



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 3, 2009

ITEM NUMBER:

SUBJECT: CODE AMENDMENT CO-08-004

DATE: JANUARY 16, 2009

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MINOO ASHABI, AIA, SENIOR PLANNER
DONALD D. LAMM, DIRECTOR

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, SENIOR PLANNER
(714) 754-5610

RECOMMENDATION

Pursuant to the Planning Commission's recommendation, give first reading to the attached ordinance which modifies the City's zoning code procedure for considering "reasonable accommodation" requests in conjunction with housing for disabled.

BACKGROUND

This zoning Code Amendment streamlines the procedure for a person who wishes to construct or modify a house to accommodate a disabled person(s). A typical example is the construction of a wheelchair ramp that encroaches into a front or side yard building setback. Presently the Zoning Code requires a conditional use permit for this type of request, payment of a \$1,550.00 fee, public notice, and a public hearing before the Planning Commission. The proposed amendment simplifies the review to a Minor Modification which is reviewed by the Planning Division and does not require an application fee, public notice, or public hearing.

The proposed amendment ensures "reasonable accommodation" for disabled persons and complies with the Federal and State Fair Housing Acts. Additionally, this amendment implements Program No. 14 of our newly adopted Housing Element (see Attachment 2).

ANALYSIS

Code Amendment CO-08-004 amends the Zoning Code to be consistent with the newly adopted 2008-2014 Housing Element.

The amendment is proposed to simplify the reasonable accommodation process as follows:

- Recognize the same process for reasonable accommodation related to single family residences and residential care facilities; and,
- Eliminate the requirement for public hearing and public notice.

On January 12, 2009, the Planning Commission, held a public hearing, and on a 4-1 vote (Clark voting NO) recommended that the City Council adopt code amendment CO-08-004. Chair Hall, Vice Chair Fisler, and Commissioner Clark commented on the negative impacts from over concentration of residential care facilities on residential neighborhoods and noted the state has pre-emptive power over local government's land use control on residential care facilities (Attachment 3).

ALTERNATIVES CONSIDERED:

The proposed ordinance implements Program No. 14 in the City's newly adopted Housing Element. City Council may consider the following alternatives:

1. Give first reading to the Ordinance as recommended by Planning Commission.
2. Give first reading to the Ordinance with modifications.
3. Retain the City's existing zoning provisions and "receive and file" the report.

ENVIRONMENTAL DETERMINATION:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

LEGAL REVIEW

The City Attorney's office has approved the draft ordinance as to form.

CONCLUSION

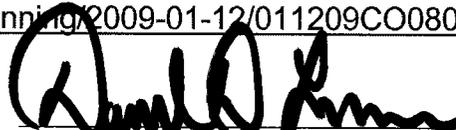
If approved by Council, the ordinance will streamline the review process in respect to reasonable accommodation for housing disabled persons.

The following items are available on the City's Website:

- January 12, 2009, Planning Commission Report
<http://www.ci.costa-mesa.ca.us/council/planning/2009-01-12/011209CO08004.pdf>



MINOO ASHABI, AIA
Senior Planner



DONALD D. LAMM, AICP
Deputy City Mgr. – Dev. Svs. Director

Attachments: 1 – Draft Ordinance – Strike-through Version
 2 – Excerpt from Housing Element (p. HOU-98)
 3 – Draft Planning Commission Minutes – January 12, 2009

cc: City Manager
Assistant City Manager
City Attorney
Public Services Director
City Engineer
City Clerk
Staff (4)
File (2)

File: 020309CO08004	Date: 012209	Time: 4:00 p.m.
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ORDINANCE NO. 09-

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-08-004, WHICH AMENDS TITLE 13 OF THE COSTA MESA MUNICIPAL CODE MODIFYING PROCEDURES FOR APPLICATIONS RELATED TO REASONABLE ACCOMMODATION

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: CODE AMENDMENT. Title 13 of the Costa Mesa Municipal Code is hereby amended as follows:

- a. Amend Chapter IX, Article 15, to read as follows:

“Sec. 13-200.60. PURPOSE.

It is the City’s policy to provide reasonable accommodation in accordance with federal and state Fair Housing Acts (42 USC § 3600 et seq. and Government Code § 12900 et seq.) for persons with disabilities seeking fair access to housing in the application of the City’s zoning laws. The term “disability(ies)” as used in this article shall have the same meaning as the terms “disability” and “handicapped” as defined in the federal and state Fair Housing Acts. The purpose of this article is to establish the procedure by which a person may request reasonable accommodation, and how the request is to be processed.

Sec. 13-200.61. APPLICABILITY.

Any person seeking approval to construct and/or modify residential housing for person(s) with disabilities, and/or operate a residential care facility, residential services facility, or referral facility which will substantially serve persons with disabilities may apply for a reasonable accommodation to obtain relief from a Zoning Code provision, regulation, policy, or condition which causes a barrier to equal opportunity for housing. The application for reasonable accommodation shall be considered ~~in conjunction with a conditional use permit application for the proposed use~~ as a Minor Modification.

SEC. 13-200.62. REASONABLE ACCOMMODATION PROCEDURE.

(a) Application required. An Minor Modification application for reasonable accommodation shall be filed and processed with the planning division pursuant to Chapter III Planning Applications. The application ~~shall be processed in the same manner as an application for a conditional use permit~~ shall include the additional information and be subject to the determinant factors required by this section.

(b) Submittal requirements. The application shall be made on the forms provided by the planning division, and shall also include the following information:

(1) The Zoning Code provision, regulation, policy, or condition from which accommodation is being requested;

(2) The basis for the claim that the individuals are considered disabled under the Fair Housing Acts, and why the accommodation is necessary to provide equal opportunity for housing and to make the specific housing available to the individuals; and

(3) Any other information that the development services director reasonably determines is necessary for evaluating the request for reasonable accommodation.

~~(c) Submittal timeframe. The application shall be filed at the same time as the application for the discretionary approval so it may be processed concurrently. However, when the application concerns conditions proposed during the processing of an underlying planning application, the application shall be filed as soon as reasonably practicable following disclosure of the proposed conditions.~~

~~(c) (d) Fees. No application fee is required for reasonable accommodation if it is filed concurrently with the underlying planning application. If the application is filed during the processing of an underlying planning application for which notice has already been provided, the applicant shall pay a fee that is equivalent to the public hearing continuance fee.~~

~~(e) Public notice required. Public notice shall be provided in accordance with section 13-29(d), and may be included with the notice of the underlying planning application. In no event shall the notice be provided less than ten (10) days before the hearing on the application for reasonable accommodation. The notice shall summarize the requested reasonable accommodation.~~

(d) (f) Grounds for reasonable accommodation. The following factors shall be considered in determining whether to grant a reasonable accommodation:

- (1) Special needs created by the disability;
- (2) Potential benefit that can be accomplished by the requested modification;
- (3) Potential impact on properties within the vicinity;
- (4) Physical attributes of the property and structures;
- (5) Alternative accommodations that may provide an equivalent level of benefit;
- (6) In the case of a determination involving a single family dwelling, whether the residents would constitute a single housekeeping unit;
- (7) Whether the requested accommodation would impose an undue financial or administrative burden on the city;
- (8) Whether the requested accommodation would require a fundamental alteration in the nature of a city program; and

(9) Whether granting the request would be consistent with the city's General Plan.

(10) Property will be used by an individual with disability protected under fair housing laws.

~~(g) Decision. The decision on the reasonable accommodation application shall be rendered as part of the decision on the underlying planning application. The decision is subject to the same request for rehearing, appeal, and review as the underlying decision as provided in Chapter III Planning Applications. "~~

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2009.

ALLAN R. MANSOOR
Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney



14. Reasonable Accommodation Ordinance

The City will amend its reasonable accommodation ordinance to provide exception in zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval by the Development Services Director applying the following decision-making criteria:

1. The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws.
2. The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing laws.
3. The requested accommodation would not impose an undue financial or administrative burden on the City.
4. The requested accommodation would not require a fundamental alteration in the nature of the City's land use and zoning program.

2008-2014 Objectives: Adopt Zoning Code Amendment by December 2008.

Funding Sources: Department/Division budget provided by General Fund

Responsible Agencies: Development Services Department/Planning Division

15. Fee Deferral for Reasonable Accommodation and Affordable Housing

The City will establish a Fee Deferral program for projects requesting Reasonable Accommodation or for affordable housing projects. This program would allow payment of fees upon certificate of occupancy, rather than prior to building permit issuance to reduce developer construction financing costs and overall development costs for housing affordable to lower-income households.

2008-2014 Objectives: Establish Fee Deferral Program by December 31, 2008.

Responsible Agencies: Development Services Department/Planning Division

Funding Sources: General Fund

16. Build Green Program

In 2007, the City formed a task force to take a closer look at sustainable building design, which included features and technologies that can help conserve energy consumption. The Costa Mesa "Green Team" was established to evaluate the feasibility of integrating sustainable building techniques in new publicly and privately developed projects as well as major retrofits. The Build Green policy afforded the following incentives for green development:

1. A fee waiver program for remodeling and upgrading existing residential structures such as installation of solar or tankless water heaters, replacement of HVAC equipment with Energy efficient units, installation of cool roofs, and reroofs with Class A assembly. The fee waiver ranges from \$50 for installation of a tankless water heater to \$800 for Energy Star certification of existing structures and could go up to \$30,000 for LEED certification of new construction.

01-12-09 PC Minute Excerpt for CO-08-004 - Unofficial Until Approved

1. **Zoning Code Amendment CO-08-004 for an ordinance to amend Article 15 of Chapter IX of Title 13 of the Costa Mesa Municipal Code modifying procedures for applications related to reasonable accommodation in accordance with Federal and State Fair Housing laws. Environmental determination: exempt.**

Senior Planner Mino Ashabi reviewed the information in the staff report, and there were no questions of staff.

No one else wished to speak and the Chair closed the public hearing.

Commissioner Clark pointed out that the City is not allowed to regulate group homes of six people or less. He stated his concerns relating to the establishment of group homes in residential zones and noted they should be treated as a business. He said this Zoning Code amendment will not regulate group homes, only the State of California could change the rules as they apply to residential care facilities. He suggested pressuring our State representatives to make changes to the regulations.

Both the Chair and Vice Chair Fisler agreed with Commissioner Clark's comments.

MOTION: Recommend that City Council give first reading of the ordinance. Moved by Commissioner James Righeimer, seconded by Vice Chair James Fisler.

During discussion on the motion, Commissioner Righeimer mentioned that there are external issues caused by these group homes. He suggested the Commission look into requiring more garage spaces if you add a fifth bedroom to your home. He also pointed out that the City of Fountain Valley requires three garage spaces for a fourth bedroom addition.

The motion carried by the following roll call vote:

Ayes: Vice Chair James Fisler, Commissioner Eleanor Egan, Commissioner James Righeimer, and Chair Donn Hall

Noes: Commissioner Sam Clark

Absent: None.