

## Ordinance 95-5 - LAND DIVISIONS

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## Article 1 GENERAL INFORMATION

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### **1.010 Ordinance.**

This Ordinance shall be known as the Manzanita Land Division Ordinance and may also be referred to the “Ordinance” or the “MLDO.”

### **1.020 Purpose.**

The purpose of this Ordinance is to establish standards and procedures for the dividing of land in the City. These regulations are necessary to provide uniform procedures and standards for land divisions, to assure adequate width and arrangements of streets, to coordinate proposed development with plans for utilities and other public facilities, to avoid undue congestion of population, to assure adequate sanitation and water supply to provide for the protection, conservation, and proper use of land, and to protect the public health, safety, and welfare.

### **1.030 Applicability and Relationship to Ordinance 95-4.**

Unless otherwise exempted or specified by provisions in this Ordinance, the following shall apply:

- (A) Zones. Unless otherwise specifically prohibited in the underlying zone as described in Ordinance 95-4, the land division regulations contained in Ordinance 95-5 shall apply to all zones.
- (B) Appeals. Land divisions are administrative decisions appealable to the Planning Commission. An appeal of the Planning Commission to the City Council is subject to provisions in Section 10.150 to 10.200 of Ordinance 95-4.
- (C) Variances. The Planning Commission shall review land divisions involving a variance, subject to provisions in Article 10 of Ordinance 95-4.

### **1.040 Administration.**

The City Manager of the City of Manzanita shall administer this Ordinance. Unless otherwise specifically prohibited by Charter, the City Manager is granted the authority to delegate his/her duties under this Ordinance.

### **1.050 Scope of Regulations.**

The regulations contained in this Ordinance shall govern property boundary adjustments, partitions, subdivisions, and replats. These shall be administrative decisions and subject to procedures in Article 7 – Administration. The following shall determine the appropriate process:

- (A) Property Line Adjustments. Property line adjustments do not divide land but adjust boundaries between properties or consolidate property by eliminating a boundary. Property line adjustments are subject to:
  - The provisions in Article 4, and,
  - Type I application procedures in Article 7.
- (B) Partition. The City shall process a land division creating two or three parcels within a calendar year as a Partition. Partitions are subject to:
  - The general design standards in Article 2,
  - Street design requirements in Article 3,
  - Improvement standards for a Partition in Article 5,
  - Type II application procedures in Article 7.
- (C) Subdivision. A land division creating four or more lots within a calendar year shall be processed as a Subdivision. Subdivisions are subject to:
  - The general design provisions in Article 2,
  - Street design requirements in Article 3,
  - The design standards and improvement requirements for a Subdivision in Article 6,
  - Type II application procedures in Article 7.
- (D) Replat. A replat alters the platted lots and easements of existing subdivisions. It differs from a property boundary adjustment in that it reconfigures more than two lots in an existing subdivision plat. For this reason, this Ordinance classifies replats as subdivisions and subject to the provisions noted in (C) above. Replats are subject to the Type II application procedures in Article 7.
- (E) Expedited Land Divisions and Middle Housing Land Divisions. These include processes and requirements to provide affordable, infill housing with all requirements contained in Article 8.

### **1.060 Serial Partitions.**

If a Partition results in the creation of a large parcel that can be subsequently divided such that there is the potential to create more than three parcels from the original, the request is classified as a Subdivision and subject to provisions in 1.040(C) above. A Middle Housing Land Division is not a Serial Partition.

### **1.070 Planned Unit Developments.**

A planned unit development can divide property but allow greater flexibility in such design factors as lot size, street width, and specific amenity requirements. Ordinance 95-4, Section 4.136 contains the specific requirements and procedures for a Planned Unit

Development.

### **1.080 Variances.**

Any request to vary or modify the quantitative standards in Ordinance 95-5 shall be subject to the variance provisions outlined in Ordinance 95-4, Article 8. The Planning Commission shall review land divisions involving a variance, subject to provisions in Section 10.150 to 10.200 of Ordinance 95-4.

### **1.090 Definitions.**

As used in this Ordinance, unless it is apparent from the context that it intends a different meaning, the words and phrases below shall have the following meaning.

**Abut** means to border on a given line, e.g., a given street right-of-way.

**Applicant** means any person who makes application to the City for approval of a subdivision or partition plan.

**Building lines** means the lines indicated on the subdivision plat or otherwise described, limiting the area upon which structures may be erected.

**City** means the City of Manzanita, Oregon.

**Comprehensive Plan** means the Comprehensive Plan of the City.

**Master Plan** means a map or layout that establishes the long-term development of a subdivision, planned unit development or future partitioning potential of larger parcels.

**Middle Housing** means duplexes, triplexes, quadplexes and cottage cluster housing as well as townhouses.

**Owner** means the owner of record of real property as shown on the latest tax rolls of Manzanita County or by the deed records of said county or a person who is purchasing a parcel of the property under contract.

**Parcel** means a unit of land created by a land division.

**Partitioning** means the division of an area or tract of land into two or three parcels within a calendar year and when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. **Partitioning land** does not include division of land resulting from lien, foreclosure; divisions of land resulting from the creation of cemetery lots; and divisions of land made pursuant to a court order, including, but not limited to, court orders in proceedings involving testate or intestate successions; and partition land does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning requirement.

**Partitioning plat** means and includes a final map and other writing containing all the descriptions, locations, specifications, provisions, and information concerning a partition.

**Pedestrian way** means a right-of-way for pedestrian traffic.

**Planning Commission** means the Planning Commission of the City of Manzanita.

**Plat** means the final map, diagram, drawing, replat, and other writing containing the description, location, specifications, dedications, provisions, and other information concerning a subdivision, replat, or partition plat.

**Property line** means the division line between two units of land.

**Property boundary adjustment** means the relocation of a common property line between two abutting properties.

**Replat** means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

**Right-of-way** means a strip of land granted, dedicated, or otherwise given to the public for specific uses including roadways, bridge structures, public utilities, and pedestrian pathways. .

**Roadway** means the portion or portions of a street right-of-way developed for vehicle traffic.

**Sidewalk** means a pedestrian walkway with permanent surfacing.

**Street** means the entire width between the boundary lines of a public right-of-way provided for vehicular and pedestrian traffic, and the placement of utilities and including road, highway, lane, place, avenue, alley, or similar designations.

- (1) **Alley** means a narrow street through a block primarily for access by service vehicles to the back or side of properties that front another street.
- (2) **Arterial** means a street designed for high-volumes and regional trips. **Principal arterial** means a street carrying the highest volume of traffic of any roadway type below grade-separated freeways and provide regional connections.
- (3) **Collector** means a street linking commercial, residential, industrial, and institutional areas, used partly by through traffic and partly for access to abutting properties. Collectors include **Major Collectors** and **Minor Collectors**, with major collectors generally having longer lengths, higher speed limits, higher traffic volumes, and more travel lanes than minor collectors. Major collectors offer more mobility and minor collectors offer more access.
- (4) **Cul-de-sac (dead-end street)** means a short street with one end open to traffic and the other terminated by a vehicle turn-around.
- (5) **Half-street** means a portion of the width of a street, usually along the edge of a subdivision where a future subdivision or development provides the remaining portion of the street.
- (6) **Local street** means a street intended primarily for access to abutting properties.
- (7) **Marginal access street** means a street parallel and adjacent to a principal arterial street providing access to abutting properties but protected from through traffic. Also known as a frontage road.

**Subdivide land** means to divide land into four or more lots within a calendar year.

**Subdivision** means either an act of subdividing land of an area or a tract of land subdivided.

**Subdivision plat** means and includes a final map and other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision.

**TSP or Transportation System Plan** means the Nehalem Bay Transportation System Plan.

**1.100 Fees.**

- (A) The City shall charge a fee for the review of the tentative and final plans as required by this Ordinance. The City Council shall establish fees by Council resolution.
- (B) The above-mentioned fees shall be in addition to any required State or County fees and/or charges.

## Article 2 LOTS AND PARCELS.

### Sections:

#### 2.010 Design Standards.

##### 2.010 Design Standards.

The following standards shall apply to both proposed Partitions and Subdivisions.

- (A) Minimum Area. Minimum lot or parcel area shall conform to the requirements of the zoning district in which the parcel is located. Where the slope of the ground exceeds 10% in any direction for more than 60% of the buildable area of a lot or parcel, the area shall increase according to the following table:

11 to 15% slope	Minimum area plus 20%
16 to 20% slope	Minimum area plus 50%
21 to 25% slope	Minimum area plus 100%
Over 25% slope	Minimum area plus 200%

- (B) Access.

- (1) All new residential lots or parcels shall provide a minimum of 20-feet of frontage on an existing or proposed public street, or 25-feet of frontage along a cul-de-sac. A private street or private access easement may access a residential lot or parcel when developed in accordance with the provisions of Section 3.020 when it is determined that a public street access is:
- (a) Infeasible due to parcel shape, terrain, or location of existing structures; and
  - (b) Unnecessary to provide for the future development of adjoining property.
- (2) All new lots or parcels for commercial, industrial, or public uses must provide, at a minimum, street frontage wide enough for a driveway. Alternatively, a commercial, industrial, or public property may use a private street or private access easement when in compliance with items (a) and (b) in subsection (B)(1) above.

- (C) Flag Lots. A flag lot shall be subject to the following development standards:

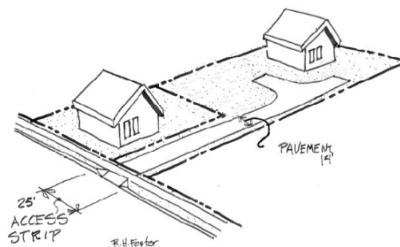


Figure 1 - Flag Lot Access



- (1) The access strip shall be a minimum of 20-feet in width. The improved surface shall be a minimum of 14-feet in width.
  - (2) If the length of the access strip exceeds 150-feet, the parcel or lot shall include a turn-around area per local Fire District requirements.
  - (3) The lot area calculation shall not include the access strip.
- (D) Residential Through Lots. The layout shall avoid through lots except where essential to provide separation of residential development from traffic arteries, adjacent non-residential activities, or to overcome specific disadvantages of topography.
- (E) Lot/Parcel Side Lines. The side lines of lots, as far as practicable, shall run at right angles to the public street, private street, or private access easement upon which the lot or parcel faces.
- (F) Utility Easements. Where necessary to accommodate public utilities, the lot or parcel shall include an easement within the easement width conforming to the applicable public and/or private utility standards.
- (G) Lot Averaging. All lots must meet the minimum lot size requirements of the zone; lot averaging is prohibited.

## Article 3 STREET STANDARDS

### Sections

#### 3.010 Street Design Standards.

#### 3.020 Private Streets and Easements.

#### 3.030 Improvements Required.

#### **3.010 Street Design Standards**

##### (A) General Provisions for Public Streets.

- (1) General. The location, width, and grade of streets shall take into account existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of the land served by the proposed streets.
- (2) Where the Comprehensive Plan does not show the arrangement of streets, the street system shall either:
  - (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - (b) Conform to an adopted neighborhood plan to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.
- (3) Minimum Right-of-Way and Roadway Widths. The width of streets and roadways shall be adequate to fulfill City Public Works specifications of this Ordinance and, unless otherwise indicated in the Comprehensive Plan, shall not be less than the minimum widths in feet shown in the following table:

	Applicability	Right of Way	Travel Lanes	Min. Lane Width	Center Turn Lane	On-street Parking	Bike Facility	Sidewalk	Planter/ Buffer (one side)
<u>Major Collector</u>	<u>See Map 6 in TSP</u>	<u>58 feet</u>	<u>2</u>	<u>11 feet</u>	<u>n/a</u>	<u>8 feet</u>	<u>n/a</u>	<u>6 feet</u>	<u>n/a</u>
<u>Minor Collector</u>	<u>See Map 6 in TSP</u>	<u>40 feet</u>	<u>2</u>	<u>10 feet</u>	<u>n/a</u>	<u>8 feet</u>	<u>12 feet<sup>2</sup> (one side)</u>		<u>2 feet</u>
<u>Local</u>	<u>See Map 6 in TSP</u>	<u>40 feet</u>	<u>1</u>	<u>20 feet</u>	<u>n/a</u>	<u>8 ft</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
<u>Local with Sharrows</u>	<u>See Figure 12 in TSP</u>	<u>40 feet</u>	<u>1</u>	<u>20 feet</u>	<u>n/a</u>	<u>8ft</u>	<u>Sharrows</u>	<u>n/a</u>	<u>n/a</u>
<u>Local with Advisory Bike Lane</u>	<u>See Figure 12 in TSP</u>	<u>40 feet</u>	<u>1</u>	<u>10 feet</u>	<u>n/a</u>	<u>n/a</u>	<u>6 feet Advisory Bike Lanes</u>	<u>n/a</u>	<u>n/a</u>

- (4) Alignment. As far as practical, streets other than local streets and marginal access streets shall align with existing streets by continuations of the center lines. Staggered street alignment resulting in “T” intersections shall, wherever practical, leave a minimum distance of 200-feet between the center lines of streets having the same direction and shall not be less than 125-feet.
- (5) Future Extension of Streets. Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, the street layout shall extend streets to the boundary of the subdivision. In addition, the City may approve a resulting dead-end street without a turn-around.
- (6) Intersection Angles.
  - (a) Street intersection angles shall be as near to right angles as practical except where topography requires a lesser angle, but in no case shall the acute angle be less than 60 degrees unless there is a special intersection design approved by Public Works.
  - (b) The intersection of an arterial or collector street with another street shall have at least 100-foot tangent adjacent to the intersection unless topography requires a lesser distance.
  - (c) Other streets, except alleys, shall have at least 50-foot tangent adjacent to the intersection unless topography requires a lesser distance.
  - (d) Intersections which contain an acute angle of less than 80 degrees, or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20-feet and maintain a uniform width between the roadway and the right-of-way line.
- (7) Existing Streets. Whenever existing streets adjacent to, or within a tract, are inadequate width, the proposed development shall provide additional right-of-way where feasible.
- (8) Half-Streets. The development may include half-streets where essential to the reasonable development of the subdivision, when in conformity with the other requirements of these regulations, and when the City finds it will be practical to require the dedication of the other half when development occurs on the adjoining property.
- (9) Cul-de-Sacs. The use of cul-de-sacs is permitted only where no other design alternative exists. When allowed, a cul-de-sac shall have a maximum length of 400-feet, serve no more than 18-dwelling units, and shall terminate with a turn-around.
- (10) Street Names. Except for extensions of existing streets, a proposed street name shall not duplicate or be confused with the names of existing streets. Street names and numbers shall conform to the established pattern in the City.
- (11) Grades and Curves.
  - (a) Grades shall not exceed six percent on arterials, 10% on collector streets, or 12% on any other street.
  - (b) Center line radii of curves shall not be less than 300-feet on major arterials, 200-feet on secondary arterials, or 100-feet on other streets, and shall be to an even 10-feet.

- (c) Where existing conditions, particularly topography, make it otherwise impractical to provide buildable lots, the City may accept steeper grades and sharper curves.
  - (12) Marginal Access Streets. Where a subdivision abuts or contains an existing or proposed arterial street, the City may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a nonaccess reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (B) Construction Specifications. Construction specifications for all public streets shall comply with the standards of the most recently adopted public works/street standards of the City of Manzanita.

### **3.020 Private Streets and Easements.**

- (A) Private Streets.
- (1) A private street may serve no more than six<sub>7</sub> lots or parcels. These standards shall also apply if at least three, and no more than six, parcels may be created through a series of separate partitions.
  - (2) Construction Standards. Private streets shall be subject to the following construction standards:
    - (a) Width. Private streets shall have a minimum easement width of 25-feet and a minimum paved surface width of 20-feet. Paving shall be either asphalt or concrete.
    - (b) Construction Standards. All private streets shall be constructed to the same cross-sectional specifications required for public streets and shall include provisions for adequate drainage in conformance with Public Works Standards.
    - (c) On-Street Parking. Private streets shall provide one on-street parking space per lot or parcel. The parking spaces may be located along the private street, designed as a “parking pocket,” or a combination of both. The provision for on-street parking may require a wider private street easement.
    - (d) Public Dedication. Any private street designed, or has the potential capacity, as a collector or an arterial street shall be dedicated as a public right-of-way.
    - (e) Private streets shall be named in conformance with the street name and numbering pattern established in the City.
  - (3) Private streets shall not connect two existing public streets. Such a connection shall require the dedication of a public street.
  - (4) Provision for the maintenance of a private street shall require a maintenance agreement, homeowner’s association, or similar instruments acceptable to the City. The applicable document shall be recorded against the deed record of each lot or parcel, and if appropriate, placed on the final plat.

- (5) A private street, which is the sole access, shall include a turn-around when the street is either more than 150-feet in length or which serves more than two dwellings. Turn-arounds shall comply with the design provisions of the local Fire District.
- (B) Private Access Easement. A private access easement created as the result of an approved land division shall conform to the following:
  - (1) No more than two lots or parcels shall have their sole access to the easement. Easements serving more than two lots or parcels shall comply with provisions for a private street in (A), above.
  - (2) The minimum easement width shall be 20-feet with a minimum paved width of 16-feet.
  - (3) The surface width noted in item (2) above shall be improved with either asphalt or concrete for the entire length of the access easement.
  - (4) A private access easement, which is the sole access, shall include a turn-around when the easement exceeds 150-feet in length or serves more than one lot or parcel. Turn-arounds shall comply with the design provisions of the Fire District. In no case shall the easement length exceed 200-feet.
  - (5) All private access easements shall be designated fire lanes and signed for "no parking."
  - (6) Provision for the maintenance of an improved private access easement shall be provided in the form of a maintenance agreement, homeowner's association, or similar instrument acceptable to the City. The applicable document shall be recorded against the deed record of each parcel, and if appropriate, placed on the final partitioning plat.
- (C) Lots and Parcels Served by Private Streets or Easements. The following shall apply to all lots and parcels that are accessed by either a private street or private access easement:
  - (1) Lot and Parcel Size. The easement containing the private street or access easement shall be excluded from the lot or parcel size calculation.
  - (2) Setbacks. The line fronting along a private street or access easement shall be considered a property line with all subsequent setbacks measured from this easement line.
  - (3) Lot Depth and Width. Where required by the underlying zone, the lot width shall be measured along the easement boundary and the lot depth shall be measured from the easement boundary to the rear lot line.

### **3.030 Improvements Required**

- (A) Generally. Except as otherwise provided, land divisions subject to this Ordinance containing, or abutting, an existing or proposed street, that is either unimproved or substandard in right-of-way width or improvement, shall dedicate the necessary right-of-way on the final plat, or prior to the issuance of building permits. Right-of-way requirements are based on functional classification of the street network as established in the Transportation System Plan.

- (B) Existing Streets. Except as otherwise provided, when a development abuts an existing street, the improvements requirement shall apply to that portion of the street right-of-way located between the centerline of the right-of-way and the property line of the lot proposed for development. In no event shall a required street improvement for an existing street exceed a pavement width of 30-feet.
- (C) Proposed Streets
- (1) Except as otherwise provided, when a development includes or abuts a proposed street, in no event shall the required street improvement exceed a pavement width of forty (40) feet.
  - (2) Half Streets: When a half street is created, a minimum of 22 feet of driving surface shall be provided by the developer.
- (D) Extent of Improvements
- (1) Streets required pursuant to this Chapter shall be dedicated and improved in compliance with the Transportation System Plan and applicable City specifications included in the City of Manzanita Ordinance 91-2 Creating Street Improvement Standards. Improvements shall also include any bikeways designated on the Transportation System Plan map. An applicant may be required to dedicate land for required public improvements only when the exaction is directly related to and roughly proportional to the impact of the development.
  - (2) If the applicant is required to provide street improvements, the City Manager may accept future improvements guarantee in lieu of street improvements if one or more of the following conditions exist, as determined by the City:
    - (a) A partial improvement is not feasible due to the inability to achieve proper design standards;
    - (b) A partial improvement may create a potential safety hazard to motorists or pedestrians.
    - (c) Due to the nature of existing development on adjacent properties it is unlikely that street improvements would extend in the foreseeable future and the improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity;
    - (d) The improvement would conflict with an adopted capital improvement plan;
    - (e) The improvement is associated with an approved land partition on property zoned residential use and the proposed land partition does not create any new streets; or
    - (f) Additional planning work is required to define the appropriate design standards for the street and the application is for a project that would contribute only a minor portion of the anticipated future traffic on the street.
- (E) Transportation Facilities Modifications
- (1) A modification to a standard contained within this Article and the standard

cross sections contained in Chapter 3 of the adopted TSP may be granted in accordance with the procedures and criteria set out in this section.

- (2) A modification request concerns a deviation from the general design standards for public facilities, in this Article or Chapter 3 in the adopted Transportation System Plan. The standards that may be modified include but are not limited to:
  - (a) Reduced sight distances.
  - (b) Vertical alignment.
  - (c) Horizontal alignment.
  - (d) Geometric design (length, width, bulb radius, etc.).
  - (e) Design speed.
  - (f) Crossroads.
  - (g) Access policy.
  - (h) A proposed alternative design which provides a plan superior to these standards.
  - (i) Low impact development
  - (j) Access Management Plans

(F) Modification Procedure

- (1) A modification must be proposed with the application for land use approval.
- (2) A modification is a Type II application and processed in conjunction with the underlying development proposal.
- (3) When a modification is requested to provide a green street element that is not included in the Engineering Design Manual, the modification process will apply, but the modification fee will be waived.

(G) Criteria for Modification. Modifications may be granted for street improvements when any one of criteria are met:

- (1) Consideration shall be given to public safety, durability, cost of maintenance, function, appearance, and other appropriate factors to advance the goals of the adopted Manzanita Comprehensive Plan and Transportation System Plan as a whole. Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact.
- (2) Topography, right-of-way, existing construction or physical conditions, or other geographic conditions impose an unusual hardship on the applicant, and an equivalent alternative which can accomplish the same design purpose is available.
- (3) A minor change to a specification or standard is required to address a specific design or construction problem which, if not enacted, will result in an unusual hardship. Self-imposed hardships shall not be used as a reason to grant a modification request.
- (4) An alternative design is proposed which will provide a plan equal to or superior to the existing street standards.
- (5) Application of the standards of this chapter to the development would not be roughly proportional to the impacts created by the development.

## Article 4 PROPERTY BOUNDARY ADJUSTMENTS

### Sections:

#### 4.010 Adjustments Provisions.

##### 4.010 Adjustment Provisions.

- (A) Purpose. A property boundary adjustment is a change to a property boundary that only modifies existing lots or parcels and does not create a new lot or parcel. A property boundary adjustment is also the elimination of a property boundary line that converts two properties into one.
- (B) Review Process. A property boundary adjustment is subject to review and decision by City staff as a Type I application (Section 7.010).
- (C) Submittal Requirements. The applicant(s) must submit the following information and material:
- (1) Applications for a \_property boundary adjustment shall be submitted on forms provided by the City and accompanied by the appropriate fee. The owners of all property affected by the request must sign the application:
  - (2) The application shall include the following information:
    - (a) Copies of the officially recorded Ordinance transfer instrument (deed, warranty deed, or contract) that shows the legal description for the affected parcels.
    - (b) Copies of the County Assessor's maps for both properties.
    - (c) A written statement explaining the purpose for the property boundary adjustment and demonstrating that the request conforms to City land use regulations of the applicable zone, such as lot size and setbacks for existing buildings.
    - (d) The applicant(s) shall certify in writing that the application does not violate any deed restrictions attached to, or imposed upon, the subject properties.
- (D) Review Criteria. Approval or denial of a property boundary adjustment shall be based on the following criteria:
- (1) A property boundary adjustment cannot create a parcel; creation of a parcel requires approval of a land division.
  - (2) Following the property boundary adjustment, all lots or parcels must comply with lot size and dimensional standards of the applicable land use district. For nonconforming lots, the adjustment shall not increase the degree of nonconformance of the subject property.
  - (3) The adjustment shall not result in a setback violation for existing structures.



- (E) Completion of a Property Boundary Adjustment. After approval of a property boundary adjustment, the new boundary becomes effective only after completion of the following steps:
- (1) Recording of the metes and bounds legal descriptions of the adjusted properties with the Tillamook County Clerk.
  - (2) If required by ORS Chapter 92, a final map and boundary survey are prepared, and all new boundaries are monumented as required by ORS Chapters 92 and 209. If so required, the applicant(s) shall submit a final map to the City for approval and signature prior to recording the document in the County Clerk's office. The applicant(s) shall return a copy of the recorded document to the City.

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## Article 5 PARTITIONS

### Sections

#### **5.010 Application and Review.**

#### **5.020 Improvement Requirements and Final Plat.**

#### **5.010 Application and Review.**

- (A) Purpose. A partition is a land division that creates two or three parcels within a calendar year.
- (B) Review Process. A partition is subject to review and decision by City staff as a Type II application (Section 7.020).
- (C) Submittal Requirements. The following provisions shall apply to the submittal of a partition application:
  - (1) Application Process. Applications for partitions shall be submitted on forms provided by 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 Article.
  - (2) Submittal Requirements. Each application shall be accompanied by a preliminary partition plat drawn to scale of not less than one-inch equals 50-feet, nor more than one-inch equals 200-feet, and containing at a minimum, the following:
    - (a) Appropriate identification stating the drawing is a preliminary plan.
    - (b) North point, scale, and date.
    - (c) Name and addresses of landowner, applicant, engineer, surveyor, planner, architect, or other individuals responsible for the plan.
    - (d) Map number and tax lot or tax account number of subject property.
    - (e) The boundary lines and approximate area of the subject property.
    - (f) Dimensions and size in square feet of all proposed parcels.
    - (g) The approximate location of existing streets, easements, or rights-of-way adjacent to, or within, the subject property, and existing improvements on the property.
  - (3) The City Manager may waive some of the requirements in item (2) above, provided there is sufficient information to process the application.
- (D) Decision Criteria. Approval of a partitioning shall require compliance with the following:
  - (1) Each parcel shall satisfy the dimensional standards of applicable zone unless the Planning Commission approves a variance to the standards.
  - (2) Each parcel shall meet the general design standards of Article 2.
  - (3) The partition shall not reduce setbacks for existing structures unless the Planning Commission approves a variance from these standards.
  - (4) Adequate public facilities shall be available to serve the existing and newly created parcels.

## **5.020 Improvement Requirements and Final Plat.**

- (A) Improvement Requirements. During the review of Partition proposals, the City shall require, as a condition of approval, the following improvements:
- (1) Street Improvements.
    - (a) Consistent with the adopted transportation plans, the final plat shall dedicate sufficient land establishing the appropriate right-of-way width.
    - (b) Improvement requirements shall comply with provisions in MLDO Section 3.030.
  - (2) Public Facilities. In addition to street improvements, necessary public facilities – water, sanitary sewer, storm lines - shall extend to the property and available for connection.
  - (3) Connection Fees. In the circumstance where existing improved streets, sanitary sewer, water, and/or storm lines are adjacent to or within the project, a connection charge is required in accordance with the City's adopted Connection Charges ordinance.
  - (4) Completion Requirements. All required improvements shall be completed prior to recording the final partition plat and the issuance of any building permits for the subject property. Alternatively, improvements required under this Section may be assured through a performance bond or other instrument acceptable to the City prior to the approval of the final plat of the Partition.
- (B) Improvement Procedures. In addition to other requirements, improvements installed by a developer shall conform to the requirements of this Article and improvement standards and specifications adopted by the City, and installed in accordance with the following procedure:
- (1) Plan Review. Improvement work shall not commence until plans are checked for adequacy and approved by the City Engineer. Plans shall be prepared in accordance with requirements of the City Public Works Department.
  - (2) Notification. Improvement work shall not commence until the City Public Works Department has been notified in advance; and, if work has been discontinued for any reason, it shall not be resumed until the City Public Works Department has been notified.
  - (3) Inspection. Improvements shall be constructed under the inspection and to the satisfaction of the City Engineer and the Director of Public Works. The City Engineer or Public Works Department may require changes in typical sections and details in the public interest, if unusual conditions arise during construction to warrant the change.
  - (4) Underground Facilities. All underground utilities, sanitary sewers, and storm drains installed in streets by the developer shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed to a length eliminating the

necessity for disturbing the street improvements when service connections are made.

- (5) Final Engineering Plans. Upon completion of the public improvements and prior to final acceptance of the improvements by the City Engineer, the developer shall provide certified as-built drawings of all public utility improvements to the City Public Works Department. The as-built drawings shall be submitted to the City Engineer by the developer's engineer.
  - (6) Sanitary Sewer Exception. Procedures (1) to (5) above shall apply to the installation of sanitary sewer service except that Nehalem Bay Wastewater Agency is the reviewing agency.
- (C) Process for Final Plat Approval. The following provisions shall apply to the approval of any final partitioning plat:
- (1) Survey. Within two years of the final decision approving a preliminary plat, the applicant shall record the final survey of the approved plat. The preliminary approval shall lapse if not recorded within two years.
  - (2) Final Approval. If the partition plat is consistent with the approved preliminary plat, and if the conditions of approval have been satisfied, the City Manager or designee shall sign the final plat.
  - (3) Recording of Approved Plat. No building permit shall be issued, or parcel sold, transferred, or assigned until the recording of the final approved plat with the County Recorder and returning a copy of the record plat to the City. The applicant shall be responsible for all recording fees.

## Article 6 SUBDIVISIONS

### Sections:

#### **6.010 Application and Review Process.**

#### **6.020 Subdivision Design Requirements.**

#### **6.030 Improvement Requirements and Final Plat.**

#### **6.010 Application and Review Process.**

- (A) Purpose. A subdivision is the process of dividing land into four or more lots within a calendar year.
- (B) Review Process. A subdivision is subject to review and decision by City staff as a Type II application (Section 7.020).
- (C) Submittal Requirements. The following submittal requirements shall apply to all preliminary plan applications for subdivisions and planned unit developments.
  - (1) All applications shall be submitted on forms provided by the City along with the appropriate fee. It shall be the applicant's responsibility to submit a complete application that addresses the review criteria of this Article.
  - (2) Submittal Requirements. Each application shall be accompanied by a preliminary plat drawn to scale of not less than one-inch equals 50-feet, nor more than one-inch equals 200-feet, and containing at a minimum, the following:
    - (a) Appropriate identification stating the drawing is a preliminary plan.
    - (b) Proposed name of the subdivision.
    - (c) North point, scale, and date.
    - (d) Vicinity sketch showing location of the proposed land division.
    - (e) Name and addresses of landowner, applicant, engineer, surveyor, planner, architect, or other individuals responsible for the plan.
    - (f) Map number and tax lot or tax account number of subject property.
    - (g) The boundary lines and approximate area of the subject property along with gross acreage.
    - (h) The approximate location of existing streets, easements, or rights-of-way adjacent to, or within, the subject property, and existing improvements on the property.
    - (i) Contour lines at two-foot intervals if 10% slope or less, five-foot intervals if exceeding 10% slope, and a statement of the source of contour information.
    - (j) Dimensions and size in square feet of all proposed lots.
    - (k) Identification of each lot by number.
    - (l) Preliminary information on connection location to existing water, sanitary sewer, and storm water facilities.
    - (m) Direction of drainage and approximate grade of abutting streets.
    - (n) Streets proposed and their names, approximate grade, and radius of curves.

- (o) Any other legal access to the subdivision other than a public street.
  - (p) All areas offered for public dedication.
- (D) **Subdivision Review Criteria.** Approval of a subdivision shall require compliance with the following:
  - (1) Each lot shall satisfy the dimensional standards and density standard of the applicable zoning district, unless the Planning Commission approves a variance from these standards.
  - (2) Adequate public facilities shall be available to serve the existing and newly created lots.
  - (3) The proposed subdivision complies with the design and layout standards in Section 6.020.
- (E) **Phased Development.**
  - (1) Schedule. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time for any phase be greater than two years without reapplying for a tentative plat, and all phases of the subdivision shall be platted within 10 years of the original date of the final decision.
  - (2) Criteria. The criteria for approving a phased subdivision (in addition to all standard subdivision criteria) review proposal are:
    - (a) The public facilities shall be constructed in conjunction with or prior to each phase to ensure provision of public facilities prior to building occupancy;
    - (b) The development and occupancy of any phase shall not be dependent on the use of temporary public facilities.
      - (i) For purposes of this subsection, a temporary public facility is an interim facility not constructed to the applicable City or district standard; and
      - (ii) The phased development shall not result in requiring the City or other property owners to construct public facilities as a part of the approval of the preliminary plat.

#### **6.020 Subdivision Design Requirements.**

- (A) All lots shall comply with applicable design standards in Article 2.
- (B) In addition, the subdivision shall comply with the following layout design standards, where applicable.
  - (1) General. The length, width, and shape of blocks shall provide adequate building sites for the use contemplated; consideration of needs for convenient access, circulation, control, and safety of street traffic - including pedestrian and bicyclist - and recognition of limitations and opportunities of topography.
  - (2) Street. The street system shall comply with applicable public and private street standards in Article 3, including required improvements.

- (3) Block length and access spacing. Proposed block length and access spacing shall extend the existing grid pattern where present. A grid pattern shall be established for new development.

Functional Class	Maximum Block Length	Minimum Block Length and Width	Minimum Driveway Spacing	Minimum Intersection Set Back
Arterial	1,000 feet	100 feet	100 feet	150 feet
Collector	500 feet	100 feet	75 feet	75 feet
Residential	500 feet	100 feet	None	feet

- (4) Access and Spacing for Highway 101. Access and spacing standards for Highway 101 within the City and arterials shall conform to the current Oregon Highway Plan (OHP) access management spacing standards for highways, as indicated below.

Roadway	Speed Limit	Spacing Standard (urban)
U.S. 101	55 or higher	1,320 feet
	50	1,100 feet
	40 & 45	800 feet
	30 & 35	500 feet
	25 & lower	350 feet

- (5) Traffic Circulation. The subdivision layout shall provide safe, convenient, and direct vehicle<sup>s</sup>, bicycle, and pedestrian access to nearby residential areas<sup>;</sup> neighborhood activity centers (e.g., schools and parks)<sup>;</sup> shopping areas<sup>;</sup> and employment centers<sup>;</sup> and provide safe, convenient, and direct traffic circulation. At a minimum, “nearby” means the distance from the subdivision boundary – quarter mile for pedestrians and one mile for bicyclists.
- (6) Connectivity. To achieve the objective in item (4) above, the City shall require the following:
- (a) Stub-End Streets: Where the potential exists for additional residential development on adjacent property. (See Figure 2)
  - (b) Accessways: Public accessways to provide a safe, efficient, and direct connection to cul-de-sac streets, to pass through oddly shaped or blocks longer than 600-feet, to provide for public paths accessing nearby residential areas, neighborhood activity centers (e.g., schools and parks); shopping areas; and employment centers. (See Figure 2)

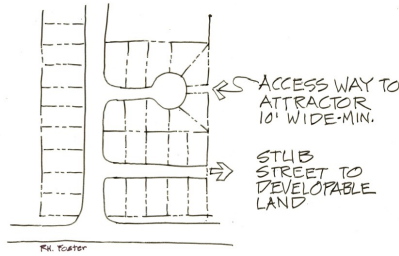


Figure 2 - Connectivity

- (7) Design Standards for Accessways. Pedestrian/bicycle accessways at the ends of cul-de-sacs shall meet the following design standards:
  - (a) Minimum dedicated width: 10-feet
  - (b) Minimum improved width: 8-feet
  - (c) The accessway shall be designed to prohibit vehicle traffic.
- (8) Collector and Arterial Connections. Accessway, bikeway, or sidewalk connections with adjoining arterial and collector streets shall be provided if any portion of the site's arterial or collector street frontage is over 600-feet from either a subdivision access street or other accessway. The accessway placement may be modified or eliminated if natural features (e.g., adverse topography, streams, wetlands) preclude such a connection.

#### **6.030 Improvement Requirements and Final Plat.**

- (A) **Improvements and Bonding.** Before the City certifies approval of the final plat, the subdivider shall either install required improvements and repair existing streets and other public facilities damaged in the development of the subdivision; or execute and file with the City an agreement between specifying the period for the completion of the required improvements and repairs.
  - (1) Bonding. The subdivider shall file a financial instrument with the agreement to assure installation of the necessary improvements. The agreement shall provide that if the work is not completed within the specified period, the City may complete the work and recover the full cost and expense thereof from the subdivider. The agreement may provide for the construction of the improvements in units and for an extension of time under specified conditions. The amount shall be a sum determined by the City Engineer as sufficient to cover the cost of the improvements and repairs, including related City expenses. In no case shall bonding exceed ten percent of the total construction costs of the subdivision as determined by the City Engineer. The financial instrument may include one of the following:
    - (a) A surety bond executed by a surety company authorized to transact business in the state of Oregon on a form approved by the City Attorney.
    - (b) A personal bond cosigned by at least one additional person, together with evidence of financial responsibility and resources of those



signing the bond sufficient to provide reasonable assurance of ability to proceed in accordance with the agreement.

(c) Cash.

- (2) Liability. If the subdivider fails to comply with provisions of the agreement, and the City has unreimbursed costs or expenses resulting from such failure, the City shall call on the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit exceeds the cost and expenses incurred by the City, the City shall release the remainder. If the amount of the bond or cash deposit is less than the cost and expense incurred by the City, the subdivider shall be liable to the City for the difference.

(B) Improvement Requirements. The following improvements shall apply:

- (1) Frontage Improvements. The City shall require half-street improvements designed to the City's Engineering Standards for all public streets on which a proposed Subdivision fronts. Improvements shall include sidewalks, curbing, storm sewer, sanitary sewer, water lines, and such other improvements necessary to serve the development or the immediate neighborhood.
- (2) Project Streets. Public or private streets within the subdivision shall comply with City Engineering Standards.
- (3) Water System. The Subdivision shall install water lines with valves and fire hydrants serving the Subdivision and connecting to the City mains in conformance with the Engineering Design Standards. The design shall consider provisions for extension beyond the Subdivision to adequately grid the City system and to serve the area within which the development is located when the area is fully developed. However, the City will not expect the developer to pay for the extra cost of mains exceeding eight inches in size.
- (4) Surface Drainage and Storm Sewer System. The Subdivision shall include drainage facilities within the Subdivision and connect to drainageways or to storm sewers outside the Subdivision. Design of drainage within the Subdivision shall be constructed in accordance with the Engineering Design Standards.
- (5) Sanitary Sewers. The Subdivision shall include sanitary sewer serving the Subdivision and connecting to existing mains both on and off the property being subdivided conforming to applicable design standards of the Nehalem Bay Wastewater Agency. The Agency may require that the developer construct sewage lines of a size exceeding that necessary to adequately service the development in question, where such facilities are or will be necessary to serve the entire area within which the development is located when the area is fully developed.
- (6) Sidewalks. Sidewalks shall be installed along both sides of each public street and in any pedestrian walkways within the Subdivision. This improvement may be deferred until prior to the occupancy of a dwelling.
- (7) Streetlights. The installation of streetlights at required locations and complying with City standards.

- (8) Street Signs. The installation of street name signs and traffic control signs is required at locations determined to be appropriate by the City and shall comply with City standards.
  - (9) Curb Cuts. Curb cut and driveway installations are not required at the time of development, but if installed, it shall be according to the City standards.
  - (10) Completion of Improvements. All improvements required under this Article shall be completed to City standards or assured through a performance bond or other instrument acceptable to the City Attorney, prior to the approval of the Final Plat of the Subdivision. In no case shall the bond exceed 5% of the remaining project improvements as determined by the City Engineer.
- (C) Improvement Procedures. In addition to other requirements, improvements installed by a developer shall conform to the requirements of this Article and improvement standards and specifications adopted by the City, and shall be installed in accordance with the following procedure:
- (1) Plan Review. Improvement work shall not commence until plans have been checked for adequacy and approved by the City Engineer. Plans shall be prepared in accordance with requirements of the City Public Works Department.
  - (2) Notification. Improvement work shall not commence until the City Public Works Department has been notified in advance; and, if work has been discontinued for any reason, it shall not be resumed until the City Public Works Department has been notified.
  - (3) Inspection. Improvements shall be constructed under the inspection and to the satisfaction of the City Engineer and the Director of Public Works. The City Engineer or Public Works Department may require changes in typical sections and details in the public interest, if unusual conditions arise during construction to warrant the change.
  - (4) Underground Facilities. All underground utilities, sanitary sewers, and storm drains installed in streets by the developer shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed to a length eliminating the necessity for disturbing the street improvements when service connections are made.
  - (5) Final Engineering Plans. Upon completion of the public improvements and prior to final acceptance of the improvements by the City Engineer, the developer shall provide certified as-built drawings of all public utility improvements to the City Public Works Department. The as-built drawings shall be submitted to the City Engineer by the developer's engineer.
  - (6) Sanitary Sewer Exception. Procedures (1) to (5) above shall apply to the installation of sanitary sewer service except that the Nehalem Bay Wastewater Agency is the reviewing agency.

(D) Form of Final Subdivision.

- (1) Final Plat Requirements. The final plat shall be prepared in a form and with information consistent with ORS 92.010 through 92.160 and approved by the County Surveyor.
- (2) Owners Association. *Where applicable*, the City Attorney shall review all owners' agreements, articles, and by-laws concurrently with the final plat.
  - (a) The City shall not approve the final plat, until the City Attorney approves the owner's association agreement, articles, and by-laws.
  - (b) A certificate of formation of a non-profit corporation, with a state seal, for the owner's association, shall be submitted with the final plat.
  - (c) Signed, original documents of the owner's association agreement, articles and by-laws and the certificate of formation described in subsection (B)(3) above, shall be recorded with the final plat.
- (3) Subdivision Names. All plat names shall conform to ORS 92.090 and be approved by the County Surveyor.

(E) Final Plat Review of Subdivisions.

- (1) Final Review. If the City Engineer determines that the final plat conforms fully with all applicable regulations and standards, the City Engineer shall advise the City Manager. If the final plat complies with the preliminary plan and applicable regulations and standards, the City Manager shall sign the plat.
- (2) Filing the Final Plat. The final subdivision plat shall be filed with the Tillamook County Clerk's Office and a copy of the final recorded document shall be returned to the City Recorder.
- (3) Time Limit. Approval of any preliminary plans for a subdivision shall be valid for two years after the date of the final decision. A Final Plat shall be recorded within this period, or the approval shall lapse.
- (4) Time Extension. The City may extend the approval period for any subdivision for not more than one additional year. An applicant must submit a written request for an extension of approval time 30-days prior to the expiration date of the approval.
- (5) Reapplication Required. If the approval period lapses, the applicant must resubmit the proposal, including all applicable fees and the applicant will be subject to all applicable standards currently in effect.

## Article 7 APPLICATION AND REVIEW PROCEDURES

### Sections

#### **7.010 Procedure for Type I Action.**

#### **7.020 Procedure for Type II Action.**

#### **7.030 Procedure for Appeals.**

#### **7.040 Conditions of Approval – Type I and Type II Applications.**

#### **7.010 Procedure for Type I Action.**

- (A) Decision Authority. Applications subject to a Type I review shall be reviewed and decided by the City Manager.
- (B) Application. Upon receipt of an application for Type I land use action, the City shall review the application for completeness.
  - 1. If determined to be complete, the 120-day time period shall begin.
  - 2. If determined to be incomplete, the applicant shall be notified and provided an additional 30 days to submit the necessary supplemental information.
  - 3. An applicant may request additional time to submit the requested information. The City will not process the application if an applicant fails to submit the information within 180 days, and the applicant shall forfeit all applications fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
  - 1. Upon receipt of the requested acceptable additional information; or refusal by the applicant to submit the requested information;
  - 2. On the 31st day after the original application submittal.
- (D) Decision. The City Manager shall review the application and shall render a decision based on an evaluation of the proposal and on applicable clear and objective standards contained in this Ordinance. Notice of the decision shall only be sent to the applicant(s).
- (E) Appeals. A Type I land use decision may be appealed to the Planning Commission. The appeal shall be submitted within 14 days of the date the decision is mailed. The appeal process shall follow the procedures in Section 7.030.

#### **7.020 Procedure for Type II Action.**

- (A) Decision Authority. Applications subject to a Type II procedure shall be reviewed and decided by the City Manager.
- (B) Application. Upon receipt of an application for Type II land use action, the City staff shall review the application for completeness.
  - 1. If determined to be complete, the 120-day time period shall begin.

2. If determined to be incomplete, the applicant shall be notified and provided an additional 30 days to submit the necessary supplemental information.
  3. An applicant may request additional time to submit supplemental information up to 180-days from submittal date of the application. The City will not process the application if an applicant fails to submit the information within 180 days, and the applicant shall forfeit all applications fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
1. Upon receipt of the requested acceptable additional information; or refusal by the applicant to submit the requested information;
  2. On the 31st day after the original application submittal.
- (D) Hearing Option. The applicant has the option to request a public hearing before the Planning Commission. The procedures for notice and conducting the public hearing shall comply with the standards in Ordinance 95-4, Article 10.
- (E) Application Notice. Before making a Type II decision, the City shall mail notice of the application to:
1. All owners of record of real property within 100-feet of the subject site for a partition and 300-feet for a subdivision.
  2. Any person who submits a written request to receive a notice.
  3. Any governmental agency that is entitled to notice under an intergovernmental agreement or required by State statute.
  4. The road authority when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of decision for the application.
  5. The City may notify other affected agencies, as appropriate, for review of the application.
- (F) Notice Information. The notice of a pending Type II decision in item (E) above shall include the following:
1. Identify the applicant, specific land use decisions or decisions requested.
  2. Describe the street address or other easily understandable reference to the location of the site.
  3. List the relevant decision criteria by name and number of Ordinance sections.
  4. Provide a 14-day period for submitting written comments before a decision is made on the land use application. The City shall only accept written comments either by letter or e-mail.
  5. State the place, date, and time the comments are due, and the person to whom the comments should be addressed.
  6. Include the name and telephone number of a contact person regarding the Administrative Decision.

7. State that if any person fails to address the relevant decision criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments based on the decision criteria are considered relevant evidence.
  8. State that all evidence relied upon by the City to make this decision is in public records and available for public review. Copies of this evidence can be obtained at a reasonable cost from the City.
  9. State that after the comment period closes, the City shall issue a decision. The decision shall be mailed to the applicant and to anyone who submitted written comments or who is otherwise legally entitled to notice.
- (G) Decision. The City Manager shall review the application and shall render a decision based on an evaluation of the proposal and on applicable criteria contained in this Ordinance. Further, the written decision shall address relevant comments submitted by the parties noticed.
- (H) Notice of Decision. Within five working days after the City's written decision, a Notice of Decision, including information on appeals, shall be sent by mail to:
1. The applicant and all owners or contract purchasers of record of the site that is the subject of the application.
  2. Any person who submits a written request to receive notice or provides comments during the application review period.
  3. Any governmental agency entitled to notice under an intergovernmental agreement, and other agencies that provided comments during the application review period.
- (I) Appeals. Except as modified by provisions in Article 8, anyone receiving notice of a Type II land use decision may appeal the decision to the Planning Commission. The appeal shall be submitted within 14 days of the date the decision is mailed. The appeal process shall follow the procedures in Section 7.030.

### **7.030 Procedure for Appeals.**

- (A) Commission Hearing and Notice of Appeal. If a Type I or Type II decision is appealed, City staff shall schedule a hearing before the Planning Commission. The Commission hearing shall comply with procedures set forth in Ordinance 95-4, Article 10. Written notice of a public hearing on the appeal shall be mailed only to the applicant and those who received notice of the original decision. This notice shall be mailed at least 10 days prior to the public hearing on the appeal and shall contain the information required in item 7.020(F), above.
- (B) Commission Action. The Commission action on an appeal shall be in the form of a decision. Within 7 days of the Commission decision, the applicant and all individuals who participated in the public hearing, or requested notice of the decision, shall be mailed written Notice of the Decision. The notice shall specify

the findings justifying the decision to approve or deny the request, any conditions of approval, and appeal procedures.

- (C) Appeals. All appeals of land use decisions by the Planning Commission may be appealed to the City Council. The appeal shall be submitted within 14 days of the date the decision is mailed. Notice requirements shall comply with provisions in Section 7.020(F).
- (D) Council Hearing and Notice of Appeal. If the Commission decision on a Type II decision is appealed, City staff shall schedule a hearing before the City Council. The Council shall conduct the hearing following the procedures set forth in Ordinance 95-4, Article 10. Written notice of a public hearing on the appeal shall be mailed to the applicant and those who received notice of the Commission decision on appeal. This notice shall be mailed at least 10 days prior to the public hearing on the appeal and shall contain the information required in Section 7.020(F).
- (E) Notice of Council Decision. Within 7 days of the final City Council decision, the applicant and those who attended the hearing or requested notice, shall be mailed written notice of the Council decision. The notice shall specify findings justifying the approval or denial of the request and any applicable conditions of approval. A decision by the City Council on a Type II application shall serve as the City's final decision. The decision shall be final on the date that notice of the decision is mailed to all parties who participated in the proceedings.

#### **7.040 Conditions of Approval – Type I and Type II Applications.**

- (A) Authorization for Conditions. Approval of a Type I or Type II action may be granted subject to conditions. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by the proposed land use described in an application. Conditions shall either ensure compliance with the standards of this Ordinance or fulfill the need for public service demands created by the proposed use.
- (B) Timing of Conditions. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant demonstrates that it is not practical to fulfill all conditions prior to issuance of such permit, the City Manager may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions. Bonding shall comply with adopted City regulations and procedures.
- (C) Modify Conditions. A request to change or alter conditions of approval shall be processed as a new Type I or Type II action, as per the original request.

## Article 8 EXPEDITED AND MIDDLE HOUSING LAND DIVISIONS

### Sections:

**8.010 Applicability.**

**8.020 Process.**

**8.030 Submittal Requirements.**

**8.040 Criteria of Approval – Expedited Land Division.**

**8.050 Criteria of Approval – Middle Housing Land Division.**

**8.060 Conditions of Approval - Expedited and Middle Housing Land Division.**

**8.070 Final Plat - Expedited and Middle Housing Land Division.**

**8.080 Appeals.**

### **8.010 Applicability.**

(A) Expedited Land Divisions. An expedited land division may be submitted when it complies with the following:

- (1) Includes only land zoned for residential uses.
- (2) Is solely for the purpose of residential use, including recreational or open space uses accessory to residential use.
- (3) 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.
- (4) Satisfies minimum street or other right-of-way connectivity standards established by Article 3 of this Ordinance.
- (5) Will result in development that either:
  - (a) 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
  - (b) All dwellings will be sold or rented to households with incomes below 120 percent of the median family income for Tillamook County. A copy of a deed restriction or other legal mechanism approved by the City shall be submitted.

(B) Middle Housing Land Divisions.

- (1) A middle housing land division applies to duplexes, triplexes, quadplexes, or cottage developments.
- (2) 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.



- (C) Land Use Decision. 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](#).

## **8.020 Process.**

- (A) Completeness. An application for an expedited land division or middle housing land division is subject to the completeness review and 120-day rule requirements except as follows:
- (1) The timeline for the completeness check in Section 7.020(C) is twenty-one days, rather than thirty days.
  - (2) The notice of decision must be provided to the applicant and parties entitled to receive notice under Section 7.020(H) within sixty-three days of a completed application.
- (B) Application Notice. Mailed notice of an application for an expedited land division or middle housing land division must be provided in the same manner as for a Type II decision, as specified Section 7.020(F), to the following persons:
- (1) The applicant.
  - (2) Owners of record of property, as shown on the most recent property tax assessment roll, located within one-hundred feet of the property that is the subject of the notice.
  - (3) Any state agency, other local government, or special district responsible for providing public facilities or services to the development area.
- (C) Decision Notice. A notice of decision must be provided to the applicant and to all parties who received notice of the application. The notice of decision must include:
- (1) A written determination of compliance or non-compliance with the criteria of approval in Section 8.040 for an expedited land division or Section 8.050 for a middle housing land division.
  - (2) An explanation of the right to appeal the community development director's decision to a city-appointed hearings referee, as provided in ORS 197.375.
- (D) Appeal. An appeal must be based solely on one or more of the allegations:
- (1) The decision violates the substantive provisions of the applicable land use regulations;
  - (2) The decision is unconstitutional;
  - (3) The application was not eligible for review under this section, Expedited and Middle Housing Land Divisions, and should be reviewed as a land use decision or limited land use decision.
  - (4) The appellant's substantive rights were substantially prejudiced by a procedural error.

### **8.030 Submittal Requirements.**

- (A) Expedited Land Division Submittal Requirements. An application for an expedited land division must submit the items listed in Section 6.010(C) and a letter or narrative report documenting compliance with the applicable approval criteria contained in Section 8.040 of this Article.
- (B) Middle Housing Land Division Submittal Requirements. An application for a middle housing land division must include the following:
  - (1) Items listed in Section 6.010(C) and a letter or narrative report documenting compliance with the applicable approval criteria contained in Section 8.050.
  - (2) Remodels, additions and alterations to existing buildings and structures require 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 that all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code. Any structure built or building permit applied prior to application for a middle housing land division is considered existing for the purpose of this section.
  - (3) A plan showing the following details:
    - (a) Separate utility connections for each dwelling unit.
    - (b) Existing or proposed easements for each dwelling unit.

### **8.040 Criteria of Approval – Expedited Land Division.**

The City Manager will approve or deny an application for expedited land division within sixty-three days of receiving a complete application, based on whether it satisfies the applicable criteria of approval. The City Manager may approve the land division with conditions to ensure the application meets the applicable land use regulations.

- (A) The land subject to the application is within the , MH-1, MH-2 or MH-3 zones.
- (B) The land will be used solely for residential uses, including recreational or open space uses that are accessory to residential use.
- (C) The land division does not provide for dwellings or accessory buildings located in the Beaches and Dunes Overlay Zone.
- (D) The land division satisfies the minimum public improvement and design standards for development in Article 2 and Article 3.
- (E) The land division satisfies the following development standards contained in Ordinance 95-4:

- (1) Applicable lot dimensional standards;
  - (2) Applicable standards that regulate the physical characteristics of permitted uses, such as building design standards;
  - (3) Applicable standards in this Ordinance for transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.
- (F) The land division will result in development that either:
  - (1) Creates enough lots to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
  - (2) Will be sold or rented to households with incomes below 120 percent of the median family income for Clackamas County.

**8.050 Criteria of Approval – Middle Housing Land Division.**

The City Manager will approve a tentative plan for middle housing land division based on whether it satisfies the following criteria of approval:

- (A) The application provides for the development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot allowed under ORS 197.758 (5).
- (B) Separate utilities are provided for each dwelling unit.
- (C) The applicant provides easements necessary for each dwelling unit on the plan for:
  - (1) Locating, accessing, replacing, and servicing all utilities;
  - (2) Pedestrian access from each dwelling unit to a private or public road;
  - (3) Any common use areas or shared building elements;
  - (4) Any dedicated driveways or parking; and
  - (5) Any dedicated common area.
- (D) The applicant proposes exactly one dwelling unit on each resulting lot, except for lots, parcels or tracts used as common areas.
- (E) The applicant demonstrates that buildings or structures on a resulting lot will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots, that structures or buildings located on the newly created lots will comply with the Oregon residential specialty code.
- (F) The original lot dedicated and improved the abutting street right of way sufficient to comply with minimum right of way and improvement standards of Article 3, or dedication and/or improvements of the abutting street right of way are proposed that meet the standards of Article 3.

- (G) The type of middle housing developed on the original lot shall not be altered by a middle housing land division. For example, cottage cluster units within a cottage cluster do not become single-family detached residential units after a middle housing land division.

#### **8.060 Conditions of Approval - Expedited and Middle Housing Land Division.**

The City Manager may add conditions of approval of a tentative plan for a middle housing land division or expedited land division as necessary to comply with the applicable criteria of approval. Conditions may include but are not limited to the following:

- (A) A condition to prohibit the further division of the resulting lots or parcels.
- (B) A condition to require that a notation appear on the final plat indicating that the approval was given under Section 2 of Senate Bill 458 (2021) as a middle housing land division.
- (C) A condition to require recording of easements required by the tentative plan on a form acceptable to the City, as determined by the City Attorney.

#### **8.070 Final Plat - Expedited and Middle Housing Land Division.**

- (A) An expedited land division or middle housing land division is subject to the final plat standards and procedures as specified in the applicable Article 5 (Partitions) or Article 6 (Subdivisions).
- (B) A notice of middle housing land division for each middle housing lot shall be recorded with the county recorder that states:
  - (1) The middle housing lot may not be further divided.
  - (2) No more than one unit of middle housing may be developed on each middle housing lot.
  - (3) The dwelling developed on the middle housing lot is a unit of middle housing and is not a single family detached residential unit, or any other housing type.
- (C) A final plat is not required prior to issuance of building permits for middle housing proposed with a middle housing land division.
- (D) A middle housing land division tentative plan is void if and only if a final plat is not approved within three years of the tentative approval.

#### **8.080 Appeals.**

Any appeal of an expedited land division or middle housing land division must be as provided in ORS 197.375. The Approval Authority for any appeal of an expedited land division or middle housing land division is a city-appointed hearings referee.