

Report to the Legislative Assembly Implementation of House Bill 2001 (2019)

January 2020



House Bill 2001 DCBS Implementation Report

Executive Summary:

The intent of the state building code is never to be a barrier to construction. With that intent in mind, the department worked with stakeholders and the legislature to draft implementation rules for the bill during the 2019 session. Following the passage of the bill, the department held a public hearing for those draft rules and accepted written public comments. Comments received by the division expressed concern about whether the rules were meeting the intention of bill, and that the proposed rules were confusing in their application. Following these comments, the division engaged again with stakeholders, including the speaker's office, the governor's office, and other stakeholders to verify the intent of the bill. The division then refined the rules to make the uniform process easier to understand, while maintaining the original concept.

The intent of HB 2001, section 9, was to create a new uniform standard to obtain approval from a local building official for the conversion of an existing single-family dwelling into no more than four residential dwelling units. Every existing building is unique due to local conditions, maintenance, remodels, and age, among other variable site-specific factors. Older homes may even predate the state code entirely. All of these variables make it impossible to create a single prescriptive code for internal conversions. Recognizing these issues, the bill created a two-part process to facilitate internal conversions.

The first part tasked the Department of Consumer and Business Services, through the Building Codes Division, to create a new uniform approval process. The division implemented this part of the bill by creating uniform standards. The new standards require internal conversions to meet the minimum life safety standard in the code for four issues:

- Detection
- Notification
- Compartmentalization
- Emergency Evacuation

The new rules require these critical fire life safety code issues to be addressed. The rules also create additional local flexibility by requiring the building official to consider any request for an alternate method. This provision allows for increased flexibility for internal conversions if a permit applicant can meet an equivalent standard of care for these fire life safety issues. The rules also require a building official to consider a modification of a code standard or a waiver of a code standard for any other non-safety issue. The result is a safety equivalence standard of care for the four key items, and complete local flexibility for all other matters.

The second part of the bill created a new expedited appeal process, the details of which are included in the bill. The new appeal process is a critical piece of the legislation that provides increased flexibility to local communities as well as creating local accountability if a local building department is unable or unwilling to approve internal conversions. The bill gives internal conversions a new process to quickly and efficiently obtain alternate approval. This new process will help local communities meet their economic development and housing density goals.

The full report is available here:

<https://oregon.gov/bcd/laws-rules/Documents/rules/20200114-HB2001implementation.pdf>.

Uniform Standards

The concept for creating a new, easier path for the internal conversion of single-family dwellings originated in discussions related to HB 2663. During those discussions, the legislature and the division identified the need for increased local flexibility and accountability for internal conversions. Following these discussions, the concept was added to HB 2001.

The division engaged early in the process with legislators, the home builders association, building officials, and other stakeholders to make sure that if HB 2001 was passed the parties involved would know how the division intended to implement its portion of the bill. The division's stated approach is part of the legislative record on OLIS, and was not opposed by those involved. The division then took an additional step of soliciting public feedback during the rulemaking process. Public comment revealed that the rules were still confusing for non-technical readers who did not have a working knowledge of the state building code. The division clarified the rules for technical code matters and further explained the standards related to alternate methods, modifications, and waivers.

The rules require a building official to consider and approve applications for internal conversions, including alternate methods, modifications, and waivers, when the appropriate standard has been met. Every existing building is unique which restricts the ability of the state to make a one-size fits all solution. Instead, the rules create a framework for a local building official to follow when considering an internal conversion, allowing each internal conversion to be considered on its own. This requires a building official, as the local government expert in construction, to use that expertise to determine whether a specific standard of care has been met and grant an alternate method, or whether the specific circumstances of an internal conversion warrant the modification or waiver of a code standard.

Alternate Methods:

During the legislative process the division and stakeholders agreed on four specific categories where the standard of care must be maintained. These four areas are all fire life safety related, and are critical for the safety of occupants of an internal conversion in the event of a fire in their dwelling unit or their neighbor's dwelling unit. This is required so that regardless of what dwelling unit the fire starts in, every occupant of every dwelling unit knows there is an emergency and they need to evacuate the building. The four issues that must be addressed are:

- Detection
- Notification
- Compartmentalization
- Emergency Evacuation

Detection and Notification are interrelated, and ensure occupants are made aware of a fire through a combination of visual, audible, or physical signals. These signals take the form of alarms (audible), lights (visual), or sprinklers activating (audible, visual, and physical). These systems detect a fire and notify occupants that they need to evacuate. These signals take multiple forms in case an occupant is sleeping, or otherwise unable to perceive one of the signals.

Similarly, compartmentalization and evacuation are also related to each other. Once a fire has started within a dwelling unit it is important to contain the fire and smoke at the location of origin for a minimum amount of time to give occupants the chance to evacuate. Compartmentalization is also required to protect the means of egress from the dwelling unit ensuring occupants can safely evacuate the building. Protection of the path of egress becomes even more important if multiple dwelling units

are sharing a primary means of egress. Compartmentalization is achieved by using construction techniques, such as fire resistance rated assemblies, fire blocking and the sealing of penetrations between units, and fire resistive materials that are rated to withstand a fire for a specific amount of time to prevent the fire and smoke from quickly spreading between dwelling units. In addition to providing notification, a sprinkler system also contributes to compartmentalization by controlling the spread of a fire. This control provides additional time for occupants to safely evacuate the building.

The building code sets a minimum standard of care for these fire life safety issues, which guarantees a minimum level of protection in the event of a fire. The rules also recognize that internal conversions will face unique circumstances and challenges due to variable existing building configurations. To address these issues the rules require a building official to consider alternate methods. An acceptable alternate method will depend on the specific configuration of the internal conversion as well as site-specific variables, but is an equivalent standard of care.

Modifications:

Modifications are a substantially similar standard of care as the state code. Under a modification, a code standard is still considered, but the building official has determined that a lower standard of care is acceptable. For internal conversions, modifications are only allowed for issues that are not fire life safety related. An example of a standard of care that would be eligible for a modification would be the required clearance height in a stairway. The code requires 6'8" of clearance in new construction, but if an existing single family dwelling only had 6'7" of clearance, a building official could allow a modification for the internal conversion. This is a substantially similar, but not equivalent standard of care.

Waivers:

In some instances, complying with a specific standard of care may be impossible, infeasible, cost prohibitive, or otherwise impractical for a specific internal conversion project. The rules recognize this and allow a building official to waive that standard of care entirely as opposed to denying the permit and preventing the project from happening. An example of an issue that might be eligible for a waiver would be a situation where two of the existing bathrooms that will serve independent dwellings once the building is converted do not meet all plumbing fixture clearance criteria the building code. It would be costly and technically infeasible to move the existing fixtures to meet these non safety requirements, but the current configuration is not substantially similar to the code requirements. In this instance the building official may waive the clearance requirements, allowing the existing bathrooms to be used. This allows the internal conversion to proceed and keeps the project economically feasible.

Appeals Process

In addition to the new flexible uniform standards for internal conversions created by rule, the bill created a new expedited appeal process when a building official does not approve an internal conversion. This process for local accountability is described in the bill, so additional rulemaking was not required. This new expedited appeal process is only available for internal conversions. It differs from the existing appeal process in a few key ways:

- Expedited timeline
- Local decision making
- Local accountability

The bill establishes an expedited timeline for the appeal. First, a building official must approve or deny an application for an alternate approval of an internal conversion within 15 business days of receiving a complete application. This 15 day requirement is an accelerated timeline from a regular permit process. If an alternate approval is denied, the applicant has the right to appeal that decision. This appeal different from the regular appeal process and is a local process. It must be administrative in nature, and the applicant must be given the opportunity to make the appeal to someone other than a technical code expert. That appeal must be ruled on within 30 business days after the building official receives it. This process ensures that a local building official explores all possible avenues to approve an internal conversion, consistent with the intent of HB 2001, and local economic development goals. This new appeal process will create a faster permitting and development timeline and reduce any associated costs while encouraging maximum flexibility at the local level.

Appendix

This appendix is intended for illustrative purposes only and contains additional information and examples of alternate methods, modifications, and waivers. It also contains a diagram showing the differences between side-by-side dwelling units, such as two-family dwellings or townhomes, and vertically stacked dwelling units typically seen in internal conversions.

Examples of Alternate Methods, Modifications, Waivers:

All existing dwelling conversions are site-specific and shall be considered on a case-by-case basis.

Alternate Methods – Equivalent Safety

- Compartmentalization – Higher density sprinkler protection may help mitigate a lower fire resistance rating (FRR) unit separation.
- Compartmentalization – Lower FRR unit separation may be reasonable where improved independent egress from each unit is provided.
- Means of egress (MOE) - Common egress may be acceptable where additional and increased FRR separations are provided.
- MOE - Common egress may be acceptable where additional sprinkler coverage and density is provided.
- Fire separation distance (FSD) – Fire separation distance may be reduced where exterior wall FRR is provided or increased.
- FSD – Fire separation distance may be reduced where additional egress is provided from each unit.
- FSD – Fire separation distance may be reduced where additional sprinkler coverage and increased density is provided.
- Sprinklers – Sprinklers may possibly be reduced where multiple factors are increased, potentially including; substantially increased FRR separation and compartmentalization of each unit, increased egress from each unit, early notification appliances interconnected throughout all units, additional detection devices are provided throughout the building, interior finishes meet higher class criteria, etc.

Modifications – Substantially Similar

- Existing fenestration now requires protection as a hazardous glazing location. The applicant proposes to use a proprietary film on the existing fenestration listed to the performance standards of human impact loads. While this is not a prescriptive option, it meets the criteria and intent of providing protection against glass impact concerns.

- Three new interior habitable rooms are unable to meet the “7 foot minimum in any horizontal dimension” requirement, but provide 6’10”, 6’9”, and 6’11”, respectively, in their least dimension. The existing footprint of the dwelling being converted does not allow for other configurations meeting the 7’ minimum, and the larger dimensions exceed the minimum criteria. Since the minimum room areas are exceeded and a greater dimension is provided in all cases, the limit on meeting the 7’ minimum in one dimension is substantially similar.

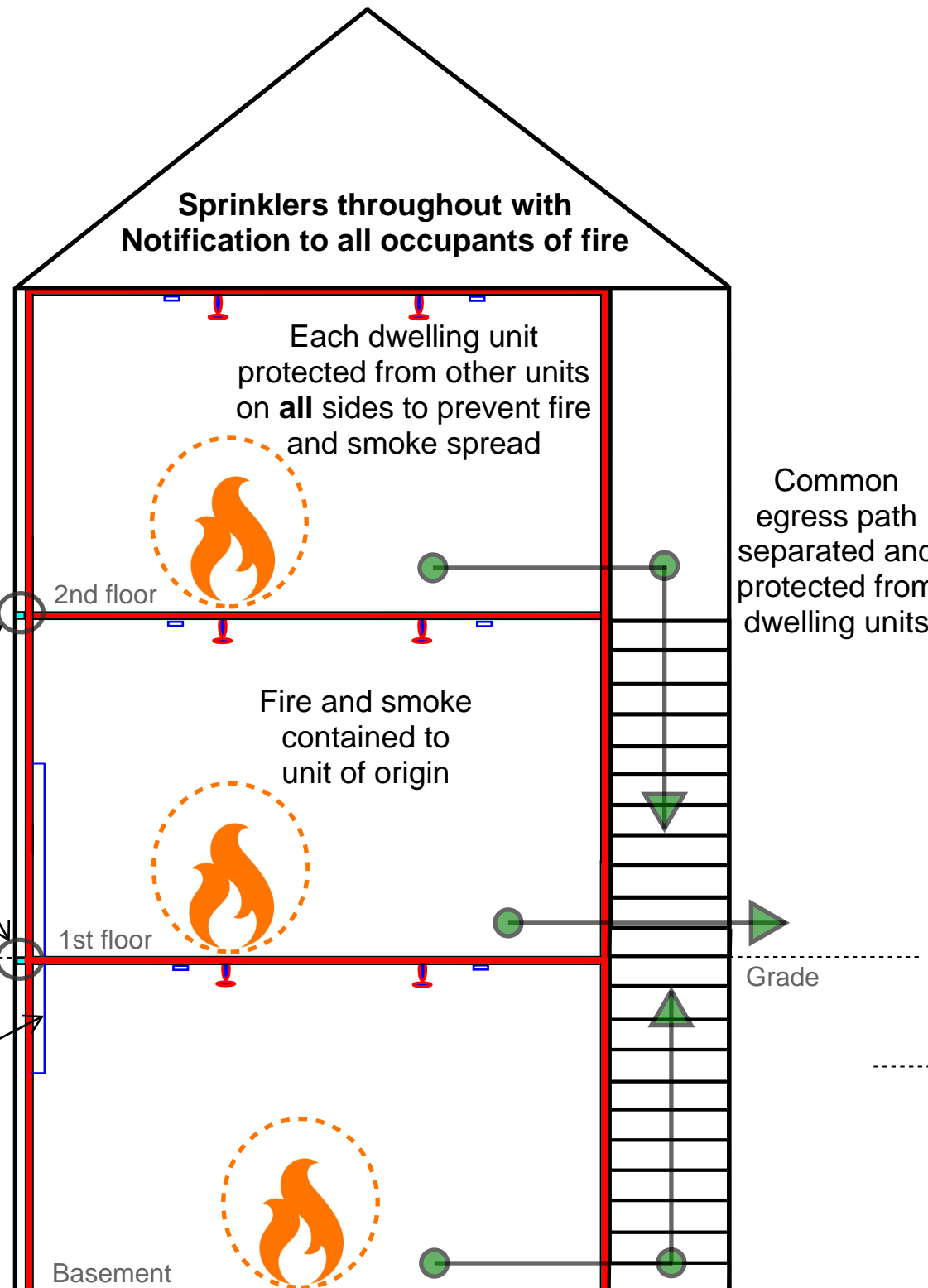
Waivers – Ultimate Flexibility (non safety)

- The sound transmission class (STC) and impact insulation class (IIC) rating of the code cannot be met without great expense, due to the existing construction. The existing assemblies are approximated as 40 STC & IIC under a field evaluation. This non safety provision can be waived by the local building official.
- Energy code requirements for the newly converted dwellings are costly and burdensome due to the existing nature of the structure. Since these are non safety requirements, the building official may waive as deemed appropriate.

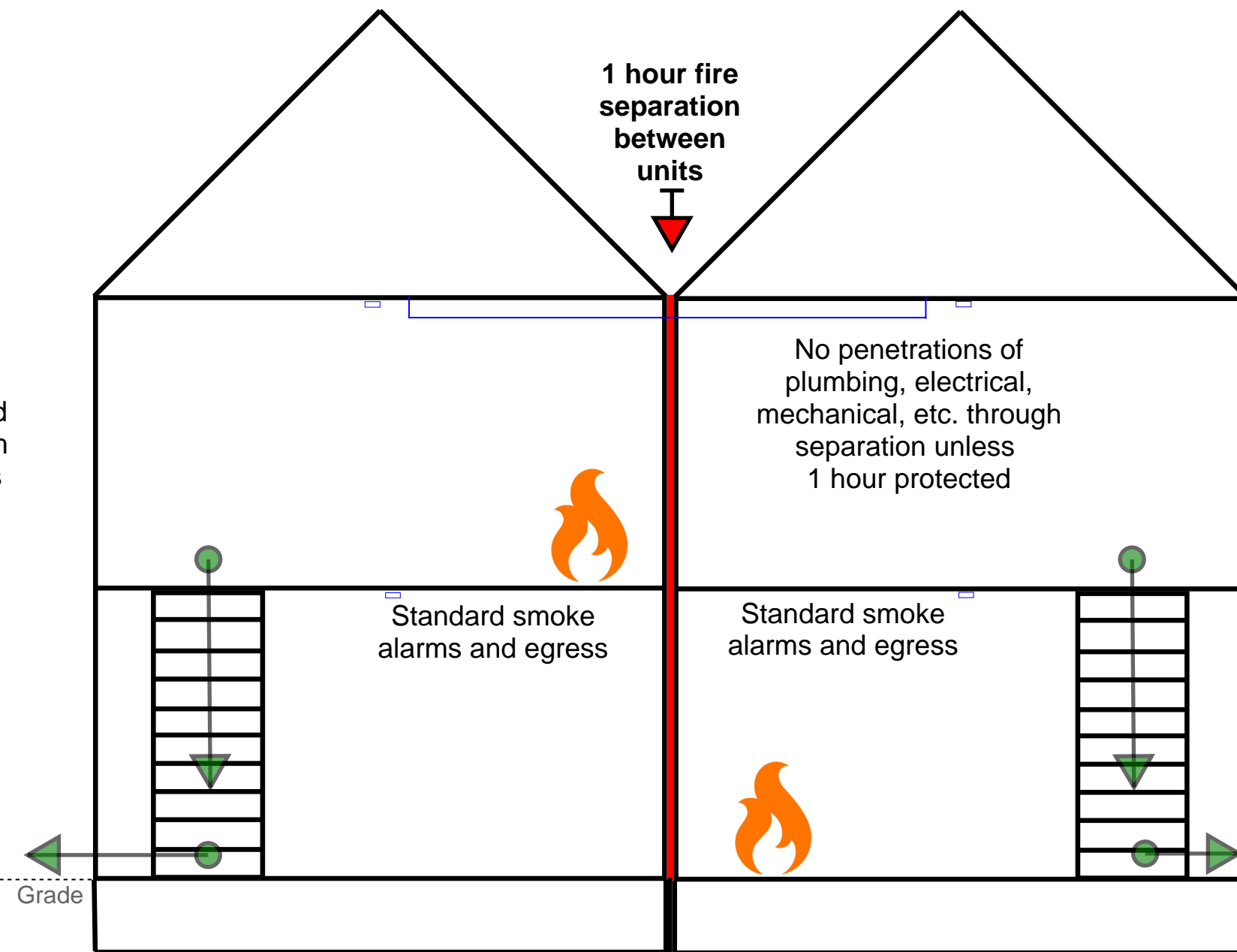
Typical Differences Between Duplexes and Apartments

(for illustration purposes only)

Three or more Dwelling Units



Two-Family Dwelling (Duplex)



OAR 918-020-0015

Definitions

- (1) For the purpose of an alternative approval process for single-family dwelling conversions as used in OAR 918-020-0390, the listed terms are defined as follows:
- (a) “Alternate method” means a proposal from an alternate approval process permit applicant to meet the standard of care for fire life safety protection for the items listed in OAR 918-020-0390(1) as required by the state building code for a dwelling conversion in a manner other than what is listed in code, including consideration of alternate construction methods and materials that achieve equivalent safety.
- (b) “Modification” means a proposal from an alternate approval process permit applicant for dwelling conversion to address one or more building code requirements in a similar manner as required by the state building code. A modification is not a waiver. Modifications address the general code requirement but do not have to meet an equivalent standard of care, or a specific code requirement. A modification is not permissible for the items listed in OAR 918-020-0390(1).
- (c) “Waiver” means a proposal from an alternate approval process permit applicant for dwelling conversion to waive a non-building safety code requirement. A waiver is not permissible for the items listed in OAR 918-020-0390(1).
- (2) “Full-service program” means a building inspection program that assumes administration and enforcement of all of the specialty code programs listed in ORS 455.148(1).

Statutory/Other Authority: ORS 455.148, 455.150, and 455.610

Statutes/Other Implemented: ORS 455.148, 455.150, and 455.610

OAR 918-020-0390

Alternative Approval Process for Single-Family Dwelling Conversions

- (1) A municipality administering and enforcing a building inspection program under ORS 455.148 or 455.150 shall, upon written request from an applicant for a building permit, exercise its ability to grant a local alternate approval, including alternate methods, modifications, and waivers under the state building code for projects related to conversion of a single-family dwelling to no more than four dwelling units. When making decisions regarding such a permit application, a building official may grant an alternate method for the following elements:
- (a) Means of egress requirements, including emergency escape and rescue openings;
 - (b) Smoke alarms, carbon monoxide alarms, and radon gas mitigation;
 - (c) Fire separation, fire resistance ratings, and dwelling unit penetrations and compartmentalization; and
 - (d) Required automatic fire sprinkler systems.
- (2) In making decisions related to an alternate method for conversion of an existing single-family dwelling into no more than four dwelling units, a building official may consider whether an automatic sprinkler system is technically feasible and consider alternate methods and materials, provided that adequate safeguards exist to address the items listed in section (1) of this rule and other appropriate measures are in place to ensure public safety, fire and smoke control, and safe egress.
- (3) A building official may accept an alternate method, a modification, or waiver of other code items pertaining to the conversion of existing single-family dwellings into no more than four dwelling units. However, consistent with the discretionary decision making powers

granted to building officials, and consistent with this rule, a building official may not approve a condition that would create an imminent threat to public health and safety.

(4) Applicable standards for the conversion of a single-family dwelling as follows:

- (a) A conversion into two dwelling units follows the construction standards of the Oregon Residential Specialty Code; and
- (b) A conversion into three or four dwelling units follows the construction standards of the Oregon Structural Specialty Code.

Statutory/Other Authority: ORS 455.610

Statutes/Other Implemented: ORS 455.610