

ORDINANCE NO. 2014-25

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, AMENDING WELLINGTON'S LAND DEVELOPMENT REGULATIONS BY CREATING CHAPTER 5.13 REASONABLE ACCOMMODATION PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND THE FAIR HOUSING ACT; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Council, as the governing body, pursuant to the authority vested in it by Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider changes to its Land Development Regulations; and

WHEREAS, the Council wishes to assure that its Land Development Regulations treat persons with disabilities and facilities serving them in a non-discriminatory manner while maintaining the fundamental integrity of the Village's zoning authority; and

WHEREAS, the Village's application of its Land Development Regulations and related rules, policies, and practices is governed by the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA), and other applicable state and federal laws; and

WHEREAS, "Reasonable Accommodation" is a statutorily established method that allows an individual who is disabled and/or handicapped, as those terms are defined in Title II of the ADA and/or the FHA, to request a modification or alteration in the application of a specific Code provision, rule, policy or practice; and

WHEREAS, 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 Village Planning, Zoning and Adjustment Board has reviewed the proposed amendment and has determined that the proposed regulations are consistent with the Village of Wellington Comprehensive Plan; and

WHEREAS, the Council has taken the recommendations from the Planning, Zoning and Adjustment Board into consideration when amending the Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified as true and correct and are incorporated herein.

44 **SECTION 2.** Article 5 of Wellington's Land Development Regulations is hereby
45 amended by adding Chapter 5.13, which reads as follows:

46
47 **CHAPTER 13 REASONABLE ACCOMODATION**

48
49 **Sec. 5.13.1. Purpose and General Provisions.**

50 A. This chapter addresses requests for reasonable accommodation to the Village's
51 ordinances, rules, policies, and procedures for persons with disabilities and
52 facilities serving them as provided by the federal Fair Housing Amendments Act
53 (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act
54 (42 U.S.C. Section 12131 et seq.) ("ADA").

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56 B. The following general provisions shall be applicable:

- 57 1. The Village shall display a notice in the Village's public notice bulletin board
58 (and shall maintain copies available for review in the Village Clerk's office)
59 advising the public disabled individuals (and qualifying entities) may request
60 reasonable accommodation as provided herein.
61 2. A disabled individual may apply for a reasonable accommodation on his/her
62 own behalf or may be represented at all stages of the reasonable
63 accommodation process by a person designated in writing by the disabled
64 individual.
65 3. The Village shall provide assistance and accommodation as is required
66 pursuant to FHA and ADA in connection with a disabled person's request for
67 reasonable accommodation, including, without limitation, assistance with
68 reading application questions, responding to questions, completing the
69 necessary forms, filing an appeal, and appearing at a hearing to ensure the
70 process is accessible.

71 **Sec. 5.13.2. Definitions.**

72 For purposes of this chapter, a "disabled" individual or person is an individual that
73 qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is
74 disabled (or qualifying entities) may request a reasonable accommodation with respect to
75 the Village's land use or zoning laws, rules, policies, practices and/or procedures as
76 provided by the FHA and the ADA pursuant to the procedures set out in this chapter.

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78 **Sec. 5.13.3. Procedure**

79 A. A request by an applicant for reasonable accommodation shall be made in writing by
80 completion of a reasonable accommodation request form. The form shall be
81 maintained by (and shall be submitted to) the Planning, Zoning and Building
82 Department.

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84 B. The Planning Director, or designee, shall have the authority to consider and act on
85 requests for reasonable accommodation. The Planning Director, or designee, shall
86 issue a written determination within 45 calendar days of the date of receipt of a
87 completed application and may in accordance with federal law:

- 88
89 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. Notice shall be deemed complete when deposited in the U.S. Mail. If reasonably necessary to reach a determination on the request for reasonable accommodation, Planning Director, or designee, may, prior to the end of said 45-day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have 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 45-day period to issue a written determination shall no longer be applicable, and the Planning Director, or designee, shall issue a written determination within 30 calendar days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said 15-day period, the Planning Director, or designee, shall issue a written notice advising that the requesting party has 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 Village with regard to said reasonable accommodation request shall be required.

- C. 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 section the disabled individual must show:

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

The requesting party will have to further 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 Planning Director, or designee, or by the Village Manager in the event of an appeal.

- D. While an application for reasonable accommodation, or appeal of a determination of same, is pending before the Village, the Village will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

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137 **Sec. 5.13.4. Appeal.**

138 The requesting party may appeal the decision of the Planning Director or designee. The
139 appeal shall be submitted in writing no later than 30 calendar days after the decision of
140 the Planning Director or designee. All appeals shall include a statement containing
141 sufficient detail of the grounds for the appeal. Appeals shall be to the Village Manager
142 who shall render a determination as soon as reasonably practicable, but in no event later
143 than 60 calendar days after an appeal has been filed.
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145 **Sec. 5.13.5. Fee**

146 There shall be no fee imposed by the Village in connection with a request for reasonable
147 accommodation under this chapter or an appeal of a determination, and the Village shall
148 have no obligation to pay a requesting party's (or an appealing party's, as applicable)
149 attorneys' fees or costs in connection with a request or an appeal.
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151 **SECTION 3.** The provisions of this Ordinance shall become and be made a part of
152 the Land Development Regulations of the Village of Wellington.
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154 **SECTION 4.** Should any section, paragraph, sentence, clause, or phrase of this
155 Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington
156 Ordinance, Resolution, or Municipal Code provision; then in that event the provisions of
157 this Ordinance shall prevail to the extent of such conflict.
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159 **SECTION 5.** Should any section, paragraph, sentence, clause, or phrase of this
160 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
161 shall not affect the validity of this Ordinance as a whole as a whole or any portion or part
162 thereof, other than the part so declared to be invalid.
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164 **SECTION 6.** This Ordinance shall become effective immediately upon adoption of
165 the Wellington Council following second reading.
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168 (This section was intentionally left blank.)
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PASSED this _____ day of _____, 2014, upon first reading.

PASSED AND ADOPTED this _____ day of _____, 2014, on second and final reading.

WELLINGTON

FOR

AGAINST

BY: _____

Bob Margolis, Mayor

John Greene, Vice Mayor

Matt Willhite, Councilman

Howard K. Coates, Jr. Councilman

Anne Gerwig, Councilwoman

ATTEST:

BY: _____

Awilda Rodriguez, Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____

Laurie Cohen, Village Attorney