



CITY OF MILWAUKIE

Milwaukie Code Proposed Amendments: Title 17 - Middle Housing and Expedited Land Divisions

May 2025

Primary Land Use File #ZA-2025-002

Summary of proposed code amendments

The proposed amendments are corrections and clarifications to Title 17 related to Middle Housing Land Divisions and Expedited Land Divisions. No policy changes are proposed. The amendments reflect state law related to requirements and processing that are currently incorrectly referenced in the existing code. The proposed amendments also update statutory references that have been changed by the legislature.

The proposed amendments are effectively housekeeping amendments to ensure that the code accurately reflects state law, as it relates to the processing of middle housing and expedited land divisions. State law is explicit in how these applications must be processed, which is different from the code's standard Type II land use review process. Therefore, the city's code must be revised to reflect these specific statutory requirements.

The current code erroneously states that middle housing and expedited land divisions will be processed in a standard Type II land use review process, albeit with a shorter timeframe for issuance of a decision. However, as required by [ORS 92.031](#), middle housing and expedited land divisions must be processed under the procedures set forth in [ORS 197.360-197.380](#), which includes a different noticing requirement as well as a different appeal process.

The proposed code amendments reflect the state requirements as well as some basic clarifications in the land division code to improve the application and review process for middle housing land divisions.

Proposed Code Amendment with Commentary

An amendment to the following code sections are proposed.

Municipal Code - Title 17 Land Division

- CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA
 - Section 17.12.020 Application Procedure
 - Section 17.12.060 Middle Housing and Expedited Land Divisions (new)
- CHAPTER 17.18 APPROVAL CRITERIA
 - Section 17.18.020.A Approval Criteria for Preliminary Plat
 - Section 17.18.030.A Approval Criteria for Final Plat
- CHAPTER 17.26 MIDDLE HOUSING AND EXPEDITED LAND DIVISIONS
 - Section 17.26.010 Middle Housing Land Divisions (multiple sections)
 - Section 17.26.020 Expedited Land Division
- CHAPTER 17.28 DESIGN STANDARDS
 - Section 17.28.040 General Lot Design

Municipal Code - Title 19 Zoning Ordinance

- Chapter 19.900 LAND USE APPLICATIONS
 - Table 19.901 Land Use Applications
- Chapter 19.1000 REVIEW PROCEDURES
 - Section 19.1001.4 Review Types
 - Section 19.1005 Type II Review

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

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. **Explanatory comments not included in amendments shown in red text and [bracketed italic gray highlight].**

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.

Underline/Strikeout Amendments

Underline/Strikeout Amendments

TITLE 17

LAND DIVISION

CHAPTER 17.12

APPLICATION PROCEDURE

17.12.020 APPLICATION PROCEDURE

A. Applications for land division and property boundary changes will be processed in accordance with Chapter 19.1000 Type I and Type II procedures, unless otherwise specified as indicated in this section.

B. An increase in the number of lots within the original boundaries of a partition plat must 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.

C. A modification to a plat (i.e., a replat) that relocates or eliminates all or a portion of a common property line between abutting properties, including underlying lot lines, that does not create an additional lot or parcel will be processed as a property line adjustment or lot consolidation. This process requires a deed to be recorded that stipulates the lot(s) to be a single lot(s) for development and legal purposes. Alternatively, an applicant may elect to document the modification by formally revising the plat itself.

D. A replat that results in the creation of a new parcel(s) or lot(s) will be processed as a partition or subdivision, depending on the number of resulting lots and according to the definitions provided in Chapter 17.04.

Table 17.12.020 Boundary Change Summary		
Boundary Change Action	Application Type/Land Use Action	Review Type
Consolidating legal lots created by deed.	Lot consolidation	I
Any boundary adjustment that is consistent with the ORS and this title but does not result in a change in the number of lots.	Property Line Adjustment	I
Any boundary adjustment that is affected by a plat restriction.	Property Line Adjustment	II
A land division, modification, or adjustment that results in up to 3 lots.	Partition	II
Any division, modification, or adjustment that results in 4 or more lots.	Subdivision	II
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>A middle housing land division pursuant to ORS 92.031.</u>	Expedited Land Division Middle Housing Land Division	<u>Pursuant to applicable ORS</u>

17.12.060 Middle Housing and Expedited Land Divisions

A. Conformance with state statute. All middle housing and expedited land division proposals must comply with all state regulations as provided in ORS Chapter 92, ORS 197A.420, and ORS 197.360.

B. Prohibition on sale of lots. Sale of lots created through the middle housing and expedited land division process is prohibited until the final plat is recorded.

C. Approval through two-step process. A middle housing or expedited land division application requires a two-step process: the preliminary plat and the final plat.

1. Preliminary plat. A preliminary plat application is processed under the procedures set forth in ORS 197.360-197.380. Application for a middle housing land division preliminary plat must include evidence of building permit approval for the proposed dwelling units.

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval pursuant to Chapter 17.26.010 and 17.26.020.

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D. Approval criteria. The approval authority may approve, approve with conditions, or deny a middle housing or expedited land division based on the approval criteria in Sections 17.26.010 and 17.26.020.

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

CHAPTER 17.18

APPROVAL CRITERIA

17.18.020 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. The applicant must provide a detailed narrative description demonstrating how the proposal conforms to all applicable code sections 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.~~

17.18.030 APPROVAL CRITERIA FOR FINAL PLAT

Following the Type I procedure, the Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on ~~findings of~~ compliance with the following:

- A. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
- B. The preliminary plat has not lapsed.

C. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.

D. The plat contains a donation to the public of all common improvements, if applicable, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.

E. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.

F. The plat complies with the Zoning Ordinance and other applicable ordinances and regulations.

G. ~~Submission of s~~ Signed deeds have been submitted when access control strips are shown on the plat.

H. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.

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

Chapter 17.24

REQUIREMENTS FOR TRACTS AND EASEMENTS

7.24.010 OWNERSHIP OF TRACTS AND MAINTENANCE AGREEMENTS.

A. Ownership of Tracts

Tracts must be owned as follows unless otherwise specified in this title or the land use decision:

1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;
2. The Homeowners' Association, or similar entity, for the area served by the tract;
3. A public or private non-profit organization; or
4. The City or other jurisdiction.

B. Maintenance Agreements

The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract. ~~or easement; however, facilities~~ Facilities within the tract or easement that will be maintained by a specified City agency ~~may be~~ must be recorded in a separate maintenance agreement. ~~The~~ Any maintenance agreement involving a City agency must be approved by the City in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. (Ord. 2242, 4/16/2024)

CHAPTER 17.26

MIDDLE HOUSING AND EXPEDITED LAND DIVISIONS

17.26.010 Middle Housing Land Divisions

A. 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(2)~~ 197A.420. Middle housing land divisions are regulated by this code and ORS Chapter 92. Townhouses, by definition, are already on their own lots, so a middle housing land division is not applicable to townhouse developments. The City may only apply standards and approval criteria to middle housing land divisions as specified in ORS 92.031, which are addressed in this chapter. Following the land division, the units of land created in a middle housing land division, the sublots or subparcels, will be collectively considered a single lot or parcel for all but platting and property transfer purposes under City code and state rules and statutes, including:

1. Lot standards such as size, setback, lot coverage, and lot width and depth;
2. Definition of unit types (e.g., a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than four lots with single detached units);
3. Allowed number of dwelling units and accessory dwelling units; and
4. Compliance with middle housing rules and statutes in ORS 197 and OAR 660-046.

B. Applications for any land division affecting middle housing as provided in ~~ORS 197.758(2)~~ 197A.420 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 (sublots) in an approved middle housing land division is prohibited.

C. Approval through two-step process. A middle housing land division requires a two-step process: a preliminary plat and a final plat.

1. Preliminary plat. A middle housing land division preliminary plat application is processed under the procedures set forth in ORS 197.360 to ORS 197.380. Application for a middle housing land division preliminary plat must include evidence of approved building permits for the proposed dwelling units. ~~through an expedited Type II procedure, as provided in Section 19.1005.~~

2. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

D. Approval criteria—Preliminary plat. ~~The approval authority may approve, approve with conditions, or deny a middle housing land division 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:

1a. The middle housing development, and any existing development, complies with the Oregon Residential Specialty code and the applicable middle housing regulations in this code. To demonstrate compliance with this criterion, the applicant must ~~submit~~ provide evidence of approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and applicable middle housing regulations in Titles 12, 17, and 19.

2b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS ~~197.758(5).~~ 197A.420.

3e. Separate utility service connections ~~for public water, sewer, and stormwater~~ are, or will be, provided for each dwelling unit.

4d. Easements are or will be provided as necessary for each dwelling unit on the site for:

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- ~~a.(1)~~ Locating, accessing, replacing, and servicing all utilities;
- ~~b.(2)~~ Pedestrian access from each dwelling unit to a private or public road;
- ~~c.(3)~~ Any common use areas or shared building elements;
- ~~d.(4)~~ Any dedicated driveways or parking; and
- ~~e.(5)~~ Any dedicated common area.

~~5e.~~ Exactly one dwelling unit will be located on each subplot except for lots or tracts used as common areas, on which no dwelling units will be permitted.

~~6f.~~ Evidence has been provided that buildings or structures on a subplot will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new sublots or parcels, that structures or buildings on a subplot will comply with the Oregon Residential Specialty Code.

~~7g.~~ Structures or buildings located on the sublots

~~8h.~~ Where a resulting subplot 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 Chapter 19.700.

~~9i.~~ The proposed middle housing land division will not cause any existing improvements on the sublots to be inconsistent with applicable standards in this land use code.

E. 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.

~~4.~~ The City will attach conditions of approval of a preliminary plat for a middle housing land division to:

~~1a.~~ Require that a notation appear on the final plat indicating:

~~a.(1)~~ The sublots shown on the ~~tentative plan~~ preliminary plat were created pursuant to a middle housing land division and further land division is prohibited. ~~may not be further divided.~~

~~b.(2)~~ The middle housing developed on the sublots shown on the preliminary plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division.

~~c.(3)~~ Accessory dwelling units are not permitted on sublots resulting from a middle housing land division.

~~d.(4)~~ Ensure that improvements associated with review criteria in this section are provided.

~~2b.~~ 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 preliminary plat~~ approval. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

F. Approval criteria – Final plat.

The Planning Manager and the City Engineer must review the final plat and must approve or deny the final plat based on findings of compliance with the following:

1. The final plat complies with the preliminary plat approved by the approval authority and all conditions of approval have been satisfied.
2. The preliminary plat has not lapsed.
3. The streets and roads for public use are dedicated without reservation or restriction other than revisionary rights upon vacation of any such street or road and easements for public utilities.
4. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal, and water supply systems.
5. All common improvements required as conditions of approval have been described and referenced on the plat, and where appropriate, instruments to be recorded have been submitted.
6. The plat complies with Title 19 and other applicable ordinances and regulations.
7. ~~Submission of signed deeds~~ have been submitted when access control strips are shown on the plat.
8. The plat contains an affidavit by the land surveyor who surveyed that the land represented on the plat was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.060, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Survey or giving 2 or more objects for identifying its location.
9. The final plat includes the following:
 - a. A note prohibiting further division of the sublots;
 - b. Labels and descriptions for all tracts;
 - c. A reference to any deed restrictions imposed on the lot or sublots as a condition of approval of the original lot creation, subplot plat, or development approval; and

d. A note stating that, pursuant to ORS 92.031, the ~~The~~ middle housing developed on the sublots shown on the final plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division. (Ord. 2219 § 2 (Exh. B), 2022; Ord. 1907 (Attach. 1), 2002)

10. The City's ~~e~~Engineering department has provided written confirmation that a sewage disposal system will be available to the subplot line of each subplot depicted in the final subplot plat.

11. All public improvements have been installed and inspected and have been approved.

12. A copy of the recorded document establishing a homeowner's association or similar entity to manage all commonly held areas located in tracts has been provided to the City, if applicable. At a minimum this document must include the following:

a. A description of the common elements located in tracts.

b. An allocation to each unit included in the subplot plat of an undivided and equal interest in the common elements and the method used to establish the allocation.

c. An establishment of use rights for common elements, including responsibility for enforcement, and

d. A maintenance agreement for common elements, including an allocation or method of determining liability for a failure to maintain.

17.26.020 Expedited Land Division

Approval through two-step process. An expedited land division requires a two-step process: a preliminary plat and a final plat.

A. Preliminary Plat. Expedited land divisions are defined by ORS 197.360(1) and are processed according to ORS 197.360 to ORS 197.380. ~~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 of this chapter.

B. Final plat. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

[No changes to Sections 17.26.020.C to the end]

CHAPTER 17.28

DESIGN STANDARDS

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, or a middle housing land division, are also exempt from the requirements of this section.

A. Size and Shape

Lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated. Minimum lot standards must conform to Title 19. Lot shape standards may be adjusted subject to Section 19.911 Variances.

B. Rectilinear Lots Required

Lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape.

C. Limits on Compound Lot Line Segments

Cumulative lateral changes in direction of a side or rear lot line exceeding 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction must be measured from a straight line drawn between opposing lot corners.

D. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

E. Measurement of Required Frontage

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage must be measured along the street upon which the lot takes access.

TITLE 19

ZONING

CHAPTER 900 LAND USE APPLICATIONS

19.901 INTRODUCTION

Uses or development that are regulated by Titles 14, 17, and 19 of the Milwaukie Municipal Code shall submit and obtain approval for all required land use applications prior to establishment or construction. Table 19.901 below contains a complete list of the City’s land use applications and the location of the provisions that govern their submittal, review, and approval. It also identifies the review type(s) associated with each application type. The review type determines who is given notice about land use and development proposals, when the City has to make a decision on a land use application, and who makes the final decision. Descriptions of the different review types and the procedures associated with them are located in Chapter 19.1000. Decision makers for each review type are listed in Table 19.1001.5.

Table 19.901		
Land Use Applications		
Application Type	Municipal Code Location	Review Types
Land Divisions:	Title 17	
Final Plat	Title 17	I
Lot Consolidation	Title 17	I
Partition	Title 17	II
Property Line Adjustment	Title 17	I, II
Subdivision	Title 17	II
Middle Housing Land Division	Title 17	Per ORS 92.031; ORS 197-ORS 197.380
<u>Expedited Land Division</u>	<u>Title 17</u>	Per ORS 197.360 to ORS 197.380

CHAPTER 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 and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing. (Ord. 2025 § 2, 2011; Ord. 2051 § 2, 2012; Ord. 2168 § 2, 2019; Ord. 2218 § 2 (Exh. B), 2022; Ord. 2219 § 2 (Exh. B), 2022; Ord. 2235 § 2, 2023)

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 197A.445 to ORS 197A.470. 197.314, shall be issued within 100 days from when the application was deemed complete. Pursuant to Subsection 17.12.020.G, the final decision for a middle housing or expedited land division as defined in, and subject to the applicable provisions of ORS 92.010 to 92.192 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.

[Amend Section 19.1005.5.A only.]

19.1005.6 Appeal of a Type II Decision.

A Type II decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

~~Appeals of a Type II decision for a middle housing or expedited land division are processed subject to the applicable provisions found in ORS 197.360 — ORS 197.375.~~