

ORDINANCE 24-031

AN ORDINANCE ESTABLISHING REASONABLE ACCOMMODATIONS PURSUANT TO THE FEDERAL FAIR HOUSING AMENDMENTS ACT OF 1988

BE IT ORDAINED AND ADOPTED BY THE COUNCIL OF THE CITY OF BROOKINGS, STATE OF SOUTH DAKOTA, AS FOLLOWS:

I.

Sec. 1-13. Reasonable accommodations for persons with disabilities.

- (a) *Purpose.* It is the policy of the city, pursuant to the Federal Fair Housing Amendments Act of 1988, to provide reasonable accommodations in the application of its ordinances for disabled persons who are seeking fair and equal access to housing in the city. The purpose of this Section is to establish a process for making and acting upon requests for reasonable accommodations.
- (b) *Definitions.* For purposes of this Section, the following terms will have the meanings provided below:
- a. *Reasonable accommodation.* A “reasonable accommodation” is the provision to a disabled individual (or to a provider or developer of housing for disabled individuals) of flexibility in the application of land-use and zoning regulations or policies, including via the modification or waiver of certain requirements, if such modification or waiver is necessary to eliminate barriers to housing opportunities.
 - b. *Disability or disabled.* An individual is “disabled” or suffers from a “disability” if he or she would qualify under the definitions of those terms in the Federal Fair Housing Amendments Act of 1988 and its implementing regulations.
 - ~~c. *Sober house.* A “sober house” is a residential dwelling designed to support the sobriety of all the residents who reside there and in which all such residents are unsupervised by any third party and are instead jointly responsible for the day-to-day affairs and management of the dwelling.~~
- (c) *Request for accommodation.* A disabled individual, the representative of a disabled individual, or a developer or provider of housing for disabled individuals may request a reasonable accommodation in the application of a city ordinance using an application form provided by the city. Such application form will be publicly available on the city’s website and at the office of the city’s community development department. The application will include a detailed explanation of why the modification is reasonably necessary to make the specific housing available to the person, including (i) information establishing that the applicant (or, as applicable, the individual on whose behalf the applicant is requesting accommodation) is disabled; (ii) information demonstrating the burden the existing city ordinance places on efforts to accommodate the disabled individual; (iii) information outlining in detail the terms of the requested accommodation, and (iv) if the application is submitted on behalf of a group of disabled individuals, the number of individuals to be housed and why that number is necessary to accommodate each individual. If a project for which the

request is being made also requires an additional land-use review or approval, the applicant must file the request concurrently with the land-use review. The application may be accompanied by any other documentary evidence that the applicant reasonably believes may be pertinent to evaluating the applicant's requested accommodation. A completed application must be submitted to the Community Development Department, who in turn will promptly transmit the application and any accompanying materials to the city council.

(d) *Hearing before city council.*

- a. Upon city council's receipt of an application for accommodation, the application will be scheduled for a hearing at the next regularly scheduled city council meeting that is at least 15 days from the date of the council's receipt of the request for accommodation.
 - b. Notice of the hearing at which the city council will evaluate the request will be mailed at least 10 days before the meeting at which such hearing will be held to the owners of all properties located within **250** feet of the property subject to the request.
 - c. At the hearing, the city council will evaluate the request according to the following factors: (i) whether the applicant or the individuals whom the applicant represents are disabled; (ii) whether the request is needed to allow the disabled individual equal opportunity to use and enjoy a dwelling or to live in a particular neighborhood as an individual without disabilities; (iii) whether the request is reasonable, considering the potential impact on surrounding uses, the extent to which the requested accommodation meets the stated need, and other alternatives that may meet that need; (iv) whether the request would fundamentally alter the city's zoning scheme; (v) whether the request would impose an undue financial or administrative burden on the city; and (vi) any other factors that may have bearing on the request, as determined by the city. At the conclusion of this hearing, the city council will grant or deny the request.
 - d. In the course of evaluating the petition at the hearing, the city council may consider, in addition to the application and the materials submitted alongside it, any additional documentary evidence presented by the applicant and the oral or written testimony of the applicant and of any other interested persons. At all times, the applicant has the burden to prove by a preponderance of the evidence that it is entitled to the accommodation.
- (e) *Nature of approval.* An approved request is granted only to the applicant and does not run with the land unless the city determines (i) that the accommodation would be physically integrated into the residential structure and cannot easily be removed or altered or (ii) that the accommodation is to be used by another individual with a disability. The city council must make this finding on the record during the meeting at which the request is approved.
- (f) *Amendments.* Proposed amendments to any reasonable accommodation provided by the city must be presented and processed in the same manner as an original request.

~~(g) *Limitation for sober houses.* No sober house granted a reasonable accommodation under this Ordinance may be located within 1,000 feet of another sober house that has been granted a reasonable accommodation. This distance will be measured from the property line of each property that is closest to the other property.~~

Any or all ordinances in conflict herewith are hereby repealed.

FIRST READING: August 27, 2024
SECOND READING: Tabled to September 24, 2024
THIRD READING: October 8, 2024
PUBLISHED:

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk