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KEIZER PLANNING COMMISSION MEETING AGENDA
Wednesday, February 9, 2022 @ 6:00 p.m.
Keizer Civic Center

- 1. CALL TO ORDER**
- 2. APPROVAL OF MINUTES – January 19, 2022**
- 3. APPEARANCE OF INTERESTED CITIZENS**
This time is made available for those who wish to speak about an issue that is not on the agenda.
- 4. House Bill 2001, Senate Bill 458 and KDC Update Recommendations**
- 5. NEW-OLD BUSINESS/STAFF REPORT**
- 6. COUNCIL LIAISON REPORT**
- 7. COUNCIL REPRESENTATIVE: Mo Avishan, Tuesday February 22**
- 8. NEXT MEETING ~ March 9, 2022**
- 9. ADJOURN**



**KEIZER PLANNING COMMISSION
MEETING MINUTES
Wednesday, January 19, 2022 @ 6:00 pm
Keizer Civic Center**

CALL TO ORDER

Chair Matt Lawyer called the meeting to order at 6:00 pm.

ROLL CALL:

Present:

Matt Lawyer, Chair
Jeremy Grenz, Vice Chair
Francisco Saldivar
Ron Bersin
Sarah Hutches
Jane Herb

Council Liaison Present:

Councilor Juran

Staff Present:

Shane Witham, Planning Director
Dina Horner, Assistant Planner

Absent:

Mo Avishan

APPROVAL OF MINUTES: Commissioner Grenz moved for approval of the December 2021 Minutes. Commissioner Herb seconded. Motion passed as follows: Lawyer, Grenz, Saldivar, Bersin, Herb and Hutches in favor with Avishan absent.

APPEARANCE OF INTERESTED CITIZENS: None

PUBLIC HEARING: Parks Master Plan Update

Chair Lawyer opened the Public Hearing.

Planning Director Shane Witham summarized the City Attorney's staff report and explained that Planning Commission approval is necessary because the Parks Master Plan is a subset of the Comp Plan. Chair Lawyer, also a member of the Parks Advisory Board, noted that this Master Plan includes the Keizer Little League fields, which were not included in the previous Master Plan, a refined plan for Keizer Rapids Park and keeps Palma Ciega Park in the Plan. He added that this will be a good tool for Robert Johnson and Bill Lawyer to work through and move forward on projects.

With no further testimony, Chair Lawyer closed the Public Hearing.

Commissioner Grenz moved that the Planning Commission recommend Council approval of the Updated Parks Master Plan. Commissioner Saldivar seconded. Motion passed as follows: Lawyer, Grenz, Saldivar, Bersin, Herb and Hutches in favor with Avishan absent.

NEW/OLD BUSINESS/STAFF REPORT: House Bill 2001: Survey Results, Code Update Recommendations

Mr. Witham summarized his staff report and introduced Matt Hastie and Brandon Crawford from Angelo Planning Group who shared a slide presentation covering: Project status and schedule, middle housing draft #1 Code amendments, minimum compliance, Comprehensive Plan amendments, permitted uses and dimensional standards, River Cherry Overlay District, minimum off-street parking standards, design standards, middle housing conversions, cottage cluster updates, approval procedures and administration, open house survey results, policy options, detached plexes and ADUs and next steps.

Lengthy discussion took place during the presentation regarding consistent lot sizes and parking requirements, cottage cluster requirements, detached plexes and ADUs, adding ADUs to a lot that already has a duplex or triplex on it and emergency access.

Commissioner Grenz urged Commission to consider increasing the building height limit for multi-family units and including that change in the upcoming changes. Mr. Witham indicated that he would figure out an appropriate height for a 3-story apartment complex.

COUNCIL LIAISON REPORT: Relative to the low response to the Angelo survey, Councilor Juran indicated that he hoped the Community Diversity Engagement Committee would be able to bring about more community involvement. He added that most Councilors would like to keep Keizer feeling like Keizer and would not want Keizer to get too dense.

COUNCIL REPRESENTATIVE: Matt Lawyer will report to Council on February 7.

ADJOURN: The meeting adjourned at 8:45 p.m.

Next Meeting:
Wednesday, February 9, 2022

Minutes approved: _____

TO: PLANNING COMMISSION

**FROM: SHANE WITHAM
PLANNING DIRECTOR**

DATE: February 2, 2022

SUBJECT: House Bill 2001: SB458 Memo and KDC Update Recommendations

ATTACHMENTS:

- **Middle Housing Land Divisions – Summary of Requirements and Recommended Updates (Memo – SB458)**
- **DRAFT Middle Housing Code Update Recommendations (Draft KDC amendments)**

BACKGROUND:

Attached is a summary of the requirements and recommendations for implementing the provisions of Senate Bill 458, which requires cities to allow for land divisions of middle housing projects. Angelo Planning Group (APG) will be presenting at Planning Commission to provide an overview of the Recommendations Draft development code language, and will be available to answer questions you may have.

While Planning Commission is not making a formal recommendation on the proposed language at this time (since this is not a public hearing), staff is asking for Commissioner's input, questions, and general consensus on the approach being taken, to guide revisions for future drafts that will be used for public hearings.



MEMORANDUM

Middle Housing Land Divisions – Summary of Requirements and Recommended Updates

City of Keizer

DATE February 2, 2022
TO Shane Witham and Dina Horner, City of Keizer
Sean Edging and Nicole Mardell, DLCD
FROM Matt Hastie and Brandon Crawford, Angelo Planning Group

Introduction and Background

In addition to complying with the requirements of HB 2001 and OAR 660-046, the City will need to comply with recent legislation related to land divisions for middle housing (SB 458). Compliance is required during approximately the same timeframe. The bill is a follow-up to House Bill 2001—the bill that legalizes middle housing in many cities throughout the state—and allows lot divisions for middle housing, enabling units to be sold or owned individually. 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. This means that cities will not be obligated to allow ADUs on the resulting cottage lots or to allow resulting lots to be further divided. (As another example, a partitioned triplex will not become townhouses—it will remain classified as a triplex.) SB 458 also establishes what conditions cities may impose during review and approval of middle housing land division plans, and prevents homeowner associations or restrictive covenants from prohibiting land divisions. The provisions will take effect at the same time the HB 2001 provisions take effect for Large Cities (July 1, 2022).

This memo includes a summary of considerations and potential implications of SB 458, followed by preliminary proposed amendments based on our understanding of what the legislation requires. The Oregon Department of Land Conservation and Development (DLCD) has provided some information and guidance about these new rules, which largely inform the following summary and

associated code amendments. The amendments provided are in addition to recommended HB 2001 amendments and minor SB 458 amendments in another memo.

SB 458 Requirement Summary:

The following sections summarize the types of changes that we believe will or may be needed to the Code for compliance. This summary is based on our work assisting other cities with similar efforts. We expect to continue to solidify our knowledge about needed amendments, which will inform the proposed code amendments as the project proceeds.

What Keizer *Must* Require

- **All Middle Housing Types.** SB 458 applies to any lot that allows middle housing under ORS 197.758, including duplexes, triplexes, fourplexes, townhomes, and cottage clusters.
- **Resulting Lots.** The land division must result in exactly one dwelling per lot (i.e., you cannot divide an 8-unit cottage cluster into four individual lots and fifth lot with four units). The only exception is that common areas may be located in a separate lot or shared tract.
- **Utilities.** Separate utilities for each dwelling unit must be provided if a development is to qualify for a middle housing land division.
- **Easements.** Easements are required for:
 - Pedestrian access (e.g., all pedestrian paths in a cottage cluster)
 - Common areas (e.g., common courtyards, community buildings)
 - Driveways and parking areas (if shared)
 - Utilities
- **Building Code.** The proposal must meet the requirements of the building code (Oregon Residential Specialty Code). For example, if an attached duplex is being divided, there must be firewall construction between the two units.
- **Timing.** In a typical land division, the land is divided prior to building permits being reviewed and issued for construction. However, SB 458 does not state that a middle housing land division must occur either before or after the issuance of a building permit. SB 458 also allows division of existing middle housing that was developed prior to HB 2001 taking effect—as long as the development meets the City’s adopted middle housing code standards. In addition, SB 458 gives cities the option of allowing concurrent review of building permits and the land division. In all cases, the land division application must include a middle housing development (either proposed or built) that complies with the building code and the City’s middle housing development code.

What Keizer may require/allow:

- **Street Frontage Improvements.** SB 458 specifies that cities can require street frontage improvements and right-of-way dedication for newly created lots abutting a street. Land divisions are often a trigger for requiring frontage improvements, whereas infill development on an existing lot may not trigger such improvements. Therefore, under SB

458, frontage improvements and dedications may be required with a middle housing land division even if those improvements would not be required for a single-lot development.

- **Concurrent Review.** As noted above, Keizer may allow concurrent review of building permits and a land division for a middle housing development. The City currently requires final plat approval before issuing a building permit. Our initial recommendation is for the City to require a Certificate of Occupancy for an MHLD approval, which will ensure that the structure has appropriate utility connections, access, and improvements. However, this recommendation is subject to change, as it is unclear whether the ORS would allow this approach.
- **Preliminary/Final Plats.** Cities may require that applicants submit preliminary and final plats in a manner consistent with their applicable platting standards. We recommend applying similar platting standards that are currently used for partitions (KDC 3.107)
- **Building Permits/Final Plat.** The City may require a developer record the final plat of a MHLD prior to issuing building permits for the structures. As mentioned, the City currently requires final plats to be recorded before a building permit can be issued, however this may conflict with allowing an MHLD for an already-constructed middle housing type. Therefore, we recommend the City does not require the final plat be recorded prior to building permit issuance for an MHLD.

What Keizer 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 Division Procedure

SB 458 requires cities to apply the expedited land division process to middle housing land divisions. The expedited land division process is outlined in ORS 197.360 to 197.380 and provides an

alternative procedure intended to streamline the review of residential land divisions under state law. Currently, land divisions must meet very specific criteria to qualify for an expedited land division. SB 458 extends the same procedure for expedited land divisions so it also applies to middle housing land divisions that meet the standards outlined in the bill. (However, middle housing land divisions and expedited land divisions remain distinct application types.) While typical land use applications must be completed within 120 days (ORS 227.178), an expedited land division must be processed within 63 days unless extended by the City Council (not to exceed 120 days). Some further details about expedited land divisions:

- Submittal requirements are consistent with typical land divisions.
- Notice is given to properties within 100 ft of the site and to applicable neighborhood association(s).
- There is a 14-day comment period.
- A decision must be made within 63 days (unless extended).
- Only the applicant or any person or organization who files written comments may appeal.
- A City-appointed “referee” decides any appeal decision. Often this is a City’s Hearings Official, but cannot be a City employee. The decision of the referee is the final local decision on the middle housing land division application.
- Appeals of the referee’s decision go to the Oregon Court of Appeals.

Considerations and Options

- **Submittal Requirements.** SB 458 does not specify what submittal requirements must be required for a preliminary or final plat application for a middle housing land division. Since middle housing land divisions could be fairly complicated, it will be important to ensure that staff has all the information needed to evaluate whether they meet all the City’s applicable standards. The City will need to determine what materials applicants will need to submit in order to demonstrate compliance with the building code, development code, utility requirements, etc., and that all necessary easements are provided. We recommend the City follow similar procedures and submittal requirements that are currently used for partitions (KDC 3.107.05).
- **Ensuring improvements are constructed as proposed.** If a middle housing land division is requested prior to applying for building permits, it will be important to ensure that all improvements will be constructed as proposed. For example, a large cottage cluster development may include a variety of shared improvements, including a common courtyard, pedestrian paths, shared parking areas, and a community building. Under a typical subdivision, lots are often sold after the land is subdivided, and another developer (or developers) will acquire the lots and construct the units. If cottage cluster lots were to be similarly sold off, how would the City ensure that all the required improvements would actually be constructed? One potential option is to require that improvements be constructed prior to final plat approval (i.e., not allow lots to be finalized and sold until

improvements are in place). The City currently requires construction of improvements prior to issuance of occupancy for the final plat approval process.

- **Housing Type Definitions.** SB 458 says “The type of middle housing developed on the original parcel is not altered by a middle housing land division.” It may be useful to acknowledge this in the middle housing type definitions. For example, a duplex could be defined as two units on a single lot, or on separate lots if divided pursuant to a middle housing land division.
- **Land Division Procedures.** Our recommendation is to create a new procedure/application type for middle housing land divisions, to be added to the Keizer Development Code. This would largely follow the provisions established in SB 458 and ORS 197.360 – 197.380. We also recommend adding the provisions from ORS 197.360 – 197.380 to incorporate expedited land division procedures into the code. Currently, if applicants opt into an expedited land division, the City must directly apply the ORS provisions to the application. However, it may be beneficial to incorporate the procedures into the Code itself, given that the expedited procedure may become more prevalent under SB 458.
- **Existing Land Division Procedures.** In addition to the “middle housing land division” path, cities can continue allowing a more standard path for creation of townhomes and cottage clusters that follows the City’s current procedures. Because of the restrictions associated with the SB 458 process, some applicants may prefer the more traditional path; therefore, it may be advantageous to include both options.

Summary of SB 458 Amendments

KDC 3.101 – Summary of Application Types

MHLDs cannot be classified as a “land use decision”, per ORS 197.360. Therefore, MHLDs cannot be classified under one of Keizer’s land use applications (Type 1 through Type 4). MHLDs also cannot be subject to requirements for things like pre-application conferences and neighborhood meetings because they are not included in the statutory procedures.

We recommend adding MHLDs and ELDs as new application types, which would be a new category that does not fit under traditional “land use”. The MHLD application would be added to the Land Use Application Process table (with a clarifying footnote stating that MHLD/ELDs are not actually land use actions), which is in the Summary of Application Types section (KDC 3.101). We also recommend the City assign the Hearings Officer as the “referee” for MHLD and ELD appeals, and appeals of the Hearings Officer Decision must be heard by the Court of Appeals.

KDC 3.115 – Middle Housing Land Divisions and Expedited Land Divisions

We recommend incorporating the ELD/MHLD procedures from the ORS directly into the Code to make them easier to implement. Consider adding a section that outlines the MHLD and ELD application procedure. These sections would follow a similar format as Partitions (3.107), which would detail the following:

- **3.115.01 Purpose:** General statement that reflects the intent of SB 458

- 3.115.02 Applicability: Any middle housing type (as defined by HB 2001) that is in a residential zone. SB 458 also applies to middle housing developed before HB 2001 adoption (pre-June 2022), provided the middle housing development complies with HB 2001 standards (i.e., conforms to the City’s middle housing code updates).
- 3.115.03 Application and Fee: As mentioned, the City may follow similar procedures as partitions for preliminary and final plats.
- 3.115.04 Submittal requirements: These can be the same or similar to Partitions. We included submittal requirements for preliminary plat submittal, which must have a description of compliance and copies of the plat showing separate utility connections and easements.
- 3.115.05 Review Criteria Process: These criteria closely follow the criteria from the State Statute. The City cannot deviate from most of the ORS requirements in this section. This section incorporates the criteria and procedures outlined in SB 458 and ORS 197.360, which cover:
 - Completeness review
 - Notice requirements
 - Comment period
 - Decision deadline
 - Extension of 63-day review timeline
 - Appeal procedures
- 3.115.06 Review Criteria: This section includes the specific review/approval criteria for a preliminary plat of a middle housing land division. Our initial recommendation is for the City to require a Certificate of Occupancy to ensure the structure is fully constructed and all improvements are completed before the middle housing land division can be approved. This recommendation is subject to change, pending DLCD and/or the City’s legal counsel feedback – it currently is unclear if the City can require construction to be completed prior to an MHL. This section also closely draws from the specific statutes that the City must follow.
- 3.115.07 Process for Final Plat Approval: This section follows a similar procedure to the City’s process for final plat of partitions. However, we recommend *not* requiring final plat approval before a building permit is approved, which is the standard process the City uses for partitions. Requiring a final plat before a building permit would conflict with a middle housing land division for structures that are already built. This initial recommendation is subject to change, pending Planning Commission and staff input.
- 3.115.08 Expedited Land Division Review Criteria and Submittal Requirements: This section outlines the requirements for an ELD, which are consistent with ORS 197.360 – ORS 197.380.



MEMORANDUM

DRAFT Middle Housing Code Update Recommendations

City of Keizer

DATE February 1, 2022
TO Shane Witham and Dina Horner, City of Keizer
Sean Edging and Nicole Mardell, DLCD
FROM Matt Hastie and Brandon Crawford, Angelo Planning Group

PROPOSED AMENDMENTS

1.200.04 Definitions

Middle Housing Child Lot: A unit of land created from the division of a middle housing parent lot through a middle housing land division.

Middle Housing Land Division: A partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758(2) and the partition or subdivision is processed in accordance with the provisions of ORS Chapter 92 and KDC 3.115. The lot or parcel that is the subject of the land division is referred to as the middle housing parent lot; a lot created by the division is referred to as a middle housing child lot.

Middle Housing Parent Lot: A lot or parcel that is developed, or proposed to be developed, with middle housing, and which may therefore be further divided through a middle housing land division to create middle housing child lots.

3.101 SUMMARY OF APPLICATION TYPES

PROCESS FOR LAND USE AND OTHER TYPES OF APPLICATIONS PROCESS

LAND USE ACTION	TYPE	STAFF	HEARINGS OFFICER	PLANNING COMMISSION	CITY COUNCIL
[...]					
<u>Middle Housing Land Division (1)</u>	<u>N/A</u>	<u>Final Decision</u>	<u>Appeal of Staff Decision (2)</u>		
<u>Expedited Land Division (1)</u>	<u>N/A</u>	<u>Final Decision</u>	<u>Appeal of Staff Decision (2)</u>		

(1) Per ORS 197.360, Middle Housing Land Divisions and Expedited Land Divisions are not land use decisions or limited land use decisions under ORS 197.015 or permits under ORS 215.402 or 227.160.

(2) ORS 197.375 establishes the requirements for appeals of Middle Housing Land Divisions and Expedited Land Divisions. An appeal of the Hearings Officer Decision is heard by the Court of Appeals.

3.115 MIDDLE HOUSING LAND DIVISIONS AND EXPEDITED LAND DIVISIONS

3.115.01 Purpose

This chapter provides standards and procedures for middle housing land divisions (MHL) and expedited land divisions (ELD), in accordance with ORS 197.360 and 197.380. An ELD provides an alternative to the standard review procedures for land divisions as set forth by the City. An MHL is an expedited land division of a lot or parcel on which the development of middle housing is allowed under ORS 197.758(2). The purpose of an MHL is to provide a simplified and expedited process for subdividing or partitioning lots with middle housing so that each unit is on a separate property, which enables middle housing dwelling units to be sold and owned individually.

3.115.02 Middle Housing Land Division Applicability

MHL can only be applied to a lot or parcel with middle housing as defined by this Code and allowed under ORS 197.758 and OAR 660-046. Middle housing types that are eligible for an MHL include duplexes, triplexes, quadplexes, townhouses, and cottage clusters. An MHL is the creation of multiple parcels from a single parent lot on which middle housing is developed or proposed, which results in individual lots for each of the middle housing units. After an MHL is applied to a property, each resulting lot or parcel becomes a middle housing child lot. The middle housing development is still subject to the requirements and standards that applied to the middle housing

parent lot, or the original lot prior to an MHL. The MHL process follows the procedures defined by ORS 197.360(1).

3.115.03 Application and Fee

An application for an MHL or ELD shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application that addresses the review criteria of this Section.

3.115.04 Middle Housing Land Division Submittal Requirements

A. Preliminary Plat Submittal. An application for a MHL shall include the following:

1. A description of the manner in which the proposed division complies with each of the provisions of 3.115.06, including copies of building permits and other evidence necessary to demonstrate:

- a. How buildings or structures on a resulting child lot will comply with applicable building codes provisions related to new property lines; and
- b. Notwithstanding the creation of new lots, how structures or buildings located on the newly created child lots will comply with the Oregon Residential Specialty Code.

2. Copies of a plat showing the following details:

- a. To qualify for a middle housing land division, each dwelling unit must have a separate utility connection. Separate utility connections for each dwelling unit must comply with approval criterion as provided in 3.115.06.A.2.
- b. Existing or proposed easements necessary for each dwelling unit on the plan.

3. Copies of all required easements in a form approved by the City Attorney.

3.115.05 Process for Middle Housing Land Division Review

A. Preliminary Plat Procedures for Middle Housing Land Division. Unless the applicant requests to use the procedure set forth in 3.202.02, the City shall use the following procedure, as described in ORS 197.360.

1. Completeness Review.

- a. If the application for an MHL is incomplete, the City shall notify the applicant of the missing information within 21 days of receiving an application signed by all property owners, and associated fee to allow the applicant to submit the missing information. The application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.
- 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 shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

2. Notice of Application.

- a. On receipt of a complete application, written notice shall be provided to owners of property within 100 feet of the entire contiguous site for which the application is made and to any City Council-recognized neighborhood association(s) whose boundaries include the site. Notice shall also be provided to any agency responsible for providing public services or facilities to the subject site. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given.
- b. The notice shall include the following:
 - i. The deadline for submitting written comments;
 - ii. A statement of issues, that may provide the basis for an appeal to the referee, 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 City 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 City contact.
 - ix. A brief summary of the process for the land division decision being made.
3. There shall be a minimum 14-day period to allow for submission of written comments prior to the Planning Official's decision.
4. There shall be no public hearing on the application.
5. The Zoning Administrator shall make a decision on the application within 63 days of receiving a completed application.

6. The Zoning Administrator’s decision shall be based on applicable elements of the Keizer Development Code and Comprehensive Plan. An approval may include conditions to ensure that the application meets applicable land use regulations.
7. Notice of the decision shall be provided to the applicant and to those who received notice under 3.115.05.A.02 within 63 days of the date of a completed application. The notice of decision shall include:
 - 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. Except as provided in section 3.115.05.A.8.b below, if the City does not make a decision on an MHLA within 63 days after the application is deemed complete, the applicant may apply in the circuit court for Marion County for a writ of mandamus to compel the City to issue the approval. The writ shall be issued unless the City shows that the approval would violate a substantive provision of the applicable land use regulations or the requirements of ORS 197.360. A decision of the circuit court under this section may be appealed only to the Court of Appeals.
 - b. After seven days’ notice to the applicant, the City Council may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an ELD 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 3.115.05.a shall remain applicable to the ELD, except that the extended period shall be substituted for the 63-day period wherever applicable.
 - c. The decision to approve or deny an extension under 3.115.05.b is not a land use decision or limited land use decision.
9. The applicant, or any person or organization who files written comments in the comment period established under 3.115.05.A.3, may appeal the Zoning Administrator’s decision to the Hearings Officer within 14 days of the mailing of the decision notice. An appeal shall be based solely on allegations as listed in ORS 197.375(1)(c)(A) through (1)(c)(D) and shall be accompanied by an appeal application and \$300 deposit which is refundable if the appellant prevails.
10. An appeal shall be based solely on the following types of allegations:
 - a. A violation of the substantive provisions of the applicable land use regulations;
 - b. Regarding the unconstitutionality of the decision;

- c. That the application is not eligible for review under ORS 197.360 to 197.380 or 3.155.02 (Middle Housing Land Division) and should be reviewed as a land use decision or limited land use decision per ORS 197.195.
 - d. That the parties' substantive rights have been substantially prejudiced by an error in procedure by the City.
11. The City's Hearings Officer shall decide the appeal decision and the Hearings Officer shall comply with ORS 197.375(3) through (6) when issuing a decision. The Hearings Officer referee may not be a City employee or official.

3.115.06 Middle Housing Land Division Review Criteria

- A. Certificate of Occupancy. A Certificate of Occupancy must be recorded before an MHLD can be approved. Applicants must submit a copy of the Certificate of Occupancy for the middle housing with an application for an MHLD. Approval of a preliminary plat for a MHLD will be granted if the Zoning Administrator finds that the applicant has met all of the following criteria:
1. Existing Compliance. The middle housing development complies with the Oregon Residential Specialty Code and applicable KDC middle housing regulations. To demonstrate compliance with this criterion, the applicant shall submit approved building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and KDC middle housing regulations.
 2. Separate Utility Connections. To qualify for a MHLD separate utility service connections for public water, sewer, and stormwater must be present for each dwelling unit.
 3. Easements. Formal easements will be provided as necessary for each dwelling unit on the site for:
 - a. Locating, accessing, replacing, and servicing all utilities;
 - b. Minimum 5-foot wide pedestrian access from each dwelling unit to a private or public road;
 - c. Any common use areas or shared building elements;
 - d. Any dedicated driveways or parking;
 - e. Any dedicated common area.
 - f. Access easements for private streets shall comply with 2.302.08.
 4. One Dwelling Unit per Lot. Exactly one dwelling unit will be located on each resulting child lot, except for lots, parcels, or tracts used as common areas, on which no dwelling units will be permitted. Resulting child lots may have accessory

structures provided the accessory structure complies with applicable zoning requirements.

5. Comply with Building Code. Buildings or structures on a child lot will comply with applicable Building Code provisions relating to new property lines.
6. Notwithstanding the creation of new child lots, structures or building located on the newly created lots will comply with the Oregon Residential Specialty Code.
7. Frontage improvements. Where a resulting child 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 prior to the creation of the child lot, pursuant to 2.310.05.C. Street frontage improvements or additional right-of-way must be completed or guaranteed prior to the MHLD.

B. Preliminary Plat Conditions of Approval.

1. The preliminary plat for a MHLD shall:

- a. Prohibit further division of the resulting child lots.
- b. Require that a notation appear on the final plat indicating:
 - The approval was given under ORS Chapter 92.
 - The type of middle housing approved on the subject site and noting that this middle housing type shall not altered by the middle housing land division.
 - Accessory dwelling units are not permitted on child lots resulting from a middle housing land division.

2. The City shall not attach conditions of approval that a child lot require driveways, vehicle access, parking, or minimum or maximum street frontage.

3.115.07 Process for Final Plat of Middle Housing Land Divisions

1. Final Plan Review Criteria. Approval of a final plat for a MHLD shall be consistent with the review criteria in 3.107.07. The process and criteria for final plat approval is as follows:
 - a. Survey. Within 3 years of the final decision approving a preliminary plat, the final plat shall be recorded. If the final plat is not recorded within 3 years, the preliminary approval shall lapse. The City staff may extend the approval period for not more than 1 additional year at a time. Requests for extension of approval time must be submitted in writing thirty days prior to the expiration date of the approval period. Extensions may only be granted if no subsequent code amendments have been adopted that affect the MHLD.

- b. Final Approval. If the MHLD plat is consistent with the approved preliminary plat, and if the conditions of approval have been satisfied, the City shall sign the final plat.
- c. Improvements/Bonding. Prior to issuance of an occupancy permit, all improvements required by the conditions of approval shall be constructed or the construction shall be guaranteed through a performance bond or other instrument acceptable to the City as provided for in 3.202.05.B.

3.115.08 Expedited Land Division Review Criteria and Submittal Requirements

A. Expedited Land Divisions. An expedited land division (ELD) shall be defined and may be used as provided under ORS 197.360 through 197.380.

1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit the right to use it.

2. Review Procedure and approval criteria. All applications for expedited land divisions shall comply with ORS 197.360 through 197.380, the Keizer Comprehensive Plan, zoning designation, and submittal requirements in 3.107.05. ORS 197.360 through ORS 197.380 details the criteria, application and notice requirements, and action and appeal procedures for ELD.

a. For an ELD to be considered, the proposed division must demonstrate how it complies with the following:

i. The parent lot is zoned for residential use and is within the urban growth boundary.

ii. The parent lot is solely for the purpose of residential use, including recreational or open spaces, accessory to residential use.

b. Application, preliminary and final plat, and notice requirements shall follow criteria in 3.115.03 – 3.115.06. These criteria are consistent with ORS 197.360 – ORS 197.380.

b. The land division will not provide for dwellings or accessory buildings to be located on land that is within the Floodplain Overlay zone (2.122), the Greenway Management Overlay zone (2.123) or the Resource Conservation Overlay zone (2.126).

c. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Design Manual, and the Development Code.

d. 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. All dwellings will be sold or rented to households with incomes below 120 percent of the median family income for Marion County. A copy of a deed restriction or other legal mechanism approved by the Zoning Administrator shall be submitted.

3. Appeal Procedure. An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a City employee), the City Attorney shall serve as the referee for ELD appeals.