

SENATE AMENDMENTS TO SENATE BILL 458

By COMMITTEE ON HOUSING AND DEVELOPMENT

April 12

1 On page 1 of the printed bill, line 3, delete “and 94.776” and insert “, 94.776, 197.365, 197.370,
2 197.375 and 197.380”.

3 Delete lines 6 through 31.

4 On page 2, delete lines 1 through 3 and insert:

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

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

10 **“(a) A proposal for development of middle housing in compliance with the Oregon resi-**
11 **dential specialty code and land use regulations applicable to the original lot or parcel allowed**
12 **under ORS 197.758 (5);**

13 **“(b) Separate utilities for each dwelling unit;**

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

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

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

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

18 **“(D) Any dedicated driveways or parking; and**

19 **“(E) Any dedicated common area;**

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

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

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

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

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

31 **“(4) In reviewing an application for a middle housing land division, a city or county:**

32 **“(a) Shall apply the procedures under ORS 197.360 to 197.380.**

33 **“(b) May require street frontage improvements where a resulting lot or parcel abuts the**
34 **street consistent with land use regulations implementing ORS 197.758.**

35 **“(c) May not subject an application to approval criteria except as provided in this section,**

1 including that a lot or parcel require driveways, vehicle access, parking or minimum or
2 maximum street frontage.

3 “(d) May not subject the application to procedures, ordinances or regulations adopted
4 under ORS 92.044 or 92.046 that are inconsistent with this section or ORS 197.360 to 197.380.

5 “(e) May allow the submission of an application for a middle housing land division at the
6 same time as the submission of an application for building permits for the middle housing.

7 “(f) May require the dedication of right of way if the original parcel did not previously
8 provide a dedication.

9 “(5) The type of middle housing developed on the original parcel is not altered by a middle
10 housing land division.

11 “(6) Notwithstanding ORS 197.312 (5), a city or county is not required to allow an acces-
12 sory dwelling unit on a lot or parcel resulting from a middle housing land division.

13 “(7) The tentative approval of a middle housing land division is void if and only if a final
14 subdivision or partition plat is not approved within three years of the tentative approval.
15 Nothing in this section or ORS 197.360 to 197.380 prohibits a city or county from requiring a
16 final plat before issuing building permits.

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

19 After line 29, insert:

20 “**SECTION 6.** ORS 197.365 is amended to read:

21 “197.365. Unless the applicant requests to use the procedure set forth in a comprehensive plan
22 and land use regulations, a local government shall use the following procedure for an expedited land
23 division, as described in ORS 197.360, **or a middle housing land division under section 2 of this**
24 **2021 Act:**

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

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

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

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

44 “(a) State:

45 “(A) The deadline for submitting written comments;

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

3 “(C) That issues must be raised with sufficient specificity to enable the local government to re-
4 spond to the issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 “**SECTION 7.** ORS 197.370 is amended to read:

32 “197.370. (1) Except as provided in subsection (2) of this section, if the local government does
33 not make a decision on an expedited land division **or a middle housing land division, as defined**
34 **in section 2 of this 2021 Act**, within 63 days after the application is deemed complete, the applicant
35 may apply in the circuit court for the county in which the application was filed for a writ of
36 mandamus to compel the local government to issue the approval. The writ shall be issued unless the
37 local government shows that the approval would violate a substantive provision of the applicable
38 land use regulations or the requirements of ORS 197.360 **or section 2 of this 2021 Act**. A decision
39 of the circuit court under this section may be appealed only to the Court of Appeals.

40 “(2) After seven days’ notice to the applicant, the governing body of the local government may,
41 at a regularly scheduled public meeting, take action to extend the 63-day time period to a date
42 certain for one or more applications for an expedited land division **or a middle housing land di-**
43 **vision** prior to the expiration of the 63-day period, based on a determination that an unexpected or
44 extraordinary increase in applications makes action within 63 days impracticable. In no case shall
45 an extension be to a date more than 120 days after the application was deemed complete. Upon ap-

1 proval of an extension, the provisions of ORS 197.360 to 197.380 **and section 2 of this 2021 Act**,
2 including the mandamus remedy provided by subsection (1) of this section, shall remain applicable
3 to the [expedited] land division, except that the extended period shall be substituted for the 63-day
4 period wherever applicable.

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

7 **“SECTION 8.** ORS 197.375 is amended to read:

8 **“197.375.** (1) An appeal of a decision made under ORS 197.360 and 197.365 **or under ORS 197.365**
9 **and section 2 of this 2021 Act** shall be made as follows:

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

12 “(b) A decision may be appealed by:

13 “(A) The applicant; or

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

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

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

18 “(B) Of unconstitutionality of the decision;

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

21 “(D) That the parties’ substantive rights have been substantially prejudiced by an error in pro-
22 cedure by the local government.

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

28 “(3) Within seven days of being appointed to decide the appeal, the referee shall notify the ap-
29 plicant, the local government, the appellant if other than the applicant, any person or organization
30 entitled to notice under ORS 197.365 (2) that provided written comments to the local government
31 and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise
32 them of the manner in which they may participate in the appeal. A person or organization that
33 provided written comments to the local government but did not file an appeal under subsection (1)
34 of this section may participate only with respect to the issues raised in the written comments sub-
35 mitted by that person or organization. The referee may use any procedure for decision-making con-
36 sistent with the interests of the parties to ensure a fair opportunity to present information and
37 argument. The referee shall provide the local government an opportunity to explain its decision, but
38 is not limited to reviewing the local government decision and may consider information not pre-
39 sented to the local government.

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

1 requirements.

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

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

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

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

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

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

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

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

32 “(c) That the decision is unconstitutional.

33 “**SECTION 9.** ORS 197.380 is amended to read:

34 “197.380. Each city and county shall establish [*an application fee*] **application fees** for an expe-
35 dited land division **and a middle housing land division, as defined in section 2 of this 2021**
36 **Act**. The [*fee shall*] **fees must** be set at a level calculated to recover the estimated full cost of
37 processing an application, including the cost of appeals to the referee under ORS 197.375, based on
38 the estimated average cost of such applications. Within one year of establishing [*the fee required*] **a**
39 **fee** under this section, the city or county shall review and revise the fee, if necessary, to reflect
40 actual experience in processing applications under ORS 197.360 to 197.380 **and section 2 of this**
41 **2021 Act.**”.