



Board Session Agenda Review Form

Meeting date: December 6, 2023

Department: Public Works

Title: Consider adopting an ordinance permitting accessory dwelling units in the Acreage Residential zone.

Agenda Planning Date: November 23, 2023 Management Update/Work Session Date: July 11, 2023 Audio/Visual aids

Time Required 5 min Contact: Brandon Reich Phone: x4175

Requested Action: Consider adopting an ordinance permitting accessory dwelling units in the Acreage Residential zone.

Issue, Description & Background: Recent legislative changes allow the county to permit accessory dwelling units (ADUs) in the Acreage Residential zone SB 644 (2023). Staff brought a discussion about initiating amendments to management update on July 11, 2023 and the board initiated consideration of amendments on September 13, 2023. On October 25, 2023, the board held a public hearing to consider the amendments and receive testimony. The board approved the amendments and directed staff to prepare an ordinance for its consideration. Last week the board scheduled adoption of the ordinance for today.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: Brandon Reich

Department Head Signature: *Bruce Sticht*

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the matter of amending the Marion)	LA 23-001
County Rural Zone Code Chapter 17 to)	Legislative Amendment
permit accessory dwelling units in the)	
Acreage Residential zone.)	

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This ordinance is enacted pursuant to the authority granted general law counties in the State of Oregon by Oregon Revised Statutes (ORS) Chapters 203, 197, and 215, and the comprehensive land use planning and coordination with local government provisions under Chapters 195 and 197.

SECTION II. Authorization

The Marion County Board of Commissioners initiated a legislative amendment to the Marion County Rural Zone Code by Resolution No. 23R-27 dated September 13, 2023.

The Board held a public hearing on October 25, 2023, for which proper public notice and advertisement was given. The Board closed the hearing on October 25, 2023. All persons present during the public hearing and those provided notice of the hearing, were given the opportunity to speak or present written statements on the proposed amendments.

SECTION III. Evidence and Findings

The amendment of the Marion County Rural Zone Code made hereunder is based on consideration and analysis of the operation of present zoning regulations and requirements of state law. Due consideration was given to the evidence in the record. As set forth in Exhibit A, attached hereto and incorporated herein, the Board finds that the amendments to the Rural Zone Code is in compliance with county ordinance and state law, its policies and requirements and federal law.

SECTION IV. Amendments to Marion County Comprehensive Plan

Marion County Code Title 17 (Marion County Rural Zone Code) is amended as set forth in Exhibit B, attached hereto and incorporated herein.

SECTION V. Severability

Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or any policy, provision, findings, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this Ordinance or of any amendments thereto and adopted hereunder, be declared invalid for any reason, such declaration shall not affect the validity and continued application of any other portion or element of this Ordinance or amendments to the Comprehensive Plan, as amended herein; and if this Ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which this Ordinance or any portion thereof was enacted.

SECTION VI. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect upon adoption.

SIGNED and FINALIZED this _____ day of _____, 2023 at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes (ORS) Chapter 197.830 provides that land use decisions may be reviewed by the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal within 21 days from the date this ordinance becomes final.

Facts and Findings

BACKGROUND

Recent legislative changes allow the county to permit accessory dwelling units (ADUs) in the Acreage Residential zone. SB 391 (2021) allowed a county to permit ADUs in a rural residential zone subject to certain criteria. One of the requirements of the bill was that statewide wildfire maps be created by the state and then adopted by the local jurisdiction. Those are still in the process of being created. SB 644 (2023) amended the statute to allow a county to permit ADUs in a rural residential zone before wildfire maps are created subject to certain criteria.

FACTS AND ANALYSIS

The proposed code amendment implements ORS 215.495 by adding accessory dwelling units to the Acreage Residential zone subject to certain standards for development.

Siting Standards

The land upon which an accessory dwelling unit would be sited has to meet these requirements in statute:

- a. Be at least 2 acres in size.
- b. Not be located within an urban reserve.
- c. Not be located within a designated area of critical state concern for water.
- d. Not be located in an area in which new or existing ground water uses have been restricted by the Water Resources Commission unless the accessory dwelling unit and associated lands and gardens will not be served by a well.

These standards better ensure that the land has the capacity, in size and water availability, to support the additional dwelling unit. These standards also ensure that the accessory dwelling unit will not be built on land planned for future urban development.

Development Standards

Additionally, statute requires the accessory dwelling unit itself be constructed to meet certain standards:

- a. Have a living space of a maximum of 900 square feet.
- b. Be located within 100 feet of the primary dwelling.
- c. Have adequate setbacks from adjacent lands in resource use, which can be achieved by implementing the existing special siting setbacks in 17.128.050.

- d. Obtain all necessary building permits and meet the construction provisions of the Oregon Residential Specialty Code Wildfire Hazard Mitigation section.
- e. Obtain all necessary septic disposal permits.
- f. Meet local fire district standards for access, evacuation, and defensible space.
- g. Not be used for vacation occupancy as other than a primary residence for a person or persons and not be rented for periods of less than 45 days.
- h. Not be divided off from the primary dwelling on the property.

These standards ensure that the accessory dwelling unit remains accessory to the primary home with which it is associated. The standards also seek to ensure the accessory dwelling unit has adequate rural services, such as septic and access to a roadway network. The standards also seek to keep the unit safer from wildfire hazard by requiring it meet construction provisions in the Oregon Residential Specialty Code related to wildfire hazard mitigation, maintain special setbacks from surrounding land in resource use, and meet fire district standards for access and defensible space. Existing roadways are designed to provide access and egress to both homeowners and firefighting equipment. The applicant would work with their local fire districts when preparing site plans to ensure adequate access for the fire district equipment. The evacuation and staged evacuation areas that are required to be provided can be indicated on the site plan associated with the accessory dwelling unit by the property owner through consultation with the local fire district. County code would require the property owner to record a declaratory agreement demonstrating the intent to continuously comply with these standards.

The statute allows the county to require that an accessory dwelling unit be served by the same water source as the primary dwelling. The county may also restrict construction of garages and outbuildings that support the accessory dwelling unit. The board is not adopting these limitations or requirements into code at this time.

Water Areas

Area of Critical State Concern

The statute prohibits accessory dwelling units located in a designated area of critical state concern for water. There are none of these areas designated in Marion County.

Ground Water Uses Restricted Areas

The statute also prohibits accessory dwelling units in an area where new or existing ground water uses have been restricted by the Water Resources Commission, unless served by a water supply other than a well. There is one of these areas in Marion County southeast of Silverton (see attached maps). In this area, an accessory dwelling unit could be served by a water source other than a well, such as a water tank. However, this alternate source of water could be a significant cost to the dwelling; therefore, the board is not adopting provisions to allow rural ADUs in the ground water restricted area southeast of Silverton at this time.

Ground Water Limited Areas

The statute does not restrict accessory dwelling units in groundwater limited areas. In Marion County, these areas are identified by the Marion County sensitive groundwater overlay zone. The board finds that the placement of accessory dwelling units in the Marion County sensitive groundwater overlay area will not have an impact on groundwater in the SGO zone for the following reasons:

- The unit is limited in size to 900 square feet, the size of which has the potential to limit any impact on water usage in the area.
- The unit may share a well with the dwelling on the property, further limiting any impact on water used in the area by reducing the need to drill additional wells on a property.
- Installing a tank in association with the ADU can minimize the impact to the aquifer by minimizing the need for immediate draws from the aquifer when flows might otherwise be low.

DECISION

Based on the facts and findings above, the board approves the amendments to allow rural accessory dwelling units in the Acreage Residential zone.

Chapter 17.128

AR (ACREAGE RESIDENTIAL) ZONE

17.128.020 Permitted uses.

Within an AR (acreage residential) zone no building, structure or premises shall be used or arranged except for the following purposes:

A. Single-family dwelling.

B. Farm use, including the sale of produce that is raised on the premises, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374).

C. Planned developments.

D. Playgrounds and parks operated by governmental agencies.

E. Public and private utility facilities and public buildings such as fire stations, sheriff and police substations.

F. Creation, restoration, or enhancement of wetlands as defined in ORS Chapter 197.

G. Limited home occupations (see limited use, MCC 17.125.100).

H. Wireless communication facilities, attached subject to MCC 17.125.110 and pursuant to MCC 17.115.110.

I. Religious organizations and expansions of existing religious organizations where the religious organization or the expanded religious organization will be less than 20,000 square feet in total area.

J. Replacement of a lawfully established dwelling, subject to the special siting standards in MCC 17.128.050(B), when the dwelling:

1. Is a manufactured dwelling, mobile home, or manufactured home, the replaced dwelling shall be removed or demolished within 90 days of the occupancy of the replacement dwelling.

2. Is a site-built dwelling, the replaced dwelling shall be removed, demolished or converted to an allowable nonresidential use within 90 days of the occupancy of the replacement dwelling.

3. A dwelling constructed between 1850 and 1945 on a parcel at least two acres in size outside of any area designated as an urban reserve may remain on the parcel as an accessory dwelling unit if replaced by a new single-family dwelling on the parcel subject to the following conditions:

- a. The property owner shall obtain all required permits from Marion County building inspection to convert the existing residence to an accessory dwelling unit upon completion of the new single-family dwelling, including permits for sanitation and wastewater disposal and treatment.
- b. The land containing the accessory dwelling cannot be divided from the land containing the new single-family dwelling.
- c. The accessory dwelling unit cannot be renovated or remodeled so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.
- d. The accessory dwelling cannot be rebuilt if the structure is lost to fire.
- e. The property owner shall record a declaratory statement acknowledging compliance with the conditions in subsections (J)(3)(b), (c) and (d) of this section.

K. One accessory dwelling unit on a lot or parcel with an existing single-family dwelling subject to the following:

1. The property where the accessory dwelling unit will be located shall:

- a. Be at least 2 acres in size.**
- b. Not be located within an urban reserve.**
- c. Not be located within a designated area of critical state concern for water.**
- d. Not be located in an area in which new or existing ground water uses have been restricted by the Water Resources Commission.**

2. The accessory dwelling unit shall:

- a. Have a maximum of 900 square feet of living space.**
- b. Be located within 100 feet of the primary dwelling.**
- c. Meet the special siting setbacks in 17.128.050.**
- d. Obtain all necessary building permits and meet the construction provisions of the Oregon Residential Specialty Code Wildfire Hazard Mitigation section.**
- e. Obtain all necessary septic disposal permits.**
- f. Meet local fire district standards for access, evacuation, and defensible space. The property owner shall indicate an evacuation and staged evacuation areas on the site plan for the accessory dwelling unit.**

g. Not be used for vacation occupancy as other than a primary residence for a person or persons and shall not be rented for periods of less than 45 days.

h. Not be divided off from the primary dwelling on the property.

i. If located on a property in the Marion County Sensitive Ground Overlay, the ADU shall be connected to a 1000 gallon water storage tank for use in conjunction with the primary well serving the ADU on the property.

j. The property owner shall record a declaratory agreement demonstrating the intent to continuously comply with the standards in this subsection.