



CITY OF BEND

BDC Update to Facilitate Housing Development

Pauline Hardie, Senior Planner, Community and Economic Development Department

Russell Grayson, Chief Operations Officer

Brooke Olsen, Associate City Attorney

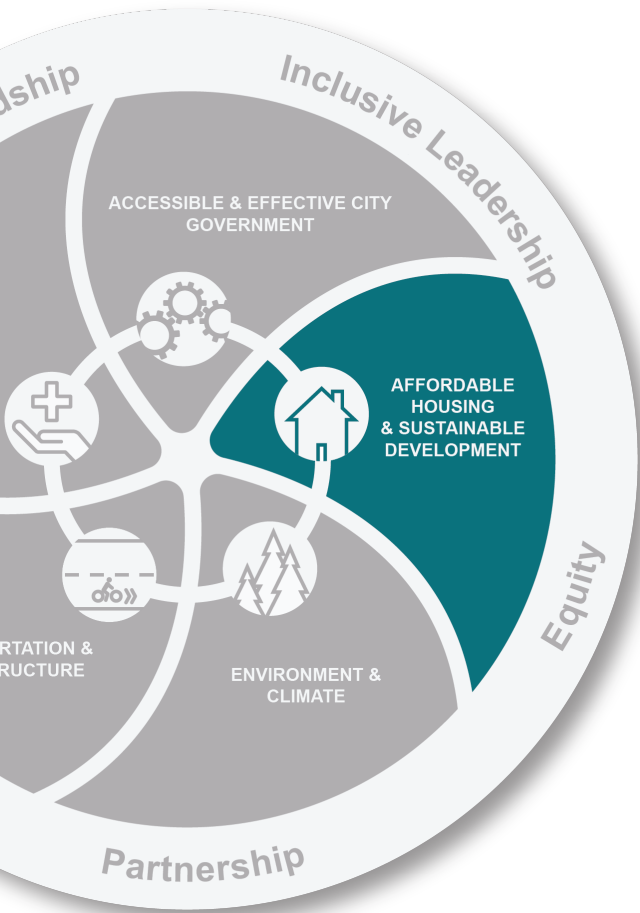
November 20, 2024

Summary of Recommended Amendments

- **Implement certain Oregon state laws and legislation which were created to facilitate housing development.**
 - New section BDC 3.6.250, Income Qualified Housing, is proposed to consolidate the existing and new affordable housing development options in one location.
- **Change some local standards identified by staff, stakeholders and Council**
 - Eliminate requirement to apply for building permits in advance of, or concurrently with, a Middle Housing Land Division application.
 - Remove the local option to request that City Council hear appeals on certain quasi-judicial development applications and the option for Council to call up and review a decision of the Hearings Officer or Planning Commission.
 - Support development of townhomes, cottage developments and shared courts.
 - Include additional revisions to other sections of BDC for consistency and clarity.



2023-2025 City Council Affordable Housing Goal



- **Goal:** Affordable Housing and Sustainability Development
- **Strategy:** Optimize housing continuum
- **Action:** Explore revenue and code/policy options to increase affordable and middle-income housing

High-Level Overview Points

Why are we recommending changes to implement the Bills?

- When the state makes changes to the law, we put the changes in our code to make understanding and using the laws easier for the community and City planners
- Cities have to comply with the state law requirements
- These laws are already in effect, or will be soon, because they have been passed by the State legislature - regardless of whether Council chooses to adopt into our code
- Putting requirements in the Bend Development Code provides transparency and understanding for everyone (neighbors, developers, City staff, other community members)

What does SB 8 mean for public lands?

- Cities must allow **affordable housing development** on land that meets one of several ownership or zoning criteria
 - Ownership criteria include **land owned by a public body**
 - Zoning criteria include **land zoned as public lands** – also known as Public Facilities (PF) zone
 - Land owned by BPRD or Bend LaPine School District is already eligible for affordable housing development regardless of zoning because it meets "ownership" criterion
- **How much land is PF zoned in Bend?**
 - 1,350.8 acres in Bend are PF-zoned
 - Approximately 35 acres within that sum acreage are privately owned
 - Remaining acreage is owned by public bodies or non-profits



What is “Income Qualified Housing?”

- Avoid confusion with other existing definitions of Affordable Housing in BDC and Oregon law
 - **Income qualified housing** means dwelling units reserved for households within certain income limits.
- Term is used in BDC 3.6.250, Income Qualified Housing
 - Residential Use of Commercial Lands for Income Qualified Housing
 - Income Qualified Housing Allowed Outright
 - Affordable Housing Strategies
- Each section defines the affordability requirements to match governing bills (HB 3395, SB 8, HB 3151)



What changes are proposed to local appeals?

Three ways developments are approved:

1. Staff initial decision – appeal goes to Hearings Officer (HO) – no further appeal to Council. Council may review on their own motion. This has never occurred. **Council option proposed for removal.**
2. HO or Planning Commission (PC) initial decision – Council has discretion to hear the appeal upon request. Must have citywide implications & LUBA not an appropriate venue. One occurrence (OSU cascades). Sets unrealistic expectations for appellants that Council will change a site-specific decision. Subject to 120-day rule so no time for two public hearings. **Council step proposed for removal.**
3. Large policy decisions where PC or HO makes recommendation to Council for final approval, and Council must approve – e.g. Master Plan or Comprehensive Plan Map amendment, including zoning change. **No proposed change.**

In all three cases, final decision is appealable to Land Use Board of Appeals.



Oregon State Laws and Legislation Implemented in the Recommended Amendments

Bills Expanding Housing Opportunities in Various Zones

Senate Bill 8 & House Bill 3151 (ORS 197A.445) - In Effect

- Require local governments to allow affordable housing meeting a specific definition and criteria on a wide range of sites.
 - Must meet **definition of "affordable housing"** in the bills
 - Must meet **ownership or zoning criteria**
- Provides height and density bonuses in areas zoned for residential uses.
- Amendments create **BDC 3.6.250(B), Income Qualified Housing Allowed Outright**, to implement the requirements of SB 8 and HB 3151.



Ownership or Zoning Criteria in SB 8 and HB 3151

ORS 197A.445 - (2) A local government shall allow affordable housing if the proposed affordable housing is on property that is:

(a) **Owned by:**

- (A) A public body, as defined in ORS 174.109;
- (B) A nonprofit corporation that is organized as a religious corporation;
- (C) A nonprofit corporation that is organized as a public benefit corporation whose primary purpose is the development of affordable housing;
- (D) A housing authority, as defined in ORS 456.005; **or**
- (E) A manufactured dwelling park nonprofit cooperative, as defined in ORS 62.803; **or**

(b) **Zoned:**

- (A) For commercial uses;
- (B) To allow religious assembly; **or**
- (C) As public lands.



HB 3395 (ORS 197A.460) - Effective June 30, 2023

- Allows affordable housing on lands zoned for commercial uses.
- Requires approval standards, conditions and procedures applicable to the residential zone that is comparable in density to the allowed commercial uses.
 - Amendments recommend the Mixed-Use Neighborhood (MN) District due to the District's density, height, and setback requirements.
- Does not apply to vacant land or land that was added to the Urban Growth Boundary within the 15 years preceding submittal.
- Amendments create **BDC 3.6.250(A), Residential Use of Commercial Lands for Income Qualified Housing.**



Converting Commercial Buildings into Housing Units

House Bill 2984 – Effective January 1, 2024

- Requires local governments to allow conversion of a building or a portion of a building from a commercial use to a residential use without requiring a zone change or conditional use permit.
- Does not apply to land zoned for industrial uses.
- Amendments create **BDC 3.6.200(C), Conversion from Commercial to Residential Uses.**



Streamlining the Development Process

Senate Bill 1537

Housing Land Use Adjustments – Effective 01/01/2025, Sunsets 01/02/2032

- Requires local governments to grant up to 10 distinct adjustments when an application to develop housing meets certain criteria
 - **Adjustment** means a deviation from an existing land use regulation.
 - **Distinct adjustment** means an adjustment to one of the development or design standards where each discrete adjustment to a listed standard that includes multiple component standards is only counted as an individual adjustment.
- Adjustments to accessibility, fire or building codes, tree codes, etc. are not allowed.
- Decision on adjustment application is a limited land use decision; only the applicant can appeal.
- Required to send notice of a denial only to the applicant.



Senate Bill 1537

Opting in to Amended Housing Regulations - Effective June 7, 2024

- Amends the goal-post rule to enable an applicant for the development of housing to “opt in” to new standards adopted after the application was submitted.
- Does not allow an applicant to choose and blend old and new standards
- Does not apply after final decision issued on application

Limited Land Use Decisions - Effective January 1, 2025

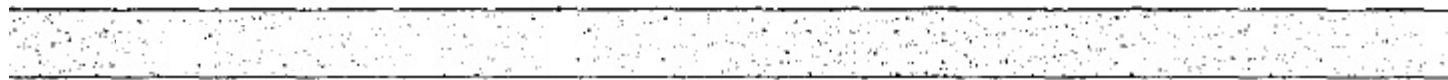
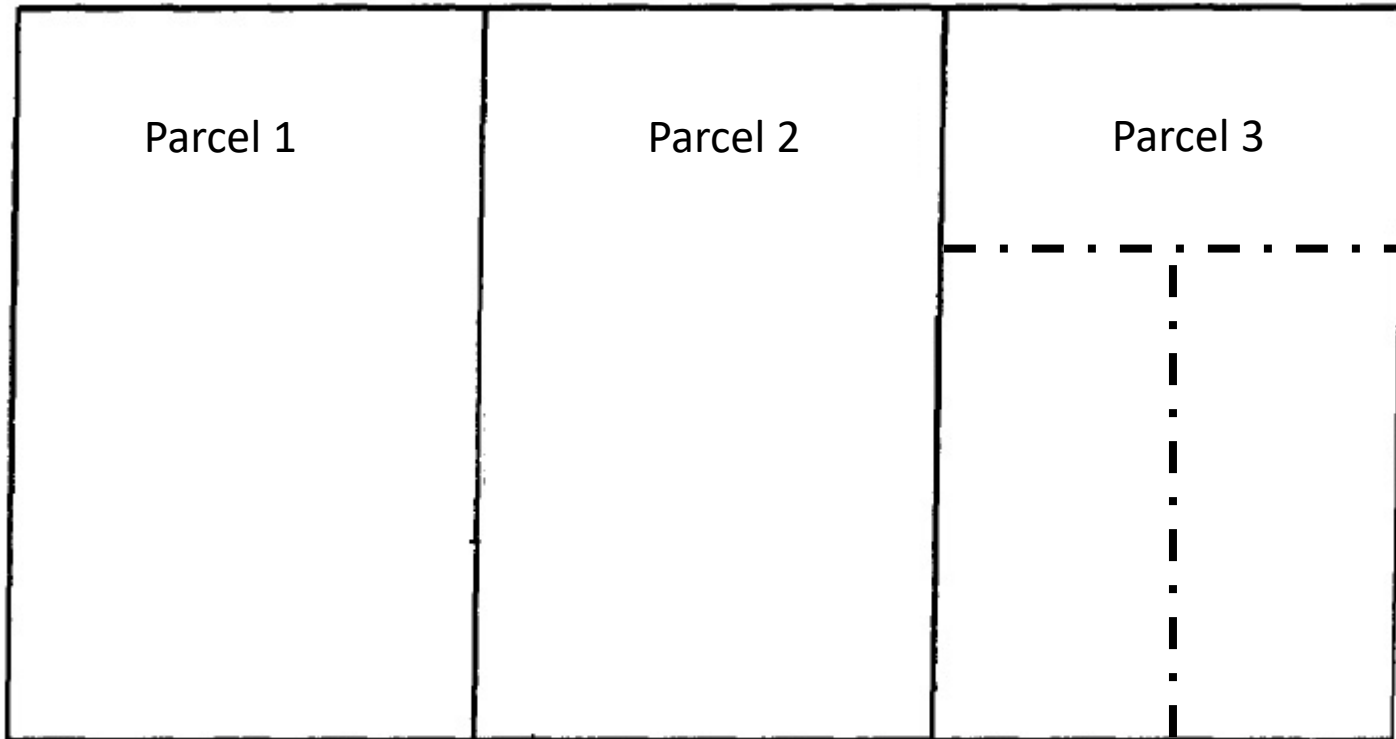
- Makes two changes to the limited land use statute:
 - Adds 3 types of applications to the definition of a limited land use decision: replats, property line adjustments, and extensions, alterations, or expansions of a nonconforming use.
 - A city may apply a ministerial process (Type I) when no is discretion required.



Other Legislation

House Bill 4063 – Effective June 6, 2024

- Allows a city to approve a partition and middle housing land division for a property in the same calendar year.



House Bill 4064 – Effective March 23, 2022

- Prohibits cities from subjecting manufactured homes and prefabricated structures to standards that do not apply to site-built single-unit dwellings, except:
 - Protections related to statewide land use planning goals; and
 - Regulations related to thermal envelope performance standards.
- Amendments update definitions and requirements for manufactured dwelling parks and prefabricated structures and delete placement and skirting requirements for manufactured dwellings.



Recommended BDC Amendments

BDC Chapter 1.2, Definitions

- Amends definitions for manufactured dwelling parks (HB 4064 and ORS 446.003) and place of worship (ORS 227.500)
- Adds a new definition for prefabricated structure
- Adds a new definition for "Income Qualified Housing" (Staff recommendation developed after 10/28/24 Planning Commission Public Hearing)
 - Income qualified housing means dwelling units reserved for households within certain income limits. See BDC 3.6.250, Income Qualified Housing.



Zoning District Amendments

Chapter 2.1, Residential Districts.

- Adds Income Qualified Housing to use table.
- Increases maximum lot coverage for townhomes to 60% in the RS Zone.

Chapter 2.2, Commercial Zoning Districts.

- Adds Income Qualified Housing to use table.
- Clarifies that an ADU may be permitted with an existing, legally established single-unit dwelling.

Chapter 2.3, Mixed-Use Zoning Districts.

- Adds Income Qualified Housing to use table.
- Clarifies that an ADU may be permitted with an existing, legally established single-unit dwelling.



Zoning District Amendments

Chapter 2.4, Industrial Zoning Districts.

- Adds Income Qualified Housing Allowed Outright to use table.

Chapter 2.6, Public Facilities Zoning District.

- Adds Income Qualified Housing Allowed Outright to use table.
- Adds Cemetery/Mausoleum as permitted use to use table.

Chapter 2.7, Special Planned Districts, Refinement Plans, Area Plans and Master Plans.

- Adds Income Qualified Housing to several master plans' use tables.



BDC Chapter 3.6, Special Standards and Regulations for Certain Uses

- **BDC 3.6.200(E), Manufactured Homes on Individual Lots.** Clarifies prefabricated structures are permitted. Deletes placement and skirting requirements and amends thermal envelop requirement (HB 4064).
- **BDC 3.6.200(G), Manufactured home Parks.** Amends minimum lot area from five acres to one acre (ORS 197.478(5)).
- **BDC 3.6.200(I), Residential Uses within Commercial Districts.** Adds an exception to allow ground-floor entrance lobbies and other common areas such as hallways or stairways that lead to the residential units above or behind the commercial or public/institutional uses. **(Added by the Planning Commission on 10/28/24)**



BDC 3.6.200(C), Conversion from Commercial to Residential Uses (HB 2984)

New section to implement HB 2984

- **Applicability.** Permitted in Commercial and Mixed-Use zones
- **Review Process.** Minimum Development Standards Review (Type I)
- **Minimum Density.** Medium Density Residential (RM) Zone apply, except there is no minimum density for “vertical” mixed-use.
- **Maximum Density.** None.



BDC 3.6.250, Income Qualified Housing


New section to include all new required and existing affordable housing development options:

- Section A: **Residential Use of Commercial Lands for Income Qualified Housing** – HB 3395 and ORS 197A.460
- Section B: **Income Qualified Housing Allowed Outright** – SB 8, HB 2984 and HB 3151, and ORS 197A.445
- Section C: **Affordable Housing Strategies** – This existing section was relocated. No major revisions are proposed.



BDC 3.6.250(A): Residential Use of Commercial Lands for Income Qualified Housing

- **Applicability:** Permitted if the proposed development will produce:
 - Residential structures with each unit affordable to a household with income less than or equal to 60 % AMI; or
 - Mixed use structures making the properties affordable to moderate income households with income between 80 and 120% AMI.
- **Permitted Zoning Districts:** Commercial and Mixed-Use Districts.
- **Minimum Density.** Medium Density Residential (RM) Zone apply, except there is no minimum density standard for a “vertical” mixed use building or development.
- **Maximum Density.** None.
- **Development Standards.** Mixed-Use Neighborhood (MN) District.



HB 3395
affordability
criteria

BDC 3.6.250(B): Income Qualified Housing Allowed Outright

Income Qualified Housing means property whose affordability is enforceable for a period of no less than 30 years, and:

- Each unit is available to own or rent to households with incomes of 80% or less of the AMI; or
- The average of all units is available to households with incomes of 60% or less of the AMI; or
- The property is a manufactured dwelling park that serves only households with incomes of 120% or less of the AMI.



BDC 3.6.250 Section B: Income Qualified Housing Allowed Outright

Income qualified housing is permitted if the proposed development is:

Owned by a:

- Public body
- Nonprofit corporation organized as a religious corporation
- Nonprofit corporation organized as a public benefit corporation whose primary purpose is the development of affordable housing
- Housing authority, or
- Manufactured dwelling park nonprofit cooperative.

Zoned:

- Residential Districts
- Commercial Districts
- Mixed-Use Districts
- Public Facilities (PF) Zone.

Located in the Light Industrial (IL) District and the property is:

- Publicly owned
- Adjacent to lands zoned to allow residential uses or schools.



BDC 3.6.250(B): Income Qualified Housing Allowed Outright

Density and Height Bonus. At the greater of:

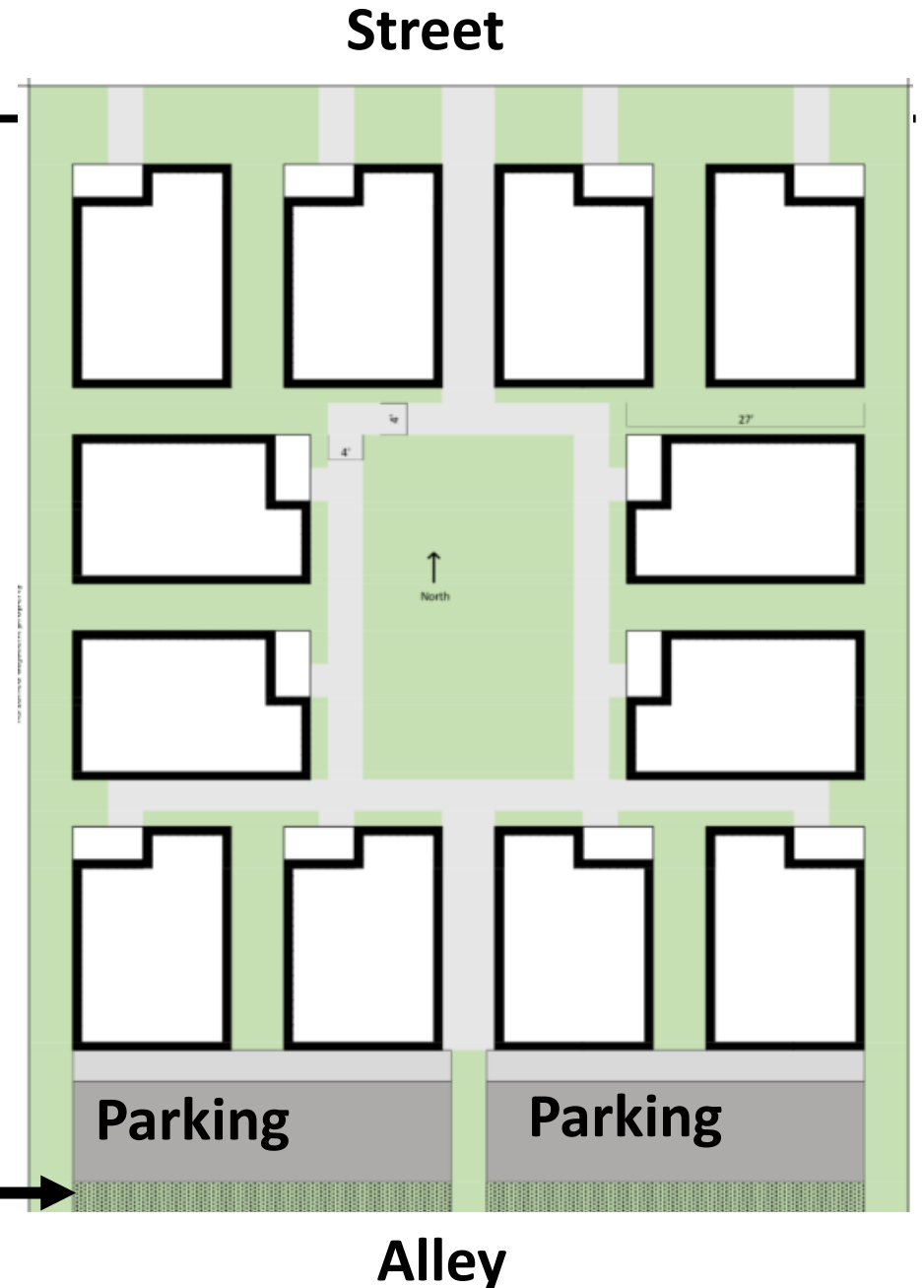
- The density bonus for affordable housing in compliance with BDC 3.6.250(C), Affordable Housing Strategies; or
- The following bonuses:
 - RL, RS or RM-10: 200% of the existing max density and an additional 12’.
 - RM: 150% of the existing max density and an additional 24’.
 - RH, or Commercial or Mixed-Use Districts: 125% of the existing max density and an additional 36’.
- May be reduced to address a health, safety, or habitability issue, etc.
- **Public Facilities Zoning District Density. The minimum and maximum density standards of the Medium Density Residential (RM) Zone apply.**



Cottage Developments

BDC 3.8.500, Cottage Housing Development and BDC 3.8.900, Cottage Cluster Developments

- Clarifies that parking can be in the rear perimeter setbacks when accessed from an alley or private driveway.



Shared Courts

- Increases lot coverage to 80%
- Allows interior units to have the front door orient towards a private access drive or common open space area.



CENTRAL LAWN PERSPECTIVE

 **BRIGHTON**

BEND, OREGON | TOWNHOMES
CONCEPTUAL DESIGN



OVERALL AERIAL VIEW

 **BRIGHTON**

BEND, OREGON | TOWNHOMES
CONCEPTUAL DESIGN

BDC Chapter 4.1, Development Review and Procedures

Appeals and Council Review

- Staff approval of permitted uses
 - A local appeal is heard by the hearings officer at a public hearing.
 - Amendments remove Council option to call up a hearings officer decision on their own motion. Council has never exercised this option.
 - Type II decisions will remain appealable to Land Use Board of Appeals (LUBA) as provided by law
- Quasi-judicial public hearings/decisions made by hearings officer or PC
 - Amendments remove option to request Council's discretionary review of decision; Used once in 2014
 - Type III decisions on site-specific projects will remain appealable to LUBA as provided by law

Amendments do not remove Council decision making authority for Master Plan or Comprehensive Plan Map amendments, including zone changes.



BDC Ch. 4.3, Land Divisions and Property Line Adjustments

- Amendments eliminate requirement to apply for building permits in advance of, or concurrently with, a Middle Housing Land Division (MHLD) application.
 - Allows a MHLD application to be submitted when the application is being reviewed with a site plan for proposed **detached** middle housing.
 - Removes the requirement for building permits to be issued for middle housing prior to final plat approval.
- Allows one vacant parcel of a partition to be divided through a MHLD during the same calendar year. (HB 4063)



Additional Recommended Amendments to BDC Ch. 4.3, Land Divisions and Property Line Adjustments

A. Applicability

2. *Middle Housing Land Divisions.*

- a. A middle housing land division applies to duplexes, triplexes, quadplexes, townhomes, or cottage developments.
- b. A middle housing land division application may be submitted when:
 - i. ~~The~~ parent site is developed with middle housing,
 - ii. The parent site has an active building permit to construct middle housing, ~~or~~
 - iii. ~~The application for a land division must be~~ is being reviewed concurrently with a building permit application for construction of middle housing, or
 - iv. The application is being reviewed concurrently with a conceptual site plan showing for proposed detached middle housing in compliance with subsection (C)(2)(d) of this section.



C. Expedited and Middle Housing Preliminary Submittal Requirements

2. *Middle Housing Land Division Submittal Requirements.* An application for a middle housing land division must include the following:

b. ~~Remodels, additions and alterations to e~~Existing buildings and structures require evidence in the form of a written statement provided by a design professional licensed in the State of Oregon and including such professional's stamp/seal and a site plan that demonstrates that all of the buildings and structures on a resulting lot or parcel comply with applicable building code provisions relating to the proposed property lines, and that all of the buildings and structures located on the lots or parcels comply with the Oregon Residential Specialty Code. Any structure built or building permit applied for prior to application for a middle housing land division would be considered existing for the purpose of this section.

i. *Exception.*

(A) If the buildings and structures on a resulting lot or parcel are at least three feet from any proposed property line as measured from nearest vertical wall or building footprint, then the required written statement does not need to be by a design professional licensed in the State of Oregon with the professional's stamp/seal.



C. Expedited and Middle Housing Preliminary Submittal Requirements

- d. Middle housing land division applications being reviewed with a site plan for proposed detached middle housing under subsection (A)(2)(b)(iv) of this section must include the following to identify the buildable area for each resulting lot or parcel:
 - i. Existing and proposed easements;
 - ii. Percent of lot coverage allocated for each child lot or parcels.
 - iii. Setback dimensions for all existing and proposed buildings.
 - iv. Six-foot separation between buildable areas to maintain compliance with BDC 3.6.200(H)(1).



F. Final Plat Requirements for Expedited and Middle Housing Land Divisions.

2. Middle Housing Land Division Final Plat.

~~b. A final plat will not be approved until building permits are issued for each dwelling unit on each lot or parcel.~~

~~c. Final occupancy for the middle housing dwelling units will not be approved until recordation of the final plat.~~

d. If the middle housing land division application is being reviewed with a site plan for proposed detached middle housing, the covenant described in subsection (F)(2)(c) of this section must limit the buildable area for each resulting lot or parcel in compliance with the site plan submitted in subsection (C)(2)(d) of this section.



BDC Ch. 5.3, Adjustments (New Section)

- **Zoning Districts.** Residential, Commercial and Mixed-Use
- **Minimum Density.** Minimum of 10 dwelling units per net residential acre
- **Applicability.** Development is for net new dwelling units, including:
 - Single-unit detached dwellings;
 - Manufactured dwelling parks;
 - Accessory dwelling units (ADUs);
 - Middle Housing;
 - Multi-unit residential; or
 - Mixed-use where at least 75% of the floor area will be used for residential uses.
- **Review Process.** Type I



Adjustment Approval Criteria

May request 10 distinct adjustments provided at least 1 of the following apply:

1. Adjustments will enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations.
2. Adjustments will enable development of housing that reduces the sale or rental prices per unit.
3. Adjustments will increase the number of dwelling units within the application.
4. Adjustments will enable the provision of accessibility or visitability features in dwelling units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations.



Adjustment Approval Criteria (continued)

5. All of the units are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land trusts making them affordable to moderate income households for a period of 90 years.
6. All dwelling units are subject to an affordable housing covenant to be affordable to moderate income (80-120% AMI) households for at least 30 years.
7. At least 20% of units are subject to an affordable housing covenant to be affordable to low-income households ($\leq 80\%$ AMI) for at least 60 years.



Development Adjustment Options

- **Side or rear setbacks: 10%**
- **Common area, open space area or landscape area: 25%**
- **Minimum lot or parcel sizes, lot widths and depths: 10%**
- **Building lot coverage: 10%**
- **Require bicycle parking:**
 - Minimum number of spaces, provided the application includes at least ½ space per unit; or
 - Location of the spaces, provided that lockable, covered spaces are within the development.



Development Adjustment Options (continued)

- **Except for single-unit detached dwellings and ADUs:**
 - **Density maximums** not more than an amount necessary to account for other adjustments.
 - **Ground floor uses of a mixed-use building to allow:**
 - Residential uses except one face of the building that faces the street and is within 20' of the street;
 - Nonresidential active uses that support the residential uses of the building.
- **Building Height Maximums** (except for single-unit detached, ADUs and cottage developments) that:
 - Are in addition to existing applicable height bonuses; and
 - Are not more than an increase of the greater of 1 story or a 20% increase.



Design Adjustment Options

- Facade materials, color or pattern
- Facade articulation
- Roof forms and materials
- Entry and garage door materials
- Window materials
- Total window area, not more than 30 percent, provided the application includes at least 12% of the total facade as window area
- Except for single-unit detached dwellings and ADUs:
 - Building orientation requirements, not including transit street orientation requirements
 - Building height transition requirements, not more than 50 % from the corresponding zone
 - Balcony and porch requirements
 - Recess and offset requirements



Public Outreach & Hearings

Legislative Process

- Planning Commission Work Session: October 14, 2024
- Planning Commission Public Hearing and Recommendation (4-0): October 28, 2024
- **City Council Public Hearing and First Reading: November 20, 2024**
- City Council Second Reading: December 4, 2024
- Effective Date of the BDC Amendments: January 3, 2025



Amended Motion

Amended Motion

I move for the first reading of the Ordinance amending the Bend Development Code (BDC) in compliance with certain Oregon state laws to facilitate housing, including BDC Chapters 1.1, General Administration; 1.2, Definitions; 2.1, Residential Districts; 2.2, Commercial Zoning Districts; 2.3, Mixed-Use Zoning Districts; 2.4, Industrial Zoning Districts; 2.6, Public Facilities Zoning District; 2.7, Special Planned Districts, Refinement Plans, Area Plans and Master Plans; 3.3, Vehicle Parking, Loading and Bicycle Parking; 3.6, Special Standards and Regulations for Certain Uses; 3.8, Development Alternatives; 4.1, Development Review and Procedures; 4.2, Minimum Development Standards Review, Site Plan Review and Design Review; 4.3, Land Divisions and Property Line Adjustments; and creating BDC 3.6.250, Income Qualified Housing and BDC Chapter 5.3, Adjustments, **with proposed amendments to BDC Chapter 1.2, Definitions, adding a definition for Income Qualified Housing, to BDC 3.6.250(B), adding density standards for the Public Facilities District, and to 4.3.700(A)(2)(b), 4.3.700(C), and 4.3.700(F) for Middle Housing Land Divisions, as presented by staff in the PowerPoint and reflected in Attachment D to the Issue Summary.**





To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Pauline Hardie at phardie@bendoregon.gov or 541-693-2153; Relay Users Dial 7-1-1.

