



### Cross walk of overlap between SB 974 and SB 1537 (2024)

SB 1537, section 38, allows the developer of a residential project to apply for an “adjustment” to a list of design review standards, all of which are also listed in SB 974. The adjustment process in SB 1537 allows the developer to ask for a “full” adjustment, which means complete waiver of the design review requirement. By contrast, SB 974 simply prohibits a city from applying the design standards to a development for more than 20 new dwellings, whether single-family, manufactured dwellings or middle housing units. Under SB 974, smaller projects (<20 units) are still subject to design review standards, but they can still seek an adjustment under SB 1537. One of the many goals of SB 1537 is to incentivize the development of denser housing and infill, those projects are not going to qualify necessarily under SB 974, which is designed with the primary objective of making greenfield development easier. It's a policy call and ultimately up to the committee.

The legal problem: The initial problem from a legal perspective is that there's no reason the developer of a project that falls under both SB 974 and SB 1537 would go through the SB 1537 adjustment process, which makes SB 1537 a nullity for many residential projects. It's easy to foresee a townhouse project (i.e. middle housing) with more than 20 units. Under SB 1537, the developer would have to seek an adjustment, but under SB 974 they don't. If SB 974 passes as is, our attorneys anticipate a flood of questions from planning staff about which process to apply, whether they can require an adjustment application or not. For a project that falls under both SB 1537 and SB 974, it is not clear how a court or LUBA would resolve the conflict.

We understand OHBA's concern is that SB 1537 only applies to residential development that meets certain density requirements, which makes it unavailable to single-family residential projects (Section 38 (2)(c)). However, simply amending SB 1537 to remove the density requirement would address this concern but without creating overlapping and potentially conflicting statutes. The intent of SB 974 seems to be prohibiting a city from applying design review requirements to larger single-family subdivisions – i.e. a development of more than 20 single-family units – because manufactured dwellings and middle housing are already covered by SB 1537. Removing the density requirement in SB 1537, section 38(2)(c), would achieve the same goal but without creating overlapping and potentially conflicting statutes, rendering portions of SB 1537 a nullity, and avoid the downstream implementation challenges that, inevitably, will lead to litigation.

<b>Crosswalk Between SB 974-A4 Design Standard Limitations and Senate Bill 1537 Mandatory Adjustment Equivalent</b>	
<b>SB 974-A4 Design Standard Limitations</b>	<b>Senate Bill 1537 Mandatory Adjustment Equivalent (Redundant Standard)</b>
i Facade materials, color or patterns	Redundant with SB 1537 Section 38 (5)(a) - Must allow a full adjustment for facade materials, color or pattern
ii. Roof decoration, form or eave overhang	Redundant with SB 1537 Section 38 (5)(c) - Must allow a full adjustment for roof forms and materials
iii. Accessories, materials or finishes for entry doors or garages	Redundant with SB 1537 Section 38 (5)(d) - Must allow a full adjustment for entry and garage door materials  Redundant with SB 1537 Section 38 (5)(a) - Must allow a full adjustment for facade materials, color or pattern
iv. Window elements including trim, recesses, shutters or grids	Redundant with SB 1537 Section 38 (5)(f) - Must allow a full adjustment for window materials except bird-safe glazing requirements  Redundant with SB 1537 Section 38 (5)(g) - Must allow an adjustment for total window area up to 30% adjustment if application includes at least 12% of total façade as window area  Redundant with SB 1537 Section 38 (5)(a) - Must allow a full adjustment for facade materials, color or pattern
v. Fence type, design or finishes	Redundant with SB 1537 Section 38 (4)(a) - Must allow up to a 10% adjustment for side or rear setback distance.

vi. Architectural details	<p>Redundant with SB 1537 Section 38 (5)(a) - Must allow a full adjustment for facade materials, color or pattern</p> <p>Redundant with SB 1537 Section 38 (5)(h) (D) - Must allow a full adjustment for recesses and offsets</p>
vii. Covered porches or balconies	Redundant with SB 1537 Section 38 (5)(h)(C) - Must allow a full adjustment for requirements for balconies and porches
viii. Variety of design or floorplan	Redundant with SB 1537 Section 38 (5)(a) - Must allow a full adjustment for facade materials, color or pattern
ix. Front or back yard area landscaping materials or vegetation	Redundant with SB 1537 Section 38 (4)(b) - Must allow a reduction of up to 25% for an individual development project, common area, open space or area that must be landscaped on the same lot or parcel as proposed housing