

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please fill out a Speaker Request Form and place it in the Speaker Request Box by staff. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION
REGULAR MEETING
June 14, 2022
AGENDA
<https://zoom.us/j/97249483975>**

- I. **CALL TO ORDER:** 7:00 PM via Zoom

- II. **ANNOUNCEMENTS**

- III. **CONSENT AGENDA**
 - A. **Approval of Minutes**
 - 1. May 10, 2022 Regular Meeting

- IV. **PUBLIC FORUM**

- V. **OTHER BUSINESS**
 - A. Housing in E1/C1 Zones
 - B. Middle Housing Lot Division & Expedited Land Division Code Changes
 - C. Ashland Characteristics, Demographics and Urban Form Presentation
 - D. Election of Officers

- VI. **ADJOURNMENT**

**CITY OF
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
REGULAR MEETING
Draft Minutes
May 10, 2022

I. **CALL TO ORDER:** 7:00 PM, via Zoom
Chair Haywood Norton called the meeting to order at 7:01 p.m.

Commissioners Present:

Michael Dawkins
Haywood Norton
Doug Knauer
Kerry KenCairn
Lisa Verner

Staff Present:

Bill Molnar, Community Development Director
Brandon Goldman, Planning Manager
Derek Severson, Senior Planner
Aaron Anderson, Associate Planner
Michael Sullivan, Administrative Assistant

Absent Members:

Lynn Thompson

Council Liaison:

Paula Hyatt

II. **ANNOUNCEMENTS**

Commissioner Doug Knauer updated the Commission regarding his involvement with the Social Equity and Racial Justice Commission (SERJ). Commissioner Knauer volunteered to act as Liaison between the Planning Commission and the SERJ Commission, and attended their May 7, 2022 meeting. A quorum was not reached and the meeting was held informally. Commissioner Knauer provided the SERJ Commission with a brief presentation on how the Planning Commission utilizes the lens of social equity in its decision-making process. He explained the Commission's procedures and emphasized its goal of total impartiality when reviewing Planning Actions.

Community Development Director Bill Molnar made the following announcements:

- An Election of Officers for the Commission will be held at its June 14, 2022 meeting.
- The Commission will consider holding its first annual retreat since the start of the Pandemic, and will discuss holding site-visits for potential locations. Mr. Molnar stated that he would circulate a list of dates for the retreat and that the Commission should consider any items or projects they would wish to discuss at that meeting.
- The Commission has received two applications to fill the seat vacated by Commissioner Pearce, and the City Council could potentially make an appointment at its next meeting.
- The party interested in developing the Croman Mill Site, Townmakers, LLC, have remained in contact with the Planning Department and are moving forward with plans for development. The group has not yet purchased the site, but are preparing another Pre-Application to submit to Planning staff and present specific plans for development. The project would require a change to the Ashland master plan and codes if approved, necessitating a legislative process where the Commission would hold an advisory role and forward a recommendation to the City Council for a final decision. The applicants recognize the employment and residential needs of the City and are considering a phased approach for development. The plans have continued to evolve based on market factors, the needs of the community, and AMC guidelines. The current owners have hired an environmental group from Portland to create a final clean-up plan for the Croman Mill site, which will then be submitted to the Oregon Department of Environmental Quality for approval. There has been some clean-up activity at the southern edge of the site, though it remains to be seen where the phased development of the site will begin.

III. CONSENT AGENDA

Approval of Minutes

1. April 12, 2022 Regular Meeting

Commissioners Verner/Knauer m/s to approve the Consent Agenda. Voice Vote: all AYES. Motion passed. 5-0.

IV. PUBLIC FORUM - None

V. UNFINISHED BUSINESS

- A. Approval of Findings for PA-APPEAL-2022-00014, 34 Scenic Dr.

Ex Parte Contact

No ex parte contact was reported.

Commissioners Verner/KenCairn m/s to approve the Findings as presented. Voice Vote: all AYES. Motion passed. 5-0.

- B. Approval of Findings for PA-T2-2022-00037, 165 Water St.

Ex Parte Contact

No ex parte contact was reported.

Commissioners Dawkins/Verner m/s to approve the Findings as presented. Voice Vote: all AYES. Motion passed. 5-0.

VI. DISCUSSION ITEMS

- A. Memo – Legislative Update

Staff Presentation

Senior Planner Derek Severson informed the Commission of two legislative updates from the state that staff have begun work on. The first item concerns an executive order from the Governor of Oregon in 2020 which directed state agencies to adopt rules to reduce greenhouse gases. One of the key approaches to achieve this goal is the creation of more mixed-use developments along transit lines to encourage people work closer to their place of residence, thereby reducing reliance on automotive transportation. The cities in the eight Metropolitan Planning Organizations (MPOs) will be required to identify Climate Friendly Areas (CFAs) that could accommodate up to 30% of their future population growth. Zoning changes would likely be necessary to allow for higher population densities (fifteen dwellings per acre), including reducing or eliminating minimum parking requirements, allowing building heights of up to 50ft, and placing a greater emphasis on alternative transit networks and electric vehicle infrastructure. The rule-adoption process is expected to finish in May, 2022, and the consultants will begin work shortly thereafter. The state will fund these consultants to assist cities in identifying CFAs and with the public involvement process. The study and identification of CFAs will conclude by June, 2023, and cities will be required to create a Comprehensive Plan, as well as Zoning adjustments to regulations and maps to implement the changes by June 30, 2024. Mr. Severson added that the Commission should expect to begin holding Public Hearings in the near future to gather input from the public before CFAs are identified and discussed.

The second legislative update from the state relates to Senate Bill 458 regarding Middle Housing Lot Divisions (MHLD). This bill provides ownership opportunities for 'Middle Housing' units built under House Bill 2001, though those lots would still be subject to the parent property's approval and will not have full development rights. Senate Bill 458 also sets specific parameters for what conditions and criteria would be considered for approval. MHLDs will not be considered land use decisions, and will instead be processed using the Expedited Land Divisions procedure of the ORS to streamline the review process. Affected cities will be required to adopt code changes by June 30, 2022 or to implement them directly from state law (see attachment #1).

Discussion

Mr. Molnar inquired if early Public Hearings would be held to discuss boundaries and locations for potential CFA sites. Mr. Severson advised that the public be introduced to the process as early as possible, and that a Public Hearing should be held once a consultant has been selected. He added that the state has not yet approved the final guidelines, but that each city will be assigned two consultants, and that the consultant for public engagement will likely initiate the process early.

Commissioner Verner asked if the City would be able to select the consultants or if they would be assigned. Mr. Severson responded that they will likely be assigned by geographic location, but had commented to the state that Scott Fregonese of 3J Consulting would be a good fit due to his past work with the City.

Chair Norton pointed out that the guidelines and criteria regarding CFAs would be directed by the state, and that there was no request for public feedback during the process. He requested that staff provide the public with examples of high density developments similar to the mandated CFAs. Chair Norton also expressed concern over the state recommendation that cities allow developments of up to 50ft, and suggested that the public be informed of the potential zoning changes before they are adopted. He added that some urban design studies might be necessary before choosing which zones would be affected by the new standards, and that a universal zoning change would be detrimental to the City.

Commissioner Verner asked if the state had mandated that a certain number of CFAs be created. Mr. Severson responded that the number of CFAs had not been given, only that they should accommodate 30% of a city's population growth needs. He added that the state appears to be envisioning most of the CFAs being located in downtown areas, but that the City may want choose areas that would be most appropriate for it.

Mr. Molnar agreed with Chair Norton's concern regarding building height, but commented that the CFAs will likely be located in commercial areas that could best accommodate these changes and have adequate transit access. He added that buildings up to 55ft in height are currently allowed in the downtown area with a Conditional Use Permit (CUP), and up to 55ft in most commercial zones with a CUP if more than 100ft away from a residential area. Mr. Molnar stated that creating CFAs to accommodate 30% of the City's population would be attainable based on the City's projected population growth for the next 20 years. Planning Manager Brandon Goldman calculated that 450-700 new housing units would be required to meet the 30% CFA standard, and that the Normal Avenue Neighborhood Plan could accommodate up to 450 new housing units.

Commissioner Knauer inquired if staff was comfortable with what the state had outlined for MHLDs, citing the June, 2022 deadline for adoption. Mr. Severson responded that House Bill 2001 was limited to Accessory Residential Units (ARUs) and duplexes, and that Senate Bill 458 would not conflict with its guidelines regarding ARUs. Mr. Severson stated that the new state law could be applied to duplex applications while a new city ordinance is adopted.

Chair Norton asked if the state would regulate the market if it found that 70% of non-CFA sites had already been developed without the required percentage of CFAs being completed. He also queried if the City would be able to propose new transit routes in order to accommodate the CFAs and not be limited to existing transit routes. He commented that transit routes would need to be altered to run through the Croman Mill Site to be considered as a CFA.

Commissioner Dawkins pointed out that the City's Transportation System Plan (TSP) has already been outlined, and that the Railroad District should be considered as a CFA with greater height allowances. He also suggested that the City consider alternatives to on-site parking, such as regularly scheduled public transportation from parking areas outside of the City.

Chair Norton asked staff how these legislative updates would be integrated with the Housing Production Strategy (HPS). Mr. Goldman responded that once the CFA rulemaking process is complete it will be integrated into the development of the HPS, which is already considering changes to building height limits and reducing parking requirements for buildings. He stated that developing those strategies in compliance with state provisions will be vital in determining if they could be implemented in other areas of the City, not just CFAs. He cited various strategies being considered in the HPS, such as a reduction in parking requirements for affordable housing, multi-family housing, and mixed-use developments, and whether these could be applied to the future CFAs.

Chair Norton expressed a concern over there being significant overlap between the HPS and the development of the CFAs, and whether the two consultants for these programs would be working together to ensure cohesion. Mr. Goldman replied that the strategies that come out of the HPS will be implemented over an eight-year period, and could therefore be adopted in compliance with new state requirements. Mr. Molnar added that Planning staff will be working closely with staff from the Department of Land Conservation and Development (DLCD) and its regional representative to assist in coordinating multiple projects.

Public Comment

The Commission briefly discussed a public comment submitted by Mark Knox, who requested that the Commission consider mixed-use commercial buildings in certain Commercial and Residential Zones be temporarily permitted as 100% residential buildings (see attachment 2). Mr. Molnar stated that the City Council had requested that the Commission consider allowing mixed-use buildings to be 100% residential with a CUP, with the possibility of returning to commercial use in the future. He added that the mechanism for achieving this is being discussed by staff, but that Mr. Knox requested the Commission consider this course of action when the item is brought back before the Commission.

Commissioner KenCairn stated that it would be premature to discuss this issue before it is sent back to the Commission. Chair Norton disagreed with Mr. Knox's assertion that the City Council, Planning Staff, and the Commission hold any bias against development in the City.

VII. ADJOURNMENT

Meeting adjourned at 8:00 p.m.

*Submitted by,
Michael Sullivan, Administrative Assistant*

Climate Friendly & Equitable Communities & Middle Housing Lot Divisions

CITY OF
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Planning Commission Meeting May 10, 2022



A duplex in Olympia



Climate Friendly & Equitable Communities Rulemaking

CITY OF
ASHLAND

By June 30, 2023

- Cities in the eight Metropolitan Planning Organizations (MPOs) will be required to identify Climate Friendly Areas (CFAs).
- CFAs would need to accommodate 30 percent of future growth.
- Rules call for zoning adjustments in CFA's to allow greater heights (at least 50 feet), greater density (at least 15 dwelling units per acre, with minimum densities, to support transit), and specific employment generation targets.
- There will be recommendations or requirements to significantly reduce or fully eliminate minimum requirements for off-street parking.
- Cities will need to plan for high-quality, connected bicycle, pedestrian and transit networks, and to require electric vehicle infrastructure with new development.
- Rules will change transportation engineering methodology used in determining success/failure of a roadway.
- Emphasis on avoiding gentrification and displacement and focusing on equity.
- State consultants for technical work in identifying CFAs and for public involvement process.
- Rule adoption is envisioned to be complete May 19th, and work with consultants will begin shortly thereafter.

By June 30, 2024

- Cities to make Comp Plan & Zoning changes to regulations and maps to implement rules.

Senate Bill 458

Middle Housing Lot Divisions (MHL D)

- ❑ Provides ownership opportunities for 'Middle Housing' units built under HB2001, but lots are still subject to parent property's approval and don't have full development rights (*i.e. a middle housing lot that is part of a duplex parent property does not have the right to build an accessory residential unit*).
- ❑ Sets specific parameters for what criteria may be considered for approval.
- ❑ Sets specific parameters for what conditions may be required with approval.
- ❑ MHL Ds are not land use decisions & must be processed using the Expedited Land Division procedure in the ORS (*i.e. a 63-day time clock instead of 120-days*).
- ❑ Any appeals go to a referee who cannot be a city employee or a city official.
- ❑ **Does not apply to accessory residential units.**
- ❑ Cities must adopt codes by June 30, 2022 or implement directly from state law.



A duplex in Olympia

Middle Housing Lot Division Requirements Under SB 458

- ❑ Applies to any lot that allows middle housing under ORS 197.758 (*i.e. HB 2001*).
- ❑ An MHL D 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** (e.g., all pedestrian paths circulating through the parent parcel)
 - ✓ **Common areas** (e.g., common courtyards, community buildings, etc.)
 - ✓ **Driveways and parking areas**, if shared.
 - ✓ **Utilities**
- ❑ An MHL D proposal must meet 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. MHL Ds could occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed. SB 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, MHL D applications must include a middle housing development (*either proposed or built*) that complies with the building code and the City's middle housing development code.

Cities May Require...

- ❑ **Street Frontage Improvements.** SB 458 specifies that cities can require street frontage improvements for newly created lots abutting a street. Land divisions are often a trigger for requiring frontage improvements, whereas infill development on an existing lot may not trigger such improvements. Under SB 458, frontage improvements may be required with an MHLD.
- ❑ **Right-of-way Dedication:** SB 458 specifies that cities may require dedication of right-of-way if the original parcel did not previously provide a dedication. Like frontage improvements, such a dedication requirement would be dependent upon the City making findings to demonstrate consistency with constitutional requirements (*i.e. a demonstration of proportionality under Dolan*).
- ❑ **Building Permit Review.** The City may allow concurrent review of building permits and an MHLD application for a middle housing development. Even if permits are not requested concurrently, the applicant is required to demonstrate that the application meets the Oregon Residential Specialty Code.
- ❑ **Tentative/Final Plats:** Cities may require that applicants submit tentative and final plats in a manner consistent with their applicable platting requirements.

- ❑ **Cities cannot apply any approval criteria other than the approval criteria specified in SB 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.**

Expedited Land Divisions (ELDs)

Cities are required to apply the expedited land division (ELD) process from ORS 197.360 to 197.380 to middle housing land divisions (MHLDs) to streamline review. The expedited land division process is outlined below:

- Submittal requirements are 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 not 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.
- A 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).

Climate Friendly & Equitable Communities & Middle Housing Lot Divisions

CITY OF
ASHLAND

Planning Commission Meeting May 10, 2022



A duplex in Olympia



Michael Sullivan

To: Brandon Goldman
Cc: Bill Molnar; Mark Knox
Subject: RE: Legislative Updates - Housing

Planning Commission/City Council

RE: Legislative Update / Affordable Housing

Thank you for your time and effort.

In reading the legislative update items within the Planning Commission's 5/10/22 packet, I wanted to request the Planning Commission, City Council and Planning staff to again consider 100% ground floor residential "temporary" housing in certain commercial and employment zoned areas in Ashland, but specifically NOT within the Downtown. Unfortunately, I'm not aware of any updates or revisions since the Council's last hearing when they kicked the item back to the Planning Commission.

Nevertheless, our world, state and city are in a serious crisis and little is occurring from the powers of government and if it is, it's agonizingly slow and disconnected. Please note that I do not blame any individual or body as that's illogical and absurd as the problems are too complex and beyond a simple code fix from the City of Ashland or State of Oregon. As a private land use planner and developer, I'm trying everything I can do to push housing type options and incorporate climate responsible elements within our projects that also must be within market parameters, financing constraints and code limitations.

That said, I sincerely believe we (the City and community of Ashland) can act quicker and pick some lower hanging fruit such as temporarily allowing ground floor office and commercial buildings to be used as residential housing. I'm tired of seeing human beings in the streets when vacant commercial spaces sit empty or mixed-use buildings can't get financing simply because banks will not loan due to the City's ground floor commercial requirements.

We are failing as a society and a community when the simplest of code changes to affordably house humans are dismissed over fears that land use regulations are too complex to enforce years after the housing crisis is resolved. To prevent such a housing opportunity because we do not know "how to revert such temporary spaces back to commercial/office use" or "what the trigger would be to revert back to commercial/office use" is simply not an acceptable excuse. I truly understand the questions, but to do nothing is incredibly disappointing, especially now after years beyond the Alameda fire when this plea was originally proposed.

For those who think this is some type of strategy to develop more hi-end condominiums, you are sadly mistaken and need to open your eyes and ears to what's occurring and get over your anti-development mentality and realize there are simple options that exist that can help address our affordable housing needs. For example, if such a code were to be adopted, why not make it a standard requirement that such housing on the ground floor be affordable rental housing at 80% AMI?? Keep our excellent design and building code standards intact, but who cares about the timeframe when in reality, there's so many people falling through the cracks and into their cars or into the streets as I write this.

Please do something and do it soon.

Mark Knox, 604 Fair Oaks Court, Ashland

OTHER BUSINESS

Housing in E-1 & C-1 Zones

Memo

DATE: June 14, 2022

TO: Ashland Planning Commission

FROM: Brandon Goldman, Planning Manager

RE: Housing in Employment Zones

Summary

This is a discussion item about the potential land use code amendments to allow more housing in the employment zones. The primary changes to the land use code as proposed would allow up to 65 percent of the ground floor of mixed-use buildings to be used as residential dwellings, and the elimination of residential density limitations for mixed-use developments in the Commercial (C-1) and Employment (E-1) zones.

The Planning Commission held a public hearing on December 14, 2021, and recommended approval of the attached ordinance amending AMC Title 18 Land Use.

The City Council reviewed the proposed land use code amendments at a public hearing on February 1, 2022, and did not approve first reading of the ordinance at that time. The Council wished to further explore other possibilities to allow the entirety of the first floor of developments on E-1 and C-1 lands to be residential provided certain housing affordability conditions were met. Further, given the potential impacts to the available supply of commercial property the Council wished to wait until the results of the Chamber of Commerce's Economic Diversification Strategy report being prepared by ECONorthwest were available for consideration.

The Council provided two separate motions relating to this item on February 1, 2022 as follows:

Graham/DuQuenne moved that we postpone this item until the end of May 2022 to give staff time to analyze the economic information that comes forward from the Chamber Study. Motion passed unanimously.

Hyatt/Jensen moved that revert this item back to the planning commission to specifically have a conditional use permit on the 35% that would be commercial to be used as residential rental only between 80-100% AMI revertible upon expiration of lease between 5–10-year period. Motion passed unanimously.

Background

This project was initiated by the City Council on March 16, 2021. The Council directed staff to work with the Planning Commission to address the following project goal and objectives:

Project Goal: Provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing.



Project Objectives

- Maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development.
- Increase the supply of moderately-priced rental and for-purchase housing.
- Jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.)

Currently, at least 65 percent of the ground floor of buildings in the commercial (C-1) and employment (E-1) zones is required to be commercial and light industrial uses. The remaining 35 percent of the ground floor can be used for residential dwellings as well 100 percent of the upper stories in multi-story buildings. The exceptions are: 1) in the Transit Triangle (TT) overlay, a minimum of 35 percent of the ground floor is required to be used for commercial and light industrial uses and 2) in the neighborhood commercial area of the North Mountain Neighborhood District, the ground floor can be used entirely for housing but must be built to commercial building code standards so that the space can be converted to commercial uses in the future.

In order to ensure that Ashland's inventory of commercial and employment lands can continue to accommodate future business development, the city contracted with Fregonese and Associates to assist in analyzing the buildable lands data, building permits issued, and Ashland's employment data over the last 10 years. This analysis found there is presently sufficient C-1 and E-1 land for future employment needs. Specific items in the data analysis include the following.

- The land consumption rate in the C-1 and E-1 zones is relatively low with an average of 2 acres per year used for the last 8 years.
- Of the 50 building permits that were issued for commercial development in the last 10 years, 26 permits were in located in the C-1 and E-1 zones. The other 24 permits were located in the C-1-D zone (Downtown), or were public projects such as SOU and Ashland School District buildings which are not located in the C-1 and E-1 zones.
- The 2007 Economic Opportunities Analysis (EOA) forecasted more employment growth than has occurred over the last 14 years. The EOA projected 15,220 projected jobs by 2027, including 10,654 jobs in retail and services. State employment data shows a total of 10,237 jobs in the Ashland Urban Growth Boundary as of 2019.
- The 2007 Economic Opportunities Analysis determined that 30% of the employment growth would not require consumption of vacant land.
- Currently, approximately 20% of the jobs within Ashland are in residential zones.

The Oregon Statewide Planning System requires all cities to maintain an adequate land supply for economic development and employment growth. To demonstrate compliance with the State goals in amending our local land use ordinance, the City can rely on existing adopted plans provided there are no significant changes in economic development opportunities based on new information about national, state, regional, count and local trends (OAR 660-009-0010(3)). A second option under the State's administrative rules requires changes to the designation of over two acres of land from an employment use designation to any other use to be supported by the City's comprehensive plan and existing



Economic Opportunities Analysis. If the proposed amendment can't be supported by the adopted comprehensive plan and EOA an update to the comprehensive plan and/or EOA is required (OAR 660-009-0010(4)).

The analysis performed by Fregonese Associates could be used to address the above Statewide planning goals for the proposed code amendments to increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay.

As directed by the City Council's motion on February 1st, the Planning Commission is to reconsider revisions to the land use code which could allow up to 100 percent of the ground floor of newly constructed buildings in the C-1 and E-1 zones to be used for residential uses, provided the additional areas dedicated to residential, in excess of 65% of the ground floor allowance previously proposed, is restricted to be rental housing affordable to households earning less than the area median income (100%AMI). Amendments which allow 100 percent of buildings in the C-1 and E-1 zones to be used for housing will likely be considered a significant change from the employment land use designation under the State's administrative rules.

As a result, it is Staff's understanding that the 2007 EOA would need to be updated to evaluate whether there would remain an adequate supply of employment lands to address Ashland's future economic and job needs to justify making code amendments that allow the entire building or development to be used for residential purposes in the C-1 and E-1 zones. The Chamber of Commerce is presently working with ECONorthwest to develop a Economic Diversification Strategy report which may inform the discussion around employment land needs. Although this was anticipated to be available in May of this year the City has not yet received a final report from the Chamber.

Next Steps

Review potential code options at a Planning Commission study session following receipt of the Economic Diversification study from the Ashland Chamber of Commerce, and forward recommendations to the City Council for consideration.



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ORDINANCE NO. 3205

**AN ORDINANCE AMENDING CHAPTERS 18.2.3, 18.2.6 AND 18.3.13 OF THE
ASHLAND LAND USE ORDINANCE REGARDING ALLOWANCES FOR
RESIDENTIAL USES IN MIXED-USE BUILDINGS AND DEVELOPMENTS IN THE
COMMERCIAL AND EMPLOYMENT ZONES.**

Annotated to show **deletions** and **additions** to the code sections being modified. Deletions are **~~bold lined through~~** and additions are in **bold underline**.

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

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

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

WHEREAS, beginning in early 2020, the COVID-19 pandemic resulted in the closure of businesses throughout the United States and a shift to conducting operations remotely and electronically, thereby temporarily resulting in a decreased need for office and commercial space; and

WHEREAS, less demand for office space is expected to continue as some companies move to smaller offices and use work from home and hybrid arrangements.; and

1 **WHEREAS**, prior to 2020, there was a decline in construction of large retail buildings in the
2 U.S. and the e-commerce share of the retail market was increasing nationally. The COVID-19
3 pandemic resulted in an even greater shift to online retail purchases.; and
4

5 **WHEREAS**, the City of Ashland is required to perform a housing capacity analysis every eight
6 years as required by ORS 197.296 and OAR 660-0008-0045. House Bill 2003 passed in the 2019
7 Oregon legislative session and amended the previously mentioned state laws and rules to require
8 cities in Oregon to perform the housing capacity analysis and housing production strategy.; and
9

10 **WHEREAS**, the Ashland City Council adopted the 2021-2041 Housing Capacity Analysis
11 (HCA) on August 17, 2021 as a technical report and supporting document to the Ashland
12 Comprehensive Plan. The HCA provides a number of recommended policy changes to address
13 Ashland’s unmet housing needs including increasing the allowance for residential dwellings in
14 commercial and employment zones and developing new housing closer to downtown and
15 commercial centers to reduce dependency on automobiles for transportation.; and
16

17 **WHEREAS**, the Almeda wildfire increased the regional need for affordable housing by
18 destroying about 2,549 dwellings in September 2020. The Almeda fire burned from north
19 Ashland to just south of Medford, with the cities of Phoenix and Talent losing the majority of
20 housing. The HCA recognized that the losses due to the Almeda fire increased regional need for
21 affordable housing and overall pressure on the Ashland housing market.; and
22

23 **WHEREAS**, amendments to the allowances for housing in the commercial and employment
24 zones are needed to provide more flexibility in the commercial and employment zones to
25 respond to fluctuations and changes in the economy and demand for housing.; and
26

27 **WHEREAS**, the City of Ashland Planning Commission conducted on December 14, 2021 a
28 duly advertised public hearing on amendments to the Ashland Land Use Ordinance concerning
29 the standards relating to annexations, and following deliberations recommended approval of the
30 amendments.; and

1
2 **WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing
3 on the above-referenced amendments February 1, 2021.; and
4

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

9 **WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and
10 benefit the health, safety and welfare of existing and future residents of the City, it is necessary to
11 amend the Ashland Municipal Code and Land Use Ordinance in manner proposed, that an adequate
12 factual base exists for the amendments, the amendments are consistent with the comprehensive
13 plan and that such amendments are fully supported by the record of this proceeding.
14

15 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**
16

17 **SECTION 1.** The above recitations are true and correct and are incorporated herein by this
18 reference.
19

20 **SECTION 2.** Section 18.2.3.130 [Dwellings in Non-Residential Zones – Special Use Standards]
21 of the Ashland Land Use Ordinance is hereby amended to read as follows:
22

23 **18.2.3.130 Dwellings in Non-Residential Zones**

24 Where dwellings are allowed in non-residential zones, they are subject to all of the following
25 requirements.

- 26 A. Dwellings in the E-1 zone are limited to the R-overlay zone. See chapter 18.3.13 Residential
27 Overlay.
28 B. Dwellings in the E-1 and C-1 zones shall meet all of the following standards, except that
29 dwellings developed under the Transit Triangle (TT) overlay option are not subject to
30 subsection 18.2.3.130.B, below. See section 18.3.14.040 for the allowed uses in the TT
overlay.

1. **Mixed-Use Developments Outside of the Downtown Design Standards Overlay.** ~~–If
there is one building on a site, ground floor residential uses shall occupy not~~

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~~more than 35 percent of the gross floor area of the ground floor. Where more than one building is located on a site, not more than 50 percent of the total lot area shall be designated for residential uses. At least 65 percent of the gross floor area of the ground floor shall be designated for permitted uses and uses permitted with special use standards, not including residential uses.~~

a. Applicability. This subsection, 18.2.3.130.B.1, applies to mixed-use buildings or developments that meet all of the following requirements.

i. Location. The mixed-use building or development shall be located outside of the Downtown Design Standards overlay.

ii. Lot Size. The mixed-use building or development shall be located on a lot that is less than 10 acres in size. Mixed-use developments located on lots 10 acres in size and greater shall be subject to the requirements of subsection 18.2.3.130.B.2, below.

ii. Building Height. The mixed-use building shall be two or more stories in height. Mixed-use buildings that are one story in height are subject to the requirements of subsection 18.2.3.130.B.2, below.

b. Gross Floor Area.

i. One Building. When a planning application is limited to one building, residential uses may occupy up to 65 percent of the gross floor area of the ground floor. At least 35 percent of the gross floor area of the ground floor shall be designated for permitted uses and uses permitted with special use standards, not including residential uses.

ii. More Than One Building. When a planning application includes more than one building, the equivalent of at least 35 percent of the gross floor area of the ground floor for all buildings shall be designated for permitted uses and uses permitted with special use standards, not including residential uses.

c. Residential uses shall be subject to the same setback, landscaping, and design standards as for permitted uses in the underlying zone.

d. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.

~~2. Mixed Use Developments Inside the Downtown Design Standards Overlay, Large Lots and One-Story Mixed-Use Buildings. Residential densities shall not exceed 15 dwelling units per acre in the E-1 zone, 30 dwelling units per acre in the C-1 zone, and 60 dwelling units per acre in the C-1-D zone. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.~~

a. Applicability. This subsection, 18.2.3.130.B.2, applies to mixed-use buildings and developments located in the Downtown Design Standards Overlay. In addition, this subsection applies to mixed-use buildings and developments

1 located on lots that are 10 acres and greater in size and to one-story mixed-use
2 buildings, whether the lot or building is located inside or outside the
3 Downtown Design Standards overlay.

4 i. Location. Mixed-use buildings and developments located in the Downtown
5 Design Standard overlay shall be subject to the requirements of this
6 subsection.

7 ii. Lot Size. Mixed-use buildings and developments located on lots 10 acres
8 and greater in size shall be subject to the requirements of this subsection.

9 iii. Building Height. Mixed-use buildings that are one story in height shall be
10 subject to this subsection.

11 **b. Gross Floor Area.**

12 i. One Building. When a planning application is limited to one building,
13 residential uses may occupy up to 35 percent of the gross floor area of the
14 ground floor. At least 65 percent of the gross floor area of the ground floor
15 shall be designated for permitted uses and uses permitted with special use
16 standards, not including residential uses.

17 ii. More Than One Building. When a planning application includes more than
18 one building, the equivalent of at least 65 percent of the gross floor area of
19 the ground floor for all buildings shall be designated for permitted uses and
20 uses permitted with special use standards, not including residential uses.

21 3. Residential uses shall be subject to the same setback, landscaping, and design
22 standards as for permitted uses in the underlying zone.

23 4. Off-street parking is not required for residential uses in the C-1-D zone.

24 **5. For the purpose of density calculations, units of less than 500 square feet of gross**
25 **habitable floor area shall count as 0.75 of a unit.**

26 **SECTION 3.** Section 18.2.6.030 [Unified Standards for Non-Residential Zones – Standards for
27 Non-Residential Zones] of the Ashland Land Use Ordinance is hereby amended to read as
28 follows:
29

Table 18.2.6.030 – Standards for Non-Residential Zones (Except as modified under chapter 18.5.5 Variances.)				
Standard	C-1	C-1-D	E-1	M-1
Residential Density ¹ (dwelling units/acre)	30 du/ac <u>No Density</u> <u>Maximum</u>	60 du/ac <u>No Density</u> <u>Maximum</u>	15 du/ac <u>No Density</u> <u>Maximum</u>	NA

Table 18.2.6.030 – Standards for Non-Residential Zones
 (Except as modified under chapter 18.5.5 Variances.)

Standard	C-1	C-1-D	E-1	M-1
¹ where allowed per section 18.2.3.130 ; within E-1 zone, per R-Overlay (see chapter 18.3.13 Residential Overlay).				
Lot Area, Width, Depth Lot Coverage	There is no minimum lot area, width or depth, or maximum lot coverage; or minimum front, side or rear yard, except as required to comply with the special district and overlay zone provisions of part 18.3 or the site development and design standards of part 18.4 .			
Setback Yards (feet)	There is no minimum front, side, or rear yard required, except where buildings on the subject site abut a residential zone, in which case a side of not less than 10 ft and a rear yard of not less than 10 ft per story is required. The solar setback standards of chapter 18.4.8 do not apply to structures in the C-1-D zone. Except for buildings within 100 feet of a residential zone, the solar setback standards of chapter 18.4.8 do not apply to structures in the C-1 zone. See also section 18.2.4.030 Arterial Street Setback.		There is no minimum front, side, or rear yard, except 20 ft where adjoining a residential zone.	
Building Height ^{2&31 & 2} – Maximum (feet)	40 ft, except: - Buildings greater than 40 ft and less than 55 ft are permitted in C-1-D zone with approval of a Conditional Use Permit. -Where located more than 100 feet from a residential zone, buildings greater than 40 ft and less than 55 ft are permitted in C-1 zone with approval of a Conditional Use Permit.		40 ft	
²¹ See definition of “height of building” in section 18.6.1.030 .				
³² Parapets may be erected up to five feet above the maximum building height; see also, 18.4.4.030 .G.4 for mechanical equipment screening requirements, and 18.5.2.020 for Site Design Review for mechanical equipment review process.				
Landscape Area – Minimum (% of developed lot area)	15%	None, except parking areas and service stations shall meet the standards of chapters 18.4.3 Parking, Access, and Circulation, and 18.4.4 Landscaping, Lighting, and Screening.	15%	10%

SECTION 4. Section 18.3.13.010 [Residential Overlay Regulations – Residential Overlay] of the Ashland Land Use Ordinance is hereby amended to read as follows:

1
2 **18.3.13.010 Residential Overlay Regulations**

3 **A. Purpose.** The Residential overlay is intended to encourage a concentration and mix of
4 businesses and housing that provides a variety of housing types, supports resource and
5 energy conservation, and promotes walking, bicycling, and transit use.

6 **B. Applicability.** The Residential overlay applies to all property where 'Residential Overlay' (R)
7 is indicated on the Zoning map.

8 **C. Requirements.** ~~The Dwellings in the Residential overlay requirements are as
9 follows shall meet the applicable standards in section 18.2.3.130, except that
10 dwellings developed under the Transit Triangle (TT) overlay option are not subject to
11 subsection 18.3.13.010 C, below. See section 18.3.14.040 for the allowed uses in the
12 TT overlay or 18.3.14.040 for the TT overlay.~~

13 ~~1. **Mixed-Use Developments.** If there is one building on a site, ground floor
14 residential uses shall occupy not more than 35 percent of the gross floor area of
15 the ground floor. Where more than one building is located on a site, not more than
16 50 percent of the total lot area shall be designated for residential uses. At least 65
17 percent of the gross floor area of the ground floor shall be designated for
18 permitted uses and uses permitted with special use standards, not including
19 residential uses.~~

20 ~~2. **Residential densities shall not exceed 15 dwelling units per acre. For the purpose
21 of density calculations, units of less than 500 square feet of gross habitable floor
22 area shall count as 0.75 of a unit.**~~

23 ~~3. **Residential uses shall be subject to the same setback, landscaping, and design
24 standards as for permitted uses in the E-1 District.**~~

25 **SECTION 5. Codification.** In preparing this ordinance for publication and distribution, the City
26 Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within such
27 limitations, may:

- 28 (a) Renumber sections and parts of sections of the ordinance;
29 (b) Rearrange sections;
30 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
(d) Delete references to repealed sections;
(e) Substitute the proper subsection, section, or chapter numbers;
(f) Change capitalization and spelling for the purpose of uniformity;
(g) Add headings for purposes of grouping like sections together for ease of reference; and
(h) Correct manifest clerical, grammatical, or typographical errors.

1 **SECTION 6. Severability.** Each section of this ordinance, and any part thereof, is severable,
2 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
3 remainder of this ordinance shall remain in full force and effect.

4
5 The foregoing ordinance was first read by title only in accordance with Article X,
6 Section 2(C) of the City Charter on the ___th day of _____, 2022,
7 and duly PASSED and ADOPTED this ___th day of _____, 2022,

8
9 _____
10 Melissa Huhtala, City Recorder

11
12
13 SIGNED and APPROVED this ___ day of _____, 2022.

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17 _____
18 Julie Akins, Mayor

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21 Reviewed as to form:

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23 _____
24 Katrina Brown, City Attorney

OTHER BUSINESS

Middle Housing Land Divisions & Expedited Land Divisions Code Update

Memo

DATE: June 14, 2002
TO: Planning Commission
FROM: Derek Severson, *Senior Planner*
RE: Middle Housing Land Divisions & Expedited Land Divisions Code Update

As discussed last month, Oregon Senate Bill 458 was passed to provide a process for lot divisions to allow home ownership opportunities for middle housing units that were built under House Bill 2001. For cities with populations of between 10,000 and 25,000 such as Ashland, the middle housing required to be allowed under House Bill 2001 was limited to duplexes. Senate Bill 458 was not intended to apply to accessory residential units, and as such the draft code language below focuses on duplexes.

Senate Bill 458 provides for these Middle Housing Land Divisions to be processed through the Expedited Land Divisions procedure established in the Oregon Revised Statutes. Expedited Land Divisions are not considered to be land use actions and as such could not be appealed to the Planning Commission. Instead, an initial administrative decision could be appealed to a referee/hearings officer, and would not be subject to appeal to LUBA.

The attached draft code language is intended to implement the Senate Bill's requirements, and following Planning Commission's initial review and comment tonight, a Planning Commission hearing will be scheduled to adopt a recommendation to the Council. For staff, at this stage, two key decision points for the Planning Commission to consider are:

- 1) If allowable under state law, should Accessory Residential Units (ARUs) be included as a middle housing type that is allowed to utilize the Middle Housing Land Division process?
- 2) If allowable under state law, should duplexes constructed prior to the implementation of House Bill 2001 be allowed to utilize the Middle Housing Land Division process?

In both cases, a key issue would be the potential to lose existing rental housing in favor of for purchase housing.



ADD Section 18.5.1.075 Middle Housing Land Divisions (MHLD)

Middle Housing Land Division decisions are made by the Staff Advisor using the Expedited Land Division procedure detailed below. Middle Housing Land Divisions may be appealed to a referee/hearings officer. Middle Housing Land Divisions are not a land use or limited land use 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. **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 in sufficient detail.
 - iv. Additional materials necessary to demonstrate compliance with the
 - 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.

- a. Mailing of Notice of 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 Application. The notice of 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
 - ii. Shall issue a written determination of compliance or noncompliance with applicable criteria and standards for Middle Housing Land Divisions that includes a summary statement explaining the determination.
 - c. The decision shall include a statement of the facts the Staff Advisor relied upon to determine whether the application satisfied or failed to satisfy each applicable approval criteria.
 - d. Notice of the decision shall be provided to the applicant and to those who received notice under subsection (4) of this section within sixty-three (63) days of the date of a completed application. The notice of decision shall include:
 - i. The summary statement described in (5)(b) of this subsection; and
 - ii. An explanation of appeal rights under ORS 197.375 ('Appeal of decision on application for expedited land division').
6. **Appeals:** An appeal of the Staff Advisor's decision made under this section shall be made as follows:
- a. An appeal must be filed within fourteen (14) days of mailing of the notice of the decision and be accompanied by a \$300 deposit toward the cost of an appeal hearing. This deposit shall be refunded if the appellant materially

improves his or her position from the Staff Advisor's decision. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, against an appellant who does not materially improve his or her position from the decision of the Staff Advisor.

- b. A decision may be appealed by:
 - i. The applicant.
 - ii. Any person or organization who filed written comments within the 14-day comment period.
- c. An appeal shall be based solely on allegations:
 - i. Of violation of the substantive provisions of the applicable criteria and standards;
 - ii. Of the unconstitutionality of the decision;
 - iii. That the application is not eligible for review as a Middle Housing Land Division under ALUO 18.5.3.140 or as an Expedited Land Division under ORS 197.360 to 197.380 and should instead be reviewed as a land use decision or limited land use decision; or
 - iv. That the parties' substantive rights have been substantially prejudiced by an error in procedure.
- d. The City of Ashland's hearings officer is designated as the referee for appeals of a decision made under this section and ORS 197.360 and 197.365.
- e. Within seven days of receiving the appeal, the City, on behalf of the hearings officer, shall notify the applicant, the appellant if other than the applicant, any person or organization entitled to notice under ALUO 18.5.1.075.D.4.a that provided written comments to the local government and all providers of public facilities and services entitled to notice under ALUO 18.5.1.075.D.4.a and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (6) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The hearings officer may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The hearings officer shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government.
- f. The hearings officer shall apply the substantive requirements of ALUO 18.5.3.140.C and ORS 197.360. If the hearings officer determines that the application does not qualify as an Expedited Land Division under ORS 197.360 or a Middle Housing Land Division under ALUO 18.5.3.140, the hearings officer shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the hearings officer

shall seek to identify means by which the application can satisfy the applicable requirements.

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

ADD Section 18.5.3.140 Middle Housing Land Divisions (MHL D)

A. **Purpose.** The Middle Housing Land Divisions (MHL D) process seeks to provide home ownership opportunities by allowing lots with middle housing to be divided so that each middle housing dwelling unit is on its own lot. As used in this section, a "Middle Housing Land Division" is the division of a lot or parcel on which the development of middle housing has been is allowed under ORS 197.758(3). For cities with populations of between 10,000 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.

B. Applicability and General Requirements.

1. Lots in residential zones including R-1, R-1-3.5, RR, WR, R-2, R-3, NN, and NM zones containing duplexes permitted on or after July 1, 2022 may be divided using the Middle Housing Land Divisions process outlined in this section.
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.
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.

C. Middle Housing Land Divisions Preliminary Plat Approval Process

1. **Approval Criteria.** The Staff Advisor shall approve a Middle Housing Land Division preliminary plat upon finding:
 - a. The parent parcel is developed with middle housing allowed under ORS 197.758(3) 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 197.758(3) on the parcel.
 - 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.
 - c. Accessory Residential Units (ARU) are not permitted on middle housing lots or parcels created under this section.
 - d. Each lot is served with its own separate utilities.
 - e. All easements necessary for each middle housing dwelling unit shall be identified on the plat. Easements shall be provided to ensure:
 - i. Provision of and access for maintenance and replacement of all utilities;
 - ii. Pedestrian access from each dwelling unit to a public or private street;
 - iii. All dedicated driveways, parking, common use areas or shared building elements and dedicated common areas can be accessed and used.
 - f. Evidence submitted by the applicant demonstrates how buildings or structures on the resulting lots or parcels will comply with applicable

building codes provisions relating 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.

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

D. Middle Housing Land Divisions Final Plat

1. The final plat shall comply with the Middle Housing Land Division preliminary plat conditions of approval.
2. The following data requirements, if applicable, shall also be shown on the final plat.
 - a. All tracts of land intended to be deeded or dedicated for public use;
 - b. Street names as approved by the Public Works Director in accordance with the 'Criteria for Naming or Renaming a Street' in AMC 13.24.010.
 - c. Any non-access strips.
 - d. A notation indicating that approval was given under ALUO 18.5.3.140 Middle Housing Land Divisions.

3. **Approval Criteria.** The Staff Advisor shall approve or deny the final plat for the Middle housing land division based upon the following criteria:
 - a. All conditions of the Middle Housing Land Division preliminary plat approval have been satisfied and the final plat substantially conforms to the approved Middle Housing Land Division preliminary plat approval.
 - b. Approved construction drawings for required public improvements have been provided, including grading and drainage plans as applicable, and the applicant has provided verification by the City that electric, water and sanitary sewer services are available to every lot depicted on the plat.
 - c. An approved security instrument is provided to guarantee completion of any required public improvements that have not been completed and accepted by the City.
 - d. The plat contains a dedication to the public of all required public improvements, including but not limited to public streets and any public utility easements, and all required streets, accessways, easements, and other dedications or reservations are shown on the plat.
 - e. The applicant has furnished acceptable copies of any applicable Covenants, Conditions and Restrictions (CC&R's), easements, maintenance agreements (e.g., landscaping, utilities, tree preservation, common areas, access, parking, etc.), and other documents pertaining to common improvements recorded and referenced on the plat.
 - f. The format of the plat shall conform to ORS 92, and shall incorporate the preliminary plat information in ALUO 18.5.3.040.B.
 - g. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner approved by the Jackson County Surveyor for purposes of identifying its location.
 - h. A copy of any deed restrictions applicable to the partition or subdivision or the title report.

E. Filing and Records

1. **Recordation.** Following review and the Staff Advisor's approval of a Middle Housing Land Division Final Plat, the applicant shall take the following actions:
 - a. Obtain the approval signature on the Middle Housing Land Division final plat by the Jackson County Surveyor certifying that the final plat complies with all applicable survey laws. Before certifying, the County Surveyor may make any necessary field investigations to verify that the plat survey is sufficiently accurate. If the County Surveyor determines that the plat does not comply, the applicant shall make corrections. When the County Surveyor determines that the plat conforms, the County Surveyor shall sign and date the final plat.
 - b. A Notice of Middle Housing Land Division for each middle housing lot shall be recorded with the County Recorder that states:

- i. The middle housing lot may not be further divided.
 - ii. No more than one unit of middle housing may be developed on each middle housing lot.
 - iii. The dwelling developed on the middle housing lot is a unit of middle housing and is not a single attached or detached dwelling, or any other housing type.
 - c. File a statement of water right and, if a water right is appurtenant, a copy of the acknowledgment from the Water Resources Department.
 - d. Deliver the approved final plat and accompanying documents to the County Recorder for recording.
 - e. Return a copy of the recorded final plat and Notices of Middle Housing Land Division to the City for filing.
- 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