

ORDINANCE NO. 16-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING SUBSECTIONS (1) THROUGH (9) OF SECTION 78-6, ENTITLED "REASONABLE ACCOMMODATIONS PROCEDURES"; PROVIDING FOR A DEFINITION OF THE TERM "QUALIFYING ENTITY"; PROVIDING FOR APPEALS OF THE DECISIONS TO A SPECIAL MAGISTRATE'S DECISION; PROVIDING FOR THE DELETION OF THE INCORPORATION OF AN APPLICATION FORM IN THE TOWN CODE; PROVIDING FOR PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; 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 of Lake Park, Florida (the "Town") has the governmental and corporate powers of a duly constituted municipality; and

WHEREAS, the Town Commission has adopted general provisions pertaining to land use and zoning within the Town, which have been codified in Chapter 78 of the Town Code of Ordinances; and

WHEREAS, on or about August 22, 2007 the Town Commission adopted Ordinance No. 18-2007, pursuant to which new Town Code Section 78-6 was created to establish reasonable accommodation procedures to be followed by the Town in the event a disabled individual(s) and/or a qualifying entity requests a reasonable accommodation, and a means where appropriate (based upon record evidence and current law), for the Town to grant a reasonable accommodations to an applicant if the criteria established in the procedure have been satisfied; and

WHEREAS, subsequent to the adoption of Ordinance 18-2007, and the codification of Town Code Section 78-6, Town Staff has reconsidered certain provisions of the reasonable accommodations procedure, and has determined that it is in the best interests of the Town to amend certain provisions contained in the procedure; and

WHEREAS, Town Staff has recommended to the Town Commission that subsections (4), (5), (6), (7), and (8) of Section 78-6, should be amended to change the designation of the individual authorized by the Town Commission to conduct the public quasi-judicial hearings on

requests for reasonable accommodations from the Town Manager to a Special Magistrate, who is a licensed and current member in good standing of the Florida Bar, and who is appointed by the Town Commission upon the recommendation of the Town Attorney for the limited purpose of conducting the hearing; and

WHEREAS, in addition, Town Staff has also recommended to the Town Commission that subsection (4) of Section 78-6, be further amended to provide for specific provisions for the notice of the hearing on the request for a reasonable accommodations, to wit: (a) the provision of courtesy mail notice of the public hearing to persons who own real property which abuts, is adjacent to, or is within 300 feet of the real property which is the subject of a request for a reasonable accommodation(s), and (b) newspaper publication of the notice of the public hearing containing a brief description of the request for reasonable accommodation and the property to which the request is applicable, the proposed reasonable accommodation(s) requested by the applicant, and the time and place of the hearing of the special magistrate on the request for reasonable accommodation, and a statement that all interested persons will be afforded an opportunity to speak and be heard at the hearing; and

WHEREAS, the Town Commission has reviewed the recommendations of Town Staff and other interested parties and members of the public, regarding the proposed amendments, and their consistency with the requirements of state and federal law; 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 I, Section 78-6 (subsections (4), (5), (6), (7), and (8)) of the Town's 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 legislative findings of the Town Commission.

Section 2. Chapter 78, Article I, Section 78-6, subsections (1), (2) (3) (4) (5), (6), (7), (8) and (9) are hereby amended to read as follows:

Sec. 78-6. Reasonable accommodation procedures.

(1) This section implements the policy of the town for processing requests for reasonable accommodation from the town's ordinances, rules, policies, practices, and procedures for persons

with disabilities as provided by the federal Fair Housing Amendments Act (42 U.S.C. 3601 et. seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et. seq.) ("ADA"). For purposes of this section, a "disabled individual" or a "disabled person" means an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or a qualifying entity) may apply for request a reasonable accommodation with respect to the town's land use or zoning laws, rules, policies, practices, and/or procedures as provided by the FHA and the ADA by submitting an application for a reasonable accommodation pursuant to the procedures set forth in this section. For purposes of this section, a qualifying entity may mean, for some applications, an entity licensed by the Department of Children and Families as a Level 1-5 treatment provider in the state of Florida. Applicants for a reasonable accommodation either individually, or, if applicable, through a qualifying entity must submit to the special magistrate proof that he or she is ~~be a disabled individual or a disabled~~ and/or handicapped under the FHA and/or ADA that qualifies as disabled and/or handicapped under the FHA and/or ADA or an authorized agent, attorney or representative for a disabled person or individual.

(2) A request by a disabled person or individual ("applicant") for a reasonable accommodation under this section shall be made in writing by completing a form which is a form available in the town's community development department ("department"). ~~The completed form shall be submitted to the department for review and processing.~~ The form shall contain questions and requests for information, which are necessary for the town to process the reasonable accommodation request. ~~The form shall be substantially in the format set forth in Exhibit "A".~~

(3) If the information required to be provided by the applicant to the town, includes medical information and/or records, including records relating to the medical condition, diagnosis or medical history of the applicant, the applicant at the time of the submission of the medical information, may request that the town treat the medical information as confidential information of the applicant. In such case, the town shall endeavor to keep the applicant's medical information confidential to the extent permitted by law. The town shall thereafter use its best efforts to provide written notice to the applicant and/or the applicant's authorized agent, attorney or representative, of any request received by the town for disclosure of the medical information or documentation which the applicant has previously requested be treated as confidential by the town. The town will cooperate with the applicant to the extent allowed by law, in actions initiated by persons or entities that challenge or oppose the town's nondisclosure of medical information or records of the applicant. However, the town shall have no obligation to ~~initiate, prosecute, defend against, or pursue~~ any such action seeking to compel the production of public records, or to incur any legal or other expenses ~~(whether by retention of outside counsel or allocation of internal resources)~~ in connection therewith, and may produce the records to the extent the town determines the records are not exempt from the Public Records Act, or to comply with any judicial or administrative order without prior notice to the applicant.

(4) When a reasonable accommodation request form has been completed and submitted to the department, it will be scheduled for a quasi-judicial hearing before a provided ~~to the town attorney for review and consideration,~~ special magistrate ~~shall be selected and~~ appointed by the town commission, ~~upon the recommendation of the town attorney to hear and decide requests for reasonable accommodation, after~~ The application shall be duly noticed public hearing has

~~been held on the request and members of the public have been permitted to be heard on the request and provide comments, input and other relevant information. Notice of the public hearing on the request for a reasonable accommodation shall be given at least 15 days before the public hearing in a newspaper of general circulation, and courtesy notice shall be given by certified mail, return receipt requested, to all landowners within 300 feet of the perimeter of the lot which is the subject of the request for a reasonable accommodation at least 15 days before the hearing of the special magistrate. The notice shall contain a brief description of the request for reasonable accommodation and the property to which the request is applicable, the proposed reasonable accommodation(s) requested by the applicant, and the time and place of the hearing of the special magistrate on the request for reasonable accommodation. Proof of publication of the notice shall be filed with the town clerk prior to public hearing of the special magistrate on the request for reasonable accommodation. For the purpose of this section, the measurement of 300 feet shall be taken in straight lines from the perimeter of the property which is the subject of the request for a reasonable accommodation. The provision for notice to all landowners within 300 feet may be dispensed with upon presentation to the special magistrate of a "waiver of notice" signed by all persons entitled to notice hereunder, which such waiver shall comply with the provisions of this section. Failure to receive such notice, however, shall not affect any action or proceeding taken hereon, nor is it intended to supplement the required notice provisions of state law for due process or any other purposes. The special magistrate shall not be required to render a decision on the request at the public hearing. The special magistrate shall issue a written determination on the request within 45 days of the date of receipt of a technically complete application. The special magistrate may, in accordance with federal law either: (1) grant the reasonable accommodation request in full, (2) grant a portion of the reasonable accommodation request and deny a portion of the reasonable accommodation request, and may also impose conditions upon the portion of the reasonable accommodation request that was granted, or (3) deny the reasonable accommodation request. Any denial of a reasonable accommodation request shall be in writing, and shall state the grounds for the denial. All decisions of the special magistrate on a request for reasonable accommodation shall be in writing and shall give the applicant notice of the applicant's right to appeal. The written decision of the special magistrate shall be sent to the applicant (i.e., the disabled individual or his/her authorized agent, attorney, or representative) by certified mail, return receipt requested, at the address specified for notice by the applicant on the application form. If the special magistrate determines that additional information from the applicant is necessary for the special magistrate to reach a determination on the request, the special magistrate may, prior to the end of the 45 day period, issue a written request to the applicant detailing the additional information and/or records which are necessary for the special magistrate to render a decision. The applicant shall have 15 days from the date of the written request for additional information within which to provide the requested information to the special magistrate. In the event the special magistrate timely requests the applicant to provide additional information, the 45 day determination period shall no longer be applicable, and the special magistrate shall issue a written administrative decision within 30 days after receipt of the additional requested information from the applicant. If the applicant fails to provide the requested additional information within the 15 day period, the special magistrate shall issue a written notice advising the applicant that, due to the fact that the applicant failed to timely submit the additional information, the request for reasonable accommodation has been deemed by the town to be abandoned by the applicant and/or withdrawn, and that no further action by the town regarding the applicant's reasonable accommodation request shall be taken.~~

(5) In determining whether a reasonable accommodation request should be granted or denied, the applicant, or, if applicable, the qualifying entity must establish that the applicant is protected under the provisions of the FHA and/or ADA by demonstrating that the applicant is handicapped or disabled, as defined in the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this section, the disabled individual who is the subject of the request for a reasonable accommodation must show: (i) a physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; and (iii) that the disabled individual is regarded as having such impairment. After satisfying the foregoing three criteria, ~~the applicant disabled individual who is the subject of the request for a reasonable accommodation~~ must demonstrate that the proposed accommodations being sought are reasonable and necessary to afford him/her an equal opportunity to use and enjoy housing. ~~The foregoing three criteria shall be the basis for the special magistrate's decision, and by the town commission in the event of an appeal.~~

(6) If denied, an applicant may appeal, by Writ of Certiorari the special magistrate's written decision on a reasonable accommodation request within 30 days after the date on which the written decision is rendered ~~by submitting a written notice of appeal to the town's community development director. All notices of appeal shall contain a statement of the request for reasonable accommodation, a statement of the facts and other evidence which the applicant contends supports the applicant's entitlement to a reasonable accommodation, a copy of the decision of the special magistrate and any legal argument which the applicant contends supports the applicant's appeal and the alleged error in the special magistrate's decision. Appeals shall be heard by the town commission at a duly noticed public hearing. The town commission shall render a written final order on the appeal as soon as is reasonably practicable, but in no event shall the decision be rendered more than 60 days after the notice of appeal has been filed by the applicant.~~

(7) No fee shall be imposed by the department in connection with a request for reasonable accommodation under this section, or for an appeal of a decision of the special magistrate. The town shall have no liability for or legal obligation to pay an applicant's attorney's fees or costs, including attorney's fees and costs incurred in any appeal at any appellate level.

(8) During the time when an application for reasonable accommodation ~~(or an appeal of a decision of the special magistrate)~~ is pending, the town shall not enforce the zoning ordinance, rules, policies, and procedures which are the subject of the request for a reasonable accommodation against the applicant.

(9) The following general provisions shall be applicable:

(a) 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 disabled individuals (and qualifying entities, if applicable) may request a reasonable accommodation as provided in this section.

(b) A disabled individual, or if applicable a qualifying entity who has applied for a reasonable accommodation ~~on his/her own behalf~~, or may be represented at all stages of the reasonable accommodation process by a person designated by the disabled individual as their authorized

agent, attorney, or representative. If an attorney, authorized agent, or other representative is representing an individual or, if applicable, a qualifying entity, a written authorization designating the attorney, authorized agent, or representative shall be submitted together with the application.

(c) The town shall provide assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including without limitation, assistance with interpreting the reasonable accommodation application form and responding to the questions contained therein, assistance with completing the form, assistance with filing an appeal, and assistance in appearing at hearings to ensure the process is accessible.

EXHIBIT A

~~Reasonable accommodation request form:~~

- ~~1. Name of applicant: _____~~
- ~~Telephone number: _____~~
- ~~2. Address: _____~~
- ~~3. Address of housing or other location at which accommodation is requested: _____~~
- ~~4. Describe qualifying disability or handicap: _____~~
- ~~5. Describe the accommodation and the specific regulation(s) and/or procedure(s) from which the accommodation is sought: _____~~
- ~~6. Reasons the reasonable accommodation may be necessary for the individual with disabilities to use and enjoy the housing or other service: _____~~
- ~~7. Name, address and telephone number of representative, if applicable: _____~~
- ~~8. Other information: _____~~
- ~~9. Signature of disabled individual or representative, if applicable, or qualifying entity: _____~~

Date: _____

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.

Upon First Reading this 16 day of September, 2009, the foregoing Ordinance, was offered by Commissioner Rumsey who moved its approval. The motion was seconded by Commissioner Daly and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 20 DAY OF September, 2009

Upon Second Reading this _____ day of _____, 2009, the foregoing Ordinance, was offered by _____ who moved its adoption. The motion was seconded by _____, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	_____	_____
VICE MAYOR JEFF CAREY	_____	_____
COMMISSIONER ED DALY	_____	_____
COMMISSIONER PATRICIA OSTERMAN	_____	_____
COMMISSIONER KENDALL RUMSEY	_____	_____

The Mayor thereupon declared **Ordinance No. 16-2009** duly passed and adopted this 30 day of September, 2009.

TOWN OF LAKE PARK, FLORIDA
 BY: Desca DuBois
 Mayor, Desca DuBois

ATTEST:
Vivian M. Lemley
 Town Clerk, Vivian M. Lemley
 (Town Seal)
 TOWN OF LAKE PARK
 FLORIDA

Approved as to form and legal sufficiency:
Thomas J. Baird
 Town Attorney, Thomas J. Baird