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ORDINANCE 2021-09 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, REMOVING THE CITY COMMISSION AS THE ADMINISTRATIVE APPELLATE AUTHORITY FOR LAND DEVELOPMENT REGULATION DECISIONS MADE BY THE HISTORIC RESOURCES PRESERVATION BOARD AND PLANNING AND ZONING BOARD BY AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE 2, “ADMINISTRATION,” DIVISION 1, “SUPPLEMENTAL REGULATIONS,” DIVISION 1, “DECISIONMAKERS,” SECTIONS 23.2-1, 23.2-7, 23.2-8, AND 23.2-9; DIVISION 2, “PROCEDURES,” SECTIONS 23.2-15, 23.2-16, AND 23.2-17; DIVISION 3, “PERMITS,” SECTIONS 23.2-27, 23.2-29, 23.2-30; ARTICLE 5, “SUPPLEMENTAL REGULATIONS,” SECTION 23.5-1 AND 23.5-4; PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to the power and authority conferred by Chapter 163, Florida Statutes, the City has enacted Land Development Regulations (“LDRs”) to promote the public health, safety and welfare through reasonable regulation of land development activity; and

WHEREAS, in section 23.2-7 of the LDRs, the City has established the City of Lake Worth Beach Historic Resources Preservation Board (“HRPB”), and has conferred upon the HRPB both advisory duties and final decision-making authority with respect to historic designations, certificates of appropriateness, and other permit applications under the LDRs within the City’s historic districts; and

WHEREAS, in section 23.2-8 of the LDRs, the City has established the City of Lake Worth Beach Planning and Zoning Board (“PZB”) as the local planning agency, and has conferred upon the PZB both advisory duties and final decision-making authority with respect to permit applications under the LDRs; and

WHEREAS, the availability of an appeal from an adverse decision serves to protect the due process rights of applicants and affected parties; and

WHEREAS, the LDRs currently provide that certain decisions of the PZB and HRPB may be administratively appealed to the City Commission as provided in section 23.2-17; and

WHEREAS, the City Commission has determined that the interests of due process would best be served by providing for the appeal of HRPB and PZB decisions to circuit court; and

WHEREAS, on October 6, 2021 these amendments were reviewed by the City of Lake Worth Beach Planning and Zoning Board, which made a recommendation to the City Commission to approve the amendments; and

WHEREAS, on October 13, 2021 these amendments were reviewed by the City of Lake Worth Beach Historic Resources Preservation Board, which made a recommendation to the City Commission to approve the amendments; and

53 **WHEREAS**, the City Commission has reviewed the recommended amendments and has
54 determined that it is in the best interest of the public health, safety and general welfare of the City,
55 its residents and visitors to adopt these amendments.
56

57 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF**
58 **LAKE WORTH BEACH, FLORIDA, that:**
59

60 **Section 1:** That the foregoing “WHEREAS” clauses are ratified and confirmed as
61 being true and correct and are made a specific part of this ordinance as if set forth herein.
62

63 **Section 2:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
64 Division 1 “Decisionmakers,” Section 23.2-1 “City Commission,” is hereby amended as follows
65 (words stricken are deletions; words underlined are additions):
66

67 The city is governed by a city commission consisting of five (5) elected members,
68 including a mayor as more particularly set forth in the City Charter. In addition to any
69 authority granted the city commission by state law, City Charter or other regulations of
70 the city, the city commission shall have the power and duty to act as the final
71 decisionmaker with respect to certain types of applications ~~and appeals. A table~~
72 ~~illustrating city commission authority is contained at section 23.2-9.~~
73

74 **Section 3:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
75 Division 1 “Decisionmakers,” Section 23.2-7 “Historic Resources Preservation Board,”
76 Subsection (f) “Decisions and appeals,” is hereby amended as follows (words stricken are
77 deletions; words underlined are additions):
78

- 79 f) *Decisions and appeals.* On rezoning, comprehensive plan and future land use
80 map advisory matters, the HRPB shall submit its recommendation in a written
81 report to the city commission, with a copy to the applicant and preservation
82 planner, documenting each consideration substantiating the board's
83 recommendation. On conditional uses, major site plans, variances and other
84 matters for which the HRPB renders a decision, such decision shall be in the
85 form of a written order, giving reasons therefor and including findings of fact.
86 Denials shall include a citation to the applicable legal authority forming the basis
87 for the denial. Should the applicant or an affected party decide to appeal the
88 decision of the HRPB, such appeal shall be to circuit court as provided in to the
89 ~~city commission, the applicant or affected party shall provide a notice of appeal~~
90 ~~to the development review official within fourteen (14) days of the issuance of~~
91 ~~the written decision. A formal written appeal shall thereafter be submitted to the~~
92 ~~development review official outlining the basis for the appeal within thirty (30)~~
93 ~~days of the HRPB's written decision. See also section 23.2-17 of this article.~~
94

95 **Section 4:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
96 Division 1 “Decisionmakers,” Section 23.2-8 “Planning and Zoning Board,” Subsection (e)
97 “Decisions and Appeals,” is hereby amended as follows (words stricken are deletions; words
98 underlined are additions):
99

- 100 e) *Decisions and appeals.* On advisory matters, the board shall submit its
101 recommendation in a written report to the city commission, with a copy to the
102 applicant and development review official, documenting each consideration
103 substantiating the board's recommendation. On matters that the board renders
104 a decision, such decision shall be in the form of a written order, giving reasons

therefor and including findings of fact. Denials shall include a citation to the applicable legal authority forming the basis for the denial. Should the applicant or affected party decide to appeal the final decision of the planning and zoning board, ~~such appeal to the city commission, the applicant or affected party shall provide a notice of appeal to the development review official within fourteen (14) days of the issuance of the written decision. A formal written appeal shall thereafter be submitted to the development review official outlining the basis for the appeal within thirty (30) days of the planning and zoning board's written decision. See also shall be to circuit court as provided in section 23.2-17 of this article.~~

Section 5: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 1 “Decisionmakers,” Section 23.2-9 “Summary illustration of authority,” including Table 2-1, is hereby deleted in its entirety.

Section 6: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 2 “Procedures,” Section 23.2-15 “Notice Requirements for Public Hearings,” Table 2-2 “Notice Requirements,” is hereby amended at the last entry in the table as follows (words stricken are deletions; words underlined are additions):

Appeals to city commission of PZB or HRPB		10 days <u>400' R</u>	
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Section 7: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 2 “Procedures,” Section 23.2-16 “Quasi-judicial Procedures,” Subsection g) “Continuance,” is hereby amended as follows (words stricken are deletions; words underlined are additions):

g) *Continuance.* The decision-making body may, on its own motion continue the hearing to a fixed date, time and place. The applicant shall also have the right to one (1) continuance. Affected parties, whether individually or collectively, shall also have the right to one (1) continuance and irrespective of the number of affected parties, only one (1) continuance may be granted. The continuance can be for no longer than thirty-one (31) days, provided the request is to address neighborhood concerns or new evidence, to hire legal counsel or a professional services consultant, or the affected party is unable to be represented at the hearing. No more than one (1) continuance may be granted for all affected parties. The decision-making body will continue the hearing to a fixed date, time and place if applicable. However, all subsequent continuances shall be granted at the sole discretion of the decision-making body. ~~Notwithstanding the foregoing, a continuance shall not be granted if to do so would delay a decision on an appeal from the HRPB regarding a certificate of appropriateness beyond the ninety-day requirement specified in section 23.2-17.~~

Section 8: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 2 “Procedures,” Section 23.2-17 “Appeals,” is hereby amended as follows (words stricken are deletions; words underlined are additions):

b) ~~To city commission.~~ Should an applicant for development approval or an affected party with demonstrated standing decide to appeal a decision of the planning and zoning board or the historic resources preservation board the ~~procedures set forth below and in subsection d)~~ shall be followed.

- 154 ~~1. The applicant or affected party shall submit to the development review~~
- 155 ~~official a notice of appeal within fourteen (14) days of the board's written~~
- 156 ~~decision.~~
- 157 ~~2. Thereafter, the applicant or affected party shall submit to the development~~
- 158 ~~review official in writing the basis for the appeal within thirty (30) days of~~
- 159 ~~the board's written decision; except appeals from decisions pertaining to~~
- 160 ~~variances shall be appealed directly to circuit court as described in~~
- 161 ~~subsection c). The basis of appeal must relate to the evidence and~~
- 162 ~~testimony presented to the planning and zoning board or the HRPB. The~~
- 163 ~~basis of appeal should include all evidence the appealing party would like~~
- 164 ~~to have the city commission review. New evidence is not allowed and shall~~
- 165 ~~not be considered.~~
- 166 ~~3. The appeal shall be submitted with a city application and the applicable~~
- 167 ~~fee and filed with the development review official. An affected party must~~
- 168 ~~have participated in the hearing before the planning and zoning board or~~
- 169 ~~HRPB to participate in an appeal before the city commission.~~
- 170 ~~4. The development review official shall forward the appeal, the staff report~~
- 171 ~~and other relevant documents reviewed at the planning and zoning board~~
- 172 ~~or HRPB meeting, and the board's decision to the city commission for~~
- 173 ~~review.~~
- 174 ~~5. The development review official may also have the right to appeal a~~
- 175 ~~decision of the planning and zoning board or the HRPB.~~
- 176 ~~6. After courtesy notice as provided in this article, the city commission shall~~
- 177 ~~conduct a hearing, and shall consider those applications on appeal from~~
- 178 ~~the planning and zoning board or the HRPB based on the record created~~
- 179 ~~at the planning and zoning board or the HRPB meeting. The~~
- 180 ~~considerations substantiating the decision of the city commission shall be~~
- 181 ~~discussed. The city commission shall convey its decision in writing to the~~
- 182 ~~applicant, affected parties, if applicable, and to the development review~~
- 183 ~~official.~~
- 184 ~~7. For appeals from the decisions of the HRPB regarding certificates of~~
- 185 ~~appropriateness, the city commission shall consider the appeal within~~
- 186 ~~ninety (90) days after the filing of the appeal. The city commission may~~
- 187 ~~uphold or reverse the HRPB's decision in whole or in part or remand with~~
- 188 ~~instructions for further consideration. A reversal of an HRPB decision,~~
- 189 ~~whether in whole or in part, shall require no less than four (4) votes of the~~
- 190 ~~full city commission or by no less than three (3) votes of those in~~
- 191 ~~attendance, and in accordance with section 23.5-4(n)(2), a reversal shall~~
- 192 ~~be rendered only if the city commission determines that the HRPB decision~~
- 193 ~~was contrary to law or arbitrary and capricious.~~

194

195 *eb)* *To circuit court.* Any person or persons, jointly or severally, or entity, aggrieved

196 by the decision of the HRPB, planning and zoning board or city commission,

197 after first exhausting all administrative remedies, shall present to a circuit court

198 a petition for issuance of a writ of certiorari pursuant to the Florida law. If a

199 planning and zoning board or HRPB variance determination is

200 being appealed and is a part of an overall order being appealed for certificates

201 of appropriateness, site plans, etc., then the entire order shall be appealed to

202 ~~the circuit court and it is not necessary to exhaust administrative remedies~~
203 ~~by appealing any portion of the order to the city commission.~~

204
205 **Section 9:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
206 Division 3 “Permits,” Section 23.2-27 “Waiver,” Subsection a) “Community Residence,”
207 is hereby amended as follows (words stricken are deletions; words underlined are
208 additions):

- 209
210 3. The applicant and any affected party may appeal the decision of the board
211 to circuit court~~the city commission~~ pursuant to section 23.2-17. A waiver
212 becomes null and void and of no effect twelve (12) months from and after
213 the date of its final approval.

214
215 **Section 10:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
216 Division 3 “Permits,” Section 23.2-29 “Conditional Use Permits,” Subsection b)
217 “Approval Authority,” is hereby amended as follows (words stricken are deletions; words
218 underlined are additions):

219
220 b) *Approval authority.* The planning and zoning board or historic resources
221 preservation board, as applicable, in accordance with the procedures, standards and
222 limitations of this section, shall approve, approve with conditions, or deny an application
223 for a development permit for a conditional use permit after review and recommendation
224 by the development review official. The board's decision on a conditional use permit
225 may be appealed to circuit court~~the city commission~~ by the applicant or affected party,
226 pursuant to section 23.2-17.

227
228 **Section 11:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,”
229 Division 3 “Permits,” Section 23.2-30 “Site Plan Review,” Subsection e) “Site Plan
230 Review Procedures for Major Developments,” is hereby amended as follows (words
231 stricken are deletions; words underlined are additions):

- 232
233 e) *Site plan review procedures for major developments.* If the development review
234 official determines that the application requires a major review, the application
235 shall be forwarded to the site plan review team for review and, determination
236 as to whether the application complies with applicable regulations. Once the
237 development review officer has made a determination of compliance, the
238 application will be scheduled for action by the planning and zoning board or the
239 historic resources preservation board, as applicable. The board shall consider
240 and act on site plan review applications for major developments. For all
241 applications, the board may:

- 242 1. Approve the application as submitted;
243 2. Approve the application with any reasonable conditions, limitations, or
244 requirements;
245 3. Deny the application for specific reason(s); or
246 4. Postpone consideration of any application pending submittal of
247 additional information which may be required to make a determination.

248 The board shall issue a written decision which shall be attached to the
249 application for site plan approval. Each consideration substantiating the action
250 of the development review official shall be included in the decision. The decision

251 shall also include a citation to the legal authority on which a denial is based.
252 The decision of the board shall be final but may be ~~unless~~ appealed to circuit
253 ~~court~~~~the city commission~~, as provided in section 23.2-17.

254
255 **Section 12:** Chapter 23 “Land Development Regulations,” Article 5 “Supplemental
256 Regulations,” Section 23.5-1 “Signs,” Subsection j) “Variances and Appeals,” Subsection
257 2 “Appeals,” Subsection D “Jurisdiction”, is hereby amended as follows (words stricken
258 are deletions; words underlined are additions):

259
260 (v) Appeals from board. Any adversely affected person or persons
261 aggrieved by any decision of the board may appeal such decision to circuit
262 ~~court~~~~the city commission~~.

263
264 **Section 13:** Chapter 23 “Land Development Regulations,” Article 5 “Supplemental
265 Regulations,” Section 23.5-4 “Historic Preservation,” Subsection (e) “Designation of Landmarks
266 and Historic Districts,” Subsection 8 “HRPB Recommendation,” is hereby amended as follows
267 (words stricken are deletions; words underlined are additions):

268
269 ~~B. If the HRPB recommends denial of designation, such action shall be final~~
270 ~~unless an affected party (in the case of an individual landmark) or not less~~
271 ~~than two thirds (2/3) of the affected eligible property owners (in the case of~~
272 ~~a historic district) appeal to the city commission in the manner provided in~~
273 ~~subsection n), below, of this section.~~

274 B. The division shall promptly notify the applicant and the property owner(s)
275 of the HRPB's recommendation.

276
277 **Section 14:** Chapter 23 “Land Development Regulations,” Article 5 “Supplemental
278 Regulations,” Section 23.5-4 “Historic Preservation,” Subsection (e) “Designation of Landmarks
279 and Historic Districts,” Subsection 9 “City Commission Review and Designation,” is hereby
280 amended as follows (words stricken are deletions; words underlined are additions):

281
282 A. The city commission shall by ordinance approve, modify or deny the
283 proposed designation within sixty (60) days of receipt of the HRPB's
284 recommendation. A decision to reverse an HRPB recommendation ~~of~~
285 ~~approval~~ shall be by no less than four (4) votes of the full city commission
286 or by no less than three (3) votes if the full city commission is not in
287 attendance.

288
289 **Section 15:** Chapter 23 “Land Development Regulations,” Article 5 “Supplemental
290 Regulations,” Section 23.5-4 “Historic Preservation,” Subsection (e) “Designation of Landmarks
291 and Historic Districts,” Subsection 14 “Potential Landmark Designation,” is hereby amended as
292 follows (words stricken are deletions; words underlined are additions):

293
294 B. *Effect of pending applications for designation.* When an application for
295 designation is made and notice is mailed to affected parties, no action with
296 respect to the exterior appearance of such site or district shall commence
297 unless approved in accordance with the procedures provided in subsection
298 e). In order to protect the city's general welfare, avoid an irreparable loss
299 and prevent circumvention of the protections of this article, such

300 requirement shall remain in effect until final disposition of the recommended
301 action. The applicant may apply to the HRPB for review of a proposed action
302 prior to final action by the city commission. The HRPB shall review the
303 application using the criteria established herein, including unreasonable
304 economic hardship. Permits may be issued upon HRPB approval of
305 designation. ~~Should the HRPB deny the applicant's request, the applicant~~
306 ~~may appeal to the city commission as provided in subsection e) below.~~ If the
307 city commission declines to designate the landmark or historic district, all
308 permitting requirements set forth herein shall no longer apply to any
309 proposed action.

310
311 **Section 16:** Chapter 23 "Land Development Regulations," Article 5 "Supplemental
312 Regulations," Section 23.5-4 "Historic Preservation," Subsection (f) "Certificates of
313 Appropriateness, in General," is hereby amended as follows (words stricken are deletions;
314 words underlined are additions):

- 315
316 2. *Effective date of certificate stayed pending appeal.* A certificate of
317 appropriateness shall be effective immediately after the written rendition of
318 the decision, notwithstanding the permit approval from the building division.
319 If an appeal is made to the HRPB ~~or city commission~~, all work permitted by
320 the certificate of appropriateness shall automatically be stayed pending
321 the appeal.

322
323 **Section 17:** Chapter 23 "Land Development Regulations," Article 5 "Supplemental
324 Regulations," Section 23.5-4 "Historic Preservation," Subsection (n) "Appeal of Decisions
325 Regarding Certificates of Appropriateness," is hereby amended as follows (words stricken are
326 deletions; words underlined are additions):

- 327
328 1. *Appeal of administrative decisions.* Any administrative decision may be appealed
329 to the HRPB within fourteen (14) calendar days of its rendering. The HRPB shall
330 consider the record made in the administrative proceedings and shall not take
331 new testimony, and shall within sixty (60) days after the filing of the appeal reverse
332 the administrative decision only if it was contrary to law or arbitrary and capricious.
333
334 2. *Appeal of HRPB decisions.* Within thirty (30) days after the date of written
335 confirmation of a HRPB decision, the applicant or any affected party may appeal
336 to circuit court ~~the city commission~~ any decision of the HRPB regarding an
337 application for a certificate of appropriateness ~~pursuant to Sec. 23.2-17(e) of~~
338 ~~these LDRs. The city commission shall consider the record made before the~~
339 ~~HRPB in reaching its decision and shall not take new testimony. The city~~
340 ~~commission shall reverse the HRPB decision only if it was contrary to law or~~
341 ~~arbitrary and capricious.~~

342
343 **Section 18:** Severability. If any section, subsection, sentence, clause, phrase or portion
344 of this ordinance is for any reason held invalid or unconstitutional by any court of competent
345 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and
346 such holding shall not affect the validity of the remaining portions thereof.

347
348 **Section 19:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict
349 herewith are hereby repealed to the extent of such conflict.

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351 **Section 20:** Codification. The sections of the ordinance may be made a part of the City
352 Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and
353 the word "ordinance" may be changed to "section", "division", or any other appropriate word.

354 **Section 21:** Effective Date. This ordinance shall become effective 10 days after
355 passage.

356 The passage of this ordinance on first reading was moved by _____, seconded
357 by _____ and upon being put to a vote, the vote was as follows:

- 358 Mayor Betty Resch
- 359 Vice Mayor Herman Robinson
- 360 Commissioner Sarah Malega
- 361 Commissioner Christopher McVoy
- 362 Commissioner Kimberly Stokes

363 The Mayor thereupon declared this ordinance duly passed on first reading on the
364 _____ day of _____, 2021.

365 The passage of this ordinance on second reading was moved by _____,
366 seconded by _____, and upon being put to a vote, the vote was as follows:

- 367 Mayor Betty Resch
- 368 Vice Mayor Herman Robinson
- 369 Commissioner Sarah Malega
- 370 Commissioner Christopher McVoy
- 371 Commissioner Kimberly Stokes

372 The Mayor thereupon declared this ordinance duly passed on the _____ day of
373 _____, 2021.

374 LAKE WORTH BEACH CITY COMMISSION

375 By: _____
376 Betty Resch, Mayor

377 ATTEST:
378 _____
379 Melissa Ann Coyne, City Clerk