



Oregon

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June 12, 2025

Steve Koper, Community Development Director
10699 SW Herman Road
Tualatin, OR 97062-7092
Sent via e-mail



RE: Review of City of Tualatin Exemption Request to Mandatory Adjustments

Dear Steve,

On February 12, 2025, the Housing Accountability and Production Office (HAPO or Office) received an application from the City of Tualatin 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.

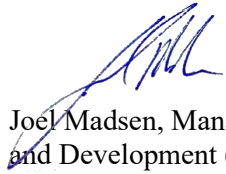
The Office is required to review and issue a decision approving, approving with conditions, or denying an exemption request within 120 days of receiving the application. Additionally, the Office is authorized to establish conditions of approval requiring the city to demonstrate that the city continue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

*Based on the Office review of the City of Tualatin 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. Following a complaint and investigation by the Office, a finding of non-compliance with the approval criteria under section 39 (2) or the conditions of approval in this 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 Sean Edging, Senior Housing Planner at sean.edging@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: Laura Kelly, DLCD
Brenda Bateman, DLCD
Andrew Boulton, Department of Consumer and Business Services, Building Codes Division
Frank Bubenik, City of Tualatin

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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, the City of Tualatin submitted information to demonstrate that section 39 (2)(c)(A) is met.

The Office held a 45-day period to solicit public comment, opened on March 14, 2025, and closed on April 28, 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 two processes by which an applicant may request an adjustment to the development and design standards for the development of housing:

1. A ‘Minor Variance’ process – an administrative process in which an applicant may request a deviation from development standards. The city’s application stated the process is only available if an applicant meets the following criteria:
 - a. The housing development must be located in the “Residential Low Density Zone (RL) and Residential Medium to Low Density Zone (RML) for detached single family dwellings, accessory structures, duplexes, townhomes, triplexes, quadplexes, cottage clusters, or accessory dwelling units” (Chapter 33.120.2.b.i).
 - b. The applicant may only request “a ten percent variation from the required lot area” and “up to a 20 percent variation from the required lot width, building coverage, setbacks, projections, into required yards and structure height development standards” (Chapter 33.120.2.b.i A and B).
2. A ‘Variance’ process – A quasi-judicial process in which an applicant may request a deviation or complete waiver from development and design standards.

As noted in greater detail in the findings in section 39 (2)(b), the city’s application stated that the Minor Variance and Variance 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. However, the local government has at least one process by which all applications for the development of housing may request development and design adjustments for review by the local government.

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 approve 90% of received adjustment requests 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) by:

1. Denying applicants for the development of housing the ability to request adjustments to specified design and development standards, which as of the effective date of section 38 of SB 1537 will be required through January 2, 2032, which affects compliance with section 39 (2)(a) and (b), and
2. Omitting adjustment requests in a manner that is unmeasurable by the Office, because the city does not issue a formal decision approving or denying a given adjustment request that is informally withdrawn or altered, which affects compliance with section 39 (2)(c)(A).

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 multiple provisions in the code that would render an application for the development of housing ineligible for an adjustment under the local government’s processes.

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 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 two pathways to request an adjustment to this standard. The city’s application has identified the following code provisions under which an applicant for the development of housing may not be eligible to adjust the standard, according to the approval criteria applied in each section.

- **Minor Variance (Chapter 33.120):** The Minor Variance process allows applications for the development of housing to adjust to this standard to the extent specified. As stated in the findings for 39 (2)(a), the Minor Variance process may only be requested in a finite number of residential zones and for a limited number of housing types (Chapter 33.120.2.b.i). This limitation of the Minor Variance process renders applications for the development of housing that do not meet this eligibility criteria ineligible to adjust the standard via this pathway.
- **Variance (Chapter 33.120):** The Variance process allows applications for the development of housing to adjust to this standard to the extent specified. However, the Variance process can only be approved if “a hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other

properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control”. This means that an applicant for the development of housing will be ineligible to adjust side or rear setbacks on an indeterminate (but categorical) proportion of sites that do not meet this standard. The limitation of the Variance process renders applications for the development of housing that do not meet this eligibility criteria ineligible to adjust the standard via this pathway.

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)(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 one pathway, the Variance process, to request an adjustment to this standard. The city’s application has identified the following code provisions under which an applicant for the development of housing may not be eligible to adjust the standard, according to the approval criteria applied in each section.

Variance (Chapter 33.120): The Variance process allows applications for the development of housing to adjust to this standard to the extent specified. However, the Variance process can only be approved if “a hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control”. This means that an applicant for the development of housing will be ineligible to adjust common area, open space or area that must be landscaped on an indeterminate (but categorical) proportion of sites that do not meet this standard. The limitation of the Variance process renders applications for the development of housing that do not meet this eligibility criteria ineligible to adjust the standard via this pathway.

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)(c) Parking minimums.

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)(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 two pathways to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for side or rear setbacks under section 38 (4)(a). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(a) above.

§ 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 provides two pathways to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for side or rear setbacks under section 38 (4)(a). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(a) above.

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

The city provides two pathways to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for side or rear setbacks under section 38 (4)(a). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(a) above.

§ 38 (4)(g)(A)(i)² 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 provides one pathway, the Variance process, to request an adjustment to this standard.

² 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.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 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 one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 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 two pathways to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for side or rear setbacks under section 38 (4)(a). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(a) above.

§ 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 one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 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 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)(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 one pathway, the Variance process, to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 38 (5)(b) Facade articulation.

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 38 (5)(c) Roof forms and materials.

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city’s local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 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 one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

§ 38 (5)(h)(A)³ Building orientation requirements, not including transit street orientation requirements.

³ 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 one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

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)(h)(C) Requirements for balconies and porches.

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

The city provides one pathway, the Variance process, to request an adjustment to this standard.

The city's local adjustment processes for this standard are identical for common area, open space or area under section 38 (4)(b). For brevity, this finding incorporates the same findings and applies conditions #1, 2, and 5 as found in section 38 (4)(b) above.

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

To demonstrate approval with this criterion, the city submitted a spreadsheet documenting the city's five-year permit history. The five-year permit history must demonstrate at least a 90 percent approval rate of received adjustment requests. Consistent with HAPO's [guidance](#), the Office will deny or revoke an exemption request upon finding that the city demonstration includes false or incomplete information.

The submitted spreadsheet includes a total of two adjustments requested as part of one application (VAR21-0003) for which the city has issued a decision. The spreadsheet indicates that the city has approved 100% of received adjustment requests.

Based on the Office's review of this permit, the Office did not identify any reporting inaccuracies or omissions that would suggest the city's five-year permit history is inaccurate. Therefore, this criterion has been met.

§ 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.

The local government has submitted materials to demonstrate that (2)(c)(A) is met. Therefore, this criterion does not apply.

Response to Public Comments

The Office held a 45-day period to solicit public comment, opened on March 14, 2025, and closed on April 28, 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 stated an exemption granted to the city of Tualatin is unfair to smaller communities, particularly those in eastern Oregon. The comment stated smaller cities have fewer resources and continue to reduce barriers to development. They are therefore adversely impacted by the mandatory adjustment requirements of Senate Bill 1537. Instead, all cities above 10,000 population should be automatically exempted from mandatory adjustments.

Section 38 of SB 1537 is a requirement to provide temporary flexibility to specified development and design standards that is effective as of January 1, 2025, sunseting on January 2, 2032. This requirement applies universally to all cities in Oregon, regardless of location or population size. Section 39 allows cities to request the office provide an exemption to section 38; however, that exemption is contingent upon city demonstration that specific approval criteria under section 39 (2) are met. This option is also available for any city, regardless of location or size. The office published a [guidance document](#) with instructions on how to apply.

Pursuant to statute, the office does not have the authority to grant exemptions to cities that do not specifically request an exemption and sufficiently demonstrate the approval criteria are met. Therefore, the office cannot consider this in issuing a decision for an exemption.

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 Tualatin 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 an adjustment approval rate of 90% as measured over a five-year period. The city's approval rate will be measured on an annual basis by the Housing Accountability and Production Office.
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)⁴.

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).

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). As stated in the findings for section 39 (2)(b), the Office identified that the Minor Variance process can only be applied to a limited number of residential zones, housing types, and development and design standards. Furthermore, the Variance process can only be approved if “a hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control”. This means that an applicant for the development of housing will be ineligible for an adjustment under section 38 (4) and (5) on an indeterminate (but categorical) proportion of sites that do not meet this standard. The limitation of the Variance process renders applications for the development of housing that do not meet this eligibility criteria ineligible to adjust the standard via this pathway.

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.

⁴ 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”.

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 permitting information over the previous five years to demonstrate that section 39 (2)(c)(A) is met. The city must continue to approve 90% of received adjustment requests over any five-year period after this exemption is granted, as outlined in Condition #7 below. To demonstrate continuing compliance with section 39 (2)(c), the city must annually submit the same report that is required of cities under section 41 of SB 1537.

This report must be provided to DLCD and the HAPO at the same deadlines and format for required reporting under ORS 197A.110. This report must include all adjustment requests to development and design standards under section 38 (4) or (5) that the city received, then issued a decision for over the previous calendar year. This information will be the basis for the HAPO to annually assess the approval rate of requested adjustments as described in Condition #7.

Consistent with this decision, 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 the reporting period. 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.

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 requested adjustments under section 41. 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 grant at least 90% of received adjustment requests over the previous five years in order to comply with section 39 (2)(c)(A) and maintain the exemption granted by this decision. The five-year period will be benchmarked to the reporting period described in Condition #6 and reviewed annually by the HAPO.

Attachment B. Required Notice to Applicants

The City of Tualatin 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 DLCD.HAPO@dlcd.oregon.gov.

Eligible Development and Design Flexibilities

The City of Tualatin must allow any applicant for the development of housing to request flexibility⁵ 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 approve 90% of received requests from this table. 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

⁵ 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
*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
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
<i>*Only applicable to manufactured dwelling parks, middle housing, multi-unit, and mixed use residential.</i>	

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 developments⁶. The City of Tualatin 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. At a minimum, approve 90% of adjustment requests submitted to the city within the previous five years. This percentage will be reviewed annually when the city submits required reporting 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

⁶ See Section 38, Senate Bill 1537 (2024 Session).

adjustment process per Section 38 of Senate Bill 1537. Suspected violations can be reported to the HAPO at DLCD.HAPO@dlcd.oregon.gov.

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>

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>

Review the HAPO's Final Decision:
https://www.oregon.gov/lcd/Housing/Mandatory%20Adjustments/20250612_Tualatin_Decision_Mandatory_Adjustment_Exemption.pdf