

Wyss, Darren

From: EDGING Sean * DLCD <Sean.EDGING@dlcd.oregon.gov>
Sent: Wednesday, June 17, 2026 1:34 PM
To: Wyss, Darren
Cc: REID Kelly * DLCD
Subject: Inquiry Response: West Linn 20260617 - Clear and Objective Standards (Local Gov't)

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Hello Darren,

We received an inquiry that relates to a potential development application in the City of West Linn. Where this occurs, we share a copy of the guidance below with both parties consistent with our [Policies and Procedures](#) and in the interest of transparency

Below is a summary of the inquiry and our response. Please note that our guidance is not substitution for legal counsel. If you have any follow-up questions, don't hesitate to reach out.

Inquiry Summary: This inquiry relates to a potential development application in the Office Business Zone within the City of West Linn. According to the inquiry, the zone allows for “multiple-family units” as part of a mixed-use development in conjunction with commercial development on the first floor. The inquiry asks whether the development project, consisting of 320 housing units within 10 buildings with required ground floor commercial, qualifies as an application for the development of housing subject to clear and objective standards. Additionally, the inquiry asks whether the new limited review process under section 17 of House Bill 4037 would apply. The inquiry notes that the applicable siting and design standards apply to the mixed-use building as a whole with little distinction between the commercial and residential uses. Additionally, the inquiry suggests the development application would be subject to a Type III procedure – including a required hearing – under the city's development code.

HAPO Response: First, a few caveats for this response:

1. HAPO does not issue determinations of whether a city's development code is in or out of compliance with a housing law outside of the formal complaint process under ORS 197A.805. At this time, no complaint was submitted and we have not reviewed information specific to the development application with sufficient context to issue such a determination. Therefore, this guidance will be generalized and not specific to the prospective development application or applicable land use regulations.
2. There is active case law relating to the scope and applicability of ORS 197A.400 ([Roberts vs Cannon Beach](#)) that is pending a decision from the Oregon Supreme Court. We recommend following the outcome of this case and consulting with legal counsel about its implications for this question.
3. In addition to the above, [HB 4037 \(2026\)](#) has substantially elevated the importance of the applicability of ORS 197A.400(1). HAPO acknowledges the need to provide guidance beyond the plain text of statute, but please keep in mind this comes with intrinsic ambiguity as understanding of the law evolves. We are working on broader guidance on this topic but know that we approach this with caution to ensure our guidance is well-vetted and accurate.

ORS 197A.400(1)(a)(A) allows local governments to “adopt and apply only clear and objective standards, conditions and procedures regulating * * * [t]he development of housing[.]” However, the statute does not further clarify the applicability of the statute for the purposes of development containing a mix of residential and other uses (e.g., commercial), and we are not aware of any case law further clarifying precisely how ORS 197A.400(1) applies to mixed-use developments.

While there are other areas in statute and administrative rule that define “residential” to include “mixed-use residential” (e.g., [ORS 197A.800\(5\)\(b\)](#) or [OAR 660-008-0405\(10\)\(b\)](#)), these definitions do not specifically apply to ORS 197A.400. However, ORS 197A.400(3) offers additional clarity for processes that are not clear and objective applied to the development of housing:

“(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;
- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (1) of this section.”

We often refer to these as “alternative, discretionary review” as a shorthand. It includes many discretionary review paths for housing such as conditional use permits, discretionary design review, or planned unit developments. For any city adopting code amendments to comply with ORS 197A.400, we generally advise ensuring any discretionary review pathway applied to housing complies with subsection (3)(a) to (c), with a few exceptions (e.g. historic review).

Said simply, there isn’t definitive clarity yet on the precise applicability of ORS 197A.400(1), but ORS 197A.400(3) requires any alternative, discretionary review applied to residential development to provide a clear and objective option to proceed.

If there is no clear and objective pathway to proceed, one option to comply with ORS 197A.400 in an active development application is to not apply discretionary standards (i.e. standards that cannot be applied independent of mind) to the development application with findings noting that ORS 197A.400 prohibits their application.

The second part of this question is whether the procedural requirements of ORS 197A.400(5) and (6) apply once the law comes into effect on July 1, 2026. This is also a complex answer. We believe the answer most consistent with the legislative intent of HB 4037 is the new procedural requirements apply to clear and objective processes, but not to alternative, discretionary review processes.

The procedural requirements in ORS 197A.400(5) apply “for applications subject to subsection (1) of this section.” This language creates some ambiguity as to whether this also extends to alternative, discretionary review pathways, which are provided in addition to subsection (1). However, legislative history of the bill indicates that the intent was for applications undergoing a clear and objective process to be reviewed without a public hearing. HAPO interprets those statements as indicating an intent that the procedural limitations of subsection (5) are not applicable for housing development being reviewed under an alternative approval process per ORS 197A.400(3). However, they would apply to developments that choose to proceed with a clear and objective review path.

Best,

Sean



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Cell:

Edging [Hear my name](#)

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The Housing Accountability and Production Office is a joint office between the Department of Land Conservation and Development (DLCD) and the Department of Consumer and Business Services' Building Codes Division (BCD).