



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner
Peter Gutowsky, AICP, Director

DATE: October 21, 2021

SUBJECT: Senate Bill 391 / Rural Accessory Dwelling Units

The purpose of this work session is to:

- a) Present to the Board of County Commissioners (Board) a preliminary draft of code language pertaining to SB 391, Rural Accessory Dwelling Units;
- b) Discuss the anticipated adoption timeline;
- c) Discuss the opportunities and challenges with respect to adopting state statute into local code, including legal vulnerabilities; and
- d) Obtain Board feedback on staff's suggested approach to a potential public process.

As noted in previous meetings, although implementation of rural ADU legislation ultimately cannot take place until after 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.

A. Draft Rural ADU Code Language

On September 29, 2021, staff presented to the Board the first set of criteria from SB 391 to interpret locally.¹ Now, staff has used that discussion to formulate a rough draft of Deschutes County Code (DCC) language, which is helpful in order to view the interrelated components of the various criteria.

Attachment A provides draft DCC based on the required provisions of SB 391 and direction received in previous meetings with the Board. In this draft, options for decisions or interpretations are highlighted. These include:

- 18.116.370(C)(5) Distance from existing dwelling
- 18.116.370(C)(6) Definition of useable floor area
- 18.116.370(C)(7) Minimum acreage

¹

<https://meetings.municode.com/adaHtmlDocument/index?cc=DESCHUTES&me=393ad9ebb3bd4b34b349f968cf79bd49&ip=True>

- 18.116.370(C)(8) Wildlife Area Combining Zone

The following subsections pertain to wildfire-related provisions that will be addressed at the state level. While some local decision-making may be necessary at a later date, the County must first wait for the state-level actions to be finalized.

- 18.116.370(C)(13) Statewide wildfire risk maps and Oregon residential specialty code
- 18.116.370(C)(14) State Board of Forestry standards for properties located in the wildland urban interface
- 18.116.370(C)(15) Defensible space and fuel break standards for properties not located in the wildland urban interface

Lastly, one provision will require additional coordination between staff and rural fire protection districts, the County Forester, and potentially the Sheriff's Office to determine what constitutes "adequate access for firefighting equipment, safe evacuation and staged evacuation areas." Staff anticipates addressing these criteria may take several coordination meetings with relevant agencies and partners:

- 18.116.370(C)(12) Adequate access for firefighting equipment, safe evacuation and staged evacuation areas

B. Timeline

As noted previously, staff's goal is to address the elements of the legislation that can be addressed locally, while the state is simultaneously addressing the wildfire-related provisions in SB 391—most significantly, the adoption of statewide wildfire risk maps, for which the deadline is June 30, 2022.² Staff's goal is to be able to formally initiate the legislative amendment process as soon after the completion of state-level tasks as possible, acknowledging that it is currently unclear exactly what the completion of those state-level tasks will look like—for instance, there may be further coordination required depending on the definition of the wildland urban interface (WUI), since SB 391 has separate criteria for those within and outside of the WUI.

The proposed timeline below seeks to maximize the available time between now and the adoption of the state wildfire maps, after which point the formal legislative process may be initiated. The timeline offers two options with respect to public hearings: the Board can choose to have the Planning Commission conduct the first evidentiary hearing and then proceed to a Board hearing, or the Board can conduct the first evidentiary hearing following a Planning Commission review of the amendments.

Proposed Timeline

November - December 2021	Staff coordination with rural fire protection districts, emergency services, County Forester
December - January 2021	Staff finalizes first draft of code, which includes options for certain provisions

² Senate Bill 762 is a comprehensive wildfire law that addresses the specific requirements of the wildfire hazard maps, as well as other wildfire-related components that are intertwined with SB 391.

Winter 2022	Public outreach: Planning Commission-facilitated outreach with public and stakeholders		
Spring 2022	Staff coordination with Board following up on outreach, performing additional changes to code based on outreach, vetting code language with other CDD divisions		
June 30, 2022	Wildfire Hazard Maps finalized by state		
July 2022	<p>Staff finalizes text amendments based on state wildfire maps and related criteria</p> <p>NOTE: The above estimate assumes that documents coming out of state wildfire processes will be relatively straightforward; it is possible staff may need more time to interpret/coordinate based on wildfire outcomes</p>		
July 2022	Staff initiates 35-day notice to DLCD of first evidentiary hearing		
Track 1		Track 2	
Late July 2022	Work session with Planning Commission	Late July 2022	Review with Planning Commission
August 2022	First evidentiary hearing with Planning Commission	August 2022	Work session with BOCC
September 2022	Work session with BOCC	August or September 2022	BOCC public hearing
Late September 2022	BOCC public hearing		

C. Challenges of translating of state law into local code

The process of turning state law into clear and objective code language can be difficult, depending on the level of clarity provided in the original law. In the case of SB 391, many components are undefined and ambiguous, which can make for a challenging “translation” process. Those imperfections in the law can result in a wide range of local interpretations, and because of this may have the potential for legal vulnerability.

To minimize that risk, the Board may choose to consider adopting the most conservative interpretations of various criteria. For example, for the interpretation of the ADU being “no farther than 100 feet” from the primary dwelling, the least ambiguous interpretation would be to require the ADU to be completely within 100 feet.

D. Public Process

Staff looks to the Board for feedback on a potential public process in early 2022. Staff’s suggested approach moving forward recognizes that several of the outstanding interpretations or decisions in the law noted above may benefit from input from the Planning Commission, stakeholders, and the public. To that end, staff’s goal is to first complete the initial draft by conducting the necessary coordination to create draft language for 18.116.370(C)(12), Firefighting Access and Evacuation Areas. Staff would then

take this draft—which includes the provisions with several options as listed above—through an initial public process to receive input on the draft language and options. This process would be facilitated by the Planning Commission, and the public and local stakeholders would be invited to participate.

While ultimately there will still be a formal public hearing as part of the legislative amendment process in 2022, making the public aware of the criteria in the law and receiving input early on will help staff and the Board ensure a robust public process for what will ultimately be a significant land use change for the County.

After the public outreach is complete, staff will reconvene with the Board to provide a summary of the input received, likely in early 2022, and will work to refine the amendments based on that input and on Board direction. This will allow for ample time to conduct further research and/or coordination as necessary prior to the state-level wildfire criteria being met.

E. Next Steps

Staff seeks Board input on the above timeline and proposed outreach strategy. With the Board's permission, staff will initiate coordination concerning the "adequate access" provisions of SB 391 and then craft associated code language, culminating in the first draft for release. Staff will then work with the Planning Commission to initiate public outreach. Alternatively, staff can proceed with a different approach, if suggested by the Board.

Attachments

Draft DCC 18.116.370