



PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

February 22, 2022

Present: Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Amy Erdt
Adam Khosroabadi
Robert Massey
Jacob Sherman

Staff: Justin Gericke, City Attorney
Vera Kolias, Senior Planner
Laura Weigel, Planning Manager

Absent: Greg Hemer

(00:08:30)

1.0 Call to Order — Procedural Matters*

Chair Loosveldt called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

Note: *The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

(00:09:05)

2.0 Planning Commission Minutes

The November 9, 2021 minutes were approved with a 6 – 0 vote.

The January 25, 2022 minutes were approved with a 6 – 0 vote.

(00:10:39)

3.0 Information Items

Laura Weigel, Planning Manager, shared an update to the Middle Housing and Tree code City Council hearings, three hearings have been held all related to the proposed amendments to the tree code. The proposed middle housing code amendments will be discussed at the March 1 and 15 meetings. **Vera Kolias, Senior Planner**, added that Council has not yet deliberated on any proposed code amendments.

(00:11:45)

4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:12:36)

5.0 Community Involvement Advisory Committee (CIAC)

No information was presented for this portion of the meeting.

(00:14:09)

6.0 Work Session Items

(00:14:10)

6.1 Oregon Senate Bill 458 – Code Amendments

Kolias shared background information on Oregon Senate Bill 458 (SB 458), the bill is a follow up on Oregon House Bill 2001 (HB 2001). SB 458 ensures expedited land divisions for middle housing enabling units to be sold or owned individually. SB 458 applies to all middle housing types but does not apply to accessory dwelling units (ADUs). SB 458 land divisions must result in one dwelling per lot with separate utilities for each dwelling, the bill does allow common areas to be located on separate lots or shared tracts. Additionally, all dwelling units must meet the requirements of the Oregon Residential Specialty Code. The bill requires an expedited review of qualifying land divisions which the City will meet through a Type II review with a compressed 63-day time frame.

Kolias continued, SB 458 allows jurisdictions to require frontage improvements, concurrent reviews from other departments, preliminary and/or final plats, and building permits. Consistent with other land division reviews the proposed code amendments will not require concurrent reviews from other departments. SB 458 states new lots created cannot be required to provide street frontage for new lots, parking or driveway to each new lot, or minimum lot sizes or dimensions. Further, the city can only review and condition approval for land divisions of middle housing on criteria noted in SB 458. SB 458 allows the City to require that a notation appear on the final plat that indicates approval was granted under SB 458.

Vice Chair Edge asked whether any child lot property could also have an ADU under the expedited land division proposed here or through a traditional land division. **Kolias** responded that they would not be allowed in the proposed expedited land division code. Further, some middle housing units may not be allowed under the traditional land division review as street frontage is an approval criterion. **Justin Gericke, City Attorney**, responded that SB 458 is not clear in that regard.

Vice Chair Edge asked whether appeals are subject to the compressed timeline and will be heard by the Planning Commission. **Kolias** responded yes, appeals must be confined to the 63-day compressed review period and they will be heard by the planning commission.

(00:40:58)

7.0 Planning Department Other Business/Updates

Weigel shared that staff is awaiting a response from the Confederated Tribes of the Grand Ronde about whether the Commission can use the same Native Lands Acknowledgment used by Council.

Weigel shared that Council is resuming in-person meetings March 1st and Commissioners can participate in future Planning Commission meetings either online or in person in Council Chambers but are not obligated to attend in person.

Chair Loosveldt asked for clarification regarding COVID protocols during in-person meetings. **Weigel** responded that individual vaccination statuses will not be checked and the City is following state guidelines, masking is currently required. **Gericke** added that capacity will be limited to ensure physical distancing in Council Chambers. **Commissioner Sherman** added that Council Chambers are equipped with sufficient technology to make a hybrid experience smooth for participation both in-person and via Zoom.

Commissioners Sherman, Edge, Massey, Khosroabadi, Erdt, and Loosveldt noted their support for a hybrid meeting format.

(00:54:00)

8.0 Planning Commission Committee Updates and Discussion Items

(00:55:19)

9.0 Forecast for Future Meetings:

March 8, 2022	1. Public Hearing: CSU-2021-005, MHS Reader Board Sign at 2301 SE Willard St
March 22, 2022	1. Public Hearing: R-2021-004, 8-lot Subdivision Replat at 10586 & 10610 SE Home Ave
April 12, 2022	1. Public Hearing: VR-2022-001, Setback Variance at 2807 SE Sherrett St 2. Public Hearing: Senate Bill 458 Code Amendments 3. Public Hearing: VR-2021-012, 9285 SE 58 th Dr

Meeting adjourned at approximately 7:18 p.m.

Respectfully submitted,

Will First, Administrative Specialist II



CITY OF MILWAUKIE

AGENDA

February 22, 2022

PLANNING COMMISSION

milwaukieoregon.gov

Zoom Video Meeting: due to high rates of community COVID-19 transmission, the Planning Commission will hold this meeting through Zoom video. The public is invited to watch the meeting online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfqe3OnDWLQKSB_m9cAw) or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time. To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-90>) and follow the Zoom webinar login instructions.

1.0 Call to Order – Procedural Matters — 6:30 PM

2.0 Planning Commission Minutes – Motion Needed

2.1 November 9, 2021

2.2 January 25, 2022

3.0 Information Items

4.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

5.0 Community Involvement Advisory Committee (CIAC)

6.0 Work Session Items

6.1 Summary: Oregon Senate Bill 458 – Code Amendments

Staff: Senior Planner Vera Koliass

7.0 Planning Department Other Business/Updates

8.0 Planning Commission Committee Updates and Discussion Items — This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings

March 8, 2022 Hearing Item: CSU-2021-005, MHS Reader Board Sign at 2301 SE Willard St

March 22, 2022 Hearing Item: R-2021-004, 8-lot Subdivision Replat at 10586 & 10610 SE Home Ave

Hearing Item: VR-2022-001, Setback Variance at 2807 SE Sherrett St

April 12, 2022 Hearing Item: Senate Bill 458 Code Amendments

Hearing Item: VR-2021-012, 9285 SE 58th Dr

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and city of residence for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners. Speakers are asked to submit their contact information to staff via email so they may establish standing.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Greg Hemer
Robert Massey
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Planning Department Staff:

Laura Weigel, Planning Manager
Vera Kolias, Senior Planner
Brett Kolver, Senior Planner
Adam Heroux, Associate Planner
Ryan Dyar, Assistant Planner
Will First, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

November 9, 2021

Present: Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Amy Erdt
Greg Hemer
Adam Khosroabadi
Robert Massey
Jacob Sherman

Staff: Justin Gericke, City Attorney
Vera Kalias, Senior Planner
Peter Pasarelli, Public Works
Director
Natalie Rogers, Climate and
Natural Resources Manager
Laura Weigel, Planning Manager

Absent:

(00:14:29)

1.0 Call to Order — Procedural Matters*

Chair Loosveldt called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

Note: *The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

(00:15:00)

2.0 Meeting Minutes

The September 14, 2021 minutes were approved with a 7-0 vote.

(00:15:50)

3.0 Information Items

No information was presented for this portion of the meeting.

(00:16:01)

4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:17:00)

5.0 Community Involvement Advisory Committee (CIAC)

Commissioner Sherman noted the resources provided by the International

Association of Public Participation (IAPP) could be useful for staff to consult throughout engagement efforts. **Laura Weigel, Planning Manager**, responded staff does frequently consult IAPP resources and will continue to.

Commissioner Erdt noted use of the Milwaukie Chit Chat Facebook page to poll residents about their awareness of which NDA represents them.

(00:22:25)

6.0 Hearing Items

(00:22:25)

6.1 VR-2021-015, 3521 SE Filbert St

Vera Kalias, Senior Planner, shared the staff report, the applicant's proposal is to convert an existing 850 square foot accessory structure to an accessory dwelling unit (ADU). The proposed variance is necessary to permit the conversion of an accessory structure with a building footprint larger than 800 square feet. Staff found the application to have no negative impacts, it meets all minimum setback requirements, and the request is both reasonable and appropriate. Staff recommended approval of the variance with the recommended findings and conditions of approval included in the staff report.

Commissioner Hemer asked for clarification on the location of the recommended sidewalk improvements.

VR-2021-015, 3521 SE Filbert St, was approved by a 7-0 vote.

(00:38:33)

6.2 ZA-2021-002, Middle Housing and Tree Code, Hearing #3

Natalie Rogers, Climate and Natural Resources Manager, and Kalias shared the code review schedule, summary of recommended revisions from the October 12 and 26 Planning Commission meetings, and staff report. The recommended revisions from previous meetings include:

- Allow flag lots and back lots in subdivisions
- Reduce minimum off-street parking for middle housing to 0 spaces per dwelling unit, except cottage clusters.
 - Reduce minimum off-street parking for cottage clusters in the R-MD zone to 0.5 spaces per cottage
- Reduce the minimum lot size for all middle housing types, except cottage clusters and townhouses, to 3,000 square feet
- Reduce minimum setbacks for income-restricted housing

Commissioner Massey asked if the Comprehensive Plan Implementation Committee (CPIC) was involved in reducing the proposed required minimum parking spaces from 1 to 0. **Kalias** responded that CPIC was not involved in lowering the required minimum parking spaces. **Chair Loosveldt** noted that CPIC

did not formally vote to recommend 1 required off-street parking space.

Commissioner Sherman asked why the City contracted parking consultant recommended 1 parking space per unit. **Kolias** responded that the consultant's recommendation was to conform to state house bill 2001 (HB 2001).

Rogers shared the background and goal of the draft private tree code. A 40% canopy goal, informed by the American Forests' recommendation, was created to balance urbanization and natural systems. Rogers noted a significant portion of the City's current canopy is located on private property.

Commissioner Khosroabadi asked what change in tree canopy is expected since the 2014 lidar data used in aerial image shown the staff report. **Rogers** responded that the change in canopy is difficult to measure accurately without lidar technology. **Commissioner Hemer** asked how many trees the City needs to reach the 40% tree canopy goal. **Rogers** responded that the number of trees needed to reach the City goal depends on what species are planted. **Passarelli** stressed the importance of diversifying tree species rather than solely planting trees with the large mature canopies.

Commissioner Sherman asked what differences experts reported between forested and non-forested lands during the heat dome event in summer 2021. **Rogers** responded that Portland State's Dr. Vivek Shandas wrote about the disproportionate effect of urban heat islands on non-forested urban areas in the Portland metro during the heat dome event. Dr. Shandas' noted that vegetated spaces provided critical shading and cooling benefits.

Commissioner Erdt asked what mechanisms will be used to support low-income residents burdened by tree maintenance costs. **Rogers** responded noting the low-income assistance fund which will provide financial aid for tree maintenance and care to low-income residents.

Commissioner Erdt raised concerns around residents looking to add solar panels to their homes. **Rogers** responded that residents could choose tree species which are shorter to not preclude the use of solar panels. Additionally, staff is working with utility companies to offer a sustainable energy source which does not require use of solar panels. **Peter Passarelli, Public Works Director**, responded to Commissioner Erdt stressing the importance of the right tree in the right location to mitigate negative implications whether solar panel shading, utility line interference, ice damage, or otherwise.

Commissioner Erdt expressed concern for wildfires when expanding tree canopy coverage within the city. **Rogers** responded that proactive maintenance would prevent any unnecessary increase in wildfire risk when expanding the tree canopy.

Commissioner Sherman asked whether programmatic permits are targeted at

utility companies. **Rogers** responded that programmatic permits are targeted at utility companies to ensure they are compliant with City guidelines and priorities.

Rogers noted the economic, environmental, and health differences between how an owner or tenant may view trees and tree canopy versus a developer. **Rogers** noted the process of developing the draft tree code and involvement of the Tree Board, arborist consultants, the Comprehensive Plan Implementation Committee (CPIC), and staff. The draft tree code is only applicable in residential zones. The residential non-development standards apply to tree removals not related to development. A permit is required for tree removal if the tree is larger than 6 inches diameter at breast height (DBH). There are two permit types, Type I permits require only a permit application, are streamlined, and approval standards for these removals include trees that are invasive species, dead, dying, diseased, or pose unmitigable infrastructure impacts, public safety risks, or a fire hazard. Additionally, needed removal for public transportation right of way (ROW) projects, utility infrastructure or building permits, and one healthy tree less than 18 inches DBH per year is included in Type I permit approval standards. Type II permits apply to multiple tree removals or removals which do not meet Type I approval standards. For Type II removals larger than 18 inches DBH public notice is required. For all removals there are replanting requirements or a fee in lieu of replanting. The draft code does not regulate private tree maintenance, it does not require property owners to plant new trees unless fulfilling removal permit requirements, or a permit to prune trees.

Commissioner Sherman asked what fees are associated with Type I removal permits and whether a replanting is required for the one healthy tree removal allowed per year. **Rogers** responded that the only fee associated with Type I removals is the application fee and replanting is necessary for the one allowed healthy tree removal per year.

Vice Chair Edge asked why one healthy tree removal was allowed under the Type I permit process. **Rogers** responded it was added to provide flexibility for homeowners. **Passarelli** added that every municipality in the region with a private tree code allows at least one healthy tree removal per calendar year.

Commissioner Hemer asked what the International Society of Arboriculture is and are the standards laid out by the organization laid out in our code. **Rogers** responded that the International Society of Arboriculture (ISA) is the certifying authority for arborists, they release best management practices which inform our proposed code.

Commissioner Erdt noted support for requiring new tree plantings on new developments but expressed concern in creating a non-development private tree code.

Commissioner Sherman asked whether consulting with an ISA certified arborist is necessary when removing the one healthy tree allowed per year. **Rogers**

responded that it is not necessary when removing the one healthy tree permitted per year, consulting an ISA certified arborist is necessary only when removing a tree using an approval criterion which requires a certified arborist's assessment.

Rogers presented the proposed private tree code for residential development which applies to land divisions and construction of new residential dwelling units. Key standards established in the residential development tree code include:

- Preservation standards to protect existing trees on site.
- Canopy standards to ensure intentional preservation and planting on development sites.
- Protection standards to ensure preserved trees are protected from development impacts.
- Soil volume standards require appropriate soil volume for new plantings to improve the tree's chance of long-term success.

Preservation standards require payment of mitigation fees if new canopy coverage after development is less than 30% at maturity. The mitigation fees are tiered and increase as total lot canopy coverage after development decreases.

Canopy standards require 40% tree canopy coverage on completed development sites through existing tree canopy and future mature canopy of new plantings. Existing trees receive 100% canopy credit while new plantings receive 75% canopy credit for their predicted mature canopy. New and existing ROW trees receive 50% canopy credit.

Protection standards prevent construction practices which fail to consider trees. The protection standards must be followed to obtain preservation and canopy credits. Protection standards include the development of a tree protection plan, establishment of root protection zones, management of encroachment into root protection zones, and protection fencing requirements. If the prescriptive path is not practicable, the applicant may propose alternative measures and follow a performance path under guidance of an ISA certified arborist.

Soil volume standards require a minimum of 1,000 cubic feet of soil volume per tree planted. A soil volume plan created by an arborist is required and soil volume methods must be consistent with ISA best management practices. The project arborist must verify the soil volume plan was successfully implemented prior to tree planting.

Mitigation standards are established when preservation and canopy standards cannot be met. Mitigation fees are assessed based on the percent of canopy removed and the total canopy percentage needed to meet 40% lot coverage. Applicants may apply for a Type III variance in lieu of a mitigation fee for alternative construction designs and techniques that provide additional sustainability benefits to the site.

Rogers shared an overview of potential fees for the proposed private tree code. Non-development fees may include the permit application fee, removal fee, and fee in lieu of planting. The development plan review fees may include minor and major permit review and tree site inspections. The development mitigation fees may include fees in lieu of preservation and canopy standards, threatened or rare tree removal, and enforcement and restoration fees. Rogers added the proposed private tree code includes low-income assistance which may exempt property owners from permit, removal, or replanting fees when the owner demonstrates household income at or below 80% area median income for the Portland-Vancouver-Hillsboro metropolitan statistical area.

Commissioner Hemer asked if the 33% vegetation code requirement conflicted with the proposed 40% canopy coverage requirement. **Rogers** responded the two do not conflict as vegetation is a ground level landscaping requirement and the canopy coverage is a separate grade.

Commissioner Hemer asked whether canopy coverage from trees located on adjacent properties count towards the proposed canopy requirements and whether trees planted on the property line count towards the proposed canopy coverage requirements. **Rogers** responded that only on-site trees count towards the proposed canopy requirements. If a tree's trunk is partially or wholly within the property, the tree is considered an on-site tree and the tree's canopy fully counts towards the proposed canopy coverage requirements. **Commissioner Khosroabadi** noted property owners' responsibility for trimming tree limbs which overhang their property and asked why the overhanging canopy coverage would not count towards the canopy coverage requirement. **Rogers** responded trees whose trunks are wholly on adjacent properties can be removed without the property owner's permission and therefore the coverage provided by those trees are outside of the property owner's control and cannot count towards canopy coverage requirements. **Commissioner Sherman** asked if developers could plant trees along the property line of two adjacent lots being developed simultaneously and have the trees' canopy count for both lots. **Rogers** responded tree canopies from trees partially on a property are only considered when assessing existing tree canopy for preservation standards and cannot be used for new plantings. New plantings must be wholly on-site to count towards proposed canopy coverage requirements.

Commissioner Hemer asked whether the soil volume standards apply to every tree. **Passarelli** responded soil volume standards only apply to residential development.

Commissioner Massey asked whether the proposed code would include language which establishes standards to ensure new plantings survive. **Rogers** responded bond issuance could be included as a mechanism to ensure new plantings survive although it is not currently in the proposed code. **Chair Loosveldt** recommended that staff include the ability to issue bonds in the proposed code as a mechanism to ensure new plantings survive. **Commissioner**

Sherman added that the meeting packet notes outline staff's authority to require a bond issuance for trees to ensure survival.

Commissioner Sherman asked whether the required tree root protection fencing signs will include a staff contact for reporting violations. **Rogers** responded the sign language is still in development and staff will consider adding the proposed language.

Commissioner Hemer asked how the mitigation fees are used by the City. **Rogers** responded mitigation fees are paid into the City's tree fund which is used for a variety of urban forest preservation, promotion, and maintenance purposes.

Commissioner Sherman asked whether the language in the draft code, stating that an applicant must show how the alternative plan provides greater environmental benefits serves as the approval criteria for the preservation and canopy variance. **Justin Gericke, City Attorney**, responded that the language provided in the draft code does serve as the approval criteria for the variance. **Vice Chair Edge** asked whether the proposed approval criteria prevent an applicant from using the hardship criteria to receive variance approval. **Kolias** responded the proposed approval criteria would be added to the existing approval criteria for a Type III variance. **Vice Chair Edge** recommended adding clarity to the code language, so the commission is clear on the variance approval criteria. **Kolias** responded staff will review the proposed code language to reconcile any ambiguities.

Kolias noted written testimony received after the meeting packet posted.

Stephen Lashbrook, a Milwaukie resident, expressed support for the proposed private tree code and recommended adding clarifying language for how the city manager would review appealed decisions from the City's Urban Forester.

Neil Schulman, representing the **North Clackamas Watershed Council**, expressed support for the City's 40% canopy goal and the parking requirements for cottage clusters. Schulman encouraged building ongoing relationships with developers to protect existing trees and raising mitigation fees. Schulman requested the variance process be made more rigorous and that the one allowed healthy tree removal per year be more rigorous to not include trees with 18-inch DBH. **Chair Loosveldt** asked what Schulman would recommend as an alternative to the proposed 18-inch DBH allowed for one healthy tree removal per year. **Schulman** recommended using a 12-inch maximum DBH for the one allowed healthy tree removal per year.

Micah Meskel, a Milwaukie resident, noted support for no required off-street parking for middle housing, recommended lowering the allowed maximum DBH for the one allowed healthy tree removal per year, and recommended raising the proposed mitigation fees. **Passarelli** responded that only the types of fees are proposed, no fee amounts have been decided. **Commissioner Sherman** asked

whether the mitigation fee amounts will be decided through staff and budget committee meetings. **Passarelli** responded that the mitigation fees will be established through meetings with staff and the budget committee.

Renee Moog, a Milwaukie resident, recommended requiring one off-street parking space per unit. Moog asked whether the middle housing growth predictions from the October 26 Planning Commission predict the city will receive 24 new middle housing units or 24 new lots with middle housing. Additionally, Moog asked whether predictions were 24 units/lots each year or over the 20-year timeframe. Moog asked whether the impact of street improvements on the capacity of on-street parking was considered in the proposed code amendments. **Vice Chair Edge** responded that the predictions were based on the buildable lands inventory number provided by staff, which identified 765 new buildable lots. The market absorption rate of middle housing in low density areas was identified as 3% by the Oregon Department of Land Conservation and Development (DLCDD). The absorption rate resulted from the greenfield modeling which is not applicable to the City but was used in the October 26 hearing to demonstrate that even with a higher absorption rate than applicable to the City, there is still ample capacity for on-street parking. Edge noted with 765 new buildable lots and a 3% absorption rate for middle housing, the City can expect an additional 24 new middle housing units in the next 20 years. **Kolias** responded that street improvements can add, take away, or not effect on-street parking depending on a variety of factors.

Ted Labbe, representing **The Urban Greenspace Institute**, expressed support for the proposed code amendments. Labbe recommended removing the language allowing the removal of one healthy tree per year and added support for further restricting the ability if removing it is not possible. Labbe recommended that lower preservation standards for affordable housing be removed from the proposed code amendments.

Anthony Allen, a Milwaukie resident, expressed concern for mailbox access with increased on-street parking.

Chris Ortolano, a Milwaukie resident, asked whether the cumulative effects of the proposed middle housing amendments and middle housing projects on parking availability has been considered.

Ronelle Coburn, a Milwaukie resident, noted a petition with 84 signatories in opposition to the proposed code amendments. Coburn expressed concern with the proposed parking code amendments.

Elvis Clark, a Milwaukie resident, expressed concern for the restrictions on trees larger than 6-inch DBH in the proposed tree code. Additionally, Clark expressed opposition for the proposed parking amendments.

Steve Klingman, a Milwaukie resident, asked how ample street parking can be

known and expressed opposition to the proposed tree code.

Michael Anderson, a Portland resident, noted support for reducing the minimum required parking and added that developers will build parking when necessary.

Commissioner Sherman asked for clarification about a chart depicting housing development feasibility which Anderson submitted via written testimony.

Anderson responded that the chart shows that in most cases the current building would provide larger profits than redeveloping a lot with middle housing although when prices are high there is a greater demand for housing units such that middle housing may be more profitable. Anderson noted off-street parking requirements for middle housing make development less likely for smaller lots.

Commissioner Sherman asked whether the elimination of parking requirements in Tigard had an effect on the on-street parking availability. **Anderson** responded that few middle housing units have been built in Tigard since the elimination of parking requirements and therefore it has had almost no effect on their on-street parking availability. **Vice Chair Edge** asked about the 3% projected market absorption rate of middle housing and whether the City can rely on the figure as an accurate rate. **Anderson** noted 3% was reached during DLCD rulemaking as a plausible upper boundary for market absorption and in the state legislature the rate was used as a mechanism to ensure the urban growth boundary could be expanded if there was a higher market absorption than expected.

Kolias reviewed the recommended revisions from the October 12 and 26 Planning Commission meetings. Revisions included:

- Allowing flag lots and back lots in subdivisions
- Reducing minimum off-street parking for middle housing to 0 spaces per dwelling unit for middle housing, except cottage clusters
 - Reduce minimum off-street parking for cottage clusters in the R-MD zone to 0.5 spaces per cottage
- Reduce the minimum lot size for all middle housing types except cottage clusters and townhouses to 3,000 square feet
- Reduce minimum setbacks for income-restricted housing

Vice Chair Edge asked to include a recommendation to encourage incentivizing income-restricted affordable housing production in the Planning Commission recommendation to City Council.

Commissioner Hemer and **Chair Loosveldt** recommended removing the proposed setback reductions for income-restricted housing noting concerns for stigmatization of tenants in buildings which vary in form from the surrounding built environment. **Vice Chair Edge** noted support for the proposed setback reductions. **Commissioner Khosroabadi** noted support for the proposed setback reductions and noted that the proposed reductions may go unnoticed. **Vice Chair Edge** suggested removing the proposed setback reductions and creating a Type II variance process to allow reduced setbacks for affordable middle housing developments. **Chair Loosveldt**, **Commissioner Sherman**, and **Commissioner Khosroabadi** expressed support for creating a Type II variance

process for setback reductions for affordable middle housing developments.

Commissioner Hemer noted public testimony from Milwaukie residents was against the proposed minimum off-street parking reductions for middle housing and recommended revisiting reducing the minimum off-street parking in ten years. **Vice Chair Edge** reiterated the predicted 3% market absorption rate of middle housing and noted the low likelihood of any effect of the proposed amendments on the City's on-street parking availability. **Commissioner Sherman** noted a difference between two tables in the 2021 Residential Parking Study, the table referenced at the October 26 Planning Commission Hearing does not account for the additional parking spaces provided by garage space, the table located in the executive summary of the 2021 Residential Parking Study found that when considering each garage's capacity there is an additional parking space for each property, for a total of 5.4 spaces per property.

Chair Loosveldt polled the commission on the proposed code amendments from the October 12 and 26 Planning Commission meetings with the revisions stated. Commissioners Loosveldt, Edge, Khosroabadi, Sherman, and Erdt were in support and Commissioners Massey and Hemer were in opposition.

Commissioner Sherman noted a need to work with the city manager to determine if the appeal process as recommended in the proposed tree code is feasible. Sherman also revisited the variance process for tree removal and requested the economic hardship approval criterion be removed. **Commissioner Hemer** and **Commissioner Khosroabadi** asked why economic hardship should be removed as an approval criterion. **Commissioner Sherman** stated the proposed approval criteria from staff were based on environmental benefits rather than economic hardship but requested that approval criteria be further clarified. **Vice Chair Edge** noted support for clarifying the approval criteria and removing the economic hardship criterion.

Chair Loosveldt polled the commission to recommend a reduced maximum DBH for the one healthy tree removal permitted under the Type I review process per year from 18 inches to 12. Commissioners Loosveldt, Edge, Massey, Sherman, and Khosroabadi were in support and Commissioners Hemer and Erdt were in opposition.

Chair Loosveldt revisited the discussion of bond issuance to ensure new plantings grow to maturity. **Commissioner Hemer** requested that staff further explore adding language which permits the City to require bond issuance for new plantings and clarify the process before presenting to City Council.

Commissioner Hemer expressed support for the proposed development tree code but opposition to the proposed private non-development tree code.

Commissioner Erdt expressed support for the proposed development code and opposition to the proposed non-development code. Erdt asked staff to provide

the cost of the fees which property owners who wish to remove a tree larger than the permitted one 18-inch DBH healthy tree allowed per year will incur in the proposed code. **Rogers** responded that fees have not been set for type II removal. **Commissioner Hemer** stated that property owners would need to hire a certified arborist to assess the tree before removal. **Rogers** clarified that an arborist would not be necessary for type II tree removal of a healthy tree. **Commissioner Erdt** asked what other jurisdictions charge for similar removals. **Rogers** responded that the charges in other jurisdictions range in price from \$35 to \$50 for the permit charge.

Commissioner Sherman asked who will be setting the fees and whether community members will have opportunities to participate in the process. **Rogers** responded the fees will be set during the City Council public hearings.

ZA-2021-002, Proposed Code Amendments: Middle Housing, Residential Parking, and Tree Preservation, was recommended to City Council for approval by a 5-2 vote.

(05:04:50)

7.0 Planning Department Other Business/Updates

No information was presented for this portion of the meeting.

(05:04:50)

8.0 Planning Commission Committee Updates and Discussion Items

Vice Chair Edge announced an upcoming presentation on November 13 by Dr. David G. Lewis and The Oak Lodge Governance Project on the history of the Oak Lodge area before the arrival of European settlers.

(05:08:05)

9.0 Forecast for Future Meetings

November 23, 2021	Canceled
December 14, 2021	Canceled

Meeting adjourned at approximately 11:27 p.m.

Respectfully submitted,

Will First, Administrative Specialist II

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

January 25, 2022

Present: Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Amy Erdt
Greg Hemer
Adam Khosroabadi
Robert Massey
Jacob Sherman

Staff: Steve Adams, City Engineer
Jennifer Backhaus, Engineering
Tech III
Justin Gericke, City Attorney
Vera Koliyas, Senior Planner
Laura Weigel, Planning Manager

Absent:

(00:11:50)

1.0 Call to Order — Procedural Matters*

Chair Loosveldt called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

Note: *The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

(00:12:24)

2.0 Meeting Minutes

(00:12:26)

2.1 September 28, 2021 Meeting Minutes

The September 28, 2021 minutes were approved with a 7-0 vote.

(00:13:14)

2.2 October 12, 2021 Meeting Minutes

The October 12, 2021 minutes were approved with a 7-0 vote.

(00:13:53)

2.3 October 21, 2021 Meeting Minutes

The October 21, 2021 minutes were approved with a 7-0 vote.

(00:14:31)

2.4 October 26, 2021 Meeting Minutes

The October 26, 2021 minutes were approved with a 7-0 vote.

(00:15:04)

3.0 Information Items

No information was presented for this portion of the meeting.

(00:15:15)

4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:16:05)

5.0 Community Involvement Advisory Committee (CIAC)

Laura Weigel, Planning Manager, presented an update to the committee. As requested during the joint NDA/PC meeting on October 21, 2021, staff developed a Land Use 101 presentation which will be presented to NDA members March 31, 2022. **Chair Loosveldt** requested that planning commissioners be included in the meeting invitation.

Commissioner Hemer asked if the CIAC has written bylaws to govern and guide the committee. **Weigel** responded that the CIAC bylaws are included within the Planning Commission bylaws.

Commissioner Sherman asked staff how the City plans to comply with Oregon House Bill 2560 which requires all public meetings to be remotely accessible for community member participation. **Weigel** responded that the City is continuing to hold all public meetings online and will maintain an online component when meetings resume in person.

(00:20:37)

6.0 Hearing Items

(00:20:40)

6.1 VR-2021-012, 9285 SE 58 Dr

Vera Koliass, Senior Planner, noted a request submitted by the applicant to continue the public hearing to April 12, 2022.

Commissioner Hemer motioned to continue the public hearing to a date certain of April 12, 2022. The motion was approved by a 7-0 vote.

(00:24:34)

6.2 VR-2021-017, 2206 SE Washington St, Dogwood Station

Koliass shared the staff report. The applicant proposed a six-story residential building with 55 workforce priced units at 80% area median income (AMI). The proposal includes 43 off-site parking stalls available for lease on two other

downtown sites but no on-site parking. Although the proposed six-story building complies with the maximum measured building height, it exceeds the maximum allowed stories (5) and requires a height variance. The proposal includes a parking quantity modification to allow the required on-site parking spaces to be located off-site parking with no parking on-site.

Kolias presented approval criteria for the building height variance which include consistency with Downtown Design Guidelines, exceptional quality or positive unique relationship to other structures, views, or open space, and preservation of important views to the Willamette River, limiting shadows on public open spaces. Additionally, the project must provide public benefit beyond those required by base zone standards and increase downtown vibrancy and/or help meet sustainability goals. The Design and Landmarks Committee (DLC) recommended approval of the development with conditions to the commission. The DLC recommended the applicant provide a view study of the location, information on building materials used to break up the vertical aspect of design, and photos of materials as installed.

Kolias presented the approval criteria for the Parking Quantity Modification which include reasonableness given proximity to transit, implementation of a Transportation Demand Management Program (TDM), and/or demonstration that characteristics of the site users will reduce vehicle use and parking demand. With by-right reductions the development is required to provide 38 off-street parking spaces. The proposal includes 43 off-site parking spaces available for lease at two properties. 20 spaces available at 10282 SE Main St, ½ mile from the development, approximately an eight-minute walk, and 23 spaces nearby at 2305 SE Washington St, located across SE Washington St. The proposal also includes lobby monitors for tracking nearby TriMet stop departure times, a designated ride share pickup and drop-off location in front of the building, a Zip Car available to tenants located across the street on TriMet property, and 82 bike parking spaces.

The staff recommendation was to approve the various applications and adopt the recommended Findings and Conditions of Approval.

Chair Loosveldt asked why the architecture criterion was not applicable to the DLC review of the project. **Kolias** responded that MMC 19.907.2 allows the applicant to elect to have the project reviewed under multi-family design guidelines where architecture is not an applicable approval criterion. The applicant was able to choose which design guidelines to review the project under because it is an all-residential building. The applicant elected to design the building to the multi-family design guidelines in MMC19.505.3.

Chair Loosveldt asked what effect the leased parking spaces will have on the minimum parking requirements of the lots which are leasing parking spots. **Kolias** responded that there will be no effect on the required parking of either lot leasing parking spaces to tenants of the development. **Commissioner Hemer**

asked if the proposed off-site parking lease agreement could create a standalone parking lot and whether that would violate restrictions in the Downtown Mixed-Use (DMU) zone. **Kolias** responded that the lease agreements are for periods of three years with options to renew, therefore the sites would not have to remain standalone parking lots. **Commissioner Hemer** asked whether the number of off-site parking spaces would need to be guaranteed should the lease with one or both sites not renew. **Kolias** responded that a condition of approval requires the ongoing implementation of a TDM which includes a provision to provide 43 off-site parking spaces available for lease. **Commissioner Hemer** asked how compliance with the conditions of approval will be ensured by the City. **Kolias** responded that violation of any one of the conditions of approval would violate the land use agreement and the development would have to return to compliance. **Vice-Chair Edge** asked whether the conditions of approval should be made more flexible. **Justin Gericke, City Attorney**, responded that the Commission could revisit the TDM program if the transportation demand of the development changes. **Commissioner Sherman** asked whether the applicants have considered implementing other strategies to manage transportation demand. **Kolias** deferred to the applicant team.

The Applicants shared a presentation showing the building design, site massing scale, and an overview of the TDM program. Key components of the TDM program include proximity to nine TriMet bus stops and a Max stop within 1/8 of a mile, transit displays in the lobby of the building, an available Zip Car, 43 off-site parking spaces, and 82 bike storage spaces.

Commissioner Hemer asked whether the proposed additional spaces being built in the property across from the development will include any charging stations for electric vehicles. **The Applicant Team** responded that the new spaces will not include charging stations initially but may later add stations.

Commissioner Sherman asked for additional information about securing funds to provide workforce priced units. **The Applicant Team** responded that the developers plan to use a multi-faceted approach to ensure workforce priced units at 80% AMI. The approach includes the use of a \$350,000 grant from Metro and plans to use funds from the City Construction Excise Tax and Oregon Housing and Community Services grants, the development qualifies for both funding sources. **Commissioner Khosroabadi** asked how the development plans to move forward if sufficient funding is not secured. **The Applicant Team** responded that although the developers intend to secure funding, if sufficient funding is not secured the units would be scaled up towards 100% AMI. **Commissioner Sherman** asked for clarification regarding how long the units will continue to rent at 80% AMI. **The Applicant Team** responded that the affordability period is partially dependent on funding sources. The secured Metro grant requires units be affordable for a period of at least 15 years. **Commissioner Khosroabadi** asked if affordability periods from different grant sources compounded. **The Applicant Team** responded that the affordability periods from multiple grant sources do not compound but the development will meet the

required affordability period.

Vice-Chair Edge asked whether the Applicant Team has experience facilitating off-site parking with other projects. **The Applicant Team** responded that they do not as the city of Portland, where they have other projects, does not require off-street parking for workforce housing developments.

Commissioner Erdt asked if there was sufficient space for multiple cars to load and unload. **The Applicant Team** responded that there is a loading zone in front of the property.

Commissioner Hemer asked whether the applicant team planned to incorporate any components of the current building in the development in accordance with the DLC request. **The Applicant Team** responded that they are considering various ways to honor the DLC request and incorporate materials from the current building. **Chair Loosveldt** asked why several of the approval criteria for pedestrian emphasis are not considered applicable. **The Applicant Team** responded that responses to those specific approval criteria were not requested from planning staff although the team is confident they would meet the criteria if applicable. **Kolias** added the pedestrian emphasis approval criteria were not relevant to the design review as the review was for the height variance only.

Guy Benn, representing **TriMet**, expressed support for the development's TDM program and use of off-site parking.

The Planning Commission discussed the approval criteria. **Vice-Chair Edge** noted support for the application and its consistency with City policies. Edge referenced condition of approval #3 and support for requiring the ongoing implementation of a TDM program. Edge additionally expressed a preference to eliminate the off-site parking requirement for further flexibility. **Commissioner Erdt** expressed support for the application package and support for increasing the capacity of the loading zones. **Commissioner Massey and Commissioner Khosroabadi** expressed support for the application package and specifically for the proposed TDM program. **Commissioner Hemer** expressed opposition to the application package because of the lack of on-site parking.

Commissioner Sherman expressed support for the height variance based on the provision of affordable units and support of adding further conditions of approval to ensure the provision of affordable units. **Commissioner Khosroabadi** asked if there were mechanisms the Commission could employ to ensure the provision of affordable housing. Khosroabadi suggested approving the application contingent on securing grants which enable the development to provide affordable units. **Gericke** added that the Commission cannot use the provision of affordable units as an approval criterion or condition of approval for land use applications unless specifically noted in the code. **Vice-Chair Edge** noted support for approval of the height variance regardless of the number of affordable units provided. Edge asked whether lowering the minimum required

off-site parking was possible if the TDM program shows an excess of off-site parking spaces. **Gericke** responded that the minimum requirement of 43 off-site spaces is needed to satisfy the approval criteria for the parking modification application. Gericke further noted that a reduction in required off-site parking spaces could be granted through an additional parking modification application in the future, if appropriate.

Vice-Chair Edge asked whether the proposed loading space complies with the standard. **Kolias** responded it does comply with the standard requiring one loading space. There is room to add an additional loading space just East of the property in front of the adjacent property.

Chair Loosveldt asked whether ADA parking requirements are met. **Kolias** responded that, to her knowledge, ADA parking requirements are a proportion of on-site parking spaces; because there are no on-site parking spaces there is no requirement to provide ADA accessible parking. **Commissioner Hemer** asked if there are ADA requirements when building or adding spaces to existing parking lots. **Gericke** responded that any ADA requirements would require accessibility to the building on the site the parking is located and not another building, off-site, which the parking spaces are being leased to residents of. **Chair Loosveldt** expressed opposition to the application package because of various issues with the off-site parking spaces. **Commissioner Khosroabadi** asked how wide the proposed loading zone is. **Commissioner Sherman** responded the loading zone is 35 feet wide. **Steve Adams, City Engineer**, noted that the applicant could request several of the new parking spaces being constructed on the off-site lot be ADA compliant. **Commissioner Massey and Vice-Chair Edge** noted support for adding a condition of approval which requires a proportion of new parking spaces to be ADA compliant. **Commissioner Sherman and Chair Loosveldt** noted support for adding a more explicit condition of approval requiring two new ADA spaces to be in the off-site parking lot closer to the proposed development. **Kolias** responded that the applicant team supports building two ADA spaces when constructing the additional parking spaces in the lot across from the development. But, the applicant team cannot guarantee the spaces will be built as the property owner can determine what spaces will be constructed. **Commissioner Khosroabadi** suggested keeping the loading space adjacent to the property and converting the loading spaces in front of the property into two ADA parking spaces.

VR-2021-017, Dogwood Station, was approved with the findings and conditions of approval presented in the staff presentation with a 6-1 vote.

(03:35:42)

7.0 Planning Department Other Business/Updates

(03:35:42)

7.1 Planning Commission Elections

Chair Loosveldt opened the discussion on annual elections for the Chair and Vice-Chair positions. **Commissioner Khosroabadi** expressed interest in holding the Vice-Chair position. **Commissioner Sherman** expressed interest in holding either the Chair or Vice-Chair positions. **Commissioner Hemer** expressed support for all members of the commission to hold an officer role during their tenure. **Chair Loosveldt and Vice-Chair Edge** expressed interest in retaining their respective officer roles. **Commissioner Khosroabadi and Commissioner Sherman** expressed support for renewing both Chair Loosveldt's and Vice-Chair Edge's term in their respective officer role.

Commissioner Hemer motioned to renew Chair Loosveldt's position as Planning Commission Chair for 2022. The motion was approved with a 7-0 vote.

Commissioner Hemer motioned to renew Vice-Chair Edge's position as Planning Commission Vice-Chair for 2022. The motion was approved with a 7-0 vote.

(03:45:03)

8.0 Planning Commission Committee Updates and Discussion Items

Commissioner Hemer announced a Ledding Library Lecture Series presentation on February 2, 2022 entitled 80 years from Incarceration – Japanese American Story. Presenters include Amy Mishima Peterson of the Japanese American Museum of Oregon (JAMO), Commissioner Sherman, and City Councilor Desi Nicodemus.

Chair Loosveldt requested staff explore the possibility of adding a Native Lands Acknowledgment to Planning Commission meetings.

Weigel noted that Planning Commission meetings will remain online through Zoom for the next two meetings due to the Omicron variant and continued high transmissibility of the COVID-19 virus.

(03:51:41)

9.0 Forecast for Future Meetings

February 8, 2022	Canceled
February 22, 2022	Work Session: Income restricted Housing Code Incentives Work Session: Oregon Senate Bill 458 – Code Amendments

Meeting adjourned at approximately 10:09 p.m.

Respectfully submitted,

Will First, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Kolas, Senior Planner
Date: February 15, 2022 for February 22, 2022, Worksession
Subject: Proposed Code Amendments: Senate Bill 458

ACTION REQUESTED

No action. Review the proposed code amendments related to compliance with Senate Bill 458 (SB458) and provide direction about implementing the changes under consideration. This is a briefing for discussion only in advance of a public hearing.

ANALYSIS

Background and Summary of SB 458

Senate Bill 458 was adopted by the Oregon Legislature in 2021. The bill is a follow-up to House Bill 2001 (HB 2001) and allows lot divisions for middle housing that enable them to be sold or owned individually.

For any city or county subject to the requirements of HB 2001, SB 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with ORS 197.758.

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 (later on, this will be the resultant ORS reference)
- 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.”

The proposed amendments in Attachment 1 are proposed to satisfy both SB 458 and the expedited land division statute.

Proposed Amendments

Staff has reviewed the bill’s language as well as code prepared in other communities to develop the proposed amendments. The key aspect 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:

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.

Next Steps

- Planning Commission public hearing: April 12, 2022

- City Council work session: April 19, 2022
- City Council public hearing: May 17, 2022

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	Packet
1. Draft code amendments (underline/strikeout format)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-90>.

Underline/Strikeout Amendments

Title 19 Zoning Ordinance

CHAPTER 19.1000 REVIEW PROCEDURES

19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

19.1003.3 Application Completeness Review

All applications are subject to the provisions of Subsections 19.1003.3.A-D below. Type I, II, III, and IV applications are also subject to the provisions of Subsections 19.1003.3.E-G below.

A. The City shall review the application submittal within 30 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete. The City shall review the application submittal for an Expedited Land Division or Middle Housing Land Division within 21 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete.

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 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.

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:

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			
	-	-	-
a. <u>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 provided in ORS 197.758 (2) 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 in Titles 12 and 19.
 - 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 MMC;
 - 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 as identified on Map 3 on the comprehensive plan, and mapped natural resources as regulated by MMC 19.402; or
 - ii. The Willamette River Greenway as regulated by MMC 19.401.
 - 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 will 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 17.12.040.A.6 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 ~~Director~~ Manager 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:

- (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.