CITY OF TAFT PLANNING COMMISSION
REGULAR MEETING AGENDA
WEDNESDAY, AUGUST 17, 2016
CITY HALL COUNCIL CHAMBERS
209 E. KERN ST., TAFT, CA 93268

AS A COURTESY TO ALL - PLEASE TURN OFF CELL PHONES

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda are made available for public inspection in the lobby at Taft City Hall, 209 E. Kern Street, Taft, CA during normal business hours (SB 343).

REGULAR MEETING **6:00 P.M.**

Pledge of Allegiance
Invocation

Roll Call: Chairman Orrin
Vice Chair Jones
Commissioner Leikam
Commissioner Livingston
Commissioner Thompson

1. CITIZEN REQUESTS/PUBLIC COMMENTS

THIS IS THE TIME AND PLACE FOR THE GENERAL PUBLIC TO ADDRESS THE COMMISSION ON MATTERS WITHIN ITS JURISDICTION. STATE LAW PROHIBITS THE COMMISSION FROM ADDRESSING ANY ISSUE NOT PREVIOUSLY INCLUDED ON THE AGENDA. COMMISSION MAY RECEIVE COMMENT AND SET THE MATTER FOR A SUBSEQUENT MEETING. PLEASE LIMIT COMMENTS TO FIVE MINUTES.

2. MINUTES

June 22, 2016 Regular
July 20, 2016 Regular

Recommendation – Approve as submitted.

3. PUBLIC HEARING – ZONING ORDINANCE AMENDMENT NO. 2016-19

Recommendation
1. Conduct a Public Hearing
2. Motion to adopt a Resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-19 an amendment to Chapters 4 and 5 of Title 6 of the Taft Municipal Code, regarding residential densities.

4. PUBLIC HEARING – ZONING ORDINANCE AMENDMENT NO. 2016-20

Recommendation
1. Conduct a Public Hearing
2. Motion to adopt a Resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-20 an amendment to Title 6 of the Taft Municipal Code, adding a section to Chapter 11 regarding Reasonable Accommodation standards consistent with fair housing laws.

5. PLANNING DIRECTOR REPORT

6. CITY ATTORNEY STATEMENTS

7. COMMISSIONER COMMENTS

8. IDENTIFICATION OF REPRESENTATIVE TO THE CITY COUNCIL

ADJOURNMENT

AMERICANS WITH DISABILITIES ACT
(Government Code Section 54943.2)

The City of Taft City Council Chamber is accessible to persons with disabilities. Disabled individuals who need special assistance (including transportation) to attend or participate in a meeting of the Taft City Planning Commission may request assistance at the Office of the City Clerk, City of Taft, 209 E. Kern Street, Taft, California or by calling (661) 763-1222. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

AFFIDAVIT OF POSTING

I, Brenda Johns, declare as follows:

That I am the Recording Secretary for the City of Taft; that an agenda was posted on a public information bulletin board located near the door of the Civic Center Council Chamber on August 12, 2016, pursuant to 1987 Brown Act Requirements.

I declare under penalty of perjury that the foregoing is true and correct.
Executed August 12, 2016, at Taft, California.

Date/Time_____Signature_____

CITY OF TAFT PLANNING COMMISSION
REGULAR MEETING MINUTES
WEDNESDAY, JUNE 22, 2016

REGULAR MEETING **6:00 P.M.**

The June 22, 2016 regular meeting of the Planning Commission of the City of Taft, held in the City of Taft Council Chamber, 209 E. Kern Street, Taft CA 93268, was opened by Chairman Orrin at 6:15:34 PM The Pledge of Allegiance was led by Commissioner Livingston, followed by an invocation given by Chairman Orrin.

PRESENT: Chairman Ron Orrin, Vice Chair Shannon Jones and Commissioner Jerry Livingston
Planning and Community Development Director Mark Staples
City Attorney Jason Epperson and Recording Secretary Brenda Johns

ABSENT: Commissioner Robert Leikam and Robert Thompson

1. CITIZEN REQUESTS/PUBLIC COMMENTS

There were none.

2. MINUTES

May 18, 2016 Regular

June 9, 2016 Special

Motion: Moved by Jones seconded by Livingston to approve the Minutes as submitted.

AYES: Orrin, Jones, Livingston,
PASSED: 3-0

3. PUBLIC HEARING – CONDITIONAL USE PERMIT NO. 2016-13

Planning Director Staples presented his staff report and recommendation.

Applicant Maria Alcala introduced herself and thanked the Commission for their consideration on her request to obtain a Conditional Use Permit for an alcohol license.

Livingston asked if the restaurant still had a drive thru.

Alcala stated yes.

Orrin asked Maria if she had previously held a beer and wine license in the past.

Alcala stated yes, she has held a beer and wine license for her other restaurants and is familiar with the regulations.

The Public Hearing was opened at 6:26:30 PM to receive testimony from proponents and opponents. Seeing none the public hearing was closed.

Motion: Moved by Livingston seconded by Jones to adopt a Resolution entitled **CONDITIONAL USE PERMIT NO. 2016-13 TO PERMIT THE ACQUISITION OF A TYPE 41 ABC LICENSE FOR THE SALE OF**

BEER AND WINE FOR CONSUMPTION ON THE PREMISES, WITHIN AN EXISTING COMMERCIAL BUILDING, LOCATED ON A 0.48 ACRE LOT, WITHIN THE GENERAL COMMERCIAL (GC) ZONE DISTRICT LOCATED AT 1008 KERN STREET (APN 032-520-19).*(Resolution No. 2016-09)*

AYES:	Orrin, Jones, Livingston,
PASSED:	3-0
ABSENT:	Leikam, Thompson

4. PUBLIC HEARING – TEMPORARY LAND USE PERMIT NO. 2016-14

Planning Director Staples presented his staff report and recommendation.

Jones asked if the outdoor fruit stand would be taken down daily.

Staples stated the structure was permanent and would not be taken down daily but could easily be removed if the applicant ever decided to stop using the vegetable stand.

Jones asked if there would be conditions in place for maintenance of the structure.

Staples stated up keep of the structure would be basic property maintenance but could be added as a condition.

Livingston noted the property recently boarded up windows.

Staples shared the applicant had boarded up the windows due to vandalism and per code had 6 months to replace the windows.

Orrin stated some of the windows were in clear violation of the sign ordinance. He also asked if the property had any code violation.

Staples stated the property did have code violations for the unpermitted shopping carts and large box of produce on the City sidewalk, the unbroken down cardboard boxes not properly disposed of in the bins provided located in the alleyway and the containers of used cooking fat grease and oils also in the alley way. He shared code enforcement had sent out a notice to the applicant.

Jones requested for the code violation of signs in the windows to be addressed.

Epperson explained there were current open code enforcement actions against the property and a number of verbal warnings had been given regarding the encroachment on to City sidewalk; to which verbal warnings were cleared but the encroachments seemed to return if not the very next day.

Orrin believes it is in the Applicants best interest to first clear up the code violations before any Temporary Land Use Permit is granted.

Staples suggested table the item to allow the applicant to address code violations.

Orrin believes right now the Applicant needs to keep his property free of any code violations for 6 months or more and then reapply for a Temporary Land Use Permit and resubmit with a set of architectural drawing.

The Public Hearing was opened at 6:47:41 PM to receive testimony from proponents and opponents. Seeing none the public hearing was closed.

Motion: Moved by Livingston seconded by Jones to adopt Resolution of the Planning Commission of the City of Taft approving **TEMPORARY LAND USE PERMIT NO. 2016-14 FOR THE ESTABLISHMENT OF A TEMPORARY 15-FOOT BY 60-FOOT OUTDOOR FRUIT AND VEGETABLE STAND, TO OPERATE ONLY ON FRIDAYS, SATURDAYS AND SUNDAYS, OCCUPYING A MAXIMUM OF 9 PARKING SPACES, WITHIN AN EXISTING PRIVATE PARKING LOT ADJACENT AND TO THE WEST OF LA VILLA MARKET, LOCATED ON A 0.36 ACRE LOT, IN THE DOWNTOWN COMMERCIAL (DC) ZONE DISTRICT LOCATED AT 623 CENTER STREET (APN 031-200-01).**

AYES: None
NOES: Orrin, Jones, Livingston
FAILED: 0-3

5. PLANNING DIRECTOR REPORT

Director Staples shared:

- The transit center had been approved by the City Council; he also reviewed color rendering elevations for the transit center with the Commission (Copies were submitted to the Recording Secretary for the permanent file).
- The City Council approved the hiring of a consultant for the revision of the General Plan.

6. CITY ATTORNEY STATEMENTS

No statement.

7. COMMISSIONER COMMENTS

Livingston mentioned he attended the City Council meeting and $250,000 thousand dollars had been budgeted for street maintenance.

Jones shared:

- The free fireworks show is Saturday July 2, 2016 at Rails to Trails.

8. IDENTIFICATION OF REPRESENTATIVE TO THE CITY COUNCIL

Commissioner Livingston was selected to be the representative to the City Council on July 19, 2016 meeting.

ADJOURNMENT

With no further business to conduct it was moved by Jones seconded by Livingston and approved unanimously, to adjourn the meeting at 7:30:38 PM

_____ _____

Brenda Johns, Recording Secretary Ron Orrin, Chairman

CITY OF TAFT PLANNING COMMISSION
REGULAR MEETING MINUTES
WEDNESDAY, JULY 20, 2016

REGULAR MEETING **6:00 P.M.**

The July 20, 2016 regular meeting of the Planning Commission of the City of Taft, held in the City of Taft Council Chamber, 209 E. Kern Street, Taft CA 93268, was opened by Chairman Orrin at 6:03:35 PM. The Pledge of Allegiance was led by Commissioner Thompson, followed by an invocation given by Heather Muller of Saint Andrews Episcopal Church.

PRESENT: Chairman Ron Orrin, Commissioners Bob Leikam, Jerry Livingston and Robert Thompson
Planning and Community Development Director Mark Staples
City Attorney Jason Epperson and Recording Secretary Brenda Johns

ABSENT: Vice Chair Shannon Jones

1. CITIZEN REQUESTS/PUBLIC COMMENTS

There were none.

2. MINUTES

June 22, 2016 Regular

Item tabled for next regular meeting due to insufficient quorum of attendees for said item.

3. PUBLIC HEARING – CONDITIONAL USE PERMIT NO. 2016-15

Planning Director Staples presented his staff report and recommendation.

Thompson inquired as to whether Alcoholic Beverage Control (ABC) enforced a limit on alcohol licenses issued per year.

Staples clarified it was a total number of alcohol license approved per area not per year.

The Public Hearing was opened at 6:22:34 PM to receive testimony from proponents and opponents. Seeing none the public hearing was closed.

Motion: Moved by Thompson seconded by Leikam to adopt a resolution entitled **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TAFT APPROVING CONDITIONAL USE PERMIT NO. 2016-15 TO PERMIT THE ACQUISITION OF A TYPE 41 ABC LICENSE FOR THE SALE OF BEER AND WINE FOR CONSUMPTION ON THE PREMISES, WITHIN A UNIT OF AN EXISTING COMMERCIAL BUILDING (LAS FOGATAS RESTAURANT), LOCATED ON A 3.78 ACRE LOT IN THE PILOT PLAZA SHOPPING CENTER, WITHIN THE GENERAL COMMERCIAL (GC) ZONE DISTRICT LOCATED AT 407 FINLEY DRIVE.** *(Resolution 2016-11).*

AYES: Orrin, Leikam, Livingston, Thompson
NOES: None
PASSED: 4-0

4. PLANNING COMMISSION REVIEW – ZONING ORDINANCE AMENDMENT NO. 2016-17

Director Staples presented informational item proposed Zoning Ordinance Amendment of Section 6.11.390 of the Zoning Ordinance relating to the Water Efficient Landscape Requirements.

Orrin disagreed with the Water Efficient Landscape Requirements.

Livingston asked if the requirements applied solely to new development.

Staples stated the requirements only applied to new development.

Livingston asked if the City currently required landscaping permits.

Staples stated the City did not require landscaping permits.

Livingston asked if auditing would be done by the water district.

Staples responded he would further research the guidelines.

5. PLANNING COMMISSION REVIEW – ZONING ORDINANCE AMENDMENT NO. 2016-18.

Director Staples presented informational item proposed Zoning Ordinance Amendment of Chapter 15 of the Zoning Ordinance relating to Sign Regulations.

Leikam asked if the referenced sign ordinance covered hand held signs.

Staples stated it did not.

Livingston asked if the referenced sign ordinance defined interactive signs.

Staples stated there were definitions for interactive signs and noted the referenced ordinance had set sign limitations.

Livingston noted the prohibited signs and sign locations within the referenced Nevada Code Ordinances are well thought out.

6. PLANNING DIRECTOR REPORT

Director Staples shared he attended the Westside Healthcare District's need analysis meeting and they are moving forward with the new facilities.

7. CITY ATTORNEY STATEMENTS

Epperson stated he would provide the Commission with a code enforcement report next meeting.

8. COMMISSIONER COMMENTS

Orrin thanked City staff for the removal of abandoned cars on Center Street. He would like there to be a business license practice for thrift stores requiring them to have liability insurance for used baby products.

9. IDENTIFICATION OF REPRESENTATIVE TO THE CITY COUNCIL

Commissioner Leikam was selected to be the representative to the City Council on August 2, 2016 meeting.

ADJOURNMENT

With no further business to conduct it was moved by Thompson seconded by Livingston and approved unanimously, to adjourn the meeting at 7:20:24 PM.

_____ _____

Brenda Johns, Recording Secretary Ron Orrin, Chairman

City of Taft
Planning Commission
Staff Report

Agenda Item #3

DATE: August 17, 2016

TO: Chairman Orrin and Members of the Planning Commission

FROM: Mark Staples, Director
Planning and Development Services

SUBJECT: Zoning Ordinance Amendment No. 2016-19 – Residential Densities

RECOMMENDATION:

1. Conduct a Public Hearing
2. Adopt a Resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-19, an amendment to Chapters 4 and 5 of Title 6 of the Taft Municipal Code regarding residential densities

LOCATION: Citywide

PROJECT ANALYSIS:

On August 19, 2008, the City Council adopted Ordinance No. 768-08, which included a comprehensive update to the Taft Zoning Ordinance. On June 22, 2010, the City Council adopted Resolution No. 3206-10, approving a new General Plan for the City of Taft. The new General Plan included new land use designations and residential densities throughout the city. On April 6, 2010, the Council adopted Ordinance No. 782-10 in anticipation of the new General Plan, which included amendments that established consistencies between General Plan land use designations and Zoning Districts. However, the amendments did not revise the prior establish densities in the Zoning Ordinance to be consistent with the General Plan densities.

The 2010 General Plan included higher residential densities that were more consistent with the prior version of the Zoning Ordinance and current single-family and multi-family residential development trends. The General Plan also included a Mixed Use (MU) Land Use designation that encouraged residential and commercial uses adjacent to each other or on the same property. The MU allowed a similar residential density as found in the High Density Residential (HDR) Land Use designation. Below is a simple table that shows the inconsistent densities between the General Plan and Zoning Ordinance:

Land Use Designation Zoning District	General Plan Density	Zoning Density	New Density
Low Density Residential (LDR) Single Family Residential (R-1)	7 du/ac	5 du/ac	7 du/ac
Medium Density Residential (MDR) Medium Density Residential (R-2)	15 du/ac	14 du/ac	15 du/ac
High Density Residential (HDR) High Density Residential (R-3)	29 du/ac	24 du/ac	29 du/ac
Mixed Use (MU) Downtown Commercial (DC) Mixed Use (MU)	29 du/ac	 Not Identified Not Identified	 29 du/ac 29 du/ac

These residential density inconsistencies were identified during the Housing Element Update process in 2015. The properties identified on the Adequate Site Inventory List to site future housing discovered that many of the opportunities could produce more units if the residential densities of each Zone District were increased to match that of the General Plan. Despite the inconsistency, the Adequate Site Inventory List found a surplus number of properties to meet the City of Taft's Regional Housing Need Allocation (RHNA). The Housing Element Update list of programs still included a task (Program #4 Zoning Ordinance Review) to amend the Zoning Ordinance to increase the residential densities of the Zone Districts to match their corresponding Land Use designation of the General Plan.

Attached, within the Resolution, are the proposed amendments to Chapters 4 and 5 of the Zoning Ordinance that amend the densities discussed above. Chapter 5 includes an additional section briefly discussing the residential density allowances and other residential uses allowed with commercial development. Also attached, for reference, are pages from Chapter 3.0 of the Taft General Plan identifying the Land Use designations and the allowable residential densities.

Therefore, staff recommends that the Planning Commission hold a public hearing and adopt a resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-19, an amendment to Chapters 4 and 5 of Title 6 of the Taft Municipal Code regarding residential densities.

CEQA:

The project is exempt from the requirements of the California Environmental Quality Act (CEQA) as set forth in Section 15061(b)(3) of the CEQA Guidelines as the proposed amendment will have no significant effect on the environment.

ATTACHMENTS:

1. Resolution
2. Taft General Plan, Chapter 3.0 Land Use Element – Pages 3.0-5 through 3.0-10

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TAFT RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ZONING ORDINANCE AMENDMENT NO. 2016-19, AN AMENDMENT OF CHAPTERS 4 AND 5 OF TITLE 6 OF THE TAFT MUNICIPAL CODE REGARDING RESIDENTIAL DENSITIES

WHEREAS, California Government Code Section 65800 provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities; and

WHEREAS, the City of Taft is responsible for continually reviewing and updating the adopted Zoning Ordinance to address changing conditions within the City; and

WHEREAS, the Taft City Council adopted Resolution No. 3732-15 approving Taft's Housing Element Update, which identified inconsistencies between the residential densities allowed in the General Plan and in the Zoning Ordinance; and

WHEREAS, the Housing Element Update included Housing Program #4 that directed City staff to review and amend the Zoning Ordinance to increase the allowable residential densities to match those allowed by the corresponding General Plan Land Use designations; and

WHEREAS, the Planning Commission reviewed and commented on a draft ordinance amending Chapters 4 and 5 of Title VI of the Taft Municipal Code at its regular meeting on August 17, 2016; and

WHEREAS, the Planning Commission studied and considered the written findings for approval of Zoning Ordinance Amendment No. 2016-19, City Staff's written and oral reports, and all public testimony before making a decision on this request; and

WHEREAS, the laws and regulations relating to the preparation and adoption of environmental documents, as set forth in the State Guidelines Implementing the California Environmental Quality Act have been adhered to; and

WHEREAS, the Planning Commission has fully considered this request and the potential environmental effects.

NOW, THEREFORE, THE PLANNING COMMISSION DOES HEREBY FIND, DETERMINE, RESOLVE, AND RECOMMEND AS FOLLOWS:

1. The proposed amendment is consistent with the goals, objectives, policies, and programs of the General Plan and is necessary and desirable to implement the provision of the General Plan; and

2. The proposed amendment will not adversely affect the public health, safety, and welfare or result in an illogical land use pattern; and

3. The proposed amendment is consistent with the purpose and intent of the remainder of this Zoning Ordinance not under consideration; and

4. The potential environmental impacts of the proposed amendment are insignificant, have been mitigated, or there are overriding considerations that outweigh the potential impacts; and

5. The proposed amendment is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines because the Code Amendment will have no significant effect on the environment.

SECTION 1. The following amendment of Chapter 4, of Title VI, shall be recommended to the City Council of the City of Taft as follows:

TABLE 4.B
SITE DEVELOPMENT STANDARDS

	RS (Large Lot)	**RS**	**R-1**	**R-2**	**R-3**
Maximum density (dwelling units per acre)	1.0	2.5	~~5.0~~ 7.0	~~14.0~~ 15.0	~~24.0~~ 29.0
Minimum lot area (net area in square feet):					
Interior lot	40,000 (1 acre average)	20,000	6,000	9,000	12,000
Corner lot	40,000 (1 acre average)	20,500	6,250	9,250	12,250
Minimum lot width:					
Interior lot	135' (150' average)	80'	60'	75'	90'
Corner lot	150'	100'	65'	80'	100'
Minimum lot depth:					
Lot is greater than 20,000 square feet	200'	130'	100'	100'	100'
Lot is less than 20,000 square feet	150'	125'	100'	100'	100'
Minimum front yard setback:					
Lot adjacent to a straight street	40'	30'	25'	20'	20'
Lot less than 20,000 square feet adjacent to straight street	35'	25'	25'	20'	20'
Cul-de-sac lot or knuckle lot	40'	20'	20'	20'	20'

Minimum interior side yard setback:					
1 story	20'	15'	5'	5'	5'
Any portion of a structure exceeding 1 story	20'	15'	10'	10'	10'
Minimum street side yard setback:					
Corner lot	30'	15'	10'	10'	10'
Reverse corner lot	30'	15'	15'	15'	15'
Minimum rear yard setback:					
Lot with alley	15'	10'	5'	5'	5'
Lot with no alley	40'	25'	15'	15'	15'
Maximum lot coverage	25%	30%	40%	50%	60%
Maximum height for buildings and structures	35'	35'	35'	35'	45'
Minimum distance between buildings	10'	10'	10'	10'	10'
Minimum dwelling unit size (square feet)	1,850	1,450	1,000	850	850

SECTION 2. The following amendment of Chapter 5, of Title VI, shall be recommended to the City Council of the City of Taft as follows:

6-5-3: USE REGULATIONS:

Identified on table 5.A of this section are those land uses or activities that may be permitted in each commercial zone district, permitted subject to an approved conditional use permit or prohibited. This table also indicates the development procedure and the approval type by which each listed land use or activity may be permitted in each commercial zone district. (Ord. 805-14, 7-1-2014)

TABLE 5.A
USES PERMITTED WITHIN COMMERCIAL ZONE DISTRICTS

Legend:
P = Permitted subject to consistency assessment
C = Permitted subject to approval of a conditional use permit application
X = Not permitted in this district

Use	MU	GC	DC
Residential uses:			

	Emergency shelters	X	X	X
	Multi-family residential dwellings	C	~~C~~X	C
	Residence in conjunction with a business	C	~~C~~X	C
	Single-family residential dwellings	X	X	X
	Supportive housing	C	~~C~~X	C
	Transitional housing	C	~~C~~X	C
Temporary uses:				
	Temporary uses as prescribed in section 6-2-10 of this title, are permitted subject to issuance of a temporary use permit	P	P	P
Other uses similar to, and no more objectionable than, the uses identified above, shall be reviewed per the process required by the similar use, as determined by the planning commission				

(Ord. 805-14, 7-1-2014; amd. Ord. 812-15, 7-7-2015; Ord. 813-15, 7-7-2015; Ord. 814-15, 7-7-2015)

6-5-4: SITE DEVELOPMENT STANDARDS:

(A) General Requirements: Table 5.B of this section describes the minimum site development standards applicable to proposed and existing development in all commercial zone districts. All commercial development shall conform to the standards established in this section.

1. A development or commercial center may, for purposes of meeting the minimum site size standards, consist of a combination of parcels whose total net acreage meets the minimum site size criteria; provided, that the design for the entire site is integrated and unified.

2. In addition to the minimum standards established in table 5.B of this section, developments within the commercial zone districts shall also comply with the special requirements contained in subsection (B) of this section, chapter 13, "Performance Standards", of this title, other city regulations and ordinances, and the city general plan.

TABLE 5.B
COMMERCIAL SITE DEVELOPMENT MINIMUM STANDARDS

Requirement	GC	DC	MU
Minimum site area (square feet, net)	6,500	5,000	12,500[1]
Minimum site width, in feet	65	50	65
Minimum site depth, in feet	100	100	100
Front building setback, in feet	0	0	0

Side street building setback area, street sides, in feet	0	0	0
Rear setback	0	0	0
Maximum floor area ratio	0.50	0.85	0.85
Building height, in feet, maximum (may be exceeded with an approved conditional use permit)	45	35	45

Note:
1.Refer to exception at subsection (C)4 of this section.

(B) Special Requirements:

1. All uses in the commercial districts shall comply with the provisions of section 6-11-29, "Screening Requirements", of this title, and shall provide street side landscaping as required by the planning director.

2. Where off street parking areas in the general commercial zone districts are situated in a visual corridor, as may be defined in a precise plan adopted by the city council, screening, such as a landscaped earthen berm or decorative wall no less than two feet (2') in height, shall be erected between the street right of way and the parking area.

3. In all commercial zone districts, no external security bars shall be permitted on structures.

4. Parking for each use shall comply with the provisions of chapter 14 of this title.

(C) Exceptions:

1. The creation of new lots within the commercial zone districts shall conform to the minimum allowable dimensions, except in the case of commercial condominium lots or lots within a shopping center, in which case no minimums are established, provided the commercial development is consistent with other requirements of this title and applicable city standards, regulations and ordinances.

2. Parcels created within shopping centers are exempt from the site development standards stated herein, as they relate to minimum site areas, and minimum lot width and depth, as long as a conceptual development plan for the entire center has been approved and if appropriate easements for reciprocal access parking and maintenance are provided.

3. When abutting a residentially zoned district, the front, side and rear yard setbacks of that residentially zoned district shall apply to the commercial development abutting that residentially zoned district.

4. In the MU zone district, the lot size may be reduced to the same size of the GC zone district (6,500 square feet); provided, that no multiple-family units are proposed for the project site.

(D) Vacant Building Registration: Vacant or abandoned residential and nonresidential buildings are subject to the vacant building registration requirements per section 6-11-39 of this title and title III, chapter 4.3 of this code.

(E) Fences and Walls: Walls, for the purpose of visual screening and sound attenuation, shall be required between nonresidential uses and any adjacent residential use or residentially zoned property, or where more sensitive adjacent land uses exist. Maximum height shall be six feet (6'), except within the required front yard or street side yard setback area where the maximum height shall be forty inches (40"). Fences and walls shall be in compliance with section 6-11-9 of this title. (Ord. 805-14, 7-1-2014)

(F) Residential Uses in Commercial Zone Districts

1. Multi-Family Residential and Mixed Use Residential developments in the MU and DC zone districts are allowed a maximum residential density of 29 dwelling units per acre (29 du/ac) consistent with the Mixed Use land use designation of the General Plan.

2. A residence, on the first or ground floor of a commercial unit, in conjunction with business is conditionally allowed when the property owner, business operator, and resident are the same person(s). In such cases, the residential and commercial uses shall comply with all requirements of the California Building Code.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections of this Resolution. The Planning Commission hereby declares that it would have passed this Resolution, and each section, subsection, clause and phrase thereof, irrespective of the face that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered forthwith by the City Clerk to the City Council of the City of Taft.

PASSED AND ADOPTED on this 17th day of August, 2016.

ATTEST

_____ _____

Brenda Johns, Recording Secretary Ron Orrin, Chairman

CERTIFICATION

I, Brenda Johns, hereby certify that the foregoing resolution was passed and adopted by the Planning Commission of the City of Taft at a specially scheduled meeting held on the 17th day of August, 2016, by the following vote

AYES:
NOES:
ABSENT:
ABSTENTIONS:

_____

Brenda Johns, Recording Secretary

Policy LU-3: Promote sustainable development practices.

Policy LU-4: Support alternative development techniques to promote the conservation of land for open space, natural resource, or agricultural uses.

Policy LU-5: Analyze all development projects in accordance with the provisions of CEQA.

Policy LU-6: Require all development to be compatible with the Airport Land Use Compatibility Plan (ALUCP).

LAND USE POLICIES: LAND USE DESIGNATIONS

Policy LU-7: The following standards apply to lands designated as **Agriculture** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide areas where the predominant land use is agriculturally oriented and to identify areas in the Planning Area in which agriculture is now and should continue to be the predominant land use, where land uses incompatible with agriculture should be precluded, and where the development of urban type land uses would be detrimental to the continuance of agriculture which is an economic and aesthetic attribute to the area. Continuance of existing non-agricultural development may be allowed. It is expected that this designation will have a very low population to acre ratio, anticipating less than one person per acre.

This land use designation also allows the City to implement Williamson Act Land Contracts, including Farmland Security Zones, to ensure the continued viability of agriculture.

Maximum Dwelling Density: 1 dwelling unit per 20 gross acres (0.5 DU/Ac); except, 1 dwelling unit per 80 gross acres (0.0125 DU/Ac) for land subject to the Williamson Act/Farmland Security Zone Contracts

Policy LU-8: The following standards apply to lands designated as **Natural Resources** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: This designation is applied to lands that have proven petroleum, mineral, or biotic resources. Most of the land within this land use designation is utilized for oil-related uses, including exploration, reserves, pipelines, and storage facilities. Much of this land also provides added benefits, such as open space and wildlife habitat. It is expected that this designation will have a very low population to acre ratio, anticipating less than one person per acre.

This land use designation also provides for the continuation of agricultural uses and allows the City to implement Williamson Act Land Contracts, including Farmland Security Zones.

Maximum Dwelling Density: 1 dwelling unit per 5 gross acres (0.2 DU/Ac); 1 dwelling unit per 20 gross acres (0.5 DU/Ac) for land subject to the Williamson Act Contract; 1 dwelling unit per 80 gross acres (0.0125 DU/Ac) for land subject to the Williamson Act/Farmland Security Zone Contracts

Policy LU-9: The following standards apply to lands designated as **Rural Residential** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for and protect a rural atmosphere and lifestyle. Rural Residential also provides for the continued use of existing Rural Residential areas within the Planning Area. It is expected that this designation will have a low population to acre ratio, anticipating up to six persons per acre.

Maximum Dwelling Density: 1 dwelling unit per gross acre (1 DU/Ac)

Policy LU-10: The following standards apply to lands designated as **Estate Residential** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for and protect a large-lot estate atmosphere and lifestyle. Estate Residential development is generally served by community sewer and water. This land use designation is also appropriately used when estate residential developments are desired to promote larger lot homes and where the overall density of an area should be limited because of public facility, safety, or aesthetic concerns. It is expected that this designation will have a population to acre ratio of up to eight persons per acre.

Maximum Dwelling Density: 2.5 dwelling units per gross acre (2.5 DU/Ac)

Policy LU-11: The following standards apply to lands designated as **Low Density Residential** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for low density residential neighborhoods. Low Density Residential development will most likely consist of detached units or attached units. Secondary dwelling units are also permitted. Low Density Residential development is generally served by community sewer and water.

The Low Density Residential designation is intended to allow limited multiple-family residential development on corner lots in single-family residential neighborhoods.

The Low Density Residential designation is also intended to allow limited neighborhood commercial development in residential neighborhoods. Neighborhood commercial uses must be compatible with nearby residential uses and located at the intersection of arterials/local streets or collectors/local streets. Development of neighborhood commercial centers must be in scale with the

surrounding residential neighborhood. It is expected that this designation will have a population to acre ratio of up to 30 persons per acre.

Maximum Dwelling Density: 7 dwelling units per gross acre (7 DU/Ac); 15 dwelling units per gross acre (15 DU/Ac) on corner lots

Policy LU-12: The following standards apply to lands designated as **Medium Density Residential** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for medium density residential neighborhoods. Medium Density Residential development will most likely consist of more compact single-family development consisting of detached units or attached units, or multiple-family units.

The Medium Density Residential designation is also intended to allow limited neighborhood commercial development in residential neighborhoods. Neighborhood commercial land uses must be compatible with nearby residential uses and located at the intersection of arterials/local streets or collectors/local streets. Development of neighborhood commercial centers must be in scale with the surrounding residential neighborhood. It is expected that this designation will have a population to acre ratio of between 10 and 40 persons per acre.

Minimum Dwelling Density: 4 dwelling units per gross acre (4 DU/Ac)

Maximum Dwelling Density: 15 dwelling units per gross acre (15 DU/Ac)

Policy LU-13: The following standards apply to lands designated as **High Density Residential** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for high density residential neighborhoods. High Density Residential development will most commonly consist primarily of attached units or multiple-family units.

The High Density Residential designation is also intended to allow limited neighborhood commercial development in residential neighborhoods. Neighborhood commercial uses must be compatible with nearby residential uses and located at the intersection of arterials/local streets or collectors/local streets. Development of neighborhood commercial centers must be in scale with the surrounding residential neighborhood. It is expected that this designation will have a population to acre ratio of between 21 and 78 persons per acre.

Minimum Dwelling Density: 8 dwelling units per gross acre (8 DU/Ac)

Maximum Dwelling Density: 29 dwelling units per gross acre (29 DU/Ac)

Policy LU-14: The following standards apply to lands designated as **Mixed Use** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To encourage a mix of residential, office, and retail uses in designated areas of the community. The Mixed Use designation is concentrated in the Downtown area and other appropriate areas as shown on Figure 3.0-1 (Land Use Map). It is expected that this designation will have a population to acre ratio of up to 78 persons per acre. Building intensity in this designation may cover the entire parcel and reach to several floors.

Maximum Dwelling Density: 29 dwelling units per gross acre (29 DU/Ac)

Policy LU-15: The following standards apply to lands designated as **Commercial** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for local and regional shopping centers, highway commercial land uses, general retail land uses, and office developments. It is expected that this designation will not have population as the uses are not intended to include residential development. However, there may be some associated residential uses but the population to acre ratio is expected to be very low, anticipating less than one person per acre. Building intensity in this designation may cover the entire parcel and reach to several floors.

Policy LU-16: The following standards apply to lands designated as **Industrial** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: To provide for industrial land uses including manufacturing, processing, light industrial, and alternative fuel or alternative energy land uses. The Industrial land use designation is also intended to allow for business park developments.

This designation is also intended to allow for appropriate and complementary commercial land uses in light industrial and business park developments. It is expected that this designation will not have population as the uses are not intended to include residential development. However, there may be some associated residential uses but the population to acre ratio is expected to be very low, anticipating less than one person per acre. Building intensity in this designation may cover the entire parcel and reach to several floors.

Policy LU-17: The following standards apply to lands designated as **Public Facilities** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: This designation is reserved for facilities that are operated by public agencies or which serve public agency functions, including state parks, schools, the post office, city hall and other government facilities, hospital, airport, prison, county offices, and similar uses. It is expected that this designation will not have population as the uses are not intended to include residential development.

However, there may be some associated residential uses but the population to acre ratio is expected to be very low, anticipating less than one person per acre. Building intensity in this designation may cover the entire parcel and reach to several floors.

Policy LU-18: The following standards apply to lands designated as **Open Space** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of the General Plan.

Intent: This designation is applied to lands that will remain generally free of buildings, except buildings incidental to active and passive parks. Land uses allowed include passive and active recreational facilities, including but not limited to parks, golf courses, and trails. It is expected that this designation will not have population as the uses are not intended to include residential development. However, there may be some associated residential uses but the population to acre ratio is expected to be very low, anticipating less than one person per acre.

Policy LU-19: Those lands designated as **Special Planning Area** on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) shall be required to file a master plan for development. The Master Plan shall implement the following policies:

a) The Master Plan may include:

- Land use designations
- Development standards
- Infrastructure plans
- Financing plans
- Phasing and implementation plans

b) The Master Plan and any related implementation plans shall be consistent with this General Plan and shall be used to implement policies of this General Plan.

c) Development should not occur until a Master Plan has been prepared and approved, and no portion of the Master Plan Area may be planned as a separate project prior to the completion of a Master Plan.

Policy LU-20: Table 3.0-1 (Consistency Matrix) illustrates the base zoning districts, which implement the land use categories shown on Figure 3.0-1a and Figure 3.0-1b (Land Use Maps) of this General Plan.

TABLE 3.0-1: CONSISTENCY MATRIX

Planned Land Use	Consistent Zone District
Agricultural	A; PD; CF
Rural Residential	RS; PD; PE; DI; CF
Residential Estate	RS; PD; PE; DI, CF
Low Density Residential	RS; R-1; PD; DI; CF
Medium Density Residential	R-2; PD; DI; CF
High Density Residential	R-3; PD; DI; CF
Commercial	DC; GC; PD; PE; DI; CF
Mixed Use	DC; PD; GC; DI; CF
Industrial	I; PD; CF
Natural Resources	NR; OS; CF
Public Facilities	CF
Open Space	NR; OS; CF

LAND USE POLICIES: RESIDENTIAL

Policy LU-21: Encourage a mix of residential densities.

Policy LU-22: Promote attractive, well designed, and adequately maintained residential neighborhoods.

Action LU-22a: Develop Residential Design Guidelines to promote:

- Tree-lined streets.
- Neighborhood parks.
- Architecturally pleasing dwellings.
- Common areas maintained by Community Facilities Districts, Landscaping and Lighting Districts, or other financing mechanisms.

Policy LU-23: Encourage pedestrian-oriented residential developments and adjacent land uses.

Action LU-23a: Amend the Taft Municipal Code to require all residential developments to provide for pedestrian and bicycle connections and facilities.

City of Taft
Planning Commission
Staff Report

Agenda Item #4

DATE: August 17, 2016

TO: Chairman Orrin and Members of the Planning Commission

FROM: Mark Staples, Director
Planning and Development Services

SUBJECT: Zoning Ordinance Amendment No. 2016-20 – Reasonable Accommodation

RECOMMENDATION:

1. Conduct a Public Hearing
2. Adopt a Resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-20, an amendment to Title 6 of the Taft Municipal Code adding a section to Chapter 11 regarding Reasonable Accommodation standards consistent with fair housing laws

LOCATION: Citywide

PROJECT ANALYSIS:

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act prohibit discrimination against individuals with disabilities in housing and require that cities and counties take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities. More specifically, fair housing laws require that cities and counties provide individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, practices and procedures.

Attached, within the Resolution, is the proposed amendments to Chapters 11 of the Zoning Ordinance that includes the application procedures for Reasonable Accommodation. The new Section 6-11-24 includes text from a model ordinance developed by the Mental Health Advocacy Services, Inc. from September 2003. The model ordinance was recommended by the state office of Housing and Community Development (HCD) during the Taft Housing Element Update in 2015. Program #13 in the Housing Element Update called for amending the Taft Zoning Ordinance to include Reasonable Accommodation.

Therefore, staff recommends that the Planning Commission hold a public hearing and adopt a resolution recommending approval to the City Council of Zoning Ordinance Amendment No. 2016-20, an amendment to Title 6 of the Taft Municipal Code adding a section to Chapter 11 regarding Reasonable Accommodation standards consistent with fair housing laws.

CEQA:

The project is exempt from the requirements of the California Environmental Quality Act (CEQA) as set forth in Section 15061(b)(3) of the CEQA Guidelines as the proposed amendment will have no significant effect on the environment.

ATTACHMENTS:

1. Resolution
2. Model Ordinance for Providing Reasonable Accommodation – September 2003

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TAFT RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ZONING ORDINANCE AMENDMENT NO. 2016-20, AN AMENDMENT TO TITLE 6 OF THE TAFT MUNICIPAL CODE ADDING A SECTION TO CHAPTER 11 REGARDING REASONABLE ACCOMMODATION STANDARDS CONSISTENT WITH FAIR HOUSING LAWS

WHEREAS, California Government Code Section 65800 provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities; and

WHEREAS, the City of Taft is responsible for continually reviewing and updating the adopted Zoning Ordinance to address changing conditions within the City; and

WHEREAS, the Attorney General of the State of California has recommended that cities and counties implement fair housing reasonable accommodation procedures for making land use and zoning determinations concerning individuals with disabilities to further the development of housing for individuals with disabilities; and

WHEREAS, The federal Fair Housing Amendment Act of 1988 and California's Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing; and

WHEREAS, the Planning Commission reviewed and commented on a draft ordinance adding a section to Chapter 11 of Title VI of the Taft Municipal Code at its regular meeting on August 17, 2016; and

WHEREAS, the Planning Commission studied and considered the written findings for approval of Zoning Ordinance Amendment No. 2016-20, City Staff's written and oral reports, and all public testimony before making a decision on this request; and

WHEREAS, the laws and regulations relating to the preparation and adoption of environmental documents, as set forth in the State Guidelines Implementing the California Environmental Quality Act have been adhered to; and

WHEREAS, the Planning Commission has fully considered this request and the potential environmental effects.

NOW, THEREFORE, THE PLANNING COMMISSION DOES HEREBY FIND, DETERMINE, RESOLVE, AND RECOMMEND AS FOLLOWS:

1. The proposed amendment is consistent with the goals, objectives, policies, and programs of the General Plan and is necessary and desirable to implement the provision of the General Plan; and

2. The proposed amendment will not adversely affect the public health, safety, and welfare or result in an illogical land use pattern; and

3. The proposed amendment is consistent with the purpose and intent of the remainder of this Zoning Ordinance not under consideration; and

4. The potential environmental impacts of the proposed amendment are insignificant, have been mitigated, or there are overriding considerations that outweigh the potential impacts; and

5. The proposed amendment is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines because the Code Amendment will have no significant effect on the environment.

SECTION 1. The following amendment of adding Section 6-11-24 to Chapter 11, of Title VI, shall be recommended to the City Council of the City of Taft as follows:

SECTION:

6-11-22: PERMITTED OUTDOOR USES
6-11-23: PUBLIC ACCESS TO OPEN SPACE AND RECREATION AREAS
6-11-24: REASONABLE ACCOMMODATION
6-11-25: RESERVATION OF LANDS FOR PUBLIC FACILITIES
6-11-~~25~~26: REFLECTIVE MATERIAL
6-11-~~26~~27: RELOCATED STRUCTURES

6-11-24: REASONABLE ACCOMMODATION

(A) Purpose and Intent: It is the policy of the City of Taft, pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereinafter Acts), to provide individuals with disabilities reasonable accommodation to rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This chapter establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures to comply fully with the intent and purpose of fair housing laws.

(B) Applicability: The city council finds and determines that this chapter is intended to apply to those persons who are defined as disabled under the Acts:

1. An individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.

2. The federal Fair Housing Amendment Act of 1988 and California's Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing.

3. The Taft Housing Element identifies and sets forth a plan for removing governmental constraints to housing for individuals with disabilities by providing reasonable accommodation.

4. A fair housing reasonable accommodation procedure for individuals with disabilities and developers of housing for individuals with disabilities to seek relief in the application of land use, zoning and building regulations, policies, practices and procedures furthers compliance with federal and state fair housing laws and provides greater opportunities for the development of critically needed housing for individuals with disabilities.

5. A request for reasonable accommodation may be made by any person with a disability, the person's representative, or any entity, when the application of a zoning law or other land use regulation, policy or practice is perceived to act as a barrier to fair housing opportunities.

6. Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

(C) Authority:

1. Authority of review and approval for reasonable accommodation shall be vested with the Planning Director.

2. If a request for reasonable accommodation is submitted for concurrent review with another discretionary land use application, it shall be determined by the authority making the final discretionary land use decision.

(D) Application: Request for reasonable accommodation shall be submitted on an application form provided by the Planning and Community Development Department or in the form of a letter and shall contain the following information:

1. Application Materials

   a) The applicant's name, address and primary contact telephone number.

   b) The name and mailing address of the property owner(s).

   c) Address of the property for which the request is being made.

   d) The current use of the property.

   e) The basis for the claim that the individual is considered disabled under the Acts.

   f) The code provision, regulation or policy from which reasonable accommodation is being requested.

   g) What specific accommodation is requested and why the accommodation is necessary to make the specific property accessible to the individual.

2. Additional Discretionary Actions: If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including but not limited to: Conditional Use Permit, Site Plan Review, General Plan Amendment, Variance, etc.), then the applicant shall file the information required above for reasonable accommodation together for concurrent review with the application for discretionary approval.

(E) Review Procedures and Findings:

1. The Planning Director shall make a written determination on the request within thirty (30) days and either approve, approve with modifications or deny a request for reasonable accommodation.

2. The Planning Director may request additional information from the applicant if it is determined the application and request is incomplete. The Planning Director shall specify in detail the items needed to make a determination consistent with fair housing laws. The 30 day period to issue a decision is stayed until the applicant responds to the request.

3. The determination on whether to approve, approve with modifications or deny a request for reasonable accommodation made by the authority responsible for reviewing the discretionary land use application shall be made at the time of the discretionary land use decision.

4. Findings. The written decision to approve, approve with modifications or deny a request for reasonable accommodation shall be based on consideration of the following factors:

   a) Whether the housing, which is the subject of the request, will be used by a disabled individual.

   b) Whether the requested accommodation is necessary to make specific housing available to a disabled individual.

   c) Whether the requested accommodation would impose an undue financial or administrative burden on the City.

   d) Whether the requested accommodation would require a fundamental alteration in the nature of a City land use, zoning and building regulations, policies, practices and procedures.

   e) Potential impact on surrounding uses.

   f) Physical attributes of the property and structures.

   g) Alternative accommodations which may provide an equivalent level of benefit.

5. In granting a request for reasonable accommodation the Planning Director or other reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the accommodation complies with the findings.

6. 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.

(F) Written Decision on the Request for Reasonable Accommodation:

1. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Planning Director's or other review authority's findings.

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

(G) Appeals:

1. A determination by the reviewing authority to approve, approve with modifications or deny a request for reasonable accommodation may be appealed, pursuant to Chapter 6-2-19 of this Title.

2. If an individual needs assistance in filing an appeal on the decision, the City shall provide assistance to ensure that the appeals process is accessible.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections of this Resolution. The Planning Commission hereby declares that it would have passed this Resolution, and each section, subsection, clause and phrase thereof, irrespective of the face that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered forthwith by the City Clerk to the City Council of the City of Taft.

PASSED AND ADOPTED on this 17th day of August, 2016.

ATTEST

_____ _____
Brenda Johns, Recording Secretary Ron Orrin, Chairman

CERTIFICATION

I, Brenda Johns, hereby certify that the foregoing resolution was passed and adopted by the Planning Commission of the City of Taft at a specially scheduled meeting held on the 17th day of August, 2016, by the following vote

AYES:
NOES:
ABSENT:
ABSTENTIONS:

_____
Brenda Johns, Recording Secretary

MODEL ORDINANCE FOR PROVIDING REASONABLE ACCOMMODATION UNDER FEDERAL AND STATE FAIR HOUSING LAWS

The following documents have been prepared for use by cities and counties to provide a process for making reasonable accommodation to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities.

Developed by Mental Health Advocacy Services, Inc.
September 2003

For More Information, Contact:
Kim Savage, Senior Attorney
Mental Health Advocacy Services, Inc.
3255 Wilshire Blvd., Suite 902
Los Angeles, California 90010
(213) 389-2077

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Introduction

Jurisdictions have become increasingly aware of their obligations under fair housing laws and federal and state housing planning documents to remove land use and zoning constraints to the development of housing for individuals with disabilities and provide reasonable accommodation to ensure equal access to housing. This introduction explains those legal mandates that require cities and counties to both eliminate fair housing violations and implement a procedure for providing reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.

Federal and State Fair Housing Laws

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act prohibit discrimination against individuals with disabilities in housing and require that cities and counties take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities. More specifically, fair housing laws require that cities and counties provide individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, practices and procedures. Local jurisdictions must even waive certain requirements when it is necessary to eliminate barriers to housing opportunities. For example, a family could seek reasonable accommodation from its local jurisdiction for waiver of a residential fence height restriction so their son, who because of his mental disability fears unprotected spaces, may use the backyard. This reasonable accommodation mandate could also provide flexibility in the application of a local zoning code regulation that limits the size of residences in R1 zones. Reasonable accommodation could be provided to allow an individual with a disability to exceed that limit to build a wheelchair ramp.

While fair housing laws intend that all people have equal access to housing, the law also recognizes that individuals with disabilities may need extra tools to achieve equality. Providing reasonable accommodation is one way for local jurisdictions to provide relief from land use and zoning and building regulations and procedures that have the effect of discriminating against the development, siting and use of housing for individuals with disabilities. Adopting a reasonable accommodation ordinance will not, however, cure a zoning ordinance that on its face discriminates against individuals with disabilities. Nor will an offer of reasonable accommodation ever excuse a city or county from liability for intentional discrimination.

Federal and State Mandated Housing Planning Documents

In addition to complying with fair housing laws, a jurisdiction is also required by both federal and state law to develop plans for meeting the housing needs of those in the jurisdiction, including individuals with disabilities. Both the federally mandated Analysis of Impediments to Fair Housing Choice, which is a stand-alone document, and a part of the Consolidated Plan and, California's Housing Element statute require that local governments identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints. In addressing the housing needs of individuals with disabilities, the statute now recognizes that local land use and zoning regulations, practices and procedures impose significant barriers to developing much needed housing for individuals with disabilities. Every jurisdiction's housing element must have a program that:

> " . . . remove[s] constraints to, or provide[s] reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities." Cal. Gov. Code § 65583(c)(3).

The most effective way for local governments to comply with the housing element requirement to remove constraints to the development of housing for individuals with disabilities is to undertake an impediments study to identify local barriers to the development of housing for individuals with disabilities, and thereafter revise land use and zoning and building code regulations, practices and procedures that violate fair housing laws. At the same time, cities and counties should adopt a reasonable accommodation ordinance to provide for flexibility in the application of zoning and land use regulations and procedures. If a local government's housing element fails to comply with the housing element requirements that address land use and zoning barriers to the development and siting of housing for individuals with disabilities as set forth above, its planning document will be considered deficient when it is reviewed by the California Department of Housing and Community Development.

California Attorney General Letter

The State Attorney General's recent urging that all California cities and counties implement a fair housing reasonable accommodation procedure for their land use and zoning activities further compels jurisdictions to adopt a reasonable accommodation ordinance for individuals with disabilities. In his May 2001 letter, Attorney General, Bill Lockyer, explained that local governments have an affirmative duty under fair housing laws to provide reasonable accommodation and "[i]t is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently." The State Attorney General, in rejecting local governments'

use of the variance or conditional use permit process to evaluate requests for reasonable accommodation under fair housing laws, explained:

> "Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values." California Attorney General letter, May 2001 (emphasis added).

In response to the State Attorney General's letter, many cities throughout the state have indicated that they are adopting fair housing reasonable accommodation procedures as one way of addressing barriers in land use and zoning regulations and procedures.

We urge cities and counties to take a comprehensive approach to eliminating discrimination and furthering housing opportunities for individuals with disabilities. By reviewing and revising as necessary local zoning and land use regulations, procedures and practices and adopting a reasonable accommodation ordinance, local governments will go a long way in complying with fair housing laws and furthering the housing opportunities of individuals with disabilities.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____ ADDING SECTIONS ____ TO THE MUNICIPAL CODE, PROVIDNG A PROCEDURE FOR REASONABLE ACCOMMODATION IN THE CITY'S LAND USE AND ZONING AND BUILDING REGULATIONS PURSUANT TO FAIR HOUSING LAWS.

THE CITY COUNCIL OF THE CITY OF _____ ORDAINS AS FOLLOWS:

Sec. 1. Purpose.

It is the policy of the jurisdiction, pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereafter "fair housing laws"), to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This ordinance establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures of the jurisdiction to comply fully with the intent and purpose of fair housing laws.

Sec. 2. Findings.

The Council of the jurisdiction finds:

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing;

A. The Housing Element of the jurisdiction must identify and develop a plan for removing governmental constraints to housing for individuals with disabilities including local land use and zoning constraints or providing reasonable accommodation;

B. The Attorney General of the State of California has recommended that cities and counties implement fair housing reasonable accommodation procedures for making land use and zoning determinations concerning individuals with disabilities to further the development of housing for individuals with disabilities;

C. A fair housing reasonable accommodation procedure for individuals with disabilities and developers of housing for individuals with disabilities to seek relief in the application of land use, zoning and building regulations, policies, practices and procedures will further the jurisdiction's compliance with federal and state fair housing laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

Sec. 3. Applicability.

Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

An individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.

A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

Sec. 4. 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.

Sec. 5. Requesting Reasonable Accommodation.

A. In order to make housing available to an individual with a disability, any eligible person as defined in Sec. 3 may request a reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.

B. Requests for reasonable accommodation shall be in writing and provide the following information:

(1) Name and address of the individual(s) requesting reasonable accommodation;

(2) Name and address of the property owner(s);

(3) Address of the property for which accommodation is requested;

(4) Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought; and

(5) Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.

C. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. 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 obligations to comply with other applicable regulations not at issue in the requested accommodation.

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

Sec. 6. <u>Reviewing Authority.</u>

A. Requests for reasonable accommodation shall be reviewed by the "reviewing authority," using the criteria set forth in Sec. 7.

B. The reviewing authority shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth in Sec. 7.

C. 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 thirty (30) day period to issue a decision is stayed until the applicant responds to the request.

Sec. 7. Required Findings.

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors:

(1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;

(2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;

(3) Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction and;

(4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program.

Sec. 8. Written Decision on the Request for Reasonable Accommodation.

A. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the reviewing authority's findings on the criteria set forth in Sec. 7. 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 below. The notice of decision shall be sent to the applicant by certified mail.

B. The written decision of the reviewing authority shall be final unless an applicant appeals it to the jurisdiction's planning commission.

C. If the reviewing authority fails to render a written decision on the request for reasonable accommodation within the thirty (30) day time period allotted by Sec. 6, the request shall be deemed granted.

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.

Sec. 9. Appeals.

A. Within thirty (30) days of the date of the reviewing authority's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing.

B. 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.

C. All appeals shall contain a statement of the grounds for the appeal. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

EXHIBIT A

NOTICE OF FAIR HOUSING ACCOMMODATION PROCEDURES FOR PEOPLE WITH DISABILITIES

THIS IS NOT A COMPREHENSIVE EXPLANATION OF YOUR RIGHTS UNDER FEDERAL and STATE FAIR HOUSING LAWS.

You may request a reasonable accommodation to rules, policies, practices and procedures for the siting, development and use of housing, including housing related services or facilities, if you meet all of the following:

- you have a disability* or the housing is for people with disabilities;
- you may need a reasonable accommodation to existing rules and regulations to have equal opportunity to housing AND;
- your request for accommodation would not be an undue burden on the city or county.

If you believe that you satisfy the above criteria and are entitled to a reasonable accommodation under federal and state fair housing laws, you may obtain a Fair Housing Accommodation Request form from the front desk. If you need assistance in applying for a reasonable accommodation, the Department will assist you.

* Under the law, a disability is a physical or mental impairment that limits one or more major life activities; a record of having such an impairment or; being regarding has having such an impairment. Fair housing laws do not protect individuals currently using illegal substances, unless they have a separate disability.

EXHIBIT B

FAIR HOUSING ACCOMMODATION REQUEST
EXPLANATION OF RIGHTS UNDER FAIR HOUSING LAWS

Before completing the request for a reasonable accommodation, below, please read the following information about who is protected by federal and state fair housing laws and what accommodation may be available under the law. This is not a comprehensive explanation of your rights under federal and state fair housing laws.

Do the protections of federal and state fair housing laws apply to me?

You are protected by the federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act if you have a disability or the housing is for people with disabilities. "Disability" means any one of the following: a physical or mental impairment that limits one or more major life activities or a record of having such an impairment or being regarded by others as having such an impairment. Federal and state fair housing laws do not protect an individual currently using illegal substances, unless that person has a separate disability.

What kind of accommodation may I request under federal and state fair housing laws?

If you have a disability or the housing is for people with disabilities, both federal and state fair housing laws require that the city or county provide you with reasonable accommodation in rules, policies, practices and procedures that may be necessary for people with disabilities to have equal opportunity to use and enjoy a dwelling. More specifically, the city or county must provide you with reasonable accommodation in decisions and procedures regulating the siting, funding, development or use of housing, including housing related services or facilities.

How do I request reasonable accommodation from the City or County?

To make a request for reasonable accommodation, answer the questions on the attached one page request form, sign and date the form and return it to the Department. If you need help in answering the questions on the request form, you may ask for assistance from the Department. Your accommodation request will be reviewed by the reviewing authority who will issue a written decision on your request within thirty (30) days of the date of the request. If the reviewing authority does not issue a written decision within 30 days, your request will automatically be granted. If the reviewing authority needs additional information consistent with fair housing laws to consider your request, the 30 day time period will stop running until you respond to the request.

What if my request for reasonable accommodation is denied?

If your request for accommodation is denied, you may appeal the adverse decision by filing a Notice of Appeal with the appeals designee within thirty (30) days of the decision. You may request reasonable accommodation in the procedure by which an appeal may be conducted. You may also contact your local fair housing or disability rights organization or legal services office for further assistance. Nothing in this accommodation request procedure limits your right to any other available state or federal remedy.

APPLICATION FOR REQUEST FOR REASONABLE ACCOMMODATION

NOTE: If you need help in completing this request form, the Department will assist you. Please contact the person at the counter where you received this request form for assistance.

1. Name of Applicant Telephone Number

_____

2. Address

_____

3. Address of Housing At Which Accommodation Is Requested

_____

4. Describe the accommodation you are requesting and the specific regulation(s) and/or procedure(s) from which accommodation is sought.

_____
_____
_____
_____
_____

5. Give the reason that the reasonable accommodation may be necessary for you or, the individuals with disabilities seeking the specific housing, to use and enjoy the housing. You do not need to tell us the name or extent of your disability or that of the individuals seeking the housing.

_____
_____
_____
_____
_____

6. If we have questions about your request for reasonable accommodation and you would like us to contact someone assisting you with this request, instead of you, please give us that person's name, address and telephone number.

_____
_____

7. Signature of Applicant _____ Date _____

PLEASE ATTACH ANY DOCUMENTS THAT YOU THINK SUPPORT YOUR REQUEST FOR REASONABLE ACCOMMODATION AND WOULD ASSIST US IN CONSIDERING YOUR REQUEST.

EXHIBIT C

NOTICE OF DECISION ON FAIR HOUSING ACCOMMODATION REQUEST

1. Date of Application: _____

2. Date of Decision: _____

3. The request for a Fair Housing Accommodation is:

_____ Granted _____ Denied (See Notice below re right to appeal decision.)

4. The reasons for this decision are as follows:

_____
_____
_____
_____
_____
_____

5. The facts relied on in making this decision:

_____
_____
_____
_____
_____
_____

Signature of Designee _____ Date _____

NOTICE: If your request for accommodation was denied, you may appeal the reviewing authority's decision to the Planning Commission within thirty (30) days of the date of this decision. To file an appeal, complete and file an Appeal of Denial of Fair Housing Accommodation Request form with the Department. You may request reasonable accommodation in the procedure by which an appeal may be conducted.

EXHIBIT D

APPEAL OF DENIAL OF FAIR HOUSING ACCOMMODATION REQUEST

NOTICE: PLEASE ATTACH TO THIS APPEAL FORM (1) A COPY OF YOUR FAIR HOUSING ACCOMMODATION REQUEST ALONG WITH ANY ATTACHMENTS SUBMITTED WITH THE REQUEST AND (2) THE NOTICE OF THE DECISION DENYING YOUR ACCOMODATION REQUEST.

1. Date of Adverse Decision: _____

2. Date Appeal Filed: _____

3. State why you think the denial of your request for accommodation was wrongly decided:

_____
_____
_____
_____
_____
_____

4. Provide any new information, facts or documents that support your request for accommodation:

_____
_____
_____
_____
_____
_____

5. Signature _____ Date_____

GUIDELINES FOR REGULATIONS GOVERNING REQUESTS FOR REASONABLE ACCOMMODATION

Sec. 1. Purpose.

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act ("fair housing laws") prohibit local government from impeding housing opportunities for people with disabilities through discriminatory land use and zoning decisions. These fair housing laws also create an affirmative duty to "make reasonable accommodations in rules, policies, practices, or services when accommodation may be necessary to afford such person[s] equal opportunity to use and enjoy a dwelling."[1]

When the jurisdiction applies its land use and zoning and building regulations, policies, practices and procedures to the development, siting or use of housing for individuals with disabilities, it must comply with federal and state fair housing laws and administer those regulations, policies, practices, and procedures in a manner that affirmatively furthers those laws.[2]

While the federal legislative history identifies historic discrimination through local land use and zoning regulations, California's fair housing law explicitly prohibits discriminatory "public or private land use practices, decisions and authorizations" including, but not limited to, "zoning laws, denials of use permits, and other [land use] actions . . . that make housing opportunities unavailable" to people with disabilities.[3]

Sec. 2. Findings.

Both federal and state fair housing laws mandate that cities and counties provide reasonable accommodation.[4]

All California jurisdictions are required to prepare and adopt a housing element as part of their general plan. The housing element must include; an identification and analysis of existing and projected housing needs, including the needs of individuals with disabilities; an identification of resources and constraints to address needs and goals and; a schedule for the development of needed housing for the community. The housing element statute was recently amended to further specify that the element must include programs that remove land use and zoning constraints or provide reasonable accommodation for housing for individuals with disabilities.[5]

The Attorney General of the State of California, Bill Lockyer, recently urged cities and counties throughout the state to adopt reasonable accommodation procedures for land use and zoning decision-making for housing for individuals with disabilities.[6] The Attorney General has cautioned against using existing conditional use permit or variance procedures for reviewing requests for

reasonable accommodation because the criteria for planning determinations differs from those which govern fair housing decision-making.[7]

Sec. 3. Applicability.

The Act protects any of the following: an individual with a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having any such impairment; or anyone who has a record of having such an impairment.[8]

Individuals in recovery from drug or alcohol abuse are protected by federal and state fair housing laws.[9] However, individuals currently using illegal substances are not protected under the law, unless they have a separate disability.

The protections afforded people with disabilities under federal and state fair housing laws extend to those who are associated with them, including providers and developers of housing for people with disabilities.[10]

Sec. 4. Notice to the Public of Availability of Accommodation Process.

Under federal and state fair housing laws, a jurisdiction has an affirmative duty to make reasonable accommodations in rules, policies, practices and procedures where accommodation may be necessary to ensure that people with disabilities have equal access to housing.[11] By providing the public with notice of the availability of its procedure for requesting accommodation, the jurisdiction takes an affirmative step in accordance with the federal and state mandates to make accommodation available to people with disabilities.[12] To reach all individuals who may need to request accommodation, notice should be posted in the planning, zoning and building departments where decisions are made regulating the siting, development and use of housing. Accommodation request forms should be available in those same departments.

Sec 5. Requesting Reasonable Accommodation.

A. A request for accommodation may be made by any eligible person as defined in Sec. 3 for the purpose of making housing available to individuals with disabilities. For example, a reasonable accommodation request may be made by an individual with a disability, a family member or friend of a person with a disability, or a developer of housing for people with disabilities.

B. A jurisdiction in its reasonable accommodation procedure may seek information from the applicant that explains the need for the accommodation based on the disability and will allow for the reviewing authority to make a determination on the request in accordance with the factors articulated in Sec. 7 of the ordinance. The jurisdiction cannot, however, seek confidential information as to the nature or severity of the disability of the applicant or those individuals with disabilities intending to

occupy the housing that is the subject of the request for reasonable accommodation.[13]

C. A jurisdiction must establish a procedure to safeguard any confidential information that an applicant has voluntarily provided to the jurisdiction in a request for reasonable accommodation.[14]

D. The Regulations provide flexibility in the time to request an accommodation because unforeseen circumstances often arise in the approval process for the siting, funding, development or use of housing. For example, a developer seeking initial approval of building plans for housing specifically designed for people with disabilities might need an accommodation on a side yard requirement. Or, a project already approved may need to be modified to accommodate an additional change due to state licensing requirements.

E. The process for making a reasonable accommodation request must be accessible to an individual with a disability. Therefore, a jurisdiction must provide assistance to an individual who needs help in requesting accommodation and offer flexibility in the procedure set forth in existing regulations. For example, a jurisdiction might record on the application form information provided by an individual who because of a disability is unable to complete the form alone.[15]

Sec. 6. Review of Requests for Reasonable Accommodation.

A. The reviewing authority may request additional information necessary for making a determination on the request for reasonable accommodation that complies with the fair housing law protections and the privacy rights of the individual with a disability to use the specific housing. See confidentiality discussion, Sec. 5, above.

C. If the reviewing authority requests additional information from the applicant consistent with fair housing law protections and privacy rights, the 30-day time period for making a determination on the request stops running until the additional information is provided to the reviewing authority. This procedure is intended to expedite the information gathering process and facilitate the issuance of a timely decision by the reviewing authority. It is in the best interest of the applicant seeking accommodation to provide the requested information as soon as possible to obtain a speedy decision.

Sec. 7. Required Findings.

Factor 1: Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws?

An individual is protected under fair housing laws if he or she meets the definition of disability set forth in Sec. 3, above. If the housing that is the subject of the request for reasonable accommodation is intended for people with disabilities, this prerequisite is met.[16]

Factor 2: Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under fair housing laws?

Under fair housing laws, jurisdictions have an affirmative duty to provide individuals with disabilities reasonable accommodations to "rules, policies, practices, or services, when such accommodation may be necessary to afford such persons equal opportunity to use and enjoy a dwelling. . ."[17] Whether an accommodation is necessary requires a "fact-specific inquiry regarding each such request."[18] Failure to make reasonable accommodation is a violation of federal and state fair housing laws.[19]

Factor 3: Whether the requested accommodation would impose an undue financial or administrative burden on a jurisdiction?

Once an individual establishes that an accommodation is necessary for equal access to housing, a jurisdiction must provide the requested accommodation unless it presents evidence that granting the accommodation would impose an undue financial or administrative burden on the jurisdiction.[20] Here again, the analysis is a fact-specific inquiry. If the jurisdiction establishes an undue burden, then the accommodation is not reasonable and should not be granted. In the land use and zoning context, many requests for accommodation will be a request to modify or waive a regulation or procedure. It costs a jurisdiction nothing to waive a rule, meaning that " . . . the accommodation request amounts to nothing more than a request for non-enforcement of a rule." In those instances, a jurisdiction would not be likely to demonstrate undue burden.[21]

Factor 4: Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program?

In addition to not imposing an undue financial or administrative burden, a reasonable accommodation must also not result in the fundamental alteration in the nature of a program.[22] "Fundamental alteration" has been defined as, "(1) a substantial change in the primary purpose or benefit of a program or activity; or (2) a substantial impairment of necessary or practical components required to achieve a program or activity's primary purpose or benefit."[23] In the land use and zoning context, "fundamental alteration in the nature of the program" means an alteration so far reaching that it would undermine the basic purpose of maintaining the character of the neighborhood. The case law indicates that in most instances granting a request to modify or waive a zoning policy or procedure, does not result in a fundamental alteration in the nature of a program.[24]

Sec. 8. Written Decision on the Request for Reasonable Accommodation.

A. The reviewing authority's written decision is to be based on a consideration of the four factors set forth in Sec. 7. The reviewing authority shall not rely on discriminatory stereotypes.[25]

B. This provision encourages prompt decision-making on requests for reasonable accommodation as delays may cause an individual with disabilities to lose a housing opportunity or a developer of housing for individuals with disabilities faced with extensive delays may be harmed by increases in development costs or risk the future of a project.

Sec. 9. Appeals.

A. An individual denied a requested reasonable accommodation has 30 days from the date of the written decision to file an appeal.

B. As with the filing of the original appeal, a jurisdiction must make efforts to ensure that the appeals process is accessible to individuals with disabilities.[26]

C. The statement of the grounds for appeal is necessary for the Planning Commission to review the appeal and reconsider the individual's request for accommodation.

D. A jurisdiction's procedure for requesting accommodation and the appeals process in no way limits an individual's right to any other available remedy including, but not limited to, filing a complaint with the Department of Housing and Urban Development, the jurisdiction's Department of Fair Employment and Housing or commencing an action in state or federal court.

Environmental Determination

Jurisdictions with a certified Local Coastal Plan may need to amend their Plan to reflect a zoning amendment adding a reasonable accommodation procedure. The Coastal Commission does not, however, have the authority to make a determination under its own rules which conflicts with or undercuts the protections of the Fair Housing Amendments Act of 1988.

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[1] 42 U.S.C. §§ 3601 et seq , § 3604(f)(3)(B) (reasonable accommodation); Cal. Gov. Code §§ 12955 et seq., § 12927(c)(1) (reasonable accommodation). In addition to federal and state fair housing laws, two other significant federal anti-discrimination laws offer protection against discrimination to people with disabilities, including land use and zoning activities. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in any program or activity that is conducted by the federal government or that receives federal financial assistance. The Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq., prohibits discrimination against individuals with disabilities in a number of areas, including all public services – irrespective of federal financial assistance. Both § 504 and the ADA require

reasonable accommodation and the accommodation analysis under these federal laws is very similar to that of the fair housing laws.

[2] The federal regulations that implement the Fair Housing Amendments Act of 1988 state that its fundamental purpose is to prohibit practices that "restrict the choices" of people with disabilities to live where they wish or that "discourage or obstruct choices in a community, neighborhood or development. 24 C.F.R. § 100.70(a)(1994). The legislative history is precise in identifying discriminatory land use practices:

> The Act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

54 Fed. Reg. 3246 citing House of Representatives Report No. 100-711, 100th Congress, 2d Session at 24.

[3] In a statement of legislative intent that accompanied the amendments, the following findings were made:

> a. That public and private land use practices, decisions, and authorizations have restricted, <u>in residentially zoned areas, the establishment and operation of group housing, and other uses</u>
> b. That people with disabilities. . . are significantly more likely than other people to live with unrelated people in group housing.
> c. That this act covers unlawful discriminatory restrictions against group housing for these people.

Stats. 1993 ch 1277, § 18 (emphasis added).

[4] *See n*ote 1, *supra*.

[5] Gov. Code § 65583(c)(3), Chapter 671, Statutes of 2001 (Senate Bill 520) effective January 1, 2001, amended housing element law and Gov. Code § 65008. See also www.hcd.ca.gov.

[6] Letter from California Attorney General Bill Lockyer to California cities and counties (May 2001). A copy of the letter is available from Mental Health Advocacy Services, Inc.

[7] In addition to different governing criteria, the Attorney General further cautions against using the variance or conditional use permit process for considering reasonable accommodation requests because the public notice and hearing process may "encourage community opposition to projects involving desperately needed housing for the disabled." Attorney General letter at 3-4.

[8] The definition of disability under the California Fair Employment and Housing Act while similar to federal law, is broader requiring that an individual have an impairment that limits a major life activity. Cal. Gov. Code § 12955.3. The Fair Housing Amendments Act requires that an individual have an impairment that "substantially limits" a major life activity to be considered disabled under the law. 42 U.S.C.§ 3602(h); 24 CFR § 100.201. The Fair Housing Act provides that nothing in the Act "shall be construed to invalidate or limit any law of the State . . . that grants, guarantees, or protects the same rights as are granted by [the Fair Housing Act]." 42 U.S.C. § 3615. Hence, California's definition of disability is controlling.

[9] 24 C.F.R. § 100.201. See <u>City of Edmonds v. Washington State Building Code Council</u>, 18 F. 3d 802, 804 (stating that "participation in a drug rehabilitation program, coupled with non-use, meets the definition of handicapped."); <u>United States v. Southern Management Corp.</u>, 955 F.2d 914 (4th Cir. 1992); <u>Oxford House v. Town of Babylon</u>, 819 F.Supp.1179 (E.D.N.Y. 1993).

[10] See Epicenter of Steubenville, Inc. v. City of Steubenville, 924 F.Supp. 845, 849 (S.D. Ohio 1996) (operators of adult care facilities have standing to challenge a city's moratorium on new facilities where the operator couldn't get a permit to open a new facility; "Congress granted the right to sue under the statute to a broad group of persons so as to ensure that the FHAA would be enforced. Under the statute, any "aggrieved person" may sue to enforce its provisions."); Simovits v. Chanticleer Condominium Ass'n, 933 F.Supp. 1394 (N.D. Ill. 1996) (a fair housing agency may sue under the Act if it shows deflection of the agency's time and money from counseling to legal efforts directed against discrimination); Judy B. v. Borough of Tioga, 889 F.Supp. 792 (M.D. Pa 1995) (a person who is not himself handicapped, but who is prevented from providing housing for handicapped persons by a municipality's discriminatory acts, has standing to sue under the Act).

[11] *See n*ote 1, *supra*. Turning Point, Inc. v. City of Caldwell, 74 F. 3d 941 (9th Cir. 1996) (cities have an affirmative duty to provide reasonable accommodation).

[12] The Department of Housing and Urban Development (HUD) has promulgated regulations under both § 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 that require a notice of rights under federal law. Under § 504, which is looked to for interpretation of the Act, HUD requires "initial and continuing steps to notify program participants, beneficiaries, applicants" . . . of its policy of nondiscrimination under the law. 24 CFR § 8.54. Under fair housing regulations, HUD requires that a fair housing poster be displayed at any place of business where a dwelling is offered for sale or rent, real estate-related transactions are conducted and brokerage services are provided to the public. 24 CFR § 110.10. Additionally, under federal assisted housing programs, HUD requires notice of the availability of reasonable accommodation at the time of the prospective tenant's application interview for housing and in any written letter of rejection. Handbook 4350.3, par. 12-23j; par. 12-30c; HUD Notice H 01-02(HUD)(addressing compliance with Section 504 and the Fair Housing Act of 1988).

[13] It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such person. 24 CFR § 100.202.

[14] The Washington D.C. reasonable accommodation ordinance provides a mechanism for safeguarding confidential information voluntarily provided to it in a request for reasonable accommodation. The information is placed in a separate file marked "confidential" and access to confidential files is restricted to personnel involved in the reasonable accommodation determination process.

[15] Title II of the Americans With Disabilities Act requires that state and local governments provide program access for individuals with disabilities to the whole range of city services and programs. 42 U.S.C. § 12131; 28 C.F.R. § 35.150(a)(3). If an action would result in a fundamental alteration to the nature of the services or result in an undue administrative or financial burden, the state or local government must take any other action that it can to ensure that individuals with disabilities receive the services of the program.

[16] *See* notes 8 and 10, *supra*.

[17] *See* note 1, *supra*.

[18] U.S. v. California Mobile Home Park Mgmt Co., 107 F.3d 1374 (9th Cir. 1997)(reaffirming Mobile Home Park, 29 F. 3d 1413 (9th Cir. 1994), that the reasonable accommodation inquiry is highly fact-specific, requiring a case-by-case determination; Department of Justice Memorandum to National League of Cities, March 4, 1996 at 6.

[19] Oxford House-C v. City of St. Louis, 843 F.Supp. 1556 (E.D. Mo. 1994) (forcing a group home to use the variance process was not a reasonable accommodation where compliance would have a discriminatory effect and the process, which required a public hearing and notice, stigmatized the prospective residents, increased their stress and evidence showed that any attempt to obtain a variance would be futile); United States v. City of Philadelphia, 838 F.Supp. 223 (E.D.Pa. 1993), aff'd w/o opinion, 30 F.3d 1488 (3d Cir. 1994) (the City of Philadelphia violated the Act by refusing to allow substitution of a side yard for the zoning requirement that a building have a rear yard for a home for chronically homeless people with mental disabilities); Oxford House v. Babylon, 819 F.Supp.1179 (E.D.N.Y. 1993) (group home established as reasonable their request that the town accommodate them by modifying its interpretation under the ordinance of the term "family"); Parish of Jefferson v. Allied Health Care, Inc., C.A. No.91-1199, (E.D.La., June 10, 1992), 1992 WL 142574 (E.D. La.1992) (allowing six individuals with mental retardation to reside in a dwelling was a reasonable accommodation to a zone restricting single family dwelllings to a maximum of four unrelated persons).

[20] The "undue financial or administrative burden" standard for determining whether an accommodation is reasonable under the Fair Housing Amendments Act of 1988 is borrowed from case law interpreting Section 504 of the Rehabilitation Act. Southeastern Community College v. Davis, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed. 2d 980 (1979); H.R. Rep.No.711, 100th Cong.,2d Sess. 25 (1988).

[21] Proviso Ass'n v. Village of Westchester, 914 F.Supp. 1555 (N.D. Ill. 1996).

[22] The "fundamental alteration" test, like "undue financial or administrative burden," derives from Section 504 of the Rehabilitation Act and is also explained in Southeastern Community College v. Davis, 442 U.S. 397. *See* note 20, *supra*.

[23] Robert Burgdorf, "Equal Access to Public Accommodations," in West, Jane, ed., *The Americans with Disabilities Act, From Policy to Practice*, Milbank Memorial Fund (1991) at 190. Elaborating on what constitutes a fundamental alteration, Professor Burgdorf explains:

> Lower court have further outlined the concept: reasonable accommodations are not mandated if they would endanger a program's viability; massive changes are not required; nor are modifications that would 'jeopardize the effectiveness' of the program or would involve a 'major restructuring' of an enterprise; and modifications that would so alter an enterprise as to create, in effect, a new program are not required.

[24] Smith & Lee Assoc. v. City of Taylor, 102 F.3d 781 (6th Cir. 1996) (allowing a 9-person adult foster care home to locate in a single family residential zone is fundamentally consistent with the single family uses surrounding the proposed home and would not constitute an undue burden or a fundamental alteration of the city's master plan); Martin v. Constance, 843 F.Supp. 1321 (E.D. Mo. 1994)(it would be neither an undue burden nor undermine the basic purpose of maintaining the residential character of a neighborhood to not enforce a restrictive covenant against a state operated home for individuals with developmental disabilities); Oxford House v. Babylon, 819 F.Supp. 1179 (E.D.N.Y. 1993) (modifying city's interpretation under the ordinance of the term "family" was reasonable where the group home had no adverse effect on the residential character of the neighborhood and neither the operation of the group home nor the residents caused any financial or administrative burdens on the town); United States v. Marshall, 787 F.Supp. 872 (W.D. Wis. 1992) (granting a variance under state law to allow a group home for people with mental disabilities to locate within 2500 feet of a group home for the elderly would not "undermine the basic purpose which the requirement seeks to achieve" where the homes would not be separated by a wide portion of a river with no bridge connection).

[25] United States v. Borough of Audubon, 797 F.Supp. 353 (D.N.J. 1991) aff'd 968 F.2d 14 (3d Cir. 1992) (the Court sanctioned the Borough and permanently enjoined it from interfering with the

living arrangements of the residents of the home and held that when acts are undertaken with improper discriminatory motive, the Act may be violated even though those acts may have otherwise been justified under state law); A.F.A.P.S. v. Regulations & Permits Admin., 740 F.Supp. 95 (D.P.R. 1990) (the denial of an application for a special use permit to operate a residence for persons with AIDS violated the Act where the intent and effect of the denial discriminated against AIDS patients and the asserted reason for the denial was pretextual).

[26] *See* note 15, *supra*.