



# Council Business Meeting

Feb 21, 2023

<b>Agenda Item</b>	Second Reading & Findings Adoption Ordinance 3217 - Middle Housing Land Division Ordinance		
<b>From</b>	Brandon Goldman Derek Severson	Interim Director of Community Development Senior Planner	
<b>Contact</b>	<a href="mailto:Brandon.goldman@ashland.or.us">Brandon.goldman@ashland.or.us</a> <a href="mailto:Derek.severson@ashland.or.us">Derek.severson@ashland.or.us</a>	(541) 552-2076 (541) 552-2040	
<b>Item Type</b>	Requested by Council <input checked="" type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input type="checkbox"/>		

## **SUMMARY**

The City Council is being asked to act on second reading of an ordinance to 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. In addition, the City Council is being asked to adopt written findings which describe the basis for amending the land use code. The City Council held a public hearing and approved first reading of these land use code amendments at the January 17, 2023 meeting.

## **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

## **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 (MHL) 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 MHL 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





# Council Business Meeting

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.

## **DISCUSSION QUESTIONS**

This item was discussed during a public hearing at on January 17, 2023, and at that hearing the Council the first reading.



# Council Business Meeting

## **SUGGESTED NEXT STEPS**

Staff recommends adoption of the ordinance 3217 as recommended by the Planning Commission, and adoption of the attached written findings.

### **1. Motion for Approval of Ordinance**

The attached ordinance is consistent with the Planning Commission recommendation.

- I move to approve second reading of Ordinance 3217, which is titled, "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."

### **2. Motion for Approval of Findings of Fact**

The attached findings document reflects the Planning Commission recommendation.

- I move to approve the Findings of Fact and Conclusions of Law document dated 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:** Draft Findings, Orders and Conclusions of Law
- Attachment 3:** Public Comments
- Amy Anderson, Rogue Planning dated 1/03/2023

1 **ORDINANCE NO. 3217**

2 **AN ORDINANCE AMENDING THE ASHLAND LAND USE ORDINANCE**  
3 **TO IMPLEMENT THE REQUIREMENTS OF OREGON SENATE BILL**  
4 **458 BY ADDING SECTION 18.5.1.075 “MIDDLE HOUSING LAND**  
5 **DIVISIONS” AND SECTION 18.5.3.140 “MIDDLE HOUSING LAND**  
6 **DIVISIONS.”**

7 **WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

8 Powers of the City the City shall have all powers which the constitutions, statutes, and common  
9 law of the United States and of this State expressly or impliedly grant or allow municipalities, as  
10 fully as though this Charter specifically enumerated each of those powers, as well as all powers  
11 not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter  
12 specifically granted. All the authority thereof shall have perpetual succession.

13  
14 **WHEREAS**, the above referenced grant of power has been interpreted as affording all  
15 legislative powers home rule constitutional provisions reserved to Oregon Cities. City of  
16 Beaverton v. International Ass’n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293;  
17 531 P 2d 730, 734 (1975); and

18 **WHEREAS**, Senate Bill (SB) 458 “relating to land division for residential development;  
19 creating new provisions; and amending ORS 93.277, 94.775, 94.776, 197.365, 197.370, 197.375  
20 and 197.380” was passed at the 81<sup>st</sup> Oregon Legislative Assembly, 2021 Regular Session, and  
21 became effective on June 30, 2022. SB 458 requires cities to approve a tentative plan for a  
22 middle housing land division if the application includes a proposal for the development of  
23 middle housing in compliance with the Oregon residential specialty code and with the land use  
24 regulations applicable to the original lot or parcel allowed under ORS 197.758(5); separate  
25 utilities for each dwelling unit; proposed easements necessary for each dwelling in the plan for  
26 utilities, pedestrian access, common use areas or shared building elements, driveways or parking,  
27 and dedicated common areas; exactly one dwelling unit per lot except for lots, parcels or tracts  
28 used as common areas; and evidence demonstrating how buildings will comply with applicable  
29 building code provisions relating to new property lines, and notwithstanding the creation of new  
30 lots or parcels, how buildings on new lots will comply with the Oregon residential specialty  
code.

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

5  
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 (MHL D)**

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:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

- 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

- 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



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

- 8 f. The hearings officer shall apply the substantive requirements of ALUO 18.5.3.140.C  
9 and ORS 197.360. If the hearings officer determines that the application does not  
10 qualify as an Expedited Land Division under ORS 197.360 or a Middle Housing Land  
11 Division under ALUO 18.5.3.140, the hearings officer shall remand the application for  
12 consideration as a land use decision or limited land use decision. In all other cases,  
13 the hearings officer shall seek to identify means by which the application can satisfy  
14 the applicable requirements.
- 15 g. The hearings officer shall not reduce the density of the land division application.
- 16 h. The hearings officer shall make a written decision approving or denying the  
17 application or approving it with conditions designed to ensure that the application  
18 satisfies the applicable criteria and standards, within 42 days of the filing of an  
19 appeal. The hearings officer shall not remand the application to the local government  
20 for any reason other than as set forth in this subsection.
- 21 i. Unless the City Council finds exigent circumstances, a hearings officer who fails to  
22 issue a written decision within 42 days of the filing of an appeal shall receive no  
23 compensation for service as hearings officer in the appeal.
- 24 j. Notwithstanding any other provision of law, the hearings officer shall order the local  
25 government to refund the deposit for costs to an appellant who materially improves  
26 his or her position from the decision of the local government. The hearings officer  
27 shall assess the cost of the appeal, up to a maximum of \$500, against an appellant  
28 who does not materially improve his or her position from the decision of the local  
29 government. The local government shall pay the portion of the costs of the appeal  
30 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.

2  
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  
21 a. The parent parcel is developed with middle housing allowed under ORS 197.758(3)  
22 or the application for a Middle Housing Land Division is being made concurrently with  
a building permit application for construction of middle housing under ORS  
23 197.758(3) on the parcel.  
24 b. Each resulting middle housing lot or parcel shall contain no more than one middle  
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  
parcels created under this section.  
26 d. Each lot is served with its own separate utilities.  
27 e. All easements necessary for each middle housing dwelling unit shall be identified on  
the plat. Easements shall be provided to ensure:  
28       i. Provision of and access for maintenance and replacement of all utilities;  
29       ii. Pedestrian access from each dwelling unit to a public or private street;  
30       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.

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

- 26 1. The final plat shall comply with the Middle Housing Land Division preliminary plat  
27 conditions of approval.
- 28 2. The following data requirements, if applicable, shall also be shown on the final plat.
- 29 a. All tracts of land intended to be deeded or dedicated for public use;
  - 30 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

**BEFORE THE CITY COUNCIL  
CITY OF ASHLAND, JACKSON COUNTY, OREGON**

**February 21, 2023**

In the matter of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use concerning the approval Criteria and procedural handling for Middle Housing Land Divisions as required by Senate Bill 458 from the 81<sup>st</sup> Oregon Legislative Assembly, 2021 Regular Legislative Session. )  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)  
)  
)

**PURPOSE:**

The proposal includes amendments to AMC Title 18 Land Use providing approval criteria and procedural handling for Middle Housing Land Divisions (MHLDs) to meet new state requirements. New state legislation, in the form of Senate Bill (SB) 458 requires Ashland to update the local land use code to meet new state laws and rules pertaining to middle housing land divisions which took effect June 30, 2022.

**PUBLIC HEARINGS:**

Notice was published in the Ashland News on November 11, 2022 prior to the Planning Commission public hearing, and on December 28, 2022 prior to the City Council public hearing. A public hearing was held at the Planning Commission on November 22, 2022 and at the City Council on January 17, 2023. Notice was also sent to the Department of Land Conservation and Development on August 23, 2022.

**SUMMARY OF 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 (MHLD) 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
- A 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 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.

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).

The current land use code allows for land divisions both in terms of partitions and subdivisions through a land use process with requirements including minimum lot areas, dimensional requirements, access and minimum street frontage. Under SB 458, cities may not apply *any* approval criteria other than the approval criteria specified in SB 458 to applications for an MHL. The allowable criteria are limited to the city's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance. The proposed amendments are necessary to bring the city's land division requirements as they relate to middle housing allowed under HB 2001 in line with SB 458.

## **REVIEW CRITERIA**

The decision of the City Council together with the recommendation by the Planning Commission was based on consideration and findings of consistency with the following factors.

- A. Consistency with City of Ashland approval criteria for legislative amendments, AMC 18.5.9.020.B
- B. Consistency with City of Ashland Comprehensive Plan and Other City Policies
- C. Consistency with Oregon Statewide Planning Goals

## **EVALUATION AND COUNCIL FINDINGS:**

### ***A. Consistency with City of Ashland approval criteria for legislative amendments and zoning map amendments, AMC 18.5.9.020.B***

#### **18.5.9.020 Applicability and Review Procedure**

*Applications for Plan Amendments and Zone Changes are 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. (Ord. 3195 § 5, amended, 12/01/2020)*



Ashland Municipal Code (AMC) 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. The City Council finds it is necessary to amend the land use ordinance to meet the new state requirements for middle housing land divisions in SB 458.

In the 2021 legislative session, the Oregon State Legislature passed SB 458 which requires cities to approve middle housing land divisions permitted on or after July 1, 2022 when 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.

SB 458 provides that cities 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. 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; and (f) May require the dedication of right of way if the original parcel did not previously provide a dedication. SB458 makes clear that the type of middle housing developed on the original parcel is not altered by a middle housing land division, that notwithstanding ORS 197.312 (5), a city is not required to allow an accessory dwelling unit on a lot or parcel resulting from a middle housing land division, and that 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.

The current Ashland Land Use Ordinance (ALUO) code is not consistent with the new state requirements in that land use approval is required to partition or subdivide land, and

divisions through a land use action include requirements for minimum lot areas, dimensional requirements, access and minimum street frontage. Under SB 458, cities may not apply *any* approval criteria other than the approval criteria specified in SB 458 to applications for an MHL. The allowable criteria are limited to the city's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance. The proposed amendments are necessary to bring the city's land division requirements as they relate to middle housing allowed under HB 2001 in line with SB 458.

The City Council finds the land use ordinance amendments proposed here are necessary to create an approval process for middle housing land divisions to comply with SB 458, and are therefore consistent with AMC 18.5.9.020.B.

***B. Consistency with the Ashland Comprehensive Plan and other City Policies***

The *Ashland Comprehensive Plan* includes a goal in the Housing Element to “*ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland’s population (6.10.01).*” Included with this goal are the following applicable policies: “*Policy 1: Provide for a mix of housing types that are attractive and affordable to a diversity of ages, incomes, household sizes, and household types,*” and “*Policy 3: Integrate housing with other compatible land uses through flexible zoning provisions.*” The Housing Element includes another goal to “*support the creation and preservation of housing that is affordable to low and moderate income households and that is commensurate with the incomes of Ashland’s workforce (6.10.02).*”

**Finding:** The proposed land use code amendments allow properties containing duplexes to be divided through an expedited process in order to provide additional housing options for ownership that are more affordable due to the likelihood of smaller lots and parcels and smaller unit sizes.

The *Climate and Energy Action Plan (CEAP)* includes an action to “*Revise community development plans to favor walkable neighborhoods and infill density. Ashland has a series of long-range planning documents that guide development across Ashland districts, neighborhoods, and natural areas. Revisiting these plans to ensure that they support climate-ready development needs, such as walking, biking, transit, parking management, and climate adaptation features, will ensure that Ashland development is consistent with the City’s climate goals and commitments. It will be important to ensure that these activities do not come at the expense of higher housing costs, which could disadvantage low-income populations (CEAP ULT-4-2).*”

**Finding:** SB 458 provides that as a condition of approval of a middle housing land division, cities may require the dedication of right of way if the original parcel did not previously provide a dedication, and may require street frontage improvements where a resulting lot or parcel abuts the street. In combination with codes implementing HB 2001, the proposed land use code amendments will provide opportunities to develop duplexes as infill density within existing neighborhoods and with this infill make these established neighborhoods more walkable which is consistent with the CEAP.

The City Council finds and determines that the proposed land use code amendments are consistent with the Comprehensive Plan and other aforementioned City documents and policies.

### ***C. Consistency with Oregon Statewide Planning Goals***

#### ***GOAL 1: CITIZEN INVOLVEMENT***

*To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

**Finding:** The City of Ashland meets this requirement by having the Planning Commission serve as the Committee on Citizen Involvement, as well as having various citizen commissions with opportunities for the public to testify on general or specific matters. The Planning Commission discussed the proposed code amendments at an electronic public meeting on June 14, 2022. This meeting was held electronically via Zoom because of the City of Ashland's emergency declaration for the COVID-19 pandemic that began on March 15, 2020 and the Governor's Executive Order 20-16 that suspended all in-person public meetings. The Planning Commission also held a hybrid public hearing on November 22, 2022, with options to participate in person or electronically via Zoom. Opportunities to provide written and oral testimony were available at both commission meetings. The Planning Commission recommended approval of the attached ordinance. This Goal is met.

#### ***GOAL 2: LAND USE PLANNING***

*To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual bases for such decisions and actions.*

**Finding:** The proposed land use code amendments have an adequate factual base and are required by SB 458, as has been thoroughly described in this application. The implementation measures proposed are consistent with and adequate to carry out SB 458 and Comprehensive Plan polices as noted in these findings. The alternative to amending the land use code would be to implement middle housing land division regulations directly from SB 458. The Goal is met.

#### ***GOAL 3: AGRICULTURAL LANDS***

*To preserve and maintain agricultural lands.*

**Finding:** Not applicable because the proposal does not propose any land use regulation changes to agricultural lands outside of the Ashland Urban Growth Boundary (UGB).

#### ***GOAL 4: FOREST LANDS***

*To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land*

*consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

**Finding:** Not applicable because the proposal does not propose any land use regulation changes to forest lands outside of the Ashland UGB.

***GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES***

*To protect natural resources and conserve scenic and historic areas and open spaces.*

**Finding:** The proposed land use code amendments will not negatively impact inventoried Goal 5 resources.

For cities of Ashland's size, the middle housing regulations apply only to duplex dwellings. Duplex dwellings within the city's identified Water Resource Protection Zones (i.e., stream bank and wetland protection zones) follow the same provisions as the development of detached single-family dwellings including activities requiring permits in AMC Chapter 18.3.11 Water Resource Protection Zones (Overlays). SB 458 addresses only the division of lands containing duplex dwellings, and will not alter the applicability of regulations to Water Resource Protection Zones or negatively impact these resources.

For designated historic resources, duplex dwellings are treated the same as detached single-family dwellings. AMC 18.5.2.020 requires Site Design Review of exterior changes to any residential structure that is individually listed on the National Register of Historic Places and require a building permit, regardless of the number of dwelling units. AMC 18.2.5.070 Maximum Permitted Residential Floor Area in Historic District limits the floor area of residential dwellings in the City of Ashland's four national register historic districts. The maximum permitted floor area (MPFA) allows more floor area for a duplex than for a single-family, and provides an exemption for a detached duplex dwelling from the MPFA calculation if it is separated from the other structures by six feet or more. SB 458 addresses only the division of lands containing duplex dwellings, and will not alter the applicability of the historic district development regulations or negatively impact these resources. This Goal is met.

***GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY***

*To maintain and improve the quality of the air, water and land resources of the state.*

**Finding:** The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the existing goals and policies, and compliance with SB 458 and OAR Chapter 660 Division 46 does not negatively impact Goal 6. This Goal is met.

***GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS***

*To protect people and property from natural hazards.*

**Finding:** The City of Ashland has an acknowledged Comprehensive Plan that complies

with this goal. This proposal does not modify the existing goals and policies, and compliance with SB 458 does not negatively impact Goal 7.

AMC 18.3.10 ‘Physical and Environmental Constraints Overlay’ regulates the development of flood plain corridor lands, hillside lands, hillside lands with severe constraints, and wildfire lands. The standards that apply to the aforementioned natural hazard areas follow the same provisions for any structure, including duplex dwellings.

As previously modified with the implementation of HB 2001, AMC 18.3.10.090.A provides that existing parcels without adequate buildable area less than or equal to 35 percent slope are buildable for one single-family dwelling and an accessory residential unit, or a duplex. There are thirty-one vacant parcels, which is less than one percent of the residential parcels in the Ashland city limits, that do not have a buildable area that is less than or equal to 35 percent slope. Given that any development in the regulated Hillside Lands area is subject to the dimensional requirements of the underlying zone including lot coverage and that the Hillside Development Standards in AMC 18.3.10.090 regulate the areas of cut and fill, surface and groundwater design, building location and design, and tree preservation, the development of a single-family dwelling, a single-family dwelling and an accessory residential unit, or a duplex, and the ability to create middle housing lots for those duplexes, will result in comparable impact to the natural hazard area. In addition, development in these areas over 35 percent slope is required to include a geotechnical study that addresses site geology and suitability of the site for the proposed development from a geologic standpoint. SB 458 addresses only the division of lands containing duplex dwellings, and will not alter the applicability of the city’s Physical and Environmental Constraints Overlay regulations or the protection from natural hazards they were implemented to provide. This Goal is met.

***GOAL 8: RECREATIONAL NEEDS***

*To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

**Finding:** The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 7 and recreational needs. This Goal is met.

***GOAL 9: ECONOMIC DEVELOPMENT***

*To provide adequate opportunities throughout the state for a variety of economic activities vital to health, welfare, and prosperity of Oregon’s citizens.*

**Finding:** SB 458 and OAR Chapter 660 Division 046 for duplexes do not apply to lands with a nonresidential Comprehensive Plan designation and that are zoned for employment uses. The proposal does not modify the existing goals and policies related to Goal 9 and economic development. This Goal is met.

## ***GOAL 10: HOUSING***

*To provide for the housing needs of citizens of the state.*

**Finding:** The City of Ashland' 2021 Housing Capacity Analysis (HCA) recognizes that Ashland will need more diverse housing types to meet its housing needs and address demographic changes. The aging of the baby boomers and the household formation of the millennials and Generation Z will drive demand for renter- and owner-occupied housing, such as single- family detached housing, townhouses, duplexes, tri- and quad-plexes, and apartments. Both groups may prefer housing in walkable neighborhoods, with access to services. A Housing Production Strategy is expected to be adopted in the spring of 2023.

With the implementation of HB 2001, Ashland's land use code provides the ability to construct duplexes in all residential zones as outright permitted uses, without the requirement for a planning approval. Duplexes can be built on an existing structure converted simply with the approval of a building permit. And with the amendments proposed here, the land division of duplex dwellings will help provide additional housing options for ownership that are more affordable due to the likelihood of smaller lots and parcels and smaller unit sizes.

SB 458 provides that as a condition of approval of a middle housing land division, cities may require the dedication of right of way if the original parcel did not previously provide a dedication, and may require street frontage improvements where a resulting lot or parcel abuts the street. In combination with codes implementing HB 2001, the proposed land use code amendments here will provide opportunities to develop and divide duplexes as infill density within existing neighborhoods and with this infill make these established neighborhoods more walkable while also creating ownership opportunities. Where existing duplex dwelling units, or existing accessory residential dwelling units which might otherwise be converted to duplexes for division, are unable to provide right-of-way dedication and required city-standard street frontage improvements, these existing rental units would remain part of the needed rental housing inventory.

The amendments proposed here comply with SB 458 and allow duplex dwellings to be divided into individual middle housing lots, increasing homeownership opportunities. This Goal is met.

## ***GOAL 11: PUBLIC FACILITIES AND SERVICES***

*To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

**Finding:** The City of Ashland has master plans in place for water, wastewater and stormwater that address projected population growth in the Ashland city limits and UGB. The Water Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period. The Wastewater Master Plan was completed in 2012 and projects and plans for an adequate water supply for a 20-year planning period. The Stormwater and Drainage Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period. This Goal is met.

## **GOAL 12: TRANSPORTATION**

*To provide and encourage a safe, convenient and economic transportation system.*

*Oregon Administrative Rules*

*660-046-0030*

*Implementation of Middle Housing Ordinances*

*(3) When a local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.*

**Finding:** The City of Ashland adopted a Transportation System Plan (TSP) in 2013 which has gone through the post acknowledgement amendment process. The transportation system is planned to accommodate the population growth of the community for the 20-year planning period.

The City of Ashland has not evaluated the impacts of duplex dwellings on the transportation system in accordance with OAR 660-046-0030. The amendments are not site specific and therefore do not affect the functional classification of any street. The amendments will have no measurable impacts on the amount of traffic on the existing transportation system, as they are limited to allowing the division of lands where duplex dwellings are already required to be allowed under HB 2001, and therefore the amendments do not cause a “significant effect” under ORS 660-012-0060. This Goal is met.

## **GOAL 13: ENERGY CONSERVATION**

*To conserve energy.*

**Finding:** The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 13 and energy conservation. This Goal is met.

## **GOAL 14: URBANZIATION**

*To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

**Finding:** The proposed land use code amendments do not include changes to the Ashland urban growth boundary, and do not encourage sprawl, lower than targeted densities or uncoordinated development. The amendments proposed are limited to allowing expedited land divisions for land developed with duplexes under ORS 197.758 (3) as required under SB 458. The management of the City’s land use inventories is unaffected by these amendments. This Goal is met.

Based on the above discussion, the proposed amendments to the Ashland Land Use Ordinance are consistent with the statewide planning goals and therefore comply with the requirement that the amendments be consistent with state land use planning law.

Because the amendments are limited in scope, there are no other Administrative Rules applicable to this amendment. Likewise, there are no other applicable Oregon Revised Statutes that are criteria applicable to these amendments. (Note: Consistency with the Transportation Planning Rule (TPR) is discussed further in this document.)

**OVERALL COUNCIL CONCLUSIONS**

The City Council finds and determines the approval criteria for this decision have been fully met, based on the detailed findings set forth herein, the detailed findings and analysis of the Planning Commission, and supporting documents together with all staff reports, addenda and supporting materials in the whole record.

Specifically, the Council finds that the proposed land use code amendments are consistent with City of Ashland approval criteria for land use ordinance and zoning map amendments as set forth in ALUO 18.5.9.020.B and are consistent with the City of Ashland Comprehensive Plan and other City policies. The Council finds and determines that the proposed amendments are consistent the Oregon Statewide Planning Goals and SB 458.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES the ADOPTION of the following amendments to AMC Title 18 Land Use as reflected in the attached ordinance.

**Ashland City Council Approval**

\_\_\_\_\_  
City Council Approval

\_\_\_\_\_  
Date

Signature authorized and approved by the full Council this 21<sup>st</sup> day of February, 2023.

Attest:

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

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Douglas McGeary, City Attorney

\_\_\_\_\_  
Date



# PUBLIC COMMENT

**From:** [Amy Gunter](#)  
**To:** [City Council](#); [mayor@ashland.or.us](mailto:mayor@ashland.or.us)  
**Cc:** [Brandon Goldman](#)  
**Subject:** ORD. 3217 - Public Comments from Jan. 3. 2023  
**Date:** Tuesday, January 17, 2023 12:48:52 PM

---

Hello,

Thank you for your service and your thoughtfulness in addressing how the state statutes intended to increase Middle Housing and in part reduce overall housing costs while balancing Ashland's needs.

Specifically, my concerns are in regard to the requirement that the expedited land divisions will require compliance with Street Design Standards.

Ashland's Street Design Standards require in nearly all instances 5-foot sidewalks, 7-foot park rows, 22+ feet of pavement width, curb, gutter, and street trees. Though newer subdivisions are more able to comply with the present standards from AMC 18.4.6, many new developments seek relief from the standards due to the topography of the city, existing vegetation, property ownership, utility encroachments, and other physical constraints.

It is more rare for the existing streets to comply with the standards as presently adopted and many land development applications in established neighborhoods that partition or further develop seek exceptions to the street standards due to the impediments beyond their control.

The street standards provide an exception process, but that still requires steps to demonstrate that the existing or proposed improvements are better for pedestrians, bicyclists, and vehicles. In a number of older neighborhoods the streets have limited improvements but the properties could be divided if not for adherence street standards. This process will add uncertainty and expense that works against the needed housing objectives.

My concerns arise from situations where there is an existing duplex (triplex or four-plex) that can comply with all of the standards except compliance with Ashland's Street Design Standards. For example, I would estimate that the more than 60% of the streets south of Siskiyou Boulevard do not comply with standards. Maple Street, Wimer Street, Scenic Drive, Almond Street, High Street, Holly, Iowa, Clay, Park, Walker, Mary Jane. These are just some of the higher order streets and they do not comply with the street standards for the majority of the street distance.

The guidance from the state is that the jurisdiction may require compliance with street standards. In Ashland where the current street standards require substantial infrastructure above and beyond what exists on many of the public streets for new developments and with most partitions and subdivisions and its a challenge to comply, requiring these small parcel to absorb the infrastructure improvment costs or process a separate exception application with discretion will greatly limit the actual results.

Thank you,  
Amy

**Amy Gunter**

*Rogue Planning & Development Services*  
541-951-4020  
[www.rogueplanning.com](http://www.rogueplanning.com)

This communication, including any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain confidential or legally protected information. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution, or use of this communication is prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments from your system.

