



MEMORANDUM

SUBJECT: Building Codes Program

TO: BOARD OF COUNTY COMMISSIONERS

FROM: TYLER STONE

DATE: 7/6/18

BACKGROUND INFORMATION:

Mid-Columbia Council of Governments (MCCOG) has operated the building codes program as a four county entity serving the regions building code needs since 2007. Prior to 2007 the State of Oregon operated the program. February 1st, 2018 the program was temporarily given back to The State of Oregon to operate when it was determined that there was no longer a need for the MCCOG entity to exist. Each of the other counties that were previously in the MCCOG building codes program followed suit and the temporary office is currently serving all four counties. This program has been operated since that time by the State and co-located with the Wasco County Planning Department.

In 2015 the Board of County Commissioners asked staff to look at the codes program and evaluate how the program was being administered and look at other potential models for the provision of building codes services. That report (Building Codes Management Analysis) is available upon request or available online in the minutes of the [11.4.2018](#) Board Session. This report concluded that two models (in-house & private firm) were the best options.

Since that time, Wasco County has pursued taking on the codes program in-house on behalf of the four counties. Wasco County proposed a model in which the MCCOG building would have been purchased and a Community Development Department (CDD) in partnership with City of The Dalles would have been created. This CDD would have jointly housed City and County Planning, Code Enforcement, Building Codes, and possibly other departments. This combined CDD program would have taken on the responsibility for providing building codes services for City and County including the codes program for the other three counties. City of The Dalles was unwilling to share in the purchase and maintenance costs of obtaining the MCCOG building which ultimately killed this concept. Additionally, the other three counties were unwilling to fund the program out of their general funds in the event that expenses exceeded revenues and reserves. A draft of the concept paper and IGA can be seen [here](#).

CURRENT PROGRAM:

The State of Oregon is currently operating the Building Codes program on behalf of Wasco County on a temporary basis with the expectation that Wasco County will make a decision on the program no later than February 1st, 2019. This program is up and running with temporary staffing. The hiring process for inspectors and office staff has been difficult given the lack of qualified personnel in the marketplace and

the wages required to attract applicants. Some of the normal services are being provided out of Salem or other nearby building code offices. We have received both complaints and compliments about the level of service being provided by the State. Complaints seem to center around timeliness of the process; particularly plan review. In all cases that I have researched contractors are unhappy with the turnaround time however it should be noted that in some cases some portion of that turnaround time was attributed to lack of response from the Contractor to questions from Building Code plan reviewers. Other complaints on turnaround time were based on the estimated stated time rather than the actual time required which makes sense because Building Codes does not want to provide a timeline estimate to a contractor who is scheduling work and then not meet that timeline. The State has been very responsive to inquiries about problems that are being incurred.

RECENT DEVELOPMENTS THAT IMPACT BUILDING CODES SERVICES:

In the 2018 short legislative session HB 4086 was introduced on behalf of House Committee on Business and Labor with consultation of State Building Codes Division and can be read [here](#). When that bill failed the State Building Codes Division took it upon themselves to adopt temporary administrative rules that were not favorable to building codes departments that currently used outside contractors for the provision of building codes services. This bill would have required that Building Officials and Electrical Inspectors be employees of the government entity among other things. This rule essentially would prohibit the use of third party contractors to provide building official and Lead electrical inspector functions. Incidentally this model was one of the two options that Wasco County looked at in 2015 and would most likely be a part of any model that Wasco County might develop in bringing the program in-house. The Association of Oregon Counties is following this very closely on behalf of its' members and can best be summarized by this overview from the AOC newsletter:

The ongoing saga over what a local building code program may delegate to third party contractors continues. Purportedly based on an Oregon Department of Justice (DOJ) legal opinion, on April 23, 2018, the Building Codes Division (BCD) adopted temporary rules, without any notice to affected parties, that require certain local building code officials to be public employees, among other things. Many local government attorneys disagree with the DOJ legal opinion, as well as the authority for the temporary rules. A court challenge was being planned. However, the temporary rules also caused an uproar among many elected officials and state legislators, especially in light of the likelihood that implementation of the temporary rules would significantly exacerbate the already strained situation in Oregon with regard to home construction and affordable housing. On May 14, 2018, the Director of the Department of Consumer and Business Services (DCBS) directed the Administrator of BCD to withdraw the temporary rules and replace them with arguably less onerous rules, for now. On May 18, 2018, BCD notified affected parties by letter of the withdrawal of the April 23, 2018 rules, and their replacement with a new set of rules. Conversations are ongoing with regard to how elected officials, legislators, and local governments should respond to the new temporary rules, as well as potential legislative fixes for 2019.

Contributed by: Rob Bovett | AOC Legal Counsel

Undoubtedly this issue will come up again either in new rules or in the 2019 legislative session which gives a significant measure of uncertainty as to the provision of building codes programs and how they can be structured.

Staffing for codes programs is the other difficult area for local programs to be successful. Inspectors are in extremely high demand and very difficult to find in this booming building economy. Inspectors are demanding and getting six figure salaries plus or minus in this labor market making it very difficult for codes programs to recruit and retain inspectors. This is especially difficult for the more rural markets to

compete. Given the position that State Building Codes Office is taking on the use of private contractors and requirements to have the building official and lead electrical inspector be public employees; this will undoubtedly to get worse before it gets better.

OTHER CONSIDERATION:

The building codes function is a State mandated service. Counties or Cities have the ability to assume the functions of the program from the State. There may be an interest from City of The Dalles to take over the building codes program if Wasco County chooses to not administer the program.

Assumption of the program by Wasco County would likely require us to hire additional staff and/or restructure in the Planning Department to help with the addition of a new department. With the loss of the MCCOG building we would need to do a remodel in the Planning Department to accommodate the additional staff and work flow. The 2015 report previously referenced has several models identified.

This will undoubtedly be a difficult discussion when it comes to local control vs. State control. The local contracting community wants a local office with local staff. The ability for contractors to build relationships with building officials and inspectors is important to those contractors. Additionally the ability to move paperwork and inspections through the system locally is of significant importance to contractors.

If Wasco County chooses to take the program we will be hiring several highly paid employees into the system including the heavy benefit and administrative loads such as PERS.

CONCLUSION AND RECOMMENDATIONS:

I believe that local control is an added benefit for this function and I would recommend allowing this program to move to City of The Dalles if they so choose to take it. In considering if Wasco County should remain the provider of Building codes services I cannot recommend that we move forward in this capacity for the following reasons. Building Codes is not a mandated or core function of the County service portfolio. Given that this program would incur significant staff increases, administration, and facility costs to implement it does not appear to be the right move at this time given that we are projecting future increases in expenses that will outpace increases in revenue. The State has the ability to cover themselves in the event of vacancies with inspectors from other jurisdictions. A Wasco only program does not have the ability to cover vacancies, vacations, etc. from other offices like the State does. The ability to recruit and retain qualified staff is a significant challenge that will be difficult to overcome. Finally, the uncertainty of what the Legislature or State Building Codes Division will do to further restrict the program makes me very cautious to assume the program at this time.