

Eugene Citizens' Guide to the 2019 Oregon House Bill 2001

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On June 30, 2019, the Oregon Legislature passed House Bill 2001 (HB 2001). This deeply-flawed bill dictates that by June 30, 2022, Eugene's residential zones, including the R-1 Low-Density Residential Zone, allow the following dwelling types:¹

- Duplexes
- Triplexes
- Quadplexes
- Cottage clusters – detached housing units with a footprint of less than 900 square feet each and that include a common courtyard. The density must be at least four units per acre.²
- Townhouses – dwelling units constructed in a row of at least two or more units where each unit is located on an individual lot or parcel and shares a common wall with an adjacent unit.³

The R-1 zone is Eugene's only low-density, predominantly "single-family" base zone. HB 2001 essentially *eliminates* all single-family zones statewide. This will effectively eliminate all single-family neighborhoods, as well – *except those areas that are covered by Covenants, Conditions & Restrictions (CC&Rs) that limit each lot to one dwelling.*⁴

HB 2001 also requires that R-1⁵ allow a duplex on each lot.⁶

HB 2001 also prohibits, as of January 1, 2020, "owner-occupancy" and off-street parking as siting- and/or design-related approval criteria for Accessory Dwelling Units (ADUs) in R-1.⁷

¹ In Eugene, three or more dwellings on the same lot are considered "multiple-family" and subject to additional approval criteria to which single-family-detached, duplex and ADU dwellings are not subject.

² This is another example of the numerous ill-informed provisions of HB 2001. Well-done "cottage cluster" developments often include structures that each comprise two side-by-side units, i.e., a duplex. But this more resource efficient approach would not be allowed by the definition, which requires "detached housing units." From a practical standpoint, no developer is going to build (e.g.) four detached units of 900 s.f., where they could build a fourplex of larger units.

³ Another poor definition. Townhouses are not necessarily constructed in a "row" (that would be "row houses"). There is no mention of lot size or number of stories. A better definition would be: Individually owned, single-family dwellings with at least two floors that share a wall with another townhouse.

⁴ Eugene has many R-1 areas, especially newer and more expensive subdivisions, with CC&Rs that limit each lot to one dwelling. Thus, the redevelopment impacts imposed by HB 2001 will fall disproportionately on older, less expensive single-family areas. HB 2001 prohibits *future* CC&R provisions to enforce such a restriction, but statutes cannot nullify *existing* CC&R provisions.

⁵ While this guide addresses the R-1 zone specifically, the same rules apply to R-2, R-3, R-4 and all special area zones that are "zoned for residential use [and] that allow for the development of detached single-family dwelling."

⁶ Section 2. (2)(b) "A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings."

⁷ As with many of HB 2001's provisions, this provision isn't clear. HB 2001 amends the ORS regarding ADUs to state: " 'Reasonable local regulations relating to siting and design' does [sic] not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking." See details below.

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Notably, HB 2001 does not apply to nearby commuter towns with a population of 10,000 or fewer, including Coburg, Junction City, Veneta, Creswell, Pleasant Hill, Harrisburg, Monroe, Lowell, and Oakridge. This makes these cities attractive locations for increased “leap frog” sprawl.

Harmful outcomes

- a) Although proponents claim that HB 2001 will be “one tool in the toolbox” to improve housing affordability, substantial evidence provided in hearing testimony demonstrates that simply upzoning single-family neighborhoods without consideration of context will exacerbate housing affordability for the lowest income households. Such upzonings replace older, less expensive housing and increase housing prices and rents in neighborhoods of color and poorer neighborhoods, leading to the displacement of residents because of increased costs.
- b) HB 2001 will inevitably worsen Green House Gas emissions (GHG) because the housing that it promotes will be *distributed* throughout wide areas of low-density housing, which will not be practical to fully serve with efficient public transit services. Further, by promoting higher-price/rent housing, the new resident households will be more likely to own one or more cars and have a higher average Vehicle Miles Travelled (VMT) than poorer households would.
- c) HB 2001 wreaks havoc on local planning for infrastructure and police and fire services because Cities cannot predict where growth in residents will create the most significant demand for upgrades in infrastructure and services.
- d) Finally, HB 2001 is egregiously inequitable because all of the impacts will fall only on the single-family areas that are not protected by CC&Rs that limit development to one dwelling per lot. Older, less expensive neighborhoods typically do not have such CC&Rs; and thus, lower-income residents of these neighborhoods will disproportionately incur the impacts of crowding, congestion, inadequate infrastructure, strapped police and fire services and rising costs.

Technical Flaws

HB 2001 is not only bad policy, it’s rife with technical flaws, including:

- a) By prohibiting owner-occupancy as a *siting* or *design* regulation of ADUs, HB 2001 does not appear to prohibit owner-occupancy as a clear-and-objective criterion for a proposed dwelling to meet the statute’s *definitional* requirement that an ADU be “used in connection with or [be] accessory to a single-family dwelling.”
Furthermore, if HB 2001 were intended to also prohibit owner-occupancy as a definitional criterion, then there would remain no obvious, clear-and-objective criterion(a) for determining that a dwelling is “used in connection with or [be] accessory to a single-family dwelling.”
- b) The R-1 zone already allows “all dwelling types ... if approved through the Planned Unit Development process.” R-1 allows duplexes, triplexes and quadplexes in specifically designated lots in subdivisions. HB 2001 doesn’t appear to say that “middle housing” must be allowed “by right.” However, the term “by right” means that the required permit is not subject to a discretionary review. Because Eugene is now attempting to provide completely “clear-and-objective” approval criteria for PUDs, would the R-1 provisions of a PUD (and other options) satisfy the HB 2001 requirements?
- c) By requiring that R-1 allow a duplex on “each lot or parcel,” HB 2001 effectively encourages, even forces, Eugene to set a greater minimum lot size in order to not conflict with the comprehensive plan designation of “Low Density Residential” (“LDR”), which has a maximum density of 10 dwelling units per gross acre (equivalent to 14.28 dwelling units per net acre). The LDR designation requires

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3,050 s.f. of lot for each dwelling. (The R-1 zone has a maximum density of 14 du/na, but that could be increased to be identical to the LDR max of 14.28 du/na.)

- d) Although HB 2001 allows Eugene to adopt new approval criteria for proposed “middle housing,” the law does not account for the fact that Measure 49 provisions allow an owner to require the City to waive such new approval criteria if the criteria restrict the “residential use” of the property.

Thus, if the City were to allow single-family dwellings in R-1 only on lots of 6,100 square feet or more, a property owner with a *smaller* lot would be able to successfully bring a M49 claim to waive the new limit, which would then potentially allow not only a single-family, detached dwelling on the lot, but also a duplex. HB 2001 doesn’t resolve the “M49 trap” that it creates by forcing existing single-family zones to allow a duplex on each-and-every lot.

- e) HB 2001 has the following unclear provision:

“Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.”

The grammar is so convoluted, the answers to the following questions are not clear:

- Does HB 2001 allow regulations applicable to duplexes that are more restrictive than apply to a single-family, detached dwellings? There are two cases:
 1. Regulations that would potentially *prohibit* a duplex on a lot that would allow a single-family, detached dwellings? For example, lots that are accessible only by a substandard, unimproved alley.
 2. Regulations that would allow a duplex, but limit the scale; e.g., maximum square footage?
- What, if any, categories of development and lot regulations are not included under “siting and design”?
- What are the clear-and-objective standards for determining whether regulation(s) “discourage ... development” and for determining “unreasonable costs or delay”?
- This provision appears to proscribe only regulations that “discourage the development of *all*”, *i.e.*, *each-and-every*, “middle housing types” enumerated in HB 2001. Was the intent actually “any,” rather than “all”? The text of HB 2001 appears to allow a regulation that may “discourage” all the types, except one, e.g. duplexes, which are addressed explicitly in a separate provision.

Could, for example, Eugene limit all “middle housing” types, except duplexes, in R-1 to sites within a ¼ mile walking distance to an EmX station?

- What “protective measures” are encompassed under “statewide land use planning goals”?
 1. There is only a single statewide land use planning goal – Goal 2 Land Use Planning (OAR 660-0015-000(2)). There are, however, 19 Statewide Planning Goals. The authors of HB 2001 apparently do not even know the fundamental structure and terminology of Oregon’s Statewide Planning Goals. Is this HB 2001 provision intended to refer only to Goal 2 or to all 19 goals?
 2. What qualifies as a “protective measure”?
 3. This section of HB 2001 appears to be silent on regulations to protect the public’s health and safety (e.g., fire apparatus access; landslide risks, etc.). However, Section 10 states:

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“It is the policy of the State of Oregon to reduce to the extent practicable ... permitting ... barriers to the construction of middle housing, ... *while maintaining safety* ... with respect to construction and occupancy.”

Does HB 2001 allow regulations related to public safety, *even if they would restrict a particular lot to a single-family, detached dwelling?*

- f) HB 2001 states that “local government is not required to consider whether the amendments [to] allow “middle housing” significantly affect an existing or planned transportation facility.” Can a local government nonetheless *opt* to consider impacts on transportation facilities as an approval criterion?
- g) It would be difficult or even impossible to reliably predict in what areas HB 2001 would lead to substantial increase in dwellings and predict – by June 30, 2021 – specifically “where ... water, sewer, storm drainage or transportation services ... are expected to be significantly deficient before December 31, 2023.” How is Eugene supposed to meet this deadline when HB 2001 appears to prohibit maintaining some areas under current R-1 zoning restrictions?
- h) By what means can a jurisdiction share the burden of new “middle housing” equitably among all R-1 homeowners, including those living in areas that have restrictive CC&Rs? Is HB 2001 unconstitutional because it violates the U.S. Constitution’s “Equal Protection” clause?
- i) The **Jefferson-Westside Special Area Zone (JWSAZ)** is Eugene’s most progressive zoning for what has for many decades been developed predominantly as a single-family neighborhood. JWSAZ already complies with HB 2001 because it allows all of the housing types listed in HB 2001. JWSAZ goes well beyond HB 2001 and other Eugene residential zones by allowing creation of new lots as small as 2,250 s.f., including new lots that have their only vehicular access via an unimproved alley. HB 2001 would require that these very small lots allow two dwellings, even when both would have to be accessed via a substandard alley. Effectively, HB 2001 will require eliminating these progressive provisions for small lot development of affordable housing. However, as explained above, such code amendments *might* be subject to M49 claims.

Potential Code Provisions for R-1 Conformance

Depending on the answers to the unresolved questions above, Eugene should consider the following items related to code amendments.

To assess scope and equitability:

1. Immediately create map(s) that show R-1 and other areas within the scope of HB 2001 and identify which of these areas have protective CC&Rs that override the dictates of HB 2001. For all areas, determine at least the following distributions, by census block:
 - a) Household income
 - b) Number of household occupants
 - c) Housing type
 - d) Tenancy (owner-occupied or rental)
2. In addition, map potentially limiting geographic characteristics, including:
 - a) Geologic hazard areas
 - b) Steep slopes
 - c) Development patterns, e.g., that make access and off-street parking for multi-plexes impracticable.

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For ADUs in R-1:

3. ORS requires that the “Dwelling, Accessory” housing type have a definition that provides clear-and-objective criterion(a) for “used in connection with or that is accessory to a single-family dwelling.” The text of HB 2001 does not prohibit using owner-occupancy as one of the *definitional* criteria. Therefore, the following definition would potentially pass judicial reviews:

Dwelling, Accessory. An interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

“For the purposes of the definition of Dwelling, Accessory:

- (A) A second dwelling on the same lot as a principal single-family dwelling is “accessory to” the principal dwelling if an owner of the lot occupies the principal dwelling.
- (B) A second dwelling on the same lot as a principal single-family dwelling is “used in connection with” the principal dwelling if an owner of the lot occupies the second dwelling.
- (C) A second dwelling on the same lot as a principal single-family dwelling is both “accessory to and used in connection with” the principal dwelling if both dwellings are rented/leased under a single rental/lease agreement for more than 30 days and both dwellings are occupied only by related persons.

For the purpose of this provision, “related persons” include: spouse, child, stepchild, parent, stepparent, grandchild, stepgrandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin [, or other persons related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship].

- (D) A second dwelling on the same lot as a principal single-family dwelling that does not conform to at least one of the above three subsections is not an Accessory Dwelling.

Note that the first part of the “related persons” definition is from House Bill 2469, which was adopted by the 2019 Legislature; and the (optional) second part is from the Eugene Code 9.0500 Definition of “Family” subsection (A).)

Subsection (C), above, allows both the principal dwelling and an ADU to be rented when both units are occupied only by members of the same “family.”

4. Maintain 6,100 s.f. minimum lot size requirements for two dwellings (principal dwelling and ADU) to conform to the comprehensive plan “Low Density Residential” designation. Maximum density is the most important means of controlling impacts on infrastructure and service requirements, as well as tree canopy and permeable ground that can absorb stormwater.
5. While “owner occupancy” could significantly reduce negative impacts of a two-dwelling development in a single-family neighborhood, the three most important physical criteria, include:
 - Maximum square footage and/or maximum bedrooms; both of which may be proportional to lot size. The maximum(s) could be for the total of both dwellings, as well as just the ADU.
 - Maximum height and sloped (or stepped) setbacks to avoid crowding and privacy intrusions.
 - Set maximum area that either: a) has any form of structure above it; or b) is a vehicle use area; or c) is some other form of hardscape.

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For duplexes in R-1

1. Maintain the 6,100 s.f. requirement for lot size to conform to LDR maximum density.
2. R-1 already allows duplexes on corner lots and under other circumstances. To manage duplexes in other cases:
 - There is no statutory prohibition against an “owner occupancy” requirement for duplexes in R1, so the duplex approval criteria could include “owner occupancy” as one of the options. See EC 9.741(4).
 - Limit both duplex units to the same development criteria as detached ADUs, e.g., max square footage and bedrooms, as well as max height and sloped setbacks.
 - Require 1 parking spot per dwelling .
 - Set maximum area that either: a) has any form of structure above it; or b) is a vehicle use area; or c) is some other form of hardscape.

For other “middle housing” in R-1

1. Limit to sites within ¼ mile by foot of EmX station.
2. Maintain the 3,050 s.f. per dwelling unit requirement for lot size.
3. Use a dwelling unit calculation similar to the Jefferson-Westside Special Area Zone at EC 9.3626(1), which takes into account the number of bedrooms.
4. Require 1 parking spot per dwelling
5. Set maximum area that either: a) has any form of structure above it; or b) is a vehicle use area; or c) is some other form of hardscape.
6. Potentially implement/require a “density allowance” for non-subsidized affordable housing.

For the Jefferson-Westside Special Area Zone (and other versions of S-JW that may be created)

1. Eliminate provision that allows creation of new “small lots” and alley-access-only lots.
2. Revise parking requirements so that if second dwelling is submitted as “ADU,” the first on-street parking space (if any) is allocated to the ADU; otherwise waive requirement.
3. Limit duplex development of all units on small lots and alley-access-only lots to max size and bedrooms. Require 2 parking spaces on the lot.
4. Require that alley access for fire apparatus is at least at 12 feet clear and supports 80,000 pound load.
5. Set maximum area that either: a) has any form of structure above it; or b) is a vehicle use area; or c) is some other form of hardscape.

Broader strategies for addressing housing need and Statewide Planning Goals

1. The City should immediately implement “Opportunity Siting” as a discretionary process to allow increased density and design flexibility in appropriate low-density locations. The **Jefferson Westside Neighbors** has already identified scores of potential sites, but City Planning Division staff have obstructed implementing this Council-adopted strategy.
2. The City should immediately implement the recommendations of the Envision Eugene “Multiple-Use Development” Committee.
3. Take the steps necessary to “activate” the Multiple-Unit Property Tax Exemption (MUPTE) district along the W. 6th & 7th Aves. EmX corridor.