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## Senate Bill 458 Guidance

*(Updated July 8, 2021)*

### *Background*

Senate Bill 458 was adopted by the Oregon Legislature in 2021. The bill is a follow-up to House Bill 2001 - the bill that legalizes middle housing in many cities throughout the state - and allows lot divisions for middle housing that enable them to be sold or owned individually.

### *Senate Bill 458 Summary*

For any city or county subject to the requirements of House Bill 2001, Senate Bill 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with ORS 197.758. Senate Bill 458 only applies to middle housing land divisions permitted on or after June 30, 2022.

The bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an “expedited land division” process defined in ORS 197.360 through 197.380, and the applicant must submit a tentative plan for the division including the following:

- A proposal for development of middle housing in compliance with the Oregon residential specialty code and applicable middle housing land use regulations,
- Separate utilities for each dwelling unit,
- Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area,
- One dwelling unit per each resulting lot or parcel (except common areas), and
- Demonstration that the buildings will meet the Oregon residential specialty code.

Additionally, cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, and right-of-way dedication if the original parcel did not make such dedications. They *may not* subject applications to approval criteria outside of what is provided in the bill, including that a lot or parcel require driveways, vehicle access, parking, or min/max street frontage, or requirements inconsistent with House Bill 2001, including [OAR Chapter 660, Division 046](#).

### *Guidance*

DLCD staff have received a significant number of questions regarding Senate Bill 458 and how cities or counties can best prepare to comply with the law. Below are answers to commonly asked questions. If you find that you have a question that has not been addressed in this document, please reach out to the Housing Team at [housing.dlcd@dlcd.oregon.gov](mailto:housing.dlcd@dlcd.oregon.gov).

### **SB 458 Deadline**

**Question:** This bill applies to middle housing lot divisions permitted on or after June 30, 2022. Will cities or counties need to incorporate these standards before this deadline?



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**Answer:** *It is highly advisable, but not required, for cities or counties to incorporate middle housing lot division standards into their development codes. On the June 30, 2022 deadline, a city or county that has not incorporated lot division standards within their development codes would utilize the bill language directly to process middle housing lot divisions under SB 458.*

**Question:** Medium cities need to allow duplexes on lots/parcels that allow single-family detached dwellings by June 30, 2021 (i.e. this year). Are duplexes built between this deadline and the SB 458 deadline eligible for a middle housing lot division?

**Answer:** *A duplex built pursuant to ORS 197.758 (i.e. House Bill 2001) during this time period would be eligible to apply for a middle housing land division under SB 458 on June 30, 2022, provided it met the applicable requirements outlined in the bill.*

**Question:** Do cities or counties need to allow lot divisions for middle housing built prior to House Bill 2001?

**Answer:** *SB 458 requires a middle housing lot division application submit: "A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5)". This means that any lot division proposal will need to demonstrate compliance with both applicable building code and HB 2001 middle housing code in order to be eligible for a lot division under SB 458.*

*There is a potential hypothetical scenario in which a pre-HB 2001 middle-housing type could make this demonstration, but 1.) this is an unlikely scenario and 2.) a jurisdiction retains the ability to require the applicant demonstrate the middle housing type complies with applicable building code and middle housing code before approving a middle housing lot division proposal.*

## Applicability, Application Process, and Submittal Requirements

**Question:** What middle housing types are eligible for division under SB 458?

**Answer:** *The bill specifies any lot or parcel that allows middle housing under ORS 197.758 (2) or (3) qualifies for a middle housing land division under SB 458. This includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters in applicable cities and unincorporated, urban portions of Metro counties. Accessory dwelling units are not eligible for lot division under SB 458.*

**Question:** SB 458 requires cities or counties to apply the expedited land division process. What is this?

**Answer:** *The expedited land division process is outlined in ORS 197.360 to 197.380. It is an alternative procedure application intended to streamline the review of land divisions under state law. While typical land use applications must be completed within 120 days (ORS 227.178), an expedited land division must be processed within 63 days or extended by the governing body of a local jurisdiction (not to exceed 120 days).*

**Question:** The expedited land division process under ORS 197.360(1)(b) seems to only include divisions of three or fewer parcels. Does this mean that a middle housing land division is limited to three total parcels?



**Answer:** No. First, ORS 197.360(1)(a) allows an expedited land division to be any size, while ORS 197.360(1)(b) clarifies that the expedited land division process is also extended to divisions of three or fewer parcels.

Additionally, SB 458 requires that local jurisdictions apply the expedited land division procedure outlined in ORS 197.360 to 197.380, a “middle housing land division” is distinct from an “expedited land division” and may contain more than three parcels, provided that each resultant lot or parcel contains one unit.

**Question:** Can a city or county apply a typical land division process to a middle housing land division application?

**Answer:** SB 458 specifies that a city or county “shall apply the procedures under ORS 197.360 to 197.380”. This means that a city or county cannot require a middle housing land division to undergo a standard land division pathway.

**Question:** This bill seems to suggest that the jurisdiction must approve an application for middle housing land division after or concurrent with the issuance of a building permit, which is backwards in comparison to typical subdivisions. Can you clarify when an applicant may submit an application for a middle housing lot division?

**Answer:** Senate Bill 458 does not state that a middle housing land division must occur either before or after the issuance of a building permit. We anticipate that most middle housing land divisions will occur before the application for a building permit, similar to other housing land division processes. However, we also anticipate that there may be circumstances in which an applicant submits a land division application after developing a middle housing type. In both scenarios, the applicant must demonstrate that the proposal meets applicable building code and middle housing code as well as the requirements outlined in SB 458.

Additionally, the bill specifies that a city or county may allow the submission of a middle housing land division at the same time as submission of an application for a building permit, but they are not required to.

## Lot Division Standards and Conditions for Approval

**Question:** SB 458 sets out several requirements that applicants must demonstrate outlined in the summary above. What else are jurisdictions allowed to require or condition?

**Answer:** The bill allows jurisdictions to require or condition the following:

- Prohibition of further division of the resulting lots or parcels
- Require notation in the final plat indicating approval was provided under SB 458 (later on, this will be the resultant ORS reference)
- Require street frontage improvements where a lot or parcel abuts a street (consistent with House Bill 2001)
- Require right-of-way dedication if the original parcel did not previously provide a dedication

**Question:** Will jurisdictions be able to require applicants to submit tentative and final plats consistent with local platting standards?



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**Answer:** Yes, jurisdictions may require that the applicant submit tentative and final plats in a manner consistent with their applicable platting standards.

**Question:** Can jurisdictions require that easements be submitted in a form approved by the City Attorney and address specific issues like maintenance and repair, cost-sharing, access, notice, damage, disputes, etc.?

**Answer:** Yes, cities are permitted to specify the format and issues an easement addresses, provided that they are specific to the types of easements specified in Section 2(2)(c) of the bill, including:

- A. Locating, accessing, replacing and servicing all utilities;
- B. Pedestrian access from each dwelling unit to a private or public road;
- C. Any common use areas or shared building elements;
- D. Any dedicated driveways or parking; and
- E. Any dedicated common area;

**Question:** What requirements are jurisdictions limited in requiring for a middle housing lot division?

**Answer:** The bill specifies that a jurisdiction may not subject a middle housing lot division application to approval criteria except as provided in Section 2 of the bill. The bill specifies that this includes the following:

- Require that a lot or parcel provide driveways, vehicle access, parking or minimum or maximum street frontage
- Subject an application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with Section 2 of the bill or ORS 197.360 to 197.380.

**Question:** Does that mean jurisdictions cannot require off-street parking for middle housing?

**Answer:** Jurisdictions are still permitted to require off-street parking and all other land use regulations in accordance with the parameters set forth in administrative rule, OAR Chapter 660, Division 046, but they may not require that each resultant lot or parcel have off-street parking. Such a lot or parcel would be provided access to off-street parking via easement.

**Question:** Cities or counties cannot require street frontage under SB 458, but can they limit how many lots within a land division do not have street frontage? For example, could a city limit the number of cottages in a cottage cluster development that only have street access from an access easement?

**Answer:** The bill states that a city or county “may not subject an application to approval criteria except as provided in this section”. The restriction on minimum or maximum frontage is an explicit example of this prohibition. Because there is nothing in this section specifying the number of units that may only have street access from an access easement, a local jurisdiction would not be able to include such a limitation as a standard or condition of approval.



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**Question:** Section 2 (4)(b) allows cities or counties to require street frontage improvements. Would this enable them to require frontage improvements that might otherwise be exempted for single-family detached dwellings, which is prohibited in OAR Chapter 660, Division 046?

**Answer:** *Yes. This provision would enable a city to require street frontage improvements in situations where it might not otherwise be permitted under administrative rule. We also think this can be a compelling incentive to better address the street frontage deficiencies that persist today in older single-family neighborhoods.*

**Question:** Does SB 458 require local jurisdictions to approve vertical divisions (i.e. divisions in which one or more units of middle housing is not on the ground floor) of middle housing in addition to horizontal divisions?

**Answer:** *Senate Bill 458 does not speak to vertical divisions of middle housing and requires that each resultant lot or parcel contain exactly one unit. Therefore, cities are not required to allow vertical divisions of middle housing.*

### **Townhouses**

**Question:** Does SB 458 apply to lot divisions for townhouses allowed under HB 2001?

**Answer:** *The bill applies to any lot or parcel that allows middle housing under ORS 197.758, including townhouses. Local jurisdictions must allow townhouse proposals to undergo the lot division process outlined in SB 458, including the application of the procedures outlined in ORS 197.360 through 197.380.*

**Question:** The bill restricts cities or counties from applying minimum or maximum frontage requirements to lots or parcels created under SB 458. This seems to conflict with OAR 660-046-0220(3)(b) regarding minimum street frontages applied to townhouses. Are jurisdictions permitted to apply minimum street frontages to townhouses?

**Answer:** *Yes, SB 458 specifies that in order for a middle housing proposal to be eligible for a land division, it must comply with all of the land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5), which includes the full scope of administrative rules outlined in OAR Chapter 660, Division 046. Therefore, local governments are able to, but are not required to, apply minimum street frontages to townhouses as permitted in OAR 660-046-0220(3)(b).*

*Local governments will not be able to apply minimum street frontage requirements for individual units for plexes and cottage clusters. However, they may apply lot dimensional standards to the parent lot as provided in OAR 660-046-0220. We recommend that local jurisdictions carefully consider the incentives and resulting form for each middle housing type when developing middle housing land use regulations.*