REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

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STAFF REPORT
July 21, 2009

Honorable Members of the
Law and Legislation Committee

Title: City Reasonable Accommodation Ordinance (LR09-001)

Location/Council District: Citywide

Recommendation: Forward a recommendation to Council to adopt the Draft Reasonable Accommodation Ordinance.

Contact: Greg Sandlund, Assistant Planner, (916) 808-8931; Jim McDonald AICP, Senior Planner, (916) 808-5723.

Presenters: Greg Sandlund, Assistant Planner, (916) 808-8931

Department: Community Development

Division: Planning

Organization Number: 22001111

Description/ Analysis

Issue: As part of the implementation of the 2008-2013 Housing Element, the City has developed a draft Reasonable Accommodation Ordinance. This ordinance would establish a formal procedure for individuals with disabilities seeking access to housing to request reasonable accommodation in the application of the City's land use and zoning standards, regulations, policies, and procedures. The draft ordinance reflects comments from the April 9, 2009 Planning Commission meeting, five other City Commission workshops, internal staff discussions, and public input.

Federal and State fair housing law prohibits cities and counties from discriminating against individuals with disabilities through land use and zoning decisions and procedures. The proposed Reasonable Accommodation Ordinance would streamline the entitlement process to approve those features that would allow an individual with a disability to occupy their home. The lack of a streamlined application process for entitlements such as variances and special permits has been

found to be inconsistent with fair housing law. Adoption of the proposed ordinance would bring the City into compliance with federal and state fair housing laws.

Staff has collected examples from other California jurisdictions that illustrate situations of when a reasonable accommodation ordinance would be applied in the context of local land use and zoning laws. These examples, which are found in Attachment 1, help to provide an understanding of how this ordinance would work.

Questions and comments from the Planning Commission, Development Oversight Commission, Housing and Redevelopment Commission, Disabilities Advisory Commission, Preservation Commission, Design Commission, internal staff discussions and public input have been summarized in a frequently asked question format in Attachment 2. The source of each question is indicated in parenthesis. Below each question is staff's response.

Changes that have been made to the draft ordinance since the April 9, 2009 Planning Commission meeting are summarized in Attachment 3. Significant changes include allowing appeals by third parties, providing notice of the application to surrounding property owners, and clarifying language to determine how the City's design and preservation standards are addressed. The revised draft Reasonable Accommodation Ordinance can be found in Attachment 4.

Policy Considerations: The proposed ordinance is consistent with the 2008-2013 Housing Element policies to "promote, preserve and create accessible residential development" (Chapter 9, Goal H-5). Additionally, the ordinance would ensure equal access to City's development policies, practices, and procedures (Chapter 9, Policy H-5.2).

Environmental Considerations: The adoption of the ordinance would establish an administrative process to support the City's housing policy and would not result in a direct physical effect on the environment. Therefore, the adoption of the ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA Guidelines Section 15061(b)(3)).

Sustainability Considerations: A reasonable accommodation ordinance would be consistent with the Sustainability Master Plan's goal of providing a wide array of housing choices near jobs for a balanced, healthy City. The ordinance would assist individuals in adapting their homes to meet the needs of their disability, thereby creating more housing choices.

Committee/Commission Action: The Planning Commission reviewed the draft ordinance on April 9, 2009 and July 9, 2009. Comments or recommendations that were provided by the Planning Commission will be reported in Staff's presentation to the Law and Legislation Committee. As noted above, staff solicited the input of the Development Oversight Commission, Housing and Redevelopment Commission, Disabilities Advisory Commission, Preservation Commission, and Design

Commission. Their comments have been summarized in a frequently asked question format in Attachment 2.

Rationale for Recommendation: The proposed ordinance would create a new application procedure for the Community Development Department that facilitates equal access to housing, is consistent with the Housing Element of the General Plan, and would bring the City into compliance with federal and state fair housing law.

Financial Considerations: A new application procedure for the Community Development Department would require staff time and training. Charging a fee for a reasonable accommodation application has been found to be inconsistent with federal and state fair housing law. Existing staff resources will be used to administer this ordinance.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully Submitted by: _____
DAVID KWONG
Planning Director

Approved by: _____
WILLIAM THOMAS
Director of Community Development

Recommendation Approved:

for Patti Bishop
RAY KERRIDGE
City Manager

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Attachment 1

Examples of Reasonable Accommodation From California Cities

City of Long Beach

- An individual with a disability needs to install an elevator in his residence, but the elevator shaft's height would exceed the height limit. Reasonable accommodation is requested to allow the elevator shaft to exceed the height limit.

- A family's adult son or daughter is disabled and cannot live independently. The parents want to convert the garage into a residential unit for the son or daughter to live in. The City requires that a new garage be built to provide new parking. Reasonable accommodation is requested to waive that parking requirement.

City of San Rafael

- An elevator in a townhome is needed that encroaches into the required garage parking spaces. Reasonable accommodation is requested to waive the parking requirement.

- A garage needs to be converted into a living space for a disabled parent. Covered parking is required onsite. Reasonable accommodation is requested to waive the parking requirement.

- A ramp needs to encroach further into a front setback than what is typically allowed for stairs and ramps. Reasonable accommodation is requested to waive the setback requirement.

City of Glendora

- A wheelchair-bound person has a van and other equipment related to his disability that he needs to have available at his home. He wants to build a garage and storage area to accommodate the van and equipment. Unfortunately, the proposed garage exceeds the allowable square footage and height for an accessory structure. Reasonable accommodation is requested to exceed the development standard.

City of Emeryville

- A family wants to add a first floor bedroom addition to the back of their house because the husband has become disabled and was no longer able to climb up to the upstairs bedroom. The project requires design review and a rear setback variance that has to be approved by the Planning Commission. Reasonable accommodation is requested to waive both the design review requirements and the setback requirements.

City of Lomita

- An individual with a disability would like to put a ramp in her side yard setback. Reasonable accommodation is requested to waive the setback requirement.

City of Berkeley

- An individual who is mobility impaired cannot go up stairs anymore and needs to add a first floor bedroom or bathroom. This would require that the home's footprint expand into a side yard setback. Reasonable accommodation is requested to waive the setback requirement.

Attachment 2

Draft Reasonable Accommodation Ordinance – FAQ Sheet

1. What is a request for a "reasonable accommodation"? **(Staff)**

   - A request for a "reasonable accommodation" is a request for a modification of the land use and development standards, regulations, policies, and processes in the City's Zoning Code as may be necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling. An accommodation is "reasonable" as long as it does not impose an undue financial or administrative hardship on the City or require a fundamental alteration in the nature of its zoning scheme.

2. How do we verify the legitimacy of the claim of disability? **(Staff)**

   - The application for reasonable accommodation requires a statement of the basis of the claim that the individual to be reasonably accommodated is disabled under the applicable laws. The City would not independently verify the claim of disability. Staff would take the application as true and correct. Staff is developing a violation provision apart from this ordinance to address code compliance (and honest applications).

3. How would requests for reasonable accommodation be treated for properties requiring design review or preservation review? **(Development Oversight Commission, Design Review Commission, Preservation Commission, and Staff)**

   - Applications in these areas would be processed in the same manner as any other application, unless the request for reasonable accommodation asks to waive design review or preservation review, in which case the Planning Director would consider the request as provided by the ordinance. In conducting design review and preservation review, the City would be required to reasonably accommodate a disabled individual in applying the applicable design and preservation standards. However, as noted above, a requested accommodation is not reasonable if it would result in a fundamental alteration in the nature of the City's design review or historic preservation programs.

   - The revised draft ordinance has a new provision that requires the Planning Director consult the design director and preservation director when the subject property is located in a design review district, historic district, or if any structure subject to the request is 50 years old or older or is a landmark structure.

4. How would design input be incorporated in the application process for properties that would not require design review or preservation review? **(Staff)**

   - The Single Family Design Checklist and Multifamily Residential Design Principles would inform the Planning Director's decision.

5. Can someone who is anticipating being disabled within one year be able to request reasonable accommodation? **(Public)**

   - Individuals who do not have immediate needs can make modifications to their dwelling through the standard review process.

6. Can notice of a reasonable accommodation application and/or decision be provided to adjacent property owners or neighborhood associations? **(Housing and Redevelopment Commission, Planning Commission and Preservation Commission)**

   - Staff has revised the draft ordinance to require that notices be sent the business day after application submittal to neighbors within 100 feet of the subject property. As a matter of practice, neighborhood associations whose boundaries encompass the subject site will be notified as well.

7. Does the ordinance allow for reasonable accommodation to accommodate disabled visitors? **(Public)**

   - No. Individuals who do not have immediate needs can make modifications to their dwelling through the standard review process to accommodate disabled visitors.

8. Can the City require temporary modifications to reasonably accommodate a disabled individual? **(Staff and Planning Commission)**

   - Yes, especially in properties where design/preservation reviews are required and where a potential conflict with design guidelines or preservation standards exists. The ordinance has been revised to allow for such a condition of approval.

9. Are requests for reasonable accommodation exempt from CEQA? **(Staff)**

   - No. It is anticipated that most reasonable accommodation requests will qualify for a statutory or categorical exemption under CEQA.

   - If the residence is a historic resource, the reasonable accommodation request may require a higher level of review under CEQA.

10. Can requests for reasonable accommodation be approved with conditions or be denied? If so, based on what criteria? **(Housing and Redevelopment Commission)**

    - Seven criteria are to be considered in reviewing a request for reasonable accommodation (see Section 17.198.070). These include whether or not the request would require a fundamental alteration in the nature of a city program or law, impacts on surrounding structures, and the physical attributes of the subject

property. In addition, the Planning Director may consider alternatives that will provide an equivalent level of benefit to the disabled individual with fewer impacts to the surrounding neighborhood or City program. Conditions may be imposed on the approval as necessary to meet these criteria.

11. Would the approved reasonable accommodation modifications be permanent? **(Housing and Redevelopment Commission and Planning Commission)**

- As in the case of variances or special permits, the modification would be allowed to remain permanently unless otherwise indicated by a condition of approval.

12. Can the ordinance apply to new construction? **(Staff)**

- The ordinance would not prohibit such an application. However, staff has not found any examples of when reasonable accommodation has been applied to new construction. A developer of new housing can choose the site and thereby avoid many site constraints or other land use restrictions. Additionally, if staff finds that the City's land use policies or standards are constraining the development of housing for individuals with disabilities, then such policies or standards could be modified, as opposed to addressing such constraints with separate applications for reasonable accommodation on a case by case basis.

13. Can a decision be appealed by the neighbors? **(Planning Commission and Preservation Commission)**

- The original public review draft only permitted the applicant the right to appeal. Staff has determined that limiting the ability of others to appeal the decision would subject the City to unnecessary litigation. The draft ordinance has been revised to allow any person to appeal the decision.

- The Planning Director will evaluate the nature of the appeal (i.e. design, preservation, development standards) and determine the appropriate commission to hear the appeal.

Attachment 3

Recent Modifications to the Draft Reasonable Accommodation Ordinance

The current draft reasonable accommodation ordinance reflects comments from the Planning Commission, Development Oversight Commission, Housing and Redevelopment Commission, Disabilities Advisory Commission, Preservation Commission, Design Commission, as well as from internal staff discussions and public input. Revisions include:

- A definition of reasonable accommodation.
- A requirement that a letter of agency be provided in the application if the individual with a disability is someone other than the owner.
- A requirement that any information related to a disability status and identified by an applicant as confidential shall not be made available for public inspection.
- A provision that the City will provide assistance to ensure that the process is accessible.
- A requirement that a notice be sent out within one business day after the application is submitted to property owners within 100 feet of the subject property.
- A requirement that a notice of decision and right to appeal to be sent to applicants and neighbors.
- A provision that would allow for conditions of approval that ensure specified features be removed when they are no longer needed by the person with a disability.
- A clarification that any person can appeal the Planning Director's decision.
- A clarification in the required findings that any potential *negative* impact be considered.
- A provision that authorizes the Planning Director to determine the appropriate appeal body.
- A requirement that the Planning Director consult the Design Director or Preservation Director if the subject property falls within a design review or historic district.

Attachment 4

ORDINANCE NO.

Adopted by the Sacramento City Council

ADDING CHAPTER 17.198 TO TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) RELATING TO REQUESTS FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF THE CITY'S LANDUSE REGULATIONS (LR-09-001)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Chapter 17.198 is added to Title 17 of the Sacramento City Code (the Zoning Code) to read as follows:

Chapter 17.198

Requests for Reasonable Accommodation under the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act

17.198.010 Purpose.

The purpose of this chapter is to establish a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use and zoning standards, regulations, policies, and procedures and to establish relevant criteria to be used when considering such requests.

17.198.020 Findings.

The Council of the City of Sacramento finds as follows:

A. Housing that is accessible to people with disabilities has been identified as a special housing need in the 2008-2013 Housing Element of the City's General Plan.

B. Implementation Program 84 of the 2008-2013 Housing Element calls for a reasonable accommodation ordinance that streamlines and formalizes City

procedures related to accessibility and adaptability accommodations for development.

C. Both the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (Gov. Code §12900 *et seq.*) ("the Acts") impose an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their rules, policies, practices, or services related to land use regulation when such accommodation may be necessary to afford an individual with a disability an equal opportunity to housing.

D. The City of Sacramento has historically provided for reasonable accommodation consistent with the Acts through the use of existing regulatory procedures not specifically designed for people with disabilities.

E. Codification of a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use and zoning standards, regulations, policies, and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the fair housing laws' reasonable accommodation mandate.

17.198.030 Definitions.

"Acts" means the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

"Applicant" means an individual who files an application for reasonable accommodation under this chapter.

"Individual with a disability" means any person who has a medical condition, physical disability, or mental disability that substantially limits one or more of the person's major life activities, as those terms are defined in the California Fair Employment and Housing Act (Cal. Gov. Code §12900 *et seq.*).

"Reasonable accommodation" means a modification or exception to the standards, regulations, policies, and procedures contained in this title for the siting, development and use of housing or housing-related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the City or require a fundamental or substantial alteration of the City's planning and zoning programs.

17.198.040 Applicability.

To make specific housing available to an individual with a disability, any person may request reasonable accommodation under this chapter to modify a land use or zoning standard, regulation, policy, and procedure under this title as may be necessary to afford the individual with a disability equal opportunity to the use and enjoyment of their dwelling. A request for reasonable accommodation shall be made by filing an application under section 17.198.050.

17.198.050 Application requirements.

A. Application.

An application for reasonable accommodation shall be submitted on a form prescribed by the planning director, or in the form of a letter addressed to the planning director, and shall contain the following information:

1. The name, address and telephone number of the applicant;

2. The name, address, and telephone number of the individual with a disability for whom the reasonable accommodation is being requested;

3. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made;

4. If the applicant is someone different than the property owner, a letter of agency or authorization signed by the owner consenting to the application being made;

5. The address and current use of the property for which the reasonable accommodation request is being made;

6. The basis for the claim that the individual to be reasonably accommodated is disabled under the Acts;

7. A description of the reasonable accommodation request and the land use or zoning standard, regulation, policy, or procedure to be modified or waived; and

8. A statement of the reason why the requested accommodation is necessary for the individual with a disability to use and enjoy the dwelling.

B. Review with other land use applications.

If the project for which the application for reasonable accommodation is being made requires approval of one or more other entitlements under this title, then the

applicant shall file the application for reasonable accommodation under subsection A with the application for the other entitlement, for concurrent review and action.

C. Any information related to a disability status and identified by an applicant as confidential 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. If an individual needs assistance in making the request for reasonable accommodation, the City will provide assistance to ensure that the process is accessible.

E. A request for reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

17.198.060 Review authority.

A. Planning Director Review.

1. An application for reasonable accommodation shall be reviewed by the planning director if the application for reasonable accommodation is not filed with an application for another entitlement.

2. If the application does not otherwise require a design review or a preservation application, the planning director shall consult with the design director if the application involves a property that is located in a design review district, or with the preservation director if the application involves a property that is located in a historic district or a structure that is 50 years old or older or is a landmark.

B. Other Reviewing Authority.

An application for reasonable accommodation submitted for concurrent review with another entitlement under this title shall be reviewed by the authority reviewing the other entitlement.

17.198.070 Review procedure.

A. Planning Director Review.

1. Written notice of the filing of an application for reasonable accommodation shall be mailed by the planning director to the owners of real property within a radius of one hundred (100) feet from the exterior boundaries of the subject property utilizing the owner names and addresses shown on the latest county equalized assessment roll. The notice shall be mailed no later than the next business day following the date the application is filed and accepted as complete

and shall describe the scope and nature of the requested reasonable accommodation.

2. Within thirty (30) days of acceptance of the application as complete, the planning director shall issue a written decision to grant, grant with modifications, or deny an application for reasonable accommodation in accordance with section 17.198.080 and shall notify the applicant of the decision. The written decision shall explain in detail the basis of the decision, including the Planning Director's findings on the factors stated in section 17.198.080. If necessary to reach a determination on the request for reasonable accommodation, the Planning Director may request additional information from the applicant consistent with the Acts, specifying in detail the information that is required. If a request for additional information is made, the thirty (30) period to issue a decision is stayed until the applicant responds to the request.

3. Upon making a decision on the application, the planning director shall mail written notice of the decision and the right to appeal the decision to the same property owners who received notice of the application under subsection (A)(1). The notice shall be mailed no later than the next business day following the date the written decision is issued.

B. Other Reviewing Authority.

If the application for reasonable accommodation is submitted for concurrent review with another entitlement under this title, the decision to grant, grant with modifications, or deny the application shall be made by the authority taking action on the other entitlement under this title. The decision to grant, grant with modifications, or deny the request for reasonable accommodation shall be made in accordance with section 17.198.080.

17.198.080 Findings and decision.

A. Findings.

The decision to grant, grant with modifications, or deny an application for reasonable accommodation shall be based on a finding of consistency with the Acts and shall take into consideration all of the following factors:

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.

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

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 requested reasonable accommodation would have a potential negative 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. 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 will comply with the findings required by this section. Conditions may be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation be removed once those structures or physical design features are unnecessary to afford the individual with a disability for whom the reasonable accommodation was granted the use and enjoyment of the dwelling.

17.198.090 Appeals.

A. Decision of Planning Director.

1. Any person who is dissatisfied with a decision made by the planning director on an application for reasonable accommodation may appeal the planning director's decision. The Planning Director will consider the nature of the appeal and determine whether the Planning Commission, Preservation Commission, or Design Commission shall hear the appeal. The appeal shall be filed within 10 days of the planning director's decision. Upon filing of the notice of appeal, the planning director shall set the matter for hearing before the commission to occur not later than 45 days from the date of filing. Notice of the appeal hearing shall be given by mail to the applicant not later than ten (10) days prior to the hearing. Except as provided otherwise in this subsection (A)(1), the procedural requirements for the hearing before a commission on appeal shall be governed by Chapter 17.200 of this title.

2. The decision of the commission on the appeal shall be made in accordance with section 17.198.080 and shall be final. Notwithstanding section 17.200.040, the decision of the commission on the appeal shall not be subject to call-up under 17.200.040.

B. Decision by Other Reviewing Authority.

A decision on an application for reasonable accommodation submitted for concurrent review with another entitlement under this title shall be subject to the same appeal rights and call-up procedures as apply to the other entitlement.

C. Reasonable Accommodation in Appeal Procedures.

An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

17.198.100 Fee.

Notwithstanding any other provision of this code, there shall be no fee imposed in connection with an application for reasonable accommodation, including appeals, under this chapter.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.