

Minutes dated November 18, 2024

TOR-2025-1 - An Ordinance to amend Chapter 180 of the Code of the City of Agawam regarding zoning enforcement powers and penalties (Sponsored by Mayor Johnson)

TOR-2025-2 - An Ordinance to amend Chapter 180 of the Code of the City of Agawam regarding Accessory Dwelling Units (Sponsored by Mayor Johnson)

TOR-2025-1

**AN ORDINANCE TO AMEND CHAPTER 180
OF THE CODE OF THE CITY OF AGAWAM REGARDING
ZONING ENFORCEMENT POWERS AND PENALTIES**

(Sponsored by Christopher C. Johnson, Mayor)

WHEREAS, Section 180-15 to Section 180-16.1 of the Code of the City of Agawam sets forth the zoning enforcement powers of the Inspector of Buildings and the non-criminal enforcement penalties; and

WHEREAS, the Zoning Advisory Committee recommends the proposed amendment and the City Council has the authority to enact the proposed amendment the Code of the City of Agawam; and

WHEREAS, Section 180-16.1 of the Code of the City of Agawam sets the non-criminal enforcement penalties and was last updated in 2005; and

WHEREAS, the Inspector of Buildings wants to expand the enforcement powers and increase the non-criminal enforcement penalties to improve zoning enforcement efforts; and

WHEREAS, the proposed amendment to Section 180-15 to Section 180-16.1 of the Code of the City of Agawam expands non-criminal enforcement to include conditions of a permit or special permit granted under the zoning code or under any decision rendered by the Zoning Board of Appeals or the Planning Board; and it further provides that unpaid fines shall be subject to the municipal charges lien law (M.G.L. c. 40 §58) which allows the town to lien the property involved and ultimately add unpaid liens to the real estate tax bill for collection; and

WHEREAS, it is in the best interest of the City of Agawam to amend Section 180-15 to Section 180-16.1 of the Code of the City of Agawam to enhance the zoning enforcement powers of the Inspector of Buildings and to increase the non-criminal enforcement penalties; and

NOW THEREFORE, the Agawam City Council hereby amends the Code of the City of Agawam Chapter 180, Section 180-15 to Section 180-16.1 by deleting those sections in their entirety and inserting in place thereof the following:

§180-15. Enforcement. The provisions of this Chapter shall be enforced by the Inspector of Buildings, and no permit shall be granted for the construction, alteration, relocation or use of any building, structure or premises in violation of any provision of this Chapter. Whenever any permit or license is refused because of some provision of this Chapter, the reason therefor shall be clearly stated in writing and kept on file.

§180-16. Judicial Enforcement Penalties. Complaints for enforcement of this Chapter brought to Superior Court or Housing Court shall carry a penalty of three hundred (\$300.00) dollars for each violation. Each day such violation continues shall be deemed a separate offense.

§180-16.1. Noncriminal Enforcement. In addition to the procedures for enforcement as described above, the provisions of this Chapter, the conditions of a permit or special permit granted under this Chapter, or any decision rendered by the Zoning Board of Appeals or Planning Board under this Chapter shall be enforced by the Inspector of Buildings, by noncriminal complaint pursuant to the provisions of Massachusetts General Laws Chapter 40, §21D, as amended from time to time. The fine for any violation disposed of through this procedure shall be one hundred (\$100.00) dollars for the first offense; two hundred (\$200.00) dollars for the second offense; and three hundred (\$300.00) dollars for the third and each subsequent offense. Each day such violation continues shall be deemed a separate offense. Unpaid fine(s) shall be subject to the municipal charges lien pursuant to Massachusetts General Laws Chapter 40, §58, as amended from time to time.

DATED THIS _____ DAY OF _____, 2025.

PER ORDER OF THE AGAWAM CITY COUNCIL

Rosemary Sandlin, President

APPROVED AS TO FORM AND LEGALITY



Christopher S. Cappucci, Solicitor



Town of Agawam

Christopher C. Johnson, Mayor
36 Main Street
Agawam, MA 01001
Telephone: 413-786-0400 | 413-786-4525

Memorandum

To: Agawam City Council
From: Christopher C. Johnson, Mayor
Re: TOR-2025-1 (Zoning Enforcement)
Date: January 16, 2025

Attached please find TOR-2025-1 which is an ordinance to amend §180-15 to §180-16.1 of the Code of the City of Agawam to update and expand zoning enforcement powers and to increase non-criminal enforcement penalties.

The proposed amendment does the following:

- expands non-criminal enforcement to include conditions of a permit or special permit granted under the zoning code or under any decision rendered by the Zoning Board of Appeals or the Planning Board;
- increases the fines for non-criminal enforcement from \$25/\$50/\$100 for first, second and third and subsequent offenses to \$100/\$200/\$300 for first, second and third and subsequent offenses; and
- provides that unpaid fines shall be subject to the municipal charges lien law which is M.G.L. c. 40 §58 (copy attached) which allows the town to lien the property involved and ultimately add unpaid liens to the real estate tax bill for collection.

I have also attached a spreadsheet showing fines in surrounding cities and towns for your information. Please do not hesitate to contact me with any questions.

Very truly yours,

Christopher C. Johnson
Mayor

M.G.L. c. 40 § 58. Any city or town may impose a lien on real property located within the city or town for any local charge or fee that has not been paid by the due date, said lien shall be known as the "municipal charges lien"; provided, that a separate vote at a town meeting, or by a city or town council is taken for each type of charge or fee.

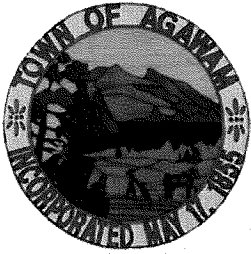
A municipal charges lien authorized under this section shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds of the county or district where the land subject to the lien lies.

If a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the board or officer in charge of the collection of the municipal charge or fee, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such charge or fee to the assessors, who shall forthwith add such charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.

If the property to which such charge or fee relates is tax exempt, such charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

Comparison of Surrounding Communities

Community	Judicial Enforcement	Non-Criminal 1st Offense	Non- Criminal 2nd Offense	Non-Criminal 3rd Offense	Non-Criminal 4th + Offense
Agawam	\$300	\$100	\$200	\$300	\$300
West Springfield	\$300	\$25	\$50	\$100	\$200
East Longmeadow	\$300	\$100	\$200	\$300	\$300
Longmeadow	\$100	\$100	\$100	\$100	\$100
Southwick	\$300	\$300	\$300	\$300	\$300
Springfield	\$100 to \$300	\$100	\$300	\$300	\$300
Chicopee	\$200	\$200	\$200	\$200	\$200
Westfield	\$100 to \$300	\$100	\$300	\$300	\$300



Town of Agawam

Planning Board

36 Main Street
Agawam, MA 01001
Telephone:
413-786-0400 ext. 8245
Fax: 413-786-9927

February 21, 2025

Rosemary Sandlin, President
Anthony J. Russo, Vice President
Edward Borgatti, Councilor
George Bitzas, Councilor
Thomas D. Hendrickson, Councilor
Dino R. Mercadante, Councilor
Robert E. Rossi, Councilor
Gerald F. Smith, Councilor
Peter Smus, Councilor
Anthony R. Suffriti, Councilor
Maria F. Valego, Councilor

Agawam City Council
36 Main Street
Agawam, MA 01001

Dear Councilors:

At its duly called meeting held on February 20, 2025 the Agawam Planning Board voted 5-0 to send a positive recommendation to the City Council regarding TOR-2025-1.

If you have any questions, please contact this office at 413-786-0400, extension 8245.

Sincerely,

Violet Baldwin, Chairperson
Agawam Planning Board

cc: Clerk, Solicitor, File

**AN ORDINANCE TO AMEND CHAPTER 180
OF THE CODE OF THE CITY OF AGAWAM REGARDING
ACCESSORY DWELLING UNITS**

(Sponsored by Christopher C. Johnson, Mayor)

WHEREAS, on August 6, 2024, Governor Healey signed the Affordable Homes Act into law (Chapter 150 of the Acts of 2024); and

WHEREAS, Section 8 of the Affordable Homes Act amends the statewide Zoning Act to allow accessory dwelling units up to nine hundred (900) square feet to be built by right in single-family zoning districts in every community in Massachusetts; and

WHEREAS, the new law on accessory dwelling units supersedes existing local zoning ordinances and is effective on February 2, 2025, after which zoning provisions that are inconsistent with the new accessory dwelling unit law become unenforceable; and

WHEREAS, Agawam has no zoning ordinance that deals with accessory dwelling units, and given the potential for the construction or installation of new accessory dwelling units, it is important for Agawam to adopt an ordinance to guide the construction and installation of accessory dwelling units; and

WHEREAS, the Zoning Advisory Committee recommends the proposed amendment and the City Council has the authority to enact the proposed amendment the Code of the City of Agawam; and

WHEREAS, it is in the best interest of the City of Agawam to amend Chapter 180 by adding Article XXIV entitled "Accessory Dwelling Units" which adds §180-174 to §180-178 to the Code of the City of Agawam to provide local guidance regarding the construction and/or installation of accessory dwelling units in Agawam; and

NOW THEREFORE, the Agawam City Council hereby amends the Chapter 180 of the Code of the City of Agawam by adding Article XXIV entitled "Accessory Dwelling Units" which is attached hereto and incorporated herein by reference.

DATED THIS ____ DAY OF _____, 2025.

PER ORDER OF THE AGAWAM CITY COUNCIL

Rosemary Sandlin, President

APPROVED AS TO FORM AND LEGALITY



Christopher S. Cappucci, Solicitor

ARTICLE XXIV Accessory Dwelling Units

§180-174 Purpose and Intent.

The purpose of this Article is to provide a fair process for the safe and orderly construction and installation of Accessory Dwelling Units that can be integrated onto existing Lots which contain a Single Family Residential Dwelling within any zoning district where Single Family Residential Dwellings are permitted or allowed as of right.

§180-175 Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Accessory Dwelling Unit (ADU): 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: (a) 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; (b) is not larger in Gross Floor Area than one half (½) the Gross Floor Area of the Principal Dwelling or nine hundred (900) square feet, whichever is smaller; and (c) is held in common ownership with the Principal Dwelling on the Lot.

Dwelling Unit: A single housing unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Gross Floor Area: The sum of the areas of all stories of the building of compliant ceiling height pursuant to the state building code, including basements, lofts and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units, but excluding: crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the Lot, the Gross Floor Area of the largest Principal Dwelling shall be used for determining the maximum size of the Accessory Dwelling Unit.

Lot: An area of land with definite boundaries that is used, or available for use, as the site of a structure or structures, regardless of whether the site conforms to the requirements of zoning.

Modular Dwelling Unit: A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities.

Principal Dwelling: A structure, regardless of whether it, or the Lot it is situated on, conforms to zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height that contains one Dwelling Unit and is, or will be, located on the same Lot as an Accessory Dwelling Unit.

Short-term Rental: Short-term rental, as defined in Massachusetts General Laws Chapter 64G, Section 1, as amended from time to time.

Single Family Residential Dwelling: A structure on a Lot containing not more than one Dwelling Unit.

Site Plan Review: The process by which the Inspector of Buildings reviews a submitted site plan along with a building permit application to construct or install an Accessory Dwelling Unit and impose terms and conditions on, the appearance and layout of the proposed Accessory Dwelling Unit prior to the issuance of a building permit.

Special Permit: A permit issued by the Board of Appeals as the special permit granting authority pursuant to Massachusetts General Laws Chapter 40A, Section 9, and §180-11 of the Code of the Town of Agawam, both as amended from time to time.

§180-176 Procedural Requirements.

1. **Site Plan Review for Accessory Dwelling Units:** An application for a building permit for the construction or installation of an Accessory Dwelling Unit as described herein shall include a site plan prepared by a Massachusetts Registered Land Surveyor.
2. **Procedure:** The applicant shall file an electronic copy plus two (2) hard copies of the site plan with the Inspector of Buildings. The Inspector of Buildings shall review and act upon the building permit application and site plan, including adding such conditions as may be deemed reasonable and appropriate, within thirty (30) days of its receipt, and shall notify the applicant of his/her decision. The decision of the Inspector of Buildings shall be in writing. An application for a building permit for the construction or installation of an Accessory Dwelling Unit shall not be deemed complete until such site plan is submitted.
3. **Site Plan Contents:** All site plans shall be prepared to scale on standard sheets of 24 inches by 36 inches to show with reasonable accuracy the following information, in addition to that information required in §180-4: uses and structures proposed for a parcel of land as required by the zoning regulations, including lot lines, streets, building sites, buildings, landscape features, traffic circulation, parking, drainage, utilities, topography and lighting within the parcel. The site plan shall include descriptions of the means of access and egress for the proposed Accessory Dwelling Unit.
4. **Appeal:** Any decision by the Inspector of Buildings on an application for a building permit with the accompanying site plan, for the construction or installation of an Accessory Dwelling Unit shall be subject to the right of appeal to the Board of Appeals.
5. **Special Permits:** A special permit as set forth in §180-11 shall be required for any application with accompanying site plan that seeks to construct two (2) or more Accessory Dwelling Units on any Lot that contains a Single Family Dwelling Unit.

§180-177 Use and Dimensional Regulations.

1. **Requirements:** The Inspector of Buildings may approve a building permit application with accompanying site plan authorizing the construction or installation of an Accessory Dwelling Unit on a Lot with an existing Single Family Residential Dwelling only when the following conditions are met:
 - a. The Accessory Dwelling Unit shall be a separate Dwelling Unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation;
 - b. Only one Accessory Dwelling Unit may be constructed or installed on a Lot with an existing Single Family Dwelling Unit, unless a Special Permit has been granted pursuant to §180-176;
 - c. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall comply with all height regulations, setback requirements, side and rear yard requirements and lot coverage restrictions for the zoning district where the Lot is located;
 - d. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall provide for a minimum of one (1) parking space for the Accessory Dwelling Unit;
 - e. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall provide for 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;
 - f. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall show the gross floor area of the Principal Dwelling and the gross floor area of the proposed Accessory Dwelling Unit. The gross floor area of the proposed Accessory Dwelling Unit shall not be greater than nine hundred (900) square feet or one-half (½) of the gross floor area of the Principal Dwelling unit, whichever is smaller;
 - g. In order to encourage the development of Accessory Dwelling Units for the disabled and for those with limited mobility, reasonable deviation from the stated conditions may be allowed, within the sole discretion of the Inspector of Buildings, where necessary to install features that facilitate access and mobility for disabled persons;
 - h. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall comply with the State Building Code, Title V of the State Sanitary Code, and all applicable federal, state and municipal laws and/or regulations; and

- i. Any building permit application with accompanying site plan for an Accessory Dwelling Unit shall comply with the provisions of the Massachusetts Stretch Energy Code for residential properties, as amended from time to time.
 - j. Any Accessory Dwelling Unit constructed in the Floodplain District as set forth in §180-68 shall require a special permit granted pursuant to §180-71.
- 2. Prohibited Use of Accessory Dwelling Units: No Accessory Dwelling Unit shall be used for business, commercial, retail or industrial purposes. In addition, no Accessory Dwelling Unit shall be used as a Short-term Rental.
 - 3. Common Ownership with Principal Dwelling: All Accessory Dwelling Units shall be held in common ownership with the owner of the Principal Dwelling on the same Lot.

§180-178 Administration and Enforcement.

It shall be the duty of the Inspector of Buildings to administer and enforce the provisions of this Article. No Accessory Dwelling Unit shall be occupied until a certificate of completion or a certificate of occupancy has been issued by the Inspector of Buildings.



Town of Agawam

Christopher C. Johnson, Mayor
36 Main Street
Agawam, MA 01001
Telephone: 413-786-0400 | 413-786-4525

Memorandum

To: Agawam City Council
From: Christopher C. Johnson, Mayor
Re: TOR-2025-2 (Accessory Dwelling Units)
Date: February 3, 2025

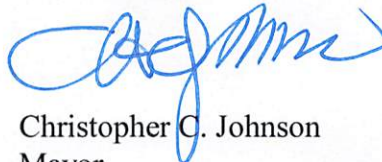
Attached please find an updated version of TOR-2025-2 which is an ordinance to add Article XXIV entitled "Accessory Dwelling Units".

The state finalized the regulations dealing with the new ADU law (copy attached). The new regulations changed some of the definitions. The updated ordinance reflects the following changes:

- updated definition for Gross Floor Area;
- updated definition for Lot;
- updated definition for Modular Dwelling Unit;
- updated definition for Principal Dwelling;
- updated definition for Site Plan Review; and
- addition of §180-177 1 j dealing with building in the Floodplain District.

Please do not hesitate to contact me with any questions.

Very truly yours,



Christopher C. Johnson
Mayor



Town of Agawam

Christopher C. Johnson, Mayor
36 Main Street
Agawam, MA 01001
Telephone: 413-786-0400 | 413-786-4525

Memorandum

To: Agawam City Council
From: Christopher C. Johnson, Mayor
Re: TOR-2025-2 (Accessory Dwelling Units)
Date: January 16, 2025

Attached please find TOR-2025-2 which is an ordinance to add Article XXIV entitled "Accessory Dwelling Units" which adds §180-174 to §180-178 of the Code of the City of Agawam to provide local guidance regarding the construction and installation of accessory dwelling units in Agawam.

On August 6, 2024, Governor Healey signed the Affordable Homes Act into law (Chapter 150 of the Acts of 2024). Section 8 of the Affordable Homes Act amends the statewide Zoning Act to allow accessory dwelling units (ADU) up to nine hundred (900) square feet to be built by right in single-family zoning districts in every community in Massachusetts. The new law on accessory dwelling units supersedes existing local zoning ordinances/by-laws in every community in Massachusetts. The new law is effective Sunday, February 2, 2025. After Sunday, February 2, 2025, zoning provisions that are inconsistent with the new ADU law become unenforceable.

The state law provides that an ADU must: maintain 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; be either no larger than half the gross floor area of the principal dwelling or nine hundred (900) square feet, whichever is smaller; meet applicable municipal restrictions, including, but not limited to, size restrictions and/or prohibitions on short-term rental.

The Commonwealth of Massachusetts Executive Office of Housing and Livable Communities published a set of draft regulations dealing with the new ADU law (copy attached). Agawam has no zoning ordinance that deals with accessory dwelling units. Given the potential for the construction and/or installation of new accessory dwelling units, it is important for Agawam to adopt an ordinance to guide the construction and installation of ADU's.

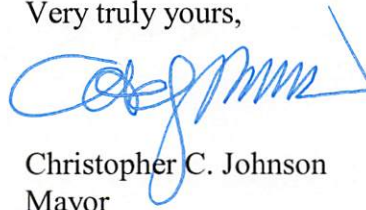
Agawam City Council

January 16, 2025
Page Two

The proposed zoning amendment represents our best effort to establish a local ordinance to deal with accessory dwelling units that is consistent with the draft state regulations. Obviously, if the state amends the draft regulations, amendments may need to be made to our local ordinance. The proposed ordinance was reviewed and recommended by the Zoning Review Committee.

Please do not hesitate to contact me with any questions.

Very truly yours,



Christopher C. Johnson
Mayor

760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS

Section

71.01: Statement of Purpose

71.02: Definitions

71.03: Regulation of Protected Use ADUs in Single-family Residential Zoning Districts

71.04: Data Collection

71.01: Statement of Purpose

(1) St. 2024, c. 150, § 8 amends M.G.L. c. 40A, § 3 to encourage the production of accessory dwelling units throughout the Commonwealth with the goal of increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life. The Executive Office of Housing and Livable Communities is the regulatory agency that is authorized by St. 2024, c. 150, § 8 to promulgate 760 CMR 71.00 that establish rules, standards and limitations that will assist Municipalities and landowners in the administration of St. 2024, c. 150, § 8.

(2) St. 2024, c. 150, § 8 and 760 CMR 71.00 seek to balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing stock to address the Commonwealth's housing needs. St. 2024, c. 150, § 8 establishes that in certain circumstances the use of land or structures for ADUs are protected from zoning restrictions by providing that zoning shall not prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single ADU, or the rental thereof, in a single-family residential zoning district, and imposes protections on ADUs through M.G.L. c. 40A, § 3, the Dover Amendment. The Act balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs. St. 2024, c. 150, § 8, however, explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units that require owner-occupancy of either the ADU or the principal dwelling and imposes limitations on Municipal parking requirements.

(3) 760 CMR 71.00 establishes definitions, standards, and limitations to assist in the local administration of M.G.L. c. 40A, § 3, para. 11, pursuant to St. 2024, c. 150, § 8. Nothing in 760 CMR 71.00 is intended to supersede state health and safety laws and regulations, such as, but not limited to the Building Code, Fire Code, M.G.L. c. 111, § 189A: Massachusetts Lead Law, or any federal laws.

71.02: Definitions

Accessory Dwelling Unit (ADU). 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:

- (a) 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 Building Code for safe egress;
- (b) is not larger in Gross Floor Area than $\frac{1}{2}$ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and
- (c) 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 ADU that is not a Short-term Rental.

Building Code. The Massachusetts state building code, 780 CMR.

Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority.

Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

Design Standards. Clear, measurable and objective provisions of Zoning, or general ordinances or by-laws, which are made applicable to the exterior design of, and use of materials for an ADU.

Dwelling Unit. A single housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EOHLC. The Executive Office of Housing and Livable Communities.

Ferry Terminal. The location where passengers embark and disembark from a ferry service with year-round service with ferries departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

Fire Code. The Massachusetts state fire code, 527 CMR 1.00.

Gross Floor Area (GFA). The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there

are multiple Principal Dwellings on the Lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.

Historic District. A district in a Municipality established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law.

Lot. An area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to requirements of Zoning.

Modular Dwelling Unit. A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities.

Municipality. Any city or town subject to the provisions of M.G.L. c. 40A.

Principal Dwelling. A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is, or will be, located on the same Lot as a Protected Use ADU.

Prohibited Regulation. Zoning or general ordinances or by-laws, or Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2).

Protected Use ADU. An attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition.

Short-term Rental. Short-term rental, as defined in M.G.L. c. 64G, § 1.

Single-family Residential Dwelling. A structure on a Lot containing not more than one Dwelling Unit.

Single-family Residential Zoning District. Any Zoning District where Single-family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single-family Residential Dwellings are allowed as-of-right or by Special Permit.

Site Plan Review. A process established by local ordinance or by-law by which a Municipal board or authority may review and impose terms and conditions on, the appearance and layout of a proposed use of land or structures prior to the issuance of a building permit.

Special Permit. A permit issued by a Municipality's special permit granting authority pursuant to M.G.L. c. 40A, § 9.

Subway Station. Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.

Transit Authority. The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, § 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, § 3 or M.G.L. c. 161B, § 14.

Transit Station. A Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station.

Unreasonable Regulation. Zoning or general ordinances or by-laws, or Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3).

Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of the Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupants, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

Zoning. Ordinances and by-laws, including base, underlying, and overlay zoning, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

Zoning District. A geographic area within a Municipality which, pursuant to Zoning, is subject to use and structure requirements that are uniform within the area.

71.03: Regulation of Protected Use ADUs in Single-family Residential Zoning Districts

(1) Municipalities shall not prohibit, impose a Prohibited Regulation or Unreasonable Regulation, or, except as provided under 760 CMR 71.03(5) and 760 CMR 71.03(6), require a special permit, waiver, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected Use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.

(2) **Prohibited Regulation.** A Municipality shall not subject the use of land or structures on a Lot for a Protected Use ADU to any of the following:

(a) **Owner-Occupancy Requirements.** A requirement that either the Protected Use ADU or the Principal Dwelling be owner-occupied.

(b) **Minimum Parking Requirements.** A requirement of, as applicable:

1. More than one additional on-street or off-street parking space for a Protected Use ADU if all portions of its Lot are located outside a 0.5-mile radius of a Transit Station; or

2. Any additional on-street or off-street parking space for a Protected Use ADU if any portion of its Lot is located within a 0.5-mile radius of a Transit Station.

(c) **Use and Occupancy Restrictions.** A requirement that a Protected Use ADU be subject to a Use and Occupancy Restriction.

(d) **Unit Caps & Density.** Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations.

(e) **Relationship to Principal Dwelling.** A requirement that a Protected Use ADU be attached to or detached from the Principal Dwelling.

(3) Unreasonable Regulation.

(a) A Municipality may reasonably regulate and restrict Protected Use ADUs provided that any 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
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:
 - a. Result in complete nullification of the use or development of a Protected Use ADU;
 - b. Impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or
 - c. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.

(b) Municipalities shall apply the analysis articulated in 760 CMR 71.03(3)(a) to establish and apply reasonable Zoning or general ordinances or by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it exceeds the limitations, or is inconsistent with provisions, described below, as applicable:

1. Design Standards. Any Design Standard that:
 - a. Would not be applied to a Single-family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located or
 - b. Is 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.
2. Dimensional Standards. Any requirement concerning dimensional standards, such as dimensional setbacks, lot coverage, open space, bulk and height, and number of stories, that are more restrictive than is required for the Principal Dwelling, or a Single-family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.

3. Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than is permitted by state requirements, including under the Fire Code. A Municipality may not require a separate utility connection, such as water, sewer, electric, provided that a separate connection may be required by a Municipal or regional utility, investor-owned utility; by state law; by a local, regional, or state board or commission; or by court order.
4. Environmental Regulation. Any regulation for the protection of public health, safety, welfare and the environment pursuant to 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, that is more restrictive than is required for a Single-family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.
5. Site Plan Review. Site Plan Review concerning the Protected Use ADU that is not clear and objective or imposes terms and conditions that are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A.
6. Impact Analysis, Studies, and Fees. Any requirement for any impact analysis, study, report, or impact fee that is not required for the development of a Single-family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located.
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 Building Code.
8. Historic Districts. Municipalities 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, or Principal Dwelling, in the Single-family Residential Zoning District; provided, however, that such standards are not unreasonable pursuant to 760 CMR 71.03(3)(a).
9. Pre-existing Nonconforming Structures. A Municipality may not prohibit the development of a Protected Use ADU in an existing structure or Principal Dwelling, or Lot due to nonconformance, that could be used for, or converted into, a Protected Use ADU in conformance with the Building Code, 760 CMR 71.00, and state law.

(c) Short-term Rentals. Municipalities may establish restrictions and prohibitions on the Short-term Rental of Protected Use ADUs pursuant to M.G.L. c. 64G.

(4) Enforceability of Restrictions and Regulations on Pre-existing ADUs. A Municipality 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, regardless of whether such Protected Use ADU complies with the Municipality's Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height.

(5) Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), if a Municipality chooses to allow additional ADUs on the same Lot as a Protected use ADU in a Single-family Residential Zoning District, Zoning shall require a Special Permit for the use of land or structures for the additional ADUs.

(6) Floodplain and Aquifer Protection Overlay Districts. Municipalities may require a Special Permit for development of a Protected Use ADU in a floodplain or aquifer protection overlay if required for the Principal Dwelling, provided that the Special Permit is based on clear, objective, and non-discretionary criteria.

(7) Nothing in these regulations is intended to prevent a Municipality from adopting more permissive Zoning, or general ordinances or by-laws, or Municipal regulations than would be allowed under 760 CMR 71.03.

(8) Address Assignment. All ADUs shall be assigned an address consistent with the most current Address Standard published by MassGIS. ADU addresses shall be reported to MassGIS and EOHLC after assignment.

71.04: Data Collection

To assist EOHLC in the administration of M.G.L. c. 40A, § 3, para 11, Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

REGULATORY AUTHORITY

760 CMR 71.00: M.G.L. c. 40A, § 3, para. 11; St. 2024, c. 150, § 8.



Town of Agawam

Christopher C. Johnson, Mayor
36 Main Street
Agawam, MA 01001
Telephone: 413-786-0400 | 413-786-4525

Memorandum

To: Agawam City Council
From: Christopher C. Johnson, Mayor
Re: TOR-2025-2 (Accessory Dwelling Units)
Date: January 16, 2025

Attached please find TOR-2025-2 which is an ordinance to add Article XXIV entitled "Accessory Dwelling Units" which adds §180-174 to §180-178 of the Code of the City of Agawam to provide local guidance regarding the construction and installation of accessory dwelling units in Agawam.

On August 6, 2024, Governor Healey signed the Affordable Homes Act into law (Chapter 150 of the Acts of 2024). Section 8 of the Affordable Homes Act amends the statewide Zoning Act to allow accessory dwelling units (ADU) up to nine hundred (900) square feet to be built by right in single-family zoning districts in every community in Massachusetts. The new law on accessory dwelling units supersedes existing local zoning ordinances/by-laws in every community in Massachusetts. The new law is effective Sunday, February 2, 2025. After Sunday, February 2, 2025, zoning provisions that are inconsistent with the new ADU law become unenforceable.

The state law provides that an ADU must: maintain 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; be either no larger than half the gross floor area of the principal dwelling or nine hundred (900) square feet, whichever is smaller; meet applicable municipal restrictions, including, but not limited to, size restrictions and/or prohibitions on short-term rental.

The Commonwealth of Massachusetts Executive Office of Housing and Livable Communities published a set of draft regulations dealing with the new ADU law (copy attached). Agawam has no zoning ordinance that deals with accessory dwelling units. Given the potential for the construction and/or installation of new accessory dwelling units, it is important for Agawam to adopt an ordinance to guide the construction and installation of ADU's.

Agawam City Council

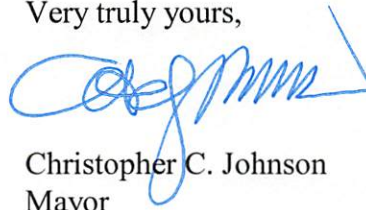
January 16, 2025

Page Two

The proposed zoning amendment represents our best effort to establish a local ordinance to deal with accessory dwelling units that is consistent with the draft state regulations. Obviously, if the state amends the draft regulations, amendments may need to be made to our local ordinance. The proposed ordinance was reviewed and recommended by the Zoning Review Committee.

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "C. Johnson", with a stylized flourish at the end.

Christopher C. Johnson
Mayor

760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS

Section

- 71.01: Statement of Purpose
- 71.02: Definitions
- 71.03: Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts
- 71.04: Annual Updates

71.01: Statement of Purpose

- (1) *St. 2024, c. 150, s. 8* (the Act) amended M.G.L. c. 40A, s. 3 to encourage the production of accessory dwelling units throughout the Commonwealth with the goal of increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life.

The Executive Office of Housing and Livable Communities is the regulatory agency that is authorized by the Act to promulgate 760 CMR 71.00 and accompanying guidelines that establish rules, standards and limitations that will assist Municipalities and landowners in the administration of the Act.

- (2) The Act and 760 CMR 71.00 seek to balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing stock to address the Commonwealth's housing needs. The Act establishes that in certain circumstances the use of land or structures for ADUs are protected from zoning restrictions by providing that zoning shall not prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single ADU, or the rental thereof, in a single-family residential zoning district. The Act balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs. The Act, however, explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units that require owner-occupancy of either the ADU or the principal dwelling and imposes limitations on Municipal parking requirements.
- (3) 760 CMR 71.00 establishes definitions, standards, and limitations to assist in the local administration of M.G.L. c. 40A, s. 3, para. 11, pursuant to *St. 2024, c. 150, s. 8*. This regulation may be further supplemented by guidelines issued by EOHLC.

71.02: Definitions

Accessory Dwelling Unit (ADU). 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; (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; provided, however, that no Municipality shall unreasonably restrict the creation or rental of an ADU that is not a Short-term Rental.

Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority. For routes that allow flag stop locations where passengers may signal for a bus to stop at any point along its designated route, the entire route shall be considered a Bus Station.

Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

Design Standards. Clear, measurable and objective provisions of Zoning, or regulations, which are made applicable to the exterior design of, and use of materials for an ADU.

Dwelling Unit. A single housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EOHLC. The Executive Office of Housing and Livable Communities.

Ferry Terminal. The location where passengers embark and disembark from a ferry service.

Gross Floor Area. The sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.

Historic District. A district in a Municipality established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law, as the case may be.

Lot. An area of land with definite boundaries that is used, or available for use, as the site of a building, or buildings.

Modular Dwelling Unit. A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities. A Modular Dwelling Unit shall not include a manufactured home, such as those defined under M.G.L. c. 140, s. 32Q.

Municipality. Any city or town subject to the provisions of M.G.L. c. 40A.

Principal Dwelling. A structure, regardless of whether it conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is located on the same Lot as a Protected Use ADU.

Prohibited Regulation. Zoning restrictions and Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2), and as may be further provided for in EOHLC guidelines.

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.

Short-term Rental. Short-term rental, as defined in M.G.L. c. 64G, s. 1.

Single-Family Residential Dwelling. A structure on a Lot containing not more than one Dwelling Unit.

Single-Family Residential Zoning District. Any Zoning District where Single-Family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single-Family Residential Dwellings are allowed as of right, by special permit, variance, waiver, or other zoning relief or discretionary zoning approval.

Site Plan Review. A clear and objective process established by local ordinance or by-law by which a Municipal board or authority may review and impose reasonable terms and conditions on, the appearance and layout of a proposed use of land or structures prior to the issuance of a building permit.

Special Permit. A permit issued by a Municipality's special permit granting authority pursuant to M.G.L. c. 40A, s. 9.

Subway Station. Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.

Transit Authority. The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, s. 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, s. 3 or M.G.L., c. 161B, s. 14.

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.

Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the use or occupancy of the Protected Use ADU to individuals or households at a specified income or age, or that imposes conditions that limit future use or occupancy of a Protected Use ADU based on income or age or, that imposes any similar use and occupancy restriction as may be further provided for in EOHLC guidelines.

Zoning. Ordinances and by-laws, adopted by Municipalities pursuant to M.G.L. c. 40A to regulate the use of land, buildings and structures, including base, underlying, and overlay zoning.

Zoning District. A geographic area within a Municipality which, pursuant to Zoning, are subject to use requirements that are generally uniform throughout the area.

71.03: Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts

(1) Municipalities shall not prohibit, impose a Prohibited Regulation or Unreasonable Regulation, or, except as provided under 760 CMR 71.03(5), require a special permit, waiver, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected Use ADU, including the rental thereof, in a Single-Family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.03(2) to 760 CMR 71.03(5), inclusive.

(2) **Prohibited Regulation.** A Municipality shall not subject the use of land or structures on a Lot for a Protected Use ADU to any of the following:

(a) **Owner-Occupancy Requirements.** A requirement that either the Protected Use ADU or the Principal Dwelling be owner occupied.

(b) **Minimum Parking Requirements.** A requirement of, as applicable:

1. More than one additional on-street or off-street parking space for each Protected Use ADU on a Lot if all portions of such Lot are located outside a 0.5-mile radius of a Transit Station; or
 2. Any additional on-street or off-street parking space for each Protected Use ADU on a Lot if any portion of such Lot is located within a 0.5-mile radius of a Transit Station.
- (c) Use and Occupancy Restrictions. A requirement that a Protected Use ADU be subject to a Use and Occupancy Restriction.
- (d) Unit Caps & Density. Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations.
- (e) Relationship to Principal Dwelling. A requirement that a Protected Use ADU be attached to or detached from the Principal Dwelling.
- (3) Unreasonable Regulation.
- (a) A Municipality may reasonably regulate and restrict Protected Use ADUs provided that any 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
 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:
 - i. Result in complete nullification of the use or development of a Protected Use ADU;
 - ii. Impose excessive costs on the use or development of a Protected Use ADU without significant gain in advancing the municipality's legitimate interest; or
 - iii. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the municipality's legitimate interest.
- (b) For the purposes of 760 CMR 71.03(3), the following restrictions and regulations shall be considered unreasonable when applicable to a Protected Use ADU:
1. Design Standards. Any Design Standard that (i) would not be applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or (ii) is 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.
 2. Dimensional Standards. Any requirement concerning 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 in the Single-Family Residential Zoning District in which the Protected Use ADU is located.

3. Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than state requirements.
4. Environmental Regulation. Any 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 is required for a Single-Family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.
5. Site Plan Review. Any requirement under Site Plan Review concerning the Protected Use ADU that is more restrictive than those applied to the Principal Dwelling.
6. Impact Analysis and Studies. Any requirement under Zoning or Site Plan Review for any impact analysis, study, or report that is not required for the development of a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located.
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.

(c) Notwithstanding 760 CMR 71.03(b)1. and 760 CMR 71.03(b)2., a 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 in the Single-Family Residential Zoning District; provided, however, that such 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.

(d) EOHLC may clarify and provide examples of what constitutes Unreasonable Regulations through guidelines.

- (4) Enforceability of Restrictions and Regulations on Pre-Existing ADUs. A Municipality 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, regardless of whether such Protected Use ADU complies with the Municipality's Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height.
- (5) Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), 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.

71.04: Annual Updates

- (1) Data Collection. To assist EOHLC in the administration of M.G.L c. 40A, s. 3, para 11, Municipalities shall collect and maintain, at a minimum, the following data related to their permitting of ADUs, in a format specified by EOHLC:

- (a) The number of approved ADU permit applications, separately tabulated for attached and detached ADUs;
 - (b) The number of denied ADU permit applications;
 - (c) The number of occupancy permits issued for any ADU; and
 - (d) Other data or information as may be further provided for in EOHLC guidelines.
- (2) **Annual Report.** To assist EOHLC in the administration of M.G.L. c. 40A, s. 3, para 11, Municipalities shall annually submit a report to EOHLC not later than March 31 containing the data collected under 760 CMR 71.04(1) during the prior calendar year. Said report shall be filed on a form as prescribed by EOHLC and shall contain all data as required therein.

REGULATORY AUTHORITY

760 CMR 71.00: M.G.L. c. 40A, s.3, para. 11; St. 2024, c. 150, s. 8.



Town of Agawam

Planning Board

36 Main Street
Agawam, MA 01001
Telephone:
413-786-0400 ext. 8245
Fax: 413-786-9927

February 21, 2025

Rosemary Sandlin, President
Anthony J. Russo, Vice President
Edward Borgatti, Councilor
George Bitzas, Councilor
Thomas D. Hendrickson, Councilor
Dino R. Mercadante, Councilor
Robert E. Rossi, Councilor
Gerald F. Smith, Councilor
Peter Smus, Councilor
Anthony R. Suffriti, Councilor
Maria F. Valego, Councilor

Agawam City Council
36 Main Street
Agawam, MA 01001

Dear Councilors:

At its duly called meeting held on February 20, 2025 the Agawam Planning Board voted 5-0 to send a positive recommendation to the City Council regarding TOR-2025-2.

If you have any questions, please contact this office at 413-786-0400, extension 8245.

Sincerely,

Violet Baldwin, Chairperson
Agawam Planning Board

cc: Clerk, Solicitor, File