

Memorandum

February 7, 2014

TO: Sausalito Housing Element Subcommittee

FROM: Geoff I. Bradley, AICP Principal, Metropolitan Planning Group
Dave Javid, AICP, LEED AP, Principal Planner, Metropolitan Planning Group
Karen Warner, AICP, Principal, Karen Warner Associates

SUBJECT: Reasonable Accommodation Ordinance
Sausalito 2009-2014 Housing Element Program #25

The following attachments address the comments we have received from the Housing Element Committee since our last meeting on January 30, 2014. The attached documents include the comments a list of the comments (**Attachment 1**), a modified draft Reasonable Accommodation Ordinance (**Attachment 2**) including the following changes:

- Page 1, lines 24-25. Addition of language stating that accommodation shall not fundamentally alter the city's programs.
- Page 1, lines 27-28. Additional language to be added providing exceptions for modifications appropriate to run with the land. Discussed with Fair Housing Council who has requested input from fair housing legal counsel on City's behalf.
- Page 3, lines 1-6. Addition of section D addressing alternative reasonable accommodations.

A draft application request form (**Attachment 3**) is also provided.

RECOMMENDATION

Provide staff and the consultants with comments on the attached draft Reasonable Accommodation Ordinance for consideration by the Planning Commission in their review of the Ordinance.

Attachments

- 1 Committee's Comments received 02.03.14
- 2 Draft Reasonable Accommodation Ordinance
- 3 Application Request Form

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Density Bonus Ordinance – Comments received 02.03.14:

- 1- Does Sausalito have a procedure for handling requests now? If we could get a brief overview, that would be helpful;
- 2- Applicability B (Scope of Accommodation): While it is mentioned later, I think it would be helpful to include the balancing language in this section stating that the accommodation should not fundamentally alter the City's programs.
- 3- Applicability B (Scope of Accommodation): I am not sure what it means in the case of a physical alteration that the modification is "personal" and does not run with the land. For example, if an accommodation is made to a side setback for an elevator, I don't think the City would request that the elevator be removed when the individual no longer occupies the house. So, perhaps this could be clarified to establish what happens to a physical modification versus the status of the waiver of the side setback.
- 4- Review Procedure: It seems that the Review Procedure should include an inquiry into whether the Department believes that there are other accommodations that may provide a reasonable accommodation but that would not require a deviation from the Codes or would require less of a deviation than the requested accommodation. This concept is introduced at the end of the process in the Conditions of Approval section but it seems like it should be part of the initial review.
- 5- Findings and Decision A.4: Could you explain how these 3 factors were derived?

Reasonable Accommodation Ordinance

Draft 02.07.14

Purpose.

The purpose of this chapter is to establish a procedure for requesting reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning and building laws and other land use regulations, policies and procedures.

Applicability.

A. Definition of Disability. Under the Federal and State Fair Housing Acts, an individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment. Individuals in recovery from drug or alcohol abuse are protected by federal and state fair housing laws although individuals currently using illegal substances are not protected under the law unless they have a separate disability. This chapter is intended to apply to those persons who are defined as disabled under the Acts.

B. Scope of Accommodation. A request for a 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 an individual with a disability equal opportunity to housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by Section X (Application Contents and Submittal), and shall not require a fundamental alteration to the City's zoning or building laws, policies, and/or procedures, as defined under the Acts. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land. *(To be expanded to identify exceptions for modifications appropriate to run with land, i.e. elevators. Waiting for input from Fair Housing attorney)*

C. Eligibility to Request Accommodation. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

Notice to the Public of Availability of Accommodation Process.

Notice of the availability of reasonable accommodation shall be displayed at the public information counter in the Community Development Department advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodation shall also be made available.

1 **Application Contents and Submittal.** Requests for reasonable accommodation shall be submitted on an
2 application form provided by the Community Development Department and shall contain the following
3 information:

- 4 1. The applicant's name, address and telephone number.
- 5 2. Address of the property for which the request is being made, and the name, address and
6 telephone number of the property owner.
- 7 3. The current existing use of the property.
- 8 4. The basis for the claim that the individual is considered disabled under the Acts.
- 9 5. The zoning code provision, regulation or policy from which reasonable accommodation is
10 being requested.
- 11 6. Reason the requested accommodation may be necessary to make the specific property
12 accessible to the individual.

13
14 **Authority.**

- 15 A. Community Development Director. Requests for reasonable accommodation shall be reviewed
16 by the Director of Community Development (Director), or his/her designee if no approval is
17 sought other than the request for reasonable accommodation.
- 18
19 B. Other Review Authority. Requests for reasonable accommodation submitted for concurrent
20 review with another discretionary land use application shall be reviewed by the authority
21 reviewing the discretionary land use application.

22
23 **Review Procedure.**

- 24 A. Director Review. The Community Development Director, or his/her designee, shall make a
25 written determination within 45 days of submittal of a complete application and either grant,
26 grant with modifications, or deny a request for reasonable accommodation in accordance with
27 **Section X** (Findings and Decision). The Director shall mail a notice of a request for reasonable
28 accommodation to contiguous owners of property, as shown on the latest equalized Marin
29 County assessment roll, but may include other property owners as determined by the Director.
30 Said notice shall be mailed at least ten days prior to making a determination.
- 31
32 B. Other Reviewing Authority. Written determinations on requests for reasonable accommodation
33 submitted for concurrent review with another discretionary land use application shall be made
34 by the authority responsible for reviewing the discretionary land use application. The written
35 determination to grant or deny the request for reasonable accommodation shall be made in
36 accordance with **X** (Findings and Decision).
- 37
38 C. Additional Information. If necessary to reach a determination on the request for reasonable
39 accommodation, the reviewing authority may request further information from the applicant
40 consistent with fair housing laws, specifying in detail the information that is required. In the
41 event that a request for additional information is made, the 45 day period to issue a decision is
42 stayed until the applicant responds to the request.

- 1 D. The reviewing authority may approve an alternative reasonable accommodation that provides
2 the applicant an opportunity to use and enjoy a dwelling equivalent to that provided by the
3 specific accommodation requested, where such an alternative accommodation would:
4 1. Reduce impacts to neighboring properties or the surrounding area; or
5 2. Not require a deviation from the provisions of Title 8 or Title 10 of the Municipal Code or
6 would require less of a deviation than the requested accommodation.
7

8 **Findings and Decision.**

- 9 A. Findings. The reasonable accommodation shall be approved, with or without conditions, if the
10 reviewing authority finds, based upon all of the evidence presented, that all of the following
11 findings can be made:
12 1. The housing, which is the subject of the request, will be occupied by an individual
13 considered disabled under the Acts.
14 2. The requested accommodation is necessary to provide a disabled individual with an equal
15 opportunity to use and enjoy a dwelling.
16 3. The requested accommodation would not impose an undue financial or administrative
17 burden on the City, as defined under the Acts.
18 4. The requested accommodation would not require a fundamental alteration to the City's
19 zoning or building laws, policies, and/or procedures, as defined under the Acts. In
20 considering whether the accommodation would require such a fundamental alteration, the
21 reviewing authority may consider, among other factors:
22 a. Whether the requested accommodation would fundamentally alter the character of
23 the neighborhood;
24 b. Whether the requested accommodation would result in a substantial increase in traffic
25 or insufficient parking; and
26 c. Whether the requested accommodation would substantially undermine any express
27 purpose of either Sausalito's General Plan or an applicable specific plan.
28 5. There are no other reasonable accommodation(s) that would allow the applicant to use and
29 enjoy the dwelling which would:
30 a. Be less impactful to neighboring properties or the surrounding area; or
31 b. Not require a deviation from the provisions of Title 8 or Title 10 of the Municipal Code
32 or would require less of a deviation than the requested accommodation.
33
34 B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing
35 authority may impose any conditions of approval deemed reasonable and necessary to ensure
36 that the reasonable accommodation would comply with the findings required by Subsection A
37 above.
38
39 C. Written Decision. The written decision on the request for reasonable accommodation shall
40 explain in detail the basis of the decision, including the reviewing authority's findings required
41 by Subsection A above. All written decisions shall give notice of the applicant's right to appeal
42 and to request reasonable accommodation in the appeals process as set forth below.
43

1 **Appeals.**

- 2 A. A determination by the reviewing authority to grant or deny a request for reasonable
3 accommodation may be appealed within ten days of the decision to the Planning Commission
4 in compliance with Chapter 10.84 (Appeals) of the Sausalito Municipal Code. Appeals shall be
5 submitted on an application form provided by the Community Development Department. If an
6 individual needs assistance in filing an appeal on an adverse decision, the City will provide
7 assistance to ensure the appeals process is accessible.

APPLICATION FOR REQUEST FOR REASONABLE ACCOMMODATION

NOTE: If you need help in completing this request form, the Department will assist you. Please contact the Community Development Director at 415-289-4133 or help@sausalto.org.

1. Name of Applicant

Telephone Number

2. Applicant Address

3. Address of housing at which accommodation is requested.

4. Property owner name, address and telephone number.

5. Describe the accommodation you are requesting and the specific regulation(s) and/or procedure(s) from which accommodation is sought.

6. Give the reason that the reasonable accommodation may be necessary for you or the individual with disabilities. You do not need to tell us the name or extent of your disability or that of the individual seeking the housing.

7. If we have questions about your request for reasonable accommodation and you would like us to contact someone assisting you with this request, instead of you, please give us that person's name, address and telephone number.

8. Signature of Applicant _____ Date _____

Please attach any documents that support your request for reasonable accommodation and would assist city staff in considering your request.

NOTICE OF DECISION ON REASONABLE ACCOMMODATION REQUEST

1. Date of Application: _____

2. Date of Decision: _____

3. The request for Reasonable Accommodation is:

_____ Granted _____ Denied (See Notice below regarding right to appeal decision)

4. The reasons for this decision are as follows:

5. The facts relied on in making this decision:

Signature of Designee _____ Date _____

NOTICE: If your request for accommodation was denied, you may appeal the reviewing authority's decision to the Planning Commission within ten (10) days of the date of this decision. To file an appeal, complete and file an Appeal of Denial of Reasonable Accommodation Request form with the Department.

APPEAL OF DENIAL OF REASONABLE ACCOMMODATION REQUEST

1. Date of Adverse Decision: _____

2. Date Appeal Filed: _____

3. State why you think the denial of your request for accommodation was wrongly decided:

4. Provide any new information, facts or documents that support your request for accommodation:

5. Signature _____ Date _____

NOTICE: Please attach to this appeal form:

- (1) A copy of your reasonable accommodation request along with any attachments submitted with the request; and**
- (2) The notice of the decision denying your accommodation request.**