



COMMUNITY DEVELOPMENT AGENCY

November 5, 2013

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Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: First Reading of a Reasonable Accommodation Ordinance

Dear Board Members:

RECOMMENDATION:

1. Instruct the Clerk to read the proposed ordinance by title only;
2. Set a hearing and consider adoption of the proposed ordinance on November 12, 2013 at 10:30 AM.

SUMMARY: The proposed Reasonable Accommodation Ordinance is intended to remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. Senate Bill 520, effective January 1, 2002, requires local jurisdictions to conduct an analysis of potential and actual constraints upon the development, maintenance and improvement of housing for persons with disabilities and demonstrate local efforts to remove governmental constraints that hinder the jurisdiction from meeting the need for housing for persons with disabilities (Section 65583(a)(4)). Adoption of this Ordinance will assist in the County receiving certification of its recently adopted Housing Element.

DISCUSSION:

The Fair Housing Amendments Act of 1988 prohibits cities and counties from discriminating against individuals with disabilities through land use and zoning decisions and procedures. Not only must local governments not discriminate, but the Fair Housing Act requires that cities and counties provide reasonable accommodation in rules, policies, practices and procedures where such accommodation may be necessary to afford individuals with disabilities equal opportunity to housing. Together with SB 520, the intent of these laws is to address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. Adopting a reasonable accommodation ordinance is just one of several necessary components for complying with fair housing laws.

The law requires that all Housing Elements include a program to provide reasonable accommodations for housing designed for, or intended for occupancy by persons

with disabilities (Section 65583(c)(3)). The proposed ordinance would implement program 2.g.a from the Housing Element, which states:

2. g Ensure Reasonable Accommodation. *Consistent with SB 520 enacted January 1, 2002, reduce barriers in housing for individuals with disabilities through the following actions:*

- a. Establish a written Reasonable Accommodation procedure for providing exceptions in zoning and land use for housing for persons with disabilities.
- b. *Amend the Development Code to clarify that retrofitted access ramps are permitted in setback areas.*
- c. *Develop guidelines and a model ordinance encouraging the principles of universal design. Evaluate possible incentives to developers who incorporate principles of universal design and advance visitability.*
- d. *Consider allowing up to 50% reduction in parking requirements for disabled housing, as allowed for senior housing.*

To provide exceptions in zoning and land-use for housing for persons with disabilities, it is common to utilize either a variance or encroachment permit process to accommodate requests such as special structures or appurtenances (i.e., access ramps or lifts) needed by persons with physical disabilities. While both variance and encroachment permit applications may be handled through an administrative procedure, the standards used to evaluate such deviations may conflict with laws applicable to housing for persons with disabilities. As a result, State law recommends that localities adopt programs to establish a written and administrative reasonable accommodation procedure for providing exception for housing for persons with disabilities in zoning and land use.

The most common type of reasonable accommodation requests in the County are for ramps and lifts; and given Marin County's high percentage of elderly adults, it is likely that these types of requests will increase over time. The proposed Reasonable Accommodation Ordinance will assist with these types of requests and make the process more transparent and efficient.

Staff has included two approaches for your Board's consideration. One option consists of ministerial review of reasonable accommodation requests which would allow these requests to be approved at the staff level if the required findings are met (as shown in the table below). This option would follow the same procedures as those utilized for Second Units. Ministerial review would provide the greatest flexibility and responsiveness to requests for reasonable accommodation by not including a process for appeals, noticing and public comment. The ministerial option would also help to reduce permit fees since it would usually involve less processing time by staff. Since no appeal option is included, any objection to the decision would be taken to court. This option is recommended by the Department of Housing and Community Development (HCD) and Fair Housing of Marin.

Another option to consider is for reasonable accommodation requests to be handled through the normal discretionary review process, which includes noticing of adjacent properties, public comment and appeals to the Board of Supervisors. The findings section could also include an analysis of whether an alternative option exists which may provide a similar level of benefit for the applicant but may result in less conflict

with existing County zoning and building regulations (see highlighted item #5 in the chart below). The city of San Rafael follows this option, except that appeals are acted on by the Planning Commission. The options are summarized in the table below.

	Ministerial	Discretionary
Noticing	No noticing	Noticing to adjacent properties
Appeal	No appeal	Appeal to the Board of Supervisors
Findings	(1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws; (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws; (3) Whether the requested accommodation would impose an undue financial or administrative burden on the County and; (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program.	(1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws; (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws; (3) Whether the requested accommodation would impose an undue financial or administrative burden on the County and; (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program. (5) Whether there is an alternative accommodation which may provide an equivalent level of benefit.
Fees	\$500 (flat)	\$750 (flat)

FISCAL/STAFFING IMPACT: In order to insure there are no barriers to applying for a request for reasonable accommodation, the proposed fee will not provide for full cost recovery. The fee reflects a substantial contribution from the General Fund. However, we don't expect this to make a significant impact because of the limited number of requests for projects involving reasonable accommodation. However, if the volume of requests exceeds our projections, we will report back to the Board of Supervisors and work with the County Administrator to insure that we meet our net county cost targets.

REVIEWED BY:

- | | |
|--|---|
| <input type="checkbox"/> Auditor Controller | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

Respectfully Submitted,



Brian C. Crawford
Agency Director



Leelee Thomas
Principal Planner

Attachments:

- 1: Reasonable Accommodation Ordinance (Ministerial)
- 2: Reasonable Accommodation Ordinance (Discretionary)