

ORDINANCE NO. 6680

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF SHERMAN, TEXAS, CHAPTER 3 (BUILDING REGULATIONS) TO ESTABLISH ARTICLE 3.14 (REASONABLE ACCOMMODATIONS FOR RESIDENTIAL USES); PROVIDING FOR APPLICATION, DECISION AND APPEAL PROCEDURES FOR REASONABLE ACCOMMODATION REQUESTS BY PERSONS WITH DISABILITIES FOR RESIDENTIAL USES; PROVIDING FOR A SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended by the Federal Fair Housing Amendments Act of 1988 ("FHA"), and the Americans with Disabilities Act ("ADA") impose an affirmative duty on local governments to make reasonable accommodations (modifications or exceptions) in their rules, policies, practices or services related to zoning and land use regulation when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, the City Council of the City of Sherman, Texas ("City Council") finds that codification of a formal procedure for persons with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use and zoning standards, regulations, policies and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the statutory mandates, including the reasonable accommodation mandates of the FHA and ADA; and

WHEREAS, the City Council therefore finds that it would be advantageous, beneficial and in the best interest of the citizens of the City of Sherman, Texas ("Sherman") to amend the Code of Ordinances, City of Sherman, Texas ("Code of Ordinances"), Chapter 3 (Building Regulations), to establish Article 3.14 (Reasonable Accommodations for Residential Uses), as set forth below; and

WHEREAS, Sherman has complied with all legal notices and public hearings as required by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:**

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to the Code of Ordinances, Chapter 3 (Building Regulations). The Code of Ordinances, Chapter 3 (Building Regulations) is hereby amended to establish Article 3.14 (Reasonable Accommodations for Residential Uses) as follows:

**“ARTICLE 3.14. REASONABLE ACCOMMODATIONS  
FOR RESIDENTIAL USES**

**Sec. 3.14.001 Purpose.**

- (a) *It is the policy of the City of Sherman, pursuant to the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act and applicable state laws, to provide persons with disabilities reasonable accommodations (including modifications or exceptions) in the City’s zoning, land use and other regulations, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for persons with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is reasonable and necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling, as may be required by applicable law.*
- (b) *This Article provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices and procedures of the City to comply fully with applicable law, including federal law, in making a reasonable accommodation.*
- (c) *Nothing in this Article shall require persons with disabilities or operators of homes for persons with disabilities acting or operating in accordance with applicable zoning or land use laws or practices to seek a reasonable accommodation under this Article.*
- (d) *Nothing in this Article shall require the City to agree to requested accommodations that are unreasonable, unnecessary or not required by applicable law.*

**Sec. 3.14.002 Definitions.**

*For the purpose of this Article, the following terms, phrases, words and their derivation shall have the meanings given herein:*

*Board means the Board of Adjustment of the City of Sherman, Texas.*

*City means the City of Sherman, Texas.*

*City Manager means the City Manager of the City of Sherman, Texas, or his/her designee.*



City regulations means the City's zoning, land use and other regulations, rules, policies and practices.

Director means the department(s) or division(s) of the City designated by the City Manager to administer or enforce the provisions of this Article and any person or persons designated by such department or division to represent the department or division for said purpose.

Person with disabilities has the meaning set forth in the federal Fair Housing Act and Americans with Disabilities Act and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment or has a record of such impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of controlled substances is not.

Reasonable accommodation (inclusive of modification) means the act of making a dwelling unit or housing facility readily accessible to and usable by a person with disabilities through the removal or modification of constraints in City regulations when such removal or modification is both reasonable and necessary – as those terms are defined in the ADA, FHA, and applicable case law – in order for a person with a disability to use and enjoy housing. Not all accommodations are reasonable and necessary, and the reasonableness and necessity of a request will be determined by the City Manager.

Residential use means a building occupied as, or designed or intended for occupancy as, a residence by one or more families.

Requirement means a provision of this Code or an administrative policy, program or procedure.

**Sec. 3.14.003 Scope and applicability.**

- (a) The provisions of this Article apply to residential uses that will be used by persons with disabilities.
- (b) The accommodation granted shall be considered personal to the individual and shall not run with the land. If the structure is sold, or otherwise changes ownership, or ceases to house persons with disabilities, an accommodation granted to the previous owner is not transferable to the new owner. Notwithstanding the foregoing, the accommodation shall be in force and effect as long as the person or group of persons with disabilities for whom the accommodation was sought resides on the property that is the subject of the accommodation, and so long as the accommodation granted is both reasonable and necessary. It is the duty of the owner to notify the regulating department of any event that would cause an accommodation to be

*discontinued under this section. The City shall allow the new owner an opportunity to apply for a renewal or modification of a granted reasonable accommodation in accordance with this Article. In the event the reasonable accommodation is not renewed or modified within 60 days from the date of change in ownership, the accommodation will lapse and the structure must be brought back into compliance with all requirements of the City.*

- (c) Nothing in this Article requires the City to expend any funds to achieve a reasonable accommodation except and to the extent required by state or federal law.*
- (d) Nothing in this Article alters an obligation of a person with disabilities to comply with other applicable federal, state and City regulations.*

***Sec. 3.14.004 Request for accommodation; application.***

- (a) An application for an accommodation may be made by any person with a disability, his or her representative or a developer or provider of housing for persons with disabilities.*
- (b) A request for accommodation may be submitted at any time the accommodation may be necessary to afford the person with a disability equal opportunity to use and enjoy the dwelling.*
- (c) Requests for an accommodation may include a modification or exception to the rules, standards and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to a dwelling of his or her choice.*
- (d) An individual requesting an accommodation shall direct the request to Development Services Department in writing. The requestor shall submit an application for an accommodation using the appropriate City form, to be provided by the Director. The applicant shall provide the following:*
  - (1) Name and address of the person or entity requesting accommodation. If the applicant is applying on behalf of a person with a disability, the name and address of the person with a disability shall also be provided;*
  - (2) Address of the property for which the accommodation is requested;*
  - (3) Indication of whether that the applicant is:*
    - (A) Person with a disability;*



- (B) *Applying on behalf of a person with a disability; or*
- (C) *A developer or provider of housing for one or more persons with a disability.*
- (4) *Description of the disability at issue, the requested accommodation, and the specific regulation, policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing;*
- (5) *Description of why the specific accommodation requested by the applicant is necessary for the person with the disability to use and enjoy the dwelling, or is necessary to make the provision of housing for persons with disabilities financially or practically feasible; and*
- (6) *Any other information the Director concludes, or the applicant believes, is necessary to make the findings required by Section 13.14.006 to the extent permissible under applicable law. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.*
- (e) *Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant or person with a disability and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within 10 days of the date all appeals are exhausted. The applicant need provide only the information necessary for the City to evaluate the reasonable accommodation request.*
- (f) *If the person with the disability needs assistance to make a request for accommodation, the Director will provide assistance, including transcribing a verbal request into a written request.*
- (g) *A fee shall not be required for an application for an accommodation.*

**Sec. 3.14.005 Review authority.**

- (a) *A request for accommodation shall be reviewed, and a determination made, by the City Manager, using the criteria set forth in Section 13.14.006.*

- (b) *The City Manager shall issue a written decision on a request for accommodation within 30 calendar days of the date of a complete application is submitted, and may either grant, grant with alterations or conditions, or deny a request for an accommodation in accordance with the required findings set forth in Section 13.14.006.*
- (c) *If necessary to reach a determination on the request for accommodation, the City Manager may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. Any personal information regarding disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within 10 days of the date all appeals are exhausted. If a request for additional information is made, the running of the 30 calendar day period to issue a decision is stayed until the applicant responds to the request.*

**Sec. 3.14.006 Required findings.**

- (a) *The written decision to grant, grant with alterations or conditions or deny a request for accommodation shall be based on the following factors to the extent they are consistent with applicable laws:*
- (1) *Whether the housing that is the subject of the request for accommodation will be used by a person with a disability protected under applicable law;*
  - (2) *Whether the requested accommodation is financially or therapeutically necessary for a person with disabilities to have usage and enjoyment in a facility equivalent to individuals without disabilities;*
  - (3) *Whether the requested accommodation would pose an undue financial or administrative burden on the City. The determination of undue financial and administrative burden will be done on a case-by-case basis; and*
  - (4) *Whether the requested accommodation would require a fundamental alteration in the nature of a City regulation or program, including but not limited to zoning and land use regulations, or whether the requested accommodation would*



*undermine the basic purposes that the City's regulation seek to achieve.*

- (b) *In making findings, the City Manager may grant with alterations or conditions reasonable accommodations if the City Manager determines that the applicant's initial request would impose an undue financial or administrative burden on the City, or fundamentally alter a City regulation or program, or undermine the basic purposes that the City's regulation seek to achieve. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to:*
- (1) *Enabling the person(s) with a disability to use and enjoy the dwelling; and*
  - (2) *Making the provision of housing for person(s) with a disability financially or practically feasible.*

**Sec. 3.14.007 Written decision.**

- (a) *The City Manager shall render all decisions in writing to the applicant. The notice of the decision shall be sent to the applicant by certified mail and electronic mail, if the applicant's electronic mail address is known to the City Manager.*
- (b) *The written decision of the City Manager shall be final unless the applicant files an appeal to the Board of Adjustment in accordance with Section 13.14.008. Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for an accommodation based on additional grounds or changed circumstances.*
- (c) *If the City Manager fails to hear the request for accommodation within the period established in Section 3.14.005, the accommodation request shall be deemed granted, unless the City Manager provides written notice to the applicant that such period will be extended. Such notice may be provided after the expiration of such period only in the event of extenuating circumstances, such as natural disaster.*
- (d) *A request for accommodation stays all proceedings in furtherance of the enforcement of any requirement that is the subject of the request. An accommodation request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.*

**Sec. 3.14.008 Appeals.**

- (a) *An applicant, or a person on whose behalf an application was filed, may appeal the written decision to deny or grant an accommodation with alterations or conditions or a denial of the accommodation no later than 30 calendar days from the date the decision is mailed.*
- (b) *An appeal must be in writing (or reduced to writing as provided by subsection (c), below) and include grounds for appeal. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act.*
- (c) *If an applicant needs assistance appealing a written decision, the City will provide assistance transcribing a verbal request into a written appeal to ensure that the appeals process is accessible.*
- (d) *An applicant shall not be required to pay a fee to appeal a written decision.*
- (e) *An appeal will be decided by the Board of Adjustment. The concurring vote of four (4) members of the Board is necessary to overturn the City Manager's decision. In considering an appeal of a decision of the City Manager, the Board shall consider the following to determine whether the City Manager's decision was consistent with applicable law and the required findings in Section 3.14.006:*
  - (1) *The application requesting the accommodation;*
  - (2) *The City Manager's decision;*
  - (3) *The applicant's written statement of the grounds of the appeal; and*
  - (4) *The provisions of this Article.*
- (f) *The decision of the Board is final.*
- (g) *If a written decision on the appeal is not rendered within 30 calendar days from the date the appeal is received and accepted, the requested accommodation is denied.*

***Sec. 3.14.009 – 3.14.999 Reserved.***

**SECTION 3: Savings/Repealing.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

**SECTION 4: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it



is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 5: Effective Date. This Ordinance shall become effective upon its passage.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.**

**INTRODUCED** on this the 18<sup>th</sup> day of December 2023.

**ADOPTED** on this the 18<sup>th</sup> day of December 2023.

**EFFECTIVE DATE** on this the 18<sup>th</sup> day of December 2023.

**CITY OF SHERMAN, TEXAS**

BY:

  
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**DAVID PLYLER, MAYOR**

**ATTEST:**

BY:

  
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**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM:  
THE LAW FIRM OF ABERNATHY,  
ROEDER, BOYD & HULLETT, P.C.**

BY:

  
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**RYAN D. PITTMAN, CITY ATTORNEY**