REASONABLE ACCOMMODATIONS FROM ZONING REGULATIONS RELATED TO HANDICAPPED HOUSING

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A. Principles Applicable to Requests for Reasonable Accommodation From Housing Regulations

1. Right to Seek a Reasonable Accommodation

The most basic principle with which this paper is concerned is that the handicapped may seek the right to operate or occupy any facility at any time and in any zone by seeking a reasonable accommodation (exemption or variance) from a land use regulation which would preclude that use. In the focus area of housing, the opportunity to so seek to be accommodated is articulated in the Fair Housing Act [42 U.S.C. § 3604(f)(3)(B)] (“FHA”), the Americans with Disabilities Act [42 U.S.C. § 12131(2) (“ADA”); 28 C.F.R. § 35.130(b)(7) and/or the Rehabilitation Act of 1973 [29 U.S.C. § 794; 29 C.F.R. § 1614.203.] The FHA defines discrimination in part as “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. 3604(f)(3)(B).

Courts have also recognized that the Rehabilitation Act and the ADA authorize reasonable accommodation claims, and that the requirements for such a claim are the same regardless of the authorizing statute. See Oconomowoc Residential Program v City of Milwaukee, 300 F.3d 775, 783 (7th Cir. 2002); see also McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004).

In Behavioral Health Services, Inc. v. City of Gardena, 2003 WL 21750852 (C.D. Cal. 2003), the District Court held that a city’s failure to provide a reasonable accommodation under federal law also violated the California Fair and Equal Housing Act (“FEHA”), Cal. Gov. Code § 2955 et seq. See 2003 WL 21750852, *10-11 (“Because FEHA’s protections are by definition as great as those under the FHA, failure to accommodate which violates the FHA also violates FEHA.”).

The requirement to afford reasonable accommodation in the context of zoning regulations is well established and specifically articulated in Bay Area Addiction and Treatment, Inc. v. City of Antioch, 179 F.3d 725 (9th Cir., 1999).

2. Standing to Sue

Standing to sue under the ADA and FHA is to be broadly construed. See Innovative Health Systems, Inc. v. City of White Plains, 117 F.3d 37, 47 (2nd Cir. 1997) (superseded by statute and overruled on other grounds); see also Jeffery O v. City of Boca Raton, ---F.Supp.2d -----, 2007 WL 628131 (S.D.Fla. 2007).

1 The contribution to this paper made by my colleague Steven Flower is acknowledged and appreciated.
In *Jeffery O.*, the District court held not only that current residents of a group home for persons recovering from substance abuse have standing under the FHA, but that so too do persons who testify that they would return to a group home if they relapsed. *Id.* The court also recognized that the FHA provides standing for the providers of housing for the disabled on behalf of residents. *Id.; see also, e.g., Community House, Inc. v. City of Boise,* 490 F.3d 1041 (9th Cir. 2007). Finally, courts have also recognized that organizations which promote or advocate for fair housing may bring suit under the FHA if the challenged action or policy causes the organization to divert resources to combat the alleged discrimination. *See Nevada Fair Housing Center, Inc. v. Clark Co.,* 2007 WL 610640, (D.Nev. Feb. 23, 2007).

To summarize, the following persons and organizations have standing to sue under the ADA, the FHA, or both:

a. Disabled residents who allegedly are subjected to discrimination;

b. Disabled persons who allegedly may be subjected to discrimination if they may require residential care in the future;

c. The providers of residential care to disabled persons; and

d. Advocacy groups which promote or advocate on behalf of the disabled.

3. Applicable Legal Test

In *City of Edmonds v. Washington State Building Code Council*, 18 F.3d 802 (9th Cir. 1994) (affirmed by *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995)), the Ninth Circuit Court of Appeal stated: “‘[W]hile a [city] need not be required to make ‘fundamental’ or ‘substantial’ modifications to accommodate the handicapped, it may be required to make ‘reasonable’ ones.’” quoting *Alexander v. Choate*, 469 U.S. 287, 300 (1985). Most courts now appear to employ some version of a two pronged formulation of the rule enunciated in *City of Edmonds* which requires the requested accommodation to be both necessary and reasonable. For example, in *U.S. v. City of Chicago Heights*, 161 F.Supp.2d 819 (N.D. Ill. 2001), the District Court held as follows with respect to necessity:

“The concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability. Plaintiffs must show that but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice.” *Id.* at 834 (internal quotes and citations omitted).

As to reasonableness, the District Court held that a requested accommodation is not reasonable if it requires a fundamental alteration in the nature of the zoning scheme, or imposes undue financial or administrative burdens. *Id.* at 836
In *McGary v. City of Portland*, 386 F.3d 1259, 1270 (9th Cir. 2004), the Court stated that “[W]hat constitutes a reasonable accommodation … requires a fact-specific, individualized analysis of the disabled individual’s circumstances and the accommodations that might allow him to meet the program’s standards.” (internal citation quotation omitted).

4. Case Law Applications and Factors Sufficiently or Insufficiently Supporting Denials of Accommodation Applications

a. Necessity

Reasonable accommodation case law demonstrates that several considerations are potentially relevant in determining whether a given accommodation is necessary. Following is an effort to create useful subcategories of those factors:

(i) Difficulty in meeting procedural requirements. This factor examines whether the procedural requirement should be excused because of the nature of the disability.

- Additional time to comply. In *McGary v. City of Portland*, 386 F.3d 1259 (9th Cir. 2004), a man with AIDS was cited by a city for maintaining a nuisance for failure to maintain his yard free of garbage and debris. After receiving an order to clean the property, the man asked for additional time to comply with the order because he had AIDS related meningitis. The city ignored the request, hired a contractor to clean the property, and sent the man a bill for the cost.

- *Held – Accommodation Required:* The man stated a reasonable accommodations claim under the FHA and the ADA. The additional time requested by the plaintiff was found to be necessary to allow him equal opportunity to live in his house.

- Submittal Requirements. In *Erdman v. City of Fort Atkinson*, 84 F.3d 960 (7th Cir. 1996), a city denied an application by the operator of a proposed group home for persons who were elderly and disabled to operate in a residential zone on the grounds that the application failed to show required development plans for the entire 9-acre parcel and showed a cul-de-sac that was inconsistent with the City’s master zoning plan.

- *Held – Accommodation Not Required:* The City did not fail to make a reasonable accommodation because there were no facts to indicate that the residents’ disabilities in any way necessitated submitting an incomplete application.

(ii) Economic Viability. An accommodation might be necessary to allow a provider to the handicapped to remain economically viable. At the same time, however, the mere fact that the City’s rules and regulations impose some extra expense on such an applicant might not by itself require an accommodation.

- In *BryantWoodsInn, Inc. v. Howard County*, 124 F.3d 597 (4th Cir. 1997) a group home operator requested permission to expand an existing group home from 8 to 15 beds.
Held – Accommodation Not Required: The expansion was not necessary where there was no evidence that it was needed to make the facility economically viable.

In Hemisphere Building Co., Inc. v. Village of Richton Park, 171 F.3d 437 (7th Cir. 1999), a developer claimed a village failed to accommodate its plan to construct a 4-unit building, in which the first floor units would be built to meet the needs of wheelchair bound persons. The village approved a 3-unit version, but the developer claimed it would result in more expensive units that would be harder to sell.

Held – Accommodation Not Required: The added expense caused by the village’s decision was a burden that anyone would have to bear regardless of disability.

In Woodward v. City of Paris, Tennessee, 520 F.Supp.2d 911 (W.D.Tenn. 2007), a person who had multiple sclerosis and was confined to a motorized wheelchair requested a variance to allow the construction of a carport within the required 15-foot side yard setback.

Held – Accommodation Not Required: The requested accommodation was not required merely because compliance with the setback requirement would have caused greater inconvenience or expense.

b. Reasonableness

Case law also demonstrates that several considerations are potentially relevant to whether a given accommodation is reasonable. Following are examples of cases dealing with “reasonableness.”

(i) Community Character. A requested accommodation is not reasonable if it would fundamentally alter the character of a community.

In Gamble v. City of Escondido, 104 F.3d 300 (9th Cir. 1997), the plaintiff sought permission to operate a residential facility for the elderly and disabled that would include a health care facility which would be open to the general public.

Held – Accommodation Not Required: The reasonable accommodation requirement did not require the city to allow a health care facility in a residential area.

In Hovsons, Inc. v. Township of Brick, 89 F.3d 1096 (3d Cir. 1996) a nursing home operator sought permission to operate in a residential area in which retirement communities were already allowed.

Held – Accommodation Required: Allowing a nursing home in the residential area would not fundamentally alter the character of the neighborhood in light of the similarities between a nursing home and a retirement community.
In United States v. City of Chicago Heights, 161 F.Supp.2d 819 (N.D.Ill. 2001), the city established a requirement that group homes be separated by 1000 feet from similar uses, based in part on the belief that clustering would create an institutional environment.

**Held — Accommodation Required:** Allowing a group home to operate within 1000 feet of a similar group home would not, under the facts of the case, result in such a clustering of uses as to promote institutionalization of group home residents and cause a fundamental alteration of the city’s zoning scheme. The court in U.S. v. City of Chicago Heights also expressly recognized, however:

“There may be situations in which the distance between the homes is so little, where there is already more than one group home within 1000 feet, or where the homes are so similar in nature or operation, under which a request for a special use permit would fundamentally alter the City’s purpose of avoiding clustering and preserving the residential character of certain neighborhoods.” *Id.* at 837.

(ii) Substantial increase in traffic or insufficient parking. A requested accommodation might not be reasonable if it would substantially increase traffic or lead to insufficient parking.

• In Means v. City of Dayton, 111 F.Supp. 2d 969 (S.D. Ohio 2000), a residential care facility for the mentally disabled was required to provide additional off-street parking that was not required of other residential uses as a condition of approval.

• **Held — Accommodation Not Required:** The condition was valid notwithstanding the additional expense absent a showing that the expense actually prevented the disabled from living in a residence. The court’s opinion indicates that the extra parking requirement would not have been allowed if there had been sufficient evidence introduced that the added cost of that parking would make operation of the group home prohibitively expensive.

(iii) Undue Financial or Administrative Burden. A requested accommodation is not reasonable if it would impose undue financial or administrative burdens on the City.

• In Hovsons, Inc. v. Township of Brick, 89 F.3d 1096 (3d Cir. 1996), discussed above, a nursing home operator sought permission to operate in a residential area. The town argued that allowing the use in the residential area would impose a financial burden due to increased demands for municipal services.

• **Held — Accommodation Required:** Allowing a nursing home in a residential area would not impose undue financial or administrative burdens because residents would become new taxpayers and would not impose any specialized burdens on municipal services.
c. Public Safety Exception

A requested accommodation is not required if it would pose “a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others.” See 42 U.S.C. § 3604(f)(9). The following cases address or are related to this very limited exception.


  *Held – Accommodation Not Required*: The accommodation was properly denied pursuant to the public safety exception because the higher fence would have posed a direct threat to pedestrians and vehicular traffic by blocking sight lines at an intersection.

- In *Behavioral Health Services, Inc. v. City of Gardena*, 2003 WL 21750852 (C.D.Cal. 2003), a city granted a conditional use permit to a residential rehabilitation facility subject to the condition that the operator was required to report to local law enforcement if any resident left without authorization or supervision.

  *Held – Accommodation Required*: The condition was tantamount to refusing a reasonable accommodation because it violated the patients’ right under federal law to not be identified as a resident of a rehabilitation facility without consent. Although the case does not directly address the health and safety exception, it nonetheless demonstrates the limits of the City’s authority to regulate based on generalized (and possibly unwarranted) fears of the risks posed by disabled persons, particularly recovering addicts.

B. Reasonable Accommodations From Use Restrictions: The Newport Beach Experience

This second part of this paper will very specifically focus on a city’s ability to regulate the location of handicapped housing facilities while still reasonably accommodating them in zones where the uses are not allowed. Newport Beach provides a case study of that circumstance.

In January, 2008, the Newport Beach City Council adopted its Ordinance No. 2008-05, a regulatory ordinance intended to maintain the rights of recovering alcoholics and drug dependent persons to be afforded recovery facilities in Newport Beach residential areas and also to maintain the residential character of those areas. For approximately four years, recovery facilities had proliferated in Newport Beach, with a heavy concentration of those institutional facilities on a two mile stretch of the Balboa Peninsula. Finding No. 7 contained in Ordinance No. 2008-05 described the Newport Beach circumstance as follows:

“The City has a disproportionately high number of licensed and unlicensed residential group uses serving the disabled recovering from drug or alcoholic use. Specifically: (i) the City has 2.63 licensed recovery beds per 1,000 residents, the highest ratio of any city in Orange County; (ii) the City contains 2.7%—
2.8% of the total population of Orange County, but is close to approximately 14.6% of all licensed residential beds in the County; (iii) the City has at least 26 licensed residential alcoholic and drug treatment and recovery facilities that provide a total of 213 licensed residential beds, and are licensed for a total occupancy of 238 individuals. Three of these facilities are treatment locations only; (iv) the City has at least 55 known unlicensed facilities most with six or fewer residents; (v) combining the known number of licensed beds with an estimate of known unlicensed beds, the City has 614 total recovery beds within the City limits. The City is likely to have the highest amount of recovery facilities in Orange County and possibly the State of California. Analysis by the City demonstrates that, based on the 2003-2004 National Survey on Drug Use and Health, the City has approximately twice the licensed bed days needed on an annual basis.”

Ordinance No. 2008-05 included the following general features:

1. Definitional language distinguishing group homes (including recovery facilities) from single housekeeping units (covering traditional families and those choosing to reside together while jointly sharing financial and other household responsibilities);

2. Exclusion of all group homes (e.g. boarding houses and fraternities) other than facilities serving the handicapped from single family residential zones;

3. Exclusion of all new recovery facilities from single family residential zones except those licensed for non-medical treatment by State of California Department of Alcohol and Drug Programs (“ADP”) for six or fewer persons;2

4. Abatement within one year of all recovery facilities then located in single family residential zones (excepting six or under ADP licensed facilities) unless such a facility obtains a conditional use permit to continue its operations.

The core of the effort to regulate group recovery homes already in operation in single family zones is a conditional use permit process which examines an operation’s impact and the impact of other closely located facilities on the residential character of its neighborhood. Finding No. 13 in Ordinance No. 2008-05 described the impacts to be avoided in the neighborhoods as follows:

“Evidence presented to the City reveals that certain areas of the City, including West Newport and the Central Balboa Peninsula have significantly higher numbers of group residential uses than other parts of the City, and in other parts of the State. City staff distributed a questionnaire asking about impacts caused by group residential uses and revealed the following concerns and

2 For the most part, these facilities, referred to as “six or under licensed” must be treated as though they were single family residences in accordance with California Health & Safety Code Section 11834.23.
secondary impacts: Extensive secondhand smoke; impacts to traffic and parking; conversion of garages to other uses; slower or gridlock transportation routes, if such routes are blocked by transit vans; more frequent deliveries (laundry, food, medicine, office goods) than is typical for a residential area; noise and traffic associated with more frequent trash collection; lack of frequent trash collection, in some instances, leading to vermin and odors; persons unwillingly removed from the facilities left ‘on the streets’ with few resources to return home, leading to scavenging or petty theft; excessive debris, including cigarette butts, on sidewalks, in gutters, on streets; and/or illegal smoking in public places where smoking is banned, including Oceanfront Walk and beaches; excessive noise, fighting and loud offensive language. Such activity changes the residential character of the neighborhood and is not beneficial to persons in recovery as they attempt to reintegrate their new sober lifestyle into typical society. Such effects essentially ‘institutionalize’ their recovery efforts as well as the neighborhood.”

C. The Element of Necessity in Considering Applications to Reasonably Accommodate Handicapped Housing Facilities From Use Restrictions.

*Schwarz v. City of Treasure Island*, 544 F. 3d 1201 (11th Cir., 2008) continues a recent iteration of the notion that a person in recovery must be reasonably accommodated at the location of his or her choice whether or not a need exists for such facilities in the community. Stated another way, this case does not recognize that a failure to show the economic necessity of allowing recovery at a particular location should be considered in determining whether an accommodation must be given. In *Schwarz*, the Court was dealing with a zoning structure which excluded from single family zones any use in which occupancy turned over frequently. This restriction was intended to protect single family zones from the secondary effects of high turnover uses such as vacation rentals as well as recovery facilities.

The *Schwarz* Court found that accommodating four particular facilities in single family residential zones made sense because each of the four locations was adjacent to multi-family uses. Accordingly, the accommodation was given. The Court continued its discussion, holding that the accommodation only was required if, upon remand, the District Court would find it necessary upon evidence being presented showing “…that living in the halfway house addresses a need caused by residents’ addiction.” *Schwarz, supra* at page 1225. Unfortunately, the Court did not terminate the discussion at that point. Instead, in what should be considered dictum, the Court made the following statement at page 1225, which dismisses the need for an operator to show a demand for additional recovery facilities in the municipality in order to obtain such an accommodation:

“Necessity. But Treasure Island would be required to make that reasonable accommodation only if it ‘may be necessary to afford [Gulf Coast clients an] equal opportunity to use and enjoy a dwelling.’” The district court concluded that Gulf Coast
could not satisfy this element because it could operate high
turnover halfway houses in Treasure Island’s RFM-30, RFH-50
and CG zones. We reject this rationale because reasonable
accommodation analysis asks whether a handicapped person must
be accommodated in the dwelling of his choice, rather than at
another location in the municipality…."

The holdings of BryantwoodsInn, Incorporated v. Howard County, Maryland, 124 F. 3d 597 (4th Cir., 1997) sharply disagree with the above quoted language from Schwarz. There, the County denied an application of an operator of a group home for elderly handicapped persons to expand from eight residents to 15 residents. Among other matters, the County’s Planning Board found that there were more than 30 such facilities in the County operating with eight or fewer residents, thus demonstrating the financial viability of that smaller operation. Further the district court held that the accommodation was not shown to be necessary because numerous other group homes were available in the area having from an 18% to 23% vacancy rate. BryantwoodsInn, Incorporation, supra, at 600.

The 4th Circuit Court of Appeals squarely supported the Planning Board and the district court by establishing a requirement that necessity for a particular facility to be operated in the community must be shown to excuse its compliance with zoning standards. Those supporting statements (Holdings) made on page 605 include the following:

“The more serious inadequacy of Bryant Woods Inn’s position, however, appears in connection with its effort to show that its zoning change is ‘necessary.’ Howard County’s existing zoning regulations do not prohibit group housing for individuals with handicaps. Indeed, the regulations permit such housing. [citation] Bryant Woods Inn houses 8 handicapped persons and some 30 other facilities in Howard County similarly do so.

…

…While ‘some minimum size may be essential to the success’ of group homes [citation], the Inn had introduced no evidence that group homes are not financially viable with eight residents. On the contrary, the record before the Board shows that almost 30 such homes operate viably in Howard County with eight or fewer residents.…

…

A handicapped person desiring to live in a group home in a residential community in Howard County can do so now at Bryant Woods Inn under existing zoning regulations and, if no vacancy exists, can do so at the numerous other group homes at which vacancies exist. The unrefuted evidence is that the vacancy rate was between 18 to 23 percent within Howard County. We hold
that under these circumstances, Bryant Woods Inn’s demand that it be allowed to expand its facility from eight to 15 residents is not ‘necessary,’ as used in the FHA to accommodate handicapped persons.”

Also worth consideration is Smith and Lee Associates v. City of Taylor, 102 F. 3d 781 (6th Cir., 1996). There the Court required a reasonable accommodation for expansion of a residential home for the elderly disabled contrary to zoning standards. One reason stated for the Court’s ruling was that there was an insufficient supply of assisted living facilities in the area. Demonstrated necessity legally supported the ordered accommodation.

Other cases have reached conclusions similar to those stated in BryantwoodsInn, Incorporated. In one recent example, a District Court held that a reasonable accommodation was not required to allow a sober living operation to increase its occupants from six to 20 in a single family zone unless the increase was shown to be needed to make the operation financially sound or therapeutically viable. Smithers v. City of Corpus Christi, 2008 WL 819069 (S.D. Tex). See also Means v. City of Dayton, 111 F.Supp. 2d 969 (S.D. Ohio, 2000).

Attached to this paper are the provisions included in Newport Beach’s Ordinance No. 2008-05 establishing a process and criteria for considering applications for a reasonable accommodation. A decision to approve such an application must include a finding that “[t]he requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.” Subsection 20.98.025 B. 2. In our view, that finding and the necessity concept it represents must legally survive in order to maintain meaningful local regulations of group homes for the handicapped. Only then, can a balance be established which protects the rights of the handicapped to be provided facilities for recovery and the rights of residents to maintain the residential character of their neighborhoods.
Section 19. A new Chapter 20.98 entitled “Reasonable Accommodation” is hereby added to the
Newport Beach Municipal Code to read as follows:

“Chapter 20.98

Reasonable Accommodation

Sections:

20.98.010 Purpose
20.98.015 Review Authority.
20.98.020 Application for a Reasonable Accommodation.
20.98.025 Decision.
20.98.030 Expiration, Time Extension, Violation, Discontinuance, and Revocation.
20.98.035 Amendments.

20.98.010 Purpose

In accordance with federal and state fair housing laws, it is the purpose of this Chapter to provide reasonable accommodations in the City’s zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

20.98.015 Review Authority

The Hearing Officer, as defined in Section 20.03.030, is hereby designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then an applicant may request that the Hearing Officer hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval.

20.98.020 Application for Reasonable Accommodation

A. Applicant. A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.
B. **Application.** An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on a form provided by the Planning Department. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.

C. **Other Discretionary Permits.** If the project for which the request for 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 other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit.

D. **Required Submittals.** In addition to materials required under other applicable provisions of this Code, an application for reasonable accommodation shall include the following:

1. Documentation that the applicant is: (i) an individual with a disability; (ii) applying on behalf of one or more individuals with a disability; or (iii) a developer or provider of housing for one or more individuals with a disability.

2. The specific exception or modification to the Zoning Code provision, policy, or practices requested by the applicant.

3. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.

4. Any other information that the Planning Director reasonably concludes is necessary to determine whether the findings required by Section 20.98.025.B can be made, so long as any request for information regarding the disability of the individuals benefited complies with Fair Housing -Law protections and the privacy rights of the individuals affected.

### 20.98.025 Decision

A. **Hearing Officer Action.** The Hearing Officer shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with Section 20.98.025.B The reasonable accommodation request shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for any other discretionary permit provided that, notwithstanding Section 20.95.060, the standard of review on appeal shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.

B. **Findings.** The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall 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 "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.

4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.

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.

In making these findings, the decision-maker may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

C. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.

2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.

3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.

4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

D. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program.

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood.

2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
3. Whether granting the requested accommodation would substantially undermine any express purpose of either the City’s General Plan or an applicable Specific Plan.

4. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

E. Coastal Zone Properties. For housing located in the Coastal Zone, a request for reasonable accommodation under this section may be approved by the City if it is consistent with the requisite findings set forth in 20.98.025.B, 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, and the Local Coastal Program.

F. Rules While Decision is Pending. 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.

G. Effective Date. No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make an appeal. In the event an appeal is filed, the reasonable accommodation shall not become effective unless and until a decision is made by the City Council on such appeal, under the provisions of Chapter 20.95.

20.98.030 Expiration, Time Extension, Violation, Discontinuance, and Revocation

A. Expiration. 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:

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.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

B. Time Extension. The Hearing Officer may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.
C. **Notice.** Notice of the Hearing Officer’s decision on a time extension shall be provided as specified in Section 20.91.030 C. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in Paragraph D below.

D. **Appeal of Determination.** A time extension for a reasonable accommodation shall be final unless appealed to the City Council within 14 calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Chapter 20.95 of this Code, as modified by Section 20.98.025.A.

E. **Violation of Terms.** Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

F. **Discontinuance.** A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days. If the persons initially occupying a residence vacate, the reasonable accommodation shall remain in effect only if the Planning 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, and (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Planning Director may request the applicant or his or her successor-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within ten (10) days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

G. **Revocation.** Procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

**20.98.035 Amendments**

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application 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 20.** Paragraph “A” of Section 5.95.010 (definitions) of Chapter 5.95 (Short Term Lodging Permit” of the Newport Beach Municipal Code is hereby amended to read as follows:
C. Notice. Notice of the Hearing Officer’s decision on a time extension shall be provided as specified in Section 20.91.030.C. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in Paragraph D below.

D. Appeal of Determination. A time extension for a reasonable accommodation shall be final unless appealed to the City Council within 14 calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Chapter 20.95 of this Code, as modified by Section 20.98.025.A.

E. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

F. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days. If the persons initially occupying a residence vacate, the reasonable accommodation shall remain in effect only if the Planning 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, and (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Planning Director may request the applicant or his or her successor-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within ten (10) days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

G. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.98.035 Amendments

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