



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Planning Code Text Changes

HEARING DATE: NOVEMBER 20, 2014

Project Name: **Reasonable Modification Ordinance**
Case No.: 2014.0156T
Initiated by: Planning Department
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Recommendation: **Recommend Adoption**

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PLANNING CODE AMENDMENT

The proposed ordinance would amend the Planning Code to provide a process for individuals with a disability to request a reasonable modification to residential properties to eliminate any barriers to housing. Reasonable modifications are defined as “a request to modify land use, zoning and building regulations in San Francisco’s Planning Code that does not impose an undue financial or administrative burden on the City of San Francisco or constitute a fundamental alteration to its Zoning and Planning program”. Reasonable modifications include changes to a residential property that enable residents with a disability to access their homes, under Fair Housing Laws. The modification must serve the disability, and be necessary to provide equal opportunity to live in that neighborhood.

Please note that the ordinance you are reviewing today has some minor modifications from the version the Planning Commission initiated on October 16, 2014. The changes are not substantive; they are grammatical, intended to clarify the legislation and make inconsistent language consistent.

The Reasonable Modification Ordinance provides an opportunity for persons with disabilities to apply for accommodations to their homes. For multi-unit buildings if a tenant seeks a reasonable modification, such as a ramp, but is not the property owner, the tenant cannot apply to changes to a property that they do not own. The landlord, however, is still subject to Fair Housing Laws.

As part of the ongoing 2014 Housing Element update, the Department has developed an ordinance that establishes a procedure for making requests for reasonable modification in land use, zoning and building regulations, policies, practices and procedures to comply fully with the intent and purpose of fair housing laws. The proposed ordinance would amend Planning Code section 305 and create an administrative Reasonable Modification variance as well as the standard variance for requests for reasonable modification requests.

The proposed Ordinance would also affirm the Planning Department’s California Environmental Quality Act determination, making findings of consistency with the General Plan, and the eight priority policies

of Planning Code, Section 101.1, and directing the Clerk of the Board of Supervisors to submit this Ordinance to the California Department of Housing and Community Development in accordance with State law.

The Way It Is Now:

Currently requests for reasonable modifications to residential uses are addressed by the Zoning Administrator on a case-by-case basis through the standard variance process. Applicants are not offered a clearly delineated process for reasonable modifications requests. Requests for some basic modifications like the addition of a wheel chair ramp would require permits and entitlements that can delay the process. The City does not provide clear guidelines about how to propose reasonable modifications.

The process is not ideal, and having a local ordinance that provides a clear path for persons with disabilities seeking reasonable modification in their homes is preferred.

The Way It Would Be:

The proposed Ordinance would provide two clear paths for requests for reasonable modification for residential uses under Section 305; -an administrative reasonable modification process and a standard variance procedure depending on the type of modification requested.

Administrative Reasonable Modification

Individuals who request reasonable modifications for residential uses are eligible for an administrative review, which, under certain conditions, would not require a public hearing or public notice. In an effort to expedite certain reasonable modification requests, any request that is consistent with the criteria in this section is eligible for administrative review and approval.

- (1) **Parking, where no physical structure is proposed.** The parking space must be necessary to achieve the modification. If the property already includes a parking space, requests for additional parking cannot be granted administratively. Exceptions may be considered for rear yard and the front setback requirements to accommodate the parking space within reason. In reviewing an Administrative Reasonable Modification for Parking, the Zoning Administrator has the authority to allow the parking space for five years. After five years, applicants may renew the temporary use for additional five-year periods.
- (2) **Access Ramps.** Access Ramps, defined in Building Code Section 1114A. that do not impact the historical structure of the building may also be considered. They should be designed and constructed to meet the accessibility provisions in the California Building Code or the California Historic Building Code. Additionally, the ramp(s) should be easily removable when the ramp(s) are no longer needed for the requested modification.
- (3) **Elevators.** Elevators, dimensions defined in Building Code Section 1124A, may be considered for an administrative variance reasonable modification if the elevator structure is not visible from the public right of way; and is set back 10 feet from the property line. Elevators must be necessary for applicants to access residential uses of the building and must be necessary to achieve the modification requested.
- (4) **Additional Habitable Space.** Additional habitable space will also be considered under administrative reasonable modification provided that the additional space does not result in the addition of a new dwelling unit or require expansion beyond the permitted buildable envelope.

Requests for reasonable modifications in residential uses that do not meet the criteria described above would continue to be reviewed through the existing variance process as described in Section 305 of the Planning Code.

Note that in both the administrative and standard variance procedure if the modification impacts a building that is listed in or eligible for listing in a local, state, or federal historic resource register, then the modifications will be reviewed to ensure conformance with the Secretary of the Interior Standards for the Rehabilitation of Historic Properties by the Planning Department's Historic Preservation Technical Specialists.

This ordinance also proposes a hardship fee waiver for reasonable modification requests for residential uses. If for some reason, an applicant cannot pay the required fee for either Administrative Reasonable Modification or the Standard Variance procedure under Reasonable Modification, a fee waiver may be granted on a case by case basis. Note that the fees involved in building the requested modification is the responsibility of the applicant.

Background:

As part of the 2014 Housing Element, the City of San Francisco is required to enact legislation to enable persons with disabilities to access reasonable modifications for their homes. Adoption of a local ordinance was called for in the 2009 Housing Element. specifically *“Implementation Measure # 39: Planning will develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation as exceptions to the City’s Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps of lifts and other non-physical accommodations.”*

The Housing Element is a required component of the City’s General Plan. The Element provides the policy background for housing programs and decisions, and provides broad direction towards meeting the City’s housing goals. It serves to showcase the City’s approach to providing sufficient and healthy housing for current and future San Francisco residents. Housing element law requires local government to adequately plan for existing and projected housing needs of all economic sectors of the community, and San Francisco has embraced this as an opportunity for a community-based vision for housing. Adoption of the Housing Element for every jurisdiction guarantees certain State funding toward affordable housing and open space, including programs geared toward down payment assistance, community development block grants, and grant funds to repair or build new parks near housing that has been constructed for very low or low-income households.

The Federal Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require local governments to make reasonable modifications in zoning and land use laws and regulations when such modifications “may be necessary to afford” disabled persons “an equal opportunity to use and enjoy dwelling.” 42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(1).) Local jurisdictions zoning and land use regulations are subject to both FHA and FEHA.

In San Francisco if a person with a disability requests a reasonable modification they are subject to the standard variance procedure detailed in section 305. In the current planning code, it does not specify what options are available to persons with disabilities if they are seeking modifications covered under both federal and state law. The purpose of this ordinance is to provide a path for persons with disabilities to request modifications necessary to access housing.

Initial meetings and conversations with Current Planners, the Zoning Administrator, other Cities, and the Mayor's Office of Disability revealed there were a few modifications that were discussed repeatedly, namely, ramps, parking, and elevators. Elevators and ramps are useful for people with physical disabilities by allowing access to the home itself and to multiple floors of a residential property. This ordinance proposes a program that allows administrative review for elevators that are limited in location and scale. Parking spaces enable people to access their homes, by limiting the distance necessary to travel between their vehicle and home.

The policy implications of administratively approving modifications such as parking were discussed to understand how much parking should be allowed and how to discourage abuse by persons who do not have a disability from requesting reasonable modifications. This ordinance includes guidelines, for example, parking with no physical structure, and elevators if the elevator structure is not visible from the public right of way and is set back 10 feet from the property line.

Other reasonable modifications that were discussed with the Mayor's Office of Disability included increasing the density on a lot to provide housing for a caregiver. This ordinance does not allow for the addition of a housing unit, however as part of an administrative reasonable modification, an applicant can add habitable space, within the permitted building envelope under this ordinance.

Persons with a Disability

Currently, the US census defines Americans with disabilities using a set of six questions to identify a "serious difficulty" with four basic areas of functioning-hearing, vision, cognition, and ambulation. The 2010 Census estimated almost 49,000 non-institutionalized adults having a physical disability, which is defined as a condition that substantially limits one or more basic physical activities, such as walking, climbing stairs, reaching, lifting or carrying. Well over half of adults with disabilities are over 65 and may require appropriate housing. There are over 19,600 people between 18 and 64 with a physical disability.

Individuals with a disability may require special housing accessible housing with features such as: wheelchair accessible entrances, wide interior spaces for wheelchair circulation, accessible bathing facilities, adjustable heights for counters and cabinets, and other amenities. Since almost three-quarters of San Francisco's housing stock was built before 1950, much of the existing stock was not built with these modifications in mind; some, but not most, can easily be converted to accessible standards.

This ordinance provides a path for individuals to apply for a reasonable modification under two scenarios. The administrative process provides a streamlined path for the most common scenarios and is based on past cases and conversations with the Mayor's Office of Disability. The standard variance exists for situations that are outside the most common scenarios listed.

REQUIRED COMMISSION ACTION

Adopt amendments to the Planning Code. The proposed ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modification to the Board of Supervisors.

PUBLIC COMMENT

The Planning Department has not received public comment on this issue.

This legislation was developed in coordination with the Mayor's Office of Disability. Planning Staff met with the office on two separate occasions and MOD has provided comment on the ordinance to planning staff.

RECOMMENDATIONS

The Department recommends that the Commission recommend approval of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

As part of the state mandated Housing Element, the California Department of Housing and Community Development (HCD) requires municipalities "where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities." To meet this requirement, the San Francisco Planning Department has drafted, as called for in the 2009 Housing Element, a local ordinance, such as the one described above. Additionally, the ordinance provides a path for the most common types of modifications requested for persons with disabilities.

ENVIRONMENTAL REVIEW

The proposed Ordinance is covered under Case No. **2014.0156E**, and would be exempt from environmental review under the General Rule Exclusion (GRE), pursuant to CEQA Guidelines Section 15061(b)(3). The GRE is attached in Exhibit C.

RECOMMENDATION:	Recommendation of Adoption
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Attachments:

Exhibit A: Draft Ordinance

Exhibit B: Draft Planning Commission Resolution

Exhibit C: Environmental Review: General Rule Exclusion