

Enrolled
House Bill 2755

Sponsored by Representative GREENLICK

CHAPTER

AN ACT

Relating to dividing land; amending ORS 92.010, 92.014, 92.025, 92.044, 92.050, 92.055, 92.060, 92.070, 92.075, 92.080, 92.095, 92.100 and 92.120.

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

SECTION 1. ORS 92.010 is amended to read:

92.010. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

- (1) "Declarant" means the person who files a declaration under ORS 92.075.
- (2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or partition plat was created.
- (3) "Lot" means a single unit of land that is created by a subdivision of land.
- (4) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.
- (5) "Parcel" means a single unit of land that is created by a [*partitioning*] **partition** of land.
- (6) "Partition" means either an act of partitioning land or an area or tract of land partitioned.
- (7) "Partition land" means to divide land [*into*] **to create** two or three parcels of land within a calendar year, but does not include:
 - (a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
 - (b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance;
 - (c) The division of land resulting from the recording of a subdivision or condominium plat;
 - (d) A sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or
 - (e) A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

(8) "Partition plat" includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.

(9) "Plat" includes a final subdivision plat, replat or partition plat.

(10) "Property line" means the division line between two units of land.

(11) "Property line adjustment" means the relocation **or elimination** of a common property line between *[two]* abutting properties.

(12) "Replat" means the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

(13) "Road" or "street" means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

(14) "Sale" or "sell" includes every disposition or transfer of land in a subdivision or partition or an interest or estate therein.

(15) "Subdivide land" means to divide land *[into]* **to create** four or more lots within a calendar year.

(16) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided.

(17) "Subdivision plat" includes a final map and other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

(18) "Utility easement" means an easement noted on a subdivision plat or partition plat for the purpose of installing or maintaining public utility infrastructure for the provision of water, power, heat or telecommunications to the public.

SECTION 2. ORS 92.014 is amended to read:

92.014. (1) *[No]* **A** person *[shall]* **may not** create a street or road for the purpose of **subdividing or** partitioning an area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be **subdivided or** partitioned.

(2) Notwithstanding ORS 92.175, *[no]* **an** instrument dedicating land to public use *[shall]* **may not** be accepted for recording in this state unless *[such]* **the** instrument bears the approval of the city or county authorized by law to accept *[such]* **the** dedication.

SECTION 3. ORS 92.025 is amended to read:

92.025. (1) *[No]* **A** person *[shall]* **may not** sell *[any]* **a** lot in *[any]* **a** subdivision or *[convey any interest in]* a parcel in *[any]* **a** partition until the plat of the subdivision or partition has been acknowledged and recorded with the recording officer of the county in which the lot or parcel is situated.

(2) *[No]* **A** person *[shall]* **may not** sell *[any]* **a** lot in *[any]* **a** subdivision or *[convey any interest in]* a parcel in *[any]* **a** partition by reference to or exhibition or other use of a plat of *[such]* **the** subdivision or partition before the plat for *[such]* **the** subdivision or partition has been so recorded. In negotiating to sell a lot in a subdivision or *[convey any interest in]* a parcel in *[any]* **a** partition under ORS 92.016 (1) and (2), a person may use the approved tentative plan for *[such]* **the** subdivision or partition.

(3) Notwithstanding subsections (1) and (2) of this section, the governing body of a city or county may enact an ordinance waiving the requirement that parcels created in excess of 80 acres be shown on a partition plat. Nothing in this subsection shall exempt a local government from minimum area requirements established in acknowledged comprehensive plans and land use regulations.

SECTION 4. ORS 92.044 is amended to read:

92.044. (1) The governing body of a county or a city shall, by regulation or ordinance, adopt standards and procedures, in addition to those otherwise provided by law, governing, in the area over which the county or the city has jurisdiction under ORS 92.042, the submission and approval

of tentative plans and plats of subdivisions, tentative plans and plats of partitions in exclusive farm use zones established under ORS 215.203.

(a) [Such] **The** standards [may] **shall** include, taking into consideration the location and surrounding area of the proposed subdivisions or [the] partitions, requirements for:

(A) Placement of utilities **subject to subsection (7) of this section**, for the width and location of streets or for minimum lot sizes and [such] other requirements [as] the governing body considers necessary for lessening congestion in the streets;

(B) Securing safety from fire, flood, slides, pollution or other dangers;

(C) Providing adequate light and air including protection and assurance of access to incident solar radiation for potential future use;

(D) Preventing overcrowding of land;

(E) Facilitating adequate provision of transportation, water supply, sewerage, drainage, education, recreation or other needs; or

(F) Protection and assurance of access to wind for potential electrical generation or mechanical application.

(b) [Such] **The** ordinances or regulations shall establish the form and contents of tentative plans of partitions and subdivisions submitted for approval.

(c) The procedures established by each [such] ordinance or regulation shall provide for the coordination in the review of the tentative plan of any subdivision or partition with all affected city, county, state and federal agencies and all affected special districts.

(2)(a) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to subdivisions and partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose.

(b) If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a subdivision or partition, such ordinance or regulation may also provide for appeal to the governing body from such approval or disapproval.

(c) The governing body may establish, by ordinance or regulation, a fee to be charged for an appeal under ORS chapter 197, 215 or 227, except for an appeal under 197.805 to 197.855.

(3) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed subdivisions that are submitted for approval pursuant to this section. As used in this subsection, "costs" does not include costs for which fees are prescribed under ORS 92.100 and 205.350.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed partitions that are submitted for approval pursuant to this section.

(5) Ordinances and regulations adopted under this section shall be adopted in accordance with ORS 92.048.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation.

(7) Unless specifically requested by a public utility provider, the governing body of a city or county may not require a utility easement except for a utility easement abutting a street. The governing body of a city or county may not place additional restrictions or conditions on a utility easement granted under this chapter.

[(7)] **(8)** For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters or at least eight miles per hour.

SECTION 5. ORS 92.050 is amended to read:

92.050. (1) A person shall not submit a plat of a subdivision or partition for record, until all the requirements of ORS 209.250 and the plat requirements of the subdivision or partition have been met.

(2) The survey for the plat of the subdivision or partition shall be done in a manner to achieve [such] **sufficient** accuracy that measurements may be taken between monuments within one-tenth of a foot or one ten-thousandth of the distance shown on the subdivision or partition plat, whichever is greater.

(3) The survey and plat of the subdivision or partition shall be made by a registered professional land surveyor.

(4) The plat of the subdivision or partition shall be of [such] **sufficient** scale and lettering size, approved by the county surveyor, so that [all]:

(a) **The survey and mathematical information[,] and all other details [may be] are clearly and legibly shown [thereon] on the plat.**

(b) Each lot or parcel [shall be] **is** numbered consecutively.

(c) The lengths and courses of [all] **the** boundaries of each lot or parcel [shall be] **are** shown **on the plat.**

(d) [Each street shall be named.] **Each street is named and shown on the plat.**

(5) The locations and descriptions of all monuments found or set [shall] **must** be carefully recorded upon all plats and the proper courses and distances of all boundary lines, conforming to the surveyor's certificate, [shall] **must** be shown.

(6) The location, dimensions and purpose of all recorded and proposed public and private easements [shall] **must** be shown on the subdivision or partition plat along with the county clerk's recording reference if the easement has been recorded [with] **by** the county clerk. Private easements [shall] become effective upon the recording of the plat.

(7) The area of each lot or parcel [shall] **must** be shown on the subdivision or partition plat.

(8) In addition to showing bearings in degrees, minutes and seconds and distances in feet and hundredths of a foot, the following curve information [shall] **must** be shown on the subdivision or partition plat either on the face of the map or in a separate table:

- (a) Arc length;
- (b) Chord length;
- (c) Chord bearing;
- (d) Radius; and
- (e) Central angle.

(9) [No] **A** city or county [shall] **may not** require that a final subdivision, condominium or partition plat show graphically **or by notation** on the final plat any information or requirement that is or may be subject to administrative change or variance by a city or county **or any other information unless authorized by the county surveyor.**

SECTION 6. ORS 92.055 is amended to read:

92.055. (1) *[Any parcel shown on a partition plat that]* **A parcel larger than 10 acres that is created outside an urban growth boundary** is not required to be surveyed and monumented **and** shall comply with the following:

(a) The approximate acreage of each unsurveyed parcel shall be shown; and

(b) Any unsurveyed parcel shall have the words "unsurveyed" placed in bold letters adjacent to the parcel number.

(2) Unsurveyed parcels need not comply with ORS 92.050 (5), (7) and (8).

SECTION 7. ORS 92.060 is amended to read:

92.060. (1) The initial point, **also known as the point of beginning**, of [all plats shall] **a plat must** be on the exterior boundary of the plat and [shall] **must** be marked with a monument[:]

(a) **That is** either [of concrete,] galvanized iron pipe or an iron or steel rod **or another type of monument approved by the county surveyor when setting a required type of monument is impracticable.** [If concrete is used it shall not be less than 6 inches by 6 inches by 24 inches and shall contain not less than five cubic inches of ferrous material permanently imbedded in the concrete.] If galvanized iron pipe is used [it shall], **the pipe must** not be less than three-quarter inch inside diameter and 30 inches long[, and]. If an iron or steel rod is used [it shall], **the rod must** not be less than five-eighths of an inch in least dimension and 30 inches long.

(b) The location of [*the monument shall be*] **which is made** with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision, partition or condominium plat. [*The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.*]

(2) In subdivision plats, the intersections, the **initial point, also known as the point of beginning** [*and*], **the point of ending** [*points*], points of curves and points of tangents, or the point of intersection of the curve if the point is within the pavement area of the road, of the centerlines of all streets and roads and all points on the exterior boundary where the boundary line changes direction, [*shall*] **must** be marked with monuments either of [*concrete,*] galvanized iron pipe[,] or iron or steel rods **or another type of monument approved by the county surveyor when setting a required type of monument is impracticable.** [*If concrete is used it shall be as described in subsection (1) of this section.*] If galvanized iron pipe is used [*it shall*], **the pipe must** not be less than three-quarter inch inside diameter and 30 inches long[, *and*]. If iron or steel rods are used [*they shall*], **the rod may** not be less than five-eighths of an inch in least dimension and 30 inches long. [*The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.*]

(3) All lot and parcel corners except lot corners of cemetery lots [*shall*] **must** be marked with monuments of either:

(a) Galvanized iron pipe not less than one-half inch inside diameter [*or*];

(b) Iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long[.]; **or**

(c) [*The surveyor may set*] Another type of monument in circumstances [*where*] **in which** setting the required monuments is impracticable.

(4) **A surveyor shall set** monuments [*shall be set with such*] **with sufficient** accuracy that measurements may be taken between monuments within one-tenth of a foot or within one thousandth of the distance shown on the subdivision or partition plat, whichever is greater.

(5) **A surveyor shall set** [*All*] monuments on the exterior boundaries of a subdivision [*shall be placed*] where changes in the direction of the boundary occur and **shall reference** the monuments [*shall be referenced*] on the plat of the subdivision before the plat of the subdivision is offered for recording. However, **the surveyor need not set** the remaining monuments for the subdivision [*need not be set*] prior to the recording of the plat of the subdivision if:

(a) The registered professional land surveyor performing the survey work certifies that the remaining monuments will be set on or before a specified date as provided in ORS 92.070 (2); and [*if*]

(b) The person subdividing the land furnishes to the county or city by which the subdivision was approved a bond, cash deposit, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other security as required by the county or city guaranteeing the payment of the cost of setting the remaining monuments for the subdivision as provided in ORS 92.065.

(6) **A surveyor shall set** all monuments on the exterior boundary and all parcel corner monuments of partitions [*shall be placed*] before the partition plat is offered for recording. Unless the governing body provides otherwise, any parcels created **outside an urban growth boundary** that are greater than 10 acres need not be surveyed or monumented.

(7) Except as provided in subsections (8) [*to (10)*] **and (9)** of this section, an adjusted property line created by the relocation of a common boundary as described in ORS 92.010 (7)(b) [*shall*] **must** be surveyed and monumented in accordance with subsection (3) of this section and a survey, complying with ORS 209.250, [*shall*] **must** be filed with the county surveyor.

(8) [*Notwithstanding subsection (7) of this section,*] Unless the governing body of a city or county has otherwise provided by ordinance, a survey or monument is not required for a property line adjustment when the abutting properties are each greater than 10 acres. Nothing in this subsection [*shall exempt*] **exempts** a local government from minimum area requirements established in acknowledged comprehensive plans and land use regulations.

[9) Unless the governing body of a city or county has otherwise provided by ordinance, the requirements of subsection (7) of this section shall not apply to the relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.]

[(10)] (9) The requirements of subsection (7) of this section do not apply to property transferred through a property line adjustment as provided in ORS 92.010 (7)(e).

SECTION 7a. If Senate Bill 468 becomes law, section 7 of this 2005 Act (amending ORS 92.060) is repealed and ORS 92.060, as amended by section 3, chapter __, Oregon Laws 2005 (Enrolled Senate Bill 468), is amended to read:

92.060. (1) The initial point, **also known as the point of beginning**, of [all plats shall] a **plat must** be on the exterior boundary of the plat and [shall] **must** be marked with a monument[,] **that is** either [of concrete,] galvanized iron pipe or an iron or steel rod. [If concrete is used it may not be less than 6 inches by 6 inches by 24 inches and shall contain not less than five cubic inches of ferrous material permanently imbedded in the concrete.] If galvanized iron pipe is used [it], **the pipe** may not be less than three-quarter inch inside diameter and 30 inches long[, and]. If an iron or steel rod is used [it], **the rod** may not be less than five-eighths of an inch in least dimension and 30 inches long. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision, partition or condominium plat. When setting a required monument is impracticable under the circumstances, the county surveyor may authorize the setting of another type of monument.

(2) In subdivision plats, the intersections, the **initial point, also known as the point of beginning** [and], **the point of ending** [points], points of curves and points of tangents, or the point of intersection of the curve if the point is within the pavement area of the road, of the centerlines of all streets and roads and all points on the exterior boundary where the boundary line changes direction, [shall] **must** be marked with monuments either of [concrete,] galvanized iron pipe[,] or iron or steel rods. [If concrete is used it shall be as described in subsection (1) of this section.] If galvanized iron pipe is used [it], **the pipe** may not be less than three-quarter inch inside diameter and 30 inches long[, and]. If iron or steel rods are used [they], **the rod** may not be less than five-eighths of an inch in least dimension and 30 inches long. When setting a required monument is impracticable under the circumstances:

- (a) The county surveyor may authorize the setting of another type of monument; or
- (b) The county surveyor may waive the setting of the monument.

(3) All lot and parcel corners except lot corners of cemetery lots [shall] **must** be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long. When setting a required monument is impracticable under the circumstances:

- (a) The surveyor may set another type of monument; or
- (b) The county surveyor may waive the setting of the monument.

(4) **A surveyor shall set** monuments [shall be set with such] **with sufficient** accuracy that measurements may be taken between monuments within one-tenth of a foot or within one thousandth of the distance shown on the subdivision or partition plat, whichever is greater.

(5) **A surveyor shall set** monuments on the exterior boundary of a subdivision [shall be set], unless the county surveyor waives the setting of a particular monument, where changes in the direction of the boundary occur and **shall reference** the monuments [shall be referenced] on the plat of the subdivision before the plat of the subdivision is offered for recording. However, **the surveyor need not set** the remaining monuments for the subdivision [need not be set] prior to the recording of the plat of the subdivision if:

(a) The registered professional land surveyor performing the survey work certifies that the remaining monuments will be set, unless the county surveyor waives the setting of a particular monument, on or before a specified date as provided in ORS 92.070 (2); and [if]

(b) The person subdividing the land furnishes to the county or city by which the subdivision was approved a bond, cash deposit, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other security as required by the county or city guaranteeing the payment of the cost of setting the remaining monuments for the subdivision as provided in ORS 92.065.

(6) **A surveyor shall set all** monuments on the exterior boundary and all parcel corner monuments of partitions *[shall be set]*, unless the county surveyor waives the setting of a particular monument, before the partition plat is offered for recording. Unless the governing body provides otherwise, any parcels created **outside an urban growth boundary** that are greater than 10 acres need not be surveyed or monumented.

(7) Except as provided in subsections (8) *[to (10)]* and (9) of this section, an adjusted property line created by the relocation of a common boundary as described in ORS 92.010 (7)(b) *[shall]* **must** be surveyed and monumented in accordance with subsection (3) of this section and a survey, complying with ORS 209.250, *[shall]* **must** be filed with the county surveyor.

(8) Unless the governing body of a city or county has otherwise provided by ordinance, a survey or monument is not required for a property line adjustment when the abutting properties are each greater than 10 acres. Nothing in this subsection *[shall exempt]* **exempts** a local government from minimum area requirements established in acknowledged comprehensive plans and land use regulations.

[(9) Unless the governing body of a city or county has otherwise provided by ordinance, the requirements of subsection (7) of this section do not apply to the relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.]

[(10)] (9) The requirements of subsection (7) of this section do not apply to property transferred through a property line adjustment as provided in ORS 92.010 (7)(e).

SECTION 8. ORS 92.070 is amended to read:

92.070. (1) Except as otherwise provided in this section, *[all]* **a** subdivision or partition *[plats]* **plat** designating the location of land in *[any]* **a** county in the State of Oregon, offered for record, *[shall]* **must** include on the face of the plat a surveyor's certificate, together with the seal and signature of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked with proper monuments the lands as represented[,] and has placed a proper monument as provided in ORS 92.060 indicating the initial point of the plat and its location in accordance with ORS 92.060 (1) and accurately describing by metes or bounds, or other description as approved by the county surveyor, the tract of land upon which the lots and blocks or parcels are laid out. *[If the plat is a partition plat which contains parcels not surveyed, the surveyor's certificate shall so indicate.]*

(2) If the person subdividing any land has complied with ORS 92.065 (1), the surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced on the subdivision plat as submitted for recording. The subdivision plat shall include a certification of the surveyor that the remaining corners for the subdivision will be monumented on or before a specified date in accordance with ORS 92.060, noting those monuments to be set on or before said specified date on the subdivision plat as approved by the city or county.

(3) After the remaining corners for a subdivision have been monumented as provided in the certificate submitted under subsection (2) of this section, the surveyor performing the work shall:

(a) Within five days after completion of the work, notify the person subdividing the land involved and the **county** surveyor *[of the city or county by which]* **by whom** the subdivision was approved; and

(b) Upon approval of the work under ORS 92.100 by the county surveyor, submit an affidavit for recording stating that the subdivision plat has been correctly surveyed and marked with proper monuments at the remaining corners of the subdivisions as noted on the original subdivision plat. Any monument that cannot be set shall be separately noted and a reference monument shall be set. The affidavit shall be approved by the county surveyor before recording. The surveyor who prepared the affidavit shall cause the affidavit to be recorded in the office of the county recorder where the

subdivision plat is recorded. The county clerk shall promptly provide a recorded copy of the affidavit to the county surveyor. The county surveyor shall note the monuments set and the recorder's information on the county surveyor's copy of the subdivision plat and any exact copies filed in accordance with ORS 92.120 (3). The original plat may not be corrected or changed after it is recorded with the county clerk.

(4) The county surveyor approving the work pursuant to subsection (3) of this section shall reference the approval upon the subdivision plat and tracings previously recorded. A city surveyor approving the work under ORS 92.100 (1) shall reference that surveyor's approval on the affidavit required under this section prior to approval by the county surveyor.

(5) Notwithstanding ORS 209.250, the surveyor who prepared the subdivision or partition plat may reestablish plat monuments within two years of plat recordation without filing a map of the survey as required under ORS 209.250. The surveyor reestablishing any plat monuments shall prepare an affidavit stating that the reestablished corners of the subdivision or partition plat have been correctly surveyed and marked with proper monuments as required under ORS 92.060. The affidavit shall be approved by the county surveyor prior to recordation of the affidavit with the county clerk. The surveyor who prepared the affidavit shall file the affidavit with the county clerk for the county where the subdivision or partition plat is recorded. The county clerk shall promptly provide a certified copy of the recorded affidavit to the surveyor. The county surveyor shall indicate the reestablished monuments on the county surveyor's copy of the plat of the subdivision or partition and any copies of the plat filed under ORS 92.120 (3). The original plat may not be corrected or changed after it is recorded with the county clerk. The county shall charge a fee for recording the affidavit in the county clerk's office and the county surveyor's office. The fee shall be established by the governing body of the county and shall be paid to the county surveyor.

SECTION 9. ORS 92.075 is amended to read:

92.075. (1) In order to subdivide or partition any property, the declarant shall include on the face of the subdivision or partition plat, if a partition plat is required, a declaration, taken before a notary public or other person authorized by law to administer oaths, stating that the declarant has caused the subdivision or partition plat to be prepared and the property subdivided or partitioned in accordance with the provisions of this chapter. Any dedication of land to public purposes or any public or private easements created, or any other restriction made, shall be stated in the declaration.

(2) If the declarant is not the fee owner of the property, the fee owner and the vendor under any instrument of sale shall also execute the declaration for the purpose of consenting to the property being subdivided or partitioned.

(3) If the subdivision or partition plat contains any dedication or donation of land to public purposes, the holder of any mortgage or trust deed shall also execute the declaration for the purpose of consenting to the property being submitted to the provisions of this chapter.

(4) Notwithstanding the provisions of subsections (1) to (3) of this section, the fee owner, vendor or the mortgage or trust deed holder may record an affidavit consenting to the declaration of property being subdivided or partitioned and to any dedication or donation of property to public purposes. *[Such]* **The** affidavit *[shall]* **must** indicate the recorded document by which the interest in the property was acquired and all information required by ORS 93.410 to 93.530 and *[shall]* **must** be recorded in deed records at the same time as the subdivision or partition plat. The county clerk shall note the recording information of the affidavit on the original and any exact copies of the subdivision or partition plat.

SECTION 10. ORS 92.080 is amended to read:

92.080. Notwithstanding ORS 205.232 and 205.234, all plats subdividing or partitioning *[any]* land in *[any]* a county in this state, *[and]* dedications of streets or roads or public parks and squares and other writings made a part of *[such]* **the** subdivision or partition plats offered for record in *[any]* a county in this state *[shall]* **must** be made on material that is 18 inches by 24 inches in size with an additional three-inch binding edge on the left side when required by the county clerk or the county surveyor, that is suitable for binding and copying purposes, and that has *[such]* **the** charac-

teristics of strength and permanency [as may be] required by the county clerk and county surveyor. All signatures on the original subdivision or partition plat [shall] **must** be in archival quality black ink. The subdivision or partition plat [shall] **must** be of [such] a scale [as] required by the county surveyor. The lettering of the approvals, the declaration, the surveyor's certificate[,] and all other information [shall] **must** be of [such] a size or type [as will] **to** be clearly legible, but [no part shall] **the information may not** come nearer [any] **an** edge of the sheet than one inch. The subdivision or partition plat may be placed on as many sheets as necessary, but a face sheet and an index page [shall] **must** be included for subdivision or partition plats placed upon three or more sheets.

SECTION 11. ORS 92.095 is amended to read:

92.095. (1) [No] **A** subdivision or partition plat [shall] **may not** be recorded unless all ad valorem taxes **have been paid**, including additional taxes, interest and penalties imposed on land disqualified for any special assessment and all special assessments, fees[,] or other charges required by law to be placed upon the tax roll [have been paid which] **that** have become a lien upon the land or [which] **that** will become a lien during the tax year.

(2) After July 1, and before the certification under ORS 311.105 of any year, the subdivider or partitioner shall:

(a) If the exact amount of taxes, penalties, special assessments, fees and charges [are able to] **can** be computed by the assessor, pay [such] **the** amount to the tax collector. The assessor is authorized to levy and the tax collector is authorized to collect [such] **the** amount.

(b) If the assessor is unable to compute [such] **the** amount at [such] **the** time, either:

(A) Pay the amount estimated by the assessor to be needed to pay the taxes, penalties, special assessments, fees and other charges to become due[,] or

(B) Deposit with the tax collector a bond or irrevocable letter of credit with a good and sufficient undertaking in [such] **an** amount [as] the assessor considers adequate to [insure] **ensure** payment of the taxes to become due. [In no event shall] The bond or irrevocable letter of credit amount **may not** exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon [such] **the** land.

(3) Taxes paid or for which security is given under subsection (2)(a) or (b) of this section [shall be] **are** entitled to the discount provided by ORS 311.505.

(4) ORS 311.370 [shall apply] **applies** to all taxes levied and collected under subsection (2) of this section, except that any deficiency [shall constitute] **constitutes** a personal debt against the person subdividing or partitioning the land and not a lien against the land[,] and [shall] **must** be collected as provided by law for the collection of personal property taxes.

(5) If a subdivision or partition plat is recorded, any additional taxes, interest or penalties imposed upon land disqualified for any special assessment [shall] become a lien upon the land on the day before the plat was recorded.

SECTION 12. ORS 92.100 is amended to read:

92.100. (1)(a) Before [any] **a** subdivision or partition plat can be recorded, covering land within the corporate limits of [any] **a** city, the county surveyor must approve the plat.

(b) Notwithstanding ORS 92.170, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor **or, with concurrence of the county surveyor, a contract surveyor to act as city surveyor.**

(c) Except as provided in subsection (4) of this section, if the land is outside the corporate limits of any city, the subdivision or partition plat [shall] **must** be approved by the county surveyor before it is recorded.

(d) All subdivision plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(e) Notwithstanding paragraph (d) of this subsection, a county may provide by ordinance for the approval of subdivision plats by:

(A) The county assessor; and

(B)(i) The chairperson of the governing body of the county;

(ii) The vice chairperson of the governing body of the county; or

(iii) A person designated in lieu of the chairperson or vice chairperson.

(f)(A) [Unless provided for by ordinance of the governing body, partition plats shall be] **A partition plat is** subject only to the approval of the city or county surveyor[.] **unless:**

(i) **The partition plat includes a dedication of land for public road purposes; or**

(ii) **Provided otherwise by ordinance of the governing body.**

(B) The city or county surveyor shall review the partition plat only for compliance with the [applicable] **survey-related** provisions of [this chapter and] **ORS 92.010 to 92.190 and 209.250.**

(2) Before approving the subdivision plat as required by this section, the county surveyor shall check the subdivision site and the subdivision plat and shall take [such] measurements and make [such] computations and other determinations [as are] necessary to determine that the subdivision plat complies with the [applicable] **survey-related** provisions of [this chapter and] **ORS 92.010 to 92.190 and 209.250** and with [the subdivision] **survey-related** requirements established pursuant to an ordinance or resolution passed by the governing body of the controlling city or county. For performing [such] **the service required under this section,** the county surveyor shall collect from the subdivider **or declarant** a fee of \$100 plus \$5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by resolution or order.

(3) Before approving the partition plat as required by this section, the county surveyor[, as provided by subsection (1) of this section,] shall check the partition plat and make [such] computations and other determinations that the partition plat complies with the **survey-related** provisions of [this] **ORS 92.010 to 92.190 and 209.250** and other applicable laws and with the [partition] **survey-related** requirements established pursuant to an ordinance or resolution by the governing body of the controlling city or county. For performing [such] **the service,** the county surveyor shall collect from the partitioner **or declarant** a fee to be established by the governing body.

(4) Any subdivision or partition plat prepared by the county surveyor in a private capacity [shall] **must** be approved in accordance with subsection (2) or (3) of this section, whichever is applicable, by the surveyor of a county other than the county where the land is located and who has been designated by the county surveyor. The designated county surveyor shall collect the applicable subdivision or partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners. The subdivision or partition plat check fee and other expenses [shall] **must** be paid by the subdivider **or declarant** prior to approval of the subdivision or partition plat by the designated county surveyor.

(5) Nothing in this section [shall be construed to prohibit] **prohibits** a city, county or special district from requiring engineering review and approval of a subdivision plat to [assure] **ensure** compliance with state and local subdivision requirements that relate to matters other than survey adequacy.

SECTION 12a. If House Bill 2356 becomes law, section 12 of this 2005 Act (amending ORS 92.100) is repealed and ORS 92.100, as amended by section 1, chapter __, Oregon Laws 2005 (Enrolled House Bill 2356), is amended to read:

92.100. (1)(a) Except as provided in subsection (4) of this section, before a subdivision or partition plat that covers land within the corporate limits of a city may be recorded, the county surveyor must approve the plat.

(b) Notwithstanding ORS 92.170, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor **or, with concurrence of the county surveyor, a contract surveyor to act as city surveyor.**

(c) Except as provided in subsection (4) of this section, if the land is outside the corporate limits of any city, the subdivision or partition plat [shall] **must** be approved by the county surveyor before it is recorded.

(d) All subdivision plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(e) Notwithstanding paragraph (d) of this subsection, a county may provide by ordinance for the approval of subdivision plats by:

(A) The county assessor; and

- (B)(i) The chairperson of the governing body of the county;
- (ii) The vice chairperson of the governing body of the county; or
- (iii) A person designated in lieu of the chairperson or vice chairperson.

(f)(A) [Unless provided for by ordinance of the controlling governing body, partition plats are] **A partition plat is** subject only to the approval of the city or county surveyor[.] **unless:**

- (i) **The partition plat includes a dedication of land for public road purposes; or**
- (ii) **Provided otherwise by ordinance of the governing body.**

(B) The city or county surveyor shall review the partition plat only for compliance with the [applicable] **survey-related** provisions of ORS 92.010 to 92.190 and 209.250.

(2) Before approving the subdivision plat as required by this section, the county surveyor shall check the subdivision site and the subdivision plat and shall take measurements and make computations and other determinations [as are] necessary to determine that the subdivision plat complies with the [applicable] **survey-related** provisions of ORS 92.010 to 92.190 and 209.250 and with [the subdivision] **survey-related** requirements established pursuant to an ordinance or resolution passed by the governing body of the controlling city or county.

(3) Before approving the partition plat as required by this section, the county surveyor[, as provided by subsection (1) of this section,] shall check the partition plat and make computations and other determinations that the partition plat complies with the [applicable] **survey-related** provisions of ORS 92.010 to 92.190 and 209.250 and with the [partition] **survey-related** requirements established pursuant to an ordinance or resolution by the governing body of the controlling city or county.

(4) Before a subdivision or partition plat prepared by the county surveyor in a private capacity may be recorded, the plat must be approved in accordance with subsection (2) or (3) of this section, whichever is applicable, by the surveyor of a county other than the county in which the land is located and who has been designated by the county surveyor.

(5) For performing the service described:

(a) In subsection (2) of this section, the county surveyor shall collect from the subdivider **or declarant** a fee of \$100 plus \$5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by resolution or order.

(b) In subsection (3) of this section, the county surveyor shall collect from the partitioner **or declarant** a fee to be established by the governing body.

(c) In subsection (4) of this section, the designated county surveyor shall collect the applicable subdivision or partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners. The subdivision or partition plat check fee and other expenses [shall] **must** be paid by the subdivider [or], partitioner **or declarant** prior to approval of the subdivision or partition plat by the designated county surveyor.

(6) Nothing in this section prohibits a city, county or special district from requiring engineering review and approval of a subdivision plat to ensure compliance with state and local subdivision requirements that relate to matters other than survey adequacy.

(7) Granting approval or withholding approval of a final subdivision or partition plat under this section by the county surveyor, the county assessor or the governing body of a city or county, or a designee of the governing body, is not a land use decision or a limited land use decision, as defined in ORS 197.015.

SECTION 13. ORS 92.120 is amended to read:

92.120. (1) The plat of a subdivision described in ORS 92.050, when made and approved as required[,] and offered for record in the records of the county where the described land is situated, [shall,] **must be recorded by the county recording officer** upon the payment of the fees provided by law[, be recorded by the county recording officer]. The fact of recording and the date [thereof shall] **of recording must** be entered [thereon, and it shall then] **on the plat and the plat must** be indexed in the deed records by owner name and subdivision.

(2) The partition plat described in ORS 92.050, when made and approved as required and offered for record in the records of the county where the described land is situated, [shall,] **must be recorded by the county recording officer** upon the payment of the fees provided by law[, be recorded

by the county recording officer]. The fact of recording and the date [thereof shall] **of recording must** be entered [thereon, and it shall then] **on the plat and the plat must** be indexed by owner name and plat type or plat name. Partition plats [shall] **must** be numbered by year and sequentially and be recorded in deed records.

(3) At the time of recording [such] a subdivision [plat] or partition plat, the person offering it for recording shall also file with the county surveyor and with the county recording officer, if requested by the county recording officer, an exact copy [thereof,] **of the plat** made on material that has [such] **the** characteristics of strength and permanency [as may be] required by the county surveyor. The surveyor who made the subdivision or partition plat shall certify that the photocopy or tracing is an exact copy of the subdivision or partition plat. [The copy filed with the county recording officer shall be certified by that officer to be an exact copy.] The subdivider shall provide without cost the number of prints from [such] **the** copy [as may be] **that are** required by the governing body of the county.

(4) For the purpose of preserving the record of subdivision or town plats or partition plats, [any such] **the** plats may be microfilmed or stored for safekeeping without folding or cutting. All [such] records [shall] **must** be created and stored in accordance with all applicable rules and regulations and in [such] a manner [as to ensure] **that ensures** the permanent preservation of the record.

Passed by House April 12, 2005

Received by Governor:

Repassed by House June 15, 2005

.....M.,....., 2005

Approved:

.....
Chief Clerk of House

.....M.,....., 2005

.....
Speaker of House

.....
Governor

Passed by Senate June 13, 2005

Filed in Office of Secretary of State:

.....M.,....., 2005

.....
President of Senate

.....
Secretary of State