THREE BILLS OF DISCUSSION

1. HB2536 administrative review; approvals; developments

Purpose:

Establishes residential zoning district regulations and limitations of residential housing design standards. Modifies current municipal zoning and licensing time frame requirements

https://www.azleg.gov/legtext/56leg/1R/summary/S.2536COM_STRIKERMEMO.pdf A.

Background:

Statute authorizes municipalities to adopt zoning ordinances and codes to conserve and promote the public health, safety, convenience and general welfare and outlines zoning guidelines and requirements (A.R.S. Title 9, Ch.4, Art. 6.1). The governing body of a municipality must adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process must include at least:

1) notifying adjacent landowners and other potentially affected citizens of the application;

2) informing adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning; and

3) providing adjacent landowners and other potentially affected citizen an opportunity to express any issues or concerns regarding the rezoning.

Any zoning ordinances that propose changes to property from one zone to another, that impose any regulation not previously imposed or that remove any such regulation previously imposed must be adopted following the procedure prescribed in the citizen review process and in the manner set for public hearings (A.R.S. § 9-462.03).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Residential Zoning Districts

1. Declares that housing supply and affordability are matters of statewide concern.

2. Asserts that the regulation of housing within residential zoning districts and through amendments to other zoning districts is not subject to further regulation by a city or town, including a charter city.

3. Requires, by January 1, 2024, a municipality to adopt an amendment to its zoning ordinance that requires the municipality, on any rezoning of land to a residential, to determine whether the application is administratively complete within 30 days after receiving the application.

4. Requires the municipality, if an application is not administratively complete, to follow the statutory procedures for review of administrative completeness, until the application is administratively complete.

5. Requires the municipality to determine whether a resubmitted application is administratively complete within 15 days of receipt.

6. Requires the municipality, after determining that an application is administratively complete, to approve the application within 180 days, unless a property owner within the zoning area demonstrates by clear and convincing evidence that the proposed housing units will create an objective externality to the property owner while on the owner's property that has not been mitigated.

7. Requires the municipality, if it is found that a property owner within the zoning area proved an objective externality by clear and convincing evidence, to:

> a) specifically identify the least restrictive mean to sufficiently mitigate the identified objective externality; and
>
> b) conditionally approve the application subject to the specifically identified mitigation measures.

8. Prohibits the municipality's identified objective externalities, including any mitigation measures prescribed by code, ordinance, standard, regulation or other legal requirement, from creating an undue burden on the development and construction of new housing units.

9. Allows an applicant, following the municipality's finding, to bring an action in superior court to challenge the finding that the owner of property within the zoning area met the burden of showing, by clear and convincing evidence, that the proposed development will create an objective externality to:

a) the property owner while on the owner's property; and

b) the municipality's specifically identified least restrictive means of mitigating the identified objective externality.

10. Requires the trial, in any judicial action brought, to be de novo.

11. Prohibits the court from using any deferential standard to the findings of the municipality.

12. Allows the municipality to require the project that is subject to the rezoning request to address any impacts on the municipality's infrastructure related to traffic, stormwater runoff, water services and wastewater service and pay any development fees adopted or collected in accordance with statute.

13. Requires the application for changes to the municipality's zoning ordinance to be adopted following a public hearing before the governing board of the municipality.

14. Requires the notice and place of the public hearing, including a general explanation of the matter, to be provided in accordance with statutory public hearing requirements.

15. Requires the applicant to comply with any other notice requirements adopted by the municipality in accordance with state law.

16. Allows the municipality, at the municipality's discretion, to require a public hearing before a planning and zoning commission if the required hearings take place within the outlined time frame for application approval.

17. Specifies that the residential zoning district requirements do not apply to:

a) any land within the immediate vicinity of a municipal, Federal Aviation Administration commercially licensed, general aviation or military airport or ancillary military facility;

b) any land within an area that is designated as a district of historical significance by a municipality in accordance with statute or as historic on the National Register of Historic Places;

c) a municipality with a population of fewer than 25,000 persons; or

d) a municipality that is located on tribal land.

18. Excludes a modification made in accordance with the residential zoning districts requirements from the citizen review process outlined for zoning change

19. Defines objective as involving no personal or subjective judgement by a municipal employee or official and being uniformly verifiable by reference to an external and uniform benchmark, standard or criterion that is available and knowable by both an applicant or proponent and a municipal employee or official.

20. Defines externality as the effect beyond the property lines of the proposed development on property owners within the zoning area while on the owner's property related to light, noise, odor, water runoff, traffic and parking.

21. Excludes, from the definition of externality, any of the effects in accordance with the residential zoning district requirements that are wholly contained within the property lines of the area of the proposed development. Residential Housing Design Standards

22. Prohibits a municipality from adopting or enforcing any ordinance, code, standard, regulation, guideline, agreement, stipulation or other legal requirement related to or regulating residential housing design elements.

23. Prohibits a municipality from withholding a building permit or other approval that is necessary as a condition of construction for failure to comply with any ordinance, code, standard, regulation, agreement, guideline, stipulation or other legal requirement related to or regulating residential housing design elements.

24. Allows a municipality to:

a) limit the number of times an elevation can be built next to or across from the same elevation

b) regulate the height of the dwelling in accordance with statute; and

c) regulate the location and size of open space to the extent required by the municipality solely for stormwater retention as of the effective date and for water conservation.

25. Allows any applicant for an approval that is necessary to obtain a building permit to construct a single-family, two-family or multifamily building or any housing organization to bring action in the superior court to enforce the requirements on residential housing design standards.

26. Specifies that the requirements on residential housing design standards do not apply to any ordinance, code, standard, regulation, guideline, agreement, stipulation or other legal requirement that is:

a) a requirement of an adopted minimum standard building code, including any local amendments that are less restrictive than the unamended minimum standard building code;

b) applicable solely to structures located in an area designated as a local district of historical significance by a municipality in accordance with statute or as historic on the National Register of Historic Places;

c) applicable solely to structures individually designated as local, state or national historic landmarks;

d) applied to manufactured homes in a manner consistent with state and federal law;

e) required as a condition of participating in the National Flood Insurance Program;

f) a stipulation on a recorded subdivision plat adopted by the municipality before the effective date; and

g) required to meet the sound attenuation in accordance with statute.

27. Specifies that the requirement on residential housing design standards does not affect the validity or enforceability of private covenants or other contractual elements among property owners relating to dwelling design elements by parties other than the municipality.

28. Specifies that the requirement on residential housing design standards does not apply to:

a) a municipality with a population of fewer than 25,000 persons; or

b) a municipality that is located on tribal land.

29. Defines design element as:

a) the number and variation of floor plans and exterior elevations, including the selection of the floor plan to be built on each lot;

b) the size and number of stories of the dwelling;

c) the exterior building color and materials;

d) the type of style of exterior cladding materials;

e) the style, materials, shape, pitch and articulation of the roof structure;

f) the style, materials, size, shape and inclusion of porches and patios;

g) the exterior nonstructural architectural ornamentation;

h) the location, architectural styling, materials and size of garages, garage doors and driveways;

i) the placement and orientation of garage doors relative to the front façade of the living space;

j) the interior layout and size or rooms, including the interior of the garage, hallways and floor plan;

k) the location, size and design of open space and amenities, including amenities in common areas maintained by the property owner, an association or the members of an association;

l) sidewalk placement and design, including requiring detached sidewalks, except as required by statute and applicable federal law;

m) the design, decoration and landscaping of the rear yard, side yard and any area that is not visible or accessible to the public; and

n) any other architectural or aesthetic element that does not directly affect an objective and identified health or safety condition.

Municipal Zoning Regulations

30. Excludes areas zoned for residential use in a municipality that has a population of more than 25,000 persons from the ability to establish, by ordinance, requirements relating to off-street parking and loading.

31. Requires a municipality with a population of more than 25,000 persons, outside of the age-specific community zoning districts, to allow a single-room occupancy to be occupied by persons 55 years of age and older in other zoning districts as determined by the municipality.

32. Specifies that the ability of the municipality's legislative body to divide a municipality into zones is for the purpose of ensuring an adequate supply of land zoned for housing for the municipality's current and future residents.

33. Requires zoning regulations, within zones that allow single-family residential uses in municipalities with a population of more than 25,000 persons, to allow one accessory dwelling unit per lot.

34. Allows the accessory dwelling unit to be occupied by a person other than the owner.
35. Allows a municipality to allow more than one accessory dwelling unit per lot and require a lease for an accessory dwelling unit to have a duration of at least three months.

36. Stipulates that the accessory dwelling unit requirement does not apply to areas designated as a district of historical significance by a municipality in accordance with statute or as historic on the National Register of Historic Places.

37. Defines accessory dwelling unit as a residential living unit that provides complete independent living facilities, which may include a kitchen with a range, with one or more persons on the same parcel as a single-family dwelling and that is smaller in total square footage than the primary dwelling unit.

38. Stipulates that the definition of accessory dwelling unit includes: a) a detached unit; and b) a unit that is attached to a single-family unit on the same parcel.

39. Defines single-room occupancy as dwelling units in which residents rent a private bedroom with shared kitchen and bathroom facilities.

40. Excludes, from the definition of single-room occupancy, sober living homes or assisted living facilities regulated by the Department of Health Services. Municipal Licensing Time Frame Requirements

41. Requires a municipality, in establishing licensing time frames, to consider the impact on the supply and cost of housing from unnecessary delays in the approval and permitting process.

42. Requires, within five working days of an applicant's request, a municipality during the substantive review time frame to: a) meet or discuss with an applicant the request for corrections; and b) provide sufficient information and instruction to allow the applicant to provide requested corrections.

43. Prohibits a municipality from denying a license application that is necessary for land development or building construction unless the municipality considers the application withdrawn, except for an application:

a) submitted for a change in zoning; or

b) related to a structure in an area designated as a district of historical significance by a municipality in accordance with statute or as historic on the National Register of Historic Places or a structure individually designed as a local, state or national historic landmark.

44. Requires a municipality to refund all fees charged for reviewing and acting on an application for a license and excuse payment of any fees that have not yet been paid if the municipality does not issue the applicant the written or electronic notice conditionally granting a license within the overall time frame or mutually agreed on time frame extensions.

45. Requires the application, if for a license or approval necessary for land development or building construction, to be deemed approved if the municipality does not issue the applicant the written or electronic notice granting or conditionally granting the license or approval within the overall time frame or within the mutually agreed on time frame extension.

46. Excludes a final certificate of occupancy or a final inspection for land development or building construction from the requirement to deem the application approved.

47. Applies the exemption to the municipal licensing time frame requirement for a license necessary for the construction or development of a residential lot only to:

a) a municipality with a population of fewer than 25,000 persons; or

b) a municipality that is located on tribal land.

2. SB1161 affordable housing; development standards; report

Summary of the Strike-Everything Amendment to SB 1161

Overview

Requires municipalities to allow by right the construction of low-income multifamily residential rental property and establishes municipal reporting requirements relating to housing needs.

History

Statute authorizes municipalities to adopt zoning ordinances and codes to conserve and promote the public health, safety, convenience and general welfare and outlines zoning guidelines and requirements (Title 9, Ch.4, Art. 6.1, A.R.S.). The governing body of a municipality must adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process must include at least:

1) notifying adjacent landowners and other potentially affected citizens of the application;

2) informing adjacent landowners and other potentially affected citizens on the substance of the proposed rezoning; and

3) providing adjacent landowners and other potentially affected citizen an opportunity to express any issues or concerns regarding the rezoning.

Any zoning ordinances that propose to change property from one zone to another, that imposes any regulation not previously imposed or that removes any such regulation previously imposed must be adopted following the procedure prescribed in the citizen review process and in the manner set for public hearings (A.R.S. § 9-462.03).

A low-income multifamily residential rental property is a multifamily residential property to which:

1) The owner received an allocation of federal income tax credits through the low-income housing tax credit program;

2) The property remains both income and rent restricted consistent with the low-income housing tax credit program and the provisions of the declaration of affirmative land use restrictive covenants agreement recorded on the property. The requirement of this subdivision is met if an affirmative land use restrictive covenants agreement is not yet recorded on the property but the property is otherwise subject to both income and rent restrictions under the low-income housing tax credit program; and

3) A federal, state or tribal court has not entered a judgment or order based on a finding that an act or omission of an owner or operator of the property constitutes a breach or violation of either:

a) The declaration of affirmative land use restrictive covenants agreement recorded on the property.

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☐ Emergency (40 votes) ☐ Fiscal Note

b) Restrictions under the low-income housing tax credit program imposed on the property but not contained within an affirmative land use restrictive covenants agreement.

c) The restrictions apply to all units on the property except employee units.

Provisions

Housing Needs Assessment

1. Requires, beginning January 1, 2024, and every five years thereafter, a municipality to publish a housing needs assessment, which at minimum includes:

a) the total population growth and total job growth projected for the subsequent five-year period; and

b) the total need for additional residential housing units for rent and for sale in the municipality to meet:

i. any deficiencies in housing the existing population and workforce;

ii. the population growth and jobs growth projections; and

iii. the housing needs across all various income levels. (Sec. 2)

2. Instructs a municipality, beginning January 1, 2025, and every year thereafter, to submit an annual report to the Department of Housing that accounts for:

a) the total number of proposed residential housing units and the total number of net new residential housing units submitted to the municipality; and

b) the total number of new residential housing units that are entitled, have been platted, have been issued a building permit and have received a certificate of occupancy by the municipality. (Sec. 2)

3. Outlines additional factors that the submitted report must include. (Sec. 2)

4. Specifies the requirement to publish a housing needs assessment does not require the municipality to meet or otherwise fulfill the projections stated in the assessment. (Sec. 2)

5. Excludes, from the assessment and reporting requirement, a municipality that is located on tribal land or that has a population of less than 30,000. (Sec. 2)

Miscellaneous

6. Requires, by January 1, 2024, certain municipalities to allow by right the construction of low income multifamily residential rental property, in any existing commercial, mixed-use or multifamily residentially zoned district within one-half mile of a light rail or streetcar stop, with specified development standards. (Sec. 1)

7. Prohibits a municipality from requiring a general plan amendment, use permit or review by a board or commission for construction of low-income multifamily residential rental property. (Sec. 1)

8. Excludes, from the requirement to allow the construction of low-income multifamily residential rental property, any:

a) land in the immediate vicinity of a municipal airport;

b) territory in the vicinity of a military airport or ancillary military facility; or

c) area where an existing mobile home park may be displaced. (Sec. 1)

9. Asserts every political subdivision of Arizona must give preference to state residents for any available low-income housing assistance payments or tenant-based assistance pursuant to the federal Housing Act of 1937. (Sec. 3)

Amendments

Committee on Commerce

1. Adopted the strike-everything amendment.

3. SB1163 municipal; zoning; housing assessment; report

Overview

Creates an at-risk permit relating to grading and earthmoving of property, provides zoning regulations relating to single-family residential uses, and establishes municipal reporting requirements relating to housing needs.

History

Statute authorizes municipalities to adopt zoning ordinances and codes to conserve and promote the public health, safety, convenience and general welfare and outlines zoning guidelines and requirements (Title 9, Ch.4, Art. 6.1, A.R.S.).

The governing body of a municipality must adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process must include at least:

1) notifying adjacent landowners and other potentially affected citizens of the application;

2) informing adjacent landowners and other potentially affected citizens on the substance of the proposed rezoning; and

3) providing adjacent landowners and other potentially affected citizen an opportunity to express any issues or concerns regarding the rezoning.

Any zoning ordinances that propose to change property from one zone to another, that imposes any regulation not previously imposed or that removes any such regulation previously imposed must be adopted following the procedure prescribed in the citizen review process and in the manner set for public hearings (A.R.S. § 9-462.03).

Provisions

Housing Needs Assessment

1.Requires, beginning January 1, 2024, and every five years thereafter, a municipality to publish a housing needs assessment, which at minimum includes:

a) the total population growth and total job growth projected for the subsequent five-year period; and

b) the total need for additional residential housing units for rent and for sale in the municipality to meet:

i. any deficiencies in housing the existing population and workforce;

ii. the population growth and jobs growth projections; and

iii. the housing needs across all various income levels. (Sec. 3)

2. Instructs a municipality, beginning January 1, 2025, and every year thereafter, to submit an annual report to the Department of Housing that accounts for:

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☐ Emergency (40 votes) ☐ Fiscal Note

a) the total number of proposed residential housing units and the total number of net new residential housing units submitted to the municipality; and

b) the total number of new residential housing units that are entitled, have been platted, have been issued a building permit and have received a certificate of occupancy by the municipality. (Sec. 3)

3. Outlines additional factors that the submitted report must include. (Sec. 3)

4. Specifies the requirement to publish a housing needs assessment does not require the municipality to meet or otherwise fulfill the projections stated in the assessment. (Sec. 3)

5. Excludes, from the assessment and reporting requirement, a municipality that is located on tribal land or that has a population of less than 30,000. (Sec. 3)

At-Risk Permit

6. Requires a municipality, at the applicant's request and after receiving certain approvals, to issue an at-risk permit for grading and earthmoving that relates to the property that is the subject of the preliminary plat. (Sec. 2)

7. Specifies the municipality issuing an at-risk permit does not constitute final preliminary plat approval or final approval of any grading and drainage plans. (sec. 2)

8. Stipulates any work, services or materials accomplished or acquired by the applicant is done at the financial risk of the applicant with no financial liability to the municipality for issuing the at-risk permit. (Sec. 2)

9. Allows the municipality to require that all grading and earthmoving be done in compliance with all municipal codes, ordinances and standards and other legal requirements. (Sec. 2)

10. Stipulates the at-risk permit requirements do not apply to:

a) a municipality with a population of less than thirty thousand persons;

b) a municipality that is located on tribal land;

c) land in an area that is designated as a district of historical significance; or

d) an area that is designated as historic on the national register of historic places. (Sec. 2)

Zoning Regulations

11. Prevents certain municipalities, on vacant land in any zone that allows single-family residential uses, from requiring:

a) lot size minimums that are greater than 4,000 square feet in area, however, may limit the density to 6 primary dwelling units per acre;

b) lot width minimums that are greater than 40 feet;

c) front setbacks that are greater than 10 feet, except for portions of a dwelling that are occupied by a garage, in which the front setback minimum may not be greater than 18 feet from the back of the sidewalk or lot line if there is no sidewalk;

d) side yard setbacks that are greater than 5 feet;

e) rear setbacks that are greater than 10 feet; or

f) the percentage of a lot that may be occupied by a building or structure to be greater than the setbacks. (Sec. 1)

12. Specifies certain municipalities, in any zone that allows residential uses, cannot prohibit the placement of a new manufactured home that is titled as real property and that is built according to the U.S. Department of Housing and Urban Development code (Code). (Sec. 1)

13. Permits a municipality to require single-family or duplex new manufactured housing, built in accordance with the Code, to be securely fixed to a permanent standard or engineered foundation at an equivalent level as the requirements applicable to single-family dwellings within the municipality on which the manufactured housing is proposed to be located. (Sec. 1)

14. Instructs certain municipalities to provide additional residential zones that allow for the construction or use of duplexes, triplexes, lots that are smaller than 4,000 square feet and other housing types proposed by applicants. (Sec. 1)

15. Specifies the statutory zoning regulations does not affect the validity or enforceability of private covenants or other contractual elements among property owners by parties other than the municipality. (Sec. 1)

16. Excludes, from specified statutory zoning regulations, municipalities that are located on tribal land, an area designated as a historical significance district or an area designated as historic on the national register of historic places. (Sec. 1) Miscellaneous

17. Makes technical and conforming changes. (Sec. 4)

Amendments

Committee on Commerce

1. Adopted the strike-everything amendment.