

1 [Planning Code - Procedure for Requesting Modification of Code Requirements or Planning
2 Department Practices and Procedures to Accommodate a Disability]

3 **Ordinance amending the Planning Code to establish a process for making and acting**
4 **upon requests for reasonable modification of a Planning Code requirement or a**
5 **Department policy, practice, or procedure to accommodate a disability pursuant to**
6 **federal and state fair housing laws; and affirming the Planning Department's California**
7 **Environmental Quality Act determination and making findings of consistency with the**
8 **City's General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font.*
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font.*
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font.~~
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Section 21000 et seq.). The Board of Supervisors hereby affirms this determination.
22 Said determination is on file with the Clerk of the Board of Supervisors in File No. 141237 and
23 is incorporated herein by reference.

24 (b) On November 20, 2014, the Planning Commission, in Resolution No. 19282,
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City’s General Plan and the priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. 141237.

4 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these
5 Planning Code amendments will serve the public necessity, convenience and welfare for the
6 reasons set forth in Planning Commission Resolution No. 19282 and the Board of Supervisors
7 hereby incorporates such reasons herein by reference. A copy of Planning Commission
8 Resolution No. 19282 is on file with the Clerk of the Board of Supervisors in File No. 141237.

9
10 Section 2. The Planning Code is hereby amended by adding Section 305.1, to read as
11 follows:

12 **SEC. 305.1. Requests for Reasonable Modification - Residential Uses.**

13 *(a) Purpose. It is the policy of the City and County of San Francisco to comply with the*
14 *Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment*
15 *and Housing Act by reasonably modifying its regulations, policies, practices and procedures for people*
16 *with disabilities. The City and County of San Francisco also recognizes the importance of sustaining*
17 *and enhancing our city’s neighborhood character. In determining whether a requested modification is*
18 *reasonable, the City will consider, among other relevant factors, the extent to which the requested*
19 *modification might fundamentally alter its existing zoning or regulations. The purpose of this Section*
20 *305.1 is to establish a process for making and acting upon requests for reasonable modifications to the*
21 *regulations, policies, practices, and procedures of the Planning Department and Code.*

22 **(b) Application.**

1 (1) Requests for reasonable modification can be made for residential uses in any zoning
2 district in the City and County of San Francisco in accordance with the procedures outlined in this
3 Section 305.1.

4 (2) An applicant may seek a modification through this Section 305.1. for an alteration
5 that is available under other sections of this Code, in which case a modification under this Section shall
6 be in lieu of any approval, permit or entitlement that would otherwise be required. An application
7 under this Section may also seek a modification that is not available under any other sections of the
8 Planning Code.

9 (c) Procedure.

10 (1) Request for a Modification. A person with a disability who requests a modification
11 in the application of the Planning Code to ensure having equal access to housing must initiate the
12 request by providing the required information to the Department. The Department shall maintain a
13 form, known as the Reasonable Modification Form, which will detail the process for seeking a
14 modification and identify the information that must be submitted to the Department in connection with
15 the request for modification.

16 (2) Content of Application. The application shall be in accordance with the policies,
17 rules and regulations of the Planning Department, Zoning Administrator, and Planning Commission. In
18 addition to any other information that is required under this Section 305.1, the applicant shall complete
19 the Reasonable Modification Form. The form shall at a minimum include the applicant's contact
20 information and a description of the need for the requested modification including an identifiable
21 relationship, or nexus, between the requested modification and the individual's disability. This
22 information is required for the administrative reasonable modification process and the standard
23 reasonable modification variance procedure.

24 (3) ADA Accommodation in Making Request. If an individual needs assistance in
25 making the request for a reasonable modification, the individual should notify the Department, which

1 will then endeavor to provide the assistance necessary to ensure that the process is accessible to the
2 applicant or applicant's representative.

3 (d) **Request for Administrative Reasonable Modification - No Hearing.** In an effort to
4 expedite the processing and resolution of reasonable modification requests, any request that is
5 consistent with the criteria in this section may receive administrative review and approval. Requests for
6 modifications that meet the requirements for administrative review do not require public notice under
7 Section 306 of this Code.

8 (1) **Parking, where no physical structure is proposed.** One parking space may be
9 considered for an administrative reasonable modification provided that the parking space is necessary
10 to achieve the accommodation and that property does not already include a parking space. Exceptions
11 may be considered from rear yard and the front setback requirements if necessary to accommodate the
12 parking space. In reviewing an administrative reasonable modification request for parking, the Zoning
13 Administrator is authorized to allow the parking space for up to five years, at the end of which period
14 the applicant may renew the temporary use for additional five-year periods.

15 (2) **Access Ramps.** One or more access ramps, defined in Building Code Section 1114A
16 may be considered for an administrative reasonable modification provided that the access ramp is
17 designed and constructed to meet the accessibility provisions in either the California Building Code or
18 the California Historical Building Code and is easily removable when the ramp(s) are no longer
19 needed for the requested modification.

20 (3) **Elevators.** One elevator, with dimensions defined in Building Code Section 1124A,
21 may be considered for an administrative reasonable modification provided that the elevator structure is
22 not visible from the public right of way and is set back a minimum of 10 feet from the property line, and
23 that the elevator is necessary to access residential uses of the building and to achieve the
24 accommodation requested.

1 (4) **Additional habitable space.** Additional habitable space may be considered for an
2 administrative reasonable modification provided that the additional habitable space does not result in
3 the addition of a new dwelling unit or require expansion beyond the permitted building envelope.

4 (e) **All Other Requests for Reasonable Modification - Zoning Administrator Review and**
5 **Approval.**

6 (1) **Standard Variance Procedure - With Hearing.** Requests for reasonable
7 modifications that do not fall within Subsection (d) shall be considered by the Zoning Administrator,
8 who will make the final decision through the existing variance process described in Section 305.

9 (2) **Public Notice of a Request for Reasonable Modification.** Notice for reasonable
10 modifications that fall with subsection (e)(1) are subject to the notice requirements of Section 306. If
11 the request for reasonable modification is part of a larger application, then the noticing can be
12 combined.

13 (f) **Determination.**

14 (1) **Zoning Administrator Authority.** The Zoning Administrator is authorized to
15 consider and act on requests for reasonable modification, whether under Subsection (d) or Subsection
16 (e). The Zoning Administrator may conditionally approve or deny a request. In considering requests
17 for reasonable modification under this Section 305.1, the Zoning Administrator shall consider the
18 factors in Subsection (f)(2).

19 (2) **Criteria for Modification.** When reviewing a request for reasonable modification,
20 the Zoning Administrator shall consider whether:

21 (A) the requested modification is requested by or on the behalf of one or more
22 individuals with a disability protected under federal and state fair housing laws;

23 (B) the requested modification will directly enable the individual to access the
24 individual's residence;

1 (C) the requested modification is necessary to provide the individual with a
2 disability an equal opportunity to use and enjoy a dwelling;

3 (D) there are alternatives to the requested modification that would provide an
4 equivalent level of benefit;

5 (E) the requested modification will not impose an undue financial or
6 administrative burden on the City as “undue financial or administrative burden” is defined under
7 federal and state fair housing laws.

8 (F) the requested modification will, under the specific facts of the case, result in
9 a fundamental alteration in the nature of the Planning Code or General Plan, as “fundamental
10 alteration” is defined under federal and state fair housing laws.

11 (G) the requested modification will, under the specific facts of the case, result in
12 a direct threat to the health or safety of others or cause substantial physical damage to the property of
13 others.

14 (3) **Residential Design Guideline Review.** If the proposed project is in a zoning district
15 that requires residential design guideline review, the Department shall complete the design review and
16 make appropriate recommendations, while also accommodating the reasonable modification.
17 Approvals are subject to compliance with all other applicable zoning or building regulations.

18 (4) **Historic Resource Review.** If the proposed project would affect a building that is
19 listed in or eligible for listing in a local, state, or federal historic resource register, then the
20 modifications, either through the administrative reasonable modification process or the standard
21 reasonable modification variance procedure, will be reviewed by the Planning Department’s Historic
22 Preservation Technical Specialists to ensure conformance with the Secretary of the Interior Standards
23 for the Rehabilitation of Historic Properties.

24 (5) **Written Decision.** Upon issuing a written decision either granting or denying the
25 requested modification in whole or in part, the Zoning Administrator shall forthwith transmit a copy

1 thereof to the applicant. The action of the Zoning Administrator shall be final and shall become
2 effective 10 days after the date of the written decision except upon the filing of a valid appeal to the
3 Board of Appeals as provided in Section 308.2.

4 (g) Fees. The fee for a reasonable modification request is the fee for a variance set forth in
5 Section 352(b) of this Code . If an applicant can demonstrate financial hardship, the Department may
6 waive or reduce the fee pursuant to Section 352(e)(2) of this Code.

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8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

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13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 JUDITH A. BOYAJIAN
17 Deputy City Attorney

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