

**ORDINANCE NO. 2017-01**

**AN ORDINANCE OF THE CITY OF CLEWISTON, FLORIDA, CREATING CHAPTER 110, ARTICLE II, DIVISION 2, SECTION 110-63 OF THE CLEWISTON CODE OF LAWS AND ORDINANCES, ENTITLED "REASONABLE ACCOMMODATION PROCEDURES" TO PROTECT PERSONS WITH DISABILITIES DUE TO SUBSTANCE ABUSE AND THE GENERLA PUBLIC; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIM, §2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, the City Commission of the City of Clewiston, Florida (the "City") has the home rule authority to establish such regulations as it deems necessary to advance and protect the health, safety, morals and general welfare of the City; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat., the Florida Legislature has made the legislative finding that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment from a licensed service provider; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat, the Florida Legislature has made the legislative finding that the state, its subdivisions, and municipal corporations have a legitimate state interest in protecting persons suffering from addiction, who represent a vulnerable consumer population in need of housing; and

**WHEREAS**, pursuant to § 397.487(1), Fla. Stat., the Florida Legislature has made the legislative finding that persons who live in a recovery residence require protection; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from addiction who live in recovery residences can be better protected by the establishment of a voluntary certification program for recovery residences; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from addiction would be better protected by the establishment of a program for the certification of recovery residence administrators to ensure that these administrators adhere to certain core competencies, including (1) a code of ethics and disciplinary process; (2) biennial continuing education requirements; (3) annual certification renewal and requirements; and

**WHEREAS**, the Florida Legislature has determined that persons suffering from addiction who live in recovery residences can be better protected by encouraging recovery residences to employ a recovery residence administrator who has earned and who will maintain certification from a credentialing entity approved by the Department of Children and Families; and

**WHEREAS**, the City Commission finds that the voluntary certification of recovery residences, the management of the recovery residence and the supervision of the residents therein by a certified recovery residence administrator is necessary and appropriate to further the health, safety and general welfare of the residents of a recovery residence and the general public; and

**WHEREAS**, the City Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety, and general welfare to create Article II, Division 2, Section 110-63, as more specifically provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CLEWISTON, FLORIDA:**

**SECTION 1.** The foregoing recitals are adopted herein as true and correct and shall constitute the legislative findings of the City Commission.

**SECTION 2.** Article II, Division 2, Section 110-63 is hereby created as follows:

**Sec. 110-63 Applications and regulations for reasonable accommodation for residents of Recovery Residences.**

**(1) Definitions.**

**Counseling** means the process, conducted in a facility licensed under Chapter 397. F.S. of engaging a client in a discussion of issues associated with the client's substance abuse and associated problems in an effort to work toward a constructive resolution of those problems and ultimately toward recovery.

**Certified recovery residence administrator** means a recovery resident administrator who holds a valid certificate of compliance.

**Certified recovery residence** means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

**Disabled individual or a disabled person** means an individual meeting the definition of "disability" set forth in 42 U.S.C.S. § 12102 of the American with Disabilities Act (ADA) means someone having: (i) a physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; and (iii) who is regarded as having such an impairment.

**Housing provider** means a person or entity which has been certified as a recovery residence, or which is in the process of obtaining certification as a recovery residence.

**Licensed service provider** means a public agency under Chapter 397. F.S., a private for-profit or non-for-profit agency under Chapter 397. F.S.. a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse services through one or more licensed service components.

**Qualifying entity** shall mean, a licensed service provider in the State of Florida as defined by F.S. § 397.311(18), or an entity who is in the business of providing recovery residences for individuals disabled due to substance abuse.

**Recovery** means a process of personal change through which individuals achieve abstinence from alcohol or drug abuse and improve health, wellness, and quality of life.

**Recovery residence** means a residential dwelling unit, or other form of group housing that is offered or advertised through any means including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug free living environment.

**Recovery residence administrator** means the person responsible for the overall management of the recovery residence, including but not limited to, the supervision of residents and staff employed by or volunteering for, the residence.

**Service component or component** means a discrete operational entity within a service provider which is subject to licensing as defined by the rules adopted to implement Chapter 397, F.S.

**Substance abuse** means the misuse of, or dependence on alcohol, illicit drugs, or prescription medications.

**Treatment** means specific clinical and services such as individual and group counseling.

**(2) Application:** This section implements the policy of the City for processing reasonable accommodation applications for persons with disabilities and who are in recovery from substance abuse. Any applicant whether a disabled individual, or a Qualifying entity may apply for a reasonable accommodation with respect to the City's land use or applicable zoning laws, codes, rules, practices and/or procedures by submitting an application for a reasonable accommodation pursuant this section.

(a) All qualifying entities shall submit as part of an application for a reasonable accommodation, proof of the licensable service component the Qualifying entity holds pursuant to F.S. ch. 397.

(b) Housing providers for disabled individuals shall submit such information as the City may deem sufficient to demonstrate that the entity is a certified recovery residence or is in the process of becoming certified to operate a recovery residence for disabled individuals.

(c) Applicants making applications to operate a recovery residence shall identify the recovery residence administrator who is responsible for the overall management and the supervision of residents and any staff. Applicant shall submit such information as is necessary to document that the recovery residence administrator is certified or has applied for certification as a recovery residence administrator.

(d) An applicant for a reasonable accommodation under this section shall submit an application using a form which is available in the City's community development department ("department"). The information on the form must be complete as the information solicited is necessary for the City to process the reasonable accommodation application.

(e) The City shall display a notice in the City's public notice bulletin board (and shall maintain copies available for review in the department, the building/permitting division, and the City Clerk's office), advising the public that an application for a reasonable accommodation as provided in this section has been submitted to the department.

(f) A disabled individual, or qualifying entity or housing provider who has applied for a reasonable accommodation may be represented at all stages of the reasonable accommodation

proceedings by a person designated by the disabled individual as their authorized agent. Any authorized agent representing an individual, or, if applicable, a qualifying entity or housing provider shall submit, a written authorization designating the individual as the agent authorized to legally bind the applicant to the representations in the application, or any conditions agreed to or imposed as part of the order of the Special Magistrate.

(g) No application fee shall be imposed by the department in connection with an application for a reasonable accommodation.

(3) An individual, qualifying entity, or housing provider who is the tenant of a property owner, shall submit the leases or lease between the property owner and the tenant or tenants requesting a reasonable accommodation. It shall be the joint and several responsibility of the property owner or tenant, to submit any leases or subleases pertaining to the residence which is the subject of a reasonable accommodation application for a recovery residence.

(4) Applicants for a reasonable accommodation shall have the burden of establishing that the individuals on whose behalf the application has been submitted are protected under the provisions of the FHA and/or ADA. The applicant shall also demonstrate that the accommodation being sought for all of the individuals who will occupy the recovery residence are reasonable and necessary.

(5) All applications for a reasonable accommodation shall be considered by the City's Special Magistrate. The City shall be responsible for mailing via certified mail a notice containing the date and time of the Special Magistrate's hearing to consider the application. The Special Magistrate may: (a) grant the reasonable accommodation application as requested in the application; (b) grant a portion of the application determined by the Special Magistrate to be a reasonable accommodation given the circumstances and the nature of the request (c) grant the application with conditions to effectuate a reasonable accommodation; or (d) deny the reasonable accommodation requested. All decisions of the Special Magistrate shall be in writing. The written decision of the Special Magistrate shall constitute a Final Order and shall be sent to the applicant by certified mail, return receipt requested, at the address specified by the applicant on the application form.

**SECTION 3.** Codification. The provisions of this Ordinance shall become and be made part of the code of Laws and Ordinances of the City of Clewiston.

**SECTION 4.** Severability. If any phrase, sentence or portion of this Ordinance is, for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and individual provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 5.** Repeal of Laws in Conflict. All ordinances of the City of Clewiston, Florida, which are in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 6.** Effective Date. This Ordinance shall take effect immediately upon its passage and consistent with all requirements of general law.

**PASSED** on first reading by the City Commission on \_\_\_\_\_, 2017.

**PASSED AND ADOPTED** on second and final reading by the City Commission on \_\_\_\_\_, 2017.

**ATTEST:**

**CITY OF CLEWISTON, FLORIDA**

\_\_\_\_\_  
**Mary K. Combass, Interim City Clerk**

\_\_\_\_\_  
**Mali Gardner, Mayor**

(MUNICIPAL SEAL)

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**By:** \_\_\_\_\_  
**Gary M. Brandenburg, City Attorney**