

Location:	Citywide
Proposal:	Recommendation to the City Council to adopt amendments to the City's Planning Code for a proposed new Reasonable Accommodations Ordinance.
Applicant:	City Planning Commission
Case Number:	ZT14006
Planning Permits Required:	Oakland Planning Code Amendment
General Plan:	All General Plan Categories
Zoning:	All Zoning Categories
Environmental Determination:	The proposed Reasonable Accommodations Ordinance would be an amendment to the Oakland Planning Code and relies on the previously certified 2007-2014 Housing Element Final EIR (2010)
Service Delivery District:	All
City Council District:	All
Status:	A meeting of the City Planning Commission Zoning Update Committee was held on January 22, 2014.
Action to be Taken:	Discuss and make recommendation to the City Council
Finality of Decision:	Recommendation to City Council
For Further Information:	Contact case planner Alicia Parker at (510) 238-3362, aparker@oaklandnet.com

SUMMARY

The City of Oakland is updating its Planning Code to include a Reasonable Accommodations Ordinance. This ordinance will provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. The ordinance would include two types of requests, "Category A" and "Category B". Category A requests would essentially formalize the City's current practice of approving, over-the-counter, relatively minor exceptions to development standards to accommodate requests such as wheelchair ramps in the setbacks. Category B requests would require approval by the Planning Director.

Establishment of a Reasonable Accommodations Ordinance was included as an action item in the City of Oakland's 2007-2014 Housing Element. Such an ordinance is consistent with both Federal and State fair housing laws.

The City Planning Commission is being asked to review and provide feedback on the draft Reasonable Accommodations Ordinance included in this report as **Attachment A**, and the draft Request for Reasonable Accommodations Form included as **Attachment B**.

BACKGROUND

The 2007-2014 Housing Element of the Oakland General Plan sets forth Policy 6.2 [Reasonable Accommodations] with associated actions. Included in the actions is a commitment to formalize the City's Reasonable Accommodations policy into a new ordinance. This report describes the proposed Reasonable Accommodations Ordinance intended to fulfill this commitment. The following section, Regulatory and Policy Framework, includes the full proposed policy and actions.

Adoption of a Reasonable Accommodations Ordinance is a requirement of the City of Oakland's 2007-2014 Housing Element. The Housing Element is one of seven mandated elements of the Oakland General Plan; State law requires every jurisdiction to update its Housing Element every five years. Preparation of the 2015-2023 Housing Element is underway, and the Reasonable Accommodations Ordinance must be adopted prior to adopting the next Housing Element update. Without an approved update of the Housing Element, the City may lose access to certain types of grant funding which the State has set aside for jurisdictions with adopted Housing Elements.

REGULATORY AND POLICY FRAMEWORK

Fair housing law is a vast area of law involving the United States Constitution, executive orders, federal statutes and regulations, the State constitution and fair housing law, and a myriad of federal and state court decisions interpreting these requirements. Below is a brief summary of the Fair Housing Act and the California Fair Employment and Housing Act.

Fair Housing Act and Fair Housing Act Amendments

The Fair Housing Act (42 U.S.C. 3601 et seq.) prohibits discrimination in the sale, rental, financing, or advertising of housing on the basis of race, color, religion, or national origin. Gender was added as a protected classification in 1974. The Fair Housing Act Amendments of 1988 added handicap (disability) and familial status and significantly strengthened enforcement mechanisms. The Fair Housing Act Amendments also impose an affirmative duty on all housing providers to provide "reasonable accommodation." This duty requires a housing provider to make changes to its rules, policies, and procedures to allow persons with disabilities equal access to housing.

The Fair Housing Act applies to zoning and land use decisions by local governments that restrict access to housing by people with disabilities and members of other protected groups. The Fair Housing Act prohibits discriminatory land use and zoning regulations that deny housing opportunities to people with disabilities.

California Fair Employment and Housing Act (FEHA)

The housing provisions of the Fair Employment and Housing Act (California Government Code Sections 12955 et seq.) (FEHA), a California statute adopted in 1980, prohibit discrimination based on race, color, religion, sex, national origin, familial status, and disability (the same categories as the federal Fair Housing Act), and also on the basis of marital status, ancestry, sexual orientation, and source of income. FEHA also prohibits land use decisions that discriminate based on the protected classifications. The requirements of FEHA are substantially the same as the requirements of the federal Fair Housing Act, including both non-discrimination provisions and the affirmative duty to provide reasonable accommodations in rules, policies, practices, or services to permit a disabled person the equal opportunity to use and enjoy a dwelling.

Zoning and Land Use

Local governments' land use and zoning actions concerning housing are subject to the federal Fair Housing Act, FEHA, and California Planning and Zoning Law. These laws prohibit the use of zoning for discriminatory purposes, and in some cases prohibit zoning laws that have a discriminatory effect on persons with disabilities. Under both federal and state fair housing laws, cities must provide reasonable accommodation in land use and zoning rules, policies and practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing.

City of Oakland 2007-2014 Housing Element

The City of Oakland 2007-2014 Housing Element describes the City's current procedures for ensuring reasonable accommodation as follows:

The City ensures that reasonable accommodations are made for persons with disabilities, through several means:

- Persons with disabilities can request special accommodation for exceptions to the Planning Code, or they can apply for variances to the Planning Code. The City does not have a reasonable accommodations ordinance, but rather, an informal procedure used by Planning and Building Division staff.
- Information is available through the City's website, and through the Mayor's Commission on Persons with Disabilities, regarding programs and procedures that can assist persons with disabilities access city services, and, if need be, reasonable accommodation for exceptions to the Planning and Building Codes.
- The City's ADA Programs Division ensures that requirements for accessibility are met throughout the City's programs

Additionally, the Oakland Housing Element includes the following policy and related action items to address reasonable accommodations for persons with disabilities:

Policy 6.2 REASONABLE ACCOMMODATIONS

Provide reasonable accommodations to persons with disabilities in access to public facilities, programs, and services.

Action 6.2.1 Incorporate Reasonable Accommodations into City Programs and Policies

The City's ADA Programs Division will continue to ensure that requirements for accessibility are met throughout the City's programs.

Action 6.2.2 Develop and Publicize Administrative Procedures

The City will develop written guidelines, clarifying and publicizing the existing administrative procedures for granting reasonable accommodation for all planning permits; to be followed by an ordinance amending the Planning Code, codifying these procedures, no later than one year after adoption of the Housing Element.

The Reasonable Accommodations Ordinance and request form presented in this report are meant to satisfy Action 6.2.2 of the 2007-2014 Housing Element.

REASONABLE ACCOMMODATIONS ORDINANCE AND PROCEDURES OVERVIEW

The draft Reasonable Accommodations Ordinance is included as **Attachment A**. The ordinance is described below.

The intent of the draft Reasonable Accommodations Ordinance is to provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing and also facilitate compliance with various state and federal fair housing laws. The purpose of the ordinance is to establish a procedure for persons with disabilities seeking fair access to housing to make requests for reasonable accommodation in the application of Oakland's zoning laws, rules, policies, practices and procedures.

The ordinance includes definitions for key terms. For example, a “disabled person” is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having such an impairment; or anyone who has a record of such impairment. Federal and state fair housing laws do not protect an individual’s current unlawful use of or addiction to controlled substances or other drugs, unless that individual has a separate disability.

The ordinance sets forth the application requirements which states that the City shall display notice of the Reasonable Accommodations policy at public counters, and that any person seeking a reasonable accommodations shall do so on a form provided by the Planning Department. The required information is listed (and further elaborated on in the actual Reasonable Accommodations form, included as **Attachment B**) including applicant information, current use of the property, basis for the claim that the individual has a disability under the Acts, etc.

The review procedure is established in the ordinance and summarized here. The Planning Director shall have the authority to consider and act on requests for reasonable accommodations. If the reasonable accommodation does not involve any other related application for discretionary approval, the Planning Director shall issue a written determination within 30 days and may: (1) grant the accommodation request, (2) grant the accommodation request subject to specified nondiscriminatory conditions of approval or (3) deny the request. If the request accompanies a related application, the request shall be processed and considered as part of the same proposal.

The ordinance presents two types of requests: “Category A” and “Category B”. Category A requests are relatively minor exceptions to the zoning rules (such as a homeowner who seeks an exception to a setback requirement for the construction of a wheelchair ramp to accommodate a disabled family member who lives at the house). Some Category A requests may be evaluated similar to the city’s current Small Project Design Review Procedure. That is, they may be decided over the counter.

A proposal will qualify as a Category A request if it meets both of the following:

- A. The proposal is limited to one or more of the types of work listed as “Category A” request; and
- B. That the request for reasonable accommodation is necessary to make a specific dwelling available to an individual protected under the Acts.

Category B requests involve requests for accommodation from residential density regulations, distance separation requirements, and land use activities not permitted by the Planning Code. Category B requests will be considered by the Planning Director. Examples of Category B requests include a single-family homeowner applying to convert a garage to a day use area for disabled relatives (potentially eliminating on-site parking), an operator at a community care facility applying to increase the number of participants at a special needs community care facility (potentially increasing the floor area of the facility beyond what would otherwise be permitted by the zone) and a special needs housing developer seeking to develop a multi-family building in a low density commercial zone, bordered by a residential district, because the property is in close proximity to the mental health services which will be used by the residents with disabilities.

In making a determination to grant a requested accommodation, the decision-making body shall make all of the following findings for Category B requests:

1. That the request for reasonable accommodation is necessary to make a specific dwelling available to an individual protected under the Acts;
2. That there are no alternative accommodations which may be equally beneficial to the applicant;

3. That the requested accommodation will not require a fundamental alteration to zoning laws, rules, policies, practices and procedures;
4. That the requested accommodation will not impose an undue financial or administrative burden on the City.

Applicants for Category A and Category B requests may appeal the Planning Director's decision; otherwise, the decision becomes final 10 days after the initial decision.

KEY ISSUES

The reasonable accommodations ordinance described in this report formalizes existing practice and introduces additional ways for persons with disabilities to gain access to housing, consistent with Federal and State law. The draft ordinance was presented to the following advisory bodies for comment.

On January 22, 2014, the proposed new Reasonable Accommodations Ordinance was presented to the City Planning Commission's Zoning Update Committee (ZUC). The ZUC ultimately recommended forwarding the proposal to the full Planning Commission, after making comments summarized below:

- Comment: Specify the amount of requests for Category B requests the City currently receives.
 - *Staff Response:* The City receives few requests for accommodations due to disabilities.
- Comment: Include examples of Category B requests.
 - *Staff Response:* Examples of Category B requests have been added to page 5 of the staff report.
- Comment: Elaborate on how the fees were developed. ZUC members felt the fee should not be a deterrent or present a hardship to disabled residents.
 - *Staff Response:* A fee of \$450 is proposed to cover the administrative costs of processing requests for reasonable accommodations; this fee is based on an existing Design Review Exemption fee.
- Comment: Describe the outer limits on Category B requests.
 - *Staff Response:* The findings for Category B serve to provide the outer limit on requests. Specifically, the requested accommodation must not "...require a fundamental alteration to zoning laws, rules, policies, practices and procedures."

On February 10, 2014, the proposed new Reasonable Accommodations Ordinance was presented to the Mayor's Commission on Persons with Disabilities (MCPD). The commission members made the following comments:

- Comment: How will the public be made aware of the new ordinance?
 - *Staff Response:* The Reasonable Accommodations Ordinance announcement will be available at the Planning Department counter. Planning staff will explore other options including partnering with the City's ADA Programs and MCPD to announce the availability of Reasonable Accommodations on their websites and in their collateral material.
- Comment: Will notice of the Reasonable Accommodations Ordinance be made available in different formats?
 - *Staff Response:* Planning staff will work with the City's ADA Programs to format the notice appropriately to meet the needs of Oakland's residents with disabilities.

- Comment: Does the Planning Department have a hardship relief mechanism for reducing/waiving permit fees?
 - *Staff Response:* Not currently.
- Comment: How was the ordinance constructed?
 - *Staff Response:* The ordinance was based on fair housing law provisions and best practices from other cities.

The City's ADA Programs Division also submitted comments on the draft ordinance. The Division made the following comments:

- Comment: The Division recommended against asking an applicant to state the nature of their disability with the rationale that this could create the appearance, and potential, that applications would be screened on the basis of the stated disability.
 - *Staff Response:* Originally, a question related to the applicant's basis for the claim that the individual had a disability was in the draft form. This question has since been removed.
- Comment: The Division recommended against requiring an applicant to identify whether the intended use was for a group home.
 - *Staff Response:* The original draft form had a series of questions related to group homes, which have been removed to eliminate any perception that the City is screening applications or applying more scrutiny for group home applications.
- Comment: The Division recommended including information about an applicant's rights and the accommodation process.
 - *Staff Response:* A "Frequently Asked Questions" section was added to the Reasonable Accommodations form with information about who qualifies as a person with a disability, and how "reasonable accommodation" is defined, as well as how an applicant can demonstrate that the requested accommodation is necessary and what to do if a request for reasonable accommodation is denied.
- Comment: The Division recommended following the Americans with Disabilities Act guidance on surcharges. The Act prohibits surcharges for reviewing reasonable accommodations.
 - *Staff Response:* The "surcharges" prohibited by the ADA Title II Technical Assistance Manual are, by their definition, an additional charge or payment. Charging a fee to cover staff costs is distinguishable from the surcharge example provided in the Technical Assistance Manual. Further, the City of San Jose charges \$695 for reviewing the application and \$200 for public noticing. Oakland is proposing to charge a \$450 fee (similar to the Design Review Exemption fee currently charged for over-the-counter design review).
- Comment: The Division recommended eliminating any public noticing period – regardless of the complexity of the request.
 - *Staff Response:* Originally the draft ordinance included a noticing requirement for Category B permits to include noticing neighbors within 300 feet of the subject property and posting a large sign on the site for 17 days. The proposal now is to only notice those neighbors adjacent to the project site and directly across the street abutting the project site in addition to posting a large sign on the site for 10 days.

- Comment: The Division recommended removing from the draft ordinance references to “other or related discretionary permits” because the policy is about requests for reasonable accommodations and should not be conflated with the applicability of general zoning rules.
 - *Staff Response:* The reference to reviewing requests for reasonable accommodations with other land use applications provides the applicant with useful information about how the Planning Department will review proposals. For example, a request for an exception to the height limit for an elevator shaft that accompanies a proposal for a new single family home would need to be disclosed, as only the exception to the height limit for an elevator shaft would qualify for a reasonable accommodation; the remaining project would need to go through the normal permitting process.
- Comment: The Division recommended including a definition for “Reasonable Accommodations”.
 - *Staff Response:* The draft ordinance includes the following definition: “Reasonable Accommodations” means a request to modify land use, zoning and building regulations, policies, practices, or procedures in a manner that does not impose an undue financial or administrative burden on the City of Oakland or constitute a fundamental alteration to its Zoning and Planning Program.

ENVIRONMENTAL REVIEW

The proposed amendments to the Planning Code rely on the previously certified 2007-2014 Housing Element Final EIR (2010), which provides analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code amendments. The proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the Housing Element EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR.

RECOMMENDATION

Staff recommends that the Planning Commission review the Draft Reasonable Accommodations Ordinance and Form and provide any feedback and forward the item to the City Council.

Prepared by:



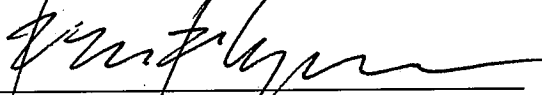
Alicia Parker, Planner II

Reviewed by:



Ed Manasse, Strategic Planning Manager

Approved for forwarding to the
City Planning Commission:



RACHEL FLYNN, Director
Department of Planning and Building

Attachments:

- A. Draft Reasonable Accommodations Ordinance
- B. Draft Request for Reasonable Accommodations Form

Chapter 17.131

REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES

Sections:

- 17.131.010 Title, purpose, and applicability.**
- 17.131.020 Definitions.**
- 17.131.030 Notice of Availability; Application Requirements.**
- 17.131.040 Required Information.**
- 17.131.050 Review procedures.**
- 17.131.060 Findings.**
- 17.131.070 Noticing Period.**
- 17.131.080 Finality of Decision and Appeal of Determination.**

17.131.010 Title, purpose and applicability.

- A. Title and Intent. The provisions of this chapter shall be known as the Reasonable Accommodations Policy and Procedure regulations. The intent of the Reasonable Accommodations Policy and Procedure regulations is to provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. This Chapter will facilitate compliance with federal and state fair housing laws, and promote housing opportunities for residents of Oakland.
- B. Purpose. The purpose of this Chapter is to establish a procedure for persons with disabilities seeking fair access to housing to make requests for reasonable accommodation in the application of Oakland's zoning laws, rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the United States Code (the "Fair Housing Act") and Section 12955 of the California Government Code (the "California Fair Employment and Housing Act"), which prohibit local government from refusing to make reasonable accommodations in policies and practices when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.
- C. Applicability. 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.

17.131.020 Definitions.

"Acts" means the "Fair Housing Act" (Section 3601 et seq. of Title 42 of the United States Code) and the "California Fair Employment and Housing Act" (Section 12955 et seq. of the California Government Code).

"Disability" shall have the same meaning as the definition of "disability" in Section 12955.3 of the California Government Code; specifically, the definitions of "mental disability"

in Section 12926 (j) and “physical disability” in Section 12926 (l) of the California Government Code.

“Disabled Person” is any person who has a physical or mental impairment that 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. Federal and State fair housing laws do not protect an individual’s current unlawful use of or addiction to controlled substances or other drugs, unless that individual has a separate disability.

“Reasonable Accommodations” means a request to modify land use, zoning and building regulations, policies, practices, or procedures in a manner that does not impose an undue financial or administrative burden on the City of Oakland or constitute a fundamental alteration to its Zoning and Planning Program.

17.131.030 Notice of Availability; Application Requirements.

A. Notice of the City of Oakland’s Reasonable Accommodations Policy and Procedure shall be displayed at public information counters in the planning and building offices of the City.

B. Any person (or his or her representative) who requires reasonable accommodation because of a disability shall make such a request to the City on a form provided by the Planning Director, or his or her designee. An administrative fee will be charged to process the application, as shown in the Master Fee Schedule.

C. Review with other land use or design review applications. If the project for which the request is being made also requires one or more unrelated discretionary approvals (including, but not limited to, design review, conditional use permit, variance or sub-division), then the applicant shall file the request for reasonable accommodation together with any unrelated application for discretionary approval. All applications for discretionary approval shall be considered concurrently with the request for reasonable accommodation.

17.131.040 Required information.

The applicant shall provide the following information on a reasonable accommodation application form provided by the Planning Division:

- A. Applicant’s name, address and telephone number.
- B. Property owner’s name and address.
- C. Address and Assessor’s parcel number of the property for which the request is being made.
- D. Current use or activity on the property.
- E. Photographs and/or drawings of the property and structure (i.e. floor plan and site plan), and proposed alterations to the property.
- F. Description of the requested accommodation, and the zoning code provision, regulation, policy or procedure for which accommodation is being requested.
- G. Reason that the requested accommodation is necessary for an individual with a disability to use and enjoy the dwelling and that the accommodation is for the tenant/resident of the property.
- H. Potential impact of accommodation to surrounding land uses and neighbors.

17.131.050 Review procedures.

A. Authority. The Planning Director, or his or her designee, shall have the authority to consider and act on requests for reasonable accommodation and shall make reasonable accommodations in rules, policies, practices, or services when those accommodations may be necessary to afford persons with disabilities equal opportunities to use and enjoy the dwelling.

1. For requests for reasonable accommodation not involving any unrelated applications for discretionary approval, the Planning Director, or his or her designee, shall issue a written determination within thirty (30) days of the date of receipt of a complete application form and may: (1) grant the accommodation request; (2) grant the accommodation request subject to specified nondiscriminatory conditions of approval; or (3) deny the request. All written determinations shall give notice of the right to appeal, if any, as specified in Section 17.131.090. The notice of determination shall be sent to the applicant by first class mail.

2. For requests for reasonable accommodations involving any unrelated applications for discretionary approval, the application for reasonable accommodation shall be processed and considered as part of the same proposal, and the decision-making body shall act on all permits at the same time.

B. Types of Requests

1. "Category A" Requests

Requests for accommodation from development regulations not specified as a "Category B" request (see item 2 below), including but not limited to *setbacks*, *building height limits* and *parking regulations* in the Planning Code, or for any additions to residential facilities which meet the definition of a "Small Project," as defined in Section 17.136.030 (B), shall be considered "Category A" requests.

2. "Category B" Requests

Requests for accommodation from residential *density* regulations in the Planning Code; *distance separation requirements* in the Planning Code; *land use activities* not permitted by the Planning Code; any additions to residential facilities which meet the definition of "Regular design review" as defined in Section 17.136.040 (A); and any other accommodations request, under the discretion of the Planning Director, shall be considered "Category B" requests.

C. Procedure

1. The applicant shall submit a completed reasonable accommodation application form to the Planning Director, or his or her designee.

2. Whenever reasonable accommodation is requested for a proposal also requiring one or more unrelated land use permits, including but not limited to a design review, conditional use permit, planned unit development permit, or variance, the application for reasonable accommodation shall be submitted with the application for said unrelated permit(s) and shall be processed and considered as part of the same proposal.

3. The applicant shall follow the noticing procedures in Section 17.131.080 (A) [for "Category A" requests] or Section 17.131.080 (B) [for "Category B" requests], as applicable. Where any provision or requirement pursuant to an unrelated permit application imposes overlapping or contradictory noticing procedures, that noticing provision which imposes a higher standard shall control.

4. In reviewing a request for a reasonable accommodation, the decision-making body shall consider information in the completed reasonable accommodation application form,

factors described in Section 17.131.060 and 17.131.070, and any additional information consistent with this Chapter. The decision-making body may consult with staff of the City's Americans with Disabilities Act (ADA) Programs Division during the review period.

5. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

17.131.060 Criteria for "Category A" Requests

A proposal will qualify for "Category A" Request if it meets each of the provisions set forth below.

- A. The proposal is limited to one or more of the types of work listed as "Category A" request in 17.131.050 B(1);
- B. That the request for reasonable accommodation is necessary to make a specific dwelling available to an individual protected under the Acts.

17.131.070 Findings for "Category B" Requests.

In making a determination to grant a requested accommodation, the decision-making body shall make all of the following findings for "Category B" requests:

1. That the request for reasonable accommodation is necessary to make a specific dwelling available to an individual protected under the Acts;
2. That there are no alternative accommodations which may be equally beneficial to the applicant;
3. That the requested accommodation will not require a fundamental alteration to zoning laws, rules, policies, practices and procedures.
4. That the requested accommodation will not impose an undue financial or administrative burden on the City;

None of the findings of this section are intended to supersede any other findings which might also be required for a discretionary permit that is reviewed concurrently with the request for accommodation (see Section 17.131.030 (C)).

17.131.080 Noticing Period.

A. "Category A" Requests. No public notice period is required for "Category A" requests.

B. "Category B" Requests. The notice requirement for "Category B" requests shall be the same as those set forth in the Track Three Small Project Design Review noticing procedure detailed in Section 17.136.030(C)(3) of the Oakland Planning Code.

17.131.090 Finality of Decision and Appeal of Determination.

A. "Category A" and "Category B" Requests.

1. For requests for reasonable accommodations not involving one or more unrelated land use permits, a decision by the Planning Director, or his or her designee, shall become final ten (10) calendar days after the date of initial decision, unless appealed to the City Planning Commission by the applicant or the adjacent property owners who received notification of the request for reasonable accommodation in accordance with the administrative appeal procedure in Chapter 17.132. In the event that the last date of appeal falls on a weekend, holiday or when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Appeals considered by the City Planning Commission under the procedure specified in Chapter 17.132 shall be final immediately and are not ultimately appealable to the City Council.

2. For requests for reasonable accommodations involving one or more unrelated land use permits, the decision-making body shall act on all permits at the same time. The finality of decision and appeal requirements applicable to the unrelated land use permits shall control.



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REQUEST FOR REASONABLE ACCOMMODATIONS

Fair Housing Protections for Individuals with Disabilities

Herein you will find information on the City of Oakland's Reasonable Accommodations policy and procedure. The intent of the Reasonable Accommodations policy is to provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. See Oakland Planning Code Chapter 17.131 for the complete ordinance.

FREQUENTLY ASKED QUESTIONS

WHO QUALIFIES AS A PERSON WITH A DISABILITY?

A person with a disability is anyone with a physical or mental impairment that 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. Federal and State fair housing laws do not protect an individual's current unlawful use of or addiction to controlled substances or other drugs, unless that individual has a separate disability. Persons with disabilities are protected under the Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act.

WHAT IS A "REASONABLE ACCOMMODATION"?

Federal and state fair housing laws require that the City provide you with reasonable accommodation in rules, policies, practices and procedures that may be necessary for people with disabilities to have equal opportunity to use and enjoy a dwelling. More specifically, the City must provide you with reasonable accommodation in decisions and procedures regulating the siting, funding, development or use of housing, including housing related services or facilities.

Reasonable accommodations that will be granted by the City of Oakland are those that do not impose an undue financial or administrative burden on the City, or fundamentally alter the City of Oakland's Planning Code. Whether a request may impose an undue financial or administrative burden will be determined on a case-by-case basis. A request for accommodation will be found to fundamentally alter the City of Oakland's zoning policies and regulations if the requested accommodation is so far reaching that it would undermine the basic purpose of the Ordinance.

Examples of reasonable accommodations include:

- wheelchair ramps located in the setbacks of residential property;
- exceptions to the height limits to allow a tower for an elevator to enable a person using a wheelchair to access all stories of a house;
- waiving parking requirements to convert a garage into a day use area for relatives living in the home who rely on wheelchairs, (when no other room could be used as such);
- an operator of a community care facility applying to increase the number of participants at a special needs care facility (beyond the number permitted by the zoning district); and a

- special needs housing developer seeking to develop a multi-family building in a low density commercial zone, bordered by a residential district, because the property is in close proximity to the mental health services which will be used by the residents with disabilities.

***Please Note:** This process refers to a limited set of applications; this process is not for qualified individuals to make aesthetic changes to their property or to unnecessarily avoid regulations.*

HOW DOES AN APPLICANT DEMONSTRATE THAT THE REQUESTED ACCOMMODATION IS “NECESSARY”?

To establish that the accommodation is necessary, it must be shown that, without the accommodation, people with disabilities will be denied the equal opportunity to live in a residential neighborhood. In other words, “but for the accommodation,” the housing would not be available and a housing opportunity for people with disabilities would be denied. Determining whether an accommodation is necessary entails a “fact specific inquiry regarding each such request,” meaning that each request is evaluated based on the particular set of facts.

WHY DOES THE CITY REQUIRE PUBLIC NOTICING FOR CERTAIN TYPES OF REASONABLE ACCOMMODATION REQUESTS?

The City is required to make reasonable accommodation to its zoning regulations to enable access to housing for persons with disabilities. Part of the process for more complex reasonable accommodations requests involves a public notice requirement as a courtesy to affected neighbors. The notice is for informational purposes only and the Planning Director will use objective findings to make a decision about the request for reasonable accommodations. The possible adverse impacts in the surrounding areas cannot defeat the needs of the persons with disabilities to have access to housing.

WHAT IF MY REQUEST FOR REASONABLE ACCOMMODATION IS DENIED?

The City may deny requests for accommodations that would impose an undue financial or administrative burden on the City or fundamentally alter the nature of the City’s zoning program. Such determinations will be made on a case-by-case basis. Within 10 days of the date of the administrative decision, an appeal from such decision may be taken to the City Planning Commission by the applicant or adjacent neighbors receiving notice of the request for reasonable accommodation. For details on the appeals process, see Chapter 17.131.090 of the Oakland Planning Code.

Sources:

Fair Housing Reasonable Accommodation: A Guide to Assist Developers and Providers of Housing for People with Disabilities in California, Mental Health Advocacy Services, Inc.

Model Ordinance for Providing Reasonable Accommodation Under Federal and State Fair Housing Laws, Mental Health Advocacy Services, Inc.

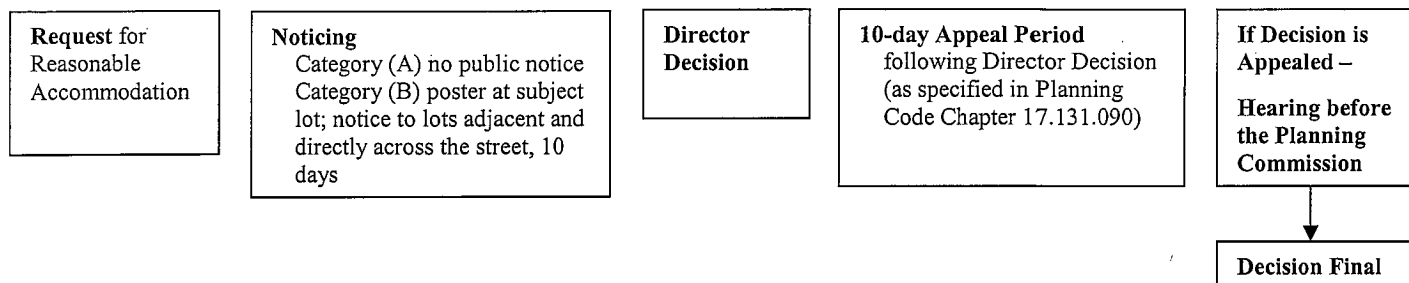
PROCESS

If no other land use permit is required, you may submit a request for reasonable accommodation directly to the Planning and Zoning Division at regular zoning counter hours. The zoning counter hours are provided below. If an unrelated land use permit such as a Conditional Use Permit or an application for Regular Design Review is also required, the request for Reasonable Accommodation should be submitted concurrently with the unrelated land use permit(s). When submitted concurrently, the submittal procedure will be the same as for the land use permit. Typically, such permits require an appointment for submittal.

ZONING COUNTER HOURS

M, T, Th, F 8:00 a.m. - 4:00 p.m.
Wednesday 9:30 a.m. - 4:00 p.m.

See Oakland Zoning Code Section 17.131.050 for the Reasonable Accommodations review procedure. A summary flowchart of the Reasonable Accommodations process is provided below.



PROPERTY OWNER AND APPLICANT INFORMATION

NAME OF APPLICANT: _____

RELATIONSHIP TO PERSON(S) WITH DISABILITY WHO RESIDES AT THE SUBJECT

PROPERTY: _____

AFFILIATION OR ORGANIZATION (IF APPLICABLE): _____

DAYTIME PHONE NUMBER: _____

APPLICANT'S ADDRESS: _____

PROPERTY ADDRESS/ ASSESSOR'S PARCEL NUMBER: _____

PROPERTY OWNER NAME (IF DIFFERENT FROM ABOVE): _____

PROPERTY OWNER PHONE NUMBER: _____

PROPERTY OWNER'S MAILING ADDRESS: _____

GENERAL INFORMATION

WHAT TYPE OF BUILDING IS THE SUBJECT OF THE REQUEST FOR ACCOMMODATION:

- ☐ Single family residential
- ☐ Duplex
- ☐ Apartment building
- ☐ Other, describe: _____

CURRENT USE OR ACTIVITY ON THE PROPERTY _____

DESCRIPTION OF THE REQUESTED ACCOMMODATION, AND THE ZONING CODE PROVISION, REGULATION OR POLICY FOR WHICH ACCOMMODATION IS BEING REQUESTED. PLEASE CITE THE APPLICABLE CODE PROVISIONS AND THE ACCOMMODATION REQUESTED FROM THE PROVISION.

- ☐ Photographs and/or drawings of the property and structure (i.e. floor plan and site plan), and proposed alterations to the property are attached to this application.

DESCRIBE WHY THE REQUESTED ACCOMMODATION IS NECESSARY FOR THE TENANT/RESIDENT(S) OF THE PROPERTY WITH THE DISABILITY TO USE AND ENJOY THE DWELLING.

DESCRIBE THE POTENTIAL IMPACT OF THE ACCOMMODATION TO SURROUNDING LAND USES AND NEIGHBORS.

To be completed if Applicant is not the Property Owner:

I authorize the applicant indicated above to submit the application on my behalf. _____

Signature of Property Owner