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3       **ORDINANCE 2020-14 - AN ORDINANCE OF THE CITY OF LAKE**  
4       **WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND**  
5       **DEVELOPMENT REGULATIONS,” ARTICLE 2, “ADMINISTRATION”,**  
6       **DIVISION 2 “PROCEDURES,” SECTION 23.2-16 “QUASI-JUDICIAL**  
7       **PROCEDURES” AND SECTION 23.2-17 “APPEALS” TO UPDATE AND**  
8       **CLARIFY THE QUASI-JUDICIAL PROCESS FOR LAND USE AND**  
9       **ZONING MATTERS; PROVIDING FOR SEVERABILITY, THE REPEAL**  
10       **OF LAWS IN CONFLICT, CODIFICATION; AND PROVIDING AN**  
11       **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”), a municipal corporation, enjoys all governmental, corporate, and proprietary  
16 powers necessary to conduct municipal government, perform municipal functions, and  
17 render municipal services, and may exercise any power for municipal purposes, except  
18 as expressly prohibited by law; 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 wishes to amend its regulations pertaining to quasi-judicial  
26 procedures and appeals to provide clarity to the processes; and

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

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31       **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local  
32 planning agency, considered the proposed amendments at a duly advertised public  
33 hearing; and

34  
35       **WHEREAS**, the City Commission has reviewed the proposed amendments and  
36 has determined that it is in the best interest of the public health, safety, and general  
37 welfare of the City to adopt this ordinance.

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

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

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45       **Section 2.** Chapter 23 “Land Development Regulations,” Article 2,  
46 “Administration,” Divisions 2 “Procedures,” Section 23.2-16 “Quasi-Judicial Procedures”  
47 of the City’s Code of Ordinances, is hereby amended by adding the words shown in  
48 underlined type and deleting the words as ~~struck through~~.

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

52

53 a) *In general*. ~~Except in the case of appeals, t~~The provisions of this section apply  
54 to all quasi-judicial hearings held pursuant to these LDRs. Quasi-judicial hearings  
55 shall be conducted generally in accordance with the following order of  
56 presentation:

- 57 1. Disclosure of ex parte communications and personal investigations  
58 pursuant to subsection h below.
- 59 2. Presentation by city staff.
- 60 3. Presentation by the applicant.
- 61 4. Presentation by affected party, if applicable.
- 62 ~~45.~~ Public comment.
- 63 ~~56.~~ Cross-examination by city staff.
- 64 ~~67.~~ Cross-examination by the applicant.
- 65 8. Cross-examination by affected party, if applicable.
- 66 ~~79.~~ ~~Cross-examination~~ Questions by the decisionmaking body.
- 67 ~~810.~~ Rebuttal or closing argument by the applicant.
- 68 ~~911.~~ Closing of the public hearing.
- 69 ~~4012.~~ Deliberation by the decisionmaking body. ~~Motion by the decisionmaking~~  
70 ~~body with explanation.~~
- 71 ~~11.~~ ~~Discussion among members of the decisionmaking body.~~
- 72 12. Action by the decisionmaking body making reference to and entry of  
73 specific findings. In the case of denials a citation(s) shall be provided  
74 referencing to the legal authority (e.g., code citation) forming the basis  
75 of the denial.

76 The chairperson, upon motion or by consensus of the decisionmaking body, may  
77 change the order of presentation. Each party shall have the right to call and examine  
78 witnesses, to introduce evidence/exhibits into the record, to cross-examine opposing  
79 witnesses on any relevant matter, subject to the rules contained herein, and to rebut  
80 evidence.

81 b) *Sworn testimony.* The applicant, staff, and all participants requesting to speak shall  
82 be collectively sworn by oath or affirmation.

83 c) *Waiver by applicant.* The applicant may waive its right to an evidentiary hearing if it  
84 agrees with the staff recommendation ~~and no one from the audience wishes to speak~~  
85 ~~for or against the application.~~ The decisionmaking body may then take public  
86 comment and vote on the item, based upon the staff report and any other materials  
87 entered by staff from the official file into the record of the hearing.

88 d) *Decorum.* The chair shall keep order, and without requiring an objection, may direct  
89 a party conducting cross-examination to stop a particular line of questioning that  
90 merely harasses, intimidates or embarrasses the individual being cross-examined; is  
91 unduly repetitious and not relevant; or is beyond the scope of the testimony by the  
92 individual being cross-examined. If the party conducting the cross-examination  
93 continuously violates directions from the chair to end a line of questioning deemed

- 94 irrelevant and merely designed to harass, intimidate or embarrass the individual, the  
95 chair may terminate the cross-examination.
- 96 e) *Affected parties.* Affected parties, as defined in section 23.1-12 (Definitions), (1) shall  
97 be allowed to present evidence, to produced witnesses, and to cross-examine  
98 witnesses produced by others; (2) may appeal final decisions of staff, HRPB, planning  
99 and zoning board, or city commission; and (3) may file suit to enforce the provisions  
100 of this article should the city fail or decline to do so. Notwithstanding the foregoing;  
101 however, in any suit brought by an affected party, the applicable circuit court shall  
102 determine whether the affected party has the requisite standing to bring suit. An  
103 affected party who wishes to participate as a party in the quasi-judicial hearing must  
104 fill out a city form and deliver it, along with documentary evidence, to the Department  
105 of Community Sustainability at least ten (10) days before the hearing. Failure to  
106 follow the process shall be deemed a waiver and the affected party will not be allowed  
107 to participate in the quasi-judicial hearing.
- 108 f) *Deliberation.* After the presentations, and at the conclusion of any continuances, the  
109 decisionmaking body shall deliberate on the application ~~or appeal, as the case may~~  
110 ~~be~~. Once the decisionmaking body begins its deliberations no further presentations  
111 or testimony shall be permitted except at the sole discretion of the decisionmaking  
112 body. The decisionmaking body's decisions must be based upon competent  
113 substantial evidence in the record.
- 114 g) *Continuance.* The decisionmaking body may, on its own motion or at the request of  
115 an applicant, continue the hearing to a fixed date, time and place. The applicant shall  
116 have the right to one (1) continuance; however, all subsequent continuances shall be  
117 granted at the sole discretion of the decisionmaking body. Notwithstanding the  
118 foregoing, a continuance shall not be granted if to do so would delay a decision on  
119 an appeal from the HRPB regarding a certificate of appropriateness beyond the  
120 ninety-day requirement specified in section 23.2-17.
- 121 h) *Ex parte communications.* Members of the decisionmaking body shall disclose on the  
122 record any ex parte communications and personal investigations regarding pending  
123 quasi-judicial decisions in accordance with applicable Florida law.
- 124 1. Members of the decision-making body shall disclose on the record any ex parte  
125 communications, site visits, expert opinions sought, and personal investigations  
126 regarding pending quasi-judicial decisions prior to any final action on the matter.
  - 127 2. The substance of any ex parte communication shall be disclosed including the  
128 subject of the communication and the identity of the person, group, or entity with  
129 whom the communication took place.
  - 130 3. Any written communication shall be made part of the record.
  - 131 4. Any site visit, personal investigation or expert opinions received shall be  
132 disclosed and made part of the record.
  - 133 5. Pursuant to section 286.0115(1), Florida Statutes, the foregoing process  
134 removes the presumption of prejudice from ex parte communications.
- 135 i) *Official file.* All written communication received by a decisionmaking body or staff  
136 concerning an application, the staff report on the application, any petitions or other  
137 submissions from the public, and all other documents pertaining to the application  
138 upon receipt shall be filed in the official file for the application, which shall be

139 maintained by staff. The comprehensive plan and the City Code of Ordinances shall  
140 be deemed to be part of the official file. The official file shall be available for inspection  
141 during normal business hours.

142 j) *Record of the hearing.* All evidence admitted into the record at the hearing, and the  
143 adopted development order of the decisionmaking body shall be maintained by the  
144 city in a hearing file available for public review for a period of at least forty-five (45)  
145 days from the rendering of the decision.

146 k) *First Reading.* For all quasi-judicial matters which require more than one (1) reading,  
147 the first reading shall constitute the quasi-judicial hearing. If a decision is rendered to  
148 grant or grant with conditions the relief sought by the applicant, then the second  
149 reading shall be procedural in nature with the quasi-judicial body ratifying and  
150 affirming its prior decision. If new evidence is introduced which, if brought to the  
151 attention of the quasi-judicial body at the first reading, would have had a material  
152 impact on its decision, the quasi-judicial body may reopen the quasi-judicial hearing  
153 and give all parties the opportunity to address the new evidence.

154  
155 **Section 3.** Chapter 23 “Land Development Regulations,” Article 2,  
156 “Administration,” Division 2 “Procedures,” Section 23.2-17 “Appeals” of the City’s Code of  
157 Ordinances, is hereby amended by adding the words shown in underlined type and  
158 ~~deleting~~ the words as struck through.

159  
160 Sec. 23.2-17. - Appeals.

161  
162 a) *To planning and zoning board and historic resources preservation board.* An  
163 applicant may appeal a final decision of the development review official to the  
164 planning and zoning board or the historic resources preservation board, as  
165 applicable. The procedures set forth in Sec. 23.2-16 shall apply except as  
166 modified herein.

167 1. The applicant shall submit to the development review official, a notice of appeal  
168 within thirty (30) days of the official's written decision. The appeal shall be in writing  
169 on a form provided by city staff.

170 2. The appeal shall be accompanied by the applicable fee and filed with the  
171 development review official.

172 3. The appeal shall be heard at a quasi-judicial hearing and be based on the record  
173 made in the proceeding below. evidence relied upon by the development review  
174 official in making his/her decision, which shall include submissions from the  
175 applicant.

176 4. Notwithstanding the above, on appeals of administrative decisions regarding  
177 certificates of appropriateness, the process shall be guided by Section 23.5-  
178 4(n)(1), which provides that a notice of appeal must be submitted within fourteen  
179 (14) days of the administrative decision, and that the administrative decision must  
180 be reviewed within sixty (60) days and may be reversed only if it was contrary to  
181 law or arbitrary and capricious.

182 b) *To city commission.* Should an applicant for development approval or an affected  
183 party with demonstrated standing decide to appeal a decision of the planning and

- 184 zoning board or the historic resources preservation board the procedures set forth in  
 185 Sec. 23.2-16 shall apply except as modified herein.
- 186 1. ~~he~~The applicant or affected party shall submit to the development review official  
 187 a notice of appeal within fourteen (14) days of the ~~issuance of the~~ board's written  
 188 decision.
- 189 2. Thereafter, the applicant or affected party shall submit to the development review  
 190 official in writing the basis for the appeal within thirty (30) days of the board's  
 191 written decision; except appeals from decisions pertaining to variances shall be  
 192 appealed directly to circuit court as described in subsection c). The basis of  
 193 appeal must relate to the evidence and testimony presented to the planning and  
 194 zoning board or the HRPB. The basis of appeal should include all evidence the  
 195 appealing party would like to have the city commission review. New evidence is  
 196 not allowed and will not be considered.
- 197 3. The appeal shall be submitted with a city application and the applicable fee and  
 198 filed with the development review official. An affected party must have  
 199 participated in the hearing before the planning and zoning board or HRPB to  
 200 participate in an appeal before the city commission.
- 201 4. The development review official shall forward the appeal, the staff report, and the  
 202 board's decision to the city commission for review.
- 203 5. The development review official may also have the right to appeal a decision of  
 204 the planning and zoning board or the HRPB.
- 205 46. After courtesy notice as provided in this article, the city commission shall conduct  
 206 a quasi-judicial hearing, and shall consider those applications on appeal from the  
 207 planning and zoning board or the HRPB based on the record ~~made in the~~  
 208 ~~proceeding below~~ created at the planning and zoning board or the HRPB. The  
 209 considerations substantiating the decision of the city commission shall be  
 210 discussed. The city commission shall convey its decision in writing to the  
 211 ~~appellant~~ applicant, affected parties, if applicable, and to the development review  
 212 ~~official. The considerations substantiating the decision of the city commission~~  
 213 ~~shall be documented.~~
- 214 27. For appeals from the decisions of the HRPB regarding certificates of  
 215 appropriateness, the city commission shall consider the appeal within ninety (90)  
 216 days after the filing of the appeal. The city commission may uphold or reverse  
 217 the HRPB's decision in whole or in part or remand with instructions for further  
 218 consideration. ~~approve, approve with modifications or disapprove the application~~  
 219 ~~within ninety (90) days after the filing of the appeal.~~ A reversal of an HRPB  
 220 decision, whether in whole or in part, of the historic resources preservation board  
 221 shall require no less than four (4) votes of the full city commission or by no less  
 222 than three (3) votes of those in attendance, and in accordance with Section 23.5-  
 223 4(n)(2), a reversal shall be rendered only if the city commission determines that  
 224 the HRPB decision was contrary to law or arbitrary and capricious.
- 225 c) *To circuit court.* Any person or persons, jointly or severally, or entity, aggrieved by  
 226 ~~any~~ the decision of the city commission, after first exhausting all administrative  
 227 remedies, may present to a circuit court a petition for issuance of a writ of certiorari  
 228 pursuant to the Florida law. If a planning and zoning board or HRPB variance  
 229 determination is being appealed and is a part of an overall order being appealed for

230 certificates of appropriateness, site plans, etc., then the entire order shall be appealed  
231 to the circuit court and it is not necessary to exhaust administrative remedies by  
232 appealing any portion of the order to the city commission.

233 d) Quasi-judicial procedure. Quasi-judicial hearings on appeals shall be conducted  
234 generally in accordance with the following order of presentation, which may be  
235 adjusted by the chairperson. At these hearings no new evidence may be introduced  
236 and presentations will be limited to ten (10) minutes per party unless the time is  
237 extended by majority vote of the decisionmaking body.

- 238
- 239 1. Disclosure of ex parte communications and personal investigations.
  - 240 2. Presentation by city staff.
  - 241 3. Presentation by the applicant.
  - 242 4. Presentation by affected party, if applicable.
  - 243 5. Public Comment.
  - 244 6. Questions by the decisionmaking body.
  - 245 7. Closing of the public hearing.
  - 246 8. Deliberation by the decisionmaking body. The decisionmaking body shall  
247 be restricted to the record developed from the hearing before the  
248 appropriate board which shall include submissions from the applicant.  
249 The standard of review for these deliberations shall be competent,  
250 substantial evidence unless indicated otherwise in these LDRs.
  - 251 9. Action by the decisionmaking body.
- 252

253

254 **Section 4. Severability.** If any section, subsection, sentence, clause, phrase or  
255 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of  
256 competent jurisdiction, such portion shall be deemed a separate, distinct, and  
257 independent provision, and such holding shall not affect the validity of the remaining  
258 portions thereof.

259

260 **Section 5. Repeal of Laws in Conflict.** All ordinances or parts of ordinances in  
261 conflict herewith are hereby repealed to the extent of such conflict.

262

263 **Section 6. Codification.** The sections of the ordinance may be made a part of  
264 the City Code of Laws and ordinances and may be re-numbered or re-lettered to  
265 accomplish such, and the word "ordinance" may be changed to "section", "division", or  
266 any other appropriate word.

267

268 **Section 7. Effective Date.** This ordinance shall become effective 10 days after  
269 passage.

270

271

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

275

276 Mayor Pam Triolo  
277 Vice Mayor Andy Amoroso  
278 Commissioner Scott Maxwell  
279 Commissioner Omari Hardy  
280 Commissioner Herman Robinson

281  
282 The Mayor thereupon declared this ordinance duly passed on first reading on the  
283 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

284  
285  
286 The passage of this ordinance on second reading was moved by  
287 \_\_\_\_\_, seconded by \_\_\_\_\_, and upon being put to a vote,  
288 the vote was as follows:

289  
290 Mayor Pam Triolo  
291 Vice Mayor Andy Amoroso  
292 Commissioner Scott Maxwell  
293 Commissioner Omari Hardy  
294 Commissioner Herman Robinson

295  
296  
297 The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
298 \_\_\_\_\_, 2020.

301  
302 LAKE WORTH BEACH CITY COMMISSION

303  
304  
305 By: \_\_\_\_\_  
306 Pam Triolo, Mayor

307  
308 ATTEST:

309  
310  
311 \_\_\_\_\_  
312 Deborah Andrea, CMC, City Clerk