

Tenant Improvement Repair, Alteration, Change of Occupancy Oregon Structural Specialty Code

Various interior improvements of existing tenant spaces require some level of local building department oversight. There are several minor cosmetic finish and repair considerations of existing buildings that are exempt from building department regulation. This document highlights the code considerations associated with improving existing tenant spaces.

WORK EXEMPT FROM BUILDING PERMIT

The Oregon Structural Specialty Code (OSSC), Section 105.2, lists items that are exempt from building permits. While the list, as with most prescriptive code language, appears definitive, it is intended to broadly identify a generalized scope of work that may be conducted in an existing building without first receiving a permit through the local building department.

Many cosmetic interior finish activities are exempt from building permits, including movable furnishings, racks, and partitions below a certain height threshold. The general intent is that applicable code requirements be considered even where the scope of work does not benefit from building permits and inspection.

Items 4 and 8 of Section 105.2 are typically included as part of an improvement to an existing tenant space. The code has established these general activities as minor in nature and permissible without first notifying the local building department.

While these activities do not require building permits, building owners should always ensure that exempt work does not reduce the existing building's general level of conformance.

105.2 Work exempt from permit. Permits shall not be required for the following:

Building: ...

4. *Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work. ...*
8. *Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.*

Note: *Unless otherwise exempted, separate plumbing, electrical and mechanical permits may be required for the exempted items listed in this section. Additionally, all new construction and substantial improvements (including the placement of prefabricated buildings and certain building work exempt from permit under Section 105.2) shall be designed and constructed with methods, practices and materials that minimize flood damage in accordance with this code. (OSSC, 2019)*

For example, short partitions are exempt because they are not likely to obstruct required exit signage or an occupant's ability to quickly identify evacuation paths. However, exempt racks, fixtures, cases, and partitions should not be placed where they may reduce existing egress widths or interfere with required exit paths from the building or space. Flame spread and smoke development values of finish materials should be considered and researched prior to application, as addressed in Chapter 8 of the OSSC. Counters may still require accessible design features, and storage racks may still require structural seismic anchorage to comply with current code and manufacturer's installation requirements.

REPAIRS

Repairs are narrowly scoped by the reference definition in Chapter 2 of the OSSC. “Ordinary” repairs, as further detailed by the guidance of Chapter 1, are exempt from building permits – and may be conducted without building department notice or involvement.

Building owners should note the limitation of an ordinary repair, and the focused exclusion of any work affecting the means of egress for the legally existing building or existing structural elements and systems. As the term, “ordinary” is not defined in code, the citable path in Section 201.4 of the OSSC states that “[w]ords of common usage are given their plain, natural and ordinary meanings.”

Based on the Merriam-Webster’s dictionary definition of “ordinary,” if the repair activity is not routine, usual, or ordinary, a building permit will be required through the local building department.

REPAIRS. *The reconstruction, replacement or renewal of any part of an existing building for the purpose of its maintenance or to correct damage. (OSSC, 2019)*

ORDINARY: *of a kind to be expected in the normal order of events: ROUTINE, USUAL (Merriam-Webster’s Dictionary)*

In Oregon, building owners are generally permitted to repair damage to existing devices, elements, and safeguards of their buildings in accordance with the code edition under which the damaged device, element, or safeguard was originally constructed. There are very few repair thresholds that lead to an increased design element or system of the existing building through the intentional *repair* allowances of code. When damage occurs to a legally existing building, the statewide code does not mandate upgrades, with few exceptions, and the code broadly allows the repair to be conducted without requiring undamaged portions of the existing building be “brought up” to current code compliance.

The citable code path for existing buildings, as stated in Section 102.6.1 of the OSSC, now uses the 2018 International Existing Building Code (IEBC) as amended by Chapter 34 of the 2019 OSSC.

102.6 Existing structures. *The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as otherwise specifically provided in this code.*

The OSSC Section 3404 amendment to Section 401.2 of the IEBC gives clear direction on allowable compliance paths for repairs to existing buildings.

102.6.1 Compliance. *The repair, alteration, change of occupancy, and addition to existing buildings shall comply with the International Existing Building Code as amended by Chapter 34 of this code. (OSSC,*

3404 General, IEBC Section 401. *The following provisions replace the indicated sections in the IEBC.*

IEBC 401.2 Compliance. *The work shall not make the building less complying than it was before the repair was undertaken.*

Devices or safeguards that are required by this code shall be repaired in conformance with the code edition under which installed. To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected.

Work on nondamaged components that is necessary for the required repair of damaged components shall be considered a part of the repair and shall not be subject to the requirements for alterations. Routine maintenance, ordinary repairs exempt from permit in accordance with Section 105.2 of the Building Code, and abatement of wear due to normal service conditions shall not be subject to the requirements for repairs.

Where it becomes necessary to repair all or a portion of a legally existing building that has been damaged by, including but not limited to fire, wind, flood, earthquake or other similar damage, and where prior to the damage, the legally existing building did not contain dangerous conditions, the building may be reconstructed exactly as it existed prior to the damage provided that the building meets the applicable requirements of IEBC Section 405. Such repairs are not required to meet code requirements for new construction. Where dangerous conditions existed prior to the damage occurring, the building may be constructed as it existed prior to the damage provided that the dangerous conditions are corrected, as determined by the building official. The absence of fire-resistance-rated construction, related building components, automatic sprinkler systems and other life safety features shall not be deemed to be an unsafe or dangerous condition where such systems and construction methods were not required at the time the building was originally constructed or modified through permit. (OSSC, 2019)

One significant concept of *repair* is that the conducted work cannot make the existing building any less conforming to the current code than it was prior to the repair. Minimally, *repairs* must be equal in strength, quality, durability, fire-resistance, or similar applicable material and element characteristics, to that of what existed previously. The general purpose of the associated repair provisions is to minimally restore the building to the existing level of conformance before the damage occurred.

ALTERATIONS

Alterations are indirectly scoped in Chapter 2 of the OSSC as any construction or renovation that does not fall within the definition of *repair* or *addition*.

Accordingly, an *alteration* is any construction or renovation to an existing structure that does not increase the floor area or height of the building (*addition*), and is not for maintenance or correcting damage to the building (*repair*).

Under the statewide code, *alterations* include the majority of improvements to existing buildings. When a building owner voluntarily chooses to modify a legally existing building, it is considered an *alteration*.

For example, an owner of an existing restaurant wishes to completely renovate the patron seating area beyond a simple reconfiguration of unfixed tables and chairs. The desired rearrangement will change aisle configuration, fixed seating, and the required exit paths of the restaurant. As such, this would be considered an *alteration* and would require a basic level of plan review, permit and inspection through the local building department.

When an alteration is proposed, the new work must comply with the current code, and the unchanged portions of the legally existing building are generally permitted to remain unaltered (with several exceptions). Unlike a *repair*, a voluntary proposed change of the existing building requires current code application while still permitting a reasonable level of flexibility for the legally remaining portions of the building.

The OSSC offers multiple paths towards compliance for the customer to consider. Simple alterations, such as restaurant seating area rearrangement, may be best handled through the *prescriptive alteration compliance method*, see Section 3405.3 of the OSSC below. More complicated and widespread alterations throughout large existing buildings may benefit from the *work area alteration compliance method*. Site specific, unique alterations that do not involve structural considerations may benefit most from the *performance alteration compliance method*.

ALTERATION. Any construction or renovation to an existing structure other than repair or addition. (OSSC, 2019)

ADDITION. An extension or increase in floor area, number of stories or height of a building or structure. (OSSC, 2019)

3405.3 Alterations, IEBC Section 503. The following provisions replace the indicated sections in the IEBC.

IEBC 503.1 General. Except as provided by IEBC Sections 302.4, 302.5 or this section, alterations to any building or structure shall comply with the requirements of the Building Code for new construction. Alterations shall be such that the existing building or structure is not less complying with the provisions of the Building Code than the existing building or structure was prior to the alteration.

Exceptions:

1. An existing stairway shall not be required to comply with the requirements of Section 1011 of the Building Code where the existing space and construction does not allow a reduction in pitch or slope.
2. Handrails otherwise required to comply with Section 1011.11 of the Building Code shall not be required to comply with the requirements of Section 1014.6 of the Building Code regarding full extension of the handrails where such extensions would be hazardous because of plan configuration. (OSSC, 2019)

Regardless of the compliance path selected, an elementary principle of all *alterations* is to ensure that the existing building together with the new *alteration* is no less conforming with current code than it was prior to the *alteration*. The general intent is to slightly increase the existing building's level of conformance to the current code in proportion to the amount and scope of work proposed by the alteration, while permitting most unaltered portions of the legally existing building to remain unchanged.

Other statutory requirements may be applicable depending on the nature of a proposed *alteration*. Oregon Revised Statute (ORS) 447.241 details requirements for *alterations* that affect the usability of, or access to, a *primary function* area.

When a renovation, alteration or modification of an existing building meets the statutory thresholds, 25 percent of the total costs affecting the primary function area must be allocated towards improving the existing accessibility of the existing building. This statute is more restrictive than the federal Americans with Disabilities Act, and is intended to help ensure that an increasing level of accessibility is provided when building owners choose to make improvements to their existing buildings. This statutory requirement does not apply to *repairs*, but may apply to any project undertaken for the purposes of renovation, alteration, or modification of the existing building or portion thereof, and related facilities.

There are several nuances to the application of this statute, and statute sets the mandated order of accessible elements to evaluate when allocating the project funds. For more details on the "25% Rule" and ORS 447.241, the entire statute and associated Statewide Statutory Interpretation 14-01 are available on the division's website: Oregon.gov/bcd.

Local municipalities may also have seismic improvement requirements that must be considered during proposed alterations. These requirements are typically implemented through local ordinance. ORS 455.020(4) details this exclusive local government authority.

CHANGES OF USE, CHARACTER, OR OCCUPANCY

Proposed changes of an existing building's approved use, character, or occupancy are all included in the definition for *change of occupancy* in Chapter 2 of the OSSC.

When a legally existing building undergoes a *change of occupancy*, code requirements for the new proposed use must be evaluated in the design. As required in Section 105.1 of the OSSC, when a building owner, or the owner's authorized agent, is initially pursuing a *change of occupancy* for their existing building or a portion thereof, they must first contact the local building department.

CHANGE OF OCCUPANCY. A change in the use of a building or a portion a building which results in one of the following:

1. A change of occupancy classification.
2. A change from one group to another group within an occupancy classification.
3. Any change in use within a group for which there is a change in application of the requirements of this code. (OSSC, 2019)

105.1 Required. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, change the character or use of the occupancy, or change the occupancy of a building or structure, which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit. See ORS 455.020(2). (OSSC, 2019)

Section 3405.5 of the OSSC allows changes of occupancy without complying with all of the requirements of this code for the new occupancy, provided that the new occupancy is not more hazardous, based on the life and fire risk, than the existing occupancy, subject to the approval of the building official.

3405.5 Change of occupancy, IEBC Section 506. The following provisions replace the indicated sections in the IEBC.

IEBC 506.1 Compliance. A change of occupancy shall not be made in any building unless that building is made to comply with the requirements of the Building Code for the use or occupancy. Changes of occupancy in a building or portion thereof shall be such that the existing building is not less complying with the provisions of this code than the existing building or structure was prior to the change. **Subject to the approval of the building official, changes of occupancy shall be permitted without complying with all of the requirements of this code for the new occupancy, provided that the new occupancy is not more hazardous, based on life and fire risk, than the existing occupancy.** Unless additions or alterations are made to the building or facility, change in use or occupancy alone shall not require compliance with the provisions of Chapter 11 of the Building Code. Additionally, changes in occupancy resulting in multifamily dwellings need not comply with covered multifamily dwellings accessibility provisions (see Section 202 of the Building Code).

Exception: The building need not be made to comply with Chapter 16 of the Building Code unless required by IEBC Section 506.4. (OSSC, 2019)

The purpose of this language and allowance is to provide potential design flexibility where the new proposed occupancy is not able to meet all applicable current code requirements but is also not creating a more hazardous condition than what legally existed prior to the proposed change of occupancy. Existing buildings are permitted to remain legally existing, and nothing within the statewide code requires a legally existing building to meet current code provisions until *alterations* occur or a *change of occupancy* is proposed. In rare circumstances, the legislature has passed retroactive bills such as requiring smoke alarms in dwellings. Understanding this concept is the cornerstone of considering how a proposed occupancy change may be permitted to occur without meeting all of the current new construction requirements; only *if* the relative hazard is not increased and the local building official approves the proposed level of compliance.

Achieving a higher degree of current code compliance while not increasing assumed risk beyond the legally existing building conformance is intended to assist in purposeful adaptive reuse and downtown district revitalization, while achieving safer buildings, where specifically approved by the local building official. Although assumed relative hazard levels and risk may not directly align with the prescriptive Oregon codes, there is a wide array of nationally recognized performance methodologies that may be used to demonstrate anticipated risk, hazard, function, and occupant response anticipated for the proposed use and occupancy.

Where the discretionary authority and application of Section 3405.5 is not agreed upon by the local building official and customer, and in all instances where the proposed change of occupancy would result in an increased level of assumed hazard and risk, current code requirements must be demonstrated in the proposed design, as applicable. Change of occupancy alone, without *addition* or *alteration*, does not require a greater level of accessibility compliance. This language is captured in OSSC Section 3403.4, amended IEBC Section 305.4. Other general exceptions may apply, depending on the proposed scope of work, including allowances for existing structural and seismic force-resisting systems.

3403.4 Accessibility for existing buildings, IEBC Section 305. The following provisions replace the indicated sections in the IEBC.

IEBC 305.4 Change of occupancy. Existing buildings that undergo a change of group or occupancy shall comply with this section. Unless additions or alterations are made to the building or facility, change in use or occupancy alone shall not require compliance with the provisions of Chapter 11 of the Building Code.

Exception: Type B dwelling or sleeping units required by Section 1107 of the Building Code are not required to be provided in existing buildings and facilities undergoing a change of occupancy or alterations. (OSSC, 2019)

Whether considering exempt work, repairs, alterations, or changes of occupancy, building owners should always maintain open communication with their local building department. It is recommended to begin all local discussions with the land-use/planning/zoning authorities to ensure that all applicable land-use requirements are met. After ensuring land-use compliance, open dialogue with the local building department is preferred. In Oregon, the local building department is in place to ensure the safety of the built environment in a timely manner without causing project delays. A primary purpose is to facilitate safe buildings for occupants and users while being supportive of a positive Oregon business climate.

Oregon Revised Statutes guide the importance of embracing innovation and ensuring the state building code is not considered a barrier to any type of regulated construction activity. See ORS 455.015(2).

“The Legislative Assembly finds and declares that... It is in the best interests of this state that state building code regulations encourage economic development, experimentation, innovation and cost effectiveness in construction, especially construction in rural or remote parts of this state.” (ORS 455.015(2), 2019)

Many projects will also require the employment of a *registered design professional* to prepare the necessary construction documents and provide general project oversight. Building owners are encouraged to be aware of and familiar with any associated laws regarding registered design professional thresholds, exemptions, and requirements. Many of these requirements fall under the authority of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) or the Oregon Board of Architect Examiners (OBAE). For more information, the following reference manual published by OSBEELS and OBAE may be a useful resource: [Oregon.gov/osbeels](https://www.oregon.gov/osbeels).