

Ordinance No. 16-005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING ZONING REGULATIONS FOR DENSITY BONUS, RESIDENTIAL CARE FACILITIES, REASONABLE ACCOMMODATION, EMERGENCY SHELTERS, TRANSITIONAL HOUSING AND SUPPORTIVE HOUSING IN CONFORMANCE WITH STATE HOUSING LAW

WHEREAS, state housing law requires all cities to adopt regulations to facilitate the production of housing for low- and moderate-income families and persons with special needs; and

WHEREAS, the General Plan Housing Element includes programs to encourage development of affordable housing, residential care facilities, emergency shelters, transitional and supportive housing, and establish procedures for reviewing and approving requests for reasonable accommodation by persons with disabilities; and

WHEREAS, pursuant to Section 23.84.060 (b) of the City's Zoning Code, the City Council finds as follows:

(1) The proposed amendments to the Zoning Code are consistent with the General Plan and Local Coastal Program in that they would implement Programs 2.3.1, 3.4.4, 4.1.2 and 4.2.2 of the 2007-2014 Housing Element; and

(2) The proposed amendments are not detrimental to the public interest, health, safety, convenience, or welfare of the City in that they shall expand the availability of decent housing for all economic segments and persons with special needs; and

(3) The proposed amendments are internally consistent and shall not create inconsistencies with other applicable provisions of the City's zoning regulations; and

WHEREAS, the City Council adopted an Initial Study/Negative Declaration (IS/ND) for the 2009-2014 Housing Element in 2011. The updated Housing Element shall apply to the 2015-2023 planning period. An Addendum to the 2011 Negative Declaration demonstrates the 2015-2023 Housing Element update and related Zoning Code amendments shall not result in conditions under which a subsequent Environmental Impact Report (EIR) or Negative Declaration (ND) would be required pursuant to Public Resources Code Section 21166 or CEQA Guidelines Sections 15162 and 15164.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The text set forth in existing Chapter 23.79 of the Pacific Grove Municipal Code entitled, "Density Bonus Regulations," shall be deleted in its entirety and replaced as follows:

23.79.010 Purpose and intent.

This Chapter is intended to provide incentives for the production of housing for low- and moderate-income, or senior households in accordance with state density bonus law (Section 65915 et seq. of the California Government Code). In enacting this Chapter, it is the intent of the city of Pacific Grove to facilitate development of affordable housing and to implement the goals, objectives and policies of the City's housing element.

23.79.020 Implementation.

A. To facilitate the provision of affordable housing, the City shall grant a density bonus and other incentives and concessions for residential developments in conformance with Government Code Sections 65915 et seq., as may be amended from time to time.

B. Affordable housing units produced pursuant to this Chapter shall be administered by a City-approved public or quasi-public agency involved in affordable housing programs, or will be verified by the City based on documentation supplied by the property owner, in conformance with state Density Bonus Law.

SECTION 3. Existing Municipal Code Section 23.08.020, Definitions, is amended by the addition of underscored text as follows:

“Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

“Residential care” means residential care facilities for alcoholism recovery, mentally disabled, handicapped, elderly, and dependent and neglected children (including residential care facilities for the elderly (RCFEs) as licensed by the state Department of Social Services). State-licensed residential care facilities for six or fewer persons, excluding the facility operator and staff, shall be considered a family use subject only to the same regulations as apply to other residential dwellings of the same type in the same zone.

“Supportive housing” means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Target population means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people. Supportive housing is a residential use subject only to the same requirements as apply to other residential dwellings of the same type in the same zone.

“Transitional housing” means buildings configured as rental housing developments, but operated under program requirements that mandate the termination of assistance and recirculation of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance. Transitional housing is a

residential use subject only to the same requirements as apply to other residential dwellings of the same type in the same zone.

SECTION 4. Existing Municipal Code Section 23.24.020 Uses Permitted, is amended by adding subsection (f), shown as underscored text, as follows:

(f) State-licensed residential care facilities for seven or more persons, subject to first securing a use permit.

SECTION 5. Existing Municipal Code Section 23.28.020 Uses Permitted, is amended by adding subsection (k), shown as underscored text, as follows:

(k) State-licensed residential care facilities for seven or more persons, subject to first securing a use permit.

SECTION 6. Existing Municipal Code Table 23.31.030 Commercial and Industrial Zoning Districts Allowable Land Uses and Permit Requirements, shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of underscored text as follows:

Use	Specific Use Regulations (PGMC)	C-1'	C-1-T'	C-D'	C-FH'	C-2	C-V'	I
Emergency Shelters						<u>P⁹</u>		
Residential Care								
Housing 6 or fewer persons		<u>P10</u>	<u>P10</u>	<u>P10</u>	<u>P10</u>	<u>P10</u>	<u>10</u>	<u>UP10</u>
Housing 7 or more persons		UP	UP	UP	UP	UP	--	UP
<p>9. Outside the Coastal Zone only. In addition to the requirements of Section 23.31.040, Emergency Shelters shall be subject to the following standards:</p> <ul style="list-style-type: none"> a. Maximum of 25 beds. b. Off-street parking shall be provided at a rate of one space per 5 beds plus one space per each staff person on duty. c. On-site management shall be provided at all times the shelter is open. A management and security plan shall be prepared in consultation with the City Manager or his or her designee which shall describe hours of operation; staffing; house rules and occupant screening procedures; on- or off-site services to be provided; security measures to ensure the safety of the occupants of the shelter and surrounding areas; and communications protocols to ensure effective coordination between shelter management, adjacent property owners and residents, and public safety personnel. d. No emergency shelter shall be established closer than 300 feet from another emergency shelter, measured from the nearest property line. e. Waiting and intake areas shall be screened from view from the public right-of-way. 								
10. Permitted subject to the same standards as apply to other residential dwellings of the same type in the same zone.								

SECTION 7. Chapter 23.81 Reasonable Accommodation for Persons with Disabilities, is added to the Municipal Code the addition of underscored text as follows:

CHAPTER 23.81

Reasonable Accommodation for Persons with Disabilities

A. Purpose and Applicability.

1. This Section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures. Fair Housing Laws means "Fair Housing Amendments Act of 1988" (42 U.S.C. § 3601, et seq.), including reasonable accommodation required by 42 U.S.C. § 3604(f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900, et seq.), including reasonable accommodation required specifically by California Government Code Sections 12927(c)(1) and 12955(l), as any of these statutory provisions now exist or may be amended from time to time.

2. A request for reasonable accommodation may be made by any person with a disability, his/her representative, or any business or property owner when the application of a zoning law, building code provision or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws.

3. A request for reasonable accommodation may include a request for 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. Requests for reasonable accommodation shall be made in the manner prescribed by this Chapter.

4. It is the intent of this Chapter that, notwithstanding time limits provided to perform specific functions, application review, decision making and appeals proceed expeditiously, especially where the request is time sensitive, so as to reduce impediments to equal access to housing.

B. Application Submittal.

1. Any person with a disability, or his or her representative, may request reasonable accommodation on a form supplied by the Community and Economic Development Department. The request shall include the following information, and be accompanied by a fee established by resolution of the City Council:

- a. The applicant's or representative's name, mailing address and daytime phone number;
- b. The address of the property for which the request is being made;
- c. The specific code section, regulation, procedure or policy of the City from which relief is sought;
- d. A site plan or illustrative drawing showing the proposed accommodation;
- e. An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant's use and enjoyment of the subject property;

f. The basis for the claim that Fair Housing Laws apply to the individual(s) and evidence satisfactory to the City supporting the claim. Evidence may include a letter from a medical doctor or other licensed health care professional, a disabled license, or any other relevant evidence;

g. A detailed explanation as to why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the City;

h. Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested; and

i. Other information required by the City to make the findings required by Section 17.42.120(D) consistent with the Fair Housing Laws.

2. A request for reasonable accommodation may be filed at any time the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is being made also requires discretionary approval, the applicant shall provide required submittal information to the City together with the application for discretionary approval and shall pay all applicable fees. These materials shall enable the City to concurrently review the accommodation request and the discretionary approval request. Processing procedures for the discretionary approval request shall govern joint processing of both the reasonable accommodation and the discretionary permit.

3. Reasonable accommodation does not affect or negate an individual's obligations to comply with other applicable regulations not at issue or related to the requested accommodation.

4. If an individual needs assistance in making the request for reasonable accommodation, the City shall provide assistance to ensure the process is accessible.

5. Should the request for reasonable accommodation be made concurrently with a discretionary permit, the fee for a reasonable accommodation application may be waived provided that the prescribed fee shall be paid for all other discretionary permits.

C. Review Authority.

1. Applications for reasonable accommodation shall be reviewed by the Community and Economic Development Director (Director) when no approval is sought other than the request for reasonable accommodation.

2. Applications for reasonable accommodation submitted for concurrent review with any discretionary land use application shall be reviewed by the authority governing the discretionary land use application.

D. Findings.

The Review Authority shall approve the request for a reasonable accommodation if, based upon all of the evidence presented, the following findings can be made:

1. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with disabilities protected under Fair Housing Laws;

2. The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the Fair Housing Laws;

3. The requested accommodation will not impose an undue financial or administrative burden on the City, as defined in the Fair Housing Laws and interpretive case law; and

4. The requested accommodation will not require fundamental alteration or frustrate application of the City's zoning or building laws, policies and/or procedures, as defined in the Fair Housing Laws and interpretive case law. The City may consider, but is not limited to, the following factors to determine whether the requested accommodation would fundamentally alter or frustrate application of the City's zoning or building program:

a. Whether granting the accommodation would fundamentally alter the character of the neighborhood;

b. Whether granting the accommodation would result in a substantial increase in traffic or insufficient parking; and

c. Whether granting the accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.

E. Decision.

1. The Review Authority shall consider the application, and issue a written determination within forty (40) calendar days of the date of receipt of a completed application. At least ten (10) calendar days before issuing a written determination on the application, the City shall mail notice to the applicant and adjacent property owners that the City is considering the application and invite written comments as to the requested accommodation.

2. If necessary to reach a determination on any request for reasonable accommodation, the Review Authority may request further information from the applicant or others consistent with this Chapter, specifying in detail what information is required. If a request for further information is made of the applicant, the time period to issue a written determination shall be stayed until the applicant responds to the request.

3. The Review Authority's written decision shall include findings and conditions of approval. The applicant shall be given notice of the right to appeal, and the right to request reasonable accommodation related to the appeal process. The Review Authority's decision shall be mailed to the applicant, to any person who provided written or verbal comment on the application, and to any other person who requests notice.

4. Any approved reasonable accommodation shall be subject to any conditions imposed on the approval consistent with the purposes of this Section.

5. The Review Authority may approve alternative accommodations that provide equivalent and reasonable levels of benefit to the applicant.

6. The written decision of the Reviewing Authority shall be final, unless appealed as set forth below.

7. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property subject to the request shall remain in full force and effect.

8. Where improvements or modifications approved through a reasonable accommodation would generally require a variance, a variance shall not be required.

F. Appeals.

1. Any decision on a reasonable accommodation request may be appealed to the City Council, which appeal must be received by the City within ten (10) calendar days of the issuance of a written decision.

2. The appeal shall be in writing and shall include a statement of the grounds for appeal, and accompanied by a fee established by resolution of the City Council. If an individual needs assistance in filing an appeal, the City shall provide assistance to ensure the appeals process is accessible.

3. The City Council shall hear the matter de novo, and shall render a determination as soon as reasonably practicable, but in no event later than sixty (60) calendar days after an appeal has been filed. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.

4. The City shall provide notice of an appeal hearing to the applicant, adjacent property owners, and any other person requesting notification at least ten (10) calendar days prior to the hearing. The Council shall announce its findings within forty (40) calendar days of the hearing, unless good cause exists for an extension. The decision shall be mailed to the applicant and to any other person who requests notice at the time of the hearing. The Council's action shall be final.

G. Waiver of Time Periods.

Notwithstanding any provisions in this Chapter regarding the occurrence of any action within a specified period of time, an applicant may request additional time beyond that provided for in this Chapter or may request a continuance regarding any decision or consideration by the City of a pending appeal. The City may, in its sole discretion, grant or deny any such request for extension or continuance. The granting of an extensions of time or continuance shall not be deemed delay on the part of the City, shall not constitute failure by the City to provide prompt decisions on applications and shall not be a violation of any required time period set forth in this Chapter.

H. Notice to the Public of Availability of Accommodation Process.

The City shall prominently display in the public areas of the Community and Economic Development Department at City Hall a notice advising those with disabilities or their representatives that reasonable accommodations are available in accord with this Section. City employees shall direct individuals to the display whenever requested to do so or if they reasonably believe individuals with disabilities or their representatives may be entitled to reasonable accommodation.

I. Expiration, Time Extension, Violation, Discontinuance, and Revocation

1. Any reasonable accommodation approved in accordance with the terms of this Chapter shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:

- a. A building permit has been issued and construction has commenced;
- b. A certificate of occupancy has been issued;
- c. The use is established; or
- d. A time extension has been granted.

2. The Director may approve a time extension for reasonable accommodation for good cause for a period or periods not to exceed three years. Application for a time extension shall be made in writing to the Community and Economic Development Department no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

3. Notice of the Director's decision on a time extension shall be mailed to the Applicant.

4. Any reasonable accommodation approved in accordance with the terms of this Chapter may be revoked if any condition or term of the reasonable accommodation is violated, or if any law or Ordinance is violated in connection therewith. Notice of revocation shall be mailed to the applicant and to the owner of any property affected by the accommodation. Upon revocation, the Director may require any physical alteration associated with the reasonable accommodation to be removed or substantially conform to the code, as may be reasonably feasible.

5. An accommodation is granted only to an individual. The accommodation shall not run with the land unless the Director expressly finds the modification is physically integrated on the property and cannot feasibly be removed or altered. Any change in use or circumstances that negates the basis for the grant of approval may render the reasonable accommodation null and void and/or revocable by the City. Thereafter the Director may require the reasonable accommodation to be removed or substantially conformed to the code if reasonably feasible.

J. Amendments.

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that affects a condition of approval shall be treated as a new application and shall be processed in accordance with the requirements of this Chapter. The Director may waive the requirement for a new application and approve the changes if the changes are minor, do not

involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

SECTION 8. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 9. In accord with Article 15 of the City Charter, this ordinance shall take effect thirty days following adoption on second reading.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 6th day of April, 2016, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Huitt, Lucius, Miller and Peake.

NOES: None.

ABSENT: None.

APPROVED:


Bill Kampe, Mayor

ATTEST:


Sandra Kandell, Deputy City Clerk

APPROVED AS TO FORM:


DAVID C. LAREDO, City Attorney

