



**MEMORANDUM**

**TO:** Deschutes County Board of Commissioners

**FROM:** Kyle Collins, Associate Planner

**DATE:** October 11, 2023

**SUBJECT:** Consideration of First and Second Reading – Rural Accessory Dwelling Unit (ADU) Amendments

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On October 18, 2023, staff will present Ordinance No. 2023-014 to the Board of County Commissioners (Board) for consideration of first and second reading. On August 9, 2023, the Board conducted deliberations to consider legislative text amendments concerning local provisions for rural accessory dwelling units (ADUs) as identified in Senate Bills (SB) 391<sup>1</sup> and 644<sup>2</sup> (file no. 247-22-000671-TA). The ordinance provided here reflects the decisions made during those deliberations.

Staff submitted an initial 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 17, 2022. A public hearing was held with the Deschutes County Planning Commission (Commission) on September 22, 2022<sup>3</sup>. The Commission held deliberations and provided recommendations on October 27, 2022<sup>4</sup>.

Subsequently, legislation was passed by the Oregon Legislature which required several changes to the original proposed amendments to maintain compliance with state standards. Specifically, SB 644 was passed in May 2023 and provides direction to local jurisdictions looking to adopt rural ADU standards prior to formal release of the Statewide Wildfire Hazard Map required by SBs 762 and 80. Additionally, SB 80<sup>5</sup> was passed which alters the original standards and terminology used within the forthcoming Statewide Wildfire Hazard Map. Per Board direction, staff submitted a revised 35-day PAPA notice to DLCD on June 7, 2023 and held a new work session with the Commission on July 13, 2023<sup>6</sup>.

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<sup>1</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0391/A-Engrossed>

<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB644/Enrolled>

<sup>3</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

<sup>4</sup> See Deschutes County Planning Commission October 27, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-21>

<sup>5</sup> <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB80/Enrolled>

<sup>6</sup> See Deschutes County Planning Commission July 13, 2023 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-29>

Following a Board work session on July 24, 2023<sup>7</sup> and public hearing on July 26, 2023<sup>8</sup>, the Board voted to keep the written record open until Wednesday August 9<sup>th</sup>, 2023 with deliberations scheduled for the same day.

## **I. RECORD**

The record, which contains all memoranda, notices, and written testimony received, is available at the following website: <https://www.deschutes.org/adu>

## **II. OVERVIEW OF ORDINANCE**

During deliberations, staff presented several decision points for Board consideration. A brief summary of the Board decisions and subsequent modifications to the draft amendments is provided below. For a more in-depth overview of each of these issues, please refer to the staff memorandum from deliberations on August 9, 2023.<sup>9</sup>

### **Primary Modifications**

#### **1. How should “Useable Floor Area” be defined?**

- “Useable floor area” is defined as “the area of the accessory dwelling unit included within the surrounding exterior walls, exclusive of garages, carports, decks and porch covers.”
- Based on staff’s understanding of the Board’s legislative intent and discussions during deliberations, language has been removed from the “useable floor area” definition to clarify that accessory components of ADUs such as garages can also be insulated without counting towards the 900 square-foot size limitation.

#### **2. How should the 100-Foot Siting Distance requirement be interpreted?**

- A unit must be located no farther than 100 feet from the existing single-family dwelling, measured from a wall of the single-family dwelling to the nearest part of the “useable floor area” of the accessory dwelling unit.
- Based on Board direction, staff has added the following exception language to the siting distance standard: “An existing structure converted to an accessory dwelling unit must be located no farther than 100 feet from the existing single-family dwelling, measured from existing single-family dwelling to the nearest part of the accessory dwelling unit structure. For the purposes of this section, “existing” means the structure was lawfully established on or before

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<sup>7</sup> See Board of County Commissioners July 24, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-115>

<sup>8</sup> See Board of County Commissioners July 26, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-116>

<sup>9</sup> See Board of County Commissioners August 9, 2023 Agenda for more information: <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

October 18, 2023.” As currently defined, the “accessory dwelling unit structure” can include any portion of an ADU, including garages and any other components not included in the “useable floor area” definition. The October 18, 2023 date is based on a presumption of Board adoption by emergency during the October 18, 2023 work session. Should the Board elect to follow a different path, this language will need to be modified accordingly.

**3. To maintain Southern Deschutes County Groundwater Protection efforts, should rural ADUs in Southern Deschutes County be limited to properties 5 acres or larger?**

- Based on Board direction, staff has modified the code to allow ADU development on qualifying properties 2 acres or larger County-wide, including Southern Deschutes County, pursuant to state statute standards.

**4. Should rural ADU development be allowed in designated Goal 5 areas such as the Wildlife Area Combining Zone, subject to existing standards and requirements?**

- The code allows ADU development in designated Goal 5 areas subject to existing standards and requirements.

**5. Do the current amendments adequately address Senate Bill 762, Senate Bill 80, and Wildfire Mitigation?**

- Based on concerns from Community Development staff and local fire protection officials, certain features of the wildfire mitigation standards have been slightly modified. These modifications do not appreciably alter the original proposal, but rather provide greater direction and clarity for implementation purposes.
- For example, the dimensional standards for adequate access and onsite driveways have been modified from requiring a “20-foot minimum width, with minimum vertical clearance of 13.5 feet” to a “12-foot minimum width, a minimum horizontal clearance of 20 feet, and a minimum vertical clearance of 13.5 feet.” These standards align with best practices from other jurisdictions and minimum standards from several fire protection districts. All other components of the adequate access standards remain unchanged from the original proposal.
- Additionally, based on further discussion with Community Development staff, it has been concluded that “staged evacuation areas” are formally determined during specific emergency situations and thus it may be unnecessary or misleading to have potential future applicants identify specific evacuation sites prior to development of an ADU. Based on this interpretation and nuance, the code has been modified to only require formal “written authorization from the property owner(s) of the staged evacuation area” in the event that property owners would rather identify private parcels as staged evacuation areas instead of formal sites identified during a specific emergency event. All other applicants will be notified at the time of application that staged evacuation areas will be identified by emergency services personnel during an evacuation event

and applicants will be directed to emergency notification networks in Deschutes County such as Deschutes Alerts<sup>10</sup>.

## **6. Should ADUs be allowed in the Westside Transect Zone?**

- Based on Board direction, staff has modified the amendments to allow ADU development within the Westside Transect Zone.

## **7. Should Vacation Occupancy be prohibited in the existing residence, as well as the ADU?**

- Based on Board direction, staff has modified the amendments to prohibit vacation occupancy within the ADU as well as the primary dwelling.

## **Secondary Modifications**

After discussions with Community Development staff, a number of minor modifications have been made to the previous amendments which are intended to facilitate implementation of the ADU program and provide clear direction for both staff and applicants. These minor modifications do not change the legislative intent of the previous amendments, but add clarifying standards or new definitions when previous language may have offered competing interpretations. These changes can be summarized as follows:

- Several amendments have been modified to clarify when application or verification materials are required during a formal ADU application process. For example, language has been included to require applicants to receive approval from a sewer authority or the Deschutes County Onsite Wastewater Division for onsite wastewater disposal and treatment, prior to an application for an ADU.
- A new definition for “accessory dwelling unit structure” has been added to provide guidance for standards which may affect areas of a proposed ADU outside of the “useable floor area,” such as setbacks or wildfire mitigation building standards. This new definition is as follows: “Accessory dwelling unit structure” means all areas of an accessory dwelling unit inclusive of garages, carports, decks, and porch covers.
- A clarification has been added to ensure that all structures which serve a primarily residential dwelling use, such as additional ADUs, guest houses, or temporary residences such as medical hardship dwellings will be disallowed on properties containing an approved ADU.

## **II. NEXT STEPS & STAFF RECOMMENDATION**

As noted in the language of Ordinance No. 2023-014, staff has recommended that the Board vote on and adopt the ordinance by emergency, with an effective date of 30 days and after final acknowledgement

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<sup>10</sup> <https://www.deschutes.org/911/page/sign-deschutes-alerts>

by the Department of Land Conservation and Development (DLCD). This proposed action requires a unanimous vote. Alternatively, if the vote is not unanimous, the Board will hold first and second readings at least 14 days apart, and then the ordinance will be effective 90 days after second reading. Should the Board elect to follow an approach different than that offered by staff, the existing ordinance language will need to be modified for a future Board meeting concerning first reading.

Attachments:

Ordinance No. 2023-014 and Corresponding Exhibits – Emergency