

Requested by Senator FREDERICK

**PROPOSED AMENDMENTS TO
SB 458**

1 On page 1 of the printed bill, line 3, delete “and 94.776” and insert “,
2 94.776, 197.365, 197.370, 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 divi-
6 sion’ means a partition or subdivision of a lot or parcel on which the
7 development of middle housing is allowed under ORS 197.758 (2) or (3).**

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

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

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

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

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

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

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

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

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

1 “(d) Exactly one dwelling unit on each resulting lot or parcel, ex-
2 cept for lots, parcels or tracts used as common areas; and

3 “(e) Evidence demonstrating how buildings or structures on a re-
4 sulting lot or parcel will comply with applicable building codes pro-
5 visions relating to new property lines and, notwithstanding the
6 creation of new lots or parcels, how structures or buildings located on
7 the newly created lots or parcels will comply with the Oregon resi-
8 dential specialty code.

9 “(3) A city or county may add conditions to the approval of a ten-
10 tative plan for a middle housing land division to:

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

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

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

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

17 “(b) May require street frontage improvements where a resulting
18 lot or parcel abuts the street consistent with land use regulations im-
19 plementing ORS 197.758.

20 “(c) May not subject an application to approval criteria except as
21 provided in this section, including that a lot or parcel require
22 driveways, vehicle access, parking or minimum or maximum street
23 frontage.

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

27 “(e) May allow the submission of an application for a middle hous-
28 ing land division at the same time as the submission of an application
29 for building permits for the middle housing.

30 “(f) May require the dedication of right of way if the original parcel

1 **did not previously provide a dedication.**

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

4 **“(6) Notwithstanding ORS 197.312 (5), a city or county is not re-**
5 **quired to allow an accessory dwelling unit on a lot or parcel resulting**
6 **from a middle housing land division.**

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

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

14 After line 29, insert:

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

16 **“197.365. Unless the applicant requests to use the procedure set forth in**
17 **a comprehensive plan and land use regulations, a local government shall use**
18 **the following procedure for an expedited land division, as described in ORS**
19 **197.360, or a middle housing land division under section 2 of this 2021**
20 **Act:**

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

28 **“(b) If the application was complete when first submitted or the applicant**
29 **submits the requested additional information within 180 days of the date the**
30 **application was first submitted, approval or denial of the application shall**

1 be based upon the standards and criteria that were applicable at the time the
2 application was first submitted.

3 “(2) The local government shall provide written notice of the receipt of
4 the completed application for [*an expedited*] a land division to any state
5 agency, local government or special district responsible for providing public
6 facilities or services to the development and to owners of property within
7 100 feet of the entire contiguous site for which the application is made. The
8 notification list shall be compiled from the most recent property tax assess-
9 ment roll. For purposes of appeal to the referee under ORS 197.375, this re-
10 quirement shall be deemed met when the local government can provide an
11 affidavit or other certification that such notice was given. Notice shall also
12 be provided to any neighborhood or community planning organization re-
13 cognized by the governing body and whose boundaries include the site.

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

15 “(a) State:

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

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

19 “(C) That issues must be raised with sufficient specificity to enable the
20 local government to respond to the issue.

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

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

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

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

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

30 “(g) Briefly summarize the local decision-making process for the [*expe-*

1 *dited]* land division decision being made.

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

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

6 “(b) Make a decision to approve or deny the application within 63 days
7 of receiving a completed application, based on whether it satisfies the sub-
8 stantive requirements of the [*local government’s*] **applicable** land use regu-
9 lations. An approval may include conditions to ensure that the application
10 meets the applicable land use regulations. For applications subject to this
11 section, the local government:

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

13 “(B) Shall issue a written determination of compliance or noncompliance
14 with applicable land use regulations that includes a summary statement ex-
15 plaining the determination. The summary statement may be in any form
16 reasonably intended to communicate the local government’s basis for the
17 determination.

18 “(c) Provide notice of the decision to the applicant and to those who re-
19 ceived notice under subsection (2) of this section within 63 days of the date
20 of a completed application. The notice of decision shall include:

21 “(A) The summary statement described in paragraph (b)(B) of this sub-
22 section; and

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

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

25 “197.370. (1) Except as provided in subsection (2) of this section, if the
26 local government does not make a decision on an expedited land division **or**
27 **a middle housing land division, as defined in section 2 of this 2021 Act,**
28 within 63 days after the application is deemed complete, the applicant may
29 apply in the circuit court for the county in which the application was filed
30 for a writ of mandamus to compel the local government to issue the approval.

1 The writ shall be issued unless the local government shows that the approval
2 would violate a substantive provision of the applicable land use regulations
3 or the requirements of ORS 197.360 **or section 2 of this 2021 Act**. A decision
4 of the circuit court under this section may be appealed only to the Court of
5 Appeals.

6 “(2) After seven days’ notice to the applicant, the governing body of the
7 local government may, at a regularly scheduled public meeting, take action
8 to extend the 63-day time period to a date certain for one or more applica-
9 tions for an expedited land division **or a middle housing land division**
10 prior to the expiration of the 63-day period, based on a determination that
11 an unexpected or extraordinary increase in applications makes action within
12 63 days impracticable. In no case shall an extension be to a date more than
13 120 days after the application was deemed complete. Upon approval of an
14 extension, the provisions of ORS 197.360 to 197.380 **and section 2 of this**
15 **2021 Act**, including the mandamus remedy provided by subsection (1) of this
16 section, shall remain applicable to the [*expedited*] land division, except that
17 the extended period shall be substituted for the 63-day period wherever ap-
18 plicable.

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

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

22 “197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365
23 **or under ORS 197.365 and section 2 of this 2021 Act** shall be made as
24 follows:

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

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

29 “(A) The applicant; or

30 “(B) Any person or organization who files written comments in the time

1 period established under ORS 197.365.

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

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

5 “(B) Of unconstitutionality of the decision;

6 “(C) That the application is not eligible for review under ORS 197.360 to
7 197.380 **or section 2 of this 2021 Act** and should be reviewed as a land use
8 decision or limited land use decision; or

9 “(D) That the parties’ substantive rights have been substantially preju-
10 diced by an error in procedure by the local government.

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

17 “(3) Within seven days of being appointed to decide the appeal, the referee
18 shall notify the applicant, the local government, the appellant if other than
19 the applicant, any person or organization entitled to notice under ORS
20 197.365 (2) that provided written comments to the local government and all
21 providers of public facilities and services entitled to notice under ORS
22 197.365 (2) and advise them of the manner in which they may participate in
23 the appeal. A person or organization that provided written comments to the
24 local government but did not file an appeal under subsection (1) of this sec-
25 tion may participate only with respect to the issues raised in the written
26 comments submitted by that person or organization. The referee may use any
27 procedure for decision-making consistent with the interests of the parties to
28 ensure a fair opportunity to present information and argument. The referee
29 shall provide the local government an opportunity to explain its decision,
30 but is not limited to reviewing the local government decision and may con-

1 sider information not presented to the local government.

2 “(4)(a) The referee shall apply the substantive requirements of the [*local*
3 *government’s*] **applicable** land use regulations and ORS 197.360 **or section**
4 **2 of this 2021 Act**. If the referee determines that the application does not
5 qualify as an expedited land division [*as described in ORS 197.360*] **or a**
6 **middle housing land division, as defined in section 2 of this 2021 Act**,
7 the referee shall remand the application for consideration as a land use de-
8 cision or limited land use decision. In all other cases, the referee shall seek
9 to identify means by which the application can satisfy the applicable re-
10 quirements.

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

13 “(c) The referee shall make a written decision approving or denying the
14 application or approving it with conditions designed to ensure that the ap-
15 plication satisfies the land use regulations, within 42 days of the filing of
16 an appeal. The referee may not remand the application to the local govern-
17 ment for any reason other than as set forth in this subsection.

18 “(5) Unless the governing body of the local government finds exigent cir-
19 cumstances, a referee who fails to issue a written decision within 42 days
20 of the filing of an appeal shall receive no compensation for service as referee
21 in the appeal.

22 “(6) Notwithstanding any other provision of law, the referee shall order
23 the local government to refund the deposit for costs to an appellant who
24 materially improves his or her position from the decision of the local gov-
25 ernment. The referee shall assess the cost of the appeal in excess of the de-
26 posit for costs, up to a maximum of \$500, including the deposit paid under
27 subsection (1) of this section, against an appellant who does not materially
28 improve his or her position from the decision of the local government. The
29 local government shall pay the portion of the costs of the appeal not assessed
30 against the appellant. The costs of the appeal include the compensation paid

1 the referee and costs incurred by the local government, but not the costs of
2 other parties.

3 “(7) The Land Use Board of Appeals does not have jurisdiction to consider
4 any decisions, aspects of decisions or actions made under ORS 197.360 to
5 197.380 **or section 2 of this 2021 Act.**

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

14 “(a) That the decision does not concern an expedited land division as de-
15 scribed in ORS 197.360 **or middle housing land division as defined in**
16 **section 2 of this 2021 Act** and the appellant raised this issue in proceedings
17 before the referee;

18 “(b) That there is a basis to vacate the decision as described in ORS
19 36.705 (1)(a) to (d), or a basis for modification or correction of an award as
20 described in ORS 36.710; or

21 “(c) That the decision is unconstitutional.

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

23 “197.380. Each city and county shall establish [*an application fee*] **appli-**
24 **cation fees** for an expedited land division **and a middle housing land di-**
25 **vision, as defined in section 2 of this 2021 Act.** The [*fee shall*] **fees must**
26 be set at a level calculated to recover the estimated full cost of processing
27 an application, including the cost of appeals to the referee under ORS
28 197.375, based on the estimated average cost of such applications. Within one
29 year of establishing [*the fee required*] **a fee** under this section, the city or
30 county shall review and revise the fee, if necessary, to reflect actual experi-

1 ence in processing applications under ORS 197.360 to 197.380 **and section 2**
2 **of this 2021 Act.**”.

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