

**CITY OF WALNUT CREEK  
ORDINANCE NO. 2131**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK AMENDING  
TITLE 10 OF THE WALNUT CREEK MUNICIPAL CODE TO PROVIDE FOR REASONABLE  
ACCOMMODATION OF PERSONS WITH DISABILITIES IN THE MANNER IN WHICH THE  
CITY IMPLEMENTS ITS ZONING ORDINANCE**

The City Council of the City of Walnut Creek does ordain as follows:

**Section 1. Findings.**

1. On December 15, 2009, the Walnut Creek City Council adopted the 2009-2014 Housing Element, with the guiding principle of "supporting housing of various types, densities, and prices to meet the needs of current and prospective residents of all income levels and ages". Policy 15 is to encourage the development of housing accessible to people with disabilities. Program 15.3 of the Housing Element is to develop policies and written procedures for reasonable accommodation requests with respect to zoning, permit processing, and building laws.
2. Federal and state fair housing laws, including the Federal Fair Housing Amendments Act of 1988, and the California Fair Employment and Housing Act, prohibit discrimination against individuals with disabilities and provide equal opportunity to use and enjoy a dwelling.
3. State Housing Element law (GC 65583(c)(3) and (5)) requires that cities remove governmental constraints to the development of housing and promote housing opportunities for persons with disabilities.
4. The State Housing and Community Development Department encourages cities to adopt written procedures for reasonable accommodation requests with respect to zoning regulations, permit processing, and building codes in light of the aforementioned laws and a city's affirmative duty to comply with fair housing laws.
5. It is the intent of the City to implement federal and state housing laws and the policies and programs contained in the City of Walnut Creek's General Plan, including the Housing Element.
6. On February 27, 2014, the Walnut Creek Planning Commission approved Resolution 3647 recommending to the City Council that the Walnut Creek Zoning Ordinance be amended to incorporate the reasonable accommodation regulations.
7. The proposed reasonable accommodation regulations comply with the goals, policies, and actions of the Walnut Creek General Plan, specifically the policies of General Plan Housing Element Program 15.3.

**Section 2. CEQA Exemption.**

The City Council hereby finds that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, which states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. The activities in question (Zoning Ordinance amendments establishing a procedure for reasonable

accommodation) will not have an impact on the environment as they do not directly facilitate new development or changes in the type or intensity of land use, and will only increase the accessibility of existing developments or future developments that will be subject to separate CEQA review.

### **Section 3. Adding definitions.**

Section 10-2.1.303(A) of the Walnut Creek Municipal Code is hereby amended to add the following definitions. Each of the following definitions shall be added alphabetically to section 10-2.1.303(A) and the City Clerk is hereby authorized and directed to renumber the entire amended section sequentially.

***Fair Housing Laws:*** The Federal Fair Housing Act (42 U.S.C. § 3601 et. seq.), the California Fair Employment and Housing Act (Government Code §12900 et seq.), and the California Disabled Persons Act (Civil Code § 54 et. seq.).

***Individual with a Disability:*** A person who has a medical, physical, or mental condition that limits a major life activity, as those terms are defined in California Government Code section 12926.

***Reasonable Accommodation:*** A modification in the application of land use or zoning regulations or in the application of land use, zoning, or building policies, procedures, or practices when necessary to eliminate barriers to housing opportunities; which does not impose undue financial or administrative burdens on the City or require a fundamental or substantial alteration of the City's regulations, policies, procedures or practices.

### **Section 4. Adding reasonable accommodation regulations.**

Article 13, "Reasonable Accommodation for Residential Uses", is hereby added to Part III of Title 10 of the Walnut Creek Municipal Code to read as follows:

#### **Article 13. Reasonable Accommodation for Residential Uses**

##### ***Sec. 10-2.3.1301. Purpose.***

It is the City's policy to provide individuals with disabilities reasonable accommodation in regulations, policies, practices and procedures to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities. This article provides for reasonable accommodations in land use or zoning regulations, and in the application of land use, zoning, or building policies, procedures and practices to eliminate barriers to housing opportunities.

This article and related regulations implement the requirements of Federal and State fair housing laws, including the Federal Fair Housing Act (42 U.S.C. § 3601 et seq.), the California Fair Employment and Housing Act (Government Code §12900 et seq.), and the California Disabled Persons Act (Civil Code § 54 et. seq.).

##### ***Sec. 10-2.3.1302. Applicability.***

A request for reasonable accommodation can be made by any individual with a disability, his or her representative, or a developer or provider of housing for an individual with a disability, when the application of a land use or zoning regulation, or land use, zoning, or building policy, practice or procedure acts as a barrier to fair housing. Any land use or zoning regulation or requirement contained in this chapter pertaining to residential use classifications, as defined by Section 10-2.1.403, may be waived or modified upon the granting of an application for Reasonable Accommodation pursuant to Part IV, Article 16 of this chapter.

**Section 5. Submittal requirements for reasonable accommodations.**

Section 10-2.4.203 of the Walnut Creek Municipal Code is hereby amended to read as follows:

***Sec. 10-2.4.203. Required Data.***

Each application for design review approval shall be accompanied by the information required by Section 10-2.4.1204. Each application for a Reasonable Accommodation shall be accompanied by the information required by Section 10-2.4.1602. Any other application required by this article shall be accompanied by copies in a quantity as required by the Planning Commission or the Zoning Administrator, as the case may be, of site plans, diagrams or other drawings, photographs or other pictorial presentation as may be necessary. Site plans shall be drawn to scale of an adequate size and shall indicate clearly and with full dimensions the following data where applicable:

- A. Exterior boundary lines of the property indicating easements, dimensions and lot size.
- B. All adjacent streets or rights-of-way, including bicycle, equestrian and hiking trails.
- C. Location, elevations, size, height, dimensions, materials, colors, and proposed use of all buildings and structures (including walls, fences, signs, lighting and hooding devices) existing and intended to remain on the site.
- D. Distances between all structures and between all property lines or easements and structures.
- E. Any nearby buildings which are relevant to this application.
- F. All existing trees (as defined in Title 3, Chapter 8, Section 3-8.02) on the site, giving type and location and any other significant plant material, with a notation as to those that are to be retained and those that are to be removed.
- G. Any existing significant natural features such as rock outcroppings, highly protected trees, creeks, knolls and ridgelines.
- H. Location, number of spaces, and dimensions of off-street parking spaces, loading docks, and maneuvering areas; indicate internal circulation.
- I. Pedestrian, vehicular and service points of ingress and egress; driveway widths, and distances between driveways.

J. Proposed landscaping; include quantity, location, varieties and container size.

K. Proposed grading plan (for sites having over five (5) foot grade differential), showing existing and proposed contours, and the direction and path of drainage on, through and off the site; indicate any proposed drainage channels or facilities.

L. Required and existing street dedications and improvements such as sidewalks, curbing and pavement. Indicate widths, radii of curves, street grades and whether streets are public or private.

M. Other such data as may be required to permit the Planning Commission or the Zoning Administrator, as the case may be, to make the required findings for approval of the specific type of application and to permit an environmental review of the application.

N. Scale shown as "Scale: 1 inch = \_\_\_\_ feet" and north arrow.

O. Vicinity map indicating nearby cross streets in relation to site (need not be to scale).

**Section 6. Reasonable Accommodation applications.**

Article 16, "Reasonable Accommodation Application", is added to Part IV of Chapter 2 of Title 10 of the Walnut Creek Municipal Code to read as follows:

**Article 16. Reasonable Accommodation Application**

***Sec. 10-2.4.1601. Purpose.***

The purpose of granting an application for Reasonable Accommodation is to provide an individual with a disability, his or her representative, or a developer or provider of housing for an individual with a disability, a modification with respect to the application of land use, or zoning regulations, and in the application of land use, zoning, or building policies, practices or procedures when those regulations, policies and procedures act as a barrier to fair housing.

***Sec. 10-2.4.1602. Application.***

An application for Reasonable Accommodation may be filed with the Community Development Department as provided in Article 2 above. The application shall be accompanied by the following information, as required by the Planning Manager:

- A. The name, address and telephone number of the applicant;
- B. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made;
- C. The current use of the property for which the reasonable accommodation request is being made;

- D. 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;
- E. The basis for the claim that the individual to be reasonably accommodated is an Individual with a Disability under the Fair Housing Laws;
- F. The land use or zoning regulation, or land use, zoning, or building policy, practice or procedure for which reasonable accommodation is being requested;
- G. The type of accommodation sought;
- H. The reason(s) why the accommodation is necessary for the needs of the disabled person. Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the accommodation;
- I. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
- J. Other supportive information deemed necessary by the department to facilitate proper consideration of the request, consistent with fair housing laws.
- K. There is no fee imposed on the filing or processing of the application for Reasonable Accommodation.

***Sec. 10-2.4.1603. Notice and Public Hearing.***

Notice and conduct of the public hearing shall be according to Article 3 of Part IV of Chapter 2 of Title 10.

***Sec. 10-2.4.1604. Findings.***

The reviewing authority shall approve the application, with or without conditions, unless it determines on the basis of substantial evidence that one or more of the following findings cannot be made:

- A. The accommodation is requested by or on behalf of an individual with a disability protected under the fair housing laws.
- B. The housing, which is subject to the requested accommodation, will be used by an individual with a disability protected under fair housing laws.
- C. The requested accommodation is necessary to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.
- D. The requested accommodation will not impose an undue financial or administrative burden on the City.

- E. The requested accommodation would not require a fundamental alteration in the nature of a City program or law, including land use and zoning.

***Sec. 10-2.4.1605. Review with Other Discretionary Permits.***

If the project requires other discretionary approval (such as a Conditional Use Permit, Design Review, or Variance) independent of the reasonable accommodation request, then the reasonable accommodation application will be decided prior to the other applications. Such decisions shall not be reconsidered as part of the subsequent approvals, but shall be regarded as independent entitlements.

***Sec. 10-2.4.1606. Decisions.***

The Zoning Administrator shall, within 30 days of determining the application complete, approve, approve with conditions, or deny the application based on the findings set forth in Section 10-2.4.1604, and may impose such conditions as it deems necessary to ensure the accommodation will comply with the findings required in Section 10-2.4.1604 and fair housing laws. As part of consideration of a request for a reasonable accommodation related to construction of new dwelling or dwellings, the Zoning Administrator may consult with the Design Review Commission regarding the requested accommodation and any options that may result in a reasonable accommodation. While any request for reasonable accommodation 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.

***Sec. 10-2.4.1607. Appeals.***

The decision of the Zoning Administrator may be appealed in accordance with Section 10-2.4.502. Appeals are subject to payment of the fee imposed on appeals in the City's Master Fee Schedule.

***Sec. 10-2.4.1608. Nonconforming Status.***

All improvements constructed under the auspices of this chapter shall be removed upon the vacation of the unit by the person to whom the reasonable accommodation was granted unless the Community Development Director, Zoning Administrator, Building Official, or other discretionary reviewing authority, as applicable, makes a determination as follows:

- A. The unit has been reoccupied by a qualified person or such improvements provide benefit for future occupancy by a qualified person; or
- B. The removal of the improvement is not readily achievable without making significant structural changes that would impact the safety and soundness of the structure, as determined solely by the Building Official, or such costs of removal equal or exceed 25 percent of the market value of the structure.

***Sec. 10-2.4.1609. Confidentiality.***

Medical information provided to the City related to the person for whom a reasonable accommodation is being requested shall be retained in a manner so as to respect the privacy rights of the

applicant to the extent feasible, shall be kept confidential and shall not be made available to the public, pursuant to state and federal law.

**Sec. 10-2.4.1610. Urgent, Temporary and Unforeseen Need.**

Upon receipt of the application required by Sec. 10-2.4.1602, but without the prior public hearing or notice required by Sec. 10-2.4.1603 and without the right of appeal provided by Sec. 10-2.4.1607, upon a showing of an urgent, temporary and unforeseen need made by or on behalf of an Individual with a Disability, the Zoning Administrator shall approve as a Temporary Reasonable Accommodation temporary ramps and temporary and easily remediated alterations to a building that are not designed or intended nor allowed to remain for more than 90 days following such approval during a period of temporary disability (90 days maximum) or during a period during which an application for Reasonable Accommodation has been made and has not been acted upon with finality. Any approved Temporary Reasonable Accommodation shall be removed within the period of time established for such removal by the Zoning Administrator at the time of approval.

**Section 7. Effective Date.**


This ordinance shall take effect on the 31st day after its adoption.

**PASSED AND ADOPTED** by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 17<sup>th</sup> day of June, 2014, by the following called vote:

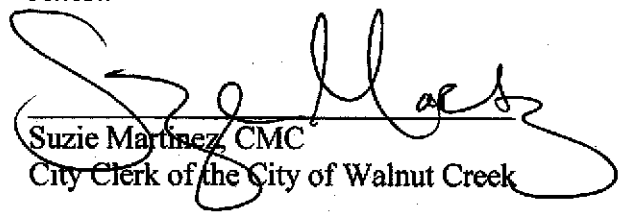
AYES: Council Members: Haskew, Silva, Wedel, Simmons, Mayor Lawson

NOES: Council Members: None

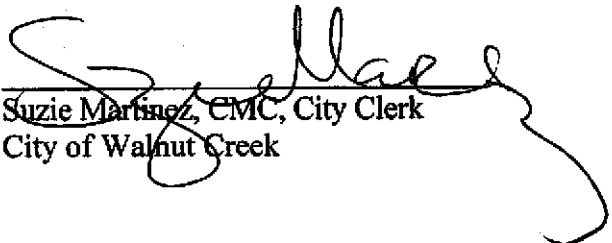
ABSENT: Council Members: None

  
\_\_\_\_\_  
Kristina Lawson  
Mayor of the City of Walnut Creek

Attest:

  
\_\_\_\_\_  
Suzie Martinez, CMC  
City Clerk of the City of Walnut Creek

**I HEREBY CERTIFY** the foregoing to be a true and correct copy of Ordinance No. 2131, duly passed and adopted by the City Council of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 17<sup>th</sup> day of June 2014.

  
\_\_\_\_\_  
Suzie Martinez, CMC, City Clerk  
City of Walnut Creek