

RESOLUTION NO. 2019-032

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA INITIATING A TEXT AMENDMENT AND RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO ENACT A NEW ARTICLE 51 "REASONABLE ACCOMMODATION" AND TO AMEND ARTICLE 38 "ADMINISTRATION" OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO ESTABLISH A PROCEDURE FOR CONSIDERATION OF REASONABLE ACCOMMODATION REQUESTS (TEXT AMENDMENT TA-116-19) AND FINDING THAT NO FURTHER ENVIRONMENTAL REVIEW IS NECESSARY PURSUANT TO CALIFORNIA CODE OF REGULATIONS 15162 AS THE ORDINANCE WAS CONTEMPLATED AS PART OF THE 2015-2023 HOUSING ELEMENT FOR WHICH A NEGATIVE DECLARATION WAS ADOPTED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (FILE NO. 2019-019)

Initiated by: City of Pacifica

WHEREAS, federal and state fair housing laws, including the federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) and the California Fair Employment and Housing Act (Government Code § 12955 *et seq.*) (collectively "Fair Housing Laws"), prohibit discrimination against individuals with disabilities in housing and provide equal opportunity to use and enjoy a dwelling; and

WHEREAS, State Housing Element law (GC § 65583(c)(3) and (5)) requires that cities remove governmental constraints to the development of housing and promote housing opportunities for person with disabilities; and

WHEREAS, the California Department of Housing and Community Development encourages cities to adopt written procedures for reasonable accommodation requests with respect to zoning regulations, permit processing, and building codes in light of the aforementioned laws and a city's affirmative duty to comply with Fair Housing Laws; and

WHEREAS, on May 11, 2015, the Pacifica City Council adopted a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for the 2015-2023 Housing Element Update (State Clearinghouse No. 2015032024), which includes Action Program No. 6 to create a reasonable accommodation program and procedure to allow deviations from zoning standards for projects that improve access for persons with disabilities. Staff is not aware of any substantial evidence of new information or substantial changes in the project or circumstances that would disclose a new or more severe impact than those considered in the Initial Study and Checklist analysis prepared for the Negative Declaration for the 2015-2023 Housing Element Update; and

WHEREAS, on May 11, 2015, the Pacifica City Council adopted the 2015-2023 Housing Element Update, which includes Action Program No. 6 to create a reasonable accommodation program and procedure to allow deviations from zoning standards for projects that improve access for persons with disabilities; and

WHEREAS, establishing a reasonable accommodation process consistent with Fair Housing Laws in land use, zoning and building regulations, will provide greater opportunities for the development of critically needed housing for individuals with disabilities; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments contained in Text Amendment TA-116-19 on September 16, 2019.

NOW, THEREFORE BE IT RESOLVED, by the Planning Commission of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its finding, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.
3. The Planning Commission hereby finds that the action to adopt this Ordinance was reviewed under the provisions of the California Environmental Quality Act (CEQA) as part of the City of Pacifica Housing Element Update – 2015-2023 Negative Declaration (State Clearinghouse No. 2015032024) and further finds that there is no substantial evidence, in light of the whole record, of any new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous Negative Declaration was adopted. Furthermore, no substantial changes or circumstances are proposed that would disclose a new or more severe impact than those considered in the Initial Study and Checklist analysis prepared for the Negative Declaration for the City of Pacifica Housing Element Update – 2015-2023. As such, there is no further environmental review necessary pursuant to California Code of Regulations section 15162 based on the environmental review conducted as part of the City of Pacifica Housing Element Update – 2015-2023 Negative Declaration (State Clearinghouse No. 2015032024), which was adopted pursuant to Resolution No. 13-2015.
4. The proposed amendments recommended by the Planning Commission are consistent with the City’s General Plan and Local Coastal Land Use Plan.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pacifica does hereby recommend the City Council to find that creation of a reasonable accommodation program and procedure was reviewed under the provisions of CEQA as part of the City of Pacifica Housing Element Update – 2015-2023 Negative Declaration (State Clearinghouse No. 2015032024), and further recommends adoption of an ordinance amending the Pacifica Municipal Code to establish a procedure for reasonable accommodation as provided in Exhibit A to this Resolution.

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 16th day of September, 2019.

AYES, Commissioners: Rubinstein, Nibbelin, Berman, Campbell, Kraske, Bigstyk

NOES, Commissioners: None

ABSENT, Commissioners: Clifford

ABSTAIN, Commissioners: None



Oren Rubinstein, Vice Chair

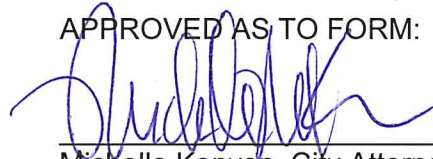
ATTEST:



Tina Wehrmeister, Planning Director

for

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA TO ENACT A NEW ARTICLE 51 “REASONABLE ACCOMMODATION” AND TO AMEND ARTICLE 38 “ADMINISTRATION” OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO ESTABLISH A PROCEDURE FOR CONSIDERATION OF REASONABLE ACCOMMODATION REQUESTS (TA-116-19; FILE NO. 2019-19), AND FINDING THAT NO FURTHER ENVIRONMENTAL REVIEW IS NECESSARY PURSUANT TO CALIFORNIA CODE OF REGULATIONS 15162 AS THE ORDINANCE WAS CONTEMPLATED AS PART OF 2015-2023 HOUSING ELEMENT FOR WHICH A NEGATIVE DECLARATION WAS ADOPTED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, federal and state fair housing laws, including the federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) and the California Fair and the California Fair Employment and Housing Act (Government Code § 12900 *et seq.*) (collectively “Fair Housing Laws”), prohibit discrimination against individuals with disabilities in housing and provide equal opportunity to use and enjoy a dwelling; and

WHEREAS, State Housing Element law (GC § 65583(c)(3) and (5)) requires that cities remove governmental constraints to the development of housing and promote housing opportunities for person with disabilities; and

WHEREAS, the California Department of Housing and Community Development encourages cities to adopt written procedures for reasonable accommodation requests with respect to zoning regulations, permit processing, and building codes in light of the aforementioned laws and a city’s affirmative duty to comply with Fair Housing Laws; and

WHEREAS, on May 11, 2015, the Pacifica City Council adopted a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for the 2015-2023 Housing Element Update (State Clearinghouse No. 2015032024), which includes Action Program No. 6 to create a reasonable accommodation program and procedure to allow deviations from zoning standards for projects that improve access for persons with disabilities. Staff is not aware of any substantial evidence of new information or substantial changes in the project or circumstances that would disclose a new or more severe impact than those considered in the Initial Study and Checklist analysis prepared for the Negative Declaration for the 2015-2023 Housing Element Update; and

WHEREAS, establishing a reasonable accommodation process consistent with Fair Housing Laws in land use, zoning and building regulations, will provide greater opportunities for the development of critically needed housing for individuals with disabilities; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments contained in Text Amendment TA-116-19 (File No. 2019-019) on September 16, 2019 and adopted Resolution No. 2019-032 by a vote of 6 to 0, with one absence, initiating and recommending City Council approval of Text Amendment TA-116-19 on September 16, 2019; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the proposed ordinance on _____, 2019 and introduced Ordinance No. ## on _____, 2019.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Enactment. Article 51, "Reasonable Accommodation" of Chapter 4, "Zoning" of Title 9, "Planning and Zoning" of the Pacifica Municipal Code is hereby enacted as follows:

"Article 51. –Reasonable Accommodation

Sec. 9-4.5101 Purpose

This article provides a procedure to request reasonable accommodation in the application of land use or zoning regulations, policies, procedures, or practices, as necessary, to ensure equal access to housing and facilitate the development of housing for individuals with disabilities as provided under fair housing laws.

Sec. 9-4.5102 Definitions

- (a) "Fair housing laws" shall mean the "Fair Housing Amendments Act of 1988" (42 U.S.C. Section 3601 *et seq.*), including reasonable accommodation required by 42 U.S.C. Section 3604(f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900 *et seq.*), including reasonable accommodations required specifically by California Government Code Sections 12927(c)(1) and 12955(l), as any of these statutory provisions now exist or may be amended.
- (b) "Disability" shall include physical disability, medical disability, and medical condition as defined in California Government Code Section 12926.
- (c) "Reasonable accommodation" shall mean a modification in the application of land use or zoning regulations, policies, procedures, or practices when necessary to eliminate barriers to housing opportunities for a person with a disability to have an equal opportunity to access a dwelling, including public and common use spaces.
- (d) "Reviewing authority" shall mean the appropriate decision making body as described in Section 9-4.5107.
- (e) "Zoning Administrator" shall mean the office of Zoning Administrator as detailed in Article 38 of this chapter.

Sec. 9-4.5103 Applicability

This article applies to any person with a disability, their representative, or any developer or provider of housing for individuals with disabilities, who requests a reasonable accommodation when the application of land use or zoning regulations, policies, procedures, or practices acts as a barrier to fair housing opportunities for a person with a disability in accordance with fair housing laws. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

Sec. 9-4.5104 Notice to the Public of Availability

Notice shall be prominently displayed at the public information counter in the Planning Department and on the City's website, advising the public of the availability of a procedure for eligible individuals to apply for a reasonable accommodation. Any required form(s) and other information for requesting reasonable accommodation shall be available to the public in the Planning Department and on the City's website.

Sec. 9-4.5105 General Provisions

- (a) A request for reasonable accommodation from land use or zoning regulations, policies, procedures, or practices may be filed at any time that the accommodation is necessary to ensure equal access to housing. Examples include, but are not limited to, reduced setbacks for accessibility improvements; reduced minimum landscaping coverage for hardscape additions, such as widened driveways, parking areas or walkways; or heritage tree removal to allow construction of accessibility features. A request for reasonable accommodation pursuant to this Article shall not regulate the standards set forth in Title 8 (Building Regulations) of the PMC.
- (b) Where improvements or modifications approved through a reasonable accommodation would generally require a variance or a parking exception, the reasonable accommodation shall satisfy this requirement and a variance or parking exception shall not be required.
- (c) If an individual with a disability needs assistance in making a request for reasonable accommodation, the City will endeavor to provide the assistance necessary to ensure that the process is accessible to the requestor. The requestor may be represented at all stages of the proceeding by a person designated by the requestor as his or her representative.

Sec. 9-4.5106 Fees

There shall be no fee for the first eight (8) hours of City staff time processing a reasonable accommodation request under this article. Fees for staff time in excess of this allowance, or for costs associated with other studies required pursuant to a request, shall be charged in accordance with the hourly rate as set forth in the fee schedule, as adopted by City Council, and shall require a deposit submitted by the requestor. A requestor may seek a reasonable accommodation for payment of fees in excess of the eight hour allowance.

Sec. 9-4.5107 Review and Decision

- (a) Reviewing Authority.
 - (1) A request for reasonable accommodation shall be reviewed by the Zoning Administrator without a public hearing pursuant to Section 9-4.3802 when no other discretionary approval is sought.
 - (2) If the project for which the request is being made also requires one or more related discretionary approvals (including, but not limited to, use permit, coastal development permit, site development permit, etc.), then to the extent feasible, the requestor shall file the request for

reasonable accommodation together with any related application for discretionary approval and the reasonable accommodation request. The appropriate decision making body in accordance with the procedures provided in this title for the other related discretionary approval shall be the reviewing authority for the reasonable accommodation request.

(b) Review.

- (1) A request for reasonable accommodation shall be submitted on a form provided by the City and shall include all the information necessary to fairly and adequately review the reasonable accommodation request in accordance with the intent of this article, and any applicable fees. The information required may include, but shall not be limited to:
 - (i) Name and address of the individual or entity requesting reasonable accommodation.
 - (ii) Address of the property for which accommodation is requested.
 - (iii) The current use of the property that is the subject of the request.
 - (iv) Description of the requested accommodation and the regulation, policy or procedure for which accommodation is sought.
 - (v) The reason that the requested accommodation may be necessary for the individual with the disability to use and enjoy the dwelling.
 - (vi) A site plan and/or floor plan of the property demonstrating the location of the reasonable accommodation, and including interior dimensions, property line setbacks, and height of the accommodation.
 - (vii) Name and address of the property owner.
 - (viii) Authorization by the property owner to implement the reasonable accommodation.
- (2) Any information identified by a requestor as confidential shall at all times be retained in a manner so as to respect the privacy rights of the requestor and shall not be made available for public inspection, unless required by law.

(c) Public Notice and Timing.

- (1) The Zoning Administrator shall make a written determination on a reasonable accommodation request within forty-five (45) days of finding the information related to the request complete when no discretionary approval is sought. The Zoning Administrator shall make its determination of the reasonable accommodation request without issuing a public notice and without conducting a public hearing.
- (2) When a reasonable accommodation request is being requested in conjunction with a related discretionary approval, public noticing for the reasonable accommodation shall occur in compliance with the public noticing procedure for the discretionary approval. The reviewing authority for the discretionary approval shall make a determination on a reasonable accommodation request in compliance with the review procedure for the associated discretionary approval, including but not limited to any requirement for public notice or public hearing; except,

however, approval of a variance or parking exception shall not be required for purposes of deviating from development standards directly related to the requested reasonable accommodation.

- (3) If necessary to reach a determination on any request for reasonable accommodation, the reviewing authority may request further information from the requestor or others consistent with this article and the fair housing laws, specifying in detail what information is required. If a need for further information is made of the requestor, the time period to issue a determination shall be stayed until the requestor responds to the request.

(d) Findings. The reviewing authority shall issue a written decision to grant, grant with modifications, or deny a request for reasonable accommodation which shall be consistent with fair housing laws and based on the following factors:

- (1) That the housing which is the subject of the request for reasonable accommodation will be used by an individual with disabilities protected pursuant to fair housing laws;
- (2) That the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws, and alternatives that may provide an equivalent level of accommodation while complying with applicable land use or zoning regulations, policies, procedures, or practices are infeasible;
- (3) That the requested reasonable accommodation would be constructed in a manner that is architecturally compatible with the subject property, to the maximum extent practicable, while still achieving the required functionality of the reasonable accommodation;
- (4) That the requested reasonable accommodation would not impose an undue financial or administrative burden on the City;
- (5) That the requested reasonable accommodation would not constitute a fundamental alteration of the City's land use or zoning regulations, policies, procedures, or practices, including the Local Coastal Program, as applicable; and
- (6) That the requested accommodation would not, under the circumstances of the particular case, materially adversely affect the health or safety of persons residing or working in the neighborhood of the subject property and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the area.

(e) Decision

- (1) The reviewing authority's written decision shall provide a description of the subject property, the reasonable accommodation requested, conditions of approval (if any), and findings pursuant to subsection (d). The requestor shall be given notice of the right to appeal. The decision shall be mailed to the requestor, to any person who provided written comment on the request, and to any other person who requests notice.
- (2) Any approved reasonable accommodation shall be subject to any conditions imposed on the approval consistent with the purposes of this article.

- (3) The reviewing authority may approve alternative accommodations that provide equivalent and reasonable levels of accommodation to the requestor.
- (4) The written decision of the reviewing authority shall be final, unless appealed as set forth in Section 9-4.5108.
- (5) While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property subject to the request shall remain in full force and effect.
- (6) It shall be at the discretion of the reviewing authority whether to include a condition of approval to a request for reasonable accommodation under this article to provide for its rescission or automatic expiration under appropriate circumstances.
- (7) Any nonconformity with land use or zoning regulations, policies, procedures, or practices which may be created as a result of approval of a reasonable accommodation request shall not be a basis for future development or redevelopment in reliance on that nonconformity.

Sec. 9-4.5108 Appeals

- (a) In the event the requestor or any aggrieved person is not satisfied with the action of the Zoning Administrator on the determination of a reasonable accommodation request, a written appeal may be made within ten (10) days after the action and shall be filed in accordance with Section 9-4.3804.
- (b) In the event the requestor or any aggrieved person is not satisfied with the action of the Planning Commission on the determination of a reasonable accommodation request, a written appeal to the Council may be made within ten (10) days after the action. Such appeal shall be filed with the City Clerk and accompanied by a fee as set forth in Section 9-4.3602 of Article 36 of this chapter.
- (c) If an individual needs assistance in filing an appeal described in this section, the City shall provide assistance to ensure that the appeals process is accessible.
- (d) Any information identified by a requestor as confidential shall at all times be retained in a manner so as to respect the privacy rights of the requestor and shall not be made available for public inspection, unless required by law.
- (e) Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available in accordance with the law.
- (f) Any appeal of a discretionary approval decision which may have been considered by the reviewing authority in conjunction with the request for reasonable accommodation pursuant to Section 9-4.5107, shall be appealed in accordance with the appeal procedures provided in this title for the discretionary approval being appealed."

Section 3. Amendment. Article 38, "Administration*" of Chapter 4, "Zoning" of Title 9, "Planning and Zoning" of the Pacifica Municipal Code is hereby amended (deletions shown in ~~strikethrough~~ and additions shown in underline) as follows:

"Article 38. - Administration

[...]

Sec. 9-4.3802. - Zoning Administrator: Powers and duties.

- (a) The Zoning Administrator shall have all the powers and duties of a Board of Zoning Adjustment as set forth in Sections 65900 through 65907 of Article 3 of Chapter 4 of Title 7 of the Government Code of the State.
- (b) Except as otherwise provided and if authorized by the Commission, the Zoning Administrator may hear and decide the following:
 - (1) Minor modifications;
 - (2) Site development permits;
 - (3) Use permits;
 - (4) Variances;
 - (5) Sign permits; ~~and~~
 - (6) Reasonable accommodation requests; and
 - (7) Other planning permits.

In connection with the applications provided for in this subsection, the Zoning Administrator shall have all the duties and responsibilities set forth in this chapter for the Commission.

- (c) At any public hearing the Zoning Administrator shall be governed by the provisions of this chapter in the granting of permits and variances and shall grant the same only when making the findings required by the pertinent provisions of this chapter.
- (d) The Zoning Administrator may refer any application or permit or variance directly to the commission without a hearing or without making a decision thereon, and the Commission shall then proceed to hear such applications as provided in this chapter for hearings by the Commission in such cases.
 - (1) This subsection shall not apply to reasonable accommodation requests filed in accordance with Article 51 of this chapter when no related discretionary approval is sought.

- (e) As used in this chapter, any of the powers of the Planning Administrator or Zoning Administrator may be performed by the Planning and Building Director.

[...]

Sec. 9-4.3805. - Effect of permits, ~~and~~ variances, and approvals.

No use permit, permit granting a variance, reasonable accommodation approval, or other planning permit shall have any force or effect until the applicant therefor actually received such permit or approval designating the conditions of its issuance thereon and signed by the Zoning Administrator. No such permit or approval shall be issued until the time for filing appeal from decisions of the Zoning Administrator has expired or, in the event of such appeal, until after the expiration of the appeal period after the final determination thereof by the Commission."

Section 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance was reviewed under the provisions of the California Environmental Quality Act (CEQA) as part of the City of Pacifica Housing Element Update – 2015-2023 Negative Declaration (State Clearinghouse No. 2015032024) and further finds that there is no substantial evidence, in light of the whole record, of any new information of

substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous Negative Declaration was adopted. Furthermore, no substantial changes or circumstances are proposed that would disclose a new or more severe impact than those considered in the Initial Study and Checklist analysis prepared for the Negative Declaration for the 2015-2023 Housing Element Update. As such, there is no further environmental review necessary pursuant to California Code of Regulations section 15162 based on the environmental review conducted as part of the City of Pacifica Housing Element Update – 2015-2023 Negative Declaration (State Clearinghouse No. 2015032024), which was adopted pursuant to City Council Resolution No. 13-2015.

Section 5. Severability. If any section, subsection, sentence, clause or phase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 6. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 7. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law. For areas within the Coastal Zone, this Ordinance shall not become effective until the California Coastal Commission certifies an amendment to the City's local coastal program pursuant to Section 30514 of the Public Resources Code.

PASSED AND ADOPTED this __ day of _____, 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sue Vaterlaus, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Kenyon, City Attorney