

CITY OF PAPIILLION REASONABLE ACCOMMODATION POLICY

I. Reasonable Accommodation—Statement of Purpose:

It is the policy of the City of Papillion to provide Reasonable Accommodation in the application of its Laws, Policies, and Processes for persons with disabilities seeking fair access to housing in conformity with federal and state law including the Rehabilitation Act, the Americans With Disabilities Act, the Fair Housing Act, and the Nebraska Fair Housing Act (“the Acts”). A person with a disability, within the meaning of the Acts, is defined as an individual with a physical or mental impairment that substantially limits one or more of that person’s major life activities; an individual with a record of these impairments; or an individual regarded as having this type of impairment. The terms “disability” and “handicap,” as defined by the Acts and other applicable federal or state law, shall be synonymous for purpose of this Policy.

Juvenile offenders and sex offenders are not disabled persons protected by the Acts and, as such, shall not have any right to be afforded any accommodation under this Policy. Persons currently engaged in the illegal use of a controlled substance are not considered disabled by reason of dependency on such substance, as defined by the Acts, and Reasonable Accommodation for these persons will not be provided under this Policy. Individuals recovering from alcohol and/or drug addictions may be provided Reasonable Accommodation, pursuant to this Policy, so long as they are not currently engaged in the illegal use of controlled substances. Furthermore, nothing in this Policy requires that housing be made available to any individual whose occupancy would constitute a Direct Threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.

II. Reasonable Accommodation—Applicability:

A request for Reasonable Accommodation may be made by any person with a disability, as defined in this policy or more specifically in the Acts, or by an entity acting on behalf of a person or persons with a disability. The purpose of the request shall be to provide disabled persons with an equal opportunity to use and enjoy a dwelling, when the application of Laws, Policies and Processes is an obstacle to disabled persons’ enjoyment of those opportunities.

A request for Reasonable Accommodation may include a modification or exception to Laws, Policies, and Processes, when a modification or exception is necessary to eliminate regulatory barriers and provide persons with disabilities the equal opportunity to use and enjoy a dwelling. Requests for Reasonable Accommodation shall be made in the manner prescribed in this Policy.

III. Reasonable Accommodation—Definitions:

For the purpose of this Policy, the following terms will be defined as follows:

The term “Applicant” shall mean an individual or group of individuals seeking a modification or change in any of the City’s Laws, Policies, and Processes that are alleged to affect equal access to housing for persons with a disability.

The term “Application” shall mean an Application for Reasonable Accommodation submitted by an Applicant pursuant to the Reasonable Accommodation Procedure.

The term “Criteria” shall mean the list of considerations that are specifically enumerated by this Policy in the section entitled “Reasonable Accommodation—Criteria,” which shall be used in determining whether each Application should be approved or recommended for approval.

The term “Direct Threat” shall mean anything creating a significant risk to the health or safety of others that cannot be eliminated by a modification of Laws, Policies, and Processes or by the provision of auxiliary aids or services. The mere fact that a person, not currently using alcohol or an unlawful substance, is being treated for alcohol or substance abuse, shall not by itself constitute a Direct Threat.

The terms “Disability” and “Handicap” shall be synonymous and, with respect to a person, be defined as an individual:

- a. with a physical or mental impairment that substantially limits one or more of that person's major life activities;
- b. with a record of having such an impairment; or
- c. regarded as having such an impairment.

The terms “Disability” and “Handicap” shall not include individuals currently engaging in illegal use of or addiction to a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, or the Uniform Controlled Substances Act, Neb. Rev. Stat. § 28-401 *et seq.*

The term “Fundamental Alteration” shall mean a proposed modification that a) alters the essential nature of the City’s operations; b) substantially changes the primary purpose of a program or activity; or c) substantially impairs a necessary or practical component required to achieve the primary purpose or benefit of a program or activity.

The term “Laws, Policies, and Processes” is intended to include the provisions of the City’s zoning code, building and structural codes, residential code, fire code, mechanical code, property maintenance code and all other City enforced laws, regulations, policies and procedures and any related policies, programs and processes.

The term “Neighbor Contact Statement Form” shall mean a form certifying the applicant's efforts to meet with and receive input from each interested party. The said form shall be provided by the Planning Department. "Interested party," for purpose of this section, shall mean the owner of record of any property contiguous to the applicant's property at issue, or across a public right-of-way from it; and any neighborhood association registered to receive notices for the area of concern in which the subject property lies. Each Interested party, or an officer or other authorized representative thereof, shall sign the form certifying that they met with the applicant regarding the application. If any Interested party refuses to sign the form, the

applicant may in lieu thereof describe on the form the reasonable efforts made to obtain that signature, and the resulting refusal or failure.

The term “Policy” shall mean this Reasonable Accommodation Policy of the City, as adopted by the City Council by resolution, and as may be amended from time to time.

The term “Procedure” shall mean the procedure for persons with a disability to request Reasonable Accommodation in seeking equal access to housing, as defined by this Policy.

The term “Reasonable Accommodation” means a modification, variance, or change in Laws, Policies, or Processes that will provide an otherwise eligible individual with a disability the opportunity to obtain equal access to housing in accordance with the Acts.

The term “Undue Financial or Administrative Burden” is not susceptible to precise definition. Its meaning is determined on a case by case basis involving various factors, including, but not limited to: the cost of the requested accommodation; the relative cost of providing the accommodation to the applicant; the availability of alternative accommodations that would effectively meet the applicant’s need; the impact of realigning, altering or supplementing job functions, or the hiring of personnel, made necessary by a grant of the accommodation; the potential benefit that the accommodation would provide to the applicant; the potential liability created by a grant of the accommodation; and the increased paper work, record keeping, or other administrative functions that could result from the grant of the accommodation.

The term “Zoning Code” shall mean Chapter 205 of the Papillion Municipal Code, as amended from time to time.

IV. Reasonable Accommodation—Application:

- A. The Applicant shall file an Application with the Planning Department, 122 East Third Street, on a form provided by that office. The Application shall include at least the following information:
 - 1. Name and address of the owner and Applicant.
 - 2. Address of the property with respect to which the accommodation is being sought.
 - 3. If the Applicant is not the owner of that property, a statement that the Applicant is the authorized agent of the property owner.
 - 4. A statement describing the current use of that property, and the nature and operating characteristics of the proposed use of the property.
 - 5. A statement of the accommodation requested, as well as citation to the applicable Laws (by code section), Policies, or Processes of the City from which accommodation is requested.

6. Plans showing, or a graphic representation illustrating, the accommodation requested, wherever possible.
7. The basis for the Applicant's claim that the person or persons on behalf of which the Application is being made are disabled within the meaning of the Acts.
8. The reason that accommodation is believed to be necessary to make specific housing available to the Applicant.
9. A narrative statement discussing each of the Criteria from section VII of this Policy for which information is requested by the Application.
10. A Neighbor Contact Statement Form signed by the persons as required by those sections.
11. Other information that may be required on the Application form developed by the Planning Department.

V. Reasonable Accommodation—Procedure:

In furtherance of this Policy, the City adopts the following Procedure for persons with a disability to request Reasonable Accommodation in seeking equal access to housing.

- A. The Application for Reasonable Accommodation shall be filed with the Planning Department on a form provided by that Department. The Planning Department shall immediately forward the Application to the City official or board vested with the responsibility for review and action on the Application, as set forth in Section V.B. or V.C. below. A copy of the Application shall also be sent to the City Attorney. The City Attorney shall then forward a copy of this Policy to those City officials who will review or act on the Application, as specified below.
- B. If the Application would require a special use permit or a rezoning, pursuant to Chapter 205, or an approval related to the subdivision of land, pursuant to Chapter 170, or if the requested accommodation cannot be restored or terminated within 90 days after the need for the Reasonable Accommodation ends, then the Application shall be reviewed and considered by the Planning Director, Planning Commission, and City Council, in conjunction with the subject permit, rezoning or approval and in accordance with the procedures set forth in sections 205-302, 205-303, 170-11 or 170-12, as applicable. The City Council shall act on the Application by resolution, where applicable.
- C. If the Application would not require a special use permit, rezoning or an approval related to the subdivision of land, pursuant to sections 205-302, 205-303, 170-11, or 170-12, then the Application shall be reviewed and acted upon as follows:

1. If the Application is for an accommodation that involves a modification, waiver, variance or exception to any section of the Papillion Municipal Code, and which can be removed or terminated within 90 days after the need for the Reasonable Accommodation ends, then the Application shall be acted on by the City official vested with the responsibility to act on that request by the Papillion Municipal Code. A decision on such an Application shall be rendered within 60 days of receipt of a complete Application, unless the matter is continued at the Applicant's request or consent.
2. If the Application is for an accommodation that involves any City action not covered by sections V. B. or V. C. 1. above, the Application shall be considered and acted on by the City Administrator. A decision on such an Application shall be rendered within 30 days of receipt of a complete Application, unless the matter is continued at the Applicant's request or consent.
3. Written notice of the determination shall be provided to the Applicant. If the Application is denied, the notice shall state the reason(s) for denial.

VI. Reasonable Accommodation—Process and Analysis:

- A. In evaluating an Application, the City official, Planning Director, Planning Commission and City Council shall follow the steps and apply the analysis set forth in subsection B of this section.
- B. **Step 1.** The Applicant bears the burden of proving, by a preponderance of the evidence, each of the following:
 - a. the Applicant or the resident(s) of the housing unit that is the subject of the Application is a qualified "individual with [a] disability," as defined by this Policy and the Acts.
 - b. the requested accommodation is related to the disability; and
 - c. an accommodation is necessary to provide the disabled individual(s) with an equal opportunity to use and enjoy housing because:
 - i. the desired accommodation will affirmatively enhance the disabled individual(s)' quality of life by ameliorating the effects of the disability; and
 - ii. but for the accommodation, the disabled individual(s) will be denied an equal opportunity to enjoy the housing of their choice.

If the Applicant fails to prove the items in Step 1, then the Application should be denied.

If the Applicant proves all of the items in Step 1, then Step 2 shall be followed.

Step 2. If the Applicant proves all of the items in Step 1 above by a preponderance of the evidence, then the Application must be approved unless:

- a. the requested accommodation would impose an Undue Financial or Administrative Burden on the City; or
 - b. the requested accommodation would constitute a Fundamental Alteration of the City's Laws, Policies, or Processes; or
 - c. in the City's effort to comply with the spirit of the Applicant's request, an alternative accommodation is approved that provides an equivalent level of benefit and effectively addresses the need for accommodation stated in the Application.
- B. Each request for an accommodation should be considered as an individual request, and the determination on each Application shall be made on a case by case basis, taking into account the circumstances and resources available at the time of the decision.
- C. If granting the requested accommodation would create an Undue Financial or Administrative Burden, the City will endeavor to comply with the request, to the extent it can do so, without being subject to that burden or burdens.
- D. The Criteria listed in Section VII of this Policy shall be considered in making a determination on each Application.

VII. Reasonable Accommodation—Criteria:

In the evaluation of each Application, the Planning Director, Planning Board, City Council, and other applicable City officials, boards or bodies shall consider the following Criteria:

- A. special needs of the disabled individual(s) created by the specific disability;
- B. the relationship between the disability and the requested accommodation;
- C. potential benefit to the disabled individual(s) that can be accomplished by the requested accommodation;
- D. financial or administrative burdens that would be placed on the City by the requested accommodation;
- E. whether the requested accommodation substantially affects the physical attributes of the property and structures;
- F. potential impact of the requested accommodation on surrounding uses;

- G. any applicable alternative accommodations that may provide an equivalent level of benefit, based upon the circumstances of the particular case;
- H. the degree to which the request is consistent with the City’s Comprehensive Plan, land use designation of the property, and general purpose and intent of the zoning district in which the use is located;
- I. the governmental purposes or interests served by the Laws, Policies, or Processes that are sought to be modified by the Application; and
- J. whether the requested accommodation, if granted, would create a significant risk to the health or safety of the applicant, residents of the dwelling unit(s) that are the subject of the Application, other individuals, or of damage to property.

VIII. Other requirements.

- A. An approved request for Reasonable Accommodation is subject to the applicant’s compliance with all other applicable zoning regulations.
- B. A Reasonable Accommodation approved under this policy is considered a personal accommodation for the individual applicant and does not run with the land.
- C. Where appropriate, the reviewing authority may condition its approval on any or all of the following:
 - a. inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;
 - b. 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;
 - c. time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
 - d. recordation with the County Register of Deeds of a deed restriction or similar instrument describing the accommodating feature and requiring its once the need for it no longer exists;
 - e. measures to reduce the impact on surrounding uses;
 - f. measures in consideration of the physical attributes of the property and structures;

IX. Reasonable Accommodation—Applicable State and Federal Law:

Title VIII of the Civil Rights Act of 1968, as amended in 1988 (The Fair Housing Act, 42 U.S.C. §§ 3601-3619): The Fair Housing Act prohibits discrimination in the sale, rental, or availability of a dwelling because of the disability of the renter or buyer, or of any person residing in the dwelling, or associated with the renter or buyer. It explicitly forbids the refusal to make Reasonable Accommodation in rules and practices where necessary to provide a disabled person with equal opportunity to use and enjoy a dwelling. The Act's general non-discrimination provisions also cover race, color, religion, sex, national origin, and families with children under 18.

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794): Section 504 makes it unlawful to exclude otherwise qualified individuals with disabilities from participating in, to deny them the benefits of, or to subject them to discrimination under, any program or activity receiving federal financial assistance, solely because of their disability.

Americans with Disabilities Act of 1990, Title II (42 U.S.C. § 12101 et seq.), (ADA): The ADA (Title II) extends the protections of Section 504 to all activities of state and local governments and their instrumentalities, regardless of the receipt of federal funding. The ADA protects qualified individuals with disabilities, requires program access similar to Section 504, and requires Reasonable Accommodations and modifications.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq): Title VI makes it unlawful to exclude any person on the grounds of race, color or national origin or to deny them the benefits of, or to otherwise subject them to discrimination under any program or activity receiving federal financial assistance.

The **federal regulations** implementing each of these statutes are set forth in the Code of Federal Regulations as follows:

Title VIII – 24 C.F.R. Part 100 *et seq.*

Section 504 – 24 C.F.R. Part 8

ADA, Title II – 28 C.F.R. Part 35

Title VI – 24 C.F.R. Part 1

The Nebraska Fair Housing Act, Neb. Rev. Stat. §§ 20-301 et seq.: The Nebraska Fair Housing Act prohibits all forms of discrimination in the acquisition, ownership, possession, or enjoyment of housing throughout the State of Nebraska. It explicitly requires Reasonable Accommodations in rules and practices and reasonable modifications where necessary to afford full enjoyment of premises. The Act's general non-discrimination provisions also cover race, color, religion, sex, national origin, and families with children under 18.