



# Oregon

Tina Kotek, Governor

## Department of Land Conservation & Development

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January 22, 2026

Laura Terway, Planning Manager  
16000 SE Misty Drive,  
Happy Valley, OR 97086  
Sent via e-mail

### RE: Review of City of Happy Valley Exemption Request to Mandatory Adjustments

Dear Laura,

On September 24, 2025, the Housing Accountability and Production Office (HAPO or Office) received an application from the City of Happy Valley requesting an exemption to section 38, chapter 110 Oregon Laws 2024 or 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 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 the City of Happy Valley Exemption Request against the applicable review criteria established in section 39(2), chapter 110, Oregon Laws 2024, **the Office approves the City's exemption request with 7 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***

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

***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, chapter 110, Oregon Laws 2024 – 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, Housing Planner at [sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) if you have questions or need further assistance.

Sincerely,



Kirstin Greene, Deputy Director  
Department of Land Conservation and Development (DLCD)

Cc: Brenda Bateman, Director, DLCD  
Kelly Reid, Regional Representative, DLCD  
Joel Madsen, Manager, Housing Accountability and Production Office, DLCD  
Andrew Boulton, Department of Consumer and Business Services, Building Codes Division  
Tom Ellis, Mayor, City of Happy Valley

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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 requests<sup>1</sup> (section 39(2)(c)(A)), **or**
5. Submitted testimony from housing developers that have utilized the adjustment process within the previous five years demonstrates the local government's process is flexible and accommodates project needs (section 39(2)(c)(B)).

In this case, the City of Happy Valley 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 October 24, 2025 and closed on December 8, 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 HAPO.

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<sup>1</sup> 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 processes by which an applicant may request an adjustment to development and design standards for the development of housing:

1. A 'Variance' process – an administrative or quasi-judicial process in which an applicant may request relief from one development or design standard upon demonstration of unique site conditions warranting flexibility to alleviate a hardship. Applicants may only request a deviation from one standard per variance (multiple requests require separate variance applications). Variances are differentiated into two categories:
  - a. A 'Class B Variance' – an administrative process enabling a deviation of up to 20% for development or design standards, except minimum lot area, which is limited to 10%
  - b. A 'Class C Variance' – a quasi-judicial process enabling a deviation to a development or design standard that is ineligible for a 'Class B Variance'. This pathway was amended on June 3, 2025 to remedy a deficiency identified in the first exemption request decision. As amended, the pathway allows an adjustment for all applications for the development, provided "the variance will result in a development that better meets the intent of the standard being varied."
2. A 'Modification' process – an administrative or quasi-judicial process that allows adjustments to a limited subset of development standards. The process is available to all applications for the development of housing, but only in certain development circumstances for specified development standards. This process was created on June 3, 2025 after the initial exemption request. Because of this, the process was not included in the original exemption request.
3. An 'Exception' process – an administrative process that enables an applicant to adjust a subset of design standards applied solely to multi-unit development (16.44.010) without a variance. This process is limited only to housing developments where the subset of design standards apply.
4. An 'Affordable Housing Adjustment' process – an administrative or quasi-judicial process that enables an applicant to request a density bonus or other equivalent exceptions to development or design standards. This process is limited to housing developments of 5 or more units that meet specific affordability criteria
5. A 'Planned Unit Development' process – a quasi-judicial process that enables land divisions to adjust applicable development and design standards, provided specific discretionary development objectives are met.
6. A 'Master Plan' process – a quasi-judicial process that allows adjustments to specific standards provided that "the proposal will be consistent with the purpose of the standard for which a modification is requested". This process is available to all applications for the development of housing utilizing this process, but the process disallows adjustment to residential densities. This process was created on June 3, 2025 after the initial exemption request. Because of this, the process was not included in the original exemption request.

Of the six pathways available for adjustment, the city's 'Class C Variance' process is the primary process by which applicants for the development of housing may request an adjustment to design and development standards as required under section 39(2)(a). In the previous exemption request,



HAPO identified a deficiency in which city processes did not allow an adjustment for “all applications for the development of housing”. To remedy this deficiency, the city amended the Class C variance process to remove limitations of the process that limited the eligibility of development applications that could request adjustments. The remaining processes are limited in their scope and applicability, meaning the pathway either restricts development applications that are eligible or does not grant an adjustment for all requested standards to the extent required under section 39(2)(b). Because there is at least one pathway by which all applications for the development of housing are eligible to request adjustments to all applicable development and design standards, the City meets section 39(2)(a).

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 at least 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).

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, the criterion in section 39(2)(a) 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) below. Based on the individualized findings for each development or design standard below, the Office identified provisions in the code that could potentially 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 potential 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 five pathways to request an adjustment to this standard: Class B and C Variances, Affordable Housing Adjustments, Planned Unit Developments, and the Master Plan process. Allowable adjustments have been amended from the original exemption request to include new processes and eligibility for housing applications to request adjustments to this standard.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to “lot configuration, or other conditions of the site”
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- Planned Unit Developments are limited to applications containing a land division and include limitations on allowable setback adjustments in specific scenarios
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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)(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 six pathways to request an adjustment to this standard: Class B and C Variances, an Exception process for multi-unit, Affordable Housing Adjustments, Planned Unit Developments, and the Master Plan process

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of

housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to “lot configuration, or other conditions of the site”
- Exceptions to standards for multi-unit are limited to development applications subject to section 16.44.010 of Happy Valley’s Development Code
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- Planned Unit Developments are limited to applications containing a land division and require a minimum 20% of gross land area dedicated to open space and “[t]he extent to which any type of open space satisfies the total open space requirement shall be in the sole discretion of the City.”<sup>2</sup>
- The Master Plan process is limited to sites at least 20 acres in size and require a minimum of 20 percent useable open space for residential development (and additional usable open space requirements of Section 16.44.010(B)(9) for multi-unit development).<sup>3</sup>

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 and 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)(c) Parking minimums.**

The city provides four pathways to request an adjustment to this standard: Class B and C Variances, Affordable Housing Adjustments, and the Master Plan process.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b).

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<sup>2</sup> Note that required open space in approved PUD applications must also be eligible for adjustment to the extent required in Oregon Laws 2024, chapter 110, section 38 in order for the city to maintain its exemption. Based on HAPO review, applicants are eligible for variances after an approved PUD. Condition #5 sets forth a remedy by which the city may comply in a development scenario in which the local process does not accommodate an adjustment.

<sup>3</sup> Note that required open space in approved Master Plan applications must also be eligible for adjustment to the extent required in Oregon Laws 2024, chapter 110, section 38 in order for the city to maintain its exemption. Based on HAPO review, applicants are eligible for variances after an approved master plan. Condition #5 sets forth a remedy by which the city may comply in a development scenario in which the local process does not accommodate an adjustment.

The city's application materials assert that the Modification process (16.40.030) allows adjustments to vehicular parking, but this is inaccurate. The pathway allows adjustment to access/circulation standards (16.41.030) and off-street loading requirements (16.43.050). Automobile parking (16.43.030) is not listed as eligible for adjustment under this process. However, the Class C variance process addresses this identified deficiency. Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to "lot configuration, or other conditions of the site". Parking is also limited in terms of the amount of parking that may be adjustable as demonstrated through a parking analysis or other facts provided by the applicant.
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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)(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: Class B and C Variances, Affordable Housing Adjustments, and Planned Unit Developments.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 10% (for lot area; other standards are limited to 20%) and require the variance to be required due to "lot configuration, or other conditions of the site"
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- Planned Unit Developments are limited to applications containing a land division. Lot size is further limited as provided in section 16.63.130(H)(2)(e) of Happy Valley's Development Code

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 and 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)(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 – Class B and C Variances, Affordable Housing Adjustments, and the Master Plan process.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to "lot configuration, or other conditions of the site"
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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)(A)(i)<sup>4</sup> 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 four pathways to request an adjustment to this standard: Class B and C Variances, Affordable Housing Adjustments, and the Master Plan process.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b).

The city's application materials assert that the Modification process (16.40.030) allows adjustments to vehicular parking, but this is inaccurate. The pathway allows adjustment to access/circulation standards (16.41.030) and off-street loading requirements (16.43.050). Automobile parking (16.43.030) is not listed as eligible for adjustment under this process. However, the Class C variance process addresses this identified deficiency. Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to "lot configuration, or other conditions of the site". Bike parking is also limited in terms of the amount of bike parking that may be adjustable based on a demonstration that the use would be "reasonably anticipated to generate a lesser need for bicycle parking".
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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)(A)(ii)<sup>2</sup> 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;**

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<sup>4</sup> 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 provides three pathways to request an adjustment to this standard, which are identical to section 38(4)(g)(A)(i). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from the above.

**§ 38(4)(g)(B)<sup>2</sup> 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 four pathways to request an adjustment to this standard: Class B and C Variances, Affordable Housing Adjustments, and the Master Plan process.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to “lot configuration, or other conditions of the site”.
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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)(C)<sup>2</sup> 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: Class B and C Variances, and Planned Unit Developments.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:



- Class B variances are limited to adjustments to 20% (and 10% for lot area which corresponds directly to maximum density) and require the variance to be required due to “lot configuration, or other conditions of the site”.
- Planned Unit Developments are limited to applications containing a land division. Lot size (and thereby maximum density) is further limited as provided in section 16.63.130(H)(2)(e) of Happy Valley’s Development Code

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 and 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)<sup>2</sup> 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 amended the development code in June 3, 2025, to remedy a previously identified deficiency in the initial exemption request. In the initial exemption request, the office identified that the city did not grant adjustments for this standard in the Employment Center (EC) zone.

In this resubmitted request, the city has amended the development code to expressly allow “limited residential on the ground floor in some Employment Center District properties”. In addition, the city indicated that ground floor limitations are eligible for a Class C variance to facilitate ground floor residential.

In reviewing the provided code amendments, the Office identified the following amendment for the Employment Center District:

“In the Rock Creek Employment District, the ground floor may contain a residential use (including ancillary residential uses within the same tenant space such as lobbies, day care, community rooms, exercise facilities, office, and activity spaces), provided that residential uses, accessory and ancillary uses, whether shared with commercial uses or separate occupy no more than 80% of the overall interior square footage of the site. No ground floor residential use may be within 20 feet of a transit street.”

This amendment does not fully correspond to the requirement of section 38(4)(g)(D)(i), which requires an adjustment to all prohibitions against residential uses in a mixed-use building, except for specific scenarios. In contrast, this provision only allows up to 80% of the interior square footage to be residential, prohibiting the remaining 20% from containing residential uses. Additionally, the allowance only applies in the Rock Creek Employment District, not in the full Employment Center District.

This deficiency is not fatal so long as the prohibition is adjustable under the variance pathway as indicated in the exemption materials. Based on the office's review, the variance pathway complies only if the city interprets an adjustment to this prohibition as *not* constituting a change in the permissible uses of the underlying zone. Specifically, section 16.71.020.A prohibits variances that change the underlying permitted uses:

“Except that a variance shall not be approved that would vary the "permitted uses" or "prohibited uses" of a land use district.”

In a previous correspondence with the city (see Attachment C), the city interpreted the prohibition of residential uses on the ground floor of a mixed use building to be a change to the use of the property that was not permissible in the Employment Center zone. If the city maintains that interpretation for variances, then the city's processes do not permit an adjustment to this standard, as required for the exemption. However, in the exemption materials submitted on September 24, 2025, the city indicates agreement with the office as to the eligibility of applications for an adjustment to this requirement:

“...the City concurs with HAPO that all zoning designations which allow residential but have ground floor limitations are subject to the Mandatory Adjustment section of SB 1537. However, as demonstrated above applicants may utilize the local Type III variance process as an avenue to achieve ground floor residential as identified in Section 39.”

Condition #4 requires the city to maintain the position excerpted above and duly notify applicants of their entitlement to adjustments under section 38 via one or more local processes allowed under section 39. If the local process does not accommodate an adjustment to this standard, then the applicant is eligible to apply the statute directly as provided in Condition #5. To be clear, a future interpretation of the local variance process as disallowing adjustments to this standard are a violation of the terms of this exemption under section 39 (6)(a).

As conditioned, this criterion is met.

**§ 38(4)(g)(D)(ii)<sup>2</sup> 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 amended the development code on June 3, 2025 to remedy a previously identified deficiency in the initial exemption request. The office identified an ambiguity relating to whether prohibitions against nonresidential active uses may or may not apply. The city clarified this with amendment to existing definitions:

“Ancillary uses associated with residential development and within the same tenant space as the residential use such as lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces are considered part of the residential use.”

This means that prohibitions to ground floor commercial uses would not affect nonresidential active uses. The city further indicated that any potential prohibition could be adjusted via the same methods as section 38(4)(g)(D)(i). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from section 38(4)(g)(D)(i) above.

## **§ 38(5) – Design Standards**

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

The city provides four pathways to request an adjustment to this standard: Class B and C Variances, Affordable Housing Adjustments, and the Master Plan process. Allowable adjustments have been amended from the original exemption request to include new processes and eligibility for housing applications to request adjustments to this standard.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20%<sup>5</sup> and require the variance to be required due to “lot configuration, or other conditions of the site”
- Exceptions to standards for multi-unit are limited to development applications subject to section 16.44.010 of Happy Valley’s Development Code
- Affordable Housing Adjustments are limited to qualifying affordable housing developments
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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(5)(b) Facade articulation.**

The process to adjust this standard is identical to section 38(5)(a). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from the above.

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<sup>5</sup> Because allowable adjustments for Class B Variances are limited numerically, non-numeric design standards (e.g. prohibitions on a specified façade material) would not be eligible for adjustment. However, numeric standards under this subsection may be adjusted, and non-numeric standards are eligible for adjustment via a Class C Variance.

**§ 38(5)(c) Roof forms and materials.**

The process to adjust this standard is identical to section 38(5)(a). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from the above.

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

The process to adjust this standard is identical to section 38(5)(a). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from the above.

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

The city provides two pathways to request an adjustment to this standard: The Class C Variance process and the Master Plan process.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- The Master Plan process is limited to sites at least 20 acres in size

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 and 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(5)(f) Window materials, except for bird-safe glazing requirements.**

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)(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 three pathways to request an adjustment to this standard: Class B and C Variances and the Master Plan process. Allowable adjustments have been amended from the original exemption request to include new processes and eligibility for housing applications to request adjustments to this standard.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20% and require the variance to be required due to “lot configuration, or other conditions of the site”
- The Master Plan process is limited to sites at least 20 acres in size

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 and 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(5)(h)(A)<sup>6</sup> Building orientation requirements, not including transit street orientation requirements.**

The city provides four pathways to request an adjustment to this standard: Class C Variances, the Exceptions process for multi-unit development, Affordable Housing Adjustments, and the Master Plan process. Allowable adjustments have been amended from the original exemption request to include new processes and eligibility for housing applications to request adjustments to this standard.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Exceptions to standards for multi-unit are limited to development applications subject to section 16.44.010 of Happy Valley’s Development Code
- Affordable Housing Adjustments are limited to qualifying affordable housing developments

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<sup>6</sup> 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 Master Plan process is limited to sites at least 20 acres in size

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 and 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(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 five pathways to request an adjustment to this standard: Class B and C Variances, the Exceptions process for multi-unit development, Affordable Housing Adjustments, and the Master Plan process. Allowable adjustments have been amended from the original exemption request to include new processes and eligibility for housing applications to request adjustments to this standard.

The Class C variance pathway was amended to mitigate a previously identified deficiency in which the pathway limited certain applications for the development of housing from being eligible for an adjustment. As amended, the Class C variance pathway complies with the criterion in section 39(2)(b). Remaining pathways have the following limitations:

- Class B variances are limited to adjustments to 20%<sup>7</sup> and require the variance to be required due to "lot configuration, or other conditions of the site"
- Exceptions to standards for multi-unit are limited to development applications subject to section 16.44.010 of Happy Valley's Development Code
- Affordable Housing Adjustments are limited to qualifying affordable housing developments

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<sup>7</sup> Because allowable adjustments for Class B Variances are limited numerically, non-numeric design standards (e.g. prohibitions on a specified façade material) would not be eligible for adjustment. However, numeric standards under this subsection may be adjusted, and non-numeric standards are eligible for adjustment via a Class C Variance.

- The Master Plan process is limited to sites at least 20 acres in size

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 and 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(5)(h)(D) Requirements for recesses and offsets.**

The process to adjust this standard is identical to section 38(5)(h)(C). Therefore, the findings are identical. For brevity, this finding incorporates the same findings from the 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.

This evaluation does not capture adjustments that are withdrawn or altered in response to feedback from city staff before a final decision is issued. The Office is unable to measure adjustment requests that are withdrawn, altered, or never submitted in response to city feedback, because the city does not provide a formal decision approving or denying a given adjustment request. Therefore, this decision does not evaluate the impact of withdrawn or altered development applications on the approval criteria.

The spreadsheet provided by the city includes a total of 10 adjustments requested as part of 8 applications for which the city has issued a decision. The spreadsheet indicates that the city has approved 100% of received adjustment requests. To verify the accuracy of permit information submitted, the Office requested three randomly-selected permits for review.

Based on the Office's review of these permits, the Office identified two reporting inaccuracies, described in greater detail below for each permit sample:

##### **1. DR-05-23**

The permit spreadsheet submitted by the city (see Attachment D) reported the requested adjustment for this permit as a single adjustment to "Requirements for recesses and offsets" (section 38(5)(h)(D)). In the provided permit narrative and decision, the adjustment was described as an adjustment to a requirement for "a separation from parking and driveway areas with a landscaped transition area measuring a minimum of ten (10) feet wide."



The city's development code contains standards requiring recesses and offsets that are applicable to multi-unit structures (see [section 16.44.010](#)). However, these recesses and offsets apply to structures, not the separation between parking/driveway areas with a landscaped transition area.

This error is not material to compliance with the criterion in section 39(2)(c)(A), because the requested adjustment can be encompassed under section 38(4)(b):

“(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 requirement describes “an area that must be landscaped on the same lot or parcel as the proposed housing”. In spite of the categorization error, the requested and approved adjustment is to a standard that must be eligible for adjustment under section 38. Therefore, while the categorization of the adjustment is in error, the inclusion of the adjustment in the city's calculation for compliance under section 39(2)(c)(A) is not.

## **2. DR-13-23**

The permit spreadsheet submitted by the city (see Attachment D) reported the requested adjustment for this permit as a single adjustment to “Requirements for recesses and offsets” (section 38(5)(h)(D)). In the provided permit narrative, the Office was unable to identify an exemption request relating to recesses or offsets.

In the provided staff report (see Attachment E for excerpt), findings indicated that the applicant did not request an adjustment to the standard, though staff recommended approving an adjustment to a 4-foot requirement for recesses:

“The applicant is not requesting exceptions to this section. Staff believes the 3-foot recesses identified in 16.44.010.B.4 are sufficient to comply with the 4-foot requirement, given the complexity of the design materials, roofing, and colors that add interest and break up the massing of the structure. This criterion is met.”

Section 39(2)(c)(A) requires the city to demonstrate that “[w]ithin the previous 5 years the city has approved 90 percent of received adjustment requests”. Importantly, this criterion stipulates that cities must approved 90 percent of received adjustment requests. The applicant did not submit a request for an adjustment; instead, the city approved an adjustment that the applicant did not request. Therefore, the inclusion of this adjustment in the calculation is not consistent with the criterion.

While this is technically an error that does render the reported adjustment ineligible for determining compliance with the criterion in section 39(2)(c)(A), it does not affect the city's compliance with the criterion, because the city approved each of the remaining nine adjustment requests it received for a 100% approval rate.

As stipulated in Conditions # 6 and 7, the city will be required to continue to grant and report adjustments to the Office to demonstrate a 90% approval rate. This calculation may not include adjustments that an applicant did not request.

## **3. LU-0016-2024**

No errors were identified in this permit sample.

As conditioned, this criterion is 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 the criterion in section 39(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, first opened on July 11, 2025 and closed on August 25, 2025. Because the application was resubmitted by the city on September 24, the Office held a second 45-day period to solicit public comment, opened on October 24, 2025 and closed on December 8, 2025. Submitted public comments can be accessed on the [Flexibilities to Housing Development and Design Standards Dashboard](#). In total, the Office received two public comments 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).

### Public Comment #1

Summary: The comment was submitted by an applicant for the development of housing in the Employment Center District. The letter urged approval of the exemption request along with proposed amendments (adopted by the resubmittal on September 24) to the prohibition on ground-floor residential uses in that zone. The letter concurs with the original order noting that the Employment District Center is subject to the requirement for adjustments. Furthermore, the commenter indicated they worked with staff to resolve the identified deficiency sufficient for granting the exemption.

Analysis: This is relevant to the approval criterion in section 39(2)(b) relating to prohibitions of residential uses on the ground floor of a mixed use building. See findings under section 38(4)(g)(D)(i) for a complete analysis on the sufficiency of the exemption request in demonstrating compliance.

### Public Comment #2

Summary: The comment was submitted by a property owner in Happy Valley in support of the exemption, noting that an unspecified government entity had a negative effect on the commenter's land rights in the past.

Analysis: The comment did not raise anything related to the approval criteria of section 39(2).

## Attachment A. Conditions of Approval

Section 39 (4) authorizes 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 Happy Valley 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)<sup>8</sup>.

#### **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 necessarily 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 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 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 HAPO to annually assess the approval rate of requested adjustments as described in Condition #7.

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<sup>8</sup> 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”.



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 must be requested by an applicant in order to qualify under this condition; the city may not include granted adjustments that were not requested by the applicant. 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 HAPO.

## Attachment B. Required Notice to Applicants

The City of Happy Valley 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 Happy Valley must allow any applicant for the development of housing to request flexibility<sup>9</sup> 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 section 38, chapter 110, Oregon Laws 2024 (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
*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

<sup>9</sup> 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
<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 developments<sup>10</sup>. The City of Happy Valley 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 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, chapter 110, Oregon Laws 2024. Suspected violations can be reported to 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>

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<sup>10</sup> See section 38, chapter 110, Oregon Laws 2024 or Senate Bill 1537 (2024 Session).

Mandatory Adjustments – Overview for Housing Developers:

[https://www.oregon.gov/lcd/Housing/Documents/20250306\\_HAPO\\_MandatoryAdjustments\\_OnePager.pdf](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](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 HAPO's Final Decision:

[https://www.oregon.gov/lcd/Housing/Mandatory%20Adjustments/20260122\\_HappyValley\\_Decision\\_Mandatory\\_Adjustment\\_Exemption.pdf](https://www.oregon.gov/lcd/Housing/Mandatory%20Adjustments/20260122_HappyValley_Decision_Mandatory_Adjustment_Exemption.pdf)

## Attachment C. City Correspondence - Interpretation of Change of Use

### EDGING Sean \* DLCD

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**From:** EDGING Sean \* DLCD  
**Sent:** Tuesday, January 14, 2025 3:01 PM  
**To:** Michael Walter, AICP; REID Kelly \* DLCD  
**Cc:** Laura Terway; Christopher Crean; Glen Hamburg; MADSEN Joel \* DLCD  
**Subject:** RE: Pending 35-Day Notice (Employment Center Zone Amendments)  
**Attachments:** RE: Happy Valley SB 1537 Exemption Request

Hi Michael,

Thanks for the notification. I am copying my manager for his awareness of the issue.

More immediately, I have a quick preliminary response to some of the notes below on the mandatory adjustment. The City of Happy Valley submitted a request for an exemption to the 'mandatory adjustment' requirement of Senate Bill 1537, which means that the applicability of the requirement is deferred unless the HAPO denies or revokes the exemption – see Section 39 (1):

(1) A local government may apply to the Housing Accountability and Production Office for an exemption to section 38 of this 2024 Act only as provided in this section. **After the application is made, section 38 of this 2024 Act does not apply to the applicant until the office denies the application or revokes the exemption.**

Attached is the HAPO's confirmation of receipt of the application, which you can use as confirmation about the deferral of applicability of the mandatory adjustment requirement until the HAPO issues a decision by April 22, 2025. As a reminder, the City also must notify the applicant of the deferral and the applicant's options for requesting adjustments to development/design standards, per Section 39 (5). I offer suggestions in the attached notice of receipt on how the city can fulfill that obligation.

Best,



**Sean Edging**

Senior Housing Planner | Housing Accountability and Production Office

Pronouns: He / Him / His

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

[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)

---

**From:** Michael Walter, AICP <michaelw@happyvalleyor.gov>  
**Sent:** Tuesday, January 14, 2025 2:33 PM  
**To:** REID Kelly \* DLCD <Kelly.Reid@dlcd.oregon.gov>; EDGING Sean \* DLCD <Sean.EDGING@dlcd.oregon.gov>  
**Cc:** Laura Terway <lterway@happyvalleyor.gov>; Christopher Crean <chris.crean@behlaw.com>; Glen Hamburg <Glen.Hamburg@oregonmetro.gov>  
**Subject:** FW: Pending 35-Day Notice (Employment Center Zone Amendments)

Hello,

As DLCD staff will soon receive our 35-day notice on proposed amendments to the City's Employment Center (EC) zone, which is an industrial zone located primarily within the City's Rock Creek Employment Center (RCEC) in the southern area of the city (and one smaller zone area west of there), and secondarily as a planned industrial area in the northern section of the city limits (see the dark purple EC zone areas in the attached zoning map). As the EC zone allows for elements of vertical mixed-use, we thought it

appropriate to provide some greater context on the proposed change. The City’s Land Development Code (LDC) currently allows “New residential uses” in the EC zone, but residential uses are limited to the upper floors of mixed-use buildings. See LDC excerpts, below:

“LDC 16.25.010.A.1 identifies the purpose of the EC District:

*The purpose of the Employment Center (EC) District is to provide for a mix of employment opportunities, located where they are accessible by a variety of transportation modes, including transit services and safe and convenient pedestrian connections. These areas provide sites suitable for business and office parks, campus and light industrial uses, professional and corporate offices, medical offices and clinics, tech/flex businesses, creative arts and services, technical/vocational schools and other related businesses. Building types range from large single user campuses, multiple tenant business parks to multistory mixed-use buildings. Quality design and a connected and walkable character of the surrounding environment will be provided. Housing is allowed when combined in vertical mixed-use buildings.*

[...]

Permitted Uses. Table 16.25.010-1 identifies the land uses that are allowed in the EC and IC Districts.

Table 16.25.010-1 Industrial (EC, IC) Permitted Uses	
P=Permitted; C=Conditional Use; X=Prohibited	
Land Use	
Residential	
Pre-existing dwellings. Preexisting dwellings may be allowed to remodel or expand and shall not be subject to the provisions of C	
Home occupations in pre-existing dwellings	
New residential uses	

[...]

NOTES:

<sup>1</sup> Residential uses on upper floors of mixed use buildings are permitted.”

Within the RCEC areas, the two primary industrial zones – EC and Industrial Campus (IC) – were adopted in conjunction with the East Happy Valley Comprehensive Plan (EHVCP) in 2009 (which is also true for the other EC-zoned lands). These zones implement a combination of Metro Title 4-compliant zoning/zoning boundaries and uses and were intended to contain a robust mixture of employment opportunities with some limited availability of potential workforce housing (thus the upper floor multi-family only in the EC zone). It was expected that implementation would occur over a relatively long period because the necessary transportation, sewer and water services were only available within limited portions of the EC/RCEC areas. Thus, the intent of the limitation (footnote 1) was to preserve the land primarily for employment uses.

As we're all aware, Senate Bill 1537 was adopted by the Oregon State Legislature in 2024 and includes a variety of measures intended to reduce Oregon's housing and homelessness crisis. Section 38 of the bill requires cities to grant adjustments to specific housing design/development standards from January 1, 2025, to January 2, 2032. One of the required adjustments requires a city to allow residential use on the ground floor of a mixed-use building if the city otherwise prohibits residential use on the ground floor (with some exception). However, the same Section 38 does not require a city to approve an adjustment to the "use," in other words if the adjustment would change the use to a different use.

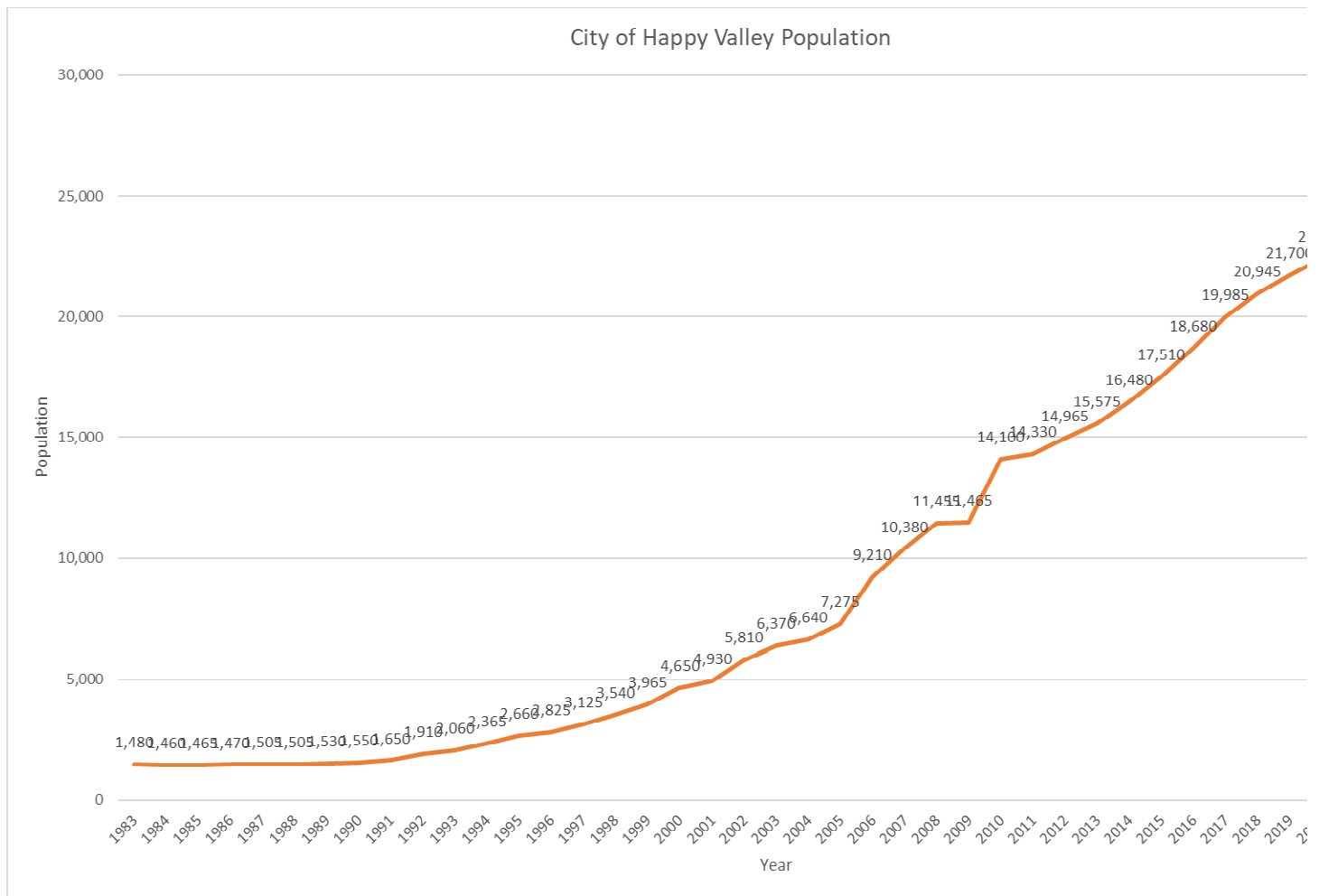
Subsequently, the private sector (Fore Development) has targeted EC-zoned lands for development of multi-family residential development ("MFR-only") without a commercial component. Specifically, the City received a request for a pre-application conference to develop an approximately 288-unit multi-family development (second attachment) within the EC zone and subsequently including a letter from the applicant's attorney (third attachment) that claims the city is required to approve an adjustment to allow all ground floor residential per Section 38 of Senate Bill 1537. After the pre-application conference, Fore forwarded a slightly revised plan with very small amounts of commercial space envisioned (fourth attachment).

Although the City has applied for an exception from the required adjustment process, the City's legal counsel has advised, as the requested applicant adjustment would change the use (from mixed-use to MFR-only or mostly so), that this would result in a change of use and therefore does not fall under Section 38. The City is proposing the draft LDC amendments (fifth attachment) to avoid this scenario in the future - that an applicant will seek an adjustment under SB 1537 to change the allowed use from mixed-use to MFR-only for development of the City's limited employment lands. In other words, the purpose of the proposed amendments is to preserve the limited employment land within the City of Happy Valley. The City is comprised of land primarily dedicated toward housing, commercial, or mixed uses which allow many housing opportunities, but too few opportunities for employment-related development and the related advantages that accompany construction/job creation. (The City has a marked jobs to housing imbalance.) There are currently only 194 acres of undeveloped/annexed land zoned EC within the City, and the notion that those lands/employment opportunities should be "lost" to MFR-only development is, we believe, not the intent of State-driven economic development goals, Metro Title 4 or the City's EHVCP/RCEC but certainly could be an unintended consequence of SB 1537. We see little option but to amend the LDC, not due to anti-MFR reasons (many, many acres of undeveloped MFR lands exist in Happy Valley), but to preserve the City's limited options for employment. If you see any alternative, please feel free to forward.

As demonstrated below by the permits issued for dwelling units during the fiscal year specified, the City of Happy Valley has consistently been producing housing and remains committed to doing so. Note that the column for Single Family Dwelling Units includes detached and attached.



<b>Fiscal Year July-June</b>	<b>Single Family Dwelling Units</b>	<b>Middle Housing Units</b>	<b>Apartment Units</b>	<b>Senior-Independent Living</b>	<b>Senior-Assisted Living</b>	<b>Senior - Memory Care</b>	<b>TOTAL UNITS PERMITT</b>
2024/25	62	11	0	0	0	0	
2023/24	174	6	0	0	0	0	1
2022/23	208	1	0	0	0	0	2
2021/22	363	0	542	0	0	32	9
2020/21	446	0	0	104	74	0	6
2019/20	393	0	304	0	0	0	6
2018/19	164	0	34	0	61	71	3
2017/18	136	0	0	0	0	0	1
2016/17	191	0	331	0	0	0	5
2015/16	419	0	48	0	0	56	5
2014/15	277	0	0	0	0	0	2
2013/14	350	0	0	0	0	0	3
2012/13	277	0	0	125	0	0	4
2011/12	158	0	216	0	0	0	3
2010/11	110	0	0	0	0	0	1
2009/10	91	0	0	0	0	0	
2008/09	59	0	0	0	0	0	
2007/08	163	0	0	0	0	0	1
2006/07	220	0	0	0	0	0	2
2005/06	595	0	228	0	0	0	8
2004/05	412	0	0	0	0	0	4
2003/04	213	0	0	0	0	0	2
2002/03	174	0	0	0	0	0	1
2001/02	197	0	0	0	0	0	1
2000/01	107	0	0	0	0	0	1
<b>Total Units</b>	<b>5959</b>	<b>18</b>	<b>1703</b>	<b>229</b>	<b>135</b>	<b>159</b>	<b>Total Un 82</b>



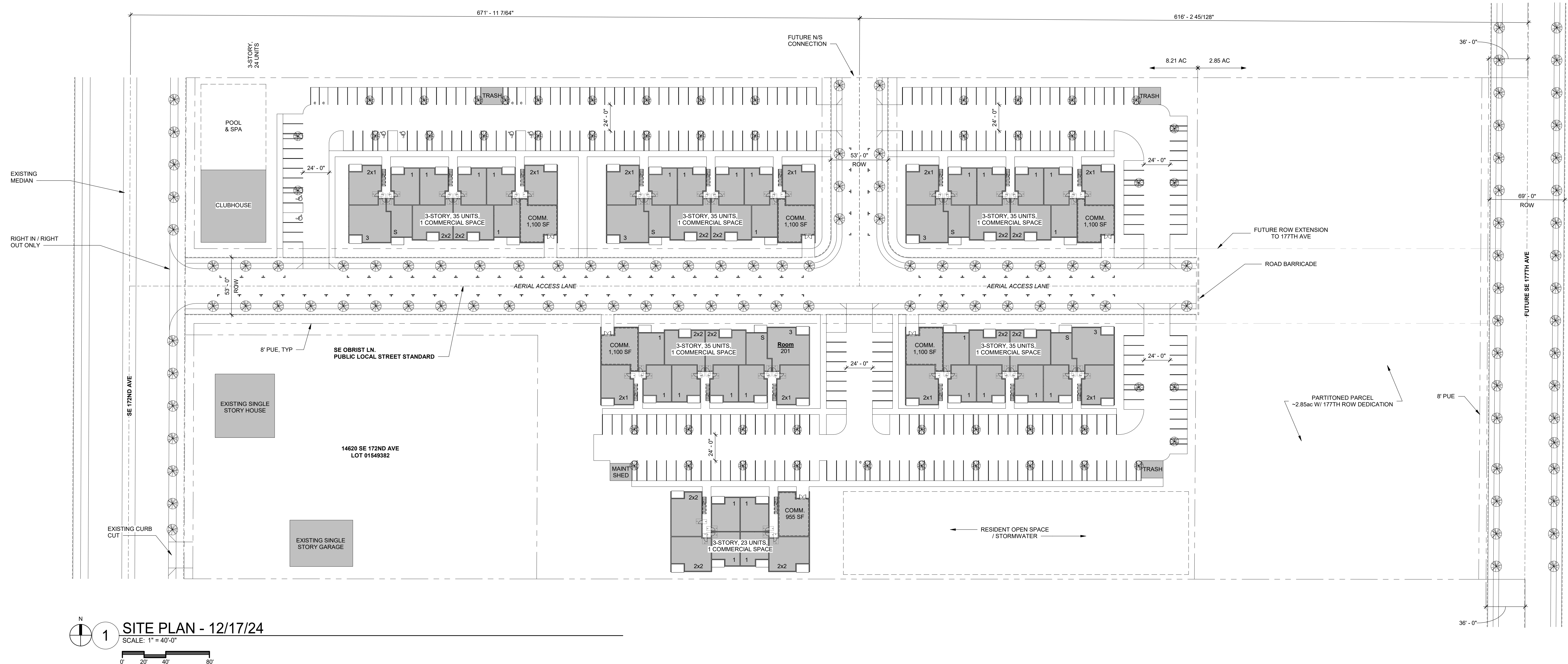
We look forward to your reply.

**Michael D. Walter, AICP** | Economic & Community Development Director

O: 503-783-3839 | M: 503-886-8439 | [happyvalleyor.gov](http://happyvalleyor.gov)



This e-mail is a public record of the City of Happy Valley and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.







# Pre-Application Conference Application

*Pre-Application Conferences are required for most land use applications including land divisions and most commercial building improvements. The meeting is designed to provide feedback on the design of a potential development proposal and the information necessary to submit a complete application. The more detailed information that is submitted, the more useful the meeting is for the applicant. Representatives from the City's Planning and Engineering Divisions as well as partnering agencies such as the Fire Department or utility providers will typically be in attendance and/or provide nonbinding guidance and written notes.*

## Applicant

Name: Fore Property Company - Jason Wald Phone: Please contact applicant's consultant

Address: 1332 NW Kearney St Portland, OR 97209

Email Address: Please contact applicant's consultant

Applicant's Consultant:  
**Marie Holladay**  
AKS Engineering & Forestry, LLC  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
holladaym@aks-eng.com  
503-563-6151

## Proposed Development

Site Address: 14548 SE 172nd Ave Happy Valley, OR 97015

Map and Tax Lot(s): 23E07A: Tax Lot 200

Name of Development: Obrist Lane Multi-Family

Brief Description of Proposal:

Please see attached project narrative.

## Application Materials (Submitted Electronically):

- ☒ An existing conditions plan drawn to scale with existing property lines, structures, environmentally sensitive areas (steep slopes, streams, wetlands, riparian corridors, floodplains), streets, driveways, utilities, and significant trees.
- ☒ Site plan of the proposed development drawn to scale including proposed property lines, structures, street systems, utilities, open space areas, etc.
- ☒ Design Review applications should also include architectural elevations, parking lot design, and general landscape plans
- ☒ A list of any specific questions (Optional)
- ☒ Fee

Meeting Format Requested (Check One): ☒ Virtual ☐ Hybrid

All materials identified above are required to schedule a Pre-Application Conferences. Meetings are hybrid and are generally scheduled on Tuesday's at 1:30pm. Pre-Application Conferences are scheduled in the order in which completed applications are submitted, generally 3 weeks from submittal. **Please email your completed application to Cheryl Whitehead, Planning Assistant at [cherylw@happyvalleyor.gov](mailto:cherylw@happyvalleyor.gov).**

October 22, 2024



City of Happy Valley  
Planning Division  
16000 SE Misty Drive  
Happy Valley, OR 97086

**RE: Pre-Application Conference Narrative and Questions for Obrist Lane Multifamily  
(14548 SE 172<sup>nd</sup> Avenue, Tax Lot 200 of Clackamas County Assessor's Map 2 3E 07A)**

This pre-application conference involves a potential Design Review application for a multi-family residential project located at 14548 SE 172<sup>nd</sup> Avenue. The site is situated on the east side of SE 172nd Avenue, located northeast of the intersection of SE Rock Creek Boulevard and SE 172nd Avenue. The ±11.11-acre property is currently within the City of Happy Valley, designated within the Rock Creek Employment Center Plan and zoned with Employment Center (EC) Land Use District. As shown on the preliminary site layout, planned improvements include ±288 residential units within 9 building complexes, community amenities (e.g. resident club house, pool and spa, dog run/relief area, etc.), paved on-site circulation, parking, landscaping, recreation areas, trash and recycling enclosures, etc. The goal of this pre-application conference is to determine all requirements, standards, applications, permits, processes, etc. necessary for the project.

**Land Use**

1. Please confirm the desired land use (multi-family residential) is permitted in the EC District.
2. This application involves a multi-family residential development that is envisioned to provide more than 61 units. Please confirm the City's review procedure type (Type III Minor or Major Design Review), the different land use applications required, and SDC's/other agency fees which may apply.
3. Please confirm that the layout shown is acceptable (building placement, setbacks, transportation circulation, etc.), given the requirements of the EC District standards and other applicable standards in the City of Happy Valley Development Code.
4. Please confirm phasing of development may be approved with a design review application, up to a period of seven years per LDC 16.62.040.
5. Please confirm if the Happy Valley Style applies to this project within the EC District.
6. The property is identified within the East Happy Valley Comprehensive Plan boundary. Please discuss the pertinent requirements that apply to this project type.
7. The site is within the Rock Creek Employment Subdistrict; please discuss how the provisions of 16.25.010(F) may impact the site (traffic trip limitations, office square footage requirements, etc.)
8. According to City of Happy Valley Steep Slopes and Natural Resource Overlay Zone (NROZ) Map F7, the property is identified with habitat conservation area (HCA) and vegetated corridor (VC). Please confirm the Environmental Review Permit, NROZ, and SSDO requirements that may apply to this site/project.
9. Please let us know which studies or analyses (traffic, geotechnical, natural resource assessment, etc.) are required and the scope of the studies.

10. Please discuss any future Development Code (and/or other regulatory) changes and what impact those Code changes may have on this project.
11. Please discuss any adjacent or nearby development projects that would impact the timing of this development (road improvements, infrastructure extensions, etc.).

### **Street/Transportation/Circulation**

12. Please confirm any access restrictions, intersection spacing requirements, and the jurisdictional authority for SE 172nd Avenue.
13. Please confirm the site can be served by a private access/driveway from SE 172nd Avenue or if a public road is required to be extended.
14. Please discuss any frontage improvements and/or right-of-way dedications that may be required with this project.
15. As shown on Figure 8-3 Functional Classification of the Happy Valley Transportation System Plan (TSP), SE 177th Avenue (future Collector roadway) is planned along the property's east frontage. Please discuss the envisioned interim (partial-street cross-section, paved width, etc.) and final roadway improvements (right-of-way dedication, cross section, etc.).
16. Will the City accept fee-in-lieu of transportation improvements along the property's frontage on SE 177th Avenue?
17. Please discuss any additional off-site improvements that may be required.
18. Please discuss any proportionate share costs or TSDC credits that may be applicable to the project.
19. The subject site is identified on Figure 5-4 of the Pedestrian Master Plan within the Happy Valley TSP. Please discuss any special circulation requirements for being within 1/4-mile proximity to school (pedestrian, bicycle, planned sidewalk, etc.).
20. As shown on Figure 7-1 of the Transit Master Plan within the Happy Valley TSP, there is a proposed transit route along the frontage of the project site on SE 172nd Avenue. Please discuss any related requirements that may impact the project.
21. Does the fire district have any comments regarding the Preliminary Site Plan? Please confirm that only one site entrance (until future SE 177th Avenue is built out) satisfies fire access requirements if all buildings will be full NFPA 13 sprinklered.

### **Public Services/Utilities**

22. Please confirm whether or not this project site needs to annex into Clackamas County Service District No. 1 and/or Sunrise Water Authority.
23. Please confirm the utilities (depths and sizes) that exist in SE 172nd Avenue. Please provide any available as-builts.
24. Please confirm sufficient water system capacity and pressure exists for this project.
25. Please provide any proximate fire flow data that may be available. Please confirm if a fire flow test will be required by this project. If so, please confirm the process to perform one.
26. Will Sunrise Water Authority require non-potable (purple pipe) to be installed with this project?
27. Are there any known downstream stormwater deficiencies? Will WES accept subsurface detention and mechanical water quality facilities for this project?

28. Are there any known issues with stormwater capacity, high groundwater table, or low infiltration rates with the site and/or existing surrounding areas?
29. Will there be any sanitary sewer collection charges for this project?
30. Are there any reimbursement districts applicable to this project?
31. Please confirm there is sufficient sanitary sewer capacity to serve this project.

Please let us know if there are any other issues or site constraints of which you are aware or other questions we should be asking.

Sincerely,

**AKS ENGINEERING & FORESTRY, LLC**



Marie Holladay  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
(503) 563-6151 | holladaym@aks-eng.com

**Enclosures:**

Preliminary Site Layout  
Clackamas County Assessor's Map





### 288 UNITS

- (6) 36-UNIT 3-STORY WALKUPS (NFPA 13R)  
-35,340 GSF PER BUILDING
- (3) 24-UNIT 3-STORY WALKUPS (NFPA 13R)  
-23,445 GSF PER BUILDING

### 437 OFF-STREET PARKING STALLS

- 1.52 STALL/UNIT NOT COUNTING STREET PARKING
- 1.75 STALL/UNIT COUNTING STREET PARKING
- 66 ON-STREET STALLS

### UNIX MIX

- STUDIOS = 36, 620 sf avg 12.5%
- 1-BDRM = 108, 725 sf avg 37.5%
- 2-BDRM = 126, 1,106 sf avg 43.7%
- 3-BDRM = 18, 1,262 sf avg 6.3%

### 912 SF AVG UNIT SIZE

**(1) 4,200 SINGLE STORY CLUBHOUSE**  
(NON SPRINKLERED)

**(4) 320 SF CMU TRASH ENCLOSURES**  
(NON SPRINKLERED)

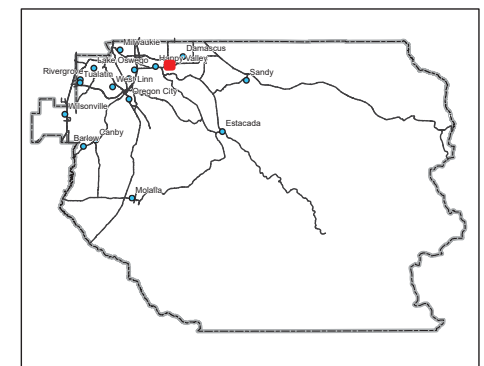
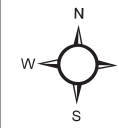
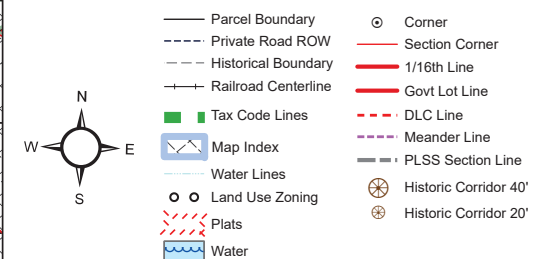
**(1) 320 SF MAINTENANCE SHED**  
(NON SPRINKLERED)

N.E.1/4 SEC.07 T.2S. R.3E. W. M.  
CLACKAMAS COUNTY

$$1'' = 200'$$

**Cancelled**

100  
101  
104  
105  
1000



2 3E 07A

Print Date: 11/15/2023



**LEGAL MEMORANDUM**

TO: Jason Wald

FROM: Jamie D. Howsley

DATE: November 13, 2024

RE: SB 1537 and the Obrist Project

---

The 2024 legislature adopted many new laws to remove regulatory barriers to the development of housing, including multifamily housing. Sections 37 through 41 of SB 1537 govern Housing Land Use Adjustments. Under Section 38, an “adjustment” is defined as a deviation from an existing land use regulation, but does not include “A request to allow a use of property not otherwise permissible under applicable zoning requirements.” Section 38(b)(A).

Section 38(2) provides that unless a local government has obtained a waiver under Section 39, it “shall grant a request for an adjustment in an application to develop housing as provided in this section.” Then Section 38(4)(g)(D)(i) provides that “A local government shall grant an adjustment to the following development standards \*\*\* for multifamily housing \*\*\* 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[.]” In other words, the statute classifies prohibitions against residential uses on the ground floor as a development standard that is subject to an adjustment.

As a result, the applicant understands that the proposed multifamily project may have ground floor residential uses so long as the buildings are set back more than 20 feet from the street right-of-way. The applicant realizes the city believes that the adjustment to the ground floor residential use prohibition is “a request to allow a use of property not otherwise permissible” under Section 38(2)(b)(A). However, the table of uses (Table 16.25.010-1) lists “New residential uses” as permitted in the EC zone, subject to the development standard in footnote 1 which limits residential uses to “upper floors of mixed use buildings.” Again, the statute classifies the prohibition on ground floor residential as a development standard, not a use regulation.

That “New residential uses” are Permitted in the EC zone means that the multifamily residential use is permitted, subject to standards. The ground floor prohibition operates like other typical development standards, such as minimum setbacks or maximum height. If the zoning code permitted multifamily buildings subject to a 50-foot setback, the setback would not be classified as a use prohibition because the use is allowed, with limits on the location within the site where the building can be constructed. The multifamily residential use would be permitted, subject to the locational development standard; that is, the minimum 50-foot setback.

November 13, 2024  
Page 2

This application proposes multifamily buildings on a property where new residential uses are expressly permitted, though not in the location within the site allowed by footnote 1. That locational prohibition is what Section 38(4)(g)(D)(i) classifies as a development standard, and mandates that the city “shall grant” an adjustment to.

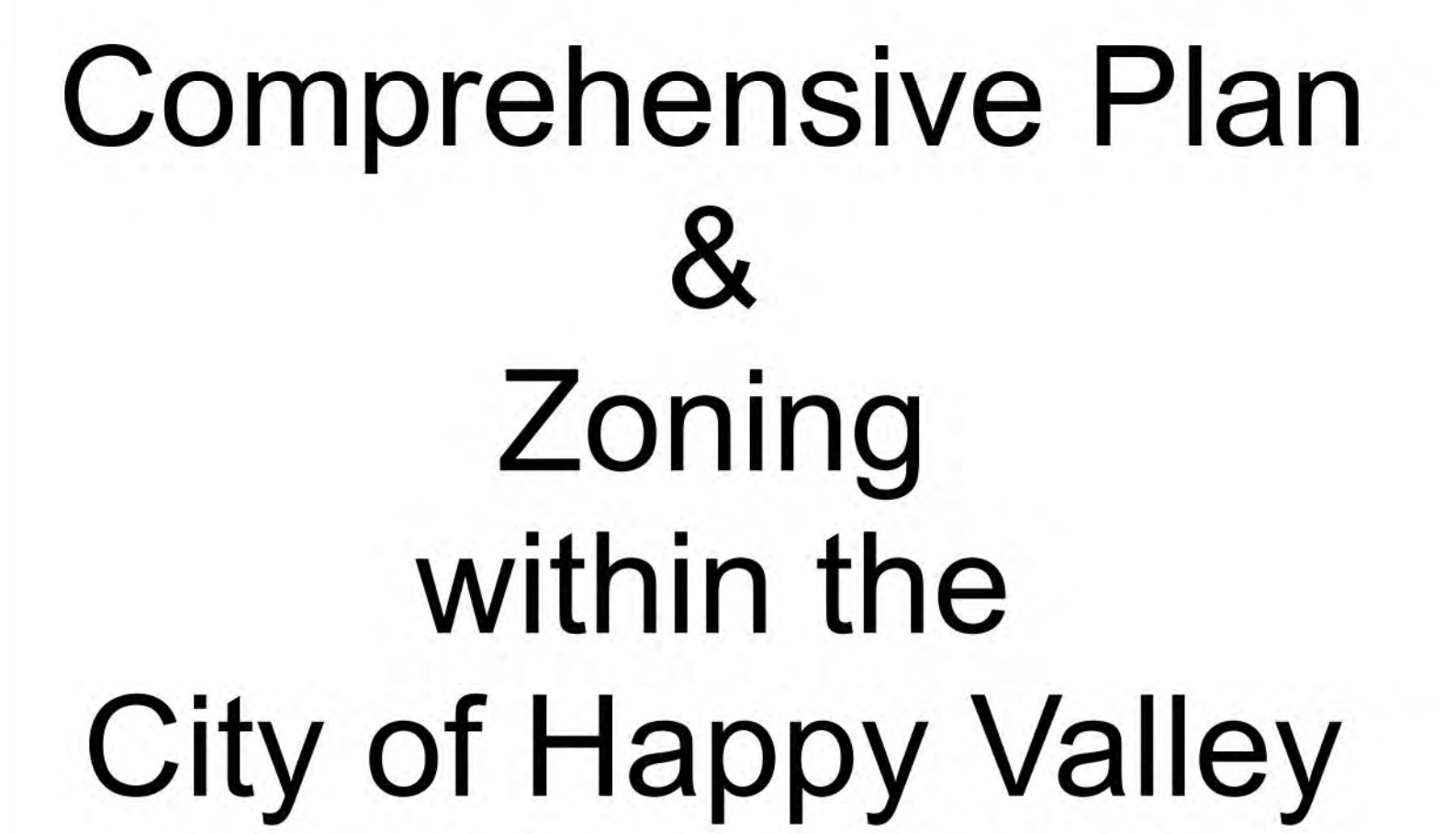
The applicant recognizes the city believes Section 38 will not apply because the city intends to apply for an exemption under Section 39. To qualify for an exemption, Section 39(2)(b) requires the city must show that “All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government’s process.” Thus the applicant should request that the city explain at the preapp meeting the process for an adjustment to footnote 1. In addition, Section 39(2)(c) requires the city to show that either “(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 applicant therefore should also request information regarding the last five years of adjustment requests, and information regarding developer testimonials on this topic.












Hopefully this will assist in preparing for the preapplication meeting. We look forward to meeting with your team, the city planning staff, and the representatives from other departments and agencies.



James D. Howsley





- ### Clackamas County Zoning
- |   |  |
|---|--|
|  | EFU: Exclusive Farm Use District                 |
|  | FF-10: Farm Forest                               |
|  | FU-10: Future Urbanization District              |
|  | RRFF-5: Rural Residential Farm Forest            |
|  | RA-2: Rural Area Residential                     |
|  | RA-1: Rural Area Residential                     |
|  | R-20: Urban Low Density Residential              |
|  | VR5/7: Village Standard Lot Residential District |
|  | RI: Rural Industrial District                    |
|  | RC: Rural Commercial                             |
|  | Happy Valley City Boundary                       |

Map updated 12/31/24



**City of Happy Valley**  
**Title 16. Land Development Code**  
**ARTICLE 16.2. LAND USE DISTRICTS**  
**Chapter 16.25. INDUSTRIAL DISTRICTS**  
**§ 16.25.010. Industrial districts.**

A. Purpose.

1. Employment Center (EC). The purpose of the Employment Center (EC) District is to provide for a mix of employment opportunities, located where they are accessible by a variety of transportation modes, including transit services and safe and convenient pedestrian connections. These areas provide sites suitable for business and office parks, campus and light industrial uses, professional and corporate offices, medical offices and clinics, tech/flex businesses, creative arts and services, technical/vocational schools and other related businesses. Building types range from large single user campuses, multiple tenant business parks to multistory mixed-use buildings. Quality design and a connected and walkable character of the surrounding environment will be provided. ~~Housing is allowed when combined in vertical mixed-use buildings.~~

[...]

- B. Permitted Uses. Table 16.25.010-1 identifies the land uses that are allowed in the EC and IC Districts.

Table 16.25.010-1 Industrial (EC, IC) Permitted Uses		
P=Permitted; C=Conditional Use; X=Prohibited		
Land Use	EC	IC
<b>Residential</b>		
Pre-existing dwellings. Preexisting dwellings may be allowed to remodel or expand and shall not be subject to the provisions of Chapter <b>16.72</b>	P	P
Home occupations in pre-existing dwellings	P	P
<del>New residential uses</del>	<del>p<sup>1</sup></del>	<del>X</del>
<b>Commercial—Retail</b>		
Commercial day care	C	C
Entertainment, major event	X	X
Hotels	C	X
Indoor health and recreation facilities, such as racquetball court, gymnasiums, health and exercise spas, swimming pools, and similar uses and associated facilities	C	C
Mobile food units	p <sup>3, 12</sup>	p <sup>3, 12</sup>
Outdoor recreation, commercial	X/C <sup>9</sup>	X
Parking lot (when not an accessory use)	X	C/X <sup>7</sup>
Quick vehicle servicing or vehicle repair	C	P
Retail sales—Includes used homes, trailers, motor homes and recreational vehicles	p <sup>2, 7</sup>	p <sup>3, 7</sup>
Commercial service	p <sup>2</sup>	p <sup>3</sup>
Self-service storage—Includes mini-storage and recreational vehicle storage facilities	X	P/X <sup>7</sup>
Marijuana retailing	X	X
Psilocybin service center	X	X
<b>Commercial—Office</b>		
Offices	P	p <sup>4</sup>
Industrial <sup>5</sup>		
Industrial services—Fully enclosed	P	P

**Table 16.25.010-1 Industrial (EC, IC) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

<b>Land Use</b>	<b>EC</b>	<b>IC</b>
Industrial services—Not enclosed	C	P
Manufacturing and production and fabrication and assembly— Fully enclosed	P	P
Research and development activities and laboratories—Fully enclosed	P	P
Research and development activities and laboratories—Not fully enclosed	C <sup>5</sup>	p <sup>5</sup>
Repair, finishing and testing—Fully enclosed	P	P
Repair, finishing and testing—Not fully enclosed	C <sup>5</sup>	p <sup>5</sup>
Distribution center and warehouse	p <sup>6</sup>	p <sup>8</sup>
Waste-related	X	C/X <sup>7</sup>
Helipads or heliports <sup>11</sup>	P	P
Transfer station	C	p <sup>7</sup>
Wholesale activities	p <sup>2</sup>	p <sup>3</sup>
<b>Institutional</b>		
Basic utilities	P	P
Colleges	C <sup>2</sup>	X
Institutional uses; educational institutes and trade schools; art, music, or dance studios; radio and television studios, excluding transmission towers	C <sup>2</sup>	C
Public parks and open space—Pedestrian amenities	P	P
Public parks and open space—Parks and recreation facilities	C	P
Public parks, usable open space	P	P
Churches, synagogues, temples or places of worship, library, post office, community center, etc.	C <sup>2</sup>	X
Public and private schools (includes commercial day care, dancing and music schools)	X/C <sup>2, 7</sup>	X
<b>Other</b>		
Agriculture—Animals, when an existing use as of May 5, 2009	P	P
Agriculture—Animals, when accessory to a permitted industrial use	X	P
Agriculture—Animals, when new use	X	X
Agriculture—Nurseries and similar horticulture (See also whole- sale and retail uses)	C	P
Agriculture—Vegetative processing/recycling, log processing— Not enclosed	C	C
Buildings and structures exceeding the height limits in Table 16.25.010-2	C	C
Marijuana processing, production and wholesaling	p <sup>10, 13</sup>	p <sup>10, 13</sup>
Psilocybin processing, production and wholesaling	p <sup>10, 13</sup>	p <sup>10, 13</sup>
Radio frequency transmission facilities—Within height limit of district	P	P
Radio frequency transmission facilities—Exceeds height limit (freestanding or building-mounted facilities)	C	C
Rail lines and utility corridors	P	P
Temporary uses (limited to "P" and "C" uses), per Section <b>16.69.010</b>	C	C
<b>Land Use</b>		
Transportation facilities (operation, maintenance, preservation, and construction in accordance with the City's Transportation System Plan)	P	P



**Table 16.25.010-1 Industrial (EC, IC) Permitted Uses**

**P=Permitted; C=Conditional Use; X=Prohibited**

<b>Land Use</b>	<b>EC</b>	<b>IC</b>
Wireless telecommunication facilities: wireless telecommunication facilities are subject to the requirements of Section <b>16.44.020</b> (Wireless Communications Facilities)	P/C	P/C
Any accessory use or structure, not otherwise prohibited, that the Planning Official or designee finds to be customarily accessory and incidental to a permitted use	P	P
Any use that the Planning Official or designee finds to be similar to one or more of those specified above	P/C	P/C

**NOTES:**

- ~~1 Residential uses on upper floors of mixed use buildings are permitted.~~
- 2 New commercial retail uses shall not exceed 60,000 square feet gross leasable area on a single lot or parcel or contiguous lots or parcels. For the purposes of this limitation, parcels or lots separated by only a transportation right-of-way are considered to be contiguous. The use of any building, structure or land that was existing on or before July 17, 2012 or which was a legal use at the time of annexation may continue and may expand to add up to 20% more floor area and 10% more land area on a site.*
- 3 Uses are subject to the following limitations:*
  - a. New uses:*
    - 1. No single store, branch, agency or other outlet shall exceed 5,000 square feet in area (including buildings and outdoor storage and sales areas); and*
    - 2. On sites with multiple outlets, the cumulative area dedicated to these uses shall not exceed 20,000 square feet (including buildings and outdoor storage and sales areas);*
  - b. Existing uses and buildings: Notwithstanding subsection (a) above, the use of any building, structure or land that was existing on or before July 17, 2012 or which was a legal use at the time of annexation may continue and may expand to add up to 20% more floor area and 10% more land area on a site.*
- 4 Permitted as an accessory use—Executive and administrative offices must relate to the operation of the industrial use and may not exceed 40% of the total gross floor area.*
- 5 If not fully enclosed, must be located more than 200 feet from residential districts and petroleum storage and refining.*
- 6 Permitted as an accessory use—May not exceed 20% of the total site area.*
- 7 All uses are prohibited within the Rock Creek Employment Center Subdistrict as defined in subsection F. Specific to retail sales, prohibition is on sale of used homes, trailers, motor homes and recreational vehicles.*
- 8 Within the Rock Creek Employment Center Subdistrict as defined in subsection F, use is permitted only as an accessory use—May not exceed 20% of the total site area except as noted in subsection F.3.*
- 9 Outdoor recreation facilities without permanent buildings are allowed as a conditional use within the EC zone.*
- 10 Use is prohibited within the Rock Creek Employment Center Subdistrict as defined in Section 16.25.010.F.*
- 11 Subject to applicable FAA rules and regulations.*
- 12 Pursuant to Section 16.69.030.*
- 13 Pursuant to Chapter 16.49.*



## Attachment E. Staff Report Excerpt (DR 13-23)

*three inches is required of the evergreen plant screening. The material shall completely screen the area from the public view.*

*f. Electrical and Mechanical Equipment. On and above-ground electrical and mechanical equipment such as transformers, heat pumps and central air conditioner units shall be completely screened with sight-obscuring fences, walls or landscaping.*

### **Staff Response:**

The applicant will be required to substantiate the location of postal delivery and garbage collection areas as part of construction plan review. In addition, Staff has recommended conditions of approval, which would require that all trash and recycling facilities, mechanical and electrical equipment be screened in a manner described in the LDC. These criteria have been satisfied with conditions.

*12. The Planning Official or designee may allow exceptions to these standards without the need to obtain a formal variance pursuant to Chapter 16.71 provided at least one of the following circumstances is met:*

*a. The applicant demonstrates that the physical characteristics of the site or existing structure make compliance impractical (e.g., they include, but are not limited to, steep slopes, wetlands, other bodies of water, trees or other nature features of the site, buildings or other existing development, utility lines and easements, etc.); or*

*b. The applicant demonstrates that the alternative design is exceptional in the quality of detailing, appearance or materials and/or creates a positive unique relationship to other structures, views or open space in a manner that accomplishes the purpose of design review standards for multifamily and attached single-family developments in Section 16.44.010.*

*13. A request for exception under this provision may be processed as part of the underlying application or separately as a Design Review II application.*

### **Staff response:**

The applicant is not requesting exceptions to this section. Staff believes the 3-foot recesses identified in 16.44.010.B.4 are sufficient to comply with the 4-foot requirement, given the complexity of the design materials, roofing, and colors that add interest and break up the massing of the structure. This criterion is met.

### *14. Lighting Standards.*

*a. For residential properties including multiple residential properties not having common areas all outdoor luminaires shall be fully shielded and shall not exceed the allowed lumen output in Table G, column LZ2 and row 2.*