

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 943

S.P. 292

In Senate, February 11, 1997

**An Act to Amend the Law Governing Municipal Zoning with Respect to  
Community Living Arrangements.**

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator DAGGETT of Kennebec.  
Cosponsored by Representative: GREEN of Monmouth.

Be it enacted by the People of the State of Maine as follows:

2  
3       **Sec. 1. 30-A MRSA §4357**, as enacted by PL 1989, c. 104, Pt.  
4 A, §45 and Pt. C, §10, is amended to read:

6       **§4357. Community living arrangements**

8       **1. Legislative intent.** It is the intent of the Legislature  
9 that persons seeking to establish a community living ~~faeilitty~~  
10 arrangement in a single-family residential zone are not  
11 prohibited or subject to limitations on the basis of the  
12 disability served. It is also the intent of the Legislature that  
13 community living ~~faeilitties~~ arrangements for ~~mentally-handicapped~~  
14 ~~and-developmentally-disabled~~ persons with disabilities are not  
15 prohibited from single-family residential zones or subject to  
16 limitations that have the effect of imposing barriers to their  
17 location in single-family residential zones in a municipality.  
18 Municipal ordinances or actions ~~whieh~~ that have the effect of  
19 prohibiting these community living ~~faeilitties~~ arrangement from  
20 single-family residential zones or that otherwise limit them in  
21 locating to these zones, particularly by establishing criteria  
22 for single-family residential zones ~~in-excess-of-the-criteria-in~~  
23 ~~subsections-4-and-5~~ or procedures that have a disparate impact on  
24 persons with disabilities in comparison to nondisabled persons,  
25 are a violation of ~~legislative-intent~~ this section.

26       **2. Definitions.** As used in this section, unless the  
27 context indicates otherwise, the following terms have the  
28 following meanings.

29       A. ~~---"Board--of--appeals"---means---the---board---of---appeals~~  
30 ~~established-by-a-municipality-to-hear-appeals-related-to~~  
31 ~~enforcement-of-the-zoning-ordinances.~~

32       B. "Community living ~~faeilitty~~ arrangement" means a housing  
33 facility for 8 or fewer ~~mentally---handicapped---or~~  
34 ~~developmentally--disabled~~ persons which with disabilities  
35 that is approved, authorized, certified or licensed by the  
36 State. A community living ~~faeilitty~~ arrangement may include  
37 a group home, foster home or intermediate care facility.

38       C. "Single-family residential zone" means a residential  
39 zone designated by a municipality for single-family housing  
40 except as provided in this section. If there are no  
41 residential zones designated or considered by a municipality  
42 as single-family residential zones, all residential zones in  
43 the municipality in which community living facilities are  
44 not a permitted use are ~~deemed---to---be~~ considered  
45 single-family residential zones.

2           **3. Permitted or conditional community living use;**  
3 **definition.** In order to implement the policy of this State that  
4 mentally-handicapped-or-developmentally-disabled persons shall  
5 with disabilities are not be excluded by municipal zoning  
6 ordinances from the benefits of normal residential surroundings,  
7 a community living facility shall-be-deemed arrangement is  
8 considered a permitted or conditional single-family residential  
use of property for the purposes of zoning.

10           **4. Hearing.** ~~The municipality shall hold a public hearing~~  
11 ~~within 60 days of receipt of an application to establish a~~  
12 ~~community living use within a single family residential zone,~~  
13 ~~unless a community living use is a permitted use within the~~  
14 ~~single family zone. The failure to hold the public hearing~~  
15 ~~required by this subsection within the 60 day period constitutes~~  
16 ~~approval of the application unless the time period is extended by~~  
17 ~~mutual agreement of the parties.~~

18           A. ~~The public hearing shall be conducted by the board of~~  
19 ~~appeals and interested parties shall be notified. The~~  
20 ~~notice period and procedure for zoning appeals, as~~  
21 ~~established by the municipality, must meet the notice~~  
22 ~~requirements of this section.~~

23           B. ~~The board of appeals shall receive public comment on the~~  
24 ~~proposed community living facility. The board may modify or~~  
25 ~~disapprove the application only upon a finding of one or~~  
26 ~~more of the following:~~

27           (1) ~~The proposed use would create or aggravate a~~  
28 ~~traffic hazard;~~

29           (2) ~~The proposed use would hamper pedestrian~~  
30 ~~circulation;~~

31           (3) ~~The proposed use would not permit convenient~~  
32 ~~access to commercial shopping facilities, medical~~  
33 ~~facilities, public transportation, fire protection or~~  
34 ~~police protection;~~

35           (4) ~~The proposed use would not comply with applicable~~  
36 ~~building, housing, plumbing and other safety codes,~~  
37 ~~including municipal minimum lot size and building~~  
38 ~~set-back requirements for new construction; or~~

39           (5) ~~The proposed use would not comply with the density~~  
40 ~~requirements of subsection 5.~~

41           **5. Density.** ~~Density regulation of community living uses is~~  
42 ~~intended to permit the location of these uses within a~~

2 municipality while ensuring that they will not become overly  
concentrated in neighborhoods to the detriment of either the  
neighborhoods or those residing in the community living uses.

4  
6 No state agency may approve, authorize, certify or license a  
community living use nor may the board of appeals, pursuant to an  
authorized public hearing, approve an application for a community  
8 living use, if:

10 A. A proposed community living use would be located within  
1,500 feet of an existing community living use; or

12  
14 B. A proposed community living use would result in the  
excessive concentration of these uses within the zone of  
municipality.

16  
18 The board of appeals may waive density regulations for adjacent  
community living uses providing essential components of a single  
program.

20  
22 **6. Appeals.** Any decision by the board of appeals under  
this section may be appealed in accordance with section 2691,  
subsection 3, paragraph C.

24  
26 **7. Applicability.** Except for the density requirements of  
subsection 5, this section does not apply to:

28 A. Community living uses authorized, certified or licensed  
before July 13, 1982;

30  
32 B. Community living uses for which an application was made  
before July 13, 1982; or

34  
36 C. Facilities licensed by the Department of Human Services  
under Title 22, section 8101, subsections 1 to 3, subsection  
4, paragraph A and subsection 5.

38  
40 **8. Repeal of designation.** If a municipality repeals the  
designation of single family residential zones, community living  
42 facilities located in the other residential zones before  
September 29, 1987 are not required to meet the criteria of  
subsections 4 and 5.

## 44 SUMMARY

46  
48 This bill amends the current law governing municipal zoning  
with respect to community living arrangements in order to bring  
it into compliance with the federal Fair Housing Act, as amended,  
50 and the Americans with Disabilities Act as those laws have been  
interpreted by courts in other jurisdictions.