



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, April 10, 2012
Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Armstrong to report at the City Council meeting on April 17, 2012.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of March 13, 2012.

Public Hearing

- 3. **ZOA 01-12, Reasonable Accommodations Ordinance, City of Clayton.** Consideration of proposed Ordinance No. 439 that would add Chapter 15.90 to the Clayton Municipal Code which establishes a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use, zoning, or building standards, regulations, policies, and procedures, and to establish relevant criteria for the City to use when considering such requests.

Proposed Action: Review and recommend City Council approval of draft Ordinance No. 439.

Old Business

- 4. None.

New Business

- 5. None.

Communications

- 6A. Staff.
- 6B. Commission.

Adjournment

- 7. The next meeting of the Planning Commission is scheduled for **Tuesday, April 24, 2012.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present. Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
Clayton Planning Commission Meeting
Tuesday, March 13, 2012

Call to Order

Chair Dan Richardson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Dan Richardson, Commissioner Bob Armstrong, Commissioner Sandra Johnson, and Commissioner Gregg Manning

Absent: Vice Chair Keith Haydon

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Commissioner Johnson to report at the City Council meeting on March 20, 2012.

Public Comment

None.

Approval of Minutes

2. Approval of minutes from the meeting of February 28, 2012.

Commissioner Armstrong moved and Commissioner Manning seconded a motion to approve the minutes, as submitted. The motion passed 4-0.

Public Hearing

3. **ENV 01-12, GPA 03-11, SPA 01-12, ZOA 06-11, Housing Element Implementation Project, City of Clayton.** The Clayton Community Development Department has scheduled a public hearing regarding the proposed Housing Element Implementation Project which includes consideration of the following (*This item was continued from the meeting of February 28, 2012*):

- Adoption of an Initial Environmental Study/Mitigated Negative Declaration, prepared in accordance with the California Environmental Quality Act, which analyzes the potential impacts caused by the Housing Element Implementation Project and identifies various measures to mitigate these impacts;
- General Plan Amendment to create a Multi-Family High Density designation allowing 15.1 – 20 dwelling units per acre;
- Town Center Specific Plan Amendment to create a Multi-Family High Density designation allowing 15.1 – 20 dwelling units per acre;
- Zoning Ordinance Amendment to create a Multi-Family Residential High (M-R-H) classification allowing 15.1 – 20 dwelling units per acre;
- General Plan Amendments and Zoning Ordinance Amendments to redesignate/reclassify specified properties to a Multi-Family High Density allowing 15.1 – 20 dwelling units per acre (APNs 119-021-013, 119-021-019, 119-021-020, 119-021-054, 119-021-055, 119-021-063, and 120-015-011);

- Zoning Ordinance Amendment to add separate definitions for supportive and transitional housing and allowing supportive and transitional housing as a permitted use subject to the residential standards of the district;
- Zoning Ordinance Amendment to allow SRO's (single room occupancy residential units) in the Limited Commercial zone subject to a Conditional Use Permit;
- Zoning Ordinance Amendment to only allow single-family homes in the Multi-Family residential zoning districts with a Conditional Use permit; and
- Zoning Ordinance Amendment to remove the number of persons per household limit.

The Initial Environmental Study/Mitigated Negative Declaration may be reviewed starting Tuesday, February 21, 2012, commencing the 30-day review period on the document, on the City of Clayton website at www.ci.clayton.ca.us or at the City of Clayton Community Development Department located at 6000 Heritage Trail, Clayton, California. You may also contact David Woltering, Community Development Director, at 925-673-7343. Written comments on the environmental aspects of the project must be submitted to the City of Clayton Community Development Department, Attention: David Woltering, 6000 Heritage Trail, Clayton, California, 94517, no later than 5:00 p.m. on Wednesday, March 21, 2012.

Director Woltering presented the staff report. During his presentation he reviewed the following:

- Since the February 28, 2012 Planning Commission meeting on this item, staff and Raney Planning and Management (RPM) staff have analyzed the request from Mr. and Mrs. Byrd (presented at the February 28th meeting) regarding changing the land use designation and zoning classification of their property at 1212 Mitchell Canyon Road to allow for higher density residential development. Based on this analysis, staff is recommending that the Byrd property be included in those properties proposed for redesignation to Multiple-Family High Density Residential and reclassified to Planned Development Zoning District. The inclusion of the Byrd property is based on the following:
 - The Byrd property is subject to the same mitigation measures applicable to the other properties analyzed in the Housing Element Implementation;
 - Addition of the Byrd property would create minimal impact;
 - None of the findings or conclusions listed in the Initial Environmental Study/Mitigated Negative Declaration (IES/MND) would change with the addition of the Byrd property;
 - Five additional units were assumed with the Byrd property;
 - Particular attention was given to greenhouse gas emissions in the analysis; and
 - An Errata Sheet, dated March 13, 2012, to the project IES/MND was prepared to address the inclusion of the Byrd property as part of the proposed project and to recommend appropriate mitigation measures to assure that the inclusion of this property would not result in any significant adverse impacts.
- The maximum height allowed for a primary structure in a Multiple-Family High Density Residential District will be 40 feet unless the structure were located within 50 feet of a single-family residential district, then the maximum height would be 35 feet.
- A numbering error in the IES/MND Table of Contents was corrected in the Errata Sheet.
- The submitted Resolution No. 01-12 with attachments.

Commissioner Manning commented that the number indicated under Action 6 on the first page of Resolution No. 01-12 should be changed from “four” to “five”.

Commissioner Armstrong inquired about and indicated the following:

- If the Byrds sell to Seeno (the property owner of the adjoining old fire station property), how could the old fire station property be joined with the Byrd property? *Director Woltering indicated that the mechanisms used to join the two properties would either be the lot line adjustment process or lot merger process in order to remove the interior lot line.*
- What if lots located adjacent to the old fire station and/or Byrd properties would want to join with the old fire station/Byrd properties to allow for higher density residential development? *Director Woltering indicated that, hypothetically, the large lot located east of and adjacent to the old fire station/Byrd properties could be a candidate for that action, but it would require a General Plan Amendment and a Rezone along with a lot merger for that to occur and to allow for a high density multi-family development of the overall property.*
- Does the Multiple-Family land use designation/zoning classification preclude four-plexes? *Director Woltering responded that four-plexes, triplexes, and other multi-unit higher-density residential developments would be allowed under this land use designation/zoning classification.*
- How does foster care fit into the “supportive” housing category? *Director Woltering indicated that foster care is a State-mandated land use, generally considered separately from “supportive” housing.*

The public hearing was opened.

There was no public comment.

The public hearing was closed.

There was a consensus by the Planning Commission that the term “elderly” should be changed to “senior” under the Institutional Density category on Page 1 of Attachment B in Planning Commission Resolution No. 01-12.

Commissioner Manning moved and Commissioner Armstrong seconded a motion to adopt Resolution No. 01-12, with amendments, which recommends City Council approval of the Housing Element Implementation Project Initial Environmental Study/Negative Declaration (ENV 01-12); and approve the text and map amendments to the City’s General Plan, Town Center Specific Plan, and Zoning Ordinance (GPA 03-11, SPA 01-12, ZOA 06-11) related to the Housing Element Implementation Project, subject to conditions and mitigation measures.

The motion passed 4-0.

Communications

6A. Staff.

Director Woltering indicated the following:

- Staff is preparing a draft of the Reasonable Accommodation Ordinance for Planning Commission review.

6B. Commission – None.

Adjournment

7. The meeting was adjourned at 7:41 p.m. to the following regularly-scheduled meeting of March 27, 2012.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Dan Richardson
Chair

Plng Comm\Minutes\2012\0313

PLANNING COMMISSION STAFF REPORT

Meeting Date: April 10, 2012

From: David Woltering, AICP
Community Development Director 

Subject: Amendment of the Clayton Municipal Code to add Chapter 15.90 Regarding Reasonable Accommodations for Individuals with Disabilities (ZOA 01-12)

BACKGROUND

On April 20, 2010, the City Council approved the Clayton 2009-2014 General Plan Housing Element. Subsequently, on July 15, 2010, the State Department of Housing and Community Development (HCD) conditionally certified this Housing Element. This certification is based on the City of Clayton making a good faith effort toward enacting over 30 categories of implementation measures that are described in the Housing Element. One of the Housing Element implementation measures, Implementation Measure IV.3.1, states the following:

“The City will adopt a written reasonable accommodations ordinance to provide exception in zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval of the Community Development Director applying the following decision-making criteria:

- The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws;
- The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing laws;
- The requested accommodation would not impose an undue financial or administrative burden on the City;
- The requested accommodation would not require a fundamental alteration in the nature of the City’s land use and zoning program.” (Pages 123 and 124, Clayton 2009-2014 Housing Element).

The Clayton 2009-2014 Housing Element provides other information as cited below about the City’s intention to encourage housing for those individuals with disabilities and to simplify the City’s related review process:

- On page 46 of the document it is stated that “[o]n April 1, 2008, the City Council of the City of Clayton approved the Americans with Disabilities Act (ADA) Transition Plan. The plan includes an evaluation of current barriers for persons with disabilities and includes steps to remove such barriers. Included in the plan is a process to request accommodations for persons with disabilities. Accommodations are reviewed and approved by the ADA Coordinator on a case

by case basis. The plan meets ADA compliance procedures and does not constrain the development of housing for persons with disabilities.”; and,

- “Reasonable accommodations requests are processed on a case-by-case basis in Clayton. Information is provided to interested persons on an ad hoc basis. All ADA retrofit requirements are processed in the same manner as other types of improvements requiring building and/or planning permits. The City will incorporate a more formalized reasonable accommodations procedure through the development of the 2009-2014 Housing Element Implementation IV.3.1.”

Moreover, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“fair housing laws”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities.

In 2011, the City of Clayton received a request for “reasonable accommodations” from residents regarding their son’s Tourette Syndrome and an exception from Clayton Municipal Code Section 6.05.010.A, which prohibits the keeping of “fowl” in residential districts in the City of Clayton. The City did not have a formalized reasonable accommodations procedure in place nor specified evaluation criteria for decision-making at the time of the request. Staff and the Planning Commission did address the matter and the accommodations were granted with conditions under provisions of the Americans with Disabilities Act (ADA). Both Community Development Department staff and staff from the City Attorney’s office researched the matter and developed a procedure and criteria to address the circumstance.

DISCUSSION

Staff, with the assistance of the City Attorney’s office, has prepared draft Ordinance No. 439 (See **Attached**) to address the requirements of Implementation Measure IV.3.1. As directed in this implementation measure, this proposed Ordinance provides for a formalized procedure to consider reasonable accommodations requests and clear decision-making criteria. The review and approval process is proposed to be administrative (i.e., staff-level), subject to appeal to the Planning Commission. The directive in the implementation measure that there be minimal or no processing fee for these requests will be discussed with the City Council when this matter reaches the Council.

RECOMMENDATION

Staff recommends that the Planning Commission review attached draft Ordinance No. 439, provide comments to staff regarding that draft Ordinance, and, then, adopt Resolution No. 02-12, recommending City Council approval of the draft Ordinance, with modifications, as determined necessary.

Attachment: Resolution No. 02-12 with Ordinance No. 439

**CITY OF CLAYTON PLANNING COMMISSION
RESOLUTION NO. 02-12**

**AMENDMENT OF THE CLAYTON MUNICIPAL CODE TO ADD CHAPTER 15.90
REGARDING REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH
DISABILITIES (ZOA 01-12)**

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“fair housing laws”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities; and

WHEREAS, fair housing laws require that cities provide individuals with disabilities (or their representatives, or developers of housing for people with disabilities) flexibility in the application of land use and zoning regulations; and

WHEREAS, cities are required to identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints, and to have a program that removes constraints on, or provides reasonable accommodations for, such housing; and

WHEREAS, the following provisions of the City of Clayton 2009-2014 General Plan Housing Element reflect the City’s intention to encourage housing for those individuals with disabilities and to simplify the City’s review process for such housing:

- “On April 1, 2008, the City Council of the City of Clayton approved the Americans with Disabilities Act (ADA) Transition Plan. The Plan includes an evaluation of current barriers for persons with disabilities and includes steps to remove such barriers. Included in the plan is a process to request accommodations for persons with disabilities. Accommodations are reviewed and approved by the ADA Coordinator on a case by case basis. The plan meets ADA compliance procedures and does not constrain the development of housing for persons with disabilities.” (Page 46).
- “Reasonable accommodations requests are processed on a case-by-case basis in Clayton. Information is provided to interested persons on an ad hoc basis. All ADA retrofit requirements are processed in the same manner as other types of improvements requiring building and/or planning permits. The City will incorporate a more formalized reasonable accommodations procedure through the development of the 2009-2014 Housing Element Implementation IV.3.1.” (Page 46).
- Implementation Measure IV.3.1 states the following: “The City will adopt a written reasonable accommodations ordinance to provide exception in zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval of the Community Development Director applying the following decision-making criteria:
 - The request for reasonable accommodations will be used by an individual with a disability protected under fair housing laws.
 - The requested accommodations are necessary to make housing available to an individual with a disability protected under fair housing laws.
 - The requested accommodation would not impose an undue financial or administrative burden on the City.

- o The requested accommodations would not require a fundamental alteration in the nature of the City's land-use and zoning program." (Pages 123 and 124); and

WHEREAS, Government Code section 65583 requires that the Housing Element address and, where appropriate and legally possible, remove governmental constraints on the maintenance, improvement, and development of housing for individuals with disabilities. This Ordinance, as described in the implementation measure above, will remove constraints to, and provide reasonable accommodations in housing for individuals with disabilities; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on the proposed Ordinance on April 10, 2012 and gave due consideration to all testimony, comments, and documents received regarding the Ordinance; and

WHEREAS, the Planning Commission determined that the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 15061(b)(3) because it does not have the potential for causing a significant adverse effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the City Council approve the attached Ordinance, based on the following:

SECTION 1. The Planning Commission finds and affirms the above-noted recitals are true and correct.

SECTION 2. The Planning Commission finds the following regarding the amendment of the Clayton Municipal Code to add Chapter 15.90 regarding Reasonable Accommodations:

- A. Conforms with the General Plan by satisfying the Clayton 2009-2014 Housing Element Implementation Measure IV.3.1 by establishing a more formalized Reasonable Accommodations procedure with specified evaluation criteria for considering and processing reasonable accommodations requests as defined herein.
- B. Is needed for the public necessity, convenience, and general welfare.

Adopted by the Planning Commission on April 10, 2012.

APPROVED

ATTEST

Dan Richardson
Chair

David Woltering, AICP
Community Development Director

Attachment: Ordinance No. 439

ORDINANCE NO. 439

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA, ADDING CHAPTER 15.90 TO THE CLAYTON MUNICIPAL CODE REGARDING REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES (ZOA 01-12)

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“fair housing laws”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities;

WHEREAS, fair housing laws require that cities provide individuals with disabilities (or their representatives, or developers of housing for people with disabilities) flexibility in the application of land use and zoning regulations;

WHEREAS, cities are required to identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints, and to have a program that removes constraints on, or provides reasonable accommodation for, such housing;

WHEREAS, among other things, the following provisions of the City of Clayton 2009-2014 General Plan Housing Element reflect the City’s intention to encourage housing for those individuals with disabilities and to simplify the City’s related review process:

- “On April 1, 2008, the City Council of the City of Clayton approved the Americans with Disabilities Act (ADA) Transition Plan. The plan includes an evaluation of current barriers for persons with disabilities and includes steps to remove such barriers. Included in the plan is a process to request accommodations for persons with disabilities. Accommodations are reviewed and approved by the ADA Coordinator on a case by case basis. The plan meets ADA compliance procedures and does not constrain the development of housing for persons with disabilities.” (Page 46).
- “Reasonable accommodation requests are processed on a case-by-case basis in Clayton. Information is provided to interested persons on an ad hoc basis. All ADA retrofit requirements are processed in the same manner as other types of improvements requiring building and/or planning permits. The City will incorporate a more formalized reasonable accommodations procedure through the development of the 2009-2014 Housing Element Implementation IV.3.1.” (Page 46).
- Implementation Measure IV.3.1 states the following: “The City will adopt a written reasonable accommodation ordinance to provide exception in zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval of the Community Development Director applying the following decision-making criteria:
 - The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws.
 - The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing laws.
 - The requested accommodation would not impose an undue financial or administrative burden on the city.

- The requested accommodation would not require a fundamental alteration in the nature of the City's land-use and zoning program." (Pages 123 and 124)

WHEREAS, Government Code section 65583 requires that the Housing Element address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for individuals with disabilities. This Ordinance, as described in the implementation measure above, will remove constraints to, and provide reasonable accommodations in housing for individuals with disabilities;

WHEREAS, this ordinance is exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 15061(b)(3) because it does not have the potential for causing a significant adverse effect on the environment;

WHEREAS, the Planning Commission held a duly-noticed public hearing on the proposed ordinance on _____, 2012 and gave due consideration to all testimony, comments, and documents received regarding the Ordinance;

WHEREAS, based on its consideration of the information it received and its deliberation and discussion of the Ordinance, the Planning Commission adopted Resolution No. ___ on _____, 2012, recommending that the City Council adopt the proposed Ordinance;

WHEREAS, on _____ and _____, 2012 the City Council held a duly-noticed public hearings and gave due consideration to all testimony, comments and documents received regarding the Ordinance; and

WHEREAS, the City Council finds that the proposed ordinance is in general conformance with the General Plan and that the public necessity, convenience, health, safety, and general welfare require the adoption of the proposed Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above Recitals are true and correct and hereby incorporated in this Ordinance as if restated in full.

SECTION 2. Chapter 15.90, entitled "Reasonable Accommodations," is hereby added to the Clayton Municipal Code to read as follows:

“Chapter 15.90
Reasonable Accommodations

Sections:

- 15.90.010 Purpose.**
- 15.90.020 Applicability.**
- 15.90.030 Definitions.**
- 15.90.040 Application process.**
- 15.90.050 Review authority.**
- 15.90.060 Review procedure.**
- 15.90.070 Findings and decision.**
- 15.90.080 Appeals.**
- 15.90.090 Expiration, revocation, termination.**
- 15.90.010 Purpose.**

The purpose of this Chapter is to establish a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City’s land use, zoning, or building standards, regulations, policies and procedures and to establish relevant criteria for the City to use when considering such requests.

15.90.020 Applicability.

Any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, may seek relief from any land use, zoning or building standard, regulation, policy or procedure found in Title 15 or Title 17 of this Code to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities by requesting a reasonable accommodation in the manner prescribed in Section 15.90.040.

15.90.030 Definitions.

For the purposes of this Chapter, the following definitions apply:

- A. “Applicant” means an individual who files an application for a reasonable accommodation under this chapter.
- B. “Department” means the Clayton Community Development Department.
- C. “Director” means the Community Development Director or the Director’s designee.
- D. “Fair housing laws” means the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sect. 3601 *et seq.*), the California Fair Employment and Housing Act (Government Code Sect. 12900 *et seq.*), and Civil Code Sect. 54, together with published judicial decisions interpreting such laws.
- E. “Individual with a disability” means an individual with a qualifying disability as defined by the fair housing laws, and generally includes any individual who has, or is regarded as having, any mental or physical impairment, disorder or condition, which substantially limits one or more major life activities, including physical, mental, and social activities and working. “Disabled or individual with a disability” does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

- F. “Reasonable accommodation” means a modification or exception to the standards, regulations, policies and procedures contained in Title 15 or Title 17 of this Code for the siting, development, and use of housing or housing-related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the City or require a fundamental alteration of the City’s planning and zoning program.

15.90.040 Application process.

- A. Application. Requests for a reasonable accommodation must be submitted on an application form provided by the Department, or in the form of a letter addressed to the Director, and must contain the following information:
1. The name, address, and telephone number of the applicant.
 2. The name, address, and telephone number of the individual with the disability for which the reasonable accommodation is being requested.
 3. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made.
 4. The address and current use of the property for which the reasonable accommodation is being made.
 5. If the applicant is someone other than the property owner, a letter of agency or authorization signed by the property owner consenting to the application being made.
 6. The basis for the claim that the individual to be reasonably accommodated is disabled within the meaning of the fair housing laws.
 7. A description of the reasonable accommodation request and the land use, zoning or building standard, regulation, policy or procedure to be modified or waived.
 8. A statement of the reason why the requested accommodation is necessary for the individual with a disability to use and enjoy the dwelling.
- B. Other Discretionary Permits. If the project for which the request for a reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the discretionary permit or approval. The processing procedures applicable to the discretionary permit will govern the joint processing of both the reasonable accommodation and the discretionary permit.
- C. If an individual needs assistance in making a request for a reasonable accommodation, the City will provide assistance to ensure that the process is accessible.
- D. A request for a reasonable accommodation 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 all other applicable regulations that are not being modified in response to in the requested accommodation.

15.90.050 Review authority.

- A. The Director may approve, conditionally approve, or deny an application for a reasonable accommodation for an existing use or a proposed new use that only requires a ministerial permit or approval.
- B. If the project for which the request for a reasonable accommodation is made requires a discretionary permit or approval, then the application for a reasonable accommodation will be heard at the same time as the other discretionary permit or approval.

15.90.060 Review procedure.

- A. Director Review. The Director will issue a written determination to approve, conditionally approve, or deny a request for a reasonable accommodation within thirty (30) days of acceptance of a complete application. The written determination must explain in detail the basis of the decision, including the Director's findings required by Section 15.90.070. The Director must mail written notice of the determination to the applicant, and, as part of such notice, advise the applicant of the right to appeal the determination.
- B. Review By Planning Commission or City Council. If the application for a reasonable accommodation is heard simultaneously with the application for another discretionary approval, the decision to approve, conditionally approve, or deny a request for a reasonable accommodation will be made by the authority taking action on the other discretionary approval. The Planning Commission or City Council must make their decision in accordance with Section 15.90.070.

15.90.070 Findings and decision.

- A. Findings. The written decision to approve, conditionally approve, or deny a request for a reasonable accommodation must be based on the following findings, all of which are required for approval:
 - 1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.
 - 2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
 - 3. The requested accommodation will not impose an undue financial or administrative burden on the City, as defined in the fair housing laws.
 - 4. The requested accommodation will not result in a fundamental alteration in the nature of the City's Zoning Code, as defined in the fair housing laws.
 - 5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
- B. Conditions of Approval. In granting a request for a reasonable accommodation, the Director, Planning Commission, or City Council may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection A above.

15.90.080 Appeals.

- A. Director Decision. Any person who is dissatisfied by the decision made by the Director on an application for a reasonable accommodation may appeal the Director's decision to the Planning Commission. The appeal must be filed within ten days of the mailing of the Director's decision. Upon the filing of a notice of appeal, the Director will set the matter for a hearing before the Planning Commission to occur not later than forty-five (45) days from the date of filing. Notice of the appeal hearing will be given to the applicant by mail at least ten days prior to the hearing. The appeal hearing will be conducted in accordance with the application procedures of Section 17.68.010 of this Code. Any person who is dissatisfied by the decision of the Planning Commission may make a further appeal to the City Council in accordance with applicable procedures of Sections 17.68.020 and 17.68.030 of this code. The Planning Commission's decision will be final absent an appeal timely filed with the City Council.
- B. Planning Commission Decision. A decision of the Planning Commission on an application for a reasonable accommodation considered concurrently with another application for a discretionary approval is subject to the same appeal rights and procedures that apply to the other discretionary approval.

15.90.090 Expiration, revocation, termination.

- A. Expiration. Any reasonable accommodation approved under this chapter will expire within twelve (12) months from the effective date of approval or at such 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. Revocation. Any reasonable accommodation approved under this Chapter may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or City ordinance is violated in connection with the reasonable accommodation. The revocation procedures in Section 17.64.050 *et seq.* of this Code will be followed to revoke a reasonable accommodation.
- C. Termination. If the individual with a disability who initially occupied the applicable dwelling ceases to reside at the premises, the reasonable accommodation will automatically terminate, and the property owner or occupant shall be responsible for modifying the applicable premises so that it conforms to Code as directed by the City, unless the Director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code, or (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Director may request that any successor-in-interest to the property provide documentation that subsequent occupants are individuals with disabilities who also require the previously established reasonable accommodation. Failure to provide such documentation within ten days of the date of a request by the Director will result in the termination of a previously approved reasonable accommodation and the property owner or occupant shall be responsible for modifying the applicable premises so that it conforms to Code as directed by the City."

SECTION 3. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provision or clause of the Ordinance or application thereof which can be implemented without the invalid provision(s), clause, or application, and to this end each provision and clause of the Ordinance is declared to be severable.

SECTION 4. This Ordinance shall become effective thirty (30) days after it is adopted by the City Council. 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 heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton on _____, 2012, and passed, adopted and ordered posted at a regular meeting of the City Council of the City of Clayton on _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

Howard Geller, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian
City Attorney

Gary A. Napper
City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on _____, 2012, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on _____, 2012.

Laci J. Jackson, City Clerk