

ORDINANCE NO. 07-2008

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, SECTION 78-6, ENTITLED "REASONABLE ACCOMMODATIONS PROCEDURES" TO CHANGE THE DESIGNATION OF THE HEARING OFFICER FOR PUBLIC HEARINGS ON REQUESTS SUBMITTED TO THE TOWN FOR REASONABLE ACCOMMODATIONS, FROM THE TOWN MANAGER TO A SPECIAL MAGISTRATE APPOINTED BY THE TOWN COMMISSION; TO PROVIDE SPECIFIC PROVISIONS FOR MAIL AND NEWSPAPER NOTICE OF THE PUBLIC HEARING ON ANY REQUEST FOR A REASONABLE ACCOMMODATION; TO PROVIDE FOR AN OPPORTUNITY BY MEMBERS OF THE PUBLIC TO BE HEARD ON THE REQUEST FOR A REASONABLE ACCOMMODATION AT THE PUBLIC HEARING; 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 (4), (5), (6), (7), and (8) are hereby amended to read as follows:

Sec. 78-6 Reasonable Accommodation Procedures.

(4) When a reasonable accommodation request form has been completed and submitted to the Department, it will be referred to the town manager and the town attorney provided to the town attorney for review and consideration. ~~The town manager, or his/her designee shall have the authority to consider and decide requests for reasonable accommodation, after a 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. A 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 a 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 town manager, or designee, special magistrate shall not be required to render a decision on the request at the public hearing.

The ~~town manager, or designee,~~ special magistrate shall issue a written determination on the request within 45 days of the date of receipt of a technically complete application. The ~~town manager~~ 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 ~~town manager~~ 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 ~~town manager~~ 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 ~~town manager, or designee,~~ special magistrate determines that additional information from the applicant is necessary for the ~~town manager~~ special magistrate to reach a determination on the request, the ~~town manager~~ 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 ~~town manager~~ 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 ~~town manager~~ special magistrate. In the event the ~~town manager~~ special magistrate timely requests the applicant to provide additional information, the 45-day determination period shall no longer be applicable, and the ~~town manager, or designee~~ 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 ~~town manager, or designee~~ 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 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; or (iii) that the disabled individual is regarded as having such impairment. After satisfying the foregoing three criteria, the 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 ~~town manager's~~ special magistrate's decision, and by the town commission in the event of an appeal.

(6) If denied an applicant may appeal the ~~town manager's~~ special magistrate's decision on a reasonable accommodation request within thirty (30) days after of the date on which the written decision is rendered by submitting a written notice of appeal to the town manager 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 ~~town manager~~ special magistrate and any legal argument which the applicant contends support the applicant's the appeal and the alleged error in the ~~town manager's~~ 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 sixty (60) days after the notice of appeal was 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 ~~town manager~~ special magistrate to the town commission. 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 ~~town manager~~ special magistrate) is pending, the town shall not enforce the

zoning ordinance, rules, policies, and procedures which is the subject of the request for a reasonable accommodation against the applicant.

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.

The provisions of this Ordinance shall become effective upon adoption.

Upon First Reading this 7 day of May, 2008, the foregoing Ordinance, was offered by Vice-Mayor Daly who moved its approval. The motion was seconded by Commissioner Balius and being put to a vote, the result was as follows:

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

PUBLISHED IN THE PALM BEACH POST THIS 11 DAY OF May, 2008

Upon Second Reading this 21 day of May, 2008, the foregoing Ordinance, was offered by Commissioner Osterman who moved its adoption. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>Absent</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

The Mayor thereupon declared **Ordinance No. 07-2008** duly passed and adopted this 21 day of May, 2008.

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

ATTEST:

Vivian Mendez Lemley
 Town Clerk, Vivian Mendez Lemley
 (Seal Seal)

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

FLORIDA