

ORDINANCE NO. 18-2007

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING CHAPTER 78, ARTICLE I, TO CREATE NEW CODE SECTION 78-6 TO BE ENTITLED "REASONABLE ACCOMMODATIONS PROCEDURES" PROVIDING FOR REASONABLE ACCOMMODATION PROCEDURES PURSUANT TO THE FAIR HOUSING AMENDMENTS ACT AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT; 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, the Town Attorney in conjunction with Town staff has reviewed the Town's zoning Code and has determined that it is in the best interest of the health, safety, and general welfare of the Town and its residents, to create a procedure whereby the Town can process requests for reasonable accommodations from the application and enforcement of certain provisions of the Town's Code of Ordinances, pursuant to the federal Fair Housing Act and the Americans with Disabilities Act; and

WHEREAS, the term "reasonable accommodation" is a statutorily established method by which an individual who is disabled and/or handicapped as those terms are defined in Title II of the Americans with Disabilities Act and/or the Fair Housing Amendments Act, (hereafter "disabled"), or a provider of services to the disabled qualifying for reasonable accommodations

under the afore-stated statutes, can request a modification or alteration in the application of a specific Code provision, rule, policy, or practice, provided the proposed accommodation sought by the disabled individual is reasonable and necessary to afford such person an equal opportunity to use and enjoy housing within the Town; and

WHEREAS, the Town Commission desires to adopt within the Town’s Code of Ordinances, reasonable accommodation procedures that will permit disabled individuals and/or qualifying entities, to request reasonable accommodations and, where it is appropriate, based on the facts and law, to receive reasonable accommodations from the Town; and

WHEREAS, it is the intent that these reasonable accommodation procedures that the Town Commission will adopt as set forth herein, shall be supplemental to the Town’s existing procedures to address access and/or structural obstacles at Town facilities that are coordinated by an appropriate Town employee to ensure the Town’s compliance with ADA compliance procedures; and

WHEREAS, the Town intends that these reasonable accommodation procedures are to be applicable to the Town’s ordinances, rules, policies, practices, and services so as to afford a disabled person the opportunity to use and enjoy a residential dwelling, including without limitation, the regulations pertaining to “substance abuse treatment facilities” and the definition of “family” as contained in Section 78-2 of the Town’s Code of Ordinances.

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 is hereby created to read as follows:

ARTICLE I IN GENERAL

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 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, an applicant for a reasonable accommodation must be a "disabled individual" or a "disabled person" 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 the attached Exhibit "A", which is incorporated herein.

(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 non-disclosure 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, 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 referred to the town manager and 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. The town manager, or designee, shall not be required to render a decision on the request at the public hearing. The town manager, or

designee, shall issue a written determination on the request within forty-five (45) days of the date of receipt of a technically complete application. The town manager 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 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 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, determines that additional information from the applicant is necessary for the town manager to reach a determination on the request, the town manager may, prior to the end of the forty-five (45) day period, issue a written request to the applicant detailing the additional information and/or records which are necessary for the town manager to render a decision. The applicant shall have fifteen (15) days from the date of the written request for additional information within which to provide the requested information to the town manager. In the event the town manager timely requests the applicant to provide additional information, the forty-five (45) day determination period shall no longer be applicable, and the town manager, or designee, shall issue a written administrative decision within thirty (30) days after receipt of the additional requested information from the applicant. If the applicant fails to provide the requested additional information within the fifteen (15) day period, the town manager, or designee, 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 decision, and by the town commission in the event of an appeal.

(6) If denied an applicant may appeal the town manager's, or designee'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. 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 manger or designee, and any

legal argument which the applicant contends support the applicant's the appeal and the alleged error in the town manager'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 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) 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.

(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) may request a reasonable accommodation as provided in this section.

(b) A disabled individual may apply 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.

(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.

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 1 day of August, 2007,
 the foregoing Ordinance 18-2007, was offered by Commissioner Balius
 who moved its approval. The motion was seconded by Vice-Mayor Daly,
 and being put to a vote, the result was as follows:

	A YE	N AY
MAYOR PAUL CASTRO	<u>X</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>	_____

Upon Second Reading this 22 day of August, 2007, the foregoing
 Ordinance 18-2007, was offered by Commissioner Carey who
 moved its adoption. The motion was seconded by Commissioner Osterman,
 and being put to a vote, the result was as follows:

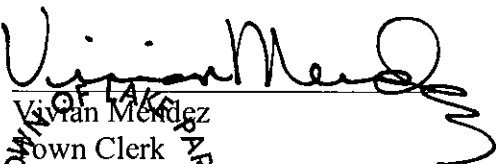
	A YE	N AY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

The Mayor thereupon declared Ordinance No. 18-2007 duly passed and adopted this
22 day of August, 2007.

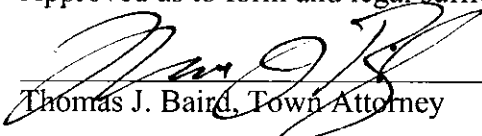
TOWN OF LAKE PARK, FLORIDA

BY: 
 Mayor Paul Castro

ATTEST:


 Vivian Mendez
 Town Clerk
 SEAL

Approved as to form and legal sufficiency:


 Thomas J. Baird, Town Attorney

FLORIDA

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 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: _____

Exhibit "A: