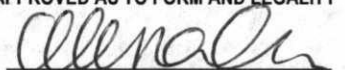


INTRODUCED BY COUNCILMEMBER 2014 MAY 29 PM 12:42


Office of the City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 13247 C.M.S.

**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, JUL 15 2014

PASSED BY THE FOLLOWING VOTE:

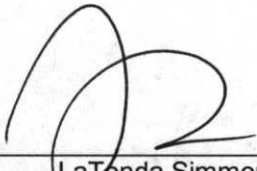
AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: _____ for


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

Introduction Date
= JUL 01 2014

DATE OF ATTESTATION: 7/17/14

ED
CIT
COUNCIL

OFFICE

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.