

June 29, 2026

VIA EMAIL to dwyss@westlinnoregon.gov

Darren Weiss, Planner
City of West Linn
22500 Salamo Rd.
West Linn, OR 97068

Re: Tannler Holdings LLC Multi-Unit Housing Application
City File No: 2025-04

Dear Mr. Weiss,

This firm represents Tannler Holdings LLC, the Applicant in the above-referenced matter. The purpose of this letter is to put you on notice of a number of state laws that alter how the above-referenced application must be processed. As you are aware, ORS 197A.400(1) provides that only clear and objective standards may be applied to applications for the development of housing. What this standard does not prescribe is what procedure controls review of applications subject to clear and objective standards. HB 4037 Section 17, codified in ORS 197A.400, which takes effect as of July 1, 2026, articulates this previously unspecified procedure and provides:

“(5) For applications subject to subsection (1) of this section, the local government:

(a) May provide notice of the application only to owners of record of property on the most recent property tax assessment roll where such property is located within 100 feet, or within 500 feet for developments of 20 units or more, of the property that is the subject of the notice;

(b) May not require a public hearing prior to making a decision on the application;
and

(c) May provide an opportunity for a local appeal only to the applicant.”

As the Governor’s Office explained throughout the legislative hearings leading up to the adoption of Section 17, the purpose of the bill was to expedite the processing of housing applications by

eliminating multiple local review and appeal processes where the local government lacks any discretion.¹

As part of an amendment package filed in early June, the Applicant has requested that the City process this application subject to the HB 4037 required procedure. This application seeks design review approval to develop 320 residential dwelling units in ten multi-family buildings. Within the Office Business Center (OBC) zone, multi-family housing is allowed only where it includes ground floor commercial and more specifically, CDC 21.050(2) listing uses allowed within the OBC zone provides:

“Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor.”

“Multiunit housing that is owned or rented” is expressly included within the definition of “housing” which is protected under Oregon housing laws. ORS 197A.018. As an application for “housing,” this application may be reviewed only against the clear and objective standards of ORS 197A.400(1) and, pursuant to HB 4037, may not be subject to a public hearing before the Planning Commission as might otherwise apply. Compliance with ORS 197A.018, as recently amended, demands that this application be processed as a Director’s decision with an appeal right to the City Council running only to the applicant.

Based on discussions to date, City staff has paused processing this application while awaiting an election by the Applicant to pursue one of the following two options:

- 1) Separate the housing and code-required ground floor commercial components of the project for purposes of review. The housing-related portion of the application would be decided by the Planning Commission at a “public meeting” where testimony from the public and applicant would not be taken, which staff believes complies with the HB 4037 obligation to not hold a “public hearing.” As for the commercial portion, the application would need to

¹ This was clearly outlined in the testimony provided by the Governor’s Office staff, who assisted in the drafting of the Committee-sponsored bill, to the Housing Committee on Housing and Homelessness at the initial hearing on February 5, 2026 at 1:20:57:

“There is no currently no state standard for review process that those goes through, what we have found is that a public hearing on this, not only adds time and cost on the development side, it creates a lot of confusion for the surrounding community, local governments, if the development meets the clear and objective standards they are required under state statute to approve that and so the community members are coming to a hearing and speaking to other issues, their testimony is not really able to be taken into account in that decision and that creates a lot of frustration within the community and so by removing this process it can really streamline it for the developer and for the community’s experience.”

be amended to address the discretionary commercial design standards set forth in CDC 55.100 and then would be processed through the code-mandated Type III review with a public hearing by the Planning Commission.

- 2) Elect not to pursue this bifurcated review and consider the entire application under the standard code-mandated procedures with a public hearing before the Planning Commission.

Both of these so-called options not only create an impossible choice, they contravene state law. First, although the law does allow a local government to adopt alternative paths for the approval of housing, such options are permitted only where “the applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section [i.e. the clear and objective path].” ORS 197A.400(3)(a). As amended by HB 4037, in addition to no discretionary standards, the clear and objective path now demands no initial public hearing. Neither of these options present a clear and objective path for the approval of this housing.

There is a fairly recent LUBA case that illustrates the defect created by these two options. In *Icon Development v. City of Oregon City*, the previous owner-in-interest had agreed to a condition to an annexation approval requiring a subsequent discretionary master plan review when development occurred. LUBA No. 2022-100, May 19, 2023. When the development application was filed, the applicant objected to application of the discretionary master plan review criteria as they were not clear and objective. The City responded that by agreeing to the condition by the previous owner, the applicant had elected an alternative track of review that included the discretionary criteria and the application could be subject to discretionary standards. On appeal, LUBA disagreed with the city, finding that “at no relevant time had the city’s land use legislation offered a ‘clear and objective’ path for approval of need housing on the subject property.” *Slip op* 16. See also *Group B, LLC v. Corvallis*, 72 Or LUBA 74, 82,11 *affd*, 275 Or App 577, 366 P3d 847 (2015).

Similar to the *Icon Development* case, what the City is offering here are two alternative track reviews where this application will be subject to a public hearing and in one case, discretionary review criteria as conditions to getting the housing application approved. There is no clear and objective, HB 4037-compliant option given and that is a violation of state law. It is quite likely that if the City proceeds with demanding a hearing or demands discretionary review for the commercial components, the Applicant would prevail in an appeal to LUBA with a high probability of attorney fees awarded to the Applicant.

Second, the structure of City design review reflects some understanding of this obligation as the clear and objective standards for design review set forth in CDC 55.105 apply to mixed-use development as follows:

“Class II Design Review applications for the development of one or more new dwelling units, as applicable under CDC 55.020(B), are subject to the clear and objective approval standards in this section. Proposals where the applicant cannot or

chooses not to meet the clear and objective approval standards in this section may apply under the discretionary Class II approval standards in CDC 55.100.”

The application subject to this review is a request for the development of “one or more new dwelling units.”² The discretionary design review path as set forth in CDC 55.100 provides:

“Except for applications subject to CDC 55.105, the approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application:”

Since this application is for dwelling units subject to CDC 55.100, it cannot also be subject to CDC 55.105 as doing so would no longer provide the “clear and objective” review path required for housing. These code sections do not contemplate subjecting the commercial component of a mixed-use project to discretionary design review standards and doing so would not give the applicant a clear and objective path to approval.

Asking the Planning Commission to render a decision on this application is similarly unlawful. The Planning Commission’s authority to consider design review applications can occur only after a public hearing. CDC 99.170(A) provides, in relevant part: “The Planning Commission, City Council, and Historic Review Board *shall conduct a public hearing on all matters* over which the Board, Commission, or Council has original jurisdiction pursuant to CDC 99.060.” This provision demands a public hearing and where HB 4037 preempts as much, the Planning Commission lacks authority to conduct review.

Moreover, by putting this decision to the Planning Commission to decide without a public hearing where testimony by the applicant would be allowed, you are depriving them of the ability to meet their burden of proof, significantly compromising their ability to participate and make their case. Such a procedural violation would most certainly prejudice the Applicant’s substantial rights, another basis for prevailing at LUBA.

Finally, and perhaps most importantly, asking the Planning Commission to consider this matter in a public meeting does nothing to make this review any more efficient or timely, the unambiguous objective to be achieved through HB 4037, Section 17. Asking this applicant to elect a Planning Commission decision made during a public meeting – a procedure that the City has never used and

² CDC 2.030 provides the following relevant definitions:

“Dwelling unit. A single unit containing eight or fewer bedrooms designed for residential occupancy by one family for living purposes providing complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.”

“Multiple family residential units. A structure containing five or more attached dwelling units in any vertical or horizontal arrangement and located on a single lot or parcel.”

that the City's code expressly does not allow – will significantly delay the processing of this application and will most certainly run afoul of another portion of ORS 197A.400(1)(B)(b), which prohibits the application of procedures that “have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

As you are probably aware, the recently created Housing Accountability and Production Office (HAPO) was established to resolve complaints about local government violations of state housing law. ORS 197A.805(2). HAPO is charged with investigating every complaint that it receives and, where a reasonable basis for violation is found, HAPO's list of available enforcement remedies include a sixty-day compliance period, followed by an enforcement order issued by the Land Conservation and Development Commission which may suspend application of local zoning regulations and/or demand application of the model code set forth in administrative rule. Importantly, such a complaint-driven HAPO investigation could open the City's zoning regulations up for even greater scrutiny, demanding significant staff time, not to mention opportunity for state intervention.

Finally, in the interest of completeness, should the City decide to require design review of the commercial component through CDC 99.100, such review would be a statutory limited land use decision as defined in ORS 197.015(12)(a)(B), which is subject to the procedures set forth in ORS 197.195, and requires an initial decision by the Planning Director and not the Planning Commission. ORS 197.195(3).

In conclusion, what is proposed is a straightforward application for design review for multi-family housing, which the City needs, on a site zoned and designated as suitable to accommodate that housing. There is simply no legal or policy basis for subjecting this application to an additional commercial design review or to require a decision by the Planning Commission, when all of the applicable approval criteria and standards are clear and objective. Imposing these obligations are, quite simply, barriers to the provision of housing in the form of significant delay and increased costs.

As such, the Applicant respectfully requests that the Director serve as the sole initial decision-maker on this application and that any appeal right runs solely to the applicant as required by ORS 197A.400(5)(c). The Applicant will not make any further election of options that violate state housing law. Please place this letter into the record of these proceedings and inform me of the Director's decision as soon as it is made.

Very truly yours,



Carrie A. Richter

cc: Ashleigh Dougill via email