

CALIFORNIA COASTAL COMMISSION

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Prepared August 23, 2013 for September 11, 2013 Hearing

To: Commissioners and Interested Persons

From: Madeline Cavalieri, District Manager
Daniel Robinson, Coastal Planner

**Subject: De Minimis Amendment Determination for City of Pismo Beach LCP
Amendment Number LCP-3-PSB-13-0201-1 (Reasonable Accommodations)**

City of Pismo Beach's Proposed Amendment

The City of Pismo Beach is proposing to modify the Local Coastal Program (LCP) Implementation Plan (IP) to add new IP Chapter 17.100 designed to provide a process by which persons with disabilities can request reasonable accommodation from the strict application of LCP standards if required to ensure equal access to housing. Typically, such 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. The addition of this proposed amendment language would bring the City's LCP into compliance with applicable State and Federal laws. See Exhibit A for the text of proposed IP Chapter 17.100.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis". In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and
3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP 10 days after the date of the Commission meeting (in this case, on September 21, 2013).

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis. Each of the de minimis criteria is discussed briefly below:

- 1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:** The Federal Fair Housing Act and the California Fair Employment and Housing Act prohibit discrimination against persons with disabilities, and require cities and counties to take affirmative action to eliminate regulations and practices that deny housing opportunities to persons with disabilities. Fair housing laws also require that cities and counties provide persons 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 would allow for the granting of minor modifications to LCP requirements to give persons with disabilities equal access to housing opportunities. The reasonable accommodations process 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).

Although the primary intent of the amendment is to comply with State and Federal laws related to reasonable accommodations, the proposed language has also taken into account the Coastal Act, and has been designed to ensure that any reasonable accommodations granted will not result in impacts to coastal resources. Specifically, proposed Section 17.100.010 requires the reviewing authority to base its decision to grant a request for reasonable accommodations in part on the finding that "the requested accommodation will not negatively impact coastal resources." Further, the requested accommodation would have to be consistent with the neighborhood character of the area, and would have to minimize inconsistencies with and not require a fundamental alteration of the City's LCP (see proposed Section 17.100.050). These types of measures are consistent with the way in which other cities and counties have addressed Coastal Act concerns when addressing reasonable accommodations, and consistent with language typically certified by the Commission for this purpose.

Thus, the proposed amendment will not adversely affect coastal resources, and it is consistent with the policies of Chapter 3 of the Coastal Act.

- 2. Provision of public notice:** The City provided public notice in advance of the Planning Commission hearing (held on November 27, 2012) and the City Council hearings (held on March 5, 2013, March 19, 2013, July 16, 2013, and August 20, 2013) where the proposed amendment was considered. For the Planning Commission hearing, a newspaper

advertisement notice was printed on November 17, 2012. For the City Council hearings, a newspaper advertisement notice was printed on February 23, 2013 and July 6, 2013. In addition, the proposed text was made available at the City Clerk's office and on the City's website for public inspection, all in advance of the City's hearings. In addition, the proposed text is posted outside City Hall and at both Post Offices. The amendment submittal was subsequently received by the Commission on April 23, 2013 (and filed as complete on August 22, 2013), and therefore, the 21-day noticing requirement has been satisfied.

- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

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 exempted the proposed amendment from environmental review 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 de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its September 11, 2013 meeting at the Eureka Public Marina Wharfinger Building, #1 Marina Way in Eureka. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Daniel Robinson at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by September 6, 2013.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on August 22, 2013. It amends the IP only and the 60-day action deadline is October 21, 2013. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until October 21, 2013 to take a final action on this LCP amendment.

Exhibits

Exhibit A: Proposed IP Chapter 17.100 Reasonable Accommodations

Ordinance No. O-2013-006

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH
ADDING CHAPTER 17.100 – REASONABLE ACCOMODATIONS TO THE 1983
ZONING REGULATIONS /LOCAL COASTAL LAND USE PROGRAM OF THE PISMO
BEACH MUNICIPAL CODE AND REPEALING ORDINANCE O-2013-001**

WHEREAS, the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq. and the California Fair Employment and Housing Act, California Government Code Section 12900 et seq., require that cities provide reasonable accommodation to individuals with physical or mental conditions that limit movement, senses or activities through zoning and other land use procedures;

WHEREAS, Pismo Beach General Plan Housing Element policy HE-30 mandates City adoption of a reasonable accommodation ordinance to provide people with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing; and,

WHEREAS, this Ordinance provides a procedure by which land use regulations, policies, practices or procedures may be modified to allow an individual(s) with a physical or mental condition that limits movements, senses or activities to occupy specific property; and

WHEREAS, adoption of this Ordinance will bring the City into compliance with United States and California Fair Housing Laws.

NOW THEREFORE, the City Council of the City of Pismo Beach does ordain as follows:

Section 1. P.B.M.C. addition, Title 17, the 1983 Zoning Code Chapter 17.100

A new Chapter 17.100 *Reasonable Accommodations* is added to the Pismo Beach Municipal Code as follows:

CHAPTER 17.100 REASONABLE ACCOMMODATIONS

Sections:

- 17.100.010** Purpose and Intent
- 17.100.020** Definitions
- 17.100.030** Notice to the Public of Availability of Accommodation Process
- 17.100.040** Requesting Reasonable Accommodation
- 17.100.050** Reviewing Authority and Required Criteria
- 17.100.060** Written Decision on the Request for Reasonable Accommodation
- 17.100.070** Appeals

17.100.010 Purpose and Intent. This Chapter's purpose is to provide a procedure to make requests for reasonable accommodation of City of Pismo Beach land use regulations and policies to comply with the intent and purpose of United States

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and California Fair Housing Laws and City of Pismo Beach General Plan policy HE-30. The City intends to provide reasonable accommodation of its land use rules, policies, practices and procedures to provide for equal access to housing for individuals with physical or mental conditions that limit movement, senses or activities.

17.100.020 Definitions. "Applicant" means an individual with a physical or mental condition that limits movements, senses or activities; his or her representative, or a developer or provider of housing for the applicant. This definition applies when the application of a zoning or other land use regulation, policy, practice or procedure acts as a barrier to fair housing opportunities for individual(s) with physical or mental conditions that limit movement, senses or activities and substantially limits one or more major life activities.

"Coastal Resources" include, but are not limited to public access and public access facilities and opportunities, recreation areas and recreational facilities and opportunities (including for, visitor recreational water-oriented activities), public views, natural landforms, marine resources, watercourses (e.g. rivers, streams, creeks, etc.) and their related corridors, waterbodies (e.g., wetlands, estuaries, lakes, etc.) and their related uplands, ground water resources, biological resources, environmentally sensitive habitat area, agricultural lands, and archeological or paleontological resources.

"Director" means the Community Development Director, or his/her designee.

"Fair Housing Laws" means the "Fair Housing Amendments Act of 1988" (42 U.S.C. § 3601, et seq.), including reasonable accommodation required by 42 U.S.C. §3604(f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900, et seq.), including reasonable accommodation required specifically by California Government Code Sections 12927(c)(1) and 12955(1), as any of these statutory provisions now exist or may be amended from time to time.

"Local Coastal Plan" means the City of Pismo Beach Local Coastal Plan.

"Reasonable accommodation" or "accommodation" means providing flexibility in the application of zoning or other land use regulations, policies, practices and procedures, or waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities for individuals with physical or mental conditions that limit movement, senses or activities.

"Reviewing authority" means the Community Development Director, or his/her designee, or the Planning Commission, as determined in compliance with Section 17.100.050.

17.100.030 Notice to the Public of Availability of Accommodation Process.
Notice of the availability of reasonable accommodation shall be prominently displayed at

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public information counters that accept planning and building applications, advising the public of the availability of the procedure for eligible individuals. City employees shall direct individuals to the display whenever they are requested to do so or reasonably believe that individuals with physical or mental conditions that limit movement, senses or activities or their representative may be entitled to a reasonable accommodation. Forms for requesting reasonable accommodation shall be available to the public in the Community Development Department.

17.100.040 Requesting Reasonable Accommodation. In order to make housing available to an individual with physical or mental conditions that limit movement, senses or activities, an applicant may request a reasonable accommodation in zoning and other land use regulations, policies, practices and procedures.

A. All requests shall be limited to the minimum reasonable accommodation that the applicant believes is necessary to accommodate his or her limited movement, senses or activities. Requests for reasonable accommodation shall be in writing and provide the following information:

- (1) Name and address of the applicant;
- (2) Name and address of the Property Owner(s);
- (3) Address of the property for which accommodation is requested;
- (4) The current use of the property for which accommodation is requested;
- (5) Description of the requested accommodation, and the regulations(s), policy or procedure for which accommodation is sought, which could include site plans, floor plans, and/or details as necessary to define the extent of the accommodation;
- (6) The basis for the claim that the Fair Housing Laws apply to the individual(s) with physical or mental conditions that limit movement, senses or activities noted to support the claim. The claim may be in the form of a letter from the medical doctor or other licensed healthcare professional, or other appropriate evidence;
- (7) Reason that the requested accommodation may be necessary for the individual(s) to use and enjoy the property; and
- (8) How the property will be used by the subject applicant and/or individual(s).
- (9) How the strict application of the zoning code would preclude a reasonable accommodation.

B. Any medical or health information identified by the applicant as confidential shall be retained by the City in a manner so as to respect the privacy rights of the individual and shall not be made available for public inspection.

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 applicant's obligation to comply with other applicable regulations not at issue in the requested reasonable accommodation.

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

E. The fee for an application for reasonable accommodation shall be established by resolution of the City Council.

17.100.050 Reviewing Authority and Required Criteria. Requests for reasonable accommodation shall be reviewed by the Director, except requests that are integral to a larger development project application shall, at the discretion of the Director, be reviewed by the Planning Commission.

The reviewing authority shall issue a written decision to grant, grant with modification, or deny a request for reasonable accommodation that shall be consistent with Fair Housing Laws and be consistent with the following criteria:

- (1) The housing, which is the subject of the request for reasonable accommodation, will be used by individual(s) with physical or mental conditions that limit movement, senses or activities who are protected under Fair Housing Laws;
- (2) The requested accommodation is necessary to make housing available to individual(s) with physical or mental condition that limits movements, senses or activities under the Fair Housing Laws;
- (3) The requested accommodation would not impose an undue financial or administrative burden on the City;
- (4) The requested accommodation would be consistent with the neighborhood character and would minimize inconsistencies with and would not require a fundamental alteration of the City's land use and zoning program/Local Coastal Plan and Land Use program;
- (5) The requested accommodations will not negatively impact coastal resources;
- (6) The requested accommodation would not impose an undue hardship on the health, safety or welfare of the subject property owner/occupant or adjacent property owners.

17.100.060 Written Decision on the Request for Reasonable Accommodation.

A. The reviewing authority shall consider and act on requests for reasonable accommodations and shall issue a written decision on the request within thirty (30) calendar days of the date of the application. The reviewing authority may either grant with modifications, or deny a request for reasonable accommodation. This written decision shall explain in detail the basis of the decision consistent with the criteria set forth in Section 17.100.050. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth in Section 17.100.070. The notice of decision shall be sent to the applicant by certified

mail. 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. If additional information is required, a new thirty (30) calendar day period for the reviewing authority's written decision will be triggered upon submittal of new information.

B. The written decision of the reviewing authority shall be final unless the applicant appeals in accordance with Section 17.100.070.

C. If the reviewing authority fails to render a written decision on the request for reasonable accommodation within the thirty (30) calendar day time period the request shall be deemed denied.

D. While a request for 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.

E. If a reasonable accommodation request is granted, an applicant shall nevertheless have to obtain all other applicable zoning, land use, and building approvals.

17.100.070 Appeals. An applicant may appeal any decision of the reviewing authority regarding an application for reasonable accommodation to the City Manager, except where the decision is made by the Planning Commission in conjunction with a larger development project application, wherein the appeal shall be considered by the City Council. All such appeals shall be heard and processed as set forth in Chapter 17.121 of the Pismo Beach Municipal Code.

Section 2. Repeal of Ordinance O-2013-001. Ordinance O-2013-001 is hereby repealed in its entirety.

Section 3. Consistent with the General Plan/Local Coastal Plan. The City Council finds this Ordinance is consistent with and implements the policies and programs of the Housing element of the Pismo Beach General Plan.

Section 4. Environmental Declaration. The City Council declares this Ordinance has no potential for physical effects on the environment because it does not commit the City to any specific project. Thus, it is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b) (3) because it can be seen with certainty that there is no possibility that approval of reasonable accommodation regulations may have a significant effect on the environment.

Section 5. Severability. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Pismo Beach City Council hereby declares that it would have passed and adopted this Ordinance and each and all sections, subsections, sentences, clauses, phrases and words thereof irrespective of the fact that any one or more of said sections, subsections, sentences, clauses, phrases or words be declared unconstitutional, unlawful or otherwise invalid.

Section 6. California Coastal Commission Certification. The City of Pismo Beach intends to carry out the LCP in a manner fully consistent with the California Coastal Act (as required under California Coastal Commission Regulations (CCR)

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Section 13551([a]). The ordinance will take effect upon final certification by the California Coastal Commission (Section 1355([b])).

The City Clerk shall cause this Ordinance to be published or posted in at least three (3) public places in the City in accordance with Section 36933 of the Government Code of the State of California.

The Council hereby directs staff to forward this amendment to the LCP to the California Coastal Commission for certification. The LCP amendment effected by this zoning ordinance shall take effect consistent with Public Resources Code Section 30510 et seq.

INTRODUCED at a regular meeting of the City Council held this 16th day of July 2013, on motion of Council Member Vardas, seconded by Council Member Reiss, and on the following roll call vote, to wit:

AYES: 5 Council Members: Vardas, Reiss, Howell, Waage, Higginbotham
NOES: 0 Council Members
ABSENT: 0 Council Members
ABSTAIN: 0 Council Members

Approved:

Attest:

Shelly Higginbotham
Mayor

Elaina Cano, CMC
City Clerk

SECOND READING at a regular meeting of the City Council held this 20th day of August 2013, on motion of Council Member _____, seconded by Council Member _____ and on the following roll call vote, to wit:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

Approved:

Attest:

Shelly Higginbotham
Mayor

Elaina Cano, CMC
City Clerk