



Mandatory Adjustments - Section 39 Exemption Guidance

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The purpose of this document is to provide guidance to cities in preparing an application for an exemption to Section 38 of [Senate Bill 1537 \(2024\)](#). This bill requires cities to grant adjustments to specified design development standards for qualifying housing development proposals for a limited time. For more information about this requirement, please reference [DLCD's SB 1537 FAQ](#) (pg. 8-15).

Section 39 of the bill authorizes the Housing Accountability and Production Office (HAPO) to grant exemptions to Section 38 for cities that review adjustments to design and development standards included in the bill and demonstrate either 1) the city has approved 90% of adjustment requests in the previous 5 years or 2) developers who have utilized the city's adjustment process provide testimonials that indicate the adjustment process is flexible and accommodates project needs. Prior to the HAPO's formal establishment July 1st, 2025, DLCD is temporarily authorized to grant exemptions under Section 39. For this guidance document, 'HAPO' is used to refer to both DLCD and the HAPO's statutory authority to review exemption requests.

This document outlines submittal instructions intended to clarify the information necessary for the HAPO to grant an exemption. Once an application is submitted, Section 38 does not apply to the applicant until the HAPO either denies the application or revokes the exemption. The HAPO must provide for a public comment period of no less than 45 days. Within 120 days of receipt, the HAPO must provide a final order on the adjustment exemption. An approval may establish conditions of approval requiring a city to demonstrate that it continues to meet the approval criteria under which an exemption was granted, and the HAPO may later revoke an exemption under specified conditions.

To submit an application, please visit this [intake form](#) and complete the question prompts therein for each design and development standard in Section 38 that the city is requesting an exemption for. Additionally, please attach a PDF copy of the [completed adjustment permit spreadsheet](#) provided alongside this guidance as part of the form submittal. This form may be completed by any staff person(s) authorized to represent the local government requesting an exemption to Section 38. Submittal of an exemption application does not require approval of the governing body of the local government. It is recommended to review this guidance document carefully and prepare application materials before completing the intake form.

After submitting the intake form, please send notice of submittal to dlcd.hapo@dlcd.oregon.gov. If you have questions, please reach out to dlcd.hapo@dlcd.oregon.gov or call 971-375-5362.



Intake Form Guidance

Intake form hyperlink: <https://www.surveymonkey.com/r/5L5Y6MP>

The questions in the form are designed to assess whether and how the city grants adjustment requests for each of the design and development standards listed in Section 38. The guidance below is intended to provide support and direction to city staff in preparing a complete application that demonstrates compliance with the parameters set forth in Section 39.

Part A: Process for Requesting Adjustments

Please describe the local process for reviewing requests to adjust development and design standards for applications for the development of housing. Include links or references to code sections of application review procedures. If procedures for requesting adjustments vary between development and design standards under Section 38 (4) & (5), please indicate so and explain which procedures apply for different standards. The intake form enables an applicant to provide this information either via text response or as a PDF attachment.

Section 38 (1) defines an “adjustment” as a deviation from an existing land use regulation, but excludes:

- A request to allow a use of property not otherwise permissible under applicable zoning requirements;
- Deviations from land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site clean-up, wildlife protection, or statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources;
- A complete waiver of land use regulations or any changes beyond the explicitly requested and allowed adjustments; or
- Deviations to requirements related to the implementation of fire or building codes, federal or state air, water quality or surface, ground or stormwater requirements, or requirements of any federal, state or local law other than a land use regulation.

Because an “adjustment” is defined as “a deviation from an existing land use regulation”, design and development standards reviewed under an alternative discretionary review pathway under ORS 197A.400 (3) may only count as an adjustment where it includes a deviation from an existing land use regulation. An alternative path for adjusting a standard must include code language which specifically indicates approval under the discretionary alternative would result in adjusting a clear and objective standard, consistent with the direction specified in Section 38. For example:

Scenario 1 – A city that provides waivers or reductions to clear and objective design standards, provided the applicant meet specified discretionary criteria in lieu of the clear and objective standard, would count as an “adjustment”.

Scenario 2 – A city that provides an optional design review pathway that applies discretionary standards in lieu of a clear and objective review pathway would not count



as an “adjustment”. The applied land use standards are simply discretionary, not a “deviation from an existing land use regulation”.

Part B: Design and Development Adjustments – Section 38 (4) & (5)

Please complete the following questions to demonstrate the standards in Section 38 that are eligible for an adjustment under local process. These questions must be answered for each design or development standard listed in Section 38 (4) & (5). For a list of these standards, please reference the “Data” tab in the [adjustment permit spreadsheet](#).

Where the city does not grant adjustments or only partially grants adjustments in comparison to SB 1537, please clearly indicate so. This will help HAPO assess compliance with the adjustment criteria and whether any conditions of approval will be necessary in the final decision. *Applications that do not clearly delineate where a city does and does not grant adjustments to standards in Section 38 will be denied, requiring resubmittal with complete information.*

Question 1: Do existing land use regulations apply this development or design standard to housing?

Guidance:

- If existing regulations include a standard in Section 38 (4) or (5), and the standard is applicable to projects that include housing, select “Yes.”
 - o For standards marked with an asterisk (e.g. Section 38 (4)(g)(A)(i)*), only select “Yes” if existing regulations apply the standard to manufactured dwelling parks, middle housing as defined in 197A.420, multifamily housing or mixed-use residential housing.
- If existing regulations do not apply the standard to the applicable housing type, select “No.”

Question 2: Is the city applying for an exemption to the Section 38 mandatory adjustment for this standard?

Guidance: Cities may choose whether to apply for an exemption for each Section 38 (4) and (5) development or design standard. If a city does not apply for an exemption to a standard, it must instead apply the mandatory adjustment provided in Section 38.

- If the city is requesting an exemption to mandatory adjustments for this standard, select “Yes.”
- If the city is not requesting an exemption to mandatory adjustments for this standard, select “No.”
- If the city selected “No.” in Question 1, select “Not applicable.”

Question 3: Does the existing local process provide a pathway for an adjustment to this standard everywhere it applies to housing, consistent with SB 1537?

Guidance: If the existing land use regulations apply a development or design standard listed in Section 38 (4) or (5) to housing, the local process or processes must provide a pathway to



adjust the standard to or above the amount required under Section 38 (4) or (5) for qualifying housing types.

If the standard is not eligible for an adjustment or is not eligible to be adjusted up to the amount required under Section 38 (4) or (5), the HAPO may approve the application with conditions that the city will 1) amend the city code to allow the adjustment to the required amount in statute, and 2) apply the statute directly for the standard until the code is amended to comply with Section 39 (2).

- **Yes:** the existing local process or processes allow the standard to be adjusted to or above the mandatory amount everywhere it applies to housing, consistent with SB 1537.
- **Partially:** the existing local process or processes allows for adjustments to this standard, but either does not provide adjustments for all eligible housing types or up to the amount required under Section 38 (4) or (5).
- **No:** the existing local process or processes does not allow this standard to be adjusted.
- **Not applicable:** the city either does not apply the standard or is not requesting an exemption to mandatory adjustments

Notes:

- Section 39(2)(b) requires the local government demonstrate that all listed development and design standards under Section 38 (4) and (5) are eligible for an adjustment under the local government's process. This means exemption applications may be approved if a standard is currently eligible for an adjustment to the amount in statute, but was not eligible for the previous 5 years, provided the application meets the approval criteria in Section 39(2)(a) and (c). For example, if a city recently amended the development code to include height adjustments that were previously unavailable, the city could still request an exemption for this standard, provided (2)(a) and (c) are met.
- Exemption applications may be approved if existing regulations do not include a development or design standard in Section 38 (4) or (5), but did in the previous 5 years, provided the application meets the approval criteria in Section 39(2)(a) and (c). Requests received within the previous 5 years to adjust the standard must be included for purposes of demonstrating the city has approved 90 percent of received adjustment requests. For example, if a city recently removed residential minimum parking requirements, the city must still include any adjustment requests to minimum parking within the last five years before the change took effect.

Question 4: Describe the local process or processes which allows an applicant to request an adjustment, and the extent to which the city provides an adjustment to the standard. Include links or references to applicable code sections. Where the local process or processes either do not allow or only partially allow adjustments to the standard, please indicate precisely how it does and does not conform to SB 1537.

Guidance: The city should clearly identify where existing local process or processes do or do not comply with the required adjustment to the standard. Conditions of approval may be applied to applications which identify local processes which do not currently comply. Applications found



to contain incomplete or false information will be denied, and exemptions granted based on such applications will be revoked.

Part C: Previous Five Years of Adjustments – Option 1 (90% Approval) or Option 2 (Testimonial)

Option 1: Complete the [permit spreadsheet](#) to demonstrate the city has approved 90% of adjustment requests received in previous five years. Because the intake form does not allow users to upload Excel files, the spreadsheet must be exported to PDF for submittal.

Note: The HAPO will deny exemption applications that are found to include false or incomplete information. Additionally, the office will revoke any approved exemptions that are found later to be based on false or incomplete information included in an exemption application.

1) What adjustment requests must be included in the five-year lookback?

For the five years preceding the date of the Section 39 exemption application submittal, include all applications received which included housing and requested an “adjustment” as described in Part A above to a standard in Section 38 (4) or (5). For each application, include the application submittal date and case number.

Examples of Adjustment Requests to Include:
Request to adjust maximum building height of mixed-use residential housing
A request for a 15%* adjustment to a side or rear setback. <ul style="list-style-type: none">*The request must be included even though the requested amount was for more than the amount required under Section 38(4)(a); a partial approval will count as an approved adjustment for purposes of demonstrating 90% approval.
Request to adjust a housing standard in Section 38 (4) or (5) for residential development that does not meet the minimum density requirements of Section 38 (2)(c). Requests must be included regardless of whether the request would meet the conditions for a mandatory adjustment in Section 38 (2).
Requests to adjust minimum parking requirements, received within the 5 years prior to the Section 39 exemption application submittal date, where parking minimums have since been removed from the city’s code.

Examples of Adjustment Requests NOT to include:
Applications that were never submitted (e.g. preapplication conference involving adjustments that did not result in an application)
Applications received before the 5 years preceding the submittal date of the Section 39 Exemption Application
Applications received in the previous 5 years which are under review and pending a decision
Applications that expired without a decision
Applications that were withdrawn
Requests to adjust development or design standards that did not apply to housing



Requests to adjust development or design standards that are not included under Section 38 (4) or (5)
Requests that do not include a deviation from an existing land use standard, such as discretionary design guidelines that do not include a deviation from an existing standard or standards.
Applications for building permits on a development site.

2) Select a result for each Section 38 (4) and (5) standard.

For each application that requested an adjustment to a standard in Section 38 (4) or (5), use the drop-down arrow in the spreadsheet to select a result of N/A (Not Applicable), A (Approved), P (Partially approved), or D (Denied) for each Section 38 (4) and (5) development and design standard. Please reference the Data tab for the standard which corresponds to each subsection.

Note: In most instances the result will be "N/A" where an application did not include a request to adjust the standard. However, in all cases, at least one standard should have a result of either "A," "P," or "D."

N/A: The application did not include a request to adjust this Section 38 (4) or (5) standard, or the city does not offer a pathway for adjusting this standard

A - Approved: The adjustment is offered, was requested, and the city approved the request for the full amount requested.

P - Partially Approved: The adjustment is offered, was requested, and the city approved the request for less than the amount requested. The amount of adjustment requested or approved does not matter. A partially approved adjustment will count as an approved adjustment for purposes of demonstrating the city has approved 90% of received adjustment requests in the previous 5 years.

D - Denied: The adjustment is offered by the city and was requested and denied.

Do not include application materials or final decision letters as part of the exemption application. The HAPO will follow up to request additional documentation as needed to clarify or verify the accuracy of submitted information.

Option 2: Provide testimonial of housing developers who have utilized the adjustment process within the previous five years, to demonstrate the adjustment process is flexible and accommodates project needs.

Please attach and submit as a single PDF collated testimony of housing developers who have utilized the adjustment process within the previous five years.



Limited Land Use Decisions - Section 46 Hardship Exemption or Time Extension to ORS 197.195(6) Guidance

The purpose of this section is to provide guidance to cities in preparing an application for a temporary exemption to Section 45 (6) of Senate Bill 1537 (2024). This bill requires cities to apply a limited land use decision or other ministerial process to specified land use application types. For more information about this requirement, please reference [DLCD's SB 1537 FAQ](#) (pg. 16-17).

Statutory language: ORS 197.195 (6) A city shall apply the procedures in this section, and only the procedures in this section, to a limited land use decision, even if the city has not incorporated limited land use decisions into land use regulations, as required by ORS 197.646 (3), except that a limited land use decision that is made under land use standards that do not require interpretation or the exercise of policy or legal judgment may be made by city staff using a ministerial process.

Section 46 of the bill authorizes the Housing Accountability and Production Office (HAPO) to grant temporary exemptions to Section 45 (6) for cities that demonstrate a hardship resulting from increased cost or staff capacity needed to implement the statute. The authority for the HAPO provide exemptions to Section 45 (6) sunsets on January 2, 2032.

This document outlines submittal instructions intended to clarify the information necessary for the HAPO to grant an exemption, which follows the same procedures that apply for requested exemptions to mandatory adjustments. To submit an application, please send a response to the questions below to dlcd.hapo@dlcd.oregon.gov. The questions are intended to inform and support a future work plan, intergovernmental agreement, and provision of technical and funding support to support an exempted city to come into conformance with ORS 197.195 (6). This will be necessary to mitigate future legal risk as HAPO's authority to exempt applicability of this requirement ends on January 2, 2032.

If you have questions, please reach out to dlcd.hapo@dlcd.oregon.gov or 971-375-5362.

Question 1: The city is applying for: (Hardship Exemption / Time Extension)

Guidance: The amendments to ORS 197.195 become operative on January 1, 2025. Cities may request a hardship exemption or a timeline extension for implementing the procedures required under ORS 197.195(6), during which time ORS 197.195(6) does not apply to decisions by a local government.

Question 2: Describe the procedure or procedures for which the city is applying for a hardship exemption or time extension.

Guidance: The statute requires applying the procedures in the limited land use statutes to specified review procedures. A city may also apply a ministerial process for decisions that do not require interpretation or the exercise of policy or legal judgement. These application procedures include:

- (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).



(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(C) The approval or denial of an application for a replat.

(D) The approval or denial of an application for a property line adjustment.

(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.

Question 3: Describe the reason(s) a substantial hardship would result from implementing the procedures required under ORS 197.195(6)

Guidance: Hardship exemptions or time extensions may be granted if the city demonstrates a substantial hardship would result from increased costs or staff capacity needed to implement the procedures in 197.195(6).

Question 3: Describe the city's plan to comply with ORS 197.195(6) and include a timeline for compliance

Guidance: HAPO's authority to grant hardship exemptions or timeline extensions ends on January 2, 2032. Cities applying for exemptions or timeline extensions need a viable plan to implement ORS 197.195(6) before this date, as HAPO will not be able to grant exemptions or timeline extensions after January 2, 2032.

Question 4: Describe any resources needed to comply with ORS 197.195(6)

Guidance: Please list any resources needed to comply with ORS 197.195(6). These resources can include funding for staff time or consultant procurement to amend procedures to be consistent with statute or it can include direct consultant support. Because the HAPO's authority to exempt applicability of this statute expires after January 2, 2032, these resources will be necessary to ensure the city is able to come into substantial conformance with statute and minimize future legal risk.