

## **PROCEDURE FOR REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT**

### **INTRODUCTION**

It is the policy of the Lafayette Consolidated Government (“LCG”) Community Development and Planning Department (“CDPD”), pursuant to the federal Fair Housing Act (“FHA”), to provide individuals with disabilities reasonable accommodation in ordinances, rules, policies, practices, and procedures, including reasonable accommodations regarding zoning and other requirements of the Lafayette Development Code (“LDC”), to ensure equal access to housing for individuals with disabilities. “Reasonable accommodation” in the context of zoning and land use means providing individuals with disabilities, or operators or developers of housing for people with disabilities, flexibility in the application of land use, zoning, and building ordinances, rules, policies, practices, and procedures; and may include waiving certain requirements, when necessary to eliminate barriers to housing opportunities.

### **I. APPLICATION PROCESS**

#### **A. When, by whom, and to whom must an application be filed for a reasonable accommodation?**

A request for reasonable accommodation in ordinances, rules, policies, practices, and procedures within the authority of CDPD, whether within or outside the City limits, may be submitted at any time that the accommodation may be necessary to provide equal access to housing. Submitting a request stays all CDPD proceedings to enforce any such requirement that is the subject of the request, until resolution of that request. Submitting a request for reasonable accommodation does not affect any obligation to comply with other requirements that are not the subject of the request.

Multiple accommodations may be requested for the same person or facility. For clarity, applicants for multiple accommodations are encouraged to submit them together in the same application if possible, but CDPD will accept separate applications. In either case, CDPD will consider accommodation requests cumulatively. If appropriate based on the considerations for accommodation requests set forth in Section I(C) below, CDPD may process multiple requests separately or subject the accommodations to different conditions.

Applicants for a reasonable accommodation to allow a violation of requirements within the authority of CDPD must apply for the accommodation before engaging in the violation. Persons already in violation of such requirements on the effective date of this Procedure, and who wish to continue the violation, must submit a request for reasonable accommodation within 60 days after

the effective date of this procedure. Requests for reasonable accommodation may be submitted later, and will be processed by CDPD, but CDPD will handle the violation as appropriate to its nature unless and until a request is submitted.

The Applicant for a reasonable accommodation is normally the person with a disability for whom the accommodation is necessary. However, a facility operator or developer (the “Operator”) may apply on behalf of its intended residents, and the CDPD Director (the “Administrator”) may also allow any other person to apply on behalf of a person with a disability, as reasonable and appropriate. Regardless, a request for a reasonable accommodation will be addressed with respect to the person(s) with a disability to whom the reasonable accommodation is requested to apply (the “Accommodatee”), regardless of who is the “Applicant” or who submits the request.

A request for reasonable accommodation must be submitted to the Administrator in writing, as set forth in this Procedure. Applicants are encouraged to request a pre-application meeting with the Administrator before submitting a request, to obtain informal advice and assistance. This pre-application meeting is not required, but will enable the Applicant to better understand the application process and applicable requirements, familiarize CDPD with the context of the request, expedite the application and review process, and troubleshoot potential issues. If an individual needs assistance in making a request for reasonable accommodation, CDPD will provide assistance to ensure that the process is accessible.

CDPD has no authority over the LCG Fire Department or the State Fire Marshal regarding matters within their jurisdiction. However, CDPD will notify both of its receipt of a request for reasonable accommodation, and may consult with them before the Administrator makes a decision regarding any such request. If an accommodation is granted, CDPD will so notify the Fire Department and Fire Marshal, but will comply with the accommodation regarding all matters within CDPD’s jurisdiction regardless of Fire Department or Fire Marshal actions.

**B. What documentation must be submitted to request a reasonable accommodation?**

To request a reasonable accommodation, the Applicant must submit to CDPD a completed Request for Reasonable Accommodation Pursuant to the Fair Housing Act. This form is available on the CDPD website or may be requested from CDPD. The Applicant must also provide all information requested by the CDPD reasonably related to the Request, including information regarding the reasonableness or necessity of the requested accommodation.

The Administrator will notify the Applicant in writing whether the Request is complete. If the Request is incomplete, the notification will include a list of the deficiencies. The Administrator will take no further action on an incomplete Request until the deficiencies are remedied.

There is no fee for a Request for Reasonable Accommodation Pursuant to the Fair Housing Act or any pre-application meeting regarding such a Request.

**C. Under what standards will the Administrator decide whether to grant a requested accommodation?**

The Administrator will evaluate a Request for Reasonable Accommodation Pursuant to the Fair Housing Act based on the following factors set forth in the FHA, the federal regulations implementing the FHA, and court decisions interpreting and applying the FHA:

1. Does the Accommodatee have a handicap within the meaning of the FHA?
  - a. Does the Accommodatee have a mental or physical impairment?
  - b. Does the impairment substantially limit one or more major life activities of the Accommodatee?
  - c. Is the Accommodatee regarded as meeting items 1(a) and 1(b)?
  - d. Does the Accommodatee have a record of meeting items 1(a) and 1(b)?
2. Is the Accommodatee excluded from FHA protections?
  - a. Is the Accommodatee a current illegal user of a Controlled Substance (“current” means use within three months). 42 U.S.C. § 3602(h).
  - b. Would the tenancy of the Accommodatee constitute a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others? 42 U.S.C. § 3604(f)(9).
  - c. Any other reason excluding the Accommodatee from coverage under the FHA.
3. Is the requested accommodation reasonable?
  - a. Would the requested accommodation impose an undue financial or administrative burden on LCG?
  - b. Would the requested accommodation create a fundamental alteration in the LDC land use and zoning scheme or any other law, regulation, or ordinance to which the accommodation would apply (e.g., the LDC, the International Fire Code, the International Building Code, or Life Safety Code)?
  - c. Would the requested accommodation fundamentally alter the character of a neighborhood?

- d. Would the requested accommodation result in a substantial increase in traffic or insufficient parking?
      - e. Any other reason constituting “reasonableness” or demonstrating lack thereof under the FHA.
  - 4. Is the requested accommodation necessary to afford the Accommodatee equal opportunity to use and enjoy the intended dwelling?
    - a. Would the requested accommodation address the Accommodatee’s handicap or mitigate its effect?
    - b. Would the individual with a disability be denied an equal opportunity to enjoy the housing type of their choice, absent the requested accommodation?
    - c. Would the requested accommodation address a need for residential opportunities for handicapped persons?
    - d. Would the requested accommodation increase a benefit to a handicapped person above that provided to non-handicapped persons, in a way that is unrelated to the handicap?
    - e. If applicable, do the economics of the facility’s operation require the requested accommodation?
    - f. Any other reason constituting “necessity” or demonstrating lack thereof under the FHA.
  - 5. Any other matter that the Administrator reasonably deems relevant to the determination whether a reasonable accommodation must be granted or that the Applicant reasonably asserts is relevant.

**D. Sober Living Homes.**

One particular instance in which a Reasonable Accommodation may be requested is a “sober living home” or “addiction recovery home” (“SLH”). An SLH is a facility where persons with drug or alcohol addiction live together in a single home as a single family, in order to assist each other to recover from their addictions and avoid relapse into drug or alcohol abuse. In many instances, SLH residents pay rent to the SLH Operator, which is often a nonprofit organization or an unincorporated association, to defray or pool operating and living costs, potentially including provision of a house manager or other staff. In other instances, the residents themselves operate the SLH, also pooling operating and living costs.

In areas within the City of Lafayette zoned Residential Single Family (“RS”), the LDC (December 2020 edition) allows residence only by a single “family.” LDC § 89-21-2 Use Table, and LDC 89-21(d). The LDC defines a “family” as follows:

A family is defined as one or more persons who are related by blood or marriage, civil union, adoption, or foster care living together and occupying a single housekeeping unit, or a group of not more than four single persons living together by joint agreement and occupying a single housekeeping unit on a non-profit, cost-sharing basis. Domestic servants residing on the premises shall be considered as part of the family.

LDC § 89-151(c). Thus, SLHs in RS zones with more than four unrelated people living in them or operating for profit violate the LDC zoning requirements. Such SLHs may also violate other requirements, such as for obtaining a Certificate of Occupancy for commercial uses, and may violate other authorities, such as building codes or fire safety requirements.

Addiction may be a disability under the FHA and other laws. The FHA may require LCG to treat persons with that handicap as a single family, allowing them to live in an SLH under LDC and other requirements applicable to a single family residential use, as a “reasonable accommodation.”

Such persons, an SLH Operator, or other Applicant who operates or intends to operate an SLH in a RS-zoned area with more than four unrelated people living there may submit a Request for Reasonable Accommodation Pursuant to the Fair Housing Act to treat the SLH residents as a single family. If such a request is granted by the Administrator, CDPD will apply and enforce the zoning and other requirements within CDPD’s jurisdiction with respect to the SLH to the same extent that these requirements would apply to single family residential use. The Administrator may make such an accommodation applicable to all residents or SLH Operator staff of the specified SLH, as such persons may change from time to time, provided that they satisfy the conditions for that Accommodation.

**E. What documentation will the Administrator issue regarding the decision on the Request for Reasonable Accommodation?**

After the Request is complete as set forth in Section I(B) above, the Administrator shall issue a written decision to the Applicant, granting the Request, granting the Request with modifications or conditions, or denying the Request. The written decision shall explain the basis for the Administrator’s decision, including the Administrator’s findings regarding the factors set forth in Section I(C). If the Administrator denies a Request or grants it with modifications or conditions, the written decision shall explain the reasons for the denial, modifications, or conditions.

## **II. CONDITIONS**

### **A. What conditions may be required for an Accommodation?**

The Administrator will determine conditions for an Accommodation in light of the factors listed in Section I(C) above. Any such conditions shall be included in the Administrator's written decision.

### **B. What types of conditions may be required for an Accommodation?**

The Administrator may require any condition that is relevant to the factors listed in Section I(C) above, including minimizing or avoiding adverse impacts or other situations that would tend to warrant denial of the Accommodation in accordance with those factors. Accordingly, required Conditions may include, but are not limited to, those addressing the following types of matters:

1. Number of residents living in a single facility at any one time.
2. Limitation of residents to those who are (a) handicapped within the meaning of the FHA, and for whom living with more than four unrelated persons as a single family is necessary to address or treat that handicap; or (b) Operator staff.
3. Requiring compliance of the residents, the Operator, and their officers, employees, contractors, and staff with all federal, state, and local laws, regulations, and ordinances regarding the facility, activities at the facility, or generally, except as modified by the Accommodation.
4. Requiring the residents and the Operator to use their best efforts to ensure that their officers, employees, contractors, staff, and invitees comply with all federal, state, and local laws, regulations, and ordinances regarding the facility, activities at the facility, or generally, except as modified by the Accommodation.
5. Requiring compliance with International Property Management Code (IPMC) or other code provisions that are not related to the Accommodation, such as the IPMC requirement that all bedrooms shall measure at least 70 square feet, and that all bedrooms with more than one occupant shall measure at least 50 square feet per occupant.
6. Precluding residency by a person who, within three months of any time the person is a resident (or such other time period as the Administrator determines appropriate), has used a controlled substance (as defined in 21 U.S.C. § 802, Appendix B) without a valid prescription.
7. Precluding residency by a person who:
  - a. Has been convicted of committing within such time period as the Administrator determines appropriate, or released from incarceration for

- committing within such time period as the Administrator determines appropriate, any of the following crimes: Felony assault; Felony battery; Domestic Violence; Robbery offense with no weapon involved; Stalking; Felony burglary or breaking-and-entering-related offense; Theft or stolen-property offense (second felony conviction); Felony destruction, damage, or vandalism of property offense; Drug offense involving manufacture or distribution; Weapons offense (other than use of firearm against a person); or other violent crime that the Administrator determines relevant;
- b.** Has been convicted of committing within such time period as the Administrator determines appropriate, or released from incarceration for committing within such time period as the Administrator determines appropriate, any of the following crimes: Use of firearm against a person; Armed robbery offense; Intentional homicide; Manslaughter; Kidnapping or abduction; Arson-related offense; two or more offenses listed in Section II(B)(7)(a) above; or other violent crime that the Administrator determines relevant;
  - c.** Is required to register as a sex offender, child predator, or similar type of offender pursuant to La. R.S. 15:542, 34 U.S.C. § 20913, or a similar statute of any other state; or
  - d.** Whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- 8.** Requiring certification by the Operator or an appropriate person or categorical designee, annually or on such other schedule as the Administrator determines appropriate, that the Operator, facility, and its operations and residents are in compliance with all Conditions of the Accommodation; and providing a list of all residents and Operator staff currently living in the facility.
- a.** If the Operator, facility, or its operations and residents are not in compliance with all Conditions, the Condition may require certification to this effect, identifying the specific Conditions violated, the nature and circumstances of the violations and persons involved, and all remedial measures taken or taken; stating when full compliance was or will be achieved, and how repetition of the violation will be avoided; certifying that the Operator, facility, and its operations and residents are in compliance with all other Conditions of the Accommodation; and providing a list of all residents and Operator Staff currently living in the facility.
  - b.** Such a Condition may include a form of the certification, which may be mandatory.

9. Requiring the residents and the Operator to provide all information requested by the CDPD regarding the facility and its operations and residents that is reasonably related to the Accommodation or compliance with its Conditions. The residents and the Operator shall allow reasonable inspection of the facility by CDPD and other authorized LCG or State officials.
10. Disclaimer that the Accommodation does not supersede, modify, or otherwise affect any provision of the LDC or any other provision of federal, state, or local laws, regulations, or ordinances, except that CDPD will apply and enforce zoning and other requirements within CDPD's jurisdiction with respect to the facility as modified by the Accommodation.
11. Disclaimer that the Accommodation does not supersede, modify, or otherwise affect any lease, deed restriction, or covenant affecting the property where the facility is located. It is the sole responsibility of the Operator (or the residents, if there is no Operator) to determine whether any leases, deed restrictions, or covenants exist, and if so, whether and how they affect use of the property for the facility.
12. Requiring the Operator (or the residents, if there is no Operator) to notify each resident, in writing, of the request for and grant of the Accommodation and its nature; that as a result, safety and other requirements that would otherwise apply will not be applied to the facility; that the resident understands this; and that the resident may contact CDPD for information regarding the safety and other requirements that still apply to the facility, but must contact the Operator or residents of the facility for further information on safety and other standards that the facility in fact satisfies. Residents may be required to sign the notice before becoming a resident, and the Operator or residents may be required to retain such signed notices until the signatory is no longer a resident. Such a Condition may include a form of the notice, which may be mandatory.
13. Requiring any other condition that the Administrator determines necessary and appropriate under the circumstances.

### **III. REVOCATION**

The Administrator may revoke an Accommodation if the Applicant, Operator, Accommodatee, or their officers, employees, contractors, staff, or invitees commit severe or multiple violations of the Conditions, or for any other reason appropriate under the FHA, the federal regulations implementing the FHA, and court decisions interpreting and applying the FHA.

For purposes of this Procedure, the term "violation of a Condition" means a substantive violation that is within the Applicant's, Operator's, or Accommodatee's power to prevent, that is relevant to the factors by which Requests for Reasonable Accommodation Pursuant to the Fair Housing



Act are evaluated as set forth in Section I(C) above, and that affects the reasonableness of the Accommodation. The term also includes provision of false information to CDPD by the Applicant, Operator, or Accommodatee regarding the Accommodation, when such person knew or reasonably should have known of the falsity.

For purposes of this Procedure, the term “multiple violations” means three or more violations of the same Condition or violations of multiple Conditions, in such relationship or pattern as to justify a reasonable belief that the Applicant, Operator, or Accommodatee will not or cannot substantially comply or ensure compliance with the Conditions.

For purposes of this Procedure, the term “severe violation” means a violation of a Condition that poses a threat to human safety or causes substantial damage to property.

In determining whether to revoke an Accommodation, the Administrator will not consider violations that are outside the Applicant’s, Operator’s, or Accommodatee’s reasonable control. However, the Administrator will consider failure of the Applicant, Operator, or Accommodatee to take reasonable actions to prevent violations of the Conditions or to evict or remove persons whom the Applicant, Operator, or Accommodatee is unable to prevent from violating the Conditions.

Before revoking an Accommodation due to multiple violations, the Administrator shall provide at least two warnings specifying the exact nature of the violations and reasonable opportunity for resolution of the violations. However, only one such warning and reasonable opportunity to resolve the violation is required as to a severe violation.

#### **IV. APPEAL**

An appeal of any decision by the Administrator regarding a request for, grant of, Conditions for, or revocation of an Accommodation within the City limits may be taken to the Board of Zoning Adjustment (“BOZA”) in accordance with the rules of the BOZA and the LDC. LDC § 89-68.

An appeal of any decision by the Administrator regarding a request for, grant of, Conditions for, or revocation of an Accommodation outside the City limits may be taken to the Parish Council.

#### **V. DEFINITIONS**

For purposes of this Procedure, the following terms are defined as stated below:

“Accommodation” means a modification of a rule, policy, practice, or service necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas. 24 C.F.R. § 100.204.

“Controlled substance” means any drug or other substance, or immediate precursor listed on the Schedule of Controlled Substances set forth at 21 U.S.C. § 812. 24 C.F.R. § 100.201.

“Current” illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem. 28 C.F.R. § 35.104 (ADA).

“Disability (or handicap)” means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. 24 C.F.R. § 100.201.

“Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. 24 C.F.R. § 100.201.

“Is regarded as having an impairment” means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
3. Has none of the impairments in the definition of physical or mental impairment, but is treated by another person as having such an impairment. 24 C.F.R. § 100.201.

“Major life activities” means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. 24 C.F.R. § 100.201.

“Physical or mental impairment” includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism. 24 C.F.R. § 100.201.