



## Middle Housing and Goal 5 Historic Resources

**Policy Summary:** The intention of adopted rules implementing House Bill 2001 relating to middle housing is to ensure that local jurisdictions continue to be empowered to protect the designated historic resources within their communities, as authorized under Goal 5 and associated administrative rules. These rules *do not* enable the exclusion of middle housing or the continuation of the single-family exclusionary zone in historic districts.

### *Background*

The Oregon Legislature passed House Bill 2001 in 2019 in order to begin to address the housing affordability crisis in Oregon. The legislature determined that limitations of housing types have contributing to rising costs for Oregonians across the state. The new law requires that local jurisdictions update local ordinances and zoning that currently limits the types of housing people can build. As the implementation of House Bill 2001 continues, DLCD staff has received questions on the relationship between middle housing and Goal 5 Historic Resources, including questions related to the historic significance of middle housing and the single-family exclusionary zone. To address this question more comprehensively, this document includes a brief summary of the historic context of housing.

### *The History of “Missing” Middle Housing*

Many of the middle housing types legalized by House Bill 2001 were common and integral to historic neighborhoods in Oregon and throughout the United States. We do not see many examples of middle housing today, because they were effectively banned in single-family neighborhoods nationwide through the application of zoning policies around the middle of the 20<sup>th</sup> century.

“Missing middle” housing refers to a spectrum of housing types that were common in the United States before World War II, such as duplexes (Fig 1), townhouses (Fig 2), and courtyard apartments (Fig 3). While these housing types contained more dwelling units than a single-family home, the height and form of these housing types were similar to single-family homes.

These housing types once played a significant role in the provision of more modest and less expensive



*Fig 1. Smith Duplex. Ashland, OR. C. 1945. Image courtesy of the State Historic Preservation Office (SHPO).*



*Fig 2. Campbell Townhouses. Portland, OR. C. 1893. Image courtesy of SHPO.*



housing in the United States. Even throughout World War II, cities like Portland leveraged middle housing to address the immediate housing need during a national emergency by allowing the internal conversion of existing housing to middle housing.<sup>1</sup> However, since the postwar period, jurisdictions increasingly implemented zoning ordinances that prohibited all forms of “multi-family housing” in single-family zones. This effectively banned many forms of housing ranging from small-scale duplexes and cottage clusters to mid-rise apartments on the majority of residential lands in cities throughout the United States.<sup>2</sup> These policies largely bifurcated the housing market into two predominant forms of housing: single-family detached homes and multi-family, mid-rise apartments, and middle housing became increasingly less common in cities throughout the United States.



Fig 3. Swain Court. Corvallis, OR. C.1929. Image courtesy of the State Historic Preservation Office (SHPO).

### *The Single-Family Exclusionary Zone and Racial/Economic Segregation in the United States*

The single-family exclusionary zone is one part of a larger historical context of racial and economic segregation policies that deliberately barred homeownership for communities of color and disinvested in the neighborhoods they lived in. The effects of these policies persist today because of the continuation of exclusionary policies and practices.

Since its inception, zoning has been used to exclude black and indigenous people and other people of color (BIPOC) from white neighborhoods. In the early part of the twentieth century, many zoning ordinances maintaining residential segregation were overt. While the Supreme Court invalidated these types of ordinances in *Buchanan v. Warley*, many communities implemented other zoning tools to maintain racial and economic segregation; in particular, many communities implemented exclusionary single-family detached residential zones, which could achieve similar effects while remaining racially neutral. These policies had the effect of perpetuating racial and economic segregation in U.S. cities, locking BIPOC households out of homeownership and high-opportunity neighborhoods, and reinforced disinvestment and displacement of the communities in which BIPOC lived and worked.<sup>3</sup>

Today, restrictive residential zoning and development ordinances – while typically based on race-neutral purposes – continue to reinforce patterns of racial and economic segregation and prevent equal access to neighborhoods, schools, parks, and employment. These patterns of segregation continue to entrench racial injustice, including the 10:1 wealth gap between white and black households in the United States today.<sup>4</sup>

<sup>1</sup> Franey, K. (2019). *Early Densification in an Urban Center: Portland, Oregon and the War Code Housing Program*. Accessed via: <https://www.oregon.gov/oprd/OH/Documents/Fellow2019KFraneyAmericasAdventureinHospitality.pdf>

<sup>2</sup> City of Eugene. (2020). *History of Middle Housing and Exclusion in Zoning*. Accessed via: [https://www.eugene-or.gov/DocumentCenter/View/58347/Fact-Sheet-History-of-Residential-Zoning-#:~:text=Middle%20housing%20is%20considered%20%E2%80%9Cmissing,war%20neighborhoods%20\(see%20sidebar\).](https://www.eugene-or.gov/DocumentCenter/View/58347/Fact-Sheet-History-of-Residential-Zoning-#:~:text=Middle%20housing%20is%20considered%20%E2%80%9Cmissing,war%20neighborhoods%20(see%20sidebar).)

<sup>3</sup> Adams-Schoen, S., (2020). *Dismantling Segregationist Land Use Controls*. Accessed via: <https://www.eugene-or.gov/DocumentCenter/View/61750/DISMANTLING-SEGREGATIONIST-LAND-USE-CONTROLS>

<sup>4</sup> Sullivan et. al. (2016). *The Racial Wealth Gap: Why Policy Matters*. Accessed via: [https://www.demos.org/sites/default/files/publications/RacialWealthGap\\_2.pdf](https://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf)



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## *Goal 5 and Protecting Historic Resources*

It's important to recognize that House Bill 2001 fits into a broader statewide regulatory framework that governs how housing is permitted on lands, including lands that contain Goal 5 historic resources. The purpose of Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces. The goal and its implementing statutes and administrative rules require cities to inventory these resources and adopt regulations that conserve and protect them for present and future generations.<sup>5</sup>

With regard to historic resources, [OAR 660-023-0200](#) outline the specific parameters and responsibilities for local jurisdictions in how they inventory and protect historic resources. These provisions are intended to preserve the historic character of resources, including both individual historic properties and historic districts and the implementation of these new rules relating to middle housing will not change these provisions. However, local historic design review regulations are not intended to regulate who owns or is able to occupy a particular resource. Even adaptive reuse, the process of repurposing a historic resource for a use other than what was originally intended, the use of the structure is only considered in so far that it changes the historic character to use a property in a different manner.<sup>6</sup> These standards do not permit cities to maintain exclusionary zoning practices or regulate who is able to live in and access neighborhoods.

For most forms of housing, local governments are required to apply clear and objective standards to the development of housing, and these regulations may not cause unreasonable cost or delay. A hearings body cannot deny a housing proposal unless the proposal does not comply with a clear and objective standard identified in their development code. However, housing built on land containing Goal 5 historic resources are exempt from the requirement for standards to be clear and objective, because many of the standards related to historic integrity, such as architectural design and historic context, are inherently discretionary.

## *House Bill 2001 and Goal 5 Historic Resources*

The statutes and administrative rules implementing House Bill 2001 enable cities and counties to continue applying standards and procedures that preserve the integrity of historic resources under Goal 5 and the National Register program. The statute and rules *do not* enable the exclusion of middle housing or the continuation of the single-family exclusionary zone in historic districts.

House Bill 2001 requires cities above a certain size to allow middle housing in areas that allow single-family detached homes. Cities are still permitted to apply goal protections, including protections specific to Goal 5 historic resources. Administrative rules implementing House Bill 2001 ([OAR Chapter 660, Division 046](#)) allow cities to continue the application of discretionary historic design standards, but *they do not allow for the categorical exclusion of middle housing from previously exclusionary single-family neighborhoods.*<sup>7</sup>

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<sup>5</sup> Oregon Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. Accessed via: <https://www.oregon.gov/lcd/OP/Documents/goal5.pdf>

<sup>6</sup> Restore Oregon. Preservation Toolkit: An Orientation to Preservation & Adaptive Reuse. Accessed via: [http://restoreoregon.org/wp-content/uploads/2016/06/RestoreOregon\\_01-orientation\\_r401.pdf](http://restoreoregon.org/wp-content/uploads/2016/06/RestoreOregon_01-orientation_r401.pdf)

<sup>7</sup> OAR 660-046-0010(3)(a)(B)



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Specifically, the rule reaffirms local government obligations to protect the historic integrity of Goal 5 historic resources. The rule requires that local governments either apply regulations adopted under [OAR 660-023-0200](#) to Middle Housing or – if they do not have adopted historic regulations – apply a set of backstop historic criteria outlined in OAR 660-023-0200(8)(a) to Middle Housing until they adopt their own set of regulations. These regulations are not required to be clear and objective under ORS 197.307 and do not cause “unreasonable cost or delay” to the development of Middle Housing. To prevent the application of historic review in a manner that excludes the development of Middle Housing, the rule restricts the application of two types of standards:

1. Use, density, and occupancy restrictions that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings; and
2. Standards that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.

Through discussion with historic preservation, land use, and housing experts and stakeholders via the House Bill 2001 rulemaking process, these provisions were considered critical to prevent the application of historic standards in a manner that would preclude any development of Middle Housing and perpetuate patterns of racial and economic segregation associated with the single-family exclusionary zone. The rule enables and reinforces local responsibility to maintain the integrity of Goal 5 historic resource through the application of historic design standards.

If you have questions about this document, House Bill 2001, or housing planning, please contact Sean Edging at [sean.edging@dcd.oregon.gov](mailto:sean.edging@dcd.oregon.gov).

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