

# AGENDA ITEM SUMMARY

November 7, 2017

City Council

## STAFF

---

Noah Beals, Senior City Planner/Zoning  
Chris Van Hall, Legal

## SUBJECT

---

First Reading of Ordinance No. 146, 2017, Amending Article 2 of the Land Use Code to Add Section 2.19 Titled "Reasonable Accommodation Process".

## EXECUTIVE SUMMARY

---

The purpose of this item is to revise the Land Use Code (LUC) to add a process to review a request for a reasonable accommodation for qualified individuals under the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) (together, the Acts). This Ordinance will establish an administrative review process and provide criteria to be considered when reviewing a request for a reasonable accommodation.

## STAFF RECOMMENDATION

---

Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

---

Recent changes to case law, and administrative guidance related to the Acts, require the City to modify its zoning rules, policies and practices to accommodate individuals that are qualified under the Acts. This Ordinance provides a mechanism for staff to approve modifications to standards in the Land Use Code when required by the Acts. The Acts require requests to be reviewed under specific criteria which are different then criteria considered in the existing modification or variance requests already in the Land Use Code.

### Revision Highlights

One section of Land Use Code will be amended:

- Article 2-Adding a new section outlining the review process and relevant criteria to be considered including:
  - Information required in an application for reasonable accommodation;
  - Criteria to be considered by staff;
  - Confirming applicant is qualified under the Acts; and
  - Community Development and Neighborhood Services Director to issue a written decision to be made within 45 days, which decision is appealable to the City Manager.

## CITY FINANCIAL IMPACTS

---

The City's zoning staff and, as needed, other department staff members will review these requests. It is anticipated that a \$150 fee will be charged per application. However, this will be monitored within the first year to verify the expended resources per request.

**BOARD / COMMISSION RECOMMENDATION**

---

At its October 19, 2017, meeting, the Planning and Zoning Board reviewed the proposed changes and recommended approval of the proposed Code language as part of its consent agenda.

ORDINANCE NO. 146, 2017  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE 2 OF THE LAND USE CODE TO ADD  
SECTION 2.19 TITLED “REASONABLE ACCOMMODATION PROCESS”

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the “Land Use Code”); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, because of changes to case law and interpretations regarding the federal Fair Housing Act (“FHA”) and the federal Americans with Disabilities Act (“ADA”), staff has determined it necessary to add a reasonable accommodation process to exempt or modify the City’s zoning rules, policies and practices for qualified individuals when required by the FHA and ADA; and

WHEREAS, the Planning and Zoning Board reviewed this proposed Land Use Code amendment at its October 19, 2017 meeting and recommended approval; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments regarding a reasonable accommodation process are in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Article 2 of the Land Use Code is hereby amended to add a new section 2.19 to read as follows:

**Section 2.19- Reasonable Accommodation Process**

(A) ***Intent.*** It is the policy of Fort Collins to provide reasonable accommodation for exemptions in the application of its zoning laws to rules, policies, and practices for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities seeking fair access to housing. The purpose of this section is to provide a process for making a request for reasonable accommodation to individual persons with disabilities.

(B) **Application.** Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law that may be acting as a barrier to equal opportunity to housing opportunities, or any person or persons acting on behalf of or for the benefit of such a person, may request such accommodation. For purposes of this section, “disabled,” “disability,” and other related terms shall be defined as in the federal Americans with Disabilities Act of 1990 (“ADA”), the Fair Housing Act (“FHA”), or their successor laws. Requests for reasonable accommodation shall be made in the manner prescribed by Sec. 2.19 (C).

(C) **Required Information.**

(1) The applicant shall provide the following information:

(a) Applicant’s name, address, and telephone number;

(b) Address of the property for which the request is being made;

(c) The current actual use of the property;

(d) Confirmation that the subject individual or individuals are disabled under the Acts. Any information related to the subject individual or individuals’ disability shall be kept confidential;

(e) The specific zoning code provision, regulation, or policy from which accommodation is being requested; and

(f) Why the reasonable accommodation is necessary for the subject individual or individuals with disabilities to have equal opportunity to use and enjoy the specific property.

(2) **Review With Other Land Use Applications.** If the project for which the request for reasonable accommodation is being made also requires some other development review, then the applicant shall file the information required by Sec. 2.19(C) together for concurrent review with any other application for development review approval. The application for reasonable accommodation will be decided prior to any concurrent development review application that is affected by the request for reasonable accommodation, including but not limited to applications reviewed by the City Council, Planning and Zoning Board and Zoning Board of Appeals.

(D) **Review Procedure.**

- (1) **Director.** Requests for reasonable accommodation shall be reviewed by the Director, or his/her designee.
- (2) **Interactive Meeting.** Upon either the request of the Director or the applicant, the Director or his or her designee shall hold an interactive meeting with the applicant to discuss the reasonable accommodation request in order to obtain additional information or to discuss what may constitute a reasonable accommodation for a particular application.
- (3) **Director Review.** The Director, or his or her designee, shall make a written determination within forty-five (45) days of receiving an application, or having an interactive meeting, whichever date comes later, and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Sec. 2.19(E). Information related to the subject individual or individuals' disability shall be kept confidential and shall not be included in a public file.

(E) **Findings and Decision.**

- (1) **Findings.** The written decision to grant, grant with conditions or deny a request for reasonable accommodation shall be based on consideration of the following factors:
  - (a) Whether the property, which is the subject of the request, will be used by an individual disabled under the Acts;
  - (b) Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
  - (c) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
  - (d) Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a land use code provision; and
  - (e) Any other applicable requirements of the FHA and ADA.

(2) **Conditions of Approval.** In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by Sec. 2.19(E)(1).

(3) **Effect of Approval.** An approval, with or without conditions, of an application for reasonable accommodation will be treated as compliance with the Code section being accommodated but will not affect any concurrent review not related to the reasonable accommodation.

(F) **Appeal of Determination.** A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed to the City Manager in accordance with Chapter 2, Article VI of the Code of the City of Fort Collins. No other review of a reasonable accommodation determination shall be allowed except as expressly provided within this Section.

Introduced, considered favorably on first reading, and ordered published this 7th day of November, A.D. 2017, and to be presented for final passage on the 21st day of November, A.D. 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on this 21st day of November, A.D. 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk