THE CITY OF PLEASANTON

Planning Commission Staff Report

January 23, 2013
Item 6.d.

SUBJECT:	P13-0005
APPLICANT:	City of Pleasanton
PURPOSE:	City initiated application to amend Title 18 of the Pleasanton Municipal Code by adding a new Chapter 18.86 (Reasonable Accommodation) to comply with fair housing laws regarding requests for reasonable accommodation.
GENERAL PLAN:	Housing Element Policy 41, Program 41.10
ZONING:	Various
LOCATION:	Citywide
EXHIBITS:	A. Proposed Code Amendment B. Comment letter from CRIL, January 14, 2013, annotated with staff responses

BACKGROUND

The subject application is a City-initiated amendment to the Pleasanton Municipal Code. The purpose of the amendment is to implement the Pleasanton Housing Element and state and federal laws by establishing a process for requesting reasonable accommodation when the strict application of the zoning regulations act as a barrier for persons with disabilities who are seeking fair access to housing.

A typical example of reasonable accommodation is modification of a front, side or rear yard requirement so that a wheelchair ramp may be constructed.

The Pleasanton Housing Element was adopted on February 13, 2012, and includes Policy 41 and program 41.10, as follows:

Policy 41: Provide for the special-housing needs of large households, the elderly, persons with disabilities, extremely low income households, the homeless, farm-workers, and families with single-parent heads of households.

Program 41.10: Adopt a reasonable accommodation ordinance to permit modifications of zoning provisions for housing intended to be occupied by persons with disabilities.

The Americans With Disabilities Act and the Fair Housing Amendments Act of 1988 mandate that municipalities provide "reasonable accommodation" in the application and enforcement of zoning regulations when necessary to afford equal opportunity to the disabled in housing. Furthermore, California State Government Code Section 65583 requires local governments to provide reasonable accommodation procedures through the administration of their housing elements, as follows:

> *Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.*

DISCUSSION

The proposed amendment would establish a procedure for requesting reasonable accommodation in the application of zoning laws and other land use regulations, policies and procedures. It would also establish procedures for review and decisions on such request. The draft amendment is based upon a model ordinance provided by the California Department of Housing and Community Development.

Summary of proposed amendment

- Persons with a disability would be able to request reasonable accommodation for modification or exception to the rules, standards and practices for siting, development, and use of housing or housing related facilities.

- Decisions on requests for reasonable accommodation would be made by the Director of Community Development or designee unless the request is submitted with another land use application. In that case the request would be reviewed concurrently and decided by the review authority for the discretionary application.

- The decision would be based on consideration of a set of prescribed factors, as follows:

  1. Whether the housing, which is the subject of the request, will be used by an individual who is considered disabled under the Fair Housing Laws.
  2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability.
  3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
5. Potential impact on surrounding uses.
6. Physical attributes of the property and structures.
7. Alternative reasonable accommodations which may provide an equivalent level of benefit.

- Reasonable conditions of approval may be imposed on the granting of a request, including a condition to rescind or establish an automatic expiration date under appropriate circumstances. For example, removal of a wheelchair ramp may be required upon sale of property if it is not needed by the new owner.

- If there is a decision to deny a request, the Director would be required to discuss an alternative accommodation that would address the applicant's needs.

- Decisions on requests for reasonable accommodations would be appealable.

OUTREACH AND PUBLIC NOTICE

Community Resources for Independent Living (CRIL) reviewed the draft ordinance and provided comments. CRIL's comment letter and staff responses are attached as Exhibit B. The letter expressed appreciation for Pleasanton's work toward becoming an accessible city.

Some of CRIL's comments were seeking an expansion of the proposed ordinance beyond what is required of a reasonable accommodation ordinance. The letter suggests that any individual, disabled or not, be able to request reasonable accommodation for any property so that, in time, more properties may become accessible to disabled individuals and those who wish to age in place.

Reasonable accommodation ordinances are intended to establish exceptions or modifications to regulations, policies and procedures on a case-by-case basis in order to enable a disabled individual equal access to the housing of their choice. The modification needed by one disabled individual may be different than what is required by another disabled individual. Reasonable accommodation procedures offer a disabled individual an alternative to seeking a variance. However, the existing variance process is available to anyone seeking exception to zoning regulations. Also, the Community Development Department is currently working on universal design requirements which will serve to broaden the accessibility of newly constructed housing, beyond what is required by state and federal accessibility standards. The objective for broader accessibility will be better addressed through new universal design requirements. Staff will be asking for CRIL's input on a draft proposal as soon as it is available.

CRIL also provides a recommended set of nine principles for the City to consider. All of these principles are addressed through policies and programs within the Pleasanton

General Plan and through established or proposed regulations and procedures (see Exhibit B).

A notice regarding the proposed code amendment and related Planning Commission public hearing were published in The Valley Times on January 13, 2013.

ENVIRONMENTAL ASSESSMENT

The adoption of the 2012 Housing Element was part of the project which was described in the Supplemental Environmental Impact Report certified by the City Council on January 4, 2012. The proposed amendment to the Pleasanton Municipal Code shown in Exhibit A constitutes implementation of Program 41.10 of the Housing Element and is therefore consistent with the Housing Element project as described and analyzed in the certified SEIR. Therefore, no further environmental assessment need be conducted to adopt this code amendment.

CONCLUSION

The proposed text amendment addresses the need to establish a process for requests for reasonable accommodation. This modification to the Pleasanton Municipal Code will implement Program 41.10 of the Pleasanton Housing Element and relevant provisions of federal and state fair housing laws.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution recommending approval of P13-0005 to the City Council.

Consulting Planner: Deborah Diamond
Planning Manger: Janice Stern, (925) 931-5606, jstern@ci.pleasanton.ca.us

EXHIBIT A

Proposed Code Amendment

Adding a New Chapter 18.86 (Reasonable Accommodation) to Title 18 of the Pleasanton Municipal Code

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Chapter 18.86
REASONABLE ACCOMMODATION

Sections:

18.86.010 Purposes
18.86.020 Applicability
18.86.030 Review Authority
18.86.040 Requesting Reasonable Accommodation
18.86.050 Review Procedures
18.86.060 Findings and Decision
18.86.070 Discussion of Alternatives
18.86.080 Appeal of Decision
18.86.090 Rescission of Grants of Reasonable Accommodation

18.86.010 Purposes.

This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act, the California Fair Employment and Housing Act, and the California Unruh Civil Rights Act (herein after "Fair Housing Laws" or "Laws") in the application of zoning laws and other land use regulations, policies and procedures.

18.86.020 Applicability.

Persons protected under the Fair Housing Laws may request reasonable accommodations when the strict application of the zoning regulations 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 Chapter is intended to apply to those persons who are defined as disabled under the Laws.

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 the equal opportunity to housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by Section 18.86.040 (Requesting Reasonable Accommodation).

Modifications requested under this Chapter shall apply only to residential properties and may be applied to both single dwelling units and multi-family units.

18.86.030 Review Authority

A. Director of Community Development. Requests for reasonable accommodation shall be reviewed by the Director of Community Development or his or her designee (collectively hereafter the Director) if no approval is sought other than the request for reasonable accommodation.

B. Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

18.86.040 Requesting Reasonable Accommodation

A. A request for reasonable accommodation shall be filed on the application form provided by the Community Development Department except, if necessary to ensure accessibility, the applicant may request an alternative format. The applicant may be the person with the disability or his or her representative. The application shall be signed by the owner of the property and shall provide the following information:

1. The applicant's name, address and telephone number.
2. Address of the property for which the request is being made.
3. The current actual use of the property.
4. The basis for the claim that the individual is considered disabled under the Fair Housing Laws.
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.

B. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including but not limited to: conditional use permit, design review, general plan amendment, zone change, annexation, etc.),

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then the applicant shall file the information required by Subsection A, above, for concurrent review with the application for discretionary approval.

C. If an individual needs assistance in making the request for reasonable accommodation the department shall provide the assistance necessary to ensure that the process is accessible to the applicant.

18.86.050 Review Procedures

A. Director Review. The Director shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with section 18.86.060 (Findings and Decision).

B. Other Reviewing Authority. A written determination on whether to grant, grant with modifications 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 discretionary review. The written determination regarding the request for reasonable accommodation shall be made in accordance with section 18.86.060 (Findings and Decision).

18.86.060 Findings and Decision

A. Findings. The written decision regarding a request for reasonable accommodation will be consistent with the Fair Housing Laws and shall be based on consideration of the following factors:

1. Whether the housing, which is the subject of the request, will be used by an individual disabled under the Fair Housing Laws.

2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Fair Housing Laws.

3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.

5. Potential impact on surrounding uses.

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6. Physical attributes of the property and structures.

7. Alternative reasonable accommodations which may provide an equivalent level of benefit.

B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority 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 above.

18.86.070 Discussion of Alternatives

If there is a determination to deny a request, the Director shall discuss with applicant whether there is an alternative accommodation that would effectively address the applicant's disability-related needs. Such discussion of alternatives is an interactive process with Director and applicant, but still allows for an immediate appeal of the decision as provided in Section 18.86.070, and any such alternative may also require approval by other reviewing authority as provided in Section 18.86.050.B.

18.86.080 Appeal of Decision

A determination regarding a request for reasonable accommodation may be appealed as provided in Chapter 18.144 (Appeals) of this Title.

18.86.090 Rescission of Grants of Reasonable Accommodation

Any approval or conditional approval of an application under this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances.

EXHIBIT B

Community Resources
For Independent Living
439 'A' Street, Hayward, California 94541
Tel: (510) 881-5743
Fax (510) 881-1593
TDD (510) 881-0218
Tri-Valley (925) 371-1531
Tri-Cities (510) 794-5735
http://www.crilhayward.org

To: Deborah Diamond
Consulting Planner
City of Pleasanton

January 14, 2013

Dear Ms. Diamond,

Thank you for including Community Resources for Independent Living in this process. We recognize and honor the work we have done in the past with the City of Pleasanton to make Pleasanton an accessible city. The intent of a Reasonable Accommodations Policy should be to promote access to all by providing a process to make requests that is most conducive to the person with a disability and/or the community member.

Attached, please find our comments on the proposed Reasonable Accommodations Ordinance. The ordinance is a great start to creating a request process that is meaningful and appropriate, and we hope that with some minor changes, it can truly be an ordinance that promotes disability access in the City of Pleasanton.

I have also included CRIL's Reasonable Accommodations Principles for the City of Pleasanton which can be used as a guide to creating an ordinance that is encompassing of the ideals of the Independent Living Philosophy.

Please let me know if you have any questions or need for clarification. I look forward to a continued collaboration.

Sincerely,

Dolores Tejada
Community Organizer
Community Resources for Independent Living
439 A St.
Hayward CA 94541

Comments on the Draft of City of Pleasanton Reasonable Accommodations Ordinance

(City staff responses noted in red.)

Positive Developments:

- City of Pleasanton is taking a proactive role in becoming an accessible city.
- Making the request for accommodations request process accessible by offering assistance to the applicant.

Concerns/ Suggested Changes

- 18.86.020:
  - Request for reasonable accommodations should not be limited to persons with disabilities as defined by Fair Housing Laws. The applicable laws and protected class definitions should include the Unruh Act as it is California State Law. Unruh Act also has a broader definition of disability than typical definition in the ADA. This would also include people that aren't traditionally seen as people with disabilities but also face access issues such as seniors.

  The Unruh Civil Rights Act will be added as one of the "Fair Housing Laws" used to implement this ordinance. The change would be to Section 18.86.010.

  - Application process should be open to everyone.

  Program 41.10 of the Pleasanton Housing Element specifically states: *"Adopt a reasonable accommodation ordinance to permit modifications of zoning provisions for housing intended to be occupied by persons with disabilities."* The intent of this ordinance is to allow disabled individuals reasonable exceptions to city laws in order to afford equal opportunity to housing of their choice. Requests for reasonable accommodation are reviewed on a case-by-case basis to insure that the accommodation is appropriate for the disabled individual and the property. A common example is construction of a covered wheelchair ramp within a required yard area.

  Consideration of other exceptions to zoning laws is available to everyone through the existing process to request a variance or other change in the zoning entitlement.

  The City is currently developing universal design requirements which will seek to broaden the accessibility of newly constructed dwelling units beyond what is required by state and federal accessibility standards.

- 18.86.020: Removal of the requirement to put in an accommodation for a specific person with a disability. Rather, creating a process that will allow for modifications that will show why the change is necessary to make the specific

housing accessible to people with disabilities, with the potential benefit to current and/or potential future tenants and or visitors that can be accomplished by the requested modification.

Same comment as above. Universal design requirements will address accessibility for future tenants and visitors. And, the existing process for a variance or change in zoning entitlement can be used to request an accommodation for potential tenants and visitors.

- 18.86.040 (A): Specification that the application will be available in the format requested by a person with a disability.

  Agreed. Please see proposed Section 18.86.040, subsection C.

- 18.86.040 (A4): Requirement for applicant to be disabled should be removed. Anyone seeking to make an accommodation that would be beneficial to a person with a disability should be able to apply.

  Again, the purpose of the ordinance is to provide accommodations for persons with a disability. If a property owner or business owner seeks to request an amendment to zoning requirements to accommodate clients and visitors, the existing process for a variance or change in zoning entitlement can be used.

- 18.86.040 (A6): Remove requirement asking for reasoning to put in an accommodation for a specific person. Instead, asking how request would be beneficial to people with disabilities could be made.

  Same as comments above. The purpose is to provide a disabled tenant or owner accessibility to a residential property through reasonable removal of barriers. The accommodation needed for one disabled individual may be different than what is needed by another disabled individual.

  As noted above, if a property owner or business owner seeks to request an amendment to zoning requirements to accommodate clients and visitors, including to businesses providing accommodations to the public, then the existing process for a variance or change in zoning entitlement can be used.

- 18.86.060 (A1): Requirement that house should be "used" by person with disability should specify that it could be used and that use does not solely refer to occupancy/tenant status.

  Same comment as above.

- 18.86.060 (A2): Using the Fair Housing Laws as measurable does not mean it will be on a case-by-case basis, but rather, a uniform application of set

standards. Are these standards necessary if application of law is based on Universal Design concepts?

The purpose of this finding is to ensure that the City does not make exceptions to its laws unless it is necessary to make a dwelling available to a disabled individual, as provided by Fair Housing Laws. Reasonable accommodation applications will be reviewed on a case-by-case basis. Universal design requirements will set specific standards that may be more broadly applied to construction of new housing.

- 18.86.060 (A6): Explanation on what this means? The implication is that a physical or cosmetic reasoning behind denial to access may be grounds for approval or denial. The appearance of a building should not take precedent over the access a person has to the building.

  This finding means that the decision maker must consider the site and entire situation in order determine if the accommodation is necessary or if there may be other more reasonable solutions.

- 18.86.090: Changes should be permanent to encourage tenants, homeowners, to keep their homes accessible to all people. Allow approvals to be for a defined period as needed. This method puts fewer burdens on the City not to have to do preapprovals for every reasonable accommodation.

  Again, the intent is to address removal of barriers to enable a disabled individual to have equal opportunity to housing of his or her choice. Depending upon the accommodation granted, it may not be suitable for other persons, or may cause an impact to the health, safety or welfare of an area which while found to be appropriate for a particular situation, but not desirable to remain in perpetuity if that particular situation no longer exists. The proposed language allows for "rescission or automatic expiration under appropriate circumstances", which can include allowing the approval to be for a defined period. Universal design requirements may result in more permanent accessibility elements.

- How will the City publicize the opportunity to request a reasonable accommodation?

  The City will develop a brochure for requests for reasonable accommodations (which could be made available at City facilities, such as the library, senior center, etc.), will publish information on its website, and consider other outreach opportunities (e.g. wellness fairs, First Wednesday booth, etc.).

- Will there be any costs associated with application? With review? With approval?

  There will be an application fee of $25.

RECOMMENDED REASONABLE ACCOMODATION PRINCIPLES FOR THE CITY OF PLEASANTON HOUSING ELEMENT REASONABLE ACCOMODATION ORDINANCE

1) Create a Reasonable Accommodation policy that promotes access for persons with disabilities.

Housing policies are provided by the General Plan's Housing Element which was adopted on February 13, 2012. The following policy and program are included:

Policy 41: Provide for the special-housing needs of large households, the elderly, persons with disabilities, extremely low income households, the homeless, farmworkers, and families with single-parent households.

Program 41.10 addresses requests for reasonable accommodation as follows:

Adopt a reasonable accommodation ordinance to permit modifications of zoning provisions for housing intended to be occupied by persons with disabilities.

2) Support elements of Universal Design, encouraging it as a building practice, and preparing for generations of persons with disabilities to come.

The Housing Element includes the following programs related to universal design:

Program 41.1: Continue to provide housing opportunities for households with special needs such as studio and one-bedroom apartments for the elderly and single-person households, three-bedroom apartments for large households, specially designed units for persons with disabilities, SRO's, emergency shelter and transitional housing for the homeless, and units affordable to extremely low-, low-and very-low-income households with single-parent heads of households. The City will continue to make available funding from sources such as the City's Lower-Income Housing Fund, and the City's Federal HOME and CDBG grants to assist local non-profit agencies and housing developers. The City will also provide technical support to agencies to seek other sources of funding and to plan and develop housing for persons with special needs.

Program 41.2: Require as many low- and very-low-income units as is feasible within large rental projects to utilize Universal Design standards to meet the needs of persons with disabilities and to allow for aging in place.

Program 41.8: Require some units to include Universal Design and visitability features for all new residential projects receiving governmental assistance, including tax credits, land grants, fee waivers, or other financial assistance. Consider requiring some units to include Universal Design and visitability features in all other new residential projects to improve safety and utility of housing for all people, including home accessibility for people aging in place and for people with disabilities.

3) Support the permanence of accessible features for persons with disabilities.

The City enforces the accessibility standards required by state and federal laws. In addition the City is drafting new requirements to promote universal design in new residential construction.

Each application for a reasonable accommodation will be considered as permanent, or subject to rescission, depending on the individual request and circumstances.

4) Allow people to apply for variances on behalf of person with disabilities.

Any property owner or authorized agent of a property owner may apply for a variance.

The proposed ordinance creates a process for requests for reasonable accommodation to enable persons with a disability to request exceptions to zoning and building regulations in order to afford equal opportunity to housing. This process allows the application to be filed by the person with the disability, or his or her representative.

5) Allow variances for residents who are not owners, but may dwell in the property such as children and older parents.

Any property owner or authorized agent of a property owner may apply for a variance.

For the proposed reasonable accommodation process, the applicant may be the person with the disability, or his or her representative. The proposed process does not require an application by the property owner.

6) Allow variances for other types of properties—People with disabilities live in their communities; they go to restaurants, schools, churches, barbershops and so on.

Any property owner or authorized agent of a property owner may apply for a variance or change in zoning entitlement.

7) Create a policy that has few fees and no required renewals because of the limited income and mobility of so many residents with disabilities.

It is proposed that the fee for an application for reasonable accommodation will be $25. As proposed, there is no required renewal.

8) Create a policy with no required renewals to reduce the financial and administrative burden on the City.

The granting of requests for reasonable accommodation will be considered on a case-by-case basis. As proposed, there is no required renewal. Where appropriate the approval may be conditioned to provide for automatic expiration, when the accommodation is no longer needed.

9) The City of Pleasanton should create a policy that understands applicants have no knowledge of city costs or legal ramifications.

The Land Use Element of the General Plan includes the following policy and program pertaining to public participation and dissemination of information:

Policy 26: Encourage the participation and collaboration of Pleasanton residents and businesses in land-use planning and decision making.

Program 26.2: Disseminate information regarding City policies and services to Pleasanton residents and businesses through the use of newsletters, information brochures, the Internet, televised public meetings, and cooperation with the media.

The Community Development Department is responsible for providing information to the public regarding planning, zoning and building matters. The City's Housing Division also provides the public with information and referrals regarding fair housing and the rights of tenants to make modifications to rental units to accommodate disabilities.