

RESOLUTION ADOPTING REASONABLE ACCOMMODATION POLICY

October 23, 2012

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accommodation when reasonable accommodation is warranted based upon sufficient evidence.

Staff intends to bring back a proposed ordinance to codify the reasonable accommodation process into the Garden Grove Municipal Code at a later date.

FINANCIAL IMPACT

There is no financial impact associated with adoption of the proposed Policy.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution adopting a Policy for Providing Individuals with Disabilities Reasonable Accommodation in Application of the City's Land Use and Zoning Regulations and Procedures



SUSAN EMERY
Community Development Director



By: Monica L. Covarrubias
Sr. Program Specialist
Neighborhood Improvement Division

Attachment: Proposed Resolution

Recommended for Approval



Matthew Fertal
City Manager

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE,
CALIFORNIA, ADOPTING A POLICY FOR PROVIDING INDIVIDUALS WITH
DISABILITIES REASONABLE ACCOMMODATION IN APPLICATION OF THE CITY'S
LAND USE AND ZONING REGULATIONS AND PROCEDURES

WHEREAS, the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (collectively, the "Fair Housing Laws") require cities to make reasonable accommodations in their zoning and land use regulations, policies, and practices when such accommodations are necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling;

WHEREAS, the Housing Element of the City's General Plan provides for the City to adopt written procedures for making requests for reasonable accommodation to land use and zoning regulations and procedures regulating the siting, funding, development and use of housing for people with disabilities; and

WHEREAS, in accordance with the Fair Housing Laws and the Housing Element of the City's General Plan, the City Council desires to establish written procedures for the receipt and evaluation of requests for reasonable accommodation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City of Garden Grove hereby adopts a Policy for Providing Individuals with Disabilities Reasonable Accommodation in Application of the City's Land Use and Zoning Regulations and Procedures," which policy is attached hereto as Exhibit "A" and is incorporated herein by reference.

SECTION 2. The City Council finds that adoption of this Resolution is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3.

SECTION 3. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Resolution or the attached Policy is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution and/or the attached Policy. The City Council hereby declares that it would have adopted this Resolution and the attached Policy and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4. This Resolution shall take effect immediately.

EXHIBIT "A"

CITY OF GARDEN GROVE

POLICY FOR PROVIDING INDIVIDUALS WITH DISABILITIES REASONABLE ACCOMMODATION IN APPLICATION OF THE CITY'S LAND USE AND ZONING REGULATIONS AND PROCEDURES

I. Purpose.

It is the policy of the City of Garden Grove to comply with the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (collectively referred to hereafter as "Fair Housing Laws") to provide individuals with disabilities reasonable accommodation in regulations and procedures regulating the siting, funding, development and use of housing to ensure such individuals equal access to housing and to facilitate the development of housing for individuals with disabilities. The purpose of this Policy is to establish a process for individuals with disabilities to make requests for, and be provided with, reasonable accommodation when reasonable accommodation is warranted based upon sufficient evidence.

II. Applicability; Definition of Individual With a Disability.

A. Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities flexibility in the application of zoning, land use, or building regulations, policies, practices, or procedures when reasonable and necessary to eliminate barriers to housing opportunities. For the purposes of this Policy, the term "reasonable accommodation" means a modification to a City's zoning, land use, or building laws, regulations, policies, practices, or procedures when the modification is reasonable and necessary to avoid discrimination on the basis of disability.

B. An individual with a disability is defined as any of the following: a person who has a physical or mental impairment that limits one or more major life activities; or a person who is regarded as having such impairment; or a person with a record of such impairment; or a person with a "disability" as otherwise defined in the federal Americans with Disabilities Act or the California Fair Employment and Housing Act.

III. Who May Request a Reasonable Accommodation.

Any person with a disability, a parent or legal guardian of a minor with a disability, his or her other legally authorized representative, or a developer or provider of housing for individuals with a disability may submit a request for a reasonable accommodation.

IV. Application For Reasonable Accommodation.

A. Application Process and Contents.

1. Requests for reasonable accommodation shall be submitted in writing on an application form prescribed by the Community Development Director.

2. In addition to a completed application form, an applicant requesting reasonable accommodation shall provide the following:

(a) Documentation that the individual who is applying or upon whose behalf application is being made is: (i) an individual with a disability; (ii) applying on behalf of one or more individuals with a disability; or (iii) a developer or provider of housing for one or more individuals with a disability.

(b) A description of the specific basis for the claim that the individual who is applying or upon whose behalf application is being made is considered disabled under the Fair Housing Laws.

(c) A description of the accommodation requested and the specific Land Use Code provision(s), regulation(s), policy(ies), practice(s), and/or procedure(s) from which relief is requested.

(d) Plans and detailed information of any physical improvements to the property being proposed, including photos and supporting information necessary for the City to evaluate the accommodation being requested.

(e) A detailed written explanation of why the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the dwelling and how it will achieve this result.

(f) Any other information that the Zoning Administrator reasonably concludes is necessary to properly evaluate request for reasonable accommodation, to make the required findings, and to render a decision. Such information may include, without limitation, additional information concerning the nature of the disability and the need for the requested reasonable accommodation, provided any request for additional information regarding the disability of the individuals benefited complies with the Fair Housing Laws and the privacy rights of the individuals protected.

3. An application processing fee, in the amount established by City Council resolution, shall be paid at the time of submittal of an application for reasonable accommodation.

4. If the project for which the application for reasonable accommodation is being made also requires some other approval, permit or entitlement,

the applicant shall file the request together with the application for such other approval, permit, or entitlement.

B. Conformance With Applicable Laws and Regulations. In order to be eligible for consideration for reasonable accommodation, the subject property must be in conformance with the applicable laws and regulations from which the applicant seeks relief. An application will not be considered until the subject property is made to conform to the laws and regulations from which the relief is sought. It is the intent of this provision to discourage applicants from violating applicable laws and regulations and making potentially expensive modifications prior to obtaining the City's approval to do so. Upon a showing of good cause, the Zoning Administrator may waive this requirement. However, the granting of such a waiver shall not preclude the City from requiring that existing violations unrelated to the reasonable accommodation be corrected to conform to all applicable laws and regulations.

V. Review of Request for Reasonable Accommodation.

A. Notice and Review.

An application for reasonable accommodation shall be processed in the same manner as a Minor Deviation under Chapter 9.32 of the Garden Grove Municipal Code, except that the Zoning Administrator shall determine whether or not to approve the request for reasonable accommodation. Pursuant to the findings set forth below, the Zoning Administrator may approve, approve subject to conditions, modify, or deny the request. Requests for reasonable accommodation shall be considered without a public hearing.

B. Required Written Findings.

1. The written decision to approve, conditionally approve, modify or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:

(a) The accommodation is requested by or on behalf of one or more individuals with a disability;

(b) The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling;

(c) The requested accommodation will not impose an undue financial or administrative burden on the City;

(d) The requested accommodation will not result in a fundamental alteration in the nature of a City program or law, including, but not limited to, the City's zoning scheme; and

(e) The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health and safety of other individuals or substantial physical damage to the property of others.

2. In making the above findings, the Zoning Administrator may consider, but is not limited to, the following additional factors:

(a) Whether the requested accommodation is being provided primarily to benefit individuals who are disabled;

(b) Whether financial considerations make the requested accommodation necessary in light of the relevant market and market participants;

(c) Whether the requested accommodation would result in a significant increase in traffic or insufficient parking;

(d) Whether the requested accommodation would substantially undermine the policies and purposes of the City's General Plan or any applicable Specific Plan;

(e) Whether the requested accommodation would create an institutionalized environment due to the number of tenants being proposed and/or the congregation of facilities that are similar in nature or operation; and

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

C. Conditions of Approval. In granting a request for reasonable accommodation, the Zoning Administrator may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the required findings set forth above.

VI. Expiration, Time Extension, and Revocation

A. Expiration. Any reasonable accommodation approved in accordance with the terms of this Policy shall expire and become null and void within one year from the effective date of the Zoning Administrator's approval of the reasonable accommodation request or at an alternative time specified as a condition of approval unless:

1. A building permit has been issued and construction has commenced;

2. A certificate of occupancy has been issued;

3. The use is established; or
4. A time extension has been granted.

B. Time Extension. The Zoning Administrator may approve one or more time extensions for a previously approved reasonable accommodation for good cause. Each time extension shall be limited to one year or less. A request for a time extension shall be made in writing to the Community Development Department prior to the expiration date of the reasonable accommodation.

C. Revocation. Any reasonable accommodation approved in accordance with this Policy may be revoked by the Zoning Administrator if the terms or conditions of such reasonable accommodation are violated or if any law, ordinance, or provision of this Policy is violated in connection with the use of the reasonable accommodation.

VII. Effect of Approval of Request for Reasonable Accommodation; Discontinuance.

A. Does Not Run With Land. A reasonable accommodation approved by the City shall not run with the land or constitute a transferrable property right.

B. Restrictive Covenant. When applicable, the City may require the property owner to execute and record a restrictive covenant, which provides that prior to any sale, transfer, lease or other conveyance of the property or at the time the need for the reasonable accommodation is no longer necessary, that the property owner shall bring the property into conformance with the Garden Grove Municipal Code to the extent that relief was provided under this Policy as part of the request for reasonable accommodation. The restrictive covenant shall be recorded against the property and provide that the reasonable accommodation does not run with the land and shall terminate upon any sale, transfer, lease or other conveyance of the property.

C. Discontinuance.

1. A previously approved reasonable accommodation shall lapse and be deemed null and void if the exercise of rights granted by the reasonable accommodation is discontinued for one hundred eight (180) consecutive days and/or if the individual or individuals with a disability on whose behalf an approved reasonable accommodation was requested vacate the premises, unless, following consideration of a new application in accordance with this Policy, the Zoning Administrator determines that (a) the modification is physically integrated into the residential structure such that it would be impractical to require the property to be returned to its previous condition, or (b) the accommodation is necessary to give another disabled individual an equal opportunity for use and enjoyment of the dwelling.

2. The Community Development Director, or his or her designee, may, at any time, request in writing the applicant or any successor-in-interest to the property

subject to a previously approved reasonable accommodation to provide documentation demonstrating that the accommodation remains necessary to ensure the equal use and enjoyment of the property by an individual or individuals with a disability and/or continued compliance with any applicable conditions of approval. Failure to provide such documentation within fifteen (15) days of the date of such a request shall constitute evidence of discontinuance the exercise of rights granted by the reasonable accommodation.

3. Upon discontinuance or revocation of a previously approved reasonable accommodation, the City may require the property owner and/or occupant(s) to bring the property into conformance with the Garden Grove Municipal Code to the extent that relief was provided under this Policy as part of the request for reasonable accommodation.

VIII. Appeals.

Any decision of the Zoning Administrator pursuant to this Policy may be appealed to the Planning Commission in accordance with the appeal procedures for land use actions set forth in Chapter 9.32 of the Garden Grove Municipal Code. The decision of the Planning Commission on any such appeal may itself be appealable to the City Council in accordance with Chapter 9.32.