

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
SPECIAL MEETING
November 22, 2022
AGENDA
<https://zoom.us/j/95237998667>**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street

- II. **ANNOUNCEMENTS**

- III. **PUBLIC FORUM**

- IV. **LEGISLATIVE HEARING:**
 - A. **PLANNING ACTION:** #PA-L-2022-00014
APPLICANT: City of Ashland
ORDINANCE REFERENCES: **AMC 18.5.1** General Review Procedures
AMC 18.5.3 Land Divisions and Property Line Adjustments
AMC 18.5.9 Comprehensive Plan, Zoning and Land Use Ordinance Amendments

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

- V. **OPEN DISCUSSION**

- 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).

**LEGISLATIVE
PUBLIC HEARING**

**PA-L-2022-00014
Middle Housing Lot Division
& Expedited Land Division
Code Changes**

ASHLAND PLANNING DIVISION

STAFF REPORT

November 22, 2022

PLANNING ACTION: PA-L-2022-00014

APPLICANT: City of Ashland

ORDINANCE REFERENCES:

AMC 18.5.1 General Review Procedures

AMC 18.5.3 Land Divisions and
Property Line Adjustments

AMC 18.5.9 Comprehensive Plan, Zoning and
Land Use Ordinance Amendments

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

I. Ordinance Amendments

A. Project Background

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

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

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

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

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

B. Summary of Proposed Amendments

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

- House Bill 458 applies to any lot that allows Middle Housing under House Bill 2001 (i.e. ORS 197.758).
- A Middle Housing Land Division (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**
- An MHLD proposal must demonstrate that it meets the requirements of the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units.
- In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being reviewed and issued for construction. A Middle Housing Land Division may occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed.
- Senate Bill 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, Middle Housing Land Division applications must include a middle housing development (*either proposed or already built*) that complies with the building code and the City's middle housing development code.

Under Senate Bill 458, cities may require the submittal of tentative & final plats for approval, review for Oregon Residential Specialty Code compliance, and 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).

II. Procedural

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

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

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

III. Conclusions and Recommendations

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

Attachments

Senate Bill 458
Draft Ordinance

Enrolled
Senate Bill 458

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

CHAPTER

AN ACT

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

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

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

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

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

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

(b) Separate utilities for each dwelling unit;

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

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

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

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

(D) Any dedicated driveways or parking; and

(E) Any dedicated common area;

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

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

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

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

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

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

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

SECTION 3. ORS 93.277 is amended to read:

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

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

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

SECTION 4. ORS 94.776 is amended to read:

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

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

SECTION 5. ORS 94.775 is amended to read:

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

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

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

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

SECTION 6. ORS 197.365 is amended to read:

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

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

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

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

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

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

(a) State:

(A) The deadline for submitting written comments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. ORS 197.370 is amended to read:

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

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

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

SECTION 8. ORS 197.375 is amended to read:

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

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

(b) A decision may be appealed by:

(A) The applicant; or

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

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

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

(B) Of unconstitutionality of the decision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) That the decision is unconstitutional.

SECTION 9. ORS 197.380 is amended to read:

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

Passed by Senate April 15, 2021

.....
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 17, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

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, recommended approval of the
4 amendments by a vote of (#-#); 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:

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

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- a. Mailing of Notice of Complete Application. The Staff Advisor shall provide written notice of the receipt of the completed application for a Middle Housing Land division to:
 - i. The applicant and/or authorized representative.
 - ii. The owner(s) of record of the subject property.
 - iii. Neighborhood group(s) or community organization(s) officially recognized by the City whose boundaries include or are within one hundred (100) feet of the subject property.
 - iv. Owners of record for properties located within one hundred (100) feet of the perimeter of the subject property.
 - v. Affected city departments, governmental agencies or special districts responsible for providing public facilities or services which is entitled to notice under an intergovernmental agreement with the City which includes provision for such notice or is otherwise entitled to such notice.

 - b. Content of Notice of Complete Application. The notice of the receipt of the completed application shall include all of the following:
 - i. The street address or other easily understood geographical reference to the subject property.
 - ii. A summary of the proposal.
 - iii. The time and place where copies of all evidence submitted by the applicant will be available for review.
 - iv. The applicable criteria for the decision, listed by commonly used citation.
 - v. The name and telephone number of a local government contact person.
 - vi. A brief summary of the local decision-making process for the Middle Housing Land Division.
 - vii. A statement that issues that may provide the basis for an appeal to the hearings officer must be raised in writing prior to the expiration of the comment period;
 - viii. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue.
 - ix. The place, date and time that comments are due.

 - c. Certification of Notices. The City shall prepare an affidavit or other certification stating the date(s) the notices were mailed and posted, which shall be made a part of the file.

 - d. Comment Period. After notification according to the procedure set out above, the Staff Advisor shall provide a 14-day period for submission of written comments prior to the decision.
5. **Decision:** The Staff Advisor shall make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether the application satisfies the substantive requirements of ALUO 18.5.3.140.C.
- a. Approval may include conditions to ensure that the application complies with the applicable criteria and standards for Middle Housing Land Divisions.
 - b. For Middle Housing Land Divisions, the Staff Advisor:
 - i. Shall not hold a hearing on the application; and

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

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

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

- 1 iii. That the decision is unconstitutional.

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

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

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

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

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

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

- 19 1. **Approval Criteria.** The Staff Advisor shall approve a Middle Housing Land Division
20 preliminary plat upon finding:
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.

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

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

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

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

23 **E. Filing and Records**

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

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

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

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of _____, 2022.

Julie Akins, Mayor

Reviewed as to form:

Douglas M. McGearry, Acting City Attorney