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# **Reasonable Accommodation and Anti-Discrimination Based on Source of Income Best Practices**

March 2nd, 2009

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## **I. Background**

A series of federal and state laws have been enacted over the past several years to prohibit policies that act 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, and the State's Housing Element law. Additionally, HUD requires 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 jurisdictions to take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities.

Consistent with federal and state law, each housing element should contain policies and programs to implement fair housing laws and to provide housing for all need groups. Examples of jurisdictions in the Bay Area that have adopted such measures include East Palo Alto (Anti-Discrimination Ordinance) and the City of Santa Rosa (Reasonable Accommodation Ordinance)

## **II. Reasonable Accommodation**

Fair housing laws and subsequent federal and state legislation require all cities and counties to further housing opportunities 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

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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.

### **Best Practices**

#### ***POLICY***

**Special Needs Housing:** Provide housing for population groups who require special assistance (special needs groups include homeless persons; people with disabilities; the elderly; people with serious illnesses, substance abuse or mental health issues; large families; female-headed households; farmworkers; and other persons in the community identified as having special housing needs).

#### ***POSSIBLE PROGRAMS***

**Adaptable Units for Persons Living with Disabilities.** The City will attempt to ensure that new housing developments include units that can be adapted for use by disabled residents.

**Reasonable Accommodation.** The City will amend its Zoning Ordinance to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing. The purpose of this is to provide a process for individuals with disabilities to make requests for reasonable accommodation in regard to relief from the various land use, zoning, or building laws, rules, policies, practices and/or procedures of the City.

#### ***POSSIBLE ORDINANCE PROCESS AND STRUCTURE***

Create a process in which the Director of \_\_\_\_\_ (Planning and Building or their designee GENERIC) 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 \_\_\_\_\_ (Planning and Building or their designee GENERIC) will

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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 \_\_\_\_\_ (Planning and Building or their designee GENERIC) 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 \_\_\_\_\_ (Planning and Building or their designee GENERIC) 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 programs 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 \_\_\_\_\_ (Planning and Building or their designee GENERIC) 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.

### III. Anti-Discrimination Based on Source of Income

#### ***POLICY***

**Equal Housing Opportunities:** Promote equal housing opportunities for all persons and assure effective application of Fair Housing law. To the extent possible, the City will ensure that individuals and families seeking housing are not discriminated against on the basis of race, color, religion, marital status, disability, age, sex, family status (due to the presence of children), national origin, or other arbitrary factors, consistent with the Fair Housing Act.

#### ***POSSIBLE PROGRAMS***

**Adopt an Anti-Discrimination Ordinance.** Adopt an Anti-Discrimination Ordinance to prohibit discrimination based on the source of a person’s income or the use of rental subsidies, including Section 8 and other rental programs.

**Respond to Complaints.** The \_\_\_\_TITLE/POSITION\_\_\_\_ is the designated Equal Opportunity Coordinator in \_\_\_\_\_ with responsibility to investigate and deal appropriately with complaints. The City will refer discrimination complaints to the appropriate legal service, county, or state agency, or Fair Housing agency. If mediation fails and

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enforcement is necessary, the City will refer tenants to the State Department of Fair Employment and Housing or HUD, depending on the nature of the complaint.

**Disseminate Fair Housing Information.** The \_\_\_\_TITLE/POSITION\_\_\_\_ is the designated Equal Opportunity Coordinator in \_\_\_\_\_ and will ensure that written materials regarding fair housing law are provided at various public locations in the town and that information regarding fair housing agencies and phone numbers is posted at City Hall, the Post Office, and local transit locations where feasible. The \_\_\_\_TITLE/POSITION\_\_\_\_ will provide information to real estate professionals, property owners and tenants on their rights and responsibilities and the resources available to address fair housing issues.

### ***POSSIBLE ORDINANCE PROCESS AND STRUCTURE***

The purpose of this ordinance is to encourage landlords to participate in the Section 8 rent subsidy program administered by the San Mateo County Department of Housing and to establish a right of existing tenants to be free of certain discrimination based on their use of a rental subsidy. It would be unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 rent subsidy. It would be a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 rent subsidy program for which an existing tenant has qualified.

Provisions of an ordinance could include: (1) Purpose and findings; (2) Right to protection against discrimination in rental housing on the basis of source of income; (3) Exceptions; (4) Redress; and, (5) Liability (protection for the jurisdiction).