

TO: JAMES L. APP, CITY MANAGER
FROM: RON WHISENAND, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CODE AMENDMENT 09-001: REASONABLE ACCOMMODATION
DATE: JUNE 16, 2009

Needs: For the City Council to consider a City-initiated amendment to the Zoning Code to revise the regulations to allow for reasonable accommodation.

Facts: 1. The Federal Fair Housing Amendments Act of 1988 and the California 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 and equal opportunity to housing.
2. To implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, the Housing Element of the General Plan includes Policy H-1B and Action Item 8, which state:

POLICY H-1B: Range of Housing Opportunities. Cooperate with private housing developers, nonprofit housing sponsors, and public agencies to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.

Action Item 8. Amend the Zoning Code to provide a means by which development standards such as setbacks, projections into yards, and heights of graded slopes and/or retaining walls might be modified either by staff (Plot Plan Review) or by the Development Review Committee (Site Plan Review) where no other means exist to make a dwelling accessible to a disabled person.

3. Additionally, in *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), the California Supreme Court ruled that definitions of “family”, such as those in Section 21.08.170, which made a distinction between related and unrelated persons in setting occupancy limits for single family homes, violated the right to privacy in the State Constitution which encompasses the right to choose with whom one lives.
4. Code Amendment 09-001 would amend the necessary Zoning Code sections to accommodate Policy H-1B and Action Item 8 of the Housing Element of the General Plan and to redefine “family” in order to conform with the Supreme Court’s decision in *City of Santa Barbara v. Adamson*.
5. Public Resources Code Section 21080.17 provides that adoption of an ordinance to implement the provisions of Government Code Sections 65852.1 and/or 65852.2 are not subject to environmental review under the California Environmental Quality Act (CEQA).

6. The Planning Commission on May 12, 2009, reviewed this request for a Code Amendment and unanimously recommended that the City Council adopt the Ordinance approving the Code Amendment 09-001.

Analysis and
Conclusion:

Code Amendment 09-001 would amend the Zoning Code in the following ways:

- A. Add a new Section 21.20A Reasonable Accommodation;
- B. Update the Land Use Matrix (Table 21.16.200) to add to and revise uses dealing with housing;
- C. Update Section 21.08 Definitions, to add to and revise definitions related to family as follows:

- Replace the current definition of family:

“Family’ means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores.”

With the following definition which would conform with the Supreme Court’s decision in *City of Santa Barbara v. Adamson* as follows:

“Family” means an individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, residential care facilities or military barracks, nor does it include such commercial group living arrangements as boardinghouses, lodginghouses, and the like.

- Add a new definition for “Group Care Home” as follows:

Group Care Home. A residential care facility for six or fewer residents which is licensed or supervised by any federal, state, or local agency which provides housing and nonmedical care for children, elderly persons, or physically and mentally handicapped persons in a family-like environment.

Group care homes includes the following:

- (a) *An intermediate care facility, developmentally disabled habilitative and intermediate care facility/ developmentally disabled-nursing or congregate living facility as identified in state of California Health and Safety Code sections 1267.8 and 1267.16;*
- (b) *A community care facility as indentified in state of California Health and Safety Code section 1566.3;*

- (c) *An alcoholism or drug abuse recovery or treatment facility as identified in state of California Health and Safety Code section 11834.02;*
- (d) *Use of property for state-authorized, certified, or licensed family care home, foster home, of group home housing for six or fewer persons afflicted with mental disorders or handicaps or dependent and neglected children, and providing care 24 hours per day, pursuant to California (Welfare & Institutions Code Section 5116);*
- (e) *Residential care facilities for the elderly and for persons with chronic life threatening illness pursuant to California Health & Safety Code Sections 1568.0831 and 1569.85;*
- (f) *Pediatric day health and respite care facilities pursuant to California Health & Safety Code Section 1760 et seq.*

The definition of “group care home” does not include homeless shelters, half-way houses for parolees or convicted persons, or living groups as defined in this chapter.

- Add a new definition for “Living Groups” as follows:

“Living Groups”. Organized living groups are organizations, clubs or associations (such as fraternities, sororities or co-operatives) that include as a principal purpose the sharing of a residence by members.

By amending the Zoning Code to include the Reasonable Accommodation Ordinance and redefine and add definitions related to “family” as suggested, Policy HB-1 and Action Item 8 of the Housing Element of the General Plan would be implemented, which would also implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

Policy

Reference: General Plan: Housing Element; Government Code Section 65852.2

Fiscal

Impact: None

Options:

After consideration of all public testimony, that the City Council consider the following options:

- a. Introduce the attached Ordinance amending the Zoning Code to establish a Reasonable Accommodation Ordinance, along with updating the City’s land use definitions to be in compliance with the Housing Element of the General Plan, Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, and set July 7, 2009 for adoption.
- b. Amend, modify or reject the foregoing options.

Prepared by Darren Nash and Ed Gallagher

Attachments:

1. Ordinance Amending the Zoning Code to Establish Regulations for Reasonable Housing
2. Newspaper Notice

DARREN\CODE AMEND\REASONABLE ACCOMMODATION\CCR 061209

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTION 21.08, DEFINITIONS AND TABLE 21.16.200,
PERMITTED LAND USE MATRIX OF THE MUNICIPAL CODE,
ADDRESSING REASONABLE ACCOMMODATION HOUSING

WHEREAS, the Federal Fair Housing Amendments Act of 1988 and the California 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, to implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, the Housing Element of the City's General Plan includes Policy H-1B and Action Item 8, which state:

POLICY H-1B: Range of Housing Opportunities. Cooperate with private housing developers, nonprofit housing sponsors, and public agencies to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.

Action Item 8. Amend the Zoning Code to provide a means by which development standards such as setbacks, projections into yards, and heights of graded slopes and/or retaining walls might be modified either by staff (Plot Plan Review) or by the Development Review Committee (Site Plan Review) where no other means exist to make a dwelling accessible to a disabled person.

WHEREAS, Ordinance 405 N.S., adopted in 1977, included Section 21.08.170, which defined “family” as follows:

“ ‘Family’ means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores.”; and

WHEREAS, in *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), the California Supreme Court ruled that definitions of “family” that distinguish between related and unrelated persons for the purpose of setting occupancy limits for single family homes, violated the constitutional right to privacy, which encompasses the right to choose with whom one lives; and

WHEREAS, Section 21.08.170 of the Municipal Code is not in accord with the holding in *City of Santa Barbara v. Adamson*; and

WHEREAS, the City filed Code Amendment 09-001 both to amend the necessary Zoning Code sections to accommodate Policy H-1B and Action Item 8 of the Housing Element of the City's General Plan and to redefine “family” in accordance with the California Supreme Court's decision in *City of Santa Barbara v. Adamson*; and

WHEREAS, this Zoning Ordinance Amendment would add to, and revise, existing definitions pertaining to housing; and

WHEREAS, this Zoning Ordinance Amendment would update the Land Use Matrix (Table 21.16.200) to accommodate the additions to, and revisions of, existing definitions pertaining to housing; and

WHEREAS, this Zoning Ordinance Amendment would add Section 21.20A, on Reasonable Accommodation, to the City's Municipal Code; and

WHEREAS, at a meeting held on May 12, 2009, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Recommended that the City Council approve the proposed ordinance; and

WHEREAS, based on information received at its meeting on June 16, 2009 the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Considered the Planning Commission's recommendation from its May 12, 2009 public meeting;
- d. Introduced said ordinance for the first reading; and

WHEREAS, on July 7, 2009 the City Council held a second reading of said ordinance.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

SECTION 1. City Council Findings.

The City Council finds that:

- a. It is necessary to amend the Zoning Ordinance in order to comply with Policy H-1B and Action Item 8 of the Housing Element, which requires the City to promote and expand housing opportunities for all segments of the community;
- b. It is necessary to amend the Zoning Ordinance's definition of "family" in accordance with the California Supreme Court's decision in *City of Santa Barbara v. Adamson*; and
- c. The proposed amendment would further an important policy of the City's General Plan, which is to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.

SECTION 2: Section 21.08.170 of the Zoning Ordinance is hereby amended to read as follows:

21.08.170 Family.

~~“Family” means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores. (Ord. 405 N.S. § 2 (part), 1977)~~

“Family” means an individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food and/or rent. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, residential care facilities or military barracks, nor does it include such commercial group living arrangements such as boardinghouses, lodginghouses, and the like.

SECTION 3: Section 21.08.217 is added to the Zoning Ordinance to read as follows:

21.08.217 Group Care Homes.

“Group Care Home”. A residential care facility for six or fewer residents which is licensed or supervised by any federal, state, or local agency which provides housing and nonmedical care for children, elderly persons, or physically and mentally handicapped persons in a family-like environment.

Group care homes include the following:

- (a) An intermediate care facility, developmentally disabled habilitative and intermediate care facility/developmentally disabled-nursing or congregate living facility pursuant to California Health and Safety Code sections 1267.8 and 1267.16;
- (b) A community care facility as identified in California Health and Safety Code section 1566.3;
- (c) An alcoholism or drug abuse recovery or treatment facility as identified in California Health and Safety Code section 11834.02;
- (d) Use of property for state-authorized, certified, or licensed family care home, foster home, or group home housing six or fewer persons afflicted with mental disorders or handicaps or dependent and neglected children, and providing care 24 hours per day, pursuant to California Welfare and Institutions Code section 5116;
- (e) Residential care facilities for the elderly and for persons with chronic life threatening illness pursuant to California Health & Safety Code sections 1568.0831 and 1569.85;
- (f) Pediatric day health and respite care facilities pursuant to California Health & Safety Code section 1760 et seq.

The definition of "group care home" does not include homeless shelters, half-way houses for parolees or convicted persons, or living groups as defined in this chapter.

SECTION 4: Section 21.08.265 is added to the Zoning Ordinance to read as follows:

21.08.265 Living Groups.

“Living Groups”. Organized living groups are organizations, clubs or associations (such as fraternities, sororities or co-operatives) that include as a principal purpose the sharing of a residence by members.

SECTION 5: Table 21.16.200 of the Zoning Ordinance is hereby amended by the changes set forth in Exhibit A.

SECTION 6: Chapter 21.20A, on Reasonable Accommodation, set forth in Exhibit B, is added to the Zoning Code.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 8. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 9. Inconsistency. To the extent that the terms or provisions of this ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof, such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

Introduced at a regular meeting of the City Council held on June 16, 2009, and passed and adopted by the City Council of the City of El Paso de Robles on the 7th day of July, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Duane Picanco, Mayor

ATTEST:

Cathy David, Deputy City Clerk

Exhibit A

TABLE 21.16.200
 (As amended through Ordinance 934 N.S.)
 PERMITTED LAND USES FOR ALL ZONING DISTRICTS

EXPLANATION OF CODES USED IN THIS CHART

- P (permitted use) denotes a land use which is permitted.
- C (conditional use) denotes a land use which requires approval of a conditional use permit (CUP).
- N (non-permitted use) denotes a land use which is not permitted.
- T (temporary use permit) denotes a land use which requires approval of a temporary use permit per Chapter 21.23C.

NOTES:

1. All uses are subject to compliance with the general regulations and performance standards contained within Chapters 21.20 and 21.21, and specific limits and/or restrictions contained in chapters for specific zoning districts. Additionally, there may be limits and restrictions within overlay zoning districts and specific plan areas.
2. Any use not specifically listed below is not permitted unless the Planning Commission determines a particular land use to be similar to another permitted, conditional or temporary use within a particular zoning district.

LAND USE	ZONING DISTRICT																		
	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS	
A. Agriculture & Animal Keeping...																			
B. Residential																			
1. Boardinghouse, roominghouse	N	N	N	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N
...																			
5. Group-homes (convents, fraternities, sororities)	N	N	N	E	E	E	E	E	N	N	N	N	N	N	N	N	N	N	N
5. Living Groups (as defined by Section 21.08.265)	N	C	C	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N
6. Group care homes (as defined by Section 21.08.217)	N	P	P	P	P	P	P	P	N	N	N	N	N	N	N	N	N	N	N
7. Home occupation business per Section 21.23.070	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
...																			

Exhibit B

Chapter 21.20A

REASONABLE ACCOMMODATION

Sections:

21.20A.010	Purpose
21.20A.020	Applicability
21.20A.030	Information Required
21.20A.040	Process
21.20A.050	Action on Application, Criteria, Findings, Appeal
21.20A.060	Rescission of Grants of Reasonable Accommodation
21.20A.070	Fees

21.20A.010 Purpose.

It is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation in rules, policies, practices, and procedures for persons with disabilities seeking fair access to housing. The City also recognizes the importance of sustaining and enhancing neighborhoods. In determining whether a requested modification in rules, policies, practices, and procedures is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purpose of its existing zoning or subdivision regulations. The purpose of this chapter is to provide a process for individuals to request reasonable accommodation in regard to relief from the City's various land use, zoning, or building rules, policies, practices, and procedures, and for the City to evaluate such requests.

21.20A.020 Applicability

- A. Any person lacking fair housing opportunities due to the disability of existing or proposed residents, may request a reasonable accommodation in the City's rules, policies, practices, and procedures. This request for reasonable accommodation shall be made on a form prescribed by the City for that purpose.
- B. If, pursuant to this title, the project for which the request is being made requires an application for an additional approval, permit or entitlement, the applicant shall file the request for reasonable accommodation along with such additional application for approval, permit or entitlement.
- C. An applicant seeking reasonable accommodation pursuant to this chapter may seek an accommodation that is also available under other provisions allowing for modifications of otherwise applicable standards under this title. In such case, an accommodation under this chapter shall be in lieu of any approval, permit or entitlement that would otherwise be required.
- D. An applicant submitting a request for reasonable accommodation pursuant to this chapter may request an accommodation not otherwise available under this title.

21.20A.030 Information Required.

In addition to any other information that is required under this title, an applicant submitting a request for reasonable accommodation shall provide the following information:

- A. Applicant's name, address and telephone number;
- B. Address of the property for which the request is being made;

- C. The current actual use of the property;
- D. The code provision, regulation(s), policy, or procedure for which accommodation is requested;
- E. A statement describing why the requested accommodation is reasonably necessary to make the specific housing available to the applicant, including information establishing that the applicant is disabled under applicable laws. Any information related to a disability status and identified by the applicant as confidential shall be retained in a manner so as to respect the applicant's privacy rights and shall not be made available for public inspection;
- F. Such other relevant and permissible information as may be requested by the Community Development Director or his or her designee.

21.20A.040 Process.

- A. If an application filed pursuant to this chapter is filed along with an application for an additional approval, permit or entitlement pursuant to this title, it shall be heard and acted upon at the same time, in the same manner, and in accordance with the same procedures, as such additional application. If an application filed pursuant to this chapter is filed along with more than one additional application pursuant to this title, the Zoning Administrator shall determine the appropriate procedure to evaluate the applications.
- B. If an application filed pursuant to this chapter is the only application filed by the applicant, it shall be heard and acted upon at the same time, in the same manner, and in accordance with the same procedures, as the application that would normally be required to modify the code provision that the application seeks to modify, as determined by the Zoning Administrator.

21.20A.050 Actions on Application, Criteria, Findings, Appeal

- A. The Zoning Administrator shall have the authority to consider and act on requests for reasonable accommodation.
- B. An application filed pursuant to this chapter may be approved, approved subject to conditions, or denied.
- C. The following factors shall be considered in making a determination regarding an application filed pursuant to this chapter:
 1. Need for the requested modification, including alternatives that may provide an equivalent level of benefit;
 2. Physical attributes of, and any proposed changes to, the subject property and structures;
 3. Whether the requested modification would impose an undue financial or administrative burden on the City;
 4. Whether the requested modification would constitute a fundamental alteration of the City's zoning or building laws, policies, procedures, or subdivision program;

5. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood;
 6. Any other factor that may bear on the request.
- D. Any decision on an application filed pursuant to this chapter shall be supported by written findings and conclusions addressing the criteria set forth in this section, and shall be subject to appeal pursuant to Chapter 21.23A. The Zoning Administrator shall issue a written determination to the applicant, which shall include notice of the right to appeal the determination.

21.20A.060 Rescission of Grants of Reasonable Accommodation

Any approval or conditional approval of an application filed pursuant to this chapter may provide for its rescission or automatic expiration under appropriate circumstances.

21.20.A.070 Fees.

There shall be no fee in connection with the filing of a request for reasonable accommodation. If the request for reasonable accommodation is filed concurrently with an application for an additional approval, permit or entitlement, the applicant shall pay only the fee for the additional approval, permit or entitlement.