ORDINANCE NO. 838

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANT HILL ADDING A NEW CHAPTER 18.112, REASONABLE ACCOMMODATION, AND AMENDING SECTIONS 18.80.030 (SUMMARY OF NOTICE REQUIREMENTS) AND 18.110.010 (VARIANCE REQUIREMENT), ALL REGARDING REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities; and

WHEREAS, fair housing laws require that cities provide individuals with disabilities (or their representatives, or developers of housing for people with disabilities) flexibility in the application of land use and zoning regulations; and

WHEREAS, cities are required to identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints, and to have a program that removes constraints to, or provides reasonable accommodations for such housing; and

WHEREAS, cities should adopt a reasonable accommodation ordinance to provide flexibility in the application of zoning and land use regulations and procedures; and

WHEREAS, the following provisions of the Housing Element of the City of Pleasant Hill General Plan reflect the City's intention to encourage housing for the disabled and to simplify the land use review process:

- Goal 4: Improve housing conditions for people with special needs.
    - Policy 4A: Provide incentives for and encourage development of... housing for the developmentally, mentally and physically challenged...
- Goal 7: Ensure equal housing opportunities for all.
    - Policy 7A: Ensure that individuals and families... are not discriminated against on the basis of ... disability....
        - Housing Program 7.2: Review the zoning ordinance to identify provisions that could pose constraints on the development of housing for persons with disabilities, and amend the ordinance as needed to: accommodate approval of group homes, expedite retrofit efforts to comply with the Americans with Disabilities Act (ADA), require ADA compliance in all new development, and provide adequate flexibility in the development of housing for persons with disabilities. At the same time, the City will review its building codes and processing procedures.
        - Housing Program 7.3: Allow flexibility during the project review process and work with homebuilders to provide living environments usable by all persons, including persons with disabilities..; and

WHEREAS, Government Code section 65583 requires that the Housing Element address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement and development of housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities; and

WHEREAS, the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under Public Resources Code section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment; and

WHEREAS, after notice thereof having been duly, regularly and lawfully given, a public hearing on the proposed ordinance was held by the Planning Commission on January 13, 2009 where all interested persons might appear and be heard; and

WHEREAS, the Planning Commission adopted Resolution No. 02-09 recommending that the City Council adopt the proposed amendment.

WHEREAS, the City Council held a duly noticed public hearing on the proposed ordinance on February 9, 2009 and continued the public hearing to March 2, 2009 where all interested persons might appear and be heard.

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

Section 1. A new Chapter 18.112, Reasonable accommodation, is added to Title 18, Planning and Land Use, of the Pleasant Hill Municipal Code to read as follows:

"Chapter 18.112
Reasonable Accommodation

Sections:

18.112.010 Purpose
18.112.020 Definitions
18.112.030 Requesting reasonable accommodation
18.112.040 Application requirements
18.112.050 Approval authority; Notice; Decision
18.112.060 Findings; Other requirements.
18.112.070 Appeal

18.112.010 Purpose.

It is the city's policy to provide individuals with disabilities reasonable accommodation in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing. The purpose of this chapter is to provide a procedure under which a disabled person may request a reasonable accommodation in the application of zoning requirements.

This chapter is based on requirements of the federal and state fair housing laws, and implements the Housing Element of the city's General Plan. It is distinct from the requirements for a variance set forth in Government Code section 65906 and PHMC chapter 18.110, Variances.

18.112.020 Definitions.

In this chapter:

Disabled person means a person who has a medical, physical or mental condition that limits a major life activity, as those terms are defined in California Government Code section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or persons, or an authorized representative of a disabled person. The term *disabled person* does not include a person who is currently using illegal substances, unless he or she has a separate disability. (42 U.S.C. 3602(h).)

Fair housing laws means (1) the federal Fair Housing Act (42 U.S.C.§3601 and following) and (2) the California Fair Employment and Housing Act (Gov't. Code §12955 and following), including amendments to them.

Reasonable accommodation means providing disabled persons flexibility in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened driveways, parking area or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. *Reasonable accommodation* does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city's land use and zoning program.[1]

18.112.030 Requesting reasonable accommodation.

A. Request. A disabled person may request a reasonable accommodation in the application of the city's land use and zoning regulations. Such a request may include a modification or exception to the requirements for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers. A reasonable accommodation cannot waive a requirement for a conditional use permit when otherwise required or result in approval of uses otherwise prohibited by the City's land use and zoning regulations.

B. Availability of information. Information regarding this reasonable accommodation procedure shall be prominently displayed at the public information counters in the planning division, advising the public of the availability of the procedure for eligible applicants, and be made available in any other manner as determined by the director.

[1] Gov't Code §12927(c)(1), (l) and §12955(l); 42 U.S.C. §3604(f)(3)(B). 28 Code of Fed. Regs §35.150 (a)(3).

C. Assistance. If an applicant needs assistance in making the request, the planning division will endeavor to provide the assistance necessary to ensure that the process is available to the applicant.

D. Balancing rights and requirements. The city will attempt to balance (1) the privacy rights and reasonable request of an applicant for confidentiality, with (2) the land use requirements for notice and public hearing, factual findings and rights to appeal, in the city's requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable accommodation.

18.112.040 Application requirements.

A. Application. The applicant shall submit a request for reasonable accommodation on a form provided by the planning division. The application shall include the following information:

1. The applicant's name, address and telephone number;
2. Address of the property for which the request is being made;
3. The name and address of the property owner, and the owner's written consent to the application;
4. The current actual use of the property;
5. The basis for the claim that the individual is considered disabled under the fair housing laws: identification and description of the disability which is the basis for the request for accommodation, including current, written medical certification and description of disability and its effects on the person's medical, physical or mental limitations;
6. The rule, policy, practice and/or procedure of the city for which the request for accommodation is being made, including the zoning code regulation from which reasonable accommodation is being requested;
7. The type of accommodation sought;
8. The reason(s) why the accommodation is reasonable and necessary for the needs of the disabled person(s). Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the accommodation;
9. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
10. Other supportive information deemed necessary by the department to facilitate proper consideration of the request, consistent with fair housing laws.

B. Review with other land use applications. If the project for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit, architectural review, general plan amendment, zoning amendment, subdivision map), then the applicant shall submit the reasonable accommodation application first for a determination by the zoning administrator, before proceeding with the other applications.

C. Fee. The fee for an application for reasonable accommodation shall be established by resolution of the city council.

18.112.050 Approval authority; Notice; Decision

A. Approval authority.

1. Zoning Administrator - The zoning administrator has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, except as noted in section 18.112.050.A.2. The zoning administrator may refer the matter to the planning commission or architectural review commission, as appropriate.

2. Planning Commission – The planning commission has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, when referred by the zoning administrator or when a reasonable accommodation request includes any encroachment into the front yard setback area, results in a building size increase above what is allowed in the applicable zoning district with respect to height, lot coverage and floor area ratio maximums, or whenever a reduction in required parking is requested.

3. Architectural Review Commission – The architectural review commission has the authority to review and decide upon requests for reasonable accommodation, including whether the applicant is a disabled person within the meaning of this chapter, when referred by the zoning administrator.

B. Notice. No advance notice or public hearing is required for consideration of reasonable accommodation requests by the zoning administrator. Requests for reasonable accommodation subject to review by the planning commission or architectural review commission shall require advance notice and a public hearing pursuant to the requirements of section 18.80.030 .

C. Decision. The zoning administrator shall render a decision or refer the matter to the planning commission or architectural review commission within 30 days after the application is complete, and shall approve, approve with conditions or deny the application, based on the findings set forth in section 18.112.060. The decision shall be in writing and mailed to the applicant and to all residents and property owners within 300 feet of the project site .

If the application for reasonable accommodation involves another discretionary decision, the reviewing body for that decision shall accept as final the determination regarding reasonable accommodation by the zoning administrator, unless the reasonable accommodation request has been referred by the zoning administrator to the planning commission or architectural review commission for consideration.

If the application for reasonable accommodation is referred to, or reviewed by, the planning commission or architectural review commission, a decision to approve, approve with conditions or deny the application shall be rendered within 20 working days after the close of the public hearing, based on the findings set forth in section 18.112.060.

18.112.060 Findings; Other requirements.

A. Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:

1. The housing will be used by a disabled person;
2. The requested accommodation is necessary to make specific housing available to a disabled person;
3. The requested accommodation would not impose an undue financial or administrative burden on the city; and
4. The requested accommodation would not require a fundamental alteration in the nature of a city program or law, including land use and zoning.

B. Other requirements.

1. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.
2. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.
3. Where appropriate, the reviewing authority may condition its approval on any or all of the following:
    a. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;
    b. Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
    c. Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
    d. Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
    e. Measures to reduce the impact on surrounding uses;
    f. Measures in consideration of the physical attributes of the property and structures;
    g. Other reasonable accommodations that may provide an equivalent level of benefit and/or that will not result in an encroachment into required setbacks, exceedance of maximum height, lot coverage or floor area ratio requirements specified for the zone district; and
    h. Other conditions necessary to protect the public health, safety and welfare.

18.112.070 Appeal.

A decision by the zoning administrator may be appealed to the planning commission and a decision of the planning commission and/or architectural review commission may be appealed to the city council in accordance with the appeal procedures of PHMC Chapter 18.130."

Section 2. Section 18.80.030 and Schedule 18.80.030, Summary of Notice Requirements, is amended to read as follows:

"18.80.030 Summary of notice requirements.

Notice of a public hearing shall be given for a particular matter in accordance with the following schedule.

Published notice means that the notice shall be published at least once in a newspaper of general circulation, at least 10 calendar days before the hearing.

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SCHEDULE 18.80.030
SUMMARY OF NOTICE REQUIREMENTS

	Published Notice	Notice Mailed to Applicant	Notice Mailed to Owners Within 300 Feet(1)	Notice Mailed to Residents Within 300 Feet(2)
Zoning Permit	–	–	–	–
Use Permit/Variance	O	X	X	X
Temporary Use Permit	–	O	O	–
Home Occupation Permit	O	X	X	X
Large Family Day Care Permit	–	X	X(3)	–
Architectural Review	–	X	–	–
Sign Review	–	X	–	–
Development Agreement	X	X	X	–
Zoning Regulation Amendment	X	X	X	X
Zoning Map Amendment	X	X	X	X
Development Plan Review	O	X	X	X
Minor Subdivision Review	O	X	X	X
Major Subdivision Review	O	X	X	X
Reasonable Accommodation				
Zoning Administrator	--	X(4)	--	--
Planning Commission	--	X	X	X
Architectural Review Commission	--	X	X	X

– Not required.

X Required.

O Optional; if deemed significant by zoning administrator.

(1) Pursuant to Government Code section 65091, if the number of owners to whom notice would be mailed is greater than 1,000, the city may instead provide notice by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in the city, at least 10 days before the hearing.

(2) Notice shall be given to each resident within 300 feet of the applicant's property, and to the applicant's homeowner's association, if there is one. However, if an apartment, condominium or other multiple-family housing complex exists within the 300-foot radius, notice may be given only to the resident manager, management firm or owner, in lieu of sending notice to each resident of the complex.

(3) Pursuant to Health and Safety Code section 1597.46(a)(3), the notice shall be sent only to owners within 100 feet of the exterior boundaries of the proposed use.

(4) No public hearing shall occur for reasonable accommodation requests heard by the zoning administrator; notice of decision only shall be sent to residents and owners within 300 feet of the applicant's property. "

Section 3. Section 18.110.010, Requirement [for variance], is amended to read as follows:

"**18.110.010 Requirement.**
A variance is required when a property owner seeks relief from zoning requirements because of special physical conditions applicable to the property. A variance may not be granted regarding use classifications or density. A request for a reasonable accommodation in the application of zoning regulations for a disabled person is not a variance, but is covered under Chapter 18.112."

Section 4. This ordinance shall be effective 30 days after its adoption.

Section 5. Within fifteen days after the passage of this ordinance, the City Clerk shall cause it to be posted in the four places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pleasant Hill held on the 2nd of March, 2009.

ADOPTED and ordered posted at a meeting of the City Council of the City of Pleasant Hill, held on the 20th day of April, 2009, by the following vote:

AYES: Durant, Hanecak, Mitchoff, Williamson, Harris
NOES: None
ABSENT: None
ABSTAIN: None

MICHAEL G. HARRIS, O.D., Mayor

ATTEST:

MARTY C. McINTURF, City Clerk

APPROVED AS TO FORM:

DEBRA S. MARGOLIS, City Attorney

CERTIFIED A TRUE COPY

DEPUTY CITY CLERK, CITY OF PLEASANT HILL

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