



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nicole Mardell, AICP, Senior Planner

DATE: March 20, 2025

SUBJECT: Deliberations: Temporary Hardship Dwelling Text Amendment

On March 27, 2025, the Deschutes County Planning Commission (Commission) will conduct deliberations to consider text amendments relating to temporary hardship dwellings (file no. 247-25-000078-TA).

All record materials can be found on the project website: <https://bit.ly/25-78-TA>.

I. BACKGROUND

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendment is to conform local requirements with state law and provide consistency for the review of hardship dwellings across multiple county zones. Notable changes include:

- Reorganized content for readability;
- Amended outdated references;
- Clarified hardship dwelling can be used for the “aged” as well as the “infirm”;
- Clarified “existing building” use and definition for the purpose of the section;
- Clarified hardship dwelling can be the only second dwelling on the property;
- Amended renewal requirement from every one year to two years;
- Listed the use in all permissible zones for readability.

Since 1979, Deschutes County has allowed property owners to obtain a temporary use permit for a secondary dwelling on a property, with the intent the dwelling would be used for the care of a property owner or relative of the property owner with a medical condition. This would allow for the person with the medical condition to maintain independence and continue to live on a rural property while also receiving necessary medical attention. Recreational Vehicles (RVs), manufactured homes, or existing buildings (only in resource zones) are eligible to be used as hardship dwellings.

The current requirements for hardship dwellings were drafted in 2008. Since that time, the state has undergone rulemaking for this use in farm and forest (resource) zones. To staff's understanding, there are no explicit state requirements for regulation of the use in non-resource zones. The purpose of this proposal is to amend the code for greater consistency with state rules and statutes and to establish a consistent review process for hardship dwelling applications across all County zones in which the use is permitted.

Following the Planning Commission work session¹, County Legal Counsel directed staff to amend the findings associated with the text amendment. The findings have been updated to list the County's 2011 Comprehensive Plan goals in policies in place of the 2040 Comprehensive Plan goals as findings, as the 2040 Plan is currently under appeal and not yet in effect.

II. OVERVIEW OF AMENDMENTS

The amendment package will affect the following DCC sections:

- Revision of section to comply with state requirements
 - 18.116.090: Temporary Hardship Dwelling requirements
- Removal of duplicative requirements found in 18.116.090
 - 18.16: Exclusive Farm Use Zone
 - 18.36: Forest Use 1 Zone
 - 18.40: Forest Use 2 Zone
- Minor amendment - listing temporary hardship dwelling under permitted uses
 - 18.32: Multiple-Use Agricultural Zone
 - 18.60: Rural Residential Zone
 - 18.65.020, 021, 022: Rural Service Center Unincorporated Community Zones
 - 18.66.020, 030, 040, 050: Terrebonne Rural Community Zones
 - 18.67.020, 030, 040: Tumalo Rural Community Zones
 - 18.74.020: Rural Commercial Zone
 - 18.108.030, 110: Sunriver Unincorporated Community Zones
 - 18.110.020, 030: Resort Community Zone

The amendments aspire to match state requirements where possible. In approaching the amendments, staff has integrated state requirements where possible, for all zones in which a hardship dwelling is permitted, to ensure a consistent and clear process for property owners and county staff. The amendments in DCC 18.116.090 provide the same general requirements for temporary hardship dwellings whether they are in a resource zone or a non-resource zone that allows for a single-family dwelling. In addition, the farm and forest zones maintain existing requirements for conditional use criteria review and ineligibility for a replacement dwelling associated with a temporary hardship dwelling.

¹ <https://www.deschutes.org/bc-pc/page/planning-commission-62>

III. PLANNING PUBLIC HEARING AND OPEN RECORD PERIOD

The Commission held a public hearing on March 13, 2025². One public comment was received prior to the hearing expressing general support. One member of the public provided verbal testimony at the public hearing expressing general support for the proposal and sought additional information on the applicability of requirements for a site-specific proposal.

Commissioners closed the oral portion of the public hearing and left the written record open until 4 p.m. on Wednesday, March 19, 2025. Commissioner Altman provided recommended clerical edits during the open record period. Staff has incorporated these recommendations into the updated proposed text amendments and findings attached to this memorandum.

Staff entered the Land Use Board of Appeals Case (No. 2021-053) into the record during the open record period. This case interprets requirements in state law as applied to a temporary hardship dwelling application in Lane County. The case relates to a unique situation and provides findings on a variety of issues. Staff provided highlights of the relevant sections in the case as they relate to this text amendment process.

To clarify and add to the information presented at the public hearing related to this case:

- The person suffering the hardship must be either an existing resident or a relative of a resident.
- The **existing resident** who is suffering the hardship (or whose relative is suffering the hardship) must reside in an existing dwelling.
- The existing resident has the flexibility to determine how care will be provided.
 - If the existing resident has a medical condition, the caregiver can reside in a temporary hardship dwelling on the property.
 - If a relative of the existing resident has a medical condition, the relative could live in the existing dwelling with the existing resident and a caregiver could reside in a temporary hardship dwelling on the property.
 - If the relative of the existing resident has a medical condition, the relative could live in a temporary hardship dwelling on the property and receive care from the existing resident or caregiver.
- The caregiver does not need to be related to the existing resident. The caregiver can be an unrelated person.

No additional public comments were received during the open record period.

IV. EXISTING BUILDINGS AND RURAL RESIDENTIAL EXCEPTION AREAS

Following the public hearing and open record period, staff was alerted to a provision within the Oregon Administrative Rule (OAR) that controls allowable uses in rural residential exception areas:

² <https://www.deschutes.org/bc-pc/page/planning-commission-63>

OAR 660-004-0040 Application of Goal 14 to Rural Residential Areas

(8)(f) *Except as provided in subsection (e) of this section or section (10) of this rule, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. **Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.** (emphasis added)*

This rule precludes the use of an existing building for a temporary hardship dwelling on rural residential lands. As it applies to this text amendment, existing buildings would not be an allowed hardship dwelling type for properties in the Rural Residential (RR-10), Multiple Use Agricultural (MUA-10), and Urban Holding (UH-10) Zones. In these zones, only an RV or manufactured home would be allowed.

To staff's understanding, this rule does not impact the allowance of the existing building type in other nonresource zones that allow a single-family dwelling, such as unincorporated community or rural commercial zones. The proposed amendments would allow the use of an existing building in those zones.

Staff will modify the amendments prior to the Board of County Commissioners' hearing to reflect this change.

V. DELIBERATIONS

As previously noted, Deschutes County can provide local interpretation of requirements that are not expressly addressed in the OAR or Oregon Revised Statute (ORS). Staff has identified several policy choices for the Planning Commission to weigh in on:

Policy Choice #1: "Existing Building" Definition

As noted above, state requirements limit the allowance of existing buildings as hardship dwellings in the MUA-10, RR-10, and UH-10 zones. Existing buildings are already allowed in farm and forest zones as prescribed by the OAR and ORS.

1. The proposed amendments would expand the allowance of an existing building as a hardship dwelling to the following zones:
 - 18.65.020, 021, 022: Rural Service Center Unincorporated Community Zones
 - 18.66.020, 030, 040, 050: Terrebonne Rural Community Zones
 - 18.67.020, 030, 040: Tumalo Rural Community Zones
 - 18.74.020: Rural Commercial Zone
 - 18.108.030, 110: Sunriver Unincorporated Community Zones
 - 18.110.020, 030: Resort Community Zone

Does the Planning Commission recommend the Board of County Commissioners adopt the expanded allowance of existing buildings as a hardship dwelling type in the above-listed zones?

- a. If yes, proceed to the next item.
 - b. If no, discuss whether to preserve the current allowance for farm and forest zones or to expand the allowance to specific zones.
2. State regulations do not define "existing buildings" for temporary hardship dwellings. To avoid a scenario in which a new building is constructed for temporary use, CDD staff identified a rolling eligibility date of two years from the date of final inspection of a building to the submittal date of the temporary use permit for a hardship dwelling. If the application is submitted prior to the two-year date, it does not constitute an "existing building."

Does the Planning Commission recommend the Board of County Commissioners adopt the amended existing building definition as identified by staff?

- a. If yes, proceed to the next item.
- b. If no, discuss whether the existing definition (*in existence on or before March 29, 2017*) is sufficient or if another definition is more appropriate.

Policy Choice #2: Restrictions on Additions and Modifications of Structures

Code Enforcement has processed several cases involving unsafe or illegal modification of RVs and existing buildings for hardship dwellings.

1. The text amendments continue to restrict permanent additions to RVs due to safety concerns from Building staff.

Does the Planning Commission recommend the Board of County Commissioners preserve the existing restriction on permanent additions?

- a. If yes, proceed to the next item.
 - b. If no, discuss preferred revisions to this item.
2. Staff is proposing a limitation on modification of existing buildings to minor improvements such as the installation of kitchen facilities, to support the temporary residential use. The limitation is drafted as follows: "*Any modifications to the existing building for the hardship dwelling must be contained within the existing building-floor area.*"

Does the Planning Commission recommend the Board of County Commissioners adopt the new restriction on modifications as identified by staff?

- a. If yes, proceed to the next item.
- b. If no, discuss preferred revisions to this item.

Policy Choice #3: RV Components

Code Enforcement has processed several cases involving non-operational RVs that are unfit for habitation. The text amendments preserve existing requirements related to the

necessary components and siting of an RV and also clarify that an RV must have a sink and a toilet. The proposed text amendments include the following component language:

A recreational vehicle hardship dwelling must comply with all of the following requirements:

- 1. The recreational vehicle must have a sink and toilet;*
- 2. The recreational vehicle must comply with all setbacks of the underlying zone(s);*
- 3. The recreational vehicle must be fully licensed;*
- 4. The recreational vehicle must be ready for highway use, on its wheels or jacking system, and must be attached to the site only by quick disconnect type utilities and security devices;*
- 5. A recreational vehicle hardship dwelling located in a special flood hazard area must comply with DCC 18.96.*

...

Does the Planning Commission recommend the Board of County Commissioners preserve the existing RV component requirements and adopt the requirement for a sink and toilet?

- a. If yes, proceed to the next item.
- b. If no, discuss preferred revisions to this item.

Planning Commissioners are welcome to raise additional items for deliberations as desired.

VI. NEXT STEPS

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation.

Ultimately, the Planning Commission will provide a recommendation to the Board. Options include:

- Recommend approval of amendments as drafted;
- Recommend approval of amendments with suggested edits or recommendations;
- Recommend denial of amendments;
- Other.

Attachments:

- Proposed Amendments and Draft Findings