

RESOLUTION NO. 5352-18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH STATE BUILDING CODES DIVISION TO ALLOW THE CITY TO ADMINISTER A MUNICIPAL BUILDING INSPECTION PROGRAM.

WHEREAS, the State of Oregon promulgated a state building code to govern the construction, reconstruction, alteration, and repair of buildings throughout the state; and

WHEREAS, ORS 190.010 et. seq., and ORS 455 authorize the State to delegate to the City the authority to administer a municipal building inspection program consistent with state law; and

WHEREAS, the City has been administering a municipal building inspection program for many years and wishes to continue to operate the program;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The City Manager is authorized to execute a Memorandum of Agreement with the Oregon State Building Codes Division, which is set forth in Exhibit A and incorporated by reference.

**Section 2.** This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 22nd day of January, 2018.

CITY OF TUALATIN OREGON

BY  \_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM

BY  \_\_\_\_\_  
City Attorney

ATTEST

BY  \_\_\_\_\_  
City Recorder

**EXHIBIT A - Resolution No. 5352-18**  
**Memorandum of Agreement**  
**Relating to Delegated Building Inspection Program**

I. Parties:

This agreement is made and entered into by the Building Codes Division (hereinafter the "Division"), through the Department of Consumer and Business Services, and the **City of Tualatin** building inspection program ("Jurisdiction"). In providing the services specified in this agreement (and any associated services) both parties are public bodies and maintain their public body status as specified in ORS 30.260. Both parties understand and acknowledge that each retains all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.295) and any and all other statutory rights granted as a result of their status as local public bodies.

II. Purpose:

In accordance with the authority granted by Oregon Revised Statutes (ORS) chapter 455 and the rules adopted thereunder, this Memorandum of Agreement (MOA) sets forth the delegation from the state to Jurisdiction to operate a municipal building inspection program as referenced in ORS chapter 455.

III. Background:

The Department is authorized to:

1. Promulgate a state building code to govern the construction, reconstruction, alteration and repair of buildings. The state building code establishes uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort and security for the residents of this state; and
2. Delegate authority to a Jurisdiction willing and able to assume operation of all or any portion of a building inspection program for a reporting period. A reporting period means a four-year period during which a Jurisdiction administers and enforces a building inspection program pursuant to an approved operating plan on behalf of the state.

IV. Agreement:

Jurisdiction's building inspection program agrees to the following minimum standards, policies and procedures while operating a building inspection program during the current reporting period:

1. **Administrative Standards.** Program must provide adequate funds, equipment and other resources needed to administer and enforce the program consistent with the inspection and permit requirements of the state building code.
2. **Electrical Program.** A building inspection program with an electrical program must comply with all applicable electrical rules for the inspection and enforcement of electrical programs.
3. **Fees.** Program must follow the uniform fee methodology for building permit and inspection fees. Program must use permit and inspection fees collected only for the administration and enforcement of the building inspection program. Electrical permit fees must only be used for the administration and enforcement of the electrical program. To avoid division enforcement action, program must collect and remit surcharges (with permit log) to the division no later than the 15<sup>th</sup> day following the month or quarter for which the surcharges are required to be collected according ORS 455.220.

4. **Appeals.** Program must have a policy to allow an applicant for building permit to appeal decision made by building official. Program must also allow an applicant for a building permit to file a written appeal of a decision of the building official directly to the division on any matter relating to the administration and enforcement of ORS Chapter 455.
5. **Operating Plan.** Program must amend operating plan within 30 days when changes occur and provide amended operating plan to the division. Changes include a change of building official.
6. **Staff.** Program must have and use only appropriately certified employees, or approved and appropriately certified and associated state-licensed third party contractors and inspectors for inspections.
7. **Enforcement.** Program must not enforce any standard different from the state building code, unless specifically authorized to do so by the Director of the Department of Consumer and Business Services under ORS 455.040(1), and only in the manner so authorized; any standard so authorized shall not be considered an amendment to the state building code under ORS 455.030.
8. **Documentation.** Program must respond timely to division data requests on any matter relating to the administration and enforcement of ORS Chapter 455.

V. Indemnity:

To the extent permitted by Article XI, sections 9 and 10 of the Oregon Constitution, and within the limits of liability established in the Oregon Tort Claims Act, Jurisdiction shall defend, indemnify and save the division, its officers, agents, and employees harmless from any and all claims, actions, costs or damages caused by Jurisdiction.

Subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, the State shall indemnify, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, Jurisdiction, from any liability for personal injury or damage to life or property arising from the State's negligent activity under this Agreement provided, however, the State shall not be required to indemnify Jurisdiction for any such liability arising out of the wrongful acts of Jurisdiction, its officers, employees or agents.

VI. Term of the Agreement:

This agreement will become effective upon signature of all parties and will remain in effect until the end of the Jurisdiction's current reporting period unless the Jurisdiction abandons or ceases to administer the building inspection program or the division assumes administration of the program under activities related to ORS 455.770. Failure to comply with any provision of this agreement may impact the Jurisdiction's continued administration of the building inspection program.

VII. Signatures:

Both parties, by the signatures below, hereby acknowledge that they have read this agreement, understand it and agree to be bound by its terms and conditions.

Building Codes Division

City of Tualatin

Date \_\_\_\_\_

Date \_\_\_\_\_

Mark S. Long, Administrator  
Building Codes Division

Please print building official name \_\_\_\_\_



Building Official Signature \_\_\_\_\_

1-22-2018

Date \_\_\_\_\_

Sherilyn Lombos, City Manager

Please print name and title \_\_\_\_\_

Jurisdiction Representative Signature \_\_\_\_\_