

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

Th12b



Prepared October 25, 2012 (for November 15, 2012 Hearing)

To: Commissioners and Interested Persons

From: Dan Carl, Deputy Director
Susan Craig, Supervising Coastal Planner

Subject: City of Capitola LCP Amendment Number 1-12 Part 1 (Reasonable Accommodations)

Proposed Amendment

The City of Capitola is proposing to modify the Local Coastal Program (LCP) Implementation Plan (IP) to add new IP Chapter 17.70 designed to provide a process by which a person with a disability or disabilities can request reasonable accommodation from the strict application of LCP standards if required to ensure equal access to housing. Typically, the accommodations involve such things as reducing the required front yard setback to allow construction of a ramp for wheelchair access. The reasonable accommodations ordinance differs from a typical variance ordinance in that it is not related to the configuration of the property per se, but rather to the needs of the disabled person in terms of his/her ability to use the residential stock of the City. See Exhibit A for the proposed text of new IP Chapter 17.70.

Minor LCP Amendment Determination

Pursuant to California Code of Regulations (CCR) Section 13555, the Executive Director may determine that a proposed LCP amendment is “minor.” CCR Section 13554 defines minor LCP amendments. Among other things, minor LCP amendments include:

CCR Section 13554(a). Changes in wording which make the use as designated in the zoning ordinances, zoning district maps or other implementing actions more specific and which do not change the kind, location, intensity, or density of use and which are found by the Executive Director of the Commission or the Commission to be consistent with the land use plan as certified by the Commission.

If the Executive Director determines that an amendment is minor, that determination must be reported to the Commission. If one-third of the appointed members of the Commission request that it be processed as a major LCP amendment, then the amendment shall be set for a future public hearing; if one-third of the appointed members of the Commission do not object to the minor LCP amendment determination, then the amendment is deemed approved, and it becomes a certified part of the LCP immediately (in this case, on November 15, 2012).

The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is minor.

The Federal Fair Housing Act and the California Fair Employment and Housing Act prohibit discrimination against individuals with disabilities and require cities and counties to take affirmative

CAP-1-12 Part 1 (Reasonable Accommodation)

action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities. Specifically, fair housing laws require that cities and counties provide individuals with disabilities flexibility in the application of land use, zoning, and building regulations, and related practices and procedures, by modifying or waiving certain requirements when it is necessary in order to eliminate barriers to housing.

The proposed amendment will allow for the granting of minor modifications to the zoning and land use requirements to give individuals with disabilities equal access to housing opportunities. City staff identified parking and yard encroachment as specific areas where modification or waiver of regulations may be most necessary. The addition of this amendment language will bring the City of Capitola into compliance with State and Federal law. In addition, the process established would take place during the course of any other required reviews/approvals engendered by any particular request (e.g., if a coastal permit or other planning permit/approval was also necessary).

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. The City adopted a Negative Declaration (as part of its Housing Element Update) for the amendment under CEQA. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this minor LCP amendment determination, and any comments received on it, to the Coastal Commission at its November 15, 2012 meeting at the Santa Monica Civic Auditorium (East Wing) at 1855 Main Street in Santa Monica. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Susan Craig at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed minor LCP amendment determination, please do so by November 9, 2012.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on October 18, 2012. It is IP only and the 60-day action deadline is December 17, 2012. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until December 17, 2012 to take a final action on this LCP amendment.

Exhibit:

Exhibit A: Proposed New IP Chapter 17.70

ORDINANCE NO. 965

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
ADDING CHAPTER 17.70 TO THE CAPITOLA MUNICIPAL CODE PROVIDING A
PROCEDURE FOR REASONABLE ACCOMMODATION IN THE CITY'S LAND USE
AND ZONING AND BUILDING REGULATIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1. Chapter 17.70 is hereby added to the Capitola Municipal Code to read as follows:

"CHAPTER 17.70

PROCEDURE FOR REASONABLE ACCOMMODATION

<u>17.70.010</u>	<u>Purpose</u>
<u>17.70.020</u>	<u>Applicability</u>
<u>17.70.030</u>	<u>Notice to the Public of Availability of Accommodation Process</u>
<u>17.70.040</u>	<u>Application Requirements</u>
<u>17.70.050</u>	<u>Review Authority</u>
<u>17.70.060</u>	<u>Review Procedure</u>
<u>17.07.070</u>	<u>Findings and Decision</u>
<u>17.07.080</u>	<u>Appeal of Determination</u>
<u>17.07.090</u>	<u>Severability</u>

17.70.010 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 (the Acts) in the application of zoning laws and other land use regulations, policies and procedures.

17.70.020 Applicability

A. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is 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. This Chapter is intended to apply to those persons who are defined as disabled under the Acts.

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 person with a disability equal opportunity to housing of their choice. A request for reasonable accommodation shall comply with Section 17.70.040 (Application Requirements).

17.70.030 Notice to the Public of Availability of Accommodation Process

Notice of the availability of reasonable accommodation shall be prominently displayed at public information counters in the planning, zoning and building departments, advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodation shall be available to the public in the Planning and Building and Safety departments.

17.70.040 Application Requirements

A. Application. A request for reasonable accommodation shall be submitted on an application form provided by the Department, or in the form of a letter, to the Community Development Department, and shall contain the following information:

1. The applicant's name, address and telephone number.
2. The name and address of the property owner.
3. The address of the property for which the request is being made.
3. The current actual use of the property.
4. The basis for the claim that the individual is considered disabled under the Acts;
5. Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought.
6. Why the reasonable accommodation is necessary to make the specific property accessible 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 some other discretionary approval (including Conditional Use Permit, Design Review, General Plan Amendment, Zone Change, Annexation, etc.), then the applicant shall file the information required by Subsection A together for concurrent review with the application for discretionary approval.

C. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligation to comply with other applicable regulations not at issue in the requested accommodation.

D. If an individual needs assistance in making the request for reasonable accommodation, the jurisdiction will provide assistance to ensure that the process is accessible.

17.70.050 Review Authority

A. Community Development Director. A request for reasonable accommodation shall be reviewed by the Community Development Director (Director) if no approval is sought 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.

17.70.060 Review Procedure.

A. Director Review. The Director, or his or her designee, shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in compliance with Section 17.07.070 (Findings and Decision).

If necessary to reach a determination on the request for reasonable accommodation, the reviewing authority may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the 45 day period to issue a decision is stayed until the applicant responds to the request.

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 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 compliance with Section 17.07.070 (Findings and Decision).

17.07.070 Findings and Decision.

A. Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:

1. Whether the housing, which is the subject of the request, will be used by an individual disabled under the Acts;
2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning;
5. Potential impact on surrounding uses;
6. Physical attributes of the property and structures; and
7. Other reasonable accommodations that may provide an equivalent level of benefit.

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 would comply with the findings required by Subsection A.

17.07.080 Appeal of Determination

A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed to the Planning Commission. All appeals must be made within ten (10) working days of the reviewing authority's decision and must be in writing. All appeals shall contain a statement of the grounds of the appeal.

If an individual needs assistance in filing an appeal on an adverse decision, the jurisdiction will provide assistance to ensure that the appeals process is accessible.

17.07.090 Severability

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance."

Section 2 This ordinance shall take effect and be in full force after its final adoption by the City Council and after an amendment to Capitola's Local Coastal Plan is approved by the California Coastal Commission.

This ordinance was introduced on the 22nd day of November, 2011, and was passed and adopted by the City Council of the City of Capitola on the 8th day of December, 2011, by the following vote:

AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton

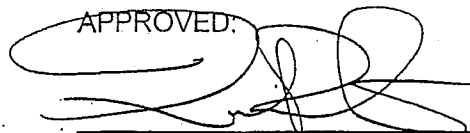
NOES: None

ABSENT: None

ABSTAIN: None

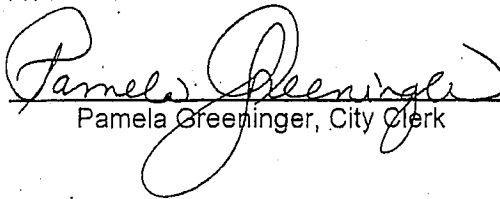
DISQUALIFIED: None

APPROVED:



Dennis R. Norton, Mayor

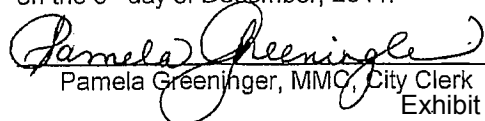
ATTEST:



Pamela Greeninger, City Clerk

MMC

This is to certify that the above and foregoing is a true and correct copy of Ordinance No. 965 passed and adopted by the Capitola City Council on the 8th day of December, 2011.



Pamela Greeninger, MMC, City Clerk