



# **PLANNING COMMISSION**

## **AGENDA REPORT**

VII.1

MEETING DATE: JANUARY 12, 2009

ITEM NUMBER

SUBJECT: ZONING CODE AMENDMENT CO-08-004: REASONABLE ACCOMMODATION PROCEDURE FOR FAIR HOUSING ACCESS TO PERSONS WITH DISABILITIES

DATE: DECEMBER 16, 2008

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

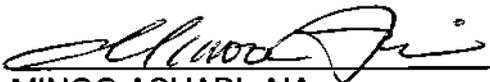
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### **DESCRIPTION**

The proposed ordinance modifies the City's procedure for considering "reasonable accommodation" requests in conjunction with housing for disabled.

### **RECOMMENDATION**

Recommend by motion that City Council give first reading to the ordinance.

  
MINOO ASHABI, AIA  
Senior Planner

  
KIMBERLY BRANDT AICP  
Asst. Development Svs. Director

**BACKGROUND:**

In accordance with Federal and State Fair Housing Act, the Zoning Code allows disabled individuals and persons that operate a residential care facility for disabled persons to request a relief from zoning requirements or city policies; however, the current process requires approval of a conditional use permit and a public hearing. The 2008-2014 update of the Housing Element includes a program (No. 14) to streamline reasonable accommodation requests and eliminate the requirement for a public hearing or public notice (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.

The following text changes are indicated with strikethrough and underlined text:

**CHAPTER IX, ARTICLE 15. REASONABLE ACCOMMODATION**

**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. A ~~n~~ 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.~~

**ALTERNATIVES CONSIDERED:**

The proposed ordinance implements Program No. 14 in the City's newly adopted Housing Element. Commission may recommend that Council adopt the ordinance as recommended by Staff or modify the ordinance as the Commission determines necessary. Commission may also forward to Council a recommendation not to adopt the proposed amendment and the reasons for that recommendation.

**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.

**CONCLUSION:**

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

Attachments:           1 – Draft Ordinance  
                                  2 – Excerpt from Housing Element (p. HOU-98)

Distribution: Assistant City Attorney  
                  Deputy City Manager- Dev. Svs. Director  
                  Public Services Director  
                  City Engineer  
                  Staff (4)  
                  File (2)

## 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, Section 13-200.61, by including the following:

**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. A 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:

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- (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 9b) (30 (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:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
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.