

RESOLUTION 2021-013

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; DECLARING A 30-DAY PUBLIC RECORD PERIOD FOR AMENDMENTS TO CHAPTER 151 OF THE CITY CODE OF ORDINANCES, THE DEVELOPMENT CODE, AS SHOWN IN EXHIBIT A, ATTACHED HERETO; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICES AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, in accordance with established policy and development code procedures, the City of Sierra Vista has proposed text amendments to the following Development Code Sections; Section 151.02.004-Definitions; Section 151.06.011-Reasonable Modification; and

WHEREAS, Article 151.31 of the Development Code requires that the City Council review and decide on all applications for text amendments; and

WHEREAS, per Article 151.31, the Planning & Zoning Commission recommended approval of the amendments to City Council; and

WHEREAS, under the provisions of Section 9-802 of the Arizona Revised Statutes, the proposed amendments to the City's Development Code shall be declared a matter of public record for a period of 30 days prior to being passed and adopted by ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista declaring proposed text amendments to the Development Code as a public record be, and hereby is, reaffirmed.

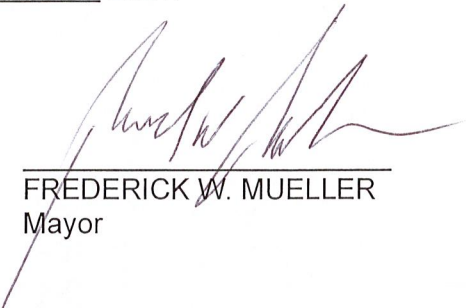
SECTION 2

That the certain document entitled Exhibit A, proposed amendments to Development Code attached hereto, copies of which are on file in the office of the City Clerk, is hereby declared a 30-day public record.

SECTION 3

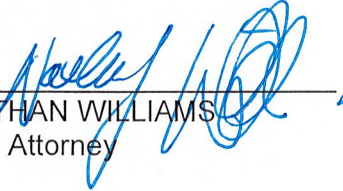
That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 25TH DAY OF FEBRUARY 2021.



FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:



NATHAN WILLIAMS
City Attorney

ATTEST:



JILL ADAMS
City Clerk

PREPARED BY:

Jeff Pregler, AICP
Senior Planner

EXHIBIT A

ARTICLE 151.02 DEFINITIONS

Section 151.02.004 Definitions

Americans with Disabilities Act: 42 U.S.C. Subsection 1281 et. seq. Pub. L 101-336 and implementing regulations at 28 C.F.R. parts 35 and 36.

Developmental Disability

~~Physical or mental impairment such as autism, cerebral palsy, epilepsy, or mental retardation.~~

Disabled Person. A person who has a physical or mental impairment, or both, that substantially limits one or more major life activities, including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

Fair Housing Laws- means (1) the Federal Fair Housing Act (42 U.S.C. § 3601) and (2) A.R.S. Title 41, Chapter 9, Article 7

Reasonable Modification- means providing disabled persons flexibility in the application of a structure's dimensional standards and lot coverage area requirements and procedures, when necessary to eliminate barriers to housing opportunities. It includes such things as reduced building setbacks, building height that exceeds the maximum requirements, or increasing the lot coverage areas. Reasonable accommodation does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city's land use patterns and zoning codes.

ARTICLE 151.06 SPECIAL REGULATIONS FOR PARTICULAR USES

Section 151.06.011 Reasonable Modification

A. Intent

1. It is the City's policy to provide individuals with disabilities reasonable modifications in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing. The intent of this Section is to provide a procedure under which a disabled person may request a reasonable modification in the application of a structure's dimensional standards or to the lot coverage areas.

2. This Section is based on requirements of the federal and state fair housing laws and is distinct from the requirements for a variance set forth in Article 151.30.

B. Requesting reasonable modification.

1. Request. A disabled individual may request a reasonable modification to a structure's dimensional standards or to the lot coverage area. A reasonable modification cannot waive a requirement for a conditional use permit when otherwise required or result in approval of uses otherwise prohibited by the City's land use and zoning regulations.

2. Availability of information. Information regarding this reasonable modification procedure will be available at City Hall and on the City websites, and be made available in any other manner as determined by the City.

3. Assistance. The City will provide reasonable assistance to any applicant making a request.

4. Balancing rights and requirements. The City will attempt to balance (1) the privacy rights and reasonable request of an applicant for confidentiality, with (2) the land use requirements for notice, factual findings and rights to appeal, in the city's requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable modification.

C. Application requirements.

1. Application. The applicant shall submit a request for reasonable accommodation on a form provided by the City. The application shall include the following information:

a. The current actual use of the property;

b. The basis for the claim that the individual is considered disabled as defined in this Code and in the fair housing laws as well as current, written certification of need for the requested accommodation from a medical doctor.

c. The rule, policy, practice and/or procedure of the city for which the request for modification is being made, including the Development Code regulation from which reasonable modification is being requested;

d. The type of accommodation sought;

e. The reason(s) why the modification is reasonable and necessary for the needs of the disabled person(s). Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the modification;

f. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and

g. . Other supportive information deemed necessary by the City to facilitate proper consideration of the request, consistent with fair housing laws.

2. Review with other land use applications. If the project for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit, architectural review, general plan amendment, zoning amendment, subdivision plat), then the applicant shall submit the reasonable modification application first for a determination, before proceeding with the other applications.

3. Fee. The fee for an application for reasonable accommodation shall be established by resolution of the city council.

D. Approval authority – Notice – Decision.

1. Approval authority.

The Director of Community Development (Director) has the authority to review and decide upon requests for reasonable modifications, including whether the applicant is a disabled individual as defined in this Code.

2. Notice. The City shall notify, by mail, abutting property owner(s) most affected by the reasonable accommodation. The notice shall include a sketch plan of the site illustrating the modification and contact information for providing any comments on the application.

3. Decision. The Director shall render a decision within 30 days after the application is complete, and shall approve, approve with conditions or deny the application, based on the findings set forth in Section E. The decision shall be in writing and mailed to the applicant.

If the application for reasonable modification involves another discretionary decision, the reviewing body for that decision shall accept as final the determination regarding reasonable modification by the Director.

E. Findings – Other requirements.

1. Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:

- a. The housing will be used by a disabled person;
- b. The requested modification is necessary to make specific housing available to a disabled person;
- c. The requested modification would not impose an undue financial or administrative burden on the City; and
- d. The requested modification would not require a fundamental alteration in the City's land use and zoning regulations.

2. Other requirements.

- a. An approved request for reasonable modification is subject to the applicant's compliance with all other applicable zoning regulations.
- b. Where appropriate, the reviewing authority may condition its approval on any or all of the following:
 - (1) Measures to reduce the impact on surrounding uses;
 - (2) Measures in consideration of the physical attributes of the property and structures;
 - (3) Other reasonable accommodations that may provide an equivalent level of benefit; and
 - (4) Other conditions necessary to protect the public health, safety and welfare.

F. Appeal.

A decision by the Director may be appealed by any aggrieved person to the Hearing Officer in accordance with the appeal procedures of Article 151.30.