

Thursday, May 21, 2020

Rules Advisory Committee Members and Interested Parties.

Att: **Shannon Flowers, Senior Policy Advisor & Rules Coordinator**

Many Cities, Counties and Code Officials across the state clearly and strongly opposed the 2019 former house bill and the proposed amendments!! There is still clear uncertainty of the many potential drastic consequences to affordable housing, permit services and loss of small businesses and jobs in Oregon

My name is Jack Applegate, I am employed by Northwest Code Professionals. (NWCP) I am a disabled Desert Storm veteran and former US Navy Seabee who proudly defended our great state and country and I am also a 4th generation native of Oregonian with family ties going back to Jesse Applegate and the Oregon Trail. I started in the construction industry in 1988. I am also a third-generation licensed code official in Oregon and consider myself fortunate that knowledge was passed down to me from my grandfather and father who both served Oregon's citizens as licensed electricians, licensed electrical supervisor's and state employed certified electrical inspectors. These retired electrical union members both had electrical supervisors license numbers in the single digits and passed down their technical knowledge and customer service experience to hundreds of trades people and inspectors including myself.

NWCP is an employee owned small business that has been providing valuable, necessary, highly technical and much needed third-party, permit and inspection services in Oregon for more than 45 years. With Oregon Offices in Eugene, Florence and Southern Oregon, NWCP has been assisting city and county jurisdictions with key services predating the existence of both the Oregon statewide building code and the Oregon Building Codes Division itself. NWCP has recently provided much needed services on a full time and/or part time basis to more than 38 Cities and currently 8 Counties in Oregon. The map provided on the RAC site by BCD is just a drop in the bucket compared to the much larger number of jurisdictions we regularly serve throughout Oregon. We have had multiple requests from other jurisdictions this year alone whom we cannot help until these rules are fixed to address the AG opinion and still allow third party Building Official services to our Cities and Counties.

As a Building Official who has worked for decades for both municipal agencies as a direct hire employee and also a third party provider Building Official, I strongly opposed the House Bill last year and the amendments as written and proposed that would have caused more harm than good in Oregon.

We want to continue to allow cities and counties to contract for Building Official services and that is why we have fought and worked for almost three years to get a bill that worked for Oregon. We are deeply **concerned** with requiring that building officials be employees of a municipality and any rules language developed which creates new and more severe problems for Oregon. This portion of the discussion is

not needed, not necessary and has not been thoroughly vetted to realize the deep cost impacts within our industry with code official groups and the various associations of cities, mayors, and counties across Oregon. Should the Building Official certification restrictions be put in place third party providers may no longer be able to serve the many cities and counties we now help on a part time basis and especially in times of urgent emergency needs like we face now with COVID-19 as budgets will no longer make serving full time city building departments adjacent to these areas financially feasible for the Cities, Counties or for third party providers. During this shutdown, our teams have continued to work safely, diligently and without pause in support of jurisdictions across the state. When Jurisdictions had employees unable to work due to Covid-19 we were there for them again with support.

The use of contracted third party services of City and County programs and enforcement has occurred for over 45 years for Building Official services. The AG office in general **avoided the elephant in the room** by driving a dagger into the hearts of only small business, private building inspection firms in Oregon with a discriminate and biased Building Official opinion based on questions and false information provided to them by the former BCD director.

Regarding the DOJ Opinion #8296: (Additional Comments coming in June after legal review)

What was not addressed in the DOJ Legal Opinion #8296 are the many other programs across Oregon where services are provided by contract services from private business or individuals. Some of those examples are contract: **City Managers, City Attorney, Flood Plain Managers, Community Development Directors, Judges, Planners, Security, DEQ inspectors, City Engineers, Public Works Engineers, Paving Companies, Special Inspectors and the list goes on and on.** This alone could cause a legal battle and enforcement nightmare across the state as lawsuits emerge from the singled out third-party contract groups, cities, or counties. This will set a legal precedent that cannot be undone without legal intervention by higher courts.

Please see additional Comments in my attached assessment of DOJ opinion document where questions were perceived by many as biased and based in part on bad questions and some inaccurate or false assumptions.

As to previous temporary rules BCD had to withdraw:

Requiring an A level certification in only one category is absurd as was proposed without technical or legal justification by the former director and without any reasonable nor technical merit. As an example, an A level structural inspector has no experience in Gas Piping, Boilers, Plumbing or Electrical codes as each category is unique and requires specific technical knowledge and certifications. An Administrative Building Official however does not need to have these certifications or technical knowledge to manage building department administrative and supervisory functions as is the case in many major jurisdictions like Portland, Hillsboro, Washington County, Tillamook County and including Building Codes Division in many cases over the past 3 decades. Properly certified staff can respond to the technical portions and advise of issues requiring discretionary decisions of building department administration similar to how it is done for planning, engineering, flood review and others by City Administrative officials every day in this state. City and County officials have provided this oversight and management of their programs for

45 years. The former bill, the BCD Temporary Rule and the amendment language were so poorly written it even gave more technical credit for an Architect trying to qualify as Building Official despite being able to get a degree and certification without any field experience and in many cases zero code training classes in college all while leaving out licensed structural Engineers who typically have a much higher level of technical knowledge of the codes than most architects do. Whomever wrote the language was naïve as to the duties performed by Building Officials. That is just one example of the issues added with that former killed bill. The costs would have an **enormous impact** statewide on building department program and the effects crippling on our industry. Lastly on this topic of qualifications we should consider and note that the State Director **already has the authority** to revoke or deny credentials of a building official if they are not qualified. (see ORS 183, 455.720 (4) and OS 455.740)

Further restrictions on Building Officials without any doubts cause a massive crater in the state of Oregon building industry should private businesses like ours be forced to give immediate notice to cease services to all full-service cities and counties across the State due to the contested questionable legal opinion. We may be forced to immediately terminate services with all full-time cities we provide services to and potentially many adjacent cities and the 8 counties we currently assist part time due to geographical proximity to our full-time programs we serve. Making that work financially unfeasible. There is also no window even for emergency third party services when an employee leaves a city or county without a Building Official. We have provided those services to dozens of jurisdictions in the past to serve those emergency needs.

We still do not agree that the Building Official has the final say in enforcement as the former LC opinion claims, we also do not agree that there is a lack of supervision and oversight as the rules already have means and methods for oversight and investigation (as noted in ORS 455.770) by Oregon Building Codes Division. Also, by appeals rights locally, by the State Code Program appeals boards and by clear and concise rules that all Oregon certified Building Officials and Inspectors are already required to follow to enforce the code provisions as written. There is no legal decision making without appropriate oversight by the City or County who administers the program. To be clear, the Municipality manages and administers the program and the Building Official via ORS 455.715 Administers the Building Code and must follow the Administrative rules and the requirements of the codes and statutes in Oregon as written. Where that is not the case and some legal discretion is involved i.e.; appeals, alternate methods, Permit Issuance or denial, etc.) **the municipality has always been the program administrator** with oversight of operations, handling of all fees, adoption of all fee schedules, management of appeals and other duties requiring oversight and discretionary decision making of law.

The state does not have the authority to select Building Officials for municipalities nor decide who they employ or not. See ORS “455.715(1) “Building official” means a person charged by a municipality with responsibility for administration and enforcement of the state building code in the municipality.”

I had the privilege of meeting with many state and local code official members and International Code Council (ICC) chapters discussing these issues and also as a member of the OBOA Legislative Committee and as the Executive Board President of the ICC Region 2, Board. Third party providers serve as Building Officials in all 6 of these states and across the nation and have done so for decades.

Finally, what I believe are some key bullet points:

- A. We want to help fix this now through reasonable oversight of all building departments and by providing the public employees at BCD with the funds and staffing needed to monitor all state programs for compliance through bringing back the program review process that was shut down more than a decade ago. Our company was part of those program reviews as a reviewer and participant and had outstanding results.
- B. If a City administrator, public works director, or any other person in a City chooses to become the appointed Building Official and take the current BCD 4-day class they can be certified in Oregon as a Building Official just like many people have for years in Oregon. These Administrators have worked as Building Officials in many major jurisdictions in Oregon including Portland, Hillsboro, Oregon Building Codes Division and Washington County. So, BCD appears to be very confident in its continued training to address ministerial supervision. Four of our employees have recently taken this class and been authorized by BCD to be certified in Oregon as a Building Official. A City or County employee who takes the BCD course could also reasonably supervise the Building Official with a "Building Department Administrator" designation/certification which also addresses the alleged delegation authority concern. This BCD training is more about the rules and requirements the state has for building departments administrators than any code related technical issues or training. Private company professionals just like any city inspector can be the technical advisor to the municipal Building Administrator. City administrators and Community Development managers employed by the Municipality have been providing this ministerial supervision for over 40 years and there is already an appeals process in place in the rules where anyone can appeal to the State or the appropriate advisory boards. In our many municipalities we serve we rarely receive any appeal requests in fact only about 1 time in every three years and we resolve them very quickly. In the 8 years I was employed at the City of Astoria there was only one official appeal formally filed which was resolved without any hearings and in the last 5 years here at NWCP there has been only one official appeal combined in all 38 of the cities we serve.. That City process was no different than how third-party officials handle these appeals as directed by the municipality supervising and administering the program.
- C. Removing third party building officials would cause a significant increase in costs to local jurisdictions in the cities and counties we serve. Early estimates show that we estimate between 100-150% permit fee increases being needed if a hired municipal Building Official is now required in most of our small municipalities.
- D. This would ultimately affect local City rule and severely impact budgets in cities already strapped with difficult budget making decisions and a **serious and severe** lack of available Inspectors and Building Officials in Oregon to hire their own staff. Several of our cities have already posted testimony during the legislative session about the deep impacts this will cause.
- E. The increased costs can have a very negative effect on affordable housing in rural small city and large county jurisdictions. We need to protect these individual property owners who are **often the most vulnerable in our communities**. When rural and low-income citizens can't afford permits or services is severely slowed because the State must take over a program there is a clear and dangerous trend where people **stop even buying permits as was the testimony during the legislative session by many rural cities where the county is seated a great distance away.** Life safety is a very serious matter and a key to protecting Oregonians. Permits save lives and

peoples biggest investment in ensuring a safe, energy efficient and sustainable building and dwelling stock!

- F. Many City Managers and Mayors across Oregon made an assertive choice on behalf of their community to use private inspection providers over the past 45 years in Oregon and for good reasons that are important to their communities. Often private providers can reduce costs to the City or County, reduce the time it takes to issue permits drastically and are able to be readily available every day to the jurisdiction and permit applicants for meetings, job site visits, and pre-submittal meetings with developers on short notice. Third Party providers are also often able to provide other customized services that benefit multiple City and County departments.
- G. Thousands of citizens have been educated on permit and licensing requirements by our staff at the permit submittal stage and during inspections just as any other municipal programs do each day. Some groups claim we do not enforce licensing but that's just ignorance of how we operate. The state can verify that simply by looking at the cases we have submitted to them or the many local investigations we have performed for cities which led to fines and enforcement action. Licensing is critical to protecting private contracting trade business and with these rules we could give additional authority for code officials to enforce existing law. Currently nearly all trades refuse to wear the visible ID badges which are required in Oregon making a claim that it is too dangerous to wear at work. **OAR 918-030-0920** "Visible Identification Badge (2) Individuals performing elevator, electrical, boiler, pressure vessel, or plumbing work, which requires a license, shall wear and visibly display their license. A licensee does not need to wear and visibly display their license if doing so would create a danger or unsafe condition for the licensee or for the public, provided the licensee can demonstrate proof of licensure to an inspector, investigator or other employee empowered to enforce the state building code." Yet this is rarely enforced ever in Oregon and if the trades follow their own requested rule it could make an actual difference to positively affect enforcement action. Nearly all trades wear orange safety vests with ID pockets that are visible with zero safety issues. We are more likely to see a unicorn on the job sites in Oregon than this required visible id badge.

Here are some of the benefits to jurisdictions who utilize third party providers in Oregon. The list is important in understanding how we operate and how our small businesses are beneficial to Oregon's construction industry.

1. **Speed of services:** Plan review and permit issuance turnaround times are often much faster than other City, County or State plan review times. Typically, we review, and issue permits within 4-5 business days for complete applications on Residential home projects and we average only 7-10 business days for commercial projects versus anywhere from 10 days to often 4-10 weeks or longer during busy times of the year for many other municipal standalone programs.
2. **Availability:** Inspections are often available the same day as requested from third party regardless of the distance from the city office in our rural areas and most always within two business days. Many County departments can only offer inspections two days per week in certain areas of the state even when they are located less than 50 miles from the office. The statutes do not allow this, but it happens every day in Oregon due to decreased budgets and a lack of available qualified and certified inspectors especially in the light commercial and commercial plumbing and electrical inspector fields. We heard former BCD Administrator Mark Long in testimony last year tell the committee that the State may take as much as two weeks to get an inspection scheduled but not typically longer than

that. This causes expensive construction delays, lost time and lost money for builders and property owners trying to effectively schedule the trade work in order and efficiently. The practice makes scheduling efficiency a nightmare for builders in rural areas and costs them a great deal of time and money. In December I visited a large Oregon jurisdiction to give an employee an award and while there I found out there was a minimum of 5 days between the request for a residential inspection and the inspection actually occurring due to high volumes of work and lack of staffing to cover those inspections. This is exactly what could happen in many regions statewide if third party providers are forced out of business by rules that limit building officials from being third party providers or limit City staff administrators from being the administrative Building Official.

3. **Partnerships:** Third party providers often perform other inspections, enforcement, and reviews as part of the customer service included with Building Department work often at no additional cost. Examples include: Sidewalk Inspections, Landscaping Inspections, Driveway Inspections, Flood Zone review, Vacation Rental Dwelling inspections, Zoning Violation inspections and enforcement, Code Enforcement, Fire Marshal duties and Inspections. The State Inspectors and Counties serving these rural areas in most all cases will not enforce the local city municipal zoning and ordinance requirements, nor attend even a basic development meeting and often will not be available in a timely manner to meet with city staff and property owners to resolve or work through issues or to attend pre-application and pre-construction meetings. They simply just don't have the budget, staff and time to provide these services for each city under their administration whereas private party inspectors typically dedicate a unique employee or two to serve that municipality for all inspection, enforcement needs, and Building Official duties and they are invested in the customer service needs and in the communities themselves.
4. **On Call Service Options:** Cities and Counties constantly have a last-minute need for coverage for inspectors who quit or are sick. Jurisdictions often get projects that they do not have the staffing to complete inspections or plan reviews in a timely manner. When these situations arise third party provider are key to giving them the help they need when they need it. As an example, a large manufacturing facility was constructed in Eastern Oregon and the local City Building Official did not have the resources or technical knowledge to perform the plan review in a timely manner. NWCP was asked to perform the review of this highly technical project. Work was completed in less than 7 business days total and NWCP remained available for questions to from both the City and the general Contractor. When the owner of this RV Manufacturing Facility in Eastern Oregon was called after 7:00 pm with questions from the plans examiner he was stunned that his permit was being worked on that late and was impressed with the customer service and concern for his individual project. This is not rare it happens often, and we regularly get calls commending the customer service of our NWCP team across Oregon. We care about our customers and the service they receive.
5. **Flexibility:** Third party providers often work and make themselves available on evenings and weekends to serve unique City needs for projects like community service projects, hospitals, police and fire stations and other projects where for safety or convenience a more flexible inspection schedule is needed and provided.
6. **Technical:** Third party providers require much more stringent continuing education and training requirements for their staff than the basic State of Oregon BCD required courses which do not adequately cover changing technology, complex fire and life safety courses and advanced plan review training through ICC that the state no longer requires as compared to the much more robust continuing education requirements from the International Code Council and other technical code writing bodies. The basic division code change required courses are very limited and scoped more

towards only Oregon changes to the code more than technical advancement of inspectors and plans examiners. NWCP requires all staff members to obtain and maintain even more technical and modern code certifications and training from the International Code Council (ICC), National Fire Protection Agency and others. These bodies maintain their training courses and certification exams with up to date information and heavily vetted questions that are evaluated often on a quarterly or minimum annual basis using national standards for test writing equivalent to the university testing systems. Oregon Building Code Division exam questions are often way out of date, as an example, recently it was noted by an employee candidate test taker that questions from the 1997 Uniform Building Codes (UBC) were still on exam questions for a third-party SRI Test. To be clear this test was not properly updated from approximately 1997 to 2019 and the UBC stopped being used in Oregon and across most of the country at the end of the previous century. Other State departments have realized they are not test writers and do not have the staff, budget, or professional tools available to write exams and keep them updated. As an example, the Oregon Construction Contractors Board made the wise decision to rely on the National Home Inspector Exam for home inspector certification which was vetted better, updated regularly and did a better job of evaluating qualified home inspectors.

7. **Efficiency:** Third party providers do not have to pay staff to sit around and stare at a clock waiting for 5:00 PM to go home when workloads are minimal, or no work is left to do. When their work is done in one small jurisdiction third party staff can grab another inspection in an adjoining jurisdiction or work on plan review from other adjacent jurisdictions, making the workday go more efficiently saving the municipality costs.
8. **Cost Savings and Predictability:** Third Party providers often charge for services based on a percentage of the permit and plan review fees. This leaves on average 20-25% of all permit fees in the local jurisdiction for administrative oversight and management of the program, office space, utilities, supplies and other needed funds to cover city counter employee staff costs. This 25% can be used as a contingency fund for downturns in permitting volume like we face now during COVID-19. In comparison should the City choose to ask for assistance from the State for inspections or plan review that fee typically jumps up to 90% or more of the total fees in addition to the 12% surcharge tax already given to the Building Codes Division as required by rule. Simply put the city and county budget can fare much better with paying a steady and predictable average of 75% of the permit and plan review fees to third party who can hire as needed and ensure the inspectors needed are always available when they need them. Having only 10% or less of the fees remaining and the public having to give the State an additional 12% surcharge on every single permit issued in Oregon is not a viable or remotely fair option for these 24 small communities. The fees adopted by the cities where we work are lower than most jurisdictions in the state. Many of the jurisdictions we serve have not had to increase fees since 2012 while during that same period most all other jurisdictions have had to increase fees many times and the costs for permits in those areas are much higher.

Pending Work Force Crisis: Should cities and rural counties be forced to hire a full time Building Official the salary alone may cost them between \$75,000 and \$145,00 per year for that one employee if they can even find one in this market. We are in a nationwide crisis with a lack of certified inspectors and building officials which is expected to drastically get worse over the next 5-8 years as more retiree. According to an independent 2014 by the International Code Council conducted by the Institute of Building Sciences, out of the 3,850 responses received from representatives of all 50 states, a massive

eighty-five percent of the survey respondents were over the age of 45. Only three percent were under age 35. Eighty percent surveyed planned to retire by 2029, and a full **thirty percent** in the next 2-3 years. It is undoubtedly not the time to take away hard earned code official certifications and abilities to work in small cities in Oregon based simply upon who signs the paycheck. The likely thing to happen is that inspectors will again leave Oregon and other potential skilled workers will not come to Oregon searching for work and the State will lose additional people at a time they are needed most to help ensure Oregon's construction Industry keeps moving forward and recover from this crushing COVID-19 pandemic. .

Building Official Certification: The Building Official Certification in Oregon has never been one that required any technical certifications and has been administrative in nature since its inception. Any drastic change to this program will have an enormous effect on an already deficient employee pool. Any such rule put in place now should be required of all new Building Officials in Oregon. However, there should also be the ability for the Administrative Building Official under the same rules we have now. If a municipality has an Administrative Building Official and they either hire or contract for their technical staff this should be allowed regardless of who pays the salary. There is ZERO differences in required technical training, testing, continuing education, and licensing requirements for certified individuals. Third Party inspectors have an additional separate exam and license, but it has nothing to do with technical code training rules. That is the outdated test mentioned earlier in this document with 1997 code questions that is a waste of time and is of zero benefit to the state or the inspector while costing money to the individual applicants. (SRI/SLI).

Summary:

This issue is an important one for me, not only as the manager of a small business tasked with the responsibility to ensure that its 43 employees and their families receive a fair shot, but also on a personal level as I have worked equally for both municipal jurisdictions and third party providers over the past 24 years and the need for third party programs is bigger now than it ever has been and will be even more critical to keeping Oregon construction moving forward in the next decade as we lose code officials and recover from the COVID-19 crisis.

In my travels the past few year serving as the Executive Board President of nonprofit ICC Region II, I have had the honor to meet with my fellow regional and State building code officials from Alaska, Idaho, Montana, Oregon, Washington and Wyoming. In each of these States it was very clear that Third party private Building Officials, Building Inspectors and Plans Examiners have been a vital key to government jurisdictions ability to reduce costly delays and save money for their budgets while serving the public interest. Oregon is not alone. The use of third-party inspection businesses is common practice across the United States and throughout the world and this week the International Code Council even listed Third party code officials as a key element to recovery and a resource in their COVID-19 struggle to reopen and fill their backlogs.

Due to the restrictions, currently in place by BCD, NWCP in the last three years has been forced to turn down the opportunity to provide emergency assistance to some cities and counties needing help at historically high levels. We have also had to reject new hires who could have had strong family wage earning jobs but only lacked the ability to use already earned Building Official and specialized inspector

certifications. This is a slow death of a thousand cuts being perpetuated on our small businesses in Oregon.

We provide a great service to cities and counties and have done so for over four decades. We have an excellent track record and employ some of the most well-respected, technically qualified, and experienced code officials in the entire country on our team. Some examples, NWCP employees serve on the 12-person ICC committee (BCAC) that writes the current International Building Code, International Existing Building Code, International Residential Code and the International Fire Code, that is amended and used in Oregon. Our employees serve on State and National code change committees, some teach technical code courses as ICC approved instructors, and 3 team members have taught as adjunct instructors at Oregon Community Colleges. Our team has also had members who served as advisory panel members for the Oregon Construction Contractors Board, Clatsop Community College Historic Preservation and CAD Program, Oregon BCD Manufactured Structures Program. One team member has coauthored technical books for the International Code Council on wall bracing. One team member was on the committee that wrote and edited test question for the International Energy Conservation Code certification exams, one served on the Oregon Construction Contractors Board. We have a dedicated, highly skilled team who mentors the next generation of code officials who are just like the contractors, electricians, plumbers and other tradespeople or government workers weighing in on this issue we want to keep doing the work we do and serving the communities where we live, work and play.

I am imploring you to avoid and oppose potential rules which would ignore the good faith efforts of the Coastal Caucus of legislators, City and County Officials and others who in convening legislative workgroups to work on real solutions to this problem made it clear that Third Party Building Officials are a key part of the solution in Oregon. Any rule restricting who can be hired by a municipality, any rule that would limit IGA's or any rule that would require specific single A level certifications to act as building official will be strongly fought in this process and by potential future legal actions to protect local rule rights.

Summary: (I am reserving Final Comments for submittal until after the May Meeting)

Respectfully,

Jack E. Applegate, CEO, CAJ, CWJ

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Citations: International Code Council Research Studies

Rule Advisory Committee – Program Delegation

Public Testimony – Email transcript

From: Jack Applegate

Sent: Thursday, May 7, 2020 8:45 AM

To: GRAHAM Lori L * DCBS

Subject: Concerns about Delegation RAC: Upcoming Meeting Information

Mrs. Lori Graham,

Thank you for the timely and thoughtful response. We look forward to discussing the timeline at a future meeting with the Rules Advisory Committee to determine the best approach and fair process to determine the next steps. In the first meeting there were technical difficulties even with divisions call in lines for the live meeting where members and city leaders were unable to connect for the meeting, so hearing the proposed process and the ability to provide further input on implementation dates is reassuring.

One urgent question that has been repeatedly asked by contract providers, City leaders, State Representatives and State Senators alike and that has not been answered by the Division or officially asked of the Attorney General's Office during this 3 year process and that we are now hopeful will be answered to avoid potential future litigation across the state is this question:

Throughout Oregon contract "appointed" persons provide services for many government agencies who rely on them to enforce state adopted laws, codes, and ordinances for administration and enforcement, all of which require some discretionary and non-discretionary review and enforcement of law. Some examples of those non-governmental employee jobs that are regularly done by contract workers throughout Oregon are; Jurisdictional Attorney, Jurisdictional Engineer, Planning Commissioner, Jurisdictional Planner, Flood Plain Managers or even a State or Jurisdiction's appointed Administrative Law Judge (ORS 183). All of these positions require review and enforcement of statutes, laws, codes etc. This is very similar to how the current ORS 455.720 item (b) allows an appointed Building Official by the requirement for the State to establish a procedure to be used by municipalities to determine whether a person meets minimum standards or has minimum training to be appointed or employed as a building official or inspector. How are all of these types of appointed contract officials and judges allowed to review, inspect and enforce those laws, codes and statutes but building code officials are somehow held to a different legal opinion, standard and standing?

In each of these other examples there is similar or exactly the same administrative management and oversight of the discretionary process by the jurisdictional commission, council, County/City manager, community development director or chief law judge of the State. In all of these cases the administrative oversight of those programs is in place. In addition there are means through ORS 455.770 to investigate and fine the Municipality, Building Official or Inspector if any wrongdoing is suspected and proven. There are also numerous provisions to restrict, fine or suspend the licenses of any individual building inspector, plans examiner and building official regardless of hiring status as either an employed or jurisdictional appointed contract worker for violations of the existing rules and statutes including failure to enforce the statutes, rules and codes as written and adopted.

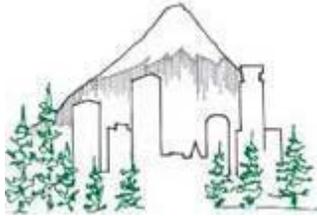
This is a question that has been ignored and avoiding it gives the appearance whether intentional or not that this is an unfair focus on only one appointed contracting group and those Oregon jurisdictions who have chosen to use them for more than 45 years. Without answering this basic question this will remain a legal challenge that cannot be fully addressed in this RAC process. There is a large and valid concern by our trade partners that if this is the opinion of the AG about building officials is accurate than it would certainly apply to all of those other regulatory contract groups and the same question about permit validity would be in place for all building and land use permits issued or denied by any government agency or any legal decisions made by a contract worker that could be legally challenged after the issuance or denial of

permits.

It is my position that all of these types of appointed contract employees have Jurisdictional supervision, administrative oversight and appeals processes in place to provide safeguards, adequate protections and supervision of the legal process, as has been shown by the successful 45 year history, long standing practical application and program successes.

Thank you again for your response and I look forward to meeting you in the near future. Stay safe.

Respectfully,



Jack E Applegate, BO, CPI, CHI
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From: GRAHAM Lori L * DCBS
Sent: Wednesday, May 6, 2020 6:13 PM
To: Jack Applegate
Subject: Concerns about Delegation RAC: Upcoming Meeting Information

Mr. Applegate,

Thank you for sharing your concerns about holding the upcoming program delegation Rulemaking Advisory Committee meeting by teleconference tentatively scheduled for the end of May.

We realize that this meeting format is not ideal and will cause some challenges, yet we believe it is important to keep the conversation moving forward without more delay than has already occurred. Our goal is to conduct a process that is as collaborative as possible given the circumstances. With the nature of the current COVID-19 public gathering restrictions, we are only able to hold meetings by video or teleconference. Due to timing, we were unable to hold the March 16 meeting via teleconference. However, over the last two months we have been able to learn from other agencies conducting remote meetings and have gained experience conducting our own remote meetings. We now feel prepared to efficiently conduct meetings by phone or videoconferencing. In addition, we solicited input from all committee members on April 10 and April 22 on how best to facilitate the May meeting. Overall 11 members provided thoughts on the format and facilitation of the meeting. With the exception of one response, most members agreed that moving forward via a video or teleconference meeting is acceptable. We did receive some additional input on suggested guidelines to facilitate a productive meeting - including calling on each member to speak, limiting overall discussion time, and ensuring that written public comment was encouraged as much as possible.

The upcoming Rules Advisory Committee meeting is by no means the final meeting, or the final occasion for the public to offer comment on this issue. This meeting provides a forum to continue the conversation started in January. We hope that all members take this opportunity to provide written comments, of any length, and use time during the meeting to summarize their thoughts and respond to other comments. Also, following the meeting, we encourage members to provide additional responses or rebuttals to any comments made.

We will seek input from the Rules Advisory Committee on the date and content of future meetings. While it is our hope that future meetings can be held in person, we will continue to follow the Governor's direction to ensure that the meetings are safe and appropriate. Additionally, all members of the public and members of the committee will have several opportunities to provide comment once the rulemaking and hearing process begins.

Please understand our timeline for adoption and implementation of permanent program delegation rules has not yet been determined. We look forward to discussing the timeline at a future meeting with the Rules Advisory Committee. Our goal is to determine the best and most efficient implementation process for all parties involved.

I hope that this helps to ease your concerns. If you have any additional questions please feel free to contact me.

Kind Regards, Lori

Lori Lee Graham,
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Shannon,

Good morning. Given the dire conditions of this economy and difficulty and challenges in having such an important meeting over a conference call, I am hopeful we could delay for another 2 months in hopes of having this series critical committee meetings in person. There were many City and County leaders and organizations who want to be present for this meeting to speak in person. Many other State Board meetings and committee meetings have been cancelled or delayed for this very reason. I am hopeful that we can postpone the meeting for another 2 months rather than having a conference call in the interest of a much better discussion and presentations for all involved.

Additionally given the critical nature of the work we do and the time it may take to implement any potential changes that could [a]ffect more than 40 Oregon Building Department Jurisdictions we are also hopeful that not only the temporary rule would be extended but also even more importantly that DCBS extends the implementation deadline for building department program renewals out to 2022. As once this shutdown ends there will be a massive change in the permitting volume and workloads and many jurisdictional staffs will be shorthanded and working on recovery.

It will be critical throughout the remainder of 2020 and well into 2021 that attention to the current permitting and inspection services is directed toward recovering the economy and helping our trade partners through this transition. Not doing could likely create a massive crater, causing harm and increased costs to the construction and affordable housing industry.

Thank you for your consideration.

Respectfully,



Jack E Applegate, BO, CPI, CHI
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