



# Crook County

Community Development Department  
Planning Division

**TO:** Crook County Planning Commission

**FROM:** Will Van Vactor

**DATE:** October 11, 2023

**SUBJECT:** Work Session – Accessory Dwelling Units (ADUs)

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This memorandum and the attached documents are provided in advance of the work session scheduled for October 11, 2023. The goal of the work session is to introduce potential code language to be adopted by Crook County to allow ADUs in rural residential zones.

## LEGISLATIVE BACKGROUND

### *SB 391 (2021)*

During the 2021 legislative session, the legislature passed Senate Bill 391 (Attachment A). SB 391 made it permissible for counties to allow ADUs on lands zoned for rural residential use. The adopted legislation is codified in [ORS 215.495](#). The statute includes the following standards and requirements (summarized for brevity):

- (a) The lot or parcel must not be in an area designated as an urban reserve (Crook County does not have any urban reserve areas);
- (b) The lot or parcel must be at least two acres;
- (c) There must be a single-family dwelling on the lot or parcel;
- (d) The lot or parcel must not be declared a nuisance;
- (e) The ADU must comply with applicable sanitation and wastewater laws;
- (f) ADU must not be more than 900 sq. ft.;
- (g) ADU must be no further than 100 ft. from the existing single-family dwelling;
- (h) No restrictions on water use in the area by the Water Resources Commission;
- (i) Must not be in an area of critical state concern;
- (j) The lot or parcel must be served by a fire protection service provider;
- (k) Must comply with rules of State Board of Forestry;
- (l) Must comply with Oregon Residential Specialty Code based on wildfire risk map; and
- (m) The County must adopt regulations that ensure:
  - a. The ADU has adequate setbacks from adjacent resource lands (e.g., EFU and Forest)
  - b. The ADU adequate access for firefighting equipment, safe evacuation and staged evacuation areas, and
  - c. If the ADU is subject to certain wildland-urban interface rules, the ADU must have defensive space and fuel break standards as developed in consultation with the local fire protection service provider.

Of note, ADUs may not be used for vacation occupancy. Additionally, the ADU must be on the same lot or parcel as the existing single-family dwelling (even if the owner also owns an adjacent vacant lot or parcel). And only one ADU per lot or parcel is permitted.

A county can elect to require the ADU be served by the same water supply source or water supply system as the existing single-family dwelling. If served by a domestic water well, the ADU must comply with applicable well setback requirements as required by OWRD.

Nothing in the statute requires a county to allow an ADU in areas zoned for rural residential use. Further, nothing prohibits a county from imposing any additional restrictions on ADUs in areas zoned for rural residential use, including restrictions on the construction of garages and outbuildings that support an ADU. The above-listed standards are the minimum standards that must be applied.

#### *SB 644 (2023)*

Senate Bill 391 was tied to the wildfire risk map that SB 762 (2021) required. The wildfire risk map was originally required to be completed by June 30, 2022. After release, though, the Department of Forestry withdrew the wildfire risk map in August 2022. At this time, a new wildfire risk map has not been adopted and it will likely be late 2024 before a new map is released.

Accordingly, during the 2023 legislative session, there was a successful effort to “decouple” SB 391 from SB 762. Senate Bill 644 (Attachment B) was signed by the governor on May 8, 2023, and became effective on May 16, 2023. It deletes language related to the wildfire risk map and replaced that language with the following:

*The accessory dwelling unit complies with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:*

*(A) The lot or parcel is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or*

*(B) No statewide map of wildfire risk has been adopted;*

As originally drafted, SB 391 required ADUs to be built in accordance with the building code that applies to the wildfire hazard mitigation for the mapped area. In other words, if the lot or parcel was mapped for high or extreme risk, a higher building standard would apply.

The 2023 legislative fix requires higher building standards until the wildfire risk map is adopted. So regardless of what risk the property might ultimately be mapped, until the map is adopted, the higher building standard applies (R327)<sup>1</sup> Thus, if the County elects to permit ADUs at this time, all ADUs will need to be constructed to section R327 of the Oregon Residential Specialty Code.

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<sup>1</sup> R327 is a part of the Oregon residential Specialty Code. It has increased construction standards for wildfire hazard mitigation. These standards are intended to provide increased fire ignition protection of homes from flying embers and debris caused by wildfires. Adoption by local governments was originally optional, but with SB 762 (2021) and SB 644 (2023), it will have to be applied in certain circumstances.

**REQUIREMENTS OF SB 391 and SB 644**

SB 644 Citation	Restrictions/Limitations	Comments
<b>Section 2: Comprehensive Plan</b>	Consistent with a county’s comprehensive plan, a county may allow an owner to construct one ADU.	The rural residential zones are intended to provide for residential opportunities. ADUs are consistent with residential use.
<b>Section 2: Rural residential exception area</b>	ADU must located be in “area zoned for rural residential use”, which is defined as “land that is not located inside an urban growth boundary as defined in ORS 195.060 (Definitions) and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.”	Staff has provided a table below identifying potential rural residential zones that may qualify for ADUs.
<b>Section 2(a): Urban Reserve</b>	The lot or parcel cannot be located within an urban reserve as defined by ORS 195.137.	The City of Prineville does not have any urban reserves.
<b>Section 2(b): Minimum lot size</b>	The lot or parcel must be at least two acres in size.	There are many lots that are less than two acres, particularly in the RR(M)-5 zone, which was formerly the RR(M)-2 zone..
<b>Section 2(c): Single-Family Dwelling</b>	One single-family dwelling must be stied on the lot or parcel.	An existing dwelling must be sited on the lot before an owner can received land use approval for an AUD.
<b>Section 2(d): Nuisance</b>	The existing single-family dwelling is not subject o an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600.	The nuisances referred to in the cited to statute relate to prostitution, gambling, etc.
<b>Sectio 2(e): Sanitation</b>	The ADU must comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.	All ADUs will require sign-off from the County Sanitarian to ensure the septic system can handle the additional waste.
<b>Section 2(f): Square Footage</b>	The ADU will not include more than 900 square feet of usable floor area.	This is consistent with the County’s ADU standards inside the UGB. The City of Prineville does not allow ADU larger than 700 square feet.
<b>Section 2(g):</b>	The ADU must be located no further than 100 feet from the existing single-family dwelling.	Staff interprets this requirement to mean a portion of the ADU must be

<b>Distance from Dwelling</b>		within 100 feet of the single-wide family dwelling (not the entire ADU).
<b>Section 2(h): Water Supply</b>	If ADU is relying on a domestic well, no portion of the lot or parcel can locate within a new or existing ground water use restricted area by OWRD.	Staff identified no <a href="#">groundwater restricted areas</a> in Crook County.
<b>Section 2(i): Area of Critical State Concern</b>	No portion of the lot or parcel may be located within an area of critical state concern.	Staff found the only area identified as an “area of critical state concern” in Oregon to be in the area of the Metolius River.
<b>Section 2(j): Fire Protection</b>	The lot or parcel must be served by a fire protection service	Most, but not all, of Crook County’s rural residential zones are inside the boundary of the Crook County Fire & Rescue District. Those that are not, will not qualify for an ADU.
<b>Section 2(k): Defensible Space</b>	If the lot or parcel is an area identified on the statewide map of wildfire risk as within the wildland-urban interface (WUI), the lot or parcel and ADU must comply with minimum defensible space requirements.	The wildfire risk map is not final yet. This provision does not apply at this time, but language must be included in the code. Defensible space requirements will apply to all property owners retroactively once in adopted.
<b>Section 2(l): Wildfire Risk</b>	ADUs must comply with section R327 of the Oregon Residential Specialty Code if: (1) the lot or parcel is identified as high (per SB 80), or no wildfire risk map is adopted.	Until a wildfire risk map is adopted, all ADUs permitted under SB 644 and any local implementing ordinance must comply with section R327.
<b>Section 2(m): Local regulations</b>	The County must adopt regulations that ensure the ADU (1) has adequate setbacks from adjacent lands zoned for resource use (farm or forest), (2) the ADU has adequate access for firefighting equipment, safe evacuation and staged evacuation areas, and (3) if the ADU is not within the states mapped WUI, the ADU complies with local requirements for defensive space adopted by the county pursuant to ORS 476.392.	(1) Some rural residential zones in Crook County include a 100-foot setback from intensive agricultural use. Others do not. The “intensive agricultural use” phrase is not defined, nor does it protect forest lands. Staff recommends a 100 ft setback for all ADUs from

		<p>farm and forest lands, with a narrow exception for ADUs that cannot be placed further than 100 ft due to the location of the existing dwelling and topography.</p> <p>(2) Staff included language in the proposed code language requiring certification of adequate access from the fire district and submittal of an evacuation plan.</p> <p>(3) The zoning ordinance does not include defensible space requirements except in the Forest Zone (F-1).</p>
<p><b>Section 3:</b></p> <p><b>Vacation Occupancy</b></p>	The ADU cannot be used for vacation occupancy.	The proposed code language includes this restriction.
<p><b>Section 4(a):</b></p> <p><b>Land Division</b></p>	The ADU and single-family dwelling cannot be divided so that the existing dwelling is on a different lot or parcel than the ADU.	The proposed code language includes this restriction.
<p><b>Section 4(b):</b></p> <p><b>One ADU</b></p>	Only one ADU is allowed on a lot or parcel.	The proposed code language includes this restriction.
<p><b>Section 5:</b></p> <p><b>Water Supply</b></p>	A county may require that the ADU be served by the same water supply source as the existing single-family dwelling	This is a discretionary requirement. The County can elect to require the existing dwelling and ADU to share a well, or not.
<p><b>Section 6:</b></p> <p><b>Single Unit</b></p>	The single-family dwelling and ADU are considered a single unit for the purpose of calculating exemptions under ORS 537.545.	Exempt use of water.
<p><b>Section 7:</b></p> <p><b>Not Required</b></p>	Nothing in the state law requires a county to allow ADUs in areas zoned for rural residential use or from imposing additional restrictions on ADUs.	County can use discretion in if, or where, it allows ADUs.

## CROOK COUNTY RURAL RESIDENTIAL ZONES

Staff has identified the following rural residential zones:

Zone Name	Chapter	Notes
<b>Park Reserve</b>	CCC 18.36	Acknowledged. Residential use outright permitted inside existing subdivisions. Unclear whether primary use in areas outside of subdivisions is residential. Significant portion in Critical Deer Winter Range.
<b>Recreation Residential Mobile Zone, RR(M)-5</b>	CCC 18.40	Originally acknowledged as RR(M)-2 zone. Residential zone.
<b>Recreation Residential Zone, RR-1 and RR-5</b>	CCC 18.44	Acknowledged. Zoned for recreation residential.
<b>Rural Residential Zone, R-5</b>	CCC 18.88	Acknowledged. Residential is primary use.
<b>Rural Residential Zone, R-10</b>	CCC 18.92	Zoned for residential use.
<b>Forest Recreation, FR-10</b>	CCC 18.96	Acknowledged. Outside of CCF&R.
<b>Residential Woodlot, RW-40</b>	CCC 18.100	Acknowledged exception area. Primary use residential/recreation.
<b>Powell Butte Rural Residential Zone, PBR-20</b>	CCC 18.108	Primary use is rural residential.

## CONCLUSION

The work session scheduled for October 11, 2023, is intended to be the first discussion of draft language to be adopted to allow ADUs. The draft language provided with this memorandum was largely taken from Lane County's recent adoption of an ordinance to allow ADUs in its rural residential zone. Staff has also included some language from Deschutes County's pending ordinance and modified language to work better with Crook County's code. However, it is preliminary. Staff look forward to feedback from the public and Planning Commission.