



Legislation Text

File #: 230936, Version: 1

ORDINANCE NO. 230936

Sponsor: Director of City Planning and Development Department

Amending Chapter 88, the Zoning and Development Code, for the purpose of creating a process to allow persons with disabilities to apply for a reasonable accommodation to the Zoning and Development Code, by enacting a new Section 88-571, Relief for Reasonable Accommodation, and by repealing Sections 88-805-02, Residential Use Group, and 88-810-700, Household, and enacting in lieu thereof new sections of like number and subject matter for the purpose of ensuring the City's regulations are in compliance with federal law.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section A. Amending Chapter 88, the Zoning and Development Code, for the purpose of creating a process to allow persons with disabilities to apply for a reasonable accommodation to the Zoning and Development Code, by enacting a new Section 88-571, Relief for Reasonable Accommodation, said section to read as follows:

88-571 RELIEF FOR REASONABLE ACCOMMODATION

88-571-01 - INTENT

It is the policy of the City of Kansas City, Missouri, pursuant to the federal Fair Housing Amendments Act of 1988, Title II of the Americans with Disabilities Act, and applicable state laws, to provide individuals with disabilities relief from requirements of this zoning and development code, city policies, and administrative practices to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities.

Nothing in this section requires persons with disabilities or operators of group homes for persons with disabilities acting or operating in accordance with applicable zoning, licensing or land use laws or practices to seek reasonable accommodation under this Section.

88-571-03 - Requesting Reasonable Accommodations

To make specific housing available to one (1) or more individuals with disabilities, a disabled person or a person acting on his/her behalf at his/her request (collectively, the "applicant") may request a reasonable accommodation in the form of relief from any standard of this zoning and development code, adopted city policy, or administrative practice of the city applicable to such housing.

1. A request by an applicant for reasonable accommodation requesting relief from any requirement of this zoning and development code, adopted city policy, or administrative procedure shall be made orally or in writing on a reasonable accommodation request form provided by the city planning and development director. The form shall contain:

- a. Name and address of the individual or entity requesting reasonable accommodation. If the applicant is applying on behalf of an individual with a disability, the name and address of the individual with a disability shall also be provided;
- b. Address of the property for which the accommodation is requested;
- c. The name, phone number, and address of the owner of the fee interest of the property (if other than the applicant);
- d. Attestation that the applicant is (a) an individual with a disability, (b) applying on behalf of an individual with a disability, or (c) a developer or provider of housing for one or more individuals with a disability;
- e. The nature of the disability that requires the reasonable accommodation. In the event that the specific individuals who are expected to reside at the property are not known to the applicant in advance of making the application, the applicant shall not be precluded from filing the application but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing. The applicant shall notify the department in the event the residents at the location are not within the range described. The department shall then determine if an amended application and subsequent determination of reasonable accommodation is appropriate;
- f. The specific type of accommodation requested by the applicant, applicable sections of this zoning and development code, policy titles, and practices for which the accommodation is sought. To the extent practicable, this portion should include information concerning the impact of the reasonable accommodation on the adjoining properties and area, the number of people who are expected to be availing themselves of the reasonable accommodation, the estimated number of people in an average week who will be necessary to provide services to the person(s) with disabilities at the property on an on-going basis, whether or not this type of reasonable accommodation is required to obtain a license from any State or County authority to operate, and any other information the applicant thinks would assist in determining the reasonableness of the accommodation;
- g. Documentation that the specific accommodation(s) requested by the applicant is necessary for the individual(s) with the disability to use and enjoy the dwelling, or is necessary to make the development of housing for individuals with disabilities financially or practically feasible.
- h. The applicant should also note, if known, whether this accommodation requires any additional permits or licensure (e.g. business license); and
- i. Whether the accommodation requested may be necessary to afford one (1) or more disabled persons equal opportunity to use and enjoy a specific dwelling.

- j. Any other information that the code administrator or department concludes is necessary in order to make the findings required by this Section.

The city planning and development department will provide the assistance necessary to an applicant in making a request for reasonable accommodation, including information which the department deems necessary to complete a reasonable accommodation request form. Upon the City's receipt of the necessary information to process the applicant's request for reasonable accommodation, the department shall use the information to complete a reasonable accommodation request form. When the department prepares a request for reasonable accommodation form in response to an oral request the form shall be presented to the requester for their input and approval.

2. The department will provide the assistance necessary to any applicant wishing to appeal a denial of a request for reasonable accommodation to ensure the process is accessible to the applicant. The applicant is entitled to be represented at all stages of the proceedings identified in this Section by a person designated by the applicant.
3. Should the information provided by the applicant to the department include medical information or records of the applicant, including records indicating the medical condition, diagnosis or medical history of the applicant, the department will treat such medical information as confidential.
4. The department shall provide written notice to the applicant, and any person designated by the applicant to represent the applicant in the application proceeding, of any request received by the department for disclosure of the medical information or documentation which the applicant has provided. The department will cooperate with the applicant, to the extent allowed by law, in actions initiated by the applicant to oppose the disclosure of such medical information or documentation.
5. All medical information or records of the applicant will be destroyed by the City after the time for appeal of the decision has expired.i98o

88-571-04 - Reviewing Authority

1. Requests for reasonable accommodation made pursuant to this section shall be reviewed by the city planning and development director, using the criteria set forth in 88-571-05.
2. The city planning and development director shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application, and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth in 88-571-05.
3. If necessary to reach a determination on the request for reasonable accommodation, the city planning and development director may request further information from the applicant consistent with applicable fair housing laws, specifying in detail the information that is required. The applicant shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the 30-day period to issue a written determination shall be stayed. The

city planning and development director shall issue a written determination within thirty (30) days after receipt of the additional information. if the applicant fails to provide the requested additional information with the 15-day period, the director shall issue a written determination within thirty (30) days after expiration of the 15-day period.

88-571-05 - Required Findings

1. The written decision to grant, grant with modifications or conditions, or deny a request for reasonable accommodation shall be consistent with applicable fair housing laws and based upon the following factors:
 - a. Whether the housing that is the subject of the request for reasonable accommodation will be used by an individual with a disability protected under the applicable fair housing laws.
 - b. Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the applicable fair housing laws.
 - c. Whether the requested accommodation would impose an undue financial or administrative burden on the city.
 - d. Whether the requested accommodation would require a fundamental alteration in the nature of the zoning and development code or building program.
 - e. Whether the requested accommodation would, under the specific facts of the case, result in a threat to the health or safety of other individuals or substantially damage the property of others.
2. Factors for Consideration - Necessity. The city planning and development director 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:
 - a. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
 - b. Whether the individual(s) with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.
 - c. In the case of developers or providers of housing for individuals with disabilities, whether the requested accommodation is necessary to make a facility or facilities of a similar nature or operation economically viable in light of the relevant market and market participants.
 - d. In the case of developers or providers of housing for individuals with disabilities, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individual(s) with a disability an equal opportunity to live in a residential setting.
3. Factors for Consideration - Fundamental Alteration/Reasonableness. The city planning and development director 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 a city program:
 - a. Whether the requested accommodation would fundamentally alter the character of a

neighborhood.

- b. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
 - c. Whether granting the requested accommodation would substantially undermine any express purpose of any of the city's comprehensive plan or the intent of this zoning and development code.
 - d. In the case of a developer or provider of housing for individuals with disabilities, whether the requested accommodation would create an institutionalized environment due to the number of, and distance between, facilities that are similar in nature.
4. In making the findings, the director may approve alternative reasonable accommodations that provide an equivalent level of benefit to the applicant with respect to (a) enabling the individual(s) with the disability to use and enjoy the dwelling, or (b) making the development of housing for individuals with disabilities financially or practically feasible.

88-571-06 - Written Decision

1. The written decision of the city planning and development director on a request for reasonable accommodation shall explain the basis of the decision, including those criteria in 88-571-05 which were dispositive. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeal process set forth in 88-571-07. The notice of decision shall be sent to the applicant by certified mail.
2. The written decision of the director shall be final unless an applicant files an appeal to the Board of Zoning Adjustment in accordance with 88-571-07.
3. If the city planning and development director fails to render a written decision on the request for reasonable accommodation within the thirty (30) day period established by 88-571-04, the request shall be deemed granted.

88-571-07 - Appeals

1. Within fifteen (15) days of the date of the city planning and development director's decision, an applicant may appeal an adverse decision to the board of zoning adjustment as set forth in 88-575.
2. If an individual needs assistance in filing an appeal on an adverse decision, the city planning and development director shall provide or arrange for assistance to ensure that the appeals process is accessible. All applicants are entitled to be represented at all stages of the appeal proceeding by a person designated by the applicant.
3. All appeals shall contain a written statement of the grounds for the appeal. Any personal information related to the disability status identified by an applicant as confidential shall be retained and transmitted in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection.
4. In considering an appeal of the decision of the director, the board of zoning adjustment shall consider (a) the application requesting a reasonable accommodation, (b) the director's decision, (c) the

applicant's written statement on the grounds for appeal, and (d) the provisions of this Section, in order to determine whether the director's decision was consistent with applicable fair housing laws and the required findings established in 88-571-05.

5. There shall be no fee to appeal a decision issued under 88-571-06.

88-571-08 - Expiration

1. Any approval granted for a reasonable accommodation in accordance with this Section shall expire twenty-four (24) months from the effective date of the approval unless:
 - a. Construction of the approved work has commenced in accordance with an approved building permit, where applicable.
 - b. A certificate of occupancy for the approved work has been issued.
 - c. The use authorized by the reasonable accommodation is legally established.
 - d. An extension of time has been granted by the director in accordance with 88-571-08(2).
2. The director may approve up to three (3), one-year extensions of time for an approval of a reasonable accommodation, upon a showing of good cause by the applicant for each such extension. Any request for an extension of time for an approval of a reasonable accommodation shall be made in writing to the director at least thirty (30) days prior to the expiration date.

88-571-09 - Future Interest of Accommodation

Any accommodation granted to an individual with a disability shall be considered personal to that individual and shall not run with the land. Accordingly, the director (or the board of zoning adjustment on appeal) may condition the approval of any such accommodation on (a) removal of any improvements constructed pursuant to the accommodation, where the removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists; (b) time limits and/or expiration of the accommodation, when the need for which the accommodation was granted no longer exists; or (c) recordation of a covenant, building restriction, or deed restriction putting prospective buyers of the subject property on notice regarding the personal nature of the accommodation and any conditions relating thereto.

88-571-10 - Resubmission

No request for reasonable accommodation that has been denied in whole or in part may be resubmitted within one (1) year of the date of the denial, except upon a showing of materially changed conditions.

88-571-11 - Modification

Any request to modify an approved accommodation shall be treated as a new application unless, in the opinion of the director, the requested modification results in only a minor change, is within the authority of the director to approve, and is consistent with the original approval.

88-571-12 - Fees

The city shall not impose any additional fees or costs in connection with a request for reasonable accommodation under the provisions of this section or an appeal of a denial of such request by the city planning and development director. Nothing in this section obligates the city to pay an applicant's attorney fees or costs.

88-571-13 - Stay of Enforcement

While an application for reasonable accommodation or appeal of a denial of said application is pending, the city will not enforce the subject zoning ordinance against the applicant. All other laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

88-571-14 - Record-Keeping

The city planning and development director shall maintain records of all oral and written requests submitted under the provisions of this section and the city's responses thereto, as required by State law.

Section B. Repealing Sections 88-805-02, Residential Use Group, and 88-810-700 Household and enacting in lieu thereof new sections of like number and subject matter for the purpose of ensuring the City's regulations are in compliance with federal law. .

88-805-02 RESIDENTIAL USE GROUP

The residential use group includes uses that provide living accommodations to one or more persons. The group includes two use categories: household living and group living.

88-805-02-A. HOUSEHOLD LIVING

Residential occupancy of a dwelling unit by a household with tenancy arranged on a basis of 30 consecutive days or more.

88-805-02-B. GROUP LIVING

Residential occupancy of a structure by other than a "household," typically providing communal kitchen/dining facilities. Examples of group living uses include but are not limited to fraternities, sororities, convents, monasteries, nursing homes and the following specific use types:

1. GROUP HOME

A single dwelling occupied on a permanent basis by a group of unrelated persons with disabilities, including those recovering from alcoholism or addiction to drugs. Group homes may also be occupied by paid staff and caregivers. It expressly excludes halfway houses for alcoholics, drug addicts, prisoners or juvenile delinquents. Group homes for eight or fewer unrelated persons with disabilities, with up to two additional persons acting as houseparents or guardians, are considered "households" and are allowed as-of-right in all districts that allow household living uses.

2. DOMESTIC VIOLENCE RESIDENCE

A residential building in which temporary housing is provided for up to 8 persons who are victims of domestic violence. Any children or support staff using sleeping accommodations at a domestic violence residence will be counted in determining maximum occupancy.

3. DOMESTIC VIOLENCE SHELTER

A building in which temporary housing is provided for more than 8 persons who are victims of domestic violence.

4. NURSING HOME

As defined in Chapter 198, RSMO.

5. CONVENT/MONASTERY

A residential building housing persons (such as nuns or monks) under religious vows.

88-810-700 - HOUSEHOLD

A household is any of the following:

- a. An individual; or
- b. Two or more persons related by blood, marriage, or adoption; or
- c. A group of not more than five persons, excluding servants, who need not be related by blood or marriage, living together and subsisting in common as a separate nonprofit housekeeping unit which provides one kitchen; or
- d. A group of eight or fewer unrelated disabled persons, including those recovering from alcoholism or addiction to drugs, which may include two additional persons acting as houseparents or guardians who need not be related to each other or to any of the disabled persons residing in the home.

Section C. That the Council finds and declares that before taking any action on the proposed amendment hereinabove, all public notices and hearings required by law have been given and had.

I hereby certify that as required by Chapter 88, Code of Ordinances, the forgoing ordinance was duly advertised and public hearings were held.

Joseph Rexwinkle, AICP
Secretary, City Plan Commission

Approved as to form:

Sarah Baxter
Senior Associate City Attorney