ORDINANCE O2023-___

AN ORDINANCE OF THE CITY OF SHAKOPEE, MINNESOTA, AMENDING SECTIONS 151.007 (GENERAL REGULATIONS) AND 151.010 (BOARD OF ADJUSTMENTS AND APPEALS) OF THE SHAKOPEE CITY CODE BY ADDING PROVISIONS PERTAINING TO REQUESTS FOR REASONABLE ACCOMMODATIONS PER THE FAIR HOUSING ACT

WHEREAS, the City has proposed an amendment to the City Code by adding Sections 151.007 (M), Reasonable Accommodations and 151.010 (A) (7); and

WHEREAS, notices were duly posted, and a public hearing was held before the Planning Commission on April 6, 2023, at which time all persons present were given an opportunity to be heard; and

WHEREAS, the Planning Commission has recommended to the City Council that the proposed text amendments be adopted; and

WHEREAS, the City Council heard the matter at its meeting on April 18, 2023; and

WHEREAS, the language of City Code Sections 151.007 and 151.010 are hereby amended; and

The City Council of Shakopee, Minnesota ordains that Chapter 151 of the Shakopee City Code is amended by adding the following underlined language:

151.007 General Regulations

M. *Reasonable Accommodations*

1. *Purpose*. It is the policy of the city, pursuant to the Federal Fair Housing Amendments Act of 1988 to provide reasonable accommodation in the application of zoning and other regulations for qualified persons with disabilities seeking fair and equal access to housing. Reasonable accommodation means providing a qualified person with flexibility in the application of land use, zoning and other regulations or policies (including the modification or waiver of certain requirements), when it is necessary to eliminate barriers to fair housing opportunities. The purpose of this article is to establish a process for making and acting upon requests for reasonable accommodation.

2. *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates otherwise or requires a different meaning.

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ACCOMMODATION SPECIALIST: City staff appointed by the City Administrator or their designee to coordinate and administer the reasonable accommodation process outlined in Shakopee City Code Section 151 (M).

DISABILITY: Those disabilities which are recognized under applicable federal law.

REASONABLE ACCOMMODATION: Process by which the city may provide a qualified person flexibility in the application of land use, zoning, or other regulations.

QUALIFIED PERSON: Any individual with a disability, their representative, or a developer or provider of housing for an individual with a disability.

3. *Initiation of Reasonable Accommodation Request*. Any qualified person who requests a reasonable accommodation in the form of modification in the application of a zoning or other regulation which may act as a barrier to fair housing opportunities due to the disability of existing or proposed residents, may do so on an application form provided by the city's Accommodation Specialist. The application shall include a detailed explanation of why the accommodation is reasonably necessary to make the specific housing available to the person(s), including information establishing that the applicant is disabled under applicable laws, as well as other information required by the Accommodation Specialist to make the determination. If the project for which the request is being made also requires an additional land use review or approval, the applicant shall file the request concurrently with the land use review. Notice of such reasonable accommodation request shall be mailed within 15 days of receipt of a complete reasonable accommodation request application to each owner of affected property and property situated wholly or partly within 500 feet of the property to which the reasonable accommodation request relates. For the purpose of giving mailed notice, the Accommodation Specialist may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the Accommodation Specialist and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this notice requirement has been made. Any person providing comments regarding the reasonable accommodation request must provide such comments to the Accommodation Specialist within 14 days of the date of the notice.

4. *Accommodation Specialist: Required Findings.* The Accommodation Specialist, in consultation with other appropriate city staff, shall have the authority to consider and act on requests for reasonable accommodation. The Accommodation Specialist shall issue a written decision in which the request is approved, subject to conditions, or denied. In making the decision as to whether an accommodation is reasonable, the following factors shall be considered:

a. Special need created by the disability;

b. Potential benefit that can be accomplished by the requested accommodation;

c. Need for the requested accommodation, including alternatives that may provide an equivalent level of benefit;

d. Physical attributes of and any proposed changes to the subject property and structures;

e. Potential impact on surrounding uses;

f. Whether the requested accommodation would constitute a fundamental alteration of the zoning regulations, policies, or procedures of the city, and/or nature of the area in which the accommodation is being requested;

g. Whether the requested accommodation would impose an undue financial or administrative burden on the city;

h. Whether the requested accommodation is likely to have any negative impacts on the health, safety, or general welfare of members of the community, and

i. Any other factor that may be determined to have a bearing on the request.

Any approval issued under this section may include such reasonable conditions that the Accommodation Specialist deems necessary to mitigate any adverse impacts that the granting of such reasonable accommodation may produce or amplify.

5. *Notice of Decision.* The written decision of the Accommodation Specialist shall be mailed to the applicant of this section within five business days of such decision being made. Any person providing comments pursuant to paragraph (C) will receive a notification via written or electronic means that a decision has been made and such notification shall include instructions on how to obtain a copy of the decision. All written decisions shall give notice of the right to appeal a decision of the Accommodation Specialist pursuant to this Section 151.007 (M). The decision of the Accommodation Specialist shall constitute the final decision of the city, unless appealed according to the procedures and within the time limits provided in this Section 151 (M). Only the aggrieved applicant of the written reasonable accommodation determination has a right to appeal the decision.

A reasonable accommodation approved under this section shall become effective on the first calendar day following expiration of the right to appeal.

6. *Applicability*. Any approved request shall constitute a limited license which shall allow the property owner or occupant to continue to rely upon such accommodation only so long as they own or occupy the property. Approval of a reasonable accommodation does not constitute a property right, does not run with the land, and does not provide future owners or occupants any rights to rely upon

such accommodation approvals. Only the person who applied for such reasonable accommodation, and who is specifically named in the city's approval of such accommodation, shall be entitled to the benefits and protections thereof. The holder of an approved reasonable accommodation license hereunder shall, on or before January 1st of each year, provide the city with an updated affirmation that the reasonable accommodation is still necessary. In the event that the Accommodation Specialist has reasonable cause to believe that the factors supporting the original approval of a reasonable accommodation have changed, the Accommodation Specialist may request additional information from the license holder. Failure to annually reaffirm the need for the reasonable accommodation, or failure to provide information reasonably requested by the Accommodation Specialist shall result in automatic termination of the reasonable accommodation upon written notice by the Accommodation Specialist.

7. *Conditions and guarantees.* Prior to the issuance of any permits relative to an approved reasonable accommodation request, the Accommodation Specialist may require the applicant to record a covenant acknowledging and agreeing to comply with the terms and conditions established in the determination.

8. *Appeals.* Any decision reached by the Accommodation Specialist pursuant to this Section 151 (M) shall be subject to appeal to the Board of Adjustment and Appeals by those persons with a right to appeal as provided herein. All appeals shall be initiated by submitting a notice of appeal, in writing, to the Accommodation Specialist within 30 days of the date upon which the decision was made. Upon notice of appeal, the City Administrator or their designee shall present such appeal to the Board of Adjustment and Appeals for action within 30 days. The Accommodation Specialist shall also serve notice of such appeal on all parties entitled to receive notice of a decision issued under this Section 151 (M) – notice to persons who made comments in accordance with paragraph (C) shall be provided notice of the appeal via written or electronic means, at the discretion of the Accommodation Specialist. Following a hearing on such appeal, the Board of Adjustment and Appeals shall issue its findings, in writing, within 30 days.

9. *Fees.* Fees for applications under Sections 151 (M) and 151.010 (A) (7) may be set by City Council resolution.

151.010 Board of Adjustment and Appeals

A. *Powers and duties.*

7. To hear and decide appeals of requests for a reasonoable accommodation related to accommodations of the zoning code.

WHEREAS, it is ordained that the proposed ordinance amendment adding Sections 151.007 (M) and 151.010 (A) (7) is hereby approved.

Effective Date. This ordinance becomes effective from and after its adoption and publication.

Passed in regular session of the City Council of the City of Shakopee, Minnesota held on the 18th day of April, 2023.

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Mayor of the City of Shakopee

Attest:

_____
Lori Hensen, City Clerk

Published in the Shakopee Valley News on the _____ day of _____, 2023.