



ACCESSORY DWELLING UNITS

MASSACHUSETTS ENVIRONMENTAL HEALTH ASSOCIATION

FOOD FOR THOUGHT

Paul Halfmann, January 22, 2025

BENEFITS OF ADUs

- For Property Owners
 - Additional rental income can help offset maintenance and repair costs
 - Low-cost housing may allow adult children & other relatives to remain in the community
 - Long-term options for seniors
 - Opportunity for caregivers to live close by
 - Downsize while remaining in their community

BENEFITS OF ADUs

- For Renters
 - Increase the number of affordable housing for smaller households and younger adults
 - Long-term residents may remain in the community

BENEFITS OF ADUs

- For Massachusetts
 - Increases affordable and diverse housing opportunities
 - Provides accessible housing for seniors, people with medical needs/disabilities and their care givers
 - Makes use of existing land, structures & infrastructure
 - More economical than building a single-family home on a new lot
 - A more sustainable option
 - Smaller units use less water & electricity

THE LAW

- Affordable Homes Act was signed August 6, 2024
 - Revised section 1A (definitions) and section 3 (local zoning prohibitions) of Chapter 40A of the Mass General Laws
 - Section 1A, 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;

THE LAW

- Section 1A, Accessory Dwelling Unit: cont.,
 - (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.

THE LAW

- Section 1, Chapter 64G:
 - **Short-Term Rental:** An owner-occupied, tenant-occupied, or non-owner-occupied property, such as an apartment, house, cottage, condominium, or furnished accommodation that is not a hotel, motel, lodging house, or bed and breakfast establishment, where at least one room or unit is rented to an occupant, and all accommodations are reserved in advance.

THE LAW

- Added to section 3 of 40A:
 - 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;
 - 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 I of chapter 64G

THE LAW

- Added to section 3 of 40A, cont.
 - 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;
 - Not more than 1 additional parking space shall be required for an accessory dwelling unit

THE LAW

- Added to section 3 of 40A, cont.
 - 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 LAW

- Added to section 3 of 40A, cont.
 - The Executive Office of Housing and Livable Communities may issue guidelines or promulgate regulations to administer this paragraph.

MUNICIPALITY'S AUTHORITY

- May impose reasonable restrictions and requirements
 - Site Plan Review
 - Title 5 Requirements
 - Dimensional Setbacks, Bulk & Height of Structures
 - Short-term Rentals

MUNICIPALITY'S AUTHORITY

- May NOT
 - Require owner occupancy for the ADU or the principal dwelling
 - Require a special permit or other discretionary zoning approval for the use or rental of an ADU
 - Require more than 1 parking space for an ADU located outside 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station
 - Require any parking for an ADU located within 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station

EOHLC REGULATIONS

- 760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS
 - Currently in draft form
 - Public hearings have been held
 - Comment period has ended
 - Expected to be promulgated by February 2, 2025

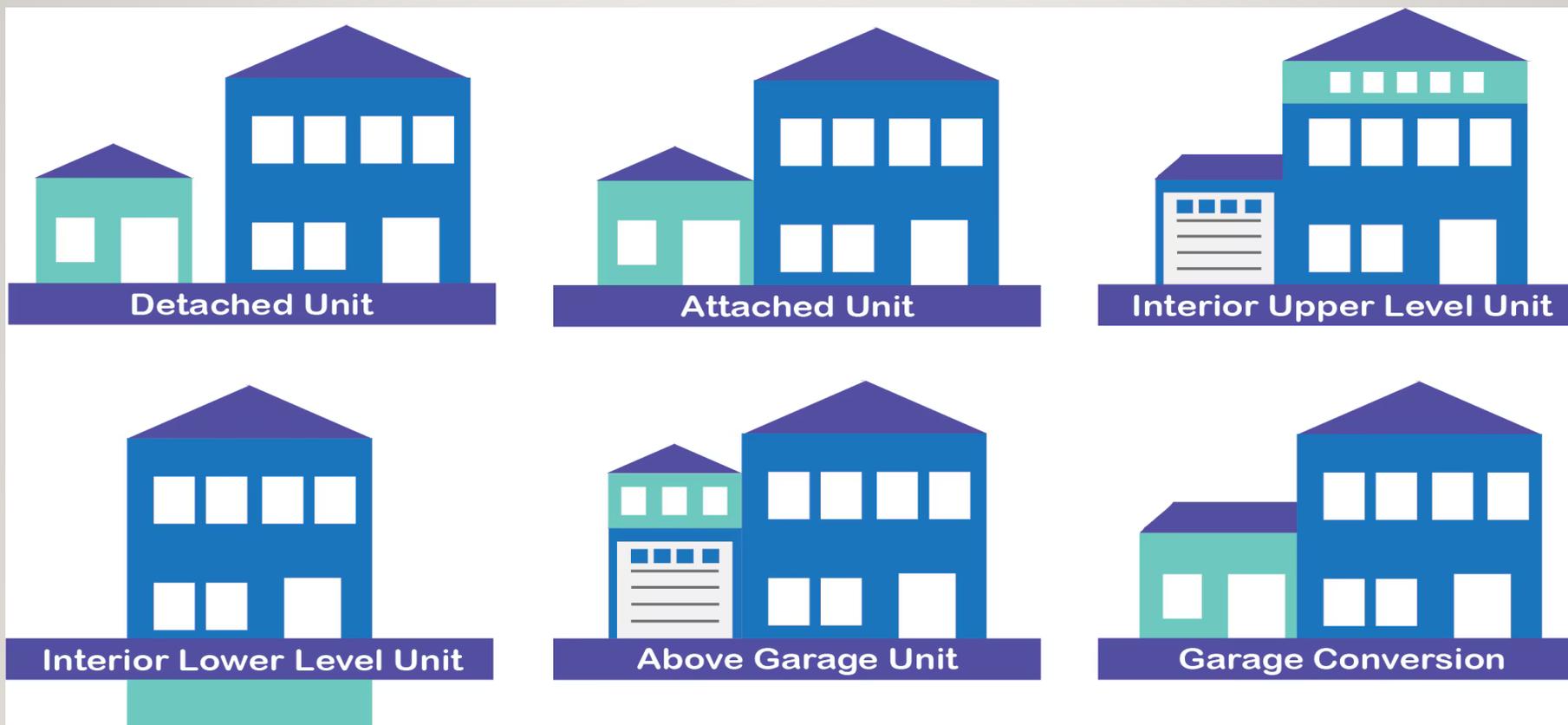
EOHLC REGULATIONS

- Purpose
 - Encourage the production of accessory dwelling units throughout the Commonwealth
 - Goal of increasing the production of housing to address statewide, local, and individual housing needs for households
 - Balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing

EOHLC REGULATIONS

- Definitions
 - ADU definition mirrors statute
 - 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 pursuant to M.G.L. c. 40A, s. 3, para. 11 and 760 CMR 71.00.

EOHLC REGULATIONS



EOHLC REGULATIONS

- Definitions, cont.,
 - Transit Station - A Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station
 - Unreasonable Regulation - Zoning restrictions and Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3)(b) and as may be further provided for in EOHLC guidelines

EOHLC REGULATIONS

- Unreasonable restriction/regulation
 - 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

EOHLC REGULATIONS

- Unreasonable restriction/regulation, cont.,
 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
 - Result in complete nullification of the use or development of a Protected Use ADU;
 - Impose excessive costs on the use or development of a Protected Use ADU without significant gain in advancing the municipality's legitimate interest; or
 - Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the municipality's legitimate interest

EOHLC REGULATIONS

- Restrictions/regulations shall be considered unreasonable when
 1. A Design standard
 - Would not be applied to a Single-Family Residential Dwelling
 - Is so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of use or construction
 2. Dimensional standards
 - 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
 3. Utilities, safety & emergency access
 - Any of these requirements are more restrictive than state requirements

EOHLC REGULATIONS

- Restrictions/regulations shall be considered unreasonable when, cont.,
 4. Environmental regulation
 - For the protection of public health, safety, welfare and the environment pursuant to Title 5, 310 CMR 15.000 that is more restrictive than for a Single-Family Residential Dwelling
 5. Site plan review
 - Any requirement under Site Plan Review concerning the Protected Use ADU that is more restrictive than for a Single-Family Residential Dwelling
 6. Impact analysis & studies
 - Zoning or site plan review for impact analysis, study or report not required for a Single-Family Residential Dwelling

EOHLC REGULATIONS

- Restrictions/regulations shall be considered unreasonable when, cont.,
 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
 8. Short-term rentals
 - Any restrictions or prohibitions on Short-Term Rentals that are not consistent with M.G.L. c. 64G

EOHLC REGULATIONS

- 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
 - Provided that the 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

EOHLC REGULATIONS

- **Enforceability of Restrictions and Regulations on Pre-Existing ADUs**
 - A 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
- **Special Permits for Multiple ADUs on the Same Lot.**
 - 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 REGULATIONS

- Annual updates
 - Municipalities shall collect and maintain, at a minimum, data related to their permitting of ADUs, in a format specified by EOHLC
 1. The number of approved ADU permit applications, separately tabulated for attached and detached ADUs;
 2. The number of denied ADU permit applications;
 3. The number of occupancy permits issued for any ADU; and
 4. Other data or information as may be further provided for in EOHLC guidelines
- Annual report
 - Municipalities shall annually submit a report to EOHLC not later than March 31 containing the data collected for the prior calendar year on a form as prescribed by EOHLC

MANUFACTURED HOUSING

Section 32Q. As used in sections thirty-two A to thirty-two P, inclusive, the words "manufactured home" shall mean a structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

CLOSING

- This is a zoning law
- No exemption in the statute or regulation from Housing, Building, Electric, Fire, Plumbing, Title 5 or any other regulations related to residential property
- For inspection purposes, they are to comply with 105 CMR 410.000 requirements and any other applicable regulations under the authority of the board of health

REFERENCES

- Section 1A, Chapter 40A, <https://www.mass.gov/info-details/mass-general-laws-c40a-ss-1a>
- Section 3, Chapter 40A, <https://www.mass.gov/info-details/mass-general-laws-c40a-ss-3>
- AHA Updates,
<https://forms.office.com/Pages/ResponsePage.aspx?id=Fh2GPrdIDkqYBowE2Bt7Km7hppyuvMVHtXKFHq406NIURjQ3U0hMRINOMUNLWEQyUIhTWkhYVTVGSC4u>