

ORDINANCE 2009-16

APPROVING ZONE CHANGE PL09-0029 TO ADD SECTION 19.40.020(H) AND CHAPTER 19.50 OF THE CITY OF AMERICAN CANYON MUNICIPAL CODE RELATING TO REQUESTS FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF THE CITY'S ZONING REGULATIONS UNDER THE FAIR HOUSING ACTS

WHEREAS, Federal and State Fair Housing Acts Laws have been created to prohibit discrimination against individuals, including those with disabilities, who seek housing; and

WHEREAS, these pieces of legislation require cities to take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities; and

WHEREAS, the proposed amendment to the city of American Canyon Zoning Ordinance establishes a clear definition of those persons with disabilities which are covered by the Fair Housing Reasonable Accommodation procedures in an effort to overcome barriers in land use and zoning regulations for persons with qualified disabilities; and

WHEREAS, in accordance with Title 14 of the California Administrative Code, Sections 15601 (b)(3) and 15378(a), that this amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt under the definition of Project in Section 15378(b)(3) in that it concerns general policy and procedure making; and

WHEREAS, the Planning Commission of the City of American Canyon unanimously recommended City Council approval of the draft ordinance on November 19, 2009; and

WHEREAS, a duly-noticed public hearing was held by the City of American Canyon City Council on December 1, 2009, at which time all those in attendance were given the opportunity to speak on the proposal; and

WHEREAS, the City Council considered all of the written and oral testimony presented at the public hearing in making its decision.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby ordain:

SECTION 1. CEQA

In accordance with Title 14 of the California Administrative Code, Sections 15601 (b)(3) and 15378(a), that this amendment is exempt from the requirements off the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt under the

definition of Project in Section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION 2. FINDINGS

1. Find, based on the following evidence and as required by Zoning Ordinance Section 19.48.040 C, that:

- a. The amendment is consistent with the goals and policies of the general plan.

Objective 2.16 states: Promote the provision and maintenance of housing for special needs groups. Objective 2.19 states: Discourage discriminatory housing practices. Policy 2.16.4 states: Help the elderly and disabled to maintain their residences. The proposed zone change will facilitate reasonable changes to the city's zoning and building regulations so that residents with disabilities have access to new and current housing opportunities.

- b. The amendment is consistent with the purposes of this title, as set forth in Chapter 19.01, Authority, Purposes and Effects of the Zoning Ordinance.

The purpose for the zoning ordinance is to promote public health, safety, peace, comfort, convenience, aesthetics, prosperity, and general welfare. Adoption of the Reasonable Accommodation ordinance will facilitate greater access to housing for residents with disabilities and in doing so, foster greater health, safety, peace, comfort, convenience, aesthetics, prosperity, and general welfare for residents with disabilities.

SECTION 3. ZONING AMENDMENT

The City Council of the City of American Canyon hereby adds Section 19.40.020(h) and Chapter 19.50 of the Municipal Code as follows:

“19.40.020 Community development director approvals.

- A. Authority.

1. The following may be approved without a public hearing by the community development director, as specified elsewhere in this title:

- a. Sign permits, pursuant to Chapter 19.23.
- b. Home occupation permits, pursuant to Chapter 19.29.
- c. Design permits, pursuant to Chapter 19.41.
- d. Temporary trailer permits, pursuant to Chapter 19.30.

- e. Classifications of use, pursuant to Chapter 19.05.
 - f. Minor modifications, pursuant to Chapter 19.45.
 - g. Minor variations, pursuant to Chapter 19.44.
 - h. Reasonable Accommodation, pursuant to Chapter 19.50
2. The following may be approved following a public hearing by the community development director, as specified elsewhere in this title:
- a. Conditional fence permits, pursuant to Chapter 19.10.
 - b. Minor use permits, pursuant to Chapter 19.42.
3. The director may refer any of the above entitlements to the planning commission for review because of unique circumstances or a need for policy direction.

B. Application.

- 1. An application subject to the approval of the community development director shall be submitted to the community development department on forms specified by the director, and shall be accompanied by all maps, plans, and other information deemed necessary by the director.
- 2. An application shall be accompanied by any fee established by the city council.
- 3. The director shall inform the applicant in writing within thirty calendar days of receipt that the application is complete or that additional information is needed to complete the application. If such additional information is not provided within ninety days, the application shall be considered withdrawn, and any unused fees shall be refunded to the applicant. At the director's discretion, an additional thirty days may be granted to complete an application.

C. Public Hearings.

- 1. When a public hearing is required for an application, upon acceptance of the application as complete and following completion of any environmental review, a public hearing shall be set before the community development director.
- 2. Notice of the public hearing shall be given in the manner specified in this chapter.
- 3. A public hearing shall be held before the director at the time and place specified by the public notice. The director may establish rules for the conduct of such

hearings. Any hearing may be continued provided that prior to adjournment or recess, the director shall announce the time and place to which the hearing will be continued.

D. Decision.

1. The director shall comply with the time limits stipulated in California Government Code Section 65950 when making a decision on an application.

2. When a public hearing is required for an application, the director shall approve, conditionally approve, or deny an application following the close of the public hearing, or within ten days thereafter. When a public hearing is not required, the director shall take such action within ten days of finding the application complete for processing. In both cases, such decision shall include any findings required by this title.

3. Written notice of the director's decision, including any conditions of approval, shall be given by mail within five calendar days of the decision to the applicant and any person who has filed a written request for notice of the decision.

4. The director's decision, including any conditions of approval, is final on expiration of ten calendar days following the decision unless a notice of appeal is filed with the director with such time. The date of the decision shall not be counted in determining the final date for filing an appeal. Should an appeal period end on a Saturday, Sunday or holiday, the final day for filing an appeal shall be the following Monday, or the next business day following a holiday.

5. Conditions of approval may be deleted or modified through a minor or major modification (Chapter 19.45), depending on the extent of the proposed change.

E. Appeal Procedures.

1. Any decision of the community development director made pursuant to this chapter may be appealed to the planning commission by the applicant or any other person aggrieved by the director's decision. Such appeal may be made by filing a written notice of appeal with the director prior to the time the decision becomes final, on forms furnished by the director. The appeal shall be accompanied by the fee established by the city council.

2. Notice of the hearing on the appeal shall be given in the manner and time provided in this chapter not less than ten days before such hearing to each person entitled to notice of the preceding decision.

3. The commission may affirm wholly or partly, reverse, modify, or attach additional conditions to the decision which was appealed.

F. Permit Issuance. No permit shall be issued prior to the expiration of any appeal period for an entitlement. (Ord. 2009-10 § 3, 2009; Ord. 2002-07 Ex. A (part), 2002; Ord. 2001-02 § 1 (part), 2001)

Chapter 19.50 REQUEST FOR REASONABLE ACCOMMODATION

19.50.010 Intent and purpose.

It is the policy of the City of American Canyon, pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereafter "fair housing laws"), to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This ordinance establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures of the City to comply fully with the intent and purpose of fair housing laws.

19.50.020 Applicability.

A. 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.

B. An individual with a disability is someone who has a physical or mental impairment that substantially limits one or more of such person's major life activities, as further defined and amended in the Fair Employment and Housing Act (FEHA) of California Government Code Sections 12926(i)(1), (2), and 12926(k)(1), (2).

C. A request for reasonable accommodation may be made by any person with a disability, his or her representative, or an entity, developer or provider of housing for individuals with disabilities, when the application of a land use or zoning regulation, policy, practice or procedure acts as a barrier to housing opportunities.

19.50.030 Application.

Requests for reasonable accommodation shall be made in a manner prescribed within this section.

A. Requests for reasonable accommodation shall be submitted by completing the City of American Canyon Request for Reasonable Accommodation Form and submitting it to the Community Development Department and specifying the following information:

1. Name and address of the individual(s) requesting reasonable accommodation;

2. Name, address and telephone number of the property owner(s);
3. Address of the property for which accommodation is requested;
4. The current actual use of the property;
5. Description of the requested accommodation and the zoning code provision, regulation(s), policy or procedure for which accommodation is requested;
6. The basis for the claim that the individual is considered disabled under the acts; and
7. Reason that the requested accommodation is necessary for the individual(s) with the disability to use and enjoy the dwelling.

B. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including, but not limited to, a conditional use permit, design review, general plan amendment, zoning change, annexation, etc.), then the applicant shall file the information required by this section together for concurrent review with the application for discretionary approval.

C. No application fee shall apply to a request for reasonable accommodation (unless the request is being made concurrently with an application for some other discretionary approval, in which case the applicant shall pay only the required application fee for the discretionary approval).

D. 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.

E. A request for reasonable accommodation in regulations, policies, practices and procedures 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.

19.50.040 Reviewing authority.

A. Requests for reasonable accommodation shall be reviewed by the Community Development Director, if no discretionary approval is sought other than the request for reasonable accommodation.

B. A Request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

19.50.050 Findings.

A. In approving or denying the request, the following criteria shall apply:

1. The accommodation is reasonable, considering the nature of the applicant's disability, the surrounding land uses, and the rule, standard, policy or practice from which relief is sought;
2. The accommodation is necessary to afford the applicant equal opportunity to enjoy and use a dwelling;
3. The accommodation will have only incidental economic or monetary benefits to the applicant, and the primary purpose of the accommodation is not to assist with real estate speculation or excess profit-taking;
4. The accommodation does not create a substantial adverse impact on surrounding land uses, or a public nuisance, that cannot be reasonably mitigated;
5. The accommodation is reasonably feasible, considering the physical attributes of the property and structures;
6. There are no alternative accommodations which may provide an equivalent level of benefit to the applicant, while minimizing adverse impacts on surrounding land uses and lessening the financial and/or administrative burden on the City;
7. In the case of a determination involving a one (1) family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents;
8. The requested accommodation does not impose an undue financial or administrative burden on the City; and
9. The requested accommodation does not require a fundamental alteration in the nature of a program.

B. In granting a request for reasonable accommodation, any conditions of approval 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 provide access to the dwelling unit for the current occupants.

19.50.060 Appeals.

A. Any decision of the community development director made pursuant to this chapter may be appealed to the planning commission by the applicant or any other person aggrieved by the commission's decision. Such appeal may be made by filing a written notice of appeal with the community development director prior to the time the decision becomes final, on forms furnished by the director. The appeal shall be accompanied by the fee established by the city council.

B. Notice of the hearing on the appeal shall be given in the manner and time provided in this chapter not less than ten days before such hearing to each person entitled to notice of the preceding decision.

C. The planning commission may affirm wholly or partly, reverse, modify, or attach additional conditions to the decision which was appealed. The council's decision shall be final on adoption of an order or resolution containing its determination, and no notice thereof need be given.

D. Any decision of the planning commission made pursuant to this chapter may be appealed to the city council by the applicant or any other person aggrieved by the commission's decision. Such appeal may be made by filing a written notice of appeal with the community development director prior to the time the decision becomes final, on forms furnished by the director. The appeal shall be accompanied by the fee established by the city council.

E. Notice of the hearing on the appeal shall be given in the manner and time provided in this chapter not less than ten days before such hearing to each person entitled to notice of the preceding decision.

F. The city council may affirm wholly or partly, reverse, modify, or attach additional conditions to the decision which was appealed. The council's decision shall be final on adoption of an order or resolution containing its determination, and no notice thereof need be given.

G. Permit Issuance. No permit shall be issued prior to the expiration of any appeal period for an entitlement. "


SECTION 4: SEVERABILITY

The City Council hereby declares that if any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional such

decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

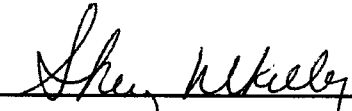
SECTION 5: The Ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 1st day of December, 2009, by a vote of 5-0, and was passed and adopted at a regular meeting of the City Council of the City of American Canyon held on the 15th day of December, 2009.

AYES: Councilmembers Bennett, Coffey, West, Vice Mayor Callison and Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: None



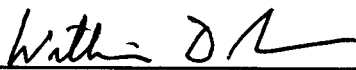
Leon Garcia, Mayor

ATTEST:



Sherry M. Kelly, Interim City Clerk

APPROVED AS TO FORM:



William D. Ross, City Attorney