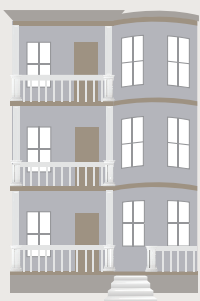


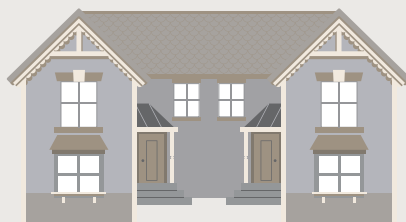


➤ Re-Legalizing Middle Housing

A Model Act and Guide to Statewide Legislation



STACKED TRIPLEX



TOWNHOUSE



FOURPLEX



COTTAGE



SIDE-BY-SIDE DUPLEX



STACKED DUPLEX

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Re-Legalizing Middle Housing: A Model Act and Guide to Statewide Legislation

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Founded in 1985 and part of the AARP Policy, Research and International Group, the AARP Public Policy Institute (PPI) promotes the development of sound, creative policies to address the common need for economic security, health care and quality of life. PPI's livability experts focus on policies that relate to issues including land use, housing, transportation and broadband — all of which facilitate aging in place. PPI also hosts the AARP Livability Index, a free, interactive, online tool that scores neighborhoods and communities throughout the United States based on the presence of the types of services and amenities that impact people's lives the most.

AARP Livable Communities

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This report is available as a PDF download via AARP.org/MissingMiddleHousing. See page 45 for additional housing and zoning resources.

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EXECUTIVE SUMMARY

■ Why Consider Statewide Action on Middle Housing

“Middle housing” encompasses a number of different housing types that have multiple units but are generally more similar in scale to single-detached homes¹ than to apartment buildings, including duplexes, triplexes, fourplexes, cottage clusters, and townhouses. Middle housing has gained recent attention because it tends to be less costly, more energy efficient, and require less land per household than single-detached homes. For a more comprehensive description of what middle housing is and how it can benefit your state or community, please see AARP’s report *Discovering and Developing Missing Middle Housing*.²

Current regulations in many communities do not allow middle housing in lower-density residential zones, leading to the phrase “missing middle housing.” However, in recent years, a growing number of cities and states have legalized middle housing in areas that have been limited to single-detached housing for decades as a way to expand options and remove barriers to development of less costly alternatives. These efforts have shown that statewide action on middle housing can open opportunities for middle housing across a wide range of communities, shift the focus of local conversations from *whether* to allow middle housing to how to allow it, and build and strengthen coalitions advocating for a greater range of housing options for their constituents.

This Model Act (Model Act) and Guide to Statewide Legislation (Guide) provide states with a starting point to design their own middle housing legislation.

■ Lessons Learned From Past State Legislative Efforts

This Model Act is informed by past legislative efforts to legalize middle housing in California, Maryland, Nebraska, New Hampshire, New York, Oregon, Rhode Island, Virginia, and Washington. Of these, California, Nebraska, and Oregon successfully passed legislation.

While the context varied in each state, successful middle housing bills often built on prior, similar efforts, such as accessory dwelling unit bills or recent local efforts to legalize middle housing. The successful bills also focused on urban and suburban communities and outlying cities and towns but exempted rural areas. For many of the unsuccessful efforts, pushback was centered on loss of local control, further exacerbated by a lack of understanding of middle housing and incomplete or misleading information about the changes that were proposed. Recent efforts have placed a greater emphasis on equity, with measures to prevent displacement and increase middle housing options in high-opportunity areas.

■ Overview of the Model Act

As each state has a unique legislative and housing context, the Model Act offers multiple options in many sections of the Model Act to suit a variety of different contexts. The options include highly prescriptive approaches that emphasize consistent implementation; targeted approaches that focus on areas where middle housing can offer the greatest benefit by increasing housing supply and housing options; and highly flexible ones that allow local governments more latitude in defining their own approaches to implementation.

The Model Act addresses definitions, requirements, state responsibilities, and implementation:

- **Definitions** (Section 1) offers a range of approaches to defining “middle housing,” including form-based approaches, form-agnostic approaches focused on the number of units and hybrids that use common housing type nomenclature. The section provides several options to identify which jurisdictions are covered by the legislation, all of which exclude rural areas. One option applies only to jurisdictions that are not meeting other state housing obligations (e.g., California’s Regional Housing Needs Allocations or Massachusetts’ Chapter 40B provisions related to low-and moderate-income housing as a share of local housing stock), while others apply more broadly. The section defines residential areas within those jurisdictions where middle housing allowances would apply: areas with low-density residential zoning and access to public water and sewer systems. This section also provides definitions for other key terms used throughout the Model Act.
- **Requirements** (Section 2) provides several choices for how to set a requirement for the subject jurisdictions to allow middle housing, including specific versions that offer incentives for affordable and accessible middle housing; versions that focus on areas that have more amenities or access to opportunities; and more general and flexible versions. All approaches emphasize equitable distribution of middle housing opportunities within a jurisdiction. This section also gives parameters for the standards and review procedures that local governments can apply to middle housing to ensure that development regulations applied to it are reasonable and allow it to be built efficiently while maintaining “house-scale” development. These parameters stipulate that jurisdictions should offer greater flexibility on several key standards for affordable and accessible middle housing. The section also provides several options offering additional flexibility in implementation, including an option to tailor middle housing allowances in disadvantaged areas where gentrification and displacement may be a concern; an “opt-out” option for jurisdictions taking other actions to support housing availability, affordability, stability, and equity; and an option to allow deferred implementation in areas with significant infrastructure deficiencies, provided there are realistic plans to address the deficiencies.
- **State Responsibilities** (Section 3) outlines key commitments to assist local jurisdictions in middle housing implementation, including funding technical assistance, producing a model local ordinance, and addressing barriers in the state building code.
- **Implementation** (Section 4) provides a timeline, describes the consequences of failure to comply, and lists additional measures for jurisdictions to consider when adopting regulations or amending a comprehensive plan to comply with middle housing requirements (e.g., measures to prevent displacement and support affordable middle housing development).

With a range of approaches and options, the Model Act provides a starting point and a template from which states can develop the approach that best fits the policy, political and development context in that state. It also includes commentary to help lawmakers, advocates, and community members understand how best to tailor the options provided to their context.

While statewide action can have wide-reaching results, AARP supports and encourages local efforts to advance middle housing as well as statewide efforts. This Guide and Model Act can provide insights into best practices for local-level initiatives that may inform and pave the way for broader, statewide legislation.

INTRODUCTION

In recent years, several states have passed legislation to expand housing options within residential neighborhoods, thus re-legalizing small multi-unit housing options, which can be less costly, more energy efficient, and require less land per household than single-detached homes. Many other states have considered similar legislation but have met resistance. These efforts have shown that statewide action on middle housing can open opportunities for middle housing across a wide range of communities, shift the focus of local conversations from *whether* to allow middle housing to *how* to allow it, and build and strengthen coalitions advocating for a greater range of housing options for their constituents. Drawing on lessons learned from both successful and unsuccessful efforts, this Model Act (Model Act) and Guide to Statewide Legislation (Guide) offer recommendations for state enabling legislation with options and considerations to tailor the legislation based on state context. The Model Act can be used as a road map of potential legislation to assist AARP volunteer leaders and members as well as other interested residents, planners, and government officials in evaluating potential changes in state laws and local zoning codes.

The Model Act and Guide are focused on middle housing, including duplexes, triplexes, fourplexes, cottage clusters, townhouses, and similar types of housing that fit into neighborhoods yet offer alternatives to single-detached homes. For a more comprehensive description of what middle housing is and how it can benefit your state or community, please see AARP's ***Discovering and Developing Missing Middle Housing***.³ While accessory dwelling units (ADUs) are part of a continuum of housing options and are sometimes grouped with middle housing, legislation related to ADUs is addressed in AARP's *Accessory Dwelling Units Model State Act and Local Ordinance*⁴ and not addressed in this guide. If there is not yet a statewide act enabling ADUs in residential areas in your state, this should be addressed along with middle housing.

Statewide action is just one pathway to expanding housing options. As discussed in the lessons learned section below, local action often informs and paves the way for statewide initiatives. AARP supports and encourages local efforts to advance middle housing as well as statewide efforts and anticipates providing additional informational resources to support local efforts. While this Guide and Model Act are not intended as a comprehensive set of recommendations for action at the local level, they do provide insights into best practices for local-level initiatives. Those considering local middle housing provisions can evaluate whether they meet the requirements of the approaches laid out in the Model Act related to how broadly middle housing is allowed, what types of middle housing are allowed, the standards and procedures applied to them, and other provisions. Local codes that are consistent with this Model Act will generally avoid potential pitfalls that could limit their effectiveness.

2. LESSONS LEARNED ...

Lessons Learned from Past Legislative Efforts to Enable Middle Housing

■ Overview

The Model Act and Guide were informed by a review of past legislative efforts to enable middle housing at the state level, including both successful and unsuccessful legislation, to understand why some efforts succeeded while others failed. This summary provides an analysis of the text of each bill and a description of any state-level context that informed the bill's legislative viability.

The states with legislation that passed into law (“successful legislation”) are California, Nebraska, and Oregon. The states with unsuccessful efforts (in which legislation was introduced but did not pass into law) include Maryland, New Hampshire, New York, Rhode Island, Virginia, and Washington.

States With Successful Legislation

Oregon HB 2001 (2019)⁵

Summary of the Legislation

Oregon's HB 2001 directed cities with populations greater than 25,000 or that are within a metropolitan service district to allow duplexes, triplexes, fourplexes, townhouses, and cottage clusters in areas zoned for single-detached dwellings and to allow a duplex on every lot or parcel that allows a single-detached home. Cities with populations between 10,000 and 25,000 outside a metropolitan service district were subject only to the duplex-specific requirement. If a local government failed to adopt regulations consistent with this rule by a certain date, it was automatically subject to a model code designed by the state. The bill exempted areas subject to environmental and natural hazard protections and allowed jurisdictions to identify infrastructure-deficient areas where implementation of the requirements would be delayed for several years.

Context

Oregon has a history of state-level land use planning dating back to the 1970s, which helped set the stage for this bill. While there were concerns about local control even within this context, there were already many housing-related requirements that local governments had to comply with, including a requirement that they plan for a 20-year supply of land for housing of all types and limits on jurisdictions' ability to apply discretionary procedures or standards to housing development. Within this context, a requirement to allow middle housing types was still a major policy shift, but not a complete novelty. Simplifying requirements for smaller cities and excluding very small jurisdictions (outside a metropolitan area) also likely helped reduce concerns about the level of effort required to comply.

This built on work by the City of Portland to adopt local-level provisions allowing middle housing through its Residential Infill Project, which started several years before HB 2001 passed. It also helped that AARP had trusting relationships with legislators, lobbyists, and a broad spectrum of advocacy organizations that were part of the process and established what they considered nonnegotiable early on.

Additionally, the Oregon Department of Land Conservation and Development adopted administrative rules to implement and clarify many aspects of the new legislation, along with adopting the model code that applies to jurisdictions that do not comply with the legislation. This allowed the bill itself to be less detailed and prescriptive while still providing an avenue, with an advisory committee and public input, to work through key details and interpretations. The administrative rules that were ultimately adopted make the requirements much more prescriptive for local governments and set a high threshold for identifying infrastructure-deficient areas.

California SB 9 (2021)⁶

Summary of the Legislation

California's SB 9 directed jurisdictions in urbanized areas and urban clusters (as defined by the U.S. Census) to allow two residential units (duplexes, detached homes, or homes with an ADU) in areas primarily zoned for single-detached dwellings. The bill also permitted existing lots zoned for single-detached housing to be split into two lots, each of which can then have two residential units if one of the units will be owner-occupied for at least three years. Development under SB 9 must be approved through ministerial review (a nondiscretionary process, generally by staff). Homes in historic districts, protected species habitat, or environmentally constrained areas are exempt. There are also anti-displacement measures built into the bill, including one making sites ineligible for development or lot splits pursuant to SB 9 if it would require demolition or alteration of income- or rent-restricted affordable housing or housing that has been occupied by a tenant within the preceding three years. Local governments were expected to comply as of an effective date, after which there was the potential for enforcement by the state attorney general.

Context

SB 9 was part of a package of housing bills passed in 2021, including SB 8, 9, and 10. AARP was part of the negotiation process and part of a coalition that advocated for middle housing that included a statewide "YIMBY" ("Yes in My Backyard") group and other interest groups. Prior to its passage, other bills offering incentives to expand middle housing achieved minimal results. Since the incentivizing approach failed, the drafters of SB 9 mandated compliance. Despite this, many cities are seeking ways to avoid compliance, such as declaring large residential areas protected or historic zones.

Nebraska LB 866 (2020)⁷

Summary of the Legislation

Nebraska's LB 866 linked middle housing to a broader effort to plan for housing affordability. It directed cities with populations greater than 20,000 to adopt an affordable housing action plan by a set deadline. The requirement gives cities of population 50,000 or more three years to adopt a plan and gives cities of population 20,000 to 50,000 four years to adopt a plan. Cities that already had a compliant plan were not required to take further action. Jurisdictions that do not comply with this requirement must allow middle housing in areas zoned for single-detached dwellings, with provisions similar to Oregon's HB 2001.

Context

While the bill does address middle housing, it focuses on getting key local governments to take the first steps in planning more pro-actively for housing supply and affordability and makes a connection between middle housing and moderate-cost housing options. This reflects the lack of prior statewide requirements related to housing and the uneven capacity at the local level to create and implement effective housing strategies. It puts middle housing in the context of other strategies to support affordable and workforce housing and uses prescriptive requirements as a "stick" to encourage local governments to adopt their own plans and strategies.

The bill achieved broad bipartisan support. While there was some opposition from local governments, they also recognized that the legislation was necessary to alleviate housing shortages. AARP helped engage communities, with personal stories and education. There was discussion of the importance of workforce housing as a driver for economic development statewide, which helped build support for expanding lower-cost housing options. In addition, the fact that the legislation removes restrictive regulations and creates more market-driven opportunities and choices for property owners helped get supporters of market-based policy solutions on board.

States With Unsuccessful Legislation

Washington SB 5670 & HB 1782 (2022)⁸

Summary of the Legislation

Washington's companion bills SB 5670 and HB 1782 directed cities with populations greater than 10,000 in areas subject to growth management planning requirements to allow certain middle housing in areas zoned for single-detached dwellings. The house bill (HB 1782) allowed duplexes on lots of 4,500 square feet or larger and triplexes on corner lots. The base senate bill (SB 5670) requirement was broader, allowing duplexes on all residential lots. In cities with a population of 20,000 or more, it allowed up to fourplexes, and on all lots and lots within a half-mile of a major transit stop, it allowed up to sixplexes. It also limited parking mandates: Parking could not be required for middle housing within a half-mile of transit in cities of 20,000 or more, no more than one space per lot could be required in other areas on lots 6,000 square feet or smaller, and no more than two stalls per lot could be required on larger lots. The senate bill also allowed jurisdictions to defer implementation of the requirements in infrastructure-deficient areas (water, sewer, stormwater, transportation) with a plan of action in place and a specific timeline to address the deficiency (there was no set upper limit on the duration of the deferral). Cities could regulate siting and design of middle housing, provided standards were no more restrictive than those applied to detached houses. The bill also allowed an alternative based on meeting a minimum average housing unit density for the city as a whole, with thresholds tiered by population, if the city made findings of fact that the alternative would not result in racial disparities.

The two bills directed the State Department of Commerce to develop a model code that cities could choose to adopt. In any city that did not pass ordinances in compliance with the bill within 24 months following the bill's effective date, the model code was automatically applied. A city that reached the 10,000-population threshold following the effective date had 12 months from that point to comply.

Context

The bills were backed by a coalition including AARP, organized labor, Habitat for Humanity, home construction and realtor industry groups, and others.⁹ While the two bills had the support of the governor, local government leaders opposed them because they wanted zoning to remain within local control. Additionally, key players such as the city of Seattle and the Washington Low Income Housing Alliance did not take a position on the bill.¹⁰ The bills had been introduced multiple times before, and sponsors indicated they will introduce them again next session.¹¹

Though the bill did not pass, the budget included funding to support local middle housing implementation, which remained after the bill failed to pass. As a result, a number of local governments will be advancing middle housing through their own initiatives, funded by state grants. The grant funding combines a focus on middle housing implementation with a focus on identifying areas at risk of displacement and advancing measures to prevent displacement. This combination was likely a result of past rezoning efforts that generated concerns about their impacts on gentrification and displacement from both impacted groups and wealthy homeowners who opposed the change. Jurisdictions that participate in the grant funding may be eligible for a streamlined state review and approval process for their local amendments.

New York S 7574 (2021)¹²

Summary of the Legislation

New York's S 7574 directed cities (any area with at least 500 people per five square miles) to allow up to four-family dwellings in areas zoned for single-detached dwellings. Additionally, it allows up to six-family dwellings on lots within a quarter-mile of a commuter rail or subway station. Cities were given 180 days to amend their regulations once the law passed.

Context

S 7574 is currently in committee but is not expected to pass. Failure to secure a strong base of support early on and panic over local control led to the bill's likely rejection. An existing proposal to legalize ADUs statewide put affordable housing at center stage, and there was already pushback against government overreach. The opposition to the bill cast it as outlawing single-detached homes and cited fears of urbanization that took on an exclusionary tone in many cases. There was also a lack of public understanding of the bill—some thought it mandated ADUs on all lots.

Rhode Island S2340 (2022)¹³

Summary of the Legislation

Rhode Island's S 2340 directed cities with populations greater than 20,000 to amend their development codes and/or comprehensive plans to allow middle housing types in areas zoned for single-detached dwellings. It required jurisdictions to allow duplexes on all lots; other middle housing types (duplexes, triplexes, fourplexes, cottage clusters, townhouses) were to be allowed in areas zoned for single-detached dwellings. The requirements did not apply to lands outside an urban growth boundary, land not primarily zoned residential, public use land, or land zoned to maintain the potential for planned urban development. If a government did not comply by the deadline, a model ordinance to be prepared by the state building code standards committee would directly apply.

Context

During the 2022 legislative session, housing was a high priority. Legislators proposed 11 housing bills, including ones targeting ADUs and middle housing. However, the content of S 2340 was largely copied from Oregon's HB 2001 and in many ways that did not apply clearly to Rhode Island. For example, S 2340 mentions urban growth boundaries, which are not a concept in general use in Rhode Island. The bill also cited dates in 2004 and 2005 as deadlines, though the bill was proposed in 2022.

Opponents of the bill cited a loss of local control as their main concern. Many came from places without public water and sewer systems. The bill failed in end-of-session negotiations between chamber leadership.

Virginia HB 152 (2020)¹⁴

Summary of the Legislation

Virginia's HB 152 directed all cities and towns that regulate zoning to allow two residential units (such as duplexes, townhouses, and cottages) per lot in areas zoned for single-detached dwellings. Jurisdictions were prohibited from requiring special use permits or subjecting middle housing to local requirements beyond those imposed on other allowed residential uses.

Context

Virginia's bill lacked a strong advocate and was treated more as an exploratory study than a concerted effort. AARP advocates noted that the political environment of Virginia is very decentralized and passing a middle housing bill at the state level would be challenging.

New Hampshire HB 1177 (2022)¹⁵

Summary of the Legislation

New Hampshire's HB 1177 directed cities, towns and counties containing unincorporated areas to allow up to four residential units (such as two duplexes, a fourplex, four single units, etc.) per lot in areas zoned for single-detached dwellings with water and sewer. Lot and yard standards, setbacks, parking requirements, and lot coverage was to be no more restrictive than those required for single-detached dwellings. Jurisdictions were required to comply within 60 days of the bill's passage, though no details on compliance were provided.

Context

The bill had support from several different interest groups but did not pass in part because of opposition from local governments which felt it took away too much local control.¹⁶

Maryland HB 1406 (2020)¹⁷

Summary of the Legislation

Maryland's HB 1406 directed cities with populations greater than 25,000 or within a metropolitan service district to allow duplexes, triplexes, fourplexes, townhouses, and cottage clusters in areas zoned for single-detached dwellings within tracts that fit one of three definitions:

- “High opportunity,” where the median household income was at least twice the area median income;
- “Jobs-rich” residential, i.e., at least 5,000 jobs per square mile;
- “Transit-rich” residential tract, where parcels are all within one mile of an existing train station or within a quarter-mile of a “high-quality bus corridor,” where a bus runs on an average interval of 10 minutes during weekday rush hour.

All qualifying tracts had to also have a median income greater than or equal to area median income.

Context

The opposition to the bill was based on a loss of local power to determine regulations. The association of counties (called the Municipal League) was not in favor of the bill and hindered its passing.

Take-Aways / Lessons Learned for a Model Act

Past legislative efforts toward middle housing suggest the following lessons for future legislation:

- 1) Successful cases were the product of incremental progress that laid the groundwork for bigger changes. Many successful states presented ADU bills prior to their middle housing bill to introduce legislators to a more palatable change. Successful bills also had strong coalitions of advocates to reach out to their voter bases and strong public discourse on the importance of middle housing.
- 2) Applying requirements to rural areas and areas that lack public sewer and water may generate disproportionate pushback. Increasing population density in these areas may lead to issues with septic systems and wells. Restricting middle housing expansion to places with the sewer and water infrastructure to handle growth will avoid adding pressure on rural systems.
- 3) Legislation must be tailored to the state context. The case of Rhode Island's S 2340 including text directly from Oregon's HB 2001 created confusion and may have made the bill less palatable. While the Model Act provided here can apply to all states, it requires drafters to be thoughtful about what works best in their state's context and to alter the Model Act accordingly.
- 4) Fear of change and the unknown are common concerns. Building familiarity with middle housing and showing how it can benefit existing residents in advance of or as part of statewide legislative efforts can help mitigate these concerns. AARP's report ***Discovering and Developing Missing Middle Housing*** can help provide material for outreach to residents.
- 5) Loss of local control is a common concern. However, highly exclusionary communities can be some of the loudest opponents. Each state must find the right balance of local control with provisions to ensure that high-opportunity areas increase housing options, and that middle housing is not limited to lower-income areas.
- 6) If passing a statewide requirement is not viable, creating dedicated funding to offer grants to local governments to voluntarily advance middle housing is another way to support implementation at the local level in some communities.
- 7) Middle housing can raise concerns about gentrification and displacement in some communities. Sometimes the concerns come from people at higher risk of displacement, but other times the concerns are raised by affluent communities that oppose middle housing. Requiring jurisdictions to evaluate displacement risks associated with middle housing in their community and advance measures to prevent or mitigate displacement can ensure that real displacement and gentrification concerns are addressed without precluding middle housing in areas where it can expand housing opportunities.

3. MODEL ACT FOR MIDDLE HOUSING

■ How to Read This Act

This act offers several alternatives for compliance that all expand opportunities for middle housing in residential areas. States vary widely in housing policy context, existing development patterns, and pace of growth, so this choice-based approach is meant to accommodate most circumstances.

Where options are provided, the Model Act identifies one as the recommended option based on the experience of those involved in preparing this Model Act and AARP's policy goals. Trade-offs associated with each of the options are noted in the accompanying commentary. All other sections are baseline components recommended for any Act. Unless otherwise noted, the options are not interrelated; drafters may select any of the available options at each point where options are provided. Where a given option must be paired with a specific option from another subsection, this is noted in the commentary.

This Model Act has four sections: Definitions, Requirements, State Responsibilities, and Implementation.

SECTION 1: DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout this act.

■ Subsection A: Defining Middle Housing

Defining middle housing is more complex than it may seem at face value. The following types of housing may or may not be considered middle housing, depending on how the definition is written:

- Stacked units on a common lot up to a certain total building size or unit count
- Units attached side by side on a common lot up to a certain total building size or unit count
- Units attached side by side on individual lots
- Detached units on a common lot
- Detached units on individual lots

Definitions related to detached units (particularly detached units on individual lots) should be written carefully so that the resulting housing is meaningfully different from standard single-detached housing. This could mean smaller units, shared yards, and/or less land area per unit. Alternatively, standards could limit the opportunities for additional single-detached housing to specific situations (e.g., when an existing home is retained or where the units will be affordable or accessible). Market forces often make it easier to build large, detached housing than to build smaller, lower-cost housing, so definitions and standards should offer incentives for development with smaller units, less land per unit, or other public benefits.

Definitions can focus on building scale, unit count, configuration, or a combination of these.

Note that more detailed form-based housing type definitions like those included in AARP's ***Discovering and Developing Missing Middle Housing*** can be appropriate for use in local codes and helpful to introduce people to the idea of middle housing, but do not lend themselves to a prescriptive usage in a legislative act. The definitions that follow provide the option for local jurisdictions to adopt their own definitions and terms, provided those definitions encompass at least the middle housing types listed in this Act.

Option 1 (Recommended)

This option focuses on form with options for attached middle housing (side by side or stacked) and detached middle housing. Limitations on number of units and building scale are assumed to be addressed in later sections and are not included here.

1) “**Middle housing**” means the following housing types:

- a) **Stacked flat plexes:** multiple units on a single lot or parcel where each unit is on a single level and units are attached horizontally and/or vertically;
- b) **Townhouses:** multiple units per building attached via one or more common walls on individual lots or parcels with frontage on a public or private street;
- c) **Attached courtyard housing:** multiple units per building attached via one or more common walls with some or all units facing a **common courtyard** or **pedestrian area**; and
- d) **Detached courtyard housing:** detached units with a floor area of no more than 1,600 square feet and a minimum density of *[4 to 10]* units per acre with some or all units facing a **common courtyard** or **pedestrian area**.

This definition focuses on unit size rather than footprint because this is a key factor that differentiates the units from standard single-detached housing and can offer a lower-cost option. The minimum density is recommended as another way to ensure that the resulting housing offers a meaningful alternative to single-detached housing by keeping land costs low. The provision related to some units connected via a common courtyard or pedestrian area is also intended to differentiate from traditional single-detached housing where each house fronts on a street.

- 2) “**Common courtyard**” means a landscaped or hardscaped area accessible to multiple units and provides for pedestrian access and passive or active recreation for residents.
- 3) “**Pedestrian area**” means an area containing an Americans with Disabilities Act (ADA) accessible walkway that connects one or more building entrances to a public or private street and has at least one foot of landscaping on each side of the walkway.
- 4) Jurisdictions may adopt local definitions of the above terms, provided the local definitions encompass the definitions offered above and are no more restrictive or burdensome to middle housing development than the definitions above.

Option 2

This option largely ignores form within the definition, except to provide an option for attached units on separate lots. Design and development standards can address form considerations. This option does not provide a clear path for cottage clusters with units on individual lots and could limit the number of cottage cluster units (if they are detached) per parcel. It does provide flexibility for units to be attached or detached if they remain on a single parcel. It includes up to six attached units, but later standards do not require that up to six units be allowed in all situations.

- 1) “**Middle Housing**” means:
 - a) Two to six units in any configuration on a single lot or parcel; and
 - b) Two to six units in a single building on individual lots.
- 2) “**Detached middle housing**” means **middle housing** units that do not share a common wall, roof, or ceiling with any other units.
- 3) Jurisdictions may adopt local definitions of the above terms, provided the local definitions encompass the definitions offered above and are no more restrictive or burdensome to middle housing development than the definitions above.

Option 3

This definition focuses on scale and the presence of multiple units or buildings, leaving options to allow units on separate or common lots, to allow a mix of attached and detached units, and to allow larger developments with more units, provided they are all in house-scaled buildings.

- 1) “**Middle Housing**” means:
 - a) **House-scaled** buildings with multiple units; and
 - b) Multiple **house-scaled** buildings around a common courtyard with one or more housing units per building
- 2) “**House-scaled**” means a building that is no larger than would be allowed for a new or remodeled single-detached housing unit.
- 3) “**Detached middle housing**” means **middle housing** units that do not share common walls, roof, or ceiling with any other units.
- 4) Jurisdictions may adopt local definitions of the above terms, provided that the local definitions encompass the definitions offered above and are no more restrictive or burdensome to middle housing development than the definitions above.

Option 4

This option uses terms that most people are familiar with, defined somewhat narrowly so that they align with most peoples' conceptions of what they mean and a structure that may integrate more easily with some local codes. However, this option may be overly restrictive for some housing types. It leaves scale-related limitations to the standards rather than including them in the definition.

- 1) “**Middle housing**” means the following housing types:
 - a) **Duplexes;**
 - b) **Triplexes;**
 - c) **Fourplexes;**
 - d) **Fiveplexes;**
 - e) **Sixplexes;**
 - f) **Cottage clusters;** and
 - g) **Townhouses.**
- 2) “**Duplexes**” means two attached units on the same lot.
- 3) “**Triplexes**” means three attached units on the same lot.
- 4) “**Fourplexes**” means four attached units on the same lot.
- 5) “**Fiveplexes**” means five attached units on the same lot.
- 6) “**Sixplexes**” means six attached units on the same lot.
- 7) “**Cottage clusters**” means groupings of detached housing units connected to a common courtyard with a floor area of no more than 1,600 square feet per unit.
- 8) “**Townhouses**” means a dwelling unit constructed in a row of two or more attached units, where each unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.
- 9) Jurisdictions may adopt local definitions of the above terms, provided the local definitions are no more restrictive or burdensome to middle housing development than those offered above.

■ Subsection B: Applicable Jurisdictions

Pro tip: Map these options out for your state to see how each would apply. When you have selected an option, share the map with constituents to make clear where requirements would apply. All options focus on urban and suburban jurisdictions rather than rural communities.

Option 1 (Recommended)

- 1) “**Subject jurisdiction**” means a municipality or county that meets the following criteria:
 - a) It has land use authority;
 - b) It contains or is located within an Urbanized Area, as defined by the U.S. Census Bureau; and
 - c) Public water and sewer service are available to all or a portion of the residentially zoned land in the jurisdiction.

This approach is recommended as a default because it relies on definitions that are consistent nationwide from the Census. Availability of public water and sewer service is important for areas that are adding density. Infrastructure capacity or adequacy is addressed separately.

Option 2

- 1) “**Subject jurisdiction**” means a municipality or county that meets the following criteria:
 - a) It has land use authority;
 - b) It is located within a [*Metropolitan Planning Organization or regional boundary/designation relevant to the state in question (e.g., municipal services boundary, urban growth boundary)*]; and
 - c) Public water and sewer service are available to all or a portion of the residentially zoned land in the jurisdiction.

In states where there are defined regional boundaries used for planning, infrastructure provision, or funding that reasonably differentiate between urban and rural areas, these boundaries may be appropriate to differentiate where regulations apply.

Option 3

- 1) “**Subject jurisdiction**” means a municipality or county that meets the following criteria:
 - a) It has land use authority;
 - b) It has a population above *[10,000 to 25,000]*; and
 - c) Public water and sewer service are available to all or a portion of the residentially zoned land in the jurisdiction.

Setting a population threshold may make sense in some states, but excluding small communities that are part of a broader urban area can risk missing exclusionary enclaves, and jurisdictions that are just below the size threshold may see this as a disincentive to grow.

Option 4

This option can be paired with any of the options above to define subject jurisdictions. This definition limits the applicability of the later requirements to jurisdictions that have failed to meet some other state-defined housing obligation or expectation.

- 1) **Housing deficient jurisdictions** means **subject jurisdictions** that fail to meet required **housing obligations**.

This can also be defined based on attributes that indicate exclusionary tendencies, such as a high percentage of white residents compared with other jurisdictions in the region or state.

- 2) “**Housing obligations**” means... *[can mean state-level or regional-level affordability or housing production requirements, as applicable in the state].*

Examples of state housing obligations include:

- California’s Housing Element Law and Regional Housing Needs Allocation (RHNA), which require jurisdictions to plan for and accommodate their share of regional housing needs;¹⁸
- Rhode Island’s Low and Moderate Income Housing Act (RIGL 45-53), which requires cities and towns to maintain 10 percent of their housing stock as affordable;¹⁹
- New Jersey’s Fair Housing Act and Fair Share Plans, which require municipalities to adopt affordable housing plans to meet local fair share allocations of affordable housing needs;²⁰
- Massachusetts’ Chapter 40B, which allows affordable and mixed-income housing development to be approved under flexible rules rather than local zoning standards in communities where low- or moderate-income housing units account for less than 10 percent of year-round housing and less than 1.5 percent of the community’s land area.²¹

■ Subsection C: Applicable Residential Areas

Notes: The definition of “residential area” is intended to focus on places that are primarily zoned for single-detached dwellings.

- 1) “**Residential area**” means any area subject to **low-density residential zoning**, excluding **infrastructure constrained** areas and **environmentally constrained** areas.
- 2) “**Low-density residential zoning**” means any zone, overlay, or land use designation where single-detached dwellings are an allowed land use, except as follows:
 - a) Zones intended primarily for commercial, industrial, or agricultural use are excluded; and/or
 - b) Zones where the maximum density for new housing development (as of right, without bonuses or optional entitlements) is at least 25 dwelling units per net acre and the maximum building height is at least 35 feet are excluded.

This is intended to exempt zones that already allow for higher-density residential development from the middle housing requirements because the focus is on increasing housing options in zones that are more limited.

- 3) “**Infrastructure constrained**” means areas where any of the following essential public facilities are not currently available:
 - a) Connection to a public sewer system capable of meeting established service levels;
 - b) Connection to a public water system capable of meeting established service levels;
 - c) Access via public or private streets meeting emergency vehicle access standards; or
 - d) Storm drainage facilities capable of meeting established service levels.

This is intended to exclude areas that do not have access to public or community water and sewer services and those where emergency access/egress is severely limited. Other areas where infrastructure capacity constraints are a concern are addressed in the optional definition of “significant infrastructure deficiency” below. Those areas can be subject to a delay in implementation of middle housing regulations or reduced middle housing requirements but are not fully exempt. The definition intentionally excludes transportation infrastructure limitations, aside from emergency access/egress, so that congestion does not become a justification for excluding areas from middle housing allowances.

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- 4) **“Environmentally constrained”** refers to sites that have (1) physical and/or regulatory barriers to development or (2) natural hazards (such as environmentally sensitive areas, flood risk, steep slopes, etc.) and where further single-detached development beyond the construction of single units on existing lots is prohibited.

The definition of “environmentally constrained areas” should be tailored as needed to align with existing state/federal definitions and applicable environmental constraints.

■ Subsection D: Additional Definitions

- 1) **“Eligible properties”** means lots or parcels in **residential areas** where **middle housing** is allowed pursuant to this Act.
- 2) **“Equitably distributed”** means that:
- a) **Eligible properties** have comparable or better access to **jobs-rich areas** and amenities such as schools, open space and parks, and commercial areas as other properties within the jurisdiction’s **residential areas**.
 - b) **Eligible properties** are not disproportionately concentrated in **disadvantaged areas** or tracts with household incomes below the jurisdiction’s median household income.
- 3) **“Disadvantaged areas”** means areas identified as having high concentrations of lower-income households, cost-burdened renters, and/or residents of color (including Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander, and Hispanic or Latino/a/e), who may be more impacted by changing market conditions, including the following:
- a) Racially or ethnically concentrated areas of poverty as defined by the U.S. Department of Housing and Urban Development;
 - b) Census tracts in which the concentration of cost-burdened renter households as a percentage of all households exceeds the city or regional average.
 - c) Areas identified as at risk of gentrification or displacement using a methodology approved by *[relevant state agency, or else the state legislature]*.

This definition is used later in the Model Act to provide jurisdictions more discretion to adjust middle housing allowances in areas that may have been subject to historic and/or on-going discriminatory policies and practices based on input from affected communities, while maintaining a focus on the areas at greater risk, so that it does not become a way for affluent communities to avoid implementation. The definition includes Census-defined race and ethnicity categories because these correspond to the available demographic data.

4) “**Affordable and/or accessible middle housing**” means **middle housing developments** where *[100 percent of rental units or at least 50 percent of ownership units]* are **guaranteed affordable** and/or where the **middle housing development** is **accessible or visitable**.

- a) **Subject jurisdictions** may, at their discretion, adopt a definition that requires a lesser percentage of housing units to be guaranteed affordable.

Requiring that all rental units be guaranteed affordable excludes mixed-income housing development because administering affordability requirements for just one or two rental units in an otherwise market-rate development can be challenging for smaller jurisdictions. However, for ownership housing, it is more feasible to apply deed restrictions to some units but not others.

5) “**Guaranteed affordable**” means that units are subject to an affordability contract with a public agency for a minimum of 30 years or deed restricted to provide a defined level of affordability for a minimum of 30 years. The affordability definition must include households earning up to 60 percent of area median income (AMI), as defined by the U.S. Department of Housing and Urban Development.

- a) **Subject jurisdictions** may, at their discretion, adopt an affordability definition that includes households earning a up to 120 percent of AMI.

Jurisdictions should evaluate the affordability of new market-rate housing based on the income needed to afford the housing compared to the AMI. If new market-rate housing is typically affordable to people whose income is 120 percent of AMI or below, the jurisdiction should make the affordable housing definition less than 120 percent of AMI.

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- 6) **“Accessible or visitable”** means **middle housing developments** that meet one of the following criteria:
- a) Accessible development: meets Fair Housing Act requirements for accessible features; or
 - b) Visitable development: all units with a ground floor entrance meet the following visitability requirements:
 - i) Visitable entrance: At least one entrance must be accessible via a route that does not have stairs between it and the street lot line or an on-site parking space. The slope of the route cannot exceed 1:8 (one foot in height for every eight feet in length).
 - ii) Visitable bathroom: At least one bathroom with a sink and toilet must be designed to accommodate an unobstructed circle that is at least 60 inches in diameter. As an alternative, the bathroom may be designed to accommodate an unobstructed area comprising two rectangles that are at least 36 inches by 60 inches and perpendicular to each other. The visitable bathroom must be on the same floor as the visitable entrance or be accessible from the visitable entrance via a ramp, elevator or lift.
 - iii) Visitable living area: There must be at least 200 square feet of living area on the same floor as the visitable entrance or 200 square feet of living area must be accessible from the visitable entrance via a ramp, elevator or lift; and
 - iv) Visitable doors: All door openings between and including the visitable entrance, visitable living area, and visitable bathroom must be at least 34 inches wide.

The Fair Housing Act establishes design and construction requirements to make certain new multifamily dwellings readily accessible to and usable by persons with disabilities. The requirements apply to buildings with four or more dwelling units: all units in buildings with elevators and ground floor dwelling units in buildings without elevators (except multistory townhouses). These requirements apply to newly constructed middle housing that has four or more attached flats, but not to detached units, duplexes, triplexes, or townhouses.

The Fair Housing Act requires the following accessible features for covered dwelling units:

- Accessible building entrance on an accessible route.
- Accessible common and public use areas.
- Usable doors (usable by a person in a wheelchair).
- Accessible route into and through the dwelling unit.
- Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Reinforced walls for grab bars.
- Usable kitchens and bathrooms.²²

The visitability requirements are taken from Portland, Oregon’s Residential Infill Project requirements and are intended to make homes more hospitable to guests with disabilities.

AARP recommends the use of universal design features as broadly as possible. However, universal design takes a more qualitative, holistic approach that is not well-suited to prescriptive use in a legislative act. More information about universal design features is available in the **AARP HomeFit™ Guide**.

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- 7) **“Middle housing development”** means one or more lots or parcels that are proposed to be developed with or converted to **middle housing**. In the case of **middle housing conversion**, any existing housing units that will remain on the lot(s) or parcel(s) are considered part of the **middle housing development**.

The purpose of this definition is to clarify that existing housing units on a site that will be converted to middle housing are part of the development from the perspective of counting housing units and applying development standards.

- 8) **“Middle housing conversion”** means a **middle housing development** in which one or more existing housing units will remain on the lot(s) or parcel(s), with no more than 50 percent of the street-facing exterior walls above the foundation removed.
- 9) **“Nondiscretionary procedures”** means development review procedures and processes that involve no personal or policy judgements by a public official.

Optional definitions follow. The following definitions may or may not be necessary based on which option is chosen. Include or omit from the final state act accordingly.

- 10) **“High opportunity areas”** means **residential areas** within tracts with a median household income of at least two times the area median income for a four-person household.

This definition may be less applicable to small towns outside a metropolitan region.

- 11) **“Jobs-rich areas”** means **residential areas** within tracts where there are at least **[5,000]** jobs per square mile;

This definition may need to be refined based on conditions in the state.

- 12) **“Transit-rich areas”** means **residential areas** within a **[half-mile radius or half-mile walk]** of an existing train or light-rail station or within a **[quarter-mile radius or quarter-mile walk]** of a bus stop providing service every 15 minutes during weekday rush hour.

This definition may need to be refined based on conditions in the state. In some states, transit-rich areas may not be applicable or appropriate. The distance can be defined based on a simple linear radius, as shown, or based on walking distance.

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- 13) **“Walkable areas”** means **residential areas** within a *[quarter-mile or half-mile radius or quarter-mile or half-mile walk]* of businesses that meet households’ common needs (e.g., grocery stores, pharmacies, restaurants), public elementary schools, and/or public parks.

This definition may need to be refined based on conditions in the state. There are many possible definitions of “walkable areas,” but few lend themselves to a prescriptive approach to state statute. The definition should rely on conditions that can be mapped and are clear, particularly if the definition is used to set requirements for where middle housing provisions apply. A quarter-mile is a distance many people can walk, but may cover too small an area, while a half-mile may be farther than some people are willing or able to walk, but covers an area for which middle housing opportunities may be more appropriate.

- 14) **“Middle housing land division”** means the partition or subdivision of a lot or parcel that is or will be developed with **middle housing** on an **eligible property**.

Allowing land divisions for middle housing, even when lots would not meet typical standards for land division, can facilitate ownership opportunities, but also adds complexity.

- 15) **“Significant infrastructure deficiency”** means an infrastructure capacity or design limitation that impacts public health or safety.

This definition is part of an optional provision at the end of this Model Act that allows jurisdictions to defer implementation to a limited degree in areas with significant infrastructure deficiencies.

SECTION 2: REQUIREMENTS

This section outlines the requirements of this act.

■ Subsection A: Requirement to Allow Middle Housing

Option 1 (Recommended)

- 1) Except as specified in Subsection (C) of this section, **subject jurisdictions** shall allow **middle housing** in **residential areas** as follows:
 - a) At least *[two middle housing units or one middle housing type]* shall be allowed on all lots or parcels over *[5,000]* square feet in all **residential areas**.

Setting the requirement based on number of units aligns best with middle housing definitions that are based on unit counts while requiring a certain number of middle housing types be allowed may work better for form-based middle housing definitions.

Oregon's experience suggests that most parcels over 5,000 square feet can be designed to accommodate at least two attached or detached units with the parking ratios described later in this Model Act. Setting a specific lot size that triggers middle housing requirements is recommended over linking to a minimum lot size for single-detached housing because some residential zones allow very small lots (e.g., 2,000 square feet) that generally will not accommodate two units with the parking ratios described later in this Model Act, and some zones have very large minimum lot sizes (e.g., one acre) that are impractical for just two middle housing units. It is also easy for jurisdictions to raise the minimum lot size for new detached housing such that it becomes impractical for middle housing.

- b) At least *[four middle housing units or two middle housing types]* shall be allowed on the majority (more than 50 percent) of lots or parcels over *[5,000]* square feet within the jurisdiction's **residential areas**. **Eligible properties** allowing at least four **middle housing** units shall be **equitably distributed** within the jurisdiction's **residential areas**.

This provision is intended to provide flexibility for jurisdictions to determine appropriate areas or criteria for somewhat higher intensity middle housing (up to four units) while providing guardrails that address equity. Examples could include allowing more units in certain zones, based on proximity to transit or other amenities, on corner lots, or on certain lot sizes, provided that in aggregate most properties in each subject jurisdiction allow for at least four units of middle housing and opportunities for middle housing are equitably distributed.

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- c) At least *[six middle housing units or four middle housing types]* shall be allowed for **affordable and/or accessible middle housing** development on all **eligible properties** used to meet the requirement of paragraph (1)(b) above.

This provision provides an incentive and benefit for affordable and accessible housing developments. See definitions section for criteria. Because four units of stacked flats will typically trigger accessibility requirements, this provision essentially allows up to six units rather than four if the development is built as stacked flats.

- d) At least six **middle housing** units shall be allowed through **middle housing conversion** on **eligible properties**, provided the total floor area of the **middle housing development** does not increase by more than *[50 percent]* relative to the floor area of the existing structures or *[800]* square feet, whichever is greater.

This provision is intended to incentivize and support middle housing conversion, the retention of existing structures, and smaller middle housing units.

Option 2

This option focuses on allowing middle housing in targeted areas based on income, jobs access, and transit access. If this option is selected, the definitions of jobs-rich areas and transit-rich areas should be changed to match conditions in the state. In some states, transit-rich areas may not be applicable or appropriate.

- 1) Except as specified in Subsection (C) of this section, **subject jurisdictions** shall allow **middle housing** in **residential areas** as follows:
- a) **Middle housing** shall be allowed on the majority (more than 50 percent) of lots or parcels over *[5,000]* square feet in **high opportunity areas, jobs-rich areas, transit-rich areas, and walkable areas**.
 - b) **Eligible properties** shall be **equitably distributed** within the jurisdiction's **residential areas**.
 - c) **Eligible properties** shall allow at least *[two units or two types]* of **middle housing**.

Option 3

This option offers a simple and flexible requirement to allow middle housing with some guardrails to address equity.

- 1) Except as specified in Subsection (C) of this section, **subject jurisdictions** shall allow **middle housing** on the majority (more than 50 percent) of lots or parcels in **residential areas**. **Eligible properties** shall be **equitably distributed** within the jurisdiction's **residential areas**.

Option 4

This option is written to provide a clear set of requirements for jurisdictions that are not meeting other housing obligations and are not given flexibility to elect where to allow middle housing. This option can be combined with other options that allow more discretion for jurisdictions that have met their housing obligations, or it can be adopted as a stand-alone requirement. If this option is selected, Option 4 for defining applicable jurisdictions should be selected for consistency. The recommended lot size thresholds are based on implementation of middle housing in Oregon and reflect lot sizes on which middle housing generally fits if development standards are aligned. (See development standards in Subsection B of this section.)

- 1) Except as specified in Subsection (C) of this section, **housing deficient jurisdictions** shall allow **middle housing** in all **residential areas** as follows:
 - a) At least two units of **middle housing** shall be allowed on all lots or parcels over **[5,000]** square feet in all **residential areas**.
 - b) At least four units of **middle housing** shall be allowed on all lots or parcels over **[7,000]** square feet in all **residential areas**.
 - c) At least six units of **affordable and/or accessible middle housing** shall be allowed on all lots or parcels over **[7,000]** square feet in all **residential areas**.

■ Subsection B: Standards and Procedures Applied to Middle Housing

This section is intended to ensure that development regulations applied to middle housing are reasonable and allow it to be built efficiently while maintaining “house-scale” development.

- 1) **Subject jurisdictions** shall apply development and design standards to **middle housing development** on **eligible properties** as follows:
 - a) **Scale:** If development and design standards limit the scale of **middle housing** buildings through floor area ratios, lot or building coverage, or other massing standards (excluding density), such standards, individually and collectively, shall:
 - i) Allow **middle housing** buildings at least the same amount of building area (collectively, if multiple buildings in one development) as one single-detached housing unit; and
 - ii) Allow **affordable and/or accessible middle housing** buildings at least *[25 percent to 50 percent]* more building area than one single-detached housing unit.
 - iii) Allow **middle housing conversions** at least *[25 percent to 50 percent]* more building area than one single-detached housing unit.
 - b) **Height and setbacks:**
 - i) Development and design standards shall not require that **middle housing** be set back more than 20 feet from a front or rear lot line unless the **middle housing** is located on a lot or parcel larger than 7,000 square feet, and single-detached housing is subject to the same setback standards.

This is intended to allow for context-sensitive adjustments (for example, in areas where existing homes are set back far from the street, a larger setback is sometimes required to match existing setbacks) where lot sizes are large enough to provide flexibility on building siting, as long as single-detached homes are held to the same standard.

- ii) Development and design standards shall not require that **middle housing** be set back more than five feet from a side lot line unless the **middle housing** is located on a lot or parcel larger than 7,000 square feet, the height limit allows the **middle housing** to be more than 2.5 stories tall, and single-detached housing is subject to the same setback standards.
 - iii) Height limits for **middle housing** shall be no less than those applied to single-detached housing or 25 feet per two stories, whichever is greater.
 - iv) Height limits for **middle housing** shall allow a minimum of 2.5 stories for attached **middle housing** buildings and a minimum of two stories for detached **middle housing** buildings.
 - v) Height limits for **affordable and/or accessible middle housing** shall be no less than those applied to single-detached housing or 30 feet/2.5 stories, whichever is greater.
 - vi) Existing structures that are part of a **middle housing conversion** shall not be required to meet height and setback standards if they are currently nonconforming, but can be prohibited from increasing their nonconformity.
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c) **Density:**

- i) If maximum density standards (including per-unit minimum site area or minimum lot area standards) are applied to **middle housing**, the maximum density for **middle housing** shall be at least four times the density allowed for single-detached housing or at least *[20 to 25]* units per net acre, whichever is greater.
- ii) If maximum density standards are applied to **affordable and/or accessible middle housing**, the maximum density for **affordable and/or accessible middle housing** shall be at least six times the density allowed for single-detached housing or at least *[30 to 45]* units per net acre, whichever is greater.

d) **Access and frontage:** Development and design standards shall not require each **middle housing** unit to have direct access to or frontage on a public or private street. However, such standards may require that each **middle housing development** provide direct access to or frontage on a public or private street.

e) **Parking minimums:** If minimum parking requirements are applied to **middle housing**, such requirements shall not be greater than:

- i) One space per unit for units that are less than 1,600 square feet;
- ii) One-half space per unit for units that are less than 800 square feet;
- iii) One-half space per unit for **guaranteed affordable middle housing**;
- iv) One-half space per unit for **middle housing** that is located within a half-mile of a major transit stop; and
- v) The minimum parking requirement for single-detached housing or a multi-dwelling housing unit of the same size.

States that do not have robust transit systems in any of the jurisdictions subject to the regulations should remove the provisions requiring lower parking ratios in areas within a half-mile of transit stops.

f) **Parking design:** Development and design standards shall establish requirements for the design and configuration of shared parking areas and shared driveways that are no more restrictive or burdensome than those applied to similarly sized shared parking areas for other types of development.

g) **Detached unit design:** If **subject jurisdictions** do not limit floor area ratio, building or lot coverage, or maximum density for *[detached courtyard housing, cottage clusters, or detached middle housing units]*, such jurisdictions may instead apply additional development and design standards to *[detached courtyard housing, cottage clusters, or detached middle housing units]* to differentiate them from single-detached housing as follows:

- i) Development standards may require a common courtyard or pedestrian area provided such area is not required to occupy more than 20 percent of the site. Standards may require that all *[detached courtyard housing units, cottage cluster units, and detached middle housing units]* face onto or have a direct pedestrian connection to the common courtyard or pedestrian area. Standards for the landscaping or design of the common courtyard or pedestrian area shall be no more restrictive or burdensome than those applied to setbacks and yards for single-detached housing.

ii) Development and design standards may limit unit size (in floor area and/or building footprint) for *[detached courtyard housing units, cottage cluster units, and detached middle housing units]* provided that the maximum or average unit size is at least 1,600 square feet and the maximum or average building footprint is at least 800 square feet. Floor area or building footprint limits may apply to garage area that is attached to a dwelling unit, at the jurisdiction's discretion, but shall not apply to garage areas that are grouped in common buildings or to shared facilities located in common buildings.

h) **Building design:** If building development or design standards or guidelines are applied to **middle housing**, such standards or guidelines shall be no more restrictive or burdensome than those applied to single-detached housing, when considering the **middle housing** building(s) as if the development were one single-detached housing unit.

This provision is intended to prevent design standards such as requiring front doors facing the street from applying to all middle housing units in a development, even if some units are set back behind other units and not visible from the street.

i) **Overall impact:**

i) Development and design standards applied to **middle housing** on **eligible properties** shall both individually and cumulatively allow for at least *[two middle housing units or the minimum number of middle housing units specified in Subsection 2(A)]* at an average unit size of at least 800 square feet.

This provision is intended to ensure that the development regulations, taken together, allow for a reasonable unit size for the number of units the property is supposed to allow.

ii) Development and design standards applied to **middle housing** shall not individually or cumulatively create unreasonable cost or delay for **middle housing** development or make impracticable the permitting, siting, or construction of **middle housing** on **eligible properties**.

2) Review and permitting procedures for **middle housing** on **eligible properties** shall be no more burdensome or discretionary than those applied to single-detached housing. Review and permitting procedures for **affordable and/or accessible middle housing** on **eligible properties** shall apply only **nondiscretionary procedures** and shall not require a public hearing.

This provision ensures middle housing is not subject to greater levels of review than single-detached housing and affordable or accessible middle housing that is most needed and incentivized does not have to go through a discretionary review process in which opposition from adjacent property owners could delay or impede the project. While community members generally value having input on specific development projects, requiring a discretionary approval process creates delay and uncertainty, which makes it much harder to build housing.

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- 3) Exactions, infrastructure requirements, and impact fees (if applicable) for **middle housing** shall be proportional to the impact of **middle housing** development when accounting for differences in unit size, household size, or other indicators of impact relative to single-detached housing.
 - 4) Nothing in this Act prohibits a city from permitting single-detached residences or permitting middle housing in areas that are not subject to the Act.

Optional Additional Standards

This provision allows for land divisions for middle housing that would not meet typical land division standards. This provides greater opportunities for homeownership but also introduces complexity.

- 1) **Subject jurisdictions** shall establish procedures allowing **middle housing land divisions** where the proposed land division meets the following criteria:
 - a) The land division is proposed in conjunction with a proposal for development of **middle housing** in compliance with residential specialty code and land use regulations applicable to the original lot or parcel allowed under this Act;
 - b) Separate utilities will be provided for each dwelling unit, located within easements as necessary;
 - c) Each resulting lot or parcel will either have frontage on a public or private street or access via a **pedestrian area** and shared access easements;
 - d) Any indoor or outdoor common use areas, shared building elements, shared driveways or parking areas, or other shared facilities are included in easements or separate tracts;
 - e) The resulting lots or parcels will be prohibited from further division; and
 - f) All dwelling units will remain consistent with applicable building code provisions relating to new property lines and will comply with residential specialty code.

■ Subsection C: Exceptions and Limitations

The options in this section are numbered sequentially because they are not mutually exclusive.

Option 1 (Recommended)

- 1) A site is not eligible for **middle housing development** pursuant to this Act if the project would require demolition or alteration of any of the following:
 - a) Existing **guaranteed affordable** housing;
 - b) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or
 - c) Housing that has been occupied by a tenant in the preceding three years.

These provisions are modeled after California SB 9's anti-displacement measures and are intended to prevent middle housing redevelopment from removing existing affordable housing or displacing existing renters.

- 2) **Subject jurisdictions** may limit or modify provisions to allow **middle housing development** in **disadvantaged areas** provided that:
 - a) The jurisdiction has conducted substantive engagement with a representative subset of potentially impacted residents living within the **disadvantaged areas**;
 - b) The proposed limitations or modifications align with the input received from potentially impacted residents living within the **disadvantaged areas**; and
 - c) The jurisdiction has evaluated the overall equity impacts of the proposed approach.

These provisions are intended to allow for additional flexibility to establish culturally responsive approaches to middle housing regulations and adapt the approaches to further reduce gentrification and displacement risk in disadvantaged communities.

Option 2

This approach allows jurisdictions to opt out if they are taking other actions to support housing. Jurisdictions with high incomes compared with the regional average are not allowed to opt out. Note that this should not be combined with Option 3 in Subsection A, which focuses on housing-deficient jurisdictions.

- 1) **Subject jurisdictions** that do not include **high opportunity residential areas** may opt out of allowing **middle housing** pursuant to Subsection A of this Act using the following procedures:
 - a) The jurisdiction shall hold one or more public meetings discussing this decision and describe alternative measures that it has in place plus additional actions it will take to support housing availability, affordability, stability, and equity.
 - b) The jurisdiction shall pass a resolution supported by a supermajority (at least two-thirds) of its elected officials to opt out of allowing **middle housing** pursuant to subsection (1) of this section. The resolution shall identify alternative measures the jurisdiction has in place and additional actions it will take to support housing availability, affordability, stability, and equity.
 - c) The jurisdiction shall submit a copy of the approved resolution to the *[relevant state agency, or else the state legislature]* prior to *[the compliance deadline for this act]*.

Option 3

- 1) **Subject jurisdictions** may defer implementation of Section 2 of this Act in specific **residential areas** that are subject to a **significant infrastructure deficiency** as follows:
 - a) Deferral is subject to the following criteria:
 - i) The jurisdiction or relevant service provider has one or more capital improvement projects identified, planned, and realistically funded that will address the **significant infrastructure deficiency**.
 - ii) Areas identified for deferred implementation under this subsection account for no more than 20 percent of lots or parcels within **residential areas** in the **subject jurisdiction**.
 - iii) **Eligible properties** within the **subject jurisdiction** that are not subject to deferred implementation are **equitably distributed**.
 - iv) The deferral is for a maximum of five years or the necessary time to address the **significant infrastructure deficiency**, whichever is less.
 - b) The **subject jurisdiction** must provide *[relevant state agency, or else the state legislature]* with documentation of the significant infrastructure deficiency and the jurisdiction or service provider's plans to address the deficiency no later than *[12 to 18 months following passage of the bill]*.
 - c) A deferral that does not meet the criteria in subsection (2)(a) above may be approved by *[relevant state agency, or else the state legislature]* if it finds that the deferral is necessary to protect public health or safety.

This provision is intended to provide flexibility for jurisdictions where certain areas have serious infrastructure deficiencies that threaten health or safety while keeping tight limits on use of this deferral so that it is not used to undermine the intent of the Act.

SECTION 3: STATE RESPONSIBILITIES

Notes: Providing financial support and/or technical assistance for jurisdictions that must comply with the legislation is important to reduce opposition from local governments and to ensure that the necessary changes can be made even for local governments with limited staff.

- 1) The state will provide funding for technical assistance to **subject jurisdictions** to assist with implementation of the requirements under Section 2 of this Act and collecting data to track results.
- 2) The state will publish a model local middle housing ordinance no later than *[12 to 18]* months following the effective date of this section.
- 3) The *[state agency, committee, or other body responsible for updating building code standards]* will review the state building code to identify and remove barriers to middle housing development and conversion no later than *[12 to 24]* months following the effective date of this section.

SECTION 4: IMPLEMENTATION

- 1) **Subject jurisdictions** shall adopt amendments to land use and development regulations and/or comprehensive plans as needed for consistency with these regulations no later than *[18 to 24 months following passage of the bill]*.

Adopting substantive amendments to development regulations typically takes at least 12 to 18 months, including time for the adoption process. Allowing at least 12 months from the time the Model Act is adopted ensures that jurisdictions that choose to use it have time to apply it locally and complete the adoption process.

If there are typically environmental review processes or other planning requirements that apply to changes to development regulations in the state in question (e.g., CEQA in California), these should be waived or streamlined to the extent possible for actions that are limited to implementing the requirements of the bill in order to expedite the process.

- 2) If a **subject jurisdiction** has not acted within the time provided under subsection (1) of this section, development regulations or policies that are inconsistent with this Act may not be used to deny an application for **middle housing** until the **subject jurisdiction** has implemented regulations consistent with this Act.

Rather than applying a model code directly, this provision eliminates local governments' ability to deny middle housing applications based on regulations that are inconsistent with the Act. Oregon's experience shows that creating a model code that can apply in any jurisdiction in the state is complex, and to some extent establishing the model code as a "stick" to encourage jurisdictions to implement their own code amendments makes it less valuable as a model.

- 3) In adopting regulations or amending a comprehensive plan under this section, a **subject jurisdiction** shall consider the following:
 - a) Measures to increase the affordability of middle housing through regulatory and/or financial support for **guaranteed affordable** middle housing and/or incentives or measures to reduce development costs for middle housing with smaller units;
 - b) Measures to prevent or mitigate displacement risks in **disadvantaged areas** where **middle housing** is allowed pursuant to this Act.

This provision is intended to prompt jurisdictions to conduct at least a cursory consideration of measures outside the development code, which they can then use to demonstrate the affordability of middle housing and to mitigate existing displacement risks and any others risks that could result from allowing middle housing development.

APPENDIX A: EXAMPLES OF STATE ACTS

The following pages summarize the examples identified to date of statewide legislation, including bills that have been introduced but not passed.

Oregon HB 2001 (2019); SB 458 (2021)	38
Nebraska LB 866	39
California SB 9	40
Washington SB 5670; HB 1782 (companion bills)	41
New York S 7574	42
Rhode Island S 2340	43
Virginia HB 152	43

STATE LEGISLATION EXAMPLES

NAME:	Oregon HB 2001 (2019); SB 458 (2021) ²³
STATUS:	Passed in 2019 and 2021, respectively
HOUSING TYPES INCLUDED:	Duplexes Triplexes Fourplexes Cottage clusters Townhouses
WHERE APPLICABLE:	<p>Jurisdictions: Cities with population greater than 25,000 and counties or cities within a metropolitan service district (except those with population less than 1,000). Cities outside metropolitan service district with population between 10,000 and 25,000 subject to duplex regulations only.</p> <p>Zones: Areas zoned for single-detached dwellings</p> <p>Other limitations:</p> <ul style="list-style-type: none">■ Does not apply to land with a future urbanization holding zone.■ Can be deferred in areas where infrastructure is significantly deficient.■ Housing types allowed depend on jurisdiction size:<ul style="list-style-type: none">• Duplexes must be allowed on every lot that allows a single-detached home in jurisdictions with 10,000 population or more;• In jurisdictions of 25,000 or more, other middle housing types must be allowed in areas zoned for single-detached dwellings, but not on every lot (additional details in administrative rules.)
DETAILS:	<ul style="list-style-type: none">■ Directs state agency to develop administrative rules (these contain additional detail and model code.■ Local governments may regulate middle housing to comply with natural hazard protections.■ Middle housing can be subject to siting and design standards, but these cannot impose “unreasonable cost or delay.”■ Jurisdictions must consider measures to increase affordability of middle housing through specific financial incentives.■ SB 458 allows expedited land division of middle housing units that are not stacked (side-by-side attached or detached only such that there is one dwelling unit per resulting lot), that have separate utilities and access easements as needed, and that meet the middle housing standards for the zone prior to land division. Jurisdictions cannot apply most other standards, including lot width, street frontage, individual driveways, etc., to the resulting parcels.
COMPLIANCE:	Local governments that did not adopt local regulations consistent with state administrative rules by June 30, 2022, must directly apply state model code. SB 458 can be applied directly by local governments or codified into local ordinances.
STATE FUNDING AND ASSISTANCE:	The state provided \$3.5M in funding for technical assistance to local governments implementing HB 2001. ²⁴

NAME:	Nebraska LB 866 ²⁵
STATUS:	Passed in 2020.
HOUSING TYPES INCLUDED:	Duplexes Triplexes Fourplexes Cottage clusters Townhouses
WHERE APPLICABLE:	<p>Jurisdictions: Applies to cities with population greater than 50,000 by 2023. Applies to cities with population 20,000 or greater by 2024.</p> <p>Zones: All areas in the city that are zoned for residential use and allow for the development of single-detached dwellings</p> <p>Other limitations:</p> <ul style="list-style-type: none"> ■ Triggered only if other requirements are not met. (See Compliance.)
DETAILS:	<ul style="list-style-type: none"> ■ Jurisdictions can regulate siting and design but regulations cannot prohibit or physically preclude development of middle housing. ■ Duplexes must be allowed on every lot that allows a single-detached home; other middle housing types are less prescribed.
COMPLIANCE:	If city does not adopt an affordable housing action plan, it becomes subject to the middle housing requirements. Jurisdictions that adopt affordable housing action plans are not subject to the middle housing requirements.
STATE FUNDING AND ASSISTANCE:	Bill included funding to create a Middle Income Workforce Housing Investment Fund.

NAME:	California SB 9 ²⁶
STATUS:	Passed in 2021.
HOUSING TYPES INCLUDED:	Any two residential units, including but not limited to: Duplexes Home with ADU or junior ADU Two detached homes
	Also allows splitting into two lots (and putting up to two units on each) with limitations.
WHERE APPLICABLE:	Jurisdictions: Urbanized area or urban cluster, as designated by U.S. Census Zones: Ones whose primary purpose is single-detached residential uses Other limitations: <ul style="list-style-type: none"> ■ Not located in a historic district or on the state historic resources inventory; not prime farmland or farmland of statewide importance, wetlands, conservation land, habitat for a protected species; not on a hazardous waste site, earthquake fault zone, 100-year floodplain or floodway.) ■ The Ellis Act was not used to evict tenants from any buildings on the property within the last 15 years; not on a site that would require demolition of rent-restricted housing or housing that has been renter occupied within the last 3 years.
DETAILS:	<ul style="list-style-type: none"> ■ Each new lot must be a minimum of 1,200 square feet. ■ The two lots must be proportionate in size. ■ Applicants for a lot split must intend to occupy one of the units for a minimum of three years. ■ Lots cannot be split multiple times. ■ Rental of any unit must be for a minimum of 30 days (no short-term rentals). ■ Ministerial approval process and objective standards required. ■ Standards must allow for units to be at least 800 square feet. ■ Cannot require more than 4-foot setbacks on side and rear.
COMPLIANCE:	Local governments required to comply with bill as of effective date (1/1/22). Potential for attorney general enforcement.
STATE FUNDING AND ASSISTANCE:	California provides funding for local housing planning efforts, but did not provide specific funding associated with SB 9.

NAME:	Washington SB 5670; HB 1782 (companion bills) ²⁷
STATUS:	Failed to move to a vote. Both bills down dead.
HOUSING TYPES INCLUDED:	Duplexes Triplexes Fourplexes Fiveplexes ¹⁷ Sixplexes ²⁸
WHERE APPLICABLE:	<p>Jurisdictions: : Cities with population greater than 10,000 in areas subject to Growth Management planning requirements</p> <p>Zones: Areas zoned for single-detached residential use</p> <p>Other limitations:</p> <ul style="list-style-type: none"> ■ Housing types allowed depends on proximity to transit and city population: <ul style="list-style-type: none"> • SB: Up to sixplexes on all residential lots within a half-mile of a major transit stop in cities with populations of 20,000 or more. • SB: Up to fourplexes on all other residential lots in cities of 20,000 or more. • SB: Duplexes on all residential lots in cities with population of at least 10,000. • HB: Up to fourplexes on 4,500+ square foot residential lots within a half-mile of a major transit stop in cities with population of 20,000 or more. • HB: Duplexes or ADUs on 4,500+ square foot lots • HB: Triplexes on 4,500+ square foot corner lots ■ Implementation can be deferred in areas where infrastructure is significantly deficient.
DETAILS:	<ul style="list-style-type: none"> ■ Jurisdictions can adopt siting and design standards that do not discourage development of middle housing or make it impracticable. Standards may not be more restrictive than those applied to single-detached housing. ■ Jurisdictions must apply same review processes as for single-detached housing. ■ Jurisdictions cannot require parking for middle housing within a half-mile of transit and can only require one to two spaces per lot for other areas, depending on lot size. ■ Directs state agency to develop model code.
COMPLIANCE:	Jurisdictions may meet standards related to allowed density as an alternative (allowing an average of 15 to 40 units per gross acre, depending on jurisdiction size, jurisdiction-wide). Any city that has not passed ordinances automatically subject to model missing housing ordinance published by the State Department of Commerce until the city completely implements the required actions.
STATE FUNDING AND ASSISTANCE:	Budget included funding to support local middle housing implementation in urban areas, which remained after the bill failed to pass.

NAME:	New York S 7574 ²⁹
STATUS:	In committee in 2022
HOUSING TYPES INCLUDED:	Up to four-family dwellings; up to six-family dwellings (see “where applicable”)
WHERE APPLICABLE:	<p>Jurisdictions: Applies to cities, towns, and villages (an incorporation of at least 500 people in five square miles or less).</p> <p>Zones: Any district in which residential construction and occupation is otherwise permitted</p> <p>Other limitations: Housing types allowed depend on proximity to transit:</p> <ul style="list-style-type: none"> ■ Up to six-family dwellings if lot is within a quarter-mile of a commuter rail or subway station ■ Up to four-family dwellings on other lots
DETAILS:	<ul style="list-style-type: none"> ■ Jurisdictions cannot impose standards on height, setback, etc., that limit construction of allowed middle housing types. ■ Also restricts jurisdictions’ ability to set minimum lot sizes and require off-street parking for all housing: <ul style="list-style-type: none"> • Cities & villages: minimum lot size cannot be over 1,200 square feet; off-street parking cannot be required as a condition of construction for any building. • Towns: Minimum lot size cannot be greater than 20,000 square feet; minimum lot size cannot be greater than 5,000 square feet if lot has access to sewer and water infrastructure (no restriction on parking requirements)
COMPLIANCE:	Any city, town, or village with regulations that do not comply must ensure compliance prior to 180 days after law passes.
STATE FUNDING AND ASSISTANCE:	\$85M included in budget to bring existing ADUs into code compliance.

NAME: **Rhode Island** S 2340³⁰

STATUS: Introduced 2022, held for further study.

HOUSING TYPES INCLUDED: Duplexes | Triplexes | Fourplexes | Cottage clusters | Townhouses

WHERE APPLICABLE: **Jurisdictions:** : Applies to cities with population greater than 20,000.

Zones: Single-detached zoned areas

Other limitations:

- Duplexes must be allowed on every lot that allows a single-detached home; other middle housing types must be allowed in areas zoned for single-detached dwellings, but not on every lot.

DETAILS: ■ Middle housing can be subject to siting and design standards, but these cannot discourage development of all middle housing types through unreasonable cost or delay..

COMPLIANCE: Local governments must adopt land use regulations or amend their comprehensive plans no later than 6/30/23. If they do not, they must directly apply the state model middle housing ordinance until it fulfills requirements.

STATE FUNDING AND ASSISTANCE: Unknown

NAME: **Virginia** HB 152³¹

STATUS: Tabled in 2020, re-introduced in 2022

HOUSING TYPES INCLUDED: Any two-family residential unit, including but not limited to duplexes, townhouses, and cottages

WHERE APPLICABLE: **Jurisdictions:** : All cities and towns that regulate zoning

Zones: All lots zoned for single-detached residential use

Other limitations: None

DETAILS: ■ Cannot require a special use permit or be subject to local requirements beyond those imposed on other allowed residential uses.

- Jurisdictions can regulate siting, design, and environmental standards, including setbacks, but these cannot discourage development of all middle housing types through unreasonable cost or delay.

COMPLIANCE: Jurisdictions must comply, no detail or alternatives provided.

STATE FUNDING AND ASSISTANCE: Unknown

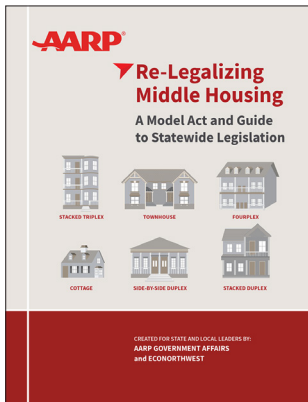
Endnotes

- 1 This document uses the term “single-detached housing” rather than “single-family housing” throughout. We are mindful of using the term “single family” or “multi-family” when describing homes/housing types that contain households that may not be comprised of families.
- 2 Also see Thinking Big and Building Small to Respond to Today’s Housing Crisis. Daniel Parolek. Island Press 2020; missingmiddlehousing.com
- 3 Also see Thinking Big and Building Small to Respond to Today’s Housing Crisis. Daniel Parolek. Island Press 2020; missingmiddlehousing.com.
- 4 A PDF of the guide can be accessed at <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html>.
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- 19 <https://www.rihousing.com/low-mod-income-housing/>
- 20 <https://fairsharehousing.org/mount-laurel-doctrine/#the-fair-housing-act>
- 21 <https://www.mass.gov/chapter-40-b-planning-and-information>; <https://www.chapa.org/sites/default/files/Fact%20Sheet%20on%20Chapter%2040B%202011%20update.pdf>
- 22 Department of Housing and Urban Development, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhfhfhasp; U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity and U.S. Department of Justice Civil Rights Division, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act, April 13, 2013, <https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>.
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- 27 <https://lawfilesex.leg.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5670.pdf?q=20220608094834>; <https://www.sightline.org/2022/01/06/washington-bill-would-legalize-hundreds-of-thousands-more-homes/>
- 28 Only allowed in state bill.
- 29 <https://legislation.nysenate.gov/pdf/bills/2021/S7574>; <https://www.nysenate.gov/legislation/bills/2021/S7574>
- 30 <https://legiscan.com/RI/text/S2340/2022>
- 31 <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB152>

Learn More

■ Website: [AARP.org/MissingMiddleHousing](https://www.aarp.org/MissingMiddleHousing)

Two free Missing Middle Housing publications — and more — from AARP.



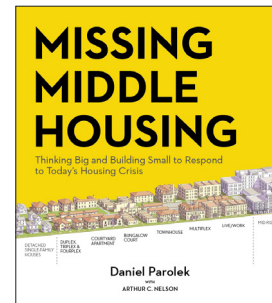
Download and print or share the model act and guide to statewide legislation by AARP Government Affairs and ECONorthwest.



Order or download a photo-and information-filled introductory guide from AARP Livable Communities and Opticos Design.

■ Website: [MissingMiddleHousing.com](https://www.MissingMiddleHousing.com)

Information and resources from architect Daniel Parolek, the founder of Opticos Design and creator of the term "Missing Middle Housing."



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Re-Legalizing Middle Housing

A Model Act and Guide to Statewide Legislation



STACKED TRIPLEX



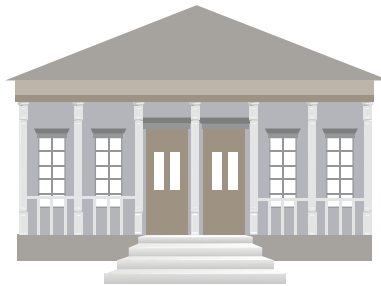
TOWNHOUSE



FOURPLEX



COTTAGE



SIDE-BY-SIDE DUPLEX



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