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File #: ORD 2015-026, Version: 1

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## AGENDA ITEM REPORT

### TITLE:

AN ORDINANCE ENACTING A PROVISION WITHIN THE CITY'S LAND DEVELOPMENT CODE TO PROVIDE PROCEDURES FOR HANDLING AND PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM THE CITY'S LAND DEVELOPMENT CODE. (SECOND PUBLIC HEARING)

### BACKGROUND:

**This Ordinance was approved at the First Public Hearing at the July 9, 2015 Commission Meeting with no changes or conditions.**

The City desires to amend Chapter 13 of the City's Code of Ordinances in order to comport with federal law to include a process for seeking Reasonable Accommodation from the City's Land Development Code. There have been many cases nationwide that have required that individual cities provide a process for disabled applicants to seek a reasonable accommodation from their Land Development Codes; however, following the holding in the United States District Court for the Southern District of Florida case of *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007), Florida cities sought to update their Land Development Codes to bring them into compliance with federal law.

### DISCUSSION:

The City is committed to updating our Land Development Code to bring it into compliance with federal law. The attached ordinance includes new language to clearly define and describe the method and procedure for making a request for a reasonable accommodation from the City's Land Development Code. The ordinance sets forth application criterion, confidentiality, fees associated with processing, deadlines, and the decision and appeal processes.

### RECOMMENDATION:

Staff recommends approval of the ordinance as proposed.

**FISCAL IMPACT:** N/A

**ORDINANCE NO. 2015-026**

**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," BY ENACTING A NEW SECTION 13-41, "REQUESTS FOR REASONABLE ACCOMMODATION," IN ORDER TO PROVIDE PROCEDURES FOR HANDLING AND PROCESSING REQUESTS FOR ACCOMMODATION FROM THE CITY'S LAND DEVELOPMENT CODE; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, in connection with the United States District Court holding in *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007) the plaintiffs asserted, among other things, that they were entitled to "reasonable accommodations" from the application and enforcement of certain provisions of the City of Boca Raton's Code of Ordinances; and

**WHEREAS**, "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 referenced statutes, can request a modification or alteration in the application of a specific Code provision, rule, policy, or practice, 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 City hereby desires to adopt within the City's Land Development Code, 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 (provided that such procedures to be codified shall be supplemental to the City's existing procedures to address access and/or structural obstacles at City facilities that are coordinated through the City's ADA compliance officer); and

**WHEREAS**, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on June 17, 2015 and voted to recommend that the changes be approved; and

**WHEREAS**, pursuant to Section 163.3174(4)(c), Florida Statutes, 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.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA AS FOLLOWS:**

**Section 1.** That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article I, “Administration, Regulations and Procedures,” Division 3, “Implementation Procedures,” and enacting a new Section 13-41, “Requests for Reasonable Accommodation,” to read as follows:

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**Sec. 13-41. - 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 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 that qualifies as disabled and/or handicapped under the FHAA and/or ADAA. Any person who is disabled (or qualifying entities) may request a 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.

**(2) Notice to the Public of Availability of Accommodation.** The City shall display a notice in the City’s public notice bulletin board (and shall maintain copies available for review in the Sustainable Development Department, the Building Department, and the City Clerk’s Office), advising the public that disabled individuals (and qualifying entities) may request a reasonable accommodation as provided herein.

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(3) **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 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 (A) (8), below.

(a) **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.

(b) **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) attorneys fees or costs in connection with the request, or an appeal.

(c) **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.

**(4) Findings for Reasonable Accommodation.** 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 FHAA and/or ADAA by demonstrating that they are handicapped or disabled, 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 or more major life activities; (ii) a record of having such impairment; or (iii) 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 his/her designee, or by the City Commission in the event of an appeal.

**(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 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.

(6) **Appeal.** 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. 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) days after an appeal has been filed.

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

(a) Contents of Reasonable Accommodation Request Form:

1. Name and contact information of the applicant;
2. Information regarding property at which reasonable accommodation is requested, including the address of such location;
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 the 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. Signature of applicant; and
8. Date of application.

(8) 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.

(9) Expiration of Approvals. Approvals of requests for reasonable accommodation shall expire within one hundred eighty (180) days if not implemented.

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**Section 2.** That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

**Section 3.** 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 4.** 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 5.** That this ordinance shall become effective upon its passage on second and final reading.

**PASSED FIRST READING THIS 9<sup>th</sup> DAY OF July, 2015.**

**PASSED SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

\_\_\_\_\_  
Rebecca A. Tooley, Mayor

Attest:

\_\_\_\_\_  
Leslie Wallace May, MMC, City Clerk

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

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