



Oregon

Tina Kotek, Governor

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October 16, 2025

Christina Robertson-Gardiner, Senior Planner
695 Warner Parrot Road
Oregon City, Oregon 97045
Sent via e-mail



RE: Review of Oregon City Exemption Request to Mandatory Adjustments

Dear Christina,

On June 18, 2025, the Housing Accountability and Production Office (HAPO or Office) received an application from Oregon City requesting an exemption to section 38 of Senate Bill 1537 (2024 Session).

[Senate Bill 1537](#) (SB 1537 or the bill) was adopted by the Oregon State Legislature and signed into law in 2024. The bill advances tools that will increase housing production, affordability and choice throughout Oregon. Section 38 of the bill requires local governments to allow temporary flexibility on specified land use regulations for qualifying residential developments. Section 39 of the bill allows local governments to apply to the HAPO for an exemption to section 38. To qualify for an exemption, a local government must demonstrate that:

- (a) The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;
- (b) All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government's process; and
- (c) One of the following:
 - (A) Within the previous 5 years the city has approved 90 percent of received adjustment requests; or
 - (B) The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.

The Office is required to review and issue a decision approving, approving with conditions, or denying an exemption request within 120 days of receiving the application. Additionally, the Office is authorized to establish conditions of approval requiring the city to demonstrate that the city continue to meet the approval criteria listed in section 39 (2). This decision is final and may not be appealed.

Based on the Office review of Oregon City's Exemption Request against the applicable review criteria established in section 39 (2), SB 1537 (2024), the Office approves the City's exemption request with seven conditions. Conditions of approval are set forth in Attachment A of this decision. A finding of non-compliance with the approval criteria under section 39 (2) or the conditions of approval in this

The HAPO is a joint office between the Department of Land Conservation and Development and the Department of Consumer Business Services, Building Codes Division.

decision will result in a revocation of this exemption under Section 39 (6). This decision expires on the sunset date specified in section 43 of SB 1537 – January 2, 2032.

The Office remains committed to partnering with local governments and developers to advance housing production, affordability, and choice throughout Oregon. Please feel free to contact Rachel Six, Housing Planner, at rachel.six@dlcd.oregon.gov if you have questions or need further assistance.

Sincerely,



Joel Madsen, Manager, Housing Accountability and Production Office, Department of Land Conservation and Development (DLCD)

Cc: Brenda Bateman, DLCD
Kelly Reid, DLCD
Andrew Boulton, Department of Consumer and Business Services, Building Codes Division
Denyse McGriff, City of Oregon City

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HAPO Review and Decision-making Process

In reviewing and issuing a decision on an application by a local government, the Office will determine that section 39 (2)(a) and (b) are met if a local government demonstrates, and the Office independently verifies that:

1. The local government has at least one local process by which all applications for the development of housing may request design and development adjustments, and
2. For each development and design standard listed in section 38 (4) and (5), there is at least one pathway by which an applicable standard or standards may be adjusted at least to the amount required in section 38 anywhere the standard or standards apply to housing, without exception, **or**
3. If there is an identified circumstance in which housing is not eligible for an adjustment as described above, the local government has provided sufficient information for the Office to establish a condition of approval to remedy the deficiency.

Additionally, the Office will determine that section 39 (2)(c) is met if the local government demonstrates, and the Office independently verifies that:

4. Over the previous five years, measured from the application submittal date, the local government has approved a minimum of 90% of received adjustment requests¹ (section 39 (2)(c)(A)), **or**
5. Submitted testimony from housing developers that have utilized the adjustment process within the previous five years demonstrate the local government's process is flexible and accommodates project needs (section 39 (2)(c)(B)).

In this case, City of Oregon City submitted information to demonstrate that section 39 (2)(c)(B) is met. The city also submitted information to demonstrate that section 39 (2)(c)(A) is met as a secondary alternative, if needed in the event the city did not meet section 39 (2)(c)(B).

The Office held a 45-day period to solicit public comment, opened on July 18, 2025, and closed on September 1, 2025. Submitted public comments can be accessed on the [Flexibilities to Housing Development and Design Standards Dashboard](#). The Office will evaluate and provide responses to submitted public comments in relationship to whether the city meets the approval criteria of section 39 (2). Where submitted public comments demonstrate that the local government has not sufficiently demonstrated section 39 (2) is met, the Office will independently verify the accuracy of the provided evidence in relationship to the approval criteria under section 39 (2).

Where the Office finds that the information and evidence submitted by the local government is incomplete or inaccurate, or that the application does not sufficiently demonstrate the approval criteria are met, it will determine that the submitted application does not qualify for an exemption and deny the application. A local government that receives a denial may submit a new application for review by the HAPO.

¹ An “adjustment request” includes any request for an adjustment as defined in section 38 (1) to a development or design standard under section 38 (4) or (5) that is submitted as part of a development application for which the local government has issued a decision within five calendar years of the application submittal date. An adjustment request is approved where a local government either approves or approves with conditions a deviation to the applicable standard and is not approved where a local government denies a deviation to the applicable standard.

Section 39 (2) - Approval Criteria Findings

§ 39 (2)(a) The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;

According to the application narrative, the city has six processes² by which an applicant may request an adjustment to the development and design standards for the development of housing:

1. Minor Variance – a process that enables deviations to development and design standards through a Type II administrative procedure involving limited interpretation and discretion.
2. Type III Variance – a process that enables deviations to development and design standards through a Type III quasi-judicial procedure. Type III decisions involve greater discretion and evaluation of subjective approval standards, and the process includes a public hearing before a planning commission or historic review board.
3. Modifications that will better meet design review requirements (Modifications) – a process that enables modifications to specified development standards as part of a Type II design review process, if the modification results in a development that better meets the applicable design guidelines, and meets the intent of the standard. Development standards which are eligible for the modifications process can alternatively request a variance or master plan adjustment, and denied modifications may be requested as a variance or master plan adjustment.
4. Master Plan/Planned Unit Development (PUD): a process that enables deviations to development and design standards through a Type III quasi-judicial procedure. The application of master plan or PUD regulations may be voluntary or required under certain circumstances.³ Master plans and PUDs follow a two-step process that includes a general development plan and a detailed development plan. Requests for adjustments are processed concurrently with the general development plan, but may be requested at the detailed development plan review under Type III review.
5. Amendments to Approved Plans: a process that enables subsequent deviations to development and design standards for which an adjustment was granted through the master plan or PUD process. Amendments to approved general or detailed plans are subject to the same approval criteria applicable to the general or detailed development plans. Amendments follow a Type I, II or III procedure, depending on the request. Amendments are required to adjust standards for which an adjustment was granted in a prior master plan or PUD approval.

² The city's application included OCMC 16.08.065 Lot Size Reduction as an additional process for adjusting minimum lot sizes. The definition of "adjustment" under SB 1537 is "a deviation from an existing land use regulation." The Lot Size Reduction process allows up to 10% reduction in minimum lot size for a percentage of lots in a proposed subdivision, however the average lot size must still meet the minimum required by the underlying zone, and therefore is not a deviation from minimum lot size requirements and is not considered an "adjustment" for purposes of SB 1537.

³ The city's zoning code requires master plan or planned unit development regulations for institutional development exceeding ten acres in size, to fulfill a condition of approval from a previous land use decision, or for properties identified for master planning in the land use section of the Oregon City Comprehensive Plan. OCMC 17.65.030

6. Planning Commission Adjustment of Parking Standards – a process that enables reductions to minimum on-site parking requirements based on a study demonstrating the availability on street parking, through a type III quasi-judicial procedure.

As noted in greater detail in the findings in section 39 (2)(b), the city's application identified the above pathways contain provisions that result in not all applications for the development of housing being eligible for an adjustment to all development and design standards listed in section 38 (4) and (5). These are addressed in greater detail later in this determination. While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to request development and design adjustments for review to the extent specified.

After an exemption is granted, applicants for the development of housing will be entitled to request all of the adjustments specified in section 38 (4) and (5), and the city will be required to maintain a flexible and accommodating local process according to testimonials from housing developers who have utilized the adjustment process within the previous five years in order to continue to meet the approval criteria of this decision. A practice of discouraging applicants from requesting adjustments under section 38 (4) and (5), where it occurs, would violate a city's obligation to continue to meet the criteria specified in section 39 (2).

To address this, this decision includes several conditions of approval in Attachment A to ensure that applicants are notified of their entitlement to request specific adjustments (Condition #1), and receive instruction from the city on requesting an adjustment via the local process (Condition #2). Where adjustment requests are submitted, the city must also inform applicants of the requirements the city must comply with to maintain an exemption (Condition #4). See Attachment A for more detail on each condition.

Therefore, this criterion is met.

§ 39 (2)(b) All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government's process;

Findings are individualized for each development or design standard under section 38 (4) and (5). Based on the individualized findings for each development or design standard below, the Office identified several provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

As noted in the finding for section 39 (2)(a), this decision includes several conditions to ensure applicants for the development of housing are eligible to adjust specified development and design standards under section 38 (4) or (5) via the city's process. Additionally, this decision includes conditions to ensure that changes to the city's code do not render development or design standards ineligible for adjustment (Condition #3). It also ensures that applicants are informed by the city of their ability to request adjustments for specified development and design standards (Condition #4). Finally, it ensures that any identified and potential unidentified nonconformities do not render an applicant ineligible to adjust a development or design standard, by authorizing the city to apply section 38 directly in those instances (Condition #5). See Attachment A for more detail on each condition.

§ 38 (4) – Development Standards**§ 38 (4)(a) Side or rear setbacks, for an adjustment of not more than 10 percent.**

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified, with one exception.

The city identified the master plan and PUD process does not allow adjustments to dimensional standards of the underlying zone in the perimeter of the development when adjacent to residentially zoned property. Depending on the development scenario, this limitation could result in an applicant being ineligible to request an adjustment to the full extent required in statute.

As noted in Condition #5, whenever an application for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(b) For an individual development project, the common area, open space or area that must be landscaped on the same lot or parcel as the proposed housing, for a reduction of not more than 25 percent.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(c) Parking minimums.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, amendments to approved master plans/PUDs, and planning commission adjustment of parking standards. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(d) Minimum lot sizes, not more than a 10 percent adjustment, and including not more than a 10 percent adjustment to lot widths or depths.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified, with one exception.

The city identified the master plan and PUD process does not allow adjustments to dimensional standards of the underlying zone in the perimeter of the development when adjacent to residentially zoned property. Depending on the development scenario, this limitation could result in an applicant being ineligible to request an adjustment to the full extent required in statute.

As noted in Condition #5, whenever an application for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(e) Maximum lot sizes, not more than a 10 percent adjustment, including not more than a 10 percent adjustment to lot width or depths and only if the adjustment results in: (A) More dwelling units than would be allowed without the adjustment; and (B) No reduction in density below the minimum applicable density.

The city does not apply this standard to the development of housing and requirements to adjust this standard under section 38 do not apply. The Office did not identify any code requirements applying this standard to the development of housing. Therefore, an exemption to this is neither requested nor applicable to this decision.

As noted in Condition #3, any changes to the city's development code that establish or apply this standard to the development of housing must remain eligible for adjustment. See Attachment A for more detail.

§ 38 (4)(f) Building lot coverage requirements for up to a 10 percent adjustment.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified, with one exception.

The city identified the master plan and PUD process does not allow adjustments to dimensional standards of the underlying zone in the perimeter of the development when adjacent to residentially zoned property. Depending on the development scenario, this limitation could result in an applicant being ineligible to request an adjustment to the full extent required in statute.

As noted in Condition #5, whenever an application for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(g)(A)(i)⁴ Requirements for bicycle parking that establish the minimum number of spaces for use by the residents of the project, provided the application includes at least one-half space per residential unit;

The city's code requires one bicycle space for every ten residential units in multifamily developments. Because the required number of spaces is less than the amount the standard must be adjusted to under § 38 (4)(g)(A)(i), requirements to adjust this standard under section 38 do not apply. The Office did not identify any code requirements applying this standard to the development of housing. Therefore, an exemption to this is neither requested nor applicable to this decision.

As noted in Condition #3, any changes to the city's development code that establish or apply this standard to the development of housing must remain eligible for adjustment. See Attachment A for more detail.

§ 38 (4)(g)(A)(ii)² Requirements for bicycle parking that establish the location of the spaces, provided that lockable, covered bicycle parking spaces are within or adjacent to the residential development;

The city provides three pathways to request an adjustment to this standard: type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathway offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

⁴ Adjustments to development standards under § 38 (4)(g) only apply to manufactured dwelling parks, middle housing as defined in ORS 197A.420, multifamily housing and mixed-use residential housing.

§ 38 (4)(g)(B)² For uses other than cottage clusters, as defined in ORS 197A.420 (1)(c)(D), building height maximums that: (i) Are in addition to existing applicable height bonuses, if any; and (ii) Are not more than an increase of the greater of: (I) One story; or (II) A 20 percent increase to base zone height with rounding consistent with methodology outlined in city code, if any;

The city provides three pathways to request an adjustment to this standard: type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified, with one exception.

The city identified the master plan and PUD process does not allow adjustments to dimensional standards of the underlying zone in the perimeter of the development when adjacent to residentially zoned property. Depending on the development scenario, this limitation could result in an applicant being ineligible to request an adjustment to the full extent required in statute.

As noted in Condition #5, whenever an application for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (4)(g)(C)² Unit density maximums, not more than an amount necessary to account for other adjustments under this section; and

The city provides three pathways to request an adjustment to this standard: type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified, with one exception.

The city identified the master plan and PUD process allows adjustments to unit density maximums of up to 10%. Depending on the development scenario, this limitation could result in an applicant being ineligible to request an adjustment to the full extent required in statute.

As noted in Condition #5, whenever an applicant for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

While individual pathways have identified limitations, in combination, as conditioned, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not otherwise identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's processes.

§ 38 (4)(g)(D)(i)² Prohibitions, for the ground floor of a mixed-use building, against residential uses except for one face of the building that faces the street and is within 20 feet of the street; and

The city provides one pathway to request an adjustment to this standard: type III variance. Under the pathway offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust to this standard to the extent specified, with two exceptions:

The city identified the following limitations to adjusting this standard within the Thimble Creek Concept Plan area. Within the Neighborhood Commercial (NC) zone, the type III variance allows an adjustment to prohibitions against ground floor residential use of mixed-use buildings only if allowed residential uses do not exceed 50% of the building's square footage. Within the mixed-use corridor (MUC) district, prohibitions against ground floor residential uses are not eligible for an adjustment under the local process.

As noted in Condition #5, whenever an applicant for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must apply section 38 directly to this standard and notify applicants for the development of housing that they may request an adjustment in this manner, consistent with Conditions #1 and #2. See Attachment A for more detail.

§ 38 (4)(g)(D)(ii)² Prohibitions, for the ground floor of a mixed-use building, against nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.

The city does not apply this standard to the development of housing and requirements to adjust this standard under section 38 do not apply. The Office did not identify any code requirements applying this standard to the development of housing. Therefore, an exemption to this is neither requested nor applicable to this decision.

As noted in Condition #3, any changes to the city's development code that establish or apply this standard to the development of housing must remain eligible for adjustment. See Attachment A for more detail.

§ 38 (5) – Design Standards

§ 38 (5)(a) Facade materials, color or pattern.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master

plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(b) Facade articulation.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(c) Roof forms and materials.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(d) Entry and garage door materials.

The city does not apply this standard to the development of housing and requirements to adjust this standard under section 38 do not apply. The Office did not identify any code requirements applying this standard to the development of housing. Therefore, an exemption to this is neither requested nor applicable to this decision.

As noted in Condition #3, any changes to the city's development code that establish or apply this standard to the development of housing must remain eligible for adjustment. See Attachment A for more detail.

§ 38 (5)(e) Garage door orientation, unless the building is adjacent to or across from a school or public park.

The city provides four pathways to request an adjustment to this standard: minor variance, type III variance, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(f) Window materials, except for bird-safe glazing requirements.

The city provides five pathways to request an adjustment to this standard: minor variance, type III variance, modifications, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(g) Total window area, for up to a 30 percent adjustment, provided the application includes at least 12 percent of the total facade as window area.

The city provides five pathways to request an adjustment to this standard: minor variance, type III variance, modifications, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(h)(A)⁵ Building orientation requirements, not including transit street orientation requirements.

The city provides five pathways to request an adjustment to this standard: minor variance, type III variance, modifications, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(h)(B) Building height transition requirements, not more than a 50 percent adjustment from the base zone.

The city provides one pathway to request an adjustment to this standard: type III variance. Under the pathway offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(h)(C) Requirements for balconies and porches.

⁵ Adjustments to design standards under § 38 (5)(h) only apply to manufactured dwelling parks, middle housing as defined in ORS 197A.420, multifamily housing and mixed-use residential housing.

The city provides five pathways to request an adjustment to this standard: minor variance, type III variance, modifications, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 38 (5)(h)(D) Requirements for recesses and offsets.

The city provides five pathways to request an adjustment to this standard: minor variance, type III variance, modifications, masterplan/PUD, and amendments to approved master plans/PUDs. Under the pathways offered by the city, all applications for the development of housing under the jurisdiction of the local government are eligible to adjust this standard to the extent specified. The Office did not identify any provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government's process.

§ 39 (2)(c)(A) Within the previous 5 years the city has approved 90 percent of received adjustment requests;

The local government has submitted materials to demonstrate that (2)(c)(B) is met. The city also submitted information to demonstrate that (2)(c)(A) is met as a secondary alternative, if needed in the event the city did not meet section 39 (2)(c)(B). As described below the Office has determined the city meets (2)(c)(B), therefore, criterion (2)(c)(A) is not applicable to this decision.

§ 39 (2)(c)(B) The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.

This approval criterion requires that the city demonstrate that the locally applied process is both flexible and accommodates project needs based on the testimonials of housing developers who have utilized the process within the previous five years. The office will determine whether there is substantial evidence to support a finding of compliance with this approval criterion; specifically, the office will consider evidence provided by the city in testimonials, and from comments submitted pursuant to Section 39 (3), that are from housing developers who utilized the city's adjustment process within the previous five years and that address whether the local process is flexible and accommodates project needs.

To make this demonstration, the city submitted a total of four letters in support of the city's request. During the required 45-day public comment period, the office received a total of one public comment from one individual in opposition to the city's request. In order for submitted testimonial and comments to be weighed in relationship to this criterion, they must address the following:

1. The testifier is either a housing developer or authorized agent of a housing developer

2. The developer has utilized the local adjustment process within the previous five years, and
3. The local adjustment process is flexible and accommodates project needs (if in support), or the local adjustment process is not flexible and does not accommodate project needs (if in opposition).

Among testimonials submitted by the city, the Office is only able to consider testimony on the flexibility of the local process from housing developers that have utilized the process within the previous five years. These are summarized in the tables below.

One of the submitted testimonials was from an architect who provided architectural services for a residential development. It is possible to meet this criterion with testimonials from non-developers, **provided there is evidence that the person who submitted the testimonial did so as an authorized agent of an identified housing developer**, however the submitted testimony was not acting as an authorized agent of a housing developer, and conveyed the author's perspective and opinion of the city's process. This distinction is important because Section 39 (2)(c)(B) is specific that testimonials must be of "housing developers".

Among the submitted testimonials, **three letters** were from housing developers who had utilized the local adjustment process within the previous five years and spoke to whether the local process was flexible and accommodating. See bolded entries on the table below:

Testimonial Org/Name	Developer?	Utilized Process?	Flexible/Accommodating?
Ron Bistline, President, Bistline Enterprises Ltd	Yes	Yes	Yes
Kristen Svicarovich, Community Development Manager for the Confederated Tribes of the Grand Ronde Community of Oregon	Yes	Yes	Yes
Todd Iselin, Principal, Iselin Architects, PC	No	Yes	Yes
Seth Henderson, Cofounder, Level Development NW	Yes	Yes	Yes

Similarly, among public comments submitted, the Office is only able to consider testimony on the flexibility of the local process from housing developers that have utilized the process within the previous five years.

The Office received one public comment on the exemption request, which was in opposition (see below). The testimony indicated the individual was seeking to develop their property and had encountered challenges in doing so. Specifically, the described challenges included meeting opposing standards in the city's historic district and geological hazard zone for maximum height of a retaining wall, an alleged conflict of interest of a historic board committee member that previously owned the lot in question, and statements from city staff indicating that building a

retaining wall in an unimproved right of way probably would not be approved by city council commissioners.

Testimonial Org/Name	Developer?	Utilized Process?	Flexible/Accommodating?
Tim Ahaus, NW Oregon Managing Partner	Yes	Yes	No

In order to meet this criterion, a city must be able to demonstrate that the local process is flexible and accommodating to project needs according to housing developers who have utilized the adjustment process within the previous five years. The three eligible testimonials provided by the city reported the local process to be flexible and accommodating. Specifically, testimonials noted that the local process supported project housing development goals and did not materially impact project timeline or budget. The one testimonial in opposition indicates the individual sought to develop their property and felt city staff had discouraged them from applying for approvals needed to do so, which suggests the local adjustment process may not be flexible and accommodating to all developers. A practice of discouraging developers from applying for adjustments would be a violation of the conditions of approval for a Section 39 exemption. However, this is remedied by informing applicants of their right to request adjustments pursuant to Condition #4.

Based on the review of eligible testimonials, the Office concludes that the city sufficiently demonstrated that the local adjustment process is flexible and accommodating to project needs. Therefore, this criterion is met.

Response to Public Comments

The Office held a 45-day period to solicit public comment, opened on July 18, 2025, and closed on September 1, 2025. Submitted public comments can be accessed on the [Flexibilities to Housing Development and Design Standards Dashboard](#). In total, the Office received one public comment in relationship to this exemption request. The findings below summarize received public comments and evaluate their relationship to the approval criteria of section 39 (2).

The one public comment opposed the exemption based on challenges the individual had experienced with the city in attempting to develop their property, and is addressed in the findings above for section 39 (2)(c)(B).

Attachment A. Conditions of Approval

Section 39 (4) authorizes the HAPO to establish conditions of approval for any granted exemption. The conditions of approval must ensure that a city continues to meet the approval criteria outlined in section 39 (2). These conditions are organized by subsection.

Under section 39 (6), the Office may revoke an exemption in response to a complaint and following an investigation if the Office determines that the local government is:

- (a) Not approving adjustments as required by the local process or the terms of the exemption;
- (b) Engaging in a pattern or practice of violating housing-related statutes or implementing policies that create unreasonable cost or delays to housing production under ORS 197.320 (13)(a); or
- (c) Failing to comply with conditions of approval adopted under subsection (4) of this section.

For the City of Oregon City to maintain the exemption granted by this decision, the city must both process and grant adjustments as required in section 39 (2) and comply with the conditions set forth in this section. Following a complaint and investigation by the Office, a finding of noncompliance with any of the terms or requirements outlined in this section will result in a revocation of the city's exemption approval. These conditions apply until the expiration of this decision, the withdrawal of the exemption approval by the city, or the revocation of this decision under section 39 (6).

Section 39 (2)(a)

Condition #1 – Required notice to existing and prospective applicants for the development of housing.

The city must provide the notice on Attachment B to all existing and prospective applicants for the development of housing. This notice informs applicants of their legal entitlement to request adjustments to design or development standards as well as the obligation by the City to review and approve adjustments consistent with section 39 (2)(a) and (b). This notice, combined with Condition #2 below, also fulfills the City's obligation to clearly and consistently notify existing and prospective applicants under section 39 (5). The city may not edit or modify the notice in a manner that would render it nonconforming with section 39 (5).

For the purposes of this condition, an “existing applicant” is the primary point of contact for any building permit or a quasi-judicial, limited or ministerial land use decision related to the development of housing where a decision has not yet been issued, including both complete and incomplete applications that have been submitted to the city as of the date of this exemption approval. The city must deliver the notice directly to existing applicants in either a written (e.g. mail) or electronic format (e.g. email). Indirect delivery methods, such as publication of the notice on a webpage or via a public meeting, does not satisfy this condition.

A “prospective applicant” is any recipient of an application form for a building permit or a quasi-judicial, limited or ministerial land use decision related to the development of housing, including any preapplication review or assistance services offered by the city. To notify prospective applicants, the city must provide the notice directly to prospective applicants in either a written (e.g. paper form) or electronic format (e.g. online form). The notice may be appended to existing application forms relating to the development of housing to satisfy this condition. Indirect delivery methods, such as publication of the notice on a webpage or via a public meeting, does not satisfy this condition.

Condition #2 – Publicly-available instructions to request adjustments via a local process.

In addition to the notice provided to existing and prospective applicants for the development of housing in Condition #1, the city must provide publicly-available instructions to existing and prospective applicants that describe how an applicant may request an adjustment to development and design standards specified in section 38 (4) and (5) via a local process or processes. These instructions must also inform applicants of the applicable approval criteria for the adjustment application. These instructions, combined with Condition #1 above, also fulfills the City's obligation to clearly and consistently notify existing and prospective applicants under section 39 (5).

These instructions may be published on a webpage or as a standalone document, provided the city share instructions to existing and prospective applicants on how to access these instructions free of charge. These instructions must also be readily available in the same physical or virtual location where applicants access the development code; for example, if the city links to the development code on a webpage, that same webpage must include a link to the instructions to request adjustments.

The instructions must articulate each pathway by which an applicant may request an adjustment for the development and design standards to the extent required in section 38 (4) and (5). Where the city employs more than one process to enable an adjustment, the city must outline instructions for each pathway, including how an applicant may request an adjustment and the standards for approval of an adjustment up to the extent required in section 38 (4) and (5). The instructions must include the applicable criteria for the adjustment application.

The instructions must also include clear instructions by which an applicant may apply the statute directly under Condition #5. Additionally, where a city's local process(es) or approval criteria are amended (see Condition #3), the city must update the provided instructions to accurately reflect amendments to the local process(es) or approval criteria.

Section 39 (2)(b)**Condition #3 – Changes to the city development code**

With the conditions specified in this decision, the city meets the requirement to review requested adjustments to development and design standards to the extent required in section 38 (4) and (5). In anticipation of future potential amendments to the city development code, the city may not amend the code in a manner that would render any applications for the development of housing ineligible to adjust one or more development or design standards to the extent required in section 38 (4) and (5). This includes development or design standards that the city does not apply and did not request an exemption for, if any.

If the city amends the development code in a manner that would apply or expand development or design standards to residential development, those standards must remain eligible for an adjustment to the extent required in section 38 (4) or (5). If a newly adopted and applied standard is rendered ineligible for an adjustment under the local process due to a development code amendment, the city must apply section 38 directly for that standard (see Condition #5) and notify applicants for the development of housing that they may request an adjustment in this manner, (see Conditions #1 and 2).

Condition #4 – Eligibility of existing and prospective applicants for the development of housing to request adjustments to development and design standards under section 38 (4) or (5).

Under this decision, all existing and prospective applicants for the development of housing are eligible to request one or more adjustments to development or design standards to the extent specified in section 38 (4) or (5). As documented in Conditions #1 and #2, the city must notify existing and prospective applicants of their eligibility to request adjustments via a local process or processes and provide instructions on the approval criteria and process to receive an adjustment.

In addition to these requirements, where an applicant for the development of housing requests an adjustment to one or more standards that are eligible for adjustment under section 38 (4) or (5), the city has an affirmative obligation to inform the applicant of the applicable terms of the exemption that the city must comply with to maintain the exemption. This includes:

1. The applicant is eligible to request one or more adjustments to development or design standards to the extent specified under section 38 (4) or (5) via a local process or processes.
2. The city's basis for approval or denial of the requested adjustment are the approval criteria set forth in the city's development code.
3. The city must provide publicly-available instructions documenting pathways to request adjustments and applicable approval criteria for adjustments (see Condition #2)
4. How an applicant may successfully demonstrate the criteria for adjustment are met, including any relevant information the applicant must provide for the city to issue a decision.
5. The city must maintain a flexible and accommodating process according to the testimonials of housing developers who have utilized the adjustment process within the previous five years. The Housing Accountability and Production Office will invite housing developers to submit testimonials to the Office on an annual basis.
6. Applicants may report suspected violations of housing law, including suspected violations of the terms of the exemption, to the Housing Accountability and Production Office.

The city may fulfill this obligation prior to the submittal of an adjustment request, such as in preapplication review or assistance or in response to inquiries or questions from applicants prior to application submittal. Where an application is submitted without opportunity to convey the information in this condition, the city may provide this information via follow-up correspondence with the applicant, such as a notice of application receipt or a completeness determination. This information must be provided before an application is determined to be complete.

This information may be provided in both written and verbal formats, provided the city follow up on verbal correspondence with a written confirmation that the information required in this condition has been conveyed to the applicant.

Nothing in this condition prevents the city from applying the local approval process or processes for adjustment identified in this decision. Additionally, nothing in this condition prevents the city from informing an applicant about the risk of denial for failure to meet applicable adjustment approval criteria. The city is encouraged to work with applicants to address identified development and design barriers that impact housing production, including through the use of adjustments.

This condition does not apply to development or design standards that are not specified in section 38 (4) or (5), nor does it apply to adjustments beyond the extent required in section 38 (4) or (5). Additionally, this condition does not extend beyond the statutory definition of "adjustment" in

section 38 (1); for example, a city is not required to allow a use that is otherwise not allowed in a given zone, as this is not defined as an “adjustment” under section 38 (1)(b)(A)⁶.

Condition #5 – Addressing nonconformity with section 39 (2)(b)

After an exemption is granted, a city must continue to comply with the approval criteria in section 39 (2), which means that all applicants for the development of housing must be eligible to adjust any and all of the development and design standards under section 38 (4) and (5). Any instance in which an applicant for the development of housing is rendered ineligible for requesting a statutorily-required adjustment is nonconforming with respect to section 39 (2).

As stated in the findings for Section 39 (2)(b), the city’s local processes do not provide a pathway for all applicants for the development of housing to be eligible to adjust any and all of the development and design standards under section 38 (4) and (5). With the acknowledgement that the Office cannot predict every potential development scenario, it is possible that a future scenario could arise in which an applicant for the development of housing is rendered ineligible to adjust a development or design standard as required by statute.

When an applicant for the development of housing is rendered ineligible to adjust a development or design standard as required by statute, the city must maintain conformance with section 39 (2)(b). The city may conform via the direct application of section 38 for the standard or standards rendered ineligible for adjustment via the local process. If the Office produces a future model code implementing section 38, the city may also elect to apply this model code for this same purpose. As stated under Condition #2, the city is obligated to inform applicants that they can directly apply section 38 for the standards rendered ineligible via the local process.

Nothing in this condition otherwise prohibits the city from applying the local process or processes for adjustment, nor does it prohibit the city from adopting future amendments to code to address any identified nonconformity with section 39 (2).

Section 39 (2)(c)

Condition #6 – Required annual reporting to the HAPO

The city has submitted testimonials from developers who have utilized the local adjustment process within the previous five years to demonstrate that section 39 (2)(c)(B) is met. The city must continue to maintain an adjustment process or processes that is flexible and accommodating to project needs according to testimonials from housing developers who utilize the local process or processes as outlined in Condition #7 below. To demonstrate continuing compliance with section 39 (2)(c), the city must annually submit a report to the HAPO documenting all applicants, including contact information, who have requested an adjustment to development or design standards required under section 38 (4) and (5).

This report will be provided to the HAPO at the same deadline for required reporting under ORS 197A.110 and is consistent with reporting that other cities must complete under section 41.

⁶ Note: For the purposes of this decision, adjustments to prohibitions on residential and nonresidential active uses on the ground floor of a mixed-use building as required under section 38 (4)(g)(D) does not constitute a use of property not otherwise permissible under applicable zoning requirements and is an “adjustment”.

However, unlike cities under section 41 that report which specific adjustments were requested and approved/denied, this condition does not require the city to report that information. Instead, the city must report all applicants for the development of housing who have requested an adjustment to development or design standards under section 38 (4) and (5). The HAPO will annually invite applicants who have utilized the local process to submit testimony in relationship to the local adjustment process or processes, as described in greater detail in Condition #7.

Please note that, because testimony from developers who have not requested an adjustment to development or design standards specified under section 38 (4) or (5) within the previous five years does not affect compliance with section 39 (2)(c), the report furnished by the city may not include applicants that did not request such an adjustment within the reporting period. This will help ensure the HAPO invites developer testimony that is relevant to the approval criterion. For example, the report may not include applicant information for developers that requested adjustments for exclusively commercial development or for development and design standards other than what is provided under section 38 (4) and (5).

DLCD must issue annual notice to cities informing applicable cities of the deadlines and instructions to complete required reporting under ORS 197A.110; this notice and format for reporting will be modified to similarly provide clear deadlines and instructions for completing reporting for applicant contact information. Failure by DLCD to issue notice or provide a format with instructions for reporting on requested adjustments does not constitute a failure by the city to comply with this condition.

Condition #7 - Maintain compliance with section 39 (2)(c)

The city must continue to maintain a flexible and accommodating local process according to testimonials from housing developers who have utilized the adjustment process within the previous five years in order to comply with section 39 (2)(c)(B) and maintain the exemption granted by this decision. From the report provided by the city in Condition #6, the HAPO will annually invite developers to submit testimonials to the Office in relationship to this approval criterion. The Office will annually evaluate submitted testimony to confirm that the city continues to maintain a flexible and accommodating local process, consistent with section 39 (2)(c)(B).

Attachment B. Required Notice to Applicants

The City of Oregon City must deliver this notice to all existing and prospective applicants for the development of housing within the city. Failure to issue this notice or comply with the terms outlined in this notice are a violation of state law and can be reported to the Housing Accountability and Production Office (HAPO) at this intake form:

<https://www.oregon.gov/lcd/HAPO/Pages/Inquiries-and-Complaints.aspx>

Eligible Development and Design Flexibilities

The City of Oregon City must allow any applicant for the development of housing to request flexibility⁷ to any standards in the following table. The applicant is eligible to request flexibility to one or more standards on this table. In order to continue utilizing a local process for adjustments to housing development and design standards in lieu of a state-prescribed process under Senate Bill 1537, the city is required to maintain a flexible and accommodating approval process as a condition of the exemption approval. Each row counts as one request, even where a request contains multiple components within that category (rows continue on the following page).

Development or Design Standard	Required Eligible Adjustment Amount
Side or rear setbacks	Must allow an adjustment up to 10% of required setback distance.
For an individual development project, common area, open space or area that must be landscaped on the same lot or parcel as proposed housing	Must allow a reduction up to 25%
Parking minimums	Must be eligible for a full adjustment
Minimum lot sizes	Must allow an adjustment up to 10%, and including up to a 10% adjustment to lot widths or depths
Maximum lot sizes	Must allow an adjustment up to 10%, including up to a 10% adjustment to lot widths or depths, if the adjustment results in more dwelling units than would be allowed without adjustment, and the adjustment does not result in reduction of density below the minimum applicable density
Building lot coverage	Must allow an adjustment up to 10%
*Bicycle parking (minimum spaces)	Must allow an adjustment to the minimum number of spaces for use by residents, provided the application includes at least one-half space per residential unit
*Bicycle parking (location)	Must allow an adjustment to the location of bike parking spaces, provided lockable, covered bike parking spaces are within or adjacent to the residential development
*Building height maximums (excluding cottage clusters)	Must allow an adjustment in addition to any existing applicable height bonuses; Must allow an adjustment up to the greater of "one story" or 20% of the base zone height
*Unit density maximums	Must allow an amount necessary to account for other requested adjustments in this table
*Prohibitions on ground floors of mixed use buildings against residential uses except for one face of the building facing the street & within 20 ft of the street	Must be eligible for a full adjustment
*Prohibitions on ground floors of mixed use buildings against nonresidential active uses that support the residential uses of the building	Must be eligible for a full adjustment
Facade materials, color or pattern	Must be eligible for a full adjustment
Facade articulation	Must be eligible for a full adjustment

⁷ These flexibilities are referred to as "adjustments" in SB 1537. An adjustment is defined as "a deviation from an existing land use regulation".

Development or Design Standard	Required Eligible Adjustment Amount
Roof forms and materials	Must be eligible for a full adjustment
Entry and garage door materials	Must be eligible for a full adjustment
Garage door orientation unless adjacent to or across from school/public park	Must be eligible for a full adjustment
Window materials except bird-safe glazing requirements	Must be eligible for a full adjustment
Total window area	Must allow up to 30% adjustment if application includes at least 12% of total façade as window area
*Building orientation requirements, not including transit street orientation requirements	Must be eligible for a full adjustment
*Building height transition requirements	Must allow up to 50% adjustment from the base zone
*Requirements for balconies and porches	Must be eligible for a full adjustment
*Requirements for recesses and offsets	Must be eligible for a full adjustment

**Only applicable to manufactured dwelling parks, middle housing, multi-unit, and mixed use residential.*

City's Requirements for Mandatory Adjustments

Senate Bill 1537 (2024) advances tools that will increase housing production, affordability and choice. This includes a requirement for cities to allow temporary flexibility on specified land use regulations for qualifying residential developments⁸. The City of Oregon City received approval for an exemption that allows the city to apply a local process to grant flexibility to local design and development standards instead of a state-prescribed process. To maintain this exemption, the city must:

1. Provide and clearly communicate all local processes by which any existing or prospective applicant for the development of housing under the jurisdiction of the city may request flexibility on design and development standards.
2. Allow any applicant for the development of housing to request flexibility on the specific design and development standards up to the amount specified in the table above via the applicable local process, and
3. Continue to demonstrate that the local process is flexible and accommodates project needs according to testimonials of housing developers who have utilized the adjustment process within the previous five years. Testimony may be submitted to the HAPO.
4. Allow any applicant rendered ineligible to request an adjustment via the local process to directly apply section 38 for the standard or standards rendered ineligible.

Following a complaint and investigation by the Office, a finding of non-compliance with these criteria will result in a revocation of the exemption. The city would then be required to apply the state-prescribed per Section 38 of Senate Bill 1537. Suspected violations can be reported to the HAPO at this intake form: <https://www.oregon.gov/lcd/HAPO/Pages/Inquiries-and-Complaints.aspx>

Learn more about HAPO, Senate Bill 1537, and Mandatory Adjustments at:

About HAPO: <https://www.oregon.gov/lcd/Housing/Pages/Housing-Accountability-and-Production-Office.aspx>

⁸ See Section 38, Senate Bill 1537 (2024 Session).

Mandatory Adjustments – Overview for Housing Developers:

https://www.oregon.gov/lcd/Housing/Documents/20250306_HAPO_MandatoryAdjustments_OnePager.pdf

Mandatory Adjustment Technical Summary:

https://www.oregon.gov/lcd/Housing/Documents/Mandatory_Adjustments_Summary.pdf

Flexibilities to Housing Development and Design Standards Dashboard:

<https://geo.maps.arcgis.com/apps/dashboards/04337d6378a24ba5b9bb6c9f7f5b3c9c>

HAPO Inquiries and Complaints Intake Form:

<https://www.oregon.gov/lcd/HAPO/Pages/Inquiries-and-Complaints.aspx>

Review the HAPO's Final Decision:

https://www.oregon.gov/lcd/Housing/Mandatory%20Adjustments/20251016_Oregon_City_Decision_Mandatory_Adjustment_Exemption.pdf