



CITY OF BEND

P L A N N I N G C O M M I S S I O N M E M O

Meeting Date: April 25, 2022

File Number: PLTEXT20220203

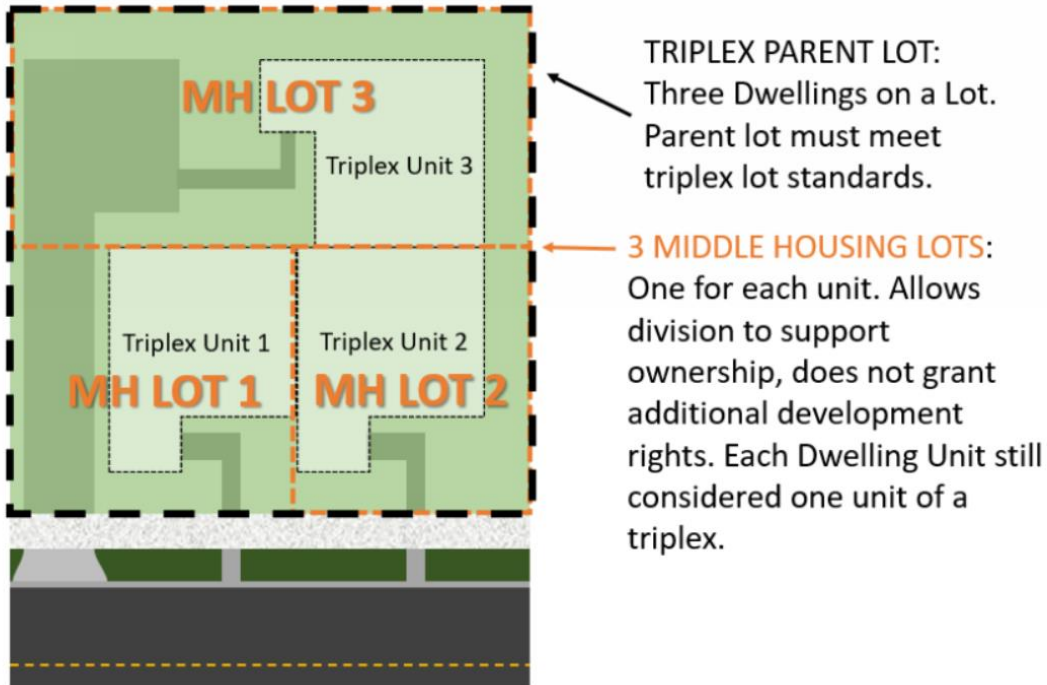
Staff Members: Pauline Hardie, AICP, Senior Code Planner

SUBJECT: Amendments to the Bend Development Code (BDC) primarily for SB 458 which was passed by the Oregon Legislature in 2021. This law requires cities to allow middle housing developments to be divided into individual lots for homeownership opportunities.

The amendments are to Bend Development Code (BDC) Chapters 1.2 Definitions, 2.1 Residential Districts, 3.1, Lot, Parcel and Block Design, Access and Circulation, 3.6 Special Standards and Regulations for Certain Uses, 3.8 Development Alternatives, 4.1, Development Review and Procedures, 4.3, Subdivisions, Partitions, Replats and Property Line Adjustments and 4.5 Master Plans and minor amendments throughout the BDC for consistency and clarity.

LOCATION: The proposed changes to the BDC are legislative text amendments and apply citywide.

BACKGROUND: SB 458 was passed by the Oregon Legislature in 2021 and it goes into effect July 1, 2022. The bill is a follow-up to HB 2001 which legalizes middle housing in many cities throughout the state. SB 458 requires cities to allow middle housing developments to be divided into individual lots for homeownership opportunities. For example, a triplex could be built on a lot and then split into three smaller parcels, each containing one dwelling unit, by using an expedited land division procedure.



The FY 2021-23 Council Goal Framework plan includes a housing goal to “Take meaningful action to make this statement a reality: People who live and work in Bend can afford housing in Bend.” The goal includes a strategy to “Pursue policy actions to increase the supply of housing as a platform for equity.” To implement this goal and strategy the plan includes an action to remove and reduce barriers of development of housing, with an emphasis on incentivizing rent and price restricted affordable housing, middle income housing, and housing that serves vulnerable community members. The proposed amendments implement SB 458 and provide more opportunities for home ownership which help implement the 2021-23 Council goal.

DISCUSSION:

SB 458 Amendments

SB 458 requires a city to apply an expedited land division process defined in ORS 197.360 through 197.380 to middle housing land divisions. The expedited land division process provides an alternative procedure intended to streamline the review of residential land divisions under state law. Currently, land divisions must meet very specific criteria to qualify for an expedited land division. SB 458 extends the same procedure for expedited land divisions to middle housing land divisions that meet the standards outlined in the bill. The following compares the timelines between a Type II land division process and the proposed expedited and middle housing land division process:

Process	Existing Type II Land Division	Proposed Expedited/Middle Housing Land Division
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Completeness Review	30 days	21 days
Comment Period	14 days	14 days
Deadline for Decision	120 days	63 days

The proposed amendments create BDC 4.3.700, Expedited and Middle Housing Land Division which includes a preliminary plat process, submittal requirements, approval criteria, and final plat requirements for expedited and middle housing land divisions and preliminary plat conditions for middle housing land divisions. The proposed amendments include the following requirements as well as what may be required in compliance with SB 458.

What Bend must require/allow as part of a middle housing land division:

1. **All Middle Housing Types.** SB 458 applies to any lot that allows middle housing under ORS 197.758, including duplexes, triplexes, fourplexes, townhomes, and cottage clusters.

Note: SB 458 doesn't apply to accessory dwelling units since they are not a type of middle housing. In addition, townhomes are not proposed as part of the BDC middle housing land division amendments since they are defined as dwelling units on their own lot or parcel, sharing a common side wall at the property line. Therefore, a townhome is already on a separate lot or parcel.

2. **Resulting Lots.** The land division must result in exactly one dwelling per lot (i.e., you cannot divide an 8-unit cottage cluster into four individual lots and fifth lot with four units). The only exception is that common areas may be located in a separate lot or shared tract.
3. **Utilities.** Separate utilities for each dwelling unit must be provided if a development is to qualify for a middle housing land division.
4. **Easements.** Easements are required for:
 - Pedestrian access (e.g., all pedestrian paths in a cottage cluster)
 - Common areas (e.g., common courtyards, community buildings)
 - Driveways and parking areas (if shared)
 - Utilities
5. **Building Code.** All of the existing and proposed buildings and structures on a resulting lot or parcel must comply with applicable building code provisions relating to the proposed property lines and, all of the buildings and structures located on the lots or parcels must comply with the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units.
6. **Timing.** In a typical land division, the land is divided prior to building permits being reviewed and issued for construction. However, SB 458 does not state that

a middle housing land division must occur either before or after the issuance of a building permit. Therefore, land could be divided prior to applying for building permits, after a middle housing development is approved for development, or after it is constructed. SB 458 even allows division of existing middle housing that was developed prior to HB 2001 taking effect—as long as the development meets the City’s adopted middle housing code standards. SB 458 also gives cities the option of allowing concurrent review of building permits and the land division. In all cases, the land division application must include a middle housing development (either proposed or built) that complies with the building code and the City’s middle housing development code.

The following is the proposed amendment to the BDC regarding timing:

A middle housing land division may be submitted when the parent site is developed with middle housing, has an active building permit to construct middle housing or the application for a land division must be reviewed concurrently with a building permit application for construction of middle housing.

What Bend may require/allow:

1. **Street Frontage Improvements.** Cities may require street frontage improvements for newly created lots or parcels abutting a street.
2. **Right-of-way Dedication.** Cities may require dedication of right-of-way if the original lot or parcel did not previously provide a dedication.
3. **Concurrent Review.** Cities may allow concurrent review of a middle housing land division with the building permit.

What Bend cannot require as part of a middle housing land division:

1. **Street Frontage.** Typically, newly created lots or parcels are required to have frontage on a street. SB 458 specifies that cities cannot require street frontage for lots or parcels created through a middle housing land division.
2. **Parking and Driveway Access to Each Lot or Parcel.** While the dwelling unit must meet applicable parking requirements, cities cannot require that each resulting lot or parcel have its own parking space or driveway access. For example, a quadplex could have a shared parking area with two spaces; the city cannot preclude the quadplex lot from being divided if some of the lots only have access to the parking area via an access easement.
3. **Minimum Lot Size or Dimension.** Cities cannot specify minimum area or dimensions for lots or parcels resulting from a middle housing land division.
4. **Other Review Criteria.** Cities cannot apply any approval criteria other than the approval criteria specified in SB 458 (i.e., separate utilities, easements, one

dwelling unit per lot or parcel, and building code compliance) to an application for middle housing land divisions.

Additional BDC Amendments for Consistency and Clarity

While not directly related to the SB 458 changes, the draft also includes the following house-keeping amendments in other sections of the code for consistency and clarity:

Amendments throughout the BDC. Rename “Subdivisions, Partitions, Replats and Property Line Adjustments” to “Land Divisions and Property Line Adjustments” and rename “Development Services Director” to “Community and Economic Development Director”.

2.1.1000, Multi-Unit Residential Districts (RM, RH). Add cottage developments as an allowable mix of housing units for properties in the RM that are between three and 20 acres.

3.1.200 Lot, Parcel and Block Design. Clarify that townhomes require a 20-foot lot width in zones that do not have a minimum lot width. This is consistent with the lot width requirement for townhomes in residential districts.

3.8.600 Courtyard Dwelling Units. Revise section for clarity based on recent courtyard dwelling unit applications.

4.5.200 Community Master Plans. Add quadplexes as an allowable housing mix for master plans. Quadplexes were allowed prior to the HB 2001 amendments and were inadvertently left out when the definition for multi-unit was revise to be five or more units.

PUBLIC OUTREACH:

Staff emailed the proposed amendments to the people who have expressed an interest in the amendments, to the Bend Development Code Update Group and to the Neighborhood Association Land Use Chairs on March 31, 2022. The notice of public hearing was published in the Bulletin on April 17, 2022, and mailed and emailed to the Neighborhood Associations on April 14, 2022. Public comments can be viewed in the [Online Permit Center Portal](#) on the City of Bend website. Open the Portal and select the *Application Search* link under the Planning & Historic header, then enter the project number PLTEXT20220203 in the search bar to find the project.

ATTACHMENTS:

Attachment A - Draft Development Code Amendments
Attachment B - SB 458

Attachment A
Bend Development Code Update
Draft: April 25, 2022
Prepared by:

Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~striketrough~~ typeface is proposed to be deleted.

***Indicates where text from the existing code has been omitted because it will remain unchanged.

Staff comments are ***bold and italicized***

Bend Development Code

Amend the following throughout the BDC:

Rename Subdivisions, Partitions, Replats and Property Line Adjustments to Land Divisions and Property Line Adjustments

Rename Development Services Director to Community and Economic Development Director

Chapter 1.2

Definitions

Expedited land division means an alternative procedure for residential land divisions in ORS 197.360 through ORS 197.380. See BDC 4.3.700, Expedited and Middle Housing Land Division.

Middle housing land divisions means the creation of multiple lots or parcels from a single parent site on which middle housing is developed or proposed, which results in an individual lot or parcel for each of the middle housing units. See BDC 3.6.200.A, Development on a Middle Housing Land Division Site and BDC 4.3.700, Expedited and Middle Housing Land Division.

Parent site (also referred to as parent property) means a lot or parcel that was the subject of a development application.

Chapter 2.1

RESIDENTIAL DISTRICTS (UAR, RL, RS, RM-10, RM, RH)

2.1.1000 Multi-Unit Residential Districts (RM, RH).

- C. Housing Mix Standards in the RM District. In order to ensure a mix of housing types that meets the City's overall housing needs, in addition to minimum and maximum density standards in BDC 2.1.600, at least 50 percent of the total housing units in residential developments on any property or combination of properties between three acres and 20 acres in the RM District must be duplexes, triplexes, quadplexes, townhomes, cottage developments and/or multi-unit dwellings. The standards of BDC 4.5.200(E) apply to properties of 20 acres in size and greater. ***(Add cottage developments since they provide a mix of housing)***

Chapter 3.1

Lot, Parcel and Block Design, Access and Circulation

3.1.200 Lot, Parcel and Block Design

- A. *Purpose.* The purpose of this section is to create orderly development as the City grows and redevelops. The size, width, topography and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated.
- B. *Applicability.* New development shall be consistent with the provisions of this chapter and other applicable sections of this code.

C. General Requirements for Lots and Parcels.

1. Depth and width of new lots or parcels must meet the minimum standards specified for the zoning district. Where no minimum standards are specified, the depth and width must be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
2. On steep slopes, increased lot or parcel sizes may be required to avoid excessive cuts, fills and steep driveways.
3. On tracts containing watercourses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographic or natural feature.
4. Each lot or parcel must abut upon a street other than an alley for the minimum width required for lots or parcels in the zone, except:
 - a. For lots or parcels fronting on the bulb of a cul-de-sac, the minimum frontage is 30 feet, except for townhomes;
 - b. For approved flag lots or parcels, the minimum frontage is 15 feet;
 - c. For townhomes and lots or parcels in zero lot line developments, the minimum frontage is 20 feet; and
 - d. In zones where a minimum frontage width is not specified, the minimum frontage is 50 feet.

(Need to provide a lot width requirement for townhomes.)

Chapter 3. 6

Special Standards and Regulations for Certain Uses

3.6.200 Residential Uses.

~~A. Repealed by Ord.NS-2389~~

A. Development on a Middle Housing Land Division Site. *(This new section applies to future development and alterations to development on a site that has undergone a middle housing land division. It incorporates certain limitations that are allowed by SB 458, including that the type of housing doesn't change with creation of new lots or parcels, that only one dwelling unit is allowed per lot and that lots or parcels may not be subsequently divided.)*

1. Applicability.

a. The standards of this section apply to lots or parcels created from a middle housing land division. See BDC 4.3.700, Expedited and Middle Housing Land Division.

2. Development on a Middle Housing Land Division Site.

a. For purposes of the middle housing development, the regulations of the BDC apply to lots and parcels resulting from a middle housing land division collectively and not to each lot or parcel individually. For example, the building setback standards of the corresponding zone apply to the property lines of the parent site prior to the land division and not to the property lines of each individual lot created through the middle housing land division.

b. The residential structure type on a site that has been divided through a middle housing land division remains the residential structure type that was proposed with the middle housing land division. For example, if the middle housing land division was approved for a site with an existing or proposed quadplex, the residential structure type on the site remains a quadplex following the middle housing land division.

3. More than one dwelling unit is prohibited on a lot or parcel that has been created through a middle housing land division. Accessory dwelling units are prohibited on lots or parcels that have been divided through middle housing land divisions.

4. The further division of a lot or parcel created through a middle housing land division is prohibited.

B. Accessory Dwelling Unit (ADU). An accessory dwelling unit (ADU) is a small dwelling unit on a property that contains a single-unit dwelling as the primary use. The ADU may be attached, detached, or within a portion of an existing dwelling unit. The maximum density standards do not apply to ADUs due to their small size and low occupancy. The standards of this section are intended to control the size, scale and

number of ADUs on individual properties to promote compatibility with abutting land uses. ADUs must comply with the following standards in addition to the standards of the applicable zoning district:

1. Permitted ADU. An ADU may only be permitted on a lot or parcel with a single-unit detached dwelling, a townhome, or a manufactured home.

a. Exception. ADUs are not permitted on a lot or parcel created by a middle housing land division.

(SB 458 applies to middle housing as defined in ORS 197.758. Accessory dwelling units are not a type of middle housing.)

Chapter 3.8

Development Alternatives

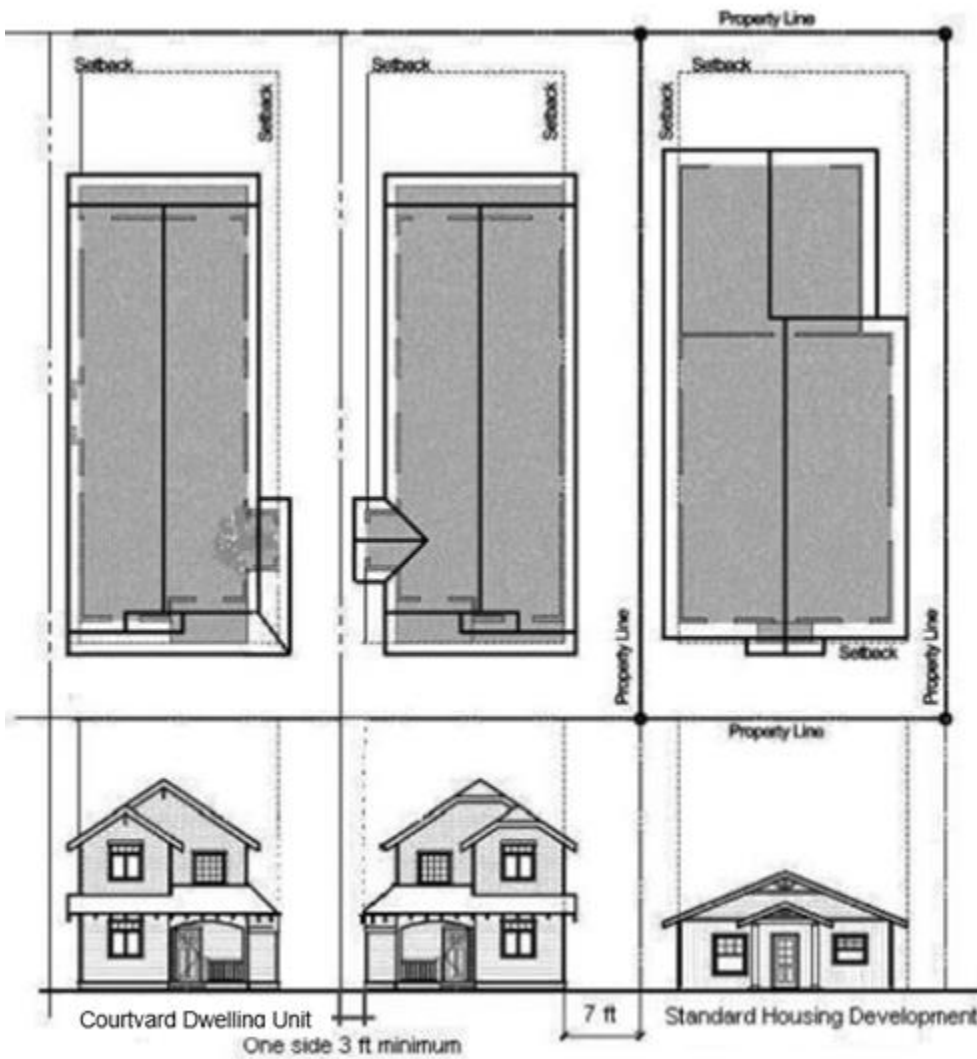
3.8.600 Courtyard Dwelling Units.

- A. Applicability. Courtyard dwelling unit developments are allowed in the following districts: Low Density Residential (RL), Standard Density Residential (RS), Medium Density Residential (RM) and Medium -10 Residential (RM-10).
- B. Permitted Uses.
 1. Single-unit detached dwellings.
 2. Duplexes.
 3. Accessory dwelling units and structures.
- C. The following standards are intended to promote compatibility and privacy between abutting buildings and allow for building maintenance:
 1. Courtyard dwelling units on individual lots and parcels are subject to the standards of the underlying zoning district, except that in the RS, RM-10 and RM Districts a three-foot minimum side setback is required on one side as shown in Figure 3.8.600 and a six foot minimum side setback is required on one side in the RL District. Courtyard dwelling units on individual lots and parcels are subject to the standards of the underlying zoning district, except as follows:

- a. RS, RM-10 and RM Districts. A three-foot minimum side setback is required on one side and a minimum seven-foot setback is required on the other side (courtyard setback) as shown in Figure 3.8.600
 - b. RL District. A six-foot minimum side setback is required on one side and a minimum of 14-foot setback is required on the other side (courtyard setback).
2. Setbacks Abutting a Non-Courtyard Development. When a courtyard dwelling unit shares a side property line with a non-courtyard dwelling unit (including vacant lots), the courtyard ~~building~~ dwelling unit must be setback from the common property line by a minimum of seven feet in the RS, RM-10 and RM Districts and 14 feet in the RL District.
 3. Construction and Maintenance Easement. Prior to building permit approval, the applicant must submit a copy of a recorded easement for every courtyard dwelling unit that guarantees rights for the purpose of construction and maintenance of structures and yards. The easement must stipulate that no fence or other obstruction ~~must~~ may be placed in a manner that would prevent maintenance of structures on the subject lot.
 4. ~~Buffering. The building placement, landscaping, and/or design of windows must provide a buffer for the occupants of abutting courtyard lots. For example, this standard is met by placing ground-floor windows (along the courtyard setback) where views are directed into adjacent yards, or by directing views away from yards (e.g., bay window), or by using frosted glass or other window covering that obscures any view to the interior but allows light into the interior. This standard does not apply to abutting non-courtyard lots.~~ Privacy. In order to maintain privacy of a courtyard on an abutting courtyard lot or parcel, the windows on the first story wall must be clerestory windows located a minimum of five feet from the interior floor or obscured glass (e.g., frosted, patterned, bubbled, ribbed). This standard does not apply to abutting non-courtyard lots or parcels. (Amendments are needed to provide clarity about what qualifies as a buffer.)

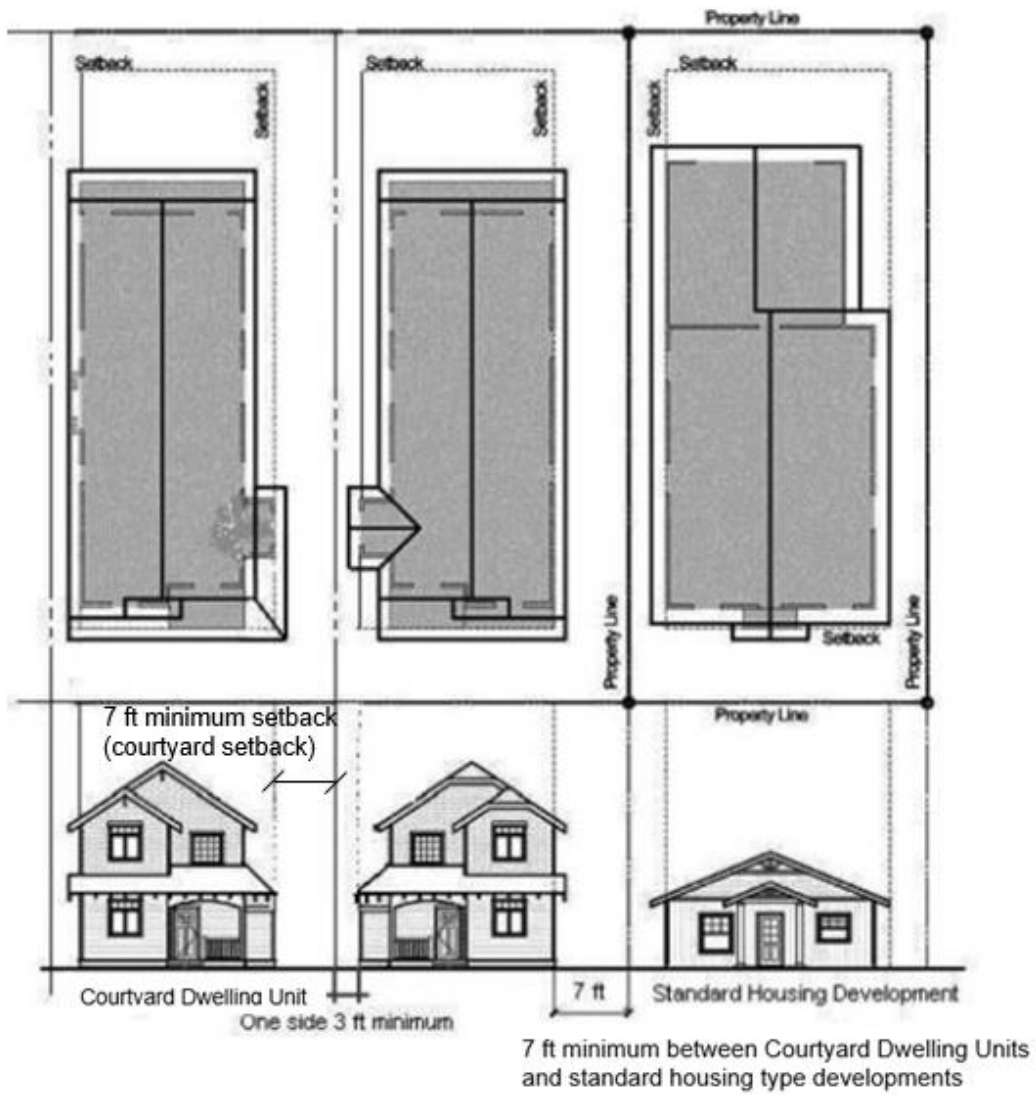
Figure 3.8.600.A – Courtyard Dwelling Units

(Delete figure below)



7 ft minimum between Courtyard Dwelling Units and standard housing type developments

(Add figure below)



Chapter 4.1

Development Review and Procedures.

4.1.412 Completeness Check.

A. Except as provided in subsections (C) and (D) of this section, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals, within 120 days after the application is deemed complete.

1. For middle housing land divisions. See BDC 4.3.700. Expedited and Middle Housing Land Divisions.

4.1.1100 Appeals.

For expedited and middle housing land divisions. see BDC 4.3.700. Expedited and Middle Housing Land Divisions.

4.1.1600 Summary of Development Application Types

There are four types of procedures: Type I, II, III, and IV. Table 4.1.1600 lists the City’s development applications and their required types of procedure(s).

Table 4.1.1600 Summary of Development Application Types

(Other uses in Table 2.1.200 remain unchanged)

Development Application	Type I*	Type II*	Type III	Type IV
<u>Expedited Land Division. See BDC 4.3.700</u> <i>(Locate at bottom of table)</i>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Middle Housing Land Division. See BDC 4.3.700</u> <i>(Locate at bottom of table)</i>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

*Unless elevated by the Development Services Director as authorized in BDC Chapter 4.1.

◆ See BDC 3.6.500, Short-Term Rentals.

◆◆ See BDC Chapter 3.7, Wireless and Broadcast Communication Facilities – Standards and Process.

Chapter 4.3

~~Subdivisions, Partitions, Replats~~ Land Divisions and Property Line Adjustments

Sections:

4.3.100 Purpose and Applicability.

4.3.200 General Requirements.

4.3.300 Tentative Plan.

4.3.400 Final Plat.

4.3.500 Replats.

4.3.600 Property Line Adjustments.

4.3.700 ~~Repealed~~ Expedited and Middle Housing Land Division.

4.3.100 Purpose and Applicability.

A. Purpose. The purpose of this chapter is to:

1. Provide rules, regulations and standards governing the review and approval of subdivisions, partitions, replats, ~~and~~ property line adjustments, expedited land divisions and middle housing land divisions.
2. Carry out the City's development pattern, as envisioned by the Bend Comprehensive Plan;
3. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
4. Promote the public health, safety and general welfare through orderly and efficient urbanization;
5. Reduce or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;
6. Provide adequate light and air, prevent overcrowding of land, provide open space opportunities, and facilitate adequate provision for transportation, water supply, sewage and drainage; and
7. Encourage the conservation of energy resources.
8. Support homeownership by allowing lots or parcels with middle housing to divide so that the dwelling unit is on its own lot or parcel.

- B. Applicability. Units of land shall must only be created or reconfigured in conformance with the standards of this chapter and ORS Chapter 92. For Expedited and Middle Housing Land Divisions, see BDC 4.3.700, Expedited and Middle Housing Land Division.

4.3.700 Infill Development Options—Expedited and Middle Housing Land Division.

A. Applicability.

1. **Expedited Land Divisions.** An expedited land division may be submitted when it complies with the following:
 - a. Includes only land zoned for residential uses.
 - b. Is solely for the purpose of residential use, including recreational or open space uses accessory to residential use.
 - c. Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect open spaces, scenic and historic areas and natural resources including the River Corridor Areas of Special Interest, Riparian Corridors and Upland Areas of Special Interest;
 - d. Satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Bend's Standards and Specifications, and the BDC.
 - e. Will result in development that either:
 - i. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
 - ii. All dwellings will be sold or rented to households with incomes below 120 percent of the median family income for Deschutes County. A copy of a deed restriction or other legal mechanism approved by the Director shall be submitted.

(ORS 197.360)

2. Middle Housing Land Divisions.

- a. A middle housing land division applies to duplexes, triplexes, quadplexes, or cottage cluster developments.
- b. A middle housing land division may be submitted when the parent site is developed with middle housing, has an active building permit to construct middle housing or the application for a land

division must be reviewed concurrently with a building permit application for construction of middle housing. (Allowed by SB 458)

3. An expedited land division and middle housing land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015. (SB 458 and ORS 197.370)

B. Preliminary Plat Process for Expedited and Middle Housing Land Divisions. Unless the applicant requests to use the procedure set forth in BDC 4.3.300, Tentative Plan, the City must use the following procedures for an expedited land division and a middle housing land division.

1. Completeness Review.

- a. If the application for an expedited land division or middle housing land division is incomplete, the City must notify the applicant of the missing information within 21 days of receiving an application. The application must be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it. (Required by SB 458 and ORS 197.365)
- 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 must be based upon the standards and criteria that were applicable at the time the application was first submitted. (Required by SB 458 and ORS 197.365)

2. Notice of Application.

- a. Written notice of the receipt of the completed application for an expedited and middle housing land division must be provided to:
 - i. The applicant.
 - ii. Owners of record of property as shown on the most recent property tax assessment roll of property located, and to the addresses based on the City's current addressing records within 100 feet of the property that is subject of the notice. (Required by SB 458 and ORS 197.365)
 - iii. Designated land use chair(s) of a neighborhood association recognized by the City of Bend where any property within the notice area specified is within the boundaries of a neighborhood association. (Required by SB 458 and ORS 197.365)

- iv. Any agency responsible for providing public services or facilities to the subject site. (Required by SB 458)
- b. The notice must include the following: (Required by SB 458)
- i. The deadline for submitting written comments:
 - ii. A statement of 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; and
 - iii. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue.
 - iv. The applicable criteria for the decision.
 - v. The place, date, and time that comments are due.
 - vi. A time and place where copies of all evidence submitted by the applicant will be available for review.
 - vii. The street address or other easily understood geographical reference to the subject property.
 - viii. The name and telephone number of a local government contact.
 - ix. A brief summary of the local decision-making process for the land division decision being made.
- c. The written notice requirement will be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given. (Required by SB 458 and ORS 197.365)
- d. Notice must be posted on the subject property by the applicant/property owner throughout the duration of the required public comment period. Such notice must be located within 10 feet of any abutting public way. Failure of applicant/property owner to maintain posting of the sign throughout the duration of the required public comment period does not invalidate a land use approval.
3. Any person may comment in writing within 14 days from the date notice was mailed. (Required by SB 458 and ORS 197.365)

4. Decisions are made by the Development Services Director following public notice and an opportunity for parties to comment but without a public hearing. (Required by SB 458 and ORS 197.365)
5. The City must issue the administrative decision on the application within 63 days of receiving a completed application. (Required by SB 458 and ORS 197.365)
6. The Development Services Director's decision must be based on applicable requirements of the BDC. An approval may include conditions to ensure that the application meets applicable land use regulations. (Required by SB 458 and ORS 197.365)
7. Notice of the decision must be provided to the applicant and to those who received notice under subsection 2(a) within 63 days of the date of a completed application. The notice of decision must include: (Required by SB 458 and ORS 197.365)
 - a. A summary statement explaining the determination; and
 - b. An explanation of appeal rights under ORS 197.375.
8. Failure to approve or deny application within specified time.
 - a. After seven days' notice to the applicant, the City Council may, at a regularly scheduled public meeting, act to extend the 63-day time period to a date certain for one or more applications for an expedited 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, including the mandamus remedy provided by subsection (a), shall remain applicable to the expedited land division and middle housing land division, except that the extended period shall be substituted for the 63-day period wherever applicable. (Required by SB 458 and ORS 197.370)
 - b. The decision to approve or deny an extension under subsection b of this section is not a land use decision or limited land use decision. (Required by SB 458 and ORS 197.370)
9. A decision may be appealed within 14 days of the mailing of the decision notice by the applicant or a person or organization who file written comments within the time period described in BDC 4.3.700.C.3. The appeal must include the appeal application and a \$300 deposit for costs. (Required by SB 458 and ORS 197.375)
10. An appeal must be based solely on one or more of the allegations: (Required by SB 458 and ORS 197.375)
 - a. The decision violates the substantive provisions of the applicable land use regulations;
 - b. The decision is unconstitutional;

- c. The application was not eligible for review under BDC 4.3.700, Expedited and Middle Housing Land Divisions and should be reviewed as a land use decision or limited land use decision.
 - d. The appellant's substantive rights were substantially prejudiced by a procedural error.
11. The City must appoint a hearings officer to decide the appeal decision and the appointed hearings officer must comply with ORS 197.375(3) through (6) when issuing a decision. (Required by SB 458 and ORS 197.375(3) through 6)

C. Expedited and Middle Housing Preliminary Plan Submittal Requirements.

1. **Expedited Land Division Submittal Requirements.** An application for an expedited land division must submit the items listed in BDC 4.3.300 (B) and a letter or narrative report documenting compliance with the applicable approval criteria contained in BDC 4.3.700(D)(1), Expedited Land Division Approval Criteria.
2. **Middle Housing Land Division Submittal Requirements.** An application for a middle housing land division must include the following:
 - a. Items listed in BDC 4.3.300 (B) and a letter or narrative report documenting compliance with the applicable approval criteria contained in BDC 4.3.700(D)(2), Middle Housing Land Division Approval Criteria.
 - b. Evidence in the form of a written statement provided by a design professional licensed in the state of Oregon and including such professional's stamp/seal and a site plan that demonstrates that all of the buildings and structures on a resulting lot or parcel comply with applicable building code provisions relating to the proposed property lines and, all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code.
 - c. A plan showing the following details:
 - i. Separate utility connections for each dwelling unit, demonstrating compliance with approval criterion 4.3.700.D.2.c.
 - ii. Existing or proposed easements necessary for each dwelling unit on the plan, demonstrating compliance with the criterion 4.3.700.D.2.d.

D. Approval Criteria for an Expedited and Middle Housing Land Division.

1. **Expedited Land Division Approval Criteria.** The applicant for an expedited land division must demonstrate that the application meets the criteria of BDC 4.3.300.E and the following:
 - a. The expedited land division complies with each of the provisions of BDC 4.3.700(A) of this section.

2. **Middle Housing Land Division Approval Criteria.** The applicant for a middle housing land division must demonstrate that the application meets of the following criteria:
 - a. The proposed, approved, or legally existing middle housing development meets the standards and regulations of the BDC applicable to the development on the parent site prior to the land division.
(Required by SB 458)

 - b. All of the existing and proposed buildings and structures on a resulting lot or parcel comply with applicable building code provisions relating to the proposed property lines and, all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code.
(Required by SB 458)

 - c. Separate utility service connections for public water, sewer, and storm water will be provided for each dwelling unit. ***(Required by SB 458)***

 - d. The preliminary plat includes easements or tracts necessary for each dwelling unit for: ***(Required by SB 458)***
 - i. Locating, accessing, replacing, and servicing all utilities, a minimum of five feet in width. Easements across property lines must be avoided if utilities to the lot frontage can be obtained from existing mains or installation of new mains:

 - ii. Pedestrian access easement a minimum width of four feet from each dwelling unit to a private or public street and to any required common area:

 - iii. Any common use areas or shared building elements:

 - iv. Any driveways or parking; and

 - v. Any common area.

 - e. The middle housing land division results in one dwelling unit on each middle housing lot.
(Required by SB 458)

- f. Where a resulting lot or parcel abuts a street that does not meet City standards, street frontage improvements will be constructed in conformance with the City's Standards and Specifications and, if necessary, additional right-of-way will be dedicated to the public without reservation or restriction. (SB 458 allows a city to require this.)
- g. The type of middle housing developed on the parent site is not altered by a middle housing land division. (Required by SB 458)

E. Preliminary Plat Conditions of Approval for Middle Housing Land Divisions.

- 1. The following conditions of approval are required for a middle housing land division:
 - a. Further division of the resulting lots or parcels is not permitted. (SB 458 allows a city to condition this)
 - b. Accessory dwelling units are not permitted on resulting lots or parcels from a middle housing land division. (SB 458 allows a city to condition this.)
- 2. The City must not attach conditions of approval that a resulting lot or parcel require driveways, vehicle access, parking, or minimum or maximum street frontage. (Required by SB 458)

F. Final Plat Requirements for Expedited and Middle Housing Land Divisions.

- 1. **Expedited Land Division Final Plat.** Approval of a final plat for an expedited land is subject to BDC 4.3.400, Final Plat.
- 2. **Middle Housing Land Division Final Plat.**
 - a. Approval of a final plat for a middle housing land division is subject to BDC 4.3.400, Final Plat, except as provided below.
 - b. A final plat will not be approved until building permits are issued and framing inspections for the dwelling units on each lot are passed. (SB 458 allows this)
 - c. Final occupancy for the middle housing dwelling units will not be approved until recordation of the final plat. (SB 458 allows this)
 - d. A notation must appear on the final plat indicating that the approval was given under ***(Insert ORS reference for SB 458 Section 2)***.
 - e. A notice in the form of a restrictive covenant must be recorded with the county which states:
 - i. The middle housing lot or parcel cannot be further divided.
 - ii. No more than one dwelling unit of middle housing can be developed on each middle housing lot.

- iii. Accessory dwelling units are not permitted.
- iv. The dwelling developed on the middle housing lot or parcel is a unit of middle housing and is not an attached or detached dwelling unit or any other housing type.
- f. The tentative approval of a middle housing land division is void if a final subdivision or partition plat is not recorded within three years of the tentative approval. (Required by SB 458)

Chapter 4.5

Master Plans

4.5.200 Community Master Plan.

E. Standards and Regulations. Minor and major community master plans must comply with the following standards:

- 3. Housing Density and Mix. Community master plans 20 acres or larger must provide a mix of housing types and achieve minimum housing densities in conformance with the standards of subsections (E)(3)(a) and (b) of this section. To the extent that the Bend Comprehensive Plan Chapter 11, Growth Management, proposes a different mix of housing and/or density standards in the specific expansion area policies, then those policies apply.

b. Minimum standards are as follows:

- i. RL Comprehensive Plan Designation. At least 50 percent of the maximum gross density of the RL Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes and/or multi-unit residential housing units comprising at least 10 percent of total housing units.
- ii. RS Comprehensive Plan Designation. At least 70 percent of the maximum gross density of the RS Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes.

townhomes, and/or multi-unit residential housing units comprising at least 10 percent of total housing units.

- iii. RM Comprehensive Plan Designation. At least 60 percent of the maximum gross density of the RM Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes, and/or multi-unit residential housing units comprising at least 67 percent of total housing units.
- iv. RH Comprehensive Plan Designation. The minimum density of the RH Comprehensive Plan designation applies. Single-unit detached dwellings are not permitted in the RH Zone.

(Quadplexes were inadvertently left off with HB 2001 amendments.)

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