

## **ORDINANCE AMENDING TITLE III, DIVISION 1, CHAPTER 2 OF HUMBOLDT COUNTY CODE SECTION 312-42**

### **SECTION 1. PURPOSE OF ZONING REGULATION AMENDMENTS.**

Title III, Division 1, Chapter 2 of the Planning Regulations: amending Section 312-42 - Requests for Modifications or Exceptions for Residential Accessibility, and retitling it as Requests for Reasonable Accommodation for Residential Accessibility, which establishes procedures, standards, and requirements for the intake, processing, and approval of requests for reasonable accommodations specific to housing, in accordance with the California Fair Employment and Housing Act, California Government Code Section 11135, the Federal Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

### **SECTION 2. Chapter 2 - Table of Contents**

Section 312-42 of the Table of Contents in Title III, Division 1, Chapter 2 of the Humboldt County Code is hereby amended as follows (modifications deleting text are shown in strike out and additions as underlined text):

312-42       ~~Requests for Modifications or Exceptions for Residential Accessibility~~  
Requests for Reasonable Accommodation for Residential Accessibility

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## SECTION 3. Chapter 2 - Requests for Modifications or Exceptions for Residential Accessibility

Section 312-42 regarding Requests for Modifications or Exceptions for Residential Accessibility in Title III, Division 1, Chapter 2 of the Humboldt County Code is hereby amended as follows (modifications deleting text are shown in strike out and additions as underlined text):

### **312-42      ~~REQUESTS FOR MODIFICATIONS OR EXCEPTIONS FOR RESIDENTIAL ACCESSIBILITY~~ Requests for Reasonable Accommodation for Residential Accessibility**

~~42.1 A person who is disabled pursuant to the Americans with Disabilities Act of 1990 may request modification or exception from specific development standards for principal zones, including minimum yard setbacks, maximum ground coverage and maximum building height, in the event of an unexpected need to make their residence accessible consistent with the Housing Accessibility Guidelines of the 2007 California Building Code and its successors located at 24 CFR 1101A et seq. The request may be made by a family member, domestic partner or agent on behalf of a disabled permanent resident of the home. (Ord. 2407, § 2, 12/16/2008)~~

~~42.2 The person requesting the modification or exception from a specific development standard of a principal zone to make their home accessible shall provide the Director of Community Development Services a written request for the modification or exception which includes all of the following: (Ord. 2407, § 2, 12/16/2008)~~

~~-the nature of the disability; (Ord. 2407, § 2, 12/16/2008)~~

~~-which resident of the home has the disability; (Ord. 2407, § 2, 12/16/2008)~~

~~-what modification or exception the applicant is requesting; (Ord. 2407, § 2, 12/16/2008)~~

~~-the impact the existing regulation or standard has on the applicant; (Ord. 2407, § 2, 12/16/2008)~~

~~-any other methods or actions considered by the applicant to provide necessary relief; and; (Ord. 2407, § 2, 12/16/2008))~~

~~-why those methods or actions were not found to be feasible. (Ord. 2407, § 2, 12/16/2008)~~

~~42.3 Upon finding the request complete, and following consultation with any knowledgeable party or parties as determined appropriate, the Director may process the request for a modification or exception of a specific development standard of a principal zone according to the procedures for Special Permits. The applicant must obtain all other applicable permits, including Coastal Development Permits, for the development to be accommodated by the request. If this determination of modification or exception is related to a discretionary land use project, the matter may be taken to the hearing officer ahead of the project as a whole, so as to expedite review and render a decision on which other permit findings may be dependant. (Ord. 2407, § 2, 12/16/2008)~~

~~42.4 In addition to the findings for approving Special Permits, approval of a request for a modification or exception from a specific development standard of a principal zone for residential accessibility shall include the following findings;~~

~~-the modification or exception is in conformance with the General Plan, and, if in the Coastal Zone, is in conformance with the Certified LCP; (Ord. 2407, § 2, 12/16/2008)~~

~~-if located in the Coastal Zone, the modification or exception involves no potential for any adverse effects, either individually or cumulatively, on coastal resources, (Ord. 2407, § 2, 12/16/2008)~~

~~-the modification or exception is not detrimental to public health, safety, or welfare; (Ord. 2407, § 2, 12/16/2008)~~

~~-the modification or exception conforms with all applicable standards and requirements of the California Building Code; (Ord. 2407, § 2, 12/16/2008)~~

~~-the modification or exception results in the only feasible design for accessibility; and (Ord. 2407, § 2, 12/16/2008)~~

~~-the modification or exception will provide residential accessibility for a disabled resident of the home consistent with the Housing Accessibility Guidelines of the 2007 California Building Code and its successors. (Ord. 2407, § 2, 12/16/2008)~~

#### **42.1 Purpose.**

This Section implements goals, policies, and programs of the County's adopted 2019 Housing Element of its General Plan. This Section provides a procedure for individuals with disabilities to request Reasonable Accommodations, consistent with the California Fair Employment and Housing Act, California Government Code Section 11135, the Federal Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, (referred to in this Section as the "Acts"), and as they may be amended from time to time. It is the intent of this Section to meet the requirements of federal and State law, including Affirmatively Furthering Fair Housing (AFFH), to ensure that individuals with disabilities have an equal opportunity to use and enjoy housing, including public and common use spaces, by allowing reasonable accommodation(s) with respect to the County's land use and zoning regulations, policies, practices, and procedures and, if necessary, eliminate barriers in housing opportunities.

#### **42.2 Applicability.**

The provisions of this chapter shall apply to all housing types in any zoning district within the unincorporated areas of the County. This chapter is intended to apply to any person who requires a reasonable modification because of a disability. A request for a reasonable modification may include, but is not limited to, a modification or exception to the rules, standards and practices of this title for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide an individual with a disability with equal opportunity to housing of their choice.

In order to remove barriers to fair housing opportunities, a person with a disability, their authorized representative, or a provider or developer of housing for individuals with disabilities may request reasonable accommodation relating to the various land use and zoning laws, rules, policies, practices, and procedures of the County. A request for reasonable accommodation(s) may include a 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. A request may be filed at any time that the accommodation(s) may be necessary to ensure equal access to housing. If the project for which the request is being made also requires some other planning or building permit or approval, then the applicant may file the request together with the application for such permit or approval.

### **42.3 Definitions**

"Person with a Disability" is any person who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.

"Request for Reasonable Accommodations" means a request to modify land use, zoning and building regulations, policies, practices, or procedures in order to give individuals with disabilities an equal opportunity to use and enjoy a dwelling, so long as the requested accommodation would not require a fundamental alteration in the nature of the County's land use and zoning regulations, policies, practices, and procedures, and the County's certified Local Coastal Program.

### **42.4 Notice to the Public of Availability of Accommodation Process.**

Notice of the availability of reasonable accommodation shall be prominently displayed at public information counters in the Planning and Building Department, 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 Department. All notices and forms shall be available in plain language and, with written or verbal notice at least 72 hours prior, individuals with qualified communication disabilities may request an appropriate auxiliary aid or service, as described in the Humboldt County ADA Compliance Effective Communication Policy.

### **42.5 Application Requirements.**

The applicant shall submit a request for reasonable accommodation to the Director or their designee. If the applicant cannot readily determine required information in Sections 42.5.1.4 through 42.5.1.6 below, the applicant may submit the request without this information and Planning and Building Department staff shall assist in finalizing this information to the extent possible.

42.5.1 All requests for reasonable accommodation shall include the following information:

42.5.1.1 The applicant's name, address, and telephone number;

42.5.1.2 Name, address, and telephone number of the property owner;

42.5.1.3 Current address of the property for which the request is being made;

42.5.1.4 Assessor's Parcel Number(s) of the property for which the request is being made;

42.5.1.5 The current actual use of the property;

42.5.1.6 Description of the requested accommodation and the code provision, regulation or policy from which accommodation is being requested;

42.5.1.7 Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling; and

42.5.1.8 If the applicant's disability or disability-related need for the accommodation is not known by or obvious to the Director or their designee, then the applicant may provide verification through self-certification or a reliable third party consistent with the Title 2 Division 4.1, Chapter 5, Subchapter 7, Article 18 Section 12178 of the California Code of Regulations.

42.5.1.8.1 Any and all County requests for additional information about an individual's disability or the disability-related need for the accommodation shall conform with Title 2 Division 4.1, Chapter 5, Subchapter 7, Article 18 Section 12178 of the California Code of Regulations.

42.5.2. Filing Fee: No application fee shall be required to file or process a request for reasonable accommodation; however, application fees for any related permit or variance application and any other permits that may be required to construct or otherwise implement the reasonable accommodation shall be required.

42.5.3 Upon request of the applicant or their designee, County staff will be available to assist with the completion of a reasonable accommodation request to ensure the request process is accessible to the applicant. The act of County staff assisting with the completion of an accommodation request does not guarantee that the reasonable accommodation request will be granted by the Director or their designee.

42.5.4 Any information submitted, reviewed, or prepared as part of considering and responding to a reasonable accommodation request shall be kept confidential, shall be retained by the County in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection, except as provided in Section 42.9 below.

## **42.6 Review Authority and Procedures.**

42.6.1 The Director or their designee shall have the authority to consider and approve, approve with conditions, or deny applications for reasonable accommodation consistent with this Section. When a request for reasonable accommodation is filed with the County, it shall be referred to the Director or their designee for review and consideration.

42.6.2 A request for reasonable accommodation shall be processed and considered separately from any required zoning clearance certificate or entitlement under Title III, Division 1, Chapter 2, Sections 312-3, 312-11, and 312-50 (Required permits and Variances, Minor Deviations, Modifications and Extensions, and Amendments to the Zoning Regulations and Zoning Maps) and Title III, Division 2 (Subdivision) that may be necessary to construct or otherwise implement the reasonable accommodation, including grading and building permits. However, the request for a reasonable accommodation cannot be effectuated or implemented until a final decision is rendered on the required zoning clearance certificate or entitlement, including grading and building permits.

42.6.3 The Director or their designee shall issue a written determination within thirty (30) calendar days following the submittal of a complete application and may (1) approve the accommodation request or an equally effective accommodation agreed upon with the requestor pursuant to Section 42.8, or (2) deny the request in compliance with Section 42.7.1 below.

42.6.3.1 If the final decision rendered on the required zoning clearance certificate, permit, variance or other land use entitlement, including grading and building permits, necessitate modification of the accommodation request, the applicant shall have the opportunity to modify the accommodation request and the right to appeal the Director's or their designee's determination on the modified accommodation request in accordance with Section 42.9.

42.6.4 In reviewing a request for a reasonable accommodation, the Director or their designee shall consider information in the completed reasonable accommodation application, the findings in Section 42.7.1, and any additional information consistent with this Section and/or State and federal law. The Director or their designee shall

consult with the County's Americans with Disabilities Act (ADA) Coordinator during the review period.

42.6.5 **Stays.** In addition to Subsection 42.5.1, if necessary to reach a determination on the request for reasonable accommodation, the Director or their designee may request further information consistent with the Acts and Title 2 Division 4.1, Chapter 5, Subchapter 7, Article 18 Section 12178 of the California Code of Regulations from the applicant. The request for further information shall be made in writing and specify in detail the information that is required. In the event that a request for additional information is made, the thirty (30) calendar day period for the Director or their designee to issue a decision shall be stayed until the applicant responds to the request.

42.6.5.1 Additional information shall not be requested as a means to postpone the timeline for a decision.

42.6.6 **Impact on Other Laws.** While a request for reasonable accommodations is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

## **42.7 Findings and Decision.**

42.7.1 A decision to grant or deny a reasonable accommodation request shall be consistent with the Acts, based upon, but not limited to, the following findings, and made in writing:

42.5.7.1.1 The housing that is the subject of the requested accommodation will be used by an individual protected under the Acts;

42.5.7.1.2 The requested accommodation will afford an individual with a disability under the Acts an equal opportunity to use and enjoy a specific dwelling;

42.5.7.1.3 The requested accommodation would not impose an undue financial and administrative burden on the County;

42.5.7.1.4 The requested accommodation would not require a fundamental alteration to the land use or zoning laws, policies or procedures of the County, and for housing in the Coastal Zone, the County's certified Local Coastal Program;

42.5.7.1.5 For housing in the Coastal Zone, the requested accommodation would not have significant adverse impacts on coastal resources; and



42.5.7.1.6 The requested accommodation would not constitute a direct threat to the health or safety of others, nor would it cause substantial physical damage to the property of others. This finding shall be made unless objective evidence (not unsubstantiated inferences) suggests otherwise. Analysis must consider the following elements:

42.5.7.1.6.1 The nature, duration, and severity of the risk of a direct threat to the health or safety of others or of substantial physical damage to property of others;

42.5.7.1.6.2 The likelihood that a direct threat to the health or safety of others or substantial physical damage to the property of others would actually occur; and

42.5.7.1.6.3 Whether additional or reasonable accommodations would eliminate a direct threat to the health or safety of others or substantial damage to the property of others.

42.7.2 **Conditions of Approval.** In approving a request for reasonable accommodation, the Director or their designee may impose any nondiscriminatory conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required by Subsection 42.7.1 of this Section. In order to impose conditions of approval, the Director or their designee shall engage in the interactive process with the applicant and meet the requirements of Section 42.8. Additionally, the approved request for reasonable accommodation shall only be granted to an individual and shall not run with the land unless authorized pursuant to Subsection 42.10.4.

42.7.3 **Notice of Decision.**

42.7.3.1 Notice of decision on the request for reasonable accommodation shall be given within five (5) working days of the Director's or their designee's written decision.

42.7.3.2 Notice shall be provided in accordance with section 312-6.7, Notice of Decision.

42.7.3.3 The Notice shall include the Director's or their designee's written findings and any other relevant information upon which the decision is based.

42.7.3.4 The Notice shall inform the applicant of the right to appeal and the procedures for appeal, and the right to request reasonable accommodations in the appeals process.

#### **42.8 Alternative Reasonable Accommodations.**

42.8.1 When the Director or their designee determines that a request for reasonable accommodation would impose an undue financial and administrative burden on the County and/or would require a fundamental alteration to the zoning or building laws, policies or procedures of the County, the Director or their designee must engage in an interactive process with the person seeking the accommodation to determine if there is another reasonable accommodation that may provide an equivalent level of benefit.

#### **42.9 Appeal Filing and Procedures.**

42.9.1 Requests for reasonable accommodations not involving one or more unrelated land use permits or entitlements, a decision by the Planning Director, or their designee, shall become final ten (10) calendar days after the date of the Director or their designee issues a decision, unless appealed to the Board of Supervisors by the applicant in accordance with Section 42.9.3. In the event that the last date of appeal falls on a weekend, holiday or when County offices are closed, the next date such offices are open for business shall be the last date of appeal.

42.9.2 For requests for reasonable accommodation involving one or more land use permits, the Planning Director or their designee shall act on the request for reasonable accommodation, subject to the appeal process described in Section 42.9.3 through 42.9.5. The appeal period shall run from the date of the denial of the variance, permit or other entitlement or denial of the reasonable accommodation request, whichever is later.

42.9.3 Within thirty (30) days of the date the Director or their designee issues a written decision on the accommodation request, the applicant requesting the accommodation may appeal an adverse determination or any conditions or limitations imposed in the written determination. All appeals shall contain a statement of the grounds for the appeal.

42.9.3.1 If an appellant needs assistance in filing an appeal, the County shall provide the assistance that is reasonable and necessary to ensure that the appeal process is accessible to the applicant.

42.9.3.2 The County shall not collect or charge the appellant, or their representative, a fee to file or process a reasonable accommodation appeal.

42.9.4 Any information submitted as part of an appeal and corresponding reasonable accommodation request shall be kept confidential and shall be retained by the County in a manner so as to respect the privacy rights of the applicant and not be made available for public inspection except as provided by Title 2 Division 4.1, Chapter 5, Subchapter 7, Article 18 Section 12176(e) of the California Code of Regulations.

42.9.5 Appeals shall be to the Board of Supervisors who shall consider the matter de novo and render a determination as soon as reasonably practicable, but in no event later than sixty (60) calendar days after an appeal has been filed. Following the filing of an appeal, the Board of Supervisors shall hold a public hearing on the matter to consider the appeal consistent with the Ralph M. Brown Act, Title 5, Division 2, Part 1, Chapter 9, Sections 54950 through 54963 of the California Government Code and 2 CCR Section 12176(e). All determinations and conditions of approval on an appeal shall address and be based upon the same findings and requirements of Sections 42.7.1 and 42.7.2. herein. A determination by the Board of Supervisors shall be final in all respects. Any appeal of the Board of Supervisor's determination shall be governed by California Code of Civil Procedure Section 1094.6, as such section may be amended from time to time.

#### **42.10 Expiration of Reasonable Accommodation.**

42.10.1 A Reasonable Accommodation that is not used within the time specified in the notice of decision, or within two (2) years after the date of grant if no time is specified, shall expire and be of no further effect, except:

42.10.1.1 The Director or their designee may extend the time to use it for a period not to exceed one (1) year, provided an application requesting such extension is filed prior to its expiration date.

42.10.2 A Reasonable Accommodation shall be considered used within the intent of this Section when the authorized construction, development, or use has commenced.

42.10.3 A Reasonable Accommodation shall automatically cease to be of any further force and effect if the use for which it was granted has ceased or has been suspended for a consecutive period of two (2) or more years and may be required to be physically removed in accordance with Section 42.7.2, unless the Director or their designee first determines that:

42.10.3.1 The modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this Zoning Ordinance; or

42.10.3.2 The accommodation is to be used by another qualifying individual with a disability.

42.10.4 The Director or their designee may request the applicant or the successor(s)-in-interest to the property to provide documentation that the subsequent occupants are qualifying persons with disabilities. Failure to provide the documentation within thirty (30) days following the date of a request by the reviewing authority shall constitute grounds for discontinuance by the County of a previously approved reasonable accommodation.