*City of Caribou, Maine*

*Municipal Building*
25 High Street
Caribou, ME 04736
*Telephone* (207) 493-3324
*Fax* (207 498-3954

# AGENDA
# Caribou Planning Board
# Regular Meeting
# Thursday August 3, 2023, at 6:00 p.m.

The meeting will be broadcast on Cable Channel 1301 and the City's YouTube Channel. Public Comments submitted prior to the meeting no later than 4:00 pm on Thursday, August 3, 2023, will be read during the meeting. Send comments to City Manager Penny Thompson at pthompson@cariboumaine.org.

I. Call Meeting to Order, Determine Quorum

II. Public Hearings

III. Approval of minutes
  a. Review and Approval of June 8, 2023, Planning Board Meeting Minutes

IV. City Council Liaison Updates

V. New Business
  a. Blight issues including structures with fires
  b. LD 1706 (formerly LD 2003)
  c. Looking ahead to projects in the pipeline

VI. Old Business
  a. Schedule a 2024 Comprehensive Plan Workshop for August

VII. Staff Report

VIII. Adjournment

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**Caribou Planning Board Meeting Minutes**
**Thursday, June 8, 2023 @ 6:00 pm**
**City Council Chambers**

**Members Present:** Steve Wentworth, Frank McElwain, James Belanger, Eric Hitchcock
**Members Absent:** Amanda Jandreau, Justin Staples, David Corriveau
**Others in Attendance:** Penny Thompson

**I. Call Meeting to Order, Determine Quorum**

Chairperson Frank McElwain called the meeting to order at 6:03 pm, a quorum was present.

**II. Public Hearings**

None.

**III. Approval of minutes**

Minutes were reviewed.

Motion by Steve Wentworth to approve minutes as amended, seconded by James Belanger
**Roll Call Vote:**
Steve Wentworth –Yes; Frank McElwain - Yes; James Belanger – Yes; Eric Hitchcock - Yes. Passed by majority vote.

**IV. Council Liaison Update**

- N/A – Dan Bagley was not in attendance.

**V. New Business**

a. Workshop:

i. "Practical Difficulty" language for possible incorporation into Caribou Code Chapter 13 Sec. 13-140 Appeals and Variances. 8. Variances E.

Discussion was held concerning allowing the Zoning Board of Appeals some latitude in allowing for variances in certain circumstances and thus making Caribou Code a bit more user friendly.

Motion by Steve Wentworth to Not add to the City Ordinance, seconded by Eric Hitchcock.
**Roll Call Vote:**
Steve Wentworth –Yes; Frank McElwain - Yes; James Belanger – Yes; Eric Hitchcock - Yes. Passed by majority vote.

b. Workshop:
   i. Review of the Proposed Land Use Table to include the comment from the Riverfront Renaissance Committee Riverfront Development District land use table review workshop.
   Discussion was held concerning various zones that were created in the Riverfront area, and various issues that exist and/or could arise.

   Motion by Eric Hitchcock to table the matter until a later meeting, seconded by Steve Wentworth.
   **Roll Call Vote:**
   Steve Wentworth –Yes; Frank McElwain - Yes; James Belanger – Yes; Eric Hitchcock - Yes. Passed by majority vote.

c. Workshop:
   i. Options for changes to ordinance.
   Discussion of options for making changes to ordinance.

   Motion by James Belanger to use existing tools and not add to the ordinance, seconded by Steve Wentworth.
   **Roll Call Vote:**
   Steve Wentworth –Yes; Frank McElwain - Yes; James Belanger – Yes; Eric Hitchcock - Yes. Passed by majority vote.

## VI. Old Business

a. Comprehensive Plan Section Workshop for June, Thursday 6/22/2023 at 6:00 p.m. for the "Recreation" section of the 2024 Comprehensive Plan. Meeting to be held at the Wellness Center.

## VII. Staff Report – by Penny Thompson, City Manager

a. Letters have been received concerning a Limestone Subdivision Rail Use Advisory Council Request.
b. The Brownfields Grant applied for by the City of Caribou was awarded in the amount of $900,000.
c. LD 2003 and LD 1706 – amendments have been introduced and are being debated in Augusta.
d. Maine DOT – VPI: has been in the area to study several issues.
e. Dangerous Buildings and Blight,
   - 24 Park Street
   - 7 Water Street

## VIII. Next Meeting

a. June 22, 2023, at 6:00 pm at the Caribou Wellness Center ("Recreation" Comprehensive Plan section)
b. July 13, 2023, at 6:00 pm at the Caribou City Council Chambers (Regular meeting)

## IX. Adjournment

Motion by James Belanger to adjourn, seconded by Steve Wentworth
**Roll Call Vote:**
Steve Wentworth –Yes; Frank McElwain - Yes; James Belanger – Yes; Eric Hitchcock - Yes. Passed by majority vote.

Meeting Adjourned 7:45 pm.

Respectfully Submitted,

James Belanger
Planning Board Secretary

JRB/JK

CARIBOU ADMINISTRATION
25 HIGH STREET
CARIBOU, ME. 04736

# MEMO

**To:** **Members of the Caribou Planning Board**
**From:** **Penny Thompson, City Manager**
**Date:** **August 3, 2023**
**Re:** **Blight including structures that have had fires**

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Planning Board members have indicated that they would like more information on how staff deal with blight – specifically the structures in the City which have had a fire.

There are three tools we can use:

Local Ordinances – Chapter 4 & 13
State Statutes
The ICC International Property Maintenance Code (2015 is what has been adopted)

The local ordinance outlines the level of authority granted to the duly appointed code enforcement official. The CEO can then take actions required to enforce the codes adopted in Chapter 4 and other duties outlined in Chapter 13.

Maine state statutes govern actions such as dangerous buildings. The City is currently using that tool on some properties.

Chapter 4 of the City Code and Ordinances is where the building code and the property maintenance code are adopted.

The CEO would send a notice of violation and can follow up with other allowable actions.

## §2851. Dangerous buildings

The municipal officers in the case of a municipality or the county commissioners in the case of the unorganized or deorganized areas in their county may after notice pursuant to section 2857 and hearing adjudge a building to be a nuisance or dangerous, in accordance with subsection 2-A, and may make and record an order, in accordance with subsection 3, prescribing what disposal must be made of that building. The order may allow for delay of disposal if the owner or party in interest has demonstrated the ability and willingness to satisfactorily rehabilitate the building. If an appeal pursuant to section 2852 is not filed or, if an appeal pursuant to section 2852 is filed and the Superior Court does not order, stay or overturn the order to dispose of the building, the municipal officers or the county commissioners shall cause the nuisance to be abated or removed in compliance with the order. After recording an attested copy of the notice required by section 2857 in the registry of deeds located within the county where the building is situated, the municipality or the county may seek a writ of attachment of the property on which the building is located in accordance with Title 14, chapter 507 and the Maine Rules of Civil Procedure. [PL 2019, c. 557, §1 (AMD).]

For the purposes of this subchapter, "building" means a building or structure or any portion of a building or structure or any wharf, pier, pilings or any portion of a wharf, pier or pilings thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, and "parties in interest" has the same meaning as in Title 14, section 6321. [PL 2017, c. 136, §1 (NEW).]

**1. Notice.**
[PL 2017, c. 136, §1 (RP).]

**2. Notice; how published.**
[PL 2017, c. 136, §1 (RP).]

**2-A. Standard.** To adjudge a building to be a nuisance or dangerous, the municipal officers or county commissioners must find that the building is structurally unsafe, unstable or unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property.
[PL 2017, c. 136, §1 (NEW).]

**3. Recording of the order.** An order made by the municipal officers or county commissioners under this section must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in section 2857.
[PL 2017, c. 136, §1 (AMD).]

**4. Proceedings in Superior Court.** In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the building is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and parties in interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the building, it shall award costs as authorized by this subchapter to the municipality or the county. The municipality or the county may petition the court for a writ of attachment of the property on which the building is located in accordance with Title 14, chapter 507 and the Maine Rules of Civil Procedure. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure.
[PL 2019, c. 557, §2 (AMD).]

SECTION HISTORY

PL 1965, c. 284 (RPR). PL 1967, c. 401, §1 (AMD). PL 1973, c. 143, §1 (AMD). PL 1979, c. 27, §§1-3 (AMD). PL 1997, c. 6, §1 (AMD). PL 2017, c. 136, §1 (AMD). PL 2019, c. 557, §§1, 2 (AMD).

**§3758-A. Violations**

**1. Enforcement.** All state, county and local law enforcement officers shall enforce the provisions of this subchapter.
[PL 2003, c. 312, §14 (NEW).]

**2. Municipal authority.** Municipal officers or their designees may enforce the provisions of this subchapter pursuant to:

A. The enforcement of land use laws and ordinances under section 4452; [PL 2003, c. 312, §14 (NEW).]

B. The litter control provisions of Title 17, chapter 80; or [PL 2003, c. 312, §14 (NEW).]

C. The abatement of nuisance provisions of Title 17, chapter 91. [PL 2003, c. 312, §14 (NEW).]
[PL 2003, c. 312, §14 (NEW).]

**3. Penalties.** Violations of this subchapter are subject to the penalty provisions of section 4452; Title 17, sections 2264-A and 2264-B; or Title 17, chapter 91. Each day that the violation continues constitutes a separate offense.
[PL 2003, c. 312, §14 (NEW).]

**4. Abatement.** If the municipality is the prevailing party in an action taken pursuant to the provisions of this Title or Title 17 as outlined in subsection 2 and the violator does not complete any ordered correction or abatement in accordance with the ordered schedule, the municipal officers or designated agent may enter the property and may act to abate the site in compliance with the order. To recover any actual and direct expenses incurred by the municipality in the abatement of the nuisance, the municipality may:

A. File a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action; [PL 2003, c. 312, §14 (NEW).]

B. File a lien on real estate where the junkyard, automobile graveyard or automobile recycling business is located; or [PL 2003, c. 312, §14 (NEW).]

C. Assess a special tax on real estate where the junkyard, automobile graveyard or automobile recycling business is located. This amount must be included in the next annual warrant to the tax collector of the municipality, for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505 in the year in which the special tax is assessed accrues on all unpaid balances of the special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest must be added to and becomes a part of the tax. [PL 2003, c. 312, §14 (NEW).]
[PL 2003, c. 312, §14 (NEW).]

**5. Revocation or suspension of permit.** Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revocation or suspension of the permit by the same authority that issued the permit. A permit may not be revoked or suspended without a hearing and notice to the owner or the operator of the automobile graveyard, automobile recycling business or junkyard. Notice of hearing must be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.

The municipal officers or county commissioners shall provide written or electronic notice of the hearing to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles at least 7 days before the hearing.
[PL 2005, c. 424, §8 (AMD).]

**6. Removal of all materials after permit denial or revocation.** The owner or operator of a junkyard, automobile graveyard or automobile recycling business for which a permit has been denied or revoked shall, not later than 90 days after all appeals have been denied, begin the removal of all vehicles, vehicle parts and materials associated with the operation of that junkyard, automobile graveyard or automobile recycling business. The property must be free of all scrapped or junked vehicles and materials not later than 180 days after denial of all appeals. An alternative schedule for removal of junk or vehicles may be employed if specifically approved by the municipal officers or county commissioners.
[PL 2003, c. 312, §14 (NEW).]

SECTION HISTORY

PL 2003, c. 312, §14 (NEW). PL 2005, c. 424, §8 (AMD).

# Maine's Dangerous Building Statute

Frequently Asked Questions

*Every situation is unique and as such this flyer is for general information only and is not meant to provide legal advice.*

**What is the Maine Dangerous Building Statute?**

*The Maine Revised Statues, in Title 17 § 2851 (enclosed) provides for municipal officers to hold a hearing and if the municipal officers adjudge a building to be a nuisance or dangerous, they may make and record an order prescribing what disposal must be made of the dangerous building. If the owner does not make proper disposal, the municipal officers may seek an order of demolition and the associated costs to carry out the order will be awarded to the municipality.*

**Why have I received a letter that the municipality plans to schedule a hearing?**

*If your property is considered by the municipality's Code Enforcement Officer or Building Official to fit the definition (see MRS 17§2851 (2-A)) of a Dangerous Building, the first step is to attempt to resolve the issue informally. If you ignore the letter from the municipality and opt not to resolve the matter informally, the next communication from the municipality will be the notice of the hearing of the municipal officers.*

**What will happen at the hearing?**

*You will have the opportunity to present information and comment. The municipality's Code Enforcement Officer or Building Official will present documentation about the condition of the property which will include photos, copies of violation notices and inspection reports. This will be held in a public forum. Neighbors or other interested parties may also submit information or comment.*

**What will happen if my property is found to be a Dangerous Building?**

*The municipal officers will approve and issue a "findings and order". The order would include formal language that the building will be secured, abated, removed, and disposed. This order must be served on the property owner and parties in interest and recorded at the Southern Registry of Deeds in Houlton as provided in statute.*

**Will I have an opportunity to appeal the decision?**

*Yes, if an order is issued for your property, you will be given information about the appeal process.*

**May I consent to the removal and correction?**

*Yes, if an order is issued for your property, you (along with all parties-in-interest) may consent to the removal and correction.*

**If the order is carried out without my consent, will I receive an invoice for the costs?**

*Yes, you will receive an invoice for all expenses related to the Dangerous Building action including legal fees, title searches, mailing and recording costs plus the costs to carry out the order to secure, abate, remove and dispose of the building.*

**What if I do not pay the invoice for the costs associated with carrying out the order?**

*If you do not pay the invoice in full within 30 days after the demand for payment, a special supplemental assessment will be made with the next tax commitment. It is treated like any assessment and therefore any delinquent assessment will create a lien which would result in collection by automatic lien foreclosure under state statute.*

# Dangerous Buildings

MMA Legal Services Information Packet

*This packet is intended for general informational purposes only. It is not meant, nor should it be relied upon, as legal advice in any particular situation. Links to documents herein are provided as examples for informational purposes only and have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel. The information herein is not a substitute for consultation with legal counsel and legal review or other specific guidance on the subject. The statutes and other information herein are only current as of the date of publication.*

Date of last revision: 11/2017

## Definition and Standard

The municipal officers of a municipality may after notice and hearing adjudge a building to be a nuisance or dangerous and order the building to be repaired or removed. For purposes of this statute, "building" means a building or structure, or any portion of a building or structure, or any wharf, pier, pilings or, any portion thereof, that is located on or extending from land within the boundaries of the municipality as measured from the low water mark (17 M.R.S. § 2851). To be adjudged a nuisance or dangerous, the municipal officers must find that the building is structurally unsafe, unstable or unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property (17 M.R.S.A § 2851(2-A)).

## Securing Structures

If a building poses a serious threat to public health and safety, a municipality may secure it pending the abatement proceedings discussed below, and may recover its expenses from the owner (17 M.R.S. §§ 2856 and 2853). Notice must be served on the owner and all parties in

interest in accordance with 17 M.R.S. § 2857, but notice need not be given in advance if prompt action to secure the structure is necessary.

### Local Process; Alternative Summary Process

State law provides three methods for abating the nuisance and public safety threat posed by a dangerous building.

A. Under the first method, the municipal officers (selectpersons or councilors) may, after notice and hearing, find that a building, or portion thereof, is a nuisance or dangerous and must be abated or disposed of (17 M.R.S. § 2851). Notice of the hearing must be served on the owner and upon all "parties in interest" as defined in 14 M.R.S. § 6321 (which includes mortgagors, holders of the fee interest, mortgagees, lessees pursuant to recorded leases or memoranda of leases, lienors and attaching creditors, all as shown by Registry of Deeds records and documents referred to therein). Published notice is required where the name or address of any owner or party in interest is unknown or not ascertainable with reasonable diligence (17 M.R.S. § 2857). The notice must be recorded in the Registry of Deeds by the municipal clerk (17 M.R.S. § 2857). After the hearing, the municipal officers may make and record an order in accordance with section 2851(3) "prescribing what disposal must be made of that building" (17 M.R.S. § 2851). The order must be accompanied by written "findings" (see 17 M.R.S. § 2851(2-A)). Most often, the order is for abatement of structural defects within a specific period of time or removal of the structure. However, nothing in the statute limits municipal remedies. Neither the statute nor due process of law requires the municipality to first list the defects and allow a reasonable time for repairs before demolition. Kirkpatrick v. City of Bangor, 1999 ME 73, 728 A.2d 1268. However, the order may allow for delay of disposal if the owner has demonstrated the ability and willingness to satisfactorily rehabilitate the building (17 M.R.S. § 2851). The municipal clerk must record the order in the Registry of Deeds and must also serve an attested copy of the order upon the owner and all parties in interest (17 M.R.S. § 2851(3)). An appeal may be taken to Superior Court from the decision of the municipal officers. If no appeal is filed, or if an appeal pursuant to section 2852 is filed and the Superior Court does not order, stay or overturn the order to dispose of the building, the municipal officers shall order the nuisance to be abated or removed in compliance with the order (17 M.R.S. § 2851).

B. The second method of abatement is an alternative to proceeding before the municipal officers. Instead, a municipality may seek an abatement and/or demolition order directly from Superior Court (17 M.R.S. § 2851(4)). After a hearing, the Court may order abatement and/or demolition and may award costs to the municipality.

C. The third method of abatement is a "summary" (immediate) process that may be used in cases involving an immediate and serious threat to public health, safety and welfare (17 M.R.S. § 2859). To use the summary process, a municipality acting through its building official (or other official named in the statute) must file a verified complaint with the Superior Court. The court may act "ex parte" to set a hearing date (within 10 days of the filing) and order the owner(s) and all parties in interest to appear. Upon hearing, the court may order abatement and/or removal and may assess costs. There is no appeal from the court's judgment, although the owner may, within 30 days, contest costs and seek damages for wrongful removal if provable.

### Acknowledgment; Return of Service

On a legal document, an "acknowledgment" attests to the authenticity of a signature and is required in order to record the document at the county Registry of Deeds. A "return of service" evidences that a copy of the document was actually served on a person by someone with authority to do so. All of the suggested forms in this packet should include an acknowledgment for each signature and should be recorded in the Registry of Deeds (17 M.R.S. §§ 2851, 2857 and 2858). Any notice or order required to be served on an owner or party in interest should also include a return of service (17 M.R.S. §§ 2851 and 2856). Service must be made in the same manner as a court summons is served, including by mail, by a sheriff or deputy within the sheriff's county, by another person authorized by law, or by some person specially appointed by the court for that purpose (Rule 4, M.R.Civ.P., linked above). Please note that while service on an out-of-state property owner may be made in the same manner in which service is made in Maine, the person serving the order on an out-of-state property owner must be one authorized to do so under the laws of the state where service is attempted.

### Records

In any proceeding before the municipal officers, a full record of testimony and deliberations should be kept (either a clearly audible tape recording or a written verbatim transcript).

Documentary evidence (such as photos and inspection reports) also should be compiled and preserved. This record is essential to sustaining the municipal officers' decision if it is appealed. Proof of expenses (such as time cards and invoices) also will be important if a municipality itself undertakes the abatement and seeks to recover its costs.

### Special Tax

All expenses incurred by a municipality related to an order issued under section 2851, including the expenses relating to the abatement or removal of a building, must be repaid to the municipality by the owner within 30 days of demand or these costs may be recovered by assessing a "special tax" against the land (17 M.R.S. § 2853). The tax must be included in the "next annual warrant" to the collector and may be collected in the same manner as property taxes (including by automatic lien foreclosure). (See MMA's Municipal Assessment Manual for assessment and commitment discussions and related forms.)

The costs that may be recovered by the municipality include, but are not limited to, the cost of title searches, location reports, service or process, reasonable attorney's fees, the cost to secure or remove the building, and all other costs that are reasonably related to the removal of the building.

### Personal Property Located in a Building Declared to be Dangerous

In many cases, there will be items of personal property inside a building that has been declared dangerous using the process outlined above. Before the building may be demolished, the personal property must be addressed. Title 30-A M.R.S. § 3106 outlines the statutory procedure that must be followed by the municipality in the event of abandoned personal property.

### Additional Concerns

As the discussion above indicates, a determination that a structure is a dangerous building requires careful consideration by the municipal officers and strict compliance with the requirements of State law, including complex notice provisions. A title search is recommended to identify all parties in interest entitled to notice of the proceedings. Moreover, demolition of property is a drastic measure that may result in liability for damages for wrongful removal. The municipality should take care to protect the due process rights of the owner and parties in

interest by providing a meaningful opportunity to be heard and to address municipal concerns. City of Brewer v. Conners, CV-03-2 (Super. Ct, Pen. Cty, May, 28, 2004), Kirkpatrick v. City of Bangor, 1999 ME 73, 728 A.2d 1268; Michaud v. City of Bangor, 196 A.2d 106 (Me. 1963); Bennett v. Town of Poland, CV-88-64 (Super. Ct, Andro. Cty, Nov. 9, 1988). Therefore, we strongly urge the municipal officers to consult with local counsel before commencing such a proceeding. The municipality may recover the cost of legal advice as part of the "special tax" assessed against the property.

Finally, and again in consideration of the complexity of the formal procedures outlined above, a municipality should first attempt to resolve the issue of an unsafe building informally by sending a letter by certified mail, return receipt requested, to the property owner setting forth the problem and explaining that unless the problem is resolved to the municipality's satisfaction within a specified number of days, the municipality will commence proceedings to have the building demolished. Municipalities should be aware that any negotiated consent which allows the municipality to demolish property and assess a special tax against the property must include written consent by all parties in interest. Notices of the consent must be recorded in the Registry of Deeds located in the county where the building is situated (17 M.R.S. § 2858).

## Forms

The MMA Legal Services Department would like to thank Geoff Hole, Esq. for sharing various forms that he developed for use in connection with the Title 17 dangerous building process. Those forms appear as part of this packet either in their original form or with modifications.

# IPMC®

# 2015 CODE AND COMMENTARY

The complete IPMC with commentary after each section

ICC
INTERNATIONAL CODE COUNCIL®

provisions of the compliance order or notice of violation have been complied with, or until such *owner* or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the *code official* and shall furnish to the *code official* a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

❖ When a property has a pending violation order, it is unlawful for an owner to sell, transfer, mortgage, lease or otherwise dispose of the property without either following the order or advising the buyer, mortgagee, etc., of the pending violation. The owner must prove that the buyer has received notice of pending violations by providing the code official with a signed, notarized receipt from the new transferee.

Determining the current owner of a building is a frustrating and difficult activity. To evade code enforcement action, owners will frequently transfer ownership of their property. This provision of the code permits the code official to cite the seller if he or she did not provide the code official with the required notification when the property was transferred; thus, even though the seller may avoid complying with the outstanding violation orders, he or she can still be charged with a violation for failing to provide proof that the transferee was aware of the pending orders.

## SECTION 108
## UNSAFE STRUCTURES AND EQUIPMENT

**[A] 108.1 General.** When a structure or equipment is found by the *code official* to be unsafe, or when a structure is found unfit for human *occupancy*, or is found unlawful, such structure shall be *condemned* pursuant to the provisions of this code.

❖ This section provides a brief description of conditions where the code official is given the authority to condemn an existing structure or equipment. Where a structure or equipment is "unlawful," as described in the text of this section, that structure or equipment does not comply with the requirements of the code. The deficiencies are such that an unsafe condition or a condition that is unfit for human occupancy exists.

**[A] 108.1.1 Unsafe structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the *occupants* of the structure by not providing minimum safeguards to protect or warn *occupants* in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

❖ Any building that endangers life, health, safety or property is unsafe. A building is considered dangerous if it meets one or more of the following conditions:

- It lacks adequate protection from fire;
- It contains unsafe equipment; or
- All or part of the building is likely to collapse.

Only structures with major defects or life-threatening conditions are considered unsafe. Minor defects, such as an inadequate number of electrical outlets or damaged plaster, do not necessarily create an unsafe structure, even though they are violations of the code.

**[A] 108.1.2 Unsafe equipment.** Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the *premises* or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or *occupants* of the *premises* or structure.

❖ Equipment may become unsafe when it is a hazard to life, health, property or safety.

The judgment of the code official is critical in determining when equipment should be deemed unsafe. If uncertain about appropriate enforcement action, he or she should seek additional expertise and advice and, if necessary, err on the side of safety.

**[A] 108.1.3 Structure unfit for human occupancy.** A structure is unfit for human *occupancy* whenever the *code official* finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks *ventilation*, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the *occupants* of the structure or to the public.

❖ A building is unfit for occupancy if it is: unsafe; unlawful; lacking maintenance to a serious degree; in disrepair; insanitary; vermin or rat infested; found to contain filth; lacking essential equipment; or located such that it is hazardous to the occupants or the public.

The list of reasons for declaring a structure unfit requires subjective judgement. Because the consequences of declaring a structure unfit for occupancy are severe, the code official should carefully and thoroughly document all conditions contributing to that determination.

**[A] 108.1.4 Unlawful structure.** An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

❖ An unlawful structure is one that has serious deficiencies such that an unsafe condition or a condition that is unfit for human occupancy exists. An unlawful structure does not mean one where there are criminal activities.

**[A] 108.1.5 Dangerous structure or premises.** For the purpose of this code, any structure or *premises* that has any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the *approved* building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, *deterioration*, *neglect*, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become *detached* or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so *anchored*, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.
5. The building or structure, or part of the building or structure, because of dilapidation, *deterioration*, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and *occupancy*.
7. The building or structure is *neglected*, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the *approved* building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, *ventilation*, mechanical or plumbing system, or otherwise, is determined by the *code official* to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the *code official* to be a threat to life or health.
11. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

❖ This specific section contains a general list of conditions establishing a baseline to evaluate a structure against to determine if its present condition is dangerous. The purpose of this section is to allow a code official to cite specific conditions under which he or she finds a structure to be dangerous. The list of conditions focuses on adequacy of the means of egress, structural, fire resistance, fire protection, and plumbing and ventilation systems.

**[A] 108.2 Closing of vacant structures.** If the structure is vacant and unfit for human habitation and *occupancy*, and is not in danger of structural collapse, the *code official* is authorized to post a placard of condemnation on the *premises* and order the structure closed up so as not to be an attractive nuisance. Upon failure of the *owner* or owner's authorized agent to close up the *premises* within the time specified in the order, the *code official* shall cause the *premises* to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and shall be collected by any other legal resource.

❖ Code officials are granted the authority to condemn, placard and vacate any building that they determine to be unsafe, unlawful or unfit for occupancy. Also, code officials may remove unsafe equipment from use.

No one is permitted to reoccupy or reuse any building or equipment until the code official has given his or her approval. Unsafe structures, unsafe equipment, buildings that are unfit for human occupancy and unlawful structures are further defined in subsequent sections.

The ability to condemn and vacate structures is a powerful enforcement tool. It protects occupants from danger and prevents owners from collecting income on their properties. Before condemning or vacating structures, the code official should establish a clearly defined list of violations that warrant such actions. Additionally, it is critical to document all of the violations found in each building to be condemned. When practical, photographs should be taken of violations. Should litigation become necessary, photographs provide documents that have a powerful impact.

Open, vacant buildings are an attractive nuisance to children, a potential fire hazard, a harborage for rodents and insects and a potential home for vagrants. Vacant buildings also create a blighting influence within a community.

The code official is authorized to condemn as unfit those buildings that are vacant and open to trespass but not in danger of collapse. When the owner has been ordered to secure an open building but fails to do so, the code official must secure the structure by contracting with a public or private agent to close up the building.

The costs for closing buildings are to be charged to the property in the form of a lien. Generally, once a lien has been filed against a property, it must be satisfied before the property can be sold. This section authorizes collection by any other legal resource. It also allows collection by additional methods such as small claims judgements, collection agency actions and personal liens. This enhances the chances of cost recovery.

**[A] 108.2.1 Authority to disconnect service utilities.** The *code official* shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 102.7 in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The *code official* shall notify the serving utility and, whenever possible, the *owner* or owner's authorized agent and *occupant* of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection the *owner*, owner's authorized agent or *occupant* of the building structure or service system shall be notified in writing as soon as practical thereafter.

❖ Disconnecting a service utility from the energy supply is the most radical method of hazard abatement available to the code official and should be reserved for cases in which all other lesser remedies have proven ineffective. Such an action must be preceded by a written notice to the owner and any occupants of the building being ordered to disconnect. Disconnection must be accomplished within the timeframe established by the code official in the written notification. When the hazard to the public health and welfare is so imminent as to mandate immediate disconnection, the code official has the authority and even the obligation to cause disconnection without notice.

**[A] 108.3 Notice.** Whenever the *code official* has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the *owner*, owner's authorized agent or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

❖ The condemnation notice is required to be posted at the structure, and the owner, the owner's authorized agent or responsible person in charge is to be served notice in accordance with the procedure in Section 107.3, in the form prescribed in Section 107.2. If the notice includes condemned equipment, the notice must also be placed on that equipment.

**[A] 108.4 Placarding.** Upon failure of the *owner*, owner's authorized agent or person responsible to comply with the notice provisions within the time given, the *code official* shall post on the *premises* or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the *premises*, operating the equipment or removing the placard.

❖ If the owner fails to comply with the notice, a placard indicating that the structure is condemned as unfit for human occupancy or use should be posted on the property or equipment. This placard should also show the penalty for illegal occupancy of the building or equipment, and for removing the placard.

Immediate enforcement action should be pursued when there is an illegal occupancy of a condemned building or equipment. The credibility of the code enforcement program is dependent upon the public's belief that the code will be adequately enforced.

Any owner, owner's authorized agent, or other responsible party who has failed to comply with a correction order must vacate the property immediately after the time for correction has passed. All occupants should be given reasonable time to find other accommodations.

**[A] 108.4.1 Placard removal.** The *code official* shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the *code official* shall be subject to the penalties provided by this code.

❖ Only the code official is authorized to remove a condemnation placard. The code official is to remove the placard only when the defect or defects have been corrected as required by the code. Any other person who removes or defaces a placard is in violation of the code and subject to its penalties.

**[A] 108.5 Prohibited occupancy.** Any occupied structure condemned and placarded by the *code official* shall be vacated as ordered by the *code official*. Any person who shall occupy a placarded *premises* or shall operate placarded equipment, and any *owner*, owner's authorized agent or person responsible for the *premises* who shall let anyone occupy a placarded *premises* or operate placarded equipment shall be liable for the penalties provided by this code.

❖ It is important that any unsafe structure be vacated to help prevent possible injury to or death of its occupants. The code official has the authority to require a condemned building to be vacated. Anyone who continues to occupy a placarded building or equipment and any owner who permits another to occupy a placarded building or equipment are subject to the penalties provided by the code.

**[A] 108.6 Abatement methods.** The *owner*, owner's authorized agent, *operator* or *occupant* of a building, *premises* or equipment deemed unsafe by the *code official* shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other *approved* corrective action.

❖ This section describes the usual circumstance in which a building has such critical violations that it is declared unsafe by the code official. The owner, operator or occupant should take abatement measures to correct the unsafe condition. If this is not done promptly, the code official has the authority to directly abate the unsafe conditions and bill the owner for the abatement work in accordance with the code.

**[A] 108.7 Record.** The *code official* shall cause a report to be filed on an unsafe condition. The report shall state the *occupancy* of the structure and the nature of the unsafe condition.

❖ The code official must file a report on each investigation of unsafe conditions, stating the occupancy of the structure and the nature of the unsafe condition.

## SECTION 109
## EMERGENCY MEASURES

**[A] 109.1 Imminent danger.** When, in the opinion of the *code official*, there is *imminent danger* of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building *occupants* or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the *code official* is hereby authorized and empowered to order and require the *occupants* to vacate the *premises* forthwith. The *code official* shall cause to be posted at each entrance to such structure a notice reading as follows: "This *Structure* Is Unsafe and Its *Occupancy* Has Been Prohibited by the *Code Official*." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

❖ If the code official has determined that failure or collapse of a building or structure is imminent, failure has occurred that results in a continued threat to the remaining structure or adjacent properties or if any other unsafe condition as described in this section exists in a structure, he or she is authorized to require the occupants to vacate the premises and to post such buildings or structures as unsafe and not occupiable. Unless authorized by the code official to make repairs, secure or demolish the structure, it is illegal for anyone to enter the building or structure. This will minimize the potential for injury.

**[A] 109.2 Temporary safeguards.** Notwithstanding other provisions of this code, whenever, in the opinion of the *code official*, there is *imminent danger* due to an unsafe condition, the *code official* shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the *code official* deems necessary to meet such emergency.

❖ This section recognizes the need for immediate and effective action in order to protect the public. This section empowers the code official to cause the necessary work to be done to temporarily minimize the imminent danger without regard for due process. This section has to be viewed critically insofar as the danger of structural failure must be "imminent"; that is, readily apparent and immediate.

**[A] 109.3 Closing streets.** When necessary for public safety, the *code official* shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, *public ways* and places adjacent to unsafe structures, and prohibit the same from being utilized.

❖ The code official is authorized to temporarily close sidewalks, streets and adjacent structures as needed to provide for the public safety from the unsafe building or structure when an imminent danger exists. Since the code official may not have the direct authority to close sidewalks, streets and other public ways, the agency having such jurisdiction (e.g., the police or highway department) must be notified.

**[A] 109.4 Emergency repairs.** For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

❖ The cost of emergency work may have to be initially paid for by the jurisdiction. The important principle here is that the code official must act immediately to protect the public when warranted, leaving the details of costs and owner notification for later.

**[A] 109.5 Costs of emergency repairs.** Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the *owner* of the *premises* or owner's authorized agent where the unsafe structure is or was located for the recovery of such costs.

❖ The cost of emergency repairs is to be paid by the jurisdiction, with subsequent legal action against the owner to recover such costs. This does not preclude, however, reaching an alternative agreement with the owner.

**[A] 109.6 Hearing.** Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

❖ Anyone ordered to take an emergency measure or to vacate a structure because of an emergency condition must do so immediately.

Thereafter, any affected party has the right to appeal the action to the appeals board to determine whether the order should be continued, modified or revoked.

It is imperative that appeals to an emergency order occur after the hazard has been abated, rather than before, to minimize the risk to the occupants, employees, clients and the public.

## SECTION 110
## DEMOLITION

**[A] 110.1 General.** The *code official* shall order the *owner* or owner's authorized agent of any *premises* upon which is located any structure, which in the *code official's* or owner's authorized agent judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the *code official* shall order the *owner* or owner's authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless *approved* by the building official.

❖ This section describes the conditions where the code official has the authority to order the owner to remove the structure. Conditions where the code official may give the owner the option of repairing the structure or boarding the structure for future repair are also in this section. The code official should carefully document the condition of the structure prior to issuing a demolition order to provide an adequate basis for ordering the owner to remove the structure. Note that Appendix A contains boarding provisions, but needs to be specifically referenced in the adopting ordinance of the jurisdiction to be mandatory.

**[A] 110.2 Notices and orders.** Notices and orders shall comply with Section 107.

❖ Before the code official can pursue action to demolish a building in accordance with Section 110.1 or 110.3, it is imperative that all owners and any other persons with a recorded encumbrance on the property be given proper notice of the demolition plans (see Section 107 for notice and order requirements).

**[A] 110.3 Failure to comply.** If the *owner* of a *premises* or owner's authorized agent fails to comply with a demolition order within the time prescribed, the *code official* shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

❖ When the owner fails to comply with a demolition order, the code official is authorized to take action to have the building razed and removed. The costs are to be charged as a lien against the real estate. To reduce complaints regarding the validity of demolition costs, the code official will obtain competitive bids from several demolition contractors before authorizing any contractor to raze the structure.

**[A] 110.4 Salvage materials.** When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

❖ The governing body may sell any valuables or salvageable materials for the highest price obtainable. The costs of demolition are then to be deducted from any proceeds from the sale of salvage. If a surplus of funds remains, it is to be remitted to the owner with an itemized expense and income account; however, if no surplus remains, this must also be reported.

## SECTION 111
## MEANS OF APPEAL

**[A] 111.1 Application for appeal.** Any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

❖ This section allows a person with a material or definitive interest in the decision of the code official to appeal that decision. The aggrieved party may not appeal a code requirement. The intent of the appeal process is not to waive or set aside a code requirement; it is to provide a means of reviewing a code official's decision on an interpretation or application of the code or reviewing the code official's decision to approve or reject the equivalency of protection to the code requirement.

**[A] 111.2 Membership of board.** The board of appeals shall consist of not less than three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The *code official* shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms.

❖ The concept of the board is to provide an objective group of persons who review the matters brought to them and make a collective decision. The members of the board are not to be employees of the jurisdiction

# Chapter 2: Definitions

### General Comments

The words or terms defined in this chapter are deemed to be of prime importance in either specifying the subject matter of code provisions or in giving meaning to certain terms used throughout the code for administrative or enforcement purposes.

Section 201 addresses the practical concerns encountered when interpreting the code in relation to the use of gender, tense and singular versus plural. This section also provides the code official with guidance for finding definitions of those words or terms not defined herein.

Section 202 provides an alphabetical listing of those terms that are commonly used throughout the code and that are required for the effective application of code requirements.

### Purpose

Codes, by their very nature, are technical documents. Every word, term and punctuation mark can alter a sentence's meaning and, if misused, muddy its intent.

Further, the code, with its broad scope of applicability, includes terms inherent in a variety of construction disciplines. These terms can often have multiple meanings, depending on the context or discipline being used at the time.

For these reasons, it is necessary to maintain a consensus on the specific meaning of terms contained in the code. Chapter 2 performs this function by stating clearly what specific terms mean for the purpose of the code.

## SECTION 201 GENERAL

**201.1 Scope.** Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

❖ In the application of the code, the terms used have the meanings given in this chapter.

**201.2 Interchangeability.** Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

❖ While the definitions contained in this chapter are to be taken literally, gender and tense are to be considered interchangeable. This is so that any grammatical inconsistencies within the code text will not hinder the understanding or enforcement of the requirements.

**201.3 Terms defined in other codes.** Where terms are not defined in this code and are defined in the *International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Residential Code, International Zoning Code* or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes.

❖ When a word or term appears in the code and that word or term is not defined in this chapter, other references may be used to find its definition, including the *International Building Code*® (IBC®), *International Fire Code*® (IFC®), *International Existing Building Code*® (IEBC®), *International Residential Code*® (IRC®), *International Fuel Gas Code*® (IFGC®), *International Plumbing Code*® (IPC®), *International Mechanical Code*® (IMC®) and the *International Zoning Code*® (IZC®). These codes contain additional definitions (some parallel and duplicative) that may be used in the enforcement of either the code or other codes by reference.

**201.4 Terms not defined.** Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

❖ Another resource for defining words or terms not defined herein or in other codes is their "ordinarily accepted meanings." The intent of this statement is that a dictionary definition may suffice, provided that the definition is in context.

Often, construction terms used throughout the code may not be defined in this chapter or in a dictionary. In such case, one would first turn to the definitions contained in the referenced standards (see Chapter 8) and then to published textbooks on the subject in question.

**201.5 Parts.** Whenever the words "*dwelling unit*," "dwelling," "*premises*," "building," "*rooming house*," "*rooming unit*," "*housekeeping unit*" or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

❖ Each and every portion of a structure, whether the structure is used for one type of occupancy or several, must comply with the appropriate regulations established by the code. It is understood that every portion

or any part of a structure must comply with the code. Instead of being wordy, "or any part thereof" is considered to be included after "dwelling," "building," housekeeping unit," "rooming unit," etc.

## SECTION 202
## GENERAL DEFINITIONS

**ANCHORED.** Secured in a manner that provides positive connection.

❖ This definition describes the term "anchored" for use in determining unsafe conditions related to exterior walls, flooring and flooring components, wall veneer and trim, overhangs and projections, stairs, porches and decks and foundation systems. Where it is apparent that a positive connection at these elements does not exist, the code official can cite the condition as unsafe and require repair as needed (see Sections 304.1.1 and 305.1.1).

**[A] APPROVED.** Acceptable to the *code official*.

❖ As related to the process of acceptance of building installations, including materials, equipment and construction systems, this definition identifies where ultimate authority rests. Where this term is used, the intent is that only the enforcing authority can accept a specific installation or component as complying with the code.

**BASEMENT.** That portion of a building which is partly or completely below grade.

❖ This definition defines that portion of a building that is partly or completely below grade as being a basement. In this case, "grade" refers to the finished ground level adjacent to the exterior walls at all points around the building perimeter.

**BATHROOM.** A room containing plumbing fixtures including a bathtub or shower.

❖ A bathroom is literally a room containing plumbing fixtures, which is used for personal hygiene.

To be considered a bathroom, such a room need only contain one or more bathtubs or showers. Traditionally, bathrooms are designed to afford privacy to an individual; however, such rooms may be designed to accommodate multiple users or bathers.

In everyday usage, the term is used interchangeably with toilet room (see the definition of "Toilet room") and, in this context, people expect a bathroom to also contain plumbing fixtures used for the elimination of bodily wastes (water closets and urinals), and fixtures used for bodily cleansing, such as lavatories (sinks).

The typical bathroom in residential occupancies contains a water closet, a lavatory and either a shower or a bathtub or a shower and a bathtub. A residential bathroom may also contain a bidet.

**BEDROOM.** Any room or space used or intended to be used for sleeping purposes in either a dwelling or *sleeping unit*.

❖ A bedroom, also referred to as a "sleeping room," is an area or room used for sleeping purposes. A bedroom typically contains a bed and a piece of furniture to store clothing or a closet, although these are not required. Bedrooms may also be temporarily used for other purposes when containing fold-up or dual-purpose furniture, such as daybeds or sleeper sofas. In any case, bedrooms must have sufficient floor space per person in order to be used as such in addition to meeting all the requirements of Section 404.4. The location and number of beds can be used to establish where people are sleeping and how many persons are occupying a dwelling at a given time.

**[A] CODE OFFICIAL.** The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

❖ The statutory power to enforce the code is normally vested in a building department (or the like) of a state, county or municipality whose designated enforcement officer is termed the "code official" (see commentary, Section 104).

**CONDEMN.** To adjudge unfit for *occupancy*.

❖ To condemn is to pronounce a structure as unfit for occupancy or use. A condemnation is the result of the most serious of code violations in that it represents a condition that, in the opinion of the code official, poses a serious threat to the health and safety of the public or another structure or property. A violation that results in condemnation is typically followed by citations requesting immediate action. Depending on the severity of the situation, these actions may include vacating the premises, securing the structure or premises and, in some cases, demolition of the structure. When condemnation is used, care must be taken to follow all of the provisions outlined in Sections 107 through 110 (see commentary, Section 108).

**COST OF SUCH DEMOLITION OR EMERGENCY REPAIRS.** The costs shall include the actual costs of the demolition or repair of the structure less revenues obtained if salvage was conducted prior to demolition or repair. Costs shall include, but not be limited to, expenses incurred or necessitated related to demolition or emergency repairs, such as asbestos survey and abatement if necessary; costs of inspectors, testing agencies or experts retained relative to the demolition or emergency repairs; costs of testing; surveys for other materials that are controlled or regulated from being dumped in a landfill; title searches; mailing(s); postings; recording; and attorney fees expended for recovering of the cost of emergency repairs or to obtain or enforce an order of demolition made by a *code official*, the governing body or board of appeals.

❖ This definition summarizes the existing language of the code text in Sections 106.3, 105.5 and 110.3. All of these sections make reference to the jurisdiction's

This section provides a mechanism for removal of weeds on neglected or abandoned properties after proper notice has been given to the responsible owner or agent (see Sections 107 and 108.3). It is important that the code official act quickly in requiring weed removal to prevent the weeds from contributing to a blight condition that could eventually become a harbor for pests and rodents.

All noxious weeds are prohibited; however, each community has different weeds that are considered noxious. The code official should confer with the state or local agricultural agent to become familiar with weeds that are noxious in his or her community.

Cultivated flowers and gardens are not considered to be weeds. The word "cultivated" is important. Cultivated is defined as "to loosen or dig (soil) around growing plants." Uncultivated gardens should be treated the same as weeds and tall grasses.

**302.5 Rodent harborage.** Structures and *exterior property* shall be kept free from rodent harborage and *infestation*. Where rodents are found, they shall be promptly exterminated by *approved* processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

❖ Rodents carry disease organisms in their feces and on their bodies. The code official must require the extermination of all rodents by approved processes. All harborage areas should be eliminated by removing piles of rubbish, towing or repairing inoperable cars and cutting back weeds. Garbage should be stored in solid containers with tight-fitting lids and disposed of regularly.

**302.6 Exhaust vents.** Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another *tenant*.

❖ There are three common problems associated with exhaust vent discharges:

- Odor problems caused from exhaust gases emanating from business and industrial properties.
- Noise problems created by exhaust vents.
- Health and safety problems created by exhausts that contain hazardous or potentially hazardous discharge.

To reduce these problems, exhaust vents are prohibited from discharging directly on abutting or adjacent public and private property.

**302.7 Accessory structures.** Accessory structures, including *detached* garages, fences and walls, shall be maintained structurally sound and in good repair.

❖ Accessory structures must be maintained in accordance with the criteria established by this section. Property owners often give detached garages, sheds, fences, retaining walls and similar structures a lower maintenance priority than the primary structure; thus, these structures are more frequently in disrepair. A thorough inspection of all property areas and accessory buildings is necessary to identify violations of the code and to improve a neighborhood's appearance.

**302.8 Motor vehicles.** Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any *premises*, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an *approved* spray booth.

**Exception:** A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and *approved* for such purposes.

❖ Improper storage of inoperable vehicles can be a serious problem for a community. The vehicles are unsightly, clutter the neighborhood, provide a harborage for rodents and are an attractive nuisance for children.

This section establishes criteria for acceptable vehicle storage. No inoperable or unlicensed vehicles are permitted on a property unless approved in other regulations adopted by the community. This regulation addresses two problems associated with vehicle storage and repair:

- The blighting influence that improperly stored inoperable vehicles have on a neighborhood.
- The neighborhood mechanic who attempts to operate a vehicle repair business from home.

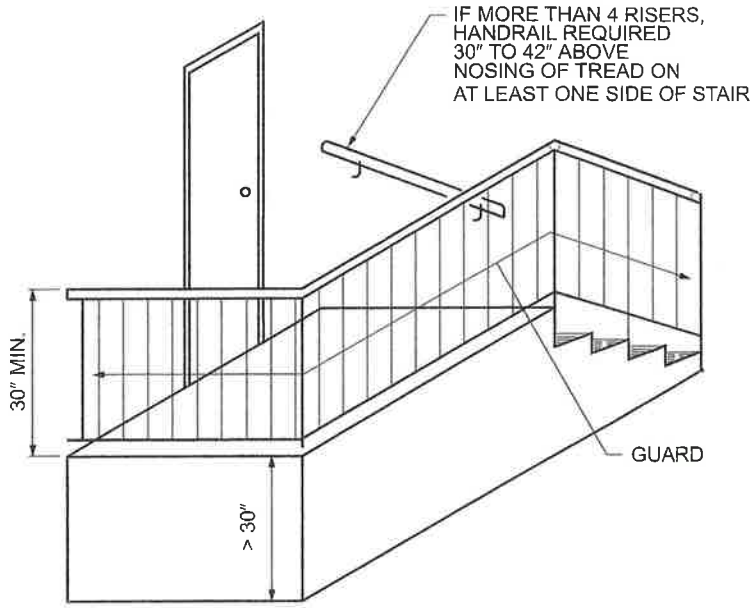
Major vehicle repairs are permitted, but only if the work is performed in a structure designed and approved for such use. Of course, this regulation does not affect the storage of vehicles on property that complies with applicable zoning or license requirements, such as repair garages, salvage yards and similar establishments.

**302.9 Defacement of property.** No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

It shall be the responsibility of the *owner* to restore said surface to an *approved* state of maintenance and repair.

❖ Graffiti, carving and damage is a problem that plagues exterior surfaces of walls, fencing and sidewalks in cities and towns of all sizes. This problem begins as an eyesore and can result in serious consequences, including declining property values and degradation of the structures' ability to repel rain and snow.

It must be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.




For SI: 1 inch = 25.4 mm.

**Figure 307.1**
**HANDRAILS AND GUARDS**

## SECTION 308
## RUBBISH AND GARBAGE

**308.1 Accumulation of rubbish or garbage.** *Exterior property* and *premises*, and the interior of every structure, shall be free from any accumulation of *rubbish* or garbage.

❖ Insanitary houses are found in almost every community. The code official may frequently find conditions where occupants fail to properly store and remove their garbage and refuse. Occasionally, the conditions may be so bad that he or she must condemn the structure as unfit for human occupancy in accordance with Section 108.1.3. Emotional, physical and mental problems may be contributing factors. The code official may have to work with health officials, social workers, child protection workers and a host of other social service agencies to obtain a solution to the problem.

Improperly stored garbage and rubbish in public halls and stairways may result in insect and rodent infestations, trip hazards and accidental fires. More importantly, improper storage creates a hazard when the exit must be used in an emergency, such as a fire.

**308.2 Disposal of rubbish.** Every *occupant* of a structure shall dispose of all *rubbish* in a clean and sanitary manner by placing such *rubbish* in *approved* containers.

❖ Rubbish includes all waste materials except garbage. Occupants are responsible for disposing of their own rubbish in proper containers. Three frequent causes for improper rubbish disposal are:

- The occupants are careless—rubbish is stacked and stored in a haphazard fashion.
- Insufficient containers are provided to handle rubbish.
- The rubbish is not being picked up frequently enough to eliminate the volume being created.

The code official should work with occupants and owners to determine the cause of the problem and then order the owners or occupants to take the appropriate action to resolve it.

**308.2.1 Rubbish storage facilities.** The *owner* of every occupied *premises* shall supply *approved* covered containers for *rubbish*, and the *owner* of the *premises* shall be responsible for the removal of *rubbish*.

❖ The owner is responsible for the removal of all rubbish. This provision is helpful as an enforcement tool. It eliminates confusion as to whether the tenant, the operator or the owner is responsible.

**308.2.2 Refrigerators.** Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on *premises* without first removing the doors.

❖ Discarded refrigerators pose an attractive nuisance to children. Children often climb into the refrigerator and close the door afterward to create a hiding place. Due to the risk of suffocation from being trapped in the refrigerator, the doors must be removed before it is considered safe to keep it during periods of storage or to properly dispose of the unit.

**308.3 Disposal of garbage.** Every *occupant* of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an *approved* garbage disposal facility or *approved* garbage containers.

❖ Garbage is the animal and vegetable waste created from the preparation and consumption of food. Occupants are responsible for properly disposing of their garbage by either using a garbage disposal (if avail-

able) or by placing the waste in approved garbage storage containers.

Improper disposal of garbage can attract rodents, insects, animals and vermin, produce noxious odors and create potential health problems. Similar to rubbish disposal, garbage disposal problems can be the result of:

- Careless disposal (not properly wrapped or stored) by the occupants.
- Insufficient containers to handle the regular amount of garbage.
- Garbage not being picked up frequently enough.
- The mechanical garbage disposal not operating.

The health consequences to the occupants and the neighborhood are probably more severe with garbage than rubbish; therefore, the code official must promptly order the correction of this problem and require an ongoing program of garbage disposal.

**308.3.1 Garbage facilities.** The *owner* of every dwelling shall supply one of the following: an *approved* mechanical food waste grinder in each *dwelling unit;* an *approved* incinerator unit in the structure available to the *occupants* in each *dwelling unit;* or an *approved* leakproof, covered, outside garbage container.

❖ The owner of any dwelling must provide a mechanical garbage disposal, an approved incinerator or enough containers to hold all garbage produced.

The storage of garbage in plastic bags is not allowed. Animals, rodents and vermin can easily open such bags and spread the garbage stored in them. Garbage containers are to be placed outside of the dwelling unit and be constructed of material that is resistant to animals and rodents. The garbage containers are to be covered with lids.

**308.3.2 Containers.** The *operator* of every establishment producing garbage shall provide, and at all times cause to be utilized, *approved* leakproof containers provided with close-fitting covers for the storage of such materials until removed from the *premises* for disposal.

❖ The operators of restaurants and similar establishments that produce garbage are required to provide sufficient numbers of containers to store the garbage properly until such time that it is removed from the premises.

Improper storage of animal and vegetable wastes produces noxious odors and permits rodents and other vermin access to the garbage. It also creates potential health problems.

## SECTION 309
## PEST ELIMINATION

**309.1 Infestation.** Structures shall be kept free from insect and rodent *infestation.* Structures in which insects or rodents are found shall be promptly exterminated by *approved* processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.

❖ There are two basic types of insect infestations: nuisance and wood destroying. Nuisance insects include flies, fleas, bees, cockroaches and silverfish. Wood-destroying insects include termites, powder-post beetles and carpenter ants.

Nuisance insects are usually found near food sources and in damp areas.

Wood-destroying insects are sometimes difficult to find. The code official or a professional exterminator may probe wood members for evidence of infestation. Concrete in contact with the soil should be visually checked for evidence of termite tubes leading from the soil to wood members. Wood infested with powder-post beetles frequently has the appearance of having been penetrated by shotgun pellets. A large powder-post beetle infestation leaves many small holes in the wood. Additionally, active beetles leave a fine wood powder called "frass" on the wood.

Eliminating nuisance insects may require treating the building with insect spray on a regular basis. Eliminating wood-destroying insects may require poisoning the soil around the building. Severe insect infestations may necessitate replacement of structural members.

Evidence of a rodent infestation can include droppings, gnaw marks and oily rub stains (imprints left where the rodent's body rubbed against the structure). Such infestations should be ordered exterminated. Additionally, corrective measures must be taken to reduce the possibility of a reinfestation.

**309.2 Owner.** The *owner* of any structure shall be responsible for pest elimination within the structure prior to renting or leasing the structure.

❖ The owner must eliminate all rodents and insects before a building or portion of a building can be rented or leased. Although it would appear easy to enforce this provision, the reality is that a new occupant may not notice any insect or rodent problems until after the building has been occupied. It may be difficult and even impossible to determine if an infestation existed before the new occupants moved in. One practical way to resolve this problem is to require the owner to have the building inspected for infestations before occupancy.

**309.3 Single occupant.** The *occupant* of a one-family dwelling or of a single-*tenant* nonresidential structure shall be responsible for pest elimination on the *premises.*

❖ In a single-family dwelling or a single-tenant nonresidential unit, the occupant of the unit—not the owner—is responsible for maintaining the property free of infestation. Accordingly, the code official should cite the occupant for rodent or insect infestations.

**309.4 Multiple occupancy.** The *owner* of a structure containing two or more *dwelling units,* a multiple *occupancy,* a *rooming house* or a nonresidential structure shall be responsible for pest elimination in the public or shared areas of the

structure and *exterior property*. If *infestation* is caused by failure of an *occupant* to prevent such *infestation* in the area occupied, the *occupant* and *owner* shall be responsible for pest elimination.

❖ The owners of public or shared areas in multiunit residential and nonresidential buildings must eliminate rodents and insects from the public or shared areas of the structure and exterior property. If a single unit in one of these buildings is infested, it is the owner and occupant's responsibility to provide for the extermination.

**309.5 Occupant.** The *occupant* of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

**Exception:** Where the *infestations* are caused by defects in the structure, the *owner* shall be responsible for pest elimination.

❖ Occupants must maintain their units in a clean and sanitary manner, free of rodents. If the occupants fail to maintain their unit, then they are responsible for all pest elimination costs.

From a practical point of view, this section is difficult to enforce. Occupants who are going to be charged pest elimination fees may move out before paying such a fee. Unfortunately, once the unit is vacant the owner becomes responsible for the pest elimination. Because the owner is responsible for correcting any defects in the structure (see Section 301.2), he or she is then responsible for any infestation caused by these defects.

## Bibliography

The following resource materials were used in the preparation of the commentary for this chapter of the code:

IBC-2015, *International Building Code*. Washington, D.C.: International Code Council, 2014.

IRC-2015, *International Residential Code*. Washington, D.C.: International Code Council, 2014.

CARIBOU ADMINISTRATION
25 HIGH STREET
CARIBOU, ME. 04736

# MEMO

**To:** Members of the Caribou Planning Board
**From:** Penny Thompson, City Manager
**Date:** August 3, 2023
**Re:** LD 1706 formerly LD 2003

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This legislation was presented as a possible remedy to attainable housing. It would allow additional dwelling units on residential lots.

I am providing information because this is something that will need to be updated in our ordinances. I have heard that MMA will be coming up with some guidance. Meanwhile, there is money from the legislature that will be available to communities for the expense of updating ordinances.

# Affordable Housing Rules Issued

**Date Posted:** Monday, May 22, 2023
**Posted In:** News, Legal Services

The Maine Department of Economic & Community Development (DECD) has issued a Final Rule implementing legislation enacted last year aimed at removing regulatory barriers to affordable housing production in Maine. The "Affordable Housing Law" requires additional density allowances for affordable housing developments and requires that municipalities allow multiple dwelling units and accessory dwelling units in specified areas (see 30-A M.R.S. §§ 4364 – 4364-C)

DECD's "*Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule*," 19-100 C.M.R. ch.5, provides additional definitions and detail to guide implementation of the law's requirements. Although the Rule provides additional clarity on a number of issues, municipal leaders should also be aware that the Legislature is currently in session and proposed legislation is currently under review that might amend the law or extend deadlines for municipal implementation.

The DECD plans to issue updated guidance materials on the topic in the near future. For a copy of the rule and DECD guidance, visit: www.maine.gov/decd/housingopportunityprogram.

Contact MMA Legal Services at 800-452-8786 or legal@memun.org with questions about the law's requirements.

## §4364. Affordable housing density

For an affordable housing development approved on or after July 1, 2023, a municipality with density requirements shall apply density requirements in accordance with this section. [PL 2021, c. 672, §4 (NEW).]

**1. Definition.** For the purposes of this section, "affordable housing development" means:

A. 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 [PL 2021, c. 672, §4 (NEW).]

B. 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. [PL 2021, c. 672, §4 (NEW).]

[PL 2021, c. 672, §4 (NEW).]

**2. Density requirements.** A municipality shall allow an affordable housing development where multifamily dwellings are allowed to have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area of a municipality consistent with section 4349-A, subsection 1, paragraph A or B or the development must be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system. The development must comply with minimum lot size requirements in accordance with Title 12, chapter 423-A, as applicable.
[PL 2021, c. 672, §4 (NEW).]

**3. Long-term affordability.** Before approving an affordable housing development, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of 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 [PL 2021, c. 672, §4 (NEW).]

B. For owned housing, occupancy of all of 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. [PL 2021, c. 672, §4 (NEW).]

[PL 2021, c. 672, §4 (NEW).]

**4. Shoreland zoning.** An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.
[PL 2021, c. 672, §4 (NEW).]

**5. Water and wastewater.** The owner of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:

A. 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; [PL 2021, c. 672, §4 (NEW).]

B. 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 under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42; [PL 2021, c. 672, §4 (NEW).]

C. 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 [PL 2021, c. 672, §4 (NEW).]

D. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use. [PL 2021, c. 672, §4 (NEW).]

[PL 2021, c. 672, §4 (NEW).]

**6. Subdivision requirements.** This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.
[PL 2021, c. 672, §4 (NEW).]

**7. Restrictive covenants.** This section may not be construed to interfere with, 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 section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.
[PL 2021, c. 672, §4 (NEW).]

**8. Rules.** The Department of Economic and Community Development shall adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. The rules must include criteria for a municipality to use in calculating housing costs. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2021, c. 672, §4 (NEW).]

SECTION HISTORY

PL 2021, c. 672, §4 (NEW).

## §4364-B. Accessory dwelling units

**1. Use permitted.** Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.
[PL 2021, c. 672, §6 (NEW).]

**2. Restrictions.** An accessory dwelling unit may be constructed only:

A. Within an existing dwelling unit on the lot; [PL 2021, c. 672, §6 (NEW).]

B. Attached to or sharing a wall with a single-family dwelling unit; or [PL 2021, c. 672, §6 (NEW).]

C. As a new structure on the lot for the primary purpose of creating an accessory dwelling unit. [PL 2021, c. 672, §6 (NEW).]

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to July 1, 2023.
[PL 2021, c. 672, §6 (NEW).]

**3. Zoning requirements.** With respect to accessory dwelling units, municipal zoning ordinances 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 [PL 2021, c. 672, §6 (NEW).]

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-A, the lot is not eligible for any additional increases in density except as allowed by the municipality. [PL 2021, c. 672, §6 (NEW).]
[PL 2021, c. 672, §6 (NEW).]

**4. General requirements.** With respect to accessory dwelling units, municipalities shall comply with the following conditions.

A. A municipality shall exempt an accessory dwelling unit from any density requirements or calculations related to the area in which the accessory dwelling unit is constructed. [PL 2021, c. 672, §6 (NEW).]

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 setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and setback requirements for an accessory dwelling unit. [RR 2021, c. 2, Pt. A, §110 (COR).]

C. An accessory dwelling unit may not be subject to any additional parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located. [PL 2021, c. 672, §6 (NEW).]
[RR 2021, c. 2, Pt. A, §110 (COR).]

**5. Shoreland zoning.** An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.
[PL 2021, c. 672, §6 (NEW).]

**6. Size requirements.** An accessory dwelling unit must meet a minimum size of 190 square feet. If the Technical Building Codes and Standards Board under Title 10, section 9722 adopts a different minimum size, that standard applies. A municipality may impose a maximum size for an accessory dwelling unit.
[PL 2021, c. 672, §6 (NEW).]

**7. Water and wastewater.** The owner of an accessory dwelling unit must provide written verification to the municipality that the accessory dwelling unit is connected to adequate water and wastewater services before the municipality may certify the accessory dwelling unit for occupancy. Written verification under this subsection must include:

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 accessory dwelling unit and proof of payment for the connection to the sewer system; [PL 2021, c. 672, §6 (NEW).]

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 under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42; [PL 2021, c. 672, §6 (NEW).]

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 accessory dwelling unit, proof of payment for the connection and the volume and supply of water required for the accessory dwelling unit; and [PL 2021, c. 672, §6 (NEW).]

D. If an accessory dwelling unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use. [PL 2021, c. 672, §6 (NEW).]
[PL 2021, c. 672, §6 (NEW).]

**8. Municipal implementation.** In adopting an ordinance under this section, a municipality may:

A. Establish an application and permitting process for accessory dwelling units; [PL 2021, c. 672, §6 (NEW).]

B. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and [PL 2021, c. 672, §6 (NEW).]

C. Establish alternative criteria that are less restrictive than the requirements of subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C. [PL 2021, c. 672, §6 (NEW).]
[PL 2021, c. 672, §6 (NEW).]

**9. 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 as described in section 4360.
[PL 2021, c. 672, §6 (NEW).]

**10. Subdivision requirements.** This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.
[PL 2021, c. 672, §6 (NEW).]

**11. Restrictive covenants.** This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid or enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided

in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.
[PL 2021, c. 672, §6 (NEW).]

**12. Rules.** The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2021, c. 672, §6 (NEW).]

**13. Implementation.** A municipality is not required to implement the requirements of this section until July 1, 2023.
[PL 2021, c. 672, §6 (NEW).]

SECTION HISTORY

PL 2021, c. 672, §6 (NEW). RR 2021, c. 2, Pt. A, §110 (COR).

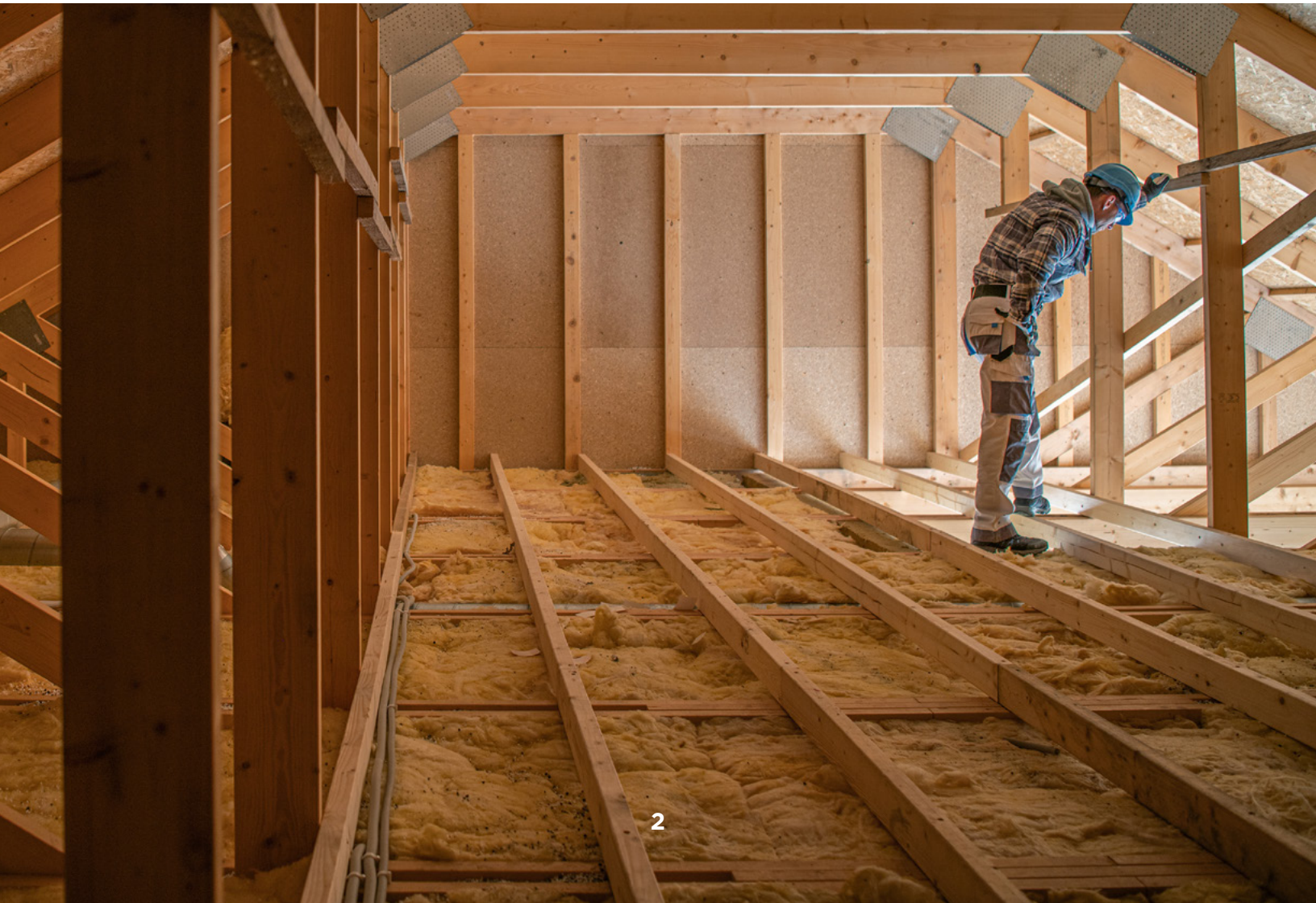
# LD 2003 Guidance

MAINE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

# LD 2003 Guidance

"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. This guidance is not legally binding or intended to serve as a substitute for the language of LD 2003 or the rule that will be adopted. It represents the interpretation of LD 2003 and the proposed rule, as well as its requirements by the state agencies that are responsible for its implementation. This guidance may be updated once the rule is adopted.



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
**Statewide Housing Production Goals**
(5 MRSA §13056, sub-§9)

Effective Aug. 8, 2022
**Municipal Role in Fair Housing/ Short Term Rentals**
(7 30-A MRSA §4364-C)

Effective July 1, 2023
**Accessory Dwelling Units**
(6 30 A MRSA §4364-B)

Effective July 1, 2023
**Affordable Housing Density in Growth Areas Bonus**
(4 30-A MRSA §4364)

Effective July 1, 2023
**Two to Four Units**
(5 30-A MRSA §4364-A)

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

**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:

**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 DensityBonus

## 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 x 2.5). The local off-street parking requirement for this development could not exceed ten spaces (15 x 2/3). In cases of fractional results, the number of units would generally be rounded down, but the municipality has discretion to round the number of parking spaces either up or down to the nearest whole number.

# 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.

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

***This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.***

### What is meant by "multifamily dwellings?"

"Multifamily dwellings" is defined in rule.

### What is a "base density that is otherwise allowed?"

Under a local zoning code, the "base density that is otherwise allowed" is the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit. This is defined in rule.

### 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?

No, Section 5's provision about "lot area per dwelling unit," 30-A M.R.S. § 4364-A(3), does not apply to Section 4. Therefore, municipalities have the discretion to designate lot area per dwelling unit when approving "affordable housing developments." Municipalities, however, must comply with the minimum lot size requirements stated in Title 12, chapter 423- A, as applicable.

### Does LD 2003 apply to municipalities that do not use the term "designated growth area," but instead use a different term for growth districts in comprehensive plans.

Yes. LD 2003 applies to a municipality that has adopted a different term to mean a "designated growth area" in its comprehensive plan.

### 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.

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

A municipality may apply its local density bonus to "affordable housing developments" instead of the density bonus stated in 30-A M.R.S § 4364, as long as the municipality's local density bonus is equally or more permissive. More permissive, for purposes of this comparison, means that a local density bonus must be more generous and permissive in regard to each of the requirements described in the LD 2003 density bonus. The density bonus also applies to "affordable housing developments" in municipalities that have not adopted density requirements, as long as the development meets the requirements of 30-A M.R.S. § 4364.

# Residential Areas, Generally; Up to 4 Dwelling Units

## 30-A MRSA §4364-A

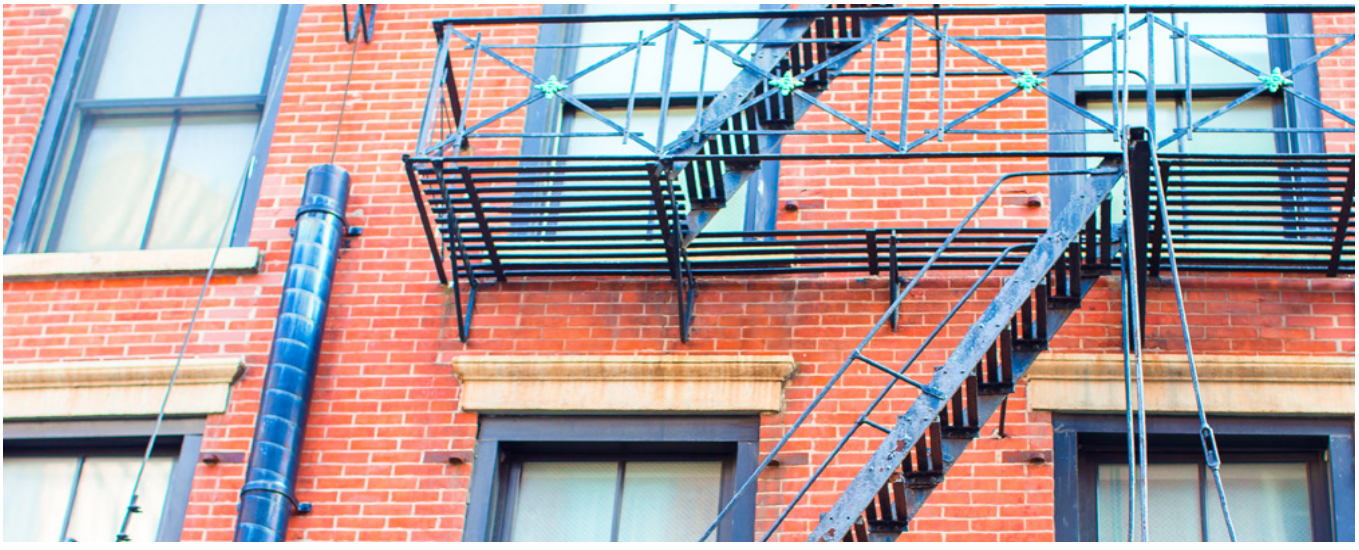
This section requires municipalities to allow multiple dwelling units on parcels where housing is allowed, provided evidence of sufficient water and wastewater capacity exists, beginning on July 1, 2023. Municipaliies may not apply different dimensional requirements to lots with more than one housing 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

***This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.***

### 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.

### Does LD 2003 establish minimum dimensional requirements for dwelling units under this section?

Yes, a municipality cannot establish dimensional requirements for additional dwelling units on a lot that are more restrictive than dimensional requirements for a single-family unit, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

### Section 5 requires a municipality to allow up to two dwelling units per lot if that lot contains an "existing dwelling unit." What does "existing dwelling unit" mean?

"Existing dwelling unit" means a dwelling unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

### What is meant by "potable" water?

This is addressed in rule.

### 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. A conditional use shall be viewed as a permitted use.

### What does "attached to an existing structure" mean?

The rule defines the word "attached." Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

### 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."

### What does "any area which housing is allowed" mean?

This phrase requires municipalities to allow multiple dwelling units on a lot located in any area allowing residential uses, regardless of zoning district designation. This does not include congregate living settings, lodging homes, residence halls, or other similar types of buildings.

### Does LD 2003 apply to municipalities with comprehensive plans that have expired findings?

Yes. An expired finding does not invalidate a locally adopted comprehensive plan or invalidate ordinances, but it could provide an opening for a party to challenge the ordinance in court. Consultation with legal counsel is recommended.

### Do the provisions of LD 2003 that mention "designated growth areas" apply to a municipality that does not use the term "designated growth area," but instead uses a related term for growth districts in its comprehensive plan?

Yes. LD 2003's provisions apply to a municipality that does not use the term "designated growth area" but instead uses a related term to mean growth districts in its comprehensive plan.

# Residential Areas

## Empty Lot Where Housing Is Already Allowed


**Empty Lot** | **One Dwelling Unit** | **Two Dwelling Units** | **Three Dwelling Units** | **Four Dwelling Units**

**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


**Adding 1 Unit to Lot with Existing Home**

Additional unit within the existing structure (e.g., basement or attic)

Additional unit attached to the existing structure

Additional unit detached from the existing structure


**Adding 2 Units to Lot with Existing Home**

Additional units attached to the existing structure and detached from existing structure

Additional units within the existing structure and detached from the existing structure

# 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
  - Up to 4 dwelling units, detached or attached
- Outside growth area
  - Up to 2 dwelling units, if attached

## 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

## ON LAND WITH TWO EXISTING UNITS

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

### 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

### 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.)

# 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. Municipali-ties may set a maximum size for ADUs in local ordinance.

### OTHER MUNICIPAL POWERS

Municipalities may establish an application and permit-ting 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.

**UNLIKE SECTION 5,** a municipality may not establish requirements for minimum lot area for the addition of an ADU on a lot with an existing single-family home.

# QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

***This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.***

### How is an ADU defined?

LD 2003 does not define ADU. There is a definition in 30-A MRSA §4301 and many communities define them in local ordinances. This is addressed in rule.

### 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?

Yes, as long as an ADU owner follows the permitting procedures and life safety requirements outlined by their municipality (if applicable).

### 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?

An accessory dwelling unit may 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 as an accessory dwelling unit must meet the existing dimensional requirements as required by the municipality for an accessory structure.

### 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 does "in any area in which housing is permitted" mean?

This phrase requires municipalities to allow one accessory dwelling unit on any lot with a single-family dwelling unit located in an area allowing residential uses, regardless of zoning district designation. This does not include congregate living settings, lodging homes, residence halls, or other similar types of buildings.

### 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.

### 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 is addressed in rule.

### 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. A conditional use shall be viewed as a permitted use.

### What does "attached to an existing structure" mean?

The rule defines the word "attached." Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

### LD 2003 allows an ADU to be built that is "a new structure on the lot for the primary purpose of creating an accessory dwelling unit." What does this mean?

This provision allows a new structure to be built on a lot with an existing single-family dwelling unit, as long as the main reason for building the structure is to support human habitation. Local ordinance can define primary purpose further.

### Can a municipality require lot area requirements for the addition of an ADU on a lot with an existing single-family home?

No. A municipality must exempt an ADU from density and lot area requirements. The setback and other dimensional requirements, however, continue to apply unless the municipality makes this more permissive for an ADU.

### Section 6 allows for the construction of an ADU within an "existing dwelling unit." What does "existing dwelling unit" mean?

"Existing dwelling unit" means a dwelling unit in existence on a lot at the time of submission of a permit application to build an additional unit on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for an additional unit on a lot.

# 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

***This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.***

### 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 regu-lation and fair housing was often not recog-nized. 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

***This guidance represents the interpretation of LD 2003 and the proposed rule language. This guidance may be updated once the rule is adopted.***

**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.

**Can developers "double count" bonuses from various sections?**

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. Developers may only "double count" bonuses from various sections on a lot if this is permitted by the municipality in which the lot is located.

**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 sub-chapter or as identified in a growth management program certified under section 4347A;*

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 Develop-ment, in consultation with the Department of Agriculture, Conservation & Forestry. These rules are considered "routine technical" – meaning they "establish standards of practice or procedure for the conduct of business with or before an agency" and can be approved administratively.

## 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 grants to service providers to encourage and support the development of additional housing units in Maine, including housing units that are affordable for low-income and moderate-income individuals and housing targeted to community workforce housing needs. These "Service Provider grants" will be awarded to experienced service providers to support municipal ordinance development, the creation of housing development plans, and public process and community engagement support, and may encourage regional coordination. Additional information regarding the Housing Opportunity Grant Program will be available in Spring of 2023.

Finally, the Housing Opportunity Program will be launching a municipal reimbursement program in the Spring of 2023 to assist municipalities with financial costs incurred from implementing ordinance amendments related to LD 2003. Limited funding is available for qualified expenses. For more information on this program reach out to the Housing Opportunity Program staff.

# Still have questions? Need more information?

VISIT: MAINE.GOV/DECD/HOUSINGOPPORTUNITYPROGRAM

MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT

# Housing Opportunity Program Municipal Payments

## PL 2021, ch. 672 (LD 2003)

INFORMATIONAL SESSION

MAINE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

JULY 27, 2023

Department of Economic & Community Development

# Overview

The Housing Opportunity Program within the Maine Department of Economic and Community Development has funding available to support municipalities with PL 2021, ch. 672 (LD 2003) compliance.

Municipalities can either receive funding to:

- Reimburse qualifying expenses; or
- Cover future qualifying expenses.

# Eligibility

- Municipalities with zoning are eligible to receive funding from the Department.
    - Zoning means the municipality is divided into zone or districts in which differing regulations and uses apply.
    - Municipalities that only have shoreland zoning are not eligible for funding.

# Municipalities Without Zoning

- Municipalities without zoning, including municipalities with only shoreland zoning, are not eligible to receive funding from the Department's municipal payments.

- However, there are two funding opportunities for municipalities without zoning to receive financial support with PL 2021, ch. 672 compliance:

    - Service Provider Grants: Now open

    - Municipal Grants: More information to come in 2024

# Payment Amount

- Eligible municipalities that have (1) one or more designated growth areas or (2) a public, special district, or other centrally managed water system and a public, special district, or other comparable sewer system shall receive **up to $10,000**.

- Eligible municipalities that do not have (1) designated growth areas or (2) a public, special district, or other centrally managed water system and a public, special district or other comparable sewer system shall receive **up to $5,000**.

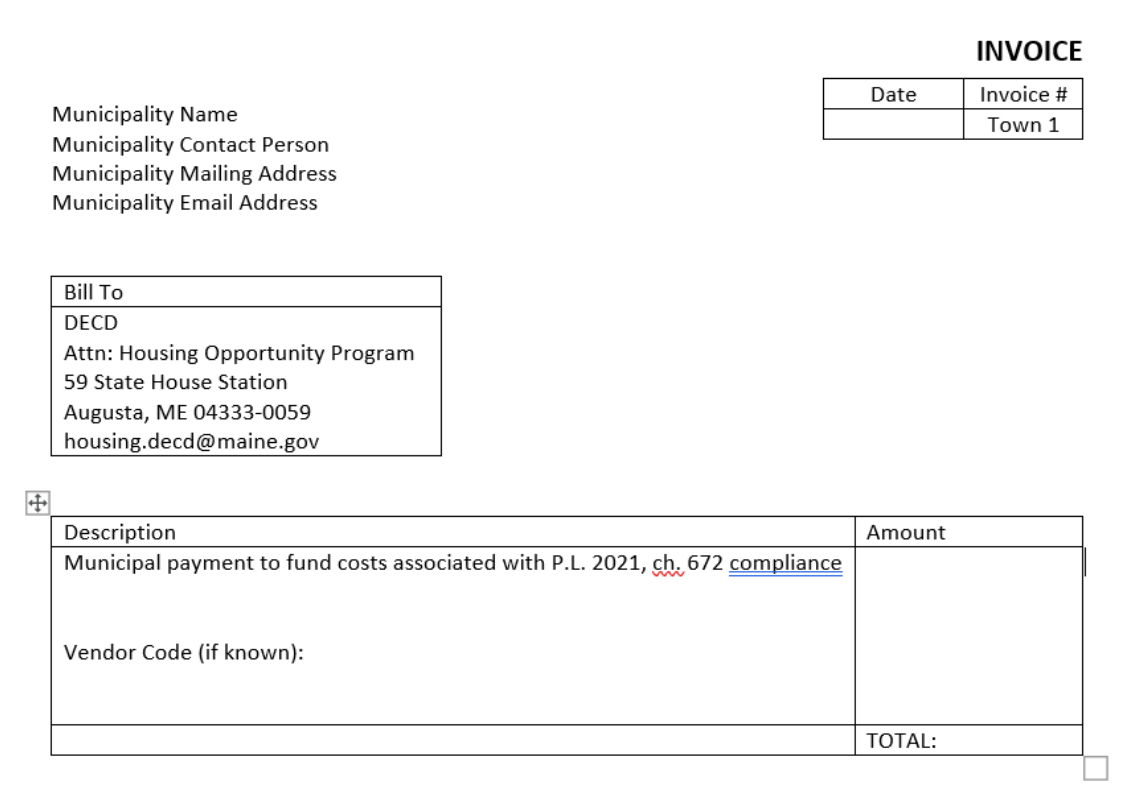
# Qualifying Expenses

The funding must be used for the following zoning ordinance related qualifying expenses:

- Attorney's fees to research, draft and revise zoning ordinances;
- Attorney's fees associated with development of legal opinions regarding local regulations;
- Staff and contractor time for research and drafting zoning ordinances, including staff time and board/town meetings;
- Fees associated with providing notice of election and public meetings; and
- Staff time, including overtime and stipends, and other associated expenses, for the conduct of town meetings and elections.

# Payment Process

- To receive funding, municipalities must fill out an invoice template and email to housing.decd@maine.gov.



**INVOICE**

| Date | Invoice # |
|---|---|
| | Town 1 |

Municipality Name
Municipality Contact Person
Municipality Mailing Address
Municipality Email Address

| Bill To |
|---|
| DECD<br>Attn: Housing Opportunity Program<br>59 State House Station<br>Augusta, ME 04333-0059<br>housing.decd@maine.gov |

| Description | Amount |
|---|---|
| Municipal payment to fund costs associated with P.L. 2021, ch. 672 compliance<br><br>Vendor Code (if known): | |
| | TOTAL: |

Don't know your town's vendor code?
Contact housing.decd@maine.gov.

# Municipal Responsibilities

- Any municipality that receives funding from the Department to comply with P.L. 2021, ch. 672 must send the Department:
    - Updated ordinances following adoption; and
    - Accounting documentation that is detailed enough for the Department to determine whether the funds spent are qualifying expenses as described above in Section D(3). Accounting documentation should provide, at a minimum: the goods and/or services paid for; the amount paid for goods and/or services; and the date of payment(s).
- Adopted ordinances and accounting documentation must be emailed to the Housing Opportunity Program at housing.decd@maine.gov.

# Municipal Responsibilities

- Municipalities may request reimbursement for staff time in multiple ways. A municipality may provide a narrative statement or chart about staff time used for research, drafting, public hearings, or town meetings.

| Staff Member | Date/Time | Amount of Time | Hourly Rate | Total |
|---|---|---|---|---|
| Clerk | 9/2022, Public Hearing | 2 hours | $25 | $50 |
| Clerk | 1/2022-9/2022 - 20 weeks | 5 hours/week | $25 | $2500 |
| Town Manager | 9/2022, Public Hearing | 2 hours | $30 | $60 |
| Town Manager | 1/2022-9/2022 - 20 weeks | 5 hours/week | $30 | $3,000 |
| Staff Planner | Research | 15 hours | $30 | $450 |
| | | | | $6,060 |

# Unexpended Funds

- If a municipality does not expend all the funds allocated pursuant to this payment schedule, the municipality must return the unexpended funds to the Department. To initiate a return of the funding, please email housing.decd@maine.gov.

# Deadline

- At this time, the Department has not set a deadline to submit invoices to receive a municipal payment.
- However, the Department anticipates that most municipalities will be asking for funding and providing accounting documentation around July 1, 2024.
- When the Department intends to close the program, ample notice will be provided.

# Appeal Process

- In accordance with the Maine Administrative Procedure Act, a municipality may appeal the number, amount, and timing of payments to the Department.

- If a municipality desires to appeal, the appeal must:
  - Be in writing;
  - Addressed to the Commissioner of the Department;
  - Be emailed to the following designated email box: housing.decd@maine.gov;
  - Label the subject line of the email "Municipal Payment Schedule Appeal"; and
  - Explain the basis for the appeal.

- Decisions on appeal from the number, amount, and timing of payments awarded pursuant to this payment schedule constitute final agency action for judicial review purposes pursuant to the Maine Administrative Procedure Act, 5 M.R.S. § 11001(1).

# Questions?

Housing Opportunity Program
Maine Department of Economic and Community Development
housing.decd@maine.gov

CARIBOU ADMINISTRATION
25 HIGH STREET
CARIBOU, ME. 04736

# MEMO

**To:** Members of the Caribou Planning Board
**From:** Penny Thompson, City Manager
**Date:** August 3, 2023
**Re:** Projects that are in the pipeline

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## Spud Speedway

Creating an event center with short-term rentals

## Dog Boarding Kennel

Staff has had two different inquires

## Caribou Police Station

Project now underway for a final design and financing

Notable permits issued in July:

Aroostook Band of Micmacs Community Center building – 214 Doyle Road

Caribou Cabins is adding another rental cabin – 259 Lombard Road

**City Manager's Report**
**June 26, 2023**

## Economic Projects

| | |
|---|---|
| **River Front - Powerplants** | Working on required items for the Brownfields Grant of $900,000 for the diesel plant and smaller buildings; EPA and DEP are initiating a CERCLA action plan to remove some contaminates from the area. UCONN will be on site July 11 & 12. |
| **Broadband Initiative** | The Caribou Utilities District discussed this at their last meeting. Charter / Spectrum is still working on their grant contract with MCA. |
| **CDBG** | No new updates |
| **Ogren Dump Solar Project** | No new updates |
| **Events and Marketing** | The next Thursdays on Sweden Street is June 29. Theme: "A Salute to Veterans", live entertainment by the "No Pressure" and Northern Maine Brewing Company will be your hosts in the outdoor café. |
| **Landbank** | No new updates |
| **Chapter 13 Rewrite** | No new updates |
| **Federal American Rescue Plan Act** | Waiting for a decision from the Aroostook County Commissioners on our ARPA application for new turn-out gear (FIRE/EMS) and a body worn camera system (POLICE). |
| **Blight Cleanup** | No new updates |
| **Birdseye Cleanup** | No new updates |
| **Caribou Development Committee** | The group will have their second meeting next week. First meeting was May 31. Very energetic group. |
| **River Front - Master Plan** | NBRC Application was submitted on time. We will have an answer in August. |
| **Façade Improvement Program** | No new updates |
| **Aldrich ATV/Snowmobile Storage** | City Manager met with owner and provided additional information. |
| **Caribou Economic Growth Council** | No new updates |
| **Business Outreach** | Two local businesses have changed ownership recently. On agenda for tonight. |

| | Other Administrative Projects |
|---|---|
| **Tax Acquired Property Policy** | A Supreme Court case may affect the tax-acquired property process here in Maine. MMA and other attorneys are working on this. One bid on tonight's agenda. |
| **Nylander** | Proposed by-Laws for the Nylander Museum of Natural History Board of Trustees is on tonight's agenda. |
| **Fire Structural Work** | Sewell has done some work on this issue recently. |
| **Fire Station Renovations** | No new updates |
| **Police Station** | Public Safety Committee met via zoom with Ellen and Rob on May 24 |
| **River Road** | No new updates |
| **Investment Policy** | No new updates |
| **Trailer Park Closure** | The park will be closing in July |
| **Cable Franchise Renewal** | No new updates |
| **Airport** | Citizen Advisory Committee meeting was held June 13 |
| **Personnel Policy** | No new updates |
| **New LED Street lights** | No new updates |
| **Comp Plan Update** | Last session was May 25. Topic was Riverfront. Next work session will be on Thursday July 20 at the Wellness Center. Topic is Recreation. |
| **COVID-19 Status** | No new updates |
| **15 Prospect Street** | The City has received a response from Mr. Barretto |
| **Water Street Fire** | On tonight's agenda |
| **Age-Friendly Efforts** | Meeting held on May 23 |
| **Personnel Changes** | All positions at the Caribou Fire & Ambulance Department have been filled |
| **Other Updates** | Caribou has been invited to participate in a competition at the National Brownfields conference to receive pro-bono consulting work on our reuse project. |
| **Administrative Approvals** | Extension of premises for Evergreen Lanes featuring Rendezvous Restaurant approved June 2. |
| **DOT Village Partnership** | Jarod was here June 8. Next step is for DOT to finalize a scope of work for the plan. |

**City Manager's Report**
**July 24, 2023**

## Economic Projects

| | |
|---|---|
| **River Front - Powerplants** | CERCLA Action pending. We know who the project manager will be but not the scope of work or start time. UCONN TAB was here on July 12 to see the project site. Brownfields conference August 7-11 in Detroit. RFP for the QEP now active. |
| **Broadband Initiative** | Charter/Spectrum and the Maine Broadband Connectivity Authority are still negotiating their contract. |
| **CDBG** | Close-out paperwork on the Caribou Area Ride Service has been submitted. The state has asked for some additional information. |
| **Ogren Dump Solar Project** | Staff toured this project with Maine DEP on July 11. We are looking for that report soon. |
| **Events and Marketing** | Caribou Cares About Kids is July 27 - 30. All events will be held at the Wellness Center. |
| **Landbank** | Councilor Bagley has been looking into Land Bank ideas. |
| **Chapter 13 Rewrite** | No new updates. |
| **Federal American Rescue Plan Act** | Agreement with Aroostook County is on tonight's agenda. |
| **Blight Cleanup** | Dangerous buildings on the agenda tonight. |
| **Birdseye Cleanup** | Staff has been spending a great deal of time and effort into researching what has been done and if we can get the needed letters from DEP. |
| **Caribou Development Committee** | There was not a quorum for the June 28 meeting. Meeting again on July 16. |
| **River Front - Master Plan** | Still waiting to hear on the NBRC grant application. |
| **Façade Improvement Program** | There will be a fall application program advertised soon. |
| **Aldrich ATV/Snowmobile Storage** | No new updates. |
| **Caribou Economic Growth Council** | Met on June 29. Discussed accounts in trouble. Land Bank will be discussed at next meeting. |
| **Business Outreach** | Newsletters were sent out to Caribou businesses and is available on the Economic Development department page of the website. |

| | Other Administrative Projects |
|---|---|
| **Tax Acquired Property Policy** | There are some things to discuss since the recent SCOTUS decision. |
| **Nylander** | Bid opening results on tonight's agenda. Bylaws accepted, leadership elected and moving forward to do great things in the community. |
| **Fire Structural Work** | No new updates. |
| **Fire Station Renovations** | CDS request cleared another hurdle this week. Fire department request approved in the Senate Appropriations Committee. |
| **Police Station** | Artifex will be here next week. |
| **River Road** | No new updates. |
| **Investment Policy** | No new updates. |
| **Trailer Park Closure** | Closure date: July 27, 2023 |
| **Cable Franchise Renewal** | No new updates. |
| **Airport** | The DBE, Disadvantage Business Enterprise Program, a requirement for federal funding, has been finalized and posted on the Airport department page of the website. |
| **Personnel Policy** | No new updates. |
| **New LED Street lights** | No new updates. |
| **Comp Plan Update** | Recreation work session was held on Thursday July 20 at the Wellness Center. Great turn out. Contract with NMDC on tonight's agenda. |
| **LD 2003 Implementation** | No new updates. |
| **15 Prospect Street** | Staff met with Attorney Solman on July 12. This is in the courts. |
| **Water Street Fire** | Dangerous buildings on the agenda tonight. |
| **Age-Friendly Efforts** | Meeting held on June 27. No July meeting. |
| **Personnel Changes** | Still looking for an experienced code enforcement officer. |
| **DOT Village Partnership** | No new updates. |
| **Aroostook Waste Solutions** | Construction of 5&6 underway but delayed due to weather; 5-year update to Maine Materials Management Plan underway |
| **Cary Medical Center** | 100th Anniversary in 2024. Planning underway. If you have old photos, memorabilia or stories, please reach out to Bill Flagg. |

# Brownfields 2023 ~ Perfect Pitch

## City of Caribou Maine Motown Hit List


Riverfront Power Plants

**142 Lower Lyndon Street**
**Caribou Maine**

**Lot Size:** **3.48 acres**

**Zoning:** **Industrial**
**Shoreland**

**Environmental Complete:**
**Phase I ESA**
**Phase II ESA**
**HBMS**

**Funding Secured:**
**FY2023 Brownfields Cleanup Grant for the diesel plant**

**Other Activities:**
**CERCLA action pending**

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www.cariboumaine.org/riverfront

### You Are The Sunshine of My Life

Caribou is more than its iconic name, it is our forever home town and holds a special place in our hearts. The people of Caribou are proud and resilient so when times have changed, they have adapted to make the best of the situation. This Riverfront Power Plants site is a reminder of the blight and economic challenges that our community has experienced in the past 30 years since the closure of nearby Loring Air Force Base.

### Nowhere to Run

This area is a high visibility gateway, especially for travelers from the east (including Canada) on highway 161 and also north/south travelers on US Route 1. There is an abandoned railroad track (the former Bangor & Aroostook, the State of Maine now owns) bordering the property. There is a nearby ATV recreational trail connecting the power plants site to the nearby "Birdseye" brownfield site by a maintained route which goes under the major access North/South highway – U S Route 1 . There are State of Maine boat landing/access points .25 miles north of the property (above the dam) and a developed boat launch site .70 miles south of the property (below the dam).

### What's Going On?

The riverfront power plants site of abandoned buildings including a diesel plant and a steam plant, was acquired by the City of Caribou through the automatic lien foreclosure process in 2019. The site is adjacent to an historic 1889 dam built for hydropower electricity production (still FERC permitted until 2044), an operating electrical switching and substation, and three abandoned above ground storage tanks referred to as the "bulk plant". The blighted power plant buildings are unsecured and have been subject to vandalism. Several neighborhood residents previously enjoyed walking through this area but recently have been afraid of vagrants and exposure to contaminants. Two (including this property) of three census tracts in Caribou have Justice40 designated status, documented by the Justice40 indicators "health burdens" and "clean energy and energy efficiency" as the measures in need of reform.

### I Heard It Through The Grapevine

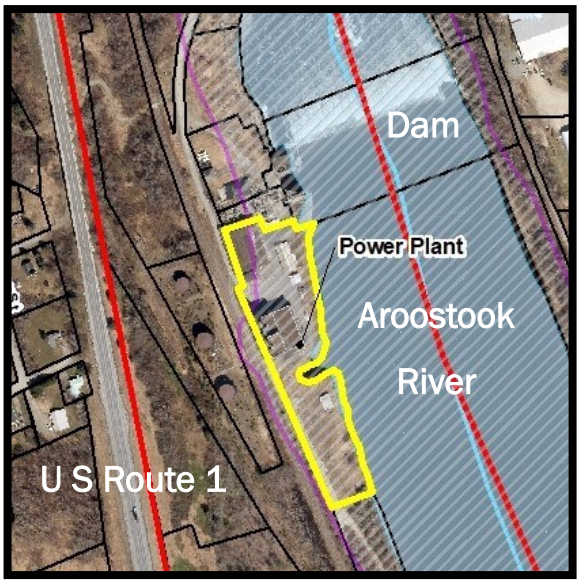
The City of Caribou is working with the UCONN TAB program to engage our residents on the Citizen's Lab platform. During a Fall 2022 community visioning session for the 2024 Comprehensive Plan, riverfront revitalization was voted of highest priority after economic development. Although riverfront revitalization has been suggested in various community plans since 2004, this project is the first one to make riverfront cleanup and development a reality.

### Just My Imagination

The Aroostook River dominates the local landscape and yet Caribou does not currently have a riverfront park. After cleaning up and redeveloping this industrial brownfield area into a gathering place on the Aroostook River, there is an opportunity for legacy land use and neighborhood transformation which would be a significant achievement for our small, rural, disadvantaged community. Reimagining this environmentally and culturally significant riverfront site as a park will be a symbol of a revitalized community and create a positive environment for new investment. This will create a renewed sense of place in this disparate, rural, remote community facing multi-faceted health, economic, social, and environmental challenges. This new riverfront gathering space will be accessible to pedestrians, vehicles, ATVs, and snowmobiles.

### Ain't Too Proud To Beg

We would appreciate your help to bring a riverfront park to Caribou.




## Mercy Mercy Me (The Ecology)

## Don't Leave Me This Way