

ORDINANCE NO. 3233

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
TITLE 19 OF THE CHULA VISTA MUNICIPAL CODE, BY  
ADDING A NEW CHAPTER 1.50 AND AMENDING  
CHAPTER 19.14 RELATED TO PROCEDURES FOR  
REQUESTING REASONABLE ACCOMMODATIONS FOR  
PERSONS WITH DISABILITIES SEEKING EQUAL ACCESS  
TO HOUSING

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (known collectively as the “Acts”) prohibit discrimination in housing against persons 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 cities to make “reasonable accommodations” (e.g., modifications or exceptions) in the application of their zoning laws and other land use regulations and practices to facilitate equal housing opportunities for persons with disabilities; and

WHEREAS, California Government Code section’s 65008(a) and (b) prohibits discrimination in local governments’ zoning and land use actions based on (among other categories) familial status, disability, or occupancy by low to middle income persons; and

WHEREAS, the underlying goal of this legislation is to allow persons with disabilities to occupy housing that they could not occupy without the accommodation; and

WHEREAS, State Housing Element law requires cities to identify constraints to providing housing for persons 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, Housing Element Policy 7.1.3 of the City’s General Plan reflects the City’s intention to encourage housing for persons with disabilities and states the City will “review and update applicable sections of the Chula Vista Municipal Code and Building Code and other City processes to remove identified constraints, if any, and establish a formal reasonable accommodation procedure to grant exception in zoning and land use for persons with disabilities”; and

WHEREAS, in order to comply with Federal and State regulations and implement the City’s Housing Element of the General Plan, an ordinance has been proposed that provides a procedure for considering requests for reasonable accommodations; and

WHEREAS, the Development Services Director has reviewed the Ordinance for compliance with the California Environmental Quality Act (CEQA) and has determined that the adoption and implementation of the proposed amendment to Title 1 and Chapter 19.14 of the Municipal Code by adding procedures for requesting reasonable accommodations in the application of the City's land use regulations and practices will not result in any physical development in and of itself, and thus will not have an impact on the environment. The Development Services Director does hereby further find and determine that the Reasonable Accommodations Ordinance is exempt from the California Environmental Quality Act (CEQA) based on CEQA Guidelines Section 15061 (b)(3), because it can be seen with certainty that there is no possibility that this activity has the potential to have a significant effect on the environment, and therefore, is not subject to CEQA; and

WHEREAS, the Planning Commission held an advertised public hearing on the Ordinance on June 27, 2012 and voted 7-0 to recommend that the City Council approve the Reasonable Accommodations Ordinance; and

WHEREAS, the proceedings and all evidence introduced before the Planning Commission at their public hearing on this Ordinance held on June 27, 2012, and the minutes and resolutions resulting therefrom, are hereby incorporated into the record of this proceeding; and

WHEREAS, a duly called and noticed public hearing was held before the City Council of the City of Chula Vista on July 10, 2012 on the Ordinance to receive the recommendations of the Planning Commission, and to hear public testimony with regard to the same.

NOW, THEREFORE, the City Council of the City of Chula Vista does hereby find, determine and approve the proposed amendments to the City of Chula Vista Municipal Code to establish procedures for considering requests for reasonable zoning and building code accommodations for disabled persons and does ordain as follows:

**Section I. Actions**

A. Title 1 of the Chula Vista Municipal Code is amended by adding a new Chapter 1.50 to read as follows:

**“CHAPTER 1.50  
REASONABLE ACCOMMODATIONS FOR EQUAL ACCESS TO HOUSING**

Sections:

- 1.50.010 Purpose.
- 1.50.020 Definitions.
- 1.50.030 Applicability.
- 1.50.040 Notice to the Public of Availability of Accommodation Process.
- 1.50.050 Application Requirements.
- 1.50.060 Review Authority.

- 1.50.070 Review Procedure.
- 1.50.080 Findings and Decision.
- 1.50.090 Appeal of Determination.
- 1.50.100 Removal of Improvement.
- 1.50.110 Savings Clause.

**1.50.010 Purpose.**

This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning, land use, or building laws, rules, policies and procedures of the City.

**1.50.020 Definitions.**

- A. "Acts" means The Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.
- B. "Applicant" means an individual making a request for reasonable accommodation pursuant to this Chapter.
- C. "Code" or "CVMC" means the Chula Vista Municipal Code.
- D. "Department" means the Development Services Department of the City of Chula Vista.
- E. "Disabled Person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, anyone who is regarded as having such impairment, or has a record of such impairment. People who are currently using illegal substances are not covered under the Acts or this Chapter unless they have a separate disability.

**1.50.030 Applicability.**

- A. Persons with Disabilities. A request for reasonable accommodation may be made by any person with a disability or their representative when the application of zoning, land use, or building laws, rules, policies and procedures of the City acts as a barrier to fair housing opportunities. This Chapter is intended to apply to those persons who are defined as disabled under the Acts.
- B. Modification to Eliminate Barriers. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by CVMC Section 1.50.050 (Application Requirements).

**1.50.040 Notice to the Public of Availability of Accommodation Process.**

The Development Services Department shall prominently display in public areas of the Development Services Department a notice advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this Chapter.

**1.50.050 Application Requirements.**

A. Application. Requests for reasonable accommodation shall be submitted on an application form provided by the Development Services Department and shall contain the following information:

1. The applicant's and property owner's name, address and telephone number.
2. Address of the property for which the request is being made.
3. The current use of the property.
4. The zoning code provision, regulation or policy from which accommodation is being requested; and,
5. The basis for the claim that the individual is considered disabled under the Acts and why the accommodation is necessary to make the specific housing available to the individual.

B. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires other discretionary approval (including but not limited to: conditional use permit, design review, etc.), then the applicant shall file the information required by Subsection A together for concurrent review with the application for discretionary approval.

**1.50.060 Review Authority.**

A. Zoning Administrator/Building Official. The Zoning Administrator shall have the authority to consider and act on requests for reasonable accommodation if no approval is sought other than the request for reasonable accommodation. The Zoning Administrator shall designate the Building Official to act on his/her behalf for requests that involve reasonable accommodations to the Building Code.

B. Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary application shall be reviewed by the authority reviewing the discretionary application.

**1.50.070 Review Procedure.**

When a request for reasonable accommodation is filed with the Department, it will be referred to the Zoning Administrator or Building Official for review and consideration, or if filed concurrently with a discretionary land use application, the authority responsible for reviewing the discretionary land use application.

- A. Zoning Administrator or Building Official Review. The Zoning Administrator or Building Official shall issue a written determination, in accordance with CVMC Section 1.50.080 (Findings and Decision), within sixty (60) days of the date of receipt of a completed application and may (1) grant the accommodation request, (2) grant the accommodation request subject to specified conditions, or (3) deny the request.
1. If necessary to reach a determination on the request for reasonable accommodation, the Zoning Administrator or Building Official may request further information from the applicant consistent with this Chapter, specifying in detail what information is required. In the event a request for further information is made, the sixty (60) day period to issue a written determination shall be stayed until the applicant responds to the request.
  2. The written determination shall contain the Zoning Administrator's or Building Official's factual findings, conclusions and reasons for the decision.
  3. The notice of determination shall be sent to the applicant by U.S. mail.
- B. Other Reviewing Authority. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary application in compliance with the applicable review procedure for the discretionary review. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with CVMC Section 1.50.080 (Findings and Decision).
- C. Assistance in Making Request. If an individual needs assistance in making the request for reasonable accommodation, or appealing a determination regarding such request, the Department will endeavor to provide the assistance necessary to complete the application and assist in the review process to ensure that the process is accessible to the applicant or their representative. The applicant shall be entitled to be represented at all stages of the proceeding by a person designated by the applicant.

#### **1.50.080 Findings and Decision.**

- A. Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts. In making a determination, the Zoning Administrator, Building Official or discretionary review authority, as applicable, shall analyze, consider and incorporate into the record of the proceeding relating to such request for reasonable accommodation the following:
1. The housing, which is the subject of the request, will be used by an individual protected under the Acts.
  2. The request for reasonable accommodation is necessary to make specific housing available to an individual protected under the Acts.

3. The requested reasonable accommodation will not 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.
4. The requested reasonable accommodation would not impose an undue financial or administrative burden on the City.
5. The requested reasonable accommodation will not require a fundamental alteration in the nature of the laws, rules, policies, procedures or programs of the City, including but not limited to land use and zoning.
6. There are no feasible alternative means for providing a reasonable accommodation at the property which may provide an equivalent level of benefit.

B. Conditions of Approval. In granting a request for reasonable accommodation, the Zoning Administrator, Building Official or discretionary reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the Findings required by Subsection A above.

**1.50.090 Appeal of Determination.**

Within ten (10) business days of the issuance of a written determination, the applicant or other interested party may file an appeal from the determination of the Zoning Administrator or other discretionary reviewing authority to the City Council, in compliance with CVMC Section 19.14 or the Building Official consistent with CVMC Section 15.06.070, as applicable. An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted. If an applicant needs assistance in filing an appeal, the Department shall provide the assistance that is necessary to ensure that the appeal process is accessible to the applicant.

**1.50.100 Removal of Improvement.**

All improvements constructed under the auspices of this Chapter shall be removed upon the vacation of the unit by the person to whom the reasonable accommodation was granted unless the Development Services Director, Zoning Administrator, Building Official, or other discretionary reviewing authority, as applicable, makes a determination as follows:

1. The unit has been re-occupied by a qualified person or such improvements provide benefit for future occupancy by a qualified person; or,
2. The removal of the improvement is not readily achievable without making significant structural changes that would impact the safety and soundness of the structure, as determined solely by the Building Official, or such costs of removal equal or exceeds 25 percent of the market value of the structure.

**1.50.110 Savings Clause.**

If any provision of this Chapter or the application thereof to any person or circumstances is held to be invalid by a court of competent jurisdiction, the remainder of the Chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.”

B. Chapter 19.14 is amended by adding a new Section 19.14.030 (F) to read as follows:

“F. Reasonable Accommodations. The Zoning Administrator shall be authorized to consider and act on requests for reasonable accommodation if no other discretionary application is sought other than the request for reasonable accommodation, as defined and regulated in CVMC Chapter 1.50. The decision of the Zoning Administrator may be appealed pursuant to CVMC Section 19.14.100. A request for reasonable accommodation in the application of zoning regulations for persons with disabilities is not considered a variance and is covered by CVMC Chapter 1.50.”

C. Section 19.14.140 is amended to read as follows:

“The granting of a variance is an administrative act to allow a variation from the strict application of the regulations of the particular zone, and to provide a reasonable use for a parcel of property having unique characteristics by virtue of its size, location, design or topographical features, and its relationship to adjacent or surrounding properties and developments. The purpose of the variance is to bring a particular parcel up to parity with other property in the same zone and vicinity insofar as a reasonable use is concerned, and it is not to grant any special privilege or concession not enjoyed by other properties in the same zone and vicinity. The variance may not be used to correct improper zoning. A request for reasonable accommodation in the application of zoning regulations for persons with disabilities is not considered a variance and is covered by CVMC Chapter 1.50. It is the purpose of this chapter to set forth the findings necessary for such administrative action and to establish a procedure for granting variances. In no case shall a variance be granted to permit a use other than a use permitted in the district in which the subject property is situated.”

**Section II. Environmental Determination**

The City Council has exercised their independent review and judgment and does hereby find and determine that the adoption and implementation of the proposed amendment to Title 1 and Chapter 19.14 of the Municipal Code by adding procedures for requesting reasonable accommodations in the application of the City’s land use regulations and practices will not result in any physical development in and of itself, and thus will not have an impact on the environment. The City Council does hereby further find and determine that the Reasonable Accommodations Ordinance is exempt from the California Environmental Quality Act (CEQA) based on CEQA Guidelines Section 15061 (b)(3), because it can be seen with certainty that there is no possibility that this activity has the potential to have a significant effect on the environment, and therefore, is not subject to CEQA.

**Section III. Severability**

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

**Section IV. Construction**

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**Section V. Effective Date**

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

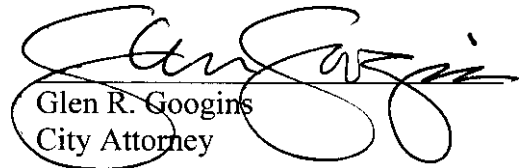
**Section VI. Publication**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

  
Gary Halbert, P.E., AICP  
Assistant City Manager/Director  
of Development Services

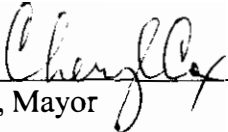
Approved as to form by

  
Glen R. Googins  
City Attorney




PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 17th day of July 2012, by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Castaneda, Ramirez and Cox  
NAYS: Councilmembers: None  
ABSENT: Councilmembers: None

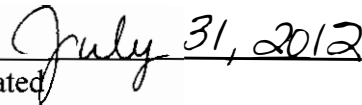
  
\_\_\_\_\_  
Cheryl Cox, Mayor

ATTEST:

  
\_\_\_\_\_  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA        )  
COUNTY OF SAN DIEGO     )  
CITY OF CHULA VISTA        )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3233 had its first reading at a special meeting held on the 10th day of July 2012 and its second reading and adoption at a regular meeting of said City Council held on the 17th day of July 2012; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

  
Dated

  
\_\_\_\_\_  
Donna R. Norris, CMC, City Clerk