

760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS

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71.01: Statement of Purpose

(1) St. 2024, c. 150, § 8 amends M.G.L. c. 40A, § 3 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.

The Executive Office of Housing and Livable Communities is the regulatory agency that is authorized by St. 2024, c. 150, § 8 to promulgate 760 CMR 71.00 ~~and accompanying guidelines~~ that establish rules, standards and limitations that will assist Municipalities and landowners in the administration of St. 2024, c. 150, § 8.

(2) St. 2024, c. 150, § 8 and 760 CMR 71.00 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 needs. St. 2024, c. 150, § 8 establishes that in certain circumstances the use of land or structures for ADUs are protected from zoning restrictions by providing that zoning shall not prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single ADU, or the rental thereof, in a single-family residential zoning district, and imposes protections on ADUs through M.G.L. c. 40A, § 3, the Dover Amendment. The Act balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs. St. 2024, c. 150, § 8, however, explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units that require owner-occupancy of either the ADU or the principal dwelling and imposes limitations on Municipal parking requirements.

(3) 760 CMR 71.00 establishes definitions, standards, and limitations to assist in the local administration of M.G.L. c. 40A, § 3, para. 11, pursuant to St. 2024, c. 150, § 8. Nothing in 760 CMR 71.00 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. 760 CMR 71.00 may be further supplemented by guidelines issued by EOHLC.

71.02: 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 ~~state building~~ 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 section 1 of chapter 64G; 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.

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.~~

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.

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

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.

EOHLC. The Executive Office of Housing and Livable Communities.

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.

Fire Code. The Massachusetts state fire code, 527 CMR 1.00.

Gross Floor Area (GFA). The sum of the areas of all ~~floors~~stories of the building of compliant ceiling height pursuant to the Building Code, including basements, ~~cellars, mezzanine~~lofts, and intermediate floored tiers ~~and penthouses of headroom height~~, measured from the ~~exterior~~interior faces of exterior walls or from the centerline of walls separating buildings , or dwelling units but excluding:-

~~(a) covered walkways, open roofed over crawl spaces, garage parking areas, attics, enclosed porches and similar spaces; and~~

~~(b) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.~~

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.

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; ~~as the case may be.~~

Lot. An area of land with definite boundaries that is used, or available for use, as the site of a ~~building~~structure, or ~~buildings~~structures, regardless of whether the site conforms to requirements of Zoning.

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. ~~A Modular Dwelling Unit shall not include a manufactured home, such as those defined under M.G.L. c. 140, § 32Q.~~

Municipality. Any city or town subject to the provisions of M.G.L. c. 40A.

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.

Prohibited Regulation. Zoning ~~restrictions and/or general ordinances or by-laws, or~~ Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2), ~~and as may be further provided for in EOHLC guidelines.~~

Protected Use ADU. An attached or detached ~~Accessory Dwelling Unit~~ ADU 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 pursuant to~~ by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU ~~para. 11 and 760 CMR 71.00. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition.~~

Short-term Rental. Short-term rental, as defined in M.G.L. c. 64G, § 1.

Single-family Residential Dwelling. A structure on a Lot containing not more than one Dwelling Unit.

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, variance, waiver, or other zoning relief or discretionary zoning approval.~~

Site Plan Review. 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.

Special Permit. A permit issued by a Municipality's special permit granting authority pursuant to M.G.L. c. 40A, § 9.

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.

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

Unreasonable Regulation. Zoning ~~restrictions and/or general ordinances or by-laws, or~~ Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3)(b) ~~and as may be further provided for in EOHLG guidelines.~~

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 ~~at a specified based upon the characteristics of, or relations between, the occupants, such as but not limited to, income, or age, familial relationship, enrollment in an educational institution, 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 EOHLG guidelines~~ limits the number of occupants beyond what is required by applicable state code.

Zoning. Ordinances and by-laws, including base, underlying, and overlay zoning, adopted by ~~Municipalities cities and towns pursuant to M.G.L. c. 40A to regulate the use of land, buildings and structures, including base, underlying, and overlay zoning 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, ~~are is~~ subject to use and structure requirements that are ~~generally~~ uniform ~~throughout within~~ the area.

71.03: Regulation of Protected Use ADUs in Single-family Residential Zoning Districts

(1) 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 71.03(2) ~~through 760 CMR 71.03(5), inclusive.~~

(2) Prohibited Regulation. A Municipality shall not subject the use of land or structures on a Lot for a Protected Use ADU to any of the following:

- (a) Owner-Occupancy Requirements. A requirement that either the Protected Use ADU or the Principal Dwelling be owner-occupied.
- (b) Minimum Parking Requirements. A requirement of, as applicable:
 - 1. More than one additional on-street or off-street parking space for ~~each a~~ Protected Use ADU ~~on a Lot~~ if all portions of ~~such 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 ~~each a~~ Protected Use ADU ~~on a Lot~~ if any portion of ~~such its~~ Lot is located within a 0.5-mile radius of a Transit Station.
- (c) Use and Occupancy Restrictions. A requirement that a Protected Use ADU be subject to a Use and Occupancy Restriction.
- (d) Unit Caps & Density. Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations.
- (e) Relationship to Principal Dwelling. A requirement that a Protected Use ADU be attached to or detached from the Principal Dwelling.

(3) Unreasonable Regulation.

- (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 ~~Z~~zoning;
 - 2. Serves a legitimate ~~M~~municipal interest sought to be achieved by local ~~Z~~zoning but its application to a Protected Use ADU does not rationally relate to the legitimate ~~M~~municipal interest; or
 - 3. Serves a legitimate ~~M~~municipal interest sought to be achieved by local ~~Z~~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 ~~significant gain insignificantly~~ advancing the ~~M~~municipality's legitimate interest; or
 - c. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the ~~M~~municipality's legitimate interest.

(b) ~~For the purposes of 760 CMR 71.03(3), the following restrictions and regulations shall be considered unreasonable when applicable to a Protected Use ADU. Municipalities shall apply the analysis articulated in 760 CMR 71.03(3)(a) to establish and apply reasonable Zoning or general ordinances or by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it exceeds the limitations, or is inconsistent with provisions, described below, as applicable:~~

1. Design Standards. Any Design Standard that:
 - a. ~~Would~~ not be applied to a Single-~~f~~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.
2. Dimensional Standards. Any requirement concerning dimensional ~~standards, such as dimensional~~ setbacks, ~~lot size,~~ lot coverage, open space, ~~and the bulk and height, and number of stories, of structures~~ that are more restrictive than ~~what~~ is required for the Principal Dwelling, or a Single-family Residential Dwelling or accessory structure in the ~~Single-family Residential~~ 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.
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.
4. Environmental Regulation. 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.
5. Site Plan Review. ~~Any requirement under~~ 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. more restrictive than those applied to the Principal Dwelling.
6. Impact Analysis, and Studies, and Fees. Any requirement ~~under Zoning or Site Plan Review~~ for any impact analysis, study, or report, or impact fee that is not required for the development of a Single-~~f~~Family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located.
7. Modular Dwelling Units. 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 ~~Massachusetts state building code~~ Building Code.
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). Short-term Rentals. ~~Any restrictions or prohibitions on Short-term Rentals that are not consistent with M.G.L. c. 64G.~~
9. Pre-existing Nonconforming Structures. 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.

~~(c) Notwithstanding 760 CMR 71.03(b)1. and 760 CMR 71.03(b)2., a Municipality 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 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.~~ 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.

~~(d) EOHLC may clarify and provide examples of what constitutes Unreasonable Regulations through guidelines.~~

(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.

(5) Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), ~~Zoning shall require a Special Permit 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 for an ADU, or rental thereof, on a Lot on which a Protected Use ADU is already located~~the additional ADUs.

(6) Floodplain and Aquifer Protection Overlay Districts. 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.

(7) Nothing in these regulations 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.

(8) Address Assignment. 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.

71.04: Annual UpdatesData Collection

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.~~(1) Data Collection. To assist EOHLC in the administration of M.G.L c. 40A, § 3, para 11, Municipalities shall collect and maintain, at a minimum, the following data related to their permitting of 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, § 3, para 11, Municipalities shall annually submit a report to EOHLC not later than March 31st 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 therein.~~

REGULATORY AUTHORITY

760 CMR 71.00: M.G.L. c. 40A, § 3, para. 11; St. 2024, c. 150, § 8.