



CITY OF MILWAUKIE

Milwaukie Zoning Code Proposed Amendments for Middle Housing and Expedited Land Divisions March 2022

Master Land Use File #ZA-2022-001

Amendments to the following code sections are proposed to comply with the provisions of [Oregon Senate Bill 458 \(SB 458\)](#) which directly relates to the provisions of [Oregon House Bill 2001 \(HB 2001\)](#) regarding middle housing and land divisions.

Please contact Vera Kalias, Senior Planner with the City of Milwaukie Planning Department, at 503-786-7653 or kaliasv@milwaukieoregon.gov with questions or comments about the proposed code amendments and/or the code adoption process.

Municipal Code - Title 19 Zoning Ordinance

- Chapter 19.1000 REVIEW PROCEDURES
 - Section 19.1001.4 Review Types
 - Section 19.1005 Type II Review

Municipal Code - Title 17 Land Division

- CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA
 - Section 17.12.020 Application Procedure
 - Section 17.12.040 Approval Criteria for Preliminary Plat
- CHAPTER 17.20 PRELIMINARY PLAT
 - Section 17.20.010 Submission of Plans
 - Section 17.20.060 Proposed Conditions
- CHAPTER 17.24 FINAL PLAT
 - Section 17.24.010 Required Plat Information

- Section 17.24.030 Approval of Final Plat
- Section 17.24.040 Filing

Reader Guide

Commentary

A commentary section precedes each section of code amendments. The commentary provides a non-technical summary of the proposed amendments and highlights proposed policy changes. The commentary section is labeled as commentary and presented in Comic Sans font (the same font of this sentence).

Amendments

Unless otherwise noted in the document, underlined text is proposed text, and ~~strike through~~ text is existing code language proposed for deletion. Standards shown in [brackets] are those that still require Planning Commission discussion and direction.

Context/Surrounding Code

The chapter, section, and subsection for the proposed code amendments are listed for reference in this document. Line breaks, like the one below, between subsequent amendments indicate that there is intervening text within the section or subsection that is not included in this document.

Please be advised that this document shows only sections of code for which amendments are proposed, along with limited surrounding sections for context. It does not include all sections of the Milwaukie Municipal Code.

The proposed amendments relate to compliance with SB 458 which requires an allowance for lot divisions for middle housing that enable them to be sold or owned individually.

Background and Summary of SB 458

Senate Bill 458 was adopted by the Oregon Legislature in 2021.

The legislation requires cities to allow land divisions for any HB 2001 middle housing type (duplexes, triplexes, fourplexes, townhomes, and cottage clusters) built in accordance with the cities' middle housing code provisions adopted under ORS 197.758. Accessory dwelling units will not be eligible for land division. The result of such "middle housing land division" will be exactly one dwelling on each resulting lot. However, the bill specifies that "The type of middle housing developed on the original parcel is not altered by a middle housing land division." For example, a subdivided cottage cluster will not become single detached dwellings—it will remain defined as a cottage cluster for the purpose of applying the development code.

Senate Bill 458 only applies to middle housing land divisions permitted on or after June 30, 2022.

The bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an "expedited land division" process defined in ORS 197.360 through 197.380, and the applicant must submit a tentative plan for the division including the following:

- A proposal for development of middle housing in compliance with the Oregon residential specialty code and applicable middle housing land use regulations,
- Separate utilities for each dwelling unit,
- Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area,
- One dwelling unit per each resulting lot or parcel (except common areas), and
- Demonstration that the buildings will meet the Oregon residential specialty code.

Additionally, cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, and right-of-way dedication if the original parcel did not make such dedications. However, cities may not subject applications to approval criteria outside of what is provided in the bill, including that a lot or parcel require driveways, vehicle access, parking, or min/max street frontage, or requirements inconsistent with House Bill 2001.

What this means is that SB 458 expressly allows back lots for middle housing land divisions, but cities are able to require that easements are provided for things like maintenance and repair, access, shared common or parking areas, etc.

The bill allows jurisdictions to require or condition the following:

- Prohibition of further division of the resulting lots or parcels

- Require notation in the final plat indicating approval was provided under SB 458
- Require street frontage improvements where a lot or parcel abuts a street (consistent with House Bill 2001)
- Require right-of-way dedication if the original parcel did not previously provide a dedication

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

- **Street Frontage.** Typically, newly created lots are required to have frontage on a public or private street. SB 458 specifies that cities cannot require street frontage for lots created through a middle housing land division (e.g., lots at the rear of the site could only have access to the street via access easement).
- **Parking or Driveway Access to Each Lot.** Cities cannot require that each resulting lot have its own parking space or driveway access. For example, a triplex could have a shared parking area with three spaces; the city cannot preclude the triplex lot from being divided such that two of the resulting lots only have access to the parking area via access easement.
- **Minimum Lot Size or Dimensions.** Cities cannot specify minimum area or dimensions for lots resulting from a middle housing land division.
- **Other Review Criteria.** The city cannot apply any review criteria other than those items specified in SB 458—these include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.
- **Conditions of Approval.** The City also cannot apply conditions of approval to a middle housing land division other than to ensure consistency with the review criteria, to prohibit further division of resulting lots, and to require that a notation appear on the final plat indicating that the approval was given under the ORS for middle housing land division.

Expedited Land Divisions

Expedited land divisions are defined by ORS 197.360(1). The key aspect of the language is that the homes developed "will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built."

Proposed Amendments

One of the key aspects of the proposed amendments is that middle housing land divisions (partitions and subdivisions) will go through a Type II process with an expedited time frame. This is reflected in the amendments to sections to Title 19:

Process	Existing Type II	Proposed Expedited Type II (SB 458)
Completeness Review	30 days	21 days
Comment Period	14 days	14 days
Deadline for Decision	120 days	63 days

The proposed code language revises sections of Title 17 to incorporate both the Middle Housing land division process and Expedited Land Divisions, including:

- Specific application submittal requirements, including information to be included on the preliminary and final plats
- Approval criteria
- Conditions of approval

The proposed amendments have been reviewed by staff at the Department Land Conservation and Development for compliance with the regulations.

Underline/Strikeout Amendments

Title 19 Zoning Ordinance

CHAPTER 19.1000 REVIEW PROCEDURES

19.1005 TYPE II REVIEW

Type II applications involve uses or development governed by subjective approval criteria and/or development standards that may require the exercise of limited discretion. Type II review provides for administrative review of an application by the Planning ~~Manager~~ Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

19.1005.5 Type II Decision

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from the date that the application was deemed complete. The final decision for an affordable housing application, as defined in, and subject to all of the provisions of ORS 197.311, shall be issued within 100 days from when the application was deemed complete. Pursuant to MMC 17.12.020.G, the final decision for a middle housing or expedited land division as defined in, and subject to all of the provisions of Oregon Senate Bill 458 and further referenced in ORS 197.360 and ORS 197.380, must be issued within 63 days from when the application was deemed complete, or extended by the city not to exceed 120 days.

Title 17 Land Division

CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA

17.12.010 PURPOSE

The purpose of this chapter is to specify the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat. (Ord. 1907 (Attach. 1), 2002)

17.12.020 APPLICATION PROCEDURE

- A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and Type III procedures as indicated in this section.
- B. Applications for property boundary changes shall be processed in accordance with Table 17.12.020 based on the type of change requested. The Planning ~~Manager~~ Director may modify the procedures identified in Table 17.12.020 as follows:

Proposed Code Amendment with Commentary

1. Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
 - a. The proposal is consistent with applicable standards and criteria;
 - b. The proposal is consistent with the basis and findings of the original approval; and
 - c. The proposal does not increase the number of lots.
2. Type III review may be required in the following situations:
 - a. When the Planning Commission approved the original land use action; and
 - b. The proposed change is inconsistent with the original approval.

Table 17.12.020 Boundary Change Review Procedures			
Boundary Change Action	Type I	Type II	Type III
1. Lot Consolidation Other Than Replat			
a. Legal lots created by deed.	X		
2. Property Line Adjustment			
a. Any adjustment that is consistent with the ORS and this title.	X		
b. Any adjustment that modifies a plat restriction.		X	
3. Partition Replat			
a. Any modification to a plat that was decided by the Planning Commission.			X
b. Parcel consolidation.	X		
c. Actions not described in 3(a) or (b).		X	
4. Subdivision Replat			
a. Any modification to a plat affecting 4 or more lots.			X
5. Expedited and Middle Housing Land Division			
<u>a. Any land division as defined by ORS 197.360 Expedited Land Division and/or land division of a middle housing project per ORS 197.758.</u>	-	X	

C. An increase in the number of lots within the original boundaries of a partition plat shall be reviewed as a subdivision when the number of existing lots that are to be modified combined with the number of proposed new lots exceeds 3.

D. Partitions

1. Applications for preliminary partition plat shall be processed in accordance with Section 19.1005 Type II Review. Should any associated application subject to Type III review be submitted in conjunction with a partition, the partition application shall be processed according to Section 19.1006 Type III Review.

2. Full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided for the purpose of subdivision. This provision applies if the land to be partitioned exceeds 2 acres and within a year is being partitioned into more than 2 parcels, any one of which is less than 1 acre.

E. Subdivisions

Applications for subdivision preliminary plat applications shall be processed in accordance with Section 19.1006 Type III Review, except that subdivision applications that meet the approval criteria for middle housing or expedited land divisions may be processed pursuant to MMC 17.12.020.G and MMC 17.12.020.H respectively.

F. Final Plats

Applications for final plats of partitions and subdivisions shall be processed in accordance with Section 19.1004 Type I Review. (Ord. 2168 § 2, 2019; Ord. 2025 § 3, 2011; Ord. 2001 § 2, 2009; amended during Supp. No. 2; Ord. 1907 (Attach. 1), 2002)

G. Middle Housing Land Divisions

A middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this Code and ORS 197.758. Middle housing land divisions are regulated by this Code and ORS Chapter 92.

Applications for any land division affecting middle housing as defined by Oregon House Bill 458 must be processed as an expedited land division process as outlined in ORS 197.360 to 197.380. Pursuant to the expedited land division process, a middle housing land division will be processed according to Section 19.1005 Type II Review. Further division of the resulting lots or parcels in an approved middle housing land division is prohibited.

H. Expedited Land Division

Expedited land divisions are defined by ORS 197.360(1) and are processed according to Section 19.1005 Type II Review. The Expedited Land Division/Middle Housing Land Division review process provides for review by the planning manager of an application based on provisions specified in this land use code. The application process includes notice to nearby occupants and property owners to allow for public comments prior to the

planning manager's decision. Eligibility and approval criteria are detailed in Subsection 17.12.040.A.7.

17.12.040 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:
 - a. The middle housing development complies with the Oregon residential specialty code and the applicable MMC middle housing regulations. To demonstrate compliance with this criterion, the applicant must submit approved building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and MMC middle housing regulations.
 - b. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.
 - c. Easements will be provided as necessary for each dwelling unit on the site for:
 - i. Locating, accessing, replacing, and servicing all utilities;
 - ii. Pedestrian access from each dwelling unit to a private or public road;
 - iii. Any common use areas or shared building elements;
 - iv. Any dedicated driveways or parking; and
 - v. Any dedicated common area.
 - d. Exactly one dwelling unit will be located on each resulting lot except for lots or tracts used as common areas, on which no dwelling units will be permitted.
 - e. Buildings or structures on a resulting lot will comply with applicable building codes provisions relating to new property lines.

- f. Structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.
 - g. Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant to MMC 19.700.
 - h. The proposed middle housing land division will not cause any existing improvements on the middle housing lots to be inconsistent with applicable standards in this land use code.
7. If an applicant elects to use the expedited land division procedure, the application must meet the following additional approval criteria:
- a. The proposed partition only includes land zoned for residential uses;
 - b. The parcels created will only be developed for residential use, including recreational or open space accessory to residential use;
 - c. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Standards, and Milwaukie Municipal Code;
 - d. The land division will not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:
 - i. Open spaces, mapped historic properties, and mapped natural resources; or
 - ii. The Willamette River Greenway.
 - e. The land division will result in development that either:
 - i. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
 - ii. Will be sold or rented to households with incomes below 120 percent of the median family income for Clackamas County.

B. Conditions of Approval

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. (Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

1. The City may attach conditions of approval of a preliminary plat for a middle housing land division to:
 - a. Require that a notation appear on the final plat indicating:
 - i. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 - ii. The middle housing developed on the middle housing lots shown on the preliminary plat shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.

- iii. Accessory dwelling units are not permitted on new lots resulting from a middle housing land division.
- iv. Ensure that improvements associated with review criteria in MMC 17.12.040 are provided.
- b. The preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three years of the tentative approval.

CHAPTER 17.20 PRELIMINARY PLAT

17.20.010 SUBMISSION OF PLANS

Applicants for partition, subdivision, expedited land division, middle housing land division, and replat shall prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal. (Ord. 1907 (Attach. 1), 2002)

17.20.060 PROPOSED CONDITIONS

- A. ~~12 copies of a preliminary plat shall be submitted to the Planning Director.~~ The plat shall include the following information:
- 1. Date, north point, scale, address, assessor reference number, and legal description;
 - 2. Name and address of the record owner or owners and of the person who prepared the site plan;
 - 3. Approximate acreage and square feet under a single ownership, or if more than 1 ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;
 - 4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
 - 5. Location of existing structures, identifying those to remain in place and those to be removed;
 - 6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;
 - 7. Existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees, topography, and other structures;
 - 8. Elevation and location of flood hazard boundaries;

9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.

10. For middle housing land divisions, in addition to the items in MMC 17.20.060.A, the following must be provided and shown on the preliminary plat:

a. separate utility connections for each dwelling unit;

b. proposed easements necessary for each dwelling unit on the plan for:

1. Locating, accessing, replacing and servicing all utilities;

2. Pedestrian access from each dwelling unit to a private or public road;

3. Any common use areas or shared building elements;

4. Any dedicated driveways or parking; and

5. Any dedicated common area.

c. Copies of all required easements in a form approved by the City Attorney.

d. A description of the manner in which the proposed division complies with each of the provisions of subsection (1) of this section, including copies of approved building permits and other evidence necessary to demonstrate:

1. How buildings or structures on a resulting lot will comply with applicable building codes provisions related to new property lines; and

2. Notwithstanding the creation of new lots, how structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.

B. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.

C. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title, Title 19, and City design standards, including the Public Works Standards.

- D. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title, Title 19, and City design standards, including the Public Works Standards.
- E. A drainage summary report and plan prepared in accordance with the applicable Public Works Standards.
- F. Proposed deed restrictions, if any, in outline form.
- G. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval.

CHAPTER 17.24 FINAL PLAT

17.24.010 REQUIRED PLAT INFORMATION

In addition to that otherwise specified by law, the following information shall be shown on the final plat:

- A. The date, scale, north point, legend, plat boundary, and controlling topography such as creeks and highways;
- B. Legal description of the tract boundaries;
- C. Name of the owner(s), applicant(s), and surveyor.
- D. Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:
 - 1. Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;
 - 2. Adjoining corners of adjoining subdivisions;
 - 3. Other monuments found or established in making the survey of the subdivision or required to be installed by provision of this title.
- E. The exact location and width of streets and easements intersecting the boundary of the tract.
- F. Lines with dimensions, bearings or deflection angles, radii, arcs, points of curvature, and tangent bearings for tract, lot, and block boundaries, and street right-of-way and centerlines. Tract boundaries and street bearings shall be shown to the nearest second with basis of bearings approved in advance by the County Surveyor. All distances shall be shown to the nearest hundredth of a foot. No ditto marks may be used.
- G. The width of the portion of streets being dedicated, the width of any existing right-of-way, and the width of each side of the centerline. For streets on curvature, curve data shall be based on the street centerline and, in addition to the centerline dimensions, the radius and central angle shall be indicated.

- H. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.
- I. Lot numbers beginning with the number "1" and numbered consecutively.
- J. Land tracts to be dedicated or reserved for any purpose, public or private, as distinguished from residential lots intended for sale.
- K. References to any agreements including conditions of approval or special building restrictions that will be recorded with the plat.
- L. The following certificates, which may be combined where appropriate:
1. A certificate signed and acknowledged by all parties having any record title interest in the land, consenting to the preparation and recording of the plat;
 2. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map as intended for any public use without any reservation or restriction whatsoever, except those parcels which are intended for the exclusive use of the lot;
 3. A certificate signed by the engineer or the surveyor responsible for the survey and final map. The seal and signature of the engineer or surveyor.
- M. For middle housing land divisions, the following notations:
1. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 2. The middle housing developed on the middle housing lots shown on the tentative plan shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.

(Ord. 1907 (Attach. 1), 2002)

17.24.030 APPROVAL OF FINAL PLAT

Approval of the final plat shall be indicated by signature of the Planning ~~Manager~~ Director and Engineering Director. (Ord. 1907 (Attach. 1), 2002)

17.24.040 FILING

Within 6 months of City approval of the preliminary plat, the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.

A notice of middle housing land division shall be recorded for each middle housing lot with Clackamas County that states:

Proposed Code Amendment with Commentary

(1) The middle housing lot may not be further divided.

(2) No more than one unit of middle housing may be developed on each middle housing lot.

(3) 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.

For middle housing and expedited land divisions, the approval of a preliminary plat is void if and only if a final plat is not approved within three years of the preliminary plat approval. Within that time, any conditions of approval must be fulfilled and the final plat, as approved by the city, must be recorded by the applicant with Clackamas County.