



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Peter Gutowsky, AICP, Planning Manager
Tanya Saltzman, AICP, Senior Planner

DATE: September 2, 2021

SUBJECT: Senate Bill 391 / Rural Accessory Dwelling Units

The purpose of this work session is to update the Planning Commission on staff’s recent follow up with the Board of County Commissioners’ (Board) desired strategies for implementation of Senate Bill (SB) 391, which allows counties to allow accessory dwelling units (ADUs) in rural residential areas. Staff introduced the basic components of the new law to the Board on July 14, 2021.¹ During that session, staff noted that although implementation ultimately cannot take place until the adoption of statewide wildfire hazard maps in June 2022, there are numerous other provisions of the law that must be addressed at the County level, each with varying degrees of complexity.

Staff presented these provisions to the Board on September 1 to identify appropriate decision-making strategies. Below, staff divides the law’s various criteria into categories depending on what type of action might be most appropriate—some may be addressed by a relatively simple decision by the Board; some might lend themselves more to community conversations; some may require engagement of partner agencies or experts. This essentially creates a “to do” list for both staff and the Board to address over the coming months, with the goal of defining all criteria that allow local control by the time the wildfire maps are approved at the state level in June of 2022.

I. SB 391 Matrix

The matrix below, which provides a summary of criteria contained in SB 391, was presented to the Board on July 14; it is reproduced here again in its entirety as it provides the background for the majority of potential decision points. It is also important to note that the law allows counties to impose additional restrictions (for instance, regulating garages). Staff anticipates that additional provisions may emerge as part of the process, but since they are yet to be determined, they do not appear in this matrix.

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-42>

SB 391 – Rural Accessory Dwelling Unit Legislation

| Eligibility | Restrictions | Comments |
|---|---|--|
| 1. Rural Residential Exception Areas, Minimum Lot Size, and Dwelling Requirements | <ul style="list-style-type: none"> • Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10) and Suburban Residential (SR 2.5) zones. • Lot or parcel must be at least two acres in size. • One single-family dwelling must be sited on the lot or parcel. | <ul style="list-style-type: none"> • There are over 10,000 lots in Southern Deschutes County. The Oregon Department of Environmental Quality (DEQ), the US Geological Survey (USGS) and Deschutes County have determined that the safety of the groundwater in southern Deschutes County is threatened by nitrate contamination from traditional onsite septic wastewater treatment systems.² • Consider raising the eligible lot or parcel size in this area (South of Sunriver) to 5 to 10 acres. |
| 2. Existing Dwelling Nuisance | The existing single-family dwelling is not subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600. | <ul style="list-style-type: none"> • ORS 105.550 to 105.600, Abatement of Nuisance, provide local governments specific authority to abate certain public nuisance activities that affects the health, safety and welfare of its community. |
| 3. ADU Sanitation Requirements | The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment. | <ul style="list-style-type: none"> • In Southern Deschutes County, rural residential density, even at two acres, can create physical challenges for upgrading conventional septic systems and drainfields. • Consider raising the eligible lot or parcel size in this area (South of Sunriver) to 5 to 10 acres. |
| 4. ADU Square Footage Requirements | The ADU cannot include more than 900 square feet of useable floor area. | Useable floor area is undefined. |
| 5. ADU Distance Requirements | The ADU is required to be located no farther than 100 feet from the existing single-family dwelling. | It is unclear whether the ADU in its entirety must be within 100 feet of the existing single-family dwelling or just a portion. |

² <https://www.oregon.gov/deq/wq/programs/Pages/Deschutes-Klamath-Groundwater-Protection.aspx>

| Eligibility | Restrictions | Comments |
|--|--|--|
| 6. ADU Water Supply Requirements | If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission. | The Water Resource Commission has not restricted new or existing domestic water use in Deschutes County for 1) watering any lawn or noncommercial garden, not exceeding one-half acre, or 2) serving a domestic use, not exceeding 15,000 gallons a day. |
| 7. ADU Water Supply Source Option | A county may require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling, provided such is allowed by an existing water right or a use under ORS 537.545 (exempt uses). ³ | This provision is optional. |
| 8. ADU / Metolius Area of Critical State Concern / Limitations | No portion of a lot or parcel can be within a designated area of critical state concern. | The Oregon legislature designated the Metolius River Basin as an “area of critical statewide concern” in 2009. |
| 9. ADU Setback Requirements | The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use. | Adequate setbacks are not defined. |

³ https://oregon.public.law/statutes/ors_537.545

| Eligibility | Restrictions | Comments |
|--|---|---|
| 10. ADU / Wildland-Urban Interface Requirements | The lot or parcel must comply with the rules of the State Board of Forestry under ORS 477.015 to 477.061. ⁴ | ORS 477 pertains to the wildland-urban interface (WUI), formerly known as the forestland-urban interface. SB 762, adopted in June 2021, rewrites several sections of ORS 477 cited in SB 391. Most significantly, the new provisions of ORS 477 require the State Board of Forestry to define the wildland-urban interface based on national best practices and define criteria and classes of the WUI to be included in the statewide wildfire hazard map. Until the provisions of the revised ORS 477 are met at the state level, the County will be unable to define the related criteria in SB 391. |
| 11. ADU / Outside Wildland-Urban Interface Area Requirements | If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined wildland-urban interface), it must have defensible space and fuel break standards as developed in consultation with local fire protection service providers. | See above re: ORS 477. |

⁴ Provisions in ORS 477.015-061, Urban Interface Fire Protection, were established through efforts of the Oregon Department of Forestry, the Office of the State Fire Marshal, fire service agencies from across the state, and the Commissioners of Deschutes, Jefferson, and Jackson Counties. It is designed to address the expanding interface wildfire problem within Oregon Department of Forestry Fire Protection Districts. Full implementation of the statute occurred on January 1, 2002. The statute does the following:

1. Directs the State Forester to establish a system of classifying forestland-urban interface areas;
2. Defines forestland-urban interface areas;
3. Provides education to property owners about fire hazards in forestland-urban interface areas. Allows for a forestland-urban interface county committee to establish classification standards;
4. Requires maps identifying classified areas to be made public;
5. Requires public hearings and mailings to affected property owners on proposed classifications;
6. Allows property owners appeal rights;
7. Directs the Board of Forestry to promulgate rules that set minimum acceptable standards to minimize and mitigate fire hazards within forestland-urban interface areas; and
8. Creates a certification system for property owners meeting acceptable standards. Establishes a \$100,000 liability limit for cost of suppressing fires, if certification requirements are not met.

| Eligibility | Restrictions | Comments |
|--|---|---|
| 12. ADU / Statewide Wildfire Map Requirements | <ul style="list-style-type: none"> Statewide wildfire risk maps must first be approved per SB 762. ADUs are then required to comply with the Oregon residential specialty code relating to wildfire hazard mitigation for the mapped area (R327.4). | The State of Oregon wildfire risk maps are anticipated for adoption in mid-2022. |
| 13. ADU Adequate Access and Evacuation for Firefighting Requirements | Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas | This provision will require coordination with Rural Fire Protection and Road Districts. Adequate access, safe evacuation and staged evacuation areas are not defined. |
| 14. ADU Occupancy Requirements | ADUs cannot be allowed for vacation occupancy, as defined in ORS 90.100. | Consider requiring a restrictive covenant that is recorded, prohibiting the ADU from being used as a vacation rental. |
| 15. ADU Land Division Requirements | If land divided, the single family dwelling and ADU cannot be situated on a different lot or parcel. | None. |
| 16. ADU / Additional Units | A second ADU is not allowed. | Legislative amendments will need to clarify that a medical hardship dwelling and/or RV are not allowed. |

II. Decision Points by Category

Below, staff offered for the Board’s consideration the organization of the above criteria into several categories of ways the Board may choose to define said criteria. These categories will enable the Board and staff to more efficiently undertake the numerous components of the law as well as determine what issues may require more resources and/or time to address.

A. Criteria that can be determined directly by the Board

This category of criteria includes decisions that appear to be relatively straightforward. Staff can conduct research and/or provide background to the Board to enable informed decision-making for each item.

| Topic | Description | Decision Point/Action |
|---------------------------|---|---|
| ADU Square Footage | ADUs cannot include more than 900 square feet of “useable floor area.” | Define “useable floor area” |
| ADU Distance Requirements | The ADU is required to be located no farther than 100 feet from the existing single-family dwelling. | Determine whether the ADU in its entirety must be within 100 feet of the existing single-family dwelling or just a portion. |
| ADU Occupancy | ADUs cannot be allowed for vacation occupancy | Determine how to enforce (i.e. restrictive covenant or other?) |
| ADU Water Supply | A county may require that an ADU be served by the same water supply source or water supply system as the existing single-family dwelling, provided such is allowed by an existing water right or a use under ORS 537.545 (exempt uses). | Determine if the county should require the ADU to be served by the same water supply |
| ADU Setback Requirements | The ADU is required to have adequate setbacks from adjacent lands zoned Exclusive Farm Use (EFU) or Forest Use. | Define “adequate setbacks” |
| Decision Type | While not part of the text of SB 391, the county may decide to process rural ADU applications ministerially or as a limited land use decision. This will have an effect on the requirements set forth in the code. | Decide preferred procedure for processing applications |

B. Criteria that requires staff coordination with outside experts/agencies

This category of criteria will require input from and coordination with experts or agencies/groups from outside of Community Development, and may entail a process that takes several meetings (internal, external, reporting back to the Board).

| Topic | Description | Decision Point/Action |
|--|--|---|
| ADU Adequate Access and Evacuation for Firefighting Requirements | Local regulations must ensure the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas. | <ul style="list-style-type: none"> • Coordinate with Rural Fire Protection and Road Districts. • Define adequate access, safe evacuation and staged evacuation areas. |

C. Criteria that the Board may consider for community conversations

This category of criteria is more complex than those listed above, and may benefit from outreach or community conversations in some form, whether a survey, open house, or other type of public forum. The Board may also choose to take action directly (as with the provisions in Section A above) and allow the public to weigh in during the formal adoption process, as they will for all provisions of the law.

| Topic | Description | Decision Point/Action |
|--|---|---|
| Minimum lot size for eligible properties | <ul style="list-style-type: none"> • Lot or parcel must be at least two acres in size. • The ADU must comply with all applicable laws and regulations relating to sanitization and wastewater disposal and treatment. | <ul style="list-style-type: none"> • Consider raising the eligible lot or parcel size in this area (South of Sunriver) to 5 to 10 acres. • In Southern Deschutes County, rural residential density, even at two acres, can create physical challenges for upgrading conventional septic systems and drainfields. • There are over 10,000 lots in Southern Deschutes County. The Oregon Department of Environmental Quality (DEQ), the US Geological Survey (USGS) and Deschutes County have determined that the safety of the groundwater in southern Deschutes County is threatened by nitrate contamination from traditional onsite septic wastewater treatment systems. |
| Wildlife Area Combining Zone compatibility | The introduction of rural ADUs in certain areas could require analysis relating to Goal 5 wildlife resources. | While not addressed in SB 391, the Board may want to consider compatibility of rural ADUs with the Wildlife Area Combining Zone |

D. Wildfire-related criteria - no current actions required for the Board

This category of criteria relate to wildfire, and are linked to Senate Bill 762, which addresses wildfire in a comprehensive, far-reaching law that continues to be monitored by staff and discussed with the Board. Until milestones are met for SB 762, there are no action items or decision points for the Board.

| Topic | Description | Decision Point/Action |
|---|---|--|
| Statewide wildfire risk maps | Statewide wildfire risk maps must first be approved per SB 762. | <ul style="list-style-type: none"> No Board decision – maps will be adopted in June 2022 |
| Wildland-Urban Interface (WUI) requirements | The lot or parcel and accessory dwelling unit must comply with rules of the State Board of Forestry under ORS 477.015 to 477.061 | <ul style="list-style-type: none"> No Board action at this time. Until the provisions of the revised ORS 477 are met at the state level, the County will be unable to define the related criteria in SB 391. ORS 477 pertains to the wildland-urban interface (WUI), formerly known as the forestland-urban interface. SB 762 rewrites several sections of ORS 477 cited in SB 391. Most significantly, the new provisions of ORS 477 require the State Board of Forestry to define the wildland-urban interface based on national best practices and define criteria and classes of the WUI to be included in the statewide wildfire hazard map. |
| Non-Wildland-Urban Interface (WUI) Requirements | If the ADU is not subject to ORS 477.015 to 477.061 (i.e. outside of the newly-defined wildland-urban interface), it must have defensible space and fuel break standards as developed in consultation with local fire protection service providers. | <ul style="list-style-type: none"> Similar to the above item, no Board action until the provisions of ORS 477 (WUI definition) are met. Depending on definition, staff may need to coordinate with rural fire protection districts to develop defensible space and fuel break standards. |

E. Criteria requiring no action at this time

This category of criteria requires no decisions or actions by the Board or staff other than eventually incorporating language into proposed code amendments.

| Topic | Description | Decision Point/Action |
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| Zoning | Applies to Rural Residential (RR10), Multiple Use Agricultural (MUA10), Urban Area Reserve (UAR-10) and Suburban Residential (SR 2.5) zones. | None |
| Existing dwellings | One single-family dwelling must be sited on the lot or parcel. | None |
| Existing dwelling nuisance | The existing single-family dwelling cannot be subject to an order declaring it a nuisance or pending action under ORS 105.550 to 105.600. | None |
| ADU Water Supply | If the ADU is relying on a domestic well, no portion of the lot or parcel can be within new or existing ground water uses restricted by the Water Resource Commission. | None - The Water Resource Commission has not restricted new or existing domestic water use in Deschutes County for 1) watering any lawn or noncommercial garden, not exceeding one-half acre, or 2) serving a domestic use, not exceeding 15,000 gallons a day. |
| Area of Critical State Concern / Limitations | No portion of a lot or parcel can be within a designated area of critical state concern. | Properties within the Metolius River Basin Area of Critical State Concern will not be eligible. |
| Urban Reserve | The lot or parcel cannot be located within an area designated as an urban reserve as defined in ORS 195.137. | None. |
| Land Division Requirements | If land divided, the single family dwelling and ADU cannot be situated on a different lot or parcel. | None. |
| Additional Units | A second ADU is not allowed | Legislative amendments will need to clarify that a medical hardship dwelling and/or RV are not allowed. |

III. Next Steps

Staff will continue to update the Planning Commission on the progress of SB 391 decision making. Staff will return to the Board in approximately one month to address a selection of criteria chosen from the above tables, addressing criteria in batches as the Board sees fit over the next several months.