Guidance: 2025 Session Amendments to Housing Laws

Last updated: October 6, 2025

Note: A summary of all relevant land use bills in the 2025 Legislative Session are available in DLCD's 2025 Legislative Report. The summary and guidance herein are provided for informational purposes only and do not constitute legal advice. HB 2138 directs future rulemaking that will change preliminary guidance provided in this document.

Bill Summaries

Senate Bill 48

Effective Date: September 26, 2025

This is a technical fix bill to Senate Bill 1537 (2024 Session). The provisions in this bill:

- Limit the new "goal post" provision enabling applicants for housing development to opt into new standards adopted after submittal to apply within the urban growth boundary
- Limit the deferred applicability of mandatory adjustments only until HAPO denies or revokes a city's initial exemption request
- Clarify one-time UGB site additions including specific terms and scenarios

For brevity, detailed guidance of SB 48 is omitted from this guidance document. HAPO will prepare forthcoming amendments to an existing guidance document to reflect new changes.

Senate Bill 974

Effective Date: September 26, 2025

A bill establishing three new local requirements for review of certain housing development applications, including:

- New timeline requirements for "final engineering plans" for residential development applications within an urban growth boundary, beginning July 1, 2026.
- A new process for certain housing applications on residential lands within an urban growth boundary including upzoning, planned unit developments, and variances, beginning July 1, 2026.
- A limitation on "residential design standards" applied to residential developments inside the urban growth boundary with 20 or more units (except "multifamily structures"), sunsetting January 2, 2033.

House Bill 2138

Effective Date: June 30, 2025 (Implementation deadlines vary)

A bill expanding allowances and flexibility for the development of middle housing and housing generally. Provisions include:

- Allowing middle housing on urban, unincorporated land outside of Metro
- Additional siting flexibility and configuration of attached and detached middle housing
- Limits to traffic impact analyses and off-site traffic exactions for individual middle housing developments
- Unit and density bonuses for affordable, accessible middle housing units
- Streamlining the middle housing land division process to encourage divisions, including as part of larger subdivisions.
- Reduced land use barriers to single room occupancies (SROs)
- Clear and objective tree removal codes
- Retroactive invalidation of restrictive CC&Rs for middle housing and ADUs (*note: this provision is not a "housing law" and is included here for informational purposes*)
- Direction for rulemaking on bill provisions by the Land Conservation and Development Commission (LCDC), to be complete January 1, 2028

Please note: Many of the new provisions contained in the bill must be operationalized by upcoming LCDC rulemaking. Specific implementation details of certain bill provisions cannot be clarified until rulemaking concludes.

House Bill 2005

Effective Date: July 24, 2025

A bill amending statutes relating to residential homes and facilities. Provisions specific to land use include:

- A new super-siting requirement to allow "residential treatment facilities" and "residential treatment homes" meeting specified statutory parameters. This requirement applies to most lands within an urban growth boundary.
- A new super-siting requirement to allow the co-location of "crisis stabilization centers" and "mental or psychiatric hospitals" meeting specified statutory parameters. This requirement applies to most non-residential lands within an urban growth boundary (*note: this provision is not a "housing law" and is included here for informational purposes*)
- Existing requirements to allow residential homes and facilities not encompassed in the super-siting provisions remain the same.

Quick Reference

Senate Bill 974

Section 1 – Final Engineering Plan Review

Effective Date: Sep 26, 2025 | Operative Date: July 1, 2026

This section establishes a process and timelines for the review of "final engineering plans" for residential development. This process is similar to, but not the same as, the 120-day requirement for cities and counties to issue decisions for permits under state law.

Provisions include:

Subsection (1)

- Defines "final engineering plans" which means "the detailed engineering plans and reports for the design or construction of public and private infrastructure improvements that require review and approval following tentative plat approval by a local government before issuing site development permits, including plans and reports for the construction of public and private infrastructure improvements such as grading, water, sewer, stormwater, transportation systems and utilities."

Subsection (2)

- Requires local governments to review final engineering plans for residential development within an urban growth boundary within specific timelines, including:
  - Within 30 days after submittal, confirmation that the application is complete or specification of the necessary materials for an application to be considered complete (*Note: This does not include the overall 180-day timeline associated with land use completeness review under ORS 227.178 or 215.427*)
  - Within 120 days after completeness, complete final review of the final engineering plans and approve or deny site development permits after applicable fees, forms, and bonds are received.

Subsection (3)

- Establishes scenarios that extend the 120-day timeline, including:
  - A "toll" (i.e. pause) on the date where a local government requires correction or supplemental materials for an application. This "toll" ends on the date where the amended application is received by the local government.
  - An optional extension that an applicant may request in writing, not to exceed a combined total of 245 days.

Subsection (4)

- Establishes remedy of writ of mandamus related to final engineering plans, which includes:
  - An applicant may file a petition for a writ of mandamus where a local government does not take final action within required timelines.
  - A local government may make a decision until the petition is filed.

- Once received by circuit court, the court has jurisdiction for “all decisions regarding the application, including settlement”.
- The court is required to issue a preemptory writ unless a local government or intervenor shows the approval of final engineering plans would violate a substantive local regulation.

Frequently Asked Questions

Q: What plans are subject to this timeline?

A: Final engineering plans subject to this section must meet all 3 of the following circumstances:

1) The development is within a UGB
2) The engineering plans are for residential development
3) The review and approval of the engineering plans follows a tentative plat approval by a local government. “Tentative plat approval” is likely synonymous with “tentative plan approval”, which is a term used in ORS 92 that refers to the local land use approval of a subdivision or partition prior to plat recordation.

Final engineering plans that do not meet all three of these are not subject to the timelines. Examples would include:

- Final engineering plans required as conditions of approval for residential development that does not involve tentative plat approval, such as multiunit development on an existing site
- Final engineering plans required as conditions of approval for non-residential development, including tentative plats for non-residential development.

Residential development is not specifically defined. Consistent with implementation guidance for provisions of ORS 197A and other land use laws, mixed-use development is considered residential development when it involves residential uses in conjunction with another non-residential use. This can be either within the same building or in separate building on the same development site.

Q: Is middle housing subject to this bill?

A: It depends. If there is a middle housing land division, then this bill applies. ORS 92.031(2) identifies a middle housing land division as a tentative plan. However, final engineering review for a middle housing development that does not involve a land division is not subject to the review timelines of this bill.

Q: Is a jurisdiction required to consolidate all infrastructure reviews included in “final engineering plans” in a single permit? For example, our process has a grading permit review that follows land use approval and precedes engineering approval of other public infrastructure.

A: No. The bill does not require these reviews to be consolidated. Jurisdictions may parse these reviews to facilitate a developer’s commencement of on-site work. However, arbitrary parsing of

infrastructure review that slows the overall project could be a violation of ORS 197A.400(1)(b) related to not causing unreasonable cost or delay to residential development.

Q: Our jurisdiction offers "early review" or "voluntary review" of engineering plans prior to land use approval in order to shorten the overall project review time. Do the timelines in SB 974 Section 1 apply to this review?

A: No, this section specifically only applies "following tentative plat approval".

Q: We are a city and some infrastructure in our final engineering plans is reviewed by another government or a special district. How does this impact our requirements under SB 974 Section 1?

A: Section 2 of the bill puts the review timeline requirements on "a local government." A local government with permitting authority over infrastructure that is covered by "final engineering plans" is responsible for compliance with Section 1. The bill requires any local government to complete final engineering plans following tentative plat approval; the requirement isn't just limited to the local government that issued the tentative plat approval. The term "local government" in ORS 174.116 includes local service districts.

It is recommended that jurisdictions review their specific permitting processes and consult with their legal counsel. It may be beneficial to create memoranda of understanding or intergovernmental agreements between local governments and local service districts to address responsibility for final engineering plan reviews subject to this bill.

Q: Are engineering plan reviews basically now subject to the same review process as land use reviews (ORS 227.178 for cities, ORS 215.427 for counties)?

A: The overall 120-day review timeline is similar to the current land use decision timeline, but there are important differences.

1) Completeness review: the final engineering plan review completeness process does not have a 180-day limit after which the application is void if Section 1(2)(b)(A), (B), or (C) has not occurred.
2) "Tolling" during the 120-day timeline: the 120-day clock can be paused ("tolled") when the local government gives the applicant notice that a correction or additional information is needed. There is no analogous tolling process for the 120-day land use decision timeline. The bill has no limit on the number of pauses that may occur during the review.

Q: Does the timeline continue counting down if an applicant resubmits but hasn't addressed all of the corrections or supplementary information the local government identified when the clock was paused (tolled)?

A: Yes. The bill says the tolling ends on the date the amended application is received by the local government. It does not place any other qualifiers on the application such as providing substantive responses to all the local government's comments. The only instance where the clock would not restart would be if the resubmitted materials were not actually amended.

Q: Why can a local government pause ("toll") review of my final engineering plans if they've already deemed them complete?

A: One reason this may occur is if the final engineering plans have been deemed complete by virtue of the applicant notifying the local government that no additional materials are forthcoming. The local government may be in the position of having to start the 120-day review without the information needed to approve the plans.

Another reason is that a review for completeness is not the same as review for approval. Completeness identifies if the information needed for review has been provided. The approval review within the 120-day timeline verifies that the information is accurate and complies with applicable standards.

There is another important difference between land use review and engineering plan review that may explain why tolling is allowed. Land use reviews for residential subdivisions and partitions can include conditions of approval (see ORS 197.522) to remedy instances where applicable land use regulations are not fully met. Final engineering plan reviews do not have the same latitude to address these issues with conditions since the plans will be the basis for construction once they are approved.

Q: What will our jurisdiction need to do to comply with this statute?

A: While this will vary, the following are things that HAPO staff would anticipate a jurisdiction needing to do:

- Identify developments that are subject to this timeline for the public works and engineering staff,
- Establish tracking, or modify existing tracking, of plan reviews to:
    - Identify date of plan submittal,
    - Completeness review status,
    - Receipt of applicant responses during completeness review,
    - Date of application completeness,
    - Date(s) when corrections or information is requested from the applicant,
    - Date the applicant provide corrections or additional information, and
    - Receipt of extension requests, including the individual and cumulative amount of extension days.

Q: Does the date of receiving a final engineering plan application establish a "goal post" for applicable regulations similar to land use review in ORS 227.178(3) and ORS 215.427(3)?

A: The bill does not establish a "goal post" rule. There is no generally applicable answer regarding the date of final engineering plan submittal and applicable review standards. We recommend consulting legal counsel.

Q: The bill says "final engineering plans" includes reports for the design or construction of public and private infrastructure. We require preliminary reports during land use review to evaluate feasibility of grading and infrastructure to serve the proposed development. Does this begin the review timelines for "final engineering plans"?

A: No. The bill specifies that the 30-day completeness review and subsequent 120-day engineering plan review clock starts with receiving an application for final engineering plans,

including the applicable forms and review fees. A jurisdiction does not initiate the review period if it evaluates preliminary infrastructure reports during land use review.

Q: The bill says complete the final review of the final engineering plans and, following the receipt of applicable fees, forms and bonds, approve or deny the site development permit. We do not bond for improvements and require final engineering inspection approval of public infrastructure before plat recordation. Does the bill require us to accept bonds?

A: No, the bill doesn't require acceptance of bonds if the jurisdiction doesn't already do so. Jurisdictions that do not accept bonds are advised to review ORS 455.175 to ensure they are in compliance with issuing building permits upon substantial completion of public improvements.

Q: The bill says that within 120 days, the final review of the engineering plans must be complete and the site development permits must be approved or denied. Does approval of the engineering plans satisfy the requirement, or does the bonding/assurances process also need to be complete within 120 days?

A: The bill specifies that the engineering review needs to be complete and the site development permits have an approval or denial. The language indicates that an approval would include all permissions necessary for a developer to begin work on the site. In some jurisdictions, the assurance/bonds for the improvements must be complete before on-site work can commence. This would mean that the technical review of plans and the necessary fees, forms, and bonds have been completed within the 120-day timeline.

Local governments may toll the review timeline if bond materials from the applicant are not available. Local governments may also discuss extensions of the 120-day timeline when the technical review of the plans is complete but final assurances and bonds are pending.

Q: We are a resource-constrained jurisdiction with limited staffing. We are concerned about our ability to comply with these deadlines. Are there temporary exemptions we can apply for, or any financial assistance from the state to help?

A: There are no temporary or permanent exemptions available, and the legislature did not allocate funding for local implementation. However, HAPO has technical and funding assistance to support local code conformance with housing laws.

Q: Can the local government require an applicant to extend the 120-day review timeline?

A: No. The bill establishes that extensions may be granted at the request of the applicant. The local government may request an extension from the applicant for a variety of reasons but cannot compel an applicant to grant an extension.

Q: We have approved the final engineering plans but exceeded the 120-day clock. What are the consequences of this?

A: When the timeline has expired, the bill specifies that the local government retains jurisdiction to make a decision on the application until a writ of mandamus is filed (Section 1(4)(b)). If the applicant in this example had not yet filed a writ, the approval issued after expiration of the decision timeline would be valid. Any decision issued after a writ has been filed would be void as the local government does not have jurisdiction at that point.

Q: The bill says a writ won't be issued if the local government or any intervenor shows that the approval of final engineering plans would violate a substantive provision of the local government's regulations. What constitutes a substantive provision?

A: The bill does not define this, and it would be subject to the decision of the court in which the motion for the writ is brought.

Q: How does the floodplain affect these new rules?

A: Locally adopted floodplain regulations are still applicable. There may be some question as to whether "floodplain review" is encompassed within "final engineering review" of infrastructure improvements within floodplains, and there may be differences between local review processes. If a floodplain permit is required, or materials are needed, such as a no-rise analysis, or a mitigation assessment, to demonstrate compliance with floodplain regulations in order for the local government to complete final engineering review and approve or deny site development permits for infrastructure improvements, a local government should identify these materials during completeness review and may toll (pause) the 120 day timeline upon direction to the applicant to provide corrected or supplemental application materials.

Sections 2 through 5 – Residential Development Applications

Effective Date: September 26, 2025 | Operative Date: July 1, 2026

This section establishes an expedited process for review of certain zone changes, planned unit developments, and variances. Amends LUBA's jurisdiction to include these application types.

Section 3, Subsection (1) to (3) - Applicability

- Clarifies applicability of this section to only apply to the following application types:
  - A zone change to allow a denser residential use designation
  - A planned unit development, or
  - A variance from a residential approval standard

    Note: These terms are not defined in statute.
- This section only applies to land that is:
  - Inside the urban growth boundary (UGB), and
  - "Zoned primarily for residential use or mixed residential use or planned for residential use"
- This section does not apply to applications:
  - That reduce minimum residential density of land
  - For final subdivision or partition plat
  - For a residential construction permit under the building code
  - For final engineering review
  - Subject to ministerial or other expedited approval procedure, including outright permitted uses

Section 3, Subsection (4) to (7) - Procedure

- Generally, the procedural requirements under this section are similar to limited land use decisions under ORS 197.195, but with several differences in the specific requirements imposed.
- Applications under this section are not subject to quasi-judicial review (ORS 197.797) and must be reviewed under locally applicable land use regulations, except as provided under this section.
- Establishes specific procedural requirements for applications, which are similar
    - Requires written notice to property owners and community associations within 100 feet of the site
    - Does not require the local government to provide for a hearing, provided that the Department of Land Conservation and Development is issued a Post Acknowledgement Plan Amendment notice as required under law
    - Establishes specific requirements for the notice. This mirrors limited land use decision notice requirements.
    - Requires the local government to provide an affidavit or other certification describing the notice given
- Establishes requirements for local approval or denial of an application. This mirrors the limited land use decision statute (ORS 197.195).
- Requires the initial decision to be made without a hearing. Allows a hearing on appeal of the initial decision. Establishes procedural requirements relating to the record and testimony/evidence provided in a hearing. Final decision must be provided to all participating parties.

Sections 4 and 5

- Amends LUBA's scope of review to include applications under section 3.

Frequently Asked Questions

Residential Development Applications

Q: Is a comprehensive plan change subject to the procedural requirements in Section 3?

A: No. The bill is specific to a zone change. However, for jurisdictions with a "one map" system (combined comprehensive plan and zoning map), this section would apply to the map change if it the change affects the applicable use and development standards, and results in a denser residential use.

Q: There is case law that informs whether a zone change application is considered a legislative or quasi-judicial decision. What if our legal counsel informs us that a proposed zone change that allows for a denser residential use designation is a legislative decision?

A We recommend continuing to consult legal counsel. Section 3 establishes a new procedure for zone changes to allow a denser residential use designation and notes explicitly that the application "is not subject to the requirements of ORS 197.797" and that "the initial decision on

the application must be made without a hearing". There is no further clarification in statute as to the status of such a decision as legislative versus quasi-judicial.

Q: What qualifies as a denser residential use designation (a.k.a. upzoning)?

A: The bill does not further specify or define how a denser residential use designation is determined. Therefore, it is not necessarily clear whether the bill is referring exclusively to "unit density" or other forms of density, such as the number of individuals per unit of land. A zoning designation could be considered denser if it increases either the minimum required or maximum allowed units per acre. Similarly, zoning changes that decrease the minimum or maximum lot size are also considered denser designations, as lot size is another land use regulation that directly affects residential unit density.

It is less clear if other standards that indirectly increase the resultant effective density of development, such as floor area ratio or regulations relating to the allowable buildable envelope, qualify as denser designations, especially in zones that do not regulate unit density.

Q: We have zones where mixed use development does not have a minimum or maximum residential density standards. The maximum number of possible units is limited only by the size of the units and the development regulations for height, setback, and FAR. Is changing from a residential zone with defined minimum and maximum density standards to the mixed-use zones without these standards a "denser residential density"?

A: This will depend on the specifics of the proposed mixed-use zone. If the applicant asserts that the zone change qualifies for the review procedures in this bill, it is recommended that the application include an analysis and findings to support that the proposed zone change is a denser residential use. A density analysis for a zone without specific residential density standards might include assumptions about developable floor area and residential unit size.

Where there is subjective interpretation about density, there is risk that a local government can use the incorrect review procedure. Local governments are advised to consult their legal counsel on how the statute applies to the specific facts of a proposed rezone.

Q: Does this apply to zone changes that do not include a development proposal?

A: No. Section 3 "applies only to a land use decision for residential development based on an application for… a zone change to allow for a denser residential use designation."

Q: Does this process apply to zone changes initiated by the jurisdiction as well as those initiated by property owners?

A: It is not clear. The bill does not differentiate based on what entity initiates the zone change. However, the bill indicates that the section "applies only to a land use decision for residential development based on an application for: [A zone change to allow for a denser residential use designation]." While this precludes zone changes that do not include an application for residential development, it does not necessarily preclude zone changes initiated by the jurisdiction. We recommend consulting legal counsel for further clarity.

Q: Could a zoning text amendment be subject to this section?

A: It is not clear. A zoning text amendment will necessarily be a legislative decision. The bill creates an administrative review framework for applications for residential development that

include a zone change to allow for a denser residential use designation. HAPO staff would not expect this situation to be a common occurrence since zoning text amendments are not usually directly associated with a land use decision for residential development. We recommend consulting legal counsel for further clarity.

Q: We have a proposed zone change that will apply a zone that increases residential density while also disallowing some uses allowed with the current zoning. Measure 56 (ORS 227.186; 215.503) requires notice with specific text about a hearing. How do we comply with this new statute and the Measure 56 requirements?

A: This section of the bill applies only to land use decisions for residential development. Both notice requirements are in effect and local governments must comply with them when applicable. We recommend consulting legal counsel on the precise application of each requirement for an individual development application.

Q: What does a variance from a residential approval standard mean?

A: The term "variance" is not specifically defined. A variance should be understood as any land use review that approves a variation from a development standard in the local government's land use regulations, even if the process itself is not called a "variance". It is important to note that the mandatory adjustments from SB 1537 (Section 38) are not variances. Although the bill uses the term "approval standard", this statute should be implemented as applicable to variances to development standards or regulations.

Review Procedures

Q: In Section 3(4)(b), the bill states these applications must be reviewed under the procedures described in a local government's land use regulations, except as provided in this section. What does 'except as provided in this section' mean regarding the procedural requirements in Section 3(5) through (7)?

A: This means that the procedural requirements provided in Section 3 are required to be administered by the local government. This includes requirements to provide written notice to property owners, issue an initial decision without a hearing, and written decision explaining the relevant facts, criteria, and standards. Beyond this, local governments must be reviewed under procedures described in a local government's land use regulations.

A floor letter and FAQ submitted in the legislative record speak to intent on the Section prescribing the process by which a local government reviews certain residential applications. However, for more clarity on the precise intersection between this requirement and local land use recommendations, we recommend consulting legal counsel.

Q: We have commercial zones that allow for some residential and mixed use residential development. What does "zoned primarily for residential use or mixed residential use" mean?

A: This is not a specifically defined term, though the term "zoned primarily for" is used in other statutes, such as HB 2138. However, a floor letter submitted in the legislative record speaks to the legislative intent specific to this section:

> "This provision applies within mixed-use zones, when they are intended for primarily residential use but does not permit the rezoning of land primarily designated for commercial, industrial, or institutional purposes. SB 974-B is not intended to turn mixed use residential zones into residential only zones. Rather, it facilitates the ability of local governments to "upzone" land already designated for residential use, ensuring the availability of higher-density housing while maintaining the integrity of existing land use classifications."

Based on this testimony, we do not understand this requirement to apply in zones that allow residential uses but are "primarily designated for commercial, industrial, or institutional purposes". There isn't additional clarity in the bill or testimony about what "primarily designated" means precisely, though it suggests that there is a distinction between mixed use zones – i.e. zones that allow primarily both residential and employment uses - versus zones that are primarily for non-residential uses that allow some residential development.

Q: The bill says the land is primarily for residential use or mixed residential use or planned for residential use. What does "planned for residential use" mean?

A: HAPO staff understands this to mean that the land use designation in the local government's comprehensive plan identifies the area primarily for residential or mixed-residential development. A key threshold for "planned" is that the planning designation is part of the jurisdiction's acknowledged comprehensive plan. Conceptual plans or studies presented to the local government's council or board but not adopted by ordinance would not be considered "planned for residential use".

Q: Our code allows an applicant to voluntarily elevate the application review process. An applicant may opt for this if they anticipate appeal of a staff-level decision and believe elevating the review will shorten the overall review time. For Residential Development Applications covered by this bill, is elevating the review process allowed under this process in Section 3?

A: No. The bill states in Section 3(7) that the initial decision must be made without a hearing. This would preclude elevating a review procedure even if the applicant elected to do so.

Q: What review process would a local government use if an application listed under section 3(1) is part of a development under concurrent review with an application not listed in the bill that requires quasi-judicial review? For example, if a tentative plat approval is part of a proposed "planned unit development", is the tentative plat review also subject to the process requirements in this bill?

A: The bill does not address this situation specifically. Consolidated review of all applications needed for a development project is an option the city must make available to an applicant per ORS 227.175(2); ORS 215.416(2). State statutes do not address what occurs when the consolidated review would result in an application undergoing a review process specifically prohibited elsewhere in statute (prohibition on hearing for the initial decision per Section 3(7)). This statute is also not intended to limit the review of an application requiring quasi-judicial review that happens to be part of a planned unit development. Local governments may need to process concurrent applications received for a single development under separate review

processes in order to comply with both statutes. We would recommend consulting legal counsel for further guidance.

Q: How does a local government provide PAPA notice for a zone change that is processed administratively?

A: A PAPA notice is required for changes to a local government's acknowledged plans and land use regulations. Zone changes require a PAPA notice, and approval of a planned unit development may also require a PAPA notice depending on a local government's planned unit development process and regulations. Typically, a PAPA notice is required to be submitted 35 days prior to a local government's first evidentiary hearing. However, SB 974 Section 3(7) precludes a hearing on the initial decision for a zone change or planned unit development for which SB 974 Section 3 is applicable.

SB 974 Section 3(5)(b) addresses this situation. The local government is not required to hold a hearing, and the 35-day PAPA notice is instead satisfied by the local government sending the 14-day application notice described in SB 974 Section 3(5)(c) to DLCD. The notice would be submitted to DLCD in the same manner that the typical 35-day notice would be provided (see https://www.oregon.gov/lcd/cpu/pages/plan-amendments.aspx).

The local government is still responsible for providing the other notices in ORS 197.610 to 197.625 associated with the zone change or planned unit development (e.g. notice of adoption, notice of withdrawal or denial).

Sections 7 through 9 – Residential Design Standards

Effective Date: September 26, 2025 | Sunset Date: Jan 2, 2033

This section establishes a new limitation on the application of "residential design standards" to applications, except a "multifamily structure" or a development with fewer than 20 residential units.

Section 8, Subsection (1)

- Disallows the application of residential design standards to an application for the development of housing within an Urban Growth Boundary, unless the application is for:
    - A "multifamily structure" as defined in ORS 197A.465: "Multifamily structure" means "a structure that contains three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit within the same structure."
      Note: This definition was previously limited to apply only to inclusionary housing policies adopted under ORS 197A.465. At the time of publication, the only city with such a policy is the City of Portland. This definition overlaps with other forms of attached housing, such as attached plexes, townhouses, and cottage clusters.
    - A development containing fewer than 20 residential units.

Subsection (2)

- Exempts land use regulations or requirements relating to setbacks, building height, accessibility, fire ingress or egress, public health or safety, state or federal water quality

standards, hazardous or contaminated site cleanup or wildlife protection or that implement statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources

Subsection (3)

- Defines terms including:
  - "Residential design standard" which means "standards intended to preserve the desired character, architectural expression, decoration or aesthetic quality of new homes, including standards regulating:
    (A) Facade materials, colors or patterns;
    (B) Roof decoration, form or materials;
    (C) Accessories, materials or finishes for entry doors or garages;
    (D) Window elements such as trim, shutters or grids;
    (E) Fence type, design or finishes;
    (F) Architectural details, such as ornaments, railings, cornices and columns;
    (G) Size and design of porches or balconies;
    (H) Variety of design or floorplan; or
    (I) Front or back yard area landscaping materials or vegetation."
  - "Residential units" which means new single-unit dwellings, manufactured dwellings and units of middle housing, as defined in ORS 197A.420

Frequently Asked Questions

Q: Does the definition of "multifamily structure" overlap with middle housing?

A: Yes. While the bill notes that the definition of "residential units" subject to the requirement includes units of middle housing, the exemption of "multifamily structure" means that middle housing that also meets the definition of "multifamily structure" are exempted from the requirement.

Q: Given the definition of "multifamily structure", are developments consisting of 20 or more dwellings, and consisting of detached single dwellings and/or duplexes exempt from the design standards listed in Section 8, (3)(A) through (I)?

A: Yes, as well as other kinds of middle housing that do not meet the definition of "multifamily structure". Other examples include detached plexes, detached cottages, attached cottages in subgroupings of two units per structure, townhouse structures with two units, and detached bonus units under Section 3, HB 2138.

Q: How does 197A.465 treat townhouses? Because lots, dwellings on their own lots, or lots or parcels are not mentioned, it's not clear that townhouses are excluded from the 197A.465 definition of "multifamily structure." In other words, does 197A.465 consider townhouses to be a "multifamily structure"?

A: The definition of “multifamily structure” does not speak to the lot configuration, only to a “structure” with three or more units that shares “at least one wall, floor or ceiling surface in common” with other units. Therefore, any structure containing townhouses with three or more units is defined as a “multifamily structure” under the bill.

Q: How does a local government determine what constitutes an application for development of housing with 20 or more units? Is this during approval of the land division application, even though the residential design standards aren’t evaluated at that point in the development process?

A: The bill does not specify if this determination is made when the land division is reviewed or when building permits are submitted. HAPO suggests that a local government should consider the future construction on lots that are part of a development with 20 or more units to be eligible for the residential design standard exceptions.

Q: Is it only applicable to new developments proposed after the effective date? What about approved subdivisions that are being built out now? Redevelopment of a lot within an existing subdivision from 30 years ago? Do historic districts / overlay zones still apply?

A: It is not clear. Generally speaking, a floor letter and FAQ submitted in the legislative record by Rep Breese-Iverson suggest an intent for the exception to apply to “new neighborhoods” and not to “multi-family housing or small-scale “infill” developments”.

The statute defines “residential units” to mean “any new single-unit dwellings, manufactured dwellings and units of middle housing, as defined in ORS 197A.420”, and requires any application for the development of housing within a UGB of 20 or more residential units to be exempted from residential design standards. The bill does not include any exemption for historic districts nor overlay zones that include residential design standards as defined in the bill.

Many residential design standards as defined in the bill are not typically applied during the subdivision stage (with some exceptions, including PUDs). Instead, these standards are generally applied at a future plan check/building permit, creating a timeline question as to when new units count or do not count towards the exemption. The bill does not distinguish new/recent subdivisions from older subdivisions that include new construction later on. One potential method of clarification is through a condition of approval of a tentative plat noting the inapplicability of certain standards under SB 974.

HAPO is unable to speak to the precise intersection of statements of legislative intent with the application of the law to offer definitive clarity. Therefore, we recommend consulting legal counsel for additional interpretive clarity.

Q: If the lots in a subdivision are eligible for middle housing, how should a local government calculate whether the 20-unit threshold is met when the number of units isn’t known?

A: The bill does not specify this determination. Additionally, as explained in an FAQ above, middle housing units are intended to count as “residential units” but also may also be exempt when they meet the definition of multifamily structures in ORS 197A.465. Where an applicant

specifies the proposed development on the future lots, this may be used as a basis for determining if the threshold is met.

Q: Does this requirement apply to street trees or trees required in the front yard?

A: In some cases, likely yes, but it is not fully clear. The exemption applies to any standard "intended to preserve the desired character, architectural expression, decoration or aesthetic quality of new homes" and explicitly includes "Front or back yard area landscaping materials or vegetation" on the list of required exemptions. This most likely would encompass required trees in the "front or back yard area".

This prohibition appears less likely to encompass street trees, unless the purpose statement for required street trees is aesthetic or decorative. However, there is no precise clarity in statute that street tree requirements are or are not applicable to the prohibition.

A floor letter submitted in the legislative record noted that the provision "does not outright eliminate a local government's ability to regulate or preserve trees… local governments are free to continue regulating the planting of trees along streets, in common areas, and between units." This suggests a legislative intent to preserve the ability for local governments to require trees, except in the "front and back yard area". However, our office cannot speak to how such a statement in the legislative record intersects with the application of the law. We would recommend consulting legal counsel to provide additional clarity.

Q: Does this requirement apply to parking or driveway standards?

A: It is not clear. It would most likely depend on the underlying stated purpose of the applicable standards. In general, the purpose for parking or driveway standards tend to lack a strong nexus to aesthetic qualities of new homes, so it may be challenging to argue that these types of standards qualify. However, it is not possible to provide definitive clarity on whether parking or driveway standards could be considered residential design standards as defined in the bill.

Note: Nothing in SB 974 affects the applicability of mandatory adjustments in Section 38 of SB 1537. All local governments are required to grant up to a full adjustment to parking minimums for eligible housing developments until the sunset of the policy on January 2, 2032.

Q: What is the intention of SB 974?

A: HAPO was not present or consulted during bill development and cannot speak definitively to legislative intent. However, Senate Bill 974 included floor letters that speak to intent in the legislative record. One floor letter, submitted by Rep Breese-Iverson on behalf of the Oregon Home Builders Association, League of Oregon Cities, and Association of Oregon Counties and offered the following excerpt speaking to the general legislative intent of the bill:

> "SB 974-B is the next step in establishing a regulatory framework that not only allows for diverse and abundant housing, but one that prioritizes efficiency in areas planned or zoned for residential use. Most importantly, SB 974-B targets increasing housing production in areas of highest need – residential lands inside our urban growth boundaries (UGBs)."

Other materials submitted in the legislative record similarly speak to intent and can be found on the bill's webpage: https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB974

House Bill 2138

Effective Date: July 17, 2025 (Immediately upon Governor's signature)

Section 1 – Middle Housing

Effective Date: July 17, 2025

Implementation Deadline: Affected local governments are assigned deadlines for implementation set forth in Section 4 – January 1, 2027 and January 1, 2028 for changes specific to cottage clusters. Until then, local governments may continue to apply their adopted and acknowledged development ordinances.

Please note: The Land Conservation and Development Commission is directed in Section 22 to undergo rulemaking to conform existing rule (OAR Chapter 660, Division 046), operationalize the changes herein, and clarify more precisely how local governments may comply with the changes to law. Because of this, it is not yet possible to clarify the precise means by which local governments may amend codes to comply with the law. For local governments undertaking code amendments, we recommend following the rulemaking process closely.

This section amends ORS 197A.420, which requires local governments to allow middle housing based on their geographic location and population size. These changes expand middle housing allowances and flexibility in the siting and configuration of middle housing. Highlights of changes include:

Subsection (1)

- Amendments to or new definitions to middle housing that increase the flexibility of siting options, including:
  - "City" – amended to include local governments with jurisdiction over unincorporated lands within an urban growth boundary.
  - "Cottage Cluster" – Removes the minimum density requirement, allows detached and attached (up to four) configurations, replaces the 900 square foot footprint limitation with a "small footprint or floor area" requirement, and retains the requirement for a common courtyard.
  - "Duplex" – A new definition that enables both detached and attached configurations on a lot or parcel, excluding middle housing lots.
  - "Middle Housing" – Includes the original definition as well as new allowances for bonus units (see Section 3) and additions to existing units (see Section 1 (4))
  - "Middle Housing Land Division" (MHLD) – Incorporates the definition from ORS 92.031
  - "Quadplex" – A new definition that enables both detached and attached configurations on a lot or parcel, excluding middle housing lots.
  - "Townhouse" – Corrects a typo in the original definition.
  - "Triplex" – A new definition that enables both detached and attached configurations on a lot or parcel, excluding middle housing lots.
  - "Zoned for residential use" – A new definition clarifying the precise applicability of middle housing requirements. It refers to land that:
    - Is within an urban growth boundary,
    - Has base zoning for, or is designated to allow, residential uses,

- Allows the development of a detached single-unit dwelling,
- Is not zoned primarily for commercial, industrial, agricultural, or public uses, and
- Is incorporated or urban unincorporated land (see definition in Section 3a)

Subsection (2)

- Amends the applicable jurisdictions required to allow middle housing to include counties for urban unincorporated lands. Previously, this requirement only applied to Metro counties. Otherwise, the applicability of this requirement remains the same.
- Amends the requirement for cities to allow middle housing "on each lot or parcel" zoned for residential use (that allows a detached single-unit dwelling). This replaces the previous requirement to allow middle housing "in areas" zoned for residential use that allow detached single-unit dwellings.

Subsection (3)

- Conforms the existing requirement with the new changes for cities outside of Metro between 2,500 and 25,000 population. Substantively, this means these cities (referred to as "medium cities" in administrative rule) will be required to allow detached duplex configurations, allow new middle housing units in addition to existing units (see subsection (4)), and allow bonus units under Section 3.

Subsection (4)

- Removes the exception list for middle housing allowances – this is replaced by the "zoned for residential use" definition and clarifications to subsections (2) and (3).
- This list is replaced with a new requirement for cities that must allow middle housing under subsections (2) and (3) to allow middle housing as additions to existing housing, including:
  - A single-unit dwelling
  - A single-unit dwelling and accessory dwelling unit (ADU), or
  - A duplex
- Cities may continue to regulate the siting and design of units under subsection (5), but these may only apply to the new units. The existing units may remain nonconforming.
- Existing units may be separated from the new units by a middle housing land division under ORS 92.031.

Subsection (5)

- This provision enabling local governments to regulate siting and design as well as goal protections is reformatted and reorganized, but otherwise substantively identical to the original law.

Subsection (6)

- Creates a new limitation on the ability of local governments to require a traffic impact analysis or attribute an exaction based on traffic impacts of any individual middle housing development.

- Local governments are still allowed to require a generally applicable system development charge, “fee-in-lieu variance charge”, or development requirement specific to the lot or parcel or its frontage, such as right-of-way dedications and frontage improvements.
- This limitation does not apply to either:
    - Developments of townhouses or cottage clusters with more than 12 units, or
    - Lots/parcels created by a partition/subdivision (not a MHLD) within the previous five years.

Frequently Asked Questions

Q: What is a “small footprint or floor area” for a cottage cluster” and how do we operationalize this without clarity? Can cities update their codes now to implement this term?

A: HB 2138 specifically calls for rulemaking to implement the term “small footprint or floor area.” The deadline for local jurisdictions to adopt conforming amendments for cottage clusters is January 1, 2028. The rules must regulate cottage clusters to incentivize smaller, less expensive housing, shared community amenities and other public benefits, as specified in Section 22. Those rules will clarify precisely how cities and counties may operationalize new requirements for cottage clusters. Local governments are not required to adopt conforming amendments to implement the changes related to cottage clusters until January 1, 2028.

Q: What does “a subgrouping of four units” in a cottage cluster mean? Can cities allow more than four units in a subgrouping?

A: Rulemaking will need to occur to determine what a “subgrouping” means in context of the definition and whether additional units may be allowed in a subgrouping. The Division 046 rule required large cities to allow eight cottages per courtyard. While the new definition includes a common courtyard, rulemaking will need to occur to determine how many cottages must be allowed per courtyard as well as per subgrouping of attached or detached units.

Q: Do local governments have to apply new requirements in HB 2138 before they have amended codes?

A: It depends – While the bill is effective as of July 17, 2025, different sections have different implementation dates. Sections 1 – 3 and section 6 have deadlines for local governments to adopt conforming amendments for new requirements. Other sections of the bill, such as changes to the middle housing land division and clear and objective statute, are effective immediately and local governments that have not amended their codes would comply with the requirements by applying statute directly.

Q: How will local governments update their codes if rulemaking has not concluded by the deadlines to adopt conforming amendments, and there are no rules yet with which to conform?

A: Rulemaking will be conducted by the DLCD Housing Division. The team is cognizant of the short timelines prescribed by the bill and the challenges this creates for implementation.

From a compliance perspective, HAPO is directed to provide technical assistance, funding, and appropriate model ordinances to support local governments in complying with housing laws. This includes navigating local code amendments as rulemaking unfolds.

Even where jurisdictions do not adopt conforming amendments by the deadline, the office is preparing model ordinances to aid local implementation efforts while implementation is underway. Examples in the draft model code directed under SB 1564 includes conforming amendments to the middle housing land division, detached plexes, cottage clusters, additions to existing units, and bonus affordable and accessible units. The office is also working closely with DLCD to draft a rule to enable local governments to apply model ordinances directly to avoid a violation to a housing law, which is scheduled for LCDC adoption before the end of 2025.

Beyond this, the office will continue to provide technical assistance and funding to local governments undertaking conforming code amendments to comply with housing laws, prioritizing voluntary compliance.

Q: What is the process for participation in rulemaking?

A: The DLCD Housing Division will lead rulemaking. Questions should be directed to Housing.DLCD@dlcd.oregon.gov

Q: Rulemaking is happening concurrently, is there a plan for that?

A: See response above.

Q: Why does the limitation on transportation exactions apply to a development of plexes with more than 12 units, but not apply to townhouses and cottage clusters with more than 12 units?

A: The prohibition on traffic impact analyses and certain exactions under subsection (6) are limited to “any individual middle housing development”. The development of an individual plex is limited to two, three, or four units on a lot or parcel (not including lots created by an MHLD). Unlike plexes, townhouses and cottage clusters can contain more than four units in an individual development, though the precise amount is governed by both rule and local land use regulations. This subsection establishes an upper unit threshold at which the prohibition no longer applies to an individual townhouse or cottage cluster development.

Q: Is a transportation development tax an “exaction” or a System Development Charge?

A: System Development Charge (SDC) is a term defined in ORS 223.299. Regardless of the name applied to the fee or charge, it can be applied to middle housing if it was created and adopted pursuant to statue in ORS 223.297 through 316.

Q: What is a fee-in-lieu variance charge?

A: This is not defined by the bill or elsewhere in statute. HAPO staff understand this to allow a local government to apply fees or charges that substitute for physical transportation improvements along the street frontage of the middle housing development site. An example would include fees based on the lineal feet of a site’s street frontage that fund the local government’s construction of curbs and sidewalks. Another example would be where it is deemed impractical to construct frontage improvements at the time of development and the

local government collects a fee in lieu of development from the developer based on the estimated cost of constructing the frontage improvements.

Q: How will cities accomplish connectivity under 660-012-0330 and connectivity to address CFEC standards, if cities are not able to exact?

A: The limitation on exactions is specific to an individual middle housing development, where an individual lot is developed with middle housing. The limitation would not apply to larger developments where platting would occur. For exactions specific to the lot, the provision also exempts “development requirement specific to the lot or parcel or its frontage”, so requirements for frontage improvements (e.g. ROW dedication, sidewalks) is allowable.

Additionally, the requirement doesn’t prevent the application of design standards for individual development projects that promote pedestrian-friendly design. For example, the model code DLCD is directed to produce under SB 1564 currently applies pedestrian design standards.

Q: Would cities be required to allow middle housing on lots that were part of a manufactured home park converted to a subdivision?

A: Middle housing must be allowed on each lot or parcel “zoned for residential use”, which means land that:

(A) Is within an urban growth boundary;
(B) Has base zoning for, or is designated to allow, residential uses;
(C) Allows the development of a detached single-unit dwelling;
(D) Is not zoned primarily for commercial, industrial, agricultural or public uses; and
(E) Is incorporated or urban unincorporated land.

Manufactured dwelling park subdivisions create lots as defined in ORS Chapter 92, and if those lots are “zoned for residential use” as defined above, they must allow middle housing consistent with ORS 197A.420.

Some local governments have amended zoning designations for manufactured home parks to reduce the likelihood of redevelopment and displacement, such as through disallowing site-built detached dwellings in existing manufactured home parks and subdivisions. Where these changes disallow the development of a detached single-unit dwelling, those zones are not required to allow middle housing.

Q: Are cities required to allow middle housing even in commercial zones?

A: If the land meets the definition of “zoned for residential use” a city is required to allow middle housing in the zone as provided in ORS 197A.420. The HB 2138 definition of “zoned for residential use” clarifies that if a zone allows residential uses (including mixed use) and “Is not zoned primarily for commercial, industrial, agricultural or public uses”, it is “zoned for residential use” and must allow middle housing. Note that rulemaking may further clarify the applicability of this definition.

As an illustrating example, a hypothetical city has two commercial zones. One zone is named “commercial”, and the zone allows detached single-unit and multi-unit housing as permitted uses. The purpose statement indicates the zone is intended to allow for a mix of commercial,

employment, and residential uses. This zone would likely be considered “zoned for residential use”.

In contrast, the city also has a zone named “employment”, and the zone only allows repair/alterations to existing, nonconforming residential dwellings and dwellings in conjunction with an employment use. The purpose statement indicates the zone is intended only for employment uses, and residential uses are only permitted in narrow circumstances. This zone would not likely be considered “zoned for residential use”.

Q: If middle housing is required to be allowed on unannexed lands within UGBs, does this mean counties are now required to allow middle housing? Or does the change give cities jurisdiction over unincorporated lands for middle housing decisions?

A: Local governments with jurisdiction over lands within a UGB will be required to allow middle housing as provided in ORS 197A.420. A county with jurisdiction over lands within a UGB, the county is considered a “city” as now defined in HB 2138 and is required to comply with middle housing requirements for certain unannexed lands which meet the definition of “urban unincorporated land.” (see the description above for this definition).

The bill does not otherwise change the authority of cities or counties to make land use decisions on land within their jurisdictional boundaries. Counties retain the authority to regulate and review applications for the development of middle housing in affected urban, unincorporated land. They are simply defined as a “city” for the purposes of allowing middle housing on applicable lands.

Q: Will counties need to update development codes?

A: Counties with jurisdiction over unincorporated lands within a UGB will need to update their codes to allow middle housing on urban unincorporated lands. Rulemaking will clarify the precise requirements and applicability of allowing middle housing on such lands. The deadline for counties to adopt conforming amendments for unincorporated urban lands are the same that apply to cities. Counties can apply for an extension to this deadline for certain areas where there is a verifiable infrastructure problem. Extension requests must be filed with DLCD no later than June 30, 2026 for unincorporated urban lands (see Section 5).

Sections 2 and 3 – Middle Housing Accessible/Affordable Bonuses

Effective Date: July 17, 2025

Implementation Deadline: Affected local governments are assigned deadlines for implementation set forth in Section 4 – January 1, 2027 and January 1, 2028 for changes specific to cottage clusters. Until then, local governments may continue to apply their adopted and acknowledged development ordinances.

This section creates a new requirement in ORS Chapter 197A requiring cities to allow bonus middle housing units for accessible or affordable units meeting specific statutory requirements.

Subsection (1) – (2)

- Establishes new definitions
    - “Accessible unit” – refers to “Type A” units in state building code

- "Affordable unit" – refers to housing with a covenant that makes the unit available to purchase for a maximum sales price affordable to a household with an income below 120 percent of median area income, as calculated by the Office of Economic Analysis (see Section 5a). The covenant must be enforceable for at least 10 years.
- Incorporates definitions from ORS 197A.420 (see Section 1)

Subsection (3)

- Establishes a new requirement for cities to allow bonus units for projects that provide one or more accessible or affordable units
  - For duplexes and triplexes, a project is allowed one additional unit, resulting in a triplex or quadplex.
  - For quadplexes, townhouses, or cottage clusters, a project is allowed two additional units, allowing five- or six-unit developments

Subsection (4)

- Allows local governments to regulate siting, design, and goal protections, except that cities are required to allow "commensurate increases to the developable area, floor area, height or density requirements to allow for the development of the units".

Frequently Asked Questions

Q: Does this requirement compel "medium cities" (between 2,500 and 25,000 population outside of Metro) to allow a triplex?

A: Yes, where a housing developing includes either one affordable or accessible unit as defined in statute, a medium city would be required to allow a triplex instead of just a duplex. The only exception to this requirement are for urban, unincorporated lands not within Metro.

Q: Does the requirement to allow two additional units scale for cottage cluster or townhouse developments with more than four units?

A: Rulemaking will clarify the precise allowance and how bonuses scale for projects with more than four units.

Section 3a – Urban Unincorporated Lands

Effective Date: July 17, 2025

Implementation Deadline: Affected local governments are assigned deadlines for implementation set forth in Section 4 – January 1, 2027 and January 1, 2028 for changes specific to cottage clusters. Until then, local governments may continue to apply their adopted and acknowledged development ordinances.

This section creates a distinct definition for "urban unincorporated lands" from "metro urban unincorporated lands" to distinguish precise applicability of ORS 197A.420 for counties. Urban unincorporated land is:

- Not within a city,

- Zoned for urban development,
- Within the boundaries of a sanitary district of authority under ORS Chapter 450 or a sewage works district under ORS Chapter 451.
- Within the service boundaries of a water provider with a system subject to regulation as described in ORS 448.119, and
- Not zoned with a designation that maintains the land's potential for future urbanization.

Frequently Asked Questions

Q: What is urban unincorporated land?

A: Urban unincorporated land means land within a UGB that has not been annexed, is zoned for urban development, is within the service boundaries of water and sewer providers, and is not zoned with a designation that maintains the land's potential for future urbanization.

Q: What is zoned with a designation that maintains the land's potential for future urbanization?

A: Where lands are brought into the UGB or Urban Reserves for planned future incorporation and urbanization, counties often apply zoning designations that limit development to avoid premature parcelization and development prior to incorporation. This is often done in conjunction with a growth management agreement between a city and county to facilitate the orderly urbanization of lands and prevent development patterns that make future urbanization at greater densities and intensities impracticable. Such zones would be able to limit the development of middle housing. An example are "Future Urban" zones. Such zones typically require large lot sizes (typical minimum lot sizes are between 2 and 10 acres) and limit development to avoid the premature parcelization and development of unincorporated lands before they are brought into city limits.

Section 4 – Implementation Deadlines (Sections 1 to 3)

Effective Date: July 17, 2025

This section establishes deadlines to clarify when specific changes to statute must be incorporated into local development codes.

- Subsection (1)(e) – requires conforming amendments for Sections 1 and 3 by January 1, 2027
- Subsection (1)(f) – requires conforming amendments for Section 1 specific to changes relating to cottage clusters by January 1, 2028

Note: These sections are still effective as of July 17, 2025. This section simply clarifies when local governments must update development codes to conform with the new law.

Frequently Asked Questions

Q: HB 2138 changed the definitions for plexes and cottage clusters. Do the new definitions apply now and are they required to be applied directly to development before local governments have amended their codes?

A: Although changes to middle housing requirements in ORS 197A.420 took effect immediately upon the Governor's signature (July 17, 2025), HB 2138 added deadlines for local governments to adopt conforming amendments under Section 4 and deferred ORS 197.646(3) until those deadlines. For changes relating to plexes, the deadline is January 1, 2027. For changes relating to cottage clusters, the deadline is January 1, 2028. Because of this, cities may continue to apply their adopted and acknowledged code relating to cottage clusters until that date. By that date, the city must adopt conforming amendments or a model code will apply directly to development.

Q: Can a city allow detached plexes before adopting code amendments to implement this change?

A: We would recommend consulting with legal counsel. HB 2138 gave cities until January 1, 2027 to adopt conforming amendments implementing changes to plexes, so it is unclear if a jurisdiction could apply statute directly to allow detached plexes without adopting code amendments prior to this deadline.

A city may adopt conforming amendments to allow detached plexes at any time before January 1, 2027, though it's important to recognize that administrative rulemaking will establish parameters governing how local governments may regulate the siting and design of detached plexes. If a city adopts amendments before rulemaking, it is possible their code may be nonconforming once rules are adopted.

Q: Our city council is hearing from residents that the city should tighten up cottage cluster regulations now. Are we able to adopt amendments now based on the rules in Division 046?

A: The changes to middle housing requirements in ORS 197A.420 took effect immediately, however rulemaking will need to occur to determine how changes to cottage clusters must be implemented. The deadline for local jurisdictions to adopt conforming amendments for cottage clusters is January 1, 2028. Jurisdictions that update codes based on the rules in Division 046, risk codifying requirements that will likely be nonconforming.

Q: Can we continue applying our existing middle housing regulations that conform with Division 046?

A: Yes. Section 4 clarifies that the requirement to adopt conforming amendments by specified deadlines is "notwithstanding" ORS 197.646, which would otherwise govern conformance with new statutory requirements, and specifically defers the direct applicability of the model code until those deadlines. Cities and counties may continue to apply adopted and acknowledged code. Prior to the specified deadlines, cities and counties must adopt conforming amendments to comply with the new changes. Otherwise, a model code will come into effect and apply directly to development.

Section 5 – Infrastructure Based Time Extension Request

Effective Date: July 17, 2025

Amends the "Infrastructure Based Time Extension Request" provision to allow deadline extensions to Section 4 for urban unincorporated lands that must be submitted to DLCD by June 30, 2026. Administrative rules implementing this time extension are provided in OAR 660-046-0300 to 0370.

Section 5a – Maximum Sales Price and Income Affordability (DAS)

Effective Date: July 17, 2025

Note: This is not a "housing law" as defined in Section 1, Senate Bill 1537 (2024 Session). This summary is provided for informational purposes only and should not be construed as guidance.

Amends ORS 184.453 to require the Office of Economic Analysis at the Department of Administrative Services (DAS) to annually publish maximum sales prices and income affordability requirements for bonus units allowed under Section 3. This will be incorporated into the Oregon Housing Needs Analysis (OHNA) methodology that DAS currently publishes annually. For more information and to access the most recent OHNA report, please see the following webpage: https://www.oregon.gov/das/oea/Pages/Oregon-Housing-Needs-Analysis-Methodology.aspx

Sections 6 and 6a – Single Room Occupancies (SROs)

Effective Date: July 17, 2025

Implementation Deadline: Affected local governments are assigned deadlines for implementation set forth in Section 6a – January 1, 2027.

Amends ORS 197A.430 to reduce barriers to single room occupancies (SROs). Establishes a deadline for implementation of Section 6 of January 1, 2027.

Subsection (1)

- Amends the definition of "single room occupancy" to allow detached configurations.

Subsection (2)

- Replaces ORS 197A.430 (2)(b) with a new provision requiring a local government to allow an SRO with a density of up to three times the maximum density applied to multi-unit housing with five or more units.

Subsection (3)

- Limits allowable off-street parking requirements. For every three SRO units, a local government may not require more than what is required for:
    - A detached single-unit dwelling for SROs with six or fewer units, or
    - A multi-unit dwelling for SROs with more than six units.

- This requirement does not extend to SROs used as “residential care facilities” as defined in ORS 443.400.

Frequently Asked Questions

Q: Does an SRO development need to have a kitchen facility?

A: Yes. ORS 197A.430(1) defines “single room occupancy” for that section of statute. It includes that occupants of an SRO share sanitary or food preparation facilities with other units in the occupancy. The key component is that an SRO development has sanitary and food preparation facilities.

Q: Does an SRO development need to have a single shared area with food preparation facilities and sanitary facilities, or can multiple shared facilities be provided?

A: The statute allows multiple shared facilities. An important aspect of the SRO definition in ORS 197A.430(1) is that it prevents anything that could qualify as a dwelling unit from being defined as an SRO. The lack of either a sanitary facility or a food preparation facility in a unit would exclude that space from being a dwelling unit. In this context, it is permissible for a unit to have its own sanitary facility or food preparation facility, but it could not have both. Having multiple shared facilities in an SRO development would be allowed by and be consistent with statute.

It is important to note that while the definition allows multiple shared facilities, a local government could not require more than a single shared cooking facility and sanitation facility. Anything that meets the definition of an SRO is required to be allowed.

Sections 7 through 12 – Codes, Covenants, and Restrictions

Effective Date: July 17, 2025

These sections amend provisions related to codes, covenants, and restrictions governing housing. These provisions are not “housing laws” as defined in Section 1, Senate Bill 1537 (2024 Session) and are omitted from this guidance document for brevity.

Section 13 – Clear and Objective Tree Removal

Effective Date: July 17, 2025

This section amends ORS 197A.400 – the “clear and objective” statute – to require local governments to apply clear and objective standards, conditions, and procedures to “tree removal codes related to the development of housing”.

Frequently Asked Questions

Q: How should local governments comply with this requirement?

A: Where a new statutory requirement is adopted by the Legislature, ORS 197.646 governs how a local government is required to conform. This includes a requirement to adopt conforming amendments to comply with the new requirements, which would mean adopting clear and objective tree removal codes. Until conforming amendments are adopted, the local government is required to apply the statute directly to local land use decisions, which means the city would not be able to apply discretionary tree removal standards, conditions, or procedures to the development of housing.

Section 14 – Middle Housing Land Division (MHLD)

Effective Date: July 17, 2025

Amends ORS 92.031 – the "middle housing land division" statute – to clarify applicability of middle housing land division requirements, including for new allowances under ORS 197A.420. The effect of these changes expand and streamline procedure requirements to facilitate the division and ownership of middle housing.

Subsection (1)

- Amends "middle housing land division" definition to include bonus units under Section 3

Subsection (2)

- (2)(a) clarifies that requirements for separate utilities does not extend to water and wastewater (*note: local governments are authorized to require separate water/wastewater later in the statute – see subsection (4)*)
- (2)(b) clarifies eligibility for a middle housing land division, which includes a development containing middle housing units allowed under ORS 197A.420 and section 3 that meet the Oregon residential specialty code and land use regulations applicable to the original lot or parcel
- (2)(d)(B) allows existing units under ORS 197A.420 (4) to be on a lot or parcel with more than one unit. This allows separating the existing units off from the new middle housing units as provided in subsection (4).

Subsection (4)

- (4)(a) requires application of the expedited land division process under ORS 197.365 if requested by the applicant, without consideration of the qualifying criteria in ORS 197.360 (1).
- (4)(e) allows a middle housing land division before, after, or concurrently with the submission of a building permit.
- (4)(g) allows cities or counties to require separated water and wastewater utilities. This optionally allows shared configurations, which was previously disallowed.
- (4)(h) requires cities or counties to allow an applicant to separate existing units under ORS 197A.420 (4) onto a separate lot as a "single" middle housing unit as part of the division. This allows additions of middle housing to be split from existing dwellings without a separate partition or subdivision.

Subsection (6)

- Amends an existing provision to allow cities to prohibit or add approval criteria to the allowance of new accessory dwelling units or subsequent middle housing land divisions, consistent with state law and local minimum density requirements.

Subsection (7)

- Modifies the provision enabling a middle housing land division of a lot created via a partition, notwithstanding prohibitions on series partitions.

Frequently Asked Questions

Q: What does "upon request of the applicant" mean? Can local governments offer an alternative process for MHLDs as long as they maintain the option for the expedited process upon applicant's request?

A: Local governments can apply their adopted/acknowledged code, however the new MHLD requirements must be applied at the applicant's request. Nothing in statute disallows a local government from offering an alternative process for a land division, provided the option for the MHLD is available for an applicant.

Q: Are the changes to middle housing land divisions in effect now and should we prioritize code amendments?

A: The changes in Sections 14 – 21 are effective upon the bill's effective date of July 17, 2025. Local governments may apply statute directly per ORS 197.646. HAPO is currently preparing a model code module to conform with new middle housing land divisions. Additionally, the office is preparing accompanying administrative rules that allow local governments to apply model ordinances to avoid violating a housing law. Local governments will have the ability to adopt or apply this model code module to comply with the new requirement, and to reduce legal ambiguity as local governments work on conforming amendments. While HAPO recommends waiting until the model code is available, it is the local government's choice if they choose to prioritize code amendments.

Q: One part of ORS 92.031 says utilities other than water and wastewater have to be separate for each unit, while another part says the local government may require these to be separate for each unit. What is the bill's policy toward water and wastewater services?

A: Previously, the MHLD statute had an overarching requirement that all utilities be separate for each unit. The amendments allow water and wastewater to be combined but retains the option for the local government to require that they be separate if the applicable public works standards don't allow shared services. Water and wastewater services can be costly to construct separately for each unit, and the amendments were intended to remove a state-level regulatory barrier to combining them. Permission to combine utilities for multiple middle housing lots or parcels still lies with the local government (in coordination with the utility service provider if that is a separate entity).

Q: The MHLD amendments were effective in July 2025 and allow a MHLD application to include bonus units from HB 2138 Section 3 and retained existing dwellings from HB

2138 Section 1. However, those sections of HB 2138 aren't in effect until January 1, 2027 (January 1, 2028 for cottage clusters). Do we need to allow bonus units and retained existing dwelling on MHLD sites now?

A: No, the operative date for middle housing bonus units and existing dwellings on middle housing development sites remain subject to HB 2138 Section 4. The text in the MHLD amendments say these can be included in a MHLD application "as allowed by" or "as allowed under" those other statutes, and therefore retained existing units and bonus units aren't required to be allowed under those statutes until their implementation deadlines.

Please note that if a jurisdiction's land use regulations currently allow existing units to be retained on a middle housing site, it will now need to allow retained existing dwellings to be placed on their own MHLD lot or parcel, pursuant to these amendments.

Q: We've had an applicant receive approval for a middle housing land division. The applicant later decided they want to phase the MHLD to plat and build the first set of units and then plat and build the second set of units after the first phase has sold. Does the local government have to allow this?

A: There isn't anything in state housing law that speaks to the phasing of a MHLD. An applicant may propose, and the city can approve, a phased MHLD, with a caveat that ORS 92.031 (8) renders a tentative approval of a MHLD void if the final plat is not approved within three years. Since that expiration timeline is in statute, the city would not be able to apply a more lenient recordation timeline. Nothing in statute otherwise prevents a city from establishing a process and criteria by which a MHLD may be phased.

Sequencing or phasing MHLDs and standard land divisions may be affected by a new provision in HB 2138, Section 15. ORS 92.044(1)(c)(C) now requires a city or county to allow a concurrent process for standard land divisions and MHLDs. As concurrent applications move forward, applicants will need to be explicit about their proposed phasing and local governments will need to carefully craft the conditions of approval and timing for phased plats.

Q: The statute says the middle housing land division is a proposal for a single middle housing development. We have an applicant that proposed a development of numerous plexes and cottage clusters on a multiacre site. What is required of the local government for processing this application?

A: The MHLD statute allows middle housing units on a single middle housing development site to be on their own lot. The recent changes to statute clarify that a plat for a MHLD is limited to an individual middle housing development (e.g. a single duplex, a single triplex, etc.).

A MHLD is not the process for dividing a larger development site that would contain multiple middle housing developments. For that scenario, the correct approach is a standard land division plat (subdivision or partition) to divide the site into lots or parcels that are eligible for middle housing development, and the MHLD then further divides those lots or parcels to put each middle housing unit on its own lot. The statute also now requires local governments to provide:

"A method by which the city or county may approve a plan or plat that includes further division of one or more of the resulting lots or parcels via concurrently submitted applications for middle

housing land divisions under ORS 92.031, all to be approved within the timelines provided under ORS 215.427 or 227.178."

This means the local process must allow applicants to concurrently divide the land and divide the parent parcel further via one or more MHLDs within the typical timeline for land use applications. Most often, this timeline is 120 days.

Q: The review procedures for a MHLD now say to use the expedited land division process if requested by the applicant. What does an applicant need to do to request this? Why is this now an option rather than a default requirement?

A: The applicant will need to indicate this preference in their application materials, either in the narrative or on the local government's application form. Applicants should be advised about this provision and make sure to indicate in their application materials if they request the expedited process. Local government staff should also check for this during application completeness review and verify with the applicant if the materials don't specifically address this point. The local government may consider revising the application form for a middle housing land division to let the applicant indicate this request.

HAPO staff does not have further insight about the purpose of this amendment. There would not seem to be circumstances where the non-expedited process would be advantageous. We expect that most often, applicants will prefer to utilize the expedited land division process.

Q: What does ORS 92.031(6) mean?

A: This section encompasses two unrelated actions that can occur on MHLD lots and says local governments can either prohibit them or allow them with conditions.

For ADUs - the version of ORS 92.031(6) prior to HB 2138 simply a city or county is not required to allow an accessory dwelling unit on a lot or parcel resulting from a middle housing land division. That basic rule remains the same under the amendments. The local government have the option on whether to allow ADUs on MHLD lots or parcels.

For land divisions - the version of ORS 92.031(3) prior to HB 2138 allowed a city or county to prohibit the further division of resulting MHLD lots or parcels. This is an option for the local government to prohibit further division of middle housing land lots and parcels in circumstances in which they may be oddly configured and constrained lots designed around specific structures.

HAPO understands the amendment to address situations where a single middle housing land division may be proposed for a large lot with area that could accommodate more housing units than just the proposed middle housing units. If the statute prevented future land divisions of middle housing lots or parcels, this could serve as a long-term preclusion of developable land. The resulting amendments would allow the local government to prohibit further division of typical middle housing lots but provide an exception allowing for further division of a lot or parcel for proposed development that would be at or above the applicable minimum density requirements.

Section 15 – Concurrent MHLD and Subdivision/Partition

Effective Date: July 17, 2025.

Amends ORS 92.044 to require a city or county to allow concurrent middle housing land divisions as part of a subdivision or partition via the 120-day process under ORS 215.427 or 227.178.

Frequently Asked Questions

Q: If a MHLD is processed concurrently with a subdivision, what noticing is required/allowed?

A: HB 2138 amended/removed noticing and appeal provisions that were unique to the expedited land division – however, subdivisions will still be subject to the same procedural requirements set forth in the local government's acknowledged development code.

Q: What is required of a local government to comply with the concurrent review requirement in ORS 92.044(1)(c)(C)? What is mean by "a method"?

A: A local government must allow the concurrent review of a standard subdivision or partition plat and any proposed middle housing land divisions within the boundaries of that plat. This is in contrast to a common practice by many local governments to require a "two-step" process in which the standard land division must be complete before submittal of subsequent middle housing land divisions. Amendments to the development or land division ordinance to specify that this is allowed are encouraged but not required so long as the statute is applied directly. LCDC is anticipated to adopt a MHLD model code module before the end of 2025 that will address this and aid with implementation.

Q: Since there may be multiple MHLDs within a large plat, does the statute require that all the MHLDs be a single application?

A: The statute speaks only to concurrent review, which typically means the review of multiple separate applications in the same review process and timeline. It does not specify that the applications be consolidated.

Q: The bill says the concurrent review needs to be completed with the timelines in ORS 215.427 or ORS 227.178. Both a standard land division and a middle housing land division have timelines described within those sections. What timeline is applicable for the concurrent land division review?

A: HAPO staff understands this amendment to mean that the timeline for the standard plat applies. Generally, this will be the 120-day timeline. If the applicant requests an expedited process for their MHLD, but it is concurrent with review of a standard subdivision, the review timeline for both applications becomes 120-days.

There may be some limited instances where a standard land division concurrent with a MHLD also qualifies as an expedited land division. In this instance, if the applicant requests the expedited process for the MHLD, the review timeline would be 63 days.

Sections 16 and 17 – Local Review Procedures

Effective Date: July 17, 2025.

Amends city and county application review procedures timelines to incorporate the expedited land division process. These changes also clarify other existing procedural requirements and re-organize statutes for clarity.

Note: Most of the separate procedures for expedited land divisions in ORS Chapter 197 are removed. This has the effect of removing most of the distinct procedural specifications for expedited land divisions, except that an expedited land division has a 63-day timeline instead of a 120-day timeline and a few other procedural distinctions described in Section 20.

Section 16, Subsection (1)

- Reorganizes county timelines for final action on an application, which includes:
  - 150 days,
  - 120 days for land within an urban growth boundary or applications for mineral aggregate extraction,
  - 100 days for an application for the development of affordable housing under ORS 197A.470, or
  - 63 days for an expedited land division

Section 17, Subsection (1)

- Reorganizes city timelines for final action on an application, which includes:
  - 120 days,
  - 100 days for an application for the development of affordable housing under ORS 197A.470, or
  - 63 days for an expedited land division

Section 16, Subsection (11) and Section 17 (12)

- Establishes a definition for “application” which encompasses:
  - A permit,
  - A limited land use decision,
  - A zone change,
  - A consolidated zone change and permit,
  - An expedited land division, or
  - A plat containing both a land division and middle housing land division (see Section 15)

Frequently Asked Questions

Q: What is the purpose of moving the application review timelines into ORS 215.427/227.178?

A: Moving the timelines into those sections has the effect of standardizing common procedures like completeness reviews, the goalpost rule, and timeline waivers for all these application types.

Q: Applicants can elect for the expedited process for a MHLD, or if not elected, follow a limited land use decision process. What is the process to extend a MHLD? Is it the same?

A: The process for extending a MHLD is now the same as an extension request for other land use decisions. MHLDs are now covered by ORS 215.427 / ORS 227.178, as are limited land use decisions. These statutes allow the applicant to extend the land use decision timeline that applies to the specific application type.

Sections 18 through 21 – Expedited Land Division

Effective Date: July 17, 2025.

Recodifies and amends "expedited land division" statutes – ORS 197.360 and 197.365 – to ORS Chapter 197A. The amendments remove most of the separate procedural requirements for expedited land divisions and limit certain procedural requirements to reduce opportunities for opposition or appeal of such divisions.

Section 19, Subsection (1) & (2)

- Replaces the "expedited land division" definition with a requirement to approve an application as an expedited land division if the application meets specific criteria
- Removes ORS 197.390 (1)(b) which stated expedited land divisions includes divisions of land that create three or fewer parcels
- Removes ORS 197.390 (2) which stated that expedited land divisions are not a land use decision, a limited land use decision, or permit under ORS Chapter 215 and 227.

Section 20, Subsection (1) to (3)

- Clarifies that the process is not subject to the requirements of ORS 197.797 for quasi-judicial land use hearings
- Establishes procedural requirements for expedited land divisions, under which local governments:
    - (2)(a) shall approve or deny an application with 63 days of completeness based on meeting the applicable land use regulations; approvals may include conditions of approval based on applicable regulations
    - (2)(b) may not hold a hearing or allow any third party to intervene or oppose the application
    - (2)(c) shall issue a written determination of compliance with applicable land use regulations, including an explanation of appeal rights for the applicant
    - (2)(d) provide notice of decision be provided to the applicant but may not require notice for any other person
    - (2)(e) may assess an application fee reflecting the cost associated with review
- Limits appeal of an expedited land division to the applicant

Section 21

- Repeals several statutes. Combined, this has the effect of consolidating most procedures associated with expedited land divisions, including appeals and legal remedies, with typical land use applications. Repealed statutes include:
    - ORS 92.377 – A required notice to applicants that submit an expedited land division application.
    - ORS 197.370 – The legal remedy for failure to act timely on an expedited land division.
    - ORS 197.375 – A separate appeal procedure for middle housing land divisions.
    - ORS 197.380 – Authorization to establish application fees for expedited land divisions. This authorization is incorporated into ORS 197.365 – see section 20.
    - ORS 197.726 – Specific parameters relating to the appeal of industrial land use permits. This is not a housing law and is omitted from this guidance
    - ORS 197.727 – Authorization to establish application fees for industrial land use permits. This is not a housing law and is omitted from this guidance.

Frequently Asked Questions

Q: What are the implications of the new language in Section 20 which state a city cannot hold a hearing or "allow any third party to intervene to oppose the application"? Can we accept public comments in opposition to a current application?

A: As amended, ORS 197.365(2)(b) prohibits holding a hearing on the application or allowing any third party to intervene to oppose the application. Subsection (3) also prohibits anyone other than the applicant from appealing the decision. Together, these suggest that public notice of an application would be perfunctory since those receiving the notice couldn't comment to oppose the application or appeal. However, the amended ORS 197.365 doesn't appear to prohibit providing notice of an application or even prohibit accepting comments so long as it doesn't constitute intervening in opposition.

Q: Do the changes in Section 20 to ORS 197.365, which provide only the applicant may appeal, apply retroactively to applications submitted under previous rules?

A: We recommend consulting legal counsel on this question. The changes in Section 20 took immediate effect upon the bill's signature. Under the "goal post" rule we would expect approval or denial to be based on standards and criteria that were applicable at the time of application submittal, however it is not clear if changes to procedures are included in this.

Q: What are the appeal rights for the applicant under the amended expedited land division statutes?

A: Previously, the expedited land division (ELD) statute required a specific appeals process in which a local government was required to appoint a "referee" for appeals. Additionally, ELDs were not a land use decision, and the statute clarified that further appeal went to the Court of Appeals.

The revised process removed those requirements and replaced it with the following appeal-related provisions:

- The local government is not permitted to hold a hearing or allow a third party to intervene in opposition to the application.
- Once a decision is issued, only the applicant receives the notice of decision.
- The notice must explain the applicant's right to appeal the decision.
- Only the applicant may appeal the decision.
- There is no longer a local appeals process for ELDs; appeals are now subject to LUBA's jurisdiction.

Q: What is meant by not allowing a 3rd party to intervene to oppose the application?

A: This appears to be a unique phrase in the land use law statutes applicable to local government review procedures. HAPO staff understands this to mean that a local government can't accept any comments on the record in opposition to the application or file an appeal at the local level.

It does not prohibit a party from sending communication in opposition to the application to the local government. However, the statute doesn't allow the local government to enter that into the record or allow it to factor into the decision.

The provision about not allowing a 3rd party to intervene would appear to be only in the context of land use review by the local government. A local government would not be obligated to prevent legal action against a party arising from an expedited land division project, assuming the action is outside the scope of land use review.

Q: What does it mean that the local government may not require the Notice of Decision (NOD) be given to any other person? Does this prevent the public from seeing the NOD?

A: HAPO understands the intent of this statute as ensuring that local land use regulations only require NOD to the applicant. This is likely similar to the procedural requirements for a Type I review in many jurisdictions. As the only party that can appeal the decision, it is logical that the applicant be the only party entitled to the NOD.

A local government complies with this statute if the development code requires the NOD be provided only to the applicant. A local government is not precluded from providing the NOD to other persons, but it cannot be required. Examples may include providing the NOD upon request from the public or through a public records request or providing the NOD to the applicant's representative and property owner where these parties are different from the applicant.

Q: We have utilities and service districts that need to review and comment on land divisions? If the land division is subject to expedited review, is the local government prohibited from providing these notices or referrals, even if they are required by other laws and intergovernmental agreements?

A: No. Prior to the HB 2138 amendments, the expedited process required notice similar to an administrative Type II procedure. That is no longer required but is also not expressly prohibited by the amendments. HAPO staff recommends notices or referrals be focused on parties that will serve the site along with any other notices required by law. Notification of surrounding property owners and neighborhood associations is not prohibited. However, there would seem to be little purpose to notifying when comments in opposition cannot be received and there is no appeal option available.

Q: Our review procedures require a hearing for a subdivision. When there is an application with a concurrent subdivision and MHLDs, and the applicant requests expedited review for the MHLD, how do we process this when procedures for notice and hearing differs from the MHLD under expedited review?

A: HAPO staff recommends that the standard land division and MHLDs be processed separately but on concurrent timelines, all to be completed within 120 days for typical land divisions. The notice and hearing requirements for the standard subdivision would most likely be in violation of several parts of the expedited land division processing requirements where applied to a MHLD.

Section 22 – LCDC Rulemaking

Effective Date: July 17, 2025.

This section directs the Land Conservation and Development Commission (LCDC) to conduct rulemaking to implement provisions of the bill and address specific legislative direction. This work will be lead by the Housing Division and is omitted from this guidance document. Future updates and information about this rulemaking will be provided by the Housing Division.

House Bill 2005

Section 59 to 63, Residential Treatment Homes and Facilities Siting

Effective Date: July 24, 2025

Note: Most provisions in House Bill 2005 (2025 Session) are not housing laws, except for sections amending ORS Chapter 197A and 197.660 to 670, which are housing laws as they relate to residential development and impose a mandatory duty on a local government. Accordingly, this guidance document omits most sections of the bill.

This bill primarily relates to behavioral health. Sections 59 to 63 amend statutes relating to residential homes and facilities, establishing new super-siting requirements to allow for "residential treatment facilities", "residential treatment homes", "crisis stabilization centers", and "mental or psychiatric hospitals" meeting specified statutory parameters on certain lands within an urban growth boundary.

Provisions include:

Section 59

- Requires local governments to allow a "residential treatment facility" or "residential treatment homes" without requiring a plan amendment, zone change, or conditional use permit on land within an urban growth boundary on land that is
  - Owned by a public body, or
  - Zoned for: residential, commercial, or employment uses, public land (except parklands), or industrial uses (that is publicly owned by a public benefit corporation, within 250 ft of residential lands, and not specifically designated for "heavy industrial")
- This requirement does not apply on land where the local government determines that:
  - The facility cannot or will not be adequately served by water, sewer, storm water drainage or streets;
  - The development is constrained by goal protections relating to natural disasters and hazards, or natural resources (not including open spaces or historic resources).
- This section does not trigger a requirement for a local government to consider updates to Goal 9 – Economic Development.
- A decision under this section is not a land use decision and may only be appealed by writ of review under ORS 34.010 to 34.100.
- A local government is required to issue a decision within 120 days after a completed application is filed with the local government.

Section 60

Note: This provision is not a "housing law", because the uses specified herein are not residential. It is included here for informational purposes only and should not be construed as guidance.

- Requires local governments to allow the co-location of a “crisis stabilization center” and “mental or psychiatric hospital” without requiring a plan amendment, zone change, or conditional use permit on land within an urban growth boundary.
    - For a crisis stabilization center, the property must be owned by a public body and adjacent to an existing or pending mental or psychiatric hospital
    - For a mental or psychiatric hospital, the property must be zoned for commercial, employment, public lands, or industrial uses and adjacent to an existing or pending crisis stabilization center
- This requirement does not apply on land where the local government determines that the facility cannot or will not be adequately served by water, sewer, storm water drainage or streets.
    - *Note: This provision does not have the same limitation on goal protected lands like Section 59*
- This section does not trigger a requirement for a local government to consider updates to Goal 9 – Economic Development.
- A decision under this section is not a land use decision and may only be appealed by writ of review under ORS 34.010 to 34.100.
- A local government is required to issue a decision within 30 days after a completed application is filed with the local government.

Section 61 and 61a

- Repeals ORS 197.670, which establishes certain limitations on denial of residential homes and facilities in certain contexts and requires amendment of local ordinances to comply during periodic review.
  Note: This does not substantively affect the requirements for local governments to allow residential homes and facilities in ORS 197.660 to 667.

Section 62 and 63

- Removes “residential treatment facility” from the definition of “residential facility” in ORS 197.660.
  Note: “Residential treatment home” remains part of the definition of “residential home”
- Clarifies that requirements to allow residential homes under ORS 197.665 are in addition to the super-siting requirement in Section 59.

Frequently Asked Questions

Q: Why is HAPO issuing guidance on this bill?

A: ORS Chapter 197A and ORS 197.660 to 670, and associated administrative rules, are defined in Senate Bill 1537 (2024 Session) as housing laws where the law imposes a mandatory duty on local governments relating to residential development, permitting, or land division. Because the bill amended and affect housing laws, the office is including this bill for awareness by local governments.

Q: What is a "residential treatment facility" and "residential treatment home"

A: A "residential treatment facility" is defined in ORS 443.400 as "a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties."

A "residential treatment home" is similarly defined in ORS 443.400 as "a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties"

A key difference between the two is the number of individuals provided residential care and treatment. Five or fewer individuals comprises a home, whereas six or more individuals is a facility.

Q: What is a "crisis stabilization center" and "mental or psychiatric hospital"

A: A "crisis stabilization center" is defined in ORS 430.626 as "a facility licensed by the Oregon Health Authority that meets the requirements adopted by the authority by rule under ORS 430.627"

"Mental or psychiatric hospital" is not defined, but the bill indicates that the use must be licensed under ORS 441.025.

For both uses, statute does not specify that either use is residential or provides residential care or treatment. Therefore, Section 60 is not a "housing law" as defined in statute. It is included simply for informational purposes and should not be construed as guidance.

Q: What is the substantive effect of this requirement on local land use regulations relating to residential homes and facilities?

A: Under state law, local governments are required to allow residential homes and facilities in certain zones with restrictions on the types of zoning requirements local governments impose on such uses. Generally speaking, these requirements are intended to allow these uses on a comparable basis to detached single-unit dwellings for residential homes and multi-unit dwellings for residential facilities.

This change requires cities to allow a subset of these uses – "residential treatment facilities" and "homes" on a much broader subset of lands without a plan amendment, zone change, or conditional use permit. This requirement is broad and applies to most land within an urban growth boundary, with a few specified limitations on the applicability of the requirement.

The bill otherwise leaves the existing requirement to allow other types of residential homes and facilities substantively intact, meaning local governments are still required to allow these uses as provided in ORS 197.660 to .667.

Q: Are local governments allowed to deny applications for residential treatment facilities or homes that meet the requirements of Section 59?

A: The bill requires a local government to allow residential treatment facilities and homes that meet the statutory requirements of the bill. The bill does not clarify a local government's authorization to approve or deny applications made under this section. Rather, the statute specifies lands that the requirement does not apply, such as:

- Public lands that are park lands
- Lands zoned for industrial use that do not meet specific locational, ownership, and allowed use parameters
- Lands that cannot or will not be adequately served by water, sewer, storm water drainage or streets, and
- Lands that are constrained by land use regulations applied under state wide land use planning goals relating to natural hazards and natural resources (excluding open space and historic resources).

Q: Are local governments permitted to apply land use regulations, such as siting requirements, for applications made under Section 59?

A: It is not clear. The bill does not include direct language either authorizing or prohibiting the application of local land use regulations to development. It is not clear whether a local government would be authorized to apply locally adopted and acknowledged land use regulations as the basis for approval or denial for an application made under Section 59. We recommend consulting legal counsel for further guidance.

Q: How should a local government comply with this new requirement?

A: ORS 197.646 governs compliance with new statutory requirements. In this case, local governments are required to amend land use regulations to comply with the new requirement. In the interim, where an application is made under Section 59, the local government must apply the statute directly.

This is similar to other statutory super-siting provisions in law, such as those relating to the siting of affordable housing (ORS 197A.445; 197A.460) or shelters (ORS 197.748). Many local governments have not codified amendments implementing these sections of law. If an application was made under these sections, the local government would be required to apply statute directly.

Note that HAPO has general direction to develop and provide appropriate model codes to support local governments in complying with housing laws. Currently, the office is preparing an initial model code based on direction under Senate Bill 1564 (2024 Session). The office plans to build on this in the future by developing model code “modules” to aid local government compliance with housing laws where local land use regulations are nonconforming. If a module is adopted in the future, local governments will have the ability to apply these modules directly to comply with a housing law.

Q: Does the typical 120-day clock apply to residential treatment homes and facilities under Section 59?

A: It is not clear. The reference in the bill notes the requirement to issue a decision within 120 days after a completed application is filed with the local government. This may suggest a similar completeness review as provided in ORS Chapters 215 or 227. However, that is not clarified in the statute, and we recommend consulting legal counsel for further guidance.