



SB 866 Provides a Pathway for Small Cities to Keep Their Third Party Building Official Program

Background

Several small cities and counties across Oregon have been using what's referred to as third-party building official for decades. A city would contract out services related to building permits, approval process and a Building Official. The reasons largely were due to financial constraints, demand for building and construction in their communities, and inability to process permits and inspections through their respective counties in a timely manner. A third-party program allows cities to adapt to the cyclical nature of building, create an efficient system and meet the rigorous technical guidelines in place for building and construction process in Oregon.

In 2019, the Attorney General issued an opinion finding that contracting out entire building departments, including building official discretionary decisions, was not constitutional. The Building Codes Division (BCD) formed an advisory committee made up of impacted stakeholders in 2020 to identify possible pathways to resolve the legal issues. Cities and counties identified a process to retain the third-party programs provided they met several additional administrative requirements. Oregon's DOJ has since agreed with the changes in the third-party program and that is what frames the elements of SB 866.

SB 866 Summary

The bill addresses the legal issues identified in the DOJ opinion by putting in adequate procedural safeguards for municipalities that use contracted building official services. The bill resolves the legal issues raised by DOJ in the following ways:

Requires cities with contracted building officials to put in place adequate procedural safeguards, including:

- A requirement for certain building official decisions (waivers and alternate methods) to be:
 - In writing, including notice of hearing rights;

- Pre-approved or ratified by a municipal employee trained in building department oversight; and
- Subject to a rapid local appeal process.
- **Audits of earnings** and use of funds every two years which are required to be made available to the public either on the city's website or through other electronic means.
- **Use of a contracted building official is only available to cities that are currently using the services** of a contract building official, or who were using one as of January 2018 when the legal issues were identified by DOJ. All jurisdictions can use a contract building official on a limited basis during recruiting.
- **Flexibility has also been added** to all cities and counties to prepare and IGA with other cities/counties and hire a Building Official for their collective building and permitting program.
- **Makes contracted building officials and inspectors subject to ORS Chapter 244**, and gives the director the ability to enforce ethics violations in ORS Chapter 244 for all inspectors and building officials; and
- **Addresses permit validity** by allowing ratification of past decisions and creating specific statute of limitations.

SB 866 provides a pathway to resolve a legal issue while preserving a critical tool for cities and industry.

Please join the League of Oregon Cities and our member cities and support SB 866