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3 **ORDINANCE 2022-23 – AN ORDINANCE OF THE CITY OF LAKE**  
4 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 2**  
5 **“ADMINISTRATION,” ARTICLE X “SUPPLEMENTAL CODE**  
6 **COMPLIANCE PROCEDURES,” SECTION 2-86 “CODE CITATION**  
7 **PROCEDURES; APPEALS,” SECTION 2-87 “CIVIL PENALTIES,” AND**  
8 **SECTION 2-88 “CLASSIFICATION OF INFRACTIONS,” PROVIDING**  
9 **FOR CONSISTENCY WITH CHANGES IN CODES TO BE ENFORCED**  
10 **AND FOR OTHER PURPOSES; AND PROVIDING FOR SEVERABILITY,**  
11 **CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**  
12

13 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State  
14 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the  
15 “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct  
16 municipal government, perform municipal functions, and render municipal services, and  
17 may exercise any power for municipal purposes, except as expressly prohibited by law;  
18 and  
19

20 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing  
21 body of each municipality in the state has the power to enact legislation concerning any  
22 subject matter upon which the state legislature may act, except when expressly prohibited  
23 by law; and  
24

25 **WHEREAS**, the City has adopted supplemental code enforcement procedures in  
26 Chapter 2 “Administration”, Article X “Supplemental Code Enforcement Procedures”; and  
27

28 **WHEREAS**, Ch. 162, Florida Statutes, and Florida case law permit a municipality  
29 to enforce its codes by alternative procedures as long as due process is provided; and  
30

31 **WHEREAS**, the City wishes to streamline its civil citation process to provide for  
32 the payment of such citation or, in the alternative, to request a hearing to challenge such  
33 citation; to include additional penalties; and to address additional violations of the Code,  
34 including but not limited to graduated penalties for repeat noise violations and violations  
35 involving conduct in parks, recreation areas and at the municipal beach (e.g., smoking  
36 and vaping violations); and  
37

38 **WHEREAS**, the City Commission finds and declares that the adoption of this  
39 ordinance is appropriate, and in the best interest of the health, safety and welfare of the  
40 City, its residents and visitors.  
41

42 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
43 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**  
44

45 Section 1: The foregoing “WHEREAS” clauses are ratified and confirmed as  
46 being true and correct and are made a specific part of this ordinance as if set forth herein.  
47

48 Section 2: Chapter 2 “Administration,” Article X “Supplemental Code  
49 Compliance Procedures,” Section 2-86 “Code citation procedures; appeals” is hereby  
50 amended to read as follows:

51 **Sec. 2-86. - Code citation procedures; appeals.**

52 (a) As used in this article, "code officer" means any designated employee or  
53 agent of the city whose duty it is to enforce the codes and ordinances enacted by the city.  
54

55 (b) The city may designate certain of its employees or agents as code officers. The  
56 training and qualifications of the employees or agents for such designation shall be  
57 determined by the city. Employees or agents who may be designated as code officers  
58 may include, but are not limited to, code officers, law enforcement officers, or fire safety  
59 inspectors. Designation as a code officer does not provide the code officer with the power  
60 of arrest or subject the code officer to the provisions of F.S. §§ 943.085 through 943.255.  
61

62 (c) A code officer is authorized to issue a citation to a person when, based upon  
63 personal investigation, the officer has reasonable cause to believe that the person has  
64 committed a civil infraction in violation of a duly enacted code or ordinance for which a  
65 fine has been set under this article.  
66

- 67 (d) A citation issued pursuant to this section shall contain:
- 68 (1) The date and time of issuance.
  - 69 (2) The name and address of the person (as defined in Section 1-2 of this Code)  
70 to whom the citation is issued.
  - 71 (3) The date, time, **and location where** the civil infraction was committed.
  - 72 (4) The facts constituting reasonable cause.
  - 73 (5) The number or section of the code or ordinance violated.
  - 74 (6) The name and authority of the code officer.
  - 75 (7) The procedure for the person to follow in order to pay the civil penalty or to  
76 contest the citation.
  - 77 (8) The applicable civil penalty if the person elects to contest the citation.
  - 78 (9) The applicable civil penalty if the person elects not to contest the citation.
  - 79 (10) A conspicuous statement that if the person fails to pay the civil penalty or  
80 contest the citation within the time allowed, or if the person contests the  
81 citation and fails to appear before the special magistrate to contest the  
82 citation, he or she shall be deemed to have waived his or her right to contest  
83 the citation and that, in such case, an order may be entered against the  
84 person for an amount up to the maximum civil penalty.
  - 85 (11) The date the property must be brought into compliance.
  - 86 ~~(12) The hearing date, time, and location.~~
- 87

88 (e) A respondent may avoid an appearance before the special magistrate by timely  
89 complying with the code section cited, requesting and passing an inspection, and electing  
90 to pay a fine and administrative costs as provided on the issued citation. However, the  
91 respondent may otherwise elect to contest the violation cited and appear before the  
92 special magistrate to contest the violation cited, and at that time must bring any witnesses  
93 or evidence to be presented at the special magistrate hearing. If the respondent wishes  
94 to contest the violation, he or she shall deliver a written request for a hearing to the code  
95 enforcement clerk within the time given on the citation. The request shall include the  
96 respondent's name, citation number, code section/ordinance number that was violated,  
97 date of issuance of the citation, and the respondent's current telephone number and  
98 mailing address. The city will mail the notice of hearing by regular mail to the mailing

99 address provided. If a fine or costs, or both, is not paid in accordance with the citation, if  
100 the respondent fails to contest the citation within the time afforded by the citation, or if the  
101 respondent fails to appear at the special magistrate hearing, the respondent shall have  
102 waived all rights to a hearing. Thereafter, an order may be entered by the special  
103 magistrate against the respondent in an amount up to the maximum permitted by law. If  
104 the respondent fails to timely comply with the code section cited and the special  
105 magistrate determines that the violation exists, the respondent may be subject to daily  
106 fines as determined by the special magistrate. Further, if the fine and costs are not timely  
107 paid prior to the hearing and the special magistrate determines a violation occurred, the  
108 respondent will be subject to additional administrative costs and fees. Once a ~~find~~ fine is  
109 paid, or if unpaid, after the date set for payment in the code citation, it is deemed to be  
110 conclusive proof of the violation for the purpose of establishing a later repeat violation.

111  
112 (f) The special magistrate, after a hearing on the citation, shall make a  
113 determination whether or not a violation of the code has been committed. The hearing  
114 shall be conducted in accordance with section 2-67 of this chapter. If a violation is found  
115 to have occurred, the special magistrate may enter an order requiring compliance and the  
116 payment of fines and administrative costs in accordance with subsection 2-67(d) of this  
117 chapter. In the alternative, the city may forego the pursuit of a daily fine and request an  
118 order be immediately entered assessing the citation fine and administrative costs.

119  
120 (g) A certified order assessing fines and/or costs may be recorded as a lien against  
121 the subject property as set forth in subsection 2-69(d) of this chapter or as otherwise  
122 provided by law.

123  
124 (h) Appeals. An aggrieved party, including the local governing body, may appeal a  
125 final administrative order of a special magistrate to the circuit court. Such an appeal shall  
126 not be a hearing de novo but shall be limited to appellate review of the record created  
127 before the special magistrate. An appeal shall be filed with thirty (30) days of the execution  
128 of the order to be appealed. The city attorney or designee is hereby authorized to defend  
129 such appeals on behalf of the city and/or special magistrate.

130  
131 Section 3: Chapter 2 "Administration," Article X "Supplemental Code  
132 Compliance Procedures," Section 2-87 "Civil penalties" is hereby amended to read as  
133 follows:

134  
135 **Sec. 2-87. - Civil penalties.**

136 (a) The maximum civil penalty for a civil infraction cited under this article shall be  
137 five hundred dollars (\$500.00). A civil penalty may also be referred to as a citation fine.  
138 The fee set for a reinspection under this section shall be set by resolution of the city  
139 commission.

140  
141 (b) If the person who has committed a civil infraction does not contest the citation  
142 and pays the penalty and complies the property in accordance with the citation, the civil  
143 penalty shall be as follows:

- 144 (1) For a Class I infraction, fifty dollars (\$50.00) plus a reinspection fee, if  
145 required.

- 146 (2) For a Class II infraction, seventy-five dollars (\$75.00) plus a reinspection  
147 fee, if required.
- 148 (3) For a Class III infraction, one hundred twenty-five dollars (\$125.00) plus a  
149 reinspection fee, if required.
- 150 (4) For a Class IV infraction, two hundred fifty dollars (\$250.00) plus a  
151 reinspection fee, if required.
- 152 (5) For a Class V infraction, five hundred dollars (\$500.00) plus a reinspection  
153 fee, if required.

154  
155 Section 4: Chapter 2 "Administration," Article X "Supplemental Code  
156 Compliance Procedures," Section 2-88 "Classification of infractions" is hereby amended  
157 to read as follows:

158  
159 **Sec. 2-88. - Classification of infractions.**

- 160 (a) *Class I.*
  - 161 (1) Violations of the building code of the city, as adopted in section 9-2 of the  
162 Code of Ordinances, not specifically enumerated in this section.
  - 163 (2) Violations involving recreational vehicles or boats.
  - 164 (3) Obstruction of public right-of-way.
  - 165 (4) Violations involving conduct in parks and recreation areas, municipal beach  
166 areas, and on public property, as adopted in Chapter 7 of the Code of  
167 Ordinances, not specifically enumerated in this section.
- 168  
169 (b) *Class II.*
  - 170 (1) Violations of the Property Maintenance Code, as adopted in section 2-  
171 75.6 of the Code of Ordinances, not specifically enumerated in this section.
  - 172 (2) Violations involving solid waste, refuse, garbage, rubbish or trash.
  - 173 (3) Violations involving fences, walls or hedges.
  - 174 (4) Violations of the sign code, as adopted in ~~Chapter 23, Article XXVIII~~ section  
175 23.5-1, of the Code of Ordinances, not specifically enumerated in this  
176 section.
  - 177 (5) Abandoned property on private property.
  - 178 (6) Violations involving landscaping.
- 179  
180 (c) *Class III.*
  - 181 (1) Performing work without a required permit.
  - 182 (2) Violations of the Code of Ordinances not specifically enumerated in this  
183 section.
  - 184 (3) Violations of the zoning ordinance, as adopted in Chapter 23 of the Code of  
185 Ordinances, not specifically enumerated in this section.
  - 186 (4) Violations of Chapter 14 of the Code of Ordinances (use and occupancy  
187 certificates, business tax receipts, and business regulations).
  - 188 (5) Prohibited or unsafe signs.
  - 189 (6) Violations involving a required visibility triangle.
- 190  
191 (d) *Class IV.*
  - 192 (1) Violations of "cease and desist" or "stop work" orders.
  - 193 (2) Repeat violations.

(3) Violations involving noise, as adopted in section 15-24 of the Code of Ordinances, not specifically enumerated in this section.

(e) Class V.

(1) Repeat violations involving noise, as adopted in section 15-24 of the Code of Ordinances, not specifically enumerated in this section.

Section 5: Severability. If any section, subsection, sentence, clause, phrase 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 independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6: Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 8: Effective Date. This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by Commissioner Malega, seconded by Vice Mayor McVoy, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Christopher McVoy	AYE
Commissioner Sarah Malega	AYE
Commissioner Kimberly Stokes	AYE
Commissioner Reinaldo Diaz	AYE

The Mayor thereupon declared this ordinance duly passed on first reading on the 18<sup>th</sup> day of October, 2022.

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

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

242 The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
243 \_\_\_\_\_, 2022.

244 LAKE WORTH BEACH CITY COMMISSION

245  
246  
247  
248 By: \_\_\_\_\_  
249 Betty Resch, Mayor

250  
251 ATTEST:

252  
253  
254 \_\_\_\_\_  
255 Melissa Ann Coyne, City Clerk  
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