

Memorandum

Date: August 1, 2024

To: West Linn Planning Commission

From: Aaron Gudelj, Associate Planner

Subject: 2024 Code Process Amendments – Expedited Land Divisions

At its August 7, 2024 meeting, the Planning Commission (PC) will hold a second work session to discuss proposed code amendments addressing how the City processes an Expedited Land Division application ([Oregon Revised Statute 197.360-380](#)). Updating the Expedited Land Division language to comply with the revised statutes is one of the four “Code Process Concepts” staff were directed by City Council to work with the PC to develop draft code amendments for adoption. The Planning Commission last discussed Expedited Land Divisions code amendments at its April 3, 2024 work session.

The goals of the August 7, 2024 work session are:

1. Recap the April 3rd discussion.
2. Discuss the proposed code amendments.
3. Provide feedback on proposed code amendments.

The tentative schedule to review and adopt the four “Code Process Concepts” is as follows:

Meeting Date	Meeting Type	Anticipated Agenda
06/05/2024	PC Work Session	<ul style="list-style-type: none"> ▪ Appeal process for Land Use Decisions (Draft Code Review) ▪ Extensions of Approval (Draft Code Review)
07/17/2024	PC Work Session	<ul style="list-style-type: none"> ▪ Appeal Process for Land Use Decisions (Final Code Review) ▪ Extensions of Approval (Final Code Review) ▪ Home Occupation Permits (Draft Code Review)
08/07/2024	PC Work Session	<ul style="list-style-type: none"> ▪ Home Occupation Permits (Final Code Review) ▪ Expedited Land Divisions (Draft Code Review)
08/21/2024	PC Work Session	<ul style="list-style-type: none"> ▪ Expedited Land Divisions (Final Code Review)

09/18/2024	PC Work Session	▪ Final Code Amendment Package Review (if needed)
10/16/2024	PC Public Hearing	▪ Code Amendment Package Hearing
11/04/2024	CC Work Session	▪ Recommended Code Amendment Package Review
11/18/2024	CC Work Session	▪ Recommended Code Amendment Package Review
12/09/2024	CC Public Hearing	▪ Code Amendment Package Hearing

Work Session 1 Recap (Expedited Land Divisions – April 3, 2024)

At the April 3, 2024 meeting the Planning Commission had an initial discussion on code compliance with Expedited Land Division state statutes, which included:

- Oregon State Statute (ORS) [197.365\(4\)\(b\)\(A\)](#) prohibits a local government from holding a hearing on an Expedited Land Division Application or Middle Housing Land Division [\(92.031\(4\)\(a\)\)](#).
 - Current West Linn Community Development Code [\(CDC\) 99.060\(E\)](#) states that Expedited Land Divisions shall be processed by the PC ‘without a public hearing’.
 - Legal guidance from the City Attorney’s office on the processing of Expedited Land Divisions has been that the public nature of a PC meeting constitutes a public hearing - even if no oral or written testimony is given – as such, Staff has been processing Expedited Land Divisions and Middle Housing Land Divisions as a staff level decision.
 - The proposed code amendments will ensure compliance with state statute.

- Staff noted pursuant to [ORS 197.375\(2\)](#) the City ‘shall appoint a referee to decide the appeal of a decision’; meaning any appeal of an Expedited Land Division or Middle Housing Land Division would go to a third party hearings officer to decide on the application as opposed to the Planning Commission or City Council.
 - The PC expressed concern regarding an appeal being processed and decided by an independent hearings officer from outside of the community.

- Staff was directed to return to the PC with preliminary code language for review and discussion.

Proposed Code Amendments

The attached draft code amendments address the decision-making authority/appeal process as discussed in April. Staff has also proposed new definitions and language to clarify the submittal requirements and approval criteria for expedited land divisions and middle housing land divisions. Below is a summary of proposed amendments.

Community Development Code Chapter 2: Definitions

1. Proposed addition of definitions for middle housing and middle housing land division. The new definitions will provide clarity and support for the proposed code amendments found in other sections of the CDC.

Community Development Code Chapter 85: Land Divisions – General Provisions

1. Proposed additions to CDC 85.070 are intended to distinguish between differing types of land division applications. The differing types include:
 - Partition (reviewed by the Planning Director)
 - Subdivision (review by the Planning Commission)
 - Expedited Land Division, Partition or Subdivision (reviewed by the Planning Director)
 - Middle Housing Land Division (reviewed by the Planning Director)
2. Proposed addition of section CDC 85.220 is intended to provide clarity to applicants and the community on what are the submittal requirements and approval criteria for an expedited land division application. An expedited land division application, even though processed in accordance with ORS 197.360 to 380, must comply with the requirements of CDC Chapter 85. Currently, the code does not clearly provide that connection and the addition of this section will close the gap in the code.
3. Proposed addition of section CDC 85.230 is intended to provide clarity to applicants and the community on what are the submittal requirements and approval criteria for a middle housing land division application. A middle housing land division application, processed in accordance with ORS 197.360 to 380, is only required to comply with ORS 92.031 and not with CDC Chapter 85. Staff have been processing middle housing land divisions by directly applying state statute, which does not address submittal requirements. The addition of this section will clearly set expectations for the submittal of a middle housing land division.

Community Development Code Chapter 99: Procedures for Decision Making: Quasi-Judicial

1. Per ORS 197.365 and City Attorney guidance, proposed addition of the following application types to the Planning Director approval authority in CDC Chapter 99.060.A(1).
 - Expedited Land Divisions
 - Middle Housing Land Divisions
2. Per ORS 197.365 and City Attorney guidance, proposed amendment of current CDC Chapter 99.060(E) by deleting existing language that gives approval authority to the Planning Commission.
3. Per ORS 197.360, proposed amendment of current CDC Chapter 99.060(E) by deleting existing language that allows concurrent processing of other applications, specifically natural resource protections, which is inconsistent with state statute.

4. Renaming and reformatting CDC Chapter 99.060(E) to be consistent with the remainder of the Approval Authority sections.

Staff also did some research on other jurisdictions and found the code implementation of expedited land divisions and middle housing land divisions varied greatly. Below are links to some of the codes and informational handouts if you are interested.

Neighboring Jurisdictions Expedited Land Division and Middle Housing Land Division Code

Jurisdiction	Expedited Land Division & Middle Housing Land Division Code or Information
Hillsboro	Section 12.80.099 <ul style="list-style-type: none"> • Code Sections discussing Expedited Land Divisions and Middle Housing Land Division approval criteria.
Tigard	Section 18.710.130 statement providing an alternative procedure for a land division if the requirements of ORS 197.360 are met.
Tualatin	Section 36.020 – statement providing an alternative procedure for a land division if the requirements of ORS 197.360 are met.
Milwaukie	Section 17.26.010 & Section 17.26.020 – Code Sections dedicated to Expedited Land Divisions and Middle Housing Land Divisions.
Lake Oswego	<ul style="list-style-type: none"> • No code • City provides a 5-page handout on process and requirements of an Expedited Land Division • Lake Oswego Partition Handout
Portland	<ul style="list-style-type: none"> • Middle Housing Code Section 33.644 and 33.671 • Expedited Land Division Handout • Expedited Land Division Review Procedures Section 33.730.013

If you have questions about the meeting or materials, please feel free to contact Aaron Gudelj (agudelj@westlinnoregon.gov – 503-742-6057). As always, please submit questions before the meeting to increase the efficiency and effectiveness of the discussion as it allows staff to prepare materials and distribute them for your consideration.

Expedited Land Divisions – Draft Code Amendment Package (08/01/2024)

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Community Development Code Chapter 2 Definitions

Middle Housing. A type of housing that includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters as defined in Oregon Revised Statute 197A.420.

Middle Housing Land Division. The division of a lot or parcel of land that contains middle housing under the rules established in Oregon Revised Statute 92.031.

Community Development Code Chapter 85 Land Divisions – General Provisions

85.070 Administration and Approval Process

A. The application shall be filed by the record owner(s) of the property or by an authorized agent who has a letter of authorization from the property owners of record. The burden of proof will be upon the applicant to demonstrate the validity of the ownership, if challenged.

B. Action on the application for a tentative plan shall be as provided by Chapter 99 CDC.

1. The Planning Director shall approve, deny, or approve with conditions an application for a partition subject to the provisions of CDC 85.200, 99.060(A), and 99.110. The Director's decision may be appealed to the City Council as provided by CDC 99.240(A).

2. The Planning Commission shall approve, deny, or approve with conditions an application for a tentative plan for a subdivision subject to the provisions of CDC 85.200, 99.060(B), and 99.110. A petition for review of the Planning Commission's decision may be filed as provided by CDC 99.240.

3. The Planning Director shall approve, deny, or approve with conditions an application for an expedited land division subject to the provisions of CDC 85.220, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

4. The Planning Director shall approve, deny, or approve with conditions an application for a middle housing land division subject to the provisions of CDC 85.230, 99.060(A), and 99.110. The decision may be appealed to a referee as provided by CDC 99.060(E).

~~3.~~ **5.** Action on the final plat shall be ministerial and taken by the Planning Director and City Engineer, and the Planning Director and City Engineer shall approve a final subdivision or partition plat upon the finding that the approval criteria set forth in CDC 89.050 have been satisfied. The Planning Director's and City Engineer's decision may be appealed to the Planning

Commission by the applicant, and the Planning Commission shall make its decision based on testimony from the applicant and the Director.

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85.220 Expedited Land Divisions

An expedited land division, as defined by ORS 197.360, is an alternative process for the review of preliminary partition or subdivision plats. An expedited land division compresses review timelines, provides for different noticing requirements, and mandates a specific appeal process.

A. Submittal Requirements.

- 1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.**
- 2. Confirmation of participation in a pre-application conference per CDC 85.140.**
- 3. Required neighborhood meeting materials per CDC 99.038 for subdivision proposals.**
- 4. Materials identified in CDC 85.150 to CDC 85.190.**

B. Approval Criteria.

- 1. Oregon Revised Statute 197.360 to 380.**
- 2. West Linn Community Development Code Chapter 85.200**

85.230 Middle Housing Land Divisions

A middle housing land division, as defined by ORS 92.031, permits the division of property that contains middle housing. A middle housing land division is subject to limited review criteria and processed using the expedited land division rules of ORS 197.360 to 380.

A. Submittal Requirements.

- 1. Written responses to Oregon Revised Statute 197.360(1) describing how the proposal qualifies for an expedited land division.**
- 2. Written responses to Oregon Revised Statute 92.031.**
- 3. Tree plan that includes:**

- a. Site plan with existing trees identified.
- b. Inventory by tree size, tree species, and proposed to retain or remove.

4. Site plan that includes:

- a. Utility connections and locations.
- b. Access locations.
- c. Proposed easements for utilities, access, or common areas.
- d. Proposed street improvement details and right-of-way dedications.
- e. Footprint of middle housing structures and proposed property lines.

5. Approved Tualatin Valley Fire and Rescue service provider permit.

6. Preliminary plat that includes:

- a. Property lines and dimensions.
- b. Public and private utility easements.
- c. Required right-of-way dedication.

B. Approval Criteria.

1. Oregon Revised Statute 92.031.

Community Development Code Chapter 99 Procedures for Decision Making: Quasi-Judicial
99.060 Approval Authority

This section explains the authority of the Planning Director **or designee**, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

A. Planning Director authority. The Planning Director, **or designee**, shall have the authority to:

- 1. Approve, deny, or approve with conditions the following applications:
 - a. A temporary use or structure application for a period no more than 120 days, including all extensions (Chapter [35](#) CDC), and not associated with another land use approval.

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t. Willamette River Greenway Permit (Chapter 28 CDC).

u. Extensions of approval **without modifications.** ~~when the Planning Director acted as the initial decision-making authority.~~

v. Extension of approval with proposed modifications when the Planning Director acted as the initial decision-making authority.

~~w. v.~~ Class I Historic Design Review (Chapter 25 CDC).

~~x. w.~~ A demolition permit for a non-contributing or not in period primary structure or an accessory structure (Chapter 25 CDC).

y. Expedited Land Division

z. Middle Housing Land Division

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E. **Land Use Referee** Expedited land divisions.

1. Approve, deny, or approve with conditions the following applications:

a. Appeal of an expedited land division per ORS 197.375.

b. Appeal of a middle housing land division per ORS 197.375.

~~Expedited land divisions shall be processed by the Planning Commission without a public hearing pursuant to Oregon Revised Statutes (ORS) 197.360 through 197.380. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:~~

~~1. Pursuant to ORS 197.360(3), the following City permits may be processed concurrently with an expedited land division application:~~

~~a. Planned unit development.~~

~~b. Willamette River Greenway.~~

~~c. Flood management area.~~

~~d. Tualatin River.~~

~~e. Water resource area.~~

~~f. Design review.~~

~~2. The Planning Commission shall make their decision based solely upon the record and staff recommendation.~~

~~3. Appeals of the Planning Commission decision on an expedited land division shall be reviewed pursuant to Chapter 197.~~