

ORDINANCE 17-79

Section 3. Title XV, Chapter 158, Article XI, Section 158.233 – Reasonable accommodation procedures.

Chapter 158, Article XI, Section 158.233, of the Code of Ordinances of the City of Port St. Lucie is hereby amended to read as follows (~~strikeout text indicates deletions while~~ underlined text indicates additions):

CHAPTER 158. – ZONING CODE

ARTICLE XI. – SUPPLEMENTARY USE REGULATIONS

SECTION 158.233. – REASONABLE ACCOMMODATION PROCEDURES

Sec. 158.233. – Reasonable accommodation procedures.

(a) ~~This section implements~~ Purpose and Applicability: ~~It shall be the policy of the City of Port St. Lucie to provide reasonable accommodation in the application of for processing of requests for reasonable accommodation to its ordinances, rules, policies, 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 person is an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the City's land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set out in this section.~~

(b) ~~A request by an Applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the Planning and Zoning Department ("P&Z"). 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 (J).~~

(b) Requirements for Filing a Reasonable Accommodation Request:

(1) Any person who is disabled (or qualifying entity) (collectively "Applicant") may request a reasonable accommodation with respect to the City's land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set forth in this section. It is the obligation of the Applicant to establish that they, or those on whose behalf the request is made, are protected under the FHA and/or ADA by demonstrating that they, or those on whose behalf the request is made, are disabled/handicapped as defined by the FHA and/or ADA and that the proposed accommodation is both reasonable and necessary to afford the Applicant, or those on whose behalf the request is made, an equal opportunity to use and enjoy the residential dwelling.

(2) A request by an Applicant for a reasonable accommodation under this section shall be in writing by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the City Attorney's Office. The reasonable accommodation request form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request.

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(3) If the request for a reasonable accommodation is made by a qualifying entity on behalf of disabled individuals: (i) it is the continuing obligation of the qualifying entity to submit Verification of Disability Status forms on behalf of each of the disabled individuals. The Verification of Disability Status Form is maintained by (and shall be submitted to) the City Attorney's Office and (ii) the reasonable accommodation request form must be signed by both the owner and the Applicant of the residential dwelling (if different individuals).

(4) Should the information provided by the disabled individual(s) or qualifying entity to the City include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled individual(s), such individual(s) 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(s). The City shall thereafter endeavor to provide written notice to the disabled individual(s) and/or their representative, of any request received by the City for disclosure of the medical information or documentation, which the disabled individual(s) has previously requested be treated as confidential by the City. The City will cooperate with the disabled individual(s), to the extent allowed by law, in actions initiated by such individual(s) 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(s) or qualifying entity.

~~(e) Should the information provided by the disabled individual 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.~~

(c) *Spatial Considerations:* If the clustering of Recovery Residences would occur by the granting of an Applicant's reasonable accommodation request, it shall be the obligation of the Applicant to establish that such clustering would not create a fundamental alteration of a residential neighborhood and will best meet the needs of the Applicant.

~~(d) The City Manager, or his/her designee, shall have the authority to consider and act on requests for reasonable accommodation, after notice and a hearing to receive any additional information from the applicant. When a reasonable accommodation request form has been completed and submitted to the P&Z Director, it will be referred to the City Manager, or designee, for review and consideration. The City Manager, or designee, shall issue a written~~

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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 therefor. 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 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 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 with said fifteen (15) day period, the City Manager, or 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.~~

(d) Reasonable Accommodation Decision Making Process:

(1) The City Manager, or his/her designee, shall have the authority to consider and act on requests for reasonable accommodation. When a reasonable accommodation request form has been completed and submitted to the City Attorney, it will be referred to the City Manager, or designee, for review and consideration. The City Manager, or designee, shall issue a written determination within thirty (30) days of the date of receipt of a completed application and may, in accordance with federal law:

- (i) Grant the accommodation request;
- (ii) Grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request; or
- (iii) Deny the request, in accordance with federal law.

Any such denial shall be in writing and shall state the grounds therefor. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the Applicant by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City Manager, or designee, may, prior to the end of said thirty (30) day period, request additional information from the Applicant, specifying in sufficient detail what information is required. The Applicant 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 thirty

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(30) day period to issue a written determination shall no longer be applicable, and the City Manager, or designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the Applicant fails to provide the requested additional information with said fifteen (15) day period, the City Manager, or designee, shall issue a written notice advising that the Applicant 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.

(2) Within thirty (30) days after the City Manager's, or designee's, determination on a reasonable accommodation request is mailed to the Applicant, such Applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the Special Magistrate who shall, after public notice and a quasi-judicial public hearing, render a determination as soon as reasonably practicable, but in no event later than thirty (30) days after an appeal has been filed. An appeal of a decision by the Special Magistrate shall be handled exclusively in the Nineteenth Judicial Circuit in and for St. Lucie County, Florida. Such appeal shall be taken by filing a petition for writ of certiorari within thirty (30) days from the date of filing of the written order by the City Clerk.

~~(e) In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are 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 ordinance the disabled individual must show:~~

- ~~(1) A physical or mental impairment which substantially limits one or more major life activities;~~
- ~~(2) A record of having such impairment; or~~
- ~~(3) That they are regarded as having such impairment.~~

~~Next, the requesting party will have to demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing. The foregoing (as interpreted by the Courts) shall be the basis for a decision upon a reasonable accommodation request made by the City Manager, or designee, or by the City Council in the event of an appeal.~~

(e) *Reapplication after Denial of a Reasonable Accommodation Request:* No reasonable accommodation request shall be considered by the City if the Applicant's same or substantially similar reasonable accommodation request was denied, and not overturned by subsequent order, within the previous twelve (12) months absent a material and substantial change in circumstances from the date of the denial. It shall be in the City Attorney's sole discretion to determine whether a material and substantial change in circumstances has occurred.

~~(f) Within thirty (30) days after the City Manager's, or designee's, determination on a reasonable accommodation request is mailed to the requesting party, such applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the City Council who shall, after public notice and~~

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~~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.~~

(f) Revocation of an Approved Reasonable Accommodation Request:

(1) Grounds for Revocation. The City Manager, or designee, may initiate an action to revoke an approval for a reasonable accommodation request, when he or she finds by competent and substantial evidence that:

(i) The Applicant provided false or misleading information on the reasonable accommodation request;

(ii) The property subject to the reasonable accommodation request has been found to be in violation the conditions of approval of the reasonable accommodation request;

(iii) Any applicable state or federal certification has expired or been revoked; or

(iv) Since the granting of the reasonable accommodation request, the reasonable accommodation has become injurious to the health, safety or welfare of the public.

(2) Revocation Procedures.

(i) Notice of Intent to Revoke. If the City Manager, or designee, finds cause exists to revoke a reasonable accommodation, he or she shall cause to be served upon the Applicant a written notice of intent to revoke which shall contain the grounds upon which such revocation is proposed. The applicant shall have ten (10) days in which to respond.

(ii) Notice of Hearing. If the Applicant fails to show compliance with the order approving the reasonable accommodation request, City Manager, or designee, shall schedule a publicly noticed quasi-judicial hearing to occur no later than thirty (30) days from the date the Notice of Intent to Revoke was served upon the Applicant before the Special Magistrate and shall cause to be served upon the Applicant a Notice of Hearing.

(iii) The Special Magistrate shall, after public notice and a quasi-judicial public hearing, render a determination as soon as reasonably practicable, but in no event later than thirty (30) days after the Notice of Hearing has been filed. An appeal of a decision by the Special Magistrate shall be handled exclusively in the Nineteenth Judicial Circuit in and for St. Lucie County, Florida. Such appeal shall be taken by filing a petition for writ of certiorari within thirty (30) days from the date of filing of the written order by the City Clerk.

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(g) Annual Renewal: An approval of a reasonable accommodation request shall be valid for twelve (12) months. An Applicant may renew the reasonable accommodation request approval by completion of a renewal reasonable accommodation request form, which form is maintained by (and shall be submitted to) the City Attorney's Office. The renewal reasonable accommodation request form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation renewal request. Said form must be received by the City Attorney no later than the last day of the eleventh month from when the last approval was granted. All forms submitted after that date shall result in a denial.

(hg) Fees: 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~~ of such request to the ~~City Council-Special Magistrate~~, and the City shall have no obligation to pay a ~~requesting party's~~ an Applicant's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

(ih) Pending Application or Appeal and Enforcement of Zoning Code: 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.

(ji) General Provisions: ~~The following general provisions shall be applicable~~

(1) The City shall display a notice on the City's webpage (and shall maintain copies available for review in P&Z, the Building/Permitting Division, and the City Clerk's Office), advising the public disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.

(2) 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.

(3) The City shall provide such 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 reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing, etc., to ensure the process is accessible.

(j) 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:

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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: _____

Section 4. Severability. The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 5. Conflict. If any ordinances, or parts of ordinances, or if any sections, or parts of sections, of the Code of Ordinances of the City of Port St. Lucie, Florida, are in conflict herewith, this Ordinance shall control to the extent of the conflicting provisions.

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Section 6. Codification. It is the intention of the City Council of the City of Port St. Lucie, and it is hereby ordained, that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the City of Port St. Lucie, Florida, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and the word "ordinance" may be changed to "Section" or other appropriate word as may be necessary.

Section 7. Effective Date. This Ordinance shall become effective upon final adoption on second reading.

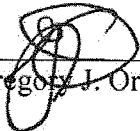
PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this 27th day of November, 2017.

CITY COUNCIL
CITY OF PORT ST. LUCIE

ATTEST:




Karen A. Phillips, City Clerk

By: 

Gregory J. Oravec, Mayor

APPROVED AS TO FORM:



O. Reginald Osenton, City Attorney

