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# Policies / Interpretations / Procedures

## Residential Structural Work Exempt from Permits

**Policy Summary:**

### Identifies what types of residential structures based on specific uses are exempt from building permits.

**Background:**

The Oregon Residential Specialty Code (ORSC) identifies that certain non-habitable structures are exempt from building permits based on size and classification of use.

Item 1. of Section R105.2 (Work Exempt from Permit.) of the ORSC states as follows:

Non-habitable one-story detached accessory structures, provided that the floor area does not exceed 200 square feet and does not exceed a height of 15 feet measured from grade plane to the average height of the highest roof surface.

The meaning of non-habitable accessory structure can be found within the ORSC definition of “accessory structure” and is defined as follows:

**Non-habitable accessory structures include, but are not limited to; garages, carports, storage sheds, tool sheds and garden structures.**

Non-habitable space is not defined in the ORSC, however, habitable space is defined as the following:

Habitable Space. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

## Discussion and Reasoning Statement:

The intended allowable use of Exempt non-habitable structures has proven difficult to define. The ORSC is vague in its language, particularly when it comes to the word “living”. Within the definition of accessory structure, non-habitable accessory structures are defined as including but not limited to; garages, carports, storage sheds, tool sheds, and garden structures. Storage sheds and tool sheds are structures that are not often occupied, while a garage or garden structure could be occupied for long periods of time throughout a day, so the argument often comes up of “why is a garage or garden shed any different than an art studio, exercise/yoga room, or any other space that can be occupied for long periods of time?”. Non-habitable space is not defined in the ORSC. However, the term habitable space is defined as a space in a building for living, sleeping, eating, or cooking. From this term we can clearly exclude sleeping rooms and kitchens from the exception, but what constitutes “living”? The natural, ordinary meaning of living is vague, and unhelpful when determining the intent of the use for these exempted structures. To muddy the water even more, R105.1.1 states that new toilet rooms or new bathrooms shall require a building permit, while the definition of habitable space states that bathrooms, toilet rooms, closets, halls or utility spaces and similar areas are not considered habitable spaces. The intent for bathrooms requiring a building permit are likely not due to structural concerns, but rather to make sure that the required clear spaces outlined in R307 are met.

Another concern that cannot be ignored is that these exempt structures, typically, the ones built as art or yoga studios, often are illegally used, and converted to sleeping areas, or other nonconforming uses. Properties also frequently change hands and the new property owners sometimes assume that these structures are permitted and are approved for habitable use. Code officials should be discouraged from assuming nonconformance of use and denying permits based on such assumptions.

Thoughtful consideration from the applicant should also be given when considering whether to permit a structure or use the exemption to build the structure without permits and inspection. Although R105.2 specifies that the exemption of the building permit shall not be deemed to grant authorization for any work to be done in any manner in violation of the provision of this code or any other laws, there is no regulation to ascertain exempt structures are being built to minimum code standards. Converting a non-permitted structure to habitable space requires a building permit and can prove to be very difficult to achieve without additional costs and modifications that sometimes make it unreasonable to do so. In these situations, the burden of proof is placed on the property owner to show that the structure meets the standards of the current adopted building code. Examples of this include structural components such as roof rafters and ceiling joist, headers over window and door openings, adequate brace wall paneling, and permanent foundations attached to the structure.

### **Policy:**

### Exemptions for non-habitable structures outlined in R105.2 of the ORSC are limited to accessory structures to one and two family dwellings for uses other than for sleeping or cooking provided that the floor area does not exceed 200 sq. ft. and does not exceed a height of 15 feet measured from grade plane to the average height of the highest roof surface. Prior to the issuance of any zoning permit being issued, an acknowledgment form must be signed by the property owners stating their understanding of the approved use and limitation of the allowable use. The acknowledgement form will also identify that conversion to habitable use will require a building permit which requires that the structure is built to the current code provisions adopted at the time of conversion, and it may be cost prohibitive to make such a conversion. Recorded Deeds will need to be in place prior to the issuance of such zoning permits which outline the approved use and limitations of use for the applicable structure.

### Any plumbing, electrical, or mechanical systems installed that serve the exempt structure are not exempt and require permits and inspections. The installation of a toilet room, or bathroom will require a building permit to verify clearances outlined in R307 are met. The requirement for a building permit to verify clearances for bathrooms will not trigger any structural permitting requirements. If the structure is heated, then SDC’s will apply for water and sewer, and impervious surface areas will be calculated towards SDC’s for storm water.