

Inspection from 1A

However, this effectively required specialized building code inspectors to be an employee of the municipality for which he or she was performing inspections.

In 2017, legislation to allow inspectors to be authorized by municipalities, rather than employed, was championed by small and large cities alike as a solution to the still-present inspector shortage. However, it died in committee in the House and work groups failed to reach a consensus regarding how municipalities ought to operate their building inspection programs.

This year, legislation in the form of House Bill 4086 addressed the issue again, this time requiring building officials to be employees of municipalities or otherwise shared under a council of governments. While the bill passed in the House, it stalled in the Senate, much to the delight of cities intent on keeping their third-party contracts.

Despite the bill's failure, a Feb. 16 Department of Justice (DOJ) opinion clarified that contracting out building department functions to a third party is unconstitutional for two primary reasons.

Firstly, hiring third parties for inspection services necessarily gives such services discretionary government powers (acting according to their own judgement) rather than ministerial duties (actions conformed to prescribed procedures). Secondly, the DOJ found that no adequate procedural safeguards exist to provide government accountability.

Based on this formal opinion, the BCD, which is delegated state authority to adopt and enforce building codes and standards, adopted a set of temporary rules Monday and is notifying cities which do not meet requirements that they must come into compliance by July 1 or revert delegation of their programs to their county. Or, in cases where the county cannot run the program, it is reverted to the state.

Additionally, the BCD letter noted that cities which choose to no longer operate their building programs and relinquish control to their county or state will be prevented from re-establishing a program until 2021.

For many, these are not viable options. Hiring extra staff is a luxury many small cities cannot afford. Although the new rules may allow for an inspector to double as a building official, thus reducing the required employees, an electrical inspector is also required.

Questions remain as to whether a single cross-certified employee would be acceptable.

Whatever number of employees cities are eventually required to hire, even one addition to staff can upset a small city's financial ecosystem.

Dunes City, which has contracted inspections through the Eugene-based firm Northwest Code Professionals since the mid-1970s, has maintained financial stability with its building program in part by contracting services only as needed. Should the city comply with the BCD's requirements, expenses toward inspections are expected to double.

"If they choose to hire somebody, I may have to lay off staff to pay for it," said Mills.

Moreover, many small municipalities like Dunes City do not rely on tax revenue to operate. The new BCD rules leave some the unappealing choices of complying with financially devastating rule changes or possibly losing local contractor inspections.

As an alternative, BCD rules also stipulate that cities may join with a maximum of two other municipalities to employ a building official and electrical inspector. While possibly the least harmful among the options, it comes with its own drawbacks.

"It has the potential, should there ever be a disagreement between the cities, to drive a huge wedge between neighboring cities," said Mills. "That could be a long-standing problem."

Attractive options are sparse and the tight deadline to choose one makes the issue all the more difficult. Dunes City, for example, has an elected council of volunteers which meets only once a month, which gives the

city one more city council meeting before a proper response must be paved.

And while city staff across the state contemplate these concerns, contractors, too, feel the weight of the DOJ decision on their own livelihood.

"I think that the state needs to go away," said Ronald Mann, a general contractor in Florence.

Mann has been building in the Florence area for more than 40 years and worries that state intervention will gum up a system that already works.

On an average home, he requires around 20 inspections, many of which must be called in and dealt with as they arise. Access to inspectors who can be on site when he needs them is invaluable.

"If a city can't give me inspections at least twice a week and give me a three-week turnaround on a plan, I need to go somewhere else and do business," he said. "If I have to call for every inspection ... and I have to wait a week or 10 days, I can't afford to build here — I wouldn't be able to get anything done."

Going through the county for site surveys and plan reviews also delays the time before ground can even be broken, which can drive clients away. Projects with long delays run the risk of tax liabilities and losing insurance rate locks. Compared to the couple of weeks a private plan reviewer may take, the county's months-long process leaves Mann skeptical that it could work efficiently on a mass scale.

"It just takes longer," he said. "I don't see how they can do it."

In addition to the sluggish nature of bureaucracy, worries persist among small cities that losing local control means their particular zoning issues will be overlooked.

"[Contracted] inspectors become the enforcement arm of those codes," said Mann. "When you take that away ... why even have zoning in a small incorporated city like Dunes City?"

Though structural health and safety codes are remain the same, Dunes City's zoning codes

differ somewhat from Lane County's on account of its position on Woahink and Siltcoos Lakes.

"I can build within a few feet of a wetland in Lane County," said Mann. "In the city I have to do 50-foot setbacks."

Attention to the wetlands is of particular concern to Dunes City residents.

"We're very sensitive about our water resources because that's where we all get our drinking water," said Mills.

The particulars of these zoning differences extend to the types of houses and ground coverages allowed in a city.

"But if they've now cut the city out of the process, people will go directly to the county to get their building permits and we will have absolutely no say as to how they build," she said.

Relying on county officials to faithfully adhere to small-town standards leaves some skeptical, never mind entrusting these responsibilities to a Salem-based state employee should the program get kicked up the ladder.

Building codes are often integrated into a city's long-term goals and knowing the particulars allows inspectors to catch problems with projects early before too much time or money has been wasted.

Exacerbating the issue is a potential rise in housing costs amid a statewide housing shortage. Although Oregon is currently building more new housing units than it has in decades, supply has not met demand and the resultant eroding affordability of housing is a major player in rural markets.

Small cities, to recoup the cost of hiring building officials, must request an increase in permit fees from the county. As permit fees rise, so do construction costs, which in turn chases away potential homeowners and runs the risk of shutting down the market.

In light of the turmoil and uncertainty faced by small cities, the wisdom of the BCD's sudden push on this issue has been questioned.

"It's awful funny to me that

after 40 years we find out that a service well-given is unconstitutional in the state of Oregon," said Mann. "I think they're well-intentioned to some degree, but I think there's a desire to control more closely rural communities that may be independent-minded," he said.

Whatever the case, many also feel it is a job at the long tradition of home rule, in which cities derive their authority from local charters rather than the state. Municipal autonomy within the bounds of state and federal law avails cities the opportunity for swift and efficient governance to address particular needs.

Reducing self-governance by even small degrees in areas such as Dunes City has measureable effect on a council's ability to serve their constituents.

"We were elected by the citizens of Dunes City to look, on their behalf, at things like this," said Councilor Duke Wells at the April 11 Dunes City Council meeting. "The idea of turning that over to the state is just — to me it's insane."

In the meantime, city councils throughout the state continue to weigh options as their July 1 deadline draws near. While some may manage to comply with the new requirements, others may be forced to forfeit a degree of autonomy. However events unfold, the issue's potential for profound consequences and precedents will demand enduring

scrutiny.

To address local concerns, the Dunes City Council has scheduled a meeting at Dunes City

Hall on May 7 at 6 p.m. to discuss options and invites residents and contractors to attend and share their ideas.

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