



**PLANNING COMMISSION  
STAFF REPORT**

**TO:** Planning Commission

**FROM:** Stephanie Diaz, Contract Planner

**DATE:** June 16, 2011

**SUBJECT:** Planning and Zoning Permit 10-580-02 (Zone Code Text Amendment) to Add Procedures and Standards for the Granting of Reasonable Accommodations for Disabled Persons in the Provision of Housing.

- 1) **Recommendation:** That the Planning Commission adopt a resolution to the City Council recommending approval of PZ 10-580-02 for text amendments to Chapter 16 of the Zone Code.
- 2) **Project Description and Applicant:** The proposed Zone Text Amendment (PZ 10-580-02) to Chapter 16 (Zoning Ordinance), that applies City-wide, addresses reasonable accommodations for disabled persons and is intended to comply with federal and state fair housing laws. A reasonable accommodation is defined as relief from the strict application of the City's zoning and land use regulations, policies, and practices when such an accommodation is found to be reasonably necessary to provide a disabled individual an equal opportunity to use and enjoy a dwelling. Filed by the City of Oxnard, 305 W. Third Street, Oxnard CA, 93030.
- 3) **Background:** Under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) local agencies are required to address reasonable accommodations for disabled persons. Additionally, the City's Draft Housing Element of the General Plan contains programs for providing housing for special needs households. The City has not adopted an official procedure for reviewing and approving reasonable accommodation requests but has been using other established permits such as minor modifications, density bonus incentives and development design review permits. The current City permit process for reasonable accommodation requests is not efficient and may not address specific project issues. None of the current procedures calls out the standards imbedded in state and federal law that are to be used in deciding upon a request for reasonable accommodation. An ordinance is proposed in Attachment A that creates an administrative procedure for individuals with disabilities to request reasonable

accommodations from land use and zoning standards when those standards are a barrier to equal housing access. Also, the ordinance provides findings and considerations for approval of a reasonable accommodation request. The proposed ordinance provides a fair means of accommodating special housing needs for the disabled without compromising the City's commitment to protecting community character and environmental quality.

4) **Environmental Determination:** Zone text amendment PZ10-580-02 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. The adoption of this ordinance will not create a significant effect and is therefore exempt. The ordinance is not likely to facilitate new development. Requests for reasonable accommodations will be considered on a case-by-case basis. These requests will undergo CEQA analysis at the time of application submittal and review.

5) **Consistency with General Plan Policies:** The proposed reasonable accommodation ordinance supports the City's Draft Housing Element of the General Plan and is consistent with the following goals, policies and programs that are designed to remove governmental constraints and ensure housing opportunities for those with special needs:

GOAL G-5    Ensure Fair and Equal Housing Opportunity.

Policy 5.1    Fair Housing Awareness

Policy 5.2    Discourage Discrimination.

Policy 5.4    Continuum of Care and Homeless Plan

6) **Analysis:** A reasonable accommodation provides an opportunity for a disabled person to apply for relief from City land use standards so that the disabled person can enjoy a dwelling unit. Such a request may involve an accommodation such as construction of a wheel chair ramp in a dwelling's setback area, diminishing outdoor open space for a structure, increasing building coverage on a lot, or to allow paved area for access in a dwelling's front yard, when there are no other viable alternatives. A disabled person is defined by state and federal laws as someone with a physical or mental impairment which substantially limits one or more of such person's major life activities. This definition could apply to those persons who have a physical or developmental issue or are recovering from alcohol or drug addiction and are in need of housing to integrate back into the community. This definition, by state law, could include recovering drug and alcohol users (sober living homes), but would not include addicts who are currently illegally using drugs or abusing alcohol.

a) **Permitting a Reasonable Accommodation:** After submitting an application and payment of the associated fee, the application from a disabled person or their representative will be reviewed by the Development Services Director. The Director

must review the application and make certain findings regarding the request. If the reasonable accommodation request is made in conjunction with a discretionary permit, the requests may be considered concurrently by the decision maker reviewing the discretionary application. To establish the person's disability associated with an application, verification of disability from an appropriate healthcare or rehabilitation professional or governmental issued identification is required.

**b) Findings and Considerations to Approve a Reasonable Accommodation**

**Request:** Findings stated in the ordinance must be made to approve the reasonable accommodation request, such as: the necessity of the request, that implementation will not be a direct threat to the health and safety of other individuals or cause physical damage to the property of others. The ordinance also includes considerations for the Director to use when reviewing the request such as whether the accommodation would fundamentally alter the character of the neighborhood and if financial viability makes the request necessary. All considerations must be evaluated on a case-by-case basis. The applicant must establish through submitted information that there is a link between the requested accommodation and how it provides an equal opportunity for housing for the disabled resident(s).

**c) Conditions of Approval:** In order to be eligible for consideration of a reasonable accommodation, the property must be in compliance with then existing laws and regulations with the exception of the component for which the reasonable accommodation is requested. A condition of approval shall state that removal of the accommodation shall be required, if no longer needed. Any grant of accommodation for an individual with a disability shall be considered as a personal accommodation for the applicant and does not run with the land. To address the tracking of reasonable accommodation approvals, the draft ordinance contains the requirement for covenant provisions.

A condition of approval will require an owner of the property that has been granted a reasonable accommodation permit to 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. The restrictive covenant 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. 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.

**7) Community Workshops:** A workshop with "stakeholders" (emergency shelter representatives, affordable housing providers, farmworker representatives and legal aid) was held January 11, 2010. Also, emergency shelter issues, housing for special needs/disabled persons and housing for low or very low income households were

discussed in two meetings held by the Commission on Homelessness (July 12, 2010 and August 2, 2010). The Commission discussed zone text amendments that would address special needs housing opportunities. The majority of input from the Commission meetings was that the City should provide more assistance through the General Plan/Housing Element programs or Zone Text Amendments to create more opportunities for special needs/disabled housing. Reasonable Accommodation Ordinance issues were presented to the Planning Commission in a work session on April 21, 2011. The use of group quarters and encouraging affordable housing for the disabled was discussed.

**Attachment:**

A. Resolution with Draft Ordinance Attached.

Prepared by: SLD  
SLD

Approved by: SM  
SM

ATTACHMENT A

RESOLUTION NO. 2011-10-580-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF PZ 10-580-02, AMENDING CHAPTER 16 OF THE CITY CODE TO ADD PROCEDURES AND STANDARDS FOR THE GRANTING OF REASONABLE ACCOMODATIONS FOR DISABLED PERSONS IN THE PROVISION OF HOUSING. FILED BY THE CITY OF OXNARD, 305 W. THIRD STREET, OXNARD CA 93030.

WHEREAS, the Planning Commission of the City of Oxnard has considered PZ-10-580-02, filed by the City of Oxnard, to amend chapter 16 of the City Code concerning reasonable accommodations for disabled persons in the provision of housing; and

WHEREAS, on June 16th the Planning Commission held a noticed public hearing on PZ 10-580-02; and

WHEREAS, the Planning Commission finds that the public interest and general welfare requires such an amendment; and

WHEREAS, the Planning Commission recommends the City Council find that the amendments conform to the General Plan and Housing Element; and

WHEREAS, the Planning Commissions finds that the California Environmental Quality Act (CEQA) does not apply to PZ 10-580-02 pursuant to the general rule expressed in section 15061(b)(3) of the State CEQA Guidelines that CEQA, 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 there is no possibility that the adoption of this ordinance and resolution may have a significant effect on the environment;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby recommends to the City Council adoption of the ordinance attached hereto as Exhibit A.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 16th day of June, 2011 by the following vote:

AYES:

NOES:

ABSENT:

Resolution No. 2011-10-580-02  
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Saul Medina, Chair

ATTEST: \_\_\_\_\_  
Sue Martin, Secretary

Exhibit A

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. \_\_\_\_\_

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 DISABLED PERSONS IN THE PROVISION OF  
HOUSING.

(PZ 10-580-02)

WHEREAS, Pursuant to the Federal Fair Housing Act, the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, 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 disabled person 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 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 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;

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

WHEREAS, on \_\_\_\_\_, 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 disabled persons 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 disabled persons, as well as the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) regarding the application of zoning laws and other land use regulations, policies and procedures. The terms “handicapped” and “disabled” shall have the same meaning as those terms have under the Acts.

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 defined as disabled under the Acts. A reasonable accommodation may be approved only for the benefit of one or more individuals 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 disabled individual(s), not in compliance with the zone code 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) Address of the property for which the request is being made.

- (3) The current actual use of the property.
- (4) Documentation for the claim that the individual 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 individual.
- (7) Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy housing.

(B) Fee. An application must be accompanied by the applicable processing fee (equivalent to a Minor Modification fee) adopted by city council fee 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 a decision maker other than the director, such as a special use permit, shall be considered together by the decision maker reviewing the discretionary land use application.

#### SEC. 16-501.4. REVIEW PROCEDURE.

(A) Administrative Permit. The director shall make a written determination within 30 days of receiving the application 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 or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the accompanying discretionary permit. The written determination on the request for reasonable accommodation shall be made in accordance with the findings and decision process of this division.

SEC. 16-501.5. FINDINGS AND DECISION.

(A) Written Findings. The applicant shall be notified of the director's decision whether to approve, conditionally approve, modify or deny the request for reasonable accommodation through a written determination within 10 days of the determination. The decision maker considering concurrent discretionary permits(s) shall take action and provide notice as set forth in the requirements for the discretionary permit(s). The written decision 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 individuals with a disability protected under the Fair Housing Laws.

(2) The accommodation is necessary to provide one or more individuals 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 the city's zoning program, as "fundamental alteration" is defined in Fair Housing Laws.

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

(B) Considerations. The director may consider, but is not limited to, the following factors in determining whether the requested accommodation is reasonably necessary to provide one or more individuals 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 individuals who are disabled.

(2) Whether the reasonable accommodation is necessary for therapeutic benefit to the disabled individual(s).

(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 decision maker 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 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 director. An appeal fee as set by city council resolution shall be collected from the appellant. The hearing officer shall set a hearing date within 30 days of receipt of the appeal. The hearing officer decision shall be final.

**Discretionary Permit.** A determination made by the authority responsible for reviewing the request 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 appeal fee set by resolution of the city council.

#### 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, disabled individual to occupy the dwelling within 90 days from the date of the director's determination. Any reasonable accommodation may be revoked by the original decision making body 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 such notice to the permittee, stating the basis on which the director intends to revoke the permit and informing the permittee that the director will revoke the permit if the permittee does not make a written request for a hearing, stating the basis on which the permittee disagrees with the director's intention to revoke the permit. The notice shall also inform the permittee that a request for a hearing must be received by the director within 18 calendar days after the notice is mailed to the permittee.

#### 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 an individual or individuals 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 Clerk was designated to prepare and 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. \_\_\_\_\_ was first read on \*\*\*\*\*, 2011, and finally adopted on \*\*\*\*\*, 2011, to become effective thirty days thereafter.

AYES:

NOES:

ABSTAIN:

ABSENT:

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Dr. Thomas E. Holden, Mayor

