

ORDINANCE NO. 03-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, BY AMENDING SECTION 2.4.7(G), “REQUESTS FOR ACCOMMODATION”; SUBSECTIONS (1), “PURPOSE”, (5), “NOTICE OF PROPOSED DECISION”, (6), “APPEAL”, AND (8), “REQUEST FORM FOR REASONABLE ACCOMMODATION”, TO UPDATE AND CLARIFY SAME; ENACTING A NEW SUBSECTION 2.4.7(G)(10), “RECERTIFICATION” TO PROVIDE FOR ANNUAL RECERTIFICATION OF REASONABLE ACCOMMODATIONS; ENACTING A NEW SUBSECTION 2.4.7(G)(11), “SEVERABILITY” TO PROVIDE FOR SEVERABILITY; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Delray Beach hereby desires to adopt within the City’s Land Development Regulations and consistent with the Final Order of the Southern District of Florida in *Jeffrey O. v. City of Boca Raton*, 511 F.Supp.2d 1339 (S.D. Fla. 2007), reasonable accommodation procedures that will permit disabled individuals (or qualifying entities) to request reasonable accommodations and, where appropriate based on the facts and law, to receive reasonable accommodations; and

WHEREAS, reasonable accommodations are not automatically granted. The government must be given an opportunity to make a final decision with respect to the request, which necessarily includes the ability to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008); and

WHEREAS, an accommodation is not reasonable if it either: imposes undue financial and administrative burdens on the government or requires a fundamental alteration in the zoning scheme. *Sch. Bd. of Nassau Cnty. v. Arline*, 480 US 273, 288 n.17, 107 S.Ct. 1123, 94 L.Ed.2d. 307 (1987); *Schwarz, supra*. at 1220; and

WHEREAS, the City Commission of the City of Delray Beach desires to update its reasonable accommodation ordinance to provide for an updated reasonable accommodation request form and to have applicants recertify on an annual basis that they are disabled and that they have a continued need for the accommodation; and

WHEREAS, a policy that required disabled participants to provide updated medical information

every three (3) years recertifying that they are disabled did not discriminate against participant on basis of his disability. *Weinrich v. Los Angeles Cnty. Metro. Transp. Auth.*, 114 F. 3d 976 (9th Cir. 1997), *cert. denied*, *Weinrich v. Los Angeles Cnty. Metro. Transp. Auth.*, 522 U.S. 971 (1997); and

WHEREAS, pursuant to LDR Section 1.1.6 and 2.4.5(M), the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on December 19, 2016 and voted 5 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), 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 Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 2.4.7(G), “Requests for Accommodation”, Subsections (1), “Purpose”, (5), “Notice of Proposed Decision”, (6), “Appeal”, and (8), “Request Form for Reasonable Accommodation”, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(G) **Requests for Accommodation:**

(1) **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 provided 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 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 Development Regulations, 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.

(5) **Notice of Proposed Decision.** 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 Planning and Zoning 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) calendar 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 or hand delivery, receipt signed by the recipient. 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) calendar day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) calendar 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) calendar 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) calendar days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) calendar 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.

(6) **Appeal.** Within thirty (30) calendar days after the City Manager's, or his/her 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 Commission 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) calendar days after an appeal has been filed.

(8) **Request Form for Reasonable Accommodation.**

(a) **Contents of Reasonable Accommodation Request Form:**

1. Name and contact information of the ~~a~~Applicant;

2. Information regarding property at which reasonable accommodation is requested, including the address and legal description of such location as well as ownership of the subject property;
3. Describe the accommodation and the specific regulation(s) and/or procedure(s) from which accommodation is sought;
4. 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;
5. Describe qualifying disability or handicap,;
6. 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;
7. All certified recovery residences must provide proof of satisfactory, fire, safety, and health inspections as required by Section 397.487, Fla. Stats., as amended from time to time; Signature of applicant;
8. Signature of applicant; ~~Date of application~~
9. If on-site supervisor or manager, provide the name and contact information (phone and email) for each;
10. Date of application;
11. Disclosure of ownership interests of property; and
12. Owner's consent for application.

Section 3. That Section 2.4.7(G), "Requests for Accommodation", Subsection (10), "Recertification", of the Land Development Regulations of the City of Delray Beach shall hereby be enacted to read as follows:

(10) Recertification. All reasonable accommodation requests approved by the City Manager or his/her designee and implemented by the Applicant pursuant to this Section, 2.4.7(G), "Requests for Accommodation", are valid for no more than one (1) year and shall require annual recertification each year on or before April 1st. Failure to recertify annually shall result in the revocation of the approved reasonable accommodation. Recertification requests shall follow the same requirements as Section 2.4.7(G), "Requests for Accommodation", and review of recertification requests shall follow the same procedures as outlined in Subsection 2.4.7(G)(5), "Notice of Proposed Decision", with the same appellate opportunities afforded to the applicant as provided under Subsection 2.4.7(G)(6), "Appeal" except the recertification notice will be sent annually by regular mail or hand delivered.

Section 4. That Section 2.4.7(G), "Requests for Accommodation", Subsection (11), "Severability", of the Land Development Regulations of the City of Delray Beach shall hereby be enacted to read as follows:

(11) **Severability.** If any part, Section, Subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Section 2.4.7(G), “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 2.4.7(G), “Requests for Accommodation”.

Section 5 That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, 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 thereof other than the part declared to be invalid.

Section 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

ATTEST

M A Y O R

City Clerk

First Reading_____

Second Reading_____