

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 1/27/11

FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: **Study Session:** Implementation of Housing Element Program H.B.3.d Regarding Reasonable Accommodation for Housing for Persons with Disabilities and Updating of Existing Height Limit Exceptions

INTRODUCTION. The recently adopted 2007-2014 Housing Element contains the following program regarding constraints on providing housing for persons with disabilities:

Program H.B.3.d Adopt a general provision to allow ministerial approval by the Community Development Director, subject to a minimal fee, of exceptions to the Zoning Ordinance for reasonable accommodation for housing for persons with disabilities per Government Code Section 65583(c)(3), and specifically amend the height limit exceptions in the zoning ordinance to allow for approval of Accessibility Improvement Permits for elevators and accessible-van garages needed by persons with disabilities to exceed the applicable height limit.

Under the Housing Element's adopted timelines, this program is to be implemented by the end of this year.

STATE AND FEDERAL REQUIREMENTS. California Government Code Section 65583(c)(3) requires that the Housing Element include a program which will:

Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

Note that "disability" as defined by the California Fair Employment and Housing Act (California Government Code Section 12955.3) includes mental disabilities as well as physical ones such as impaired mobility.

The State Attorney General has advised that, under the federal Fair Housing Act and the California Fair Employment and Housing Act, all jurisdictions should adopt a procedure for

handling requests for reasonable accommodations, modifications or exceptions to zoning and other land use regulations and practices, when necessary to afford disabled persons “an equal opportunity to use and enjoy a dwelling” (see attached). He further advises against reliance upon standard variance or use permit procedures that use findings that may be insufficient under fair housing laws. He states that the reasonable accommodations procedure should deal with “whether a requested accommodation is reasonable within the meaning of fair housing laws,” which the FHA defines as not imposing “undue financial and administrative burdens” on the municipality or requiring a “fundamental alteration in the nature” of the City’s zoning regulations which, according to Robert Fields’ “A Handbook for Reasonable Accommodation,” would change in the primary purpose of the applicable rules, policies or procedures, and the practical components necessary to achieve this purpose.

REASONABLE ACCOMMODATION PROCEDURES. Provisions to accommodate accessibility improvements through setback exceptions are already provided in Brisbane Municipal Code Section 17.32.070.A.1.f:

- f. Accessibility Improvements (Such as Ramps, Elevators, and Lifts).
All Setback Areas. Accessibility improvements, such as ramps, elevators and lifts, may be allowed within any front, rear or side area setback upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:
- i. The exception is necessary to meet special needs for accessibility of a person having a physical handicap which impairs his or her ability to access the property and cannot be addressed through the standard exceptions to the setback area requirements under this Section 17.32.070.
 - ii. Visual impacts of the accessibility improvements located within a setback area have been minimized.
 - iii. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.
 - iv. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.

Following this format, the new height limit exception for accessibility improvements that would be added to the existing exceptions in BMC Section 17.32.060 would potentially read as follows:

G. Exceptions to the height limit to accommodate accessibility improvements (such as elevators and wheelchair van garage spaces) may be allowed upon the granting of an

accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

- 1. The exception is necessary to meet special needs for accessibility of a person having a disability which impairs his or her ability to access the property.*
- 2. Visual impacts of the accessibility improvements exceeding the height limit will be minimized.*
- 3. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.*
- 4. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.*

To address any other possible requests for “reasonable accommodations,” a more general procedure is suggested, based in part upon the City of San Jose’s Requests for Reasonable Accommodation process (attached), which was specifically cited by the State Attorney General:

17.32.080 Request for reasonable accommodation. Modifications or exceptions to the regulations set forth in Title 17 may be requested as reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities, if the accommodation would not impose an undue financial or administrative burden upon the City and would not require a fundamental alteration in the nature of the applicable regulation. Such requests may be granted by the zoning administrator through application for an accessibility improvement permit, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

- A. The accommodation is necessary to meet special needs for a person having a disability and cannot be addressed through the exceptions under Sections 17.32.060 and 17.32.070.*
- B. Any visual impacts of the accommodation will be minimized.*
- C. The accommodation will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.*
- D. Any construction resulting from the accommodation will be done in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.*

EXISTING HEIGHT EXCEPTIONS: Amending Municipal Code Section 17.32.060 provides an opportunity to review the existing height limit exceptions. These provisions have not been updated since 1989.

BMC Section 17.32.060.A allows chimneys no more than 3 ft. wide or deep to exceed the height limit by no more than 4 ft., but changes to the Building Code have resulted in conflicts with this provision. In the 2001 Edition of the California Building Code, the new requirement for a spark arrester atop chimneys typically added approximately 1 ft. to their height, which the Code already required to be at least 2 ft. taller than any part of a building within 10 ft. To take these Building Code standards into account, staff would suggest that this height exception be revised to read:

A. Chimneys which do not exceed three (3) feet in width or depth may exceed the height limit by no more than ~~four (4)~~ *five (5) feet except as required to comply with the California Building Code.*

BMC Section 17.32.060.B allows “cupolas, flag poles, monuments, radio and other towers, water tanks, church steeples, mechanical appurtenances and similar structures” to exceed the height limit through Planning Commission approval of a Use Permit, rather than the more onerous Variance. An exception to this exception is the specific requirement for a Variance for wireless telecommunications facilities (cell towers) to exceed 70 ft. in height per BMC Section 17.32.035.G.3, while BMC Section 17.32.035.D.f allows expansion of an existing support structure up to 70 ft. through approval of a Telecommunications Administrative Permit. The Commission may wish to consider whether a simplified height exception procedure should also be provided for rooftop solar panels, particularly those that might be installed on flat roofs surrounded by safety railings for maintenance access.

BMC Section 17.32.060.C provides that, in districts with a height limit less than 35 ft., various types of institutional buildings may exceed the applicable height limit by 1 ft. for each 1 ft. the front, rear and side yards are increased beyond the minimum standard. This provision in its current form dates back before the height limits in the R-1, R-2 and R-3 District were lowered to 28-30 ft. in 1989, to a time when the City actually had no zoning districts with a height limit less than 35 ft. Given the effort the City put into lowering these height limits, it would appear that any non-residential building that would exceed them should be subject to Variance as well as Design Permit approval. Accordingly, staff would suggest that this subsection be repealed.

BMC Section 17.32.060.D allows buildings in non-residential districts to exceed the height limit through Use Permit approval, provided that the floor area ratio does not exceed the maximum possible under the applicable height limit. This is another example of a situation that would more appropriately be addressed through Variance and Design Permit approval. This subsection should also be repealed.

BMC Section 17.32.060.E, added in 1989, permits a garage or carport on a downslope lot to exceed the height limit to a maximum height of 35 ft. This provision has been superseded by the height regulation incorporated into each of the residential zoning districts in 2002 that allows garages to be constructed to a height of 15 ft. above the elevation of the center of the street, so long as the total height of the garage and any permitted living area underneath does not exceed the district's height limit (see BMC Sections 17.06.040.G.2, 17.08.040.G.2, 17.10.040.G.2 & 17.12.040.G.2). Staff suggests that this subsection now be deleted to avoid confusion.

BMC Section 17.32.060.F, also added in 1989, allows a gable or hipped roof in any R District to exceed the height limit by 3 to 5 ft., if the midpoint of the slope of the roof does not exceed the height limit. This method of measuring the height of a pitched roof at its midpoint was subsequently incorporated into the definition of "height, structures" (BMC Section 17.02.400.A) in 1998, so that it is no longer necessary here. The maximum limits were not included in the height regulations specified in each of the residential zoning districts (BMC Sections 17.06.040.G.1, 17.08.040.G.1, 17.10.040.G.1 & 17.12.040.G.1), so staff suggests that this subsection also be deleted to avoid confusion.

RECOMMENDATION: Adopt the attached draft Resolution No. RZ-2-11a to formally initiate the zoning text amendment process.

Attachments:

- Draft Resolution RZ-2-11a
- Letter from State Attorney General Bill Lockyer, 5/15/01
- San Jose Municipal Code Chapter 20.160 and Process for Requests for Reasonable Accommodation

draft
RESOLUTION NO. RZ-2-11a

RESOLUTION OF INTENTION TO CONSIDER AMENDMENTS TO
THE CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING REASONABLE ACCOMMODATIONS AND HEIGHT LIMIT EXCEPTIONS

WHEREAS, 2007-2014 Housing Element Program H.B.3.d calls for adoption of a provision in the Zoning Ordinance for reasonable accommodation for housing for persons with disabilities and for amendment of the height limit exceptions to allow for approval of Accessibility Improvement Permits for elevators and accessible-van garages needed by persons with disabilities to exceed the applicable height limit; and

WHEREAS, Policy 116 directs the City to recognize the special needs of persons with disabilities; and

WHEREAS, 1994 General Plan Policies 4 and 5 direct the City to “Acknowledge the fundamental rights of citizens to freely act and to use their own property, except to the extent government rules or regulations are necessary for the public health and safety and for protection of the environment” and to “Use the least intrusive rules and regulations consistent with overall governmental needs and State and Federal law;” and

WHEREAS, Program 22a requires that the City “Consider amendments to the Zoning Ordinance which contain clear and defined standards to protect creativity and diversity in design while addressing issues of height, scale, mass and articulation;” and

WHEREAS, provisions for reasonable accommodations for housing for persons with disabilities and revised height limit exceptions may provided through amending the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the City of Brisbane Planning Commission intends to consider amendments to the Title 17, Zoning, of the Brisbane Municipal Code.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-2-11a was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on January 27, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

RE: Adoption of A Reasonable Accommodation Procedure

Dear

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).)¹ Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community.²

¹ Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

² A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at <<http://www.bazeion.org/cpfha/cpfha.html>> [as of February 27, 2001].)

It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.³ The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.⁴ Further, most of this increase will likely be concentrated in California's nine largest counties.⁵
- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

³See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <<http://www.calsilc.org/housing.html>> [as of February 27, 2001].

⁴The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

⁵These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

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discriminatory procedures such as these is not of itself a violation of the FHA.⁶ Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.⁷ This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.⁸

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

⁶See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

⁷ See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

⁸ Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

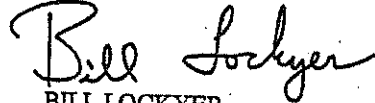
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Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.⁹ Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step¹⁰ and from various nonprofit groups which provide services to people with disabilities, among others.¹¹ It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,



BILL LOCKYER

Attorney General

⁹Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

¹⁰ Within California, these include the cities of Long Beach and San Jose.

¹¹ Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.

CHAPTER 20.160

REQUESTS FOR REASONABLE ACCOMMODATION

20.160.010 Purpose

It is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws. The purpose of this Chapter is to provide a process for making a request for reasonable accommodation.

20.160.020 Application

- A. 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 fair housing opportunities may do so on a form to be provided by the Director.
- B. If the project for which the request is being made also requires some other planning permit or approval, then the applicant shall file the request together with the application for such permit or approval.

20.160.030 Required Information

The applicant shall provide the following information:

- 1. Applicant's name, address and telephone number;
- 2. Address of the property for which the request is being made;
- 3. The current actual use of the property;
- 4. The zoning code provision, regulation or policy from which accommodation is being requested;
- 5. The bases for the claim that the individual is considered disable under the Fair Housing Act and why the accommodation is necessary to make the specific housing available to the individual.

20.160.040 Notice of Request for Accommodation

Written Notice that a Request for Reasonable Accommodation shall be given as follows:

- 1. In the event that there is no approval sought other than the request for reasonable accommodation, the Notice shall be mailed to the owners of record of all

properties which are immediately adjacent to the property which is the subject of the Request.

2. In the event that the Request is being made in conjunction with some other process, the Notice shall be transmitted along with the notice of the other proceeding.

20.160.050 Grounds for Accommodation

In making a determination regarding about the reasonableness of a requested accommodation, the following factors shall be considered:

1. Special need created by the disability;
2. Potential benefit that can be accomplished by the requested modification;
3. Potential impact on surrounding uses;
4. Physical attributes of the property and structures;
5. Alternative accommodations which may provide an equivalent level of benefit;
6. In the case of a determination involving a one-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents;
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City; and
8. Whether the requested accommodation would require a fundamental alteration in the nature of a program.

20.160.060 Notice of Proposed Decision

1. Notice of the proposed decision shall be made in the same manner as provided above.
2. Within ten (10) days of the date the Notice is mailed, any person may make a request for a Director's Hearing upon a proposed decision.
3. If no request for hearing is received the proposed decision shall become a final Director's Decision.

20.160.070 Director's Hearing

The Director shall conduct a hearing on the Request for Reasonable Accommodation at which all reasonable evidence and credible testimony shall be considered.

20.160.080 Notice of Director's Decision

- A. Within thirty (30) days after the Hearing, the Director shall issue a decision granting the request, including any reasonable conditions, or denying the request.
- B. The Notice of Decision shall contain the Director's factual findings, conclusions and reasons for the decision.
- C. The Notice of Decision shall be made in the same manner as set forth in the previous section.

20.160.090 Appeal to Planning Commission

- A. Within thirty (30) days after the Notice of Director's Decision, any person may appeal in writing to the Planning Commission.
- B. All appeals shall contain a statement of the grounds for the appeal.

Process for Requests for REASONABLE ACCOMMODATION

Policy:

Effective Date: April 3, 1998. It is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and processes. A person with disabilities is someone who has a "physical or mental impairment which substantially limits one or more of such person's major life activities." Laws, which protect persons with disabilities against discrimination, include within their protection, persons who are recovering from addictions to alcohol or narcotics so long as they are not currently using the substances.

Process:

If no other land use permit is required, you may submit a request for Reasonable Accommodation directly to the Development Services Center at 200 E. Santa Clara St. 2nd floor. Staff can FAX you a copy of the application by calling the Planning Division at 408-535-3555. If a land use permit is also required, then the request for Reasonable Accommodation should be submitted concurrently with the land use permit (e.g., Conditional Use Permit). When submitted concurrently, the procedure will be the same as for the land use permit and you should refer to the land use permit application for the appropriate procedures, including noticing and hearing. Typically, such permits require an appointment for submittal.

Procedure:

1. The applicant submits a Request for Reasonable Accommodation along with associated application fee.
2. Within **thirty (30)** days of the application, a Notice of Decision will be issued by the Director of Planning and mailed to the applicant, adjacent property owners/occupants and any requesting party. During the thirty day time-frame, additional information may be requested by staff and a site visit may be scheduled.
3. Within ten (10) days of the Notice of Decision being mailed, any person may make a request in writing for a Director's Hearing. If no request is received, then the decision of the Director of Planning will be final.
4. If a hearing is requested, such hearing will take place at the next reasonably available Director's Hearing. Director's Hearings are scheduled every Wednesday

(except for the first Wednesday of the month) in the City Council Chambers at 9:00 a.m. The Director shall issue a decision granting the request, including any reasonable conditions, or denying the request and include the Director's factual findings, conclusions and reasons for the decision. The decision will be mailed to the applicant and adjacent property owners and/or occupants.

5. Within thirty (30) days of the Notice of the Director's decision, any person may appeal in writing to the Planning Commission. Any such appeal should be mailed to the Planning Commission in care of the Department of Planning, Building and Code Enforcement. All appeals shall contain a statement of the grounds for appeal.
6. The Planning Commission shall hold a Public Hearing on the appeal. Planning Commission public hearings are held approximately two (2) Wednesday evening per month at 6:30 p.m. The decision of the Planning Commission shall be final. Copies of the resolution of the Planning Commission decision will be sent to the applicant, the appealing party, and any adjacent property owners and occupants.

See page 2 for a flowchart of the Process.

Grounds for Reasonable Accommodation:

In making a determination regarding the reasonableness of a requested accommodation, the following factors shall be considered:

- Special needs created by the disability
- Potential benefit that can be accomplished by the requested modification
- Potential impact on surrounding uses
- Physical attributes of the property and structures
- Alternative accommodations which may provide an equivalent level of benefit
- In the case of a determination involving a single family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents
- Whether the requested accommodation would impose an undue financial or administrative burden on the City

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

G.2.14.

Whether the requested accommodation would require a fundamental alteration in the nature of a program

Definitions:

The following definitions (Chapter 20.200) may be helpful to review prior to applying for a Reasonable Accommodation Request:

Dwelling, one family or one-family dwelling is a detached building of permanent character placed in a permanent location which is designed or used for residential occupancy by one family. A single mobilhome on a foundation system on a single lot is included within this definition. All rooms within a one-family dwelling must be integral to each other.

Family is one or more persons occupying a premises and living as a Single Housekeeping Unit.

Residential Care Facility is a facility licensed by the State of California where care, services, or treatment is provided to persons living in a community residential setting.

Residential Service Facility is a residential facility, other than a Residential Care Facility or a Single Housekeeping Unit, where the operator receives compensation for the provision of personal services, in addition to housing, including but not limited to, protection, supervision, assistance, guidance, training, therapy or other non-medical care.

Single Housekeeping Unit is the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas, and sharing household activities and responsibilities such as meals, chores, and expenses.

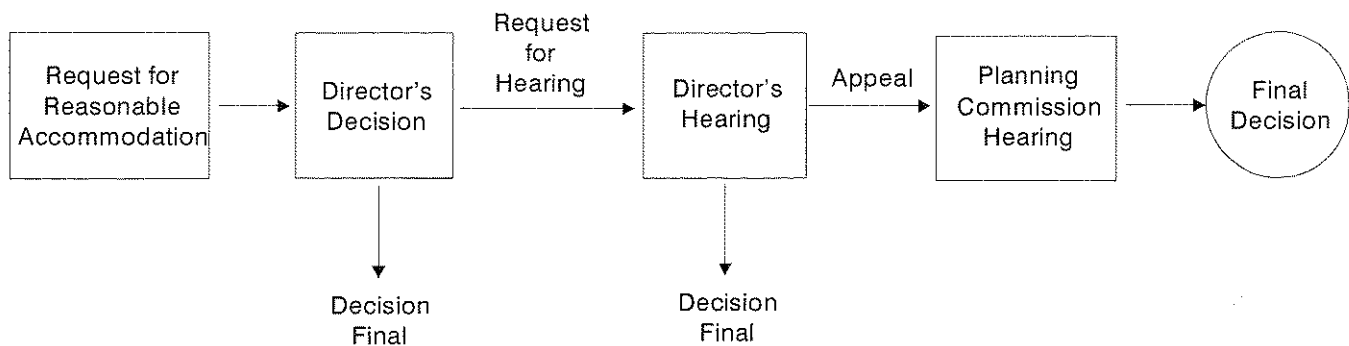
Zoning Districts:

A request for Reasonable Accommodation may be submitted on behalf of any disabled person(s) from any City of San Jose Zoning Code provision or policies. The attached table, entitled "Table-A", provides a general guide to uses and the appropriate zoning districts.

Any questions regarding the Reasonable Accommodation procedure should be addressed to the City of San Jose, Department of Planning, Building, and Code Enforcement at 408-535-3555.

To arrange an accommodation under the Americans With Disabilities Act to participate in any public meeting, please call 408-535-3555 at least 48 hours before the meeting.

REASONABLE ACCOMMODATION PROCESS FLOWCHART



PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

TABLE A

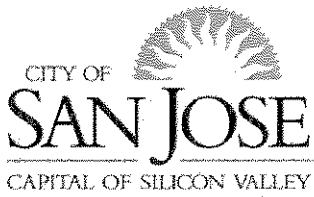
USE/ZONING DISTRICT	R-1	R-2	R-M	R-MH	COMMERCIAL
Single Family Dwelling (Single Housekeeping Unit)	P	P	P	CUP	No
Residential Care Facility ≤6 (State License)	P	P	P	P	No
Residential Service Facility ≤6 (No State License)	P	P	P	P	No
Residential Care Facility >6 (State License)	No	No	CUP	CUP	CUP
Residential Service Facility >6 (No State License)	No	No	CUP	CUP	CUP

P - Permitted
 subject to requests for Reasonable Accommodation.
No - Not Permitted
 CUP - Conditional Use Permit

Note: Zoning Ordinance provisions are

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

G.2.16.



CITY OF SAN JOSE

Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

Request for REASONABLE ACCOMMODATION

(pursuant to SJMC Chapter 20.160)

Under Section 20.160.010 of the San Jose Municipal Code, the City of San Jose seeks to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of City zoning laws. The purpose of this application form is to commence the process for making a request for reasonable accommodation.*

FILE NUMBER (to be completed by staff) RA		RECEIPT # _____
NAME OF APPLICANT/Relationship to person(s) with disability (Please Print)		AMOUNT _____
DAYTIME PHONE NUMBER ()	FAX NUMBER ()	DATE _____
AFFILIATION OR ORGANIZATION: (if applicable)		
ADDRESS OF PROPERTY:		ASSESSOR'S PARCEL NUMBER (APN):
MAILING ADDRESS: (if different from above)		
PROPERTY OWNER: (if different from above)		PROPERTY OWNER'S MAILING ADDRESS:
CURRENT USE OF THE PROPERTY:		

1. Request For Accommodation:

- a. Specify any requested accommodations to a code, policy or practice of the City of San Jose. Please cite the applicable code provisions and the accommodation requested from the provision.

- b. What is the basis for the claim that the person or persons on behalf of which this application is being made is considered Disabled under the Fair Housing Act?

- c. Why is the accommodation necessary to make specific housing available to those persons?

* Please feel free to answer questions on a separate page(s) and use additional pages as necessary.

REASONABLE ACCOMMODATION REQUEST

2. Please provide information regarding each of the following criteria:
- a. Special needs created by the disability.

 - b. Potential benefit that can be accomplished by the requested modification.

 - c. Potential impact on surrounding uses.

 - d. Concise physical description of the property. Please attach floor plan and site plan (need not be to scale, but please dimension site plan and indicate parking).

 - e. Alternative accommodations which may provide an equivalent level of benefit.

 - f. In the case of a determination involving a single family dwelling, whether the household would be considered a Single Housekeeping Unit if it were not using special services that are required because of the disabilities of the residents.

 - g. Whether the requested accommodation would impose an undue financial or administrative burden on the City.

 - h. Whether the requested accommodation would require a fundamental alteration in the nature of a program.

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G.2.18.

REASONABLE ACCOMMODATION REQUEST

3. Other Information:

a. Do you have a county, state or federal license or certification with respect to the use of property? If yes, attach a copy of applicable document(s). Yes No

b. Are any alterations planned to the property? If yes, please describe. Yes No

c. Will the property be identified by a name or sign? Yes No

d. Will the property contain a staff office? Yes No

e. Does the property have on-site parking? If yes, how many spaces? _____ Yes No

f. Please describe all services to be offered on the premises:

g. Do you provide services at the property to non-residents? Yes No

h. Proposed maximum number of residents on the property:
Adults: _____ Children: _____ Typical length of stay for residents: _____

i. Proposed number of staff members:
Total Staff: _____ Resident: _____ Non-Resident: _____

j. Have any neighbors been contacted regarding this proposal? If yes, describe how they were contacted. Yes No

k. If neighbors have immediate concerns regarding residents or the operation of the facility, who should they contact?
Name: _____ Telephone Number: _____

4. Please attach a list of the adjacent property owners. Adjacent is defined as sharing a property line or located directly across the street from the proposed location. You will also need to provide two (2) sets of stamped envelopes addressed to the adjacent property owners and occupants. A self help area is available at the Planning Department to assist you in locating property owner addresses. Please do not include a return address on the envelopes as Planning staff will use the envelopes to mail the required notices.

Signature of Applicant

Date

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REASONABLE ACCOMMODATION REQUEST

Date: _____

Recommendation(s) of the Advisory Committee:

The recommendation of the Advisory Committee on the request for a Reasonable Accommodation Request is to:

Grant Grant with Conditions Deny

If the Advisory Committee recommends to the Grant with Conditions, the following terms apply:

The request for a Reasonable Accommodation is:

Granted Granted with Conditions Noted Below Denied

Findings:

Signature

Date

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