

ORDINANCE 2021-01 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 "LAND DEVELOPMENT REGULATIONS," ARTICLE 1, "GENERAL PROVISIONS," DIVISION 2 "DEFINITIONS," SECTION 23.1.12 "DEFINITIONS" TO ADD AND CLARIFY USE DEFINITIONS; ARTICLE 2, "ADMINISTRATION", DIVISION 2 "PROCEDURES," SECTION 23.2-16 "QUASI-JUDICIAL PROCEDURES" TO UPDATE AND CLARIFY PROVISIONS RELATED TO AFFECTED PARTIES; AND AMENDING DIVISION 1 "GENERALLY," SECTION 23.3-6 "USE TABLES" TO ALLOW FOR TAKE OUT ESTABLISHMENTS BY ZONING DISTRICT AND TO MODIFY THE ZONING DISTRICT AND REVIEW PROCESS FOR SEVERAL USES; AND ADDING A NEW SECTION 23.4-23 – "TAKE OUT ESTABLISHMENTS" TO CREATE DEVELOPMENT REVIEW STANDARDS FOR TAKE OUT ESTABLISHMENT USES; AND PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the City wishes to amend Chapter 23 Land Development Regulations," Article 1 "General Provisions," Division 2 "Definitions," Section 23.1.12 definitions, to add and modify definitions to clarify several existing uses and to define the new use, "Take-out Establishments;" and

WHEREAS, the City wishes to amend Chapter 23 Land Development Regulations," Article 2 "Administration," Division 2 "Procedures," Section 23.2-16 Quasi-judicial Procedures, to clarify that only one continuance is permitted for all affected parties to ensure that the City does not run afoul of development review time limitations for local governments as set forth in Florida law; and

WHEREAS, the City wishes to amend Chapter 23, Article 3 "Zoning Districts," Division 1 "Generally," Section 23.3-6 Use Tables to allow for take-out by zoning district and modify required review process by zoning district for severale; and

WHEREAS, the City wishes to amend Chapter 23, Article 4 "Development Standards," to establish a new section, Section 23.4-23 – Take-out Establishments to establish supplementary development standards for these uses; and

50
51 **WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning
52 agency, considered the proposed amendments at a duly advertised public hearing; and
53

54 **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local
55 planning agency, considered the proposed amendments at a duly advertised public
56 hearing; and
57

58 **WHEREAS**, the City Commission has reviewed the proposed amendments and
59 has determined that it is in the best interest of the public health, safety, and general
60 welfare of the City to adopt this ordinance.
61

62 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
63 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**
64

65 **Section 1:** The foregoing “WHEREAS” clauses are ratified and confirmed as
66 being true and correct and are made a specific part of this Ordinance as if set forth herein.
67

68 **Section 2:** Chapter 23 Land Development Regulations,” Article 1 “General
69 Provisions,” Division 2 “Definitions,” Section 23.1.12 definitions related to new and
70 existing uses is hereby amended by adding the words shown in underlined type and
71 deleting the words ~~struck through~~ as indicated in **Exhibit A**.
72

73 **Section 2:** Chapter 23 Land Development Regulations,” Article 2
74 “Administration,” Division 2 “Procedures,” Section 23.2-16 Quasi-judicial Procedures
75 related to affected parties, is hereby amended by adding the words shown in underlined
76 type and deleting the words ~~struck through~~ as indicated in **Exhibit B**.
77

78 **Section 4:** Chapter 23 Land Development Regulations,” Article 3 “Zoning
79 Districts,” Division 1 “Generally,” Section 23.3-6 Use Tables related to review process by
80 zoning district for take-out establishments and several existing uses, including truck/van
81 rentals, museums, school of the arts, and art and photography gallery; is hereby amended
82 by adding the words shown in underlined type and deleting the words ~~struck through~~ as
83 indicated in **Exhibit C**.
84

85 **Section 8:** Chapter 23 “Land Development Regulations,” Article 4
86 “Development Standards,” related to the establishment of a new section, Section 23.4-23
87 – Take Out Establishments, is hereby amended by adding the words shown in underlined
88 type and deleting the words ~~struck through~~ as indicated in **Exhibit D**.
89

90 **Section 10:** Severability. If any section, subsection, sentence, clause, phrase or
91 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
92 competent jurisdiction, such portion shall be deemed a separate, distinct, and
93 independent provision, and such holding shall not affect the validity of the remaining
94 portions thereof.
95

96 **Section 11:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
97 conflict herewith are hereby repealed to the extent of such conflict.

Section 12: 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 13: 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 Robinson and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Herman Robinson	AYE
Commissioner Sarah Malega	AYE
Commissioner Christopher McVoy	AYE
Commissioner Kimberly Stokes	AYE

The Mayor thereupon declared this ordinance duly passed on first reading on the 6th day of April, 2021.

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 Herman Robinson
Commissioner Sarah Malega
Commissioner Christopher McVoy
Commissioner Kimberly Stokes

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

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Deborah Andrea, CMC, City Clerk

EXHIBIT A

Chapter 23

CODE OF ORDINANCES ARTICLE 1 "GENERAL PROVISIONS"

Division 2 - Definitions

Sec. 23.1-12. - Definitions.

Equipment Rental and Leasing: A business that involves the leasing and rental of medium and heavy duty equipment, medium and heavy duty construction equipment, and medium and heavy duty commercial and construction vehicles.

Medical office: A facility operated by one or more licensed practitioners that provides a single category of services including but not limited to general and specialty medical care, dental care, chiropractic care, and vision care, psychotherapy or related care, and medical care related to the treatment of disabilities under the Americans with Disabilities Act (ADA), and shall not include bed patient care or overnight accommodations.

Restaurants – Take-out: A full service restaurant with indoor dining where both the “take-out” or “pick-up” use area is greater than 25% and less than 50% of the use area accessible to customers, and where the waiting area is located indoors only. Take-out restaurants with a “take-out” or pick-up” use area greater than 50% shall be classified as a take-out establishment.

Take-out establishments: A food service or retail business with a dedicated “take-out” or “pick-up” use area that is greater than 25% of the total use area accessible to customers, and/or where the designate waiting area is located outdoors.

Truck/Van Rentals: A vehicle rental/leasing business that includes the rental of moving vans and trucks, or commercial trucks or vans considered commercial business or service vehicles less than 8,000 lbs. to consumers. Rental stock of trucks and van rentals shall be not be considered to be the parking, storing or keeping commercial vehicles.

EXHIBIT B

Chapter 18

CODE OF ORDINANCES ARTICLE 2 "ADMINISTRATION"

Division 2 - Procedures

Sec. 23.2-16. - Quasi-judicial procedures.

- e) *Affected parties.* Affected parties, as defined in section 23.1-12 (Definitions), (1) shall be allowed to present evidence, to produced witnesses, and to cross-examine witnesses produced by others; (2) may appeal final decisions of staff, HRPB, planning and zoning board, or city commission; and (3) may file suit to enforce the provisions of this article should the city fail or decline to do so. Notwithstanding the foregoing; however, in any suit brought by an affected party, the applicable circuit court shall determine whether the affected party has the requisite standing to bring suit. An affected party who wishes to participate as a party in the quasi-judicial hearing must fill out a city form and deliver it to the Department of Community Sustainability at least five (5) days before the hearing. Failure to follow the process shall be deemed a waiver and the affected party will not be allowed to participate in the quasi-judicial hearing.
- f) *Deliberation.* After the presentations, and at the conclusion of any continuances, the decisionmaking body shall deliberate on the application. Once the decisionmaking body begins its deliberations no further presentations or testimony shall be permitted except at the sole discretion of the decisionmaking body. The decisionmaking body's decisions must be based upon competent substantial evidence in the record.
- g) *Continuance.* The decisionmaking body may, on its own motion continue the hearing to a fixed date, time and place. Also, ~~The~~ applicant ~~or affected party~~ shall also have the right to one (1) continuance. Affected parties, whether individually or collectively, shall also have the right to one 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 ~~applicant or affected party~~ is unable to be represented at the hearing. No more than one (1) continuance may be granted for all affected parties. The decisionmaking 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 decisionmaking 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.

EXHIBIT C

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Division 1 "Generally"

Sec. 23-3.6 – Use Tables.

Under separate cover

EXHIBIT D

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

[New Section] Sec. 23.4-23. -Take Out Establishments

- a) The following development standards shall apply to take-out establishments, take-out restaurants or establishments with a "take-out" or "pick-up" window or outdoor waiting area. "Take-out" establishments located in the Downtown (DT) zoning district are not permitted to be located in the portion of buildings with frontage or access (window or door) onto Lake Avenue or Lucerne Avenue. The location requirement in the DT zoning district shall not apply to full service restaurants with indoor dining provided that both the "take-out" or "pick-up" use area is less than 25% of the total use area accessible to customer and the designated waiting area is located inside.
- b) Take-out establishments shall not be movable such as a mobile stand, food truck or kiosk.
- c) "Take-out" or "pick-up" windows or service openings to the exterior, excluding entrance doors into the business, shall not be located on a building facade that faces a public right-of-way, unless they are designed in a manner consistent with the building's architectural style and to be an aesthetic asset to the building and neighborhood.
- d) Designated customer waiting areas, located outside of a take-out establishment and within a public right-of-way, shall require a right-of-way permit from the appropriate authority and shall not impact ADA accessibility. Waiting areas shall not extend beyond the façade width of the take-out establishment in the public right-of-way as permitted or shall not extend beyond the site's property lines.
- e) Exterior covered/lidded refuse bin/s shall be provided in a designated location/s that is screened from the public right-of-way and adjacent properties in so far as feasible. The refuse bins shall be available outside of the take-out establishment during hours of operation and shall be removed when the business is closed unless otherwise approved by the Development Review Official.
