

Supplemental Material

For
City of Sacramento
Law & Legislation Committee

Agenda Packet

Submitted: July 16, 2009

For the Meeting of: July 21, 2009

- X Additional Material
- Revised Material

TITLE: CITY REASONABLE ACCOMMODATION ORDINANCE (LR09-001)

On July 6th, Ron Javor, a member of the public, submitted a letter to the Planning Commission with multiple concerns about the draft reasonable accommodation ordinance. Mr. Javor’s concerns and staff’s responses are summarized below in a question and answer format. Additionally, concerns previously voiced by Mr. Javor are addressed in the original FAQ located in the staff report.

Reasonable Accommodation Supplemental FAQ Page 1

Attachments

1. Letter – Ron Javor (July 6, 2009) Page 3

Contact Information: Greg Sandlund, Assistant Planner, 808-8931

Please include this supplemental material in your agenda packet. This material will also be published to the City’s Internet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604, (916) 808-7200.

Reasonable Accommodation Supplemental FAQ

- **Can all fees related to the modification be waived besides just planning fees?**

Fees for issues related to reasonable accommodation would be waived as they relate to streamlined review of planning entitlements. Financial impacts of waiving all other fees would be more significant and cannot be waived.

- **Can the ordinance be worded to allow an applicant to enjoy the mental or physical health benefits of universal design standards?**

Nothing in the City's zoning code or other land use standards would preclude an individual from enjoying the benefits of universal design standards. As long as the modifications are consistent with the building code there should not be an issue with making these modifications.

- **Why does the ordinance only consider mobility impairments?**

The ordinance allows consideration of *any* disability, defined under that ordinance, that requires reasonable accommodation from the City's land use standards, policies and procedures.

- **Why does the ordinance require projects with multiple entitlements be filed concurrently in one application?**

The ordinance does not prevent the applicant from filing separate applications. The ordinance specifies that if multiple entitlements are in an application then the highest level of review (i.e. commission or Council) will occur. If the entitlement is not related to the disability, the applicant can elect to postpone that application, or process them concurrent with the reasonable accommodation request.

- **Can the fifth consideration (listed in the ordinance) of a reasonable accommodation application be reworded from "a negative impact" to an "unsafe physical impact"?**

Staff cannot assume an unsafe physical impact is the only type of negative impact a project might have. We recommend a more general finding be used to allow the Planning Director flexibility in evaluating the requested accommodation.

- **Why does the ordinance allow for a condition of approval that would require a modification be removed when no longer needed?**

Such a condition of approval is an optional condition that would be used in rare circumstances (e.g. when properties require design/preservation an unavoidable conflict with design guidelines or preservation standards exists). Also, in cases where there is significant neighborhood concern, a temporary modification may be a good compromise.

- **Can the appeal period be longer than 10 days to allow an applicant more time to appeal a decision?**

Since any person could appeal this decision the 10 day deadline to appeal is for the benefit of the applicant. Otherwise, the applicant would have to wait more than 10 days to know if the decision is final and thereby be able to commence with construction.

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July 6, 2009

Darrel Woo, Chairperson
Planning Commissioners
Sacramento City Planning Commission
300 Richards Blvd, Third Floor
Sacramento, CA 95814

RE: Proposed Reasonable Accommodations Ordinance: Land Use
Amendments (July 9, 2009, Meeting)

Dear Chairperson Woo and Commissioners:

I apologize for not being able to attend the July 9, 2009, hearing on this matter, but professional obligations require my presence in Southern California. While I believe that staff has made an excellent start in both complying with the housing element program and the legal obligations under the applicable state and federal fair housing laws, the product before you on July 9 falls short of being socially, economically, administratively, philosophically, and, possibly, legally adequate. I have spoken with staff, and the areas identified below were presented to staff during the draft discussion period.

Background

Concurrent with adoption of this program in the City housing element, planners also proposed and the City adopted, goals related to “universal design.” Generally, it now is recognized that access by persons with disabilities to residences and ergonomic safety and utility features in those residences, whether their own or others’, is as important to their lives and those around them as is access to commercial areas. It is as important for mental health as physical health to live and visit safely and accessibly.

This proposed ordinance promotes and perpetuates several fictions. The first that most of us do not like to recognize: a significant physical disability occurs suddenly and requires a sudden response to remodel the home of the disabled person. In fact, the opposite is true: most disabilities develop over a period of time—sometimes quickly and sometimes slowly. There often is a “warning” of some type. And designing an ordinance that requires a person becoming disabled to face being shut-up in his or her own home, hoping for visitors or assistance, rather than having access to close relatives or friends for support and sustenance further exacerbates the problem created by the disability.

A second “fiction” this proposed ordinance perpetuates is that all or most disabilities are “mobility” limitations, requiring something as simple as a ramp, raised toilet, and a couple handrails, all of which are simple to address. In fact, common sense indicates otherwise: a battle injury impacts mobility as well as vision or hearing; aging affects mobility and balance, but also cognitive abilities, sight, hearing, and other facilities. Developmental disabilities often have multiple impacts on life style and safety. Assuming that we should be considering multiple disabilities, is an expedited planning process after a person with disabilities moves into house an adequate response? No! How difficult is it to obtain a loan for both architectural work (for the planning process as well as building plans)? How difficult is it to obtain a contractor for a reasonable cost, rather than, in an emergency, taking the first to come along and not have work pending (which might be an indication of competence as well as availability)? And how long will the beneficiary of the work have to wait through this process, sitting, possibly unable to see or hear, in a wheelchair, unable to leave a house or even a room? Is there enough time to do the work when given five months’ notice of a pending disabled baby, four months’ notice of a returning disabled veteran from Afghanistan or Iraq, two months’ notice that Dad or Mother no longer can live alone, etc? The bottom line: applications should be allowed up to one year before the onset of a disability or the arrival of the person(s) with disabilities.

Finally, the last fiction is that access to an adapted house takes care of the problems of a person with disabilities. Assuming that a house or room can be adapted to the needs of the person with a new and serious disability, is it healthy, or even fair, to cut him or her off from visiting relatives, siblings, children, or even prior close friends? Given the possible mental state of someone suddenly subject to severe activity limitations, should he or she be either locked in a home or able to meet people only at fast food restaurants for the many months it will take to traverse the planning process and its appeals in order for those relatives, siblings, or children to obtain a variance to allow a nephew, sister, or father to visit?

The items discussed below address the provisions in, or missing from, the proposed ordinance that relate to the issues above.

Section 17.198.010. Purpose

This provision expressly limits the procedure to “individuals with disabilities seeking equal access to housing.” While this may meet the most minimal obligations of the federal and state fair housing acts, it lacks the vision and is an injustice to those who want to positively deal with disabilities and/or their family and friends who want to assist them.

Section 17.198.020. Findings

Finding “E” expressly limits the procedure to “individuals with disabilities seeking equal access to housing; see comments to 17.198.010.

Section 17.198.030. Definitions

“Applicant” should be amended expressly to be broader, allowing any person or organization to apply on behalf of a person with disabilities or seeking to allow for the housing of someone with disabilities: *“The applicant may be a person acting on behalf of the individual with a disability, a property owner seeking to rent or sell to a person with a disability, or organization acting on behalf of that person. For the purposes of this Chapter, the applicant also may be a person who often is visited by another person who is an individual with a disability or would benefit from the inclusion of universal design standards.”*

“Individual with a disability” [for the purpose of this chapter] should be amended as follows for the reasons listed above:

“Individual with a disability” means any person who has, or is likely to have within twelve months, a one or more medical conditions, physical disability disabilities, or mental disability disabilities as those terms are defined in the California Fair Employment and Housing Act (Cal. Gov. Code §12900 et seq.) or the Federal Fair Housing Amendments Act of 1988.

“Reasonable accommodation” should be amended expressly to (a) to allow the inclusion of anticipatory accommodations and to allow use of generally accepted “universal design” features to make the home safer for the individual with disabilities and others who may be there. *“Universal Design Standards” means those buildings standards code modifications commonly incorporated to promote access and use of residential dwellings for persons of varying abilities or disabilities.”*

Section 17.198.040. Applicability

For the reasons stated above, this paragraph should be amended as follows:

To make specific existing or proposed housing available and accessible to an individual with a disability or to incorporate universal design standards, an applicant may request reasonable accommodation under this chapter when the application of a zoning or other land use regulation, policy or practice under this title acts as a barrier to fair housing opportunities. A request for reasonable accommodation shall be made by filing an application under section 17.198.050.

Section 17.198.050. Application requirements.

For the reasons stated above, this paragraph should be amended as follows:

A. 6. The basis for the claim that ~~the~~ an individual to be reasonably accommodated is disabled under the Acts or would enjoy physical or mental health benefits from the inclusion of universal design standards;

A. 8. A statement why the requested reasonable accommodation is necessary to make the specific property accessible to ~~the~~ an individual with a disability or to include new universal design standards.

B. This paragraph requires “concurrent filing” for other entitlements, for concurrent review by other city agencies. While this requirement may be convenient for the City, it is an unreasonable imposition on the applicant, requiring additional plans, potentially engineering, additional steps and costs, etc., none of which should be necessary until “conditional approval” by planning, subject to these other approvals is necessary. At worst, this should be permissive.

Section 17.198.080. Findings and Decision

A. For the reasons stated above, and because the only standard is “necessary” (presumably for the current physical or mental status of the proposed beneficiary of improvements), and because of the flaming invitation for NIMBY opposition to a person with disabilities living next door (e.g., #5, “negative impact” versus an appropriate standard such as “unsafe physical impact”), this section should be amended as follows:

1. Whether the housing or housing related facilities, which are the subject of the request, will be used by an individual with a disability under the Acts or a person who would benefit from the inclusion of universal design standards.

2. Whether the request for reasonable accommodation is reasonably necessary or appropriate to make specific housing available and accessible to an individual with a disability under the Acts or to a person who would benefit from the inclusion of universal design features.

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. Whether the required reasonable accommodation would have a potential negative unsafe physical impact on surrounding uses.

6. Whether the requested reasonable accommodation adequately considers the physical attributes of the property and structures.

7. Whether alternative reasonable accommodations could provide an equivalent level of benefit.

B. A provision (second sentence) has been added to the initial draft allowing a condition of approval which includes mandating that removable structures or physical

design features that are constructed or installed be removed once those structures or features are unnecessary for the initial beneficiary of disabled access. This is thoroughly inappropriate. What if another household with a person with disabilities wants to rent or buy the house: must the first family incur costs of both installation and removal, and the second family incur new costs of installation? Why not allow the home or unit to be added to the very scarce supply of accessible housing in Sacramento on a permanent basis?

Section 17.198.090 Appeals

Requiring the notice of appeal to be filed with the Planning Director within ten (10) days, rather than 30 days (initial draft proposal) or even longer is an unreasonable imposition on the applicant. Keep in mind, the individual already is dealing with housing and caring for a person with a new disability necessitating the application, as well as other personal and professional issues. As long as the ordinance provides for “within”, an applicant can file sooner if necessary. Allowing a longer period of time also permits the applicant to seek assistance to address any specific issues which may have been the basis of the denial, rather than having to rely only on the initial application, and/or to seek legal counsel in the event that the applicant believes that the denial was illegal.

Section 17.198.100 Fee.

This ordinance on one hand, requires concurrent review by other City entities, but, by virtue of this section, eliminates only the fee for the Planning Department. The ordinance, either in this section or wherever appropriate, should waive fees “for related reviews for approval of the reasonable accommodation by any agency under this title”

I am able to discuss these issues by telephone, except between 7 a.m. and 1 pm. on Friday, July 10. My telephone number will be (916) 718-4664.

Respectfully submitted

Ronald S. Javor