



CITY COUNCIL ACTION

Council Meeting Date: August 28, 2023

Item No:

Responsible Dept: Planning

Action Requested: Ordinance

Map/Lot: N/A

Title, Ordinance

Amending Chapter 165, Land Development Code, by Updating the Allowed Number of Dwelling Units in Residential Zones to Comply with LD 2003.

Summary

The proposed changes would update the City's Land Development Code to comply with the requirements of the state law known as LD 2003. This update has the effect of allowing more dwelling units in residential zones throughout the City. These changes align with the City Council policy to create residential units where feasible and with the 2022 Comprehensive Plan, which suggests that the City update the Land Development Code to comply with LD 2003.

Committee Action

Committee: Planning Board

Meeting Date: September 5, 2023

Action:

For:

Against:

Staff Comments & Approvals

City Manager

City Solicitor

Finance Director

Introduced for: First Reading and Referral



CITY COUNCIL ORDINANCE

Date: August 28, 2023

Assigned to Councilor:

ORDINANCE, Amending Chapter 165, Land Development Code, by Updating the Allowed Uses in Residential Zones to Comply with LD 2003.

WHEREAS, at present, LD 2003 is a state law that requires municipalities to update land use codes to allow a minimum number of residential units in residential zones;

WHEREAS, the proposed changes would update the City's Land Development Code to comply with the requirements of LD 2003;

WHEREAS, the City Council has a policy to create residential units where feasible;

WHEREAS, the 2022 Comprehensive Plan suggests the City update the Land Development Code to comply with LD 2003;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANGOR AS FOLLOWS, THAT

Chapter 165, Attachment 2 - Schedule A, Attachment 3 – Schedule B, and Attachment 4 – Schedule C of the Code of the City of Bangor is amended as shown on the attached, and

Chapter 165 of the Code of the City of Bangor is amended as follows:

§ 165-31.2 Accessory dwelling units (ADUs).

- A. Accessory dwelling units (ADUs) are not subject to minimum lot area requirements, ~~nor~~ requirements for the number of dwelling units per acre, nor minimum parking requirements.
- B. In districts where ADUs are allowed, the Code Enforcement Officer shall approve an ADU upon a determination that said ADU complies with the following conditions:
 - ...
 - (6) No more than one ADU is allowed per lot and an ADU may only be allowed where there exists only one single-family detached dwelling or one detached manufactured housing unit.
 - ...
 - ~~(8) ADUs shall not be rented for less than 30 days.~~

§ 165-72 Required number of spaces.

- C. Exemptions from the requirements of this § 165-72 are as follows:

(6) Accessory dwelling units shall be exempt from the requirements of this section.

§ 165-88 Urban Residence 1 District (URD-1).

...
C. Permitted uses. The following uses are permitted in this district:

- ...
(1) One-family detached dwellings, with additional dwelling units permitted given the following:
- (a) The lot is inside the Growth Boundary defined in the City's most recently adopted Comprehensive Plan.
 - (b) If no dwelling exists on a lot, up to 4 units are allowed, either detached or attached.
 - (c) If one dwelling unit exists on the lot, up to 2 additional units are allowed, one being attached to or within the existing dwelling and one being detached.
 - (d) If two dwelling units exist on a lot, no additional units are allowed.
 - (e) If dwelling units are demolished after the date this ordinance is adopted and the demolition results in an empty lot, there can be no increase in the number of units above what existed on the lot prior to demolition.

§ 165-89 Urban Residence 2 District (URD-2).

...
C. Permitted uses. The following uses are permitted in this district:

- (1) One-family, two-family, three-family and four-family detached dwellings
- (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-90 Multifamily and Service District (M&SD).

...
C. Permitted uses. The following uses are permitted in this district:

- (1) One-family, two-family, three-family and four-family detached dwellings
- (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-91 Neighborhood Service District (NSD).

...
C. Permitted uses. The following uses are permitted in this district:

- ...
(10) One-family, and two-family-unit dwellings, three-family, and four-family detached dwellings
- (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-92 Urban Service District (USD).

...
D. Conditional uses. Subject to Planning Board approval under the provisions of § **165-9**, the following uses may be permitted in this district:

- ...
(5) A mixed residential and commercial use, provided that:
- (e) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-99 Low-Density Residential District (LDR).

...
C. Permitted uses. The following uses are permitted in this district:

...

- (1) ~~A single building containing one dwelling unit.~~ One-family detached dwellings, with additional dwelling units permitted given the following:
 - (a) If the lot is inside the Growth Boundary defined in the City's most recently adopted Comprehensive Plan:
 - (i) If no dwelling exists on a lot, up to 4 units are allowed, either detached or attached.
 - (ii) If one dwelling unit exists on the lot, up to 2 additional units are allowed, one being attached to or within the primary dwelling and one being detached.
 - (iii) If two dwelling units exist on a lot, no additional units are allowed.
 - (b) If the lot is outside the Growth Boundary defined in the City's most recently adopted Comprehensive Plan:
 - (i) If no dwelling exists on a lot, up to 2 units are allowed, either detached or attached.
 - (ii) If one dwelling unit exists on the lot, up to 2 additional units are allowed, one being attached to or within the existing dwelling and one being detached.
 - (iii) If two dwelling units exist on a lot, no additional units are allowed.
 - (c) If dwelling units are demolished after the date this ordinance is adopted and the demolition results in an empty lot, there can be no increase in the number of units above what existed on the lot prior to demolition.

§ 165-100 High-Density Residential District (HDR).

...

C. Permitted uses. The following uses are permitted in this district:

...

- (2) One or more buildings containing two to six dwelling units
 - (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI
- (3) One or more buildings containing seven to 12 dwelling units, provided that:
 - (a) The parcel is a minimum of two acres in size.
 - (b) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

...

D. Conditional uses. Subject to Planning Board approval under the provisions of § **165-9**, the following uses may be permitted in this district:

- (1) One or more buildings containing 13 to 30 dwelling units, provided that:
 - (a) The parcel is a minimum of three acres in size.
 - (b) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-101 Shopping and Personal Service District (S&PS).

...

C. Permitted uses. The following uses are permitted in this district:

...

- (18) Multi-family detached dwellings, provided that:
 - (a) The lot does not have frontage on Hammond Street or Union Street.
 - (b) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

(19) A mixed residential and commercial use, provided that:

...

- (c) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

D. Conditional uses. Subject to Planning Board approval under the provisions of § **165-9**, the following uses may be permitted in this district:

...

- (9) A mixed residential and commercial use if the lot has frontage on Union Street, provided that:

- (a) The commercial activity is a use permitted in Subsection C above, except that marijuana stores would not be permitted.
- (b) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

- ...
- (13) Multi-family detached dwellings if the lot has frontage on Union Street
 - (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-102 General Commercial and Service District (GC&S).

D. Conditional uses. Subject to Planning Board approval under the provisions of § **165-9**, the following uses may be permitted in this district:

- ...
- (11) A mixed residential and commercial use if the lot has frontage on Union Street, provided that:
 - (a) The commercial activity is a use permitted in §165-101.C, except that marijuana stores would not be permitted.
 - (b) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

- (12) Multi-family detached dwellings if the lot has frontage on Union Street
 - (a) An affordable housing density bonus may be allowed, subject to the requirements of Article XXI

§ 165-105 Rural Residence and Agricultural District (RR&A).

C. Permitted uses. The following uses are permitted in this district:

- ...
- (4) One-family dwellings and one-family detached manufactured housing units, with additional dwelling units permitted given the following:
 - (a) If the lot is inside the Growth Boundary defined in the City’s most recently adopted Comprehensive Plan:
 - (i) If no dwelling exists on a lot, up to 4 units are allowed, either detached or attached.
 - (ii) If one dwelling unit exists on the lot, up to 2 additional units are allowed, one being attached to or within the primary dwelling and one being detached.
 - (iii) If two dwelling units exist on a lot, no additional units are allowed.
 - (b) If the lot is outside the Growth Boundary defined in the City’s most recently adopted Comprehensive Plan:
 - (i) If no dwelling exists on a lot, up to 2 units are allowed, either detached or attached.
 - (ii) If one dwelling unit exists on the lot, up to 2 additional units are allowed, one being attached to or within the existing dwelling and one being detached.
 - (iii) If two dwelling units exist on a lot, no additional units are allowed.
 - (c) If dwelling units are demolished after the date this ordinance is adopted and the demolition results in an empty lot, there can be no increase in the number of units above what existed on the lot prior to demolition.

§ 165-112 Submittal requirements.

A. Any site development project requiring a land development permit shall include the following information and submittals:

- ...
- (6) For developments using the Affordable Housing Density Bonus outlined in Article XXI, documentation showing the proposed mechanism(s) to ensure affordability, as described in §165-143.D.
 - (6 7) Such other information as the Code Enforcement Officer or Planning Board shall deem necessary.

Article XXI
Affordable Housing Density Bonus

§ 165-141 Purpose.

This article provides for a density bonus for the creation of affordable dwelling units in certain zoning districts per Title 30-A Section 4364 in the State of Maine statutes.

§ 165-142 Definitions.**AFFORDABLE**

When used for the purpose of claiming the Affordable Housing Density Bonus outlined in Article XXI, "affordable" means:

- (1) For rental housing, a household whose income does not exceed 80% of the area median income can afford to rent the dwelling unit without spending more than 30% of the household's monthly income on housing costs.
- (2) For owned housing, a household whose income does not exceed 120% of the area median income can afford to own the dwelling unit without spending more than 30% of the household's monthly income on housing costs.
- (3) For the purposes of this definition, "area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development
- (4) For the 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 owned unit, the cost of the mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

BASE DENSITY

The maximum number of units allowed on a lot not used for affordable housing based on the dimensional requirements listed for the zone(s) in which the lot is located. This does not include any other density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

CENTRALLY MANAGED WATER SYSTEM

A water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

COMPARABLE SEWER SYSTEM

Any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

§ 165-143 General requirements.

- A. **Density Bonus.** A residential or mixed-use development shall be allowed a maximum dwelling unit density of up to 2.5 times the base density (as defined in § 165-142) permissible in the underlying zoning district if the project meets the following eligibility criteria:

- (1) **Affordability.** After completion of the project, more than half of the total dwelling units, existing and new, on the same lot shall be affordable (as defined in § 165-142) for a period of at least 30 years.
 - (2) **Located in a Growth Area or Served by Water and Sewer.** The lot is inside the Growth Boundary defined in the City's most recently adopted Comprehensive Plan, or the lot is served by both a public, special district, or centrally managed water system and public, special district, or comparable sewer system.
 - (3) **Adequate Utility Capacity.** The lot has adequate water and wastewater services.
 - (4) **Zoning.** The lot is located in the URD-2, M&SD, NSD, USD, HDR, S&PS, or GC&S zoning districts.
 - (5) **Minimum Lot Sizing for Septic.** The subject property complies with minimum lot size requirements in accordance with 12 M.R.S.A. § 423-A, as amended, if subsurface wastewater disposal is proposed.
- B. Non-conforming Situations.** The density bonus may not be applied to non-conforming lots.
- C. Fractional Density.** If a fractional results when calculating the density bonus, the number of units shall be rounded down to the nearest whole number.
- D. Long-Term Affordability Covenant.** Prior to granting a Certificate of Occupancy for any dwelling unit in the project, or in a phase of the project, the applicant shall:
- (1) Execute an affordable housing agreement, in such form as shall be approved by the City Solicitor, containing a restrictive covenant relating to the affordability of the dwelling unit, enforceable by a party acceptable to the City, and record the affordable housing agreement in the Penobscot County Registry of Deeds. The affordable housing agreement shall require that for at least thirty (30) years after the issuance of the Certificate of Occupancy for a dwelling unit in the project:
 - (a) For rental housing, occupancy of all the dwelling units designated affordable in the development to qualify for the density bonus, or an equivalent number of affordable dwelling units in the project when specific locations for the affordable units are not specified, will remain limited to households at or below 80% of the local area median income (i.e. within the area represented by the "Bangor, ME HUD Metro Fair Market Rent Area" as defined by the U.S. Housing Act of 1937, as amended) from the time of initial occupancy; and
 - (b) For owned housing, occupancy of all the dwelling units designated affordable in the development to qualify for the density bonus will remain limited to households at or below 120% of the local area median income (i.e. within the area represented by the "Bangor, ME HUD Metro Fair Market Rent Area" as defined by the U.S. Housing Act of 1937, as amended) from the time of initial occupancy.
 - (2) For phased projects, the City may issue Certificates of Occupancy for dwelling units in a phase of a project only if a sufficient number of affordable dwelling units, subject to an affordable housing agreement consistent with Subsection D(1) above, are included in the phase so that more than one-half of the total number of dwelling units that will be approved for occupancy, as evidenced by Certificates of Occupancy, at the end of the phase constitute affordable dwelling units.
- E. Site Plan and Subdivision Review Required.** All projects creating 3 or more dwelling units are subject to Site Plan review per § 165-111 and Subdivision review per Title 12 Section 682 in the State of Maine statutes.

LAND DEVELOPMENT

165 Attachment 2

City of Bangor

Schedule A
Urban Developed Area
Article XIII, §§ 165-88 through 165-97

Zoning Districts	Maximum District Height (feet)	Minimum Lot Area (square feet)	Maximum Lot Coverage	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Side Yard Depth (feet)	Minimum Rear Yard Depth (feet)	Maximum Impervious Surface Ratio	Minimum Water Setback (feet)	Maximum Floor Area Ratio
Urban Residence 1 (URD-1)	35	¹	35%	50	10 ⁷	5	15; 5 for accessory structure	0.75	--	--
Urban Residence 2 (URD-2)	40	⁺²	40%	50	10 ⁷	5	15; 5 for accessory structure	0.8	--	--
Multifamily and Service (M & SD)	45	^{±3}	50%	50	10	5	5	0.85	--	--
Neighborhood Service (NSD)	35	10,000 ²	25%	75	20	10	20	None	0.4	0.4

NOTES:

¹ For one and two dwelling units, 5,000 square feet; for three dwelling units, 7,500 square feet; and for four dwelling units, 10,000 square feet. 5,000 square feet for each dwelling unit up to 4 on an empty lot, up to 2 (additional) if one dwelling unit exists (see §165-88.C(1)).

² For the first two dwelling units, 5,000 square feet, plus 250 square feet for each additional dwelling unit. For one and two dwelling units, 5,000 square feet; for three dwelling units, 7,500 square feet; and for four dwelling units, 10,000 square feet. If using Affordable Housing Density Bonus, 5,000 square feet for first 5 units, plus 1,000 square feet for each additional unit up to 10 (see §165-143).

³ (Reserved) For the first two dwelling units, 5,000 square feet, plus 250 square feet for each additional dwelling unit. If using Affordable Housing Density Bonus, 5,000 square feet for first 5 units, plus 100 square feet for each additional unit (see §165-143).

...

⁹10,000 square feet for 1 to 4 dwelling units. If using Affordable Housing Density Bonus, 10,000 square feet for up to 10 dwelling units (see §165-143).

LAND DEVELOPMENT

165 Attachment 3

City of Bangor

Schedule B
Developing Area

Article XIV, §§ 165-99 through 165-103.1

Zoning Districts	Minimum Lot Area (square feet)	Minimum Front Yard Depth (feet)	Minimum Side Yard Depth (feet)	Minimum Rear Yard Depth (feet)	Maximum Dwelling Units per Acre	Maximum Dwelling Units per Building	Maximum Height (feet)	Maximum Lot Coverage	Maximum Floor Area Ratio	Maximum Impervious Surface Ratio	Minimum Open Space	Minimum Lot Width (feet)	Minimum Buffer Yard Type
Low-Density Residential (LDR)													
Permitted uses													
Buildings containing 1-unit dwelling, home occupation, community living arrangement	¹⁰	25	10 ⁷	20 ⁷	3 ½ ¹¹	4-2-4	35	20%	NA	0.3	NA	100	NA

NOTES:

¹12,000 square feet for the first two units in a building and 3,000 square feet for each additional unit in the same building. If using Affordable Housing Density Bonus, up to 15 units per building - minimum 12,000 square feet for the first 5 units in a building and 1,200 square feet for each additional unit in the same building. (see §165-143).

²27,000 square feet for seven-dwelling-unit buildings and 3,000 square feet per unit over seven units in the same building, but not less than a two-acre site. If using Affordable Housing Density Bonus, up to 30 units per building - minimum 27,000 square feet for the first 17 units in a building and 1,200 square feet for each additional unit in the same building, but not less than a two-acre site. (see §165-143).

³45,000 square feet for 13 dwelling units in a building and 3,000 square feet per unit over 13 units in the same building, but not less than a three-acre site. If using Affordable Housing Density Bonus, up to 75 units per building - minimum 45,000 square feet for the first 32 units in a building and 1,200 square feet for each additional unit in the same building, but not less than a three-acre site. (see §165-143).

...

⁸For the first two dwelling units, 10,000 square feet, plus 250 square feet for each additional dwelling unit. If using Affordable Housing Density Bonus, minimum 10,000 square feet for first five units, plus 100 square feet for each additional. (see §165-143).

...

¹⁰12,000 square feet for the first dwelling unit, 6,000 square feet for each additional (up to 3-4 in Growth Boundary, 2-3 outside Growth Boundary) (see §165-99.C(1)).

¹¹Applies to subdivision only.

LAND DEVELOPMENT

165 Attachment 4

City of Bangor

Schedule C

Resource, Open Space and Rural Area
Article XV, §§ 165-105 through 165-107

Zoning Districts	Maximum District Height (feet)	Minimum Lot Area (acres)	Maximum Lot Coverage	Maximum Impervious Surface Ratio	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Side Yard Depth (feet)	Minimum Rear Yard Depth (feet)
Rural Residence and Agricultural (RR&A), permitted and conditional uses	40	1 ½ ⁵	15%	.20	200	40	20	30

NOTES:

...
⁵For dwelling units inside the Growth Boundary, 12,000 square feet for the first unit plus 6,000 square feet for each additional unit up to 3-4 units. For dwelling units outside the Growth Boundary, minimum lot size of 1.5 acres regardless of the number of units. (See §165-105.C(4)).