

Selected Statutory Excerpts

State Level Laws that Impact Zoning and Land Use in Maine
(prepared by OPLA staff)

❖ Municipal Home Rule Authority

➤ [Constitution of Maine, Article VIII, Part Second, Section 1](#)

Section 1. Power of municipalities to amend their charters. The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

➤ **Statutes:**

[Title 30-A, Chapter 111: Home Rule](#)

[Title 30-A, Chapter 141: Ordinances](#)

[§3001. Ordinance power](#)

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.

2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

3. Standard of preemption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.

4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.

➤ <https://lawguides.maine.gov/ordinances>

❖ **Planning and Land Use Regulation**

Title 30-A, Chapter 187: Planning and Land Use Regulation

- [§4301. Definitions](#) [*includes “affordable housing,” “accessory dwelling unit,” “conditional zoning”*]

➤ **Zoning**

[Subchapter 3: Land Use Regulation](#) [*contains express limitations on home rule authority*]

§4352. Zoning ordinances

A municipal zoning ordinance may provide for any form of zoning consistent with this chapter, subject to the following provisions.

1. Public participation required. The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.

2. Relation to comprehensive plan. A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertainment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has no such comprehensive plan....

3. Zoning map required. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

4. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, by a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 or by a renewable ocean energy project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Effect on local governments. County and municipal governments and districts are subject to any zoning ordinance.

6. Effect on State. A zoning ordinance that is not consistent with a comprehensive plan that is consistent with the provisions of [section 4326](#) [*growth management program elements*] is advisory with respect to the State. Except as provided in this section, a state agency shall comply with a zoning ordinance consistent with a comprehensive plan that is consistent with the provisions of section 4326 in seeking to develop any building, parking facility or other publicly owned structure. The Governor or the Governor's designee may, after public notice and opportunity for public comment, including written notice to the municipal officers, waive any use restrictions in those ordinances upon finding that:

- A. The proposed use is not allowed anywhere in the municipality;
- B. There are no reasonable alternative sites for or configurations of the project within the municipality that would achieve the necessary public purposes;

- C. There are no reasonable alternatives to the project, including sites in other municipalities, that would achieve the necessary public purposes;
- D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and
- E. The project is necessary to protect the public health, welfare or environment.

A decision to waive a restriction under this section may be appealed by the municipality or any aggrieved party to Superior Court.

7. Petition for rezoning; bond. Any zoning ordinance may provide that if a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan the area may not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

8. Conditional and contract rezoning. A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

- A. Be consistent with the growth management program adopted under this chapter;
- B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and
- C. Only include conditions and restrictions that relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. ...

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing zoning ordinance or map, including ordinances or amendments adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions.

- A. The notice must be posted in the municipal office at least 13 days before the public hearing.
- B. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication must be at least 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.
- E. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.

10. Additional notice; limited areas. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited. ...

§4353. Zoning adjustment

Any municipality which adopts a zoning ordinance shall establish a board of appeals subject to this section.

1. Jurisdiction; procedure. The board of appeals shall hear appeals from any action or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by [section 2691](#), except that section 2691, subsection 2, does not apply to boards existing on September 23, 1971.

2. Powers. In deciding any appeal, the board may:

A. Interpret the provisions of an ordinance called into question;

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance except that, if the municipality has authorized the planning board, agency or department to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and

C. Grant a variance in strict compliance with subsection 4.

3. Parties. The board shall reasonably notify the petitioner, the planning board, agency or department and the municipal officers of any hearing. These persons must be made parties to the action. All interested persons must be given a reasonable opportunity to have their views expressed at any hearing.

4. Variance. Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted;

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

4-A. Disability variance; vehicle storage. A disability variance may be granted pursuant to this subsection. ...

4-B. Set-back variance for single-family dwellings. A municipality may adopt an ordinance that permits the board to grant a set-back variance for a single-family dwelling. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

B. The granting of a variance will not alter the essential character of the locality;

- C. The hardship is not the result of action taken by the applicant or a prior owner;
- D. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

An ordinance adopted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. An ordinance may allow for a variance under this subsection to exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner.

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or

buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

[§4356. Moratoria](#)

[§4358. Regulation of manufactured housing](#)

[§4360. Rate of growth ordinances](#)

1. Ordinance review and update. A municipality that enacts a rate of growth ordinance shall review and update the ordinance at least every 3 years to determine whether the rate of growth ordinance is still necessary and how the rate of growth ordinance may be adjusted to meet current conditions.

2. Differential ordinances. A municipality may enact rate of growth ordinances that set different limits on the number of building or development permits that are permitted in designated rural areas and designated growth areas.

3. Ordinance requirements. A municipality may adopt a rate of growth ordinance only if:

- A. The ordinance is consistent with section 4314, subsection 3;
- B. The ordinance sets the number of building or development permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of permits issued, excluding permits issued for affordable housing, for new residential dwellings for each year in the prior 10 years and then dividing by 10;
- C. In addition to the permits established pursuant to paragraph B, the ordinance sets the number of building or development permits for affordable housing at no less than 10% of the number of permits set in the ordinance pursuant to paragraph B; and
- D. The number of building or development permits for new residential dwellings allowed under the ordinance is recalculated every 3 years.

➤ **Shoreland Zoning**

The Mandatory Shoreland Zoning Act, [Title 38, §§ 435-339](#)
Department of Environmental Protection: [Rules – Chapter 1000](#)

➤ **Planning**

[Subchapter 2: Growth Management Program](#)

[§4323. Local authority for growth management](#)

Through the exercise of its home rule authority, subject to the express limitations and requirements of this subchapter, every municipality may:

1. **Planning.** Plan for its future development and growth;
2. **Growth management program.** Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with the procedures, goals and guidelines established in this subchapter; and
3. **Other.** Do all other things necessary to carry out the purposes of this subchapter.

[§4324. Responsibility for growth management](#)

This section governs a municipality's or multimunicipal region's responsibility for the preparation or amendment of its growth management program. When procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality or multimunicipal region may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.

[§4326. Growth management program elements](#)

A growth management program must include at least a comprehensive plan, as described in subsections 1 to 4-A, and an implementation program as described in subsection 5.

1. Inventory and analysis. A comprehensive plan must include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance that the municipality or multimunicipal region considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section must include, but is not limited to:

- A. Economic and demographic data describing the municipality or multimunicipal region and the region in which it is located;
- B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, when applicable, their vulnerability to degradation;
- C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under [Title 5, section 3316](#), and unique natural areas;
- D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;
- E. Commercial forestry and agricultural land;
- F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality or multimunicipal region;
- G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;
- H. Residential housing stock, including affordable housing, policies that assess community needs and environmental effects of municipal regulations, lessen the effect of excessive parking requirements for buildings in downtowns and on main streets and provide for alternative approaches for compliance relating to the reuse of upper floors of

buildings in downtowns and on main streets and policies that provide for accessory dwelling units;

H-1. Housing that meets the needs of older residents, including housing that is rehabilitated, adapted or newly constructed to help older adults age in place;

I. Historical and archeological resources including, at the discretion of the municipality or multimunicipal region, stone walls, stone impoundments and timber bridges of historical significance;

J. Land use information describing current and projected development patterns; and

K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

2. Policy development. A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must:

A. Promote the state goals under this subchapter;

B. Address any conflicts between state goals under this subchapter;

C. Address any conflicts between regional and local issues; and

D. Address the State's coastal policies if any part of the municipality or multimunicipal region is a coastal area.

3. Implementation strategy. A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and periodic review of the comprehensive plan.

3-A. Guidelines for policy development and implementation strategies. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality or multimunicipal region shall employ the following guidelines consistent with the goals of this subchapter:

A. Except as otherwise provided in this paragraph, identify and designate geographic areas in the municipality or multimunicipal region as growth areas and rural areas, as defined in this chapter.

(1) Within growth areas, each municipality or multimunicipal region shall:

(a) Establish development standards;

(b) Establish timely permitting procedures;

(c) Ensure that needed public services are available; and

(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

(2) Within rural areas, each municipality or multimunicipal region shall adopt land use policies and ordinances to discourage incompatible development. These policies and ordinances may include, without limitation, density limits, cluster or

special zoning, acquisition of land or development rights, transfer of development rights pursuant to [section 4328](#) and performance standards. The municipality or multimunicipal region should also identify which rural areas qualify as critical rural areas as defined in this chapter. Critical rural areas must receive priority consideration for proactive strategies designed to enhance rural industries, manage wildlife and fisheries habitat and preserve sensitive natural areas.

(3) A municipality or multimunicipal region may also designate as a transitional area any portion of land area that does not meet the definition of either a growth area or a rural area. Such an area may be appropriate for medium-density development that does not require expansion of municipal facilities and does not include significant rural resources.

(4) A municipality or multimunicipal region is not required to identify growth areas within the municipality or multimunicipal region for residential, commercial or industrial growth if it demonstrates, in accordance with rules adopted by the department pursuant to this article, that:

(a) It is not possible to accommodate future residential, commercial or industrial growth within the municipality or multimunicipal region because of severe physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources;

(b) The municipality or multimunicipal region has experienced minimal or no residential, commercial or industrial development over the past decade and this condition is expected to continue over the 10-year planning period;

(c) The municipality or multimunicipal region has identified as its growth areas one or more growth areas identified in a comprehensive plan adopted or to be adopted by one or more other municipalities or multimunicipal regions in accordance with an interlocal agreement adopted in accordance with [chapter 115](#) with one or more municipalities or multimunicipal regions; or

(d) The municipality or multimunicipal region has no village or densely developed area.

(6) A municipality or multimunicipal region exercising the discretion afforded by [subparagraph 4](#) shall review the basis for its demonstration during the periodic revisions undertaken pursuant to [section 4347-A](#);

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds;

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality or multimunicipal region, if authorized to enact ordinances, may adopt ordinances more stringent than applicable state law;

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal area may identify and designate one or more critical waterfront areas and implement policies to ensure protection of those areas or otherwise discourage new development that is incompatible with uses related to the marine resources industry;

F. Ensure the protection of agricultural and forest resources. Each municipality or multimunicipal region shall discourage new development that is incompatible with uses related to the agricultural and forest industries;

G. (CONFLICT: Text as amended by PL 2019, c. 38, §6) Ensure that the municipality's or multimunicipal region's land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of [section 4358](#) pertaining to individual mobile home and mobile home park siting and design requirements. The municipality or multimunicipal region shall seek to achieve a level of at least 10% of new residential development, based on a 5-year historical average of residential development in the municipality or multimunicipal region, that meets the definition of affordable housing. A municipality or multimunicipal region is encouraged to seek creative approaches to assist in the development of affordable housing and housing that meets the needs of older residents, including, but not limited to, cluster housing, reduced minimum lot and frontage sizes, increased residential densities, adaptation, rehabilitation and construction of housing that helps older adults age in place, use of municipally owned land and establishment of policies that assess community needs and environmental effects of municipal regulations, lessen the effect of excessive parking requirements for buildings in downtowns and on main streets and provide for alternative approaches for compliance relating to the reuse of upper floors of buildings in downtowns and on main streets;

G. (CONFLICT: Text as amended by PL 2019, c. 145, §6) Ensure that the municipality's or multimunicipal region's land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of [section 4358](#) pertaining to individual mobile home and mobile home park siting and design requirements. The municipality or multimunicipal region shall seek to achieve a level of at least 10% of new residential development, based on a 5-year historical average of residential development in the municipality or multimunicipal region, that meets the definition of affordable housing. A municipality or multimunicipal region is encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to:

- (1) Cluster housing;
- (2) Reduced minimum lot and frontage sizes;
- (3) Increased residential densities;
- (4) Use of municipally owned land;
- (5) Establishment of policies that:
 - (a) Assess community needs and environmental effects of municipal regulations;

(b) Lessen the effect of excessive parking requirements for buildings in downtowns and on main streets; and

(c) Provide for alternative approaches for compliance relating to the reuse of upper floors of buildings in downtowns and on main streets; and

(6) Provisions for accessory dwelling units;

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it;

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking, and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality or multimunicipal region shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection;

J. Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within the municipality's or multimunicipal region's jurisdiction;

K. Encourage policies that assess community needs and environmental effects of municipal regulations, lessen the effect of excessive parking requirements for buildings in downtowns and on main streets and provide for alternative approaches for compliance relating to the reuse of upper floors of buildings in downtowns and on main streets;

L. Ensure that land use policies encourage aging in place and appropriate housing options for older residents and address issues of special concern to older adults, including transportation to and accessibility and availability of needed services; and

M. (REALLOCATED FROM T. 30-A, §4326, sub-§3-A, ¶L) Encourage policies that provide for accessory dwelling units.

4. Regional coordination program. A regional coordination program must be developed with other municipalities or multimunicipal regions to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities or multimunicipal regions for these resources and facilities.

4-A. Addressing sea level rise. A municipality or multimunicipal region that is in the coastal area may include in its comprehensive plan projections regarding changes in sea level and potential effects of the rise in sea level on buildings, transportation infrastructure, sewage treatment facilities and other relevant municipal, multimunicipal or privately held infrastructure or property and may develop a coordinated plan for addressing the effects of the rise in sea level. For the purposes of this subsection, "coastal area" has the same meaning as in Title 38, section 1802, subsection 1.

5. Implementation program. An implementation program must be adopted that is consistent with the strategies in subsection 3-A.

➤ **Subdivisions**

[Subchapter 4: Subdivisions](#)

- [§4403\(1\)](#). Municipal reviewing authority. The municipal reviewing authority shall review all requests for subdivision approval. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.
- [§4404](#). Review criteria [*includes the following criteria: pollution, sufficient water, municipal water supply, erosion, traffic, sewage disposal, municipal solid waste disposal, aesthetic, cultural and natural values, conformity with local ordinances and plans, financial and technical capacity, surface waters/outstanding river segments; ground water, flood areas, freshwater wetlands, farmland, river, stream or brook, storm water, spaghetti-lots prohibited, lake phosphorus concentration, impact on adjoining municipality, and lands subject to liquidation harvesting*]

❖ **Development**

Title 30-A, subpart 8: Development

[Chapter 201: Housing Authority](#)

[Subchapter 2: Maine State Housing Authority established; powers, duties and restrictions](#)

[§4722. Maine State Housing Authority established; powers, duties and restrictions](#)

The Maine State Housing Authority is established and is a public body corporate and politic and an instrumentality of the State.

1. Powers and duties. In addition to the powers granted by [section 4741](#), the Maine State Housing Authority shall have the powers and duties to:

A. Gather information and statistics on housing and housing-related socioeconomic conditions, using existing sources and data to the fullest extent possible and request reports and obtain information from all state departments, agencies, boards, commissions, authorities and instrumentalities about their respective expenditures for housing and housing-related services and facilities, and about their respective functions and activities related to the financing, construction, leasing or regulation of housing and housing-related services and facilities;

U. Consult with the Statewide Homeless Council, established pursuant to Title 30-A, [section 5046](#), with respect to the implementation of housing programs to make the best use of resources and make the greatest impact on the affordable housing crisis;

AA. Certify transfers of multifamily affordable housing property that qualify for the deduction under [Title 36, section 5122](#), subsection 2, paragraph Z or [Title 36, section 5200-A, subsection 2, paragraph Q](#). The affordability restrictions that apply under this paragraph must be contained in a declaration signed by the transferee and recorded in the appropriate registry of deeds at the time of the sale or transfer.

CC. Encourage and provide incentives to individuals and entities that conserve energy; support and participate, with resources derived from sources except the conservation program fund under [Title 35-A, section 10110, subsection 7](#), in markets that reward energy conservation and use the proceeds from this participation to support affordable housing programs under its jurisdiction; and create and administer programs that encourage individuals and entities to conserve energy;

DD. Certify affordable housing projects for the purpose of the income tax credit increase under [Title 36, section 5219-BB, subsection 3](#); administer and enforce the affordability requirements set forth in this paragraph; and perform other functions described in this paragraph and necessary to the powers and duties described in this paragraph.

GG. In accordance with the credit for affordable housing established in [Title 36, section 5219-WW](#) and in accordance with rules adopted under the Maine Administrative Procedure Act:

- (1) Allocate the credit;
- (2) Administer and enforce the requirements of the credit; and
- (3) Perform other functions and duties necessary for the proper administration of the credit, including providing any necessary certifications and notices to

taxpayers and to the Department of Administrative and Financial Services, Bureau of Revenue Services containing information required by the State Tax Assessor necessary for determining eligibility and the amount of the credit for each taxable year.

Rules adopted under this paragraph are routine technical rules.

- Affordable Housing Programs:
 - Subchapter 3-A: Affordable Housing Program

§4751. Purpose

The State is experiencing severe shortages of affordable housing in various parts of the State. The affordable housing shortage is also contributing to an increasing class of working poor people and creating severe hardships for a significant number of the State's citizens. Municipalities feel the impact of the affordable housing shortage and find it difficult to deal with the problem with their inadequate resources. By working together, sharing resources and using more comprehensive measures, the State and its municipalities can more effectively address the shortage of affordable housing and the many other problems stemming from this housing shortage.

§4752. Housing Component of comprehensive plans

Any comprehensive plan developed under chapter 187, subchapter II, shall provide for the development of affordable housing for low-income and moderate-income households. A municipality may cooperate with neighboring municipalities to develop a regional comprehensive plan in lieu of a municipal plan. Any comprehensive plan developed under chapter 187, subchapter II, shall include municipal or regional strategies to effectively reduce the cost of housing or provide for the construction of affordable housing, including zoning measures, use of municipally owned land and other similar measures.

1. Provide technical assistance and information. The Maine State Housing Authority and any municipal housing authority shall provide technical assistance and information to municipalities requesting assistance in the development of affordable housing provisions for comprehensive plans to include the formulation of measures to effectively address the shortage of affordable housing for low-income and moderate-income households.

§4753. Coordination of resources and programs

The Maine State Housing Authority, municipal housing authorities, municipalities and the Department of Economic and Community Development shall cooperate in the coordination of resources and programs and the development of housing for low-income and moderate-income households.

1. Matching of resources. The Maine State Housing Authority may match the resources provided by municipalities according to ratios established by the Maine State Housing Authority by rule in accordance with the Maine Administrative Procedure Act, [Title 5, chapter 375](#).

A. Municipal resources may consist of land, buildings, equipment, personnel, zoning provisions, money and any other resources considered by the Maine State Housing

Authority to effectively help to provide affordable housing to low-income and moderate-income households.

B. Any municipality and the Maine State Housing Authority may use resources provided by the private sector, any private nonprofit organization or any other public sector organization for the purpose established in this subchapter.

C. Municipalities and municipal housing authorities may require reasonable reservations or set-asides of units created in projects to which they have contributed significant resources to serve the residents or members of the work force of their particular municipalities.

[§4754. Purchase and acquire property; construct housing](#)

The Maine State Housing Authority or any municipal housing authority may purchase or acquire property to preserve or provide affordable housing to low-income and moderate-income people and provide for the management and maintenance of this property.

1. Construction. The Maine State Housing Authority or any municipal housing authority may construct or reconstruct housing for low-income and moderate-income households.

2. Rehabilitation. The Maine State Housing Authority or any municipal housing authority may rehabilitate buildings as a means of providing affordable housing to low-income and moderate-income households.

3. State-owned property. The Maine State Housing Authority may use surplus state-owned property pursuant to this subchapter and [Title 5, section 1742, subsection 23](#) to achieve the purpose of this article.

4. Property. For the purpose of this subchapter, property includes land, buildings, structures and equipment. [*also includes provisions on surplus property*]

➤ **Additional Programs of Interest Within Chapter 201**

- [Subchapter 5: Loans to Financial Institutions](#)
- [Subchapter 6: Construction loans](#)
- [Subchapter 7: Housing Opportunities for Maine Program](#)
- [Subchapter 7-A: Maine Energy, Housing and Economic Recovery Program](#)
- [Subchapter 12: Preservation of Moderate-Income and Low-Income Housing Constructed with Federal Assistance](#)

➤ **Development Districts**

[Chapter 206: Development Districts](#)

[Subchapter 3: Municipal Affordable Housing Development Districts](#)

[§5245. Findings and declaration of necessity](#)

1. Legislative finding. The Legislature finds that there is a need for the development of affordable, livable housing and the containment of the costs of unplanned growth in Maine municipalities.

2. Authorization. For the reasons set out in subsection 1, a municipality may develop a program to provide impetus for affordable housing development within a district of the municipality, as provided in the comprehensive plan adopted by the legislative body of the municipality.

3. Declaration of public purpose. It is declared that the actions required to assist the implementation of affordable housing development programs are a public purpose and that the execution and financing of these programs are a public purpose.

[§5247. Affordable housing development districts](#)

1. Creation. A municipal legislative body may designate an affordable housing development district within the boundaries of the municipality in accordance with the requirements of this subchapter. If the municipality has a charter, the designation of an affordable housing development district may not be in conflict with the provisions of the municipal charter.

2. Considerations for approval. Before designating an affordable housing development district within the boundaries of a municipality, or before establishing an affordable housing development program for a designated affordable housing development district, the legislative body of a municipality must consider whether the proposed district or program will contribute to the expansion of affordable housing opportunities within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality. Interested parties must be given a reasonable opportunity to present testimony concerning the proposed district or program at the hearing provided for in section 5250, subsection 1. If an interested party claims at the public hearing that the proposed district or program will result in a substantial detriment to that party's existing property interests in the municipality and produces substantial evidence to that effect, the legislative body shall consider that evidence. When considering that evidence, the legislative body also shall consider whether any adverse economic effect of the proposed district or program on that interested party's existing property interests in the municipality is outweighed by the contribution made by the district or program to the availability of affordable housing within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.

3. Conditions for approval. Designation of an affordable housing development district is subject to the following conditions.

A. At least 25%, by area, of the real property within an affordable housing development district must:

- (1) Be suitable for residential use;

- (2) Be a blighted area; or
- (3) Be in need of rehabilitation or redevelopment.

B. The affordable housing development district is subject to the area cap established in section 5223, subsection 3, paragraph B.

C. The original assessed value of a proposed affordable housing development district plus the original assessed value of all existing affordable housing development districts within the municipality may not exceed 5% of the total value of taxable property within the municipality as of April 1st preceding the date of the director's approval of the designation of the proposed affordable housing development district.

E. The affordable housing development program must show that the development meets an identified community housing need. The affordable housing development program must provide a mechanism to ensure the ongoing affordability for a period of at least 10 years for single-family, owner-occupied units and 30 years for rental units.

G. The district must be primarily a residential development on which at least 33% of the dwelling units are affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development

4. Powers of municipality. Within an affordable housing development district and consistent with an affordable housing development program, a municipality may acquire, construct, reconstruct, improve, preserve, alter, extend, operate or maintain property or promote development intended to meet the objectives of the affordable housing development program. Pursuant to the affordable housing development program, the municipality may acquire property, land or easements through negotiation or by using eminent domain powers in the manner authorized for community development programs under section 5204. The municipality's legislative body may adopt ordinances regulating traffic in and access to any facilities constructed within the affordable housing development district. The municipality may install public improvements.

[§5248. Affordable housing development programs](#)

1. Adoption. The legislative body of a municipality shall adopt an affordable housing development program for each affordable housing development district. The affordable housing development program must be adopted at the same time as the district as part of the district adoption proceedings or, if at a different time, in the same manner as adoption of the district, with the same notice and hearing requirements of [section 5250](#). Before adopting an affordable housing development program, the municipal legislative body shall consider the factors and evidence specified in [section 5247](#).

2. Requirements. The affordable housing development program must include:

- A. A financial plan in accordance with [subsection 3](#);
- B. A description of facilities, improvements or programs to be financed in whole or in part by the affordable housing development program;
- C. Plans for the relocation of persons displaced by the development activities;
- D. The environmental controls to be applied;

- E. The proposed operation of the affordable housing development district after the planned improvements are completed;
- F. An assurance that the program complies with [section 4349-A](#);
- G. The duration of the program, which may start during any tax year specified in the approval of the affordable housing development program by a municipal legislative body, except that the program may not exceed 30 years after the tax year in which the designation of the district is approved by the director as provided in [section 5250, subsection 3](#); and
- H. All documentation submitted to or prepared by the municipality under [section 5247, subsection 2](#).

3. Financial plan for affordable housing development district. The financial plan for an affordable housing development district must include:

- A. Cost estimates for the affordable housing development program;
- B. The amount of public indebtedness to be incurred;
- C. Sources of anticipated revenues;
- D. A description of the terms and conditions of any agreements, contracts or other obligations related to the affordable housing development program; and
- E. For each year of the affordable housing development program:
 - (1) Estimates of increased assessed values of the district;
 - (2) The portion of the increased assessed values to be applied to the affordable housing development program as captured assessed values and resulting tax increments in each year of the program; and
 - (3) A calculation of the tax shifts resulting from designation of the affordable housing development district.

4. Limitation. For affordable housing development districts, a municipality may expend the tax increments received for any affordable housing development program only in accordance with the financial plan.

[§5250-A. Affordable housing increment financing](#)

❖ **Additional Relevant Statutes:**

➤ **Affordable Housing Covenants**

[Title 33, chapter 6: Affordable Housing Covenants](#)

[§122. Creation; conveyance; acceptance; duration](#)

1. Affordable housing covenant. Except as otherwise provided in this chapter, an affordable housing covenant may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other covenants created by written instrument.

2. Right or duty. A right or duty in favor of or against a qualified holder may not arise under an affordable housing covenant unless it is accepted by the qualified holder.

3. Limitation. Except as provided in this chapter, an affordable housing covenant is unlimited in duration unless:

A. The instrument creating it provides otherwise; or

B. A change of circumstances renders the affordable housing covenant no longer in the public interest as determined in an action under section 123, subsection 3.

4. Interest. An interest in real property in existence at the time that an affordable housing covenant is created is not impaired by the affordable housing covenant unless the owner of the interest is a party to the affordable housing covenant.

5. Right to enter land. The instrument creating an affordable housing covenant must designate the manner in which and the times when representatives of the holder of an affordable housing covenant are entitled to enter the real property to assure compliance.

[§124. Scope of affordable housing covenant](#)

An affordable housing covenant may include any of the following agreements affecting residential real estate:

1. Resale price of residential real estate. To limit the resale price of residential real estate;

2. Amount of equity appreciation. To limit the amount of equity appreciation that a landowner may derive from ownership of residential real estate;

3. Improvements to residential real estate. To limit the extent or dollar value of improvements that may be made to residential real estate;

4. Class of persons to whom residential real estate may be sold. To restrict the class of persons to whom residential real estate may be sold or leased, as long as that restriction does not discriminate based upon race, color, sex, physical or mental handicap, religion, ancestry or national origin and does not otherwise contravene the Constitution of Maine or the United States Constitution;

5. Options to purchase. To grant rights of first refusal or options to purchase to qualified holders;

6. Maintenance and insurance of residential real estate. To maintain and insure residential real estate;

7. Right of qualified holders to enter and inspect. In accordance with [section 122, subsection 5](#), to provide to qualified holders the right to periodic entry and inspection of residential real estate at reasonable times and after reasonable notice;

8. Construction and materials. To restrict, limit or specify types of construction and materials that may be used in the construction of or improvements to residential real estate; and

9. Acts that may enhance affordability of residential real estate. To prohibit, limit or require other acts that may enhance the affordability of residential real estate over time to lower income or moderate-income households.