

Draft Concepts for Accessory Dwelling Unit Regulations and other measures necessary for Benton County to implement Oregon Senate Bill 1051, as subsequently amended by House Bill 4031

Oregon Senate Bill (SB) 1051 was developed with the primary purpose of expanding housing opportunities within the state. The bill was signed into law on August 15, 2017, establishing a number of requirements for cities and counties in Oregon. Following is a summary of the pertinent elements of SB 1051, as amended by HB 4031, as well as analysis of any changes that may be necessary for the County to implement the requirements.

Section 1: Requires a final local decision on specified types of affordable multi-family housing development within urban growth boundaries within 100 days.

Analysis: This provision applies to the development of affordable housing in a “multifamily residential building containing five or more residential units within the urban growth boundary.” Since none of the Benton County zones within these areas allow for the development of this type of building¹, no action is necessary.

Section 2: Prohibits counties from denying “an application for a housing development located within the urban growth boundary if the development complies 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.”

Analysis: Most of Benton County’s regulations pertaining to residential development within urban growth boundaries are clear and objective standards. The Planned Unit Development process required for land divisions within the Urban Residential zone within the Corvallis Urban Fringe area contains clear and objective criteria, with the exception of the density bonus process, which is an optional process and is therefore exempt from the clear and objective requirement.

One code section that is not clear and objective is the regulations for placement of manufactured dwellings in the Urban Residential and Rural Residential Zones (Benton County Code, or BCC, Section 91.510). Proposed changes to these regulations are shown below (existing code language in bold, with underline for new language and ~~strikeout~~ for deleted language to illustrate the proposed changes):

91.510 Placement Standards for Manufactured Dwellings in the Urban Residential and Rural Residential Zones. In addition to the minimum standards set forth in BCC 91.505, a manufactured dwelling placed in the Urban and Rural Residential Zones shall:

¹ Although a 5+ unit multi-family dwelling is allowed in the PR-3 zone within the Philomath UGB, the zoning is not in existence anywhere within the UGB or elsewhere in the County. If such zoning is established in the future, implementing rules will need to address the 100-day requirement for qualified types of residential development.

- (1) Contain at least ~~320~~² ~~800~~ square feet of occupied space in a unit in the Rural Residential Zone ~~or 1,000 square feet in a double-section or larger multi-section unit~~ and in the Urban Residential Zone;
- (2) Be constructed with asphalt shingle or standing seam metal roofing materials ~~similar in appearance to other residences in the area~~ and have a roof with a minimum pitch of three feet in height for each twelve feet in width (3/12);
- (3) ~~Be constructed with siding materials similar in appearance to other residences in the area and shall have no~~ Siding shall not be reflective, unpainted, or uncoated metal siding;
- (4) Have its foundation installed according to one of the methods listed in the most current Oregon Manufactured Dwelling Standard;
- (5) Be placed on an excavated and back-filled foundation and enclosed at the perimeter;
- (6) Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010. Evidence demonstrating that the manufactured dwelling meets “Super Good Cents” energy efficiency standards is deemed to satisfy this requirement without further certification from the manufacturer;
- (7) If sited within the Corvallis urban growth boundary have a garage or carport ~~with exterior materials similar in appearance to the main unit;~~
- (8) Have all wheels, axles, hitch mechanisms, and transient lights removed; and
- (9) Comply with every development standard to which a conventional single-family residential dwelling on the same parcel or lot would be subject. [Ord 90-0069, Ord 94-0104, Ord 97-0131]

Nearly all of these proposed changes are meant to eliminate prohibited discretionary language that is applied to manufactured homes. As proposed, these revised standards would apply not only to manufactured dwellings in Urban Residential zones (within urban growth boundaries), but also in Rural Residential zones, which are outside UGBs. In order to promote affordable housing opportunities, staff proposes eliminating the discretionary criteria for these homes in the Rural Residential zone as well. For the same reason, and to allow for the possibility of establishing a small manufactured home as an accessory dwelling unit, staff also proposes to reduce the minimum size requirements for manufactured homes in Rural Residential and Urban Residential zones to the minimum size allowed in other zones within Benton County. Incidentally, this change would accommodate qualifying “tiny homes” that are built to a manufactured home standard.

Section 6: Cities with a population of more than 2,500, and counties with a population of more than 15,000 (such as Benton County), must allow the development of an accessory dwelling unit (ADU) in conjunction with a detached single family dwelling in areas zoned for detached single family dwellings. Although the initial bill did not limit the scope of these regulations for counties, House Bill

² This proposed change is not to comply with the requirement for clear and objective standards, but is to enable a broader range of manufactured housing.

4031, which was signed into law on March 16, 2018, clarified the Legislature’s intent that ADUs must be allowed within urban growth boundaries under county jurisdiction. In addition, SB 1051 allows that ADU requirements may be “subject to reasonable local regulations relating to siting and design.”

Analysis: Benton County does not currently allow for accessory dwelling units in conjunction with detached single family dwellings in any zones. Benton County does administer a process to allow temporary medical hardship dwellings (manufactured homes) to be established for a limited period of time that must be removed once the medical hardship has ceased. Additionally, Benton County does allow for accessory living space in a structure meeting all building code requirements that is located on a property in addition to the primary dwelling on a property. However, the accessory living space may not be used as a separate dwelling for fully independent living. Rather, all persons living in a primary dwelling and accessory living space must share a kitchen and live together as if the structures were one dwelling unit. In some circumstances, these provisions have assisted the accommodation of friends and family members who might otherwise struggle with finding affordable housing.

To clarify the distinction between accessory living space and a dwelling, staff propose to amend the definition of “Dwelling” in Section 51.020(11) of the Benton County Code. This is necessary not only to administer accessory dwelling unit regulations, but also to clarify the Department’s current practice regarding what types of structures constitute a “dwelling” within the County. The proposed amendments are as follows:

(10) "Dwelling" means a single-family dwelling, as further defined below for purposes of this Development Code. "Dwelling" includes a manufactured dwelling unless otherwise provided by this code. "Dwelling" does not mean a tent, tepee, yurt, hotel, motel, recreational vehicle or bus.

A “dwelling” is limited to a structure, or structures, designed and occupied as a single housekeeping unit by an individual, two or more related persons, or a group of not more than five unrelated persons. Use of a structure or a portion of a structure as a second, independent housekeeping unit constitutes a second dwelling. However, if the residents described above occupy a primary dwelling and accessory living area in a separate structure on the same property, share a kitchen, and live together as a household, the two structures would be considered components of one dwelling.

An accessory structure containing a kitchen, as defined below, in combination with a bathroom and a bedroom or a room that could function as a bedroom, constitutes a dwelling.

Except when authorized as a duplex or accessory dwelling unit in those zones that allow such uses, no dwelling may contain a second kitchen, as defined below, unless the dwelling is organized such that neither kitchen can support a second, separate housekeeping unit; for example, the kitchen may not be capable of being shut off from the rest of the dwelling in a way that would isolate a combination of kitchen, bathroom, bedroom or a room that could function as a bedroom, and outside entrance.

As used in this definition, “kitchen” means a room or area containing a combination of:

- (a) kitchen sink; and**

(b) Range, stove, microwave or other cooking facility; or, 220 wiring or gas line except to service an allowed use in an area that clearly will not function as a kitchen, such as a clothes dryer in a laundry room.

As noted above, SB 1051 allows jurisdictions to put in place “reasonable local regulations relating to siting and design.” Community Development staff has consulted with our colleagues in Public Works and the Health Department to develop a package of proposed regulations intended to be consistent with the goal of expanding affordable housing opportunities in the County, while continuing to protect neighboring properties from negative impacts and environmental hazards. Consequently, the following proposed standards would limit the size of accessory dwelling units to minimize impacts to groundwater, septic capacity, traffic, and neighboring residential, farm, and forest uses. The proposed standards are also intended to ensure that ADUs contribute to affordable housing rather than the short-term rental market and to ensure that ADUs are safely constructed and accessed. Since the regulatory concepts for ADUs have not yet been reviewed, staff provides the proposed regulations in concept form, to be formally incorporated into the Benton County Code prior to the public hearing process for adoption of the code amendments:

1. At a minimum, the law requires that “accessory dwelling units” be defined as “an interior, attached, or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.” An “interior” ADU would be the conversion of existing space within an existing dwelling unit to serve as a separate ADU.
2. Subject to satisfaction of all applicable standards, one accessory dwelling unit is allowed for each legally established detached single family dwelling on a parcel or lot currently zoned to allow detached single family dwellings as an outright permitted use.
3. ADU must be constructed or renovated to comply with all applicable building code requirements.
4. ADU must contain no more than 800 square feet of habitable space. A single-car garage (no larger than 300 square feet) is allowed in conjunction with an ADU, but may not be used for human habitation. Garage area does not count towards the 800 square foot maximum size for the ADU. One additional exterior or garage parking space is required to serve the ADU.
5. ADU may contain no more than 1 bedroom and 1 bathroom, and a covenant will be required to memorialize this requirement for the current and future property owners. A bedroom is defined as a room designed for sleeping, meeting all applicable building code requirements for such rooms.
6. ADU (and the primary dwelling on the property) must be served by a septic system (or septic systems) meeting all applicable requirements of Benton County Environmental Health and the Oregon Department of Environmental Quality.
7. Water serving the ADU must comply with the water quality requirements of BCC Section 99.810(2). Additionally, a minor pump test is required, consistent with BCC Section 99.845. However, if a single well is proposed to serve both the primary residence and the ADU, the pump test shall demonstrate compliance with the following thresholds:
 - a. Minimum supply = 1.5 gpm
 - b. Minimum required to avoid storage requirement = 7.5 gpm
 - c. If storage is required, storage within the tank and well must meet the following requirements:

1.5 – 2.99 gpm	No less than 2,250 gallons
3 – 4.49 gpm	No less than 1,500 gallons
4.5 – 7.49 gpm	No less than 1,000 gallons

8. ADU must share the same road approach as the primary dwelling on the property. An ADU may be interior to the primary dwelling unit, attached to it, or detached, but may not be more than 200 feet away from the primary dwelling unit on the site, as measured horizontally from structural wall to structural wall.
9. ADU must comply with all applicable setbacks for a dwelling in the zone.
10. Access to the ADU, and construction of the ADU, must comply with applicable Fire District requirements.
11. An ADU may only be utilized if the owner of the property on which it is located resides in the primary or accessory dwelling unit. A covenant shall be recorded to memorialize this requirement.
12. A manufactured home may be utilized as an ADU, if in compliance with all applicable standards.
13. An ADU may only be occupied if neither the ADU nor the primary dwelling on the property are utilized as a short-term rental (defined as rental for 30 days or less). A covenant shall be recorded to memorialize this requirement.
14. An ADU may be allowed in addition to a temporary medical hardship dwelling, if all applicable requirements for all dwellings are met.
15. Road improvement requirements consistent with the requirements of BCC Chapter 99 shall be met, proportionate to the transportation impacts of the ADU.
16. The applicant shall prepare an urban conversion plan for the property, demonstrating that the location of the dwelling and ADU on the property will not preclude future urbanization of the property, consistent with the density established on the applicable city’s comprehensive plan map.

Section 7: Requires counties to allow the reasonable use of real property that is used for religious assembly for activities customarily associated with the practices of a religious activity, including qualified affordable housing in a building that is detached from a place of worship, if the property is zoned for residential use and located within an urban growth boundary.

Analysis: Since residential development is allowed in areas zoned for residential use, no change is needed. Current Benton County regulations allow housing that is in compliance with county standards to be constructed on the same property as a place of worship in an area that is zoned for residential use.

Section 9: Requires annual reporting on residential development within jurisdictions to the Oregon Department of Land Conservation and Development.

Analysis: Community Development staff currently report annually to DLCD, which will likely be augmented with this new requirement. No change to regulations needed.