

ORDINANCE NO. 2022-03

AN ORDINANCE AMENDING CHAPTER 17, ARTICLE 4, BY ADDING A NEW SECTION 17.45, "REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES", TO THE MARINA MUNICIPAL CODE

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THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY ORDAIN AS FOLLOWS:

1. To follow the Fair Employment and Housing Act (Cal. Gov. Code § 12900 et seq.) and to implement Program 8.1 of the City's Housing Element, the City shall adopt an ordinance that provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures.

2. An amendment to the City of Marina's Municipal Code is needed to ensure compliance with State law.

3. Chapter 17, Article 4. Chapter 17, Article 4, entitled "Regulations and Standards Applicable to All Zones" is hereby amended by adding a new Section, Section 17.45 "Reasonable Accommodations for Persons with Disabilities", to the Municipal Code to read as set forth on the attached Exhibit "A," and incorporated herein by this reference thereto.

4. Environmental. In accordance with the California Environmental Quality Act (CEQA), staff finds that this ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections: 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

5. Effective Date. This Ordinance shall be in full force and effect on thirty (30) days after its final passage and adoption.

6. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

7. Posting of Ordinance. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on July 6, 2022, and was passed and adopted at a regular meeting duly held on July 19, 2022, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Biala, Delgado

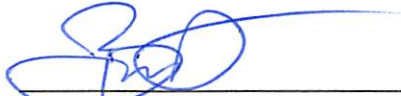
NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Burnett, Berkley

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:


Anita Sharp, Deputy City Clerk


Bruce C. Delgado, Mayor

Chapter 17.45
REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

Sections:

- 17.45.010 Purpose and applicability.
- 17.45.020 Application submittal.
- 17.45.030 Review authority.
- 17.45.040 Findings.
- 17.45.050 Decision.
- 17.45.060 Appeals.
- 17.45.070 Waiver of time periods.
- 17.45.080 Notice of public availability of accommodation process.
- 17.45.090 Expiration, time extension, violation, discontinuance, and revocation.
- 17.45.110 Amendments.

17.45.010 Purpose and applicability.

- A. This chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures. Fair Housing Laws means "Fair Housing Amendments Act of 1988" ([42 U.S.C. § 3601](#) et seq.), including reasonable accommodation required by [42 U.S.C. § 3604\(f\)\(3\)\(B\)](#), and the "California Fair Employment and Housing Act" (California Government Code Section [12900](#) et seq.), including reasonable accommodation required specifically by California Government Code Sections [12927\(c\)\(1\)](#) and [12955\(l\)](#), as any of these statutory provisions now exist or may be amended from time to time.
- B. A request for reasonable accommodation may be made by any person with a disability, his/her representative, or any business or property owner when the application of a zoning law, building code provision or other land use regulation, policy or practice acts 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, as those terms are defined in the Fair Housing Laws.
- C. A request for reasonable accommodation may include a request for modification or exception to the rules, standards and practices for 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. Requests for reasonable accommodation shall be made in the manner prescribed by this chapter.
- D. It is the intent of this chapter that, notwithstanding time limits provided to perform specific functions, application review, decision making and appeals proceed expeditiously, especially where the request is time sensitive, so as to reduce impediments to equal access to housing.

17.45.020 Application submittal.

- A. Any person with a disability, or his or her representative, may request reasonable accommodation on a form supplied by the community development department. The request shall include the following information, and be accompanied by a fee established by resolution of the city council:**
- 1. The applicant's or representative's name, mailing address and daytime phone number.**
 - 2. The address of the property for which the request is being made.**
 - 3. The specific code section, regulation, procedure or policy of the city from which relief is sought.**
 - 4. A site plan or illustrative drawing showing the proposed accommodation.**
 - 5. An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant's use and enjoyment of the subject property.**
 - 6. The basis for the claim that Fair Housing Laws apply to the individual(s) and evidence satisfactory to the city supporting the claim. Evidence may include a letter from a medical doctor or other licensed health care professional, a disabled license, or any other relevant evidence.**
 - 7. A detailed explanation as to why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the city.**
 - 8. Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested.**
 - 9. Other information required by the city to make the findings required by subsection (17.47.040) of this section consistent with the Fair Housing Laws.**
- B. A request for reasonable accommodation may be filed at any time the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is being made also requires discretionary approval, the applicant shall provide required submittal information to the city together with the application for discretionary approval and shall pay all applicable fees. These materials shall enable the city to concurrently review the accommodation request and the discretionary approval request. Processing procedures for the discretionary approval request shall govern joint processing of both the reasonable accommodation and the discretionary permit.**
- C. Reasonable accommodation does not affect or negate an individual's obligations to comply with other applicable regulations not at issue or related to the requested accommodation.**
- D. If an individual needs assistance in making the request for reasonable accommodation, the city shall provide assistance to ensure the process is accessible.**

- E. Should the request for reasonable accommodation be made concurrently with a discretionary permit, the fee for a reasonable accommodation application may be waived; provided, that the prescribed fee shall be paid for all other discretionary permits.

17.45.030 Review authority.

- A. Applications for reasonable accommodation shall be reviewed by the community development director (director) when no approval is sought other than the request for reasonable accommodation.
- B. Applications for reasonable accommodation submitted for concurrent review with any discretionary land use application shall be reviewed by the authority governing the discretionary land use application.

17.45.040 Findings. The review authority shall approve the request for a reasonable accommodation if, based upon all of the evidence presented, the following findings can be made:

- A. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with disabilities protected under Fair Housing Laws.
- B. The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the Fair Housing Laws.
- C. The requested accommodation will not impose an undue financial or administrative burden on the city, as defined in the Fair Housing Laws and interpretive case law.
- D. The requested accommodation will not require fundamental alteration or frustrate application of the city's zoning or building laws, policies and/or procedures, as defined in the Fair Housing Laws and interpretive case law. The city may consider, but is not limited to, the following factors to determine whether the requested accommodation would fundamentally alter or frustrate application of the city's zoning or building program:
 - 1. Whether granting the accommodation would fundamentally alter the character of the neighborhood.
 - 2. Whether granting the accommodation would result in a substantial increase in traffic or insufficient parking.
 - 3. Whether granting the accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan.

17.45.050 Decision.

- A. The review authority shall consider the application, and issue a written determination within 40 calendar days of the date of receipt of a completed application. At least 10 calendar days before issuing a written determination on the application, the city shall mail notice to the applicant and adjacent property owners that the city is considering the application and invite written comments as to the requested accommodation.

- B. If necessary to reach a determination on any request for reasonable accommodation, the review authority may request further information from the applicant or others consistent with this chapter, specifying in detail what information is required. If a request for further information is made of the applicant, the time period to issue a written determination shall be stayed until the applicant responds to the request.
- C. The review authority's written decision shall include findings and conditions of approval. The applicant shall be given notice of the right to appeal, and the right to request reasonable accommodation related to the appeal process. The review authority's decision shall be mailed to the applicant, to any person who provided written or verbal comment on the application, and to any other person who requests notice.
- D. Any approved reasonable accommodation shall be subject to any conditions imposed on the approval consistent with the purposes of this section.
- E. The review authority may approve alternative accommodations that provide equivalent and reasonable levels of benefit to the applicant.
- F. The written decision of the reviewing authority shall be final, unless appealed as set forth below.
- G. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property subject to the request shall remain in full force and effect.
- H. Where improvements or modifications approved through a reasonable accommodation would generally require a variance, a variance shall not be required.

17.45.060 Appeals.

- A. Any decision on a reasonable accommodation request may be appealed to the city council, which appeal must be received by the city within 10 calendar days of the issuance of a written decision.
- B. The appeal shall be in writing and shall include a statement of the grounds for appeal, and be accompanied by a fee established by resolution of the city council. If an individual needs assistance in filing an appeal, the city shall provide assistance to ensure the appeals process is accessible.
- C. The city council shall hear the matter de novo, and shall render a determination as soon as reasonably practicable, but in no event later than 60 calendar days after an appeal has been filed. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.
- D. The city shall provide notice of an appeal hearing to the applicant, adjacent property owners, and any other person requesting notification at least 10 calendar days prior to the hearing. The council shall announce its findings within 40 calendar days of the hearing, unless good cause exists for an extension. The decision shall be mailed to the applicant and to any other person who requests notice at the time of the hearing. The council's action shall be final.

17.45.070 Waiver of time periods. Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, an applicant may request additional time beyond that provided for in this chapter or may request a continuance regarding any decision or consideration by the city of a pending appeal. The city may, in its sole discretion, grant or deny any such request for extension or continuance. The granting of an extension of time or continuance shall not be deemed delay on the part of the city, shall not constitute failure by the city to provide prompt decisions on applications and shall not be a violation of any required time period set forth in this chapter.

17.45.080 Notice to the Public of Availability of Accommodation Process. The city shall prominently display in the public areas of the community development department at City Hall a notice advising those with disabilities or their representatives that reasonable accommodations are available in accord with this chapter. City employees shall direct individuals to the display whenever requested to do so or if they reasonably believe individuals with disabilities or their representatives may be entitled to reasonable accommodation.

17.45.090 Expiration, Time Extension, Violation, Discontinuance, and Revocation.

- A. 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. The director may approve a time extension for reasonable accommodation for good cause for a period or periods not to exceed three years. Application for a time extension shall be made in writing to the community development department no less than 30 days or more than 90 days prior to the expiration date.
- C. Notice of the director's decision on a time extension shall be mailed to the applicant.
- D. Any reasonable accommodation approved in accordance with the terms of this chapter may be revoked if any condition or term of the reasonable accommodation is violated, or if any law or ordinance is violated in connection therewith. Notice of revocation shall be mailed to the applicant and to the owner of any property affected by the accommodation. Upon revocation, the director may require any physical alteration associated with the reasonable accommodation to be removed or substantially conform to the code, as may be reasonably feasible.
- E. An accommodation is granted only to an individual. The accommodation shall not run with the land unless the director expressly finds the modification is physically integrated on the property and cannot feasibly be removed or altered. Any change in use or circumstances that negates the basis for the grant of approval may render the reasonable accommodation null and void and/or revocable by the city. Thereafter the director may require the reasonable accommodation to be removed or substantially conformed to the code if reasonably feasible.

17.45.110 Amendments. A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that affects a condition of approval shall be treated as a new application and shall be processed in accordance with the requirements of this chapter. The director may waive the requirement for a new application and approve the changes 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.