

ARTICLE 6 LAND DIVISIONS

Section 6.0000 Introductory Provisions

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GENERAL

6.0001 PURPOSE AND AUTHORITY

No land may be divided without first obtaining a development permit.

- A. No land or ownerships may be divided prior to approval of a partition or subdivision in accordance with this code. Except as provided for in 6.0001(B), if a development permit application to divide land is submitted that does not involve other proposed development, the application shall state an intended form of future development for the resulting land parcels. This intended future development will then be processed along with the land division processing just as though the applicant were intending to proceed with the further development.
- B. For non-residential land divisions where it is more practical to determine how public facilities will be provided in a required subsequent development permit application, the proposed land division may be approved if:
 - 1. It is feasible to provide public facilities to each lot; and
 - 2. Adequate public facilities are provided with further development.
- C. A land division is processed by approving a tentative plan prior to approval of the final plat. If there is compliance with the approved tentative plan, the Manager may approve final plats for land divisions under the Type I procedure.
- D. An application for an expedited land division will be processed in accordance with the provisions of ORS 197.360 through 197.380.

LOT DESIGN STANDARDS

6.0010 LOT ARRANGEMENT

The lot arrangement shall be such that there will be no foreseeable difficulties, for reason of topography or other condition, in securing building permits to build on all lots in compliance with the requirements of the Gresham Development Code.

6.0011 RESIDENTIAL DISTRICT LOT AND PARCEL CONFIGURATION

- A.** Subdivision lots and partition parcels created through the subdivision and partition process shall be rectilinear. Irregular shaped subdivision lots and partition parcels are not allowed, except at the discretion of the Manager when based upon existing parent lot shape. Exceptions shall not be granted to comply with minimum lot size requirements or minimum setback requirements for existing structures. This standard does not apply to lots or parcels created through a Middle Housing Land Division **Section 6.0500**.
- B.** Split-zoned lots
1. When a single development site is split by two or more residential land use districts (as described in Article 4, **Section 4.0100**), the creation of lots or parcels through the subdivision and partition process or the adjustment of lots through the lot line adjustment process that have more than one land use district is not allowed unless the applicant demonstrates to the satisfaction of the Manager that a logical lotting pattern is not feasible without creating split-zoned lots or parcels.
 2. If the Manager determines a logical lotting pattern is not feasible, the applicant may create lots or parcels split by two or more land use districts as long as all split lots or parcels comply with the standards of the least intensive land-use district applied to the split lots. For the purposes of this section, least intense to most intense is: LDR-7, LDR-5, TR, TLDR, MDR-12, MDR-24.

6.0012 LOTS IN ENVIRONMENTAL OVERLAY DISTRICTS

Development permit requests in Floodplain Overlay District, Hillside and Geologic Overlay, Natural Resource Overlay may be developed in accordance with the provisions of the underlying district the relevant sections of Article V, and if applicable, **Section 6.0300**.

6.0013 LOT OF RECORD

- A.** No sale or conveyance of any portion of a lot for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot area, lot dimensions, yard setbacks or result in a lot with less than the minimum buffering and screening requirements of this ordinance.
- B.** The lot of record provisions do not include land divisions that were recorded with Multnomah County after December 16, 1975, where the City's approval was required but not sought and granted prior to recordation. Such land divisions are not recognized as lots of record as defined in this ordinance.

6.0014 LAND DIVISION WITH LEFTOVER PARCEL

- A. Applicability.** This provision applies within the LDR-7, LDR-5, TLDR, TR, LDR-PV, MDR-PV, and LDR-SW subdistricts, or on lots where there is an existing single detached or middle housing unit which will be on the left-over parcel in the HDR-PV, TC-PV, MUE-PV, EC-PV, and THR-SW sub-districts.

- B. Conditions.** An application for a land division may have a maximum of two “leftover” parcels, or portions of the property which are capable of further development and which are not included as part of a phased subdivision if the following conditions are met:
1. In the HDR-PV, TC-PV, MUE-PV, EC-PV, and THR-SW sub-districts, the parent parcel has an existing habitable home on it built on or before April 6, 2018.
 2. The leftover parcel(s) must be capable of further development.
 3. The land division will not preclude ultimate buildout of the parent parcel per an adopted or submitted and approved Master Plan, as applicable.
 4. The area of up to two leftover parcels may be excluded from the average lot size calculation provided that a future development plan is submitted which demonstrates that the parcel(s) can be developed consistent with applicable standards.
 5. As required per **Section 10.0120(C)** and **Section 10.0203(F)(2)**, when a land division places the primary residence on a separate parcel than an accessory structure or an accessory dwelling, the accessory structure or dwelling must be:
 - a. Removed upon transfer of ownership of either parcel; or
 - b. An accessory dwelling be converted to a conforming primary dwelling as part of the land division application.
- C. Development of Leftover Parcels.** Parcels created under this provision may not be developed until:
1. Lots are created pursuant to Article 6 – Land Divisions and to the Master Plan, where applicable. Lots shall be consistent with the standards of the applicable underlying sub-district(s) and other applicable provisions of the Community Development Code; or
 2. The development is approved through the Special Use Review process found in **Section 8.0100**.
- D. Submittal Requirements.** The following must be provided with submittal for the land division:
1. Payment-in-lieu of required future improvements along the existing street frontage(s) of the leftover parcel(s).
 2. In the LDR-PV, MDR-PV, HDR-PV, TC-PV, MUE-PV, and EC-PV sub-districts, dedication or all perimeter right(s)-of-way of the created leftover parcel(s). Dedications shall be in compliance with the Master Plan, where applicable.
 3. A deed restriction requiring removal of any applicable accessory structure or accessory dwelling pursuant to **Section 6.0014(B)(5)** above upon transfer of ownership of either parcel.
 4. A site plan shall be provided showing the minimum density build-out of the leftover parcel(s). In applicable Pleasant Valley and Springwater sub-districts the site plan shall be per the approved, or submitted and approved, Master Plan. Site plans shall include the following:
 - a. For single detached dwelling and middle housing developments;
 - i. A conceptual plot plan.
 - ii. Access and street layout, as applicable.
 - iii. Plan requirements of other applicable provisions of the Community Development Code.
 - b. For all other uses, including but not limited to multifamily, commercial, mixed-use, and Special use Reviews:
 - i. A conceptual plot plan.
 - ii. Future uses.
 - iii. Building footprints.

- iv. Parking areas.
- v. Access and street layout (as applicable).
- vi. Plan requirements of other applicable provisions of the Community Development Code.

CONDOMINIUMS

6.0020 CONDOMINIUMS

- A. Condominium Review. A request to create condominiums shall be reviewed under the Type II Procedure as part of the Design Review or Land Division process.
- B. Plat Approval for a Condominium.
 - 1. Upon approval by the Manager, the applicant shall submit all necessary documents and final plat copies following the applicable requirements of **Section 6.0400** of this document and applicable sections of ORS 94.550 to 94.785, ORS Chapter 100, and the platting requirements of ORS Chapter 92.
 - 2. Public improvements must comply with the standards of **Appendix 5.000**.
 - 3. Plat recording shall not occur until the County Recording Officer has received a written approval from the Manager establishing compliance of the proposal with all applicable City of Gresham Development Codes.

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GENERAL

6.0101 LOT LINE ADJUSTMENTS AND LOT CONSOLIDATIONS

- A. A. Lot line adjustments and lot consolidations shall be processed under the Type I procedure and shall be approved by the Manager provided that the adjusted lots comply with the applicable requirements of the Community Development Code with the exception of **Sections 5.0100, 5.0210, 5.0300, 5.0400, 5.0500, 9.0100, and 9.0500** and **Appendix 5.000** - Public Facilities Standards. If the lot line adjustment application is processed with another development application, all the applicable requirements of the Community Development Code shall apply.
- B. B. Approval of a lot line adjustment or lot consolidation may be conditioned to require the abandonment of existing utility facilities if the resulting property line configuration renders them unusable or redundant.
- C. C. Approval of a lot line adjustment or lot consolidation may be conditioned to require any necessary easements described in **Section 9.0300** Easements.

6.0111 LOT LINE ADJUSTMENT - FINAL SURVEY MAP

The applicant shall submit three paper copies of the final survey map and adjusted legal descriptions. Additional copies may be required if deemed necessary. The final map shall comply with the approved preliminary plan and shall comply with the applicable requirements of ORS Chapters 92 and 209. The approved final map, along with the deeds transferring ownership, must be recorded with Multnomah County Deed Records.

6.0112 LOT CONSOLIDATIONS

Upon approval of a Type I lot consolidation by the Manager, and upon demonstrating compliance with approval conditions:

- A. For the consolidation of lots or parcels of a recorded plat, the lot consolidation shall be finalized by a replat of the subdivision or partition.
- B. The County Assessor may consolidate parcels or tracts of land that are not within a recorded plat.

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GENERAL

6.0201 TENTATIVE PARTITION OR SUBDIVISION PLAN

An application for a tentative partition or subdivision plan shall be processed under the Type II procedure except a plan submitted as a Planned Development, which, pursuant to **Section 6.0300** of the Community Development Code, shall be processed under the Type III procedures.

TENTATIVE LAND DIVISION APPROVAL CRITERIA

6.0210 CRITERIA FOR APPROVAL OF TENTATIVE PLAN

In approving a tentative land division plan, the approving authority shall find compliance with the relevant portions of the Community Development Code and the following:

- A. Development of any remainder of property under the same ownership can be accomplished in accordance with this code.
- B. Adjoining land can be developed or is provided access that will allow its development in accordance with this code.

6.0211 PHASED SUBDIVISION

The approval authority may authorize a time schedule for platting a subdivision in phases. Each phase may be for a period of time in excess of one year but the total time period for all phases shall not be greater than five years without resubmission of the tentative plan. Each phase so platted and developed shall conform to the applicable requirements of this code.

If a phased development or subdivision is proposed for a development that includes townhouses, the first phase shall conform to density requirements without consideration of subsequent phases. Later phases shall conform to density requirements in a cumulative fashion, taking into account previous phases and while

continuing to meet density standards at each phase. This is calculated by adding the number of lots for the current phase and all previous phases and dividing by the acreage of the current phase (taking into account subtractions in the "Net Density" definition) and all previous phases. The result shall meet the applicable density standard.

6.0212 DURATION OF EXEMPTION FROM SUBSEQUENTLY ADOPTED LAND USE ORDINANCE

For the purposes of ORS 92.040(2) and (3), after September 9, 1995, construction within an approved subdivision shall at the Applicant's discretion be subject to the City of Gresham land use laws that were in effect on the date the tentative subdivision plan application was made and shall not be subject to subsequently adopted City of Gresham land use laws. This exemption from subsequently adopted City of Gresham land use laws shall terminate 3 years from the date of the recording of the final plat. In no instance shall this exemption extend beyond 10 years from tentative plan approval.

6.0213 REVIEW OF LOTS NOT LAWFULLY CREATED

The City will consider applications to partition or subdivide lots that were not lawfully created under the following circumstances:

- A. The property is owned by more than one owner; and
- B. One or more of the owners applies for creation of the lots that were improperly formed without approval of the City or County, even if not all of the owners of the existing legal lot have applied for approval; and
- C. The owners of the lot are not related by blood or marriage; and
- D. The only business relationship among the owners is the transaction by which ownership interests in the portions of the lot were sold.

The application shall be subject to the City's land division requirements and shall meet all applicable standards.

6.0214 EXPIRATION OF PARTITIONS AND SUBDIVISIONS

A tentative land division plan approval expires two (2) years from the effective date. Those tentative land division plans approved on or after September 19, 2017 shall expire one (1) year from the effective date.

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GENERAL

6.0301 PURPOSE

The purpose and intent of this section is to allow an alternative to the traditional subdivision that encourages conservation of natural features by relating design to the existing landscape, efficient use of land and public services (particularly but not limited to situations where the existence of slopes, drainageways, or other natural features may preclude traditional subdivision design), and the creation of public and private common open space. A Planned Development (PD) is such a method of applying alternative development standards for residential developments.

6.0302 APPLICABILITY

PD's shall be permitted for residential-only partition and subdivision developments in any of the following residential zones that permit residential development: VLDR-SW, LDR-5, LDR-7, LDR-PV, LDR-SW, TLDR and TR. Only those housing types permitted as allowed uses in each district shall be allowed in PDs.

6.0303 TYPES OF PDS

PDs may include a mix of the housing types permitted within the primary plan district. Subdivision lot sizes are also variable and may consist of large, mixed size, or small lots provided the maximum density of the district is not exceeded. A “Large Lot” PD, for example, is a PD that creates larger than standard lot sizes for purposes of single detached and middle housing. No maximum lot size is stipulated.

6.0311 PD TENTATIVE PLAN APPROVAL CRITERIA

An application for a tentative PD plan approval shall be made in conjunction with an application for Land Division under **Section 6.0200** of the Community Development Code, except that it shall be processed under the Type III procedures. In addition, PDs that include elements that require Design Review under Article 7 shall submit for Design Review concurrent with the PD application. In approving a tentative PD plan, the approving authority shall find compliance with the applicable sections of the Community Development Code.

In addition to the above, the application shall clearly provide satisfaction to all of the following:

- A.** That the proposal needs to be processed as a PD instead of a standard subdivision or partition,
- B.** That the proposal implements the Purpose of this section (see **Section 6.0301**),
- C.** That all private open space areas have an approved conservation/maintenance plan,
- D.** That the Development Standards in this section are met, and
- E.** That the project design, building heights, bulk and scale is appropriate for this location, considering such elements as surrounding development and housing types, street system network and capacity, utility availability, and the physical and/or natural features of the site. Such project design shall include transitioning measures (lower to higher height, bulk, scale and density) or buffers, so that perimeter structures of the PD are both comparable and compatible with adjacent residential development. Note: In the case of Large Lot PDs, since the building bulks proposed for each lot may be larger and not comparable to adjacent residential development, buffering measures (such as increased vegetation and setbacks) may be required by the review body to ensure neighborhood compatibility and bulk separation.

6.0312 MODIFICATION OF TENTATIVE PD PLAN APPROVAL

Modification of the tentative PD plan approval shall be made under the Type II procedures unless it involves any of the following, in which case it shall be processed under the Type III procedures used for the tentative PD plan approval:

- A.** An increase in the number of dwelling units approved as part of the tentative plan.
- B.** A change in the mix of dwelling types.
- C.** A reduction in the amount of approved open space area by 5% or more. In no case, except by Type III variance, shall the amount of land designated as open space fall below 25% of the gross land area within the PD if there is no specified Special Purpose overlay district designation; 30% of the gross land area within the PD if there is a Floodplain, Hillside and Geologic Risk Overlay, Open Space, or Natural Resource Overlay designation.

DEVELOPMENT STANDARDS

6.0320 SITE DEVELOPMENT REQUIREMENTS

- A. Site development standards of the underlying land use district, including maximum and minimum density standards, shall apply unless superseded by the standards of the PD Section or applicable Overlay District. The regulations of the PD Section shall prevail if there is a conflict. Maximum density does not apply to duplexes, triplexes, quadplexes, or cottage clusters.
- B. The regulations of the PD Section shall apply unless superseded by the standards of the Overlay Districts in Article 5. The regulations of the Overlay District(s) shall prevail if there is a conflict.
- C. Uses subject to a Special Use Review developed in conjunction with a residential PD shall be subject to the provisions of **Sections 8.0100** and **7.0000**. Such reviews would occur concurrently with the PD.
- D. Planned Developments may not prohibit Middle Housing Land Divisions (see **Section 6.0503(G)**).

6.0321 EXCEPTION TO SITE DEVELOPMENT AND ZONING STANDARDS

Exceptions to the following site development standards of the underlying land use district or applicable special purpose district provisions may be approved in accordance with this Article:

- A. Design performance Standards Exemption: The Safe Neighborhood Design Performance Standards do not apply.
- B. Table 6.0321 indicates overall limits for adjusting the underlying district dimensional standards dependent upon housing type.

Table 6.0321 Standards Allowed for PD Residential Units Permitted in VLDR-SW, LDR-SW, LDR-PV, LDR-7, LDR-5, TR, and TLDR

	Single Detached Dwelling	Duplex, Triplex, Quadplex	Townhouse	Cottage Cluster
Standards				
Minimum site size	None	None	None	None
Minimum lot size	3,500 sq. ft. (use underlying district standards for perimeter lots)	3,500 sq. ft. (use underlying district standards for perimeter lots)	None	3,500 sq. ft. (use underlying district standards for perimeter lots)
Density range¹	See underlying district	See underlying district	See underlying district	See underlying district
Minimum lot dimensions²	None	None	None	None
Minimum lot width/depth ratio	None	None	None	None
Minimum street frontage	None	None	None	None
Minimum yard setbacks: Interior lots	3 feet	0 feet ³	0 feet ³	3 feet

Minimum yard setbacks: Perimeter lots	See underlying district	See underlying district	See underlying district	See underlying district
Maximum lot coverage	70%	70%	70%	70%
Minimum building height	See underlying district	See underlying district	See underlying district	See underlying district
Maximum building height	40 feet (See underlying district for perimeter lots)	45 feet or underlying district ⁴	45 feet or underlying district ⁴	40 feet (See underlying district for perimeter lots)
Maximum number of attached units per structure	NA	See underlying district and 10.0100	See underlying district	NA
Building separation	Per Building Code	Per Building Code	Per Building Code	8 ft.
General lot utility easements⁵	None	None	None	None

Table Notes

1. Developments subject to Overlay Districts may also be restricted in density as per those Overlay Districts.
2. It shall be demonstrated for each lot that there is a building area of adequate space to accommodate the proposed dwelling type.
3. Structures with zero lot lines and/or common wall construction are subject to appropriate building and fire code standards at the time of building permit application.
4. Whichever is greater.
5. It shall be demonstrated that general utility facilities can be accommodated and, if necessary, general utility easements shall be provided.

6.0322 PD LOT TRANSFER FOR SITES WITH HILLSIDE AND GEOLOGIC RISK OVERLAY

To encourage the development of PDs in the Hillside and Geologic Risk Overlay, a lot transfer shall be provided.

Table 6.0322 PD Density for Hillside and Geologic Risk Overlay Property

In areas of the lot(s) or parcel(s) that are:	Percentage of maximum lots from underlying zone:
HGRO	100%
HSS	1 lot per acre*

There is no average lot size requirement. However, the total number of lots proposed for the entire PD shall be no less than 80% of the minimum allowed at single detached dwelling density on those portions of the property that are outside the Hillside and Geologic Risk Overlay with the exception of large lot PDs as provided in **Section 6.0329**. Refer to the Hillside and Geologic Risk Overlay (**Section 5.0200**) for other applicable development standards.

*This lot must be transferred to another portion of the ownership outside the HSS. No dwelling units shall be constructed on slopes in the HSS, except as provided under **Section 5.0212**.

6.0324 OPEN SPACE AREAS

The approval authority shall evaluate proposed open space areas based on the following criteria:

- A.** For sites with no specified Special Purpose Overlay District designation as per subsection (B), a minimum of 25% of the gross land area within the PD shall be allocated as an open space area and shall be in public or private common ownership. Improved open spaces shall be subject to the applicable provisions of **Section 7.0400**.
- B.** For sites with a Hillside and Geologic Risk Overlay, Open Space Overlay District, or Natural Resource Overlay designation, a minimum of 30% of the gross land area within the PD shall be allocated as an open space area and shall be in public or private common ownership. Open space that conserves steep slopes and/or natural areas shall allow limited access to preserve its natural features.
- C.** Proposed natural open space areas shall be located to maximize the preservation of the features identified in subsection (G).
- D.** The open space areas may be either public open space or private common open space.
 - 1.** Public open space must comply with requirements of **Section 5.0500** of the Community Development Code.
 - 2.** Private open space shall comply with the following criteria:
 - a.** Open space easements transferring development rights are dedicated to the public;
 - b.** A conservation/maintenance plan is provided that maintains all natural open space areas in a natural condition with only minimal maintenance activity provided. The plan shall be approved by the City, maintained and implemented by the property owner, and kept as part of the City's site development file for the duration of the existence of the private open space area. This plan shall include:
 - i.** Identification and contact information of the party responsible for maintenance and oversight of the open space area;
 - ii.** Whether the open space area is to be actively or passively maintained and/or conserved;
 - iii.** Specific maintenance anticipated (as applicable) and timing thereof;
 - iv.** Anticipated conservation measures;
 - v.** Vegetation renewal or replacement plans, nuisance and/or dangerous vegetation removal plans; and
 - c.** There is a financial mechanism that ensures maintenance of any private open space area.
- E.** The approval authority may approve the dedication of open space areas or of open space easements in concurrence with an approved phased land division.
- F.** Open space areas that are not located in a Special Purpose Overlay District may be improved with active recreation uses or landscaping/passive recreation uses. Active recreation areas shall include, but are not limited to: swimming pools; tennis, basketball, volleyball and badminton courts; children's play areas; baseball and soccer fields, etc. Landscaping or passive recreation uses shall include, but are not limited to: picnic and barbecue facilities; reflection parks; vegetated stormwater facilities; lawn and other landscaped areas; and community gardens, etc. Active open space areas shall be of a sufficient size for the proposed

active use. Active and passive open space areas shall be made accessible to all residents of the development.

G. Proposed open space areas shall be located so as to encourage the conservation of natural features and the protection of steep slopes. The following topographic features, natural resources and other features shall be mapped and identified as part of the application:

- 1.** Significant natural and cultural features:
 - a.** Water resources, streams, drainageways, ponds, lakes, fish habitat or wetlands;
 - b.** Historically or culturally significant sites;
 - c.** Ecological or scientifically significant areas, such as Hogan Cedar trees;
 - d.** Significant trees and significant tree groves;
 - e.** Land areas within the Natural Resource Overlay;
 - f.** Land areas designated High Slope Subarea of the HGRO map.
- 2.** Other natural features:
 - a.** Trees with a circumference of 25 inches or greater measured at a point 4.5 feet above the ground on the upslope side of the tree;
 - b.** Geologic features;
 - c.** Scenic views and landscapes;
 - d.** Significant wildlife habitat.

6.0325 STREETS AND ACCESS, PUBLIC OR PRIVATE STATUS

All PD proposals shall include a future street/neighborhood circulation plan as per **Section 9.0700**. Streets provided within a PD shall be public streets, unless it is determined by the City that neighborhood connectivity is not necessary for the provision of access through the PD to other properties, either for purposes of public safety and/or efficiency of traffic circulation and access. Public paths and trails identified as transportation facilities in the Transportation System Plan shall be located within public rights-of-way or public access easements, unless otherwise approved by the City. Private streets may be allowed within a PD if the future street/neighborhood circulation plan demonstrates that connectivity is not necessary through the PD to other properties (as described above), and, the applicant can demonstrate how on-going maintenance of the private streets will be provided for. All streets and public paths and trails shall be designed and constructed according to applicable standards of **Appendix 5.000, Section A.5.400-Streets** and the Public Works Standards document.

6.0326 STREET TREES

Street trees shall be provided for all streets within a PD following the standards of **Section 9.1044** of the Community Development Code.

6.0327 REQUIRED BUFFERS AND TRANSITIONING

PDs are not exempt from applicable buffer provisions of **Section 9.0100**. However, natural and landscaped open space areas may substitute for required buffers via the alternative buffer plan provision of **Section 9.0110(F)(3)**. The transitioning of housing types (lower to higher bulk, scale and density) is required at the perimeter of PD's regardless of whether or not a buffer is required by **Section 9.0100**. Buffer or transition variations may be considered as part of alternative buffer plan proposals.

6.0328 FINAL PD PLAT

Final plats for a PD shall follow the standards, process, and timelines of **Section 6.0400**, Land Division Final Plat Requirements.

6.0329 ADDITIONAL STANDARDS FOR LARGE LOT PDS

- A.** Large Lot PDs are not limited to just areas covered by Overlays. In case of conflicts in standards, the more restrictive standards shall apply, with the exception of subsection (D) below, which applies in any case.
- B.** When clustering and/or attached housing are not proposed and site grading will not exceed the 55% of site limit (if Hillside and Geologic Risk Overlay) as per **Section 5.0210(B)**, the open space designation requirement is not required for Large Lot PDs. However, buffering or transition measures for compatibility purposes may be required by the review body for portions of Large Lot PDs, whether in Hillside and Geologic Risk Overlay or not, adjoining other developed areas.
- C.** A minimum site size of 2 acres is required for establishment of a Large Lot PD.
- D.** Large Lot PDs are not required to comply with minimum density or maximum lot size standards. Large Lot PDs shall, however, have a minimum average lot size that is the same or greater than at least twice the minimum density standard of the primary land use district where proposed. For example, the minimum average lot size in LDR-5 for a Large Lot PD would be 14,000 square feet per lot and in TLDR it would be 8,712 square feet per lot.
- E.** All PD requirements (except as authorized above) are still in effect for Large Lot PDs.

Section 6.0400 Land Division Final Plat Requirements

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GENERAL

6.0401 SURVEYS REQUIRED

All land divisions and lot line adjustments shall be surveyed and monumented in compliance with ORS Chapters 92 and 209. Parcels and tracts adjusted or created greater than 10 acres in size shall also be subject to these requirements. An applicant may submit final plat for review by the County Surveyor concurrent with City review.

6.0403 PARTITIONS AND SUBDIVISIONS - FINAL PLAT

- A.** The applicant shall submit two (2) originals of the final plat on 7 mil mylar that complies with ORS Chapters 92 and 209 on a material and of a size required by the Multnomah County Surveyor. The applicant shall first submit an electronic copy of the final plat. The final plat shall comply with the Tentative Plan conditions of approval. The following data requirements, if applicable, shall also be shown on the final plat.
 - 1.** All tracts of land intended to be deeded or dedicated for public use;
 - 2.** Street names as approved by the Manager on the preliminary final plat copies in accordance with the City of Gresham Street Naming and Property Addressing Guidelines;
 - 3.** Any non-access strips.
- B.** A final subdivision or partition plat shall be submitted to the Manager for final approval under the Type I procedure prior to expiration of the tentative plan pursuant to **Section 11.0105**. Within 20 days of submission, the Manager shall determine whether the material conforms with the approved tentative plan and with the applicable requirements of this code. If the Manager determines that the material does not conform, the applicant may make corrections prior to issuance of a final decision.
- C.** The Manager shall approve a final subdivision or partition plat when the plat conforms with the approved tentative plan, other applicable requirements of this code and the following are submitted:
 - 1.** Lands to be deeded or dedicated for public use are provided for on the final plat or on separate documents.

2. An approved guarantee of completion for required public improvements that have not been completed and accepted by the City.
 3. An approved grading and drainage plan if grading is required.
 4. Approved construction drawings for required public improvements.
- D. When the Manager determines that the plat conforms, the Manager shall sign and date the plat if the other requirements for a development permit have been fulfilled.
- E. A final condominium plat may be approved by the Manager when all criteria of subsection (C) are met and when the condominium plat meets applicable ORS provisions for Condominium Platting.
- F. Prior to City signature, all street names on the Final Plat shall conform to the City of Gresham Street Naming and Property Addressing Guidelines and the City of Gresham Development Code.

6.0404 APPROVAL SIGNATURES FOR FINAL SUBDIVISION PLAT

Following the review and Manager's approval of a subdivision plat, the applicant shall take the following actions:

- A. Obtain the approval signature on the final subdivision plat of the County Surveyor certifying that the subdivision plat complies with applicable survey laws. Before certifying, the surveyor may make field investigations to verify that the plat survey is sufficiently accurate. If the surveyor determines that subdivision plat does not comply, the applicant shall make corrections. When the surveyor determines that the plat conforms, the surveyor shall sign and date the plat.
- B. As required by ORS 92.090, obtain the approval signature on the final subdivision plat of the board of directors, or board's delegate, of any irrigation district, drainage district, water control district, or district improvement company if the subdivision is within such district.
- C. Obtain the approval signatures on the final subdivision plat of the directors certifying that the plat is approved.
- D. Obtain the approval signature on the final subdivision plat of the county assessor certifying that all taxes on the property have been paid or bonded for in accordance with state law.
- E. File a statement of water right, and if a water right is appurtenant, a copy of the acknowledgment from the Water Resources Department.
- F. Deliver the approved subdivision plat and accompanying documents to the County Recorder for recording.
- G. Return a copy of each associated recorded document to the City for filing.

6.0405 APPROVAL SIGNATURES FOR FINAL PARTITION PLAT

Following review and Manager's approval of a final partition plat, the applicant shall take the following actions:

- A. Obtain the approval signature on the final partition plat by the County Surveyor certifying that the final partition plat complies with all applicable survey laws. Before certifying, the surveyor may make field investigations to verify that the plat survey is sufficiently accurate. If the surveyor determines that the partition plat does not comply, the applicant shall make corrections. When the surveyor determines that the plat conforms, the surveyor shall sign and date the plat.
- B. File a statement of water right and, if a water right is appurtenant, a copy of the acknowledgment from the Water Resources Department.

- C. Deliver the approved final partition plat and accompanying documents to the county recorder for recording.
- D. Return a copy of each associated recorded document to the City for filing.

APPROVAL TIMELINE

6.0411 REINSTATEMENT OF TENTATIVE PLAN APPROVAL STATUS

- A. Prior to the expiration date of a tentative plan extension the Manager may, upon written request of the applicant, assign an inactive status to the tentative plan.
- B. An inactive plan may have its tentative plan approval status reinstated, under the Type II procedure, if the plan is found to be consistent with the following criteria:
 - 1. There have been no changes in the Community Development Code that would necessitate a modification of the tentative plan;
 - 2. The facts upon which the approval was based have not changed to an extent sufficient to warrant refiling of the tentative plan; and
 - 3. There are no other development approvals that would be affected.
- C. If the tentative plan approval status is reinstated the applicant shall comply with the City's final plan technical information requirements in effect at the time of reinstatement. A land division that has been reinstated shall be recorded with Multnomah County within three years from the date the inactive plan was reinstated.

6.0412 EFFECTIVE DATE FOR FINAL PLAT APPROVAL

A plat shall be final upon the recording with the county of the approved plat and any required document. Approved plats shall become void if not recorded within one year after approval of the final plat. Work specifically authorized following tentative approval may take place prior to issuance of the final plat development permit.

Section 6.0500 Middle Housing Land Division

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6.0501 PURPOSE

The Middle Housing Land Division process supports homeownership by allowing lots with middle housing to divide such that each middle housing dwelling is on its own lot. As used in this section, a “middle housing land division” is the division of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3). A Middle Housing Land Division includes both a preliminary approval and a final plat and is not a land use decision or a limited land use decision under ORS 197.015.

6.0502 APPLICABILITY

- A. Lots in the following districts or portions of districts may be divided for middle housing development following the Middle Housing Land Division process outlined in this section: LDR-7, LDR-5, TR, TLDR, MDR-12 (lots of record only), OFR (lots of record only), LDR-GB, LDR-PV, MDR-PV, VLDR-SW, LDR-SW, DRL-1, DRL-2, and those portions of CMF along the NE Glisan and NE 162nd Avenue corridors.
- B. This section applies only to Middle Housing Land Divisions permitted on or after July 1, 2022.
- C. The **Section 6.0500** Middle Housing Land Divisions process applies unless the applicant requests to use the procedures in **Section 6.0200**.

6.0503 REVIEW CRITERIA AND STANDARDS

- A. The Manager shall approve a Middle Housing Land Division upon finding:
 - 1. The parent lot or parcel is developed with Middle Housing, or the application for middle housing land division is concurrent with a building permit for construction of middle housing on the subject parcel. Where the parent lot or parcel has an existing dwelling unit(s) not classified as middle housing, the dwelling(s) shall be converted to middle housing through the concurrent building permit.
 - 2. Each resulting middle housing lot shall contain exactly one dwelling unit, except for lots, parcels, or tracts used as common areas.
 - 3. Each lot is served with utilities separately.
 - 4. All easements necessary for each dwelling unit shall be provided. Easements shall ensure:
 - a. Provision of and access for maintenance and replacement to all utilities;
 - b. Pedestrian access from each dwelling unit to a private or public road;
 - c. All dedicated driveways, parking, common use areas, shared building elements, and dedicated common area can be accessed and used.

5. Evidence submitted by the applicant demonstrates buildings or structures on a resulting middle housing lot will comply with applicable building code provisions relating to new property lines and how buildings or structures located on new lots/parcels will comply with Oregon Residential Specialty Code or Low-Rise Residential Dwelling Code, as applicable.
- B. The Manager shall apply additional conditions to the approval of a tentative plan for a middle housing land division to:
 1. Prohibit the further division of the resulting middle housing lots or parcels.
 2. Require that a notation appear on the final plat indicating that approval was a Middle Housing Land Divisions under ORS 197.758 (2) or (3).
- C. A Middle Housing Land Division does not alter the type of middle housing developed on the parent lot or parcel (for example a lot or parcel developed with a detached quadplex that is divided will result in four middle housing lots each developed with a quadplex unit not four single detached dwellings).
- D. Where the parent lot or parcel abuts the street and dedication or frontage improvements consistent with **Table A5.501** were not provided when the lot or parcel was created, dedication and improvements shall be provided that meet the standards of **A5.500** and the Public Works Standards.
- E. The standards of **Sections 6.0010-6.0412** do not apply to a Middle Housing Land Division.
 1. The Manager shall not enforce any provision in a recorded instrument affecting real property that is executed on or after August 8, 2019 if the provision would allow the development of a single detached dwelling on the real property but would prohibit the development of, or the partitioning or subdividing of lands according to the provisions of **Section 6.0500** for, the following:
 - a. Middle housing, as defined in ORS 197.758 (Development of Middle Housing; Local Regulations); or
 - b. An accessory dwelling unit allowed under ORS 197.312(5) (Limitation on City and County Prohibitions – Needed Housing within UGBs).
- F. The Manager shall not require the final plat before it issues building permits, but is not responsible if utilities or buildings must be moved to meet code requirements relating to property line location.
- G. Planned Developments and Planned Communities. For development created through **Section 6.0300** or ORS 94.550-94.783 the following shall apply:
 1. Lots or parcels resulting from the division of land in a planned community are subject to the governing documents of the planned community and are allocated assessments and voting right on the same basis as existing units.
 2. Judicial partition by division of a lot in a planned community is not allowed unless:
 - a. The declaration expressly allows the division of lots in a planned community; or
 - b. The lot may be divided under ORS 94.776 (Restrictions on Allowable Maximum Density Prohibited).
 3. The lot may be partitioned by sale and divisions of the proceeds under ORS 105.245 (Sale or Partition Ordered by Court).
 4. The restrictions noted in subsection (2) above do not apply if the homeowners association has removed the property from the provisions of the declaration.

6.0504 PROCEDURES

A Middle Housing Land Division is not land use procedure. Unless the applicant requests to use the procedures in **Section 6.0200** – Partitions and Subdivisions (a Type II land use procedure), the following procedure for Middle Housing Land Division shall be followed.

- A. Pre-Application Conference.** A pre-application conference is not required.
- B. Neighborhood Meeting.** A neighborhood meeting is not required.
- C. Application Requirements.** Applications for development permits shall be submitted upon forms established by the Manager. Applications will not be accepted in partial submittals. All of the following items must be submitted to initiate the completeness review:
 - 1.** Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;
 - 2.** Deed, title report, or other proof of ownership;
 - 3.** Information addressing the criteria of **Section 6.0502** in sufficient detail for review and action;
 - 4.** Plans required for the particular type of application as noted by staff on the application checklist;
 - 5.** Application narrative to address applicable code approval criteria and standards as noted on the application checklist; and
 - 6.** Payment of the required fee.
- D. Completeness Review.** The Manager shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within 21 calendar days after the City receives the application submittal.
 - 1.** Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.
 - 2.** If the application was complete when first submitted or the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.
 - 3.** If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the Manager by the applicant, indicating whether or not the applicant intends to amend or supplement the application.
- E. Notification.**
 - 1.** The Manager shall provide written notice of the receipt of the completed application for a Middle Housing Land Division to all of the following:
 - a.** The applicant and/or authorized representative;
 - b.** The owner(s) of record of the subject property;
 - c.** Any City-recognized neighborhood association whose boundaries include or are within 100 feet of the subject property;

- d. Owners of record within 100 feet of the perimeter of the subject property; and
 - e. Affected City departments, governmental agency, or special district responsible for providing public facilities or services which is entitled to notice under an intergovernmental agreement with the City which includes provision for such notice or is otherwise entitled to such notice.
 2. The notice shall state:
 - a. The street address or other easily understood geographical reference to the subject property;
 - b. A time and place where copies of all evidence submitted by the applicant will be available for review;
 - c. The applicable criteria for the decision;
 - d. The name and telephone number of a local government contact person;
 - e. A brief summary of the local decision-making process for the Middle Housing Land Division;
 - f. That issues that may provide the basis for an appeal to the hearings officer must be raised in writing prior to the expiration of the comment period;
 - g. That issues must be raised with sufficient specificity to enable the local government to respond to the issue; and
 - h. The place, date and time that comments are due.
 3. For purposes of appeal to the hearings officer under ORS 197.375 (Appeal of Local Government to Referee; Court of Appeals), this requirement shall be deemed met when the Manager can provide an affidavit or other certification that such notice was given.
 4. After notification according to the procedure set out above, the Manager shall provide a 14-day period for submission of written comments prior to the decision.
 - F. Decision: The Manager shall make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the applicable requirements of **Section 6.0500**.
 1. Approval may include conditions to ensure that the application meets the applicable regulations.
 2. For applications subject to **Section 6.0500**, the Manager:
 - a. Shall not hold a hearing on the application; and
 - b. Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination.
 3. The decision shall include a statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval.
 4. Notice of the decision shall be provided to the applicant and to those who received notice under subsection (1) of this section within 63 days of the date of a completed application. The notice of decision shall include:
 - a. The summary statement described in (2)(b) of this subsection; and
 - b. An explanation of appeal rights under ORS 197.375 (Appeal of decision on application for expedited land division).
 - G. Appeals: An appeal of a decision made under this section shall be made as follows:
 1. An appeal must be filed within fourteen (14) days of mailing of the notice of the decision and be accompanied by the applicable deposit for costs.
 2. A decision may be appealed by:
 - a. The applicant; or
 - b. Any person or organization who filed written comments within the 14-day comment period.

3. An appeal shall be based solely on allegations:
 - a. Of violation of the substantive provisions of the applicable land use regulations;
 - b. Of unconstitutionality of the decision;
 - c. That the application is not eligible for review under **Section 6.0500** or ORS 197.360 to 197.380 and should be reviewed as a land use decision or limited land use decision; or
 - d. That the parties' substantive rights have been substantially prejudiced by an error in procedure.
4. The Hearings Officer shall act as the referee for appeals of a decision made under this section and ORS 197.360 and 197.365.
5. Within seven days of receiving the appeal, the City, on behalf of the hearings officer, shall notify the applicant, the appellant if other than the applicant, any person or organization entitled to notice under **Section 6.0504(E)** that provided written comments to the local government, and all providers of public facilities and services entitled to notice under **Section 6.0504(E)**, and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (1) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The hearings officer may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The hearings officer shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government.
6. The hearings officer shall apply the requirements of this section and ORS 197.360. If the hearings officer determines that the application does not qualify as an expedited land division [as described in ORS 197.360] or a middle housing land division, as defined in **Section 6.0501**, the hearings officer shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements.
7. The hearings officer shall not reduce the density of the land division application.
8. The hearings officer shall make a written decision approving or denying the application, or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The hearings officer shall not remand the application to the local government for any reason other than as set forth in this subsection.
9. Unless the City Council finds exigent circumstances, a hearings officer who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as hearings officer in the appeal.
10. Notwithstanding any other provision of law, the hearings officer shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The hearings officer shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this section, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the hearings officer and costs incurred by the local government, but not the costs of other parties.
11. The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380 (Expedited and Middle Housing Land Divisions) or this section.

12. Any party to a proceeding before a hearings officer under this section may seek judicial review of the hearings officer's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the hearings officer in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

- a. That the decision does not concern an expedited land division as described in ORS 197.360 or Middle Housing Land Division as defined in **Section 6.0501** and the appellant raised this issue in proceedings before the hearings officer;
- b. That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or
- c. That the decision is unconstitutional.

H. Expiration. The tentative approval of a Middle Housing Land Division is void if a final plat is not recorded within three years of the tentative approval.

6.0505 MIDDLE HOUSING FINAL PLAT

A. The final plat shall comply with the Middle Housing Land Division conditions of approval.

B. The following data requirements, if applicable, shall also be shown on the final plat.

1. All tracts of land intended to be deeded or dedicated for public use;
2. Street names as approved by the Manager on the preliminary final plat copies in accordance with the City of Gresham Street Naming and Property Addressing Guidelines;
3. Any non-access strips.

C. Approval Criteria. The Manager shall approve or deny the final plat for the Middle Housing Land Division. Approval shall be based on the following criteria:

1. Lands to be deeded or dedicated for public use are provided for on the final plat or on separate documents.
2. An approved guarantee of completion is provided for required public improvements that have not been completed and accepted by the City.
3. An approved grading and drainage plan is provided if grading is required.
4. Approved construction drawings for required public improvements are provided.
5. All conditions of Middle Housing Land Division approval have been met and the final plat substantially conforms to the provisions of the approved Middle Housing Land Division.

D. Recordation. Following review and Manager's approval of a final partition plat, the applicant shall take the following actions:

1. Obtain the approval signature on the final Middle Housing Land Division plat by the County Surveyor certifying that the final partition plat complies with all applicable survey laws. Before certifying, the surveyor may make field investigations to verify that the plat survey is sufficiently accurate. If the surveyor determines that the plat does not comply, the applicant shall make corrections. When the surveyor determines that the plat conforms, the surveyor shall sign and date the plat.
2. A Notice of Middle Housing Land Division for each middle housing lot shall be recorded with the county recorder that states:
 - a. The middle housing lot may not be further divided.

