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HOUSING INSIGHTS

Middle Housing and Updates on HB 2001

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INTRODUCTION

Oregon House Bill 2001 was passed in 2019 to expand housing choice and ultimately lower the cost of housing for Oregon residents. The bill implements a change to city zoning codes to allow for middle housing on all land previously zoned for single-family homes. Middle housing is best explained as housing assets that are more dense than single-family homes but less dense than mid-rise or high-rise buildings. According to the bill, cities with more than 25,000 residents must allow for 2-4 units on these lots. Cities with more than 10,000 residents must allow duplexes.

This bill was passed in the face of rising housing costs, inflexible urban growth boundaries and long-term concerns about the availability of new housing market supply. HB 2001 was not without its controversies which continue as the deadline approaches to implement the zoning changes. The bill universally changes all single-family zoning in the designated cities of Oregon without indicating flexibility for communities who wish to selectively apply zoning code changes to certain neighborhoods.

This study will look at the current state of zoning code implementations with an emphasis on stakeholders' feedback. It will also examine the conflicts that lay ahead as the State of Oregon drastically changes the way it regulates residential land. With an overview of the current market conditions in Oregon and a review of middle housing testimony by local leaders, this paper will examine the benefits that Oregon hopes will come and what challenges may lie ahead.

The Housing Market

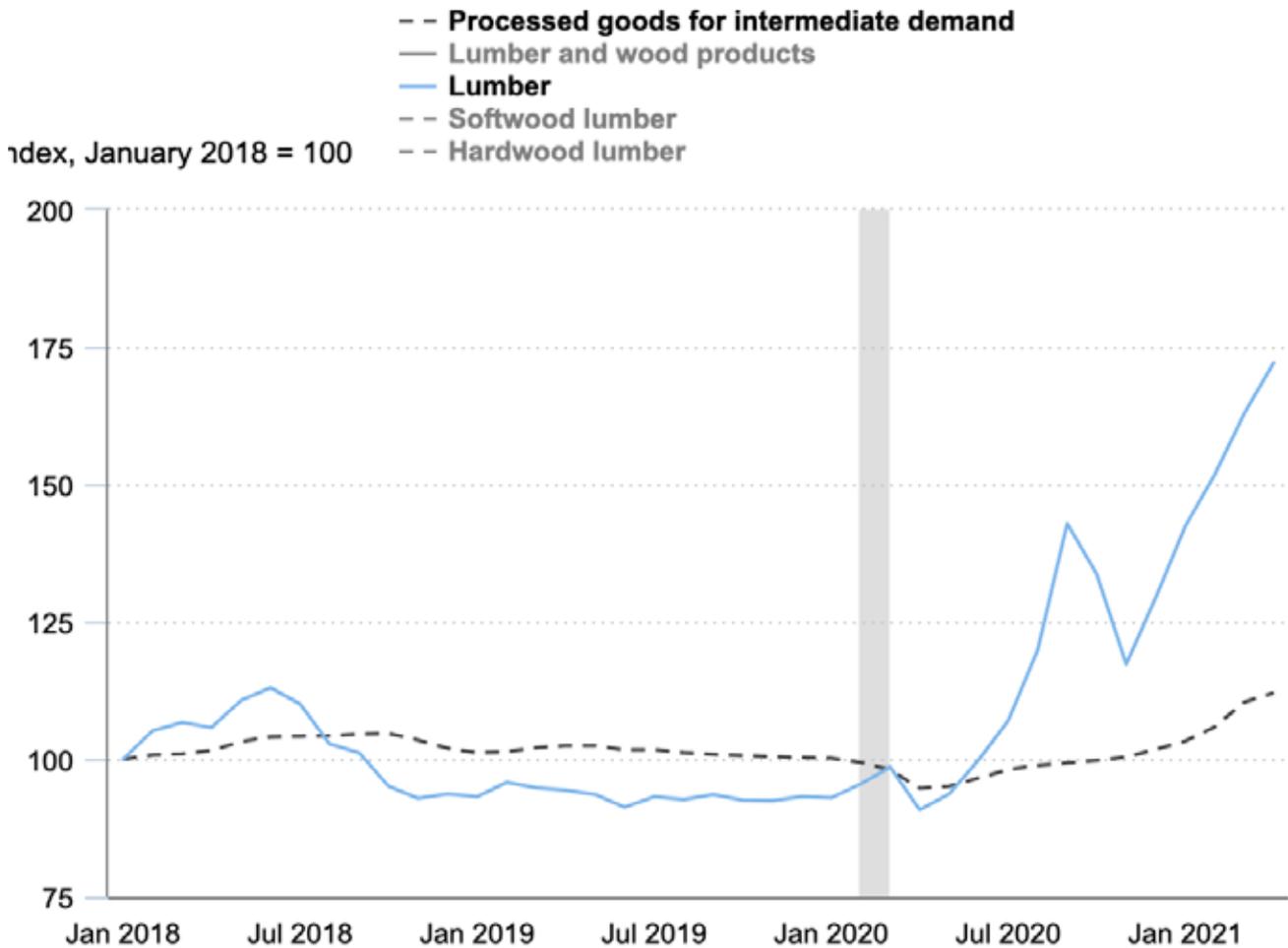
The Oregon housing market has experienced strong growth in recent years. Most markets within Oregon are currently sellers' markets with housing prices continuing to increase, multifamily rents increasing, and vacancies continuing to decline. Portland's year-over-year rent growth has reached 8.9% compared to a 10-year average of 4% annual growth. Salem's vacancy rate is currently 2.3% with rents remaining lower than other markets in Oregon, while Eugene's 1.5% vacancy rate has been bolstered by local population growth. Sales in every Oregon market have increased along with price per units. This is a positive sign for many investors, and capital markets have responded by compressing cap rates to record lows, reaching near 4.5% in Portland. However, this is not good news in the short term for rents, and it is a cause for concern for the entire market in the long term.

The inability of new supply to keep up with record demand is an underlying cause for increasing rents, decreasing vacancies, and increased property values. This is down from the annual average of 8,600 units delivered over the last ten years. Similar trends across

Oregon led to an alarming trend in the housing market. Oregon's increasing population and decreasing new supply has caused the values of multifamily assets to increase. Increasing demand is a positive force in the market. However, markets need increasing supply to drive down rents and allow renters to remain in the market. In addition, the market needs new real estate investment to compete with larger corporations, REITS, and investment groups.

The two main reasons that new deliveries have slowed in Portland are rising construction costs, which affect the entire state of Oregon, as well as the Portland-specific inclusionary housing policies implemented in 2019. Construction costs continue to rise, posing a threat for new construction projects to be profitable. Lumber prices have hit a record high, increasing 24.4% in December 2021, while lumber volatility reached a 75-year high, according to the Bureau of Labor Statistics. The cost of building materials increased by 15.9% in 2019, and the average cost of commercial development projects increased by 23.1% between August 2020 and August 2021 according to a JLL report.

Producer Price Index for selected commodities, January 2018–April 2021



Click legend items to change data display. Hover over chart to view data.

The vertical line at February 2020 represents the start of a recession, as determined by the National Bureau of Economic Research. When this chart was published, the NBER had not yet determined an endpoint for that recession.

Source: U.S. Bureau of Labor Statistics.



MIDDLE HOUSING

Middle housing refers to residential properties with medium density, typically duplexes, triplexes, townhouses, courtyard buildings, multiplexes, and other arrangements. Middle housing allows renters to live in smaller developments, and it allows developers to construct multifamily properties smaller than typical urban multifamily properties. Middle housing is less costly to build than mid- and high-rises. It can be created by converting an additional dwelling unit (“ADU”) such as a detached garage into a residential unit. Daniel Parolek, author of *Missing Middle Housing: Responding to the Demand for Walkable Urban Living* explains that “Because of their simple forms, smaller size, and Type V construction, Missing Middle building types can help developers maximize affordability and returns without compromising quality.” Middle housing allows owners of single-family lots to change the existing use and create multifamily housing on their property without the significant investment needed to develop a midrise building, or the land required for garden style multifamily complexes.

IMPLEMENTATION OF HB 2001 AND CITY RESPONSES

Oregon has been in the process of implementing HB 2001 for over two years as of this publication. As the deadline for code adjustments looms over cities, the results have indicated a mix of reactions from larger cities and a nearly universal embrace of this bill from smaller cities. As seen in the appendix, most small cities have made the necessary zoning changes while larger cities are still in the process of deciding the direction of their city codes. This distinction is likely due to the difference in densities between smaller and larger cities. Smaller cities see their capabilities to expand their existing housing supply, while larger cities are less inclined to focus on population growth at the expense of their single-family inventory. Also, smaller cities typically have more to gain by population growth and would be inclined to take advantage of the infrastructure benefits outlined in HB 2001. By comparison, some larger cities have grown to their capacity and would see less impact from eliminating single-family zoning. The Oregon Legislative Assembly required cities failing to meet the July deadline to implement an alternative “development model code,” creating a strong incentive to accept the legislative mandate.

The most succinct summary of the challenges coming from larger cities would be the 2020 letter published by the Oregon League of Cities (OLOC) regarding HB 2001. The OLOC is a political organization of city leaders throughout Oregon designed to advocate for legislative action based on individual city needs. Their vision is that “All Oregon cities effectively govern, provide municipal services, and freely exercise their home rule authority,”

and their focus has been for maintaining local control over city decisions rather than statewide actions such as HB 2001.

The OLOC letter was written on behalf of nine large Oregon cities including Eugene, Salem, and Beaverton and includes clear opposition to HB 2001. They urge the state government to revisit their approach to the legislation and lay out numerous points which all focus on allowing flexibility on a city by city basis. These cities refer to HB 2001 as a “whittle away” approach. This is due to language within the bill that allows middle housing on land which is, “zoned for residential uses that allow for the development of detached single-family dwellings,” rather than lots zoned exclusively for single family.

The OLOC’s concern is that because many zoning codes technically allow single family houses to be built, any lot with this potential is now subject to middle family zoning. These parcels include lots with higher density and mixed commercial zoning codes which allow for single family. The OLOC claims this approach fails to provide cities with flexibility, taking issue without how HB 2001:

“Fails to provide a path for cities to retain middle housing strategies that are already working... does not expressly allow cities to define different areas within their jurisdiction in which middle housing can be regulated in different ways... and removes flexibility and severely limit cities’ ability to use tools such as minimum lot size, maximum density, planned unit developments, and unit maximums per lot.”

The OLOC letter goes on to propose an alternative approach which focuses on cities deciding their own criteria for lots that should be designated for middle housing. The components of their alternatives include, “Promotion of racial equity and desegregation,” wherein cities would be allowed to rezone land to middle housing in a manner that “promotes racial equity and reduces historic segregation by race, ethnicity and income by providing the opportunity for a wider range of housing types to be built in areas zoned for residential use.” The OLOC advocates for local jurisdictions having the authority to set standards and expectations on zoning adjustments and land designations to avoid potential conflicts.

The OLOC letter indicates how cities may handle compliance. The primary focus of their critique is focused on the centralized nature of HB 2001 and how the minimum requirements push compliance across all cities. Their criticism identifies an issue with cities that allow single-family along with other potential uses on a site that may not be compatible with middle housing options. However, the alternative option that focuses on racial equality lacks explanation as to how individual zoning designations would

increase access to housing options for people of color. Also, it seemingly allows for cities to pick and choose the areas that would be the focus for housing density increases over others. Without further understanding of this idea, the OLOC proposal suggests differences in zoning in areas with higher populations of BIPOC residents in the apparent effort to lower housing costs in those areas. If this is the intended value behind the flexible option of the OLOC letter, it creates a clear risk of further segregation as areas with middle housing becoming ostracized compared to areas without middle housing. This proposal appears to endorse zoning rules that correlate with racial characteristics of neighborhoods.

Portland has embraced the changes made in HB 2001 and made clear their approval of zoning changes to encourage density in all residential land. In September 2021, the Portland city government announced the Residential Infill Project Part 2 (“RIP 2”). This project adopts the zoning changes in HB 2001 and clears the way for additional multifamily units that were part of Senate Bill 458. RIP 2 will be implemented by July 1, 2022 in order to meet the state deadline as the city has stated that adopting the model development code is not compliant with Portland’s zoning policies. City Council hearings are planned in Spring 2022, but it is doubtful that anything will change Portland’s plan to adopt these codes. The city has stated that RIP 2 will allow for several middle housing options, including triplexes, fourplexes and cottage clusters, on R10- and R20-zoned properties. RIP 2 will revise the constrained site overlay zones in compliance with middle housing requirements and create an expedited land division process for the creation of new middle housing.

During this debate, the Portland region has been dramatically impacted by the rising demand for housing as supply fails to keep up. Rising construction costs and inclusionary housing policies have diminished the incentive for new large multifamily projects. The hope is that middle housing will enable Portland to pursue a new avenue of housing creation to lower rents. The Portland CBD has a number of small single-family lots that would be difficult, though not impossible, to add further density. However, Portland’s sprawling city limits encapsulate many neighborhoods of less dense areas with room to add housing stock. With their clear intents on easing the expansion of their UGB, the City of Portland’s embrace of HB 2001 is expected, and there is a clear potential for the new housing options to have a positive impact on the market. Portland is also the target location of the Missing Middle Housing Fund, a nonprofit organization which aims to bolster innovation in missing middle techniques by launching a competition to reward developers of innovative projects.

Outside of Portland, many of Oregon’s larger cities are showing more hesitation on the matter, and their city leaders have made

their attitudes clear. Many of these cities echo the sentiments of the OLOC letter but for their own reasons. The City of Beaverton, which signed the OLOC letter, expressed its desire to keep local control of zoning codes. Beaverton has historically expressed an interest in increasing density and expanding middle housing options before HB 2001 was passed. The City established the Beaverton Housing Options Project to help determine where and how these housing types will be allowed.

Those efforts were stalled, according to Beaverton community development director Cheryl Twete, to determine if the initiative was in compliance with HB 2001 and whether Beaverton residents would accept higher density. Beaverton associate planner Rob Zoeller expressed a concern with the impact of single-family markets as land demands rise and residents are priced out of buying the existing single-family inventory. Mark Haas, a state senator from Beaverton, voted no on the bill. While the City has demonstrated a desire to pursue increased density, members of the community have taken issue with the state-mandated control of zoning codes rather than identifying neighborhoods for increased density themselves.

The City of Troutdale, with just over 16,000 residents, responded to HB 2001 with a strongly worded message on its website making clear that the Troutdale city council was largely opposed to HB 2001 and supporting the message of the OLOC. The website stated, “There are still possibilities for legal challenges to the law, and there may also be legal protections for some established neighborhoods.” The city council issued a letter of disapproval immediately following the passage of HB 2001 in 2019. During the legislative debate regarding HB 2001, Troutdale mayor Casey Ryan publicly disagreed with the sentiment that single family neighborhoods enforce segregation, noting, “Maybe at one point neighborhoods were formed to keep people out, but that’s not going on anymore.”

Eugene, the second most populous city in Oregon, is currently in phase two of a four-part plan in amending their zoning code to meet HB 2001 standards and has largely expressed a desire to see increased density in their city. Code writing will start in the spring, and then city staff will bring the changes to City Council for adoption. Principal planner Terri Harding has expressed the city’s intent to comply with the minimum standards of HB 2001 and anticipated furthering measures to increase density beyond state guidelines. Harding expressed an interest in incentivizing higher density projects with measures such as not requiring off-street parking for properties with an affordable unit or for triplexes near a transit option.

Albany, a city of 50,000 residents just outside of Salem, adopted a mixed approach to HB 2001, ultimately embracing the bill. In November 2021, the city rolled out its Expanded Housing Options

Project, which aims to improve housing choice and implement zoning changes in compliance with HB 2001. According to the City, members of the community – including small families and older adults – need housing options with smaller footprints, and middle housing can be that solution. Anne Catlin, a City of Albany senior planner, made her support of increased density clear. Catlin states, “Through zoning without realizing it, we did actually restrict the types of housing units that could be built... A lot of communities, not just in Oregon, are trying to get back to more varieties of housing types.” However, this view was not universal in the city as Former Mayor Sharon Konopa viewed HB 2001 as irresponsible and claimed that “[HB 2001] takes away cities’ authority over the character of their neighborhoods and basically punishes single-family neighborhoods.” Konopa served until 2020 before losing reelection to Alex Johnson II, who publicly stated his support for new housing options to increase affordability.

HB 2001 provided \$3.5 million to the Department of Land Conservation and Development to assist local governments with planning and zoning processes, as well as infrastructure plans which are necessary for many cities to increase density. The money targeted smaller cities with inadequate resources to independently plan and implement these changes. Most large cities, such as Portland, Eugene, Bend and Wilsonville, were awarded with grant money. For example, Eugene was awarded \$145,000.

OUTLOOK

The earlier analysis published on this subject focused on the technical impacts of HB 2001 and how middle housing serves as an opportunity to increase housing supply, decrease rents and property values, and create new opportunities for smaller investors. While these points remain true, the political fallout of cities struggling with reduced autonomy is an increasingly important subject and has become a test case for further implementation of similar legislation in other states.

HB 2001 presents a contradictory look at legislative autonomy: does the right of a city to decide its zoning code outweigh the right of a landowner to decide what ought to be built on that property? HB 2001 universally overhauled Oregon’s zoning codes by mandating that all individual city codes with single-family zoning must be expanded to allow increased density, effectively ending single-family zoning in these cities. This new state policy reverses practices that were historically handled at the city level and challenges local planning departments to redesign their cities.

A look at the record of public comments, legislative actions, and popular press in Oregon shows that many cities that oppose HB 2001 have also engaged in their own density increases and are

struggling to embrace a statewide approach rather than a local one. Nearly every city in Oregon has publicly announced their plans to amend zoning codes to comply with HB 2001. Only a few cities, like Troutdale, have taken a more aggressive approach to engage in legal battles against the state legislature over the issue. The legislature's actions beg the question of whether cities should have the authority to decide which parts of their city density ought to increase in. However, the nature of HB 2001 and its universal approach to the zoning code changes prevents cities from focusing density on lower-income areas.

The changes in zoning codes do not prohibit or dissuade the development of single-family homes but do change the potential uses for all land. Cities that desire single-family neighborhoods have no authority to prevent investors from purchasing and converting plots of land to convert into multifamily development. Construction of middle housing can start a domino effect in which neighboring owners sell their property to investors, and neighborhoods are largely converted from single family to multifamily properties. This outcome may be extreme but demonstrates the potential impact of taking away legal authority for cities to create single-family neighborhoods. On a market level, a potential conversion of a sizable number of single-family units creates the likelihood of new single-family development to compensate for this change. In this scenario, consumer preferences for single-family homes dominate the preferences of lawmakers.

Ultimately, HB 2001 could have a dramatically large or surprisingly small impact on housing in Oregon. A common fear for some Oregon residents is that this bill will put an end to single-family housing, which has become a strawman argument against the bill. This change in zoning code opens all single family lots within the selected cities to potentially convert to multifamily housing, but this is solely at the discretion of the owner. The bill creates more flexibility for landowners to choose highest and best use for their property, which is ultimately the goal of all developers and landowners. At the same time, city officials – many who show a clear desire to increase density throughout their cities – fear the loss of control over their own zoning regulations.

RESOURCES

“About the RIP2 Project.” Portland.gov, <https://www.portland.gov/bps/rip2/about-rip2>.
Banta, Megan. “What Are Eugene and Springfield Doing to Allow ‘Missing Middle’ Housing as Required by State Law?” Guard, Register-Guard, 26 Jan. 2021, <https://www.registerguard.com/story/news/2021/01/26/eugene-springfield-hb-2001-middle-housing-duplex-triplex-development-city-code/667410002/>.

“Competition.” MMHF, <https://www.missingmiddlehousing.fund/competition>.
“Diverse Choices for Walkable Neighborhood Living.” Missing Middle Housing, 6 May 2021, <https://missingmiddlehousing.com/>.

Grega, Kelcie. “How Beaverton Plans to Solve ‘Missing Middle’ Equation.” <https://joomla-lakave.com>, 11 Aug. 2021, <https://pamplinmedia.com/bvt/15-news/518431-413755-how-beaverton-plans-to-solve-missing-middle-equation>.

HB 2001 FAQ - Oregon. <https://www.oregon.gov/lcd/UP/Documents/HB%202001%20FAQ.pdf>.

“HB 2001 Moves through the House.” League of Oregon Cities, <https://www.orcities.org/resources/communications/bulletin/loc-bulletin-archive/hb-2001-moves-through-house>.
HB 2001 Tracker - Oregon. https://www.oregon.gov/lcd/UP/Documents/HB_2001_Implementation_Status.pdf.

House Bills 2001 & 2003 Planning Assistance - Oregon. https://www.oregon.gov/lcd/CPU/Documents/20200728_HB2001_HB2003_FundingDecisions.pdf.
LM_HB2001 Fact Sheet - Beaverton, Oregon. https://www.beavertonoregon.gov/DocumentCenter/View/27282/LM_HB2001-Fact-Sheet.

Mann, Cody. “Albany Exploring How to Create More Housing Options for Those in the ‘Middle.’” Corvallis Gazette Times, 17 Jan. 2022, https://www.gazettetimes.com/news/local/albany-exploring-how-to-create-more-housing-options-for-those-in-the-middle/article_0674bf99-c51c-5f07-ba70-ee54f119f68f.html.

“Mark Hass.” 2019 Environmental Scorecard for the Oregon Legislature, <http://scorecard.olcv.org/2019/senate/hass/>.

“Markets & Submarkets.” CoStar, <https://product.costar.com/Market/>.

“Medium Cities Middle Housing Model Code.” Government of Oregon, <https://www.oregon.gov/lcd/UP/Documents/OAR660046%20EXHIBIT%20A%20-%20Medium%20Cities%20Middle%20Housing%20Model%20Code.pdf>.

Miller, Samantha Matsumoto | Dave. “Represented: Rethinking Single-Family Zoning in Oregon.” Opb, OPB, 3 June 2020, <https://www.opb.org/radio/programs/think-out-loud/article/oregon-single-family-zoning-house-bill-2001/>.

Oregonian/OregonLive, Janet Eastman | The. “Put a Spare Home or Two in Your Backyard: Oregon’s ADU Rules Allow for More Income-Producing Rentals.” Oregonlive, 10 Sept. 2021, <https://www.oregonlive.com/hg/2021/09/put-a-spare-home-or-two-in-your-backyard-oregons-adu-rules-allow-for-more-income-producing-rentals.html>.

Sinnock, Bonnie. “Lumber Volatility Hits 75-Year High as Inflation Soars.” National Mortgage News, National Mortgage News, 14 Jan. 2022, <https://www.nationalmortgage-news.com/news/lumber-volatility-hits-75-year-high-as-inflation-soars>.

“Troutdale Responds to New State Housing Legislation.” Troutdale Oregon, <https://www.troutdaleoregon.gov/commdev/page/troutdale-responds-new-state-housing-legislation>.