



MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Tanya Saltzman, AICP, Senior Planner
DATE: January 26, 2022
SUBJECT: Senate Bill 391 / Rural Accessory Dwelling Units

The purpose of this work session is to update the Board of County Commissioners (Board) on:

- a) Legislative impediments pertaining to the intersection of SB 391 (rural ADUs) and SB 762 (wildfire mitigation) and pending solutions;
- b) The resulting revised timeline for local adoption and implementation; and
- c) The progress of other elements of the draft code

A. Legislative Issues and Proposed Solutions

As noted previously, SB 391 is intrinsically linked to the comprehensive wildlife bill, SB 762. However, due to the timing of the adoption of those two bills (first SB 391, then SB 762), certain references pertaining to specific wildfire criteria are now broken. Specifically:

SB 391, Section 2, (2)(k) requires that:

The lot or parcel and accessory dwelling unit comply with rules of the State Board of Forestry under ORS 477.015 to 477.061;

and Section 2, (2)(m)(C):

If the accessory dwelling unit is not subject to ORS 477.015 to 477.061, the accessory dwelling unit has defensible space and fuel break standards as developed in consultation with local fire protection service providers.

ORS 477.015 to 477.061 address the definition of the wildland urban interface (WUI), and the administration and definitions of defensible space standards set by the State Board of Forestry.

However, SB 762 created new procedures for defining the WUI, gave the responsibility for the administration and requirements for defensible space to the State Fire Marshal, and set the deadline for

establishing these standards to December 31, 2022. Most significantly, in doing so it deleted the above sections of ORS 477 that SB 391 refers to. While the intent (requiring defensible space standards) remains the same, without direct links to statute, SB 391—and ensuing local legislation—does not establish specific objective criteria for defensible space and thereby becomes not only impossible to administer, but also potentially legally vulnerable.

County staff brought this broken link to the attention of the Department of Land Conservation and Development (DLCD), the Association of Oregon Counties (AOC), as well as the County's lobbyist. As Deschutes County appears to be the first county to take advantage of the SB 391 legislation, this issue had not yet been raised elsewhere in the state.

Ultimately a patch to the wording of SB 391 has been proposed as a legislative concept for the upcoming legislative short session, changing the reference from the now-deleted ORS 477 sections to the applicable sections of SB 762. This patch will restore a direct reference to defensible space standards and administration. As anticipated, this will have a direct effect on the overall implementation timeline due to the section of law it refers to. Staff explored potential options of an interim standard for defensible space, but were advised by numerous state agencies, including the Governor's Office that this is not feasible in the legislative fix.

B. Timeline

As previously discussed with the Board, work on implementation of SB 391 is occurring on two parallel tracks: first, elements of the bill that require local interpretation/definition (i.e. distance from primary dwelling, adequate access for emergencies, etc.); second, wildfire requirements being developed at the state level. Staff is continuing to work the first track so that those pieces will be ready for presentation to the public when the state-level wildfire requirements are finalized.

Assuming the successful adoption of the above-noted legislative patch to SB 391, relevant dates noted in SB 762 are as follows:

- June 30, 2022: Statewide wildfire maps must be completed by the State Forestry Department and Oregon State University, and adopted per the requirements of SB 762.
- October 1, 2022: the Department of Consumer and Business Services shall adopt wildfire hazard mitigation building code standards that apply to new dwellings and the accessory structures of dwellings, as described in section R327 of the 2021 Oregon Residential Specialty Code (see below).
- December 31, 2022: State Fire Marshal shall establish minimum defensible space requirements for wildfire risk reduction on lands in areas identified on the map.
- April 1, 2023: The amended building code standards (R327) may not become operative before April 1, 2023.

Concerning the revised building codes, SB 391 contains the requirement that “Statewide wildfire risk maps have been approved *and the accessory dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area.*”

Upon consideration, staff believes that the adoption timeline of the amended R327 building code should dovetail with the overall adoption timeline of local rural ADU code adoption without significant additional delay. Staff will write the local legislation to reference the new building code, which per SB 762 will be adopted in October 2022 (and therefore accessible for review by future applicants) but not yet effective. Staff anticipates some coordination to be required concerning defensible space requirements once they are set by the state on December 31, 2022, meaning that by the time the public legislative amendment process is completed, the new building code should be effective, or extremely close to its effective date. Depending on the actual legislative amendment timeline, the effective date of the rural ADU ordinance can be the date the building code is operational—April 1, 2023.

C. Other Draft Code Components

Staff has been coordinating with other County departments and outside experts on the remaining provisions of the code. Notably, staff has made progress on the “adequate access/safe evacuation” criteria and anticipates those criteria will be more straightforward than originally anticipated. Staff’s goal is to present to the Board a draft version of the code—which in some areas will contain a couple of options for some criteria (i.e. distance from primary dwelling) but will be as complete as reasonably possible for the elements the County has control over—before pausing the process for several months while the wildfire criteria are finalized at the state level. This will allow staff to focus capacity on other high priority long-range projects, knowing that the rural ADU legislation will be ready to be revisited when the time comes. At that time, staff will begin the public process outlined previously. In addition, in the interim, staff will update the project web page and other communications/materials to reflect the revised timeline and of course will continue to relay that information to the public as inquiries are made.

D. Next Steps

Staff anticipates returning to the Board in four to six weeks with a preliminary code draft before temporarily pausing the project as outlined above.