



# STATE BUILDING CODE

## BACKGROUND BRIEF

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

The Department of Consumer and Business Services (DCBS) adopts, administers, and enforces a uniform, statewide building code to govern construction in Oregon.<sup>1</sup> The state building code is composed of a series of specialty codes, each of which addresses a specific area of construction (see Appendix 1).<sup>2</sup> DCBS works with advisory boards to adopt the specialty codes and delegates administration and enforcement of some specialty codes to local government.

### STATEWIDE BUILDING CODE

Nationwide, the decision to adopt or administer building code standards is typically left to local government. This was the case in Oregon until the early 1970s; by that time, the Portland metro area had 53 different local codes, while 20 Oregon counties had none.<sup>3</sup> In 1973, the Legislative Assembly required the state to adopt a uniform, statewide building code to govern construction in Oregon.<sup>4</sup>

### CODE ADOPTION PROCESS

Specialty codes are adopted through a public process that includes public advisory board and code review committee meetings and the administrative rulemaking process (see Figure 1). Interested parties can participate at any point in the process and may also seek appointment to an advisory board through the Governor's Office.

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**Figure 1: Code Adoption Process**



Source: Legislative Policy and Research Office  
Data: OAR 918-008-0000 et seq.

<sup>1</sup> ORS 455.020(1).

<sup>2</sup> ORS 455.010(7)-(8).

<sup>3</sup> Dept. of Consumer and Business Services, Building Codes Division. *A regulatory success story in Oregon.* <<https://www.oregon.gov/bcd/Documents/annualreports/BCDmagazineJuly2013.pdf>>, visited October 25, 2018.

<sup>4</sup> Senate Bill 73 (1973).

The specialty code adoption cycle generally occurs every three years for most specialty codes.<sup>5</sup> DCBS coordinates, interprets, and generally supervises the code adoption and amendment process, ensuring the proposed specialty codes:<sup>6</sup>

- are based on the application of scientific principles, approved tests, and professional judgment;
- focus on desired results instead of the means of achieving such results;
- avoid the incorporation of particular methods or materials;
- encourage the use of new methods and materials; and
- encourage maximum energy conservation.

### Advisory Boards

DCBS adopts specialty codes with the approval of advisory boards (see Appendix 1).<sup>7</sup> Membership of the advisory boards is prescribed in statute and includes representatives from specialty contractors, skilled labor, local government, fire officials, building owners, utilities, and the general public.<sup>8</sup> Advisory boards are subject to the Oregon Public Meetings Law and provide time on meeting agendas for any interested party to provide public comment.<sup>9</sup> Interested individuals may apply to the Governor's Office for appointment to one of the advisory boards.

### National Model Codes

The specialty codes must align as much as possible with the national model codes generally accepted and in use throughout the country.<sup>10</sup> National model codes are developed by committees composed of code officials, architects, engineers, designers, manufacturers, contractors, and government agency representatives, and are designed to provide consistent nationwide regulation.<sup>11</sup> DCBS works with the appropriate advisory board to select a base model code for the specialty code adoption process.

### Public Code Amendment Proposals

DCBS is required to amend the specialty codes as needed to allow for the use of new materials or methods of construction.<sup>12</sup> Any interested person may propose amendments to a specialty code, and all proposed amendments are submitted to the appropriate advisory board.<sup>13</sup> DCBS currently screens proposed code amendments to determine whether they substantially meet specified criteria.<sup>14</sup> With the approval of the appropriate advisory board, DCBS may adopt or modify and adopt any proposed code amendment.<sup>15</sup>

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<sup>5</sup> *Id.*, OAR 918-008-0070.

<sup>6</sup> *Id.*

<sup>7</sup> ORS 455.110.

<sup>8</sup> ORS 455.132-140, ORS 480.535, ORS 693.115.

<sup>9</sup> ORS 192.610 *et seq.*

<sup>10</sup> *Id.*

<sup>11</sup> International Code Council. *ICC Code Development Process*.

<[https://www.iccsafe.org/cs/PMG/Documents/Code\\_Dev.pdf](https://www.iccsafe.org/cs/PMG/Documents/Code_Dev.pdf)>, visited October 26, 2018.

<sup>12</sup> ORS 455.030(6).

<sup>13</sup> ORS 455.030(4).

<sup>14</sup> OAR 918-008-0030, OAR 918-008-0060.

<sup>15</sup> ORS 455.030(5).

### Code Review Committee

DCBS works with the appropriate boards to establish code review committees composed of stakeholders for each specialty code.<sup>16</sup> The code review committee reviews the technical provisions of the base model code, existing Oregon amendments, and proposed code amendments, and develops a proposed specialty code for the board's review. The code review committee also identifies potential marginal cost increases of the proposed specialty code.<sup>17</sup>

### Board Approval and Findings

The appropriate advisory board must approve the adoption of the specialty codes, including code amendment proposals from the public.<sup>18</sup> The advisory board reviews the proposed specialty code from the code review committee and proposes a specialty code to DCBS for adoption by administrative rule.<sup>19</sup> Notice of proposed rulemaking for the adoption or amendment of a specialty code must include a finding from the appropriate advisory board that the added cost, if any, is necessary to the health and safety of the occupants or the public or necessary to conserve scarce resources.<sup>20</sup>

### Administrative Rulemaking

Unless explicitly directed otherwise, DCBS follows the rulemaking process outlined in the Oregon Administrative Procedures Act.<sup>21</sup> DCBS gives notice of the proposed rulemaking to the public, recipients of the agency's mailing list, legislators, and local governments.<sup>22</sup> The notice identifies the economic impact to state agencies, local governments, and the public, including specified information on the cost of compliance for small businesses, and, where applicable, a housing cost impact statement.<sup>23</sup> The housing cost impact statement is an estimate of the effect of the proposed rule on the cost of developing a 6,000 square foot parcel and constructing a 1,200 square foot detached single-family dwelling on that parcel.<sup>24</sup>

Any interested party can submit comments on the proposed specialty code.<sup>25</sup> After fully considering all data and views presented, DCBS may adopt the code by rule.<sup>26</sup>

## ENERGY CONSERVATION STANDARDS AND SCHEDULE

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DCBS periodically reviews the energy conservation standards of the state building code and proposes updates to the standards as the director considers necessary to reflect changing technology in energy efficiency and to encourage continual improvements in

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<sup>16</sup> ORS 183.333(1).

<sup>17</sup> ORS 186.333(3).

<sup>18</sup> ORS 455.110(3), ORS 455.030(5)

<sup>19</sup> ORS 455.030(1), OAR 918-008-0000(6).

<sup>20</sup> ORS 455.030(2)(b).

<sup>21</sup> ORS 455.030(1).

<sup>22</sup> ORS 183.335, ORS 455.030(2).

<sup>23</sup> ORS 183.335(2)(b)(E), ORS 183.530.

<sup>24</sup> ORS 183.534.

<sup>25</sup> ORS 183.335(3)(a).

<sup>26</sup> *Id.*

building energy efficiency.<sup>27</sup> Energy conservation standards are adopted with the approval of the appropriate advisory boards and after consultation with the Oregon Department of Energy.<sup>28</sup>

### **Reach Code**

DCBS consults with the appropriate advisory boards to adopt, amend, and administer the Reach Code, an optional set of construction standards and methods designed to increase energy efficiency in buildings that are newly constructed, reconstructed, altered, or repaired.<sup>29</sup> DCBS also currently uses the Reach Code to adopt standards for tiny homes.<sup>30</sup>

### **Energy Efficiency Schedule**

DCBS works with the appropriate advisory boards to develop a schedule for the periodic review of energy efficiency standards and establish goals for increasing the level of energy conservation achieved by the use of energy efficiency standards contained in the state building code and the Reach Code.<sup>31</sup> The Governor issued an executive order in November, 2017, that specifies goals for energy efficiency standards and a schedule for their inclusion in the state building code.<sup>32</sup>

## **MUNICIPAL BUILDING INSPECTION PROGRAMS**

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The state building code is applicable and uniform throughout Oregon, and local governments are expressly prohibited from adopting or administering a competing standard without permission from DCBS.<sup>33</sup> Local governments can apply to DCBS to assume responsibility for administering and enforcing specified specialty codes.<sup>34</sup> Administration is delegated for a period of four years.<sup>35</sup> Municipal building inspection programs must establish and maintain minimum standards and policies designed to ensure consistent administration and enforcement of the state building code.<sup>36</sup>

Counties provide building inspection services for all cities within their borders that have not assumed administration and enforcement of a building inspection program. DCBS is the service provider in counties that have not assumed a building inspection program, which are currently Coos and Umatilla Counties. DCBS also provides building inspection services via contract to municipal building inspection programs as necessary

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<sup>27</sup> ORS 455.505, ORS 455.511(2).

<sup>28</sup> *Id.*

<sup>29</sup> ORS 455.500.

<sup>30</sup> Dept. of Consumer and Business Services, Building Codes Division. *2018 Oregon Reach Code*. <<https://www.oregon.gov/bcd/codes-stand/Documents/reach-18reachcode.pdf>>, visited October 25, 2018.

<sup>31</sup> ORS 455.511(3).

<sup>32</sup> Or. Exec. Or. 17-20 (Nov 2017).

<sup>33</sup> ORS 455.040.

<sup>34</sup> ORS 455.148, 455.150.

<sup>35</sup> ORS 455.148(2), ORS 455.150(2).

<sup>36</sup> OAR 918-020-0090, OAR 918-308-0010.

to ensure service delivery.<sup>37</sup> There are currently 128 local building inspection programs (See Appendix 2).

### **Building Official**

The governing body of the municipality must appoint a building official, who is the person responsible for the administration and enforcement of the building inspection program.<sup>38</sup> Building officials are certified by DCBS and exercise broad discretion as they administer the municipal inspection program including interpreting the codes, considering alternate methods, and waiving requirements or fees.<sup>39</sup> Building inspection staff act under the authority of their local building official.<sup>40</sup>

Decisions of a building official can be appealed to DCBS.<sup>41</sup> If the agency finds in favor of the appellant, it overturns the decision of the local building official and directs the building official to take specified action.

### **Uniform Forms and Fees**

DCBS adopts rules establishing uniform permit, inspection, and certificate of occupancy requirements as well as a uniform fee methodology.<sup>42</sup> Local governments may adopt by ordinance or regulation such fees as may be necessary and reasonable to provide for the administration and enforcement of the municipal building inspection program.<sup>43</sup> Fees are dedicated to the administration and enforcement of the municipal building inspection program.<sup>44</sup>

## **DELEGATION QUESTIONS**

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Several municipalities contract with private parties to administer and enforce their building inspection program. These municipalities often do not directly employ the individual appointed as the building official.

During the 2018 legislative session, the Office of Legislative Counsel found that the building official exercises legislative authority, and the use of a nonemployee as the building official could therefore be an unconstitutional delegation of legislative authority.<sup>45</sup> The Department of Justice advised DCBS that building officials exercise discretionary authority and that it is unconstitutional to delegate discretionary authority to a private party.<sup>46</sup>

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<sup>37</sup> ORS 455.185.

<sup>38</sup> ORS 455.148(3), ORS 455.150(3).

<sup>39</sup> OAR 918-098-1015(1).

<sup>40</sup> ORS 455.715(3).

<sup>41</sup> ORS 455.475.

<sup>42</sup> ORS 455.055, OAR 918-050-0000 *et seq.*

<sup>43</sup> ORS 455.210(3)(a).

<sup>44</sup> ORS 455.210(3)(c), ORS 479.845.

<sup>45</sup> Dexter Johnson, Legislative Counsel. "Re: Municipal building officials and inspectors." <<https://olis.leg.state.or.us/liz/2018R1/Downloads/CommitteeMeetingDocument/143186>>, visited October 25, 2018.

<sup>46</sup> Katharine Lozano, Assistant Attorney General. "Private Third Party Building Departments – Unconstitutional Delegation."

DCBS adopted rules in April 2018 requiring municipal building inspection programs to directly employ a certified building official and establishing additional administrative requirements.<sup>47</sup> Those rules were repealed in May 2018. Current rules require municipal building inspection programs to directly employ the building official, except when two or more municipalities combine in the appointment of a single building official.<sup>48</sup> DCBS requested a formal opinion on the question of delegation of building official duties to private parties from the Attorney General in May 2018. DCBS is awaiting that opinion.

## STAFF CONTACT

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<<https://olis.leg.state.or.us/liz/2018R1/Downloads/CommitteeMeetingDocument/145991>>, visited October 25, 2018.

<sup>47</sup> Dept. of Consumer and Business Services, Building Codes Division. *Notice of Temporary Rule: Program Delegation Standards*. <<https://www.oregon.gov/bcd/laws-rules/Documents/rules/20180423-delgationtemprule-tr.pdf>>, visited October 25, 2018.

<sup>48</sup> OAR 918-020-0090(1)(n) *et seq.*

## Appendix 1: Specialty Codes and Advisory Boards

Specialty Code	Scope	Advisory Board(s)
Manufactured Dwelling and RV Park Program*	Design and construction of mobile home and manufactured dwelling parks	Residential and Manufactured Structures Board
Oregon Amusement Ride and Device Specialty Code	Manufacturing, operation, and inspection standards for all amusement rides and devices	Electrical and Elevator Board
Oregon Boiler and Pressure Vessel Specialty Code	Minimum safety standards for the construction, installation, repair, use, and operation of boilers and pressure vessels	Board of Boiler Rules
Oregon Electrical Specialty Code*	Minimum safety standards for workmanship and materials in electrical installations	Electrical and Elevator Board
Oregon Elevator Specialty Code	Safety standards for the installation, alteration, repair, or maintenance of elevators	Electrical and Elevator Board
Oregon Energy Efficiency Specialty Code*	Energy efficiency standards for the Oregon Structural Specialty Code	Building Codes Structures Board; Construction Industry Energy Board
Oregon Manufactured Dwelling Installation Specialty Code*	Standards for the installation of manufactured dwellings	Residential and Manufactured Structures Board
Oregon Mechanical Specialty Code*	Standards for the installation and use of mechanical, heating, and ventilating devices and equipment	Mechanical Board
Oregon Plumbing Specialty Code*	All installations of plumbing and drainage in buildings and structures in this state and all potable water supply, drainage, and waste installations within or serving buildings or structures	State Plumbing Board
Oregon Residential Specialty Code*	All requirements, including structural design provisions, related to the construction of residential dwellings three stories or fewer above grade plane height	Residential and Manufactured Structures Board; Electrical and Elevator Board; Mechanical Board; State Plumbing Board
Oregon Structural Specialty Code*	Structural standards for the construction, reconstruction, alteration, and repair of buildings and other structures	Building Codes Structures Board
Recreational Parks and Organizational Camps*	Standards for the design, construction, enlargement, or alteration of recreational or picnic parks or organizational camps	Residential and Manufactured Structures Board
Recreational Vehicle Program	Standards and requirements for recreational vehicles	Residential and Manufactured Structures Board
*=Administration and enforcement delegated to local government		

Source: Legislative Policy and Research Office

Data: ORS chapter 446, 447, 455, 460 479, 480, and 693



**Appendix 2: Current Municipal Building Inspection Programs**

Albany	Douglas County	Lake County	Rogue River
Amity	Dundee	Lake Oswego	Salem
Ashland	Dunes City	Lakeside	Sandy
Astoria	Durham	Lane County	Scappoose
Aurora	Eagle Point	Lebanon	Seaside
Baker City	Estacada	Lincoln City	Sheridan
Baker County	Eugene	Lincoln County	Sherman County
Beaverton	Fairview	Linn County	Sherwood
Bend	Florence	Lowell	Silverton
Benton County	Forest Grove	Malheur County	Springfield
Boardman	Gearhart	Manzanita	St. Helens
Brookings	Gilliam County	Marion County	Sweet Home
Canby	Grant County	McMinnville	Talent
Cannon Beach	Grants Pass	Medford	Tigard
Central Point	Gresham	Milwaukie	Tillamook County
Clackamas County	Happy Valley	Molalla	Troutdale
Clatskanie	Harney County	Monmouth	Tualatin
Clatsop County	Hermiston	Morrow County	Umatilla
Coburg	Hillsboro	Multnomah County	Union County
Columbia City	Hood River	Newberg	Veneta
Columbia County	Hood River County	Newport	Vernonia
Coos Bay	Independence	North Bend	Wallowa County
Cornelius	Irrigon	Oakridge	Warrenton
Corvallis	Jackson County	Ontario	Wasco County
Cottage Grove	Jacksonville	Oregon City	Washington County
Creswell	Jefferson County	Pendleton	West Linn
Crook County	Josephine County	Philomath	Wheeler County
Culver	Junction City	Phoenix	Wilsonville
Curry County	King City	Polk County	Wood Village
Dallas	Klamath County	Portland	Woodburn
Dayton	La Grande	Redmond	Yamhill
Deschutes County	Lafayette	Reedsport	Yamhill County

Source: Legislative Policy and Research Office

Data: Dept. of Consumer and Business Services, Building Codes Division