

BEFORE THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO

IN THE MATTER REGARDING )  
ADOPTION OF BUILDING CODES )  
FOR THE UNINCORPORATED AREA )  
OF KOOTENAI COUNTY. )  
\_\_\_\_\_ )

Case No. **ORA18-0002**  
**STAFF REPORT**

**HEARING DATE:** March 19, 2018

***I FINDINGS OF FACT***

1. On November 30, 2018, the Board of County Commissioners rejected adoption of Case Number ORA17-0005 regarding Building Code Update as required by Idaho Statutes Title 39, Chapter 41.
2. Since that date, two alternate versions of adoption have been presented by Commissioners Bingham and Eberlein. Commissioner Fillios has requested the original ORA17-0005 proposal be presented for re-consideration.
3. Four separate options have been presented for Public Hearing and adoption.

***II APPLICABLE LEGAL STANDARDS***

County Legal Staff has determined that Options #3 and #4 are expressly authorized in Idaho Code, and that Options #1 and #2, though not expressly authorized in Idaho Code, are defensible in the event of legal challenge.

***III STAFF ANALYSIS***

**Option #1:** Adoption of Building Codes with opt-out provisions for residential and accessory structures on parcels of five (5) acres or larger. Sponsored by Commissioner Bob Bingham.

1. During a discussion with the State Division of Building Safety, it was revealed that the State may withdraw authorization for the County to issue permits for those “opt-out” residential manufactured housing and residential mechanical work projects and perform permitting and enforcement actions as they do currently in other jurisdictions that have chosen not to require such permits. The State may also chose to assume all duties regarding both commercial and residential mechanical permits. Final determination by the State would be made after adoption is complete. The County may also be able to influence the State’s decision if we have preferences going forward.

2. Section 7.1.105(C)(4): When exercised by a residential property owner, this provision would prevent compliance enforcement actions currently being performed by the County and return those duties to the various local and State agencies.
3. All land use codes, including those pertaining to stormwater, would remain in effect. Staff would continue to enforce those requirements as they do currently. Section 7.1.105(F)(3) should be modified to read “If the parcel is classified as a high or moderate risk site, as defined in Title 8, Chapter 7, Article 7.1 of this code, a site disturbance plan will be required.”
4. The commercial building, permitting, inspection, enforcement and codes would remain in place as it is today. Because the public can assemble in commercial buildings, preservation of commercial permitting, inspection and enforcement is desired.
5. This option requires that the property owner, not the contractor, apply for the opt-out provision. This requirement ensures that the property owner is seeking the option rather than the contractor, who could conceivably deceive the owner into believing the structure was receiving building code inspections.
6. Total financial impact is difficult to accurately forecast due to the unknown number of persons who will take advantage of the “opt-out” provisions. Commissioner Bingham estimates that 10% to 15% of owners of residential parcels of 5 acres or greater will take advantage of the “opt-out” option. Staff believes that this number may be significantly higher. Potential sources of financial impact include but not necessarily limited to:
  - a. Reduced revenue due to fewer permits issued.
  - b. Staff time to develop procedures for implementation.
  - c. Direct costs and labor for permit fee refunds of active manufactured housing and mechanical permits if the State takes over these programs. This will entail a review of all active permits to determine the unused portions of all manufactured housing and mechanical permits and the mechanical component of all other permits.
  - d. Direct cost and labor to calculate and refund unused building permit fees for active permits where the owner elects to take advantage of the "opt out" provisions. Actual cost is impossible to estimate due to the number of persons electing this is unknown.

**Option #2:** Repeal of Building Code Ordinance, Adoption of Building Location Permit Requirements and Procedures, and Adoption of Voluntary Building Permit Program. Sponsored by Commissioner Marc Eberlein.

1. During a discussion with the State Division of Building Safety, it was revealed that the State may withdraw authorization for the County to issue permits for manufactured housing and mechanical work. The final determination would be made after adoption is complete, a

determination is made as to whether State involvement for only a portion of mechanical permits would be acceptable, and a State legal review is completed. There is a higher probability that the State will withdraw authorization with this option than with Option #1 due to expansion into commercial projects and the much higher number of projects that will be involved.

2. The last sentence of Section 7.1.102(C) should be modified by adding "... minimum snow load requirement of the specific site may satisfy ..." and the last sentence of the following #1 should be modified to read "... minimum roof snow load for the installation site" in order to protect the public from roof collapse due to excessive snow accumulation.
3. Coordination procedures will need to be established between the State and the County for verification and notification of manufactured housing permits. Otherwise the County may never be aware of State-permitted installations.
4. All land use codes, including those pertaining to stormwater, would remain in effect. Staff would continue to enforce those requirements as they do currently.
5. Total financial impact is impossible to accurately forecast due to the unknown number of persons who will take advantage of the voluntary provisions. Staff believes that this number will be significantly higher than Option #1 due to the fact that all sites will qualify. Potential sources of financial impact include but not necessarily limited to:
  - a. Reduced revenue due to fewer permits issued.
  - b. Staff time to develop procedures for implementation.
  - c. Direct costs and labor for permit fee refunds of active manufactured housing and mechanical permits. Calculation of direct costs and labor for permit fee refunds of active manufactured housing and mechanical permits if the State takes over the programs will entail a review of all active permits to determine the unused portions of all mechanical permits and the mechanical component of all other permits .
  - d. Direct cost and labor to calculate and refund unused building permit fees for all active permits where the owner elects to take advantage of these "optional building permit" provisions. Actual cost is impossible to estimate due to the number of persons electing this is unknown.

**Option #3:** Adoption of Updated Building Codes. Sponsored by Commissioner Chris Fillios. This option is identical to ORA17-0005 rejected by the Board on November 30, 2017. The changes to the ordinance from previous ones have been reviewed and provide for:

1. Re-formatting for consistent format with other County Ordinances.

2. Re-organization by moving sections in previous ordinance to proper locations within this document.
3. Elimination of some section deletions and minor re-wording of others for clarity to the public and consistency with current Building Division organization and procedures.
4. Revised definition of Agricultural Building in the International Residential Code in order to link Building Permit exemption to building use versus land use and thereby expanding the exemption to private agricultural uses.
5. Addition of new Appendix Q, entitled “Tiny Homes on Foundation.”
6. There will be no negative financial impact to the County

**Option #4:** Repeal of Building Code Ordinance.

1. Adoption of this option will require that on the effective date, building plan review and inspection operations of the Building Division will cease. Coordination with the State to inform them of active manufactured home and mechanical permits must be established. All active permits must be reviewed for calculation of and processing required refunds of permit fees.
2. Kootenai County Land Use Code must be reviewed for addition of building location permits for all sites not involving site disturbance or flood development review permits.
3. Total financial impact to the County will be significant. Potential sources of financial impact include but not necessarily limited to:
  - a. No revenue due to no permits issued.
  - b. Staff time to develop procedures for implementation.
  - c. Direct costs and labor for permit fee refunds of all active permits. This will entail a review of all active permits to determine the unused portions of all fees charged.

***IV RECOMMENDATION***

Staff recommends adoption of Option #3.