



AGENDA REPORT

Meeting Date: December 4, 2012
Item Number: F-4
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ESTABLISH PROCEDURES FOR DISABLED PERSONS TO REQUEST A REASONABLE ACCOMMODATION FROM THE CITY'S ZONING AND LAND USE REGULATIONS
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

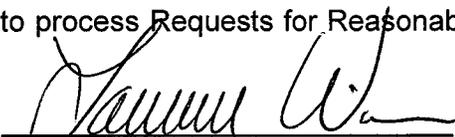
This ordinance is consistent with requirements of state and federal law and implements the City's Housing Element by establishing a procedure within the Municipal Code by which disabled persons, their representatives, or a builder of disabled housing may request a deviation from the City's codes in order to assure that a disabled person has an equal opportunity to use and enjoy their home.

DISCUSSION

At the meeting of November 20, 2012 the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

A fiscal impact associated with staff hours needed to process Requests for Reasonable Accommodation is anticipated to be minor.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 12-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
ESTABLISH PROCEDURES FOR DISABLED PERSONS TO
REQUEST A REASONABLE ACCOMMODATION FROM THE
CITY'S ZONING AND LAND USE REGULATIONS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS
FOLLOWS:

Section 1. On September 27, 2012, the Planning Commission held a duly noticed public hearing and continued such hearing to the following meeting on October 11, 2012, at which it adopted Resolution No. 1658, recommending that the City Council, pursuant to State law and the City's 2008-2014 Housing Element, amend the Zoning Code to establish a process by which persons may petition the City for relief from zoning requirements that would otherwise limit or prevent the equal use and enjoyment of housing by disabled persons. On November 20, 2012, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment.

Section 3. This Ordinance is consistent with the objectives, principles, and standards of the General Plan. General Plan Policy H 3.4 "Housing Accessibility" calls for the zoning

ordinance to be amended to include Reasonable Accommodation procedures. General Plan Implementation Program “11.5 Accessible Housing” requires revisions to the zoning ordinance to comply with General Plan Policy H 3.4 and with State law. Additionally, the General Plan includes “Implementation Program 2.1 – Update Zoning Code and Development Regulations,” which requires that the City’s Zoning Code be updated and amended from time to time.

Section 4. The City Council hereby amends Section 10-3-100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding the following definitions, with all other definitions in that Section to remain unchanged:

“DISABLED; DISABLED PERSON. A person who has a Physical or Mental Impairment that limits or substantially limits one or more Major Life Activities, anyone who is regarded as having such impairment, or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws.”

“FAIR HOUSING LAWS. The “Fair Housing Act” (42 U.S.C § 3601 et seq.), the “Americans with Disabilities Act” (42 U.S.C. § 12101 et seq.), and the “California Fair Employment and Housing Act” (California Government Code § 12900 et seq.), as these statutes now exist or may be amended from time to time, and the implementing regulations for each of these statutes.”

“MAJOR LIFE ACTIVITY. Physical, mental, and social activities, such as the operation of major bodily functions, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.”

“PHYSICAL OR MENTAL IMPAIRMENT. Any physiological disorder or condition

and any mental or psychological disorder, including, but not limited to, orthopedic, visual, speech and hearing impairments, cosmetic disfigurement, anatomical loss, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities (formerly termed “mental retardation”), emotional or mental illness, learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, and alcoholism and drug addiction (but not including current use of illegal drugs). A temporary condition, such as a broken leg, pregnancy, use of crutches, etc. does not qualify as a Physical or Mental Impairment.”

“REASONABLE ACCOMMODATION. Any deviation requested and/or granted from the City’s zoning and land use laws, rules, regulations, policies, procedures, practices, or any combination thereof, that may be reasonable and necessary for a Disabled Person to have an equal opportunity to use and enjoy a dwelling.”

Section 5. The City Council hereby adds a new Article 36.7 to Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“ARTICLE 36.7. REASONABLE ACCOMMODATION PROCEDURES FOR
DISABLED PERSONS

10-3-3670: PURPOSE AND APPLICABILITY:

Purpose. The purpose of this Article is to establish a procedure for Disabled Persons, or their representatives, to request a Reasonable Accommodation from the City’s zoning laws, building codes, and land use regulations, policies, and procedures to provide Disabled Persons with an opportunity to use and enjoy housing equal to that of non-disabled persons.

Who May Apply. A request for a Reasonable Accommodation may be made by any

Disabled Person, his/her representative, or a developer or provider of housing for Disabled Persons, when the application of a zoning law, building code provision, or other land use regulation, policy, or practice acts as a barrier to a Disabled Person's equal opportunity to use and enjoy housing.

What Can Be Requested. A request for a Reasonable Accommodation may include a modification to or exception from the rules, standards, or practices for the siting, development, or use of housing or housing related facilities, in order to allow a Disabled Person an equal opportunity to use and enjoy housing in accordance with the Fair Housing Laws. Requests for a Reasonable Accommodation shall be made in the manner prescribed by this Article.

10-3-3671: REVIEWING AUTHORITY:

A. A request for a Reasonable Accommodation shall be reviewed by the Community Development Director or the Director's designee, unless it is related to a discretionary land use application for the same Site Area that requires review by the Planning Commission, in which case the Planning Commission shall be the reviewing authority. The Community Development Director may, in his/her discretion, refer applications to the Planning Commission for consideration.

B. Variance Not Required. Where the improvements or modifications approved through a request for a Reasonable Accommodation would otherwise require a variance, a variance shall not be required.

10-3-3672: REVIEW PROCEDURE:

Director Review. The Director, or designee, shall consider an application and issue a written determination. At least ten (10) calendar days before issuing a written determination on the application, the Director shall mail notice to the applicant and adjacent property owners that

the City will be considering the application, advising of the standards for issuing an accommodation, and inviting written comments on the requested accommodation.

Planning Commission Review. The processing procedures for the discretionary land use application before the Planning Commission shall govern the processing of the request for a Reasonable Accommodation. If the Reasonable Accommodation is referred to the Planning Commission by the Director and there is no other discretionary application, then the Planning Commission shall hold a public hearing within forty-five (45) days after the application is deemed complete and shall issue a written determination within sixty (60) calendar days after such public hearing. Written notice of a hearing to consider the application shall be mailed ten (10) calendar days prior to the meeting to the applicant and adjacent property owners.

Ability to Require Additional Information. If the reviewing authority believes that additional information is necessary to reach a determination on any request for a Reasonable Accommodation, then the reviewing authority may request further information from the applicant. The reviewing authority's request shall specify in detail the requested information. In the event a request for further information is made, the applicable time period to issue a written determination shall be stayed until the applicant fully responds to the request for information. If an individual needs assistance in submitting the application for a Reasonable Accommodation, the City shall provide assistance to ensure that the process is accessible.

The applicant and the City may agree at any time to extend the time period(s) set forth in this section.

10-3-3673: APPLICATION SUBMITTAL:

Notwithstanding any other requirements of this Article, a request for a Reasonable Accommodation shall be made on a form supplied by the Community Development Department

and shall include the following information:

- A. The applicant's or representative's name, mailing address, and daytime phone number;
- B. The address of the property for which the request is being made;
- C. The specific code section, regulation, procedure, or policy of the City from which relief is sought;
- D. A site plan or illustrative drawing showing the proposed accommodation, if applicable;
- E. An explanation of why the specified code section, regulation, procedure, or policy is denying, or will deny a Disabled Person equal opportunity to use and enjoy the dwelling;
- F. The basis for the claim that the Fair Housing Laws apply to the applicant and evidence satisfactory to the City supporting the claim, which may include a letter from a medical doctor or other licensed health care professional, a disabled license, or any other appropriate evidence;
- G. A detailed explanation of why the accommodation is reasonable and necessary to afford the Disabled Person an equal opportunity to use and enjoy the dwelling;
and
- H. Any other information required to make the findings required by Section 10-3-3674, consistent with the Fair Housing Laws.
- I. A Reasonable Accommodation does not affect or negate an individual's obligation to comply with other applicable regulations that are not the subject of the requested accommodation.

- J. No application fee shall be required to process an application for a request for a Reasonable Accommodation pursuant to this Article. However, application fees shall be required for any concurrent development application and any other permits that may be required to construct or otherwise implement the Reasonable Accommodation.
- K. While a request for a Reasonable Accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

10-3-3674: FINDINGS AND CONDITIONS OF APPROVAL:

Required Findings. The Reasonable Accommodation shall be approved, with or without conditions, if the reviewing authority finds, based upon all of the evidence presented, that all of the following findings can be made:

- A. The dwelling that is the subject of the request for Reasonable Accommodation will be occupied by a Disabled Person;
- B. The requested accommodation is necessary to provide a Disabled Person with an equal opportunity to use and enjoy a dwelling;
- C. The requested accommodation will not impose an undue financial or administrative burden on the City, as defined in the Fair Housing Laws; and
- D. The requested accommodation will not require a fundamental alteration to the City's zoning or building laws, policies, and/or procedures, as defined in the Fair Housing Laws. In considering whether the accommodation would require such a fundamental alteration, the reviewing authority may consider, among other factors:

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
2. Whether the requested accommodation would result in a substantial increase in traffic or insufficient parking;
3. Whether the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable specific plan; and
4. Whether the requested accommodation would create an institutionalized environment due to the number of, and distance between, facilities that are similar in nature or operation.

10-3-3675: DECISION:

The reviewing authority's written decision shall set forth the findings and any conditions of approval. The decision and notice of the right to appeal shall be mailed to the applicant, and to any person having provided written comment on the application.

The approval of a Reasonable Accommodation shall be subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this Article or the General Plan, or are appropriate to protect the public health, safety, or welfare.

The reviewing authority may approve an alternative Reasonable Accommodation that provides the applicant an opportunity to use and enjoy a dwelling equivalent to that provided by the specific accommodation requested by the applicant, where such alternative accommodation would reduce impacts to neighboring properties or the surrounding area.

The written decision of the reviewing authority shall be final, unless appealed or ordered for

Council review in the manner set forth in Chapter 4 of Title 1 of this Code.

Prior to the issuance of any permits related to an approved Reasonable Accommodation, the applicant, or property owner if different, shall record a covenant in the County Recorder's Office, in a form approved by the City Attorney, acknowledging and agreeing to comply with the terms and conditions of the approved Reasonable Accommodation.

A Reasonable Accommodation is granted to an individual(s) and shall not run with the land, unless the Director of Community Development finds, at the time of approval of the accommodation, that the modification is physically integrated with the structure and cannot feasibly be removed or altered.

10-3-3676: EXPIRATION AND DISCONTINUANCE

- A. Expiration. Any Reasonable Accommodation approved in accordance with the terms of this Article shall expire within twelve (12) months from the effective date of the approval, or at an alternative time specified in the approval, unless:
1. A building permit has been issued and construction has commenced; or
 2. The right granted by the accommodation has been exercised; or
 3. A time extension has been granted by the Community Development Director.
- B. Discontinuance. A Reasonable Accommodation shall lapse if the exercise of rights granted by it is discontinued for 180 consecutive days. In addition, if the Disabled Person for whom the Reasonable Accommodation was granted vacates the residence, the Reasonable Accommodation shall remain in effect only if: (1) the Community Development Director determined pursuant to Section 10-3-3675 that the Reasonable Accommodation shall run with the land, or (2) another Disabled Person who requires the accommodation to have an equal opportunity to

use and enjoy the dwelling now occupies the dwelling. The Director may request that the person seeking to retain the accommodation provide documentation that the occupants are Disabled Persons and the existing accommodation is necessary for them to have an equal opportunity to use and enjoy the dwelling. Failure to provide such documentation within 10 days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved Reasonable Accommodation.

10-3-3677: REVOCATION OR MODIFICATION:

- A. If the Director determines that evidence could be presented to the Planning Commission that may support grounds for revocation or modification of an approved Reasonable Accommodation, and the Director believes that the Planning Commission may find that such evidence is adequate to support revocation or modification of the Reasonable Accommodation, then the Director may initiate a revocation proceeding before the Planning Commission.
- B. Upon initiation of a revocation proceeding, the Planning Commission shall hold a public hearing regarding the possible revocation or modification of the Reasonable Accommodation. Notice of such hearing shall be provided in the same manner as the notice required to be provided in Section 10-3-3672. The Planning Commission, after such hearing, may revoke or modify the Reasonable Accommodation if the Planning Commission determines that:
 - 1. There has been a change in the Disabled Person's use of the property or need for the Reasonable Accommodation that negates the basis for the approval of the Reasonable Accommodation; or
 - 2. The application, or other information presented to the City in conjunction

with the request for a Reasonable Accommodation, included false information; or

3. Any of the conditions or terms of such approval are violated, or any law or ordinance is violated in connection therewith.

C. Upon revocation of the Reasonable Accommodation, the property shall be brought into compliance with any zoning regulation or other laws, policies, or procedures from which a deviation was granted in order to allow the Reasonable Accommodation.”

Section 6. **Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. **Publication.** The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

Effective:

WILLIAM W. BRIEN, MD
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



SUSAN HEALY KEENE
Director of Community Development