



## BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

**PLACEMENT:** PUBLIC HEARINGS

**PRESET:** 2:30 PM

**TITLE:** PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE CREATING ARTICLE 28, REASONABLE ACCOMMODATION PROCEDURES, CHAPTER 21, BUILDING AND HOUSING REGULATIONS, GENERAL ORDINANCES, MARTIN COUNTY CODE, PURSUANT TO THE FAIR HOUSING AMENDMENTS ACT AND THE AMERICANS WITH DISABILITIES ACT

### AGENDA ITEM DATES:

MEETING DATE: 5/5/2015	COUNTY ATTORNEY: 4/13/2015
COMPLETED DATE: 4/23/2015	ASSISTANT COUNTY ADMINISTRATOR: 4/20/2015

REQUESTED BY:	DEPARTMENT:	PREPARED BY:
<b>Name:</b> County Attorney's Office and Growth Management Department	County Attorney	Krista A. Storey
<b>Name:</b>		Senior Assistant County Attorney

**Procedures:** None

### EXECUTIVE SUMMARY:

The Board is asked to consider adoption of an ordinance creating Article 28, Reasonable Accommodation Procedures, Chapter 21, Building and Housing Regulations, General Ordinances, Martin County Code, pursuant to the Fair Housing Amendments Act and the Americans with Disabilities Act to address accommodations sought by disabled individuals or providers of services to the disabled in the application of a County ordinance, rule, policy, practice, procedure or service.

### APPROVAL:

GMD

**BACKGROUND/RELATED STRATEGIC GOAL:**

“Reasonable accommodation” is a statutorily established method by which an individual who is disabled and/or handicapped as those terms are defined in 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 referenced statutes, can request a modification or alteration in the application of a County ordinance, rule, policy, practice, procedure or service to them. The proposed accommodation sought by a disabled individual or a provider of services to the disabled qualifying for a reasonable accommodation, must be reasonable and necessary to afford such person an equal opportunity to use and enjoy housing.

Currently there are no reasonable accommodation procedures codified within the Martin County Code and the County has received three requests for a reasonable accommodation. The attached ordinance proposes that the three pending and all future reasonable accommodation requests be considered under the procedure set forth in the ordinance. The proposed ordinance would permit disabled individuals or qualifying entities to request reasonable accommodations and, where appropriate based on the facts and law, to receive reasonable accommodations after consideration of the request by a hearing officer at an administrative reasonable accommodation hearing.

In summary, the process for reasonable accommodation requests under the proposed ordinance will be as follows:

- Application. A reasonable accommodation request shall be made in writing to the County Administrator or her designee substantially in the form set forth in Sec. 21.279 (see section in attached proposed ordinance).
- Scheduling the Reasonable Accommodation Review Meeting. An administrative reasonable accommodation hearing will be conducted by a hearing officer designated by the County Administrator, in conjunction with the County Attorney, within 45 days after receipt of a completed request.
- Determination by Hearing Officer. At the administrative reasonable accommodation hearing, the hearing officer shall consider the request and review the information provided by the applicant, who must 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. The applicant will also 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.
- Written Determination. The hearing officer shall issue a written determination within 30 days after the administrative reasonable accommodation hearing and shall, 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 as he/she deems necessary, or (3) deny the request.
- Appeal to and Determination by County Administrator. The applicant may appeal the hearing officer’s decision to the County Administrator within 30 days after the date that the hearing officer’s determination is mailed to the applicant.

- ◇ The County Administrator or her designee may also, within 15 days after the hearing officer's determination is mailed to the applicant, reject, in whole or in part, the hearing officer's written determination.

By law, no fee may be imposed in connection with a reasonable accommodation request or an appeal of a determination on such request to the County Administrator.

While an application for reasonable accommodation or appeal of a determination is pending, the County is prohibited from enforcing the ordinance, rules, policy, or procedure against the applicant.

### **ISSUES:**

Adoption of a reasonable accommodation procedure is time sensitive because three reasonable accommodation requests have been filed with the County.

### **LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that are arbitrary and capricious or illegal are subject to serious legal challenge.

### **RECOMMENDED ACTION:**

#### **RECOMMENDATION**

Move that the Board approve the draft ordinance and a budget transfer in the amount of \$55,250.00 from General Fund Reserves for Contingency.

#### **ALTERNATIVE RECOMMENDATIONS**

Provide direction regarding additional revisions and adopt the ordinance as revised or deny approval of the ordinance.

### **FISCAL IMPACT:**

#### **RECOMMENDATION**

The County has retained Matthew Mandel, Esq. with Weiss Serota Helfman Cole & Bierman, a subject matter expert in reasonable accommodation, to provide advice regarding the implementation of a reasonable accommodation procedure. Based on the complexity and intricacies of this process, he has also been retained to represent the County in its response to the three pending reasonable accommodation requests.

At the time this agenda was submitted, Mr. Mandel’s fees were \$5,775.00. It is anticipated that his fees to complete the implementation of the reasonable accommodation procedure, and represent the County through the conclusion of the pending three requests and hearings, will be approximately \$29,000.00 (which includes the \$5,775 already incurred). Additionally, an independent treatment expert and an independent planning expert may be needed for the hearings. The fees for both experts combined is estimated to be less than \$5,000.00 per case, so a maximum of \$15,000 is estimated for the first three hearings, if three hearings are required. A hearing officer will also need to be retained to conduct these hearings. It is estimated that the hearing officer will spend approximately 10-15 hours on each case. With three hearings, and assuming a hearing officer rate of \$250.00 per hour, those fees are estimated to be between \$7,500.00 - \$11,250.00 total.

After these initial reasonable accommodation requests are concluded, the County Attorney’s Office plans to work with the Growth Management Department to represent the County on future reasonable accommodation requests. The estimated cost for future requests, per case, should be within the range of \$7,500.00 - \$8,750.00.

Approval of a budget transfer is requested in the amount of \$55,250.00 from General Fund Reserves for Contingency to cover the fees and costs which are anticipated to be incurred for the first three hearings.

Funding Source	County Funds	Non-County Funds	Authorization
General Fund Reserves	\$55,250.00		
<b>Subtotal</b>			

<b>Project Total</b>	
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**ALTERNATIVE RECOMMENDATIONS**

If a reasonable accommodation procedure is not adopted, there is a very high probability that Federal lawsuits alleging a violation of the Fair Housing Act and the Americans with Disabilities Act will be filed. Attorney’s fees alone during Federal lawsuits can reach \$300,000 – \$400,000.

**DOCUMENT(S) REQUIRING ACTION:**

<input type="checkbox"/> Budget Transfer / Amendment	<input type="checkbox"/> Chair Letter	<input type="checkbox"/> Contract / Agreement
<input type="checkbox"/> Grant / Application	<input type="checkbox"/> Notice	<input checked="" type="checkbox"/> Ordinance
<input type="checkbox"/> Other:		<input type="checkbox"/> Resolution

**ROUTING:**

_ ADM	_ BLD	_ CDD	_ COM	_ ENG	_ FRD	X GMD
_ GSD	_ ITS	_ LIB	_ MCA	_ MPO	_ PRD	_ USD
X CA	X ACA	_ LEG				



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
MARTIN COUNTY, FLORIDA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF MARTIN COUNTY, FLORIDA CREATING, ARTICLE 28, REASONABLE ACCOMMODATION PROCEDURES, CHAPTER 21, BUILDING AND HOUSING REGULATIONS, GENERAL ORDINANCES, MARTIN COUNTY CODE PURSUANT TO THE FAIR HOUSING AMENDMENTS ACT AND THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR CONFLICTING PROVISIONS; SEVERABILITY AND APPLICABILITY; PROVIDING FOR CODIFICATION; FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE**

WHEREAS, “reasonable accommodation” is a statutorily established method by which an individual who is disabled and/or handicapped as those terms are defined in 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 referenced statutes, can request a modification or alteration in the application of a specific Code provision, rule, policy, or practice, procedures and services to them; and

WHEREAS, the proposed accommodation sought by a disabled individual, or a provider of services to the disabled qualifying for a reasonable accommodation, must be reasonable and necessary to afford such person an equal opportunity to use and enjoy housing; and

WHEREAS, Martin County does not currently have reasonable accommodation procedures which have been codified within the Martin County Code and Martin County has received three requests for a reasonable accommodation; and

WHEREAS, Martin County intends to consider the three pending and all future reasonable accommodation requests under the procedures herein and accordingly the adoption of this Ordinance shall apply retroactively to the three pending requests for a reasonable accommodation; and

WHEREAS, Martin County hereby desires to adopt 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, Martin County intends these reasonable accommodation procedures to be applicable to Martin County’s ordinances, rules, policies, practices, procedures and services.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA THAT:

**PART ONE: Article 28, Chapter 21, General Ordinances, Martin County Code is hereby created as follows:**

**Article 28. REASONABLE ACCOMMODATION PROCEDURES**

**Sec. 21.270 Purpose and applicability.** It shall hereby be the policy of Martin County to provide reasonable accommodation to its ordinances, rules, policies, practices, procedures, and services for persons with disabilities as provided by the federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) (“FHA”) and/or 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.

**Sec. 21.271 Filing for Reasonable Accommodation.**

**Sec. 21.271.A.** Any person who is disabled or is a qualifying entity under the FHA and/or the ADA may request a reasonable accommodation with respect to Martin County’s ordinances, rules, policies, practices, procedures and services as provided by the FHA and/or the ADA pursuant to the procedures set out in this section.

**Sec. 21.271.B. Application.** A request by an applicant for reasonable accommodation under this section shall be made in writing by submitting a reasonable accommodation request form to the County Administrator or his/her designee. 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 Section 21.279.

**Sec. 21.271.C. Medical Records.** Should the information provided by the disabled individual or qualifying entities to Martin County 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 Martin County, to the extent allowed by law, treat such medical information as confidential information of the disabled individual. Martin County shall thereafter endeavor to provide written notice to the disabled individual, and/or their representative, of any request received by Martin County for disclosure of the medical information or documentation, which the disabled individual has previously requested be treated as confidential by Martin County. Martin County 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 Martin County 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.

**Sec. 21.272. Scheduling the administrative reasonable accommodation hearing.**

**Sec. 21.272.A** Once a fully completed reasonable accommodation request has been submitted to the County, it will be set for an administrative reasonable accommodation hearing

before a hearing officer designated by the County Administrator in consultation with the County Attorney. The hearing officer shall be a member in good standing of The Florida Bar and appointed on the basis of experience and interest in the subject matter.

**Sec. 21.272.B** The hearing officer shall schedule the administrative reasonable accommodation hearing on the reasonable accommodation request within forty-five (45) calendar days after receipt of a completed reasonable accommodation request. The County Administrator, or his/her designee, shall determine if the reasonable accommodation request is complete or if additional information is required.

**Sec. 21.273** *Additional information.* The County Administrator, or his/her designee, may, prior to the end of said forty-five (45) calendar day period, request required missing information or additional information from the applicant, specifying in sufficient detail what information is required and/or needed. The applicant shall have fifteen (15) calendar days after the date of the request for missing and/or additional information to provide the requested information. In the event a request for missing and/or additional information is made, the forty-five (45) calendar day period to conduct the administrative reasonable accommodation hearing shall no longer be applicable, and the County Administrator, or his/her designee, shall set the matter for an administrative reasonable accommodation hearing within forty-five (45) calendar days after receipt of the missing and/or additional information. If the applicant fails to provide the requested missing and/or additional information with said fifteen (15) calendar day period, the County Administrator, or his/her designee, shall issue a written notice advising that the applicant had failed to timely submit the missing and/or additional information and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by Martin County with regard to said reasonable accommodation request shall be required.

**Sec. 21.274** *Determination by hearing officer.* At the administrative reasonable accommodation hearing, the hearing officer shall consider the reasonable accommodation request and review the information provided by the applicant. The applicant 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: (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 they are regarded as having such impairment. Next, the applicant 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 hearing officer in the event of an appeal.

**Sec. 21.274.A** *Written Determination.* The hearing officer shall issue a written determination within thirty (30) calendar days after the administrative reasonable accommodation hearing and shall 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 as he/she deems necessary, or (3) deny the request, in



accordance with federal law. If the request is denied in whole or in part, the determination shall state the grounds therefore. The determination shall also give notice of the right to appeal. The determination shall be sent to the applicant (i.e. the disabled individual(s) or his or her representative) by certified mail, return receipt requested.

**Sec. 21.274.B** *Hearing Officer Request for Information.* If reasonably necessary to reach a determination on the request for reasonable accommodation, the hearing officer may, prior to the end of said thirty (30) calendar day period following the administrative reasonable accommodation hearing, request additional information from the applicant, specifying in sufficient detail what information is required. The applicant 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 thirty (30) calendar day period to issue a written determination shall no longer be applicable, and the hearing officer shall issue a written determination within thirty (30) calendar days after receipt of the additional information.

**Sec. 21.274.C.** *Untimely or Failure to Respond.* If the applicant fails to provide the requested additional information within said fifteen (15) calendar day period, the hearing officer 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 County with regard to said reasonable accommodation request shall be required.

**Sec. 21.275.** *Appeal to and Determination by County Administrator.* The applicant may appeal the hearing officer's determination within thirty (30) calendar days after the date that the hearing officer's determination is mailed (as shown on the return receipt) to the applicant. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the County Administrator, or his/her designee, who shall, after the administrative reasonable accommodation hearing, render a determination as soon as reasonably practicable, but in no event later than thirty (30) calendar days after an appeal has been filed. The County Administrator, or his/her designee, may also, within fifteen (15) calendar days after the hearing officer's determination on a reasonable accommodation request is mailed (as shown on the return receipt) to the applicant, may reject, in whole or in part, the officer's written determination. Such determination by the County Administrator, or his/her designee, shall be sent to the applicant (i.e. the disabled individual(s) or his or her representative) by certified mail, return receipt requested.

**Sec. 21.276.** *No fee to be imposed.* There shall be no fee imposed by Martin County in connection with a request for reasonable accommodation or an appeal of a determination on such request to the County Administrator. Martin County shall have no obligation to pay an applicant's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

**Sec. 21.277.** *Effect while pending.* While an application for reasonable accommodation, or appeal of a determination of same, is pending before Martin County, it will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant, except that Martin

County may seek injunctive relief if an imminent threat to the health, safety and welfare of the public is present.

Sec. 21.278. Notice and general provisions. The following general provisions shall be applicable:

Sec. 21.278.A. Martin County shall display a notice on the County’s webpage (and shall maintain copies available for review in the County Administrator’s Office), advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.

Sec. 21.278. 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.

Sec. 21.278. C. The County shall provide such assistance and accommodations as is required pursuant to the FHA and ADA in connection with a disabled person’s request for reasonable accommodation, which may include, if needed by the applicant, assistance with reading application questions, responding to questions, completing the form, and filing an appeal, to ensure the process is accessible.

Sec. 21.278.D. Any of the time limits set forth herein may be extended by mutual written agreement of the applicant and Martin County.

Sec. 21.279 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: \_\_\_\_\_

**PART TWO: CONFLICTING PROVISIONS.**

Special acts of the Florida legislature applicable only to unincorporated areas of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

**PART THREE: SEVERABILITY.**

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

**PART FOUR: APPLICABILITY.**

This ordinance shall be applicable in the unincorporated area of Martin County.

**PART FIVE: FILING WITH DEPARTMENT OF STATE.**

The clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of state via electronic transmission.

**PART SIX: EFFECTIVE DATE.**

This ordinance shall take effect upon filing with the Department of State.

**DULY PASSED AND ADOPTED THIS 5<sup>TH</sup> DAY OF MAY, 2015.**

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
MARTIN COUNTY, FLORIDA**

\_\_\_\_\_  
**CAROLYN TIMMANN  
CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER**

\_\_\_\_\_  
**ED FIELDING, CHAIRMAN**

**APPROVED AS TO FORM & LEGAL  
SUFFICIENCY:**

\_\_\_\_\_  
**MICHAEL D. DURHAM  
COUNTY ATTORNEY**