

Attachment A
Bend Development Code Update
Draft: March 21, 2022
Prepared by:

Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~striketrough~~ typeface is proposed to be deleted.

***Indicates where text from the existing code has been omitted because it will remain unchanged.

Staff comments are ***bold and italicized***

Bend Development Code

Chapter 1.2

Definitions

Expedited land division means an alternative procedure for residential land divisions in ORS 197.360 through ORS 197.380. See BDC 4.3.700, Expedited and Middle Housing Land Division.

Middle housing land divisions means the creation of multiple lots or parcels from a single parent site on which middle housing is developed or proposed, which results in an individual lot or parcel for each of the middle housing units. See BDC 3.6.200.A, Development on a Middle Housing Land Division Site and BDC 4.3.700, Expedited and Middle Housing Land Division.

Parent site (also referred to as parent property) means a lot or parcel that was the subject of a development application.

Chapter 2.1

RESIDENTIAL DISTRICTS (UAR, RL, RS, RM-10, RM, RH)

2.1.1000 Multi-Unit Residential Districts (RM, RH).

- C. Housing Mix Standards in the RM District. In order to ensure a mix of housing types that meets the City's overall housing needs, in addition to minimum and maximum density standards in BDC 2.1.600, at least 50 percent of the total housing units in residential developments on any property or combination of properties between three acres and 20 acres in the RM District must be duplexes, triplexes, quadplexes, townhomes, cottage developments and/or multi-unit dwellings. The standards of BDC 4.5.200(E) apply to properties of 20 acres in size and greater. *(Add cottage developments since they provide a mix of housing)*

Chapter 3.6

Special Standards and Regulations for Certain Uses

3.6.200 Residential Uses.

~~A. Repealed by Ord.NS-2389~~

- A. Development on a Middle Housing Land Division Site. *(This new section applies to future development and alterations to development on a site that has undergone a middle housing land division. It incorporates certain limitations that are allowed by SB 458, including that the type of housing doesn't change with creation of new lots or parcels, that only one dwelling unit is allowed per lot and that lots or parcels may not be subsequently divided.)*

1. Applicability.

- a. The standards of this section apply to lots or parcels created from a middle housing land division. See BDC 4.3.700, Expedited and Middle Housing Land Division.

2. Development on a Middle Housing Land Division Site.

- a. For purposes of the middle housing development, the regulations of the BDC apply to lots and parcels resulting from a middle housing land division collectively and not to each lot or parcel individually. For example, the building setback standards of the corresponding zone apply to the property lines of the parent site prior to the land division and not to the property lines of each individual lot created through the middle housing land division.
 - b. The residential structure type on a site that has been divided through a middle housing land division remains the residential structure type that was proposed with the middle housing land division. For example, if the middle housing land division was approved for a site with an existing or proposed quadplex, the residential structure type on the site remains a quadplex following the middle housing land division.
3. More than one dwelling unit is prohibited on a lot or parcel that has been created through a middle housing land division. Accessory dwelling units are prohibited on lots or parcels that have been divided through middle housing land divisions.
 4. The further division of a lot or parcel created through a middle housing land division is prohibited.

B. Accessory Dwelling Unit (ADU). An accessory dwelling unit (ADU) is a small dwelling unit on a property that contains a single-unit dwelling as the primary use. The ADU may be attached, detached, or within a portion of an existing dwelling unit. The maximum density standards do not apply to ADUs due to their small size and low occupancy. The standards of this section are intended to control the size, scale and number of ADUs on individual properties to promote compatibility with abutting land uses. ADUs must comply with the following standards in addition to the standards of the applicable zoning district:

1. Permitted ADU. An ADU may only be permitted on a lot or parcel with a single-unit detached dwelling, a townhome, or a manufactured home.

a. Exception. ADUs are not permitted on a lot or parcel created by a middle housing land division.

(SB 458 applies to middle housing as defined in ORS 197.758. Accessory dwelling units are not a type of middle housing.)

Development Alternatives

3.8.600 Courtyard Dwelling Units.

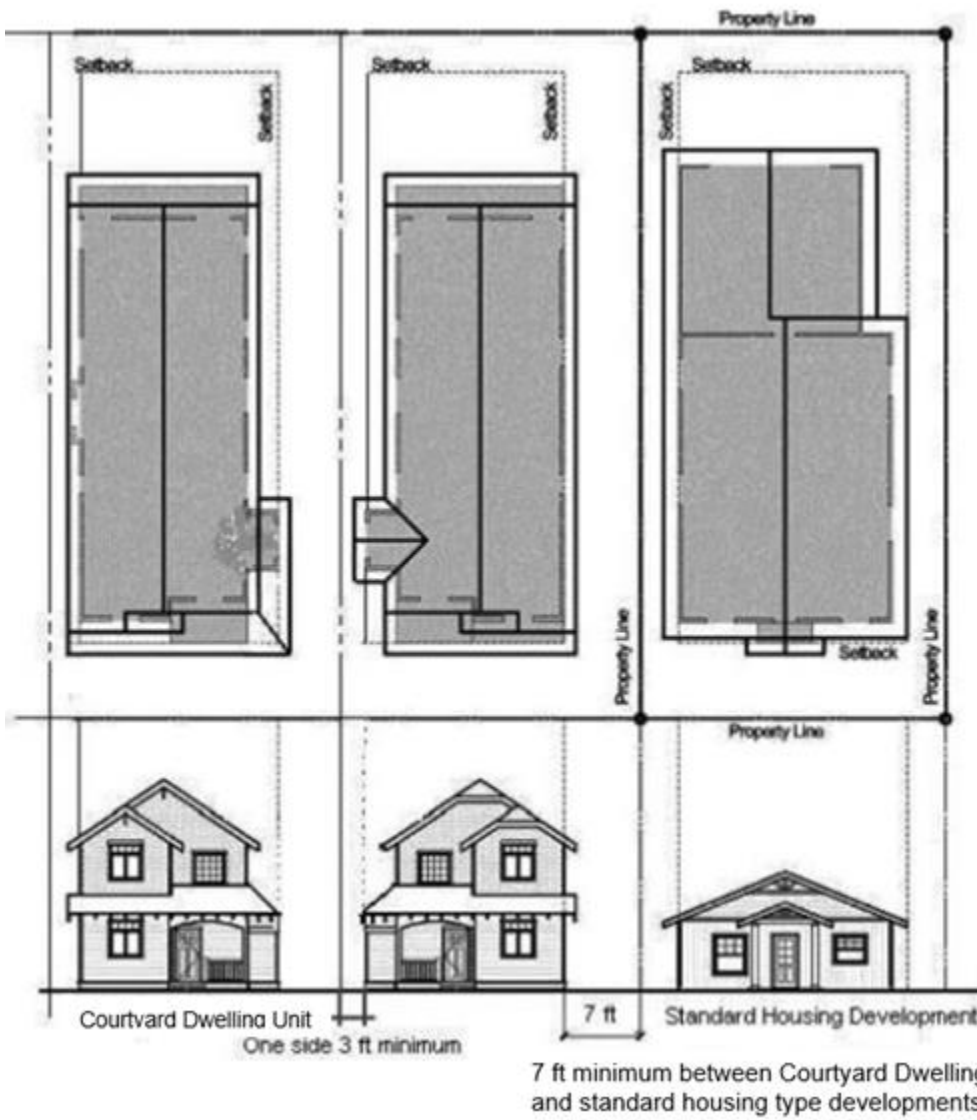
- A. Applicability. Courtyard dwelling unit developments are allowed in the following districts: Low Density Residential (RL), Standard Density Residential (RS), Medium Density Residential (RM) and Medium -10 Residential (RM-10).
- B. Permitted Uses.
1. Single-unit detached dwellings.
 2. Duplexes.
 3. Accessory dwelling units and structures.
- C. The following standards are intended to promote compatibility and privacy between abutting buildings and allow for building maintenance:
1. ~~Courtyard dwelling units on individual lots and parcels are subject to the standards of the underlying zoning district, except that in the RS, RM-10 and RM Districts a three-foot minimum side setback is required on one side as shown in Figure 3.8.600 and a six-foot minimum side setback is required on one side in the RL District. Courtyard dwelling units on individual lots and parcels are subject to the standards of the underlying zoning district, except as follows:~~
 - a. RS, RM-10 and RM Districts. A three-foot minimum side setback is required on one side and a minimum seven-foot setback is required on the other side (courtyard setback) as shown in Figure 3.8.600
 - b. RL District. A six-foot minimum side setback is required on one side and a minimum of 14-foot setback is required on the other side (courtyard setback).
 2. Setbacks Abutting a Non-Courtyard Development. When a courtyard dwelling unit shares a side property line with a non-courtyard dwelling unit (including vacant lots), the courtyard ~~building dwelling unit~~ unit must be set back from the common property line by a minimum of seven feet in the RS, RM-10 and RM Districts and 14 feet in the RL District.

3. Construction and Maintenance Easement. Prior to building permit approval, the applicant must submit a copy of a recorded easement for every courtyard dwelling unit that guarantees rights for the purpose of construction and maintenance of structures and yards. The easement must stipulate that no fence or other obstruction ~~must~~may be placed in a manner that would prevent maintenance of structures on the subject lot.

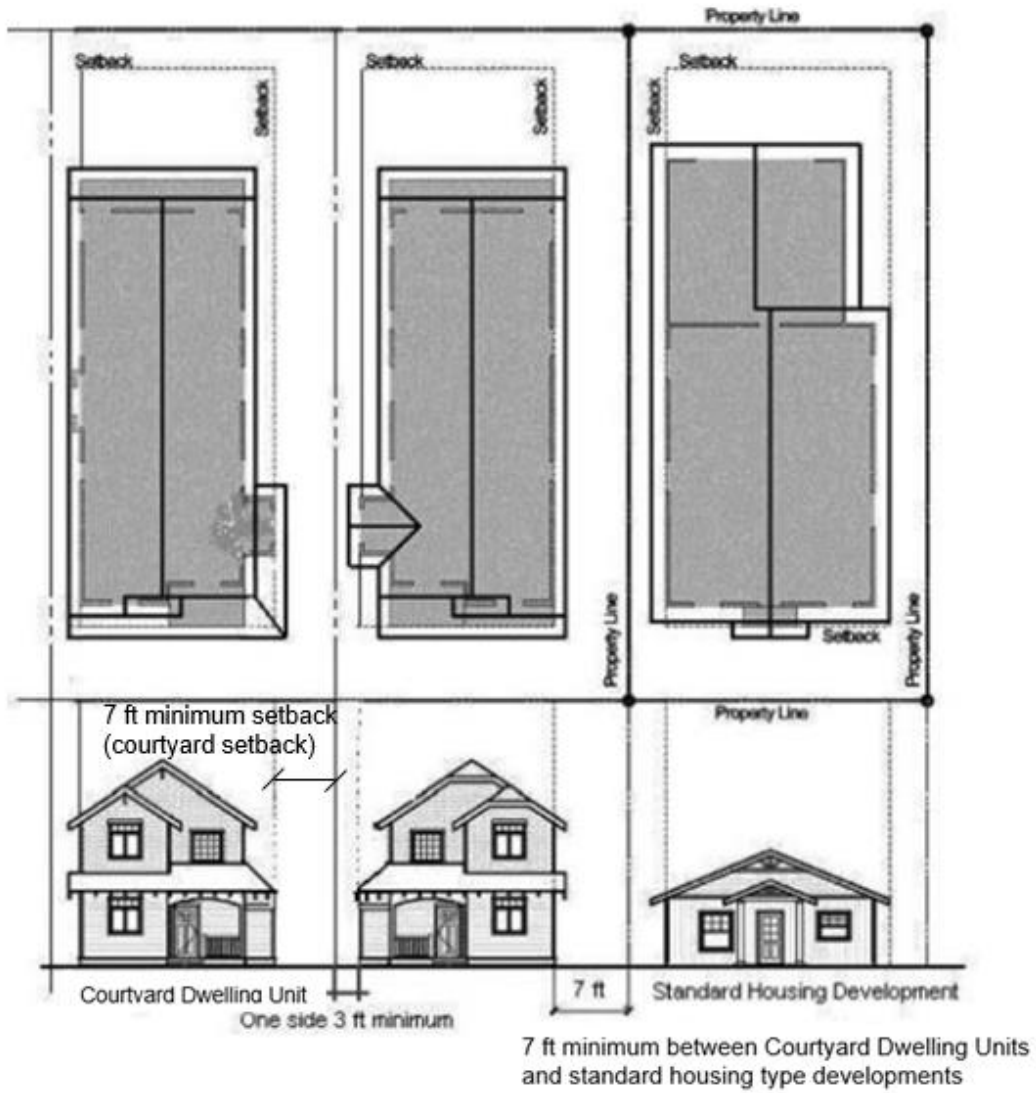
4. ~~Buffering. The building placement, landscaping, and/or design of windows must provide a buffer for the occupants of abutting courtyard lots. For example, this standard is met by placing ground-floor windows (along the courtyard setback) where views are directed into adjacent yards, or by directing views away from yards (e.g., bay window), or by using frosted glass or other window covering that obscures any view to the interior but allows light into the interior. This standard does not apply to abutting non-courtyard lots.~~ Privacy. In order to maintain privacy of a courtyard on an abutting courtyard lot or parcel, the windows on the first story wall must be clerestory windows located a minimum of five feet from the interior floor or obscured glass (e.g., frosted, patterned, bubbled, ribbed). ~~This standard does not apply to abutting non-courtyard lots or parcels.~~ ***(Amendments are needed to provide clarity about what qualifies as a buffer.)***

Figure 3.8.600.A – Courtyard Dwelling Units

(Delete figure below)



(Add figure below)



Chapter 4.1

Development Review and Procedures.

4.1.412 Completeness Check.

A. Except as provided in subsections (C) and (D) of this section, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals, within 120 days after the application is deemed complete.

1. For middle housing land divisions. See BDC 4.3.700. Expedited and Middle Housing Land Divisions.

4.1.1100 Appeals.

For expedited and middle housing land divisions. see BDC 4.3.700. Expedited and Middle Housing Land Divisions.

4.1.1600 Summary of Development Application Types

There are four types of procedures: Type I, II, III, and IV. Table 4.1.1600 lists the City’s development applications and their required types of procedure(s).

Table 4.1.1600 Summary of Development Application Types

(Other uses in Table 2.1.200 remain unchanged)

Development Application	Type I*	Type II*	Type III	Type IV
<u>Expedited Land Division. See BDC 4.3.700</u> <i>(Locate at bottom of table)</i>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Middle Housing Land Division. See BDC 4.3.700</u> <i>(Locate at bottom of table)</i>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

*Unless elevated by the Development Services Director as authorized in BDC Chapter 4.1.

◆ See BDC 3.6.500, Short-Term Rentals.

◆◆ See BDC Chapter 3.7, Wireless and Broadcast Communication Facilities – Standards and Process.

Chapter 4.3

~~Subdivisions, Partitions, Replats, Land Divisions~~ and Property Line Adjustments

Sections:

4.3.100 Purpose and Applicability.

4.3.200 General Requirements.

4.3.300 Tentative Plan.

4.3.400 Final Plat.

4.3.500 Replats.

4.3.600 Property Line Adjustments.

4.3.700 ~~Repealed~~ Expedited and Middle Housing Land Division.

4.3.100 Purpose and Applicability.

A. Purpose. The purpose of this chapter is to:

1. Provide rules, regulations and standards governing the review and approval of subdivisions, partitions, replats, ~~and~~ property line adjustments, expedited land divisions and middle housing land divisions.
2. Carry out the City's development pattern, as envisioned by the Bend Comprehensive Plan;
3. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
4. Promote the public health, safety and general welfare through orderly and efficient urbanization;
5. Reduce or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;
6. Provide adequate light and air, prevent overcrowding of land, provide open space opportunities, and facilitate adequate provision for transportation, water supply, sewage and drainage; and
7. Encourage the conservation of energy resources.
8. Support homeownership by allowing lots or parcels with middle housing to divide so that the dwelling unit is on its own lot or parcel.

- B. Applicability. Units of land shall must only be created or reconfigured in conformance with the standards of this chapter and ORS Chapter 92. For Expedited and Middle Housing Land Divisions, see BDC 4.3.700, Expedited and Middle Housing Land Division.

4.3.700 Infill Development Options—Expedited and Middle Housing Land Division.

A. Applicability.

1. **Expedited Land Divisions.** An expedited land division may be submitted when it complies with the following:
 - a. Includes only land zoned for residential uses.
 - b. Is solely for the purpose of residential use, including recreational or open space uses accessory to residential use.
 - c. Does 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 open spaces, scenic and historic areas and natural resources including the River Corridor Areas of Special Interest, Riparian Corridors and Upland Areas of Special Interest;
 - d. Satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Bend's Standards and Specifications, and the BDC.
 - e. 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. All dwellings will be sold or rented to households with incomes below 120 percent of the median family income for Deschutes County. A copy of a deed restriction or other legal mechanism approved by the Director shall be submitted.

(ORS 197.360)

2. Middle Housing Land Divisions.

- a. A middle housing land division applies to duplexes, triplexes, quadplexes, or cottage cluster developments.
- b. A middle housing land division may be submitted when the parent site is developed with middle housing, has an active building permit to construct middle housing or the application for a land

division must be reviewed concurrently with a building permit application for construction of middle housing. (Allowed by SB 458)

3. An expedited land division and middle housing land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015. (SB 458 and ORS 197.370)

B. Preliminary Plat Process for Expedited and Middle Housing Land Divisions. Unless the applicant requests to use the procedure set forth in BDC 4.3.300, Tentative Plan, the City must use the following procedures for an expedited land division and a middle housing land division.

1. Completeness Review.

- a. If the application for an expedited land division or middle housing land division is incomplete, the City must notify the applicant of the missing information within 21 days of receiving an application. The application must be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it. (Required by SB 458 and ORS 197.365)
- b. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted. (Required by SB 458 and ORS 197.365)

2. Notice of Application.

- a. Written notice of the receipt of the completed application for an expedited and middle housing land division must be provided to:
 - i. The applicant.
 - ii. Owners of record of property as shown on the most recent property tax assessment roll of property located, and to the addresses based on the City's current addressing records within 100 feet of the property that is subject of the notice. (Required by SB 458 and ORS 197.365)
 - iii. Designated land use chair(s) of a neighborhood association recognized by the City of Bend where any property within the notice area specified is within the boundaries of a neighborhood association. (Required by SB 458 and ORS 197.365)

- iv. Any agency responsible for providing public services or facilities to the subject site. (Required by SB 458)
- b. The notice must include the following: (Required by SB 458)
- i. The deadline for submitting written comments:
 - ii. A statement of issues that may provide the basis for an appeal to the hearings officer must be raised in writing prior to the expiration of the comment period; and
 - iii. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue.
 - iv. The applicable criteria for the decision.
 - v. The place, date, and time that comments are due.
 - vi. A time and place where copies of all evidence submitted by the applicant will be available for review.
 - vii. The street address or other easily understood geographical reference to the subject property.
 - viii. The name and telephone number of a local government contact.
 - ix. A brief summary of the local decision-making process for the land division decision being made.
- c. The written notice requirement will be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given. (Required by SB 458 and ORS 197.365)
- d. Notice must be posted on the subject property by the applicant/property owner throughout the duration of the required public comment period. Such notice must be located within 10 feet of any abutting public way. Failure of applicant/property owner to maintain posting of the sign throughout the duration of the required public comment period does not invalidate a land use approval.
3. Any person may comment in writing within 14 days from the date notice was mailed. (Required by SB 458 and ORS 197.365)

4. Decisions are made by the Development Services Director following public notice and an opportunity for parties to comment but without a public hearing. (Required by SB 458 and ORS 197.365)
5. The City must issue the administrative decision on the application within 63 days of receiving a completed application. (Required by SB 458 and ORS 197.365)
6. The Development Services Director's decision must be based on applicable requirements of the BDC. An approval may include conditions to ensure that the application meets applicable land use regulations. (Required by SB 458 and ORS 197.365)
7. Notice of the decision must be provided to the applicant and to those who received notice under subsection 2(a) within 63 days of the date of a completed application. The notice of decision must include: (Required by SB 458 and ORS 197.365)
 - a. A summary statement explaining the determination; and
 - b. An explanation of appeal rights under ORS 197.375.
8. Failure to approve or deny application within specified time.
 - a. After seven days' notice to the applicant, the City Council may, at a regularly scheduled public meeting, act to extend the 63-day time period to a date certain for one or more applications for an expedited land division prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380, including the mandamus remedy provided by subsection (a), shall remain applicable to the expedited land division and middle housing land division, except that the extended period shall be substituted for the 63-day period wherever applicable. (Required by SB 458 and ORS 197.370)
 - b. The decision to approve or deny an extension under subsection b of this section is not a land use decision or limited land use decision. (Required by SB 458 and ORS 197.370)
9. A decision may be appealed within 14 days of the mailing of the decision notice by the applicant or a person or organization who file written comments within the time period described in BDC 4.3.700.C.3. The appeal must include the appeal application and a \$300 deposit for costs. (Required by SB 458 and ORS 197.375)
10. An appeal must be based solely on one or more of the allegations: (Required by SB 458 and ORS 197.375)
 - a. The decision violates the substantive provisions of the applicable land use regulations;
 - b. The decision is unconstitutional;

- c. The application was not eligible for review under BDC 4.3.700, Expedited and Middle Housing Land Divisions and should be reviewed as a land use decision or limited land use decision.
 - d. The appellant's substantive rights were substantially prejudiced by a procedural error.
11. The City must appoint a hearings officer to decide the appeal decision and the appointed hearings officer must comply with ORS 197.375(3) through (6) when issuing a decision. (Required by SB 458 and ORS 197.375 (3) through 6)

C. Expedited and Middle Housing Preliminary Plan Submittal Requirements.

1. **Expedited Land Division Submittal Requirements.** An application for an expedited land division must submit the items listed in BDC 4.3.300 (B) and a letter or narrative report documenting compliance with the applicable approval criteria contained in BDC 4.3.700(D)(1), Expedited Land Division Approval Criteria.
2. **Middle Housing Land Division Submittal Requirements.** An application for a middle housing land division must include the following:
 - a. Items listed in BDC 4.3.300 (B) and a letter or narrative report documenting compliance with the applicable approval criteria contained in BDC 4.3.700(D)(2), Middle Housing Land Division Approval Criteria.
 - b. Evidence in the form of a written statement provided by a design professional licensed in the state of Oregon and including such professional's stamp/seal and a site plan that demonstrates that all of the buildings and structures on a resulting lot or parcel comply with applicable building code provisions relating to the proposed property lines and, all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code.
 - c. A plan showing the following details:
 - i. Separate utility connections for each dwelling unit, demonstrating compliance with approval criterion 4.3.700.D.2.c.
 - ii. Existing or proposed easements necessary for each dwelling unit on the plan, demonstrating compliance with the criterion 4.3.700.D.2.d.

D. Approval Criteria for an Expedited and Middle Housing Land Division.

1. **Expedited Land Division Approval Criteria.** The applicant for an expedited land division must demonstrate that the application meets the criteria of BDC 4.3.300.E and the following:
 - a. The expedited land division complies with each of the provisions of BDC 4.3.700(A) of this section.

2. **Middle Housing Land Division Approval Criteria.** The applicant for a middle housing land division must demonstrate that the application meets of the following criteria:
 - a. The proposed, approved, or legally existing middle housing development meets the standards and regulations of the BDC applicable to the development on the parent site prior to the land division.
(Required by SB 458)
 - b. All of the existing and proposed buildings and structures on a resulting lot or parcel comply with applicable building code provisions relating to the proposed property lines and, all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code.
(Required by SB 458)
 - c. Separate utility service connections for public water, sewer, and storm water will be provided for each dwelling unit. **(Required by SB 458)**
 - d. The preliminary plat includes easements or tracts necessary for each dwelling unit for: **(Required by SB 458)**
 - i. Locating, accessing, replacing, and servicing all utilities, a minimum of five feet in width. Easements across property lines must be avoided if utilities to the lot frontage can be obtained from existing mains or installation of new mains;
 - ii. Pedestrian access easement a minimum width of four feet from each dwelling unit to a private or public street and to any required common area;
 - iii. Any common use areas or shared building elements;
 - iv. Any driveways or parking; and
 - v. Any common area.
 - e. The middle housing land division results in one dwelling unit on each middle housing lot.
(Required by SB 458)

- f. Where a resulting lot or parcel abuts a street that does not meet City standards, street frontage improvements will be constructed in conformance with the City's Standards and Specifications and, if necessary, additional right-of-way will be dedicated to the public without reservation or restriction. (SB 458 allows a city to require this.)
- g. The type of middle housing developed on the parent site is not altered by a middle housing land division. (Required by SB 458)

E. Preliminary Plat Conditions of Approval for Middle Housing Land Divisions.

- 1. The following conditions of approval are required for a middle housing land division:
 - a. Further division of the resulting lots or parcels is not permitted. (SB 458 allows a city to condition this)
 - b. Accessory dwelling units are not permitted on resulting lots or parcels from a middle housing land division. (SB 458 allows a city to condition this.)
- 2. The City must not attach conditions of approval that a resulting lot or parcel require driveways, vehicle access, parking, or minimum or maximum street frontage. (Required by SB 458)

F. Final Plat Requirements for Expedited and Middle Housing Land Divisions.

- 1. **Expedited Land Division Final Plat.** Approval of a final plat for an expedited land is subject to BDC 4.3.400, Final Plat.
- 2. **Middle Housing Land Division Final Plat.**
 - a. Approval of a final plat for a middle housing land division is subject to BDC 4.3.400, Final Plat, except as provided below.
 - b. A final plat will not be approved until building permits are issued and framing inspections for the dwelling units on each lot are passed. (SB 458 allows this)
 - c. Final occupancy for the middle housing dwelling units will not be approved until recordation of the final plat. (SB 458 allows this)
 - d. A notation must appear on the final plat indicating that the approval was given under ***(Insert ORS reference for SB 458 Section 2)***.
 - e. A notice in the form of a restrictive covenant must be recorded with the county which states:
 - i. The middle housing lot or parcel cannot be further divided.
 - ii. No more than one dwelling unit of middle housing can be developed on each middle housing lot.

- iii. Accessory dwelling units are not permitted.
- iv. The dwelling developed on the middle housing lot or parcel is a unit of middle housing and is not an attached or detached dwelling unit or any other housing type.
- f. The tentative approval of a middle housing land division is void if a final subdivision or partition plat is not recorded within three years of the tentative approval. (Required by SB 458)

Chapter 4.5

Master Planning and Development Alternatives

4.5.200 Community Master Plan.

E. Standards and Regulations. Minor and major community master plans must comply with the following standards:

- 3. Housing Density and Mix. Community master plans 20 acres or larger must provide a mix of housing types and achieve minimum housing densities in conformance with the standards of subsections (E)(3)(a) and (b) of this section. To the extent that the Bend Comprehensive Plan Chapter 11, Growth Management, proposes a different mix of housing and/or density standards in the specific expansion area policies, then those policies apply.

b. Minimum standards are as follows:

- i. RL Comprehensive Plan Designation. At least 50 percent of the maximum gross density of the RL Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes and/or multi-unit residential housing units comprising at least 10 percent of total housing units.
- ii. RS Comprehensive Plan Designation. At least 70 percent of the maximum gross density of the RS Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes.

townhomes, and/or multi-unit residential housing units comprising at least 10 percent of total housing units.

- iii. RM Comprehensive Plan Designation. At least 60 percent of the maximum gross density of the RM Comprehensive Plan designation, with two- and three-unit dwellings, quadplexes, townhomes, and/or multi-unit residential housing units comprising at least 67 percent of total housing units.
- iv. RH Comprehensive Plan Designation. The minimum density of the RH Comprehensive Plan designation applies. Single-unit detached dwellings are not permitted in the RH Zone.

(Quadplexes were inadvertently left off with HB 2001 amendments.)