

Chapter 20.84 - REASONABLE ACCOMMODATIONS

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20.84.010 Purpose

In accordance with federal and state fair housing laws, it is the purpose of this chapter to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling. A reasonable accommodation is typically an adjustment to physical design standards to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled resident.

20.84.020 Review Authority

- A.** The Director of Development Services shall approve, conditionally approve, or deny all applications for a reasonable accommodation.
- B.** If the project for which the request for reasonable accommodation is made requires another City staff-level discretionary permit or approval, then an applicant may request that the Director of Development Services hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval is heard. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval.
- C.** If the project for which the request for a reasonable accommodation is made requires another discretionary permit or approval that is subject to Planning



Commission action, the applicant may elect to have the Planning Commission hear the request for a reasonable accommodation and act as the review authority at the same time as the other discretionary permit or approval is heard. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final decision has been made by the City regarding the other discretionary permit or approval.

20.84.030 Application Submittal and Review

- A. Applicant.** A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.
- B. Application.** An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made in writing in a form acceptable to the Development Services Department. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.



- C. Other Discretionary Permits.** If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit.
- D. Required Submittals.** In addition to materials required under other applicable provisions of this code, an application for reasonable accommodation shall include the following:
1. Documentation that the applicant is:
 - a. An individual with a disability; or,
 - b. Applying on behalf of one or more individuals with a disability; or,
 - c. A developer or provider of housing for one or more individuals with a disability.
 2. The specific exception or modification to the zoning code provision, policy, or practices requested by the applicant;

3. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the dwelling; and,
4. Any other information that the Director of Development Services reasonably concludes is necessary to determine whether the findings required by Section 20.86.040 (Decision), hereof, can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected.

20.84.040 Decision

A. Hearing Officer Action.

1. The Director of Development Services shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with subsection B below.
2. The reasonable accommodation request shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for a Minor Use Permit (Section 20.68.020).
3. The standard of review on appeal shall not be de novo and the Planning Commission or City Council, as applicable, shall determine whether the findings made by the hearing officer are supported by substantial evidence presented during the evidentiary hearing.
4. The Planning Commission or City Council, as applicable, acting as the appellate body, may sustain, reverse, or modify the decision of the hearing officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.



B. Findings.

1. The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:
 - a. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.

- b. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
 - c. The requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in fair housing laws and interpretive case law.
 - d. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as “fundamental alteration” is defined in fair housing laws and interpretive case law.
 - e. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
2. In making these findings, the decision maker may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

C. Criteria for Decision.

1. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:



- a. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
 - b. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.
- c. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.
 - d. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

2. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of Merced's zoning regulations:
- a. Whether the requested accommodation would fundamentally alter the character of the neighborhood.
 - b. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
 - c. Whether granting the requested accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan.
 - d. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.



- D. Rules While Decision is Pending.** While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
- E. Effective Date.** No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make an appeal. In the event an appeal is filed, the reasonable accommodation shall not become effective unless and until a decision is made by the Planning Commission or City Council as, applicable, on such appeal, under the provisions of Chapter 20.74 (Appeals).

20.84.050 Post-Decision Procedures

- A. Expiration.** Any reasonable accommodation approved in accordance with the terms of this chapter shall expire within 24 months from the effective date of approval or at an alternative time specified as a condition of approval unless:
1. A building permit has been issued and construction has commenced;
 2. A certificate of occupancy has been issued;
 3. The use is established; or,
 4. A time extension has been granted.
- B. Time Extension.** The hearing officer may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Director of Development Services no less than 30 calendar days or more than 90 calendar days prior to the expiration date.

C. Notice. Notice of the hearing officer's decision on a time extension shall be provided as required for a Minor Use Permit (Section 20.68.020). All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in subsection D below.

D. Appeal of Determination. A time extension for a reasonable accommodation shall be final unless appealed to the City Council within 14 calendar days of the date of



mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Chapter 20.74 (Appeals), as modified by Section 20.84.040 (Decision).

E. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

F. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for 180 consecutive calendar days. If the persons initially occupying a dwelling vacate, the reasonable accommodation shall remain in effect only if the Director of Development Services determines that:

1. The modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the code; and,
2. The accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling.
3. The Director of Development Services may request the applicant or his or her successor-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within 10 business days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

G. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.72 (Post-Decision Procedures).

20.84.060 Amendments

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application. The Director of Development Services may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.