



MEMORANDUM

To: Clackamas County Planning Commission

From: Martha Fritzie, Principal Planner (503-742-4529 or mfritzie@clackamas.us)
Karen Buehrig, Planning Manager
Jennifer Hughes, Planning Director

Date: February 20, 2024

RE: **ZDO-285: *Minor and Time Sensitive Amendments*** – *Responding to Rule Changes by State Legislature and Other Agencies*

The purpose of the February 26th study session is to:

- Update the Planning Commission on ZDO-285, which will contain proposed amendments to the Zoning & Development Ordinance (ZDO) and Comprehensive Plan related to a number of rule changes that have recently been made by the Oregon Legislature and other State agencies; and
- Give the Planning Commission an opportunity to discuss issues and ask staff questions about proposed amendments that will be included in ZDO-285, in order to help prepare for an upcoming public hearing on this matter.

BACKGROUND

Last August, the Board of County Commissioners (Board) approved the 2023-2025 Long-Range Planning Work Program. One of the priority projects in that work program is *Minor and Time-Sensitive Comprehensive Plan and ZDO Amendments*, a project intended to be completed annually and focus on relatively minor changes to the County's Comprehensive Plan and Zoning and Development Ordinance (ZDO) to comply with any new state and federal mandates, clarify existing language, correct errors, or adopt optional provisions that require only minimal analysis. In addition, this annual package may be a vehicle for the adoption of new land use allowances in state law.

The 2023-2024 *Minor and Time Sensitive Amendments* package (ZDO-285) will be a narrowly-focused package of amendments that primarily responds to certain land use items approved in the 2021, 2022 and 2023 Oregon legislative sessions and recent state rulemaking, including consideration of the following:

1. Accessory dwelling units (ADUs) in rural residential zones (optional).
2. Recreational vehicles (RVs) for residential use as second dwellings (optional).
3. Changes to standards for replacement dwellings in Agriculture and Forest zones (mandatory).

4. Other minor housing-related amendments, generally inside the Metro urban growth boundary, which may include emergency shelters; affordable housing bonuses; affordable housing in commercial zones; prefabricated structures as dwellings and single-room occupancy allowances (mandatory).

Planning Staff held a policy session with the Board on October 11, 2023 to obtain direction on whether and how to proceed with item #1 (ADUs in rural residential areas) and item #2 (RVs as second dwellings). At that policy session, the Board directed Staff to develop Comprehensive Plan and ZDO amendments to implement *both* the allowance for ADUs in rural residential areas *and* RVs as second dwellings and include in the forthcoming proposed amendments package under ZDO-285. The Board also directed Staff to include, at least in the initial amendment package, only the minimum standards required under State law for each of these items.

The February 26th PC study session will also focus on items #1 and #2; however, Staff is available to answer questions about any of the items that will be included in the code amendment package in ZDO-285 (see summary table in **Attachment A**).

1. ADUs in Rural Residential Areas

Currently, in Clackamas County, accessory dwelling units (ADUs) are only allowed on properties located *inside* of an urban growth boundary (UGB) or *inside* certain unincorporated communities. This is because, until recent legislation, state law did not allow the county to permit ADUs outside of a UGB or unincorporated community.

In 2021, Senate Bill 391 included language that enabled counties to allow ADUs on rural residential lands outside a UGB, but only after the completion of the state's wildfire hazard map, which, to date, has not been adopted. SB 644 (2023) amended the earlier legislation so that counties can proceed with allowing ADUs in rural residential areas prior to the wildfire map adoption.

Per this legislation, counties may allow one ADU in "areas zoned for rural residential use," provided the site is *outside* of a UGB and *outside* of an urban reserve (see **Attachment B** for map of potentially affected area).

This legislation is not a mandate; the county may, but is not *required* to, allow ADUs on some rural residential lands. But if ADUs are allowed in rural residential areas they must, at a minimum, comply with certain standards identified in the state law, including:

- The lot must be two (2) acres or greater
- There is one single-family dwelling (includes manufactured dwellings) sited on the lot
- The lot must not be subject to order declaring it as a nuisance property or subject to pending action related to nuisance property
- The lot or parcel must be served by a fire protection service provider
- The ADU must comply with all applicable state laws relating to water supply, sanitation and wastewater disposal
- The living area of the ADU is limited to 900 square feet
- The ADU must be located within 100 feet of the single-family dwelling
- The ADU cannot be used as a short-term rental
- The lot cannot be subdivided to separate the primary dwelling and ADU

- An ADU is not allowed in groundwater restricted areas where domestic wells & ½-acre of lawn or garden have been restricted (see ORS 537.545(1)(b)&(d)). Staff does not believe any of these areas exist in Clackamas County.
- Until the statewide map of wildfire risk has been adopted, all rural ADUs must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code – wildfire hazard mitigation standards in the building code. Once the statewide map of wildfire risk has been adopted, this requirement will only apply to properties within “high” and “extreme” designations.

Considerations

Planning staff frequently hears from customers who would like to develop a rural ADU; however, consideration of both the advantages and disadvantages of allowing ADUs in rural residential areas is important.

On the one hand, a rural ADU could allow a property owner to help a family member by providing a small dwelling for someone looking to downsize, saving to buy their own home, or who cannot find an affordable alternative elsewhere. It can also provide a property owner with rental income, while providing a household a potentially more affordable rental home, because it will be a relatively small dwelling.

On the other hand, staff frequently hears concerns from residents in rural areas about increasing density and the potential negative effects on neighborhoods, rural infrastructure, and loss of natural resources and habitat. Rural ADUs would not have access to public sewer and would need to be connected to an existing or new septic system; in some cases, they would not have access to public water and would need to rely on a well.

Given the housing crisis in our area, increasing supply is paramount. While it makes sense for most of the new supply to be in urban areas where infrastructure is more developed and access to employment, services and transportation options is better, reasonable increases in rural housing can be part of the solution.

If this use is allowed, the county may impose additional restrictions, including on construction of garages and outbuildings that support the ADU. The county has the option to be more restrictive than state law on the standards listed above, but may not be more permissive. It is important to keep in mind, however, that the development of additional local standards would increase the complexity of both the code amendment project and ongoing administration of the new rules, increasing demand on limited available staff resources.

2. RVs as Second Dwellings on Private Property

Currently, in Clackamas County, siting an RV as a residence is prohibited except in limited circumstances, such as temporary dwellings for care or while building a permanent dwelling.

SB 1013(2023) creates the potential to allow certain property owners to place an RV on their property and use it as a second dwelling. This legislation is not a mandate; the county may, but is not *required* to, allow for RVs as second dwellings.

The bill specifies that a county may allow property owners in a “rural area” to site one RV for residential purposes. Interestingly, the legislation defines “rural area” as *an area zoned for rural residential use as defined in ORS 215.501 or land that is within the urban growth boundary of a metropolitan service district, but not within the jurisdiction of any city, and zoned for residential use*. This means that in unincorporated Clackamas County, this legislation applies to urban *and* rural residential zones (i.e. both inside and outside the Metro UGB), but not to properties within

the Barlow, Canby, Estacada, Molalla or Sandy UGB or an urban reserve (see **Attachment C** for map of potentially affected areas).

The bill further specifies that:

- The allowance is subject to a residential rental agreement
- The RV is not subject to state building code
- The single-family dwelling on the property must be occupied as the property owner's primary residence
- There cannot be any other dwelling units on the property and no portion of the single-family dwelling can be rented for residential tenancy
- The property owner must provide utility hookups to the RV space
- The RV may not be used for vacation occupancy

In addition, a county *may* require property owner to:

- Register with the county
- Enter into a written rental agreement with tenant
- Limit amount of payments that the property owner can accept from tenant to those reasonably necessary to cover the owner's costs or losses
- Require that the recreational vehicle comply with any reasonable appearance, repair, inspection or siting standards adopted by the county.

Considerations

The optional standards in the bill include items that are outside of zoning regulations and Planning's purview. Implementing rules that directly relate to landlord-tenant laws may require the county to set up a new program, and Planning staff is unsure how limiting tenant payments could be enforced. Likewise, the county is not staffed to provide inspection services for RVs.

Another important consideration is whether there are reasons that this use may be more or less appropriate in urban locations, with smaller lots but with access to public utilities and other services, or in rural locations, with larger lots but more limited infrastructure.

And as with rural ADUs, allowing RVs as second dwellings has potential advantages and disadvantages. For example, this allowance provides an opportunity for a property owner to provide a safe living situation for a household that cannot find another type of housing they can afford. On the other hand, there may be public concern about (1) allowing more residential "density" and (2) the sited RVs being in disrepair.

Again, there is an urgent need to increase housing supply. RVs may provide a more affordable option for households otherwise at risk of being unsheltered or those requiring a supportive living environment near family/friends.

If this use is allowed, there are several policy considerations for decision-makers. As with rural ADUs, the county has the option to be more restrictive than state law on the standards that apply to RVs as second dwellings but may not be more permissive. This means that the county may consider whether this use would be appropriate in all urban and rural areas (as identified on the map) and if there are certain standards that may be appropriate to require, such as minimum lot size or property line setbacks for the RV. An important factor to keep in mind again, however, is that the development of additional local standards increases the complexity of both the code amendment project and ongoing administration of the new rules, increasing demand

on limited available staff resources. Plus, some of the optional standards for this use would require new County programs for which there is no identified staffing or funding.

DISCUSSION ITEMS / QUESTIONS

- 1) Rural ADUs
 - a. Does the Planning Commission have any comments, concerns, or questions regarding allowing ADUs on rural residential lands?
 - b. Should the county consider additional standards that are more restrictive than the state-mandated requirements? If so, what standards?
- 2) RVs as Second Dwellings
 - a. Does the Planning Commission have any comments, concerns, or questions regarding allowing RVs as second dwellings on residential lands?
 - b. Should this consideration be limited to only include certain geographic areas or zoning districts (i.e. only *inside* a UGB, only *outside* a UGB, only in certain residential zones)?
 - c. Should the county consider additional standards that are more restrictive than the state-mandated requirements? If so, what standards?
 - d. Should the county consider including the optional provisions noted above (registration, rental agreement, etc.), understanding that implementation of some of these standards will require the development and staffing of a new program?
- 3) Does the Planning Commission have any questions about other items that may be included in the package of amendments in ZDO-285?

NEXT STEPS

Staff will take the direction from the Planning Commission and the previous direction from the Board and finish preparing the legislative text amendments necessary to implement the identified changes. The full text of the proposed amendments, along with a brief summary of the proposed changes, will be available and posted online for review by mid-March.

The tentative hearing schedule for consideration of the proposed amendments that will be in ZDO-285 is as follows:

Planning Commission: Monday, April 22, 2024
Monday, April 29, 2024, special meeting (if needed for continuation)

Board of County Commissioners: Wednesday, May 8, 2024

ATTACHMENTS

- A. Table 1. Summary of Relevant Legislation and Items to Potentially Include in ZDO-285: *Minor & Time Sensitive Amendments*
- B. Map 1. Rural Residential Areas Where the County Could Allow Accessory Dwelling Units (ADUs)
- C. Map 2. Urban and Rural Residential Areas Where the County Could Allow RVs as Second Dwellings

Table 1. Summary of Relevant Legislation and Items to Potentially Include in ZDO-285: *Minor & Time Sensitive Amendments*

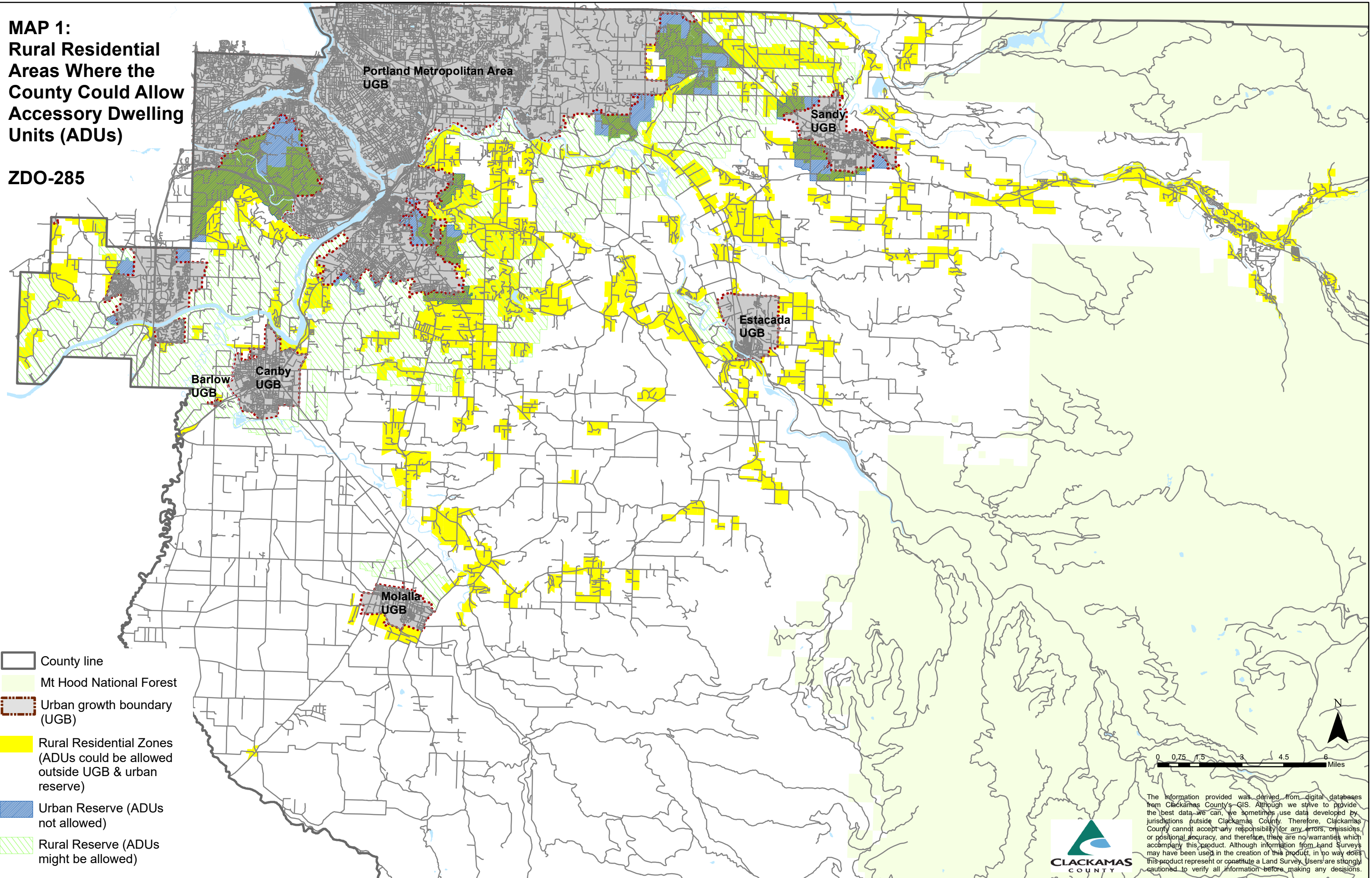
Legislation ORS reference	(Relevant) Major Items
OPTIONAL	
<p>SB391 [2021] SB1533 [2022] SB644 [2023]</p> <p>ORS 215.495</p>	<ul style="list-style-type: none"> • Counties may allow one ADU in “areas zoned for rural residential use” • Only outside UGB and outside an urban reserve (as defined in ORS 195.137) • Must comply with certain standards: <ul style="list-style-type: none"> ○ Lot or parcel that is two (2) acres or greater ○ One single family dwelling is sited on the lot or parcel ○ Not subject to order declaring it as a nuisance property or subject to pending action related to nuisance property ○ Located on a lot or parcel served by a fire protection service provider ○ Complies with all applicable state laws relating to water supply, sanitation and wastewater disposal ○ Limited to 900 square feet ○ Must locate within 100 feet of single-family dwelling (broad definition in ORS 215.501) ○ Cannot be used for STR ○ Cannot be subdivided ○ Not allowed in groundwater restricted areas where domestic wells & ½-acre of lawn or garden have been restricted (see ORS 537.545(1)(b)&(d)) • ADU must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code if no statewide map of wildfire risk has been adopted (will only apply to high and extreme designations once maps are adopted) • County may impose additional restrictions, including on construction of garages and outbuildings that support the ADU
<p>SB1013 [2023]</p> <p>ORS 215.490</p>	<ul style="list-style-type: none"> • Applies to “rural areas” - rural residential zones AND unincorporated areas “zoned for residential use” inside the UGB, BUT outside an urban reserve <ul style="list-style-type: none"> ○ “Rural area” means an area zoned for rural residential use as defined in ORS 215.501 or land that is within the urban growth boundary of a metropolitan service district, but not within the jurisdiction of any city, and zoned for residential use. • County may allow property owner in “rural area” to site one (1) RV for residential purposes, subject to a rental agreement <ul style="list-style-type: none"> ○ SF dwelling must be occupied as primary residence by property owner ○ RV may not be used for vacation occupancy ○ Property owner must provide utility connections • County may require property owner to <ul style="list-style-type: none"> ○ Register with the county ○ Enter into a written rental agreement with tenant ○ Limit amount of payments that the property owner can accept from tenant to those reasonable necessary to cover the owner’s costs or losses ○ Require that the recreational vehicle comply with any reasonable appearance, repair, inspection or siting standards adopted by the county. • RV not subject to state building code







Legislation ORS reference	(Relevant) Major Items
MANDATORY	
HB4051 [2022] ORS 197A.445	<ul style="list-style-type: none"> • Must allow affordable housing <u>on property that is</u>: <ul style="list-style-type: none"> ○ Owned by a public body (ORS 174.109) or a nonprofit corporation that is organized as a religious organization; <u>OR</u> ○ Zoned for commercial uses; to allow religious assembly; or on public lands • Only inside UGB • No update to Goal 9 required • Applies only to certain industrial lands: publicly owned; not adjacent to residential or school land; not heavy industrial • Requires adequate water, sewer, storm water drainage and streets (now or development will make it so) • Not on steep slopes, in 100-year floodplain, in natural hazard areas • Specifies densities for residential zoned properties – at the greater of local density bonus, <u>OR</u> <ul style="list-style-type: none"> ○ Property with max density ≤ 16 DU/acre – 200% max density +12 additional feet (presume in height) ○ Property with max density > 17 & ≤ 45 DU/acre – 150% max density +24 additional feet ○ Property with max density > 45 DU/acre – 124% max density +36 additional feet • May reduce maximums above for health, safety, fire, habitability reasons, as necessary to comply with protective measure pursuant to a SWP Goal. Must adopt findings for this.
HB3395 [2023] ORS 197A.460	<ul style="list-style-type: none"> • Only inside UGB • Must allow on lands “zoned to allow only commercial uses and not industrial uses “ <ul style="list-style-type: none"> ○ Affordable housing (households at or below 60% MFI) ○ Mixed use structures with commercial and affordable housing units • May only apply standards applicable to the residential zone most comparable in density to the commercial zone • No update to Goal 9 required • Requires adequate water, sewer, storm water drainage and streets (now or development will make it so) • Not on lands with > 25% slope; within 100-year floodplain; • Does not apply to vacant lands • Does not apply to lands added to UGB within last 15 years • The 120-day clock does not apply to <i>A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order</i> • Removes sunset on emergency shelter siting and replaced with metric related to houselessness • Changes standard for who can operate (slightly) • Condominiums – clarifies that standards for condo ownership cannot be different than for other types of ownership • Includes SRO definition and standards

Legislation ORS reference	(Relevant) Major Items
	<ul style="list-style-type: none"> ○ “single room occupancy” means a residential development with no fewer than four attached units that are independently rented and lockable and provide living and sleeping space for the exclusive use of an occupant, but require that the occupant share sanitary or food preparation facilities with other units in the occupancy ○ Inside UGB, must allow SRO with up to 6 units on each lot or parcel zoned to allow a detached SFD and at comparable “density” for zones allowing “residential dwellings with five or more units” ● Includes moneys for housing grants and loan funds
HB4064 [2022]	<ul style="list-style-type: none"> ● Must allow siting of manufactured homes and prefabricated structures on “all land zoned to allow the development of single-family dwelling (in addition to those allowed in designated manufactured dwelling subdivisions) ● Only inside UGB ● May not apply any different standards that would apply to detached SFDs, exceptions for SWP Goal protected areas ● May not prohibit prefabricated structure in MH or MD park ● Definition: <i>a prefabricated structure, as defined in ORS 455.010, that is relocatable, more than eight and one-half feet wide and designed for use as a single-family dwelling</i> OR 455.010: <i>Prefabricated structure”:</i> <i>Means a building or subassembly that has been in whole or substantial part manufactured or assembled using closed construction at an off-site location to be wholly or partially assembled on-site.</i> <i>Does not mean a manufactured dwelling or a small home as defined in section 2, chapter 401, Oregon Laws 2019.</i> ● Includes other definition changes and MD replacement program (not relevant to ZDO)
HB2192 [2023] ORS 215.291 (also ORS 215.755 & ORS 92.176)	<ul style="list-style-type: none"> ● Applies to Forest Land (TBR & AGF zones) and Farm Land (EFU zone) ● Lawfully established dwelling may be altered, restored, or replaced if it has or formerly had (listed physical components) AND <ul style="list-style-type: none"> ○ Unless value of dwelling has been eliminated “as a result of destruction or demolition”, was assessed as a dwelling since the later of: <ul style="list-style-type: none"> ▪ 5 years before date of application or ▪ The date the dwelling was erected/fixed on land and became taxed, <u>OR</u> ○ If value of dwelling has been eliminated “as a result of destruction or demolition”, was assessed as a dwelling prior to elimination since the later of: <ul style="list-style-type: none"> ▪ 5 years before date of elimination or ▪ The date the dwelling was erected/fixed on land and became taxed. ● BUT, an application must be filed within 3 years following the date that the dwelling last possessed all the listed component ● Construction of the replacement dwelling must commence no later than 4 years after approval becomes final. ● Replacement dwellings must comply with construction provisions of section R327 of OR Specialty Code if no statewide map of wildfire risk has been adopted (will only apply to high and extreme designations once maps are adopted)

**MAP 1:
Rural Residential
Areas Where the
County Could Allow
Accessory Dwelling
Units (ADUs)**

ZDO-285



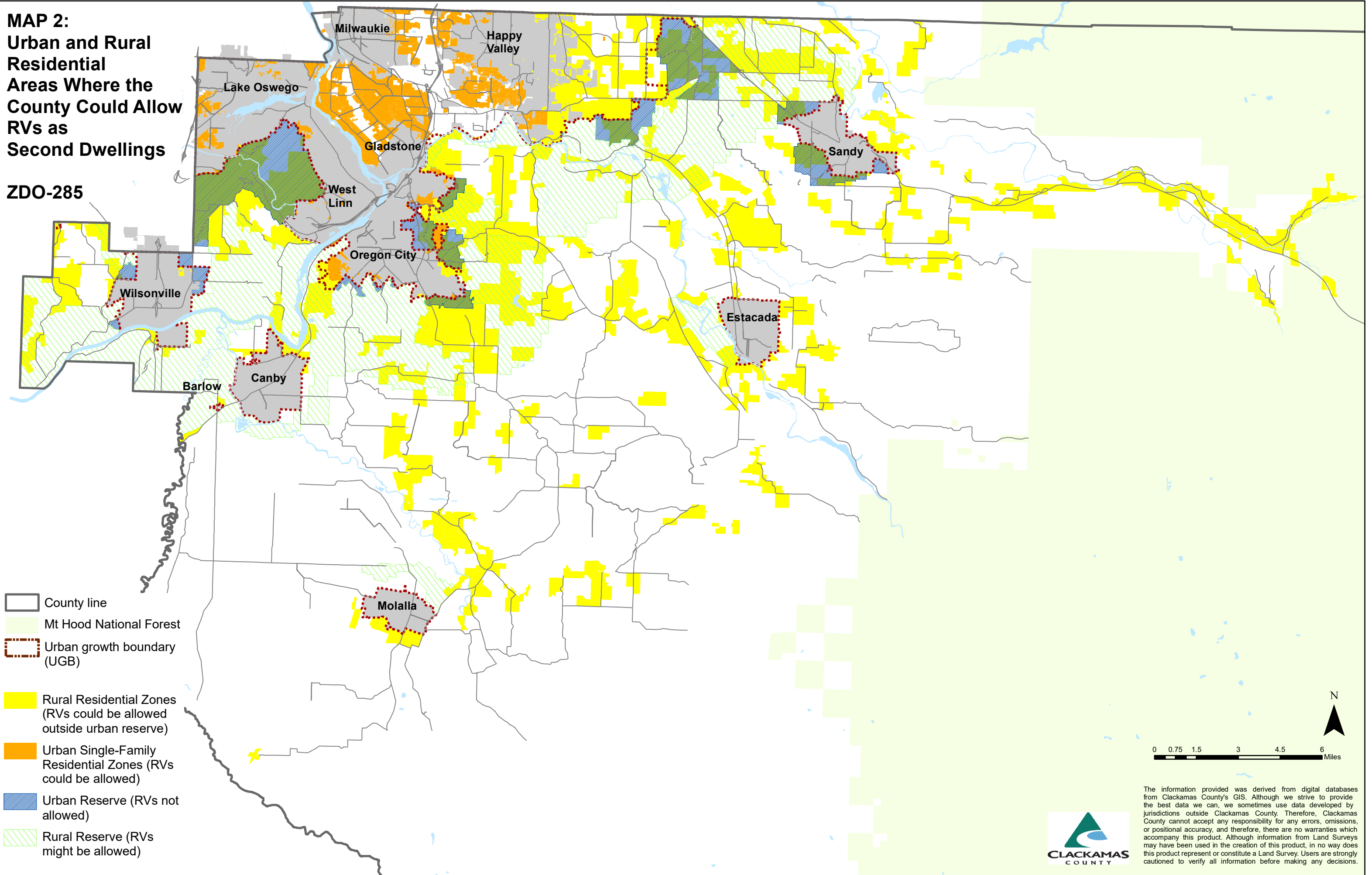
-  County line
-  Mt Hood National Forest
-  Urban growth boundary (UGB)
-  Rural Residential Zones (ADUs could be allowed outside UGB & urban reserve)
-  Urban Reserve (ADUs not allowed)
-  Rural Reserve (ADUs might be allowed)










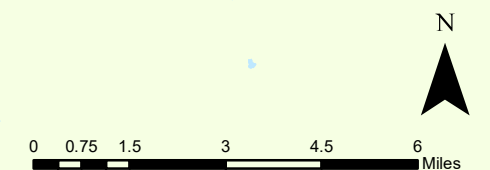
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**MAP 2:
Urban and Rural
Residential
Areas Where the
County Could Allow
RVs as
Second Dwellings**

ZDO-285



-  County line
-  Mt Hood National Forest
-  Urban growth boundary (UGB)
-  Rural Residential Zones (RVs could be allowed outside urban reserve)
-  Urban Single-Family Residential Zones (RVs could be allowed)
-  Urban Reserve (RVs not allowed)
-  Rural Reserve (RVs might be allowed)



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