



COUNTY OF PLACER
Community Development Resource Agency

John Marin, Agency Director

PLANNING

Michael J. Johnson
Planning Director

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Michael J. Johnson, Planning Director
DATE: May 13, 2008
SUBJECT: Reasonable Accommodation Ordinance (ZTA 20050609)

ACTION REQUESTED

The Board is being asked to consider a Zoning Text Amendment related to "Requests for Reasonable Accommodations" as recommended by the Planning Commission at a public hearing on March 27, 2008.

BACKGROUND

The County is charged by State statute with the responsibility for updating its Housing Element. The Housing Element is a planning document (part of the General Plan) that guides the County's housing efforts. The Element not only provides general goals, objectives and policies but also proposes implementation programs to meet the stated goals and objectives. The Element must also address its potential and actual governmental constraints to meeting the housing needs of special households, which includes disabled (physical and mental) households. Existing law also requires the State Department of Housing and Community Development (HCD) to evaluate each Housing Element, for consistency with State Planning and Zoning Law. Through the Housing Element the County is responsible for identifying and removing barriers to encourage the development of a variety of types of housing for these special needs households.

Housing that is accessible to people with disabilities has been identified as a special housing need in the Housing Element. Policy H.2, Program 52 of the Housing Element calls for the adoption of an ordinance to establish a process for making requests for reasonable accommodations to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities. Specifically, Program 52 states:

Pursuant to the Fair Housing Amendments Act of 1988 and the requirements of Chapter 671, Statutes of 2001 (Senate Bill 520), the County will adopt an ordinance to establish a process for making requests for reasonable accommodations.

Both the Federal Fair Housing Act and the California Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodations (i.e., modifications or exceptions) in their zoning laws and other use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling."

PROJECT DESCRIPTION:

Reasonable Accommodation Ordinance Summary

The Reasonable Accommodation Ordinance has ten sections that establish a formal procedure for persons with disabilities to make a request to the County for reasonable accommodations in the application of the County's land use regulations. The ordinance also provides relevant and reasonable criteria for the County to use when considering such requests. The process is summarized below:

Application - The ordinance establishes a requirement for an applicant to submit to the County factual and background information (e.g., location of property, basis for request) relative to the request for reasonable accommodation. Information related to individual's disability submitted to the County as part of a reasonable accommodations request would be kept confidential. If the request is being made in conjunction with another discretionary approval, such as a Use Permit, then the request is required to be submitted and reviewed concurrently with the application for the discretionary approval.

Review - Requests for reasonable accommodation will be reviewed by the Planning Director (or the Director's designee), and/or if submitted with another discretionary land use application, then the request will be reviewed by the authority reviewing the discretionary land use application (i.e., Zoning Administrator, Planning Commission, or the Board of Supervisors).

Noticing- Requests for reasonable accommodation will be noticed. The notice will be mailed to the surrounding properties within one hundred (100) feet of the subject site. The notice will describe the request and indicate that any person may request a public hearing on the request. If a hearing is requested, then the Planning Director shall hold a public hearing.

Decision- The granting of a conditional approval or denial of a request for reasonable accommodation(s) must be based on consideration of factors such as: making specific housing available to an individual with a disability; the request will not impose an undue financial or administrative burden on the County nor fundamental alteration in the nature of a County program or law; potential impact on surrounding uses; and physical attributes of the property and structures. Decisions may be appealed as described in Section 17.60.110 of the Zoning Ordinance (Appeals).

Fees - The ordinance proposes no fee for an application requesting reasonable accommodation. However, if the project for which the request is being made requires other planning permit(s) or approval(s), fees for applicable applications will apply. In addition, fees for appeals to decisions on reasonable accommodation are the same as those fees for appeals as established by the County's Fee Ordinance.

Reasonable Accommodation Ordinance Application

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling. A typical reasonable accommodation example would be to waive a setback requirement so that a paved travel path or ramp can be provided to residents who have mobility impairments.

Prior to the adoption of this ordinance, the only formal process available to respond to requests for reasonable accommodation were the Variance and/or Conditional Use Permit processes (i.e., setback reductions for a ramp required a Variance). However, the criteria for granting Variances and Conditional Use Permits differ from those which govern the determination of whether a requested accommodation is reasonable under the fair housing laws. The existing Housing Element requires that the County establish a procedure within the County Zoning Ordinance, consistent with the Federal and

State Fair Housing Acts, for granting reasonable accommodations. The proposed ordinance makes it clear that under certain circumstances reasonable accommodations may be granted without the requirements for a Variance application.

In recent years, the Planning Director, under direction from County Counsel, has granted reasonable accommodations without Variances based on the existing fair housing laws. For example, a request to install a second kitchen in a single-family residence to provide special food preparation for a disabled person has been granted. The Planning Director has also granted reasonable accommodations for the construction of a pool and other play equipment within a setback area for disabled children's therapy and enjoyment of normal play activities.

Based on the existing fair housing laws, in 2003 the Planning Commission considered a request for reasonable accommodations to allow an existing residential care home to increase the number of residents allowed with a Minor Use Permit. In that case, there were many factors, including the property size, location, and previous use as a residential care home, that the Planning Commission and on appeal the Board of Supervisors considered before granting the Minor Use Permit. The proposed ordinance does not change the existing zoning regulation for residential care homes. The proposed ordinance provides a process and finding under which reasonable accommodations may be considered. The County recognizes that determining what is reasonable depends on multiple factors and must be decided on a case-by-case basis. The County also recognizes that not all requested accommodations of rules or policies are reasonable and what is "reasonable" in one circumstance may not be "reasonable" in another. This ordinance simply provides for a procedure for handling requests for reasonable accommodations consistent with fair housing.

PLANNING COMMISSION HEARING:

The Planning Commission conducted two public hearing on the proposed Reasonable Accommodation Ordinance the first at its January 24, 2008 meeting and the second at its March 27, 2008 meeting. At the January 24, 2008 meeting, the Planning Commission had questions/concerns regarding confidentiality, public notification and fees and requested staff provide additional information. The Commission requested that the proposed Reasonable Accommodation Ordinance clarify that disability-related information submitted to the County as part of a reasonable accommodations request would be kept confidential. To address confidentiality concerns, a sentence was added to the draft ordinance stating disability information shall be kept confidential and shall not be included in a public file. This provision is consistent with the provisions of the Public Records Act. Also, the Commission discussed the possibility of waiving the "appeal" fee. In addition, the Commission requested more information about noticing for reasonable accommodation requests. The draft ordinance that was presented to the Planning Commission at the January 24, 2008 hearing was based on the City of Santa Rosa's ordinance and a model ordinance developed by Mental Health Advocacy Services. Neither of these ordinances requires noticing unless the reasonable accommodation request was made with other discretionary approvals. Public notification for requests and/or decisions for reasonable accommodations are not required by law. Staff researched other jurisdictions' Codes in order to determine what notification (if any) other jurisdictions provide for reasonable accommodation requests. Staff provided examples of other jurisdictions that required noticing for reasonable accommodation requests.

At the March 27, 2008 meeting, the Planning Commission adopted unanimously a motion (5-0, Sevison and Farinha absent) to recommend the Board of Supervisors approve the Reasonable Accommodation Ordinance with added language to notice the surrounding property owners within 100 feet. No member of the public spoke at the public hearings.

FISCAL IMPACT

The exact fiscal impact to the County is unknown at this time, but would likely be minimal. The draft ordinance proposes no fee for an application requesting reasonable accommodation. Since the revision to housing laws in 2001, the County has considered only four requests. County services for the past four requests have been minimal, consisting of an estimated two to four hours of staff time. With the proposed ordinance, a reasonable accommodation requests would now require public noticing and the potential for a public hearing. The cost associated with the noticing and hearing would likely double staff time for processing a request and those costs would be dependent on General Fund revenues. However, if the project for which the request is being made requires other planning permit(s) or approval(s), fees for applicable applications will apply. In addition, fees for appeals to decisions on reasonable accommodation are the same as those fees for appeals as established by the County's Fee Ordinance.

CEQA COMPLIANCE

The proposed Zoning Text Amendment is categorically exempt from environmental review pursuant to provisions of Section 15305 of the California Environmental Quality Act Guidelines and Section 18.36.070 of the Placer County Environmental Review Ordinance (Class 5), Minor Alterations in Land Use Limitations.

RECOMMENDATION

Staff brings forward the Planning Commission's recommendation that the Board of Supervisors approve the adoption of the Requests for Reasonable Accommodation Ordinance as set forth in Attachment A.

FINDINGS:

CEQA

The adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that there is no possibility that the implementation of this ordinance may have significant effects on the environment.

Zoning Text Amendment

1. Housing that is accessible to people with disabilities has been identified as a special housing need in the Housing Element of the County's current General Plan.
2. Policy H.2, Program 52 of the General Plan calls for the adoption of an ordinance to establish a process for making requests for reasonable accommodations to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities.
3. Both the Federal Fair Housing Act and the California Fair Employment and Housing Act 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 disabled persons an equal opportunity to housing.
4. Placer County has historically provided for reasonable accommodation through the use of existing regulatory procedures not specifically designed for people with disabilities.
5. Codification of a formal procedure for persons with disabilities seeking equal access to housing to request reasonable accommodation in the application of the County'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.

Respectfully submitted,


MICHAEL J. JOHNSON, AICP *M.J.*
Planning Director

ATTACHMENTS

Attachment A, Requests for Reasonable Accommodation Ordinance

Jennifer Dzakowic – Planning Department
Ann Baker – Planning Department
Richard Eiri - Engineering and Surveying Division
Jill Pahl - Environmental Health Services
Bob Martino – Chief Building Official
Bob Eicholtz - Emergency Services
Gina Langford – Environmental Coordinator
Christa Darlington - County Counsel
Karin Schwab - County Counsel
Holly Heinzen – CEO Office
Allen Breuch - Tahoe CDRA Director
John Marin – CDRA Director
Melanie Heckel – Assistant Planning Director
Loren Clark - Assistant Planning Director
All MAC's (Horseshoe Bar Area MAC, Newcastle/Ophir MAC, Foresthill Forum, Rural Lincoln Advisory Council, North Auburn MAC, Granite Bay MAC, Meadow Vista MAC, North Tahoe Regional Advisory Council, Weimar/Applegate/Colfax MAC, Sheridan MAC, West Placer MAC, Penryn Area Advisory Council, Squaw Valley MAC)
All Planners
Subject/chrono files

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**Before the Board of Supervisors
County of Placer, State of California**

**In the matter of: AN ORDINANCE
AMENDING CHAPTER 17 OF
THE PLACER COUNTY CODE
TO ADD SECTION 17.56.185
REGARDING REQUEST FOR
REASONABLE ACCOMMODATION**

**Ord. No. _____
FIRST READING _____**

**The following ordinance was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held on _____, 2008
by the following vote:**

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Board of Supervisors

Attest:

Jim Holmes, Chair

**Ann Holman
Clerk of said Board**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF
CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1: Section 17.56 of Chapter 17 of the Placer County Code is amended to add Section 17.56.185, Request for Reasonable Accommodation, which shall read as follows:

Section 17.56.185. Request for Reasonable Accommodation

A. Intent.

It is the policy of Placer County to provide reasonable accommodation for exemptions in the application of its zoning laws to rules, policies, practices, and procedures for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities seeking fair access to housing. The purpose of this Section is to provide a process for making a request for reasonable accommodation to individual persons with disabilities.

B. Application.

Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law which may be acting as a barrier to equal opportunity to housing opportunities, or any person or persons acting on behalf of or for the benefit of such a person, may request such accommodation. For purposes of this Section, 'disabled', 'disability', and other related terms shall be defined as in the Federal Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act, or their successor legislation. Requests for reasonable accommodation shall be made in the manner prescribed by Section C (Required Information).

C. Required Information.

1. The applicant shall provide the following information:
 - a. Applicant's name, address, and telephone number;
 - b. Address of the property for which the request is being made;
 - c. The current actual use of the property;
 - d. That the subject individual or individuals are disabled under the Acts. Any information related to the subject individual or individuals disability shall be kept confidential;
 - e. The zoning code provision, regulation, or policy from which accommodation is being requested; and
 - f. Why the reasonable accommodation is necessary for people with disabilities to have equal opportunity to use and enjoy the specific property accessible to people with disabilities.

2. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including but not limited to; use permit, design review, general plan amendment, zone change, etc.), then the applicant shall file the information required by Subsection C together for concurrent review with the application for discretionary approval, except a variance since none would be required for request for consideration of an exemption(s) from development standard(s).

D. Review Authority.

1. Planning Director. Requests for reasonable accommodation shall be reviewed by the Planning Director (Director), or his/her designee if no approval is sought other than the request for reasonable accommodation.

2. Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

E. Notice of Request for Reasonable Accommodation

1. Requests for reasonable accommodation shall be noticed. Notice shall be mailed to the owners of record of all properties within a one hundred (100) foot radius of the property which is the subject of the request. This notice shall include the information in Section 17.056.185 C, above, shall indicate that any person may request a hearing on the request as provided in Section 17.056.185 F, and shall describe the approval process.

2. In the event that the request is being made in conjunction with another discretionary land use application process, notice shall be included with the notice of the other proceeding.

F. Planning Director's hearing

When a hearing is requested per Section 17.056.185 (E)(1), the Planning Director or his/her designee shall hold a public hearing on the request for Reasonable Accommodation. A request for a hearing must be made in writing to the Director within fifteen days of the date of the notice of request for Reasonable Accommodation. If requested, the Director shall conduct a hearing on the request for Reasonable Accommodation within thirty days of the date of the notice of request for Reasonable Accommodation. Notice of the hearing shall be mailed ten days prior to the hearing to the owners of record of all properties within a one hundred (100) foot radius of the property which is the subject of the request. This notice shall include the information in Section 17.056.185 C, above.

G. Review Procedure.

1. Director Review.

- a. The Director, or his/her designee, shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Section H (Findings and Decision). Information related to the subject individual or individuals' disability shall be kept confidential and shall not be included in a public file.

2. Other Reviewing Authority.

- a. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. Information related to the subject individual or individuals' disability shall be kept confidential and shall not be included in a public file. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Section H (Findings and Decision).

H. Findings and Decision.

1. Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:
 - a. Whether the property, which is the subject of the request, will be used by an individual disabled under the Acts.
 - b. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.
 - c. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the County.
 - d. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a County code provision, including but not limited to land use and zoning.
 - e. Potential impact on surrounding uses.
 - f. Physical attributes of the property and structures.
2. 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 would comply with the findings required by Subsection H(1) above.

I. Appeal of Determination.

A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed in compliance with Section 17.60.110 of the Zoning Ordinance.

J. Fees.

There shall be no fee for an application requesting reasonable accommodation. If the project for which the request is being made requires other planning permit(s) or approval(s), fees for applicable applications shall apply as established per County Ordinance. Fees for appeals to decisions on reasonable accommodation shall be the same as those fees for appeals as established per County Ordinance.

Section 2: This ordinance shall take effect and be in full force and effect thirty (30) days after its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within fifteen (15) days in accordance with Government Code Section 25124.

