

ORDINANCE NO. 691

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA ADDING MUNICIPAL CODE CHAPTER 17.60, REQUESTS FOR REASONABLE ACCOMMODATION, RELATING TO REQUESTS FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF THE CITY'S LAND USE REGULATIONS

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, 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; and

WHEREAS, the following provisions of the Housing Element of the City of Calistoga's General Plan reflect the City's intent to prevent housing discrimination and remove constraints to housing for individuals with disabilities:

GOAL H-7: Prevent housing discrimination on the basis of race, color, sex, religion, age, ancestry, marital status, children or disability.

OBJECTIVE H-7.1: Provide housing opportunities for all persons, regardless of race, religion, sex, marital status, ancestry, national origin, disability or color.

POLICY P1: The City shall actively support provision of fair and equal housing opportunities for all Calistogans.

ACTION A7: Amend the Calistoga Municipal Code to create a procedure wherein persons with disabilities seeking equal access to housing may request reasonable accommodation in the application of zoning laws and other land use regulations, policies and procedures; and

WHEREAS, staff has prepared an ordinance containing the necessary Municipal Code amendments for implementing a procedure wherein persons with disabilities seeking equal access to housing may request reasonable accommodation in the application of zoning laws and other land use regulations, policies and procedures; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the ordinance on March 27, 2013, and adopted Resolution PC 2013-12 forwarding a recommendation that the City Council approve the ordinance. Prior to taking action on the resolution, the Planning Commission received written and oral reports from staff and received public testimony; and

WHEREAS, the City Council of the City of Calistoga has reviewed and considered this ordinance at regular meetings on April 16, 2013 and May 7, 2013, noticed in accordance with state and local law, and which included the written and oral staff report, proposed findings and comments received from the general public and interested agencies and parties; and

WHEREAS, this action has been determined to be exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

A new Chapter entitled "Requests for Reasonable Accommodation" is hereby added to Title 17 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

"Chapter 17.60

Requests for Reasonable Accommodation

- 17.60.010 Purpose.
- 17.60.020 Definitions.
- 17.60.030 Requesting reasonable accommodation.
- 17.60.040 Application requirements.
- 17.60.050 Review authority.
- 17.60.060 Review procedure.
- 17.60.070 Findings and decision.
- 17.60.080 Appeal of determination.

- 17.60.10 Purpose.

The purpose of this chapter is to provide a procedure for persons with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's zoning laws and other land use regulations, policies and procedures. This chapter is based on the requirements of the Federal Fair Housing Act and the California Fair Employment and Housing Act (Fair Housing Laws) and implements the Housing Element of the Calistoga General Plan.

- 17.60.020 Definitions.

For purposes of this chapter, the following definitions apply:

"Disabled person" shall mean 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" shall mean: (1) the federal Fair Housing Act (42 U.S.C. § 3601 et. seq.); and (2) the California Fair Employment and Housing Act (Government Code § 12955 et. seq.), including amendments thereto.

"Reasonable accommodation" shall mean providing disabled persons flexibility in the application of land use and zoning regulations and procedures when necessary to eliminate barriers to housing opportunities. *Reasonable accommodation* does not include an accommodation that 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.

17.60.030 Requesting reasonable accommodation.

A. A request for reasonable accommodation may be made by any disabled person when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities.

B. 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 disabled person equal opportunity to housing of their choice.

D. If an applicant needs assistance in making the request, the Planning and Building Department will endeavor to provide the assistance necessary to ensure that the process is available to the applicant.

17.60.040 Application requirements.

A. ~~Application.~~ A request for reasonable accommodation shall be submitted on an application form provided by the Planning and Building Department, or in the form of a letter to the Planning and Building Director, and shall contain 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, if the property owner is not the applicant, 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 Fair Housing Laws;

6. The Zoning Code provision, regulation or policy from which reasonable accommodation is being requested;
7. The type of accommodation sought;
8. A statement of the reason(s) the reasonable accommodation is necessary to make the specific property accessible to the individual; and
9. Other supportive information deemed necessary by the Planning and Building 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 land use approval by the City, the applicant shall file the information required by Subsection A together for concurrent review with the application for discretionary approval.

C. Fee. The fee for an application for reasonable accommodation shall be the same as for a minor conditional use permit, as established by resolution of the City Council.

17.60.050 Review authority.

A. Planning and Building Director. A request for reasonable accommodation shall be reviewed by the Planning and Building Director (Director), or his/her designee if no approval is required for any discretionary land use application other than the request for reasonable accommodation.

B. Other review authority. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

17.60.060 Review procedure.

A. Director review. The Director, or his/her designee, shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Section 17.60.070 (Findings and Decision). No notice or public hearing is required for consideration of reasonable accommodation requests by the Director or his/her designee.

B. Other review 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 land use application. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Section 17.60.070 (Findings and Decision). Requests for reasonable accommodation shall require notice and a public hearing, as applicable, in accordance with the requirements for the underlying discretionary land use application.

17.60.070 Findings and decision.

A. Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with Fair Housing Laws and shall be based on consideration of the following findings, all of which shall be required for approval:

1. The housing, which is the subject of the request, will be used by a disabled person under Fair Housing Laws;
2. The request for reasonable accommodation is necessary to make specific housing available to a disabled person under Fair Housing Laws;
3. The requested reasonable accommodation will not impose an undue financial or administrative burden on the City;
4. The requested reasonable accommodation will not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning; and
5. The requested reasonable accommodation will not result in a direct threat to the public health or safety of other individuals or substantial physical damage to the property of others.

B. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required by Subsection A, including without limitation, conditions that require alternative reasonable accommodations that provide an equivalent level of benefit.

C. Other requirements. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

17.60.080 Appeal of determination.

A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed pursuant to procedures set forth in Chapter 1.20 (Appeals) of this Code."

SECTION THREE

Environmental Review. This action has been reviewed in accordance with the California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, which states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. The City has determined that the activity in question, Municipal Code amendments establishing a procedure for persons with disabilities seeking equal access to housing to request reasonable accommodation in the application of land use regulations, will not have an impact on the environment and therefore is exempt from CEQA under the general rule.

SECTION FOUR

Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION FIVE

Effective Date.

THIS ORDINANCE shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the 16th day of April, 2013, and was passed and adopted at a regular meeting of the Calistoga City Council on the 7th day of May, 2013, by the following vote:

AYES:	Vice Mayor Dunsford, Councilmembers Barnes, Lopez-Ortega, Kraus and Mayor Canning
NOES:	None
ABSENT:	None
ABSTAIN:	None


CHRIS CANNING, Mayor

ATTEST:


AMANDA DAVIS, Deputy City Clerk