

**CITY OF SAN MATEO
ORDINANCE NO. 2014-3**

**AMENDING THE SAN MATEO MUNICIPAL CODE BY ADDING CHAPTER 27.79,
“REASONABLE ACCOMMODATION FOR RESIDENTIAL USES,” RELATED TO
HOUSING FOR PERSONS WITH DISABILITIES**

WHEREAS, it is the City’s policy to provide persons with disabilities reasonable accommodation in regulations and procedures to ensure equal access to housing;

WHEREAS, it is the City’s policy to facilitate the development of housing for persons with disabilities; and

WHEREAS, a number of laws prohibit policies that act as barriers to individuals with disabilities who are seeking housing, which include the federal Fair Housing Act, California’s Fair Employment and Housing Act, and the state’s Housing Element law; and

WHEREAS, in adopting the current Housing Element, specifically Housing Element policy H2.16 “Special Needs Groups,” the City Council acknowledged the importance of this issue; and

WHEREAS, the state Attorney General’s office has urged cities to adopt reasonable accommodation ordinances; and

WHEREAS, this Ordinance adds a chapter to the Municipal Code to provide a procedure under which a person with disabilities may request a reasonable accommodation in the application zoning regulations in order to secure equal access to housing and outlines a process for decision makers to act upon such requests while recognizing the importance of sustaining and enhancing residential neighborhoods and considering impact on residential neighborhoods; and

WHEREAS, the City Council wishes to assist in the removal of barriers to reasonable accommodations by eliminating application and appeal fees for applicants and providing financial assistance to low-income families for any required technical reports;

WHEREAS, the provisions of this Ordinance are intended for residential uses and are distinct from the requirements for a variance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, HEREBY ORDAINS that:

Section 1. The San Mateo Municipal Code is amended by adding a new chapter, Chapter 27.79, “Reasonable Accommodation for Residential Uses,” to read:

Chapter 27.79

REASONABLE ACCOMMODATION FOR RESIDENTIAL USES

Sections:

- 27.79.010 Purpose.
- 27.79.020 Definitions.
- 27.79.030 Applicability.
- 27.79.040 Application and Review Procedure.
- 27.79.050 Appeals.

27.79.010 PURPOSE. It is the policy of the City of San Mateo to provide persons with disabilities reasonable accommodation in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing for persons with disabilities. This Chapter is based on requirements of federal and state housing laws, including the federal Americans with Disabilities Act, the federal Fair Housing Act and the California Fair Employment and Housing Act, and implements the housing element of the city's General Plan.

The purpose of this Chapter is to provide a procedure under which a person with disabilities may request a reasonable accommodation in the application of zoning regulations in order to secure equal access to housing, and outlines a process for decision makers to act upon such requests. This Chapter is intended solely for residential use and is distinct from the requirements for a variance.

The city also recognizes the importance of sustaining and enhancing residential neighborhoods, as articulated in the city's General Plan, and will consider whether the requested reasonable accommodation would result in an undue burden to the city or a fundamental alteration of city policies.

27.79.020 DEFINITIONS.

- (a) "Person with disabilities" has the meaning set forth in the federal Fair Housing Act and the California Fair Employment and Housing Act and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such an impairment, or has a record of such impairment.
- (c) "Reasonable accommodation" means the act of making a dwelling unit or housing facility(ies) readily accessible to and usable by a person with disabilities, through the removal of constraints in the city's land use, zoning, permit and processing procedures.

27.79.030 APPLICABILITY. The provisions of this section apply to residential uses that will be used by a person with disabilities. In order to make specific housing available to a person with disabilities, any person may request a reasonable accommodation, or exception to the city's zoning code regulations, in accordance with this Chapter.

27.79.040 APPLICATION AND REVIEW PROCEDURE.

- (a) Applicant. Any person who requests reasonable accommodation, based on the disability of residents, in the application of a land use or zoning law which may be acting as a barrier to fair housing opportunities, may submit an application. The applicant may be the person with the disability, or his or her representative, or a developer of housing for people with disabilities.
- (b) Application. An application shall be filed with the Zoning Administrator, or his or her designee, on a form provided by the Community Development Department. The application shall include all submittal requirements set forth below. No application fee will be charged. If assistance is needed to complete the application, or an alternative format for the application is necessary, the applicant shall contact the Zoning Administrator, or his or her designee, for assistance. The applicant shall provide the following information:
- (1) Applicant's name and contact information;
 - (2) Property address(es) and Assessor's Parcel Number(s);
 - (3) Property owner(s) name(s) and contact information;
 - (4) Property owner(s) signature;
 - (3) Current use of the property;
 - (4) Basis for the claim, such as a medical certification, that the person on whose behalf the accommodation is sought is disabled;
 - (5) Explanation of why the reasonable accommodation is necessary to make the specific housing accessible to the person with disabilities.
 - (6) Plans showing the details of the proposal.
 - (7) Other relevant information as requested by the Zoning Administrator, or his or her designee, in order to make the required findings. These may include, but are not limited to: an Arborist Report (for tree removal as per SMMC 27.71 Landscape) and Geotechnical Report (for substantial grading as per SMMC 23.40 Site Development Code) . For low income households (as defined in Health and Safety Code section 50079.5), the City will fund the cost of any required technical reports so long as doing so would not constitute an "undue financial burden" (as provided in the federal regulations for Title II of the Americans with Disabilities Act) for the City.
- (c) If the project for which the request for reasonable accommodation is being made also requires another discretionary planning approval, the application for reasonable accommodation shall be submitted, reviewed, and noticed with the related planning application(s).
- (d) Public Notice. Within ten days of deeming an application complete, a notice of pending application shall be sent to all property owners adjacent to the subject property. The notice shall include the following information:
- (1) Description of reasonable accommodation request;
 - (2) Statement of the scope of application review permitted by this chapter;
 - (3) Date by which public comments regarding the application must be submitted for consideration;
 - (4) Date that the Zoning Administrator, or his or her designee, shall make a determination on the application; and
 - (5) Appeal rights.
- (e) Findings. Any decision on an application under this chapter shall be supported by written findings addressing the criteria set forth below. An application under this chapter for a reasonable

accommodation shall be granted if all of the following findings are made:

- (1) The housing, which is the subject of the request, will be used by a person with disabilities.
- (2) Due to the physical attributes of the subject property or the structures on site, the requested reasonable accommodation is necessary to make the specific housing available to an individual with a disability under the federal Fair Housing Act and the California Fair Employment and Housing Act.
- (3) The requested reasonable accommodation would not create an undue financial or administrative burden for the city.
- (4) The requested reasonable accommodation would not require a fundamental alteration in city's land use and zoning ordinances, programs or policies. In making this finding, the decision-making body may consider, but its consideration is not limited to, the following factors:
 - a. Whether the proposed changes to the subject property and structures, would adversely impact the health, safety or use of adjacent properties or the city right-of-way.
 - b. Whether any reasonable alternatives have been identified that would provide an equivalent level of benefit without requiring a reasonable accommodation or exception to the city's applicable rules, standards and practices.

(f) Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose conditions to ensure that the reasonable accommodation complies with the findings required by this Chapter. Conditions may also 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 no longer necessary in order to accommodate a person with disabilities. The reviewing authority may require the recordation of the conditions of approval, or its equivalent.

(g) Determination. Within 30 calendar days of deeming an application complete, the Zoning Administrator, or his/her designee, shall approve, conditionally approve, or deny the application.

(h) Expiration of Reasonable Accommodation Planning Permit. The reasonable accommodation planning permit is valid for two years from the date of approval unless a longer period is stated in the planning permit. If the applicant does not begin the work authorized by the permit by the expiration date, the permit shall expire. The applicant may request one two-year extension from the Zoning Administrator, or his/her designee, provided that the written request for the extension is submitted to the Zoning Administrator no less than 60 calendar days prior to the expiration of the planning permit. Requests for extensions that involve another discretionary approval shall comply with San Mateo Municipal Code 27.08.087, Planning Approval Extension.

27.79.050 APPEALS. Any decision of the Zoning Administrator, or his or her designee, may be appealed by the applicant or another individual to the Planning Commission and thereafter to the City Council in accordance with San Mateo Municipal Code (SMMC) 27.08.090 Appeals. If the applicant appeals, no appeal fee will be charged. If a person other than the applicant appeals, the appeal fee will be in the amount set by resolution of the City Council. The Planning Commission and City Council shall limit its consideration of the appeal to whether the reasonable accommodation meets the findings set forth in this Chapter. The decision of the City Council is final.

If an application for reasonable accommodation is filed concurrently with another planning application, the appeal procedures for the other planning approval, permit, or entitlement will control.

Section 2. ENVIRONMENTAL DETERMINATION. California Environmental Quality Act Guidelines 12, section 15183 exempts adopting of this zoning code amendment for reasonable accommodations because it is necessary to implement the Housing Element of the City of San Mateo General Plan; the action to adopt a process for considering reasonable accommodation requests is covered within the City's adopted General Plan and as such has been mitigated, if required, as part of the General Plan Environmental Impact Report and Housing Element Negative Declaration.

Section 3. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. PUBLICATION. This Ordinance shall be published in summary in the Examiner Peninsula Edition, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

The foregoing ordinance was introduced on May 5, 2014, and adopted by the City Council of the City of San Mateo, State of California on the 16th day of June, 2014, by the following vote:

AYES: COUNCIL MEMBERS ROSS, FRESCHET, GOETHALS, LIM and MATTHEWS


NOES: NONE

ABSENT: NONE

ATTEST:



Patrice M. Olds, City Clerk



Robert Ross, Mayor