

REPORT TO CITY COUNCIL

DATE: JANUARY 11, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: ADOPTION OF REASONABLE ACCOMMODATIONS ORDINANCE NO. 11-393

At the December 14, 2011 City Council meeting, the Council introduced, read by title only, and waived further reading of the Reasonable Accommodations Ordinance (Ordinance No. 11-393). The City Council unanimously approved the introduction of Ordinance No. 11-393.

The purpose of the Ordinance is to create a procedure for an individual with a disability to request a reasonable accommodation from land use and zoning regulations, policies, and practices, when needed, to provide that individual with an equal opportunity to use and enjoy a dwelling. The need for such a procedure is indicated in federal and state fair housing law, as well as the City of Agoura Hills 2008-2014 Housing Element.

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 11-393, Reasonable Accommodations.

Attachment: Ordinance No. 11-393

ORDINANCE NO. 11-393

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ESTABLISHING PROCEDURES TO REQUEST A REASONABLE ACCOMMODATION FROM THE CITY'S ZONING REGULATIONS BY ADDING A NEW DIVISION 9 OF PART 1 OF CHAPTER 8 OF ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE

WHEREAS, the State Legislature has declared that the lack of housing, including housing for persons with disabilities, is a critical problem that threatens the economic, environmental, and social quality of life in California; and

WHEREAS, Government Code Section 65583 requires that the City's housing element address governmental constraints to the development of housing, including housing for individuals with disabilities, and that the City provide reasonable accommodations for housing for persons with disabilities; and

WHEREAS, the City of Agoura Hills 2008-2014 Housing Element, adopted by the City Council in November 2008, identifies in Item 19 of its housing program the need for the City to develop procedures for reasonable accommodation requests with respect to zoning, permit processing, and building laws; and

WHEREAS, procedures for individuals with disabilities and developers of housing for individuals with disabilities to seek relief in the application of land use and zoning regulations, policies, practices and procedures will further the City's compliance with federal and state fair housing laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities; and

WHEREAS, to conform to state and federal law and to provide disabled persons an equal opportunity to use and enjoy housing, it is necessary to amend the Agoura Hills Municipal Code to establish procedures by which an individual may request a reasonable accommodation from the City's zoning and land use laws and regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Procedural Findings. The City Council of the City of Agoura Hills does hereby find, determine, and declare that:

A. The Planning Commission considered this Ordinance and the Negative Declaration on November 17, 2011, at a duly noticed public hearing, as prescribed by law, at which time City staff and interested persons had an opportunity to and did testify either in support of or in opposition to this matter.

B. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 11-1043, recommending approval of the Ordinance by the City Council.

C. The City Council, at a regular meeting, considered the Ordinance and Negative Declaration on December 14, 2011, at a duly noticed public hearing, as prescribed by law, at which time City staff and interested persons had an opportunity to and did testify either in support of or in opposition to this matter.

D. Following the public hearing, the City Council considered the entire record of information received at the public hearings before the Planning Commission and City Council.

Section 2. Consistency with General Plan. In accordance with Section 9805.4 of the Agoura Hills Municipal Code, the Planning Commission has determined, and the City Council agrees, that the Ordinance is consistent with the objectives of Article IX (Zoning) of the Agoura Hills Municipal Code and with the City's General Plan. The Ordinance is consistent with Goal 5 of the Housing Element of the General Plan to provide housing opportunities in conformance with open housing policies and free of discriminatory practices. Specifically, the Ordinance carries out Program Item 19 of the Housing Element, which requires that the City develop procedures for reasonable accommodation requests regarding zoning and permit processing.

Section 3. Environmental Findings. The City Council of the City of Agoura Hills hereby makes the following environmental findings and determinations in connection with the approval of the proposed Ordinance:

A. Pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA")), the State CEQA Guidelines (California Code of Regulations, Article 14, Sections 15000, *et seq.*), and the City's local CEQA Guidelines, the City Council finds that City staff prepared an Initial Study of the potential environmental effects of this Ordinance amending the City's Municipal Code to establish reasonable accommodations procedures ("Project"). Based upon the findings contained in that Initial Study, staff determined that there was no substantial evidence that the Project could have a significant effect on the environment and a Negative Declaration was prepared. Thereafter, staff provided public notice of the public comment period and of the intent to adopt the Negative Declaration as required by law. The public comment period commenced on October 6, 2011 and expired on November 7, 2011. Copies of the documents have been available for public review and inspection in the Office of the City Clerk at City Hall, located at 30001 Ladyface Court, Agoura Hills, California 91301.

B. The City Council has independently reviewed the Initial Study, the Negative Declaration, and all comments received regarding the Negative Declaration prior to and at the January 11, 2012 public hearing, and based on the whole record before it, finds that (1) the Negative Declaration was prepared in compliance with CEQA, the CEQA Guidelines, and the City's local CEQA Guidelines; (2) there is no substantial evidence that the Project will have a significant effect on the environment; and (3) the Negative Declaration reflects the independent judgment and analysis of the City Council. Based on the findings set forth in this Section, the City Council hereby approves and adopts the Negative Declaration prepared for the Project.

Section 4. Division 9 of Part 1 of Chapter 8 is hereby added to Article IX (Zoning) of the Agoura Hills Municipal Code to read as follows:

“DIVISION 9. REASONABLE ACCOMMODATIONS

9809. Purpose.

The purpose of this division is to provide reasonable accommodations in the City’s zoning and land use regulations, policies, and practices, when needed, to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

9809.1 Applicability.

The provisions of this division shall apply to all laws, rules, regulations, policies, procedures and/or practices regulated by the department of planning and community development.

9809.2 Definitions.

The following terms as used in this section shall, unless the context clearly indicates otherwise, have the following meanings:

“Applicant” means a person, business, or organization making a written request to the city for reasonable accommodation in the strict application of the city’s zoning and land use laws, rules, policies, practices and/or procedures.

“Disabled Person” or **“Person with a Disability”** means an individual who has a physical or mental impairment that limits one or more of that person’s major life activities; anyone who is regarded as having such impairment; or anyone who has a record of having such an impairment. Such an impairment shall not include an individual’s current, illegal use of a controlled substance.

“Fair Housing Laws” means the “Federal Fair Housing Act” (42 U.S.C. § 3601, et seq.), the “Americans with Disabilities Act” (42 U.S.C. § 12101, et seq.), and the “California Fair Employment and Housing Act” (California Government Code § 12900, et seq.), as these statutes now exist or may be amended from time to time, and each Act’s implementing regulations.

“Major life activity” shall include physical, mental, and social activities, such as the operation of major bodily functions, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

“Physical or mental impairment” means any physiological disorder or condition and any mental or psychological disorder, including, but not limited to, orthopedic, visual, speech and hearing impairments, cosmetic disfigurement, anatomical loss, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities (formerly termed “mental retardation”), emotional or mental illness, learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, and alcoholism and drug addiction (but

not including current users of illegal drugs). A temporary condition, such as a broken leg, pregnancy, use of crutches, etc. does not qualify as a physical or mental impairment.

“Reasonable Accommodation” means any deviation requested and/or granted from the strict application of the City’s zoning and land use laws, rules, regulations, policies, procedures and/or practices that may be reasonable and necessary for a person with a disability to have an equal opportunity to use and enjoy a residence.

9809.3 Authority of the Planning and Community Development Director.

The director is hereby designated to approve, conditionally approve, or deny, without public hearing, all applications for a reasonable accommodation. The director may elect to forward the matter to the planning commission for consideration of the application.

9809.4 Procedure for Application Review.

- A. Applicant. A request for a reasonable accommodation may be made by any person with a disability, his or her representative, or a developer or provider of housing for individuals with a disability.
- B. Application. An application for a reasonable accommodation shall be made on a form provided by the planning and community development department. No fee shall be required for a reasonable accommodation, but if the project requires another discretionary permit, the prescribed fee shall be paid for the required discretionary permit. If an individual needs assistance in making the request for reasonable accommodation, the City will provide assistance to ensure that the process is accessible.
- C. Other Discretionary Permits. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, the applicant shall file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit. If the project’s other discretionary permit or approval requires planning commission approval, then the request for reasonable accommodation shall also be referred to the planning commission for approval.
- D. Required Submittals. An application for a reasonable accommodation shall include the following:
 - 1. Documentation that the applicant is: (a) a person with a disability; or (b) applying on behalf of one or more persons with a disability; or (c) a developer or provider of housing for one or more persons with a disability.
 - 2. The name and address of the individual(s) requesting the reasonable accommodation.

3. The name and address of the property owner(s).
4. The address of the property for which the accommodation is requested.
5. A description of the reasonable accommodation requested by the applicant.
6. An explanation of how the specific reasonable accommodation requested by the applicant is necessary to provide one or more persons with a disability an equal opportunity to use and enjoy the dwelling.

The director may request additional information from the applicant if the application does not provide sufficient information for the city to make the findings required in section 9809.5.

9809.5 Basis for Approval or Denial of a Reasonable Accommodation.

- A. Findings. The written decision shall be based on the following findings, all of which are required for approval:
 1. The accommodation is requested by or on behalf of one or more persons with a disability protected under the Fair Housing Laws.
 2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
 3. The requested accommodation will not impose an undue financial or administrative burden on the city.
 4. The requested accommodation will not result in a fundamental alteration in the nature of the city's land use and zoning program.
 5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
- B. In determining whether the requested reasonable accommodation is necessary to provide one or more disabled persons an equal opportunity to use and enjoy a dwelling, pursuant to section 9809.5.A.2., the city may consider, but is not limited to, the following factors:
 1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
 2. Whether the individual(s) with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.

3. Whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.
 4. Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in the City.
- C. In determining whether the requested reasonable accommodation would require a fundamental alteration in the nature of the city's land use and zoning program, pursuant to section 9809.5.A.4., the city may consider, but is not limited to, the following factors:
1. Whether the requested accommodation would fundamentally alter the character of the neighborhood.
 2. Whether the requested accommodation would result in a substantial increase in traffic or insufficient parking.
 3. Whether granting the requested accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan or other similar regulatory document.
 4. Whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.
- D. Rules While Decision is Pending. 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.

9809.6 Notice of Decision.

- A. The director, or planning commission, whichever has approval authority, shall issue a written determination to approve, conditionally approve, or deny a request for a reasonable accommodation.
- B. Appeals of the director's, or planning commission's, action shall be made in accordance with section 9804.5 of the municipal code. All determinations on the appeal shall address, and be based upon, the same findings required in accordance with section 9809.5.A.

9809.7 Recordation.

The applicant shall record the written determination approving the request for a reasonable accommodation in the office of the county recorder.

9809.8 Expiration and Discontinuance.

- A. Expiration. Any reasonable accommodation approved in accordance with the terms of this division shall expire within twenty-four (24) months from the effective date of approval, or at an alternative time specified as a condition of the approval, unless:
1. A building permit has been issued and construction has commenced; or
 2. A certificate of occupancy has been issued; or
 3. The right granted by the accommodation has been exercised; or
 4. A time extension has been granted by the director or planning commission, whichever has authority over the granting of the reasonable accommodation.
- B. Discontinuance. If the disabled person for whom the reasonable accommodation was originally granted vacates the residence, or if the director finds that the accommodation is no longer necessary for the use and enjoyment of the residence pursuant to Section 9809.5.A., the reasonable accommodation shall remain in effect only if the director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the municipal code, or (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The director may request that the applicant, or his or her successor-in-interest, provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within thirty (30) days of the date of a request by the city shall constitute grounds for discontinuance of a previously approved reasonable accommodation.

9809.9 Amendments.

A request for changes in the conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval, shall be treated as a new application. The director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or additions to the plan or the conditions of approval, and are consistent with the intent of the original approval.”

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, 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 remainder of this ordinance. The city council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Certification. The city clerk shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Section 7. Effective Date. This ordinance shall go into effect on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED this 11th day of January 2012, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

John M. Edelston
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele
City Attorney