BRUNSWICK QUESTIONS ON HOUSING BILLS WITH SUMMARY OF RESPONSES

This List was used at our meeting with the new Maine Office of Community Affairs (MOCA) regarding LD 1829 on August 13, 2025. Summary responses are pasted in below in red. MOCA was represented by Hilary Gove and Ben Averill. Brunswick area attendees included Rep. Poppy Arford, Sally Costello, Town Attorney Kristen Collins (Zoom), James Dealaman, Rep. Cheryl Golek (Zoom), Steve Walker, and Steve Weems.

General

LD 1829 contains a mixture of provisions relating to (1) ADUs, (2) "affordable housing," and (3) all housing (housing in general). As we work thorough today's discussion, could you please note the breadth of application of each section of the bill? Yes.

We know there will be a rulemaking process prior to implementing **LD 1829** and certain other housing bills. What issues will this rulemaking cover? How significant will the rules be? For instance, will it be possible for a town like Brunswick, which has robust processes regarding land use and housing planning, to be granted density requirement waivers or other specific considerations if just cause for providing this flexibility can be demonstrated? We think the rules should contain such provisions. What flexibility do you think you have? Or would this require future legislation amending LD 1829?

There will be a rule-making process, covering LD 1829, and also LD 427 (housing parking requirements), and LD 997 (mandate to allow residential uses in commercial districts). This process will be conducted by the new Maine Office of Community Affairs (MOCA), under general authority of the Department of Economic and Community Development (DECD). These will be so-called routine rules (not subject to legislative review and approval). MOCA's goal is to have the rules out in Jan-Feb 2026 because the deadline for ordinance compliance for a community like Brunswick is July 1, 2026. The comment period for feedback about rulemaking is expected to open October – November.

It appears the significance of the rules will be to clarify definitions and provisions in the new legislation that are not obvious in the legislation itself. Call these technical or operational clarifications or refinements. There does not appear to be room for a waiver or any other type of flexibility that is not expressly authorized in the legislation, so our hopes in this regard apparently would depend on future legislative changes to the State statutes. The Municipal Planning Assistance Program will also provide ongoing assistance for municipalities.

What is the effective implementation date for **LD 1829** for the Town of Brunswick? The Town Council can adopt ordinances without approval of the voters. Does this mean our compliance deadline is July 1, 2026? Yes. Kristen Collins has verified this.

If Brunswick adopts a rate of growth ordinance, <u>including</u> its designated growth area (DGA) <u>prior</u> to July 1, 2026, will it be honored and allowed to stand by the State? The answer appears

to be no. LD 1829 prohibits a rate of growth ordinance that limits residential development in a designated growth area (DGA).

Brunswick is on track to adopt an updated Comprehensive Plan later this year, as the result of a multi-year process initiated in 2018 and interrupted by the pandemic. Is the Town still authorized to establish the boundaries of its designated growth area (DGA) where it believes these boundaries should be?

Yes. According to the existing Housing Opportunity Program: Municipal and Use and Zoning Ordinance rule, a "Designated growth area" means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial or industrial development, or any combination of those types of development, and into which most development projected over (10) years is directed. Apparently "most" development means at least 51%, and this may be a requirement in what ensues to remain qualified for certain types of State funding. We do, however, appear to have great flexibility with this, and perhaps other, practical provisions in mind.

For towns like Brunswick, who already are experiencing rapid housing growth, including some affordable and workforce housing, especially over the last five years, there is increasing concern about modulating growth. Current municipal infrastructure and services (i.e., public schools, hospitals, traffic, emergency housing, sewer and wastewater infrastructure, etc.) may be reaching capacity. As a result, more growth could require expensive expansions of these municipal infrastructure assets and services, especially if additional fast-paced growth is mandated by the State. Does the State recognize this possibility as a potential result of a housing mandate and plan to assist in funding these expansions? Asked but not answered, due to the rhetorical nature of the question. The legislation would not have any impact on requiring developments to demonstrate sufficient water and sewer utilities are available to serve development.

Specific Sections of LD 1829

Sec. 1. Fire protection in ADUs. It seems clear when fire suppression sprinklers are NOT required if the ADU is attendant to a single-family residence. However, does this section mean fire suppression sprinklers WILL BE REQUIRED in all other situations, or will this be at the discretion of the municipality? For example, what about an ADU that is within or attached to a duplex, or any other two-unit property (e.g., an owner-occupied home with a separate rental unit)? [Comment: this could be a seriously discourage construction of ADUs.]

This appears to be an example of where LD 1829 needs clarification. The apparent intent of this provision is to encourage the designation and/or construction of ADUs. The Office of the State Fire Marshall has jurisdiction on this matter, so the MOCA people demurred on this question.

Sec. 2. Definition of ADU. Does the new language include commercial or multi-use buildings as well as multi-family residential structures? In other words, does the ADU definition apply only

to properties exclusively in residential use? [Comment: Note potential overlap or confusion with LD 997.]

This is the type of question MOCA hopes to address in the rulemaking process.

Sec. 3. Differential ordinances. Please note the above general question about a rate of growth ordinance adopted prior to July 1, 2026. Also, what is the practical application of the exception at the end of this section of LD 1829 ("*except as authorized by this chapter*")? What does this mean?

This appears to be a drafting oversight in the legislation which has no substantive meaning.

Sec. 4. Density requirements. What is the meaning of "multifamily dwellings" in line 2 of this section? How does the new ADU provision affect this definition? If there is a lot with a single-family dwelling with an attached (or detached) ADU does this make it a multifamily dwelling for the purpose of the density bonuses for affordable housing?

This will be addressed in the rulemaking process, presumably.

Sec. 6. Plumbing inspections. What problem is this section meant to solve? Unanswered.

Sec. 7. Number of dwelling units allowed. Are we correct in reading that this section applies to **any type of housing**, not just affordable housing, and usurps a municipality's authority to limit the number of dwelling units per lot, no matter where the lot is located in the community (e.g., growth zone, rural zone, contract zoning area)? Or does this section apply to affordable housing only? [Comment: Why not just eliminate local zoning altogether?]

The section applies to all housing, not just affordable housing, in any area of a municipality in which residential use is allowed. This provides for at least three units per lot in any area (including rural areas) and four in a designated growth area or area served by public water and sewer. It does not specify minimum lot size or address the possibility of a clustering requirement. (See Section 9 of LD 1829 below.)

Sec. 8. Density provisions (apparently). What is being repealed in this section? Not specifically discussed, but this section was repealed to so there are not overlapping provisions that increase the base density. (Note: 30-A MRSA §4364-A, sub-§2, applies to locations in growth area or served by public water/sewer and allows affordable housing development where multifamily dwellings are allowed to have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units.)

Sec. 9. Lot size and density allowance. **Does this section apply to any type of housing or is it limited to affordable housing**? [Comment: The Brunswick P&D Dept. has a chart about this.]

In subsection A, within a designated growth area with water/sewer service, does this translate to a minimum of 11 units per acre (i.e., 1,250 sf/dwelling unit for the first 4 dwelling units plus 5,000 sf of lot area for the subsequent units)?

In subsection B, outside a designated growth area with water/sewer service, does this translate to a minimum of 9 units per acre (i.e., a minimum of 2 dwelling units on the first 5,000 sf lot plus 5,000 sf of lot area for the subsequent units)? Plus an ADU?

In subsection C, within a designated growth area but without water/sewer service, does this translate to the maximum allowed by the State's septic system provisions? Plus an ADU?

Of paramount importance, this section applies to any form of housing. Further clarifications of these provisions will be included in the rules, including how ADUs are counted, apparently.

Sec. 11. Plumbing Inspections. What is the point of this? What problem is it solving? Redundant.

Sec 12. Planning Board approval not required for 4 or fewer dwelling units within a structure. Does this apply to affordable housing units only or all multi-family housing units?

This applies broadly to all multi-family housing units, affordable or not. Presumably this will be clarified further in the rulemaking process. This provision does not preclude other reviews/processes triggering.

Sec. 13. ADUs allowed. What is the purpose and meaning of this section? Is it redundant? Does it allow an ADU attendant to any kind of building if the building is in a zone that allows residential structures? As a result, could an ADU be located in association with a commercial or mixed-use building?

This was unclear, although it appears to be addressed by LD 997, which has blanket provisions for residential uses in commercial buildings that are located in zones where residential use is permitted. It should be addressed in the rulemaking process.

Sec. 13 & Sec. 14. Multi-use structure. What is the definition of a "multi-use structure?" To be covered in rulemaking.

Sec. 20. Subdivision law changes. Can you please explain the purpose and meaning of the subdivision law changes? Is one practical effect of this law, as amended, to allow for an ADU that is constructed to be designated a condominium unit and sold separately from the lot with the structure that qualifies the lot for construction of an ADU on it?

The MOCA representatives with whom we were meeting pointed out that MOCA will be concerned primarily with the housing provisions of LD 1829. The land use provisions (including the administration of the State's Subdivision statues are still under the jurisdiction of the

Department of Agriculture, Conservation and forestry (DACF). With this in mind the MOCA folks demurred on the questions about land use.

Sec. 21. How does the deadline requiring municipal compliance with this section of July 1, 2027 relate to the general deadline for compliance of July 1, 2026 (see Sec. 23)? This question was based on a misreading of LD 1829, and is irrelevant.

Sec. 23. Application. What is the overall significance of this deadline for compliance of July 1, 2026 for LD 1829? Does this in effect change the effective date of the law for municipalities? What happens between the effective date of **LD 1829** as a statute and July 1, 2026?

The MOCA sponsored rulemaking process will take place between the effective date of LD 1829 (sometime in October 2025) and the municipal compliance date of July 1, 2026, for a community like Brunswick. MOCA is holding listening sessions now, intends to publish draft rules in October, post a 30-day review and comment period, and publish the final rules in early 2026.

More General Questions

We could not locate a definition for affordable housing as this term is used in **LD 1829**. Since there are different definitions for various types of housing, and these are tied to Area Median Income (AMI), which is continuously in a state of flux, will this achieve the kinds of outcomes municipalities need/want? The MIX of housing unit types and relative LEVELS of affordability are important in getting the kinds of affordable and workforce housing needed. There are many points of view within every municipality about what is most desirable, including the scope of various forms of housing, writ large. What is your understanding about the overall objective of the State, as expressed in **LD 1829**? Is the official state policy now "more housing of all types everywhere, regardless of a community's sense of what is best?" What provisions are likely to emerge that would allow for solutions acceptable to individual municipal sentiment? This was essentially a rhetorical question, left unanswered!

Does the 80% of Area Median Income (AMI) have a statutory or rule significance for rental housing and similarly the 120% of AMI for owned housing?

See DECD, Chapter 5, Housing Opportunity Program : Municipal Land Use and Zoning Ordinance Rule. According to this rule, "Affordable housing development" means

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs: and

2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs.

3. For purposes of this definition, "housing costs" include, but are not limited to:

    a. For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

    b. For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments) private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

Will the rules speak to the status of certain nonprofit entities which do not pay property taxes to municipalities, increasing the demand for municipal infrastructure and services, thereby increasing the burden on residential taxpayers? Another rhetorical question, not answered.

What is the intent and probable practical effect of **LD 997**? Is this intended to encourage the use of underutilized buildings in commercial areas for housing or is it meant to allow housing to be built just about anywhere, according to State law?

To be addressed in the rulemaking process. Terms like, 'Unreasonable costs,' can be defined during rulemaking.