

# House Bill 2565

Sponsored by Representatives MEEK, ZIKA (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows partition to separate dwelling units for new duplexes allowed in cities. Prohibits homeowners associations or restrictive covenants from forbidding partition. Delays applicability of limits on private middle housing restrictions.

## A BILL FOR AN ACT

1  
2 Relating to land division for residential development; creating new provisions; and amending ORS  
3 93.277, 94.775 and 94.776.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 92.010 to 92.192.**

6 **SECTION 2. (1) Cities shall allow a partition of a lot or parcel on which the construction**  
7 **of a duplex was allowed under ORS 197.758 (2)(b) or (3), to divide the property into two par-**  
8 **cels each with a dwelling unit, notwithstanding:**

9 (a) **Land use regulations or comprehensive plan provisions that require a minimum area**  
10 **of a parcel or that require minimum property line setbacks; or**

11 (b) **Standards or procedures established by the city under ORS 92.044 or 92.046.**

12 (2) **Partitions of land under this section apply only to duplexes that:**

13 (a) **Were permitted on or after the effective date of this 2021 Act; and**

14 (b) **At the time of the application for the partition:**

15 (A) **Had not yet been constructed;**

16 (B) **Are under construction; or**

17 (C) **Have been substantially completed for less than two years and have been occupied for**  
18 **less than 12 months.**

19 (3) **In approving a partition under this section, a city:**

20 (a) **May not subject an application to approval criteria except as provided in this section;**

21 (b) **May not require the applicant to provide public notice of the application or require a**  
22 **public hearing to evaluate the application, notwithstanding ORS 227.175;**

23 (c) **Shall approve or deny an application for a partition no more than 60 days after sub-**  
24 **mission; and**

25 (d) **May not charge fees to review or approve a partition under this section except as**  
26 **otherwise authorized by this chapter or as necessary to cover the actual costs of approval.**

27 (4) **A person may not appeal the approval of a partition under this section.**

28 (5) **The maintenance and costs of the shared expenses or common walls or joint property**  
29 **of the resulting parcels created under this section are subject to apportionment as if among**  
30 **holders of an interest in an easement under ORS 105.170 to 105.185, unless:**

31 (a) **The parcels are subject to a declaration as defined in ORS 94.550; or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **(b) The apportionment would be inconsistent with a recorded agreement executed by the**  
2 **owner of each resulting parcel.**

3       **SECTION 3.** ORS 93.277 is amended to read:

4       93.277. A provision in a recorded instrument affecting real property is not enforceable if:

5       (1) The provision would allow the development of a single-family dwelling on the real property  
6 but would prohibit the development of, **or the partition of lands under section 2 of this 2021 Act**  
7 **for:**

8       (a) Middle housing, as defined in ORS 197.758; or

9       (b) An accessory dwelling unit allowed under ORS 197.312 (5); and

10       (2) The instrument was executed on or after [*August 8, 2019*] **January 1, 2020.**

11       **SECTION 4.** ORS 94.776 is amended to read:

12       94.776. (1) A provision in a governing document that is adopted or amended on or after [*August*  
13 *8, 2019*] **January 1, 2020**, is void and unenforceable to the extent that the provision would prohibit  
14 or have the effect of unreasonably restricting the development of, **or the partition of lands under**  
15 **section 2 of this 2021 Act for**, housing that is otherwise allowable under the maximum density of  
16 the zoning for the land.

17       **(2) Parcels resulting from a partition of land in a planned community are subject to the**  
18 **governing documents of the planned community and are allocated assessments and voting**  
19 **right on the same basis as existing units.**

20       **SECTION 5.** ORS 94.775 is amended to read:

21       94.775. (1) [*Unless the declaration expressly allows the division of lots in a planned community,*]  
22 Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205[.],  
23 **unless:**

24       **(a) The declaration expressly allows the division of lots in a planned community; or**

25       **(b) The lot may be partitioned under ORS 94.776.**

26       (2) The lot may be partitioned by sale and division of the proceeds under ORS 105.245.

27       [(2)] **(3)** The restriction specified in subsection (1) of this section does not apply if the home-  
28 owners association has removed the property from the provisions of the declaration.

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