



Commonwealth of Massachusetts
Executive Office of Housing and
Livable Communities



ADU Draft Regulations Overview

Webinar
December 10, 2024



Agenda



1. The new ADU law
2. Overview of the new ADU Draft Regulations
3. Public Comment Process
4. Support for Municipalities

RECORDING:

A recording of this presentation will be posted online on mass.gov/ADU



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 amends the Zoning Act and establishes new ADU laws and definitions that we are discussing today.
- **Please note:** The effective date of Section 8 is February 2, 2025.
- **Goal:** Regulations 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**. Goal: 8,000 to 10,000 new ADUs in the next five years.
- **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



When is the Law in Effect?

August 6, 2024

Section 7 takes effect

February 2, 2025

Section 8 takes effect

This effective date is not a deadline, but unreasonable regulations are unenforceable after this date.

Goal: Regulations finalized and published prior to this date



Webinar Purpose: Overview of the Draft Regulations

These are Draft Regulations and subject to change after your comments.

This webinar is not intended to be legal advice. Consult your City/Town solicitor for legal advice.



2.

Overview of the Draft 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



71.01 Statement of Purpose – Key Points

“...to encourage the production of accessory dwelling units 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.”

- Seeks to balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing stock.
- Balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs.
- Explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units (e.g., owner-occupancy of either the ADU or the principal dwelling).



71.02 List of Definitions

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



Definitions – Protected Use ADU

“An **attached or detached** Accessory Dwelling Unit that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District and no other Accessory Dwelling Unit is located on said Lot and which is protected from Prohibited Regulations and Unreasonable Regulations”





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, by special permit, variance, waiver, or other zoning relief or discretionary zoning approval.”

- **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 building, or buildings.”

- **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

Under the draft 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 conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is 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 – Design Standards

“Clear, measurable, and objective provisions of Zoning, or regulations, 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 clear and objective process established by local ordinance or by-law by which a Municipal board or authority may review and impose reasonable 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?
- Should specific types of ADUs be subject to SPR – such as detached?
- 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 floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.”

- **This definition is from the MA State Building Code.** EOHLC has been and will continue to seek input from Building Officials about this and other key definitions.
- **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 use or occupancy of the Protected Use ADU to individuals or households at a specified income or age, or that imposes conditions that limit future use or occupancy of a Protected Use ADU based on income or age or, that imposes any similar use and occupancy restriction as may be further provided for in EOHLC guidelines.”

- This does **not prohibit municipalities from restricting or prohibiting short-term rentals.**
- 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).



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), 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 71.03(2) to 760 CMR 71.03(5), inclusive.”

- This section of the Draft 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 (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:** short-term rental restrictions and prohibitions are an EXCEPTION.
- **Density and Unit 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 each Protected Use ADU on a Lot if all portions of such 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 each Protected Use ADU on a Lot if any portion of such Lot is located is within a 0.5-mile radius of a Transit Station.”



Definitions – Transit

“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. For routes that allow flag stop locations where passengers may signal for a bus to stop at any point along its designated route, the entire route shall be considered a Bus Station.”

“Ferry Terminal. The location where passengers embark and disembark from a ferry 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, s. 2 or other local or regional transit authority established pursuant to M.G.L c. 161B, s. 3 or M.G.L., c. 161B, s.14.”

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) 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:
 1. Result in complete nullification of the use or development of a Protected Use ADU;
 2. Impose excessive costs on the use or development of a Protected Use ADU without significant gain in advancing the municipality’s legitimate interests; or
 3. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the municipality's legitimate interests.”

- 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) (a) and (b)

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

- 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. **Short Term Rentals**

Those shown in **bold** are covered in this presentation



Unreasonable Regulations – Design Standards 71.03 (3) (b) (1)

“Design Standards. Any Design Standard that (i) 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 (ii) 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 setbacks, lot size, lot coverage, open space, and the bulk and height of structures that are more restrictive than what is required for a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.”

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. However, it is difficult to arrive at a standard maximum setback that should apply to 350 cities and towns.

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 Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than state requirements.”

- **Consider** – do ADUs need separate utilities, which will add costs?
- **Emergency access is important** – but does your local fire department exceed state access standards?
- **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.



Unreasonable Regulations – Site Plan Review 71.03 (3) (b) (5)

“Any requirement under Site Plan Review concerning the Protected Use ADU that is more restrictive than those applied to the Principal Dwelling.”

- **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 and Studies. Any requirement under Zoning or Site Plan Review for any impact analysis, study, or report 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 – Short-term Rentals 71.03 (3) (b) (8)

“Short-Term Rentals. Any restrictions or prohibitions on Short-Term Rentals that are not consistent with M.G.L. c. 64G.”

M.G.L. c40A Section 3 now 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 restrict and others may want to prohibit them. All of these are allowed under this section of the draft regulations as long as they are consistent with MGL c 64G.



Unreasonable Regulations – Short-term Rentals 71.03 (3) (b) (8)

“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 may be restricted or prohibited.
- On the left is the definition from MGL c 64G section 1.



Unreasonable Regulations – Historic Design Standards 71.03 (3) (c)

Historic Districts. "Notwithstanding 760 CMR 71.03(b)1. and 760 CMR 71.03(b)2., a Municipality may establish Design Standards and dimensional standards in an Historic District for a Protected Use ADU that are different from what is required, or more restrictive than, for a Single-Family Residential Dwelling in the Single-Family Residential Zoning District; provided, however, that such standards are not 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."

- This section tries to balance the need to respect the fabric of historic districts without preventing Protected Use ADUs.



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.
- A 1,200 sq ft ADU that was previously approved with a requirement for family relationship is not a Protected Use ADU and such requirements may continue to apply.



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), Zoning shall require a Special Permit in a Single-Family Residential Zoning District for the use of land or structures for an ADU, or rental thereof, on a Lot on which a Protected Use ADU is already located.”

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

For example:

- If there is a 1,200 sq ft ADU on a property and a 900 sq ft ADU is proposed, the 900 sq ft ADU would qualify as the Protected Use ADU and must be allowed without a special permit.
- However, a second 900 sq ft ADU would require a Special Permit.



Annual Updates – Data Collection 71.04

1. “**Data Collection**. To assist EOHLC in the administration of M.G.L c. 40A, s. 3, para 11, from the effective date of 760 CMR 71.00, Municipalities shall collect and maintain, at a minimum, the following data related to their permitting of Protected Use ADUs, in a format specified by EOHLC:
 - (a) The number of approved ADU permit applications, separately tabulated for attached and detached ADUs;
 - (b) The number of denied ADU permit applications;
 - (c) The number of occupancy permits issued for any ADU; and
 - (d) Other data or information as may be further provided for in EOHLC guidelines.”
2. “**Annual Report**. To assist EOHLC in the administration of M.G.L c. 40A, s. 3, para 11, Municipalities shall annually submit a report to EOHLC not later than March 31 containing the data collected under 760 CMR 71.04(1) during the prior calendar year. Said report shall be filed on a form as prescribed by EOHLC and shall contain all data as required.”



3.

Public Comment Process



Outreach to date

EOHLC has sought and will continue to seek feedback from many stakeholders including but not limited to:

Municipalities

(e.g., Planners, Building Inspectors, Planning and Zoning Board members)

Industry Professionals

(e.g., Builders, Housing Advocacy Groups, Real Estate Professionals, etc.)

General Public

(e.g., Property Owners, Folks interested in building ADUs)



Timeline

December 6	EOHLC released ADU Draft Regulations.
December 10 and 16	Public informational webinars, will be posted online
December 20	Public comment period starts. There will be an <u>online form</u> available on December 20 at <u>www.mass.gov/adu</u>
January 10	Public Hearing. Speaker sign-up will be posted at <u>www.mass.gov/adu</u> on December 20.
January 10, 11:59 pm	The public comment period closes.



Other Issues

The draft regulations address many issues, but EOHLC is interested in feedback on how (if at all) the regulations should address the following topics:

- **Pre-existing Nonconformities:** How pre-existing nonconformities should be addressed
- **Dimensional Standards:** How to apply standards that enable ADU construction
- **Utility Connections:** Addressing separate or joint utility connections, especially water and sewer
- **Fees/Charges:** Application and calculation of impact fees and utility connection charges
- **Addresses:** Addressing of Accessory Dwelling Units



4.

Supports for Municipalities



Coming Soon!

1. Model By-law
2. Continued technical assistance to adopt existing zoning including coordination with Attorney General's Office attorneys
3. Expanded guidance on administration/enforcement on the mass.gov/ADU webpage (FAQs)



For More Information

Webpage: mass.gov/adu

Emails: EOHLCADUhomes@mass.gov

Sign up to AHA implementation newsletter on the ADU
webpage: mass.gov/adu