

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2848

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, AMENDING CHAPTER 16 (ZONING) OF THE CITY CODE TO ADD A PROCEDURE AND STANDARDS FOR THE GRANTING OF REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN THE PROVISION OF HOUSING.

WHEREAS, Pursuant to the federal Fair Housing Act (42 U.S.C. sections 3601 et seq.), and the California Fair Employment and Housing Act (Cal. Gov. Code sections 12900 et seq.), the City is required to provide a reasonable accommodation in the application of its rules, policies, practices or regulations when such accommodation is reasonably necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling unit; and

WHEREAS, in the past the City has utilized the procedures from the density bonus ordinance, minor modifications or other existing procedures in processing requests for such reasonable accommodations; and

WHEREAS, the City Council finds that the processing of requests for reasonable accommodations in the provision of housing for persons with disabilities will be more efficient and defined if there is a specific procedure for the processing of such request; and

WHEREAS, the City finds that the zone text amendment (Planning and Zoning Permit No. 10-580-02) supports programs within the Housing Element of the General Plan; and

WHEREAS, the City Council has determined that zone text amendment PZ 10-580-02 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines, which sets forth the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment; and

WHEREAS, on June 16, 2011 the Planning Commission conducted a noticed public hearing on PZ 10-580-02, accepted comments and recommended approval to the City Council; and

WHEREAS, on July 19, 2011 the City Council conducted a noticed public hearing on PZ 10-580-02.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Division 17 of Article V is hereby added to Chapter 16 of the City Code to read as follows:

“DIVISION 17. REASONABLE ACCOMMODATION.

SEC. 16-501. PURPOSE AND INTENT.

This division provides a procedure and sets standards for persons with disabilities seeking a reasonable accommodation in the provision of housing and is intended to comply with Government Code section 65583(c)(3) requiring a Housing Element program to provide reasonable accommodations for persons with disabilities, as well as the Federal Fair Housing Act (42 U.S.C. sections 3601 et seq.) and the California Fair Employment and Housing Act (Cal. Gov. Code sections 12900 et seq.) (the Acts) regarding the application of zoning laws and other land use regulations, policies and procedures.

SEC. 16-501.1. APPLICABILITY.

(A) A request for reasonable accommodation may be made by any person with a disability, their representative, or entity when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This section is intended to apply to those persons who are considered disabled under the Acts. A reasonable accommodation may be approved only for the benefit of one or more persons with a disability.

(B) 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. Facilities serving persons with disabilities, not in compliance with this chapter at the time of adoption of this ordinance, may qualify for a reasonable accommodation permit pursuant to this division.

SEC. 16-501.2. APPLICATION REQUIREMENTS.

(A) Application. A request for reasonable accommodation shall be made on a city application form or in the form of a letter to the director and shall contain the following information:

- (1) The applicant's name, address and telephone number, and written permission of the property owner, if applicable.

- (2) The address of the property for which the request is being made.
- (3) The current use of the property.
- (4) Documentation for the claim that the person is considered disabled under the Acts.
- (5) The zoning code provision, regulation or policy from which reasonable accommodation is being requested.
- (6) Why the reasonable accommodation is necessary to make the specific property accessible to the person.
- (7) Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more persons with a disability an equal opportunity to use and enjoy a dwelling unit.

(B) Fee. An application must be accompanied by the applicable processing fee (equivalent to a Minor Modification fee) adopted by city council resolution.

SEC. 16-501.3. REVIEW AUTHORITY.

(A) Administrative Permit. Requests for reasonable accommodation shall be reviewed by the director if no discretionary approval is sought other than the request for reasonable accommodation.

(B) Associated Discretionary Permit. Requests for reasonable accommodation submitted for concurrent review with a discretionary land use application reviewed by the planning commission, such as a special use permit, shall be considered together by the planning commission.

SEC. 16-501.4. REVIEW PROCEDURE.

(A) Administrative Permit. Within 30 days of receiving the application, the director shall issue and mail a written determination to either grant, grant with modifications or conditions, or deny a request for reasonable accommodation.

(B) Associated Discretionary Permit. The written determination on whether to grant, grant with modifications or conditions, or deny the request for reasonable accommodation shall be made by the planning commission in compliance with the applicable review procedure for the accompanying discretionary permit. The planning commission shall take action and provide notice as set forth in the Zone Code requirements for the associated discretionary permit(s). The written determination on the request for reasonable accommodation shall be made in accordance with the provisions of section 16-501.5.

SEC. 16-501.5. FINDINGS AND DECISION.

(A) Written Findings. The applicant shall be notified of the decision whether to approve, conditionally approve, modify or deny the request for reasonable accommodation through a written determination. The written determination shall be consistent with the Acts and shall be based on the following findings, all of which are required for approval:

(1) The accommodation is requested by or on the behalf of one or more persons with a disability protected under the Acts.

(2) The accommodation is necessary to provide one or more persons with a disability an equal opportunity to use and enjoy a dwelling unit.

(3) The accommodation will not impose an undue financial or administrative burden on the city.

(4) The accommodation will not result in a fundamental alteration in the nature of a city program or law, including but not limited to land use and zoning.

(5) The accommodation will not result in a direct threat to the health and safety of other persons or physical damage to the property of others.

(B) Considerations. The director or planning commission may consider, but are not limited to, the following factors in determining whether the requested accommodation is reasonably necessary to provide one or more persons with a disability an equal opportunity to use and enjoy a dwelling unit or would result in a fundamental alteration in the nature of the city's zoning program:

(1) Whether the reasonable accommodation is being provided primarily to benefit one or more persons with a disability.

(2) Whether the reasonable accommodation is necessary for therapeutic benefit to the person(s) with a disability.

(3) Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

(4) Whether granting the requested accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan.

(5) Whether the requested accommodation would significantly deprive any neighboring property owners of the use and enjoyment of their own properties.

(6) Whether there are preferable and/or feasible alternatives to the requested accommodation that may provide an equivalent level of benefit.

(7) Whether proposed changes to property or structures are compatible with surrounding development or create potential impact(s) on surrounding uses.

(C) Conditions of Approval. In granting a request for reasonable accommodation, the director or planning commission may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection (A). Conditions of approval for a reasonable accommodation request may, where appropriate, provide for any or all of the following:

(1) Inspection of the affected premises by the city to verify compliance with this division and any conditions of approval;

(2) Removal of the permitted improvements by the applicant where removal would not constitute an unreasonable financial burden, if the need for which the accommodation was granted no longer exists; and

(3) Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists.

SEC.16-501.6. COMPLIANCE WITH EXISTING RULES.

In order to be eligible for consideration for a reasonable accommodation, the property must be in compliance with the then existing laws and regulations otherwise applicable to the property except that which is the subject of the reasonable accommodation request. If the non-compliance is through no fault of the applicant, the director may waive this requirement. However, such a waiver shall not preclude the city from requiring that the existing violations be corrected in accordance with the city code and all applicable rules and regulations.

SEC. 16-502. APPEAL OF DETERMINATION.

Administrative Permit. A determination by the director regarding a request for reasonable accommodation may be appealed to the hearing officer in accordance with the administrative hearing procedures set forth in article V of chapter 1 of the city code.

Discretionary Permit. A determination made by the planning commission for a reasonable accommodation in conjunction with a discretionary land use application may be appealed to the city council by the applicant or any aggrieved person within 18 calendar days of the date of the determination. Such appeal shall be delivered in writing to the city clerk. An appeal fee as set by city council resolution shall be collected from the appellant. The city clerk shall set a hearing date within 30 days of receipt of the appeal. The city council decision shall be final.

SEC.16-502.3. MODIFICATIONS.

A request to modify an approved reasonable accommodation shall be treated as a new application, unless in the opinion of the director, the requested modification results in a minor change, is within the director's authority to approve and is consistent with the original approval.

SEC.16-502.4. TIME EXTENSIONS.

The time limit for initiation of a reasonable accommodation as set forth in the permit that has been approved in accordance with the terms of this division may be extended for good cause for a period not to exceed 24 months by application to the director no less than 60 days prior to the expiration date. The request must be accompanied by the applicable fee for administrative permit extensions.

SEC. 16-502.5. DISCONTINUANCE AND REVOCATION.

A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for 30 days. The reasonable accommodation shall remain in effect after that time only if the director makes a written determination that (1) the modification is physically integrated into the residential structure and cannot be easily removed or altered to comply with code, and (2) the accommodation is necessary to allow another, identified, person with a disability to occupy the dwelling unit within 90 days from the date of the director's determination. Any reasonable accommodation may be revoked by the original decision maker for any violation of this division or the terms or conditions of the reasonable accommodation, or if any law is violated in connection with the use of the reasonable accommodation. The director shall mail notice of intent to revoke a reasonable accommodation that was granted by an administrative permit, and the permittee may request an administrative hearing regarding such action, in accordance with the procedures set forth in article V of chapter 1 of the city code.

SEC. 16-503. RESTRICTIVE COVENANT.

The owner of the property shall enter into a restrictive covenant with the city which provides that prior to sale, transfer, lease or other conveyance of the property or at the time the reasonable accommodation is no longer necessary, that the owner of the property shall bring the property into conformance with the city's zoning code to the extent that relief was provided as part of the request for reasonable accommodation. The restrictive covenant shall be recorded against the property by the County Recorder and shall provide that the reasonable accommodation does not run with the land and shall terminate upon sale, transfer, lease or other conveyance of the property. Any grant of accommodation for a person with a disability shall be considered as a personal accommodation for the applicant and does not run with the land. If the director finds that the accommodation cannot be feasibly removed or altered or the new property owner applies for and is granted the same accommodation by the director a new covenant shall be recorded as provided above."

Part 2. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Part 3. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk has published a summary of this ordinance, and a certified copy of it was posted in the Office of the City Clerk a minimum of five days before the City Council's public hearing to consider adoption of the ordinance.

Part 4. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. 2848 was first read on July 26, 2011, and finally adopted on _____, 2011, to become effective thirty days thereafter.

AYES:

NOES:

ABSTAIN:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Alan Holmberg, City Attorney