



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Building Codes Division

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March 4, 2019

House Committee on Revenue  
Oregon House of Representatives  
900 Court St. NE  
Salem Oregon 97301

Re: Preliminary testimony regarding House Bill 2663

Dear Chair Nathanson and members of the House Committee on Revenue:

We have had several conversations with legislators and other stakeholders regarding HB 2663, specifically the portions of the bill related to conversions of existing structures into multi-family housing. We would like to provide the following background for the committee to consider.

The Conversion of an existing structure into multi-family housing raises issues unique to each structure and community. Therefore, we believe this issue is a local matter best addressed by the community that chooses to allow this practice as part of a land-use or other local strategy. We do not believe a one-size-fits-all approach set in Salem is adequate to address the multitude of issues, including the age of the structure, type of construction as well as any modifications, remodels and/or maintenance that has taken place.

We have heard general comments from local communities that the State Code, which is primarily designed for new buildings, is a barrier to conversion of existing structures. Building Codes are not designed to be and should not be viewed as a barrier to construction. The various codes include many tools for building officials to address local conditions as well as issues specific to the individual structure. If a local community finds the State Code does not meet a local need they may seek a specific local amendment. As an example, the City of Portland, has been granted preliminary approval of a local amendment for conversion of multi-family dwellings related to a pending historical building program (see attached).

When HB 2001 and HB 2663 became available for agency review, we posed two questions to stakeholders. First, does the State Code create a barrier for new construction? Second, should there be additional tools for local flexibility? To answer the first question, we wrote to the Oregon Home Builders Association (see attached). To address the tools available to local communities to address conversions, we asked the Oregon Building Officials Association to provide options. A group of local officials working with the state has identified new tools that would increase options for local officials as they address multi-family conversions. Our recommended solutions include those flexible tools and an appeal mechanism to ensure timely local consideration. Both concepts are attached. We don't recommend a state study for what is ultimately a matter specific to each structure and that should be considered at the local level. However, if the legislature intends to move forward with a study, we



House Committee on Revenue  
HB 2663  
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suggest amending the language to speed the process up. We can provide your committee our suggestions. Last, we would need expenditure limitation for the study and would need to have those conversations with our budget committee.

I will not be available for the scheduled hearing on Monday, March 4, 2019 but I am available to the committee to address any questions or to follow up on our recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Mark Long', with a long horizontal flourish extending to the right.

For Mark Long  
Administrator

attachments

Local Ordinance allowing up to three Dwelling Units in a Historical Home  
(R-3.1 Occupancy Classification)

As provided for herein, up to three separate dwelling units may be allowed in those existing dwellings specifically designated as historically significant by the state historic preservation office(r) or by official action of a local government.

In addition to the requirements of the *Oregon Residential Specialty Code*, the following shall apply;

- 1. Occupancy Classification.** Structures complying with this ordinance shall be classified as R3.1 occupancies.
- 2. Separations.** Each dwelling unit shall be separated from other dwelling units, and any other common spaces as follows. Where horizontal separations are utilized, all supporting construction shall be protected to afford the required fire-resistance-rating;
  - a. 1-hour fire-resistance-rated assemblies where 2 dwelling units are proposed
  - b. 2-hour fire-resistance-rated assemblies where 3 dwelling units are proposed
- 3. Dwelling Unit Penetrations.** Dwelling unit penetrations shall comply with R302.4. Through penetrations of dwelling unit separations shall not be permitted where 3 dwelling units are proposed.
- 4. Alarms.** Each dwelling unit shall contain the following alarms;
  - a. Smoke alarms complying R314
  - b. Carbon monoxide alarms complying R315
  - c. EPA Certified Radon Gas Detector in the dwelling where located in Baker, Clackamas, Hood River, Multnomah, Polk, Washington or Yamhill county.
  - d. Multiple-station smoke alarms devices with one actuation device in each dwelling unit or interconnected smoke alarms complying with Section R314.4 which will activate all alarms in the building.
- 5. Means of Egress.** Each dwelling unit shall be provided with at least 1 direct exterior exit. The required exit shall discharge directly to a public way or to a yard or court that opens to a public way.
  - a. **Exception:** The means of egress may be through an *exit access stairway* complying *Oregon Structural Specialty Code* Section 1009.1.
- 6. Emergency Escape and Rescue Openings.** Basements and every sleeping room shall have not less than one operable emergency escape and rescue opening complying with Section R310.
- 7. Separation Distance.** The dwelling shall be surrounded by a 10 foot separation distance on all sides. The term “separation distance” shall have the meaning given in ORSC Section R328.3.
- 8. Utility Disconnects.** Gas, electricity and water disconnects shall be accessible to all residents of the structure either by means of individual disconnects in each dwelling unit or a location available to all residents.

Consistent with the discretionary decision making powers granted to the local building official, modifications to these requirements may be made locally to address site specific considerations. When waiving or accepting a modification to these requirements locally, a building official shall not allow a provision that would create an imminent threat to public health or safety.



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February 13, 2019

Home Builders Association

Attention: Jodi Hack, Scott Barrie, Justin Wood and Howard Asch  
2075 Madrona Ave. S.E., Ste. 100  
Salem, Oregon 97302

Re: Available Housing (House Bills 2001 & 2663) – Building Code Changes

The Oregon legislature is concerned with availability of housing in Oregon. As you may know, the division has recognized the escalating costs of typical residential construction and has previously attempted to address the issue. Our efforts last year to develop a set of reasonable codes for affordable starter homes was unsuccessful.

This year, affordable multi-family housing is a specific point-of-interest for the legislature. Multiple bills (HB 2001, HB 2663 and others) and discussions with stakeholders and legislators have identified the State Building Code as a potential “barrier” to affordable multi-family construction. Specifically, the standards applicable to new small multi-family housing have been identified as needing to be addressed (in Oregon the code for small multi-family is the Low Rise Residential Dwelling Code). The division needs your input to identify the barriers to small multi-family dwelling construction. We would appreciate your input related to the following questions at your earliest convenience:

- 1) What are the Building Code barriers to affordable small multi-family dwellings?
- 2) Do you see a challenge for new construction or are there different challenges for “conversion” of an existing dwelling to multi-family or both?
- 3) Are the barriers and challenges with the Code a statewide matter or specific to an area or region?
- 4) We have heard that residential sprinklers should be reviewed. Should we reconsider alternative sprinkler requirements for dwellings, town houses and small multi-family dwellings?
- 5) Are there other building code issues related to affordability that you can identify?

As you are aware, Residential Structures Board is responsible for the Low Rise Residential Code. Your responses to these questions will be included as part of our discussions with the Board in attempting to address the issues that the legislature and/or the construction industry believe may be barriers to affordable construction. The division plans to bring a package of building code changes to the board for consideration. Your input will also be a part of our discussions with the legislature as well.





Home Builders Association  
February 13, 2019  
Page Two

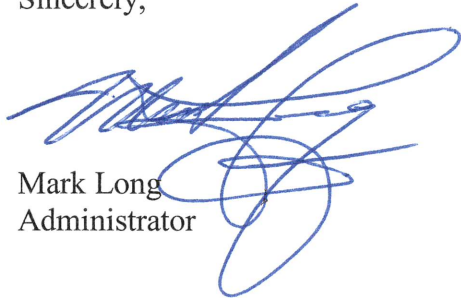
The division has also identified that additional “tools” should be available for the local officials to help industry convert existing structures. We will be proposing changes to the Residential Structures Board and legislature to improve local decision-making for conversion of existing dwellings. The items you identify in your responses will be important to this discussion as well.

For convenience, BCD staff has identified key building code elements for small multi-family housing and single/two family housing. This information may aid in the identification of barriers, opportunities to improve safety and other items we should consider.

The next Residential Structural Board meeting is scheduled for April 10, 2019. To include your suggestions with our package of proposals, please let us know your thoughts by March 22, 2019. Thank you in advance for your assistance.

Should you have questions, please contact Richard Rogers at (503) 373-4472 or by email [Richard.rogers@oregon.gov](mailto:Richard.rogers@oregon.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Long', is written over the typed name and title.

Mark Long  
Administrator

Attachment

# One- and Two-Family Dwellings vs Multiple Dwelling Units

TR 02/12/19

CODE ELEMENT	ONE- AND TWO-FAMILY	THREE OR MORE DWELLING UNITS
<b>MEANS OF EGRESS PROTECTION</b>	Two methods of egress from each sleeping area.  Independent egress from each dwelling	Two methods of egress from each sleeping area. Independent egress from each dwelling and fire protected if commonly accessed (stairways, hallways, etc.)
<b>FIRE SEPARATION &amp; COMPARTMENTALIZATION</b>	1 hour between units vertical & horizontal	1 hour between units vertical & horizontal
<b>FIRE &amp; SMOKE ALARMS</b>	Single station alarms only	Single station alarms and building-wide notification
<b>AUTOMATIC SPRINKLERS</b>	No	Yes – NFPA 13R (Supervised)
<b>SHARED ATTIC AND UNDERFLOOR SPACES</b>	Shared attics not permitted between units	Permitted where fireblocked or draftstopped to control smoke & fire
<b>PENETRATIONS THROUGH FIRE-RATED SEPARATIONS</b>	Approved firestop system per ASTM E814 or UL 1479	Approved firestop system per ASTM E814 or UL 1479
<b>FIRE SEPARATION DISTANCE</b>	3 feet minimum to property line or fire rated exterior wall	10 feet minimum to property line or fire rated exterior wall
<b>OCCUPANT LIMIT</b>	Not contemplated	1 occupant per 200 gross square feet
<b>ACCESSIBILITY</b>	Not required	Required by Federal FHA at <b>four</b> or more
<b>SHARED HVAC SYSTEMS</b> (Single system serving more than one dwelling)	Not permitted between units	Not permitted between units
<b>SOUND TRANSMISSION</b>	STC & IIC of 45	STC & IIC of 50 (45 if field tested)
<b>ENERGY COMPLIANCE</b>	Prescriptive envelope & Existing components	Prescriptive envelope & Existing exposed cavities
<b>MINIMUM HEATING &amp; ROOM AREAS</b>	68° F Habitable rooms ≥ 70 sq ft	68° F Habitable rooms ≥ 70 sq ft 1 room per unit ≥ 120 sq ft
<b>UTILITIES</b>	Separate access to electrical, plumbing & mechanical disconnections	Separate access to electrical, plumbing & mechanical disconnections

Proposed Rules: Alternative Approval Process for Housing Permits  
For discussion purposes only  
2/21/19

Background:

The State Building Code is not intended to be a barrier to construction, or limit a local jurisdiction's ability to find alternative solutions for construction. For conversion of multi-family dwellings, building officials and contractors need "tools" to ensure projects proceed in a flexible and timely manner.

Proposed Concept:

Recognizing that a local jurisdiction's housing stock and housing needs are unique, this concept would:

- Provide new tools for local government to accept alternate proposals for conversion of dwellings.
- Create standing for permit applicant to seek alternative approvals based on community needs.
- Ensure timely decisions related to alternate proposals are considered.
- Establish a local mechanism to allow permit applicant to seek alternate review if denied by a building official.
- **Note: This is a proposed rule to align with proposed legislative amendment to HB 2001. (See proposed HB 2001 amendment dated 2/21/19)**

Proposed Language:

**(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 dwelling to no more than 4 dwelling units under the Low-rise Residential Code. 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 detectors; and**

**(c) Fire separation, fire resistance ratings, and dwelling unit penetrations and compartmentalization;**

**(d) Required sprinkler system.**

**(2) In making decisions related to an alternate method for conversion of a dwelling to no more than 4 dwelling units under the Low-rise Residential Code, a Building Official may consider whether a sprinkler system is technically feasible and consider alternate methods and materials provided that adequate safeguards exist to address items 1 a-d 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 conversion of existing dwellings to no more than 4 dwelling units under the Low-rise Residential Code, however, consistent with the discretionary decision making powers granted to Building Officials, and consistent with these rules, a Building**

**Official may not approve a condition that would create an imminent threat to public health and safety.**

**(4) A Building Official must make a decision on a dwellings conversion alternate method, modification or waiver within 15 business days from the receipt of a written request for a decision accompanied by any required submittal information.**

(Note: Subsection 4 requiring timelines and appeal mechanism would only be added to these rules should appropriate legislative action occur.)

**Definitions:**

**Alternate Method**

**For the purpose of these rules, an alternate method is a proposal from a permit applicant to obtain equivalent safety protection as required by the State Building Code for a dwelling conversion, including consideration of alternate methods and materials that achieve equivalent safety.**

**Modification**

**For the purposes of these rules, a modification is a proposal from a permit applicant to address a Building Code item in a substantially similar manner as required by the State Building Code. A modification is not a waiver. A modification is not permissible for item 1 a-d.**

**Waiver**

**For the purposes of these rules, a waiver is a request from a permit applicant to waive a non-building safety code requirement. A waiver is not permissible for items 1 a-d.**



Proposed Legislative Amendments to HB 2001 Concept: Low-rise Residential Dwelling Code  
For discussion purposes only  
2/21/19

Proposed Concept:

Amend ORS 455.610 Low-rise Residential Code:

The Director, by rule, shall establish uniform standards for alternate approval of construction related to conversions of residential dwellings to no more than four residential dwelling units built to the Low-rise Residential Code that received occupancy approval prior to January 1, 2020. A Building Official operating under ORS 455.150/148 must consider upon written request with required submittal information an alternate approval from a permit applicant within 15 business days.

A Building Official may not deny a written request for an alternate approval that meet the uniform standard adopted by the Director, unless the Building Official provides to the party subject to the denial:

- a) Explains in detail the basis of the denial including relevant codes, ordinances and other written references;
- b) States that the party may appeal the denial;
- c) Describes the means and timeline for a party to appeal;
- d) Establishes a deadline for the party to appeal, and provides for an administrative process other than a judicial proceeding in a court of law, that affords the party an opportunity to appeal the denial before an individual, department or a body that is other than the municipalities plan reviewer, building inspector or Building Official. Administrative adjudication of the party's challenge under this sub-section must be completed within 30 business days after the Building Official receives notice of the challenge. Notwithstanding any other provision of law, this municipal administrative process shall be the only means for an administrative challenge of an alternate approval denial.