

ORDINANCE NO. 2020-013

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE I, "ADMINISTRATION, REGULATION AND PROCEDURES," DIVISION 3, "IMPLEMENTATION PROCEDURES," SECTION 13-41, "REQUESTS FOR ACCOMMODATION," IN ORDER TO UPDATE REQUIREMENTS AND PROCEDURES FOR ACCOMMODATION FROM THE CITY'S LAND DEVELOPMENT CODE, PROVIDE FOR REVOCATION OF A REASONABLE ACCOMMODATION UNDER CERTAIN CIRCUMSTANCES AND PROVIDE FOR ANNUAL RECERTIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has adopted a "Reasonable Accommodation" procedure consistent with requirements of federal courts, which establishes a 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, can request a modification or alteration of the way a specific Code provision, rule, policy, practice, or order is applied to them. The proposed accommodation sought by the disabled individual must be reasonable and necessary to afford such person an equal opportunity to use and enjoy housing; and

WHEREAS, the Florida Legislature established a voluntary certification program for recovery residences that establishes operational and ethical safeguards for disabled persons, and the City desires to acknowledge and promote such safeguards; and

WHEREAS, the City desires to update the requirements and procedures related to reasonable accommodations; and

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WHEREAS, the City desires to require annual recertification of reasonable accommodation approvals in order to ensure ongoing protection for the disabled; and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives, and policies of the City's Comprehensive Plan; and

WHEREAS, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on March 11, 2020, and voted to recommend that the changes be approved; and

WHEREAS, the City Commission is charged with protecting the health, safety, and welfare of its residents and believes this ordinance to be in the best interests of the residents.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

Section 2: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13, "Land Development Code," Article I, "Administration, Regulation and Procedures," Division 3, "Implementation Procedures," Section 13-41, "Requests for accommodation," to read as follows:

Sec. 13-41. - Requests for accommodation.

- (a) *Purpose.* The purpose of this section is to implement a procedure for processing requests for reasonable accommodation to the City's Code of Ordinances, Land Development Regulations, Rules, Policies, and Procedures for persons with disabilities as defined by the federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHAA") and Title II of the Americans with Disabilities Amendments Act (42 U.S.C. Section 12131, et seq.) ("ADAA"). For purposes of this section, a "disabled" person is an individual who qualifies as disabled and/or handicapped under the FHAA and/or ADAA. Any person who is disabled (or qualifying entities) may request a

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reasonable accommodation with respect to the City's Land Development Code, Code of Ordinances, rules, policies, practices and/or procedures as provided by the FHAA and the ADAA pursuant to the procedures set out in this section.

- (b) *Notice to the public of availability of accommodation.* The city shall display a notice ~~in~~ on the city's public notice bulletin board, on the City's website, ~~(and shall maintain copies~~ a copy available for review in the department of sustainable development ~~department and the city clerk department~~), advising the public that disabled individuals (and qualifying entities) may request a reasonable accommodation as provided herein.
- (c) *Application.* A request by an applicant for reasonable accommodation under this section shall be either oral or written. A written request may be submitted by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the department of sustainable development ~~department~~ ("~~SDD~~"). The reasonable accommodation form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall be substantially in the form set forth in subsection 13-41(g)(1), below.
- (1) *Confidential information.* Should the information provided by the applicant to the city include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled individual, such individual may, at the time of submitting such medical information, request that the city, to the extent allowed by law, treat such medical information as confidential information of the disabled individual. The city shall thereafter endeavor to provide written notice to the disabled individual, and/or their representative, of any request received by the city for disclosure of the medical information or documentation which the disabled individual has previously requested be treated as confidential by the city. The city will cooperate with the disabled individual, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the city shall have no obligation to initiate, prosecute 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 comply with any judicial order without prior notice to the disabled individual.
- (2) *Fee.* There shall be no fee imposed by the city in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the city commission, and the city shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorney's fees or costs in connection with the request, or an appeal.
- (3) *City assistance.* The city shall provide such assistance and accommodation as is required pursuant to FHAA and ADAA in connection with an applicant's request for reasonable accommodation, including, without limitation, assistance with

reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing, etc., to ensure the process is accessible.

- (d) *Findings for reasonable accommodation.* In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish, at a minimum, that:

(1) ~~They are protected under the FHAA and/or ADAA by demonstrating that they are handicapped or disabled, or a qualifying entity, as defined in the FHAA and/or ADAA. Although the definition of disability is subject to judicial interpretation, for purposes of this ordinance the applicant must show: (i) a physical or mental impairment which substantially limits one (1) or more major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment.~~

(2) ~~Next, the requesting party will have to demonstrate that~~ The proposed reasonable accommodations being sought are reasonable and necessary to afford handicapped/disabled persons the subject individual(s) with disabilities an equal opportunity to use and enjoy the housing that is the subject of the request.

The foregoing, in addition to applicable federal standards, (all as interpreted by the courts) shall be the basis for a decision upon a reasonable accommodation request made by the city manager, or his/her designee, or by a Special Magistrate ~~the city commission~~ in the event of an appeal.

- (e) *Decision process* ~~Notice of proposed decision.~~ The city manager, or his/her designee, shall have the authority to consider and act on requests for reasonable accommodation, recertification of an approved reasonable accommodation, and amendment to an approved reasonable accommodation. When a reasonable accommodation request form has been completed and submitted to the department of sustainable development ~~department~~, it will be referred to the city manager, or his/her designee, for review and consideration. The city manager, or his/her designee, shall issue a written determination within forty-five (45) days of the date of receipt of a completed application and may, in accordance with federal law, (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party (i.e. the disabled individual or his/her representative) by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the city manager, or his/her designee, may, prior to the end of said forty-five (45) day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional

information is made, the forty-five (45) day period to issue a written determination shall no longer be applicable, and the city manager, or his/her designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) day period, the city manager, or his/her designee, shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the city with regard to said reasonable accommodation request shall be required.

(f) Appeal. Section 13-34 of this Code notwithstanding, the appeal of any decision of the city manager or his/her designee regarding a request for reasonable accommodation, recertification of an approved reasonable accommodation, or amendment to an approved reasonable accommodation shall be considered pursuant to the requirements of this section. Within thirty (30) days after the city manager's, or his/her designee's, determination regarding a reasonable accommodation request is mailed to the requesting party, such applicant may appeal the decision by filing a notice of appeal with the city clerk. The city clerk or designee shall act as clerk to the Special Magistrate for purposes of an appeal from a decision under this section. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the ~~city commission~~ Special Magistrate who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed. The appeal shall be conducted as a de novo review of the evidence on record for the original review under the required findings of this section. The decision of the Special Magistrate shall be considered final city action and may be appealed within thirty (30) days to a court of competent jurisdiction as provided by law.

(g) *Request form for reasonable accommodation.*

(1) Contents of reasonable accommodation request form:

- a. Name and contact information of the applicant, and as applicable, the applicant's authorized representative;
- b. Information regarding property at which reasonable accommodation is requested, including the address of such location;
- c. Describe the accommodation and the specific regulation(s) and/or procedure(s) from which accommodation is sought;
- d. Reasons the accommodation may be necessary for the applicant or the individuals with disabilities seeking the specific accommodation; and if relating to housing, why the requested reasonable accommodation is necessary to use and enjoy the housing;
- e. Description~~be~~ of the qualifying disability or handicap;

- f. Other relevant information pertaining to the disability or property that may be needed by the city in order for it to be able to evaluate the request for reasonable accommodation;
 - g. A statement as to whether the applicant is seeking the accommodation in order to make housing and/or provision of housing financially viable, with supporting documentation;
 - h. A statement as to the therapeutic necessity of the accommodation for the applicant, with supporting documentation;
 - i. If seeking a reasonable accommodation from the definition of family:
 - 1. Proof of state licensure, as applicable to the location for which the reasonable accommodation is requested; or
 - 2. Proof of certification pursuant to Section 397.487, Fla. Stat. as amended, or alternatively, certification under a nationally accredited agency or recognition or sanction by Congress if the accommodation is for or related to a recovery residence, as defined in Section 397.311, Fla. Stat.; and
 - 3. All applicants must provide proof of satisfactory fire, safety, and health inspections as required by Section 397.487, Fla. Stat. or other applicable statute, as amended from time to time for the location for which the reasonable accommodation is requested;
 - j. Signature of applicant; and
 - k. Date of application;
 - l. If on-site supervisor or manager, provide the name and contact information (phone and email) for each;
 - m. Disclosure of ownership interests of property; and
 - n. Consent of all property owners for application.
- (h) *Stay of enforcement.* While an application for reasonable accommodation, or appeal of a determination of same, is pending before the city, the city will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.
- (i) *Expiration of approvals.* Approvals of requests for reasonable accommodation shall expire within one hundred eighty (180) days if not implemented.
- (j) *Revocation of reasonable accommodation.*
- (1) Any reasonable accommodation received shall be deemed revoked if the applicant or the property upon which the accommodation is granted is found in violation of any provision of the approval granting the reasonable accommodation by a court of law or by the special magistrate hearing code enforcement cases.

(2) Failure to obtain state certification or a required state license, or failure to maintain state certification or a required state license or alternate certification permitted by this section, shall result in revocation of the reasonable accommodation and cessation of operations within 60 days of termination of the license or certification.

(k) Annual certification. All reasonable accommodation requests approved by the city shall be valid for no more than one year and shall require annual recertification each year on or before February 1st. Recertification requests must be filed at least 90 days before the conclusion of the end of the one-year period of effectiveness of the reasonable accommodation approval. The failure of the applicant to timely apply for annual recertification, or the denial of an annual recertification application, shall result in the revocation of the approved reasonable accommodation. Recertification requests shall follow the same submittal, review and procedural requirements as set forth above for new applications. If a reasonable accommodation is for a property which is required to be licensed or certified pursuant to this section or applicable state or federal law, then to be recertified an applicant must provide proof of active licensure or certification consistent with the requirements of section 13-41(g)(1)i.

(l) Revisions. Any changes to the use or property desired by the applicant or identified by the City, state, or any certifying or licensing entity after approval or during the recertification process which require an additional reasonable accommodation or amendment to the original reasonable accommodation approval shall be processed as an amendment to the original approval and such amendment application shall follow the same application and review process set forth herein for an original reasonable accommodation request.

(l) Severability. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Section 13-41, "Requests for Accommodation", is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Section 13-41, "Requests for Accommodation".

Section 3: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 5: Codification. That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 23RD DAY OF JULY, 2020.

PASSED SECOND READING THIS 27TH DAY OF AUGUST, 2020.

Louis Sarbone, Mayor

Attest:

Leslie Wallace May, City Clerk

	<u>1st</u>	<u>2nd</u>
Sarbone	<u>Aye</u>	<u>Aye</u>
Rydell	<u>Aye</u>	<u>Aye</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Belvedere	<u>Aye</u>	<u>Aye</u>
Welch	<u>Aye</u>	<u>Aye</u>

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Date: 8/28/2020

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