

ZONING CODE AMENDMENTS – REASONABLE ACCOMMODATION

DRAFT FOR PLANNING COMMISSION DISCUSSION

30-5.17 - Reasonable Accommodation.

a. Purpose.

The purpose of this section is to provide a procedure to request reasonable accommodation to obtain exceptions to zoning and development regulations to allow reasonable modifications to sites and buildings for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (together, the Acts) and the California Code of Regulations (CCR) in the application of zoning laws and other land use regulations, policies, and procedures.

b. ~~Applicability~~Principles.

1. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity that is developing or providing housing for one or more persons with a disability, when the ~~application of~~ a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that ~~limits or~~ substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. ~~This section is intended to apply to those persons who are defined as disabled under the Acts.~~

2. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

3. A reasonable accommodation is ~~granted to~~ approved for the household that needs the accommodation and does not apply to successors in interest to the site unless the Director determines that it is impractical to remove the accommodation / modification or unnecessary / undesirable in order to provide continued fair access to housing.

4. A reasonable accommodation ~~may be granted in compliance with this section the need for the approval of a variance without request~~ shall be considered independently of any discretionary permit and is exempt from design review, use permit, variance and similar requirements.

5. Requests for reasonable accommodation shall be made ~~in the manner prescribed in Section 30-5.17(c), Application Requirements~~ on a form provided by the Planning Director for this purpose and shall contain the information listed in section 30-5.17c.

6. No fee shall be charged to file or process the request; any appeal shall be accompanied by a fee paid by the applicant per the Master Fee Schedule.

c. Application Requirements.

1. *Application.* A request for reasonable accommodation / modification shall be submitted on an application form provided the Community Development Planning Department, or in the form of a letter, to the Community Development Planning Director and shall contain the following information:

- (a) The applicant's name, address, and telephone number;
- (b) The aAddress of the property for which the request is being made;
- (c) The current and proposed actual-use and development of the property;
- (d) ~~The basis for the claim that the individual is considered disabled under the Acts~~ form of disability to be accommodated and supporting evidence of disability consistent with CCR 12178;
- (e) The zoning ordinance or development review standard, provision, regulation, or policy for which reasonable accommodation is being requested; and
- (f) ~~Why~~ How the reasonable accommodation / modification is necessary to accommodate the functional daily need of the disabled individual or disabled persons in general in order to provide equal opportunity to use or enjoy a housing opportunity.

2. Confidentiality Regarding Reasonable Accommodations and Modifications.

All information concerning an individual's disability, request for an accommodation or modification, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation or modification unless disclosure is:

- (a) Required to make or assess the decision to grant or deny the request for accommodation or modification;
- (b) Required to administer or implement the requested accommodation or modification;
- (c) Authorized by the individual with the disability in writing; or
- (d) Required by law.

~~2. Review with Other Land Use Applications.~~ If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including but not limited to: Use permit, design review, general plan amendment, zone change, etc.), then the applicant shall file the information required by subsection 1 (Application) above together with the application for discretionary approval.

d. Review Authority.

~~1. Community Development Director.~~ A request for reasonable accommodation shall be reviewed by the Community Development Planning Director (Director), or his/her or their designee if no approval is sought other than the request for reasonable accommodation.

~~2. Other Review Authority.~~ Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

e. Review Procedure.

~~1. Director Review.~~ The Director, or ~~Director~~ their designee, shall make a written determination no later than forty-five (45) thirty (30) days after receiving a complete application and either ~~grant,~~ grant approve, approve with modifications, or deny ~~athe~~ request for reasonable accommodation in accordance with Section 30-5.17(f), Findings and Decision.

~~2. Other Reviewing Authority.~~ The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Section 30-5.17(f), Findings and Decision.

f. Findings and Decision.

~~1. Findings.~~ The written decision to grantapprove or deny a request for reasonable accommodation ~~will be consistent with the Acts and shall be approved unless adverse findings are made supported by substantial evidence based on consideration of the following factors:~~

(a) Whether the housing, ~~which that~~ is the subject of the request, will be used by an individual with a disability as defined under the Acts.

(b) Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.

(c) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

(d) Whether an Aalternative reasonable accommodations which may provide an equivalent level of benefit would be equally effective in meeting the needs of the person(s) with disability. Equally effective means that the alternative accommodation or modification will allow the person with the disability to use and enjoy a dwelling or housing opportunity as well as the requested accommodation or modification would have. The alternative must be acceptable to the applicant.

(e) Whether the requested accommodation would constitute a direct threat to the health or safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others, or such risks can be sufficiently mitigated or eliminated by another reasonable accommodation pursuant to CCR 12179.

~~2. Conditions of Approval.~~ In granting a request for reasonable accommodation, the reviewing authority Director may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection 1 above and other code requirements of the Building Official and of the Fire and Public Works Departments. The conditions shall also state whether the accommodation granted ~~A!ameda94501~~ shall be removed in the event that the person for whom the accommodation was

requested no longer resides on the site, if practical. The conditions may also state whether the approval shall lapse if not implemented within a specified period of time.

g. Appeal of Determination.

A determination by the reviewing authority to ~~grant~~approve or deny a request for reasonable accommodation may be appealed by the applicant to the Planning Board in compliance with Section 30-25, Appeals or Calls for Review.