

**ORDINANCE NO. 05-2018**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, SECTION 78-6 OF THE LAKE PARK TOWN CODE, AMENDING THE REASONABLE ACCOMMODATION PROCEDURES; PROVIDING FOR THE REQUIREMENT THAT RECOVERY RESIDENCES IN THE TOWN BE CERTIFIED BY THE STATE'S CREDENTIALING ENTITY; PROVIDING THAT RECOVERY RESIDENCES BE MANAGED BY A CERTIFIED RECOVERY RESIDENCE ADMINISTRATOR; PROVIDING FOR THE ANNUAL RECERTIFICATION OF RECOVERY RESIDENCES TO ENSURE THE PROTECTION OF THOSE PERSONS WITH SUBSTANCE ABUSE DISORDERS WHO RESIDE IN RECOVERY RESIDENCES IN THE TOWN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, §2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, the Town Commission of the Town of Lake Park, Florida (the "Town") has the home rule authority to establish such regulations as it deems necessary to advance and protect the health, safety, morals and general welfare of the residents, visitors and businesses in the Town; and

**WHEREAS**, the Town Commission has established reasonable accommodation procedures to protect persons with disabilities due to substance abuse and the general public; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat., the Florida Legislature has determined that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment from a licensed service provider; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat. the Florida Legislature has determined that the state, its subdivisions, and municipal corporations have a legitimate state interest in

protecting persons suffering from addiction, who represent a vulnerable consumer population in need of adequate housing; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat., the Florida Legislature has determined that persons who live in a recovery residence require protection; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from addiction who live in recovery residences can be better protected by the establishment of a voluntary certification program for recovery residences; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from addiction would be better protected by the establishment of a program for the certification of recovery residence administrators to ensure that these administrators adhere to certain core competencies, including (1) A code of ethics and disciplinary process; (2) Biennial continuing education requirements; (3) Annual certification renewal requirements; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from substance abuse disorders who live in recovery residences can be better protected by encouraging recovery residences to employ a recovery residence administrator who has earned and who will maintain certification from a credentialing entity approved by the Department of Children and Families; and

**WHEREAS**, the Town Commission has the home rule authority, pursuant to the Florida Constitution and Chapter 166, Fla. Stat., to require that a Recovery Residence be certified by an approved credentialing entity and that the Recovery Residence be managed by a certified Recovery Residence Administrator; and

**WHEREAS**, the Town Commission finds that the voluntary certification of recovery residences, the management of the recovery residence and the supervision of the residents therein

by a certified recovery residence administrator is necessary and appropriate to further the health, safety and general welfare of the residents of recovery residences and the general public; and

**WHEREAS**, THE Town Commission of the Town of Lake Park has adopted reasonable accommodation procedures that will permit disabled individuals, housing providers, or qualifying entities to request reasonable accommodations and where appropriate based on the facts and law presented to the Town's Magistrate, to receive reasonable accommodations; and

**WHEREAS**, reasonable accommodations are not automatically granted because the Magistrate who is considering the requested accommodation must be given an opportunity to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law and is reasonable; and

**WHEREAS**, according to the Joint Statement prepared by the United States Departments of Housing and Urban Development and Justice, an accommodation is not reasonable if it either; imposes undue financial and administrative burdens on the government or requires a fundamental alteration in the zoning scheme; and

**WHEREAS**, the Town Commission desires to update its reasonable accommodation procedures to have applicants who have been previously approved for a reasonable accommodation to re-apply annually so that it can be established that they the residents of a Recovery Residence are disabled and have a continued need for the accommodation; and

**WHEREAS**, a policy that required disabled participants to provide updated medical information every three (3) years certifying that they are disabled does not discriminate against participant on basis of his disability; and

**WHEREAS**, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety, and general welfare to amend Chapter 78, Article 1,

Section 78-6 of the Town Code, as more specifically provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:**

**Section 1.** The foregoing recitals are adopted herein as true and correct and shall constitute the legislative findings of the Town Commission.

**Section 2.** Chapter 78, Article I, Section 78-6 is hereby amended as follows:

Sec. 78-6. Applications and regulations for reasonable accommodation for residents of Recovery Residences

(1) Definitions

***Counseling*** means the process, conducted in a facility licensed under Chapter 397, F.S., of engaging a client in a discussion of issues associated with the client's substance abuse and associated problems in an effort to work toward a constructive resolution of those problems and ultimately toward recovery.

***Certified recovery residence administrator*** means a recovery resident administrator ~~who holds a valid certificate of compliance~~ who has been certified and maintained certification from a credentialing entity approved by the Department of Children and Families.

***Certified recovery residence*** means a recovery residence that holds a valid certificate of compliance from a credentialing entity approved by the Department of Children and Families, and is actively managed by a certified recovery residence administrator.

***Disabled individual or a disabled person*** means an individual meeting the definition of "disability" set forth in 42 U.S.C.S. § 12102 of the American with Disabilities Act (ADA) means someone having: (i) a physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; and (iii) who is regarded as having such an impairment.

***Housing provider*** means a person or entity which provides housing for individuals disabled due to substance abuse. ~~has been certified as a recovery residence, or which is in the process of obtaining certification as a recovery residence.~~

***Licensed service provider*** means a public agency under Chapter 397, F.S., a private for-profit or non-for-profit agency under Chapter 397, F.S., a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse services through one or more licensed service components.

**Qualifying entity** shall mean, a licensed service provider in the State of Florida as defined by F.S. § 397.311(18), or an entity who is in the business of providing recovery residences for individuals disabled due to substance abuse.

**Recovery** means a process of personal change through which individuals achieve abstinence from alcohol or drug abuse and improve health, wellness, and quality of life.

**Recovery residence** means a residential dwelling unit, or other form of group housing that is offered or advertised through any means including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug free living environment.

**Recovery residence administrator** means the person responsible for the overall management of the recovery residence, including but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.

**Service component or component** means a discrete operational entity within a service provider which is subject to licensing as defined by the rules adopted to implement Chapter 397, F.S.

**Substance abuse** means the misuse of, or dependence on alcohol, illicit drugs, or prescription medications.

**Treatment** means specific clinical and services such as individual and group counseling.

- (2) Application: This section implements the policy of the Town for processing reasonable accommodation applications for persons with disabilities and who are in recovery from substance abuse. Any applicant whether a disabled individual, housing provider, or a qualifying entity may apply for a reasonable accommodation with respect to the Town's land use or applicable zoning laws, codes, rules, practices and/or procedures by submitting an application on the Town approved form for a reasonable accommodation pursuant to this section.

(a) All qualifying entities shall submit as part of an application for a reasonable accommodation, proof of the licensable service component the qualifying entity holds pursuant to F.S. ch. 397.

(b) Applicants requesting a reasonable accommodation from the definition of the term family who are seeking to operate a recovery residence where unrelated individuals who are disabled by substance abuse will live together as a family Housing providers for disabled individuals shall submit an application on the Town's approved form and provide the information requested therein together with such information as the Town may reasonably deem sufficient to be necessary to demonstrate that the entity is a has been certified as a recovery residence by a state approved credentialing entity, or has been recognized or sanctioned by Congress (Oxford House) to operate the proposed

~~recovery residence or is in the process of becoming certified to operate a recovery residence for disabled individuals.~~

(c) Applicants making application for a reasonable accommodation whether individually, through a qualifying entity or as a housing provider, shall submit proof that each individual who will reside in a recovery residence ~~seeking a reasonable accommodation~~ is disabled due to the individual's handicap or disability by substance abuse.

(d) Applicants making applications to operate a recovery residence shall identify the recovery residence administrator who is responsible for the overall management and the supervision of residents and any staff. Applicant shall submit such information as is necessary to document that the recovery residence will be managed by a recovery residence administrator who resides within the residence and is has been certified by a state approved credentialing entity ~~or has applied for certification as a recovery residence administrator.~~

(e) An applicant for a reasonable accommodation under this section shall submit an application using a form which is available in the Town's community development department ("department"). The information on the form must be complete before it will be submitted to the Town's Special Magistrate for consideration ~~as the information solicited is necessary for the Town to process the reasonable accommodation application.~~

(f) The Town shall display a notice in the Town's public notice bulletin board (and shall maintain copies available for review in the department, the building/permitting division, and the Town Clerk's Office), advising the public that an application for a reasonable accommodation as provided in this section has been submitted to the department.

(g) A disabled individual, ~~a~~-qualifying entity, or housing provider who has applied for a reasonable accommodation may be represented at all stages of the reasonable accommodation proceedings by a person designated by the disabled individual as their authorized agent. Any authorized agent representing an individual, ~~or, if applicable,~~ a qualifying entity or housing provider shall include as part of its application ~~submit~~, a written authorization designating the individual as the agent authorized to legally bind the applicant to the representations in the application, or any conditions agreed to or imposed as part of the order of the Special Magistrate.

(h) No application fee shall be imposed by the department in connection with an application for a reasonable accommodation.

- (3) An individual, qualifying entity, or housing provider who is the tenant of a property owner and making a request for a reasonable accommodation, shall submit information disclosing the owner of the property and written confirmation from the owner demonstrating that it

~~has consented to the submission of the request for a reasonable accommodation. the leases or lease between the property owner and the tenant or tenants requesting a reasonable accommodation. It shall be the joint and several responsibility of the property owner or tenant, to submit any leases or subleases pertaining to the residence which is the subject of a reasonable accommodation application for a recovery residence.~~

- (4) Applicants for a reasonable accommodation shall have the burden of establishing that the individuals on whose behalf the application has been submitted are protected under the provisions of the FHA and/or ADA. The applicant shall also demonstrate that the accommodation being sought for all of the individuals who will occupy the recovery residence are reasonable and necessary.
- (5) All applications for a reasonable accommodation shall be considered by the Town's Special Magistrate pursuant to the procedures of § 2-2 of the Town Code. The Town shall be responsible for mailing via certified mail a notice containing the date and time of the Special Magistrate's hearing to consider the application. The Special Magistrate may: (1) grant the reasonable accommodation application as requested in the application; (2) grant a portion of the application determined by the Special Magistrate to be a reasonable accommodation given the circumstances and the nature of the request (3) grant the application with conditions to effectuate a reasonable accommodation; or (4) deny the reasonable accommodation requested. All decisions of the Special Magistrate shall be in writing. The written decision of the Special Magistrate shall constitute a Final Order and shall be sent to the applicant by certified mail, return receipt requested, at the address specified by the applicant on the application form.

If denied the applicant may appeal the Magistrate's Final Order by writ of certiorari within 30 days of the date it is rendered.

(6) All reasonable accommodation requests approved by the Special Magistrate and implemented by an applicant are valid for one year.

(7) All approved and implemented reasonable accommodations shall be submitted annually to the Special Magistrate, prior to the anniversary date of the Special Magistrate's initial approval of the reasonable accommodate request the re-certification of the Reasonable Accommodation by the Special Magistrate.

(8) Those residences which have previously obtained a Reasonable Accommodation from the Town Magistrate shall request for the renewal of the Reasonable Accommodation for a one year term no later than October 1, 2018. In the event, that a re-certification of the Reasonable Accommodation previously granted by the Magistrate is not made, the Reasonable Accommodation previously granted by the Magistrate shall be deemed to have expired.

(9) An applicant for a Reasonable Accommodation, or for re-certification by the Magistrate of a Reasonable Accommodation previously granted, shall submit an application on the Town's form and provide all of the information requested in the form to the department.

(10) The Town's Special Magistrate shall consider requests for Reasonable Accommodation, including re-certifications, and shall determine whether: the requested accommodation is reasonable and necessary; the recovery residence has been certified by a state approved credentialing entity, or is recognized or sanctioned by Congress to operate the proposed recovery residence; the proposed recovery residence is managed by a recovery residence administrator who has been certified by a state approved credentialing entity unless the recovery residence is one that has been recognized or sanctioned by Congress to operate the proposed recovery residence; the approval of the request would create an administrative and/or financial burden on the Town; and the extent to which the request would fundamentally alter the zoning scheme of the Town.

(10) The Special Magistrate may impose conditions on the operation of the recovery residence to ensure that the residents thereof are protected; and that the public's health, safety and general welfare will be furthered.

(11) The requirements herein shall apply to those individuals, qualifying entities or housing providers who have previously been granted a reasonable accommodation, are requesting re-certification of the Reasonable Accommodation; and those who request a Reasonable Accommodation to operate a Recovery Residence in the Town after the effective date of this ordinance.

(12) If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word in this section is declared unconstitutional by a court of competent jurisdiction, the declared unconstitutional provision shall not affect any other part, section, subsection, paragraph, sentence, phrase, clause, term, or word of this section.

### **Section 3. Codification.**

The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of the Town of Lake Park.

### **Section 4. Severability.**

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### **Section 5. Repeal of Laws in Conflict.**



All ordinances or parts of ordinances of the Town of Lake Park, Florida, which are in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall take effect upon execution.

LEGAL NOTICE OF  
PROPOSED ORDINANCE  
TOWN OF LAKE PARK

Please take notice that on Wednesday, April 18, 2018 at 6:30 p.m. or soon thereafter the Town Commission, of the Town of Lake Park, Florida in a regular session to be held in the Commission Chambers, Town Hall, 535 Park Avenue, Lake Park, Florida will consider the following Ordinances on second reading and proposed adoption thereof:

Ordinance No. 05-2018

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, SECTION 78-6 OF THE TOWN OF LAKE PARK CODE, AMENDING THE RECOVERABLE PROCEDURE PROCESSES; PROVIDING FOR THE REQUIREMENT THAT RECOVERY RESIDENCES IN THE TOWN BE CERTIFIED BY THE STATE'S CREDENTIALING ENTITY; PROVIDING THAT RECOVERY RESIDENCES BE MANAGED BY A CERTIFIED RECOVERY RESIDENCE ADMINISTRATOR; PROVIDING FOR THE ANNUAL RECERTIFICATION OF RECOVERY RESIDENCES TO ENSURE THE PROTECTION OF THOSE PERSONS WITH SUBSTANCE ABUSE DISORDERS WHO RESIDE IN RECOVERY RESIDENCES IN THE TOWN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

If a person decides to appeal any decision made by the Town Commission with respect to any hearing, they will need a record of the proceedings and fees associated therewith. It is hereby ordered that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. For additional information, please contact Vivian Mendez, Town Clerk at 561-881-3311.

Vivian Mendez, CMC, Town Clerk  
Town of Lake Park, Florida  
PUB: The Palm Beach Post  
4 - 8 /2018

000039579-01

Upon First Reading this 4 day of April, 2018, the foregoing Ordinance was offered by Vice-Mayor Glas-Castro, who moved its approval. The motion was seconded by Commissioner Michaud, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER ANNE LYNCH	<u>/</u>	_____
COMMISSIONER ROGER MICHAUD	<u>/</u>	_____

**PUBLISHED IN THE PALM BEACH POST THIS 8 DAY OF April, 2018**

Upon Second Reading this 18 day of April, 2018, the foregoing Ordinance, was offered by Commissioner Flaherty, who moved its adoption. The motion was seconded by Commissioner Lynch, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>/</u>	_____
COMMISSIONER ANNE LYNCH	<u>/</u>	_____
COMMISSIONER ROGER MICHAUD	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No.** 05-2018 duly passed and adopted this 18 day of April, 2018.

TOWN OF LAKE PARK, FLORIDA

BY: [Signature]  
Mayor, Michael O'Rourke

ATTEST:

[Signature]  
Town Clerk, Vivian Mendez  
(Town Seal)

Approved as to form and legal sufficiency:

[Signature]  
Town Attorney, Thomas J. Baird

