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3 **ORDINANCE 2021-09 - AN ORDINANCE OF THE CITY OF LAKE WORTH**  
4 **BEACH, FLORIDA, REMOVING THE CITY COMMISSION AS THE**  
5 **ADMINISTRATIVE APPELLATE AUTHORITY FOR LAND DEVELOPMENT**  
6 **REGULATION DECISIONS MADE BY THE HISTORIC RESOURCES**  
7 **PRESERVATION BOARD AND PLANNING AND ZONING BOARD BY**  
8 **AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE**  
9 **2, “ADMINISTRATION,” DIVISION 1, “SUPPLEMENTAL REGULATIONS,”**  
10 **DIVISION 1, “DECISIONMAKERS,” SECTIONS 23.2-1, 23.2-7, 23.2-8, AND**  
11 **23.2-9; DIVISION 2, “PROCEDURES,” SECTIONS 23.2-15, 23.2-16, AND 23.2-**  
12 **17; DIVISION 3, “PERMITS,” SECTIONS 23.2-27, 23.2-29, 23.2-30; ARTICLE 5,**  
13 **“SUPPLEMENTAL REGULATIONS,” SECTION 23.5-1 AND 23.5-4;**  
14 **PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT,**  
15 **CODIFICATION, AND AN EFFECTIVE DATE.**  
16

17 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted  
18 municipality having such power and authority conferred upon it by the Florida Constitution and  
19 Chapter 166, Florida Statutes; and  
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21 **WHEREAS**, pursuant to the power and authority conferred by Chapter 163, Florida  
22 Statutes, the City has enacted Land Development Regulations (“LDRs”) to promote the public  
23 health, safety and welfare through reasonable regulation of land development activity; and  
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25 **WHEREAS**, in section 23.2-7 of the LDRs, the City has established the City of Lake Worth  
26 Beach Historic Resources Preservation Board (“HRPB”), and has conferred upon the HRPB both  
27 advisory duties and final decision-making authority with respect to historic designations,  
28 certificates of appropriateness, and other permit applications under the LDRs within the City’s  
29 historic districts; and  
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31 **WHEREAS**, in section 23.2-8 of the LDRs, the City has established the City of Lake Worth  
32 Beach Planning and Zoning Board (“PZB”) as the local planning agency, and has conferred upon  
33 the PZB both advisory duties and final decision-making authority with respect to permit  
34 applications under the LDRs; and  
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36 **WHEREAS**, the availability of an appeal from an adverse decision serves to protect the  
37 due process rights of applicants and affected parties; and  
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39 **WHEREAS**, the LDRs currently provide that certain decisions of the PZB and HRPB may  
40 be administratively appealed to the City Commission as provided in section 23.2-17; and  
41

42 **WHEREAS**, the City Commission has determined that the interests of due process would  
43 best be served by providing for the appeal of HRPB and PZB decisions to circuit court; and  
44

45 **WHEREAS**, on October 6, 2021 these amendments were reviewed by the City of Lake  
46 Worth Beach Planning and Zoning Board, which made a recommendation to the City Commission  
47 to \_\_\_\_\_ the amendments; and  
48

49 **WHEREAS**, on October 13, 2021 these amendments were reviewed by the City of Lake  
50 Worth Beach Historic Resources Preservation Board, which made a recommendation to the City  
51 Commission to \_\_\_\_\_ the amendments; and  
52

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.

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

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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.

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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.~~

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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.~~

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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  
105 therefor and including findings of fact. Denials shall include a citation to the  
106 applicable legal authority forming the basis for the denial. Should the applicant  
107 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):

<del>Appeals to city commission of PZB or HRPB</del>		<u>10 days</u> <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.

1. ~~The applicant or affected party shall submit to the development review official a notice of appeal within fourteen (14) days of the board's written 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.

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

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

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

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

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

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

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

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

B. *Effect of pending applications for designation.* When an application for designation is made and notice is mailed to affected parties, no action with respect to the exterior appearance of such site or district shall commence unless approved in accordance with the procedures provided in subsection e). In order to protect the city's general welfare, avoid an irreparable loss and prevent circumvention of the protections of this article, such requirement shall remain in effect until final disposition of the recommended action. The applicant may apply to the HRPB for review of a proposed action prior to final action by the city commission. The HRPB shall review the 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.

350  
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.

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