

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE STATE OF OREGON, FOR THE COUNTY OF BENTON**

**In the Matter of Amending the Benton)
County Development Code Chapters 51,)
63, 64, 65 and 91, and Declaring an)
Emergency**

ORDINANCE No. 2018-0285

WHEREAS:

Senate Bill 1051 (2017), as modified by House Bill 4031 (2018), requires that for land within urban growth boundaries, cities and counties must allow accessory dwelling units in residential zones and must apply clear and objective standards to the review of housing development.

Benton County supports increased housing opportunities for families as well as for addressing the ongoing shortage of affordable housing.

The proposed amendments to the Development Code will:

- Allow establishment of accessory dwelling units in the Urban Residential, Rural Residential, and Philomath Residential zones within urban growth boundaries;
- Establish standards for accessory dwelling units to ensure health and safety and to minimize impacts to infrastructure and neighboring properties;
- Clarify the definition of “dwelling” to distinguish among a single-family dwelling, living space that is an extension of the single-family dwelling, and an accessory dwelling unit;
- Modify the standards for manufactured dwellings to enable them to qualify as accessory dwelling units, to make the standards clear and objective, and to reflect current building code.

The proposed amendments will enable additional housing options in a responsible manner.

The Benton County Planning Commission held a duly advertised public hearing on May 1, 2018, and voted to recommend that the Board of Commissioners approve a modified version of the originally proposed amendments to the Development Code.

The Benton County Board of Commissioners held a duly advertised public hearing on June 5, 2018, to receive testimony from the public and to consider the request; and

The Benton County Board of Commissioners finds that the proposed Development Code amendment complies with the criteria of Benton County Development Code; and

The Benton County Board of Commissioners has considered the staff report, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated, approved the proposed amendment to the Development Code, and conducted the First Reading of the proposed Ordinance on June 5, 2018; and

This Ordinance, being necessary for the preservation of the health, safety, and welfare of Benton County citizens, due to the fact that the amendments to Chapter 197 of the Oregon Revised

Statutes from Senate Bill 1051 (2017) and House Bill 4031 (2018), become effective on July 1, 2018, and it is essential to have standards in place for accessory dwelling units by the effective date in order to mitigate potential adverse impacts from such units, an emergency exists and this Ordinance shall be in full force and effect on June 30, 2018, and shall expire at midnight at the end of August 29, 2018, unless repealed sooner by an action of the Benton County Board of Commissioners.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

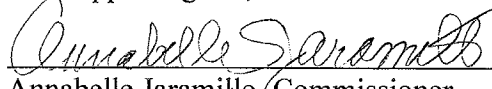
- PART I:** Short Title. Amendments to the Benton County Development Code Chapters 51, 63, 64, 65 and 91.
- PART II:** Authority. The Board of County Commissioners of Benton County has authority to amend the Development Code pursuant to ORS Chapter 215 and the Benton County Charter.
- PART III:** The Development Code amendments proposed in Planning File No. LU-18-016 are hereby approved, based on the Findings of Fact and Conclusions of Law contained in the attached "Exhibit 1" and hereby adopted and incorporated herein.
- PART IV:** Benton County Development Code is hereby amended as shown in "Exhibit 2."
- PART V:** The effective date for this amendment to the Benton County Development Code will be:

First Reading: June 5, 2018
Effective Date: June 30, 2018
Repealed as of: August 30, 2018

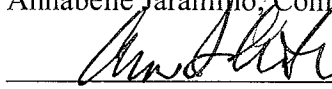
BENTON COUNTY BOARD OF COMMISSIONERS



Xanthippe Augerot, Chair



Annabelle Jaramillo, Commissioner



Anne Schuster, Commissioner

Approved as to Form:

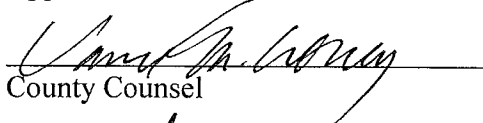


County Counsel
Recording Secretary

Exhibit 1
Findings of Fact and Conclusions of Law
File No. LU-18-016

**FINDINGS APPLYING CODE CRITERIA, INCLUDING JUSTIFICATION FOR
THE PROPOSED AMENDMENTS**

BCC 53.605: On occasion, it may be appropriate to amend sections of the Comprehensive Plan or Development Code to respond to changing policies and conditions, or to clarify the text.

Findings: Oregon Senate Bill (SB) 1051 was signed into law on August 15, 2017, and was recently amended by House Bill (HB) 4031. The bill was developed with the primary purpose of expanding housing opportunities, and the affordability of housing, in all but the least populated cities and counties in Oregon. The combined effect of the two bills places a few requirements on most Oregon local governments, including Benton County. The component of the new regulations that has probably received the most attention is the requirement to put in place clear and objective regulations to allow at least one accessory dwelling unit (ADU) to be established in conjunction with a detached single family dwelling in any zone within an urban growth boundary (UGB) that allows detached single family dwellings. Additionally, jurisdictions are required to adopt a definition for “accessory dwelling unit” consistent with that in SB 1051. Per SB 1051, the new ADU standards must be in place by July 1, 2018.

Senate Bill 1051 includes a number of other provisions, many of which will not require amending the Benton County Code. However, the Bill includes a requirement to apply only clear and objective standards to residential development within UGBs. For the most part, the County’s standards for residential development within UGBs are clear and objective; however, some provisions in the County’s placement standards for manufactured dwellings in Urban Residential and Rural Residential Zones are not clear and objective. Staff prepared amendments for these requirements, which are related to the visual compatibility of the homes or required garages, to make them clear and objective.

In relation to the requirement to allow ADUs, SB 1051 allows local governments to establish “reasonable local regulations related to siting and design.” Community Development Department staff developed a package of requirements for the establishment of accessory dwelling units, which the Planning Commission reviewed at a public hearing and modified and which the Board of Commissioners has reviewed at public hearing and is now approving. The proposed regulations have been developed in consultation with Environmental Health, Public Works, and other Benton County staff, as well as with planning staff from other Oregon jurisdictions. The proposed regulatory concepts were introduced and discussed with the interested Benton County residents at the public information session on April 10th. Reasons for the various requirements include: protecting environmental resources and public health, limiting the size of ADUs to enhance affordability and minimize environmental and other impacts, addressing impacts to the County’s transportation system and ensuring public safety, minimizing impacts to neighboring properties and uses, disallowing use as short-term rentals to support use for affordable long-term housing, and ensuring that the location of ADUs within urban fringe areas (outside city limits, but within UGBs) will not complicate or preclude future urbanization.

The remaining code amendments include improving the definitions of “dwelling” and “family” and reducing the minimum size requirement for a manufactured home throughout Benton County to 320 square feet, which is the minimum size allowed by the US Department of Housing and Urban Development. Improving the definition of “dwelling” is necessary to ensure consistent interpretation and implementation regarding dwellings and accessory living space in the County. These revisions codify existing interpretations implemented by Community Development staff, making these requirements more transparent to the public and to the development community. Expanding the definition of “family” clarifies that this term includes adoptive and foster families, thereby promoting clarity and inclusion. Lastly, reducing the minimum size allowed for a manufactured dwelling within the County provides smaller scale and more affordable housing options for Benton County residents.

Conclusion: The proposed code amendments are largely a response to “changing policies and conditions” stemming from the passage of SB 1051 and of HB 4031. Other amendments are proposed to benefit public health, safety, and welfare, as explained above. The proposed amendments meet the general criteria for consideration.

BCC 53.610(1): The Board of County Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed text amendment.

Findings: The Benton County Board of Commissioners was briefed on the Community Development Department’s upcoming long range planning projects at a work session on September 26, 2017. On that list of projects, the implementation of Senate Bill 1051 was identified as a high priority for upcoming work efforts, due to the requirement to put in place standards by July 1, 2018. The Board of Commissioners expressed their support for the proposed long range planning projects, including this set of code amendments. The staff report for the Board of Commissioners’ public hearing and the annotations within the code amendments attached to the staff report constitute a background report discussing the justifications for the proposed amendments.

Conclusion: The proposed amendments were properly initiated.

BCC 53.620: The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the hearing, the Planning Commission shall make a recommendation to the Board to approve, deny, or modify the proposed text amendment.

BCC 53.625: The Board of County Commissioners shall hold a public hearing to review a proposed text amendment. The Board may accept, reject, or modify the proposed text amendment in whole or in part. Incorporation of any text amendment into the Development Code shall proceed pursuant to the Ordinance adoption provisions of the Benton County Charter.

Findings: The Planning Commission held a hearing on May 1, 2018, and forwarded a recommendation to the Board of Commissioners. The Board of Commissioners held a public hearing on June 5, 2018, and accepted the proposed text amendment. The incorporation of the text amendment proceeded pursuant to the appropriate provisions of the Benton County Charter.

Conclusion: The conduct of the public hearing and ordinance adoption process has complied with the procedure stipulated here.

CONCLUSIONS

The Board concludes that the proposed amendments are consistent with the applicable provisions of the Benton County Code, and comply with applicable state statutes and administrative rules. **The Board of Commissioners concludes that all criteria have been met and approves the Development Code text amendment.**

Exhibit 2
Amendments to the Development Code
File No. LU-18-016

(New language designated by double underline, deleted language by ~~strikeout~~)

Chapter 51

Development Code Administration

51.020 Definitions. As used in BCC Chapters 51 to 100:

* * *

- (2) “Accessory dwelling unit” means an interior, attached, or detached residential structure that is used in connection with or that is accessory to a single-family dwelling. Standards for accessory dwelling units are found in BCC Section 91.050.

[All subsequent definitions to be renumbered accordingly]

* * *

- (12) “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.

The land use category of “dwelling” is limited to a structure or structures, designed and occupied as a single housekeeping unit by an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons. This type of use is distinct from a short-term rental use (defined as rental of a dwelling for less than a one month period) which is considered a home occupation and allowed subject to the applicable standards for home occupations in this code. Use of a structure or a portion of a structure as a second, independent housekeeping unit is allowed only when specifically authorized pursuant to this Development Code, such as for a duplex, accessory dwelling unit, medical hardship dwelling, farm-help dwelling, or other approved use. However, if the occupants described above occupy a primary dwelling structure and accessory living area in a separate structure on the same property, share a single kitchen, and live together as a household, the two structures would be considered components of one dwelling.

A separate structure containing a kitchen, as defined below, in combination with a bathroom and a bedroom or a room that could function as a bedroom, is allowed only when authorized as an additional dwelling or accessory dwelling unit pursuant to the Development Code.

Within a dwelling, a second kitchen, as defined below, is allowed only when authorized as a duplex, accessory dwelling unit, or additional dwelling in those zones that allow such uses, or when 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) Wash basin designed to be used for washing and food preparation; and
- (b) Range, stove, microwave or other cooking facility, or 220 wiring, or gas line, except as to service a facility other than a cooking facility.

[All subsequent definitions to be renumbered accordingly]

* * *

(14) “Family” means an individual, two or more related persons (including dependents), or a group of not more than five unrelated persons living together as a housekeeping unit.

[All subsequent definitions to be renumbered accordingly]

* * *

Chapter 63

Rural Residential (RR)

* * *

PERMITTED USES

63.105 Permitted Uses. The following uses are allowed in the Rural Residential Zone:

- (1) Farm or forest use.
- (2) One dwelling per parcel. For the purposes of this section, “dwelling” includes a manufactured dwelling that complies with the manufactured dwelling standards in BCC 91.505 to 91.510, as well as all other applicable requirements of BCC Chapter 91.
- (3) Residential home.
- (4) Day care for fewer than thirteen children.
- (5) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident, subject to the terms and conditions set forth in BCC 91.545 and 91.550. The hardship manufactured dwelling shall comply with all other applicable requirements of BCC Chapter 91, except the additional placement standards of BCC **91.510 shall not apply.**
- (6) Home occupation.
- (7) Accessory use or structure.
- (8) Accessory dwelling unit on properties zoned Rural Residential and only within urban growth boundaries, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050.

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Chapter 64

Urban Residential (UR)

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64.105 Permitted Uses. The following uses are allowed in the Urban Residential Zone:

- (1) One dwelling per parcel. For the purposes of this section, “dwelling” includes a manufactured dwelling that complies with the manufactured dwelling placement in BCC 91.505 and 91.510, as well as all other applicable requirements of BCC Chapter 91.
- (2) One manufactured dwelling per space in a mobile home or manufactured dwelling park. The manufactured dwelling shall comply with the minimum placement standards for a Manufactured Dwelling in 91.515. The manufactured dwelling in an approved park shall comply with the applicable manufactured dwelling standards in Chapter 91, except that additional placement standards of BCC 91.510 shall not apply, and BCC 91.515 shall be applicable.
- (3) Home occupation.
- (4) Day care for fewer than thirteen children.
- (5) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident, subject to the terms and conditions set forth in 91.502, 91.505, BCC 91.545 and 91.550. The hardship manufactured dwelling shall comply with all other applicable requirements standards of Chapter 91, except the additional placement standards of BCC 91.510 shall not apply.
- (6) Residential home.
- (7) Farm or forest use except for feed lots, except as prohibited or limited by the provisions of Chapters 83 and 88.
- (8) Accessory use or structure.
- (9) Fire stations or other public facilities rendering a public service to the community when located on an arterial or collector road as designated in the County’s Comprehensive Plan.
- (10) Natural area, open space, or acquisition of greenway corridor.
- (11) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050.

* * *

Chapter 65

Philomath Low-Density Residential Zone (PR-1)

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65.015 Permitted Uses. The following uses are allowed in the Philomath Low-Density Residential Zone:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Duplex, on corner lots or parcels only.
- (6) Accessory use or structure.
- (7) Public utilities.
- (8) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050.

* * *

Philomath Medium-Density Residential Zone (PR-2)

* * *

65.115 Permitted Uses. The following uses are allowed in the Philomath Medium-Density Residential zone subject to applicable siting standards:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Duplex, triplex, or fourplex.
- (6) Residential facility.
- (7) Accessory use or structure.
- (8) Public utilities.
- (9) Manufactured dwelling.
- (10) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050.

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Philomath High-Density Residential Zone (PR-3)

* * *

65.215 Permitted Uses. The following uses are allowed in the Philomath High-Density Residential Zone:

- (1) Single-family dwelling.
- (2) Home occupation.
- (3) Day care for fewer than thirteen children.
- (4) Residential home.
- (5) Multi-family dwelling.
- (6) Residential facility.
- (7) Accessory use or structure.
- (8) Public utilities.
- (9) Manufactured dwelling.
- (10) Accessory dwelling unit, in conjunction with a single-family dwelling on a lot or parcel, subject to the specific use standards in BCC 91.050.

* * *

Chapter 91

Specific Use Standards

ACCESSORY DWELLING UNITS

91.050 Accessory Dwelling Unit Standards. Where permitted by zoning within urban growth boundaries, every accessory dwelling unit (ADU) shall:

- (1) Be allowed in conjunction with and on the same lot or parcel as one legally established detached single-family dwelling. The single-family dwelling must be established prior to, or concurrent with, the establishment of the accessory dwelling unit or, if the existing single-family dwelling is demonstrated to meet the standards of this section for an accessory dwelling unit then it may be so designated and establishment of a single-family dwelling may be allowed. In any event, a maximum of one ADU is allowed per single-family dwelling;
- (2) Be constructed or renovated to comply with all applicable building code requirements, and shall comply with all other applicable regulations for a dwelling, including but not limited to floodplain provisions and setback requirements;
- (3) Contain no more than 900 square feet of habitable space. A single-car garage (no larger than 300 square feet in size) is allowed in conjunction with an ADU, but may not be used for human habitation. The garage area does not count towards the 900 square foot maximum size allowed for the ADU. One on-site parking space (which may be outside or in a garage) is required to serve an accessory dwelling unit, in addition to the parking required for the single-family dwelling;
- (4) Contain no more than two bedrooms and two bathrooms. For the purposes of this code, a bathroom is defined as a room containing, at minimum, a sink and a toilet; a bedroom is defined as a room or area designed for sleeping, in compliance with all applicable building code requirements for such rooms or areas. A studio space shall be considered a bedroom if it has the components of a bedroom;
- (5) Be served by either:

 - (a) A septic system; whether existing or new, the system shall meet all applicable requirements of Benton County Environmental Health and the Oregon Department of Environmental Quality (DEQ) [Note that DEQ rules may prohibit additional septic system loading if municipal sewer is located within a specified distance of the property.]; or
 - (b) A community/municipal sewer system, in which case the applicant shall submit evidence that the service agency is mutually bound and able to serve the accessory dwelling unit.
- (6) Be provided with water from an approved source, consistent with BCC 99.805. Well or spring water serving the ADU must comply with the well log and water quality requirements of BCC 99.810(1) and (2). A spring shall comply with the provisions of BCC 99.820 with the exception that the minimum gallons per minute required of the flow test described in BCC 99.820(4)(a) shall be increased by 50% if both the single-family dwelling and the ADU will be served by the spring. For a well, a minor pump test is required, consistent with BCC 99.845. If the ADU will be served by a separate well than the single-family dwelling, the pump test shall demonstrate compliance with the standards in BCC 99.845(1). If a single well is proposed to serve both the single-

family dwelling and the ADU, the pump test shall demonstrate compliance with the following modified standards for BCC 99.845(1):

- 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:

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

- (7) Share the same road approach as the primary dwelling on the property.
- (8) Be located no more than 200 feet from the single-family dwelling unit on the site, as measured horizontally from structural wall to structural wall. Attached garages within 200 feet of each other may be used to meet this requirement;
- (9) Access to the ADU, and construction of the ADU, must comply with applicable Fire District requirements;
- (10) Either the single-family dwelling or the accessory dwelling unit shall be occupied by the owner, or one of the owners if more than one, of the subject property;
- (11) A manufactured home may be utilized as an ADU, if in compliance with all applicable standards;
- (12) Neither the single-family dwelling nor the ADU may be utilized for short-term accommodation purposes. Short-term accommodations are defined as lodging agreements for a period of less than one month;
- (13) An ADU is allowed in addition to a temporary medical hardship dwelling associated with the single-family dwelling, if all applicable requirements are met for all dwellings on the site;
- (14) Road improvement requirements consistent with the requirements of BCC Chapter 99 shall be met by the property owner, proportionate to the transportation impacts of the ADU;
- (15) The applicant for an ADU shall submit an urbanization plan, demonstrating that the location and placement of the single-family dwelling and accessory dwelling unit on the subject property will not prevent achieving the minimum density designated by the respective city's comprehensive plan. The urbanization plan shall show potential future roadways necessary to serve the development and potential lot configurations, and shall comply with natural features or natural hazard regulations on the site. All dwellings and all structures requiring building permits shall be placed within boundaries of the future parcels or lots shown on the urban conversion plan and shall meet urban setbacks of the respective city. The urban conversion plan shall be binding on future property owners, until such time as an alternative urban conversion plan is submitted by the property owner and approved by the County in consultation with the respective city, or the

property is annexed to the city. In unusual circumstances, the urban conversion plan requirements may be modified by the Planning Official in consultation with the respective city.

- (16) The applicant for an ADU shall record a covenant to memorialize the requirements of Sections (3), (4), (10), (12), and (15) above for current and future property owners.

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MANUFACTURED DWELLINGS

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) Contain at least ~~320~~ 800-square feet of ~~occupied space enclosed floor area~~ in a unit in the Rural Residential Zone or 1,000 square feet in a double-section or larger multi-section unit 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 h~~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;~~

Bear certificates of compliance from the US Department of Housing and Urban Development and from the State of Oregon. 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;

- (6) If sited within the Corvallis urban growth boundary have a garage or carport with exterior materials similar in appearance to the main unit;
- (7) Have all wheels, axles, hitch mechanisms, and transient lights removed; and
- (8) 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]

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