

Wyss, Darren

From: EDGING Sean * DLCD <sean.edging@dlcd.oregon.gov>
Sent: Monday, July 27, 2026 2:02 PM
To: Carrie Richter; MADSEN Joel * DLCD
Cc: Wyss, Darren; REID Kelly * DLCD
Subject: RE: HAPO Help?

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Hello Carrie,

Thank you for reaching out to our office with your inquiry and for your patience as we worked to respond. Below is a summary of the inquiry and our response. Please note that our guidance is not substitution for legal counsel.

Inquiry Summary: This inquiry relates to a specific development proposal in the City of West Linn and was submitted by the project applicant's representative. The project proposes 320 dwelling units on land zoned Office Business Commercial, which allows "multi-family residential" so long as it includes ground floor commercial.

The inquiry asks for HAPO guidance for the following:

1. Whether the office will submit testimony explaining "what state housing law requires" with respect to House Bill (HB) 4037 (2026),
2. The constitutionality of HB 4037, and
3. Whether HAPO has issued any formal interpretations regarding "how SB 1537 waivers work with respect to ground floor commercial." The inquiry provides context that "project opponents have taken the position that SB 1537 cannot apply because ground floor commercial is a use rather than a design or development standard."

HAPO Response: On the first question, we are happy to provide a written explanation of new requirements under HB 4037 that you are welcome to share publicly and enter into the record. Though please note that, as further explained below, our ability to issue a written warning notice of a potential housing law violation is limited to formal complaints under ORS 197A.805. As of writing, no such complaint has been submitted. Therefore, this message is a response to a request for technical assistance, and we are not undertaking an investigation, making any determination, nor issuing a warning notice of a housing law violation at this time. See ORS 197A.800(2)(b)-(c); ORS 197A.805(3)(a).

House Bill 4037 (2026) amended ORS 197A.400 to establish new procedural requirements for applications subject to clear and objective standards, conditions and procedures. This change went into effect on July 1, 2026 and affects applications for the development of housing within an urban growth boundary. These procedural requirements include:

1. The local government may provide notice of the application only to property owners within 100 feet, or 500 feet for developments of 20 units or more, of the subject property.
2. The local government may not require a public hearing prior to a decision.
3. The local government may provide an opportunity for local appeal only to the applicant.
4. Only the applicant may appeal these decisions to the Land Use Board of Appeals.

For a summary of all amendments to housing laws during the 2026 Legislative Session, including HB 4037, please see the following HAPO bulletin:

https://www.oregon.gov/lcd/HAPO/Shared%20Documents/HAPO_Bulletin_2026Session_HousingLaws.pdf

HB 4037 limits local government notice, hearing, and appeal requirements for housing development applications reviewed under clear and objective standards. Additionally, the law limits the opportunity to appeal a local decision to only the applicant. In practice, most local governments may conform with this new requirement by amending ministerial and administrative review procedures to conform with the new requirements and apply only those processes to housing development applications reviewed under clear and objective standards. Additionally, our understanding of the new requirement is that it extends to clear and objective review and not to optional, discretionary review pathways authorized under ORS 197A.400(3).

Currently, HAPO is amending procedures from previously adopted Housing Model Codes to conform with the new procedural requirements established by HB 4037. For the most part, these procedures already conform to the new requirements, with a few exceptions. We are incorporating amendments to conform public hearings and appeals to the new law. Drafts of these conforming amendments will be available for public comment in August. Once adopted (anticipated early 2027), local governments will be able to rely on adopted model codes to comply with the new law, either as guidance for local code amendments, optionally adopted by reference, or optionally applied directly to an application where local code is nonconforming.

On the second question, we cannot speak to the constitutionality of HB 4037 in this request for technical assistance. As noted, outside the context of the office's authority to investigate and respond to complaints regarding suspected or credibly alleged violations of housing laws, issue warning notices, and pursue enforcement, HAPO's statutory authority is to provide technical assistance with complying with housing laws to local governments and applicants for land use and building permits for residential development who are experiencing permitting and land use barriers related to housing production. See ORS 197A.800(2); 197A.805(2)-(3). Should a complaint alleging a housing law violation be submitted and determined credible, our office would conduct a thorough analysis of the complaint, actions taken by local government and consistency with state law.

On the third question, HAPO issued a prior mandatory adjustment exemption decision, which included HAPO's determination as to the relationship between the definition of "adjustment" at sections 38(1)-(2) and the requirement for local governments to grant adjustments under section 38(4)(g)(D), as set forth below (bold added):

(1)(a) "Adjustment" means a deviation from an existing land use regulation.

(b) "Adjustment" does not include:

(A) **A request to allow a use of property not otherwise permissible under applicable zoning requirements;**

(B) Deviations from land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site clean-up, wildlife protection, or statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources;

(C) A complete waiver of land use regulations or any changes beyond the explicitly requested and allowed adjustments; or

(D) Deviations to requirements related to the implementation of fire or building codes, federal or state air quality, water quality or surface, ground or stormwater requirements, or requirements of any federal, state or local law other than a land use regulation.

(2) Except as provided in section 39, chapter 110, Oregon Laws 2024, a local government shall grant a request for an adjustment in an application to develop housing as provided in this section. An application qualifies for an adjustment under this section only if the following conditions are met:

(b) The development is on lands zoned to allow for residential uses, including mixed-use residential;

(4) A local government shall grant an adjustment to the following development standards:

(g) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multiunit housing and mixed-use residential housing:

(D) Prohibitions, for the ground floor of a mixed-use building, against:

(i) Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and

(ii) 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 prior HAPO exemption request determination involved a local government that asserted an adjustment required under section 38(4)(g)(D) for prohibitions against residential uses on the ground floor of a mixed-use building in a mixed-use zone could be denied (and did not disqualify the city from a requested exemption) because it constituted a change in use that was otherwise prohibited given the section (38)(1)(b)(A) definition of “adjustment” (excluding “[a] request to allow a use of property not otherwise permissible under applicable zoning requirements”). We disagreed with that rationale and explained further in the findings for the decision (see pg 16-18) that “[t]he action of disallowing an applicant from seeking an adjustment to a required standard (in this case section 38(4)(g)(D)(i)) directly contradicts section 39(2)(b), which states: ‘(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[.]’”

Note that the findings associated with the decision relate to the exemption approval criteria in Oregon Laws 2024, chapter 110, section 39, *compiled as a note after* ORS 197A.395 (2025), *amended by* Oregon Laws 2025, chapter 530, section 3.

As mentioned in a previous response, we are providing a copy of this response to Darren Wyss at the City of West Linn, consistent with our policies and procedures.

Let me know if you have any follow-up questions.

Best,



Sean Edging  [Hear my name](#)

Senior Housing Planner | Housing Accountability and Production Office

Pronouns: He/Him

Cell: 971-375-5362 | Main: 503-373-0050

sean.edging@dlcd.oregon.gov | www.oregon.gov/LCD

From: Carrie Richter <crichter@batemanseidel.com>

Sent: Thursday, July 16, 2026 2:38 PM

To: EDGING Sean * DLCD <sean.edging@dlcd.oregon.gov>; MADSEN Joel * DLCD <joel.madsen@dlcd.oregon.gov>

Cc: Wyss, Darren <dwyss@westlinnoregon.gov>

Subject: HAPO Help?

Hello,

As I think you know, this firm represents a developer seeking design review approval for a 320 unit multi-family development within the City of West Linn on land zoned Office Business Commercial. Multi-family residential is permitted outright so long as it includes ground floor commercial. Relying on SB 1537, the applicant has sought a waiver to allow more limited ground-floor commercial than the code requires. The applicant has also asked that the City apply HB 4037, Section 17 and make a staff decision without a public hearing. As you may have heard, this has stirred up a great deal of consternation as this community is very surprised and dismayed by this result. To get a feel, perhaps take a look at the 60 minutes of testimony offered at the City Council meeting this past Tuesday night:

https://westlinn.granicus.com/player/clip/1765?view_id=&meta_id=89399&redirect=true

In response, the City has decided to proceed with a hybrid approach whereby the criteria related to housing will be decided at a public meeting without a public hearing. The criteria directed solely to commercial will be determined by the Planning Commission after a public hearing. This approach is not only absurd, it is completely at odds with the legislative history resulting in the adoption of HB 3047.

What I'm hoping is that perhaps HAPO might be willing to submit some testimony, either orally or at the public hearing on August 10, explaining what state housing law requires. If the goal is to get housing to market, the time is now for HAPO to step in and provide support and not after the fact through enforcement.

Second and tangentially related, has HAPO issued any formal interpretations regarding how SB 1537 waivers work with respect to ground floor commercial? The argument that the opponents are making is that SB 1537 cannot apply because ground floor commercial is a use rather than a design or development standard. I heard this argument early on but I haven't heard it lately so I'm wondering if this might be settled through anything HAPO has issued.

Just FYI – I have copied the City Planner Darren Wyss on this email in an effort to be fully transparent and inclusive about this request.

Thanks,
Carrie

Carrie Richter
Bateman◇Seidel
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
[1000 SW Broadway, Suite 1910](#)
[Portland, OR 97205](#)
(503) 972-9903 (direct phone)
(503) 972-9904 (direct fax)
crichter@batemanseidel.com

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