

# **Elmira Housing Authority**

## **Reasonable Accommodation Policy**

Board Approved: May 27, 2004  
Resolution 2004.59

### **1.0 Purpose**

The purpose of this policy is to help Elmira Housing Authority staff in providing reasonable accommodations to its applicants, public housing residents and other program recipients with a disability. It does not enlarge the EHA's duty under any law, regulation or ordinance. Where in conflict, the applicable law, regulation or ordinance shall prevail.

### **2.0 Mission Statement**

The EHA's policy is to comply with the Rehabilitation Act, §504.29 U.S.C. §794, as implemented by 24 C.F.R. §8, Americans with Disabilities Act, 42 U.S.C. §2101 as implemented by 28 C.F.R. §35 and 29 C.F.R. §1630, Fair Housing Act, 42 U.S.C. §3601 as implemented by 24 C.F.R. §100, New York Human Rights Law, Executive Law Article 15 and applicable local Civil Rights ordinances.

The EHA shall not discriminate against an applicant, public housing resident or other program recipient because of disability, race, color, creed, religion, national origin or ancestry, familial status, sex, sexual preference, veteran status, public assistance status, marital status, age, or political affiliation. The EHA shall not solely on the basis of a disability, deny benefits to an otherwise qualified person. The EHA shall give a qualified person with a disability through a reasonable accommodation an equal opportunity to participate in and benefit from its housing, aid, benefit or service.

By means of a reasonable accommodation, the EHA shall give a qualified person with a disability housing, aid, benefit or service that is equally effective as that provided to others without a disability. The term "equally effective" is not intended to produce an identical result or level of achievement as a person without a disability but is intended to give a person with a disability an equal opportunity to obtain the same result or level of achievement.

This policy shall be incorporated into the EHA's "Statement of Policies Governing Admission to Continuing Occupancy of Low Rent Housing" and shall apply to all EHA programs designed to provide financial or advisory assistance to persons seeking housing.

### **3.0 Definitions**

#### **3.1 A Person With A Disability Is One Who:**

1. Has a physical or mental impairment that substantially limits one or more major life activities;

2. Has a record of such an impairment; or
  3. Is regarded as having such an impairment.
- 3.11 Specifically excluded from the definition of a disability under the Americans with Disabilities Act are:
- a) Sexual behavior disorders such as transvestitism, pedophilia, exhibitionism and voyeurism.
  - b) Compulsive gamblers, kleptomaniacs or pyromaniacs.
  - c) Homosexuality, bisexuality, gender disorders and transsexualism.
- 3.12 Under the Americans with Disabilities Act, the disability must be current and substantially limit one or more major life activities. Under certain circumstances, physical conditions such as high blood pressure and poor vision, which are corrected by medication or another measure, are not a disability.
- 3.13 Under 24 CFR §100.201 (b)(2) *handicap* a disability does not include the current illegal use of or addiction to a controlled substance. Nor is being a transvestite a disability. Also, beginning October 1, 1999, for purposes of eligibility for low-income housing a person does not have a disability solely based on any drug or alcohol dependence.

### 3.2 Major Life Activity

Includes but is not limited to caring for one's self, doing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

### 3.3 Mental and Physical Impairments

A mental impairment includes mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

A physical impairment includes cosmetic disfigurement, neurological, musculoskeletal, senses, respiratory cardiovascular, reproductive, AIDS, HIV-positive, digestive, genitor-urinary, hemic, lymphatic and skin.

A mental or physical impairment includes but is not limited to cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, and mental retardation.

### 3.4 A Qualified Person With A Disability:

Is one who meets the essential eligibility requirements and who can achieve the purpose of the program or activity with or without modifications.

### 3.5 Essential Eligibility Requirements

Include but are not limited to: stated eligibility requirements like income; compliance with selection criteria; timely payment of financial obligations; care of premises; no disqualifying criminal or drug activities; respect for the rights of others; explicit or implicit requirements inherent to the program or activity; and compliance with all obligations of occupancy with or without supportive services provided by persons other than the EHA. A person may request a reasonable accommodation to meet the central obligation requirements.

For instance, a mentally ill person whose conduct even with a reasonable accommodation poses a significant risk of substantial interference with the safety and enjoyment of others or with the person's own health or safety or would result in substantial physical damage to the property of others, may not be qualified for a project lacking the necessary supportive services.

### **3.6 Reasonable Accommodation**

A reasonable accommodation may include a transfer, an alteration to the home or housing complex, or an exception to the EHA's rules, policies or procedures. While the EHA may accept the judgment of the person with the disability, that an accommodation is needed, it has the option to require the person to show the need for an accommodation.

The EHA may accept the judgment of the person with the disability that the requested accommodation is the most appropriate. However, the EHA may investigate alternatives to the requested accommodation and/or alternative methods of providing the requested accommodation. If more than one reasonable accommodation will satisfy the needs of the person with the disability, the EHA has the option to select the accommodation, which is most convenient and cost effective for it.

The EHA shall make a reasonable accommodation for a physical or mental impairment of a qualified applicant or recipient unless the EHA shows that the accommodation would (a) impose an undue financial or administrative hardship; (b) fundamentally change the nature of the program; (c) pose a direct threat to others, the person's own health or safety or; (d) result in substantial physical damage to the property of others or; (e) that the request is not a request for a reasonable accommodation.

For instance, a reasonable accommodation is not a personal preference. A personal preference is the liking of something over another. In addition, a reasonable accommodation does not require the EHA to provide counseling, medical or social services that are outside the scope of services provided to other persons.

### **3.7 Exclusions**

A person with a disability may be excluded when a person's tenancy would pose a direct threat to others or the person's own health or safety, or would result in substantial physical damage to the property of others or if the person is not "otherwise qualified" for housing.

### **3.8 Undue Hardship**

The EHA has the burden to show that the reasonable accommodation would result in an undue hardship. An undue hardship is a significant difficulty or expense or undue financial or administrative burden.

### **4.0 Communication**

The EHA shall make reasonable accommodations to communicate with applicants, public housing residents and members of the public. Reasonable accommodations may include using auxiliary aids such as interpreters for applicants, Braille materials, large print materials, audio tapes, notetakers or telecommunication devices for deaf persons. The EHA is not required to provide devices that are of a personal nature or that are prescribed for or for personal use or study.

### **5.0 Application Process**

During the application process, the EHA may ask all applicants the same questions. An applicant is not required to talk about a disability but may be asked to verify a disability if the applicant asks for a reasonable accommodation. The EHA shall not assume that a person has a disability.

An applicant may refuse to explain negative information because it may reveal the existence, nature or severity of a disability. The applicant has the right not to talk about

the disability. However, the EHA may have the right to deny admission because of the lack of or negative information.

If an applicant requests a reasonable accommodation, the applicant has the burden to show that the accommodation is likely to enable the applicant to comply with the lease and that the applicant will accept necessary assistance. However, the EHA cannot make it a condition of the tenancy or include as a lease provision that the tenant use the assistance. For example, the EHA may not evict a tenant for not taking a medication, but may evict the tenant for conduct resulting in serious or repeated lease violations resulting from not taking the medication.

The EHA may make it a condition of an applicant's admission to accept supportive services, attend a self-help group or rehab program if the applicant's history warrants. However, the EHA cannot amend the lease or program requiring the person to accept such service but may evict or deny admission if the rejection of the services result in conduct that violates the lease or program.

## **6.0 Physical Accessibility**

Where practicable, the EHA's buildings will be physically accessible and usable by disabled persons. A physical accommodation is reasonable if it does not (a) cause an undue financial and administrative burden; (b) fundamentally change the nature of the program; (c) pose a direct threat to others or the person's own health; (d) result in substantial physical damage to the property of others or; (e) is not a request for a reasonable accommodation.

With each physical alteration, a cost base analysis may be needed. Cost base factors include but are not limited to the type of accommodations, cost, the size of the EHA's overall housing business, number of units, type of units, budget, expenses and ability to recoup the cost.

Alterations in new construction shall comply with federal and state law and regulations. If a physical accommodation is unreasonable, the EHA may provide for program access at a different accessible location.

## **7.0 Barrier Free Units**

It is the EHA's goal to provide barrier free units for persons with mobility impairments of at least 5% of the total number of the units in each project as follows:

- 7.1 In new units, 5% will be barrier free and an additional 2% will be accessible for the hearing or sight-impaired. The EHA will comply with accessibility standards as provided by the Uniform Federal Accessibility Standards, 24 C.F.R. §40, Appendix A and the Americans with Disabilities Act Accessibility Guidelines.
- 7.2 The rehabilitation of existing projects that exceeds 75% of the replacement cost of the completed facility will include 5% barrier free units.
- 7.3 Alteration work in a dwelling unit that does not exceed 75% of the replacement cost of the completed facility but is substantial in nature as determined by the EHA will include the conversion of 5% of the units to barrier free at the time of construction.
- 7.4 Buildings receiving modernization work which include substantial work in the units but does not exceed 75% of the cost of the unit and with existing programs that service the disabled or frail elderly, the number of handicapped units may exceed 5% at the EHA's discretion.

7.5 Consistent with the provisions of this policy, barrier free units may be created to meet the specific needs of a resident in the building.

#### **8.0 Accessible Units for Hearing and Sight Impaired**

The EHA will modify units to reasonably accommodate residents with hearing or sight impairments consistent with the provisions of this policy.

#### **9.0 Barrier Free Common Areas and Non Dwelling Areas**

It is the EHA's goal to achieve barrier free common areas and non-dwelling sites as follows:

9.1 Non-dwelling areas within a building, which are not accessible, will be modified to meet accessibility requirements when the building undergoes comprehensive modernization or when making a reasonable accommodation.

#### **10.0 Transfer To A Barrier Free Unit**

To satisfy a reasonable accommodation, a resident may transfer to a barrier free unit in priority as follows:

10.1 First, if available, the resident will be offered a unit in the same project.

10.2 Second, the resident will be offered, if available, a barrier free unit in any building. If a unit is not available, the resident will be placed on a waiting list for a reasonable period of time.

10.3 Third, the resident's current unit may be modified to meet the needs of the resident consistent with the provisions of this policy.

#### **11.0 Disability Applicants On The Waiting List**

A disabled applicant who is qualified and needs a modified unit, shall be offered a unit as follows:

11.1 When the qualified applicant is on the waiting list and when an appropriate modified unit is available and no tenant in the building needs the features of the unit.

11.2 When a qualified applicant is at the top of the waiting list, and an appropriate modified unit is not available, the EHA may modify the unit consistent with the provisions of this policy.

11.3 If an appropriate modified unit becomes available and no disabled applicant is on the waiting list and no tenant in the building needs the modified unit, the unit will be offered to the qualified applicant next on the waiting list. However, if the modified unit is needed for a disabled applicant or resident, the occupant in the unit shall vacate and transfer to another unit. The transferred tenant is entitled to due process.

#### **12.0 Program Accessibility**

The EHA will make reasonable accommodations for qualified persons with disabilities to have access and use its programs. Except when necessary to maintain the fundamental nature of the program, the EHA will not use eligibility criteria, which adversely impacts upon disabled persons.

#### **13.0 Disabled Person's Compliance With The EHA's Rules, Policies or Procedures**

A reasonable accommodation may include an exception to the EHA's rules, policies and procedures. If an applicant or recipient can show that the failure to comply with a rule, policy or procedure was due to a disability, the EHA may reinstate the person's status.

This may include reinstating the person to a waiting list at an original spot or abandoning termination or eviction procedures.

If an accommodation failed in the past the EHA is not required to offer the same accommodation unless the person can show new circumstances as to why the accommodation will likely work in the future.

An exception to the EHA's rules, procedures and policies does not require a lowering or a waiver of the essential requirements of a lease or program. If a tenant refuses services or another reasonable accommodation, and violating conduct continues, the EHA make take the same action as it would with a person without a disability.

A disabled person is required to show documentation of the disability and the need for the accommodation. Without such documentation, the EHA need not offer an accommodation such as a companion or service animal. However, the person must maintain health and safety standards in keeping the animal. Animals that are dangerous or potentially dangerous under federal law or regulation state law or local ordinance are not permitted.

#### **14.0 Grievances**

A grievance is any dispute which an applicant or recipient may have for the EHA's failure to provide the requested accommodation. A person or their representative shall present a grievance either verbally or in writing to the EHA's Management Office within 10 working days after the receipt of the denial of the request. The grievance shall state:

1. The reasons for the grievance,
2. The action requested,
3. Name, address, and telephone of applicant or recipient.

The grievance shall be process in accordance with the EHA's Grievance Procedures, as set out in its Statement of Policies Governing Admission to and Continued Occupancy of Low-Rent.

#### **15.0 Amendment**

The Executive Director may amend this policy when it is reasonably necessary to effectuate its intent, purpose or interpretation. The proposed amendment along with the rationale for the amendment shall be submitted to the Executive Director for consideration. Where reasonably necessary, the Executive Director may approve the amendment. The amendment shall be effective and incorporated herein on the date that the Executive Director signs the amendment.