

# ATTACHMENT 2

**TABLE 1**  
**FUNDING BUDGET FOR FISCAL YEAR 2016**  
**Rockingham Planning Commission**  
**FY2016 - Funding Budget - \*\*ACTUAL - UNAUDITED\*\***

**ATTACHMENT 2**  
**(corrected)**

FUNDING CATEGORY	ADOPTED FY 2016 Funding	AMEND#1 FY 2016 Funding	ACTUAL FY16 (unaudited)	\$ Change	% Change	Comments
<b>I. LOCAL DUES AND SERVICES</b>	<b>\$352,769</b>	<b>\$390,484</b>	<b>\$365,698</b>	<b>-\$24,786</b>	<b>-6.8%</b>	delayed ~ \$13000; lost ~ \$11500
<b>Local Dues</b>	<b>\$134,783</b>	<b>\$130,524</b>	<b>\$130,524</b>	<b>\$0</b>	<b>0.0%</b>	
<b>Circuit Rider Services</b>	<b>\$124,228</b>	<b>\$139,202</b>	<b>\$135,098</b>	<b>(\$4,104)</b>	<b>-3.0%</b>	
Plan Review Income (Tier 2)	\$1,500	\$1,500	\$0	(\$1,500)	-	included in individual contracts as income
Brentwood	\$18,038	\$19,282	\$19,282	\$0	0.0%	
East Kingston	\$9,744	\$10,416	\$10,416	\$0	0.0%	
Fremont	\$9,164	\$16,306	\$13,702	(\$2,604)	-19.0%	admin
Kensington	\$8,642	\$9,238	\$9,238	\$0	0.0%	
Kingston	\$25,752	\$27,528	\$27,528	\$0	0.0%	
Newton	\$10,614	\$11,346	\$11,346	\$0	0.0%	
Atkinson	\$7,656	\$8,184	\$8,184	\$0	0.0%	
Hampton Falls CR/TA	\$16,240	\$17,360	\$17,360	\$0	0.0%	
N. Hampton CR/TA	\$16,878	\$18,042	\$18,042	\$0	0.0%	
<b>TBG Local Grant Match</b>	<b>\$6,500</b>	<b>\$5,000</b>	<b>\$2,050</b>	<b>(\$2,950)</b>	<b>-143.9%</b>	
Sandown Zoning Amds. & Poll.				\$0	--	
Fremont - recodification				\$0	--	
Stratham Agric Comm support	\$6,500	\$2,000	\$2,000	\$0	0.0%	
Placeholder	\$3,000	\$3,000	\$0	(\$3,000)		no additional TBG projects solicited
<b>Other Local Contracts</b>	<b>\$87,258</b>	<b>\$115,758</b>	<b>\$98,026</b>	<b>(\$17,732)</b>	<b>-18.1%</b>	
Seabrook SRTS Travel Plan	\$7,258	\$7,258	\$0	(\$7,258)		project not restarted
Hampton Falls MP Update	\$0	\$0	\$0	\$0	--	
Exeter MP Update	\$0	\$5,500	\$3,500	(\$2,000)	-57.1%	completion delayed
Exeter MP Update - Part 2?	\$9,500	\$0	\$0	\$0	--	
Hampton F. MP Update Pt. 2	\$35,000	\$35,000	\$35,000	\$0	0.0%	
Fremont RSMS (UPWP match)	\$1,500	\$1,500	\$1,500	\$0	0.0%	
Newton CIP		\$0	\$4,095	\$4,095	--	new project - not budgeted
No. Hampton MP updates	\$3,000	\$3,000	\$0	(\$3,000)	--	contract did not occur
Rye Visioning / MP Update	\$4,500	\$4,500	\$5,750	\$1,250	21.7%	larger scope
Regional HHW Management	\$2,500	\$2,500	\$2,000	(\$500)	-25.0%	closer to cost
PREPA Contracts	\$15,000	\$24,750	\$17,013	(\$7,737)	-45.5%	Project runs to Oct17
Exeter Temp. Planning Services		\$22,750	\$23,080	\$330	1.4%	final invoice
Stratham Temporary Planning Services		\$0	\$4,488	\$4,488	--	new - covered after Planner resigned
ERLAC - Technical Assistance		\$0	\$1,500	\$1,500	--	pass-through to T. Walker
Placeholder UPWP 50% match	\$2,500	\$2,500	\$0	(\$2,500)		no local match projects
Misc. Local Contracts	\$6,500	\$6,500	\$100	(\$6,400)		all accounted for elsewhere

FUNDING CATEGORY	PROPOSED	AMEND#1	ACTUAL	\$	%	
	FY 2016	FY 2016	FY16			
	Funding	Funding	(unaudited)	Change	Change	
<b>II. TRANSPORTATION PLANNING</b>	<b>\$546,650</b>	<b>\$557,900</b>	<b>\$561,548</b>	<b>\$3,648</b>	<b>0.6%</b>	<b>delayed=\$29862; lost=\$14891</b>
UPWP (FHWA/FTA/SPR)	\$528,550	\$528,550	\$509,938	(\$18,612)	-3.6%	slightly behind in UPWP spending
FTA 5310 RPC Admin	\$8,100	\$8,100	\$3,209	(\$4,891)	-152.4%	reimbursable basis
FTA 5310 Passthrough for services		\$0	\$48,401			(NOT INCL IN ORIG. BUDGET)
Highway Perf. Standards Pilot Proj.	\$0	\$11,250	\$0	(\$11,250)		SRPC NHDOT contract delayed; started FY17
CART Planning Services	\$10,000	\$10,000	\$0	(\$10,000)		never initiated contract
<b>III. OTHER STATE &amp; FEDERAL FUNDING</b>	<b>\$184,947</b>	<b>\$164,175</b>	<b>\$125,812</b>	<b>(\$38,363)</b>	<b>-30.5%</b>	<b>delayed ~ \$20,860; lost ~ \$17500</b>
Targetted Block Grant	\$11,227	\$11,111	\$11,111	\$0	0.0%	
Coastal Program TA	\$12,500	\$12,500	\$12,500	\$0	0.0%	
NHHSEM Haz Mit Plnng (Fremont)	\$3,000	\$3,000	\$1,494	(\$1,506)	-100.8%	generated insuff. Match
NHHSEM Haz Mit Plnng (So Hamp., Rye,	\$13,500	\$13,500	\$13,120	(\$380)	-2.9%	delayed start, in progress
NHHSEM - Vulnerability Assessments /	\$31,270	\$8,114	\$8,114	\$0	0.0%	end of Tides to Storms
Adaptation Planning - Tides to Storms						
NHDES EPA Brownfields	\$46,000	\$54,000	\$52,756	(\$1,244)	-2.4%	runs to Sept 17
NHDES/PTAPP Pollution Tracking (604B)	\$26,450	\$26,450	\$10,450	(\$16,000)	-153.1%	FY split wrong -more rec'd in FY15
NHDES/604B Epping Green	\$8,000	\$7,500	\$3,440	(\$4,060)	-118.0%	delayed, in progress
NHCP/NERRS Climate Ready Culverts	\$25,000	\$20,000	\$12,827	(\$7,173)	-55.9%	delayed start, in progress
NHDES Sourcewater Protection - Seabroo	\$8,000	\$8,000	\$0	(\$8,000)		delayed start - all now in FY17
<b>IV. OTHER</b>	<b>\$16,000</b>	<b>\$51,000</b>	<b>\$33,655</b>	<b>(\$17,345)</b>	<b>-51.5%</b>	<b>delayed=\$7670-; lost \$3175; na=\$6500</b>
REDC -- CEDS	\$9,000	\$8,500	\$5,325	(\$3,175)	-59.6%	smaller work scope than anticipated
NE Oceans Research Council -	\$0	\$36,000	\$28,330	(\$7,670)	-27.1%	not completed in FY16
Tides/Storms 2						
Miscellaneous	\$7,000	\$6,500	\$0	(\$6,500)		rsa bood and annl mtg income not tracted to this acct
<b>TOTAL/PROJECTED FUNDS**</b>	<b>\$1,100,366</b>	<b>\$1,163,559</b>	<b>\$1,086,713</b>	<b>(\$76,846)</b>	<b>-7.1%</b>	
<b>PASS-THROUGH OR CONTRACTED</b>	<b>\$125,495</b>	<b>\$149,555</b>	<b>\$198,542</b>	<b>\$48,987</b>	<b>24.7%</b>	
<b>OPERATING BUDGET</b>	<b>\$974,871</b>	<b>\$1,014,004</b>	<b>\$888,171</b>	<b>(\$125,833)</b>	<b>-14.2%</b>	

**TABLE 2**  
**EXPENSE BUDGET FOR FISCAL YEAR 2016 \*\*ACTUAL - UNAUDITED\*\***  
**Rockingham Planning Commission**

<b>I. LINE ITEM BUDGET FOR FY 2015</b>							
<b>LINE ITEM</b>	<b>Account Number</b>	<b>ADOPTED FY2016</b>	<b>AMEND#1 FY2016</b>	<b>ACTUAL FY2016 (U-A)</b>	<b>\$\$ Change from Amd#1</b>	<b>% Change</b>	<b>Amendment #1 Comments</b>
Salaries	6100	\$ 651,370	\$ 659,037	\$ 648,467	\$ (10,570)	-1.6%	1.6% COLA; \$10K intern budget; SP prom + \$9K HC Stipnd
Contracted Services	6115	\$ 125,495	\$ 149,555	\$ 198,542	\$ 48,987	39.0%	See Section IV below for details
Travel & Expenses	6116	\$ 9,000	\$ 9,000	\$ 7,350	\$ (1,650)	-18.3%	reduced travel pool and/or milage rate
Bank Service Charge	6200	\$ 100	\$ 350	\$ 282	\$ (68)	-68.0%	reneal of credit line
Taxes-Payroll	6110/6111	\$ 49,830	\$ 50,416	\$ 48,957	\$ (1,459)	-2.9%	7.65% of salaries
Unemployment Insurance	6210	\$ 500	\$ 500	\$ 158	\$ (342)	-68.4%	no change
Health Insurance & Benefit	6212	\$ 59,195	\$ 61,070	\$ 56,662	\$ (4,408)	-7.4%	New insurer: Maine Comm. Options; RPC funded deductble. in separate line item
Health Ins Deductible (separated)		\$ -	\$ -	\$ -	\$ -	--	\$2500 max RPC expense, included in Heath Ins line item
Dental Insurance	6214	\$ 10,388	\$ 10,388	\$ 10,490	\$ 102	1.0%	6% quoted premium increase
Life & Disability Insurance	6216	\$ 4,092	\$ 4,092	\$ 3,650	\$ (442)	-10.8%	assumes no change
Retirement - 457 Plan	6218	\$ 37,468	\$ 41,830	\$ 40,104	\$ (1,726)	-4.6%	Plan changeover expenses and parity with NHRS contrib.
Retirement - NHRS	6218	\$ 33,280	\$ 33,401	\$ 33,260	\$ (141)	-0.4%	Employer rate = 11.17%
General Insurance	6220	\$ 4,625	\$ 4,625	\$ 4,087	\$ (538)	-11.6%	based on current estimates
Rent	6230	\$ 48,816	\$ 48,816	\$ 48,816	\$ -	0.0%	2nd of 3rd lease renewal yrs. @ 0% incr.
Janitorial		\$ 3,900	\$ 3,900	\$ 2,015	\$ (1,885)	-48.3%	no change
Telephone & Internet	6240	\$ 5,200	\$ 5,200	\$ 5,041	\$ (159)	-3.1%	based on YTD
Office, Cmptr., Copier Suppl.	6250	\$ 10,500	\$ 10,500	\$ 11,575	\$ 1,075	10.2%	based on YTD
Postage	6260	\$ 3,000	\$ 3,000	\$ 1,491	\$ (1,509)	-50.3%	fewer mailings after GSF
Audit	6270	\$ 10,020	\$ 10,020	\$ 9,962	\$ (58)	-0.6%	new quote for FY15
Utilities	6280	\$ 6,750	\$ 6,750	\$ 5,737	\$ (1,013)	-15.0%	no change anticipated
Contract Printing	6118	\$ 2,000	\$ 2,000	\$ 2,860	\$ 860	43.0%	post GSF
Newspaper & Media	6117	\$ 1,500	\$ 1,500	\$ 3,304	\$ 1,804	120.3%	MPO only
Equipment & Software Maint.	6311	\$ 12,500	\$ 12,500	\$ 11,582	\$ (918)	-7.3%	no change anticipated
Dues & Subscriptions	6340	\$ 6,500	\$ 6,500	\$ 5,885	\$ (615)	-9.5%	(APA, AMPO, NARC, NHARPC, NHMA, Chamber, SEL)
Training, Workshops, Conf.	6350	\$ 3,500	\$ 3,500	\$ 625	\$ (2,875)	-82.1%	expenses lower than budgeted in FY15
Accounting	6360	\$ 1,200	\$ 1,200	\$ -	\$ (1,200)	-100.0%	Accting/Quickbooks consulting
Payroll Processing	6361	\$ 425	\$ 425	\$ 480	\$ 55	12.9%	based on FY14 expenses
Miscellaneous	6380	\$ 7,000	\$ 6,500	\$ 1,280	\$ (5,220)	-74.6%	annual meeting; RSA books
Equip. Purchase. & Lease	6400	\$ 8,100	\$ 10,100	\$ 3,031	\$ (7,069)	-87.3%	See Section II below for details
Depreciation	****	\$ -	\$ -	\$ -	\$ -	--	none
Fund Balance Accrual	****	\$ -	\$ 5,000	\$ -	\$ (5,000)	--	as able to set funds aside
Unobligated Funds**	****	\$ 2,863	\$ 1,884	\$ (78,980)	\$ (80,864)	-2824.9%	to balance budget (based on projected revenue)
<b>TOTAL</b>		<b>\$ 1,125,366</b>	<b>\$ 1,163,559</b>	<b>\$ 1,086,713</b>	<b>\$ (76,846)</b>	<b>-6.8%</b>	from Table 1 - funding budget
Pass-through/Contr Services		\$ 125,495	\$ 149,555	\$ 198,542	\$ 48,987	39.0%	See Section IV below for details
<b>TOTAL OPERATING</b>		<b>\$ 999,871</b>	<b>\$ 1,014,004</b>	<b>\$ 888,171</b>	<b>\$ (125,833)</b>	<b>-12.6%</b>	

# ATTACHMENT 3

## Summary of the Accessory Dwelling Unit Mandate and Brief for the Rockingham Planning Commission Region

September 14, 2016

### Introduction

In March 2016, the New Hampshire Legislature enacted SB 146 which established a statewide mandate requiring all municipalities to permit the creation of accessory dwelling units in any zoning district which allows single family residential development. The new law, enacted as RSA 674:71, defines an accessory dwelling units as a “residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.”

Accessory dwelling units (ADUs) are commonplace in the Rockingham Planning Commission (RPC) region, where 22 of 26, or nearly 90% of communities already allowed ADUs or in-law/accessory apartments prior to the adoption of the mandate. The minimum standards and limitations associated with the new law will, however, require most municipalities to adopt new or amend existing zoning to comply. Those changes will need to be in place before the law takes effect on June 1, 2017. The purpose of this brief is to provide background information regarding ADUs, to review how they have been regulated in the past, to summarize the major provisions of the new law, and to highlight a number concerns that the new law has raised in many communities in the RPC region.

### Background

SB146 was proposed as both a means to expand the supply of affordable housing in New Hampshire and as a way of improving the match between the existing housing stock and housing demand

With respect to housing affordability, after some years of lowered average housing purchase prices due to the ‘great recession’, lack of affordable housing is once again arisen as a significant planning issue in the RPC region and in much of southern New Hampshire. The problem is even more pronounced in the rental market which has experienced dramatic price increases in the past two years. (The rental market generally did not experience as large a drop

in prices as the owner market did at the start of the recession) Rental prices are higher relative to household income today than at any time in the past 20 years in this region. Based on the latest NH Housing Finance Authority Rental Price survey, the median two bedroom rental in the RPC region, at nearly \$1,300 per month is workforce-affordable<sup>1</sup> to less than an estimated 40% of renter households. The net effect is that fewer municipalities in the region provide their fair share of existing and foreseeable regional need for affordable housing and more are therefore subject to the State Workforce Housing Statute – RSA 674:58-61.

With respect to the need to balance housing stock with housing need, we are not doing as well as needed to accommodate the needs of an aging population. This region's relatively low density and dispersed housing stock of mostly single family houses do not support the growing need for viable housing options that support aging in place.

The new law includes a number of findings to justify the ADU mandate it imposes, which are generally applicable to the RPC region:

- There is a growing need for more diverse affordable housing.
- Demographic trends are producing more households where adult children wish to give care and support to parents in a semi-independent living arrangement.
- Elderly and disabled residents are in need of independent living space for caregivers to facilitate their ability to 'age in place'.
- There are important societal benefits associated with the creation of accessory dwelling units, such as:
  - Increasing the supply of affordable housing without requiring more infrastructure or further land development.
  - Expanding affordable housing options for aging homeowners, single parents, recent college graduates, caregivers, and disabled persons.
  - Integrating affordable housing into the community with minimal negative impact.
  - Providing elderly citizens with the opportunity to live in a supportive family environment
  - Assisting current homeowners to remain in their community.

It should be noted that SB146 went through significant changes between the time it was first introduced in 2014 and when it was finally adopted in 2016. Major improvements were made including the ability of a municipality to prohibit detached ADUs, the crediting of ADU units as units of workforce housing, the addition of the conditional use permit as an avenue of approval, and the applicability of aesthetic standards to both attached and detached ADUs -- all changes advocated by the RPC and other regional and municipal planning interests.

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<sup>1</sup> Rental workforce housing means that rent does not exceed 30% of gross household income in a 3 person household that has no more than 60% of the median income for the region.

## History of ADU Regulation in RPC Region

For more than 30 years, the RPC has advocated that municipalities allow ADUs because they serve as highly effective, low cost and low impact means to increase the availability and affordability of housing in the region. ADUs not only help to diversify the kind of housing options that exist in a community, they help improve overall affordability of housing which helps a municipality demonstrate that it is meeting its share of regional housing needs. They have other benefits such as meeting unique housing needs, particularly with respect to the elderly, the disabled, young families and young adults, and can help maintain the affordability of the main dwelling for retired or fixed income owners. Attached ADUs are also a flexible form of housing which can be 'removed' or returned to the main dwelling when no longer needed or desired by the homeowner.

Over the years, RPC and others produced and modified model ADU ordinances addressing such issues as purpose, size, aesthetics, attached or detached, adequacy of sewage disposal and water supply, parking, approval process etc., and assisted municipalities to modify it to suit their needs.

Because of the utility of ADUs, and perhaps also because of the RPC's advocacy and technical assistance, ADU and in-law/accessory apartment ordinances are very common in the region, apparently much more so than the rest of New Hampshire. At least 23 of 26 municipalities in the region already allow ADUs of some form. However, most of these existing ordinances will need to be modified to be compliant with the new ADU law because the local ordinances impose limitations on ADUs which the state law either does not allow or allows differently - including limits on location (zoning district), limits to unit size or number or bedrooms, or requirements of familial relationship of occupants.

## Summary of RSA 674:71-73

Several good and detailed summaries of RSA 674:71 have been produced since SB146 was adopted into law, including the Office of Energy and Planning Advisory Memo *Planning for Accessory Dwellings* ([www.nh.gov/oep/planning/resources/documents/planning-for-accessory-dwellings.pdf](http://www.nh.gov/oep/planning/resources/documents/planning-for-accessory-dwellings.pdf)), a detailed article in the July/August edition of NHMA's Town and City Magazine called "Make Room for Daddy: The New Law on Accessory Dwelling Units," ([www.nhmunicipal.org/TownAndCity/Article/679](http://www.nhmunicipal.org/TownAndCity/Article/679)) and a forthcoming Accessory Dwelling Unit Guidebook under development by the NH Housing Finance Authority ([www.nhhfa.org](http://www.nhhfa.org)). With these sources already or soon to be available no detailed summary is needed here. Note that all these sources and other ADU resources are available on the RPC website as well. (Navigate to: <http://www.rpc-nh.org/regional-community-planning/housing/accessory-dwelling-units>)

The key provisions of the law are as follows:

- Municipalities have a reasonable timeframe to comply. The law does not take effect until **June 1, 2017** so municipalities with town meeting as their legislative body have their Spring town meeting of 2017 to adopt changes to their zoning ordinance as necessary to comply.
- Municipalities/Towns are not required to address ADUs in their zoning. If they do not then ADUs are **deemed to be allowed by right** as part of a single family dwelling, subject only to building and occupancy permits. Municipalities that do address ADUs in zoning have the ability to regulate certain aspects of the ADU and may establish a conditional use permit or special exception-based approval process.
- The combination of a single-family dwelling and an ADU **must be subject to the same land use standards** as apply to a single-family dwelling by itself. A community may not apply land use regulations to an ADU that are either more restrictive or less restrictive than those that apply to a single-family dwelling.
- Accessory dwellings must be allowed in **ALL zoning district that permit single family dwellings**. Municipalities no longer have the discretion to limit ADUs to certain zoning districts.
- ADUs can no longer be required by regulation to be smaller than **750 sq. feet** or to have **fewer than 2 bedrooms**. (However a homeowner may choose to construct a smaller unit with only one bedroom.)
- The ADU law **does not appear to limit the number of ADUs per single family dwelling**. A municipality wishing to limit the number to one per single family dwelling must explicitly state that limitation in their zoning ordinance.
- An ADU ordinance may:
  - Require owner occupancy (but cannot specify in which unit the owner resides).
  - Specify adequate and additional parking to accommodate additional parking demand.
  - Disallow detached ADUs.
  - Include ADU standards to help maintain aesthetic continuity.
  - Impose size and bedroom limits (but not less than 750 square feet and not fewer than 2 bedrooms).
  - Ensure adequate provisions for sewage disposal and water supply per state and local standards.
  - Disallow non-conforming aspect of an ADU that is proposed (e.g. lot coverage, set backs, off street parking, etc.).
- An ADU Ordinance may not:
  - Require increase lot size to accommodate an ADU if it is an attached unit (but may require additional lot size/ frontage if the unit is detached).
  - Require separate water and sewer systems.
  - Require a familial relationship between occupants.
- Any ADU unit created may be counted as an affordable housing unit under RSA 674:59.

### Issues of Concern

As stated previously the RPC is an advocate of accessory dwelling units as highly effective, low cost and low impact means to increase the diversity, availability and affordability of housing in a

community and the region. That said, there are number of elements in the new law and some things not included that have raised concern. Whether these become serious planning problems will be determined as the law is implemented and experience with it is gained. Nevertheless, these concerns should be kept in mind as the ADU regulation evolves both at the state and local level.

## 1. Lack of Zoning Discretion on ADU Location

A striking feature of the law is the explicit requirement that ADUs be allowed in all zoning districts where single family dwellings are permitted, without exception. No allowances to this are given based on the type or existing density of neighborhood or zoning districts, or to local environmental factors. Based on feedback we have received, there are at least three residential development settings where the exercise of at least limited local discretion is called for.

**Dense Urban Centers:** ADUs in some existing high density residential districts in cities like Portsmouth, Dover, Rochester, Nashua, Manchester or Concord are likely to be problematic. Many of these neighborhoods have very small lots (~5000s.f.). ADUs could as much as double the unit density in these areas resulting in significant congestion, street parking shortage and other problems where they don't now exist. Portsmouth, for example has single-, two- and multi-family districts that are cumulative (single family is allowed in multi-family districts), with the number of allowed units based on lot size. By requiring a second (full-size) unit to be permitted with no increase in lot area, the law undercuts the density provisions of the local ordinance regardless of their locally determined need and purpose.

- **Beach Village Districts:** A second instance, somewhat unique to this region, is found in the very high density development of coastal beach communities - like Seabrook Beach, Hampton Beach and Rye Beach. These once seasonal cottage developments were typically built on extremely small lots and already have significant dimensional and parking problems. Many residences have been converted to year-round use and function more like conventional single family homes. It is certainly conceivable that significant congestion and overcrowding could develop if ADUs became commonplace in these areas, especially where existing dimensional standards are minimal.
- **Lakeshore Development:** Many communities in our region - like Hampstead, Sandown, Salem, Kingston, Danville and Newton - have smaller Great Ponds with high density lakeshore development around them. Many of these high density seasonal home developments (most served by on-site septic systems) have been converted to year round residences. Additional development density allowed by way of ADUs in these environments could significantly add to nutrient loads on the lakes and ponds and potentially harm their water quality. Although the ADU law appropriately requires that septic systems be determined to be adequate under RSA 485-A:38, this will not prevent additional nutrient loads from reaching the water, since conventional septic systems, no matter how well functioning, are not designed to remove most nutrients from wastewater.

Each of these situations may be mitigated to some extent by a municipality's ability to deny ADUs where they would create non-conformance to existing lot standards. But likewise, these three situations suggest an important and necessary role for local discretion in defining where the benefit of ADU housing options is outweighed by the problems that may be caused. One remedy might be to provide municipalities the ability to exclude certain locations within their zoning from the ADU mandate when there is legitimate need to do so. A simpler alternative might be to follow the precedent of the Workforce Housing and Manufactured Housing laws (RSA 674:59 and RSA 674:32 respectively) which require municipalities to allow each type of housing in the majority but not necessarily all residentially zoned areas, and thus restore some local discretion in zoning for accessory dwelling units. Both would require amendments to the existing ADU law.

## **2. Determining Adequacy of Septic Systems**

As referenced in the preceding discussion of lakeshore development, the ADU law includes a provision that requires adequate sewage disposal capacity exist to accommodate the additional loading associated with the ADU. This is an important and helpful provision but may not be adequate to protect nearby surface waters that are impaired due to nutrient loading. Additional residents will likely mean additional nutrients will reach the waterbody since conventional septic systems do not remove most nutrients from their effluent. This is a location specific problem which could be remedied by granting additional discretion in approving ADUs.

## **3. Size and Bedroom Minimums**

The law establishes comparatively high minimum thresholds for size and number of bedrooms in ADUs. Especially in dense urban settings, such minimums could exceed the size of the primary residence. The rationale for such minimums may be that in order to consider ADUs as viable workforce housing units they should be well sized. On the other hand, many existing ADUs, probably the majority, are single bedroom ADUs of much smaller size and yet provide an important housing function in the region. An alternative to this approach is to instead grant the workforce housing 'credit' that the law provides only to approved ADUs that meet those minimum standards, but allow the municipality to impose size limits on units that would not receive the credit. This issue may or may not prove to be a problem. The homeowner is free to propose an ADU that is smaller than the imposed standards, so the market may determine if larger ADUs (>750 square feet with 2 bedrooms) become the norm.

## **4. ADUs in Condominiums**

The ADU law does not explicitly address how ADUs might be handled in condominiums where condominium association rules may (and often do) prohibit subletting a portion of a residential unit for rent. The presumption is that the condominium agreement is binding on the unit owner, regardless of local zoning permissions. It follows then that the municipalities allowance of ADUs does not mean that condominium owner can create an ADU by right.

Rural condominiums serviced by shared septic and water systems pose a separate problem, in the case where ADUs are allowed. If the shared systems' reserve capacity is exceeded by the addition of ADUs, how does that capacity get divided, and what happens if it were to be exceeded and the system(s) fail? Who would be responsible?

Both questions are cause for additional research and definition.

## **5. Assumption of Multiple ADUs Per Single Family Dwelling**

Unlike the vast majority of ADU ordinances in effect in this region, the state's ADU law makes no presumption that only one accessory dwelling unit may be permitted for each principal single family dwelling unit. This is a surprising aspect of the law. Can a 'principal' dwelling use still be considered principal when it hosts multiple accessory dwellings? It is counterintuitive at the least. Fortunately, municipalities may restrict the number of ADUs per primary single family dwelling unit to one, however they are advised to do this explicitly in their ADU ordinance because the law implies that there is no limit to the number that could be allowed (RSA 674:72: "...The municipality is not required to allow more than one accessory dwelling unit for any single dwelling unit.").

## **6. Short Term Rentals**

An emerging concern regarding accessory dwelling units is the likelihood that some significant and growing fraction of ADUs that are created will be used as short term rental units. This is a particular concern in communities that have strong appeal as vacation or tourism destinations where the assumption is that residents will create ADUs primarily as 'Airbnb' or VRBO ('Vacation Rental by Owner') units as a source of supplementary income. While an expansion of short term rentals may help the tourism economy of the region, it defeats the purpose of ADUs and of the ADU law because short term rentals will not expand housing opportunities or the workforce housing supply for permanent residents. Moreover ADUs as short term rentals are less likely to become integrated with the existing residential neighborhood and may detract from neighborhood cohesion. In dense communities with high demand for short term stays, like Portsmouth and Seabrook, Hampton Beach and Rye Beach, the financial reward for creating ADUs to meet that demand will be very attractive. Those municipalities should anticipate ADUs wherever they can be permitted given lot limitations – exacerbating existing concerns about congestion, parking and general overcrowding.

It should be acknowledged that the short term rental phenomenon, and the concerns it carries for communities, is not directly related to the new ADU law. Existing ADUs are subject to the same short term usage. The connection comes from the fact that municipalities now have less control over where and what size accessory dwellings will be.

It is RPC understanding that to date, municipalities have no statutory authority to regulate short term rentals. Until that changes they will not be able prevent ADUs from being used as

short term rentals, no matter what the consequences. This is an area of legislation we may wish to pursue.

### **7. Inflexibility in Applying Different Standards to ADUs**

A provision of the ADU law (RSA 674:72. IV) states that with the exception of parking standards, any regulation applicable to single family dwelling must also be applied to the single family dwelling and ADU combined (e.g. lot coverage, setbacks, etc). This was probably included to ensure that communities not wishing to allow ADUs could discourage them through over-regulation of the ADU itself. However, it may also have the unintended consequence of prohibiting a community from applying lesser standards to an ADU that would otherwise be denied as non-conforming. For example, the law would prohibit regulations that simply allow conversion of existing accessory structures such as garages and carriage houses to detached ADUs if the lot is non-conforming. If such a structure does not meet the dimensional standards for single-family dwellings (especially side/rear yard setbacks) they do not comply with a land use regulations applicable to SF dwellings and would therefore not be allowed. And if the community does allow conversion of existing accessory buildings it must allow them to be expanded to the maximum height allowed for SF dwellings. A good case can be made here for allowing communities to differentiate standards between primary and accessory.

### **8. Application of home occupation regulations**

A strict reading of the previously references section would also suggest that a community that allows home occupations or home-based businesses in single family dwellings cannot prohibit such uses in accessory dwelling units. The statute would seem not to allow such a prohibition, since it is a “municipal regulation applicable to single-family dwellings.” If so, this is another area where some differentiation between regulation applicable to main and accessory dwelling should be allowed

### **9. Other Areas of Concern**

What other areas of concern do you have that are not addressed here?

# ATTACHMENT 4

## ACCESSORY UNIT MODEL ORDINANCE

### I. Authority

This section is enacted in accordance with the provisions of RSA 674:71 and RSA 674:21.

### II. Purpose

The purposes of the accessory dwelling unit ordinance are to:

- (a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
- (b) Provide flexible housing options for residents and their families
- (c) Integrate affordable housing into the community with minimal negative impact.
- (d) Provide elderly citizens with the opportunity to retain their homes and age in place.

### III. Definition

An “accessory dwelling unit” means a residential living unit that is within or attached to a single-family dwelling {Optional: or is located in a detached structure} and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

### IV. Conditional Use Permit Required

Pursuant to RSA 674:21 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory dwelling units in accordance with the restrictions and requirements of this section.

## EXPLANATION

*RSA 674:41 is the new statutory reference for accessory dwelling units (ADU) and RSA 674:21 Innovative Land Use Controls is the statutory reference for administering conditional use permits.*

*These purposes are based on the purposes from the State law. The municipality may add additional purposes as desired.*

*An ADU may be deemed a unit of workforce housing for purposes of satisfying the municipality’s obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units*

*This is the State definition for an ADU. Because the State law allows the use of detached structures for an accessory dwelling unit, the ordinance definition should be expanded to state such, if a municipality wishes to allow accessory dwelling units in detached structures.*

*Accessory Dwelling units can be permitted by right, as: 1) a Conditional Use Permit by the Planning Board (appeal to Superior Court); 2) a Special Exception by the Zoning Board of Adjustment (appeal to the ZBA); or 3) a building permit approved and issued by the Building Inspector. This model recommends approval as a Conditional Use Permit by the Planning Board. If a town uses the Special Exception process items V, (a)-(g) are recommended as Special Exception criteria.*

**V. Criteria for Approval**

All of the following criteria must be met in order for the zoning board/planning board/building inspector to approve the construction of an accessory dwelling unit:

- (a) A maximum of one (1) accessory dwelling may be permitted on property where single family dwellings are permitted and must be located within or attached to the single family dwelling unit [*OPTIONAL or be located in a detached structure on the property*].
- (b) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked.
- (c) All municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with policy adopted by the United States Department of Housing and Urban Development. A minimum of two parking spaces shall be provided to accommodate an accessory dwelling unit.
- (d) The applicant for a conditional use permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units.
- (e) Either the principal dwelling unit or the accessory dwelling unit must be owner occupied. The owner must demonstrate that one of the units is their principal place of residence. Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership. Transfer of either dwelling unit to condominium ownership is not permitted.

*Provision (a) in State law indicates clearly that an attached accessory unit is expected to have a direct physical connection to the original single family unit. A local ordinance can offer some flexibility (i.e., connection through a breezeway) but the combined structures are intended to maintain the appearance of a single family dwelling.*

*A municipality shall require an applicant to upgrade an existing septic system so that the existing system is designed and constructed to provide the septic capacity required for the total number of bedrooms onsite after the ADU has been constructed.*

*A municipality may not require a familial relationship between the occupants of an ADU and the occupants of a principal dwelling unit. Both units must be in common ownership and condominium ownership is not permitted.*

- (f) Accessory dwelling units shall maintain an aesthetic continuity with the principal dwelling unit as a single-family dwelling.
- (g) The ADU shall be no larger than one-third the size of the combined living area of the primary and accessory units [*OPTIONAL if a maximum size is to be established*] except that no accessory dwelling unit shall be restricted to less than 750 square feet.
- (h) **Detached Accessory Dwelling Units.** Detached accessory dwelling units are permitted. Detached accessory dwelling units shall require that the lot be 20 percent larger than the minimum lot size required in the residential zone it is proposed.
- (i) The accessory dwelling unit shall have no more than two bedrooms.

*Provision (g) allows the municipality to prepare regulations outlining the aesthetic values necessary to comply with this section. The municipality can also mandate maximum and minimum unit sizes as long as the minimum is no less than 750 square feet. (Note: This does not mean an applicant cannot build an ADU smaller than 750 sq. feet, but the municipality cannot require it to be smaller.) A common requirement is to limit the ADU to no larger than one-third the size of the combined living area of the primary and accessory units.*

*In considering detached ADUs, municipalities are required to determine if such uses are appropriate for their community. This model encourages the use of detached structures but requires additional lot size and prohibits more than one ADU per single family lot.*

*State law prohibits a municipality from limiting ADUs to less than two bedrooms. However, an applicant may propose a one bedroom ADU. This model advocates that two (2) bedrooms be set as the maximum as well, again to emphasize the secondary nature of the dwelling.*

#### **VI. Occupancy Permit Required**

Prior to occupancy of the accessory dwelling unit, the homeowner shall obtain an occupancy permit from the Building Inspector.