CITY PLANNING COMMISSION

DATE: January 13, 2005
TIME: After 8:30 a.m.*
PLACE: Room 1010, City Hall
        200 N. Spring Street
        Los Angeles, CA 90012

REQUEST: Code Amendment

SUMMARY: A proposed ordinance (Appendix A) amending various sections of the Los Angeles Municipal Code to comply with federal and state fair housing laws.

RECOMMENDATION:
1. Adopt the staff report as its report on the subject.
2. Adopt the attached findings.
3. Approve the proposed ordinance (Appendix A) and recommend adoption by City Council.

Jane Blumenfeld,
Principal City Planner 213/978-1372

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ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the Commission Secretariat, 200 North Main Street, Room 532, Los Angeles, CA 90012 (Phone No. 213/978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent to the week prior to the Commission’s meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to this programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request no later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at 213/978-1300.
SUMMARY

Federal and State Fair Housing laws have been created to prohibit discrimination against individuals, including those with disabilities, who seek housing. As a result of this legislation and subsequent actions, including a recommendation to adopt a reasonable accommodation ordinance by the State Attorney General, the City must amend some of its regulations and procedures to comply with the law.

The proposed ordinance will bring the City into compliance with the law in the following three ways: (1) creating a “reasonable accommodation” procedure by which individuals with disabilities or developers of housing for people with disabilities can request deviations from the Zoning Code which, because of the person’s disability, are necessary for the use of the house or dwelling unit; (2) amending the definition of “family;” and (3) amending the definition of “hospitals or sanitariums” in the R5 zone.

FINDINGS

1. In accordance with Charter Section 556, the proposed ordinance (Appendix A) is in substantial conformance with the purposes, intent, and provisions of the General Plan. The Housing Element of the General Plan requires the City to identify governmental constraints to housing for individuals with disabilities and this ordinance provides a reasonable accommodation procedure; and

2. in accordance with Charter Section 558 (b)(2), the proposed ordinance (Appendix A) will have no adverse effect upon the General Plan, specific plans, or any other plans being created by the Department of City Planning because the proposed ordinance is consistent with the General Plan and carries out the General Plan goals, policies and objectives discussed above, and

3. in accordance with Charter Section 558 (b)(2), the proposed ordinance (Appendix A) will be in conformity with the public necessity, convenience, general welfare and good zoning practice. This ordinance will provide opportunities for the use and development of housing by individuals with disabilities, which is required by federal and state law and by the Housing Element of the General Plan; and

4. the proposed ordinance (Appendix A) is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2, Subsection (m) of the City of Los Angeles CEQA Guidelines for ordinances which do not themselves have an impact on the physical environment. The ordinance is enabling legislation; each individual reasonable accommodation project will be subject to CEQA at the time it is filed.
STAFF REPORT

BACKGROUND

A series of federal and state laws have been enacted over the past several years to prohibit discrimination that acts as a barrier to individuals with disabilities who are seeking housing. Among such laws are the Federal Fair Housing Amendments Act of 1988, California’s Fair Employment and Housing Act, the State’s Housing Element law, and HUD’s requirement that cities utilizing Community Development Block Grant (CDBG) funds prepare an “Analysis of Impediments to Fair Housing Choice” (AI). Taken together, these pieces of legislation require cities and counties to take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities.

In 1997, the Fair Housing Congress of Southern California, under contract to the City, prepared the city’s first federally mandated AI. As required by law, it examined existing and potential barriers to fair housing for all classes protected under the Fair Housing Act. Cities are specifically required to (1) conduct an analysis of impediments to fair housing choice within their jurisdiction; (2) take appropriate actions to overcome the effects of any impediments identified through that analysis; and (3) maintain records reflecting the analysis and actions in this regard. Once the AI is completed, jurisdictions must take actions to overcome the effect of any impediments identified.

That same year, the City of Los Angeles was one of 90 jurisdictions audited as part of the California Land Use and Zoning Campaign, a statewide study that identified local land use and zoning regulations, practices and procedures that impede the development, siting and use of housing for individuals with disabilities. One of the study’s findings was that jurisdictions throughout the state consistently lack a fair housing “reasonable accommodation” procedure for an individual with disabilities or developer of housing for individuals with disabilities to request relief from strict compliance with local land use and zoning regulations or, in some instances, waiver of the application of a rule in order to make housing available to individuals with disabilities.

The City subsequently contracted with Mental Health Advocacy Services, Inc. to review its Planning and Zoning Code, identify specific land use and zoning impediments to the development of housing for individuals with disabilities and make recommendations to remove constraints. The study identified several zoning regulations and practices that conflict with fair housing laws and recommended that these be revised and that the City also adopt a reasonable accommodation procedure.

The ordinance attached, Appendix A, addresses the recommendations by Mental Health Advocacy Services, Inc. It creates a “reasonable accommodation” process by which individuals with disabilities can request deviations from the Zoning Code that, as a result of their disability, are necessary for them to live in their own dwelling unit and it amends several definitions and regulations.
REASONABLE ACCOMMODATION PROCEDURE

The Fair Housing laws require that cities and counties provide flexibility or even waive certain requirements when it is necessary to eliminate barriers to housing opportunities for people with disabilities. Examples of such a request might be to locate an elevator in a side yard in order for an individual with a physical disability to get in and out of his/her home or to place a ramp in a front yard to provide access from the street to the front door.

The State Attorney General, in a letter to the City of Los Angeles, in May 2001, stated that local governments have an affirmative duty under fair housing laws to provide reasonable accommodation and “[i]t is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently.” He advised jurisdictions not to use existing variance or conditional use permit processes because they do not provide the correct standard for making fair housing determinations and because the public process used in making entitlement determinations fosters opposition to much needed housing for individuals with disabilities. In response to the State Attorney General’s letter, many cities throughout the state are adopting fair housing reasonable accommodation procedures as one way of addressing barriers in land use and zoning regulations and procedures.

A fundamental characteristic of a fair housing reasonable accommodation procedure is the establishment of appropriate findings that reflect the intent and specific language of both the federal and state fair housing statutes. In this regard, it is somewhat different than traditional or typical zoning cases because here the focus of review is the need of the individual with disabilities to overcome barriers to housing, not on the topography of the site or the unique character of the lot. The focus here is solely on the special need of the individual to utilize his or her home or dwelling unit, which is directly related to the individual’s disability. It is this reasoning that underlies the Attorney General’s warning not to utilize variance criteria for such determinations.

As proposed in the draft ordinance, a new process would be created in which the Director of Planning (or his designee) would determine that the individual making the request for accommodation has a disability as defined in the law and verified by an appropriate professional, or is developing housing for individuals with disabilities. Second, the applicant would establish that, because of the disability, the requested accommodation is necessary to overcome a barrier to housing. If the individual has established the need for the accommodation based on the disability, the Director will determine that it is “reasonable,” and grant the request, unless he/she can establish that granting the request would be an undue financial or administrative burden to the City or would result in a fundamental alteration in the City’s land use and zoning programs.

The Planning Director may gather additional information necessary to make a determination on a request, and may also consider “alternative accommodations which may provide an equivalent level of benefit” to that which has been requested by an individual with disabilities. An alternative accommodation would be considered if the Planning Director determines that providing the requested accommodation would create an undue administrative or financial burden to the City or result in a fundamental alteration in the nature of the City’s programs and that an alternative method is available to achieve an equivalent accommodation. In providing reasonable accommodation, it is generally presumed that the individual with disabilities is in the best position to know whether the requested accommodation is effective.
The Planning Director would prepare a written decision, including findings based on specific factors in the Fair Housing laws and delineated in the ordinance. The decision may be appealed to the City Council. This analytic process for reviewing and making determinations on requests for reasonable accommodation is well established in the case law interpreting the fair housing mandate. This analysis is also consistent with the approach used by other cities, such as Long Beach, Santa Rosa and San Jose and the District of Columbia.

Similar “reasonable accommodations” that relate solely to requirements contained in the Building Code may be necessary. In such cases, an applicant would request a deviation through the Department of Building and Safety, not Planning. Building and Safety staff has determined that a process currently exists in their department that can accommodate requests for reasonable accommodations relating to the Building Code. Therefore, at this time, no code amendment or additional process seem to be necessary to address the legal issues raised by the city’s consultant.

**DEFINITION CHANGES**

The consultant recommended that the City amend the definition of “family” to comply with federal and state fair housing laws and California case law and eliminate the Code’s current distinction in regulating hospitals based on the types of disabilities treated at those facilities.

Group living arrangements are often necessary to enable people with disabilities to secure the support they need to live in the community. Definitions of family that have numerical limits on unrelated persons and occupancy standards based on familial status restrict the housing choices of individuals with disabilities in violation of federal and state fair housing laws. The definition of “family” must emphasize the functioning of the members as a cohesive household and cannot distinguish between related and unrelated persons. When a group home of individuals with disabilities functions like a family, they cannot be excluded from an R1 zone solely because the residents are unrelated by blood, marriage or adoption.

In 1980 the California Supreme Court, in City of Santa Barbara v. Adamson (27 Cal. 3d 123, 164 Cal. Rptr. 539 [1980]), struck down a municipal ordinance that permitted any number of related people to live in a house in an R1 zone, but limited the number of unrelated people who were allowed to do so to five. The court held that the residents of the Adamson household, although unrelated, were a single housekeeping unit that could be termed an alternative family and as such could not be excluded from the single family zone, nor made to apply for a conditional use permit.

Although the City of Los Angeles has, since the Adamson case, acknowledged the law as it was established in the court case, the definition of “family” has never been amended to properly reflect the law. The proposed amendment does that.

The Code currently distinguishes, for purposes of siting restrictions, between types of treatment facilities based on services to individuals with disabilities: “[h]ospitals or sanitariums (except animal hospitals, clinics and hospitals or sanitariums for contagious, mental, or drug or liquor-addict cases”), and hospitals or sanitariums, generally, which do not specify who is served by the facility. (LAMC 23.23A5 and 12.12A17). To comply with federal and state fair housing laws and California Welfare and Institutions Code Section 5120 (a state preemption statute requiring that mental health treatment programs be permitted in any zone in which hospitals or nursing
homes are permitted), the draft ordinance in Appendix A eliminates the distinction in treatment facilities and provides for a general hospital definition that does not look at the personal characteristics of those served by the facilities.

CONCLUSION

The development of the proposed reasonable accommodation ordinance and the modification to the definition of “family” in the Code are the next step in the City’s commitment to complying with fair housing laws. Fair housing laws and subsequent federal and state legislation require all cities and counties to further housing opportunities for individuals with disabilities by identifying and removing constraints to the development of housing for individuals with disabilities, including local land use and zoning barriers, and to also provide reasonable accommodation as one method of advancing equal access to housing. The proposed ordinance provides a fair and reasonable means of accommodating the special housing needs individuals with disabilities, as required by state and federal law.

ENVIRONMENTAL IMPACT:

The proposed ordinance (Appendix A) is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2, Subsection (m) of the City of Los Angeles CEQA Guidelines for ordinances which do not themselves have an impact on the physical environment. The ordinance is enabling legislation; each individual reasonable accommodation project will be subject to CEQA at the time it is filed.
APPENDIX A

PROPOSED ORDINANCE FOR DISCUSSION

An ordinance amending Sections 12.03, 12.12, 12.13, 12.21 and 12.24 of the Los Angeles Municipal Code to assure fair housing protections for individuals with disabilities.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

PRELIMINARY DRAFT ORDINANCE

Section 1. Subsection X of Section 12.24 of the Los Angeles Municipal Code is hereby amended by adding a new section 23 to read:

23. Reasonable Accommodation—Fair Housing protections for individuals with disabilities

A. Purpose. The purpose of this provision is to establish a formal procedure for individuals with disabilities seeking equal access to housing to request a reasonable accommodation as provided by the federal Fair Housing Amendments Act of 1988 and California’s Fair Employment and Housing Act, and to establish criteria to be used when considering such requests. Reasonable accommodation means providing individuals with disabilities or developers of housing for individuals with disabilities, flexibility in the application of land use and zoning regulations or policies (including the modification or waiver of certain requirements), when it is necessary to eliminate barriers to housing opportunities.

B. Definitions.

Acts – the Federal Fair Housing Amendments Act of 1988 and California’s Fair Employment and Housing Act

Individual with a disability - As defined under the Acts, a 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 who has a record of such impairment

C. Procedures.

1. A written request for reasonable accommodation shall be made on a form provided by the Department by any individual with a disability, his or her representative or a developer or provider of housing for individuals with disabilities when the application of a land use or zoning regulation or policy acts as a barrier to fair housing opportunities.

2. A request for reasonable accommodation shall state the basis of the request including but not limited to a modification or exception to the regulations, standards and practices 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 to housing of his or her choice.

3. The Director of Planning or designee may request additional information necessary for making a determination on the request for reasonable accommodation that complies with the fair housing law protections and the privacy rights of the individual with a disability to use the specified housing. If additional information is requested, the 45 day time period for making a determination on the request stops running until the additional information is provided.

4. The Director of Planning or designee shall issue a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Section ___.

5. While a 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.

D. Findings. The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with the Acts, shall, if granted, be granted to an individual and shall not run with the land (unless the Director or designee determines that such modification is physically integrated into the residential structure and cannot easily be removed), and shall be based on consideration of the following factors:

1. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under the Acts;

2. Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the Acts;

3. Whether the requested accommodation would impose an undue financial or administrative burden on the City;

4. Whether the requested accommodation would require a fundamental alteration in the nature of the City’s land use and zoning program and;

5. Whether there are any alternative reasonable accommodations which may provide an equivalent level of benefit to the applicant.

All written decisions shall give notice of the applicant’s right to appeal and to request reasonable accommodation in the appeals process as set forth above.

E. Notice. Notice of the determination shall be provided to abutting owners of the property which is the subject of the request for reasonable accommodation. The notice shall provide a general description of the accommodation that was deemed necessary for the use of the house or dwelling unit, as a result of the applicant’s disability.

F. Appeal of Determination
1. A determination by the Director of Planning shall be final unless appealed to the City
Council within 15 business days.

2. Only the aggrieved applicant and abutting owners who received notice of the reasonable accommodation determination have a right to appeal the decision.

3. An appeal shall be made in writing, pursuant to procedures established in Section 12.24 I of the Municipal Code.

G. Coastal Zone Properties. For housing located in the coastal zone, a request for reasonable accommodation under this Section shall be approved by the City if it is consistent with the requisite findings above, with Chapter 3 of the California Coastal Act of 1976, and with the Interpretative Guidelines for Coastal Planning and Permits as established by the California Coastal Commission dated February 11, 1977 and any subsequent amendments thereto, and, within the Venice Community Plan, with the certified Local Coastal Program Land Use Plan.

Where a request for reasonable accommodation is not consistent with the regulations identified in the paragraph above, the City may waive compliance with an otherwise applicable provision of these regulations and approve the request for reasonable accommodation if the City finds:

1. The requested reasonable accommodation is consistent, to the maximum extent feasible, with the regulations identified in this Subsection; and,

2. There are no feasible alternative means for providing an accommodation at the property that would provide greater consistency with the regulations identified in this Subsection.

Section 2. Section 12.03 of the Los Angeles Municipal Code is hereby amended, revising the definition of “family,” to read:

Family. An individual or two or more persons related by blood, or marriage, adoption or court order or a group of not more than 5 persons (excluding servants) who need not be related by blood or marriage, living together in a dwelling unit, except that there may be up to four foster children 16 years of age or under where the total number of persons living in the dwelling unit does not exceed eight and providing the keeping of the foster children is licensed by the State of California as a full time foster care home, or a group of individuals living together in a dwelling unit as a single housekeeping unit.

Section 3. Paragraph 5 of Subsection A of Section 12.12 of the Los Angeles Municipal Code is hereby amended to read:

Hospitals or sanitariums (except animal hospitals, clinics, and hospitals or sanitariums for contagious, mental, or drug or liquor addict cases), with yards as required in Sec. 12.21 C3.

Section 4. Subparagraph (13) of Subparagraph (a) of Paragraph 2 of Subsection A of Section 12.13 of the Los Angeles Municipal Code is hereby amended to read:

Hospital, sanitarium or clinics (except animal hospitals, or hospitals or sanitariums for contagious, mental, or drug or liquor addict cases).

Section 5. The City Clerk shall certify…