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OFFICE OF THE CITY CLERK  
OAKLAND  
2014 MAY 29 PM 12:42

# AGENDA REPORT

**TO:** FRED BLACKWELL  
CITY ADMINISTRATOR

**FROM:** Rachel Flynn

**SUBJECT:** Reasonable Accommodations Ordinance      **DATE:** May 15, 2014

City Administrator  
Approval

Date

5/22/14

**COUNCIL DISTRICT:** Citywide

## RECOMMENDATION

Staff recommends that the City Council conduct a public hearing, and upon conclusion adopt:

**An Ordinance, As Recommended By The City Planning Commission, Amending The Oakland Planning Code To Create Chapter 17.131, Reasonable Accommodations Policy And Procedures**

## EXECUTIVE SUMMARY

The City of Oakland is updating its Planning Code to include a Reasonable Accommodations (RA) 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 RA 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. Both Category A and Category B requests would require approval by the Planning Director, or his or her designee.

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 Council is being asked to review and adopt the draft Reasonable Accommodations Ordinance described in this agenda report.

Item: \_\_\_\_\_  
Community and Economic Development Committee  
June 10, 2014

## **OUTCOME**

The City Council's adoption of a Reasonable Accommodations Ordinance would improve access to housing for individuals with a disability. The ordinance would provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities.

## **BACKGROUND/LEGISLATIVE HISTORY**

The 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 §§ 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.

Current Reasonable Accommodations Procedure

Currently, 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 Planning and Building Department staff currently utilize an informal reasonable accommodations procedure in the absence of an adopted ordinance.
- 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 in gaining access to 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.

City of Oakland 2007-2014 Housing Element

Oakland's 2007-2014 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 Oakland Housing Element.

**ANALYSIS**

The draft Reasonable Accommodations 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 "person with a disability" is defined as any person 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 who has a record of such impairment. Federal and State fair housing laws do not protect an individual's current unlawful use of controlled substances or other drugs, unless that individual has a separate disability.

The ordinance sets forth the application requirements which state that the City shall display notice of the Reasonable Accommodations policy at public counters, and that any person seeking a reasonable accommodation shall do so on a form provided by the Planning Department or request assistance from City staff to complete the request for reasonable accommodations. 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. The Planning Director shall issue a written determination within a timely manner but no longer than 30 days after receipt of a completed request and may: (1) grant the accommodation request, (2) grant the accommodation request subject to specified nondiscriminatory conditions of approval, or (3) deny the request.

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). Category A requests will be evaluated and decided, in most cases, 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. The accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling.

Category B requests involve requests for accommodation from more complex regulations such as residential density, distance separation requirements, and land use activities not permitted by the Planning Code. 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 lower density commercial zone, 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 Planning Director shall make all of the following findings for Category B requests:

1. That the housing, which is the subject of the request for reasonable accommodation, will be used by people with disabilities protected under fair housing laws;
2. That the request for reasonable accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling;

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

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

### **PUBLIC OUTREACH/INTEREST**

Staff brought the draft Reasonable Accommodations Ordinance to the City Planning Commission's Zoning Update Committee on January 22, 2014, the Mayor's Commission on Persons with Disabilities on February 10, 2014, and the City Planning Commission on April 2, 2014 and May 7, 2014.

### **COORDINATION**

The Draft Reasonable Accommodations Ordinance was developed by the Planning Department in collaboration with the City's ADA Programs Division. This report has been reviewed by the Office of the City Attorney and by the Budget Office.

### **COST SUMMARY/IMPLICATIONS**

Adopting the Draft Reasonable Accommodations Ordinance will have no direct fiscal impact to the City. Application of the new Reasonable Accommodations Ordinance will be integrated into the City's existing project review procedures administered by the Department of Planning and Building. An updated ordinance will assist the City with complying with fair housing laws and improve access to housing for individuals with disabilities.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Adoption of the ordinance will have little effect on the local economy. Applicants for reasonable accommodations will not be charged a fee.

***Environmental:*** Adoption of the proposed ordinance will improve access to housing for individuals with disabilities. Since Oakland has many support services for the disabled community, improving housing options in Oakland for individuals with disabilities could

Item: \_\_\_\_\_  
Community and Economic Development Committee  
June 10, 2014

possibly enable such individuals to live closer to critical support services, reducing long commutes. Thus, this ordinance could induce positive environmental outcomes.

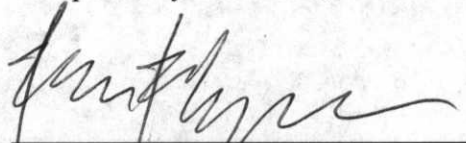
**Social Equity:** Adoption of the proposed ordinance would have positive social equity outcomes. Amending the Planning Code to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws will help ensure the inclusion in our communities of those among us who are disabled, and help provide equal access to housing for all segments of the population, including individuals with disabilities.

### CEQA

The proposed Reasonable Accommodations Ordinance relies on the previously certified 2007-2014 Housing Element Final EIR (2010), which provides analysis of the environmental impacts of the proposed amendments and supports 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 Oakland Housing Element EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR.

For questions regarding this report, please contact Alicia Parker, Planner II, at (510) 238-3362.

Respectfully submitted,



RACHEL FLYNN  
Director of Planning and Building

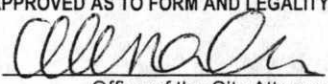
Reviewed by:  
Ed Manasse, Strategic Planning Manager  
Bureau of Planning

Prepared by:  
Alicia Parker, Planner II  
Bureau of Planning

FILED  
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OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER 2014 MAY 29 PM 12:42

  
Office of the City Attorney

**OAKLAND CITY COUNCIL**  
**ORDINANCE No. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE, AS RECOMMENDED BY THE CITY  
PLANNING COMMISSION, AMENDING THE  
OAKLAND PLANNING CODE TO CREATE  
CHAPTER 17.131, REASONABLE  
ACCOMMODATIONS POLICY AND PROCEDURES**

**WHEREAS**, adoption of a Reasonable Accommodations policy and procedures will provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing; and

**WHEREAS**, the Fair Housing Act (42 U.S.C. §§ 3601 et seq.), the Fair Housing Act Amendments of 1988, and the Fair Employment and Housing Act (California Government Code §§ 12955 et seq.) (FEHA) impose an affirmative duty on local governments to make reasonable accommodations (i.e., modifications or exceptions) in their land use and zoning rules, policies and practices and procedures when such accommodations may be necessary to provide individuals with disabilities an equal opportunity to use and enjoy a dwelling; and

**WHEREAS**, the City of Oakland's 2007-2014 Housing Element, which must be updated every eight years, directs the City to adopt an ordinance amending the Planning Code, codifying procedures for handling requests for reasonable accommodations made pursuant to fair housing laws; and

**WHEREAS**, 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; and

**WHEREAS**, 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; and

**WHEREAS**, the City of Oakland's Planning Bureau staff has prepared the following amendments to the Oakland Planning Code to create a Reasonable Accommodations policy and procedure to handle requests for reasonable accommodation made pursuant to the fair housing laws; and



**WHEREAS**, on January 22, 2014, at a duly noticed public hearing, the City Planning Commission's Zoning Update Committee recommended approval of the proposed Reasonable Accommodations Ordinance; and

**WHEREAS**, on February 10, 2014, the Mayor's Commission on Persons with Disabilities heard the item and provided feedback; and

**WHEREAS**, on April 2, 2014, at a duly noticed public hearing, the City Planning Commission continued consideration of the Reasonable Accommodations Ordinance to its May 7, 2014 meeting; and

**WHEREAS**, on May 7, 2014, at a duly noticed public hearing, the City Planning Commission recommended approval of the proposed Planning Code amendments; and

**WHEREAS**, after a duly noticed public meeting on June 10, 2014, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on June 17, 2014 to consider the proposal; and

**WHEREAS**, the proposed Reasonable Accommodations Ordinance relies on the previously certified 2007-2014 Housing Element Final EIR (2010), which provides analysis of the environmental impacts of the proposed Planning Code amendments and supports all levels of approval necessary to implement the Planning Code amendments; and

**WHEREAS**, the proposed Reasonable Accommodations Ordinance would not result in any significant effect that has not already been analyzed in the Oakland Housing Element EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code section 21166 and CEQA Guidelines sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines section 15162(a)(3); and

**WHEREAS**, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**Section 2.** The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

**Section 3.** Title 17 of the Oakland Planning Code is hereby amended pursuant to **Exhibit A** attached hereto and hereby incorporated by reference. Additions to Title 17 of the Planning Code are shown in Exhibit A.

**Section 4.** This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired; (b) zoning applications approved by the City and not yet expired; or (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

**Section 5.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**Section 6.** If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_

ED  
101  
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## NOTICE AND DIGEST

2014 MAY 29 PM 12: 41

### **AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO CREATE CHAPTER 17.131, REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES**

This ordinance would improve access to housing for individuals with a disability. The ordinance would 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 City Council's adoption of a Reasonable Accommodations Ordinance is a requirement of the City of Oakland's 2007-2014 Housing Element.

Edits to the Oakland Planning Code  
deletions are shown in strikethrough, additions are shown in underline

## **Title 17 PLANNING**

### **Chapters:**

- Chapter 17.01 - GENERAL PROVISIONS OF PLANNING CODE AND GENERAL PLAN CONFORMITY
- Chapter 17.03 - CITY PLANNING COMMISSION
- Chapter 17.05 - LANDMARKS PRESERVATION ADVISORY BOARD
- Chapter 17.07 - TITLE, PURPOSE AND SCOPE OF THE ZONING REGULATIONS
- Chapter 17.09 - DEFINITIONS
- Chapter 17.10 - USE CLASSIFICATIONS
- Chapter 17.11 - OS OPEN SPACE ZONING REGULATIONS
- Chapter 17.11A - RESERVED
- Chapter 17.12 - RESERVED
- Chapter 17.13 - RH HILLSIDE RESIDENTIAL ZONES REGULATIONS
- Chapter 17.14 - RESERVED
- Chapter 17.15 - RD DETACHED UNIT RESIDENTIAL ZONES REGULATIONS
- Chapter 17.16 - RESERVED
- Chapter 17.17 - RM MIXED HOUSING TYPE RESIDENTIAL ZONES REGULATIONS
- Chapter 17.18 - RESERVED
- Chapter 17.19 - RU URBAN RESIDENTIAL ZONES REGULATIONS
- Chapter 17.20 - RESERVED
- Chapter 17.22 - RESERVED
- Chapter 17.24 - RESERVED
- Chapter 17.26 - RESERVED
- Chapter 17.28 - RESERVED
- Chapter 17.30 - R-80 HIGH-RISE APARTMENT RESIDENTIAL ZONE REGULATIONS
- Chapter 17.32 - RESERVED
- Chapter 17.33 - CN NEIGHBORHOOD CENTER COMMERCIAL ZONES REGULATIONS
- Chapter 17.34 - RESERVED
- Chapter 17.35 - CC COMMUNITY COMMERCIAL ZONES REGULATIONS
- Chapter 17.36 - RESERVED
- Chapter 17.37 - CR REGIONAL COMMERCIAL ZONES REGULATIONS
- Chapter 17.38 - RESERVED
- Chapter 17.40 - RESERVED
- Chapter 17.42 - RESERVED
- Chapter 17.44 - RESERVED
- Chapter 17.46 - RESERVED
- Chapter 17.48 - RESERVED
- Chapter 17.50 - RESERVED
- Chapter 17.52 - RESERVED
- Chapter 17.54 - C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS
- Chapter 17.56 - C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS
- Chapter 17.58 - CBD CENTRAL BUSINESS DISTRICT ZONES REGULATIONS
- Chapter 17.60 - RESERVED
- Chapter 17.62 - RESERVED
- Chapter 17.64 - RESERVED
- Chapter 17.65 - HBX HOUSING AND BUSINESS MIX COMMERCIAL ZONES REGULATIONS
- Chapter 17.66 - RESERVED
- Chapter 17.68 - RESERVED
- Chapter 17.70 - RESERVED
- Chapter 17.72 - M-20, M-30, AND M-40 INDUSTRIAL ZONES REGULATIONS
- Chapter 17.73 - CIX-1, CIX-2, IG AND IO INDUSTRIAL ZONES REGULATIONS

Chapter 17.74 - S-1 MEDICAL CENTER ZONE REGULATIONS  
Chapter 17.76 - S-2 CIVIC CENTER ZONE REGULATIONS  
Chapter 17.78 - S-3 RESEARCH CENTER ZONE REGULATIONS  
Chapter 17.80 - S-4 DESIGN REVIEW COMBINING ZONE REGULATIONS  
Chapter 17.81 - RESERVED  
Chapter 17.82 - S-6 MOBILE HOME COMBINING ZONE REGULATIONS  
Chapter 17.84 - S-7 PRESERVATION COMBINING ZONE REGULATIONS  
Chapter 17.86 - RESERVED  
Chapter 17.88 - RESERVED  
Chapter 17.90 - S-10 SCENIC ROUTE COMBINING ZONE REGULATIONS  
Chapter 17.92 - S-11 SITE DEVELOPMENT AND DESIGN REVIEW COMBINING ZONE REGULATIONS  
Chapter 17.96 - RESERVED  
Chapter 17.97 - S-15 TRANSIT ORIENTED DEVELOPMENT ZONE REGULATIONS  
Chapter 17.98 - RESERVED  
Chapter 17.99 - S-17 DOWNTOWN RESIDENTIAL OPEN SPACE COMBINING ZONE REGULATIONS  
Chapter 17.100A - S-19 HEALTH AND SAFETY PROTECTION COMBINING ZONE REGULATIONS  
Chapter 17.100B - S-20 HISTORIC PRESERVATION DISTRICT COMBINING ZONE REGULATIONS  
Chapter 17.101A - D-WS WOOD STREET DISTRICT COMMERCIAL ZONE REGULATIONS  
Chapter 17.101B - D-OTN OAK TO NINTH DISTRICT ZONE REGULATIONS  
Chapter 17.101C - D-BR BROADWAY RETAIL FRONTAGE DISTRICT INTERIM COMBINING ZONE REGULATIONS  
Chapter 17.101D - D-KP KAISER PERMANENTE OAKLAND MEDICAL CENTER DISTRICT ZONES REGULATIONS  
Chapter 17.101E - D-CE CENTRAL ESTUARY DISTRICT ZONES REGULATIONS  
Chapter 17.101F - D-GI GATEWAY INDUSTRIAL DISTRICT ZONE REGULATIONS  
Chapter 17.102 - REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES  
Chapter 17.103 - SPECIAL REGULATIONS AND FINDINGS FOR CERTAIN USE CLASSIFICATIONS  
Chapter 17.104 - GENERAL LIMITATIONS ON SIGNS  
Chapter 17.106 - GENERAL LOT, DENSITY, AND AREA REGULATIONS  
Chapter 17.107 - DENSITY BONUS AND INCENTIVE PROCEDURE  
Chapter 17.108 - GENERAL HEIGHT, YARD, AND COURT REGULATIONS  
Chapter 17.110 - BUFFERING REGULATIONS  
Chapter 17.112 - HOME OCCUPATION REGULATIONS  
Chapter 17.114 - NONCONFORMING USES  
Chapter 17.116 - OFF-STREET PARKING AND LOADING REQUIREMENTS  
Chapter 17.117 - BICYCLE PARKING REQUIREMENTS  
Chapter 17.118 - RECYCLING SPACE ALLOCATION REQUIREMENTS  
Chapter 17.120 - PERFORMANCE STANDARDS  
Chapter 17.124 - LANDSCAPING AND SCREENING STANDARDS  
Chapter 17.126 - USABLE OPEN SPACE STANDARDS  
Chapter 17.128 - TELECOMMUNICATIONS REGULATIONS  
Chapter 17.130 - ADMINISTRATIVE PROCEDURES GENERALLY  
Chapter 17.131 - REASONABLE ACCOMMODATIONS POLICY AND PROCEDURE  
Chapter 17.132 - ADMINISTRATIVE APPEAL PROCEDURE  
Chapter 17.134 - CONDITIONAL USE PERMIT PROCEDURE  
Chapter 17.135 - SPECIAL USE PERMIT REVIEW PROCEDURE FOR THE OS ZONE  
Chapter 17.136 - DESIGN REVIEW PROCEDURE  
Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE  
Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE  
Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS  
Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE  
Chapter 17.148 - VARIANCE PROCEDURE  
Chapter 17.150 - FEE SCHEDULE  
Chapter 17.152 - ENFORCEMENT  
Chapter 17.154 - ZONING MAPS

Chapter 17.155 - SPECIAL REGULATIONS APPLYING TO MINING AND QUARRYING EXTRACTIVE  
ACTIVITIES  
Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS  
Chapter 17.157 - DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS  
Chapter 17.158 - ENVIRONMENTAL REVIEW REGULATIONS

## 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 Review procedures.
- 17.131.050 Criteria for Category "A" Requests.
- 17.131.060 Findings for Category "B" Requests.
- 17.131.070 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 et seq. 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).

"Person with a Disability" is any person 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 who has a record of such impairment. Federal and State fair housing laws do not protect an individual's current unlawful use of controlled substances or other drugs, unless that individual has a separate disability.

"Request for Reasonable Accommodations" means a request to modify land use, zoning and building regulations, policies, practices, or procedures in order to give people with disabilities an equal opportunity to use and enjoy a dwelling.

#### **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. The application shall be accompanied by such information as may be required to enable review of the requested accommodation. City staff are available to assist with the completion of a reasonable accommodations request (see related Reasonable Accommodations Form for more information).

C. Any information submitted as part of a reasonable accommodations request shall be kept confidential and shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. 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 subdivision), then to the extent feasible, the applicant shall file the request for reasonable accommodation together with any unrelated application for discretionary approval.

#### **17.131.040 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 the Planning Director, or his or her designee, shall issue a written determination within a timely manner but no later than 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 17.131.070. The notice of determination shall be sent to the applicant by first class mail or in a format requested by the applicant.



2. For requests for reasonable accommodations involving any applications for discretionary approval, the application for reasonable accommodation shall be processed and considered separately from any discretionary elements of the same proposal. The Planning Director, or his or her designee, shall act on the request for reasonable accommodation within a timely manner but no later than thirty (30) days of the date of a complete application form; however, if the request for a reasonable accommodation cannot be effectuated until a final decision is rendered on the related discretionary approvals, a “provisional approval” can be granted within the 30 day time frame allowing the reasonable accommodation request to be implemented, or modified as needed to obtain the same goal, at the time of the final discretionary approval, and shall become final at the same time. The applications for discretionary approval shall be separately considered and shall be subject to the procedures for consideration specified in the applicable Planning Code Chapter, depending on the type of application. The appropriate decision-making body shall act on all discretionary permits, but not the reasonable accommodation request.

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, or request assistance from City staff to complete the application.

2. Whenever reasonable accommodation is requested for a proposal also requiring one or more discretionary land use permits, including but not limited to a design review, conditional use permit, planned unit development permit, or variance, to the extent feasible the application for reasonable accommodation shall be submitted with the application for said permit(s). The reasonable accommodation request shall be processed and considered separately from any land use permits requested for the same proposal as specified in 17.131.040(2).

3. In reviewing a request for a reasonable accommodation, the Planning Director, or his or her designee, shall consider information in the completed reasonable accommodation application form, factors described in Section 17.131.050 and/or 17.131.060, and any additional information consistent with this Chapter. The Planning Director, or his or her designee, may consult with staff of the City's Americans with Disabilities Act (ADA) Programs Division during the review period.

4. 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.

#### **17.131.050 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 17.131.040(B)(1); and
- B. The accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling.

#### **17.131.060 Findings for "Category B" Requests.**

In making a determination to grant a requested accommodation, the Planning Director, or his or her designee, shall make all of the following findings for "Category B" requests:

- 1. That the housing, which is the subject of the request for reasonable accommodation, will be used by people with disabilities protected under fair housing laws.
- 2. That the accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling;
- 3. That the requested accommodation will not require a fundamental alteration to zoning laws, rules, policies, practices and procedures; and
- 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 (D)).

**17.131.070 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 Administrator by the applicant. 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 Administrator, in consultation with the City's ADA Programs Division, shall be final immediately and are not appealable.

2. For requests for reasonable accommodations involving one or more land use permits, the Planning Director, or his or her designee, shall act on the request for reasonable accommodations, subject to the appeal process described in 17.131.070(A)(1) . The appeal periods in 17.131.070(A)(1) shall run from the date of the denial of the permit or the modification or denial of the provisional permit, whichever is later. The appropriate decision making body shall act on all discretionary permits including appeal processes for the discretionary permits.