

**THE INTERSECTION OF LAND USE AVENUE  
AND CIVIL RIGHTS BOULEVARD**

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Ms. Mickelson practices law and urban planning, concentrating her practice in the areas of land use, real estate development, economic development, and municipal and non-profit corporation law, and is a frequent speaker and author on these issues in Texas, Illinois, and nationally. She is licensed, and practices, in both Texas and Illinois.

Ms. Mickelson is an honors graduate of the Plan II program at The University of Texas, as well as The University of Texas School of Law and the Lyndon B. Johnson School of Public Affairs. She studied municipal and historic preservation practices in Krakow, Poland, and also studied in Germany and the former Yugoslavia.

Ms. Mickelson has taught undergraduate and graduate courses in several universities, to varied student populations, and is currently a Visiting Associate Professor in the Masters in Urban Planning program in the College of Architecture at Texas A&M University in College Station.

She is a member of the Texas Bar Association, and serves on the Section Council of the Government Lawyers Section, the Houston Bar Association, the Texas City Attorney's Association, the American Planning Association (Texas and Illinois chapters), and the American Institute of Certified Planners.

She is the President of the Texas APA Chapter, and the Editor of Texas APA's book, [A Guide to Urban Planning in Texas Communities](#). She is a member of Preservation Texas and Preservation Houston. In her spare time, Kim is a fiber and glass artist—usually not together—and is a rabid Texas Longhorns fan.

## THE INTERSECTION OF LAND USE AVENUE AND CIVIL RIGHTS BOULEVARD<sup>1</sup>

The term “Reasonable Accommodations” has meaning to lawyers in a variety of specialties.<sup>2</sup> This paper will look at the phrase in the context of local land use decision making—zoning, development rights, and accessibility in the built environment. The paper will focus on areas where federal law influences local land use authority, through the Federal Fair Housing Act.<sup>3</sup> It briefly also discusses the context in which it arises with the Americans with Disabilities Act<sup>4</sup>.

The Federal Fair Housing Act was originally passed as Title VIII of the Civil Rights Act of 1968, to provide protection from discrimination in housing on the basis of race, color, religion, or national origin. It was amended in 1974 to add gender as a protected class, and again in 1988 to add handicap as a protected class. Texas has adopted a state fair housing law that tracks much of the language of the federal statute.<sup>5</sup>

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<sup>1</sup> From the header photo on [www.landuseaccommodations.com](http://www.landuseaccommodations.com); a blog by New Jersey attorney Steve Rother, which discusses related issues for developers and operators of various forms of supportive housing. Mr. Rother is a Member of Post, Polak, Goodsell & Strauchler, PA.

<sup>2</sup> Note, for example, that certain accommodations may be needed under the Federal Telecommunications Act for amateur radio operators; and many are familiar with the term within the employment law context under the Americans with Disabilities Act.

<sup>3</sup> 42 U.S.C.A. §§3601-3631.

<sup>4</sup> 42 U.S.C.A. §12101 et seq.

<sup>5</sup> Texas Fair Housing Act, Tex. Prop. Code Chapter 301.

Discrimination on the basis of one of the seven protected classifications is prohibited; this includes discrimination in the sale or rental, or otherwise making unavailable or denying a dwelling to someone because the buyer or renter, or a person residing in or intending to reside in the dwelling after it is made available, or any person associated with the buyer or renter because of a particular characteristic of one of those persons—if within the protected classifications.<sup>6</sup> The Fair Housing Act, requires owners, landlords, or other entities controlling housing to make reasonable accommodations to allow a person with disability to occupy a dwelling unit. Reasonable accommodations must be made in the rules, policies, practices, or services when they are necessary to afford a disabled person equal opportunity to enjoy or use a dwelling. For example, a landlord must allow a seeing-eye dog in a unit that otherwise would prohibits pets. Failure to make reasonable accommodations is defined as discrimination.<sup>7</sup>

The person with the disability must pay for the reasonable accommodations and, if renting or otherwise occupying the property in a capacity other than owner, must restore the property to its original condition on move out.

Reasonable accommodations will often mean physical alterations to the property, but are not limited to physical elements. Basic accessibility to housing means that:

1. there is an accessible building entrance on an accessible route,

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<sup>6</sup> 42 U.S.C.A. Sec. 3604(f)(1), (2).

<sup>7</sup> Id., Sec. 3604(f)(3)(B).

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