

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
PLANNING COMMISSION**

Resolution
No 2016-008

**A Resolution Recommending that the Board of Supervisors
approve an Ordinance to Amend Title 17 by Adding a
Reasonable Accommodation Chapter, Chapter 17.146**

WHEREAS, the Fair Housing Amendments Act prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning decisions and creates an affirmative duty to “make reasonable accommodations in rules, policies, practices, and services when accommodation may be necessary to afford such person(s) equal opportunity to use and enjoy a dwelling”; and

WHEREAS, the California Fair Employment and Housing Act 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; and

WHEREAS, the Fair Housing Amendments Act and the California Fair Employment and Housing Act are hereafter referred to as “the Acts”; and

WHEREAS, it is the policy of Mariposa County to comply fully with the intent and purpose of fair housing laws and to provide individuals with disabilities as defined under the Acts reasonable accommodation in its application of General Plan and zoning standards to ensure equal access to housing and facilitate the development of housing for individuals with disabilities pursuant to state and federal law; and

WHEREAS, the Housing Element (HE) which is part of the county’s General Plan must include identification and analysis of existing and projected housing needs, identification of resources and constraints to address these needs, and goals, policies and programs for adequate housing opportunities for all economic segments of the community; and

WHEREAS, the current Housing Element (2009-2014) of the Mariposa County General Plan includes Program 8.5 in Section 8.6.04.H(2) which requires the county to adopt a written reasonable accommodation ordinance to provide minor exceptions to zoning and land use for housing for persons with disabilities that will allow for expedited processing and approval of such housing. The program requires this procedure to be a ministerial process, subject to approval by the Planning Director applying specific decision making criteria; and

WHEREAS, on the 21st day of June 2016 Resolution No. 2016-318 was adopted by the Board of Supervisors, initiating an ordinance to amend Title 17 by adding a Reasonable Accommodation chapter, Chapter 17.146 regarding reasonable accommodation in the County’s application of zoning regulations and land use policies; the proposed ordinance will implement Program 8.5 in Section 8.6.04.H(2) of the General Plan Housing Element; and

WHEREAS, this project is known as County Code Amendment No. 2016-112; and

WHEREAS, a duly noticed Planning Commission public hearing was scheduled for the 9th day of September 2016; and

WHEREAS, the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report packet and testimony presented by the public.

NOW BE IT THEREFORE RESOLVED THAT, the Planning Commission does hereby recommend approval of an ordinance to amend Title 17 by adding a Reasonable Accommodation Chapter, Chapter 17.146 regarding reasonable accommodation in the County's application of zoning regulations and land use policies. The proposed ordinance is included as Attachment A.

BE IT THEREFORE FINALLY RESOLVED THAT the recommendation for project approval is based on the following recommended findings supported by substantial evidence in the public record:

1. **Finding:** The amendment is in the general public interest, and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment is in the general public interest in that it implements State and Federal law regarding removing barriers in housing opportunities for persons with disabilities and affords the County the opportunity to address the needs of its citizens with disabilities. The amendment will not have a significant adverse effect on the general public health, safety, peace, and welfare. In order to approve a request for reasonable accommodation the planning director must find that the request will not be injurious to property and improvements in the surrounding area and will not adversely affect the health and safety of persons residing or working in the vicinity, or be detrimental to the public health, safety and welfare.

2. **Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long term guide for county development and a short term basis for day-to-day decision making.

Evidence: This amendment will help achieve Mariposa County General Plan Housing Element goals to ensure that housing for persons with disabilities is available to the maximum extent feasible. The amendment will assist in providing a long term guide for county development. In the short term, the amendment will assist in decision making, by providing flexibility in the application of land use and zoning regulations in order to comply with Federal and State laws for the benefit of County citizens with disabilities.

3. **Finding:** That amendment conforms to the requirements of state law and county policy.

Evidence: This project has been processed in accordance with State law. The amendment will ensure that County policy is consistent with State law with respect

to providing reasonable accommodation for persons with disabilities. With this amendment, County policy will be consistent with federal and state housing law.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County General Plan. The approval of a request for reasonable accommodation requires a finding to be made that the request will not require a major or fundamental alteration to the County's General Plan land use policies and/or zoning ordinance standards.

Evidence: The amendment implements the General Plan by bringing County Code into consistency with General Plan Housing Element goals to provide housing opportunities for all sectors of the community.

5. **Finding:** County Code Amendment No. 2016-112 is exempt from environmental review pursuant to the General Rule Exemption, Section 15061(b)(3), of CEQA Guidelines. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This amendment implements the Mariposa County General Plan and Federal and State laws, which address reasonable accommodation in the application of land use and zoning regulations to remove, to the maximum extent feasible, barriers to persons with disabilities seeking adequate housing of their choice.

ON MOTION BY Commissioner Herman, seconded by Commissioner Harter, this resolution duly passed and adopted this 9th day of September 2016 by the following vote:

AYES: Herman, Harter, Becker, Kennec and Kehoe

NOES: None

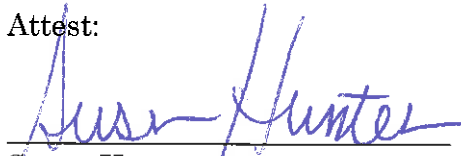
ABSENT: None

ABSTAIN: None



Mark Becker, Chair
Mariposa County Planning Commission

Attest:



Susan Hunter
Planning Commission Secretary

ATTACHMENT A – Proposed New Chapter 17.146

Chapter 17.146

REASONABLE ACCOMMODATION

Sections:

- 17.146.010 Purpose and intent.
- 17.146.020 Applicability.
- 17.146.030 Application requirements.
- 17.146.040 Review authority.
- 17.146.050 Review procedures.
- 17.146.060 Required findings and decision.
- 17.146.070 Appeal of determination.
- 17.146.080 General provisions

17.146.010 Purpose and intent.

It is the policy of the County of Mariposa to provide individuals with disabilities reasonable accommodation in its application of zoning standards and other land use regulations, policies and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities pursuant to the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts). This chapter provides a procedure for making requests for reasonable accommodations in zoning standards and other land use regulations, policies and procedures to comply fully with the intent and purpose of fair housing laws.

17.146.020 Applicability.

Persons defined as disabled under the Acts may request reasonable accommodations when the strict application of the provisions within the County's General Plan or this Title act as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. A request for reasonable accommodation may be made by any person with a disability, his or her representative (e.g. family member, care provider, etc.), or a provider of housing for persons with disabilities.

A request for reasonable accommodation may include a minor modification or exception to the standards contained in the County's General Plan and zoning ordinance relating to the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

17.146.030 Application Requirements.

A request for reasonable accommodation must be filed on an application form provided by the planning department, shall be signed by the applicant and shall include the following information:

A. The applicant's name, address and phone number;

B. The name and address of the property owner if different than the applicant;

1. The property owner, if different than the applicant, shall be required to sign an affidavit stating they do not object to the application for reasonable accommodation.

C. Verification that the property is the primary residence of the person(s) for whom the reasonable accommodation is requested.

D. The address for the property for which the reasonable accommodation request is being made;

E. Current use of the property;

F. A description of how the property will be used by the person(s) requesting reasonable accommodation;

G. The specific reason the requested accommodation is necessary to make a particular dwelling available to the disabled person(s) with a citation of the specific provision within the General Plan or this Title from which accommodation relief is being sought;

H. The basis for the claim that the Acts apply to the person(s) requesting the reasonable accommodation and evidence supporting the claim, which may include a letter from a medical doctor or other licensed health care professional, a disabled person license or other appropriate evidence which establishes that the person(s) needing the reasonable accommodation is disabled pursuant to the Acts;

I. The planning department shall assist the applicant in completing the form, as necessary, or, shall elicit oral information from the applicant necessary for the Department to complete the form itself. In the event the Department completes the form by eliciting oral information from the applicant, the Department shall read the completed form to the applicant to ensure its accuracy and shall provide a copy of the completed form to the applicant.

17.146.040 Review authority.

The planning director shall review and make a written determination regarding a request for a reasonable accommodation.

17.146.050 Review Procedures.

A. Planning director review. The planning director shall make a written determination with findings within thirty (30) calendar days following the submittal of a complete application and either approve, approve with modifications, or deny a request for a reasonable accommodation in compliance with Section 17.146.060 below.

B. Conditions of approval. In granting a request for reasonable accommodation, the director may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings shown in Section 17.146.060 below.

C. The planning director may consult with other Mariposa County agencies if the reasonable accommodation request affects the

jurisdiction or the review, permitting and/or enforcement processes of those agencies. The planning director may review General Plan and zoning standards when considering a request for reasonable accommodation, including, but not limited to, land use classification, zoning district, design, setback, and lot coverage standards.

D. Stays. If necessary to reach a determination on the request for reasonable determination, the director may request further information from the applicant consistent with the Acts, specifying in detail the information that is required. In the event a request for additional information is made, the thirty (30) calendar day period to issue a decision is stayed until the applicant responds to the request.

17.146.060 Required findings and decision.

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with the Acts and based on consideration of the following findings and any other relevant information upon which the decision is based as determined by the planning director on a case-by-case basis. The planning director shall not grant a request unless it is found that:

A. Whether the housing, which is the subject of the request, will be used by an individual disabled under the Acts.

B. Whether the requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.

C. Whether the requested reasonable accommodation would not impose an undue financial or administrative burden on the County.

D. Whether the requested reasonable accommodation would not require a major or fundamental alteration to the County's General Plan land use policies and/or zoning ordinance standards.

E. The requested reasonable accommodation will not be injurious to property or improvements in the surrounding area and will not adversely affect the health and safety of persons residing or working in the vicinity, or be detrimental to the public health, safety and welfare.

17.146.070 Appeal of determination.

A. The written determination by the planning director to grant or deny a request for reasonable accommodation may be appealed in accordance with Chapter 17.136 of this Title.

B. All appeals shall be filed with the Mariposa County Planning Commission Secretary or the Clerk of the Mariposa County Board of Supervisors on a Notice of Appeal Form obtained at the planning department or on-line, and shall contain all required information including a statement of the grounds for the appeal.

C. An individual needing assistance in filing an appeal on an adverse decision shall be provided assistance by the planning department to ensure that the appeals process is accessible.

17.146.080 General provisions.

A. Rescission. A grant or grant with modifications made in compliance with this chapter may be conditioned to provide for its

rescission or automatic expiration under appropriate circumstances (e.g., the individual defined as disabled under the Acts vacates the subject site, etc.).

B. Severability. The sections of this chapter are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, or portion of these sections, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

C. Fees. An applicant for a request for reasonable accommodation shall not be assessed a fee to process the application.

D. Any information identified by the applicant as confidential that is submitted to the County as part of an application or appeal shall be retained by the County in a manner that respects the privacy rights of the applicant/appellant and shall not be made available for public inspection.