

# Housing Elements Checklist for Supportive Housing

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## Section 1: Introduction

Disability Rights California's publication, *Everyone's Backyard: Addressing "Not in My Backyard" Opposition to Supportive Housing for People with Mental Health Disabilities ("Everyone's Backyard")*,<sup>1</sup> discusses the important role of land use and planning in promoting supportive housing for people with mental health disabilities. In California, the principal planning document for this purpose is the housing element of a local government's general plan. The housing element is designed to make "adequate provision for the housing needs of all economic segments of the community."<sup>2</sup> Housing elements must be reviewed and approved by the California Department of Housing and Community Development ("HCD").<sup>3</sup>

Section 2 of this publication contains a checklist that is designed to help advocates and land use planners ensure that their housing elements adequately plan for supportive housing. The checklist includes references to HCD's housing elements technical assistance materials. *Everyone's Backyard* contains

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<sup>1</sup> DRC Publication #CN 52.01, available at [www.disabilityrightsca.org/pubs/CM5301.pdf](http://www.disabilityrightsca.org/pubs/CM5301.pdf)

<sup>2</sup> Government Code § 65583

<sup>3</sup> Government Code § 65585. HCD posts the status of housing elements that have been reviewed and are in the process of being reviewed, at <http://www.hcd.ca.gov/hpd/hrc/plan/he/>

additional information and resources for housing elements as they apply to supportive housing. These resources include the following:

- HCD, *Housing Element Update Guidance*<sup>4</sup>
- HCD Memorandum, *Senate Bill 2 – Legislation Effective January 1, 2008: Local Planning and Approval for Emergency Shelters and Transitional and Supportive Housing* (May 7, 2008) (“HCD SB 2 Memo”)<sup>5</sup>
- HCD Memorandum, *Transitional and Supportive Housing: re SB 745: Chapter 183, Statutes of 2013 (SB 745)* (April 14, 2014) (“HCD SB 745 Memo”)<sup>6</sup>
- California Affordable Housing Law Project, Public Interest Law Project, *California Housing Element Manual and Appendices*<sup>7</sup>
- San Mateo County 21 Elements, *Zoning in the Wake of SB 2: Best Practices for Emergency, Supportive and Transitional Housing*<sup>8</sup>
- Non-Profit Housing Association of Northern California, *Zones for Homes and the Housing Elements Toolkit*<sup>9</sup>

In 2008, Senate Bill 2 (“SB 2”) amended the California Government Code to require that transitional and supportive housing “shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.”<sup>10</sup> The California Constitution and federal and state fair housing laws also prohibit zoning discrimination against people with disabilities. Section 3 of this publication

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<sup>4</sup> <http://www.hcd.ca.gov/hpd/HE%20Guidance%20Complete%20package.pdf>

<sup>5</sup> [http://www.hcd.ca.gov/hpd/sb2\\_memo050708.pdf](http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf). Note that this memorandum was published before SB 2 was amended in 2013 by SB 745.

<sup>6</sup> <http://www.hcd.ca.gov/hpd/SB745/sb745memo042414.pdf>

<sup>7</sup> <http://pilpca.org/wp-content/uploads/2013/11/California-Housing-Element-Manual-3rd-Ed.-November-2013.pdf>; <http://pilpca.org/wp-content/uploads/2010/10/California-Housing-Element-Manual-3rd-Ed.-Appendices-2013.pdf>

<sup>8</sup> <http://21elements.com/Resources/table-of-contents.html>

<sup>9</sup> <http://nonprofithousing.org/resources/zone-for-homes-and-the-housing-element-toolkit/>

<sup>10</sup> Chapter 633, Statutes of 2007, Government Code §65583(a)(5). SB 2 also includes requirements for zoning of emergency shelters. See, HCD SB 2 Memo and SB 745 Memo, notes 5 and 6 above, and the other resources listed above, for more information on SB 2 as it applies to shelters.

provides steps and sample language to ensure that housing elements comply with SB 2.

Fair housing and anti-discrimination laws also require that local governments provide reasonable accommodations to people with disabilities in the zoning process. Section 4 provides a model reasonable accommodations ordinance, based on an ordinance adopted by the City of Oakland in 2014.

## Section 2: Housing Elements Checklist for Supportive Housing

The following checklist is designed to help ensure that housing elements adequately plan for housing for people with disabilities, particularly supportive housing. The HCD website contains information about how to obtain HCD approval for housing elements,<sup>11</sup> as well as the status of jurisdictions' housing elements and HCD review letters.<sup>12</sup>

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/ Notes
<p><b>Needs Assessment: General</b></p> <p>Quantification and analysis of existing and projected housing needs</p> <p>Populations and employment trends</p> <p>Housing and household characteristics</p> <p>Existing and projected need for extremely low income households</p>	<p>65583(a)(1) - (3)</p>	<p>HCD Building Blocks: Housing Needs<sup>13</sup></p> <p>HCD Building Blocks: Sites Inventory/<sup>14</sup>Analysis</p>	

<sup>11</sup> [http://www.hcd.ca.gov/hpd/Attachment%204\\_ReviewProcessTimelines.pdf](http://www.hcd.ca.gov/hpd/Attachment%204_ReviewProcessTimelines.pdf)

<sup>12</sup> <http://www.hcd.ca.gov/hpd/hrc/plan/he/>

<sup>13</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/HN\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/HN_home.php)

<sup>14</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/SIA_home.php)

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/ Notes
<p>At-risk units</p> <p>Sites inventory and analysis</p>			
<p><b>Needs Assessment: People with Disabilities</b></p> <p>Requisite analysis of each special needs group, including quantification of each group, quantification and qualitative description of need, and identification of potential program or policy options;</p> <p>Additional analysis of special housing needs for people with disabilities, including people with developmental,<sup>15</sup> physical,</p>	<p>65583(a)(4) (D) (7),(9);</p>	<p>HCD Building Blocks: Persons with Disabilities<sup>17</sup></p> <p>HCD Memo, <i>Persons with Developmental Disabilities: SB 812 (Ashburn), Chapter 507, Statutes of 2010 (June 21, 2012)</i><sup>18</sup></p>	

<sup>17</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/SHN\\_disabilities.php](http://www.hcd.ca.gov/hpd/housing_element2/SHN_disabilities.php)

<sup>18</sup> <http://www.hcd.ca.gov/hpd/NoticeCoverLtrSB812.pdf>

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/Notes
<p>sensory and mental health disabilities.<sup>16</sup></p> <p>Analysis includes resources for housing and services, identification of housing types that can accommodate people with disabilities and any zoning issues, and programs or strategies to address these needs.</p>			
<p><b>Needs Assessment: SB 2</b></p> <p>Assessment of unmet needs for emergency shelter and transitional and supportive housing to be treated as other residential uses of the same type in the same zone, and designation of adequate zoning districts that permit emergency shelters to be developed by right.</p>	<p>655683(a) (4),(5)</p>	<p>HCD SB 2 Memo<sup>19</sup></p> <p>HCD SB 745 Memo<sup>20</sup></p>	

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<sup>16</sup> It is important that housing elements provide for housing that is targeted to the needs of people with different types of disabilities, because people with different disabilities require different types of housing. For example, people with mobility impairments may require wheelchair-accessible units, people with hearing impairments may require visual aids such as blinking doorbells, and people with mental health disabilities may require supportive housing.

<sup>19</sup> See note 5, above.

<sup>20</sup> See note 6, above.

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/Notes
<p><b>Governmental Constraints</b></p> <p>Identification and discussion of potential and actual governmental constraints that hinder the locality from meeting its share of housing for people at all income levels and housing for people with all types of disabilities,<sup>21</sup> supportive and transitional housing, and emergency shelters, and local efforts to remove those constraints.</p> <p>Governmental constraints may include land use controls, building codes and their enforcement, site improvements, fees, and local processing and permit procedures.<sup>22</sup></p>	65583(a)(5)	HCD Building Blocks: Constraints <sup>23</sup>	
<p><b>Non-Governmental Constraints</b></p> <p>Analysis of potential and actual nongovernmental constraints on the maintenance, improvement, or development of housing for all income levels.</p> <p>Non-governmental constraints may include the availability of</p>	65583(a)(6)	HCD Building Blocks: Constraints <sup>25</sup>	

<sup>21</sup> See note 16, above.

<sup>22</sup> Examples of governmental constraints that can negatively affect supportive housing include family composition rules and spatial separation and concentration requirements. See, *Everyone's Backyard*, note 1 above.

<sup>23</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php)

<sup>25</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php)

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/ Notes
financing, the price of land, the cost of construction, and NIMBY barriers to affordable housing or housing for people with all types of disabilities. <sup>24</sup>			
<p><b>Quantified Objectives and Program of Action<sup>26</sup></b></p> <p>Statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing;</p> <p>Program of action identifying steps that will be taken to:</p> <ul style="list-style-type: none"> <li>- Make sites available as necessary to meet the community's Regional Housing Needs Assessment (RHNA) obligation;<sup>27</sup></li> <li>- Facilitate and encourage the development of a variety of types</li> </ul>	65583(b); 65583(c)	<p>HCD Building Blocks: Program Requirements<sup>31</sup></p> <p><a href="#">Oakland Reasonable Accommodations Ordinance</a>:<sup>32</sup></p>	

<sup>24</sup> For more information on non-governmental constraints that can negatively affect supportive housing, see, *Everyone's Backyard*, note 1 above.

<sup>26</sup> See the model SB 2 ordinance language in Section 3, below, for suggested language in planning for supportive housing.

<sup>27</sup> If a housing element does not identify enough sites to meet its RHNA obligation for very low and low-income households, the program of action must provide for this capacity in zones that permit owner-occupied and multi-family residential use by right.

<sup>31</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/PRO\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/PRO_home.php)

<sup>32</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/documents/oakland\\_accomodation\\_ord13247.pdf](http://www.hcd.ca.gov/hpd/housing_element2/documents/oakland_accomodation_ord13247.pdf). The Oakland ordinance is reprinted as model reasonable accommodations ordinance language in Section 4, below. This language is more complete and up to date than the model ordinance which is posted on the HCD website.

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/ Notes
<p>of housing for all income levels, including supportive housing;</p> <ul style="list-style-type: none"> <li>- Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities;<sup>28</sup></li> <li>- Remove constraints to, and provide reasonable accommodations or housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities;<sup>29</sup></li> <li>- Promote housing opportunities for all persons, regardless of certain personal characteristics of the tenants, including disability.<sup>30</sup></li> </ul>			
<p><b>Review and Revise: Appropriateness, Effectiveness and Progress</b></p> <p>Appropriateness of goals, objectives, policies and programs;</p> <p>Effectiveness of the element;</p> <p>Progress in implementation.</p>	65588	HCD Building Blocks: Review and Revise <sup>33</sup>	

<sup>28</sup> See, note 22, above.

<sup>29</sup> See, model reasonable accommodations ordinance in Section 4.

<sup>30</sup> See note 16, above.

<sup>33</sup> [hcd.ca.gov/hpd/housing\\_element2/GS\\_reviewandrevise.php](http://hcd.ca.gov/hpd/housing_element2/GS_reviewandrevise.php)

Housing Element Requirement	Gov't Code Section	HCD Resources	Check/Notes
<p><b>Public Participation</b></p> <p>Description of diligent effort to include all economic segments of the community and/or their representatives in the development and update of the housing element. This should include people with disabilities and disability organizations in the public participation process.</p>	65583(c)(8)	HCD Building Blocks: Public Participation <sup>34</sup>	
<p><b>Other Requirements</b></p> <p>General plan consistency; demolition, construction and conversion of affordable housing; energy conservation; water and sewer priority; flood hazard and land management; disadvantaged communities; etc.</p>	65583(c) (7)  65588	<p>HCD Building Blocks: Other Requirements<sup>35</sup></p> <p>HCD Building Blocks: Opportunities for Energy Conservation<sup>36</sup></p>	

<sup>34</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/GS\\_publicparticipation.php](http://www.hcd.ca.gov/hpd/housing_element2/GS_publicparticipation.php)

<sup>35</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/OR\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/OR_home.php)

<sup>36</sup> [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_conservation.php](http://www.hcd.ca.gov/hpd/housing_element2/SIA_conservation.php)

## Section 3: Bringing Land Use and Zoning Codes into Compliance with SB 2 for Transitional and Supportive Housing<sup>37</sup>

Two steps are necessary to ensure that land use and zoning codes comply with the requirements of SB 2 for transitional and supportive housing. First, all existing language that is not in compliance with both SB 2 and fair housing rules should be removed. Second, affirmative language should be added to demonstrate the jurisdiction's intent to comply.

### Step 1: Remove Code Language Not in Compliance with SB 2

The first step is to review the existing zoning and land use codes, and remove language that does not comply with both SB 2 and fair housing laws.<sup>38</sup> For example, jurisdictions may not:

1. Limit the number of unrelated people living together in the same residence;<sup>39</sup>
2. Impose family composition rules that are designed to preserve the family character of a neighborhood;<sup>40</sup>
3. Impose spatial separation or concentration requirements that restrict the siting of supportive housing;<sup>41</sup>
4. Impose "health and safety" restrictions that apply only to housing for people with disabilities, or that have a disparate impact on people with disabilities,

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<sup>37</sup> SB 2 also includes requirements for zoning of emergency shelters. See, HCD Memoranda regarding SB 2 and SB 745, notes 5 and 6 above, and the other resources listed above, for more information on SB 2 as it applies to shelters.

<sup>38</sup> See, e.g., Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>; *Joint Statement of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development: Group Homes, Local Land Use and the Fair Housing Act* (August 18, 1999), at [http://www.justice.gov/crt/about/hce/final8\\_1.php](http://www.justice.gov/crt/about/hce/final8_1.php)

<sup>39</sup> California Const. Article I; *Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980).

<sup>40</sup> *City of Edmonds v. Oxford House*, 514 U.S. 725 (1995).

<sup>41</sup> *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013).

unless the restrictions are warranted by the specific needs and abilities of the intended residents;<sup>42</sup> or

5. Have zoning or land use restrictions that prohibit the siting of supportive or transitional housing in zones that otherwise permit residential uses, or require conditional use permits or other conditions for supportive and transitional housing that are not required for other residential uses.

## Step 2: Add Language Demonstrating an Intent to Comply with SB 2

Adopting a specific zoning provision with the following language will provide clarity about the locality's intent to comply with SB 2's requirements for siting transitional and supportive housing, and will prevent any misinterpretation of zoning ordinances if there is any ambiguity:

*Transitional and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.*<sup>43</sup>

The following definitions apply to the above provision:

*“Supportive housing”* means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.<sup>44</sup>

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<sup>42</sup> *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775 (7<sup>th</sup> Cir. 2002).

<sup>43</sup> Government Code §65583(c).

<sup>44</sup> Government Code §65582(f). To be exempt from licensure under the Community Care Facilities Act, supportive housing must provide community living support services and have all of the following characteristics:

- 1) It is affordable to people with disabilities;
- 2) It is independent housing in which each tenant holds a lease or rental agreement in his or her own name and is responsible for paying his or her own rent, and has his or her own room or apartment and is individually responsible for arranging any shared tenancy;
- 3) It is permanent, meaning that each tenant may stay as long as he or she pays his or her required share of rent and complies with the terms of his or her lease;
- 4) Supportive housing providers are required to comply with applicable state and federal laws governing the landlord-tenant relationship; and
- 5) Participation in services or any particular type of service is not required as a condition of tenancy. Health & Safety Code §1504.5(c)(1), (2).

*“Target population”* means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.<sup>45</sup>

*“Transitional housing”* means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.<sup>46</sup>

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<sup>45</sup> Government Code §65582(g). This definition was amended by SB 745 in 2013. See HCD, <http://www.hcd.ca.gov/hpd/SB745/sb745memo042414.pdf>

<sup>46</sup> Government Code §65582(h).

## Section 4: Model Reasonable Accommodations Ordinance

The following model is adapted from an ordinance that was passed by the City of Oakland in 2014.

WHEREAS, adoption of a Reasonable Accommodations policy and procedures will provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing; and

WHEREAS, the Fair Housing Act (42 U.S.C. §§ 3601 et seq.), the Fair Housing Act Amendments of 1988, and the Fair Employment and Housing Act (California Government Code Sections 12955 et seq.) (FEHA) impose an affirmative duty on local governments to make reasonable accommodations (i.e., modifications or exceptions) in their land use and zoning rules, policies and practices and procedures when such accommodations may be necessary to provide individuals with disabilities an equal opportunity to use and enjoy a dwelling; and

WHEREAS, on \_\_\_\_\_, at a duly noticed public hearing, the City Planning Commission recommended approval of the proposed Planning Code amendments; and

WHEREAS, after a duly noticed public meeting on \_\_\_\_\_, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on \_\_\_\_\_ to consider the proposal; and

WHEREAS, the proposed Reasonable Accommodations Ordinance relies on the previously certified \_\_\_\_\_ Housing Element, which provides analysis of the environmental impacts of the proposed Planning Code amendments and supports all levels of approval necessary to implement the Planning Code amendments; and

WHEREAS, the proposed Reasonable Accommodations Ordinance would not result in any significant effect that has not already been analyzed in the Housing Element EER, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating

preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code section 21166 and CEQA Guidelines sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines section 15162(a)(3); and

WHEREAS, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore

THE COUNCIL OF THE CITY OF \_\_\_\_\_ DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Wildlife Code (Section 711.4) with the County of \_\_\_\_\_.

Section 3. Title \_\_\_\_\_ of the \_\_\_\_\_ Planning Code is hereby amended pursuant to Exhibit A attached hereto and hereby incorporated by reference. Additions to Title \_\_\_\_\_ of the Planning Code are shown in Exhibit A.

Section 4. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

IN COUNCIL, \_\_\_\_\_ CALIFORNIA, ---- [DATE] PASSED BY THE  
FOLLOWING VOTE \_\_\_\_\_ :

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING  
COMMISSION, AMENDING THE \_\_\_\_\_ PLANNING CODE TO CREATE

CHAPTER \_\_\_\_\_, REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES

This ordinance would improve access to housing for individuals with a disability. The ordinance would provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. The City Council's adoption of a Reasonable Accommodations Ordinance is a requirement of the City's \_\_\_\_\_ Housing Element.

**AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE \_\_\_\_\_ PLANNING CODE TO CREATE CHAPTER \_\_\_\_\_, REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES**

This ordinance would improve access to housing for individuals with a disability. The ordinance would provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. The City Council's adoption of a Reasonable Accommodations Ordinance is a requirement of the City of \_\_\_\_\_'s Housing Element.

**NOTICE AND DIGEST AN ORDINANCE, AS RECOMMENDED BY THE CITY  
PLANNING COMMISSION, AMENDING THE PLANNING CODE TO  
CREATE CHAPTER , REASONABLE ACCOMMODATIONS POLICY  
AND PROCEDURES**

This ordinance would improve access to housing for individuals with a disability. The ordinance would provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. The City Council's adoption of a Reasonable Accommodations Ordinance is a requirement of the City of 's ] Housing Element.

Chapter

**REASONABLE ACCOMMODATIONS POLICY AND PROCEDURES**

Section 1 – Title, Purpose and Applicability.

- A. Title and Intent. The provisions of this chapter shall be known as the Reasonable Accommodations Policy and Procedure regulations. The intent of the Reasonable Accommodations Policy and Procedure regulations is to provide flexibility in the application of the Planning Code for individuals with a disability, when flexibility is necessary to eliminate barriers to housing opportunities. This Chapter will facilitate compliance with federal and state fair housing laws, and promote housing opportunities for residents of .
- B. Purpose. The purpose of this Chapter is to establish a procedure for persons with disabilities seeking fair access to housing to make requests for reasonable accommodation in the application of 's zoning laws, rules, pohcies, practices and procedures pursuant to Section 3604(f)(3 )(b) of Title 42 of the United States Code (the "Fair Housing Act") and Section 12955 et seq. of the California Government Code (the "California Fair Employment and Housing Act"), which prohibit local government from refusing to make reasonable accommodations in policies and practices when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.
- C. Applicability. 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.

## Section 2 - Definitions.

"Acts" means the "Fair Housing Act" (Section 3601 et seq. of Title 42 of the United States Code) and the "California Fair Employment and Housing Act" (Section 12955 et seq. of the California Government Code).

"Person with a Disability" is any person who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment. Federal and State fair housing laws do not protect an individual's current unlawful use of controlled substances or other drugs, unless that individual has a separate disability.

"Request for Reasonable Accommodations" means a request to modify land use, zoning and building regulations, policies, practices, or procedures in order to give people with disabilities an equal opportunity to use and enjoy a dwelling.

## Section 3 - Notice of Availability; Application Requirements.

- A. Notice of the City of \_\_\_\_\_'s Reasonable Accommodations Policy and Procedure shall be displayed at public information counters in the planning and building offices of the City.
- B. Any person (or his or her representative) who requires reasonable accommodation because of a disability shall make such a request to the City on a form provided by the Planning Director, or his or her designee. The application shall be accompanied by such information as may be required to enable review of the requested accommodation. City staff are available to assist with the completion of a reasonable accommodations request (see related Reasonable Accommodations Form for more information).
- C. Any information submitted as part of a reasonable accommodations request shall be kept confidential and shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.
- D. Review with other land use or design review applications. If the project for which the request is being made also requires one or more unrelated

discretionary approvals (including, but not limited to, design review, conditional use permit, variance or subdivision), then to the extent feasible, the applicant shall file the request for reasonable accommodation together with any unrelated application for discretionary approval.

#### Section 4 - Review procedures.

- A. Authority. The Planning Director, or his or her designee, shall have the authority to consider and act on requests for reasonable accommodation and shall make reasonable accommodations in rules, policies, practices, or services when those accommodations may be necessary to afford persons with disabilities equal opportunities to use and enjoy the dwelling.
1. For requests for reasonable accommodation the Planning Director, or his or her designee, shall issue a written determination within a timely manner but no later than thirty (30) days of the date of receipt of a complete application form and may: (1) grant the accommodation request; (2) grant the accommodation request subject to specified nondiscriminatory conditions of approval; or (3) deny the request. All written determinations shall give notice of the right to appeal, if any, as specified in Section 7. The notice of determination shall be sent to the applicant by first class mail or in a format requested by the applicant.
  2. For requests for reasonable accommodations involving any applications for discretionary approval, the application for reasonable accommodation shall be processed and considered separately from any discretionary elements of the same proposal. The Planning Director, or his or her designee, shall act on the request for reasonable accommodation within a timely manner but no later than thirty (30) days of the date of a complete application form; however, if the request for a reasonable accommodation cannot be effectuated until a final decision is rendered on the related discretionary approvals, a "provisional approval" can be granted within the 30 day time frame allowing the reasonable accommodation request to be implemented, or modified as needed to obtain the same goal, at the time of the final discretionary approval, and shall become final at the same time. The applications for discretionary approval shall be separately considered and shall be subject to the procedures for consideration specified in the applicable Planning Code Chapter, depending on the type of application. The appropriate decision-making body shall act on all discretionary permits, but not the reasonable accommodation request.

## B. Types of Requests;

### 1. "Category A" Requests

Requests for accommodation from development regulations not specified as a "Category B" request (see item 2 below), including but not limited to setbacks, building height limits and parking regulations in the Planning Code, or for any additions to residential facilities which meet the Planning Code's definition of a "Small Project," shall be considered "Category A " requests.

### 2. Category B" Requests

Requests for accommodation from residential density regulations in the Planning Code; distance separation requirements in the Planning Code; land use activities not permitted by the Planning Code; any additions to residential facilities which meet the definition of "Regular design review" as defined in the Planning Code; and any other accommodations requests, under the discretion of the Planning Director, shall be considered "Category B" requests.

## C. Procedure

1. The applicant shall submit a completed reasonable accommodation application form to the Planning Director, or his or her designee, or request assistance from City staff to complete the application.
2. Whenever reasonable accommodation is requested for a proposal also requiring one or more discretionary land use permits, including but not limited to a design review, conditional use permit, planned unit development permit, or variance, to the extent feasible the application for reasonable accommodation shall be submitted with the application for said permit(s). The reasonable accommodation request shall be processed and considered separately from any land use permits requested for the same proposal as specified in Section 4(A)(2).
3. In reviewing a request for a reasonable accommodation, the Planning Director, or his or her designee, shall consider information in the completed reasonable accommodation application form, factors described in Section 5 and/or 6, and any additional information consistent with this Chapter. The Planning Director, or his or her designee, may consult with staff of the City's Americans with Disabilities Act (ADA) Programs Division during the review period.

4. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

#### Section 5 - Criteria for "Category A" Requests.

A proposal will qualify for "Category A" Request if it meets each of the provisions set forth below.

- A. The proposal is limited to one or more of the types of work listed as "Category A" request in Section 4; and
- B. The accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling.

#### Section 6 - Findings for "Category B" Requests.

In making a determination to grant a requested accommodation, the Planning Director, or his or her designee, shall make all of the following findings for "Category B" requests:

1. That the housing, which is the subject of the request for reasonable accommodation, will be used by people with disabilities protected under fair housing laws.
2. That the accommodation is necessary to afford people with disabilities an equal opportunity to use and enjoy the dwelling;
3. That the requested accommodation will not require a fundamental alteration to zoning laws, rules, policies, practices and procedures; and
4. That the requested accommodation will not impose an undue financial or administrative burden on the City.

None of the findings of this section are intended to supersede any other findings which might also be required for a discretionary permit that is reviewed concurrently with the request for accommodation (see Section 3(D)).

#### Section 7 - Finality of Decision and Appeal of Determination.

- A. "Category A" and "Category B" Requests.

1. For requests for reasonable accommodations not involving one or more unrelated land use permits. A decision by the Planning Director, or his or her designee, shall become final ten (10) calendar days after the date of initial decision, unless appealed to the City Administrator by the applicant. In the event that the last date of appeal falls on a weekend, holiday or when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Appeals considered by the City Administrator, in consultation with the City's ADA Programs Division, shall be final immediately and are not appealable.
2. For requests for reasonable accommodations involving one or more land use permits, the Planning Director, or his or her designee, shall act on the request for reasonable accommodations, subject to the appeal process described in Section 7(A)(1). The appeal periods in Section 7(A)(1) shall run from the date of the denial of the permit or the modification or denial of the provisional permit, whichever is later. The appropriate decision making body shall act on all discretionary permits including appeal processes for the discretionary permits.

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://fs12.formsite.com/disabilityrightsca/form54/index.html>

Spanish version: <http://fs12.formsite.com/disabilityrightsca/form55/index.html>

*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.*

***The California Mental Health Services Authority (CaMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CaMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.***



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