

# Council Business Meeting

January 17, 2023

<b>Agenda Item</b>	First Reading of Ordinance 3217 - Middle Housing Land Division Ordinance	
<b>From</b>	Brandon Goldman Derek Severson	Interim Director of Community Development Senior Planner
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## **SUMMARY**

The proposed ordinance would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 “Middle Housing Land Divisions” and section 18.5.3.140 “Middle Housing Land Divisions.” Senate Bill 458 became effective on June 30, 2022, and under the Senate Bill cities are required to implement directly from the bill until local code modifications are put in place.

## **POLICIES, PLANS & GOALS SUPPORTED**

Comprehensive Plan, Housing Element (6.10.01.1 & .3, and 6.10.02)  
Climate Energy Action Plan (CEAP ULT-4-2)  
City Council Biennial Goals 2019-2021

## **PREVIOUS COUNCIL ACTION**

This item was previously scheduled for review on January 3<sup>rd</sup>, 2023, but due to insufficient time for the public hearing, deliberation, and decision by council, was postponed to this meeting on January 17, 2023. House Bill 2001 took effect on August 8, 2019 and required cities of Ashland’s size to allow duplexes on residentially-zoned lots that allow development of detached single-family dwellings, and to have approval processes and standards for duplexes that are no more restrictive than those applied to detached single-family dwellings.

The Council adopted these required code changes as Ordinance #3199 on June 15, 2021. With these code changes adopted in response to House Bill 2001, duplexes are defined as two units on one lot in any configuration, two off-street parking spaces are required, and the required parking cannot be addressed through on-street parking credits. Duplexes satisfying these requirements are approved with a building permit and do not require a separate land use action.

## **BACKGROUND AND ADDITIONAL INFORMATION**

Oregon Senate Bill 458 provides a process for lot divisions to allow home ownership opportunities for middle housing units built under the middle housing allowances of House Bill 2001 which for cities of Ashland’s size were limited to duplexes. Senate Bill 458 does not apply to accessory residential units, and the ordinance here is limited to duplexes.

A Middle Housing Land Division (MHLD) allows a lot with a duplex in place or proposed to be split so that there would be one duplex unit per lot, except that common areas may be located on a separate lot or a shared tract. Separate utilities are required for each unit, and easements are required to be provided for pedestrian access; any common areas; driveways and parking areas, if shared; and utilities. An MHLD proposal must demonstrate that it meets the requirements of the Oregon Residential Specialty Code. For example, if an

attached duplex is being divided, there must be firewall construction between the two units. In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being reviewed and issued for construction. A Middle Housing Land Division may occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed. Senate Bill 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, Middle Housing Land Division applications must include a middle housing development (*either proposed or already built*) that complies with the building code and the City's middle housing development code.

Under Senate Bill 458, cities may require the submittal of tentative & final plats for approval, review for Oregon Residential Specialty Code compliance, and require right-of-way dedications and city-standard street frontage improvements. Cities may not apply *any* approval criteria other than the approval criteria specified in Senate Bill 458 to applications for an MHLD — i.e. the allowable criteria include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.

Senate Bill 458 provides for these Middle Housing Land Divisions to be processed through the Expedited Land Divisions (ELD) procedure established in the Oregon Revised Statutes. Expedited Land Divisions are not considered to be land use actions and as such cannot be appealed to the Planning Commission. Instead, an initial administrative decision by the Staff Advisor (Community Development Director or their designee) could be appealed to a referee/hearings officer, and would not be subject to appeal to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission has previously discussed these code amendments in response to Senate Bill 458 at two public meetings on May 10, 2022 and June 14, 2022, and conducted a public hearing on November 22, 2022. The Planning Commission recommended approval of the attached ordinance.

### **FISCAL IMPACTS**

The Senate Bill requires appeals to be handled by a referee or hearings officer who cannot be a city staff person or member of the Planning Commission. As such, the city will need to keep a hearings officer on retainer. The actual per appeal cost of a hearing officer will not be known until the City solicits for this support but a cost of approximately \$150-\$200 per hour is normal for the region. Assuming hearing plus document preparation time will be between 4-5 hours, a hearing may cost the city between \$600-\$1000. Community Development staff believes that the number of applications under the Senate Bill is likely be limited, and that there will be few appeals, because approval equates to the division of units that are already built or which could be built without notice to neighbors, independent of the approval of the middle housing land division. Staff estimate the City would not exceed three (3) appeals in FY 2023-2024 for an estimated annual hearing expense of \$1,800-\$3,000 for the hearing officer costs.

The hearings officer will assess costs of the appeal, up to a maximum of \$500, against appellants who do not materially improve their position through the appeal hearing, and the city will be responsible for remaining costs of each hearing. Appeal application fees will be established based on hearing officer and corresponding administration support costs. The application fees will be reviewed annually.

### **STAFF RECOMMENDATION**

Staff concurs with the Planning Commission and recommends that the Council approve the proposed ordinance.

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

The Council can choose to conduct the first reading and to approve the proposed ordinance as recommended by the Planning Commission or with modifications and move the ordinance to second reading, or choose not to adopt the ordinance. However, Senate Bill requires the city to implement directly from the bill until local code modifications are in place. Adopting the proposed City ordinance will enable a smoother implementation for Ashland citizens and City staff of SB 458’s requirements. The Council will also need to adopt written findings formalizing tonight’s decision. Recommended motion:

- I move approval of first reading of Ordinance 3217 and scheduling of its second reading and adoption of written findings for February 21, 2023.

**REFERENCES & ATTACHMENTS**

**Attachment 1:** Draft Ordinance 3217- An Ordinance Amending The Ashland Land Use Ordinance to Implement The Requirements of Oregon Senate Bill 458 By Adding Section 18.5.1.075 “Middle Housing Land Divisions” And Section 18.5.3.140 “Middle Housing Land Divisions.”

**Attachment 2:** November 22, 2022 Planning Commission minutes

**Attachment 3:** Staff Report to the Planning Commission

**Attachment 4:** Senate Bill 458



1 **WHEREAS**, the City of Ashland Planning Commission considered the above-referenced  
2 recommended amendments to the Ashland Land Use Ordinance at a duly advertised public  
3 hearings on November 22, 2022, and following deliberations, unanimously recommended  
4 approval of the amendments; and

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6 **WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing  
7 on the above-referenced amendments on January 3, 2023; and

8  
9 **WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing  
10 and record, deliberated and conducted first and second readings approving adoption of the  
11 Ordinance in accordance with Article 10 of the Ashland City Charter; and

12  
13 **WHEREAS**, the City Council of the City of Ashland has determined that in order to meet the  
14 requirements of state law and protect and benefit the health, safety and welfare of existing and  
15 future residents of the City, it is necessary to amend the Ashland Land Use Ordinance in the  
16 manner proposed, that an adequate factual base exists for the amendments, the amendments are  
17 consistent with the Ashland Comprehensive Plan and that such amendments are fully supported  
18 by the record of this proceeding.

19  
20 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

21 **SECTION 1.** Ashland Municipal Code Title 18 Land Use is hereby amended as follows.

22  
23 **SECTION 2.** Section 18.5.1.0750 [Middle Housing Land Divisions] is hereby added to the  
24 Ashland Land Use Ordinance to read as follows:

25  
26 **Section 18.5.1.075 Middle Housing Land Divisions (MHLD)**

27 Middle Housing Land Division decisions are made by the Staff Advisor using the Expedited  
28 Land Division procedure detailed below. Middle Housing Land Divisions may be appealed to a  
29 referee/hearings officer. Middle Housing Land Divisions are not a land use or limited land use  
30 decision.

A. **Procedural Handling.** Unless the applicant requests to use the land partition procedures in  
ALUO 18.5.3.030, Middle Housing Land Divisions shall be processed under the Expedited  
Land Divisions procedure from ORS 197.360 to 197.380 as detailed below:

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1. **Pre-Application Conference.** A pre-application conference is voluntary for a Middle Housing Land Division.
2. **Application Requirements.** Applications for development permits shall be submitted upon forms established by the Staff Advisor. Applications will not be accepted in partial submittals, and all of the following items must be submitted to initiate completeness review:
  - a. Application Form and Fee. Applications for Middle Housing Land Divisions shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.
  - b. Submittal Information. The application shall include all of the following information.
    - i. The information requested on the application form.
    - ii. Drawings and supplementary materials for Preliminary Plat as required in ALUO 18.5.3.040.B.
    - iii. A narrative explanation of how the application satisfies each and all of the relevant criteria and standards in ALUO 18.5.3.140.C.1.
    - iv. Additional materials necessary to demonstrate compliance with the Oregon residential specialty code.
    - v. Information demonstrating compliance with all prior approvals and conditions of approval for the parent lot or parcel, as applicable.
3. **Completeness review.** The Staff Advisor shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within twenty-one (21) calendar days after the city receives the application submittal.
  - a. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required submittal information and shall not be based on differences of opinion as to the quality or accuracy of the information provided. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the applicable criteria and standards.
  - b. If the application was complete when first submitted or the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the applicable criteria and standards that were in effect at the time the application was first submitted.
  - c. If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the Staff Advisor by the applicant, indicating whether or not the applicant intends to amend or supplement the application. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.
4. **Notification.**

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- a. Mailing of Notice of Complete Application. The Staff Advisor shall provide written notice of the receipt of the completed application for a Middle Housing Land division to:
    - i. The applicant and/or authorized representative.
    - ii. The owner(s) of record of the subject property.
    - iii. Neighborhood group(s) or community organization(s) officially recognized by the City whose boundaries include or are within one hundred (100) feet of the subject property.
    - iv. Owners of record for properties located within one hundred (100) feet of the perimeter of the subject property.
    - v. Affected city departments, governmental agencies or special districts responsible for providing public facilities or services which is entitled to notice under an intergovernmental agreement with the City which includes provision for such notice or is otherwise entitled to such notice.
  
  - b. Content of Notice of Complete Application. The notice of the receipt of the completed application shall include all of the following:
    - i. The street address or other easily understood geographical reference to the subject property.
    - ii. A summary of the proposal.
    - iii. The time and place where copies of all evidence submitted by the applicant will be available for review.
    - iv. The applicable criteria for the decision, listed by commonly used citation.
    - v. The name and telephone number of a local government contact person.
    - vi. A brief summary of the local decision-making process for the Middle Housing Land Division.
    - vii. A statement that issues that may provide the basis for an appeal to the hearings officer must be raised in writing prior to the expiration of the comment period;
    - viii. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue.
    - ix. The place, date and time that comments are due.
  
  - c. Certification of Notices. The City shall prepare an affidavit or other certification stating the date(s) the notices were mailed and posted, which shall be made a part of the file.
  
  - d. Comment Period. After notification according to the procedure set out above, the Staff Advisor shall provide a 14-day period for submission of written comments prior to the decision.
5. **Decision:** The Staff Advisor shall make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether the application satisfies the substantive requirements of ALUO 18.5.3.140.C.
- a. Approval may include conditions to ensure that the application complies with the applicable criteria and standards for Middle Housing Land Divisions.
  - b. For Middle Housing Land Divisions, the Staff Advisor:
    - i. Shall not hold a hearing on the application; and

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- ii. Shall issue a written determination of compliance or noncompliance with applicable criteria and standards for Middle Housing Land Divisions that includes a summary statement explaining the determination.
  - c. The decision shall include a statement of the facts the Staff Advisor relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criteria.
  - d. Notice of the decision shall be provided to the applicant and to those who received notice under subsection (4) of this section within sixty-three (63) days of the date of a completed application. The notice of decision shall include:
    - i. The summary statement described in (5)(b) of this subsection; and
    - ii. An explanation of appeal rights under ORS 197.375 ('Appeal of decision on application for expedited land division').
- 6. **Appeals:** An appeal of the Staff Advisor's decision made under this section shall be made as follows:
  - a. An appeal must be filed within fourteen (14) days of mailing of the notice of the decision and be accompanied by a \$300 deposit toward the cost of an appeal hearing. This deposit shall be refunded if the appellant materially improves his or her position from the Staff Advisor's decision. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, against an appellant who does not materially improve his or her position from the decision of the Staff Advisor.
  - b. A decision may be appealed by:
    - i. The applicant.
    - ii. Any person or organization who filed written comments within the 14-day comment period.
  - c. An appeal shall be based solely on allegations:
    - i. Of violation of the substantive provisions of the applicable criteria and standards;
    - ii. Of the unconstitutionality of the decision;
    - iii. That the application is not eligible for review as a Middle Housing Land Division under ALUO 18.5.3.140 or as an Expedited Land Division under ORS 197.360 to 197.380 and should instead be reviewed as a land use decision or limited land use decision; or
    - iv. That the parties' substantive rights have been substantially prejudiced by an error in procedure.
  - d. The City of Ashland's hearings officer is designated as the referee for appeals of a decision made under this section and ORS 197.360 and 197.365.
  - e. Within seven days of receiving the appeal, the City, on behalf of the hearings officer, shall notify the applicant, the appellant if other than the applicant, any person or organization entitled to notice under ALUO 18.5.1.075.D.4.a that provided written comments to the local government and all providers of public facilities and services entitled to notice under ALUO 18.5.1.075.D.4.a and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection



(6) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The hearings officer may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The hearings officer shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government.

- f. The hearings officer shall apply the substantive requirements of ALUO 18.5.3.140.C and ORS 197.360. If the hearings officer determines that the application does not qualify as an Expedited Land Division under ORS 197.360 or a Middle Housing Land Division under ALUO 18.5.3.140, the hearings officer shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements.
- g. The hearings officer shall not reduce the density of the land division application.
- h. The hearings officer shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the applicable criteria and standards, within 42 days of the filing of an appeal. The hearings officer shall not remand the application to the local government for any reason other than as set forth in this subsection.
- i. Unless the City Council finds exigent circumstances, a hearings officer who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as hearings officer in the appeal.
- j. Notwithstanding any other provision of law, the hearings officer shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The hearings officer shall assess the cost of the appeal, up to a maximum of \$500, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the hearings officer and costs incurred by the local government, but not the costs of other parties.
- k. The Land Use Board of Appeals (LUBA) does not have jurisdiction to consider any decisions, aspects of decisions or actions made for Middle Housing Land Divisions under ALUO 18.5.3.140 or Expedited Land Divisions under ORS 197.360 to 197.380.
- l. Any party to a proceeding before a hearings officer under this section may seek judicial review of the hearings officer's decision in the manner provided for review of final orders of the Land Use Board of Appeals (LUBA) under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the hearings officer in the same manner as provided for review of final orders of the Land Use Board of Appeals (LUBA) in those statutes. However, notwithstanding ORS 197.850(9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:
  - i. That the decision does not concern Middle Housing Land Divisions under ALUO 18.5.3.140 or Expedited Land Divisions under ORS 197.360 and the appellant raised this issue in proceedings before the hearings officer;
  - ii. That there is a basis to vacate the decision as described in ORS 36.705(1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

- 1           iii. That the decision is unconstitutional.

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3 **SECTION 3.** Section 18.5.3.140 [Middle Housing Land Divisions] is hereby added to the  
4 Ashland Land Use Ordinance to read as follows:

5 **Section 18.5.3.140 Middle Housing Land Divisions (MHLD)**

6 **A. Purpose.** The Middle Housing Land Divisions (MHLD) process seeks to provide home  
7 ownership opportunities by allowing lots with middle housing to be divided so that each  
8 middle housing dwelling unit is on its own lot. As used in this section, a “Middle Housing  
9 Land Division” is the division of a lot or parcel on which the development of middle housing  
10 has been is allowed under ORS 197.758(3). For cities with populations of between 10,000  
11 and 25,000 such as Ashland, the middle housing types allowed under ORS 197.758(3) is  
limited to duplexes. A Middle Housing Land Division includes both a preliminary plat  
approval and a final plat and is not considered a land use decision or a limited land use  
decision under ORS 197.015.

12 **B. Applicability and General Requirements.**

- 13 1. Lots in residential zones including R-1, R-1-3.5, RR, WR, R-2, R-3, NN, and NM zones  
14 containing duplexes permitted on or after July 1, 2022 may be divided using the Middle  
15 Housing Land Divisions process outlined in this section.  
16 2. The Middle Housing Land Divisions process in ALUO 18.5.3.140 shall be used unless  
the applicant requests to use the standard partition procedures in ALUO 18.5.3.030.  
17 3. The Middle Housing Land Divisions process in ALUO 18.5.3.140 may not be used to  
create separate lots for Accessory Residential Units.

18 **C. Middle Housing Land Divisions Preliminary Plat Approval Process**

- 19 1. **Approval Criteria.** The Staff Advisor shall approve a Middle Housing Land Division  
preliminary plat upon finding:
- 20 a. The parent parcel is developed with middle housing allowed under ORS 197.758(3)  
21 or the application for a Middle Housing Land Division is being made concurrently with  
22 a building permit application for construction of middle housing under ORS  
197.758(3) on the parcel.  
23 b. Each resulting middle housing lot or parcel shall contain no more than one middle  
24 housing dwelling unit except for lots, parcels, or tracts proposed as common area.  
25 c. Accessory Residential Units (ARU) are not permitted on middle housing lots or  
26 parcels created under this section.  
27 d. Each lot is served with its own separate utilities.  
28 e. All easements necessary for each middle housing dwelling unit shall be identified on  
the plat. Easements shall be provided to ensure:
- 29 i. Provision of and access for maintenance and replacement of all utilities;  
30 ii. Pedestrian access from each dwelling unit to a public or private street;  
iii. All dedicated driveways, parking, common use areas or shared building elements  
and dedicated common areas can be accessed and used.
- f. Evidence submitted by the applicant demonstrates how buildings or structures on the  
resulting lots or parcels will comply with applicable building codes provisions relating

1 to new property lines and, notwithstanding the creation of new lots or parcels, how  
2 structures or buildings located on the newly created lots or parcels will comply with  
3 the Oregon Residential Specialty Code.

- 4 2. The Staff Advisor shall apply additional conditions to the approval of a tentative plat for a  
5 Middle Housing Land Division to:
- 6 a. Prohibit the further division of the resulting middle housing lots or parcels.
  - 7 b. Require that a notation appear on the final plat indicating that approval was given  
8 under ALUO 18.5.3.140 Middle Housing Land Divisions.
- 9 3. The type of middle housing developed on the original parent parcel is not altered by a  
10 Middle Housing Land Division. The newly created middle housing lots are created within  
11 a legal parent lot solely for the purpose of providing ownership opportunities, and these  
12 new middle housing lots are not granted additional development rights and must be  
13 maintained to meet the criteria applicable to the "parent lot" (height, lot coverage, open  
14 space, etc.). A duplex divided into two middle housing lots is still considered part of the  
15 original duplex and subject to all conditions of the original duplex approval.
- 16 4. Where the parent lot or parcel abuts a public street and dedication or frontage  
17 improvements consistent with ALUO 18.4.6.040.F were not provided when the lot or  
18 parcel was created, necessary right-of-way and street frontage improvements shall be  
19 provided to meet the Street Design Standards.
- 20 5. The access and minimum street frontage standards in ALUO 18.2.4.010 shall not apply  
21 to Middle Housing Land Divisions.
- 22 6. There shall be no minimum area or dimensional requirements for lots resulting from a  
23 MHL.
- 24 7. The Staff Advisor shall not require a final plat before building permits are issued.

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**D. Middle Housing Land Divisions Final Plat**

1. The final plat shall comply with the Middle Housing Land Division preliminary plat  
conditions of approval.
2. The following data requirements, if applicable, shall also be shown on the final plat.
- a. All tracts of land intended to be deeded or dedicated for public use;
  - b. Street names as approved by the Public Works Director in accordance with the  
'Criteria for Naming or Renaming a Street' in AMC 13.24.010.
  - c. Any non-access strips.
  - d. A notation indicating that approval was given under ALUO 18.5.3.140 Middle  
Housing Land Divisions.
3. **Approval Criteria.** The Staff Advisor shall approve or deny the final plat for the Middle  
housing land division based upon the following criteria:
- a. All conditions of the Middle Housing Land Division preliminary plat approval have  
been satisfied and the final plat substantially conforms to the approved Middle  
Housing Land Division preliminary plat approval.
  - b. Approved construction drawings for required public improvements have been  
provided, including grading and drainage plans as applicable, and the applicant has

1 provided verification by the City that electric, water and sanitary sewer services are  
2 available to every lot depicted on the plat.

- 3 c. An approved security instrument is provided to guarantee completion of any required  
4 public improvements that have not been completed and accepted by the City.
- 5 d. The plat contains a dedication to the public of all required public improvements,  
6 including but not limited to public streets and any public utility easements, and all  
7 required streets, accessways, easements, and other dedications or reservations are  
8 shown on the plat.
- 9 e. The applicant has furnished acceptable copies of any applicable Covenants,  
10 Conditions and Restrictions (CC&R's), easements, maintenance agreements (e.g.,  
11 landscaping, utilities, tree preservation, common areas, access, parking, etc.), and  
12 other documents pertaining to common improvements recorded and referenced on  
13 the plat.
- 14 f. The format of the plat shall conform to ORS 92, and shall incorporate the preliminary  
15 plat information in ALUO 18.5.3.040.B.
- 16 g. The plat contains an affidavit by the surveyor who surveyed the land, represented on  
17 the plat to the effect the land was correctly surveyed and marked with proper  
18 monuments as provided by ORS 92, indicating the initial point of the survey, and  
19 giving the dimensions and kind of such monument and its reference to some corner  
20 approved by the Jackson County Surveyor for purposes of identifying its location.
- 21 h. A copy of any deed restrictions applicable to the partition or subdivision or the title  
22 report.

## 23 **E. Filing and Records**

- 24 1. **Recordation.** Following review and the Staff Advisor's approval of a Middle Housing  
25 Land Division Final Plat, the applicant shall take the following actions:
  - 26 a. Obtain the approval signature on the Middle Housing Land Division final plat by the  
27 Jackson County Surveyor certifying that the final plat complies with all applicable  
28 survey laws. Before certifying, the County Surveyor may make any necessary field  
29 investigations to verify that the plat survey is sufficiently accurate. If the County  
30 Surveyor determines that the plat does not comply, the applicant shall make  
31 corrections. When the County Surveyor determines that the plat conforms, the  
32 County Surveyor shall sign and date the final plat.
  - 33 b. A Notice of Middle Housing Land Division for each middle housing lot shall be  
34 recorded with the County Recorder that states:
    - 35 i. The middle housing lot may not be further divided.
    - 36 ii. No more than one unit of middle housing may be developed on each  
37 middle housing lot.
    - 38 iii. The dwelling developed on the middle housing lot is a unit of middle  
39 housing and is not a single attached or detached dwelling, or any other  
40 housing type.
  - 41 c. File a statement of water right and, if a water right is appurtenant, a copy of the  
42 acknowledgment from the Water Resources Department.
  - 43 d. Deliver the approved final plat and accompanying documents to the County  
44 Recorder for recording.
  - 45 e. Return a copy of the recorded final plat and Notices of Middle Housing Land Division  
46 to the City for filing.

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F. **Expiration and Extensions.** The final plat for a Middle Housing Land Division shall be approved within three years of the approval of the preliminary plat, except when extension of the preliminary plat approval is granted pursuant to ALUO 18.1.6.040

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2023, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
Melissa Huhtala, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Julie Akins, Mayor

Reviewed as to form:

\_\_\_\_\_  
Douglas M. McGearry, Acting City Attorney

**CITY OF  
ASHLAND**  
**ASHLAND PLANNING COMMISSION**  
**REGULAR MEETING**  
**Minutes**  
**November 22, 2022**

**I. CALL TO ORDER: 7:00 PM**

Chair Haywood Norton called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Michael Dawkins  
Haywood Norton  
Lynn Thompson  
Eric Herron  
Doug Knauer

**Staff Present:**

Brandon Goldman, Acting Community Development Director  
Derek Severson, Senior Planner  
Aaron Anderson, Senior Planner  
Michael Sullivan, Executive Assistant

**Absent Members:**

Kerry KenCairn  
Lisa Verner

**Council Liaison:**

Paula Hyatt

**II. ANNOUNCEMENTS**

Acting Community Development Director Brandon Goldman made the following announcements:

- The November 15, 2022 City Council meeting was cancelled. The discussion regarding PA-T3-2022,00004, the annexation of 1511 Highway 99 N, was rescheduled for December 6, 2022.
- The Planning Commission annual update to Council, and the first reading of PA-L-2021-00013 regarding housing in E-1 and C-1 zones, have both been rescheduled for January 3, 2023.
- An appeal of the Commission's decision to deny PA-T2-2022-00159, 165 Water Street will be heard by the Council on January 17, 2023. The applicant submitted the appeal on May 20, 2022, but subsequently requested a postponement. The Council is required to render a decision by February 10, 2023. Commissioner Thompson asked who would be representing the Commission during the appeal process. Senior Planner Derek Severson responded that it will be incumbent on the appellant to successfully contest the Commission's decision to deny the project, and that staff will be present to provide clarification and defend the decision. Chair Norton inquired if the minutes of the relevant meetings would be sent to the Council, to which Mr. Severson said that they would.

**III. PUBLIC FORUM – None**

**IV. LEGISLATIVE HEARING:**

**A. PLANNING ACTION: #PA-L-2022-00014**

**APPLICANT:** City of Ashland

**ORDINANCE REFERENCES:**

<b>AMC 18.5.1</b>	General Review Procedures
<b>AMC 18.5.3</b>	Land Divisions and Property Line Adjustments
<b>AMC 18.5.9</b>	Comprehensive Plan, Zoning and Land Use Ordinance Amendments

**REQUEST:** The proposal would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 “Middle Housing Land Divisions” and section 18.5.3.140 “Middle Housing Land Divisions.”

### **Staff Presentation**

Mr. Goldman noted that staff felt that it was important to import the state’s language into the City’s ordinance to provide clarity for citizens reviewing the code.

Mr. Severson stated that there had been no significant changes to the ordinance since it was first presented at the June 14, 2022 Commission meeting. He gave a brief presentation on Senate Bill 458, which include changes to Middle Housing Lot Divisions (MHL) and Expedited Land Division codes, and also provided a timeline for the changes to be implemented. Under SB 458 Expedited Land Divisions would not be considered land use actions, and any appeals of staff decisions would be decided by a hearings officer or referee instead of being brought to the Commission. The noticing area for Expedited Land Divisions will also be reduced to 100ft from 200ft, and the City would be required to make a final determination within 63 days of submittal.

House Bill 2001 will also institute code changes to the duplex and Accessory Residential Unit (ARU) approval criteria. Mr. Severson outlined how duplexes would constitute two units on one lot, as attached or detached structures, and that two on-site parking spaces would be required. ARUs would need to meet size guidelines, but that no on-site parking would be required. Both duplexes and ARUs would be permitted with approval of a building permit.

Mr. Severson described previously noted issues with the draft ordinance, the first being whether the MHL procedure would apply to duplexes permitted prior to HB 2001. The state has indicated that any middle housing lot division proposal would need to demonstrate compliance with both applicable state building code and local middle housing code in order to be eligible under SB 458, and that it is unlikely but not impossible that a pre-HB 2001 housing type would meet those criteria. The second issue was whether MHL procedure should apply to ARUs in addition to duplexes. Mr. Severson noted that SB 458 itself does not directly address its applicability to ARUs, but that the Department of Land Conservation and Development (DLCD) has explicitly stated that the MHL procedure would not apply to ARUs.

Mr. Severson concluded by briefly detailing two staff-recommended additions to the ordinance (see attachment #1).

### **Questions of Staff**

Commissioner Verner inquired if the City had a hearings officer or referee, and Mr. Severson responded that one would need to be hired specifically for this role. Chair Norton asked if they would be a fulltime staffer of the City, and Mr. Severson responded that they would be contracted. He added that the appellant would be required to pay \$300 of the officer’s contract fee, with the possibility of levying an additional \$500. Any further funding would be paid by the City. Mr. Severson stated that he is in contact with other communities in the Rogue Valley to see who they are hiring for this position and to review copies of their contracts.

Commissioner Thompson asked how the division of a lot would be determined and if it would be at the discretion of the property owner. Mr. Severson responded that it would be up to the property owner, likely with a surveyor’s assistance. They would have great latitude to divide the property as there would no longer be setback, street-frontage, or lot size zone requirements. It would be based on what worked best for the building configuration on the property, but would largely be limited to one dwelling per lot.

Commissioner Dawkins inquired if the new state guidelines would conflict with the current code. Mr. Severson responded that the Commission would be required to approve a MHL proposal if it came before them, but that if it was a land use action under the flag drive partition regulations then the review process would not change. Mr. Goldman clarified that MHL proposals are not land use decisions, and would not go before the Commission except under rare circumstances.

Commissioner Thompson asked whether the first of staff’s recommended additions to the guidelines would supplant cottage housing codes. Mr. Severson commented that cottage housing is exempt from these rules. Mr. Goldman added that it would be more expedient for an applicant to go through the performance standards review process to create a cottage housing development, rather than dividing up a property in an incremental fashion. Commissioner Thompson inquired if her property in an

R-2 zone with two dwelling units would be able to be subdivided and sold separately under the new guidelines. Mr. Goldman responded that she could, but that the secondary unit would need to meet building and setback requirements in relation to the parent lot. He noted that both buildings would still be considered a duplex, and that the owners would not be permitted to develop an ARU in either property. Commissioner Thompson asked if both properties would be fully transferable. Mr. Severson responded that neither property would have full development rights, but that they could both be sold and resold.

Commissioner Herron asked whether ARUs need separate utilities from the parent property, and Mr. Severson responded that they would only require separate electrical service. Commissioner Herron commented that the parent property would then be required to provide all other utilities in order to be legally divided, and asked if that was explicitly stated in the Ashland Municipal Code. Mr. Severson responded that it is part of the building code requirements, and that separate utilities are required by state law.

Chair Norton noted that divided duplexes could now develop their own Covenants, Conditions, and Restrictions (CC&Rs) under the new guidelines. Mr. Severson stated that the duplex would still be subject to the original division approval, which would include building design and placement of a landscape plan. Commissioner Thompson noted that the state bill contains a clause regarding planned communities, and that the properties within such a division would be subject to the governing documents of the planned community, and would be allocated assessments and voting rights on the same basis as existing units. Commissioner Verner requested clarification on when this situation would apply. Mr. Goldman responded that a duplex in an existing planned community that went through a middle housing land division would have voting rights under the existing CC&Rs. The other scenario would be if a single-family home, outside of an existing planned community, added a second unit to their property and then went through the MHLD process. These two properties could then develop their own CC&Rs for maintenance of any common areas. Chair Norton expressed concern that the conditions for the division could become confused after the properties are sold and resold, which could result in conflicts arising between two future property owners. Commissioner Thompson pointed out that the City would not get involved in such a civil matter.

Commissioner Knauer inquired if the City actively observed mandates coming from the state, and whether the City had an advocate at the state level. Councilor Hyatt detailed how the League of Oregon Cities (LOC) will annually send out a list of priority issues to a variety of committees, which are then placed into relevant categories. One of those categories are land actions, and the City votes on which it deems to be the top six highest priority items. The LOC then leverages lobbyists at the league on behalf of those cities. However, those lower priority items are not overlooked, as environments and circumstances change rapidly. Land use, affordability, and infrastructure are currently a high priority for the LOC and are being advocated for on behalf of Oregon cities. A lobbyist within the LOC can also be approached if there is an issue that would be counter to the interests of a city.

Commissioner Thompson commented that there was a consortium of Oregon cities that is currently suing the DLCDC over the removal of parking mandates within the state's new Climate Friendly and Equitable Communities guidelines. Chair Norton inquired if the City was approached about joining the lawsuit. Councilor Hyatt responded that Medford and Grants Pass had joined the lawsuit, but to her knowledge the City had not entertained the notion of joining.

**Commissioners Thompson/Dawkins m/s to recommend that the City Council adopt the draft ordinance with staff's additional recommendations. Voice Vote: All AYES. Motion Passed. 6-0.**

## **V. OPEN DISCUSSION**

Mr. Goldman stated that the open discussion item had been added in order to address topics not on the agenda that Commissioners would like to discuss, as well provide an opportunity for Commissioners to put forth topics for discussion at future Study Sessions. He noted that no new items could be added to the current agenda during an Open Discussion, nor could a decision be made on such an item.

Chair Norton inquired if the Midtown Lofts project at 188 Garfield was progressing. Mr. Goldman responded that a site visit had recently been conducted to look for tree protection fencing in advance of the permit being issued, and the developers would soon begin work on the common areas. The Commission discussed a variety of projects that have yet to begin development. Mr. Severson announced that the Columbia Care facility and Plaza North on First Street both recently obtained their occupancy



permits.

Chair Norton informed the Commission that Governor-Elect Tina Kotek had expressed the belief that the Urban Growth Boundary (UGB) was having a detrimental effect on affordable housing in the state, and had shown interest in modifying State Bill 100 to address this issue. Commissioner Dawkins commented that one of the incoming City Councilors appeared open to expanding the UGB.

Councilor Hyatt expressed her gratitude to the Commissioners for their dedication and willingness to delve into difficult issues, and that she always appreciated recommendations that come from them. She also expressed her appreciation to staff.

**VI. ADJOURNMENT**

Meeting adjourned at 7:52 p.m.

*Submitted by,  
Michael Sullivan, Executive Assistant*

# ASHLAND PLANNING DIVISION

## STAFF REPORT

November 22, 2022

**PLANNING ACTION:** PA-L-2022-00014

**APPLICANT:** City of Ashland

**ORDINANCE REFERENCES:**

**AMC 18.5.1** General Review Procedures

**AMC 18.5.3** Land Divisions and  
Property Line Adjustments

**AMC 18.5.9** Comprehensive Plan, Zoning and  
Land Use Ordinance Amendments

**REQUEST:** The proposal would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 “Middle Housing Land Divisions” and section 18.5.3.140 “Middle Housing Land Divisions.”

### I. Ordinance Amendments

#### **A. Project Background**

Oregon Senate Bill 458 provides a process for lot divisions to allow home ownership opportunities for middle housing units built under the middle housing allowances of House Bill 2001. For cities with populations between 10,000 and 25,000 such as Ashland, the middle housing required to be allowed under House Bill 2001 was limited to duplexes, and Senate Bill 458 intentionally does not apply to accessory residential units. As such, the draft code language proposed is limited to duplexes.

House Bill 2001 took effect on August 8, 2019 and required cities to allow duplexes on residentially-zoned lots that allow development of detached single-family dwellings, and to have approval processes and standards for duplexes that are no more restrictive than those applied to detached single-family dwellings. With the code changes adopted in response to House Bill 2001, duplexes are defined as two units on one lot in attached or detached structures. Two off-street parking spaces are required, and the required parking cannot be addressed through on-street parking credits. Duplexes satisfying these requirements are approved with a building permit and do not require a separate land use action.

Senate Bill 458 provides for these Middle Housing Land Divisions to be processed through the Expedited Land Divisions (ELD) procedure established in the Oregon Revised Statutes. Expedited Land Divisions are not considered to be land use actions and as such cannot be appealed to the Planning Commission. Instead, an initial administrative decision by the Staff

Advisor could be appealed to a referee/hearings officer, and would not be subject to appeal to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission has previously discussed code amendments to respond to Senate Bill 458 at two public meetings on May 10, 2022 and June 14, 2022. Senate Bill 458 became effective on June 30, 2022, and cities are required under the Senate Bill to implement directly from the bill until local code modifications are implemented.

## **B. Summary of Proposed Amendments**

The proposal includes the addition of two new sections to the Ashland Land Use Ordinance (ALUO) to implement the requirements of Senate Bill 458, which include:

- House Bill 458 applies to any lot that allows Middle Housing under House Bill 2001 (i.e. ORS 197.758).
- A Middle Housing Land Division (MHLN) must result in exactly one dwelling per lot, except that common areas may be located on a separate lot or a shared tract.
- Separate utilities are required for each dwelling unit.
- Easements are required to be provided for:
  - **Pedestrian access**
  - **Common areas**
  - **Driveways and parking areas, if shared**
  - **Utilities**
- An MHLN proposal must demonstrate that it meets the requirements of the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units.
- In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being reviewed and issued for construction. A Middle Housing Land Division may occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed.
- Senate Bill 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, Middle Housing Land Division applications must include a middle housing development (*either proposed or already built*) that complies with the building code and the City's middle housing development code.

Under Senate Bill 458, cities may require the submittal of tentative & final plats for approval, review for Oregon Residential Specialty Code compliance, and right-of-way dedications and city-standard street frontage improvements. Cities may not apply *any* approval criteria other than the approval criteria specified in Senate Bill 458 to applications for an MHLN — i.e. the allowable criteria include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.

Cities are required to process Middle Housing Land Divisions under the Expedited Land Division (ELD) process from ORS 197.360 to 197.380 in order to streamline review. The ELD process is outlined below:

- Submittal requirements are to be consistent with typical land divisions.
- Completeness review must occur by the City within **21 days** of application submittal.

- Notice is given to properties **within 100 feet of the site**, to utility providers and to applicable neighborhood association(s).
- There is a 14-day comment period.
- A decision must be made by the city within **63 days** after a complete application is submitted, unless extended by the Council under limited circumstances. *This is in contrast to the 120 days typically allowed for land use actions.*
- An ELD is not considered to be a land use decision, and would never be heard by the Planning Commission.
- The Staff Advisor makes the initial administrative decision, and any appeals go to a referee who cannot be a city employee or city official, but could be a hearings officer.
- Only the applicant and any person or organization who files written comments in the time period specified in the bill may appeal. An appeal must be filed within 14 days of mailing the Notice of Decision. A \$300 deposit to cover costs must be paid with the appeal submittal, and the referee may levy additional fees to cover hearing costs up to \$500.
- The city-appointed “*referee*” decides any appeal decision—often this is a city’s Hearings Officer - who must issue a decision within **42 days of the appeal being filed**. The decision of the referee is the final local decision on the MHLD application. Any appeals of the referee’s decision go to the Oregon Court of Appeals rather than to the Land Use Board of Appeals (LUBA).

## **II. Procedural**

Applications for Type III (i.e. Legislative) Plan Amendments and Zone Changes are described in the Ashland Land Use Ordinance section 18.5.9.020 as follows:

**B. Type III.** It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

## **III. Conclusions and Recommendations**

If the Planning Commission recommends approval of the attached ordinances, staff will forward the Commission’s recommendation to the City Council to proceed with a public hearing before the Council.

### **Attachments**

Senate Bill 458  
Draft Ordinance

**Enrolled**  
**Senate Bill 458**

Sponsored by Senators FREDERICK, KNOPP; Senators GOLDEN, HANSELL, KENNEMER, PATTERSON, Representatives DEXTER, FAHEY, HUDSON, KROPF, LEIF, MEEK, MOORE-GREEN, NOBLE, SMITH DB, WRIGHT, ZIKA (at the request of Habitat for Humanity) (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to land division for residential development; creating new provisions; and amending ORS 93.277, 94.775, 94.776, 197.365, 197.370, 197.375 and 197.380.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** Section 2 of this 2021 Act is added to and made a part of ORS 92.010 to 92.192.

**SECTION 2.** (1) As used in this section, “middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3).

(2) A city or county shall approve a tentative plan for a middle housing land division if the application includes:

(a) A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5);

(b) Separate utilities for each dwelling unit;

(c) Proposed easements necessary for each dwelling unit on the plan for:

(A) Locating, accessing, replacing and servicing all utilities;

(B) Pedestrian access from each dwelling unit to a private or public road;

(C) Any common use areas or shared building elements;

(D) Any dedicated driveways or parking; and

(E) Any dedicated common area;

(d) Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas; and

(e) Evidence demonstrating how buildings or structures on a resulting lot or parcel will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots or parcels, how structures or buildings located on the newly created lots or parcels will comply with the Oregon residential specialty code.

(3) A city or county may add conditions to the approval of a tentative plan for a middle housing land division to:

(a) Prohibit the further division of the resulting lots or parcels.

(b) Require that a notation appear on the final plat indicating that the approval was given under this section.

- (4) In reviewing an application for a middle housing land division, a city or county:
- (a) Shall apply the procedures under ORS 197.360 to 197.380.
  - (b) May require street frontage improvements where a resulting lot or parcel abuts the street consistent with land use regulations implementing ORS 197.758.
  - (c) May not subject an application to approval criteria except as provided in this section, including that a lot or parcel require driveways, vehicle access, parking or minimum or maximum street frontage.
  - (d) May not subject the application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with this section or ORS 197.360 to 197.380.
  - (e) May allow the submission of an application for a middle housing land division at the same time as the submission of an application for building permits for the middle housing.
  - (f) May require the dedication of right of way if the original parcel did not previously provide a dedication.
- (5) The type of middle housing developed on the original parcel is not altered by a middle housing land division.
- (6) Notwithstanding ORS 197.312 (5), a city or county is not required to allow an accessory dwelling unit on a lot or parcel resulting from a middle housing land division.
- (7) The tentative approval of a middle housing land division is void if and only if a final subdivision or partition plat is not approved within three years of the tentative approval. Nothing in this section or ORS 197.360 to 197.380 prohibits a city or county from requiring a final plat before issuing building permits.

**SECTION 2a.** Section 2 of this 2021 Act applies only to a middle housing land division permitted on or after July 1, 2022.

**SECTION 3.** ORS 93.277 is amended to read:

93.277. A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of, **or the partitioning or subdividing of lands under section 2 of this 2021 Act for:**

- (a) Middle housing, as defined in ORS 197.758; or
  - (b) An accessory dwelling unit allowed under ORS 197.312 (5); and
- (2) The instrument was executed on or after [August 8, 2019] **January 1, 2021.**

**SECTION 4.** ORS 94.776 is amended to read:

94.776. (1) A provision in a governing document that is adopted or amended on or after [August 8, 2019] **January 1, 2020,** is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of, **or the dividing of lands under section 2 of this 2021 Act for,** housing that is otherwise allowable under the maximum density of the zoning for the land.

(2) **Lots or parcels resulting from the division of land in a planned community are subject to the governing documents of the planned community and are allocated assessments and voting right on the same basis as existing units.**

**SECTION 5.** ORS 94.775 is amended to read:

94.775. (1) [Unless the declaration expressly allows the division of lots in a planned community,] Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205[.], **unless:**

- (a) **The declaration expressly allows the division of lots in a planned community; or**
- (b) **The lot may be divided under ORS 94.776.**

(2) The lot may be partitioned by sale and division of the proceeds under ORS 105.245.

[2] (3) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration.

**SECTION 6.** ORS 197.365 is amended to read:

197.365. Unless the applicant requests to use the procedure set forth in a comprehensive plan and land use regulations, a local government shall use the following procedure for an expedited land

division, as described in ORS 197.360, **or a middle housing land division under section 2 of this 2021 Act:**

(1)(a) If the application for [*expedited*] a land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(2) The local government shall provide written notice of the receipt of the completed application for [*an expedited*] a land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3) The notice required under subsection (2) of this section shall:

(a) State:

(A) The deadline for submitting written comments;

(B) That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C) That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b) Set forth, by commonly used citation, the applicable criteria for the decision.

(c) Set forth the street address or other easily understood geographical reference to the subject property.

(d) State the place, date and time that comments are due.

(e) State a time and place where copies of all evidence submitted by the applicant will be available for review.

(f) Include the name and telephone number of a local government contact person.

(g) Briefly summarize the local decision-making process for the [*expedited*] land division decision being made.

(4) After notice under subsections (2) and (3) of this section, the local government shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

(b) Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the [*local government's*] **applicable** land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:

(A) Shall not hold a hearing on the application; and

(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.

(c) Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:

(A) The summary statement described in paragraph (b)(B) of this subsection; and

(B) An explanation of appeal rights under ORS 197.375.

**SECTION 7.** ORS 197.370 is amended to read:

197.370. (1) Except as provided in subsection (2) of this section, if the local government does not make a decision on an expedited land division **or a middle housing land division, as defined in section 2 of this 2021 Act**, within 63 days after the application is deemed complete, the applicant may apply in the circuit court for the county in which the application was filed for a writ of mandamus to compel the local government to issue the approval. The writ shall be issued unless the local government shows that the approval would violate a substantive provision of the applicable land use regulations or the requirements of ORS 197.360 **or section 2 of this 2021 Act**. A decision of the circuit court under this section may be appealed only to the Court of Appeals.

(2) After seven days' notice to the applicant, the governing body of the local government may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an expedited land division **or a middle housing land division** prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380 **and section 2 of this 2021 Act**, including the mandamus remedy provided by subsection (1) of this section, shall remain applicable to the [expedited] land division, except that the extended period shall be substituted for the 63-day period wherever applicable.

(3) The decision to approve or not approve an extension under subsection (2) of this section is not a land use decision or limited land use decision.

**SECTION 8.** ORS 197.375 is amended to read:

197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365 **or under ORS 197.365 and section 2 of this 2021 Act** shall be made as follows:

(a) An appeal must be filed with the local government within 14 days of mailing of the notice of the decision under ORS 197.365 (4)[,] and shall be accompanied by a \$300 deposit for costs.

(b) A decision may be appealed by:

(A) The applicant; or

(B) Any person or organization who files written comments in the time period established under ORS 197.365.

(c) An appeal shall be based solely on allegations:

(A) Of violation of the substantive provisions of the applicable land use regulations;

(B) Of unconstitutionality of the decision;

(C) That the application is not eligible for review under ORS 197.360 to 197.380 **or section 2 of this 2021 Act** and should be reviewed as a land use decision or limited land use decision; or

(D) That the parties' substantive rights have been substantially prejudiced by an error in procedure by the local government.

(2) The local government shall appoint a referee to decide the appeal of a decision made under [ORS 197.360 and 197.365] **this section**. The referee [shall] **may** not be an employee or official of the local government. However, a local government that has designated a hearings officer under ORS 215.406 or 227.165 may designate the hearings officer as the referee for appeals of a decision made under ORS 197.360 and 197.365.

(3) Within seven days of being appointed to decide the appeal, the referee shall notify the applicant, the local government, the appellant if other than the applicant, any person or organization entitled to notice under ORS 197.365 (2) that provided written comments to the local government and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (1) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and



argument. The referee shall provide the local government an opportunity to explain its decision, but is not limited to reviewing the local government decision and may consider information not presented to the local government.

(4)(a) The referee shall apply the substantive requirements of the [*local government's*] **applicable** land use regulations and ORS 197.360 **or section 2 of this 2021 Act**. If the referee determines that the application does not qualify as an expedited land division [*as described in ORS 197.360*] **or a middle housing land division, as defined in section 2 of this 2021 Act**, the referee shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements.

(b) **For an expedited land use division**, the referee may not reduce the density of the land division application.

(c) The referee shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The referee may not remand the application to the local government for any reason other than as set forth in this subsection.

(5) Unless the governing body of the local government finds exigent circumstances, a referee who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as referee in the appeal.

(6) Notwithstanding any other provision of law, the referee shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this section, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the referee and costs incurred by the local government, but not the costs of other parties.

(7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380 **or section 2 of this 2021 Act**.

(8) Any party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

(a) That the decision does not concern an expedited land division as described in ORS 197.360 **or middle housing land division as defined in section 2 of this 2021 Act** and the appellant raised this issue in proceedings before the referee;

(b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

(c) That the decision is unconstitutional.

**SECTION 9.** ORS 197.380 is amended to read:

197.380. Each city and county shall establish [*an application fee*] **application fees** for an expedited land division **and a middle housing land division, as defined in section 2 of this 2021 Act**. The [*fee shall*] **fees must** be set at a level calculated to recover the estimated full cost of processing an application, including the cost of appeals to the referee under ORS 197.375, based on the estimated average cost of such applications. Within one year of establishing [*the fee required*] **a fee** under this section, the city or county shall review and revise the fee, if necessary, to reflect actual experience in processing applications under ORS 197.360 to 197.380 **and section 2 of this 2021 Act**.

**Passed by Senate April 15, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 17, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State