



Commonwealth of Massachusetts
Executive Office of Housing and
Livable Communities



ADU Law, Regulations, and Model Zoning Overview



Welcome and Introductions



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Agenda



1. New ADU Law
2. ADU Regulations
3. Model Zoning
4. Additional Information & Supports



1.

New ADU law

Where did the new ADU Law come from?

On August 6, 2024, Governor Maura Healey signed the Affordable Homes Act (AHA) after it was adopted by the Legislature.

- Section 7 & 8 of the AHA amended the Zoning Act and established new ADU laws and definitions
- ADU Regulations were finalized and published prior to February 2, 2025





Why was a change to the Zoning Act needed?

- ADUs can be **part of the solution** to create enough housing for people at all income levels and stages of life.
- Massachusetts can enable the **gradual addition of new homes**.
- **Many MA municipalities have ADU zoning in place** with various types of restrictions but have seen limited new units.
- New rules were added to Section 3 of the Zoning Act (MGL c.40A) which includes other important “**protected uses**” such as agriculture, religious and educational institutions, childcare centers and renewable energy facilities.



ADU in Massachusetts. Credit: MAPC



Section 3 of Zoning Act / Protected Uses

- The AHA adds ADUs to the list of uses — like home childcare facilities, handicapped access ramps, solar energy systems, and religious and educational programs — that have been deemed important enough to justify state-level protection from local regulation.
- These **protected uses** are listed in Section 3 of the Zoning Act (Chapter 40A of the General Laws).
- Like other **protected uses**, ADUs are still subject to reasonable regulation at the municipal level.



ADU Legislation – Definition: Section 7

“Accessory dwelling unit”, a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities **on the same lot as a principal dwelling**, subject to otherwise applicable dimensional and parking requirements, that:

- (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress;
- (ii) is not larger in **gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller**; and
- (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in section 1 of chapter 64G; provided, however, that **no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental.**



ADU Legislation – Section 8

No zoning ordinance or by-law **shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit**, or the rental thereof, in a single-family residential zoning district; provided, that the use of land or structures for such accessory dwelling unit under this paragraph **may be subject to reasonable regulations**, including, but not limited to, **310 CMR 15.000** et seq., if applicable, **site plan review**, regulations concerning **dimensional setbacks and the bulk and height of structures** and may be subject to restrictions and prohibitions on short-term rental, as defined in section 1 of chapter 64G. The use of land or structures for an accessory dwelling unit under this paragraph **shall not require owner occupancy of either the accessory dwelling unit or the principal dwelling**; provided, that **not more than 1 additional parking space shall be required** for an accessory dwelling unit; and provided further, that **no additional parking space shall be required for an accessory dwelling located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station**. For more than 1 accessory dwelling unit, or rental thereof, in a single-family residential zoning district there shall be a **special permit** for the use of land or structures for an accessory dwelling unit. The executive office of housing and livable communities **may issue guidelines or promulgate regulations** to administer this paragraph.



ADU Law – Key Highlights

- **One Protected Use ADU** allowed per lot per principal dwelling by-right.
- **Protected Use ADU (PUADU)** = 1) Separate entrance, 2) 50% gross floor area or 900sqft whichever is smaller, 3) other permitted local restrictions.
- **Dover Amendment** = Unreasonable restriction analysis for entire zoning and per lot.
- Cannot be prohibited, unreasonably restricted, or require discretionary approval.
- Allowed by right in all “**Single-Family Residential Zoning District(s)**.”
- Reasonably regulated through Title 5, setbacks, height, bulk, short term rentals, etc...
- Cannot require homeowner occupancy.
- One parking maximum and no requirement if 0.5 miles from certain transit modes.
- Second PUADU must be by special permit **if city/town chooses to allow it.**



2.

Overview of the ADU Regulations



Overview of Draft Regulations (760 CMR 71.00)

- 71.01 Purpose
- 71.02 Definitions
- 71.03 Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts
 - Prohibited Regulations
 - Unreasonable Regulations
 - Enforcement on Preexisting ADUs
 - Special Permits for multiple ADUs
- 71.04 Data Collection and Reporting

Purpose



Source: AARP



Purpose – 760 CMR 71.01

- “To encourage the production of ADUs throughout the Commonwealth with the goal of **increasing the production of housing** to address statewide, local, and individual housing needs for households of all income levels and at all stages of life.”
- The statute and regulations “seek to **balance municipal interests** in regulating the use and construction of ADUs **while empowering property owners** to add much needed housing stock to address the Commonwealth’s housing stock needs.”
- Establishes that nothing in the regulations “**is intended to supersede state health and safety laws and regulations**, such as, but not limited to the Building Code, Fire Code, M.G.L. c. 111, § 189A: Massachusetts Lead Law, **or any federal laws.**”

Definitions



Photo via [TD Custom Construction](#)

Source: MAPC Living Little report



List of Definitions - 760 CMR 71.02

- | | | |
|--------------------------|--|---------------------------------------|
| 1. ADU | 12. Lot | 21. Site Plan Review |
| 2. Building Code | 13. Modular Dwelling Unit | 22. Special Permit |
| 3. Bus Station | 14. Municipality | 23. Subway Station |
| 4. Commuter Rail Station | 15. Principal Dwelling | 24. Transit Authority |
| 5. Design Standards | 16. Prohibited Regulation | 25. Transit Station |
| 6. Dwelling Unit | 17. Protected Use ADU | 26. Unreasonable Regulation |
| 7. EOHLC | 18. Short Term Rental | 27. Use and Occupancy
Restrictions |
| 8. Ferry Terminal | 19. Single Family Residential
Dwelling | 28. Zoning |
| 9. Fire Code | 20. Single Family Residential
Zoning District | 29. Zoning District |
| 10. Gross Floor Area | | |
| 11. Historic District | | |



Definitions – EOHLC

EOHLC: “The Executive Office of Housing and Livable Communities.”

- EOHLC offers programs to help prevent homelessness and to help people afford housing. It also offers housing programs and financial assistance for municipalities, local housing authorities, non-profit organizations, and developers. EOHLC is led by Secretary Ed Augustus.
- Section 8 of AHA established EOHLC as the regulatory agency that is authorized by AHA to promulgate regulations that establish rules, standards, and limitations in the administration of Section 8.





Definitions – Accessory Dwelling Unit (ADU)

“A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities **on the same Lot as a Principal Dwelling**, subject to otherwise applicable dimensional and parking requirements, that: (a) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the Building Code for safe egress;

(b) is not larger in **Gross Floor Area than ½ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller**; and

(c) is subject to such additional restrictions as may be imposed by a municipality including, but not limited to, additional size restrictions, and restrictions or prohibitions on Short-term Rental as defined in M.G.L. c. 64G, § 1; provided, however, that **no Municipality shall unreasonably restrict the creation or rental of an ADU that is not a Short-term Rental.**

- **Building Code:** “The Massachusetts state building code, 780 CMR.”
- **Municipality:** “Any city or town subject to the provisions of M.G.L. c. 40A.”



Definitions – Protected Use ADU

“An **attached or detached** ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition”





Definitions – Single-Family Residential Zoning District

- **Single-Family Residential Zoning District** “Any Zoning District where Single-family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single family Residential Dwellings are allowed as-of-right or by Special Permit.”
- **Single-Family Residential Dwelling** “A structure on a Lot containing not more than one Dwelling Unit.”
- **Lot** “An area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to requirements of Zoning.”
- **Dwelling Unit** “A single housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.”



Definitions – Single-Family Residential Zoning District

In the regulations zoning districts that permit single-family dwellings must allow Protected Use ADUs as of right.

For example:

- Neighborhood Commercial Zoning District that allows single-family residential uses as of right, or
- Commercial district that allows single-family residential dwellings by Special Permit, or
- Multi-family district that allows single-family residential uses as-of-right.



ADU in Massachusetts. Credit: MAPC



Definitions – Principal Dwelling

“A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is, or will be, located on the same Lot as a Protected Use ADU.

- A Principal Dwelling includes single-family, duplex, triple decker, or a multi-family structure.
- Principal Dwellings include pre-existing non-conforming structures.



Definitions – Zoning and Zoning District

- **Zoning:** “Ordinances and by laws, including base, underlying, and overlay zoning, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.”
- **Zoning District:** “A geographic area within a Municipality which, pursuant to Zoning, is subject to use and structure requirements that are uniform within the area.”

- Lots/principal dwellings located within an underlying or overlay zoning district that allows single-family homes by right or special permit are eligible to receive a permit for a Protected Use ADU



Definitions – Design Standards

“Clear, measurable and objective provisions of Zoning, or general ordinances or by-laws, which are made applicable to the exterior design of, and use of materials for an ADU.”

Clear and objective

- Roof pitch must be no less than 9 over 12.
- Exterior stairs may not be visible from the public way.

Not clear and objective

- ADU must match the neighborhood character.



Definitions – Site Plan Review (SPR)

“A process established by local ordinance or by-law by which a Municipal board or authority may review and impose terms and conditions on, the appearance and layout of a proposed use of land or structures prior to the issuance of a building permit.”

Questions to ask

- Would you require Site Plan Review (SPR) for a new single-family dwelling? If not, why for an ADU?
- What is the appropriate level of review – building official, planning staff, planning board, or other?



Definitions – Gross Floor Area (GFA)

“The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the Lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.”

- **Local zoning needs to be consistent** with definitions such as GFA in the regulations.
- However, municipalities may want to provide examples or other information about how a larger structure (e.g., a garage or barn) may be converted into a Protected Use ADU that meets the size thresholds.



Definitions – Use and Occupancy Restrictions

“A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of the Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupants, such as but not limited to, **income, age, familial relationship, enrollment in an educational institution**, or that limits the number of occupants beyond what is required by applicable state code.”

- Municipalities may **NOT require** an ADU to be occupied by someone of a certain age (i.e., over 55 years old for example).
- Municipalities may **NOT require** an ADU to be affordable to households with incomes under 80% of Area Median Income (AMI).



Definitions – Transit (71.02)

“Transit Station. A Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station.”

“Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority.”

“Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.”

“Ferry Terminal. The location where passengers embark and disembark from a ferry service with year-round service with ferries departing at regular time intervals, rather than intermittent, seasonal, or event-based service.”

“Subway Station. Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.”

“Transit Authority. The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, § 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, § 3 or M.G.L. c. 161B, § 14.”

Prohibited and Unreasonable Regulations





Definitions – Prohibited and Unreasonable Regulation

- **Prohibited Regulation:** “Zoning or general ordinances or by-laws, or Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2).”
 - **Unreasonable Regulation:** “Zoning or general ordinances or by-laws, or Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3).”
- 71.03 of the Regulations has two sections:
 - Prohibited Regulations
 - Unreasonable Regulations
 - Prohibited Regulations cannot be applied to a Protected Use ADU
 - Unreasonable Regulations reflect Massachusetts Case Law on Section 3 Protected Uses.



71.03 (1): Regulations of Protected Use ADUs

“Municipalities shall not prohibit, impose a Prohibited Regulation or Unreasonable Regulation, or, except as provided under 760 CMR 71.03(5) and 760 CMR 71.03(6), require a special permit, waiver, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected Use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.00.”

- **Special Permit:** “A permit issued by a Municipality’s special permit granting authority pursuant to M.G.L. c. 40A, § 9.” (71.02)



71.03 (2) Prohibited Regulations

- **Owner-Occupancy:** may not be required of either Principal Dwelling nor ADU.
- **Parking:** no more than one on-street or off-street parking space, and within 0.5 miles from a Transit Station no off-street parking may be required.
- **Protected Use ADUs may be either part of the Principal Dwelling or a detached ADUs:** local zoning may not prohibit a Protected Use ADU that is detached.
- **Use and Occupancy restrictions:** Review the definition of Use and Occupancy restriction, for example, **familial relationship** nor **low-income status** may NOT be required. Short-Term Rental restrictions and prohibitions are an EXCEPTION and a municipal choice.
- **Unit and Density caps:** Protected Use ADUs do not count towards density limitations nor unit caps.



71.03 (2) (b) Prohibited Regulations - Parking

Prohibited

“Minimum Parking Requirements. A requirement of, as applicable:

1. More than one additional on-street or off-street parking space for a Protected Use ADU if all portions of its Lot are located outside a 0.5 mile radius of a Transit Station; or
2. Any additional on-street or off-street parking space for a Protected Use ADU if any portion of its Lot is located within a 0.5 mile radius of a Transit Station.”



71.03(3) (a) Unreasonable Regulations - Legal Framework

“(a) A Municipality may reasonably regulate and restrict Protected Use ADUs provided that any restriction or regulation imposed by a Municipality shall be unreasonable if the regulation or restriction, when applicable to a Protected Use ADU:

1. Does not serve a legitimate municipal interest sought to be achieved by local zoning;
2. Serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a Protected Use ADU does not rationally relate to the legitimate Municipal interest; or”

- This section reflects the legal test that has developed through case law as applied to MGL c. 40A Section 3 Protected Uses.
- This framework is included to give Municipalities a clear statement of the standard that already exists for regulation of Section 3 Protected Uses and which the Attorney General's Office and the Courts will apply to Municipal regulation of Protected Use ADUs



71.03(3) (a) Unreasonable Regulations (continued)

“3. Serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will:

- a. Result in complete nullification of the use or development of a Protected Use ADU;
- b. Impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or
- c. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.”

- This section reflects the legal test that has developed through case law as applied to MGL c. 40A Section 3 protected uses.
- This framework is included to give Municipalities a clear statement of the standard that already exists for regulation of Section 3 protected uses and which the Attorney General's Office and the Courts will apply to Municipal regulation of Protected Use ADUs



Unreasonable Regulations 71.03 (3) (b) and (c)

The following regulations should be viewed within the framework of section 71.03 (3) (a) and (b).

1. Design Standards
2. Dimensional Standards
3. Utilities, Safety and Emergency Access
4. Environmental Regulations
5. Site Plan Review
6. Impact Analysis and Studies
7. Modular Dwelling Units
8. Historic Districts
9. Pre-existing Nonconforming Structures
10. Short-Term Rentals - 71.03 (3) (c)

Unreasonable Regulations – Design Standards

71.03 (3) (b) (1)



“Design Standards. Any Design Standard that:

- a. Would not be applied to a Single-family Residential Dwelling in the Single family Residential Zoning District in which the Protected Use ADU is located or
- b. Is so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU.”

- **Consider** – What design standards does your community have for single-family homes?
- **Are there design standards for other accessory structures** such as garages, home office structures, and/or barns?
- **Are specific ADU design standards needed?**

Unreasonable Regulations – Dimensional Standards

71.03 (3) (b) (2)



“Dimensional Standards. Any requirement concerning dimensional standards, such as **dimensional setbacks, lot coverage, open space, bulk and height, and number of stories**, that are more restrictive than is required for the Principal Dwelling, or a Single family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, **whichever results in more permissive regulation**, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.”

Setbacks are of particular concern when developing regulations or zoning meant to encourage ADUs. This is especially true for detached ADUs which may be difficult to build given that rear and side setbacks may constrain the detached ADUs location.

Most Permissive- The setbacks should be set at the same as the Primary Dwelling, or Accessory Structure, whichever is most permissive.

Consider – what setbacks exist for other accessory structures such as garages, home office structures, and/or barns?

Unreasonable Regulations – Utilities, Safety, Access

71.03 (3) (b) (3)



“Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than is permitted by state requirements, including under the Fire Code. A Municipality may not require a separate utility connection, such as water, sewer, electric, provided that a separate connection may be required by a Municipal or regional utility, investor-owned utility; by state law; by a local, regional, or state board or commission; or by court order.”

- **Consider** – Do ADUs need separate utilities, which will add costs?
- **Sprinklers** - If the Principal Dwelling is required to have a sprinkler it may be reasonable for an ADU to as well, however consider the effect on a property owner’s ability to build a small unit.
- **“Fire Code:** The Massachusetts state fire code, 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code.*” (71.02)

Unreasonable Regulations – Environmental Regulations

71.03 (3) (b) (4)



“Any regulation for the protection of public health, safety, welfare and the environment pursuant to 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, that is more restrictive than is required for a Single-family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.”

- **Septic** - Title 5 should be adhered to and there are instances where a city/town may be able to require upgrades, additions, or entirely new septic systems be built to meet the new capacity with a Protected Use ADU being built.
- MassDEP has published [Guidance on Title 5 \(310 CMR 15.000\) Compliance for Accessory Dwelling Units](#)

Unreasonable Regulations – Site Plan Review

71.03 (3) (b) (5)



“Site Plan Review. Site Plan Review concerning the Protected Use ADU that is not clear and objective or imposes terms and conditions that are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A.”

- **Consider** – Does your zoning require any Site Plan Review for construction of a single-family dwelling or an addition to a single-family dwelling?
- **Consider – What are the reasons to review an ADU** in a site plan process (e.g., there might be certain triggers to consider, like if the ADU is in a wetland area)?
- **Consider** - What **sort of process** should that be (administrative or a public hearing)?

Unreasonable Regulations – Impact Analysis & Studies

71.03 (3) (b) (6)



“Impact Analysis, Studies, and Fees.
Any requirement for any impact analysis, study, report, or impact fee that is not required for the development of a Single-family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located.”

- **Consider** – Does your zoning require any impact analysis or study for construction of a single-family dwelling or an addition to a single-family dwelling?
- **Consider** – Are such studies necessary for an ADU?

Unreasonable Regulations – Modular Dwelling Units

71.03 (3) (b) (7)



“Any requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Building Code.”

- **“Modular Dwelling Unit:** A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is **affixed to a foundation and connected to external utilities**; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities.” (71.02)
- **Consider** – Does the structure conform to all Building and Fire code?

Unreasonable Regulations – Historic Districts

71.03 (3) (b) (8)



“Historic Districts. Municipalities may establish Design Standards and Dimensional Standards for Protected Use ADUs located in an Historic District that are more restrictive or different from what is required for a Single-family Residential Dwelling, or Principal Dwelling, in the Single-family Residential Zoning District; provided, however, that such standards are not unreasonable pursuant to 760 CMR 71.03(3)(a).”

- **“Historic District:** A district in a Municipality established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law.” (71.02)
- This section tries to balance the need to respect the fabric of historic districts without preventing Protected Use ADUs.
- ADU Model Zoning includes suggested design standards for Historic Districts.

Unreasonable Regulations – Pre-existing Nonconforming Structures 71.03 (3) (b) (9)



“A Municipality may not prohibit the development of a Protected Use ADU in an existing structure or Principal Dwelling, or Lot due to nonconformance, that could be used for, or converted into, a Protected Use ADU in conformance with the Building Code, 760 CMR 71.00, and state law.”

- **Consider:** Some municipalities exempt Dover Uses from M.G.L. 40A §6
- If a finding under M.G.L. c. 40A §6 is required by the municipality, then they must provide for a clear, objective, as-of-right process by the permit granting authority

Unreasonable Regulations – Short-Term Rentals

71.03 (3) (c)



“Short-term Rentals. Municipalities may establish restrictions and prohibitions on the Short-term Rental of Protected Use ADUs pursuant to M.G.L. c. 64G.”

M.G.L. c40A Section 3 includes the following reference to M.G.L. c64G.

“....may be subject to restrictions and prohibitions on short-term rental, as defined in section 1 of chapter 64G.”

- Short-Term Rentals may be restricted or prohibited.
- **This is a local choice.**
- Some municipalities may want to allow short-term rentals, some may want to if and others may want to prohibit them.
- All of these are allowed under this section of the regulations as long as they are consistent with MGL c 64G.
- **Short-term Rental:** “Short-term rental, as defined in M.G.L. c. 64G, § 1.” (71.02)

Unreasonable Regulations – Short-Term Rentals

71.03 (3) (c)



“MGL 64G s1: "Short-term rental", an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.”

- Short-Term Rentals (STRs) may be restricted or prohibited. This is a local option.
- On the left is the definition from MGL c 64G section 1.
- Consult with your legal counsel about how to define the length of stay for STRs

Other Important Regulations





Pre-existing ADUs 71.03 (4)

“Enforceability of Restrictions and Regulations on Pre-existing ADUs. A Municipality shall not enforce any Prohibited Regulation or Unreasonable Regulation that was imposed as a condition for the approval of the use of land or structures for a Protected Use ADU prior to the effective date of 760 CMR 71.00, regardless of whether such Protected Use ADU complies with the Municipality’s Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height.”

If a pre-existing ADU meets the standards of a Protected Use ADU, prior conditions may not be continued.

For example:

- A Special Permit for an 850 sq ft ADU that requires owner occupancy may no longer be enforced.



Special Permits for Multiple ADUs Same Lot 71.03 (5)

“Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), if a Municipality chooses to allow additional ADUs on the same Lot as a Protected use ADU in a Single-family Residential Zoning District, Zoning shall require a Special Permit for the use of land or structures for the additional ADUs.”

EOHLC interprets the statutory language as one Protected Use ADU is allowed as-of-right, but that (if allowed) a second ADU must require a Special Permit.

For example:

- If a 900 sq ft ADU is permitted as a Protected Use ADU then a second 900 sq ft ADU would require a Special Permit.
- Allowing more than one ADU on a lot is a **local option**.

Floodplain and Aquifer Protection Overlay Districts

71.03 (6)



“Municipalities may require a Special Permit for development of a Protected Use ADU in a floodplain or aquifer protection overlay if required for the Principal Dwelling, provided that the Special Permit is based on clear, objective, and non-discretionary criteria.”

- **Consider:** Is the special permit based on clear, objective, and non-discretionary criteria?



More Permissive Zoning 71.03 (7)

“Nothing in 760 CMR 71.00 is intended to prevent a Municipality from adopting more permissive Zoning, or general ordinances or by-laws, or Municipal regulations than would be allowed under 760 CMR 71.03.”

- **Consider:** Local rules may be more permissive on rules such as but not limited to:
 - 1) Maximum size
 - 2) Greater or no percentage of Gross Floor Area
 - 3) Reduced parking minimums for locations not considered within the law
 - 4) Allowing Protected Use ADUs in properties that are not located within an eligible zoning district
 - 5) Any and all of the standards that cities/towns can regulate where the local rules would be more permissive than the state law or regulations allow.



Address Assignment 71.03 (8)

“All ADUs shall be assigned an address consistent with the most current Address Standard published by MassGIS. ADU addresses shall be reported to MassGIS and EOHLC after assignment.”

- Every detached, attached, and internal ADU should receive a unique address
- **Consider:** For ADUs accessible only through a dedicated exterior entry, adopt the principal dwelling address with appended alphabetic character
 - Principal Dwelling: 19 Pine Street
 - ADU: 19A Pine Street
- **Consider:** For ADUs accessible only through an interior hallway/stairwell/doorway without exiting the building, classify the ADU as a “unit”
 - Principal Dwelling: 73 Maple Avenue
 - ADU: 73 Maple Avenue, Basement Unit OR 73 Maple Avenue, Apartment 1

Data Collection





Annual Updates – Data Collection 71.04

“To assist EOHLC in the administration of M.G.L c. 40A, § 3, para 11, Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.”

This information is typically maintained in Building Permit records.

Please make sure your Permit systems have these records.

EOHLC continues to coordinate with local building officials to make this process as simple as possible.



ADU Regulations – Key Highlights

- **Dover Amendment** - ADU Regulations have been added to Section 3 of the MGL Zoning Act as part of the other Dover Amendments. There is existing case law that covers the Dover Amendments.
- **Single-Family Zoning District** – Includes any district where single-family homes are allowed by-right or by special permit, regardless of how it is named.
- **Principal Dwelling** – This includes any structure with a dwelling unit in a single-family zoning district (i.e., duplexes, triple-deckers, and multi-units).
- **Dimensional Standards** – Cannot be more restrictive than for a single-family home, the Principal Dwelling, or Accessory Structure, whichever is more permissive for each of the standards.



ADU Regulations – Key Highlights (Cont.)

- **Size Limitation** – ADUs of 900 Sq Ft and larger are allowed as a more permissive regulation, so long as all protections and requirements meet the regulations.
- **Protected Use and Local Use ADUs** – Municipalities may have zoning rules for Protected Use ADUs and other types of ADUs that are locally defined by that city or town. These “Local ADUs” are optional and allowed in addition to a Protected Use ADU, at the discretion of the town or city.
- **Short-Term Rental** – This is a municipal choice that is unaffected by the ADU Regulations.
- **Pre-existing ADUs** - If a pre-existing ADU meets the standards of a Protected Use ADU, prior conditions may not be continued.



ADU Regulations – Key Highlights (Cont.)

- **Multiple ADUs** – For multiple ADUs on the same lot, EOHLC interprets the statutory language as one Protected Use ADU is allowed as-of-right, but that (if allowed) a second ADU must require a Special Permit.
- **Address Assignment** – All ADU's shall be assigned an address consistent with the most current Address Standards published by MassGIS.

Note: Please review the ADU Regulations to better understand all the rules.

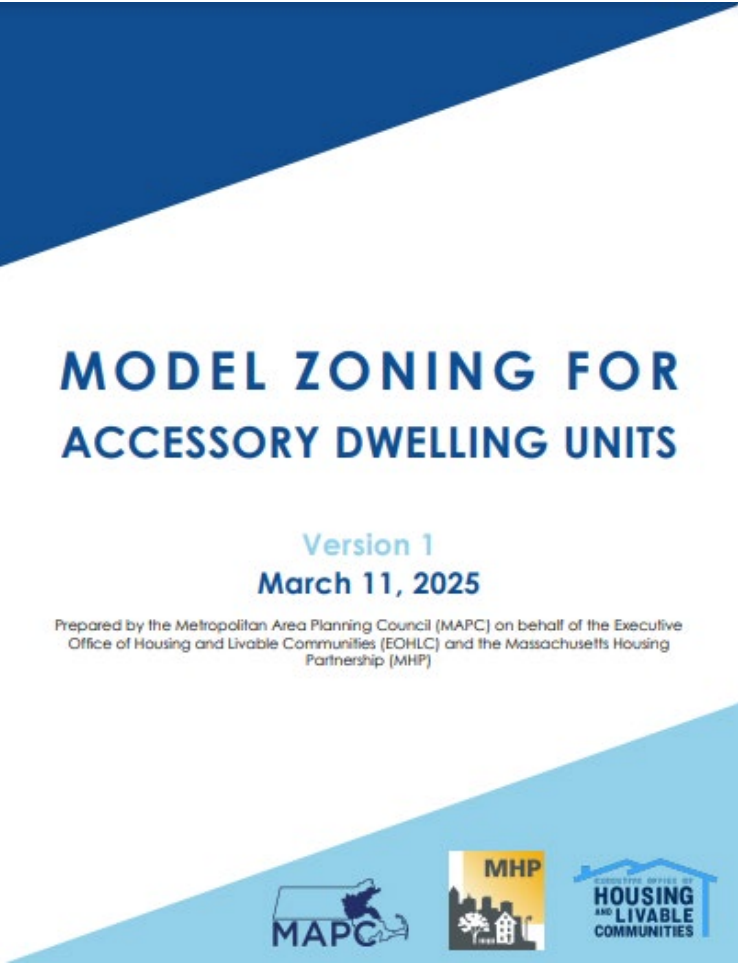


3.

ADU Model Zoning



Model Zoning Guide – Annotated Version



MODEL ZONING - Annotated Version

A. Purpose

The purpose of this Section [X] is to allow for Accessory Dwelling Units (ADUs), as defined under M.G.L. c. 40A, §1A, to be built as-of-right in Single-Family Residential Zoning Districts in accordance with Section 3 of the Zoning Act (M.G.L. c. 40A), as amended by Section 8 of Chapter 150 of the Acts of 2024, and the regulations under 760 CMR 71.00: Protected Use Accessory Dwelling Units. This zoning provides for by-right ADUs to accomplish the following purposes:

1. Increase housing production to address local and regional housing needs across all income levels and at all stages of life.
2. Develop small-scale infill housing that fits in the context of zoning districts that allow single-family housing while providing gentle/hidden density.
3. Provide a more moderately priced housing option to serve smaller households, households with lower incomes, seniors, and people with disabilities.
4. Enable property owners to age in place, downsize, or earn supplemental income from investing in their properties.

Annotations: Purpose

DO:
State local priorities in adopting the ADU by-law or ordinance.
Edit examples provided in the Model Zoning as appropriate to reflect intention and relevant municipality characteristics.
Reference the enabling Statute (Section 3 of M.G.L. c. 40A, as amended by Section 8 of Chapter 150 of the Acts of 2024) and accompanying Regulations (760 CMR 71.00).

PROCEED WITH CAUTION:
In general, be wary of any local purpose that may be at odds with the Statement of Purpose in 760 CMR 71.01(1): "...increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life."

Model Zoning overview guide to help municipalities update their by-laws and ordinances.

Includes an annotated version with guidance on what to consider.

Model Zoning Guide – Clean Version



MODEL ZONING - Clean Version

A. Purpose

The purpose of this Section [X] is to allow for Accessory Dwelling Units (ADUs), as defined under M.G.L. c. 40A, §1A, to be built as-of-right in Single-Family Residential Zoning Districts in accordance with Section 3 of the Zoning Act [M.G.L. c. 40A], as amended by Section 8 of Chapter 150 of the Acts of 2024, and the regulations under 760 CMR 71.00: Protected Use Accessory Dwelling Units. This zoning provides for by-right ADUs to accomplish the following purposes:

1. Increase housing production to address local and regional housing needs across all income levels and at all stages of life.
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4. Enable property owners to age in place, downsize, or earn supplemental income from investing in their properties.

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PURPOSE

B. Definitions

For purposes of this Section [X], the following definitions shall apply:

1. **Accessory Dwelling Unit (ADU).** A self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the Building and Fire Code for safe egress. ADUs may be detached, attached, or internal to the Principal Dwelling. [General references to ADUs in this by-law include both Protected Use ADUs and Local ADUs.]
2. **Design Standards.** Clear, measurable and objective provisions of zoning, or general ordinances or by-laws, which are made applicable to the exterior design of, and use of materials for an ADU when those same design standards apply to the Principal Dwelling to which the ADU is an accessory.
3. **Dwelling Unit.** A single-housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. This can include a housing unit within a single-family, duplex, or multi-unit development.
4. **EOHLC.** The Executive Office of Housing and Livable Communities.
5. **Gross Floor Area.** The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches, and similar spaces. Where there are multiple Principal Dwellings on the lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.
6. **[Historic District.]** A district in a municipality established pursuant to M.G.L. c. 40C or other State Law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the municipality pursuant to M.G.L. c. 40C or other state law.]
7. **[Local ADUs.]** An ADU that is not a Protected Use ADU but includes rules specific to [Municipality or cross-reference to any existing or proposed zoning for Local ADUs.]
8. **Lot.** An area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to requirements of zoning.
9. **Modular Dwelling Unit.** A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems, in compliance with the Building and Fire Code, prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities.

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DEFINITIONS

The Model Zoning also includes a Clean Version that can be inserted in their local zoning code with a few changes to reflect local priorities.

Model Zoning Guide – Checklist



APPENDIX A: Checklist for Municipal Planners

This checklist is to help municipal staff and board members updating or creating new zoning for Accessory Dwelling Units ensure that the zoning is enforceable in accordance with Section 3 of the Zoning Act (M.G.L. c. 40A), as amended by Section 8 of Chapter 150 of the Acts of 2024, and 760 CMR 71.00: Protected Use Accessory Dwelling Units.

Purpose

- ☐ No purpose contradicts the intent of the enabling legislation and its accompanying regulations: "...increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life"
- ☐ No purpose indicates some form of local preference
- ☐ No purpose refers to a prohibited regulation on property owners, such as requiring the inclusion of Affordable Housing units

Definitions

- ☐ Zoning includes relevant definitions from 760 CMR 71.02 and makes clear the difference between Protected Use ADUs and other ADUs that the municipality may choose to regulate
- ☐ No terms that exist in 760 CMR 71.02 or elsewhere in the municipal zoning by-law have different or contradictory meanings

Regulations

- ☐ Protected Use ADUs are allowed by-right within or on lots with a Principal Dwelling in Single-Family Residential Zoning Districts
- ☐ No Special Permit requirement for Protected Use ADUs within or on lots with a Principal Dwelling, except within a Floodplain or Aquifer Protection Overlay District
- ☐ No Special Permit required for Protected Use ADUs within or on existing nonconforming lots, or lots with an existing nonconforming primary dwelling.
- ☐ Any Special Permit requirement for Protected Use ADUs within a Floodplain or Aquifer Protection Overlay District is based on clear, objective, and non-discretionary criteria
- ☐ A Special Permit is required if additional ADUs are allowed on the same lot as a Protected Use ADU
- ☐ No enforcement of a Prohibited or Unreasonable Regulation imposed as a condition for the approval of a Protected Use ADU prior to the effective date of 760 CMR 71.00
- ☐ Zoning for Protected Use ADUs includes no Prohibited or Unreasonable Regulations

Prohibited Regulations

- ☐ Owner-Occupancy Requirements: No requirement for owner-occupancy of the Protected Use ADU or Principal Dwelling
- ☐ Minimum Parking Requirements:
 - ☐ No requirement for off-street parking for Protected Use ADUs within a half-mile radius of a Transit Station
 - ☐ No requirement for more than one parking space for Protected Use ADUs outside the half-mile radius

Prohibited Regulations Continued

- ☐ Use and Occupancy Restrictions: No requirement that a Protected Use ADU to be subject to a Use and Occupancy Restriction, such as a requirement that the ADU be occupied by a family member
- ☐ Unit Caps and Density:
 - ☐ No limit to the number of Protected Use ADUs that may be permitted, constructed, or leased in the Municipality or a particular zoning district
 - ☐ Protected Use ADUs not counted in density calculations
- ☐ Relationship to Principal Dwelling: All types of Protected Use ADUs are allowed (attached, detached, and internal)

Unreasonable Regulations

- ☐ Design Standards:
 - ☐ Any Design Standard applied to Protected Use ADUs is the same or more lenient than the design standard applied to Single-Family Residential Dwellings within the same zoning district
 - ☐ No Design Standard prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU
 - ☐ All design standards applied to ADUs are clear and measurable
- ☐ Dimensional Standards:
 - ☐ Protected Use ADUs have a maximum Gross Floor Area requirement of 900 square feet or ½ the Gross Floor Area of the Principal Dwelling, whichever is smaller
 - ☐ Any Dimensional Standard for Protected Use ADUs is the same or more permissive than what is required for the Principal Dwelling, a Single-Family Residential Dwelling, or accessory structure in the same zoning district
 - ☐ No minimum lot size requirement for Protected Use ADUs
- ☐ Utilities, Safety, and Emergency Access:
 - ☐ No requirements concerning utilities, safety, and emergency access are more restrictive than state requirements
 - ☐ No requirement for a separate utility connection for Protected Use ADUs
- ☐ Environmental Protection: Any regulation pursuant to 310 CMR 15.000 (Title V) applied to Protected Use ADUs is not more restrictive than those for Single-Family Residential Dwellings in the same zoning district
- ☐ Site Plan Review: If there is a requirement for Site Plan Review approval of Protected Use ADUs, the review guidelines are clear, objective, and consistent with an as-of-right process as defined in M.G.L. c. 40A ss. 1A and 3
- ☐ Impact Analysis, Studies, and Fees: An impact analysis, study report, or impact fee is only required for a Protected Use ADU if the requirement is already in place for Single-Family Residential Dwellings in the same zoning district.
- ☐ Modular Dwelling Units: No requirements more restrictive than the Massachusetts Building Code for prohibiting, regulating, or restricting a Modular Dwelling Unit from being used as a Protected Use ADU
- ☐ Historic Districts:
 - ☐ Design Standards and Dimensional Standards for Protected Use ADUs in Historic Districts are not unreasonable pursuant to 760 CMR 71.03(3)(a)
 - ☐ Design standards applied to Protected Use ADUs in Historic Districts must be clear and measurable standards
- ☐ Pre-Existing Nonconforming Structures: Protected Use ADUs allowed by-right within or on lots with a Pre-Existing Nonconforming Structure

This checklist will walk you through existing ADU zoning including steps to consider as municipalities update their local zoning and processes.



4.

Supports for Municipalities



Additional Supports

1. EOHLC: Continued **technical assistance** to amend/adopt zoning.
2. By-law Review for Towns and Cities for **Attorney General's Office**
3. Expanded guidance on administration/enforcement on the mass.gov/ADU webpage (FAQs)
4. Other state agencies releasing ADU guidance – Keep an eye out!
5. More to come on financing ADU development and construction
6. ADU Design Competition

For More Information



Webpage: mass.gov/adu

Emails: Claire.Morehouse@mass.gov

Sign up to Affordable Homes Act (AHA) implementation
newsletter on the ADU webpage: mass.gov/adu