

**CALISTOGA PLANNING COMMISSION  
STAFF REPORT**

**TO:** Chairman Manfredi and Members of the Planning Commission

**FROM:** Lynn Goldberg, Planning & Building Director

**MEETING DATE:** March 27, 2013

**SUBJECT:** ZONING ORDINANCE AMENDMENT ZO 2013-1  
REASONABLE ACCOMMODATION PROCEDURE

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**1 REQUEST**

2 Consideration of text amendments to the Calistoga Municipal Code, initiated by the City  
3 of Calistoga, amending Title17 (Zoning) to establish a procedure whereby persons with  
4 disabilities seeking equal access to housing may request reasonable accommodation in  
5 the application of zoning laws and other land use regulations, policies and procedures.

**6 BACKGROUND**

7 Both the Federal Fair Housing Act and the California Fair Employment and Housing Act  
8 (Fair Housing Laws) impose an affirmative duty on local governments to make  
9 reasonable accommodation (modifications or exceptions) in their land use regulations  
10 and practices when such accommodation may be necessary to afford disabled persons  
11 an equal opportunity to housing.

12 The intent of the proposed ordinance is to establish a formal procedure for persons with  
13 disabilities seeking equal access to housing to request reasonable accommodation in  
14 the application of the City's land use regulations and to establish criteria to be used  
15 when considering such requests.

16 The amendments would implement Action A7 under Objective H-7.1 in the Calistoga  
17 General Plan Housing Element, which calls for a reasonable accommodation procedure  
18 to be incorporated into the Municipal Code.

**19 DISCUSSION**

20 Many jurisdictions in California have relied upon existing variance and/or conditional use  
21 permit procedures to handle requests for reasonable accommodation in place of  
22 establishing a specific review procedure. However, the criteria for granting or denying  
23 requests for reasonable accommodation made through a variance or conditional use  
24 permit process may be insufficient to justify the decision when judged in the light of the  
25 fair housing laws' reasonable accommodation mandate.

26 The proposed ordinance addresses this concern by establishing a specific procedure for  
27 persons with disabilities to request reasonable accommodation in the application of the  
28 City's land use regulations and relevant criteria to be used when considering such  
29 requests. The proposed ordinance has been developed using the State Department of

30 Housing and Community Development's "model ordinance" and other reasonable  
31 accommodation ordinances that have been adopted by other communities in California.  
32 Provisions of the proposed ordinance are summarized below.

### 33 Request for Accommodation

34 A request for reasonable accommodation may be made by any person with a disability,  
35 or an authorized representative of a disabled person, when a modification or exception  
36 to the rules, standards and practices for the siting, development and use of housing or  
37 housing- related facilities would eliminate regulatory barriers and provide an individual  
38 with a disability equal opportunity to housing of choice.

39 The types of reasonable accommodation requests that would be appropriate under the  
40 proposed ordinance could range from modifications or exceptions from site  
41 development standards such as yard setbacks or parking requirements to relief from  
42 certain use permit conditions. Examples of the types of requests that may be made are  
43 provided below.

#### 44 • Example No. 1: Yard Setbacks

45 Wheelchair ramps are classified as a structure under the California Building  
46 Code and must comply with applicable setback requirements. Under the  
47 proposed ordinance, a request could be made to allow for a modification or  
48 exception to the setback requirement to allow for construction of ramp.

#### 49 • Example No. 2: Parking

50 In most residential zoning districts required off-street parking cannot be located in  
51 the front or side yard setback areas. Under the proposed ordinance, a request  
52 could be made to allow for parking improvements to be made within the front or  
53 side yard setback area to accommodate access to and use of a wheelchair ramp.

### 54 Review Procedure

55 Applications requesting reasonable accommodation will be reviewed under one of two  
56 tracks set forth in the proposed ordinance. In situations where no other City approval is  
57 being sought, the decision to grant a request for reasonable accommodation will be  
58 made by the Planning and Building Director (or designee). If the request for reasonable  
59 accommodation is part of a project that requires some other discretionary land use  
60 review by the City, the request will be reviewed by the authority responsible for  
61 reviewing the discretionary land use application

62 Decisions made by the Planning and Building Director may be appealed to the Planning  
63 Commission. Decisions made as part of a discretionary land use review may be  
64 appealed to the City Council.

### 65 Approval Criteria

66 The proposed ordinance sets forth the following list of findings to be considered when  
67 reviewing a request for reasonable accommodation, all of which shall be required for  
68 approval:

- 69 1. The housing, which is the subject of the request, will be used by a disabled  
70 person under Fair Housing Laws;
- 71 2. The request for reasonable accommodation is necessary to make specific  
72 housing available to a disabled person under Fair Housing Laws;
- 73 3. The requested reasonable accommodation will not impose an undue financial or  
74 administrative burden on the City; and
- 75 4. The requested reasonable accommodation will not require a fundamental  
76 alteration in the nature of a City program or law, including but not limited to land  
77 use and zoning; and
- 78 5. The requested reasonable accommodation will not result in a direct threat to the  
79 public health or safety of other individuals or substantial physical damage to the  
80 property of others.

81 In considering and granting a request, the reviewing authority can also impose  
82 reasonable conditions, such as including a condition that requires an alternative  
83 reasonable accommodation that provides an equivalent level of benefit.

#### 84 **ENVIRONMENTAL REVIEW**

85 This action has been reviewed in accordance with the California Environmental Quality  
86 Act. CEQA Guidelines Section 15061(b)(3), the “general rule” exemption, states that  
87 where it can be seen with certainty that there is no possibility that the activity in question  
88 may have a significant effect on the environment, the activity is exempt from CEQA. The  
89 City has determined that the activity in question, Municipal Code amendments  
90 establishing a procedure for persons with disabilities seeking equal access to housing to  
91 request reasonable accommodation in the application of land use regulations, will not  
92 have an impact on the environment and therefore is exempt from CEQA under the  
93 general rule.

#### 94 **RECOMMENDATION**

95 Staff recommends that the Planning Commission adopt a resolution recommending to  
96 the City Council approval of text amendments to the Calistoga Municipal Code, adding  
97 Municipal Code Chapter 17.60 (Requests for Reasonable Accommodation) to establish a  
98 formal procedure for persons with disabilities to request reasonable accommodation in  
99 the application of the City’s land use regulations.

100 Staff will forward the comments and recommendations of the Planning Commission to  
101 the City Council for consideration during their review of the proposed reasonable  
102 accommodation ordinance.

#### 103 **ATTACHMENT**

- 104 1. Draft Resolution recommending City Council approval of amendments to the  
105 Calistoga Municipal Code relating to requests for reasonable accommodation in  
106 the application of the City’s land use regulations.