

DRAFT Staff Report

Reasonable Accommodation Ordinance

March 31, 2010

STAFF REPORT BACKGROUND

A series of federal and state laws have been enacted over the past several years to prohibit discrimination that acts as a barrier to individuals with disabilities who are seeking housing. Among such laws are the Federal Fair Housing Amendments Act of 1988, California's Fair Employment and Housing Act, the State's Housing Element law, and HUD's requirement that cities utilizing Community Development Block Grant (CDBG) funds prepare an "Analysis of Impediments to Fair Housing Choice." Taken together, these pieces of legislation require cities and counties to take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities.

The _____ Housing Element was adopted in _____. Consistent with federal and state law, the Housing Element contains policies and programs to implement fair housing laws and to provide housing for all need groups within the City. The specific Housing Element programs being implement are _____. Other jurisdictions in the Bay Area have adopted such measures, including the City of Mill Valley, the City of Santa Rosa, and the City of Pleasant Hill (samples attached).

Reasonable Accommodation Ordinance

Fair housing laws and subsequent federal and state legislation require all cities and counties to further housing opportunities for individuals with disabilities by identifying and removing constraints to the development of housing for individuals with disabilities, including local land use and zoning barriers, and to also provide reasonable accommodation as one method of advancing equal access to housing. The proposed ordinance provides a fair and reasonable means of accommodating the special housing needs individuals with disabilities, as required by state and federal law.

The Fair Housing laws require that cities and counties provide flexibility or even waive certain requirements when it is necessary to eliminate barriers to housing opportunities for people with disabilities. An example of such a request might be to place a ramp in a front yard to provide access from the street to the front door.

The State Attorney General, in a letter to the City of Los Angeles, in May 2001, stated that local governments have an affirmative duty under fair housing laws to provide reasonable accommodation and "[i]t is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently." He advised jurisdictions not to use existing variance or conditional use permit processes because they do not provide the correct standard for making fair housing determinations

and because the public process used in making entitlement determinations fosters opposition to much needed housing for individuals with disabilities. In response to the State Attorney General's letter, many cities throughout the state are adopting fair housing reasonable accommodation procedures as one way of addressing barriers in land use and zoning regulations and procedures.

A fundamental characteristic of a fair housing reasonable accommodation procedure is the establishment of appropriate findings that reflect the intent and specific language of both the federal and state fair housing statutes. In this regard, it is somewhat different than traditional or typical zoning cases because here the focus of review is the need of the individual with disabilities to overcome barriers to housing, not on the topography of the site or the unique character of the lot. The focus here is solely on the special need of the individual to utilize his or her home or dwelling unit, which is directly related to the individual's disability. It is this reasoning that underlies the Attorney General's warning not to utilize variance criteria for such determinations.

As proposed in the draft ordinance, a new process would be created in which the Director of _____ (or their designee) would determine that the individual making the request for accommodation has a disability as defined in the law and verified by an appropriate professional, or is developing housing for individuals with disabilities. Second, the applicant would establish that, because of the disability, the requested accommodation is necessary to overcome a barrier to housing. If the individual has established the need for the accommodation based on the disability, the Director will determine that it is "reasonable," and grant the request, unless he/she can establish that granting the request would be an undue financial or administrative burden to the City or would result in a fundamental alteration in the City's land use and zoning programs.

The Director of _____ may gather additional information necessary to make a determination on a request, and may also consider "alternative accommodations which may provide an equivalent level of benefit" to that which has been requested by an individual with disabilities. An alternative accommodation would be considered if the Director of _____ determines that providing the requested accommodation would create an undue administrative or financial burden to the City or result in a fundamental alteration in the nature of the City's regulations and that an alternative method is available to achieve an equivalent accommodation. In providing reasonable accommodation, it is generally presumed that the individual with disabilities is in the best position to know whether the requested accommodation is effective.

The Director of _____ would prepare a written decision, including findings based on specific factors in the Fair Housing laws and delineated in the ordinance. The decision may be appealed to the City Council. This analytic process for reviewing and making determinations on requests for reasonable accommodation is well established in the case law interpreting the fair housing mandate. This analysis is also consistent with the approach used by other cities, such as Long Beach, Santa Rosa and San Jose and the District of Columbia.

Similar “reasonable accommodations” that relate solely to requirements contained in the Building Code may be necessary.

CONCLUSION

The development of the proposed reasonable accommodation ordinance are the next steps in the City’s commitment to complying with fair housing laws.

ENVIRONMENTAL IMPACT

The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines for ordinances which do not themselves have an impact on the physical environment. The ordinance is enabling legislation; each individual reasonable accommodation project will be subject to CEQA at the time it is filed.