From the Desk of Rep. Vikki Breese Iverson

Vikki Breese Iverson

Frequently Asked Questions – SB 974-B

Q1: Does the "upzoning" section (Section 3) of the bill eliminate public process?

No, Section 3 does not eliminate public process. Section 3 authorizes zone changes, planned unit developments, and variances to proceed under an expedited framework. Before making a decision on one of these applications, local governments must send out notice of the application to owners of property within 100 feet of the site and to any neighborhood or community organization recognized by the governing body whose boundaries include the site, provide a 14-day period for submission of written comments prior to the decision, and if anyone appeals the decision, the local government may provide an additional public hearing on the application.

Q2: Does Section 3 prevent a local government from substantively applying their land use regulations or their comprehensive plan?

No, Section 3 does not prevent a local government from substantively applying their land use regulations or their comprehensive plan. Section 3 only dictates the **process** in which a local government must review an application. Section 3 does not eliminate or change any substantive regulations that applicants must meet or force a local government to approve an application it otherwise could deny.

Q3: Can an "upzoning" application be appealed?

Yes, an application under Section 3 is a land use decision that is appealable to the Land Use Board of Appeals. Section 4 and Section 5 make conforming amendments to make clear that these decisions are subject to the normal appeal procedures in existing law.

Q4: What are "final engineering plans" under Section 1?

"Final engineering plans" means "the detailed engineering plans and reports for the design or construction of public and private infrastructure improvements that require review and approval following tentative plat approval by a local government before issuing site development permits, including plans and reports for the construction of public and private infrastructure improvements such as grading, water, sewer, stormwater, transportation systems and utilities." Final approval of these plans is a condition of land use approval and required before a developer may receive final plat approval and obtain construction permits. Section 1 requires these plans to be reviewed within 120 days, unless the applicant and local government agree to extend the timeframe.

Q5: What happens if a local government does not meet the 120-day timeframe?

Under existing law, if a local government goes beyond the 120-day timeframe for making a land use decision, the applicant may seek a "writ of mandamus" under ORS 34.130 asking a court to direct the local government to fulfill its legal obligation to approve the land use decision. Here, Section 1 allows an applicant to also seek a writ of mandamus asking the court to issue the writ unless the local government can show that approval of the engineering plans violates their local regulations. Under existing law, the court has the discretion to award attorney fees to the prevailing party.

Q6: What requirements must be waived under the design review section (Section 8)?

By streamlining the design review process, Section 8 ensures housing projects are evaluated based on substantive considerations rather than subjective aesthetic preferences that contribute to unnecessary costs and delays. Section 8 makes clear that it does not prohibit cities from requiring design standards related to accessibility, fire ingress or egress, public health or safety, localities may still require certain design standards to ensure safe, livable communities.

Specifically, Section 8 requires the waiver of standards intended to preserve the desired character, architectural expression, decoration or aesthetic quality of new homes, including:

- Facade materials, colors or patterns
- Roof decoration, form or materials
- Accessories, materials or finishes for entry doors or garages
- Window elements such as trim, shutters or grids
- Fence type, design or finishes
- Architectural details, such as ornaments, railings, cornices and columns
- Size and design of porches or balconies
- Variety of design or floorplan; or
- Front or back yard area landscaping materials or vegetation

Q7: Does Section 8 prevent a local government from complying with stormwater requirements or any requirements relating to protecting wildlife, wetlands, or natural resources?

No. Section 8 makes clear that the bill does not apply to land use regulations or requirements that are related to setbacks, building height, accessibility, fire ingress or egress, public health or safety, state or federal water quality standards, hazardous or contaminated site cleanup or wildlife protection or that implement statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources.

Q8: Does Section 8 eliminate the "tree code"?

No. "Tree codes", as they are colloquially known, are not defined under state law, but generally refer to regulations related to trees. These regulations vary depending on the type of property, type

of tree, and the nature of the action related to the tree. Some jurisdictions have robust regulations related to trees, others have very little, if any.

Section 8 does not outright eliminate a local government's ability to regulate or preserve trees. Section 8 only requires local government to waive prescriptive aesthetic landscaping standards in back or front yards of individual units. This means that local governments are free to continue regulating the planting of trees along streets, in common areas, and between units.

Additionally, the waiver only applies if the application is for 20+ single-unit, middle-housing, or manufactured housing units (new neighborhoods). This means that local governments remain able to apply any regulations related to trees to multi-family housing, along surface area parking lots, and to infill projects. SB 974 also does not apply to standards related to public health, safety, wildlife protection, and natural resources.

Q9: Have other states eliminated design or aesthetic requirements?

Yes. Several other states have begun eliminating certain aesthetic requirements from needed housing because of the added cost and delay. For example:

- Oklahoma – The City of Tuttle's vinyl siding ban increased home prices by $2,000–$3,000, pricing out 4,500 lower-income families. In 2020, SB 1713 was signed into law, preventing municipalities from imposing design requirements on single-family homes, except in specific cases.

- Arkansas – SB 170, passed in 2019, blocks local governments from regulating building design in ways that would increase housing costs. The bill responded to the City of Springdale's proposed restrictions on siding, roof pitch, garage placements, and fencing.

- Texas – HB 2439, effective September 2019, prohibited local restrictions that limits the use of a building material that is approved for use by a national model code, nor establish a standard more stringent than a standard referenced by a national model code.

- North Carolina – SB 25, enacted in 2015, dictates that any zoning and development regulation relating to building design may not be applied to structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings. Building design includes items such as exterior building color; type and style of exterior cladding material; style and materials of roof structures and porches; etc.

You can learn more about the national movement to eliminate arbitrary aesthetic standards by reading the National Association of Home Builders Report, *Residential Design Standards: How Stringent Regulations Restrict Affordability and Choice*.