



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Kyle Collins, Associate Planner

DATE: January 29, 2025

SUBJECT: Preparation for Public Hearing: Clear and Objective Housing Text Amendments – Definitions, Dimensional Standards, and Accessory Uses

The Deschutes Board of Commissioners (Board) will conduct a work session on February 3, 2025 to consider text amendments establishing “clear and objective” housing development standards (file no. 247-24-000705-TA). This work session is in preparation for a public hearing scheduled for February 12, 2025. Attached to this memorandum are the proposed text amendments and a staff report summarizing the changes. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~. The public hearing will be conducted in-person, electronically, and by phone.¹

All record materials can be found on the project website: <https://bit.ly/DeschutesClearAndObjective>

I. BACKGROUND

Beginning in 2017, the Oregon State Legislature passed a series of bills to encourage efforts to expand the supply of housing statewide. The passage of Senate Bill (SB) 1051 prohibited cities from denying applications for housing developments within urban growth boundaries, provided those applications complied with “clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”²

The provisions of SB 1051, along with subsequent bills, modified Oregon Revised Statutes (ORS) 197.286–197.314. Of relevance to the current project is ORS 197.307(4)³ which was modified to state:

(1) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

¹ See Board of County Commissioners February 12, 2025 Agenda for more information:

<https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-213>

² <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051/Enrolled>

³ https://oregon.public.law/statutes/ors_197.307

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

In 2023, ORS 197A.400⁴ (formerly ORS 197.307, as referenced above) was established by House Bill (HB) 3197⁵. The newly established ORS 197A.400 will become effective on July 1, 2025, and states the following [emphasis added]:

*(1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary, **unincorporated communities designated in a county’s acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501.** The standards, conditions and procedures:*

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay

...

(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (1) of this section.

These provisions require local governments to apply only clear and objective standards, criteria, and procedures to applications for housing projects and may not discourage housing through unreasonable delay. Application of typical discretionary standards (e.g. “adequate public facilities,” “effective mitigation,” etc.) is prohibited. The statute is intended to address the concern that use of discretionary criteria leads to uncertainty, inconsistent administration, and delays that do not serve the goal of efficiently providing an adequate supply of housing stock.

⁴ https://www.oregonlegislature.gov/bills_laws/ors/ors197a.html

⁵ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3197/Enrolled>

II. OVERVIEW OF AMENDMENTS

Numerous sections and language in the Deschutes County Code (DCC) affecting the development of housing do not currently meet the identified thresholds for “clear and objective” standards outlined in HB 3197. The primary focus of the Clear and Objective Code Compliance Project is to ensure the DCC complies with state statute and the objectives of the Deschutes County Comprehensive Plan.

With the assistance of consultants from MIG, planning staff have identified areas of the DCC that are not in compliance with statute and drafted packages of text amendments to address each issue. These packages have been broken into distinct segments to provide the public, the Deschutes County Planning Commission, and the Board the opportunity to review and vet the proposed changes in a more structured and confined way.

Where possible, planning staff have endeavored to draft amendments that are a policy-neutral conversion of existing discretionary language to non-discretionary language. This ensures the original intent and desired outcome is preserved. When not possible, in certain limited circumstances alternative standards or criteria have been proposed. Additionally, while not exclusively associated with housing development, as part of this process certain amendments have been proposed to broadly remove ambiguity from implementing sections of the DCC, maintain conformity across all development standards, and ensure review clarity for staff and members of the public.

The first amendment package proposed through this process will broadly cover the following areas of the DCC:

- Definitions for the Deschutes County Zoning Code (DCC Title 18) and the Bend Urban Growth Boundary Zoning Ordinance (Title 19)
- Dimensional standards (e.g. height, structural footprints, setbacks, etc.) for Titles 18 and 19
- Accessory structure standards for Titles 18 and 19

III. METHODOLOGY AND APPROACH

As noted above, staff has grouped the first proposed package of amendments to address the DCC definitions, dimensional or measurement standards, and the uses and standards associated with accessory structures. Each of these sections has been addressed as follows:

Definitions

Definitions are the foundational principle for all areas of the development code. Staff has modified the County’s existing land use/planning definitions in the following ways:

- 1) If an existing term has a definition in the ORS, that existing terminology has been adopted verbatim or by reference. Staff understands that ORS terminology takes precedence over the requirements for clear and objective standards, even if these definitions contain some non-objective language.

- 2) If an existing definition has subjective language (e.g. “adequate,” “designed for,” etc.) that could be replaced with measurable, quantitative standards, then those new standards have been used.
- 3) If an existing term has criteria which could reasonably be interpreted in multiple ways (e.g. How should the height of a structure be measured? etc.), then explicit directions on how to interpret the standard have been included within the definition itself or new terms have been added to further clarify inter-definition relationships.
- 4) If two or more existing terms provided conflicting interpretations (e.g. “lot width versus “lot depth,” “yard” versus “setback,” etc.), then these terms were simplified into a single term to remove unintentional conflicts.
- 5) If an existing term has language which has previously been deemed unconstitutional or otherwise unlawful (e.g. Defining a “dwelling unit” based on familial relationships, etc.), then those terms have been modified to remove the offending language.

Additionally, certain terms within the existing code have been subject to numerous interpretive challenges over many years (e.g. What types of development constitute “structures?”), and where possible staff has attempted to provide these terms with the broadest possible interpretation and/or align these terms with previous Hearings Officer or Board decisions which have clarified the matter at hand.

Finally, as modified definitions could potentially have cascading effects throughout the remaining portion of the DCC, staff has attempted to align all uses of these terms with the new proposed definitions, while maintaining the original intent as much as possible within each corresponding code section.

Dimensional Standards

Dimensional standards can be categorized as any criteria which require a specific quantitative measurement (e.g. height, setbacks, lot coverage, floor area, etc.). As dimensional standards are another foundational principle for administering the development code, staff has modified several areas of the code dealing with these standards to remove ambiguity and provide explicit directions in how the measurements should be evaluated.

To provide specific examples:

- 1) Nearly all zones have specific height limitations on structures. However, the current DCC is ambiguous in how to evaluate structural height, particularly on properties with sloping or irregular topography. This ambiguity can produce varying height calculations depending on where a specific measurement is taken. Staff has proposed a new definition for “height” which explicitly defines how the height of all structures should be evaluated, regardless of topography, structural design, or other variables. This new “height” definition necessitated the inclusion of other terms which did not previously exist in the DCC to provide clarity for applicants and staff, such as “average grade,” “existing grade,” and “finished grade.”

- 2) All zones have specific setback standards which outline the distance required between structures and lot lines or other designated features such as the Ordinary High Water Mark of rivers and streams. However, certain features which interact with setback standards such as “front lot lines” are difficult to identify under the current code in certain circumstances. “Front lot line” is currently defined as:

“...the lot line separating a lot from a street other than an alley. In the case of a lot that does not front directly on any street, the front lot line shall be that lot line parallel to and facing the same direction as the front lot lines of the majority of other properties in the immediate area.”

The application of “the majority of other properties in the immediate area,” is a subjective standard and could make setback standards for a property difficult or impossible to evaluate. As such, “front lot line” and the corresponding setback standards have been modified to state:

“...In the case of a lot or parcel that does not have street frontage, a front lot line shall be any lot line through which driveway access to the property is provided.”

- 3) Most zones have specific standards for lot coverage, which is the amount of area within an individual property which can be developed with structures. However, the existing DCC remained ambiguous on which structures should be counted towards lot coverage requirements, and which structures should be provided an exemption given the general intent of the standard. The proposed amendments clarify that only those structures which exceed 18 inches above finished grade shall be counted toward lot coverage measurements, allowing for structures such as at-grade patios a minor exemption.

Accessory Uses

Finally, given that clear and objective standards are now required for all housing development, it is important to distinguish between what constitutes a dwelling unit and structures which may be accessory to a dwelling unit or another use on a property. Distinguishing between these various structures and uses requires an explicit set of standards governing what features or uses are allowed within a particular structure.

Community Development Department (CDD) staff continually face challenges in implementing the development code when reviewing applications which appear to fall within a definitional transition between dwelling units and accessory structures such as detached garages, storage buildings, shops, etc. Most zones in Deschutes County only allow the establishment of a single (1) dwelling-unit on a particular property (notwithstanding developments such as Accessory Dwelling Units). Applicants commonly propose establishing accessory structures which contain numerous elements which could be construed to allow residential dwelling use, such as kitchens, full bathrooms, and/or laundry facilities. Historically, staff have attempted to limit these uses through land use decisions or recording legal documents for the property warning future owners that such structures cannot be utilized as secondary dwelling units without adequate land use approval.

To remove ambiguity for both applicants and CDD staff, portions of the code dealing with accessory structures and uses have been modified in the following ways:

- 1) Outlining specifically which components, when taken together, constitute a “dwelling unit.” As proposed, structures will be considered dwelling units when they contain the following:
 - One or more persons living together
 - Provisions for sleeping, cooking, and sanitation
 - One kitchen (“kitchen” has been further defined in the proposed amendments)
 - At least one full bath (“baths,” including “full baths,” have been further defined in the proposed amendments)
- 2) Outlining which components may be allowed within accessory structures, and codifying a formal process to ensure accessory structures are not unlawfully converted to, or otherwise use for, dwelling purposes.

These proposed changes codify longstanding policies from CDD and provide clear direction for the development of housing and accessory structures, while removing legal risk and uncertainty for future property owners in the County.

IV. PUBLIC TESTIMONY & DISCUSSION

The following public comments have been received regarding the proposed amendments:

1. *Robin Hayakawa, Central Oregon LandWatch:* LandWatch expressed concerns regarding the inclusion of the proposed definition “incidental and subordinate.” Specifically, it was noted that the terms “incidental and subordinate” have specific meanings outlined in the Oregon Revised Statutes (ORS) and the Oregon Administrative Rules (OAR) when dealing with resource zoned lands.

To ensure consistency with state law, LandWatch recommends that the County amend the proposed definition so that, when applied to resource land uses, so that it aligns with the definition under OAR 660-033-0130(42)(a). OAR 660-033-0130(42)(a) specifically provides that "A determination under ORS 215.213(11) or 215.283(4) that an event or activity is ‘incidental and subordinate’ requires consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective farm and event uses, that bear on whether the existing farm use remains the predominant use of the tract."

2. *Nunzie Gould:* Ms. Gould’s provided testimony during the public hearing before the Deschutes County Planning Commission (Commission) and in supplementary comments following that process. The testimony broadly covered the following themes:
 - The necessity of balancing various values such as housing affordability when drafting legislative amendments.
 - A desire to evaluate the entire suite of proposed Clear and Objective Housing amendments

collectively that will ultimately be included in the project.

- A general desire that housing should be located inside Urban Growth Boundaries (UGBs) where it can be served equitably by public transit and multimodal transportation for the safety of dwellers and to reduce climate emissions.
 - A request that additional new terminology be added to the proposed “Grade” definition to distinguish between natural and existing grade, particularly in areas outside of the Landscape Management Combining Zone.
3. *Matt Cyrus, Deschutes County Planning Commission Chair:* Chair Cyrus requested a revision to the proposed “grade” definitions in DCC Titles 18 and 19. Specifically, Chair Cyrus expressed concern that the proposed “average grade” definition, which determines the point from which the height of a structure would be evaluated, would be prohibitively restrictive when evaluating structures which have development partially below ground elevation, as in a “walkout basement.”

Commissioner Cyrus proposed the following replacement definition:

“Grade, average”, for the purposes of calculating structural height, means the average of four points which shall be the highest finished grade abutting the structure and the lowest finished grade abutting the structure for each of the four sides or elevations.

V. PLANNING COMMISSION REVIEW & DISCUSSION

Staff presented information on the proposed amendments at a Planning Commission work session on December 12, 2024⁶. The Commission held a public hearing on January 9, 2025⁷ and left the written record open until January 16, 2025 at 4:00 p.m. The Commission held deliberations on January 23, 2025⁸, ultimately recommending approval of the proposal with unanimous consent among the Commissioners.

During the public hearing and deliberations process, Commissioners discussed the following themes and issues:

- A general understanding that the amendments presented during the public hearing represent a “point in time” snapshot of the proposal, and specific language would be subject to changes as additional issues were discovered and addressed by Planning staff and partner Divisions in CDD.
- Debate surrounding specific language choices related to definitions such as:
 - Average Grade
 - Dwelling Unit
 - Kitchen

⁶ <https://www.deschutes.org/bc-pc/page/planning-commission-48>

⁷ <https://www.deschutes.org/bc-pc/page/planning-commission-49>

⁸ <https://www.deschutes.org/bc-pc/page/planning-commission-55>

- Discussion with staff regarding if and when the Commission would be presented the opportunity for further review should any significant changes be necessary in future amendment packages or during the Board review process.

Staff assured the Commission that future review of changes to any proposed amendments could be provided if directed by the Board.

Additionally, staff addressed many of the public comments submitted and noted where alterations were proposed to address any potential concerns. Outside of scrivener's edits, noteworthy changes are illustrated in the proposed amendments package attached to this memo and broadly cover the following areas:

- Alterations to DCC 18.116.040 and 19.92.020, dealing with the provisions of features allowed in dwelling units and accessory structures. Two additional sections, DCC 18.116.045 and 19.92.025, have been proposed to clarify the types of features expressly allowed within dwelling units. Staff has included language which clarifies the following items when evaluating residential developments to ensure consistency in interpretation for both property owners and County staff:
 1. Building features which are allowed outright in both dwellings and accessory structures.
 2. Building features which are allowed upon recording of a Deschutes County restrictive covenant ensuring that all uses will remain in compliance with the relevant land use regulations.
 3. Building features which are allowed upon issuance of an approved land use permit which includes a finding that the proposed use is allowed on the subject lot or parcel.
- In response to the comments from Central Oregon LandWatch discussed above, the following language has been included in the Definitions sections of both Titles 18 and 19:

As used in DCC Title 18, the following words and phrases shall mean as set forth in DCC 18.04.030, or, where such words and phrases are defined in applicable Oregon Revised Statutes (ORS) and/or Oregon Administrative Rules (OAR), as defined therein. If there is any conflict between the definitions set forth in DCC 18.04.030 and the definitions of the same words and phrases in applicable ORS and/or OAR, the definitions in ORS and/or OAR shall prevail."

As used in DCC Title 19, words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; unless the context clearly indicates the contrary, the word "shall" is mandatory and not discretionary; the word "may" is permissive; the masculine gender includes the feminine and neuter; and the term "this title" shall be deemed to include the text of this title and accompanying zoning maps and all amendments hereafter made thereto. As used in this title, unless the context requires otherwise, the following words and phrases shall be defined as set forth in DCC 19.04.040, or, where such words and phrases are defined in applicable Oregon Revised Statutes (ORS) and/or Oregon Administrative Rules (OAR), as defined therein. If there is any conflict

between the definitions set forth in DCC 19.04.040 and the definitions of the same words and phrases in applicable ORS and/or OAR, the definitions in ORS and/or OAR shall prevail.

- In response to Chair Cyrus' comments discussed above, the following language has been included in both the Definitions and Exceptions sections of Titles 18 and 19 dealing with "average grade":

"Grade, average", for the purposes of calculating structural height, shall be the average of two points which shall be the highest finished grade abutting a structure and the lowest finished grade abutting the structure.

For the purposes of calculating structural height, the following method may be used as a discretionary alternative when determining average grade:

Perimeter Sampling Method: The average of eight measurements around the entire structural footprint perimeter, with the first measurement point starting at the lowest finished grade abutting the structure, and subsequent measurement points spaced equidistantly along the finished grade abutting the structure.

VI. FUTURE AMENDMENTS

As noted above, the proposed amendments presented herein are the first of several code modifications which will be proposed over the coming months. Upcoming text amendment proposals will address the following areas, subject to modifications as the process unfolds:

- Deschutes County Subdivision and Partition Standards (DCC Title 12 and 17)
- Deschutes County Goal 5 Resources – Natural Resources (Landscape Management Combining Zones, Wildlife Area Combining Zones, Wetlands and Riparian Resources, etc.)
- Cluster and Planned Development Standards
- Additional Sections Most Pertinent to the Development of Housing

VII. NEXT STEPS

A public hearing with the Board is scheduled for February 12, 2025.

Attachments:

- 1) Staff Report & Proposed Text Amendments