



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

March 23, 2010

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02145

Re: Ordinance regarding Providing a Procedure for Reasonable Accommodation in the City's
Land Use and Zoning and Building Regulations Pursuant to the Fair Housing Laws

Dear Honorable Board Members:

Enclosed for your consideration is draft Ordinance regarding Providing a Procedure for
Reasonable Accommodation in the City's Land Use and Zoning and Building Regulations
Pursuant to the Fair Housing Laws.

Please feel free to contact me if you have any questions.

Very truly yours,

David Shapiro
Assistant City Solicitor

cc: Mayor Joseph Curtatone
Frank Wright, Acting City Solicitor
Janice Delory, Chief of Staff
Matt Dias, Mayor's Aide
Monica Lamboy, Executive Director, OSPCD
Ed Nuzzo, Acting Superintendent, ISD

enc.

CITY OF SOMERVILLE
ORDINANCE NO. 2010-____
IN THE BOARD OF ALDERMEN: _____

Be it ordained by the Board of Aldermen, in session assembled, that the Code of Ordinances of the City of Somerville, are hereby amended as follows:

AN ORDINANCE OF THE CITY OF SOMERVILLE
ADDING SECTIONS ____ TO THE SOMERVILLE CODE OF ORDINANCES,
PROVIDING A PROCEDURE FOR REASONABLE ACCOMMODATION
IN THE CITY'S LAND USE AND ZONING AND BUILDING REGULATIONS
PURSUANT TO FAIR HOUSING LAWS.

Sec. 1. Purpose.

It is the policy of the jurisdiction, pursuant to the federal Fair Housing Amendments Act of 1988 and the Massachusetts Fair Housing Act, G.L. Chapter 151B (hereafter "fair housing laws"), to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This ordinance establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures of the jurisdiction to comply fully with the intent and purpose of fair housing laws.

Sec. 2. Findings.

The Board of Aldermen finds:

The federal Fair Housing Amendments Act of 1988 and Massachusetts Fair Housing Act, G.L. Chapter 151B impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing;

- A. The Office of Strategic Planning and Community Development must identify and develop a plan for removing governmental constraints to housing for individuals with disabilities including local land use and zoning constraints or providing reasonable accommodation;
- B. A fair housing reasonable accommodation procedure for individuals with disabilities and developers of housing for individuals with disabilities to seek relief in the application of land use, zoning and building regulations, policies, practices and procedures will further the jurisdiction's compliance with federal

and state fair housing laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

Sec. 3. Applicability.

Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

In accordance with 42 United States Code Section 3602, an individual with a disability is someone 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 with a record of such impairment, pursuant to 24 Code of Federal Regulations Section 100.201.

A request for reasonable accommodation may be made 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, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

Sec. 4. Notice to the Public of Availability of Accommodation Process.

Notice of the availability of reasonable accommodation shall be prominently displayed at the Office of Strategic Planning and Community Development, advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodation shall be available to the public in the Office of Strategic Planning and Community Development.

Sec. 5. Requesting Reasonable Accommodation.

- A. In order to make housing available to an individual with a disability, any eligible person as defined in Sec. 3 may request a reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.
- B. Requests for reasonable accommodation shall be in writing and provide the following information:
 - (1) Name, address and telephone number of the individual(s) requesting reasonable accommodation;
 - (2) Name and address of the property owner(s);
 - (3) Address of the property for which accommodation is requested;

- (4) The current actual use of the property
 - (5) The basis for the claim that the individual is considered disabled under the Acts.
 - (6) Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought; and
 - (7) Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.
 - (8) Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
 - (9) Other supportive information deemed necessary by the Office of Strategic Planning and Community Development to facilitate proper consideration of the request, consistent with fair housing laws.
- C. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.
- D. If an individual needs assistance in making the request for reasonable accommodation, the Office of Strategic Planning and Community Development will provide assistance to ensure that the process is accessible.

Sec. 6. Reviewing Authority.

- A. Requests for reasonable accommodation shall be reviewed by the Office of Strategic Planning and Community Development using the criteria set forth in Sec. 7.
- B. The Office of Strategic Planning and Community Development 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 Sec. 7.
- C. If necessary to reach a determination on the request for reasonable accommodation, the Office of Strategic Planning and Community Development may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a

request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.

Sec. 7. Required Findings.

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on 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 fair housing laws;
- (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;
- (3) Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction and;
- (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program.

Sec. 8. Written Decision on the Request for Reasonable Accommodation.

- A. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Office of Strategic Planning and Community Development's findings on the criteria set forth in Sec. 7. 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 below. The notice of decision shall be sent to the applicant by certified mail.
- B. The written decision of the Office of Strategic Planning and Community Development shall be final unless an applicant appeals it to Planning Board.
- C. 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.

Sec. 9. Appeals.

- A. Within thirty (30) days of the date of the Office of Strategic Planning and Community Development's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing.

- B. If an individual needs assistance in filing an appeal on an adverse decision, the Planning Board will provide assistance to ensure that the appeals process is accessible.
- C. All appeals shall contain a statement of the grounds for the appeal.
- D. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

Sec. 10. Fee.

The fee for an application for reasonable accommodation shall be established by the Office of Strategic Planning and Community Development.

Sec. 11. Other Requirements.

- A. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.
- B. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.
- C. Where appropriate, the Office of Strategic Planning and Community Development may condition its approval on any or all of the following:
 - (1) Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;
 - (2) Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
 - (3) Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
 - (4) Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
 - (5) Measures to reduce the impact on surrounding uses;
 - (6) Measures in consideration of the physical attributes of the property and structures;
 - (7) Other reasonable accommodations that may provide an equivalent level of benefit and/or that will not result in an encroachment into required

setbacks, exceedance of maximum height, lot coverage or floor area ratio requirements specified for the zone district; and

(8) Other conditions necessary to protect the public health, safety and welfare.

Approved:

President

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