



Item No:
Meeting Date: 3/11/14

To: Planning Commission

Date: 3/3/2014

Authorized By: Ron Munekawa,
Chief of Planning

By: Julia Klein, Associate Planner
(650) 522-7216
jklein@cityofsanmateo.org

Subject: Zoning Code Amendments for Reasonable Accommodation (PA13-071)

RECOMMENDATION

That the Planning Commission review the zoning code amendment for Reasonable Accommodation and recommend Council adoption of the amendments.

BACKGROUND

The City of San Mateo's Housing Element policy *H2.16 Special Needs Groups* calls for the city to review its rules, policies, and procedures and make changes that may be necessary to ensure that individuals with disabilities are afforded equal access to housing. The purpose of the zoning code amendment is to provide a process for individuals with disabilities to make requests for reasonable accommodation in the application of zoning requirements.

Over the past several years, the federal and state governments have enacted a series of laws to prohibit policies that act as a barrier to individuals with disabilities who are seeking housing; these include the Federal Fair Housing Amendments Act of 1988, California's Fair Employment and Housing Act, and the State's Housing Element law. Additionally, the Housing and Urban Development Department (HUD) requires that cities utilizing Community Development Block Grant (CDBG) funds prepare an "Analysis of Impediments to Fair Housing Choice." These legislations require jurisdictions to take action to eliminate regulations and practices that serve as a barrier and in denying housing opportunities to individuals with disabilities. In adopting the current Housing Element, the City Council acknowledged the importance of this issue and

included a requirement for staff to analyze barriers in the city's zoning ordinance and bring forth recommendations for code amendments to address impediments. For more background, please refer to Attachment 2.

Consistent with the aforementioned federal and state law, the San Mateo Housing Element contains policies and programs to implement fair housing laws and to provide housing for special need groups within the city. The specific Housing Element program being implemented is:

H 2.16: Special Needs Groups.

Continue existing support for programs that assist special needs groups (the elderly, large families, female heads of households, and the disabled).

- 2. Finalize the evaluation of governmental constraints to the development and rehabilitation of housing for people with disabilities. Develop strategies to eliminate identified constraints where appropriate. As part of this effort, codify a formal reasonable accommodations procedure as needed based on the findings of the evaluation.*

(NOTE: For the full text, please refer to Attachment 1.)

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 (Attachment 4).

Reasonable Accommodation Ordinance

The proposed ordinance is intended to provide 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.

One key element in the development of a citywide reasonable accommodation procedure is establishment of appropriate findings that reflect the intent and specific language of both the federal and state fair housing statutes. This perspective differs from the typical zoning variance in that the focus of review is the need of the individual with disabilities in order for him/her to overcome barriers to housing, rather than an emphasis on the topographical characteristics of the site, the unique character of the lot, or context. In the case of reasonable accommodation, the focus is on the special need(s) of the individual to utilize his/her home or dwelling unit, including secondary dwelling units (aka in-law units), which is directly related to the individual's disability.

As proposed in the draft ordinance, a new process would be created in which the Zoning Administrator, or their designee, would review the request for reasonable accommodation and consider the following:

1. Reasonableness of the Improvement. Consistent with State and Federal law, the reasonableness of the request for relief from various zoning requirements shall be considered.
2. Link Between a Person's Disability and the Improvement. As part of the process of assessing reasonableness, there should be a direct link between the improvement and the disability of the person residing in the unit for which the relief is being requested. This is intended to make clear that due to the physical attributes of the subject property or the structures on site, the requested reasonable accommodation is necessary to make the specific housing available to an individual with a disability.
3. Housing for People to Remain in the City and to Address Special Housing Needs. As the population of the City ages, requests for reasonable accommodation will enable long-term residents to remain in the City. In addition, a reasonable accommodation process will assist in providing housing for persons living with disabilities.
4. Removal of the Improvement When the Person No Longer Lives in the Housing Unit. Once a request for reasonable accommodation has been granted, it is the City's intention that the improvement(s) should be allowed to remain as long as the person with the disability resides in the housing unit. Once the unit is vacated, the improvement should be removed.
5. Cases Where an Improvement May Remain. An accommodation that is granted shall not run with the land unless it is found that the modification is physically integrated on the property and cannot feasibly be removed or altered.

6. Conditions of Approval. In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required. Conditions may be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation be removed once those structures or physical design features are unnecessary to afford the individual with a disability for whom the reasonable accommodation was granted the use and enjoyment of the dwelling.

The Zoning Administrator, or their designee, 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 Zoning Administrator, or their designee, 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 Zoning Administrator, or their designee, 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 Planning Commission and thereafter to the City Council, as outlined under San Mateo Municipal Code (SMMC) 27.08.090 Appeals. 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 Pleasant Hill, Santa Rosa, and San Jose.

Proposed Findings for Reasonable Accommodation

The decision to grant, grant with modifications, or deny an application for reasonable accommodation shall be based on a finding of consistency with the Federal Fair Housing Amendments Act of 1988 and California’s Fair Employment and Housing Act. The following are factors to be considered:

- (a) The housing, which is the subject of the request, will be used by an individual disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
- (b) Due to the physical attributes of the subject property and the structures on site, the requested reasonable accommodation is necessary to make the specific housing available to an individual with a disability under the Federal Fair Housing Act and the California Fair Employment and Housing Act.

- (c) The requested reasonable accommodation would not require a fundamental alteration in the nature or effect of the City's land use and zoning ordinances, programs or policies.
- (d) The proposed changes to the subject property and structures, would not adversely impact surrounding properties or uses.
- (e) The requested reasonable accommodation would not create a "direct threat", which is a significant risk to the health or safety of others, that cannot be eliminated or reduced to an acceptable level by further modification of the City's policies, practices, or procedures.
- (f) There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the City's applicable rules, standards and practices.
- (g) The requested reasonable accommodation is consistent with the Federal Americans with Disabilities Act, the Federal Fair Housing Act, and the California Fair Employment and Housing Act.
- (h) The requested reasonable accommodation would not impose an undue financial or administrative burden on the City.

Additionally, similar "reasonable accommodations" that relate solely to requirements contained in the Building Code may be necessary. The applicant would pursue these requests directly with the Building Division and submit any necessary permit application(s) and supporting documents to demonstrate compliance.

BUDGET IMPACT

The draft reasonable accommodation code includes a proposed Application Fee and Appeal Fee that will be set by City Council annually as part of the Comprehensive Fee Schedule.

ENVIRONMENTAL DETERMINATION

California Environmental Quality Act (CEQA) Article 12, section 15183, provides an exemption because zoning code amendments for reasonable accommodations are necessary to implement the Housing Element of the City of San Mateo General Plan; and the action to adopt a process for reasonable accommodation is covered within the City's adopted General Plan and as such has been mitigated, if required, as part of the General Plan Environmental Impact Report (EIR) and Housing Element Negative Declaration (MND).

NOTICE PROVIDED

Meeting notice requirements were met. Specifically, the meeting was published in the Examiner newspaper, placards were posted at three City facilities (main library and two branch libraries) at least 10-days prior to the meeting. Additionally, information was posted on the

City's Housing Element update website and emails were sent to those who have signed up for the interested parties list for reasonable accommodation.

ATTACHMENTS

1. 2009 Housing Element - Policy H2.16 Special Needs Group (2)
2. Background for Reasonable Accommodation
3. Proposed Zoning Code Amendment
4. Examples from Other Jurisdictions

CC (AR and attachments via Email)

Interested Parties (if email address was provided)