

— Oregon Municipal Handbook —

CHAPTER 24: BUILDING REGULATIONS



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Chapter 24: Building Regulations

The Oregon State Building Codes Division, part of Oregon Department of Consumer and Business Services, adopts, administers, and enforces a uniform, statewide building code to govern construction in Oregon.¹ Through the state municipal building inspection program, many cities have assumed administration and enforcement of the building inspection program.

This chapter will discuss: the role of the state of Oregon; the authority of cities to apply the building code; and a summary of the state's building codes. Lastly, this chapter will discuss other regulations or interested parties that impact buildings such as the state fire code, the national historic landmark program and the state historic preservation officer.

I. BUILDING CODES DEFINED

Building codes are laws that set minimum requirements for how structural systems, plumbing, heating, ventilation and air conditioning (HVAC), natural gas systems, and other aspects of residential and commercial buildings should be designed and constructed.² A building permit gives a homeowner or contractor formal permission to build certain projects.³ The permit is issued by local building officials if the plans comply with the building code, local zoning regulations, and any other laws or regulations that might apply.⁴ Laws and regulations such as the state fire code are also discussed below.

A. Oregon Building Code

Nationwide, the decision to adopt or administer building code standards is typically left to local government.⁵ This was

Importance of Modern Building Codes

1. Protects you from a wide range of hazards such as fire, flood, and earthquakes.
2. Cities and counties avoided at least \$132 billion in losses from natural disasters.
3. Codes are always improving with the latest technology and experience.
4. Levels the playing field because when larger communities enforce codes, it makes it easier for smaller communities to follow.
5. Saves communities money in reduced insurance premiums, lower bond ratings, and can help when applying for federal grant funds.

Federal Emergency Management Agency, *5 Reasons Building Codes Should Matter to You* (2021), available at: <https://www.fema.gov/blog/5-reasons-building-codes-should-matter-you> (last accessed on May 1, 2024).

¹ ORS 455.020(1); see STATE OF OREGON LEGISLATIVE POLICY AND RESEARCH OFFICE, STATE BACKGROUND BRIEF BUILDING CODE (2018), available at: [background-brief-state-building-code-2018.pdf \(oregonlegislature.gov\)](#) (last accessed on May 1, 2024).

² *Id.*

³ See State of Oregon Building Codes Division, *About Oregon Residential Building Permits*, available at: <https://www.oregon.gov/bcd/lbddd/pages/oregon-permits.aspx> (last accessed on May 1, 2024).

⁴ *Id.*

⁵ See STATE OF OREGON LEGISLATIVE POLICY AND RESEARCH OFFICE, *supra* (providing the background of the state building codes).

the case in Oregon until the early 1970s, and by that time the Portland metro area had 53 different local codes, while 20 Oregon counties had none.⁶

In 1973, the Oregon Legislative Assembly required the state to adopt a uniform, statewide building code to govern construction in the state.⁷ The state-wide adoption of the building codes was intended to create a quick and efficient method to aid in construction and to encourage “economic development, experimentation, innovation and cost effectiveness in construction, especially in rural or remote parts of this state.”⁸

The state building code is applicable and uniform throughout Oregon and is composed of a series of specialty codes, each of which addresses a specific area of construction.⁹ The state building code does not include the regulations adopted by the Oregon State Fire Marshal.¹⁰ The building codes are made up the following specialty codes:

- *Oregon Structural Specialty Code.*¹¹ Structural standards for the construction, reconstruction, alteration, and repair of buildings and other structures. Enforcement can be delegated to local governments.
- *Oregon Residential Specialty Code.*¹² All requirements, including structural design provisions, related to the construction of residential dwellings three stories or fewer above grade plane height. Enforcement can be delegated to local governments.
- *Oregon Energy Efficiency Specialty Code.*¹³ Energy efficiency standards for the Oregon Structural Specialty Code. Enforcement can be delegated to local governments.
- *Oregon Mechanical Specialty Code.*¹⁴ Standards for the installation and use of mechanical, heating, and ventilating devices and equipment. Enforcement can be delegated to local governments.
- *Oregon Electrical Specialty Code.*¹⁵ Minimum safety standards for workmanship and materials in electrical installations. Enforcement can be delegated to local governments.

⁶ See State of Oregon Building Codes Division, *How it all started: Building a uniform state building code*, available at: <https://www.oregon.gov/bcd/50years/Pages/how-it-all-started.aspx> (last accessed on May 1, 2024).

⁷ Senate Bill 73 (1973).

⁸ ORS 455.015.

⁹ ORS 455.010(7)(8).

¹⁰ ORS 455.010(8).

¹¹ OREGON STRUCTURAL SPECIALTY CODE (2022), available at: <https://codes.iccsafe.org/content/ORSSC2022P1> (last accessed on May 1, 2024); see also OAR 918-460-0010.

¹² OREGON RESIDENTIAL SPECIALTY CODE (2023), available at: <https://codes.iccsafe.org/content/ORRC2023P1> (last accessed on May 1, 2024); see also OAR 918-480-0005.

¹³ OREGON ENERGY EFFICIENCY SPECIALTY CODE (2021), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/2021oeesc.pdf> (last accessed on May 1, 2024).

¹⁴ OREGON MECHANICAL SPECIALTY CODE (2021), available at: <https://codes.iccsafe.org/content/ORMSC2022P1>, (last accessed on May 1, 2024); see also OAR 918-440-0010.

¹⁵ OREGON ELECTRICAL SPECIALTY CODE (2023); see also OAR 918-305-0100.

- *Oregon Plumbing Specialty Code*.¹⁶ 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. Enforcement can be delegated to local governments.
- *Oregon Manufactured Dwelling Installation Specialty Code*.¹⁷ Standards for the installation of manufactured dwellings. Enforcement can be delegated to local governments.
- *Recreational Parks and Organizational Camps*.¹⁸ Standards for the design, construction, enlargement, or alteration of recreational or picnic parks or organizational camps. Enforcement can be delegated to local governments.
- *Manufactured Dwellings and RV Park Program*.¹⁹ Design and construction of mobile home and manufactured dwelling parks.
- *Oregon Elevator Specialty Code*.²⁰ Safety standards for the installation, alteration, repair, or maintenance of elevators.
- *Oregon Boiler and Pressure Vessel Specialty Code*.²¹ Minimum safety standards for the construction, installation, repair, use, and operation of boilers and pressure vessels.

Oregon law does not require the building codes to be published.²² This is because some of the specialty codes are copyrighted, and the publisher prohibits governments from distributing the code.²³ For example, the 2022 Oregon Structural Specialty Code is published by the International Code Council (ICC), and prohibits the publication of the Code.²⁴ Rather, the ICC makes the published codes available for free in a non-downloadable form on the ICC’s website.²⁵

¹⁶ OREGON PLUMBING SPECIALTY CODE (2023); *see also* OAR 918-750-0110.

¹⁷ OREGON MANUFACTURED DWELLING INSTALLATION SPECIALTY CODE (2010), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/md-2010omdisc-codebook.pdf> (last accessed on May 1, 2024); *see also* OAR 918-500-0510.

¹⁸ OAR 918-650-0000 to 918-650-0080.

¹⁹ OREGON MANUFACTURED DWELLING AND PARK SPECIALTY CODE (2002), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/md-2002-mdparks-code.pdf> (last accessed on May 1, 2024); *see also* OAR 918-500-0510.

²⁰ *See* OREGON ELEVATOR SPECIALTY CODE (2024).

²¹ *See* OREGON BOILER AND PRESSURE VESSEL SPECIALTY CODE (2021).

²² ORS 455.030.

²³ *See* OREGON STRUCTURAL SPECIALTY CODE (2022), available at: <https://codes.iccsafe.org/content/ORSSC2022P1/copyright> (last accessed on May 1, 2024).

²⁴ *Id.*

²⁵ *Id.*

The specialty code adoption cycle generally occurs every three years for most specialty codes.²⁶ The state coordinates, interprets, and generally supervises the code adoption and amendment process, ensuring the proposed specialty codes: (1) are based on the application of scientific principles, approved tests, and professional judgment; (2) focus on desired results instead of the means of achieving such results; (3) avoid the incorporation of particular methods or materials; (4) encourage the use of new methods and materials; and (5) encourage maximum energy conservation.²⁷ The state utilizes the administrative rulemaking process to advise on code amendments from groups such as advisory boards and code review committees.²⁸ The advisory boards are composed of persons that include specialty contractors, local government, building owners, utilities and the general public.²⁹

B. Building Code Tools

Oregon State Building Codes Division developed two web-based code tools to assist development:

- *Oregon ePermitting*.³⁰ The state has developed an online permitting system for access to services and information from all participating cities and counties.³¹ The Oregon ePermitting system allows contractors to apply for building permits, submit plans and construction documents, and schedule inspections. The system is a database for local jurisdictions to track and manage the permitting systems. Lastly, the system has mobile apps for inspectors and builders to communicate with photos and videos.³² Many local jurisdictions voluntarily participate in part or all of the ePermitting system.³³
- *Oregon Design Criteria Hub*.³⁴ The Oregon Design Criteria Hub is an interactive mapping tool that provides site-specific climatic and geographic design criteria for construction projects governed by the Oregon Residential Specialty Code (ORSC).³⁵ The hub is a streamlined tool where data from multiple maps and sources referenced by the ORSC can be accessed.³⁶ The hub is available to design professionals as well as local

²⁶ See STATE OF OREGON LEGISLATIVE POLICY AND RESEARCH OFFICE, *supra* (providing the specialty code adoption process).

²⁷ *Id.*

²⁸ *Id.*

²⁹ ORS 455.132 to ORS 455.140; ORS 480.535; ORS 693.115.

³⁰ Oregon Building Codes Division, *Oregon ePermitting*, available at: <https://aca-oregon.accela.com/oregon/> (last accessed on May 14, 2024).

³¹ ORS 455.095; See also BUILDING CODES DIVISION, CELEBRATING 50 YEARS OF THE STATE BUILDING CODE (2023).

³² *Id.*

³³ *Id.* A list of the participating jurisdictions is available at: <https://www.oregon.gov/BCD/epermitting/Documents/jurisdictions/participating.pdf> (last accessed on May 1, 2024).

³⁴ See Oregon Building Codes Division, *Oregon Design Criteria Hub*, available at:

<https://www.oregon.gov/bcd/codes-stand/Pages/design-criteria.aspx> (last accessed on May 1, 2024).

³⁵ *Id.*

³⁶ *Id.*

municipalities to assist in efficiently determining appropriate site-specific design criteria and to simplify the design and review of ORSC governed structures.³⁷

C. Building Permits

Oregon law requires a property owner to obtain local permits for a range of installations, alterations, and construction performed to ensure that the work meets minimum standards for safe construction.³⁸ A building permit is required to construct, enlarge, alter, repair, or move a residential building or structure.³⁹

Not all work requires permits. For example, the following work does not require a permit:

- Building an accessory structure, such as a shed or garage, that is uninhabitable, detached, one-story, less than 200 square feet or less than 15 feet measured from the floor to the average height of the roof.
- Building a patio, porch, or deck cover not more than 200 square feet in area or 12 feet in average roof height, and not closer than three feet to any property line.
- Building a porch or deck where the floor or deck is not more than 30 inches above the adjacent grade at any point.
- Installing a fence made of wood, wire mesh, or chain link less than seven feet in height.⁴⁰

Before commencing work, property owners and contractors should contact their local building department to verify permit requirements before beginning work.

³⁷ *Id.*

³⁸ *Id.*

³⁹ OREGON RESIDENTIAL SPECIALTY CODE (2023), § R101.

⁴⁰ *Id.*; See also State of Oregon Building Codes Division, *About Oregon Residential Building Permits*, available at: <https://www.oregon.gov/bcd/lbddd/pages/oregon-permits.aspx> (last accessed on May 1, 2024).

Building Permit Process

1. **Submit application.** Submit the following: project address, legal description, owner's name and address, name of the contractor, and a description of the work.

2. **Application is reviewed.** City planning staff may review for compliance with zoning rules, setback, lot coverage limitations, building height restrictions. If sufficient, the plans are reviewed by the plan examiner. If the plans are complex, other city professionals will review (i.e. plumbing, mechanical, structural, electrical or transportation concerns). If application is sufficient and money is paid, permit and job card are issued.

3. **Work begins.** Most plumbing and electrical work must be done by licensed contractors. As required by permit approval, building inspections are performed.

4. **Certificate of occupancy issued.** Once work is complete or conditions may be imposed to ensure completion, the owner may use the building.

See 1 Construction Law in Oregon (OSB Legal Pubs 2019) § 17.2.

The person performing the work, whether it is a homeowner or contractor, is responsible for obtaining all necessary permits.⁴¹ Once the permit is issued, the work must be done within 180 days unless the building official has granted extensions.⁴² Failure to get a permit could lead to a civil penalty. For the city of Salem, failure to obtain a permit could result in civil penalties up to \$2,000 per violation per day.⁴³

D. Building Code Trends

With its state-wide administration of building codes, Oregon has become an innovator in this area. In recent years, Oregon has adopted a Small Home Specialty Code, a Residential Reach Code, a Commercial Reach Code and is currently exploring further explore energy efficiency through the Resilient Efficient Buildings Task Force.

i. Small Home Specialty Code

In 2019, the Oregon Legislature created a path for approval of “tiny homes” in response to the high demand for the small houses.⁴⁴ At that time, the building codes did not have specific provisions applicable to small houses. The law specified that the 2018 International Residential Code would be adopted as the Small Home Specialty Code for the design and construction for small homes.⁴⁵ A “small home” is a single-family residence that is not more than 400 square feet in size.⁴⁶

ii. Energy Efficiency goals

In 2020, Governor Kate Brown issued Executive Order (EO) 20-04, requiring the Oregon Building Codes Division to evaluate and report on the state’s current progress toward achieving the goal of reducing greenhouse gas emissions at least 75% below 1990 levels by 2050 for new residential and commercial buildings, and options for achieving that goal over the next three code cycles.⁴⁷

In response to EO 20-04, the Building Codes Division adopted the Oregon Reach Code.⁴⁸ This code is separate from the state building code and applicable at the designer’s and

⁴¹ See, e.g., OREGON RESIDENTIAL SPECIALTY CODE (2023), § R105.

⁴² See OREGON RESIDENTIAL SPECIALTY CODE (2023), § R105.3.2.

⁴³ See City of Salem, *Report Building Activity Done Without a Permit*, available at: <https://www.cityofsalem.net/business/building-in-salem/feedback/report-building-activity-done-without-a-permit> (last accessed on May 1, 2024).

⁴⁴ House Bill 2423 (2019).

⁴⁵ See INTERNATIONAL RESIDENTIAL CODE (2018) Appendix Q, available at: <https://codes.iccsafe.org/content/IRC2018P4> (last accessed on May 1, 2024).

⁴⁶ ORS 455.616.

⁴⁷ <https://www.oregon.gov/bcd/Documents/eo-energy-20-04.pdf> (last accessed on May 1, 2024).

⁴⁸ Exec. Order No. 20-04, available at: <https://www.oregon.gov/bcd/Documents/202309-eo-energy-20-04-6breport.pdf> (last accessed on May 1, 2024).

contractor’s discretion.⁴⁹ The Oregon Reach Code is split into two codes: (1) the Oregon Residential Reach Code; and (2) the Oregon Commercial Reach Code.⁵⁰ This provides an additional choice to increase energy efficiency for the construction of structures regulated by the Oregon Structural Specialty Code.⁵¹

iii. Wildfire Hazard Mitigation

The Oregon Legislature directed the state’s Building Codes Division to adopt fire hardening building code standards to help protect structures from wildfire.⁵² The standards will be based on existing wildfire mitigation provisions, and could be applied to new dwellings and the accessory structures of dwellings in areas of the state mapped as high hazard zones and that are in the wildland urban interface.⁵³

The Building Codes Division is in the process of adopting these standards, which will be based on the wildfire mitigation provisions in Section R327 of the 2021 Oregon Residential Specialty Code.⁵⁴ The Oregon Department of Forestry is overseeing the development of a comprehensive statewide map of wildfire hazard zones.⁵⁵ The high hazard zones of the state in the wildland urban interface will be mapped out on the Oregon Wildfire Hazard Map.⁵⁶

E. Collaboration with Office of the State Fire Marshal

Through the Oregon Fire Code, the State Fire Marshal adopts minimum requirements related to fire prevention and standards for fire protection purposes.⁵⁷ Unlike the state building codes, local jurisdictions may adopt their own regulations, as long as the local regulations are consistent with the Fire Code.⁵⁸ The State Fire Marshal reviews the local regulations and makes consistency findings.⁵⁹ For ease, most cities in Oregon default to the Oregon Fire Code.

In 2018, the Building Codes Division Administrator and State Fire Marshal outlined best practices and suggestions to coordinate efforts with the state requirements such as providing code references and a plain statement of facts for citations and orders; providing electronic

⁴⁹ OREGON RESIDENTIAL REACH CODE (2021), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/2021-residential-reach-code.pdf> (last accessed on May 1, 2024); OREGON COMMERCIAL REACH CODE (2022), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/2022ocrc.pdf> (last accessed on May 1, 2024).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Senate Bill 80 (2023).

⁵³ *Id.*

⁵⁴ See Oregon Building Codes Division, *Wildfire Hazard Mitigation*, available at: <https://www.oregon.gov/bcd/codes-stand/pages/wildfire-hazard-mitigation.aspx> (last accessed on May 1, 2024).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See OREGON FIRE CODE (2022), available at: <https://codes.iccsafe.org/content/ORFC2022P1> (last accessed on May 1, 2024).

⁵⁸ See OAR 837-039-0006.

⁵⁹ *Id.*

access to plans to local fire officials, schedule joint meetings with building and fire officials, develop a pre-application meeting with building and fire officials, and develop a parallel review process for the state building code and fire code.⁶⁰ Fire code matters pertaining to new construction are made by the building official with consideration for advice provided by State Fire Marshal or fire official.⁶¹

The State Fire Marshal has created tools to educate homeowners and renters about defensible space.⁶² Creation of defensible space is a practice recommended to increase the chances of a home surviving a wildfire.⁶³

II. MUNICIPAL BUILDING INSPECTION PROGRAM

As discussed above, the state administers a uniform, statewide building code to govern construction in Oregon.⁶⁴ The state oversees the roughly 130 municipalities that administer the state building code through the municipal building inspection program.⁶⁵

A. City Authority

Local governments can apply to the state to assume responsibility for administering and enforcing specified specialty codes.⁶⁶ If approved by the state, the administration and enforcement of building codes is delegated for a period of four years.⁶⁷ Once delegated, the municipal building inspection program is reviewed every four years for compliance with the minimum standards and policies established by the state.⁶⁸

Municipal building inspection programs must establish and maintain minimum standards and policies designed to ensure consistent administration and enforcement of the state building code.⁶⁹ For cities that have not assumed the building inspection program, counties provide the

⁶⁰ Building Codes Division Administrator and State Fire Marshal letter to building and fire officials dated May 1, 2018, available at: <https://www.oregon.gov/bcd/codes-stand/Documents/20180515-joint-bcd-osfm-letter.pdf> (last accessed on May 1, 2024).

⁶¹ ORS 455.485.

⁶² See State Fire Marshal, *Creating Defensible Space*, available at: <https://oregondefensiblespace.org/> (last accessed on May 1, 2024); STATE FIRE MARSHAL, OREGON DEFENSIBLE SPACE FOR HOMEOWNERS & RENTERS, available at: <https://www.oregon.gov/osfm/Documents/OSFMDefensibleSpaceAssessmentTool.pdf> (last accessed on May 1, 2024).

⁶³ *Id.*

⁶⁴ Senate Bill 73 (1973).

⁶⁵ See OREGON BUILDING CODES DIVISION, STATE OF OREGON PERMIT SURCHARGE FEE, available at: <https://www.oregon.gov/bcd/jurisdictions/Documents/surcharge-backgrounder.pdf> (last accessed on May 1, 2024).

⁶⁶ ORS 455.148; ORS 455.150; e.g. City of Lincoln City Building Inspection Program Operating Plan, available at: <https://www.oregon.gov/bcd/jurisdictions/Documents/202310-lincolncity-program-assumption-request.pdf> (last accessed on May 1, 2024).

⁶⁷ ORS 455.148(2), ORS 455.150(2).

⁶⁸ OAR 918-020-0180.

⁶⁹ OAR 918-020-0090; OAR 918-308-0010.

service within city limits.⁷⁰ Where a city or a county has not assumed or is unable to administer the building inspection programs, the state will assume the administration and enforcement of the program.⁷¹

Cities requesting to assume new building department programs or additional parts of a program must provide a full-service program.⁷² The city must also prepare an assumption plan demonstrating its ability to administer the program for at least four years, to maintain or improve on service levels provided to the areas, operate a financially feasible program for at least two years, and transition the program from the previous service provider.⁷³ If a municipality would like to assume an electrical program, the requirements in OAR Division 918, Chapter 308 must also be followed. The application for the request for delegation of building inspection program must prepare an operating plan describing the manner in which the city shall meet the specific process and goals of the state building codes.⁷⁴ The city operating plan must describe how the building inspection program will cooperate with the State Fire Marshal and how the Fire Code will be considered in the building review process.⁷⁵

Several examples of municipal inspection program assumption applications are available online at: <https://www.oregon.gov/bcd/jurisdictions/Pages/program-assumptions.aspx>.

Local governments are expressly prohibited from adopting or administering building code standards without permission from the state.⁷⁶ Cities are not preempted from adopting ordinances that address the “local administration of the state building code; local appeal boards; fees and other charges; abatement of nuisances and dangerous buildings; enforcement through penalties, stop-work orders or other means; or minimum health, sanitation and safety standards for governing the use of structures for housing.”⁷⁷

B. Building Official

The governing body of the city must appoint a building official, who is the person responsible for the administration and enforcement of the building inspection program.⁷⁸ Local building officials work under the authority of state.⁷⁹ Building officials are certified by the state and exercise broad discretion as they administer the municipal inspection program including

⁷⁰ ORS 455.148(6).

⁷¹ ORS 455.148(12).

⁷² ORS 455.148.

⁷³ OAR 918-020-0095.

⁷⁴ ORS 455.148(8); OAR 918-020-0080.

⁷⁵ ORS 455.148(6).

⁷⁶ ORS 455.040; *see State, By & Through Haley v. City of Troutdale*, 281 Or 203 (1978); *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, *rev den*, 348 Or 524 (2010).

⁷⁷ ORS 455.040; ORS 455.020(4).

⁷⁸ ORS 455.148(3); ORS 455.150(3).

⁷⁹ OAR 918-020-0090; *see also* OREGON BUILDING CODES DIVISION, REFERENCE MANUAL FOR BUILDING OFFICIALS (2022), available at: <https://www.oregon.gov/osbae/Documents/Reference-Manual-for-Building-Officials.pdf> (last accessed on May 1, 2024).

interpreting the codes, considering alternate methods, and waiving requirements or fees.⁸⁰ Building inspection staff act under the authority of their local building official.⁸¹

C. Contracted Building Officials

The use of contracted building officials by local governments is an issue that was contested by a variety of interests. During the 2018 legislative session, the Oregon Office of Legislative Counsel found that the building official exercises legislative authority, and the use of a non-employee as the building official could therefore be an unconstitutional delegation of legislative authority.⁸² In 2019, Oregon Attorney General Ellen Rosenblum issued an opinion finding that contracting out entire building departments, including building official discretionary decisions, was unconstitutional.⁸³

In 2020, the Oregon Building Codes Division formed an advisory committee to identify possible pathways to resolve the legal issues of using a contracted building official. Cities and counties identified a process to retain the third-party programs provided local governments met several additional administrative requirements. In 2021, the Oregon Legislature passed the bill drafted to address the use of third-party building officials.⁸⁴ The 2021 law requires cities with contracted building officials to put in place certain procedural safeguards, including:

- A requirement for discretionary decisions to be: (1) in writing, including notice of hearing rights; (2) pre-approved or ratified by a municipal employee trained in building department oversight, and (3) subject to a rapid local appeal process.⁸⁵
- The contract building official shall be licensed by the State of Oregon.⁸⁶ The contract building official is considered to be a public official for purposes of ORS chapter 244.⁸⁷
- A city that uses a contract building official must have an independent auditor examine the building inspection program finances every two years.⁸⁸

A city using a contract building official was required to submit an updated operating plan to reflect the new laws.⁸⁹

⁸⁰ OAR 918-098-1015(1).

⁸¹ ORS 455.715(3).

⁸² Oregon Legislative Counsel Dexter Johnson Opinion Re: Municipal building officials and inspectors.

⁸³ Op. Att’y Gen. 8296 (2019).

⁸⁴ Senate Bill 866 (2021).

⁸⁵ ORS 455.202.

⁸⁶ *Id.*

⁸⁷ ORS 455.206.

⁸⁸ OAR 455.202.

⁸⁹ ORS 455.208.

D. Uniform Forms and Fees

The state adopts rules establishing uniform permit, inspection, and certificate of occupancy requirements as well as a uniform fee methodology.⁹⁰ A state surcharge fee of 12% is applied any time a construction activity under the state building code is authorized and will be inspected.⁹¹

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.⁹² When a local government changes its fees, it must submit notice of the time and place for public comment to the state prior to the fee's adoption by the local governing body.⁹³ Once the state receives the notice of the hearing, interested parties have 60 days to appeal the fee increase.⁹⁴

Fees are dedicated to the administration and enforcement of the municipal building inspection program.⁹⁵ Dedicated fees provide stable funding for local building departments, provide timely, value-added plan reviews and inspections, and support safe and affordable buildings.⁹⁶

In Clackamas, Washington, and Multnomah counties, special rules apply to the permitting process for permits that do not require a review of building plans.⁹⁷

E. Enforcement

Municipalities that assumed the administration and enforcement of a building inspection program before January 1, 2002, may administer and enforce some or all of a building inspection program.⁹⁸ On or after January 1, 2002, municipalities that assume the administration and enforcement of a building inspection program, must administer and enforce the program for all of the specialty codes, not just some of them.⁹⁹ If a municipality with a selective building inspection program seeks to administer additional parts of a program, the municipality must begin to enforce all aspects of the building inspection program.¹⁰⁰

⁹⁰ ORS 455.055; OAR 918-050-0000 *et seq.*

⁹¹ ORS 455.170(2); ORS 446.430(2); *See* OREGON BUILDING CODES DIVISION, STATE OF OREGON PERMIT SURCHARGE FEE, available at: <https://www.oregon.gov/bcd/jurisdictions/Documents/surcharge-background.pdf> (last accessed on May 1, 2024).

⁹² ORS 455.210(3)(a).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ ORS 455.210(3)(c); ORS 479.845; *see also* OREGON BUILDING CODES DIVISION, DEDICATED FEES, available at: <https://www.oregon.gov/bcd/jurisdictions/Documents/backgroundar-dedicated-fees.pdf> (last accessed on May 1, 2024).

⁹⁶ *Id.*

⁹⁷ ORS 455.044; ORS 455.046; OAR 918-050-0030.

⁹⁸ ORS 455.150.

⁹⁹ ORS 455.148; ORS 455.150.

¹⁰⁰ ORS 455.150(7).

III. BUILDING CODE DISPUTES

Building codes are complicated and are open to a degree of interpretation. Disputes arise in the interpretation of the codes. Sometimes those disputes are resolved in the field. As discussed below, the state interprets the state building codes and if the issue is brought to the state, it may resolve disputes between local building officials on the application of the code.¹⁰¹ If unresolved, those disputes may lead to a citation with potential penalties unless compliance is achieved.

Further, the Oregon Building Code Division investigates complaints made by persons believing that businesses and individuals are in violation of the building code statutes, rules, and specialty codes.¹⁰²

A. Interprets the Specialty Codes

i. Statewide and Site-Specific Code Interpretations

If someone wants to use any material, design, or method of construction that raises questions under the state building code, that person (or the building official) may request a ruling regarding acceptability from the state.¹⁰³ The ruling is based on advice from the appropriate advisory board and copies of the ruling are transmitted to all building officials in the state.¹⁰⁴

A statewide code interpretation is a binding interpretation of a specific code provision that applies to all jurisdictions.¹⁰⁵ A consumer or jurisdiction may request a statewide code interpretation.¹⁰⁶ The information contained in statewide code interpretation is legally binding on any party involved in activities regulated by applicable Oregon law, Oregon regulation, or the state building code.¹⁰⁷ If the information contained in this statewide code interpretation is cited as a basis for a civil infraction, a representative of the jurisdiction must cite the interpretation number found in the statewide rulings.¹⁰⁸

A site-specific code interpretation is a binding interpretation of a specific provision for use by a municipality that applies to the specific facts and circumstances in one particular

¹⁰¹ ORS 455.042.

¹⁰² See Oregon Building Code Division, *Enforcement Program*, available at: <https://www.oregon.gov/bcd/enforcement/pages/index.aspx> (last accessed on May 6, 2024).

¹⁰³ ORS 455.060.

¹⁰⁴ *Id.*

¹⁰⁵ OAR 918-008-0075 to 918-008-0085.

¹⁰⁶ OAR 918-008-0080.

¹⁰⁷ OAR 918-008-0110.

¹⁰⁸ OAR 918-098-1900.

location.¹⁰⁹ Only the building official of a jurisdiction may request a site-specific code interpretation.¹¹⁰

ii. Statewide Alternative Methods

A statewide alternative method is a ruling on the acceptability of any material, design, or method of construction that is not covered by the state building code.¹¹¹ A person or a building official may request an alternate method ruling.¹¹²

Statewide alternate methods are approved by the state in consultation with the appropriate advisory board.¹¹³ The advisory board’s review includes technical and scientific facts of the proposed alternate method.¹¹⁴ In addition:

- Building officials shall approve the use of any material, design or method of construction addressed in a statewide alternate method;
- The decision to use a statewide alternate method is at the discretion of the applicant; and
- Statewide alternate methods do not limit the authority of the building official to consider other proposed alternate methods encompassing the same subject matter.¹¹⁵

The Oregon Building Code Division’s rulings on statewide alternative methods are available online at: <https://www.oregon.gov/bcd/codes-stand/pages/alternate-methods.aspx>.

B. Citations

All building officials must include an exact reference to the applicable specialty code section, administrative rule, or statute when issuing corrective notices at construction sites.¹¹⁶ Further, the building official must include a plain statement of facts upon which the citation for correction action is based.¹¹⁷ This is also known as “cite it, write it.”¹¹⁸ The state has also published a structural checklist and electrical checklist for applicable specialty code citations.¹¹⁹

¹⁰⁹ OAR 918-008-0075; OAR 918-008-0080; OAR 918-008-0090.

¹¹⁰ OAR 918-008-0090.

¹¹¹ See OAR 918-008-0075; 918-008-0080; 918-008-0095.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ OAR 918-098-1900; See also OREGON OF OREGON BUILDING CODES DIVISION, CITE IT, WRITE IT RULES (2013), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/cite-it-write-it-rules.pdf> (last accessed May 6, 2024).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See OREGON BUILDING CODES DIVISION, STRUCTURAL STANDARDS CITE-IT, WRITE-IT (2021), available at: <https://www.oregon.gov/bcd/codes-stand/Documents/cite-it-write-it-checklist.pdf> (last accessed May 6, 2024); See OREGON BUILDING CODES DIVISION, INSPECTOR’S QUICK REFERENCE 2017 OESC, available at: <https://www.oregon.gov/bcd/codes-stand/Documents/el-insp-quick-ref.pdf> (last accessed May 6, 2024).

The checklist is a resource for building officials to help ensure that the officials are consistent in the violations they cite.

The citations may assess civil penalties, or condition, suspend or revoke a license or certificate of competency.¹²⁰ The director of the Oregon Building Codes Division has developed a penalty matrix for civil penalties.¹²¹ The penalty matrix identifies penalties that may be assessed to businesses and individuals found to be in violation of building code statutes, rules, and specialty codes.¹²²

C. Appeals

Decisions of a building official can be appealed to the local jurisdiction appeals board or the state specialty code chief.¹²³ The local jurisdiction appeals board procedure is set forth by the applicable jurisdiction.¹²⁴ If the appeal is directed to the state specialty code chief, the appeal process is set forth in the administrative rules.¹²⁵

If the state finds in favor of the appellant, it overturns the decision of the local building official and directs the building official to take specified action. The Oregon Building Codes Division maintains the state specialty code chief rulings that overturn the local building official online at: <https://www.oregon.gov/bcd/codes-stand/Pages/appeal-decisions.aspx>.

If the state finds in favor of the building official, the appellant may appeal to the appropriate advisory board.¹²⁶

D. Municipal Liability

Cities may be concerned about the potential liability for negligently inspecting work subject to the state's building codes. Currently, there are no Oregon appellate cases on negligent building code inspections for issuing a building permit in error. In a noteworthy Washington case, plaintiff homebuyers sued the county building department, alleging that the department's inspector had performed a negligent inspection.¹²⁷ The Washington Supreme Court stated that there was no duty owed to the homebuyers and therefore the county was not liable for its inspector's actions.¹²⁸

¹²⁰ OAR 918-001-0036.

¹²¹ *Id.* See also Oregon Building Codes Division, *Advisory Board Civil Penalty Matrix* (2017), available at: <https://www.oregon.gov/bcd/enforcement/Documents/penalty-matrix.pdf> (last accessed May 6, 2024).

¹²² *Id.*

¹²³ ORS 455.475; OAR 918-008-0120 (for appeals relating to the Electrical Specialty Code); OAR 918-001-130 (for appeals of all other specialty codes); OAR 918-020-0260 (appeals of discretionary decisions to the local board).

¹²⁴ See e.g., city of Portland, *Building Code Board of Appeals*, available at <https://www.portland.gov/bds/appeals-board> (last accessed May 6, 2024).

¹²⁵ OAR 918-008-0120.

¹²⁶ *Id.*

¹²⁷ *Taylor v. Stevens Cnty.*, 111 Wash 2d 159 (1988).

¹²⁸ *Id.*

In Oregon, arguably the law of negligence would apply to such a claim. Oregon negligence law would be concerned about reasonableness, foreseeability, and the particular code at issue.¹²⁹ Since inspections could be considered a discretionary function, it is possible that local governments would be immune from performing discretionary functions.¹³⁰ In a recent Oregon Court of Appeals case, the court held that the city’s enactment and enforcement of a fire sprinkler ordinance was the “quintessential discretionary policy-making decision,” and the city is immune for that choice.¹³¹

¹²⁹ See generally *Fazzolari v. Portland School Dist. No. 1J* (1987).

¹³⁰ See generally *Smith v. Cooper*, 256 Or 485, 495 (1970) (public employee is not liable for negligently performing discretionary function, although line differentiating ministerial functions from discretionary functions has never been clearly drawn); See 1 *Construction Law in Oregon* (OSB Legal Pubs 2019) § 17.2.

¹³¹ See *Ragaway v. City of Portland*, 315 Or App 647 (2021).