

COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

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April 4, 2017

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: Proposed ordinance to amend the procedures for reasonable accommodation in the County's land use and zoning and building regulations pursuant to Fair Housing Laws.

Dear Board Members:

RECOMMENDATION: Staff recommends your Board conduct a first reading and consider an ordinance amending the County's reasonable accommodation procedures.

SUMMARY: In order to increase access to housing for individuals with disabilities and to comply with a State-mandated program of the 2007-2014 Housing Element, your Board adopted Ordinance 3609 in December 2013, thereby establishing procedures for reasonable accommodation in the County's land use, zoning, and building regulations.

The Reasonable Accommodation Ordinance removes governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. The proposed amendments are intended to simplify the appeal process and align it with similar County processes. The proposed amendments to the appeal process (Section VIII) and clarification of the Review Authority (Section V) constitute the principal revisions to the established procedures. A track-changed copy of the Ordinance identifying all revisions is provided for your review (Attachment 2).

DISCUSSION: The federal Fair Housing Amendments Act of 1988 prohibits cities and counties from discriminating against individuals with disabilities through land use and zoning decisions and procedures. Not only must local governments not discriminate, but the federal Fair Housing Act ("FHA") and California Fair Employment and Housing Act ("FEHA") require that cities and counties provide reasonable accommodation in rules, policies, practices, and procedures where such accommodation may be necessary to afford individuals with disabilities equal opportunity to housing. Case law has also established that both Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act apply to zoning ordinances and require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. Together with California State Senate Bill 520, the intent of these laws is to address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities.

Before the institution of specific administrative reasonable accommodation procedures for providing exceptions from zoning, land use, and building standards for housing for persons with disabilities, municipalities commonly utilized an exception or use permit process to accommodate requests such as construction of special structures or appurtenances (i.e., access ramps or lifts) needed by persons with physical disabilities. While these requests were typically handled through an objective administrative procedure, the criteria or standards used to evaluate and determine such requests were not designed with the primary goal of fulfilling an affirmative duty to encourage fair housing access for persons with disabilities. They were therefore often found to deviate from or conflict with laws protecting housing choice for members of this protected class.

The County's reasonable accommodation policy and ordinance for housing designed for, or intended to be occupied by, persons with disabilities implements a state-mandated program of the 2007-2014 Housing Element (Program HE-2.g and State Government Code §65583(c)(3)). Under the procedures set out in the County's reasonable accommodation ordinance adopted by your Board in 2013, the Community Development Agency Director issues decisions on reasonable accommodation requests and the Board of Supervisors serves as the appellate body. Following adoption of the ordinance, a program was included in the 2015-2023 Housing Element to consider reassigning the responsibilities for adjudicating appeals to an independent entity with legal expertise in resolving issues related to disabilities protected under federal and state laws (Program HE-2.g).

Proposed Amendments

Appeal Process (Section VIII). Given the intent of the aforementioned Housing Element program, staff recommends the reasonable accommodation appeal procedures be aligned with the hearing process used by the Community Development Agency's Code Enforcement Program. The Agency's Code Enforcement Division employs the State Office of Administrative Hearing (OAH) to hear and issue determinations for its appeal processes. A division of the California Department of General Services, the OAH is a quasi-judicial tribunal that hears administrative disputes. Regarded as a highly professional organization, the legal expertise of their Administrative Law Judges renders the appeal process impartial.

Review Authority (Section V). The current Reasonable Accommodation Ordinance designates the entity responsible for issuing a written decision to be the Review Authority, which is defined in Title 22 of the County Development Code as:

"The Board of Supervisors, Health Officer, Planning Commission, Zoning Administrator, or Community Development Director, where designated by this Development Code as having the responsibility and authority to review, approve, or deny land use and development applications in compliance with this Development Code."

As the original ordinance does not specify which entity should serve as the review authority for the purpose of this ordinance, Section V has been amended to name the Director or their designee as the responsible entity. This clarification reinforces staff's understanding of established procedures and is supported by standard best practices.

CONCLUSION: Staff recommends that your Board adopt the proposed amendments to the Reasonable Accommodation Ordinance. This action aligns with County fair housing goals and implements a program from the 2015-2023 Housing Element (2.g Ensure Reasonable Accommodation).

FISCAL/STAFFING IMPACT: Consistent with the original ordinance, no fee is proposed for processing such a request to avoid creating barriers that could deter individuals from applying for a request for reasonable accommodation. Any other applicable fees (e.g. building permits) for physical improvements would apply. This practice is commonly held by many jurisdictions across the State, and is recommended by the California State Department of Housing and Community Development and many disability rights advocates. Given the small number of requests submitted since the establishment of this program in December 2013, staff does not anticipate that this action will result in a significant impact on CDA's staffing or financial resources. However, if the volume of requests increases to exceed current projections, CDA will report back to the Board of Supervisors and work with the County Administrator to ensure that we meet our net county cost targets.

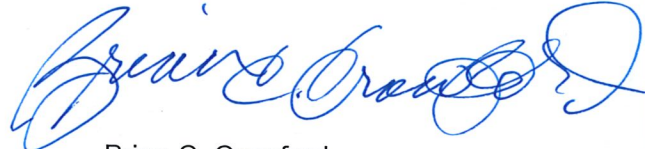
REVIEWED BY:

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| <input type="checkbox"/> Auditor Controller | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

Respectfully submitted,



Debbi La Rue
Planner



Brian C. Crawford
Director

Attachments:

1. Ordinance to amend the procedures for reasonable accommodation in the County's land use and zoning and building regulations pursuant to Fair Housing Laws.
2. Track-changed document identifying amendments to Ord. 3609 ("Reasonable Accommodation Ordinance").

This Board letter and all attachments are available in English, Spanish and Vietnamese online at the Community Development Agency's [Affordable Housing Webpage](#).

A full reference copy is available for public review at the Board of Supervisors office, 3501 Civic Center Drive, Suite 329 (8:00 am to 5:00 pm, Monday through Friday) and at the Community Development Agency, Planning Division, 3501 Civic Center Drive, Suite 308 (8:00 am to 4:00 pm, Monday through Thursday, closed Fridays).