

Memorandum

February 13, 2014

TO: Sausalito Housing Element Subcommittee

FROM: Geoff I. Bradley, AICP Principal, Metropolitan Planning Group
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Karen Warner, AICP, Principal, Karen Warner Associates

SUBJECT: Reasonable Accommodation Ordinance
Sausalito 2009-2014 Housing Element Program #25

The following attachments address the comments we have received from the Housing Element Committee since our last meeting on February 7, 2014.

RECOMMENDATION

Provide staff and the consultants with comments on the attached draft Reasonable Accommodation Ordinance (Attachment 1) for consideration by the Planning Commission in their review of the Ordinance.

Attachments

- 2 Revised Draft Reasonable Accommodation Ordinance (track changes shown from 2/7 version)
- 3 Draft Application Request Form

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1 **Reasonable Accommodation Ordinance**

2 *Draft 02.13.14*

3
4 **Purpose.**

5 The purpose of this chapter is to establish a procedure for requesting reasonable accommodation for
6 persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the
7 California Fair Employment and Housing Act (the Acts) in the application of zoning and building laws and
8 other land use regulations, policies and procedures.

9
10 **Applicability.**

11 A. Definition of Disability. Under the Federal and State Fair Housing Acts, an individual with a
12 disability is someone who has a physical or mental impairment that limits one or more major life
13 activities; anyone who is regarded as having such impairment; or anyone with a record of such
14 impairment. Individuals in recovery from drug or alcohol abuse are protected by federal and
15 state fair housing laws although individuals currently using illegal substances are not protected
16 under the law unless they have a separate disability. This chapter is intended to apply to those
17 persons who are defined as disabled under the Acts.

18
19 **B.** Scope of Accommodation. A request for a reasonable accommodation may include a
20 modification or exception to the rules, standards and practices for the siting, development and
21 use of housing or housing-related facilities that would eliminate regulatory barriers and provide
22 an individual with a disability equal opportunity to housing of their choice. Requests for
23 reasonable accommodation shall be made in the manner prescribed by Section X (Application
24 Contents and Submittal), and shall not require a fundamental alteration to the City's zoning or
25 building laws, policies, and/or procedures, as defined under the Acts. A modification approved
26 under this chapter is considered a personal accommodation for the individual applicant and
27 does not run with the land.

Comment [LS1]: SUBCOMMITTEE: Waiting for input from Fair Housing attorney. See expansion under Conditions of Approval below

28
29 C. Eligibility to Request Accommodation. A request for reasonable accommodation may be made
30 by any individual with a disability, his or her representative, or a developer or provider of
31 housing for individuals with disabilities, when the application of a land use, zoning or building
32 regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

33
34 **Notice to the Public of Availability of Accommodation Process.**

35 Notice of the availability of reasonable accommodation shall be displayed at the public information
36 counter in the Community Development Department advising the public of the availability of the
37 procedure for eligible individuals. Forms for requesting reasonable accommodation shall also be made
38 available.

39
40 **Application Contents and Submittal.** Requests for reasonable accommodation shall be submitted on an
41 application form provided by the Community Development Department and shall contain the following
42 information:

- 1 1. The applicant's name, address and telephone number.
- 2 2. Address of the property for which the request is being made, and the name, address and
- 3 telephone number of the property owner.
- 4 3. The current existing use of the property.
- 5 4. The basis for the claim that the individual is considered disabled under the Acts.
- 6 5. The zoning code provision, regulation or policy from which reasonable accommodation is
- 7 being requested.
- 8 6. Reason the requested accommodation may be necessary to make the specific property
- 9 accessible to the individual.

10
11 **Authority.**

- 12 A. Community Development Director. Requests for reasonable accommodation shall be reviewed
- 13 by the Director of Community Development (Director), or his/her designee if no approval is
- 14 sought other than the request for reasonable accommodation.
- 15
- 16 B. Other Review Authority. Requests for reasonable accommodation submitted for concurrent
- 17 review with another discretionary land use application shall be reviewed by the authority
- 18 reviewing the discretionary land use application.
- 19

20 **Review Procedure.**

- 21 A. Director Review. The Community Development Director, or his/her designee, shall make a
- 22 written determination within 45 days of submittal of a complete application and either grant,
- 23 grant with modifications, or deny a request for reasonable accommodation in accordance with
- 24 **Section X** (Findings and Decision). The Director shall mail a notice of a request for reasonable
- 25 accommodation to contiguous owners of property, as shown on the latest equalized Marin
- 26 County assessment roll, but may include other property owners as determined by the Director.
- 27 Said notice shall be mailed at least ten days prior to making a determination.
- 28
- 29 B. Other Reviewing Authority. Written determinations on requests for reasonable accommodation
- 30 submitted for concurrent review with another discretionary land use application shall be made
- 31 by the authority responsible for reviewing the discretionary land use application. The written
- 32 determination to grant or deny the request for reasonable accommodation shall be made in
- 33 accordance with **X** (Findings and Decision).
- 34
- 35 C. Additional Information. If necessary to reach a determination on the request for reasonable
- 36 accommodation, the reviewing authority may request further information from the applicant
- 37 consistent with fair housing laws, specifying in detail the information that is required. In the
- 38 event that a request for additional information is made, the 45 day period to issue a decision is
- 39 stayed until the applicant responds to the request.
- 40
- 41 D. The reviewing authority may approve an alternative reasonable accommodation that provides
- 42 the applicant an opportunity to use and enjoy a dwelling equivalent to that provided by the
- 43 specific accommodation requested, where such an alternative accommodation would:
 - 44 1. Reduce impacts to neighboring properties or the surrounding area; or

- 1 2. Not require a deviation from the provisions of Title 8 or Title 10 of the Municipal Code or
2 would require less of a deviation than the requested accommodation.
3

4 **Findings and Decision.**

5 A. Findings. The reasonable accommodation shall be approved, with or without conditions, if the
6 reviewing authority finds, based upon all of the evidence presented, that all of the following
7 findings can be made:

- 8 1. The housing, which is the subject of the request, will be occupied by an individual
9 considered disabled under the Acts.
10 2. The requested accommodation is necessary to provide a disabled individual with an equal
11 opportunity to use and enjoy a dwelling.
12 3. The requested accommodation would not impose an undue financial or administrative
13 burden on the City, as defined under the Acts.
14 4. The requested accommodation would not require a fundamental alteration to the City's
15 zoning or building laws, policies, and/or procedures, as defined under the Acts. In
16 considering whether the accommodation would require such a fundamental alteration, the
17 reviewing authority may consider, among other factors:
18 a. Whether the requested accommodation would fundamentally alter the character of
19 the neighborhood;
20 and
21 b. Whether the requested accommodation would substantially undermine any express
22 purpose of either Sausalito's General Plan or an applicable specific plan.
23 5. There are no other reasonable accommodation(s) that would allow the applicant to use and
24 enjoy the dwelling which would:
25 a. Be less impactful to neighboring properties or the surrounding area; or
26 b. Not require a deviation from the provisions of Title 8 or Title 10 of the Municipal Code
27 or would require less of a deviation than the requested accommodation.
28

29 B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing
30 authority may impose any conditions of approval deemed reasonable and necessary to ensure
31 that the reasonable accommodation would comply with the findings required by Subsection A
32 above, including but not limited to the following:

- 33 1. Inspection of the property periodically, as specified, to verify compliance with this article
34 and any conditions of approval.
35 2. Removal of the improvements, where removal would not constitute an unreasonable
36 financial burden, when the need for which the accommodation was granted no longer
37 exists.
38 3. Time limits and/or expiration of the approval if the need for which the accommodation was
39 granted no longer exists.
40 4. Recordation of a deed restriction requiring removal of the accommodating feature once the
41 need for it no longer exists.
42 5. Measures to reduce the impact on surrounding uses.
43 6. Measures in consideration of the physical attributes of the property and structures.
44 7. Other conditions necessary to protect the public health, safety and welfare. |

1
2 C. Written Decision. The written decision on the request for reasonable accommodation shall
3 explain in detail the basis of the decision, including the reviewing authority's findings required
4 by Subsection A above. All written decisions shall give notice of the applicant's right to appeal
5 and to request reasonable accommodation in the appeals process as set forth below.
6

Comment [LS3R2]: SUBCOMMITTEE: COAs expanded (per Tiburon's adopted ordinance) to address removal of modifications when the property is no longer occupied by a disabled individual "where the removal would not constitute an unreasonable financial burden". Alternatively, the city could add a discontinuance section similar to the Beverly Hills ordinance below.

7 **Appeals.**

8 A. A determination by the reviewing authority to grant or deny a request for reasonable
9 accommodation may be appealed within ten days of the decision to the Planning Commission
10 in compliance with Chapter 10.84 (Appeals) of the Sausalito Municipal Code. Appeals shall be
11 submitted on an application form provided by the Community Development Department. If an
12 individual needs assistance in filing an appeal on an adverse decision, the City will provide
13 assistance to ensure the appeals process is accessible.

APPLICATION FOR REQUEST FOR REASONABLE ACCOMMODATION

NOTE: If you need help in completing this request form, the Department will assist you. Please contact the Community Development Director at 415-289-4133 or help@sausalto.org.

1. Name of Applicant

Telephone Number

2. Applicant Address

3. Address of housing at which accommodation is requested.

4. Property owner name, address and telephone number.

5. Describe the accommodation you are requesting and the specific regulation(s) and/or procedure(s) from which accommodation is sought.

6. Give the reason that the reasonable accommodation may be necessary for you or the individual with disabilities. You do not need to tell us the name or extent of your disability or that of the individual seeking the housing.

7. If we have questions about your request for reasonable accommodation and you would like us to contact someone assisting you with this request, instead of you, please give us that person's name, address and telephone number.

8. Signature of Applicant _____ Date _____

Please attach any documents that support your request for reasonable accommodation and would assist city staff in considering your request.

NOTICE OF DECISION ON REASONABLE ACCOMMODATION REQUEST

1. Date of Application: _____

2. Date of Decision: _____

3. The request for Reasonable Accommodation is:

_____ Granted _____ Denied (See Notice below regarding right to appeal decision)

4. The reasons for this decision are as follows:

5. The facts relied on in making this decision:

Signature of Designee _____ Date _____

NOTICE: If your request for accommodation was denied, you may appeal the reviewing authority's decision to the Planning Commission within ten (10) days of the date of this decision. To file an appeal, complete and file an Appeal of Denial of Reasonable Accommodation Request form with the Department.

APPEAL OF DENIAL OF REASONABLE ACCOMMODATION REQUEST

1. Date of Adverse Decision: _____

2. Date Appeal Filed: _____

3. State why you think the denial of your request for accommodation was wrongly decided:

4. Provide any new information, facts or documents that support your request for accommodation:

5. Signature _____ Date _____

NOTICE: Please attach to this appeal form:

- (1) A copy of your reasonable accommodation request along with any attachments submitted with the request; and**
- (2) The notice of the decision denying your accommodation request.**