



REPORT TO PRESERVATION COMMISSION City of Sacramento

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STAFF REPORT
May 6, 2009

Members of the Preservation Commission:

Subject: City Reasonable Accommodation Ordinance (LR09-001)

Location/Council District: Citywide

Recommendation: This informational item presents the Draft Reasonable Accommodation Ordinance. Staff seeks comments on the draft ordinance.

Contact: Greg Sandlund, Assistant Planner, (916) 808-8931; Thomas Pace, Principal Planner, (916) 808-6848.

Presenters: Greg Sandlund, Assistant Planner, (916) 808-8931

Department: Community Development Department

Division: Long Range Division

Organization Number: 22001111

Description/ Analysis

Issue: As part of the implementation of the 2008-2013 Housing Element, the City is developing a reasonable accommodation ordinance. This ordinance would establish a formal procedure for individuals with disabilities seeking access to housing to request reasonable accommodation in the application of the City's land use regulations.

Federal and state fair housing law prohibits cities and counties from discriminating against individuals with disabilities through land use and zoning regulations and procedures. The proposed Reasonable Accommodation Ordinance would provide a procedure to consider whether a land use or development standard or regulation can be modified or exempted in order to allow an individual with a disability to occupy their home. Adoption of the proposed ordinance would facilitate the City's compliance with federal and state fair housing laws.

Attachment 1 lists examples obtained from other California jurisdictions that illustrate situations of when a reasonable accommodation ordinance would be applied in the context of local land use and zoning laws. These examples help to provide an understanding of how this ordinance would work.

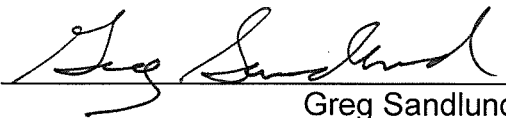
Attachment 2 is a compilation of questions and comments from the Planning Commission, Development Oversight Commission, Housing and Redevelopment Commission, and Disabilities Advisory Commission, as well as from internal staff discussions and public input. The source of each question is indicated in parenthesis. Below each question is Staff's response.

Staff is using the *original* public review draft of the ordinance (Attachment 3) while receiving questions and comments from each commission. While the ordinance is not modified for each subsequent commission meeting, Staff's responses to the frequently asked questions or comments changes after further input and research. Following the May 20th Design Review Commission meeting, Staff will revise the ordinance, trying to address as many of the comments received as possible. Staff intends to go to the Planning Commission on June 11th to forward their recommendation to the Council for approval of the draft Reasonable Accommodation Ordinance

Policy Considerations: The proposed ordinance is consistent with the 2008-2013 Housing Element's policies to "promote, preserve and create accessible residential development" (Chapter 9, Goal H-5). Additionally, the ordinance would ensure equal access to City's development policies, practices, and procedures (Chapter 9, Policy H-5.2).

Rationale for Recommendation: The proposed ordinance would create a new application procedure for the Community Development Department. The commission's input on this new procedure would inform the development of the ordinance, particularly how historic resources can be considered.

Financial Considerations: A new application procedure for the Community Development Department would require staff time and training. However, charging a fee for a reasonable accommodation application has been found to be inconsistent with federal and state fair housing law.

Respectfully submitted by: 
Greg Sandlund
Assistant Planner

Recommendation Approved:


Thomas Pace
Principal Planner

Table of Contents:

Report Pg 1

Attachments:

- 1 Examples of Reasonable Accommodation Pg 4
- 2 Frequently Asked Questions Pg 6
- 2 Draft Reasonable Accommodation Ordinance Pg 9

Attachment 1

**Examples of Reasonable Accommodation
From California Cities**

City of Long Beach

- An individual with a disability needs to install an elevator in his residence, but the elevator shaft's height would exceed the height limit. Reasonable accommodation is requested to allow the elevator shaft to exceed the height limit.
- A family's adult son or daughter is disabled and cannot live independently. The parents want to convert the garage into a residential unit for the son or daughter to live in. The City requires that a new garage be built to provide new parking. Reasonable accommodation is requested to waive that parking requirement.

City of San Rafael

- An elevator in a townhome is needed that encroaches into the required garage parking spaces. Reasonable accommodation is requested to waive the parking requirement.
- A garage needs to be converted into a living space for a disabled parent. Covered parking is required onsite. Reasonable accommodation is requested to waive the parking requirement.
- A ramp needs to encroach further into a front setback than what is typically allowed for stairs and ramps. Reasonable accommodation is requested to waive the setback requirement.

City of Glendora

- A wheelchair-bound person has a van and other equipment related to his disability that he needs to have available at his home. He wants to build a garage and storage area to accommodate the van and equipment. Unfortunately, the proposed garage exceeds the allowable square footage and height for an accessory structure. Reasonable accommodation is requested to exceed the development standard.

City of Emeryville

- A family wants to add a first floor bedroom addition to the back of their house because the husband has become disabled and was no longer able to climb up to the upstairs bedroom. The project requires design review and a rear setback variance that has to be approved by the Planning Commission. Reasonable accommodation is requested to waive both the design review requirements and the setback requirements.

City of Lomita

- An individual with a disability would like to put a ramp in her side yard setback. Reasonable accommodation is requested to waive the setback requirement.

City of Berkeley

- An individual who is mobility impaired cannot go up stairs anymore and needs to add a first floor bedroom or bathroom. This would require that the home's footprint expand into a side yard setback. Reasonable accommodation is requested to waive the setback requirement.

Draft Reasonable Accommodation Ordinance – FAQ Sheet

1. What is a request for a “reasonable accommodation”? **(Staff)**
 - A request for a “reasonable accommodation” is a request for a modification of the land use and development standards, regulations, policies, and processes in the City’s Zoning Code as may be necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling. An accommodation is “reasonable” as long as it does not impose an undue financial or administrative hardship on the City or require a fundamental alteration in the nature of its zoning scheme.

2. How do we verify the legitimacy of the claim of disability? **(Staff)**
 - The application for reasonable accommodation requires a statement of the basis of the claim that the individual to be reasonably accommodated is disabled under the applicable laws. The City would not independently verify the claim of disability. Staff would take the application as true and correct. Staff is developing a violation provision to address code compliance (and honest applications).

3. How would requests for reasonable accommodation be treated for properties requiring design review or preservation review? **(Development Oversight Commission and Staff)**
 - Applications in these areas would be processed in the same manner as any other application, unless the request for reasonable accommodation asks to waive design review or preservation review, in which case the Planning Director would consider the request as provided by the ordinance. In conducting design review and preservation review, the City would be required to reasonably accommodate a disabled individual in applying the applicable design and preservation standards. However, as noted above, a requested accommodation is not reasonable if it would result in a fundamental alteration in the nature of the City’s design review or historic preservation programs.

4. How would design input be incorporated in the application process for properties that would not require design review or preservation review? **(Staff)**
 - The Single Family Design Checklist and Multifamily Residential Design Principles would inform the Planning Director’s decision.

5. Can someone who is anticipating being disabled within one year be able to request reasonable accommodation? **(Public)**
 - Individuals who do not have immediate needs can make modifications to their dwelling through the standard review process.

6. Can notice of a reasonable accommodation application and/or decision be provided to adjacent property owners? **(Housing and Redevelopment Commission and Planning Commission)**
 - Staff is considering modifications to the ordinance to require that notices be sent the business day after application submittal to neighbors within 100 feet of the subject property.
7. Does the ordinance allow for reasonable accommodation to accommodate disabled visitors? **(Public)**
 - No. Individuals who do not have immediate needs can make modifications to their dwelling through the standard review process to accommodate disabled visitors.
8. Can the City require temporary modifications to reasonably accommodate a disabled individual? **(Staff and Planning Commission)**
 - Yes, especially in properties where design/preservation reviews are required and where a potential conflict with design guidelines or preservation standards exists. The City of Davis has specified this in their ordinance and our new draft ordinance will have similar language.
9. Are requests for reasonable accommodation exempt from CEQA? **(Staff)**
 - No. It is anticipated that most reasonable accommodation requests will qualify for a statutory or categorical exemption under CEQA.
 - If the residence is a historic resource, the reasonable accommodation request may require a higher level of review under CEQA.
10. Can requests for reasonable accommodation be approved with conditions or be denied? If so, based on what criteria? **(Housing and Redevelopment Commission)**
 - Seven criteria are to be considered in reviewing a request for reasonable accommodation (see Section 17.198.070). These include whether or not the request would require a fundamental alteration in the nature of a city program or law, impacts on surrounding structures, and the physical attributes of the subject property. In addition, the Planning Director may consider alternatives that will provide an equivalent level of benefit to the disabled individual with fewer impacts to the surrounding neighborhood or City program. Conditions may be imposed on the approval as necessary to meet these criteria.

11. Would the approved reasonable accommodation modifications be permanent?
(Housing and Redevelopment Commission and Planning Commission)
 - As in the case of variances or special permits, the modification would be allowed to remain permanently unless otherwise indicated by a condition of approval.

12. Can a decision be appealed by the neighbors? **(Housing and Redevelopment Commission and Planning Commission)**
 - The draft ordinance provides for appeals by the applicant only. Some jurisdictions have allowed for appeals by a third party.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

ADDING CHAPTER 17.198 TO TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) RELATING TO REQUESTS FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF THE CITY'S LANDUSE REGULATIONS (LR-09-001)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Purpose.

The purpose of this ordinance is to establish a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use regulations and to establish relevant criteria to be used when considering such requests.

Section 2. Findings.

The Council of the City of Sacramento finds as follows:

A. Housing that is accessible to people with disabilities has been identified as a special housing need in the 2008-2013 Housing Element of the City's General Plan.

B. Implementation Program 84 of the 2008-2013 Housing Element calls for a reasonable accommodation ordinance that streamlines and formalizes City procedures related to accessibility and adaptability accommodations for development.

C. Both the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (Gov. Code §12900 *et seq.*) ("the Acts") impose an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their land use regulations and practices when such accommodation may be necessary to afford an individual with a disability an equal opportunity to housing.

D. The City of Sacramento has historically provided for reasonable accommodation consistent with the Acts through the use of existing regulatory procedures not specifically designed for people with disabilities.

E. Codification of a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use regulations and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the fair housing laws' reasonable accommodation mandate.

Section 3. Chapter 17.198 is added to Title 17 of the Sacramento City Code (the Zoning Code) to read as follows:

Chapter 17.198

Requests for Reasonable Accommodation under the Fair Housing Act

17.198.010 Purpose.

This chapter provides a procedure to request reasonable accommodation for individuals with disabilities seeking equal access to housing under the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations, policies and procedures.

17.198.020 Definitions.

“Acts” means the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

“Applicant” means an individual who files an application for reasonable accommodation under this chapter.

“Code” means the Sacramento City Code.

“Individual with a disability” means any person who has a medical condition, physical disability, or mental disability as those terms are defined in the California Fair Employment and Housing Act (Cal. Gov. Code §12900 *et seq.*).

17.198.030 Applicability.

A. To make specific housing available to an individual with a disability, any person may request reasonable accommodation under this chapter when the application of a zoning or other land use regulation, policy or practice under this title acts as a barrier to fair housing opportunities. A request for reasonable accommodation shall be made by filing an application under section 17.198.040.

B. A reasonable accommodation request 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 an individual with a disability equal opportunity for housing of their choice.

17.198.040 Application requirements.

A. Application.

An application for reasonable accommodation shall be submitted on a form prescribed by the planning director, or in the form of a letter addressed to the planning director, and shall contain the following information:

1. The applicant's name, address and telephone number;
2. The address of the property for which the request is being made;
3. The current use of the property;
4. The basis for the claim that the individual to be reasonably accommodated is disabled under the Acts;
5. The zoning code provision, regulation, or policy for which reasonable accommodation is being requested; and
6. A statement why the requested reasonable accommodation is necessary to make the specific property accessible to the individual with a disability.

B. Review with other land use applications.

If the project for which the application for reasonable accommodation is being made requires approval of one or more other entitlements under this title, then the applicant shall file the application for reasonable accommodation under subsection A with the application for the other entitlement, for concurrent review and action.

17.198.050 Review authority.

A. Planning Director Review.

An application for reasonable accommodation shall be reviewed by the planning director if the application for reasonable accommodation is not filed with an application for another entitlement.

B. Other Reviewing Authority.

An application for reasonable accommodation submitted for concurrent review with another entitlement under this title shall be reviewed by the authority reviewing the other entitlement.

17.198.060 Review procedure.

A. Planning Director Review.

The planning director shall, within 30 days of acceptance of the application as complete, grant, grant with modifications, or deny an application for reasonable accommodation in accordance with section 17.198.070.

B. Other Reviewing Authority.

If the application for reasonable accommodation is submitted for concurrent review with another entitlement under this title, the decision to grant, grant with modifications, or deny the application shall be made by the authority taking action on the other entitlement under this title. The decision to grant, grant with modifications, or deny the request for reasonable accommodation shall be made in accordance with section 17.198.070.

17.198.070 Findings and decision.

A. Findings.

The decision to grant, grant with modifications, or deny an application for reasonable accommodation shall be in writing and shall be based on a finding of consistency with the Acts and shall take into consideration all of the following factors:

1. Whether the housing or housing related facilities, which are the subject of the request, will be used by an individual with a disability under the Acts.
2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.
3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.
4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a city program or law, including but not limited to land use and zoning.
5. Potential impact on surrounding uses.

6. Physical attributes of the property and structures.

7. Alternative reasonable accommodations which may provide an equivalent level of benefit.

B. Conditions of Approval.

In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required by this section.

17.198.080 Appeals.

A. Decision of Planning Director.

1. An applicant who is dissatisfied with a decision made by the planning director on an application for reasonable accommodation may appeal the planning director's decision to the planning commission. The appeal shall be filed within 30 days of the planning director's decision. Upon filing of the notice of appeal, the planning director shall set the matter for hearing before the planning commission to occur not later than 45 days from the date of filing. Notice of the appeal hearing shall be given by mail to the applicant not later than ten (10) days prior to the hearing. Except as provided otherwise in this subsection (A)(1), the procedural requirements for the hearing before the planning commission on appeal shall be governed by Chapter 17.200 of this title.

2. The decision of the planning commission on the appeal shall be made in accordance with section 17.198.070 and shall be final. Notwithstanding section 17.200.040, the decision of the planning commission on the appeal shall not be subject to call-up under 17.200.040.

B. Decision by Other Reviewing Authority.

A decision on an application for reasonable accommodation submitted for concurrent review with another entitlement under this title shall be subject to the same appeal rights and call-up procedures as apply to the other entitlement.

C. Reasonable Accommodation in Appeal Procedures.

An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

17.198.090 Fee.

Notwithstanding any other provision of this code, there shall be no fee imposed in connection with an application for reasonable accommodation, including appeals, under this chapter.

Section 4. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.