

Building Codes Division



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September, 2001

QUESTIONS REGARDING THE AUTHORITY OF LOCAL BUILDING AND FIRE OFFICIALS TO ENFORCE THE STATE BUILDING AND FIRE CODES

TO: Local Building and Fire Officials And Interested Parties

Following is a list of questions submitted to the Building Codes Division concerning authority to administer the state building and fire codes. The responses have been reviewed and agreed upon by the Building Codes Division and State Fire Marshal. Since these interpretations of various state laws and codes apply to all municipalities, they are being circulated statewide with the intent of improving consistency among jurisdictions. Please assist in this effort by ensuring your local procedures are compatible with these interpretations. Your cooperation and efforts to gain statewide uniformity are appreciated. If you have questions, please contact Richard Rogers, Structural Program Chief at (503) 378-4472 or by email, richard.rogers@state.or.us; or John Caul, Deputy State Fire Marshal at (503) 934-8269 or by email, john.caul@state.or.us.

QUESTIONS REGARDING THE AUTHORITY OF LOCAL BUILDING AND FIRE OFFICIALS TO ENFORCE THE STATE BUILDING AND FIRE CODES Oregon Building Codes Division September 24, 2001

Authority to Adopt and Administer Standards

1. Is the December 10, 1985 Attorney General Opinion (5874) still valid?

Yes. The basic tenants of the Attorney General (AG) Opinion 5874 are still valid. The statutory authority of the state Building Codes Division (BCD) through the Department of Consumer and Business Services (DCBS), the State Fire Marshal (SFM) and local municipalities to implement and administer the state building and fire codes has not significantly changed since the 1985 opinion was written. What has changed is the chapter reference for the statute that enables the division to adopt the state building code. It has been renumbered from the ORS Chapter 456 series to ORS Chapter 455. ORS 455.020 and subsequent sections authorize and establish the method of adoption of the state building code. The code section references in the opinion are also changed. The 1998 Edition of the Oregon Structural Specialty Code (OSSC) and the 2000 Edition of the One and Two Family Dwelling Code (OTFDC) are the applicable building codes relating to the questions contained herein.

2. Is the 1993 letter from Assistant AG Thomas E. Twist to Susan M. Browning of the State Fire Marshal's Office (DOJ File No. 920-001-0095) consistent with this opinion and the laws regulating adoption of the state building and fire codes?

Yes, we believe it is. The letter is one of advice rather than a formal opinion, and therefore may not

have undergone the same degree of scrutiny by the AG's office, but it does not appear to be in conflict with the 1985 opinion. The 1993 letter relates to matters that generally are not included within the state building code but rather under the authority of the State Fire Marshal to establish fire protection standards. As far as we are aware this advice has not been tested through appeal, court case or by further AG review. The code section references are out dated but technical content remains valid. (See also **Question 4**)

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3. Does the State Fire Marshal have the authority to adopt standards for new construction, alteration, repair, and use of new buildings; location and construction of fire access roads for new buildings; installation and spacing of fire hydrants; and required water supply and fire flow for new buildings? If so, what standards apply? Does the Fire Marshal have the authority to stop the issuance of a building permit?

The SFM has authority to adopt minimum standards “*for the prevention of fires*” and “*for the protection of life and property against fire....*”. (ORS 476.030 and 476.120) Fire protection standards include such things as fire access roads, water flow for fire fighting purposes and the installation and spacing of fire hydrants, as well as such things as storage and use of flammable liquids and maintenance of existing buildings. The Oregon Uniform Fire Code (OUFC) serves as the minimum fire protection standard for the state and local municipalities. Unlike the “mini/maxi” state building code, the fire code may be amended to be more restrictive at local level. (See also **Question 6**) The local jurisdiction may adopt the state fire code, some variation of the state code, or another fire code, but amendments to the state code, or adoption of a different fire code, must retain or meet the minimum requirements of the state adopted code. Local municipalities also may establish their own standards for road widths, (see **Question 8**) and standards for their local water system including water supply and fire flows (see **Question 37**). The Fire Marshal’s Office has informed us they review local fire code amendments for consistency with state law. The 1985 AG opinion indicates the authority of the SFM does not include adopting standards for the construction, reconstruction, alteration and repair of buildings (emphasis added). The authority for construction standards is vested in BCD in ORS Chapter 455 (previously Chapter 456). The OUFC is defined as the applicable Fire Code as used in the OSSC, in order to pick up those provisions of the fire code related to construction of buildings and structures. The SFM does not have authority to adopt standards requiring fire sprinklers in buildings. Fire sprinklers may be recognized in the fire code to reduce fire protection requirements, but the OUFC may not mandate sprinklers be installed when not specifically required by the OSSC and building construction standards. This is consistent with Attorney General Opinion 6311, issued to the State Fire Marshal’s Office and dated October 27, 1989.

The question asks if fire officials have authority to stop issuance of a local building permit. OSSC Section 106.4, applicable for structures governed by that code, authorizes the building official to require a project comply not only with the provisions of the OSSC, but also provisions of “*other pertinent laws and ordinances*”. The building official may delay issuance of a permit to ensure compliance with other federal and state laws and local development standards, such as planning, utility and engineering requirements. Some jurisdictions amend this administrative provision to include specific local requirements. Who actually holds up issuance of the permit depends on the language of local ordinance if it is different than the OSSC. The Dwelling Code does not contain the same provision, which is reason to ensure this issue is addressed in local ordinance. The fire official, or any other department, may not delay the issuance of a permit based on a construction provision of the state building or fire code. This authority rests with the building official.

4. Would this authority extend to individual single-family residences? Multiple single-family residences (subdivisions)? All other buildings?

The basic authority to adopt the state building code versus fire protection standards applies to both residential and commercial type structures including single family dwellings. However, the Fire Marshal's authority to regulate occupancy and maintenance of buildings varies based on the type of building and its use. As noted in Mr. Twist's letter, there is an exception for private residences from the SFM's authority related to "*maintenance and regulation of structural fire safety features in occupied structures*". (ORS 476.030 (1)c) (See also **Question 2**) This means they cannot routinely inspect the interior of private residences for structural fire safety features; however, they may investigate a fire that occurs within a residence. Mr. Twist indicates that fire protection provisions such as fire access roads are a separate subject matter, and therefore, not limited by the exception for private residences. We agree with his interpretation of the statute. Mr. Twist does not reference two other statutory sections related to the question of authority to adopt fire protection standards. First, ORS 476.030 (1)c) indicates the authority to regulate existing buildings is limited to those things that do not require a structural alteration to a building legally "*built, occupied and maintained*" under the state building code. Second, ORS 479.155 recognizes the state building code adopted by DCBS as the applicable construction standard for buildings and indicates approval of plans by DCBS is considered approval by the State Fire Marshal. Both DCBS and the SFM have authority to allow local administration of the state building and fire codes, and therefore, ORS 479.155 applies at local level. In some cases the SFM retains authority for enforcement of the Fire Code within a local municipality even though there may be local fire officials.

5. May a municipality adopt local ordinances that contain requirements for the construction, alteration and repair of buildings that are different from those in the state building or fire code? If the answer is yes, must the local government obtain BCD approval?

Yes, under certain conditions. The state building code may be amended locally with approval of BCD. (ORS 455.040) The administrative provisions may be amended locally according to ORS 455.020 without BCD approval. If requested, a proposed amendment typically would be reviewed by the Structural Code Committee and the BCSB for a recommendation, and approved or disapproved by the administrator.

6. When the building code refers to the fire code, does it mean the Oregon Uniform Fire Code? When sections of the Fire Code are "referenced" by the Building Code, do they become part of the Building Code to be enforced by the Building Official or are they part of the Fire Code to be enforced by the Fire Chief?

The format of model codes includes referencing the Fire Code for various requirements relating to both construction and fire protection. Because of this, the OUFC as adopted by the SFM is defined in the OSSC as the appropriate standard for these provisions. There is a note following the OSSC definition of "Fire Code", and a similar one in OTFDC Section 301.1, about the allowance to locally amend fire regulations. OUFC sections applying to building construction, reconstruction, alteration and repair are considered a part of the state building code and are therefore mini/maxi provisions that cannot be amended locally. These code provisions are to be enforced and interpreted by the building official. When these same provisions are applied to maintenance of existing buildings, the fire official enforces them under authority stemming from ORS 479.160, 170 and 195. Deciding which provisions of the OUFC are considered part of the state building code currently is confusing and difficult because they are not identified in the printed code. This issue is being addressed as part of the transition to new model codes. Even though the code sections are not identified, it is the

building official that has responsibility and authority to enforce the construction provisions of the fire code. (See also **Question 3 and 9**)

7. Does HB 3508 (ORS 368.039) allow municipal land development codes to supersede the standards for road construction adopted in the state fire code and local fire ordinances?

Yes, a municipality may adopt their own standards for road construction by local ordinance, providing the standards are adopted through a public process and in consultation with the fire official. SFM November 3, 1995 Interpretation 95-12, Enforcement of Access Requirements by Local Fire Departments and Districts, has not been updated since the passage of HB 3508 in 1997. This interpretation appears to need revision in light of this legislation.

Construction, Alteration and Repair of Buildings

8. When there are provisions for construction of new buildings or structures in the fire code, is it the fire or the building official that has the responsibility and authority to enforce them?

When related to construction, reconstruction, alteration or repair of a building or structure it is the building official. When it is a cross-reference to fire code for non-construction related requirements, such as fire access roads, hydrants, fire fighting water supply, storage of materials within the building, housekeeping or maintenance, it is the fire official. During fire inspections of existing buildings, the fire official may cite a building owner for being out of compliance with an applicable construction standard. For example their authority stems from ORS 476.030(1)(c), 479.170 and OAR Chapter 837 Divisions 041 and 043. When this occurs it is the fire official that enforces the order for corrective action. If it entails work requiring permit, then the permit when issued is enforced by the building official. The failure to obtain a required permit and commence correction of the violation is the responsibility of the fire official, but starting work without a permit is a building code violation. (See also **Question 6** above.)

9. When the building or fire code indicates a particular item (such as OSSC Section 904.1.1 – location of fire department hose connections) must be approved by the fire department, which has responsibility for approving the plans and enforcing the requirements for new buildings? How is this different from a reference to regulation by the Fire Code in this same section?

A BCD certified plans examiner under the authority of the building official must approve the plans. OSSC Section 904.1.1 requires fire department approval of the location of the fire department hose connections during plan review or as agreed upon by the building and fire official. In many jurisdictions, both the building and fire official through a cooperative arrangement inspect such equipment. However, the building inspector may inspect the installation once the fire department approves the location. This is different from fire code construction provisions that are clearly stated and do not require judgement of the fire official to determine the appropriate location or installation method in order to apply them. When clearly stated, the BCD certified fire and life safety plans examiner may review and approve the plans in accordance with the fire code requirements with input, not “approval” from the fire official. (ORS 455.150(8) and OAR 918-020-0020) If there is disagreement concerning these code provisions, the building official must make the final interpretation of the code, which may be appealed by any aggrieved party through local appeal or appeal to the appropriate BCD Chief. Enforcement of both of these types of provisions during construction becomes the responsibility of the building official as part of the requirements for final inspection, and if applicable, issuance of a certificate of occupancy. Failure to provide the required elements may be enforced locally through

municipal courts or as a violation of state building code through BCD. Application of these provisions to existing buildings as part of a maintenance program is the responsibility of the fire official until such time a permit is issued for repairs or alterations, which then becomes the responsibility of the building official. The building and fire official may work cooperatively to gain compliance if the owner fails to follow through and complete the work under permit since it would be a violation of the fire code if repairs are not made and it would be a violation of the building code if work authorized by permit is not completed. (See also **Question 9**)

11. What is the definition of a “structural change” as used in the context of ORS 476.030(1)c)? Does this section apply to new construction? Would the installation of an alarm system be included in the definition of “structural change”?

We are not aware of any formal definition of “structural change”. In terms of the state building code, a structural change is anything that requires a physical alteration to the structural elements of the building. The term is used in ORS 476.030(1)c) in the context of inspection and correction of hazardous conditions in existing buildings. The key to application of this provision is whether the building as it exists was “*built, occupied and maintained in conformity with state building code regulations applicable at the time of construction*”. A fire official may not retroactively require a building to be upgraded to meet current code (i.e. fire sprinkled or alarmed) if it was legal at the time of construction without the particular element. OSSC Section 3401 and OTFDC Section 117 that allow existing buildings to be maintained in their current condition support this. Upgrades may be required or approved by the building official if there is a change of occupancy or an alternate method of construction requested. A building that never met state building code may be required by the fire official to be reasonably upgraded when a hazardous condition exists. For example, when a fire official discovers an existing building that does not have adequate exiting for the occupancy it contains, they may require remedies such as installation of corridor protection sprinklers or alarms in lieu of meeting the current code requirements for corridor construction and location of exits. This type of remedy has traditionally been applied to high-risk occupancies such as grade schools and old hotels or apartment buildings where occupants sleep in the building. The owner could not be required to make structural changes such as constructing a new enclosed stairway.

12. Are there circumstances under which fire sprinkler systems may be *installed* in single family residences?

Yes. Although the OTFDC does not require fire sprinkler systems in single family residences, fire sprinklers may be installed voluntarily by builders or owners. In this case, the building official approves a fire sprinkler system as part of an alternate method of construction either individually, or in conjunction with the local fire official. House Bill 2912 passed this legislative session, directs BCD to establish uniform standards for granting alternate methods when fire access and water supply requirements of the applicable fire code or state building code cannot be met. It is anticipated the division will develop rules to implement this bill in 2002.

13. Are there circumstances under which fire sprinkler systems may be *required* in single family residences? If so, who has the authority to require? Would such a requirement need to be authorized by BCD?

Yes, under certain circumstances. As stated in Question 12, the owner may elect to install a fire sprinkler system in lieu of complying with other provisions such as required access or water flow. In order to “require” fire sprinkler systems in single family residences without a voluntary alternate

method, a state code change or a division approved local amendment to the OTFDC as permitted by ORS 455.040 is necessary. (See also **Question 12**)

14. Is there a requirement for the Building Official to provide the Fire Marshal *an opportunity to examine and comment on construction plans for those buildings the Fire Marshal may later inspect for occupancy standards (all building but private residences)*?

ORS 455.150(8) requires each building inspection program have a process in place to allow the SFM or the Fire Marshal's certified designee, to provide input into the plan review process. OAR 918-020-0020 requires this process be identified within the local building inspection program operating plan. OSSC Section 106.3.3.2 identifies the types of occupancies requiring fire and life safety plan review. This section applies generally to the type of facilities that are under the authority of fire officials to inspect for maintenance; however, it exempts some smaller structures from this type of plan review. The process required by ORS 455.150(8) is not restricted to only those projects requiring fire and life safety plan review. It applies to any project that is subject to inspection by fire officials under ORS 476.030.

15. Does the local fire official have the authority to require his/her routine *approval* before the issuance of building permits? Does the Fire Marshal have the authority to deny approval of the building plans, thus keeping the building permit from being issued?

The method of review and approval of construction plans is an administrative process established by the local municipality with cooperation between the building and fire official and other municipal agencies. The municipality may or may not actually require "sign-off" by the fire official. The building official is obligated according to ORS 455.150(8) and OAR 918-0200020 to provide opportunity for review and comment and to consider the comments as part of the building department plan review. The fire official is offered the opportunity, but if it is not taken there is no penalty. Whatever process is used must be identified in the building inspection program operating plan as noted in **Question 14**. The building official is responsible for having BCD certified personnel review and approve the plans. If there is disagreement between the building and fire official regarding application of the state building code or construction provisions of the fire code, the building official has responsibility for making the final decision. If the fire official is applying a fire protection standard dealing with such things as fire access roads, fire hydrants or water flow for fighting fires, it is under authority of the fire official or other local agency such as the water purveyor as established by local ordinance. Other municipal authorities may delay issuance of the permit in accordance with local ordinance or in the case of the OSSC, Section 106.4.1 the building official may do so on their behalf. (See also **Question 3**)

16. If the local fire official cannot prevent the issuance of a building permit once the building official has approved the application, how does the fire official gain compliance once the building official approves the permit?

Again, the process of permit issuance and approval by various municipal departments, is established by the municipality not the state building code. The building official is responsible for gaining compliance with construction provisions of the state building and fire codes; other fire protection provisions are generally the responsibility of the fire official. The municipality may require the building official to be responsible for other functions; however, only building construction related activities may be funded by building permit and plan review fees.

17. When fire officials review plans for the purpose of approving building permit applications, are they required to be certified by BCD as Fire and Life Safety plans examiners?

Not necessarily. They must be qualified and certified under rules of the SFM to perform the review established by ORS 455.150(8). (See ORS 479.165, OAR 837-039-0110 and OAR 918020-0020(1)) However, some jurisdictions actually have fire officials who are certified as Fire and Life Safety Plans Examiners (FL&S) and they may sign off on the FL&S plan review when working under the authority of the building official.

18. When there is a conflict between the state building code and NFPA requirements, which one would apply for new construction and who at the local level has the responsibility of interpretation? If the state code applies to new construction, may the local fire official apply the NFPA requirements once the building is completed?

The state building code adopts some NFPA standards such as fire sprinkler installation standards. When these are adopted as part of the building code, the building official has final responsibility and authority for making any decision related to the interpretation and application of the standard. Most jurisdictions work cooperatively with their fire officials to gain their expertise in applying these standards. If the NFPA standard is not adopted as part of the building code, or there is a new edition, then it does not apply to new construction unless the applicant requests to use it as an alternate method of construction and the building official approves it. The Fire Code also adopts various NFPA standards, some of which are considered part of the state building code construction standards, and some of which regulate non-construction related issues such as the contents of the building and storage of materials. The fire official enforces non-construction related fire code standards. Current examples of standards that are out of date in the building code are the fire sprinkler standards. Most jurisdictions are allowing the 1994, 1996 or current NFPA standards to be used as an alternate method. BCD is adopting a rule effective January 1, 2002 to update the edition of the standard referenced in the OSSC to the 1999 edition.

19. When alternate methods are proposed in new construction, which official has the responsibility and authority of approving such alternates in the area of fire and life safety?

The building official approves alternate methods of construction with input from the fire official as required by ORS 455.150(8). The fire official may approve alternates to fire code provisions that are not considered building construction standards.

Fire Access

20. Does the fire official have the authority to review fire access roads as part of the plan review process for new construction? Is it the fire or the building official that has the authority to approve fire access roads? If it is the fire official, how is this “approval” reconciled with ORS 455.150(3), which gives the Building Official the authority to “attend to all aspects of code enforcement, including the issuance of all building permits”?

ORS 455.020 establishes the scope of the state building code to include standards for the construction, reconstruction, alteration and repair of *buildings*. ORS 455.020(4) allows municipalities to establish their own administrative procedures. The state building code refers to the Fire Code for fire access road requirements. Because these requirements are not related to construction of the “building” they are considered part of the Fire Code fire protection regulations not the state building code. Therefore, the

fire official has responsibility and authority to administer these requirements. OUFC Article 9, Section 901.2.2.1 requires plans for fire access roads be reviewed and approved by the fire department. The municipality may adopt road standards that are different than the Fire Code. (See **Question 8**) These standards may be implemented through various local agencies such as planning, public works and engineering departments, as well as fire officials.

21. May the requirements for fire access roads be waived?

This decision is up to the appropriate fire official and the municipality. OSSC Section 901.2 refers the code user to the Fire Code for the requirements for fire access roads. Since access roads are not part of the building construction, but rather are an element of providing fire protection to the property, they are under the authority of the fire official. The fire official may reduce or modify the requirements as described in OUFC Article 9, Sections 901 and 902 and the guidelines in Appendix III-E. The municipality may also adopt road standards that are more or less restrictive than, and that supersede, the Fire Code in accordance with ORS 368.039. (See **Question 8**) OSSC Section 1001.1 requires unobstructed access to a public way for exiting; however, this may not satisfy the needs for fire apparatus access. A public way as defined in the OSSC is *“any street, alley or similar parcel of land essentially unobstructed from the ground to the sky that is deeded, dedicated or otherwise permanently appropriated to the public for public use and having a clear width of not less than 10 feet.”* This means of egress may not be waived by the building official, but an alternate method of providing an equivalent means of exiting and access may be approved.

22. Is there a definition of a “fire apparatus access road”? Is a private driveway serving one dwelling considered a fire apparatus access road? If so, what would be the construction standard?

There is no specific definition of “fire apparatus access road”, “fire access road” or “access road” in the fire or building code. In our opinion, a private driveway could under some circumstances be considered a fire access road just as a portion of a private parking lot may provide fire access to a commercial building. However, this decision lies with the fire official and the municipality. OUFC Article 9, Section 902.2.1 Exception 3 allows the fire chief to modify the requirements for access roads when there are not more than two Group R Division 3 or Group U buildings. This would apply to one and two family dwellings and their accessory buildings, as well as other buildings considered to be R-3 Occupancies. The grade and width requirements for fire access roads to dwellings should be considered, and a sufficient area for turn around may also be appropriate where backing out of the driveway is not a reasonable solution because of distance from the roadway. Standards for access roads that are different than the Fire Code may be established by local ordinance according to ORS 368.039.

23. If a driveway to a new proposed dwelling exceeds 150 feet in length, does the local fire official have the authority to require the house to be sprinkled in lieu of having an approved apparatus access road? If so, how is this requirement enforced?

No, although sprinklers may be installed voluntarily as part of an alternate method to reduce fire access requirements, the intent of the OTFDC is that fire sprinklers are not required for this condition. There is nothing in the Dwelling Code requiring sprinklers when a dwelling is more than 150 feet from a public road. This would be especially troublesome in rural Oregon where private drives may be several miles long. These dwellings typically may be constructed under the Dwelling Code without fire sprinklers. Examples under which such a dwelling may be sprinkled as an alternate method would be where reasonable fire access cannot be provided due to the slope of the road, or when the dwelling is part of a subdivision of more than 25 units and there is not a second means of access to the PUD. (See note

following OTFDC Section 301.1 and **Question 21 and 22**)

24. Since the Oregon One and Two Family Dwelling Code does not contain requirements for access roads for one and two family dwellings, do the requirements of the state fire code apply here? Can the ordinances of a local municipality be more or less restrictive?

Yes, the OUFC applies unless a more or less restrictive requirement is adopted by local ordinance or superseded by local road development standards. (See also the note following OTFDC Section 301.1 and **Question 8 and 22**)

25. Fire Code Appendix III-E is called “Fire Department Access Guidelines”. What legal status does a “guideline” have? How can a guideline contain mandatory “shall” language? If these guidelines are mandatory, do they apply to single-family residences or just to residential developments of 3 or more dwellings?

OSSC Section 901.2 refers the code user to the Fire Code for fire department access requirements. Fire Code Appendix III-E Section 1.1 identifies that the Appendix is “*intended to provide guidelines for alternatives (to Fire Code Article 9, Section 902.1) to be considered by the chief when determining fire department access for residential development of three or more dwellings*”. According to OUFC Article 1, Section 101.8.1 this Appendix is not adopted as part of the Fire Code. Alternates are discretionary approvals granted at the option of the appropriate official. The appendix identifies suggested limits and the minimum criteria the fire official should consider when granting an alternate in, for example, Sections 2.3, 3.1 and 4.1. The scope of the Appendix III-E is intended only to apply to three or more dwelling units within a PUD. A PUD is defined by Appendix III-E to be a “*subdivision or partition of land resulting in 3 or more residential sites, as approved and recorded in accordance with local planning and zoning regulations*”, not an individual dwelling on a single lot. The Fire Code requirements for fire access roads found in Article 9, Section 902 apply unless superseded by local ordinance. (See also **Question 3 and 24**)

26. UFC 902.2.1 says that more than one fire apparatus access road shall be provided when it is determined by the Fire Chief that access by a single road might be impeded by “vehicle congestion, condition or terrain, climatic conditions or other factors that could limit access”. If the city requires a second access, should such a requirement be addressed during the land use process and justified in findings related to the state criteria?

OUFC Section 902.2.1, Exception 3 allows the fire chief to modify the requirements of both 902.2.1 and 902.2.2 when there are not more than two dwellings affected by an access road. Such a modification may be granted at any time. Otherwise access roads should be determined at the time of the subdivision or land development application. ORS 368.039 allows road standards adopted by local government to supersede standards in the state or local fire code as long as they are developed in consultation with the local fire officials. This enables use of cul-de-sac and “skinny street” developments not meeting the OUFC. (See also **Questions 3, 8, 22, 24 and 25**) HB 2912 rules may also impact this issue but at this time we do not know the rule content.

27. Is the reference to PUD in Appendix III-E, Sections 1.2 and 2.1 meant to refer to one or more lots or parcels of property, or is it limited to a subdivision of more than 25 single

family residences, or to lots containing 25 or more dwelling units on each lot/site?

Again, OUFC Appendix III-E is not adopted by the SFM and is a guideline for granting alternates not a mandatory standard. The definition of PUD in Appendix III-E specifically references subdivisions or partitions of land “*resulting in 3 or more residential sites...*” (emphasis added). Individual properties not created as part of a subdivision or partition are not included in the definition. Subdivisions and partitions create individual properties or lots at the time of an official zoning action. This provides an opportunity to review the development design and impose conditions prior to development. This opportunity is not available to preexisting lots. A single lot with multi-family dwelling units or a single lot with more than three detached dwelling units also would not be included in the definition of a PUD. Appendix III-E, Section 2.1, suggests an appropriate standard for requiring a second access road to a PUD is when the road serves 25 or more dwelling units on individual sites.

28. May the minimum width requirements for fire access roads in the fire code be modified by local ordinances for street improvements?

Yes, under the authority of the fire official to adopt more restrictive requirements than the state fire code or under ORS 368.039 which allows adoption of either more or less restrictive standards as part of local street improvement standards. (See also **Question 3 and 8**)

Fire Hydrants

29. May municipalities establish their own standards related to number and spacing of fire hydrants that are part of a public water system? If so, who has the authority to apply these standards for new construction?

Yes. OSSC Section 901.2 refers to the Fire Code for requirements for fire hydrants. OUFC Article 1, Section 101.2 allows governmental subdivisions, water districts and fire districts to create their own fire protection standards including hydrant locations and distribution and decide whom, in addition to the fire department, enforces these standards. It may be the fire official as required by OUFC Article 9, Section 901.2.2.2, and may include others such as the water purveyor. Uniform Fire Code (UFC) Appendix III-B relating to hydrant location and distribution is not specifically adopted in OUFC Article 1, Section 101.8.1; therefore, according to Article 1, Section 101.8, it does not apply unless adopted locally. SFM Interpretation 94-02, Water Supply, although outdated because it does not reference the current edition of the OUFC, and Appendix III-B is no longer adopted, also applies. Policy II of the interpretation indicates it is appropriate to use Appendix III-B when also using OUFC Appendix Table III-A-1 for fire flows, or when the underground utility system is capable of providing a minimum of 1000 gallons per minute.

The authority to adopt hydrant standards does not include authority to require fire sprinkler systems in buildings that are not required to be sprinkled by the OSSC or OTFDC when hydrants are not available.

30. Are there circumstances under which on-site fire hydrants may be required as part of a building plan review?

31. May hydrants on one property be used to supply water to an adjacent property? If so, who has the authority and responsibility to enforce for new construction?

Yes, the requirement is included in OUFC Article 9, Section 903.2 and may also be in local ordinance. See also Article 9, Section 903.4.2 which indicates the required fire flow from

hydrants may be “*on the public street or on the site of the premises or both...*”

Only if permitted by local ordinance, the local fire official and water purveyor. UFC Appendix IIIB Section 4 limits the use of hydrants on adjacent properties unless “*fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads.*” The municipality may also want to consider how on-site hydrants are paid for and who maintains them.

32. When hydrants are required in addition to the municipal water system, does the fire or the building official have the responsibility and authority for reviewing and approving their location and installation?

OUGC Article 9, Section 901.2.2.2 requires the fire department to review and approve plans for fire hydrant systems. The municipality may also require approval by the water purveyor when part of, or connected to, a municipal water system. (See also **Question 29**)

33. Might there be unusual circumstances when the determination or number and spacing of hydrants should be addressed and justified as part of the land use process?

Yes. It is always preferable to address these issues as early in the process as possible because of the significant expense that can be involved. Subdivision or PUD development is an example of when it is appropriate to identify the requirements during the land use approval process. However, sometimes the requirements for hydrants will depend upon the final approved use of the property and design of the project, which may not be determined during original land development, but rather during the building permit application process. The permit process can also be an appropriate time to require additional hydrants in order to provide adequate fire protection for the property. An example might be when there are multiple buildings on-site and a building or landscape berm separates the rear building on the property from the on-street hydrants.

34. What standards apply to hydrants on private property?

Local ordinance and OUGC Article 9, Sections 901, 903 and 1001 establish requirements, which in some municipalities may include UFC Appendix III-B when adopted locally. (See also **Question 9 and 30**)

Water Supply and Fire Flow

35. Are the “new construction” requirements for fire sprinkler system water supply and fire flow referred to in the building code under the authority of the fire or the building official?

The fire flow requirements for sprinkler systems and standpipes are part of the building code through OSSC Chapter 9, UBC Standard 9-1, Sections 6-3 and Chapter 7, Standard 9-2, Chapters 5, 6 and 7 and Standard 9-3, Chapter 2. These requirements are under authority of the building official with input

from the fire official as required by ORS 455.150(8). (See also **Question 14 and 15**)

36. Are the “new construction” requirements for water supply and fire flow under the authority of the fire or the building official?

Fire protection water supply and fire flow from hydrants for fighting fires are generally under the authority of the fire official and local water purveyor. If the municipality adopts OSSC Appendix Chapter 9 Division II, Fire Flow, it specifies both the building and fire official approve decreases or increases in required fire flow as described in Appendix Section 910. If there is disagreement regarding the required level of fire protection, it is appropriate that added weight be given to the fire official’s opinion since it directly relates to the ability of the fire department to adequately fight fires and the fire department ISO rating, rather than building construction.

The authority to adopt water supply and fire flow standards does not include authority to require fire sprinkler systems in buildings that are not required to be sprinkled by the OSSC or OTFDC, although recognition of fire sprinklers may be used to justify a reduction in fire flow requirements. Granting alternate methods for one and two family dwelling water supply and fire flow will be impacted by HB 2912 rules. (See also **Question 37**)

37. What standards govern water supply and fire flow? Do the requirements apply to single family residences?

OSSC Section 901.2 refers to the Fire Code for requirements relating to water supply for fire fighting. ORS 479.200 establishes a minimum standard for fire fighting water supply to certain public buildings as defined in ORS 479.010(1)(i). This statute primarily affects assembly buildings, educational facilities, and publicly owned and occupied facilities constructed after July 1, 1967, when they are greater than 5000 square feet in usable or occupied area, or more than two stories in height and 2000 square feet in area. The statute specifies there must be *“a readily available water supply within 500 feet of such building of sufficient capacity to allow fire fighting apparatus to pump 500 gallons per minute for a period of 10 minutes for each 5000 square feet of occupied or usable floor area of fraction thereof, up to 500 gallons per minute for 30 minutes.”* The statute allows this water supply to be from various sources including ponds, lakes and streams when there are readily accessible standpipes of a certain size.

OUFC Article 1 Section 101.2 identifies that municipalities, water districts or fire protection districts have statutory authority to establish their own standards for water supply and fire flow and decide who, in addition to the fire department, enforces these standards as long as they are consistent with SFM OAR Chapter 837 Division 39. However, the statutory minimum may not be reduced. (ORS 264.342, 478.910 and 478.924) Sometimes the enforcing authority is the fire official as required by OUFC Article 9, Section 903.2, and sometimes it may include others such as the water purveyor. Fire Code Appendix III-A, Fire Flow Requirements for Buildings is adopted in OUFC Section 101.8.1. Section 1 of this appendix identifies NFPA 1231, *“Standard on Water Supplies for Suburban and Rural Fire Fighting”* as an alternate to Appendix III-A. According to OUFC Article 9, Section 903.3 this appendix is to be used by the fire chief as a “guide” when establishing local fire flow requirements. The locally adopted standards may apply to all development, including single family residences, within the boundaries of the municipality or within particular zones of the fire protection district.

Appendix III-A also refers to the July 9, 1999 SFM Interpretation 94-02 regarding water supply. The edition of the OUFC referenced in the interpretation has changed from 1991 to 1997 and UFC Appendix III-B is no longer adopted; however, the guidance is still valid. It states that ORS 479.200

is the primary tool for enforcement of fire flow requirements for public buildings and is applicable in rural and unprotected areas of the state. It refers fire departments to the “*Oregon Department of Forestry Fire Siting Standard for Dwellings and Structures*” for non-public buildings in unprotected areas. OUFC Appendix III-A Section 3 allows the fire chief to reduce fire flow requirements when it is impractical to develop full fire flows. In protected areas, the SFM indicates communities wanting to maintain an ISO rating *of four (4) or better should attempt to develop fire flow requirements consistent with the recommendations found in Appendix III-A. Communities where fire departments possess an ISO grade of five (5) to nine (9) should be using NFPA 1231 as their initial guide, with a target of moving towards the language of Appendix IIIA...* NFPA 1231 allows multiple sources of water to be used to satisfy the requirements including water from a tanker truck shuttle. The SFM emphasizes that local municipalities may adopt their own standards and that when they do they may also interpret them.

The authority having jurisdiction may adopt OSSC Appendix Chapter 9, Division II – Fire Flow as its standard. This appendix was developed by fire officials and building officials and is approved by the Building Codes Structures Board and the division as an acceptable alternate to OSSC Chapter 9 and OUFC requirements. Appendix Chapter 9 allows modifications and fire flow reductions to be approved jointly by the building and fire official “*where development of full fire-flow requirements is impractical.*” (See Question **36** relating to joint approval) The authority to adopt water supply and fire flow standards does not include authority to require fire sprinkler systems in buildings that are not required to be sprinkled by the OSSC or OTFDC, although recognition of fire sprinklers may be used to justify a reduction in fire flow requirements. (See also **Question 4 and 36**)

38. If there are conflicts between the standards, which ones apply and who has the primary responsibility/authority to enforce in new construction?

Both the building code (OTFDC and OSSC) and fire code (OUFC) specify “Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.” The OSSC and OTFDC also state where “different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.” If the conflict is between building construction standards in the building code and fire code, the building official must decide with input from the fire official, and may use the above criteria to help make the decision. The fire official decides conflicts between the fire code and building code dealing with fire protection standards rather than construction of buildings and structures. (See also **Question 3, 6 and 9**)