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Middle Housing Land Division

This handout answers frequently asked questions about middle housing land divisions. This document is intended for reference purposes only—please refer to Milwaukie Municipal Code (MMC) Chapter 17.26 for the complete set of middle housing land division requirements and to MMC Title 19 for other zoning rules and standards.

What is Middle Housing?

Middle housing includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters.

What is Middle Housing Land Division?

Middle housing land division (MHLd) allows for a single legal lot of record (parent lot) to be divided into middle housing lots (sub lots) and common areas. MHLd can be used for any middle housing type except townhouses, which are developed on their own individual lots from the outset.

With MHLd, the parent lot must meet the applicable standards for a lot, such as minimum frontage along a public right-of-way, minimum lot area, and minimum lot width. The middle housing development must meet all the applicable development standards for the parent lot (e.g., maximum building height, minimum setbacks, and maximum lot coverage). MHLd then creates sub lots. See Figure 1 for an example.

There are only a few rules for sub lots—each is limited to a single dwelling unit, must have its own utility connections, and must have the necessary easements (such as for access, utilities, common areas, etc.). A sub lot cannot be further divided.

How is MHLd different from conventional land division?

Conventional land division (i.e., partition or subdivision) creates new legal lots that are granted full development rights. MHLd allows for the creation of sub lots within a legal parent lot solely for the purpose of property transfer (i.e., opportunities for ownership of individual units). MHLd has the effect of locking the parent lot into the middle housing development pattern created by a particular MHLd. No additional development rights are granted after an MHLd is performed.

There are several key characteristics that make MHLd distinct from conventional land division:

1. Conventional lots must comply with all the standards in Titles 17 and 19 for new properties, such as requirements for minimum dimensions and minimum setbacks for structures. MHLd sublots do not have to comply with conventional lot standards, such as minimum size, street frontage, or dimensions.
2. MHLd is allowed only with duplex, triplex, quadplex, and cottage cluster housing types. A sublot cannot be established for an ADU.

Figure 1

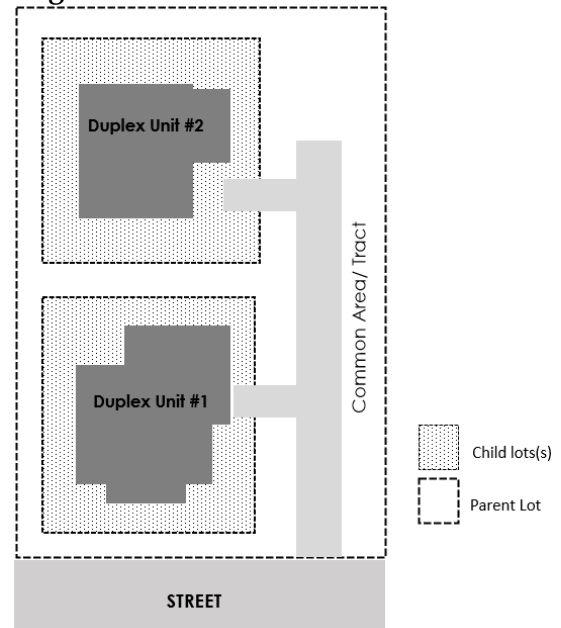


Figure 1. Detached duplex that has gone through a middle housing land division. Each sub lot is distinct for platting and property transfer purposes only.

3. Each sub lot can have no more than one dwelling unit, regardless of the zone. A sub lot cannot be further developed with an ADU.
4. Sub lots cannot be further divided.
5. For purposes of the zoning code, the residential structure type developed on the MHL D site remains the same structure type after the MHL D is complete. For example, a parent lot developed with a detached triplex will always be considered a triplex site and not three single-unit houses on sub lots.
6. Development standards will continue to apply to the overall parent lot even after the MHL D is complete. For example, lot coverage limitations will remain in effect for the site as a whole; each sub lot does not get its own new lot coverage standard.

When can I submit for an MHL D and what is the process?

Applicants can apply for an MHL D once they have built the middle housing or have submitted approvable building permits for a middle housing development. In situations where the middle housing is approved but has not yet been built, applicants are advised that modifications to the approved building plans after the MHL D is finalized may impact not only the zoning compliance of the overall middle housing development but also compliance with applicable building code standards.

Like conventional land division, MHL D follows a two-step process—preliminary and final approval.

1. Preliminary approval is subject to an expedited review. The application will be processed under the procedures set forth in Oregon Revised Statutes (ORS) 197.360-197.380. The application is subject to a public notice and comment requirement but no public hearing, with a decision issued within 63 days of the application being deemed complete.
2. Final approval is subject to the Type I process (see MMC Section 19.1004). The review is administrative and happens concurrently with review by the County Surveyor.

What are the approval criteria for an MHL D?

Approval of a preliminary plat for an MHL D will be granted if the Planning Manager finds that the applicant has met all 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 or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and MMC middle housing regulations in Titles 17 and 19.
- b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758(5).
- c. Separate utility service connections for public water, sewer, and stormwater must be provided for each dwelling unit.
- d. Easements will be provided as necessary for each dwelling unit on the site 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.

- e. Exactly one dwelling unit will be located on each resulting sub lot except for lots or tracts used as common areas, on which no dwelling units will be permitted.
- f. Buildings or structures on a resulting lot will comply with applicable building code provisions relating to new property lines.
- g. Structures or buildings located on the newly created sub lots will comply with the Oregon Residential Specialty Code.
- h. Where a resulting sub 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 Chapter 19.700.
- i. The proposed MHL D will not cause any existing improvements on the middle housing sub lots to be inconsistent with applicable standards in the land division or zoning codes.

What happens when the MHL D is approved?

After approval, the Final Plat is recorded with Clackamas County, along with a document establishing a homeowner's association or similar entity to manage all commonly held areas, including a maintenance agreement. These documents will be identified during a title search to indicate that a property is part of an approved MHL D and ensure that future development complies with the approved plat.

Important Considerations

- MHL D can only be done for side-by-side or detached middle housing. Stacked middle housing cannot use the MHL D process.
- A separate utility connection is required for each middle housing unit. For example, each unit needs its own water meter or electric meter. Contact Milwaukie Public Works, Milwaukie Engineering, and Portland General Electric early in the process to plan for water, sewer, and electrical service connections.
- Buildings or structures on the new MHL D sub lots must comply with applicable building code provisions related to new property lines, such as fire separation and openings.

Examples

The next page shows examples of three attached units in three different configurations:

- **Figure 2** = A townhouse development where each unit is on its own legal lot.
- **Figure 3** = A triplex development on a single lot that has not been divided.
- **Figure 4** = A triplex on a lot that has been divided using the MHL D procedure.

In each example, the building and site improvements are the same; however, they are different in terms of how property is transferred (i.e., bought and sold) and how development rights are apportioned (i.e., the limits on future development).

Figure 2

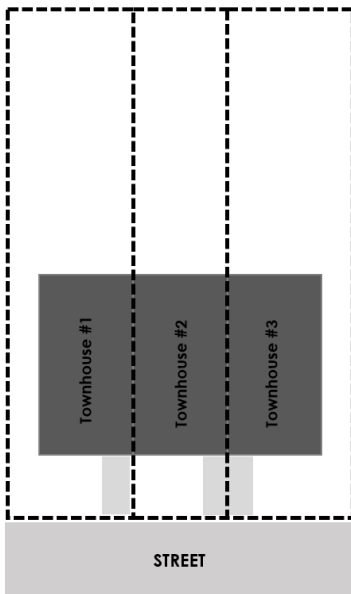


Figure 2. This is a townhouse project. Each attached townhouse is on its own legal lot. Each individual unit can be bought and sold, and each lot has full independent development rights.

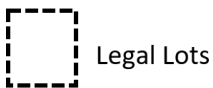


Figure 3

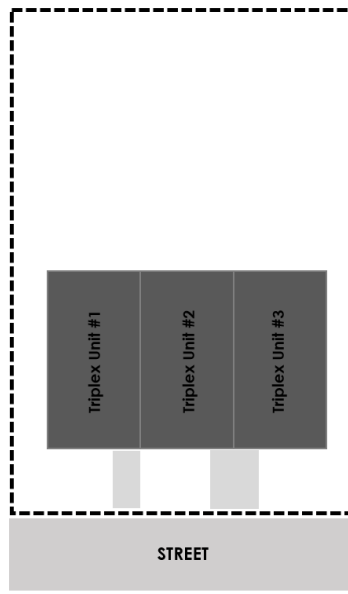


Figure 3. This is also a triplex, with all three dwellings on the same lot. The three units can only be sold together. With the units, the purchaser also controls the entire parcel.

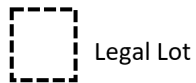


Figure 4

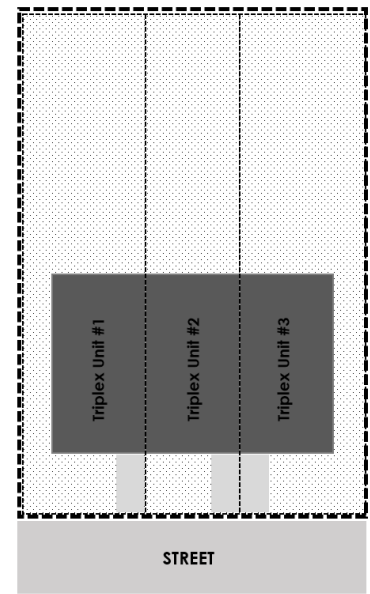
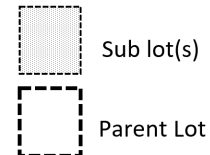


Figure 4. This is a triplex. It has gone through an MHL D process but remains a triplex, with three units on the same parent lot but each unit on its own middle housing lot (a.k.a. sub lot). Land use development standards, such as maximum lot coverage and minimum vegetation, continue to apply to the entire parent parcel, even after the MHL D.



Property Transfer and Development Rights

A key difference between these three development examples is the ability to sell and own each individual unit. Each unit in the townhouse example (Figure 2) is on its own lot and can be individually bought or sold. Similarly, each unit in the MHL D example (Figure 4) can also be sold independently from the others with the land surrounding each unit (shown as sub lots). Conversely, each unit in the undivided triplex example (Figure 3) is bound to the other two units for property transfer purposes.

A second difference among these examples is how development rights are granted and limited.¹ Each townhouse unit in Figure 2 has independent development rights, while both triplex examples in Figures 3 and 4 are regulated as a single parcel for development purposes, notwithstanding the MHL D in Figure 4.

¹ Development rights are the rights given to a property owner to control and develop land in compliance with applicable land use regulations. Although townhouses are distinct from the triplex examples insofar as each townhouse lot is granted independent development rights, townhouses are interdependent in that they are subject to the specific townhouse design and development standards established in MMC Subsection 19.505.5.