

BUILDING CODE PREEMPTION AND THE LOCAL AMENDMENT IN OREGON

Oregon's Building Codes Overview

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- Building codes are adopted by the Building Codes Division, a division of the Department of Consumer and Business Services (DCBS)
- The Building Codes Division adopts the codes and standards for:
 - Construction and reconstruction
 - Alteration and repair
 - Installation of mechanical devices and equipment in buildings
- Oregon's buildings codes are made up of specialty codes
- Each specialty code is adopted, amended and administered with the assistance of various advisory boards, populated by specific interests, including utilities or energy suppliers



Oregon's Building Codes Preemption

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State ex rel Haley v. Troutdale, 218 Or. 203, 576 P.2d 1238 (1978)

ORS 456.775(1) provided:

“The state building code shall be applicable and uniform throughout this state and in all municipalities therein, and no municipality shall enact or enforce any ordinance, rule or regulation **in conflict** therewith.”

Troutdale could adopt more stringent building code provisions so long as they were compatible with the state code.

The next session, the Oregon legislature amended the law

Now ORS 455.020(1) provides:

“The state building code shall be applicable and uniform ... and no municipality shall enact or enforce any ordinance, rule or regulation **relating to the same matters encompassed by the state building code but which provides different requirements** unless authorized by the Director of the Department of Consumer and Business Services.”

Oregon's Local Amendment – OAR 918-020-0370

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Step One

Hold public hearing or meeting

Step Two

Complete report addressing seven criteria:

1. Summarize comments received
2. Explain response to substantive concerns
3. Describe stakeholder outreach and report on results
4. Identify other communities consulted and regional solutions
5. “Outline the impacts” of the amendment
6. Estimate the fiscal impact and additional construction cost
7. “Identify the financial or regulatory incentives provided by the municipality to businesses or contractors impacted by the local amendment request”

Step Three

Submit application to BCD
with copy of ordinance



The BCD's Response

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- In considering a local amendment submitted by a municipality, “[t]he director shall encourage experimentation, innovation and cost effectiveness by municipalities[.]”
- BCD has authority to approve the local amendment, in whole or in part, or deny it
- BCD may interpret or add conditions
- BCD maintains review authority
- None of the provisions are severable

A note about the Energy Policy and Conservation Act (EPCA)

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EPCA preempts, with some exceptions, any state or local regulation “concerning the energy efficiency, energy use, or water use of [a] covered product.”

There is a building code exception; the statute sets out seven criteria in 42 U.S.C. § 6297(f)(3) that the code must comply with in order to avoid preemption.