

Affordable Homes Act Expands Housing Options

August 16, 2024 | Brian R. Falk, Andrew T. Lechner | Articles

The new Affordable Homes Act (AHA) signed by Governor Healey this month allows accessory dwelling units by-right statewide, lifts restrictions on merged zoning lots, and makes several additional changes to Massachusetts land use statutes in an effort to increase the production of smaller residential units.

[The Affordable Homes Act, Chapter 150 of the Acts 2024](#), also includes \$5.2 billion in state spending on various housing initiatives. The AHA's emergency preamble means that many new provisions take effect immediately.

Below is a summary of certain key provisions impacting municipalities, developers, and property owners:

1. Accessory Dwelling Units Permitted By-Right (Sections 7 and 8)

The AHA amends the Zoning Act by prohibiting towns and cities from restricting accessory dwelling units (ADUs) in single-family zoning districts. ADUs, sometimes known as in-law apartments, now fall under the protection of M.G.L. c. 40A, Section 3, which exempts religious, educational, and other uses from local zoning.

One ADU is now allowed by-right on each lot in a single-family zoning district, subject to "reasonable regulations", which may include non-discretionary site plan review, certain dimensional controls, Title 5 septic regulations, and restrictions on short-term rentals.

The AHA provides that an accessory dwelling unit must have a separate entrance (interior or exterior) that complies with the State Building Code



Related Services

Public and Municipal Law

Related People

Stephen F. Madaus

Nicholas Anastasopoulos

Ashley P. Coffey

Moriah L. Cummings

Brian R. Falk

Robert B. Gibbons

Todd K. Helwig

Corey F. Higgins

Spencer B. Holland

Andrew T. Lechner

David K. McCay

John O. Mirick

Kimberly A. Rozak

Sharon P. Siegel

and may not be larger than half the gross floor area of the principal dwelling or 900 square feet, whichever is smaller. The AHA prohibits restrictions on owner-occupancy and rentals of ADUs, eliminating the requirement in many towns and cities that in-law apartments may only be used by an owner's close relative.

In addition, towns and cities must allow additional ADUs in single-family zones through a special permit process.

The ADU provisions take effect on February 2, 2025, so municipalities have a few months to consider zoning amendments consistent with the AHA.

2. Merger Doctrine Exemption Allows Smaller Homes on Certain Lots (Section 10)

The AHA creates a new exemption to the “merger doctrine,” which usually treats undersized adjacent lots held in common ownership as a single lot for zoning purposes. In addition to the existing exemption allowing construction on prerecorded residential lots with 50 feet of frontage and 5,000 square feet in area, the AHA now allows home construction on lots with 75 feet of frontage and 10,000 square feet in area – even if those lots abut other land held in common ownership.

Development of these lots, however, is restricted to single-family dwellings that do not exceed 1,850 square feet of heated living area with at least three bedrooms, which may not be used as seasonal homes or short-term rentals. This new exemption thus encourages the development of new starter homes, which have been rare in recent decades.

3. Heightened Standards for Zoning Appeals (Sections 11 – 13)

Abutter appeals of all zoning decisions (not just housing projects) now face heightened pleading standards and increased cash bonds. The AHA amends M.G.L. c. 40A, Section 17, to provide that any person, other than an applicant, who appeals a special permit, variance, or other zoning decision shall “sufficiently allege and must plausibly demonstrate that measurable injury, which is special and different to such plaintiff, to a private legal interest that will likely flow from the decision through credible evidence.”

This substantially raises the bar on zoning appeals, which previously only

required a complaint alleging “that the decision exceeds the authority of the board or authority.” The new standard applies regardless of whether the appellant was a party-in-interest for notice purposes.

The AHA also increases the surety or cash bond amount courts may require from not more than \$50,000 to not more than \$250,000, and expands the purposes to which the bond may apply, including “the payment of and to indemnify and reimburse damages and costs and expenses.” Previously, appeal bonds only applied to “payment of costs.” The AHA also clarifies that bad faith or malice of a plaintiff is not required for the court to issue the bond.

4. Designated “Seasonal Communities” May Allow “Tiny Homes” (Section 5)

The AHA allows certain municipalities with a high volume of seasonal housing to be designated as “Seasonal Communities” by the Executive Office of Housing and Livable Communities. Upon local acceptance of the designation, Seasonal Communities must adopt bylaws permitting the use of undersized lots in residential zones for the creation of year-round housing, including “tiny houses” of not more than 400 square feet. A Seasonal Community may also acquire year-round housing occupancy deed restrictions and acquire and develop housing units with a preference for public employees, such as teachers and public safety employees.

5. Affordable Housing Preference for Veterans (Section 14)

The AHA allows municipalities with inclusionary zoning provisions (requiring or incentivizing affordable housing) to enter into agreements with developers to provide a preference to veterans of low or moderate income for affordable housing, for up to 10% of the affordable units in a particular development.

6. Streamlined Rehabilitation of Vacant Residential Properties (Section 29)

Under the AHA, receivers appointed to remediate and sell a distressed residential property may ask a court to allow for an as-is sale at fair market

value to a nonprofit entity. Such a sale must be conditioned on the nonprofit agreeing to correct all outstanding sanitary code violations and rehabilitate the property for sale to a first-time homebuyer.

7. No Waiver of Home Inspections (Section 45)

The AHA requires the Executive Office of Housing and Livable Communities to promulgate regulations (not later than December 15, 2024) prohibiting home sellers from either: (1) conditioning the acceptance of an offer on the buyer waiving or restricting their right to a home inspection, or (2) accepting an offer from a buyer intending to waive their right to a home inspection. Exceptions are available for sales at auction and sales to family members.

Please contact any member of our [Public and Municipal Law Group / Real Estate Group](#) if you have any questions about this legal update.

This client alert is intended to inform you of developments in the law and to provide information of general interest. It is not intended to constitute legal advice regarding a client's specific legal issues and should not be relied upon as such. This client alert may be considered advertising under the rules of the Massachusetts Supreme Judicial Court. This client alert is for informational purposes only. It is not intended to be a solicitation or offer to provide products or service to any individual or entity, including to a "data subject" as that term is defined by the European Union General Data Protection Regulations. ©2024 Mirick, O'Connell, DeMallie & Lougee, LLP. All Rights Reserved.