

MODEL ORDINANCE
MICHIGAN

ADDING CHAPTER ____ TO THE _____ CITY CODE (THE ZONING CODE) RELATING
TO REQUEST FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF THE
CITY'S LAND USE REGULATIONS

Chapter ____

Requests for Reasonable Accommodation under the Federal Fair Housing
Amendments Act of 1988

Section 1. Purpose

The purpose of this chapter is to establish a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use and zoning standards, regulations, policies, and procedures and to establish relevant criteria to be used when considering such requests.

Section 2. Findings

The Council of the City of _____ finds as follows:

The Federal Fair Housing Amendments Act of 1988 imposes an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their rules, policies, practices, or services related to land use regulation when such accommodation may be necessary to afford an individual with a disability an equal opportunity to housing; and

A. The City of _____ 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;
and

B. Codification of a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City’s land use and zoning standards, regulations, policies, and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the fair housing laws reasonable accommodation mandate; and

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 city's compliance with federal and state fair housing laws and provide opportunities for the development of critically needed housing for individuals with disabilities.

Section 3. Definitions

“Act” means the Federal Fair Housing Amendments Act of 1988.

“Applicant” means an individual who files an application for reasonable accommodation under this chapter.

“Individual with a disability” means any person who has a medical condition, physical disability, or mental disability that substantially limits one or more of the person’s major life activities, as those terms are defined by the Act.

“Reasonable accommodation” means a modification or exception to the standards, regulations, policies, and procedures contained in the City’s Zoning Code for the siting, development and the use of housing or housing related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the City or require a fundamental or substantial alteration of the City’s planning and zoning programs.

Section 4. Applicability

To make specific housing available to an individual with a disability, any person may request reasonable accommodation under this chapter to modify a land use or zoning standard, regulation, policy, and procedure under the City's Zoning Code as may be necessary to afford the individual with a disability equal opportunity to the use and enjoyment of their dwelling. A request for reasonable accommodation shall be made by filing an application under Section ____.

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. 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 the land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

Section 5. Notice to the Public of Availability of Accommodation Process.

Notice of the availability of a 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.

Section 6. Application requirements

A. An application for reasonable accommodation shall be submitted on a form prescribed by the City's planning director, or in a form of a letter addressed to the City's planning director, and shall contain the following information:

1. The name, address and telephone number of the applicant;

2. The name, address, and telephone number of the individual(s) with a disability for whom the reasonable accommodation is being requested;
3. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made;
4. If the applicant is someone different than the property owner, a letter of agency or authorization signed by the owner consenting to the application being made;
5. The address and current use of the property for which the reasonable accommodation request is being made;
6. The basis for the claim that the individual to be reasonably accommodated is disabled under the Act;
7. A description of the reasonable accommodation request in the land use or zoning standard, regulation, policy, or procedure to be modified or waived;
8. A statement of the reason why the requested accommodation is necessary for the individual with a disability to use and enjoy the dwelling.; and
9. If the request for reasonable accommodation is made by a recovery housing provider for disabled people seeking recovery from addiction to alcohol and other drugs, a statement of whether the recovery housing has been certified by the Michigan Association of Recovery Residences, Inc. or chartered by Oxford Homes, Inc., or approved by any other nationally recognized entity utilizing evidence-based standards and a code of ethics governing operation of such recovery housing.

B. Review with other land use applications. If the project for which the application for reasonable accommodation is being made requires approval of one or more other entitlements under the City zoning code, then the applicant shall file the application for reasonable accommodation under subsection A with the application for the other entitlement, for concurrent review and action.

C. Any information related to a disability status and 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. If an individual needs assistance in making the request for reasonable accommodation, the City will provide assistance to ensure that the process is accessible.

E. A request for reasonable accommodation 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.

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

Section 7. Review authority.

A. Planning director review.

An application for reasonable accommodation shall be reviewed by the planning director of the application for reasonable accommodation if the request is not filed with an application for another entitlement.

B. Other reviewing authority.

An application for reasonable accommodation submitted for concurrent review with another entitlement under the City zoning code shall be reviewed by the authority reviewing the other entitlement.

Section 8. Review procedure.

A. Planning director review.

1. Written notice of the filing of an application for reasonable accommodation shall be mailed by the planning director to the owners of real property within a radius of five hundred (500) feet from the exterior boundaries of the subject property utilizing the owner names and addresses shown on the latest County equalize assessment roll. The notice shall be mailed no later than the next five (5) business days following the date the application is filed and accepted as complete

and shall describe the scope and nature of the requested reasonable accommodation.

2. Within thirty (30) days of acceptance of the application as complete, the planning director shall issue a written decision to grant, grant with modifications, or deny an application for reasonable accommodation in accordance with Section 8 and shall notify the applicant of the decision. The written decision shall explain in detail the basis of the decision, including the Planning Director's findings on the factors stated in Section 8. If necessary to reach a determination on the request for reasonable accommodation, the planning director may request additional information from the applicant consistent with the Act, specifying in detail the information that is required. If 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.

3. Upon making a decision on the application, the planning director shall mail written notice of the decision and the right to appeal the decision to the same property owners who receive notice of the application under subsection (A) (1). The notice shall be mailed no later than three (3) business days following the date the written decision is issued.

B. Other Reviewing Authority.

If the application for reasonable accommodation is submitted for concurrent review with another entitlement under the City's zoning code, the decision to grant, grant with modifications, or deny the application shall be made by the authority taking action on the other entitlement under this Chapter. The decision to grant, grant with modifications, or deny the request for reasonable accommodation shall be made in accordance with Section 9.

Section 9. Findings and Decision.

A. The decision to grant, grant with modifications, or deny an application for reasonable accommodation shall be based on the finding of consistency with the Act and shall take into consideration all the following factors:

1. Whether the housing or housing related facilities, which are the subject of the request, will be used by an individual with a disability under the Act.

2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Act.
3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.
4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
5. Whether the requested reasonable accommodation would be contrary to the public health, safety, or welfare, or be injurious to the property or improvements of adjacent properties.
6. Whether the requested reasonable accommodation adequately considers the physical attributes of the property and structures.
7. Whether alternative reasonable accommodations could provide an equivalent level of benefit.
8. Whether the applicant is certified by the Michigan Association of Recovery Residences or is chartered by Oxford Homes, Inc or approved by any other nationally recognized entity utilizing evidence-based standards and a code of ethics governing operation of such recovery housing.

B. Conditions of approval.

In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with findings required by this section. Conditions may be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation be removed once those structures or physical design features are unnecessary to afford the individual with a disability for whom the reasonable accommodation was granted the use and enjoyment of the dwelling.

Section 10 Appeals.

A. Decision of Planning Director.

1. Any person who is dissatisfied with the decision made by the planning director on an application for reasonable accommodation may appeal the planning director's decision to the City's zoning board of appeals. Any appeal shall be filed with the City planning director's office within ten (10) days of the planning director's decision. Upon filing of the notice of appeal, the planning director shall set the matter for hearing before the Zoning Board of Appeals to occur not later than 45 days from the date of filing of the appeal. Notice of the appeal hearing shall be given by mail to the applicant not later than ten (10) days prior to the hearing.

2. The decision of the Zoning Board of Appeals on the appeal shall be made in accordance with section 8 and shall be final.

B. Decision by Other Reviewing Authority.

A decision on an application for reasonable accommodation submitted for concurrent review with another entitlement under this chapter shall be subject to the same appeal rights and procedures as applied to the other entitlement.

C. Reasonable Accommodation in Appeals Procedures.

An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

Section 11. Fees

Notwithstanding any other provision of the City's code of ordinances, there shall be no fee imposed in connection with an application for reasonable accommodation, including appeals, under this chapter.

Section 12. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Adopted by the City of ____ City Council on _____, 202__ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Mayor

Attest: _____

City Clerk