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3 **ORDINANCE 2021-01 - AN ORDINANCE OF THE CITY OF LAKE**  
4 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND**  
5 **DEVELOPMENT REGULATIONS,” ARTICLE 1, “GENERAL**  
6 **PROVISIONS,” DIVISION 2 “DEFINITIONS,” SECTION 23.1.12**  
7 **“DEFINITIONS” TO ADD AND CLARIFY USE DEFINITIONS; ARTICLE**  
8 **2, “ADMINISTRATION”, DIVISION 2 “PROCEDURES,” SECTION 23.2-**  
9 **16 “QUASI-JUDICIAL PROCEDURES” TO UPDATE AND CLARIFY**  
10 **PROVISIONS RELATED TO AFFECTED PARTIES; AND AMENDING**  
11 **DIVISION 1 “GENERALLY,” SECTION 23.3-6 “USE TABLES” TO**  
12 **ALLOW FOR TAKE OUT ESTABLISHMENTS BY ZONING DISTRICT**  
13 **AND TO MODIFY THE ZONING DISTRICT AND REVIEW PROCESS FOR**  
14 **SEVERAL USES; AND ADDING A NEW SECTION 23.4-23 – “TAKE OUT**  
15 **ESTABLISHMENTS” TO CREATE DEVELOPMENT REVIEW**  
16 **STANDARDS FOR TAKE OUT ESTABLISHMENT USES; AND**  
17 **PROVIDING FOR SEVERABILITY, THE REPEAL OF LAWS IN**  
18 **CONFLICT, CODIFICATION, AND AN EFFECTIVE DATE.**  
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20 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State  
21 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the  
22 “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct  
23 municipal government, perform municipal functions, and render municipal services, and  
24 may exercise any power for municipal purposes, except as expressly prohibited by law;  
25 and  
26

27 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing  
28 body of each municipality in the state has the power to enact legislation concerning any  
29 subject matter upon which the state legislature may act, except when expressly prohibited  
30 by law; and  
31

32 **WHEREAS**, the City wishes to amend Chapter 23 Land Development  
33 Regulations,” Article 1 “General Provisions,” Division 2 “Definitions,” Section 23.1.12  
34 definitions, to add and modify definitions to clarify several existing uses and to define the  
35 new use, “Take-out Establishments;” and  
36

37 **WHEREAS**, the City wishes to amend Chapter 23 Land Development  
38 Regulations,” Article 2 “Administration,” Division 2 “Procedures,” Section 23.2-16 Quasi-  
39 judicial Procedures, to clarify that only one continuance is permitted for all affected parties  
40 to ensure that the City does not run afoul of development review time limitations for local  
41 governments as set forth in Florida law; and  
42

43 **WHEREAS**, the City wishes to amend Chapter 23, Article 3 “Zoning Districts,”  
44 Division 1 “Generally,” Section 23.3-6 Use Tables to allow for take-out by zoning district  
45 and modify required review process by zoning district for severale; and  
46

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

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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

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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.

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

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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.

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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**.

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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**.

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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.

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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.

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99 **Section 12: Codification.** The sections of the ordinance may be made a part of  
100 the City Code of Laws and ordinances and may be re-numbered or re-lettered to  
101 accomplish such, and the word "ordinance" may be changed to "section", "division", or  
102 any other appropriate word.

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104 **Section 13: Effective Date.** This ordinance shall become effective 10 days after  
105 passage.

106  
107 The passage of this ordinance on first reading was moved by  
108 \_\_\_\_\_, seconded by \_\_\_\_\_, and upon  
109 being put to a vote, the vote was as follows:

- 110
- 111 Mayor
- 112 Commissioner
- 113 Commissioner
- 114 Commissioner
- 115 Commissioner Herman Robinson

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118 The Mayor thereupon declared this ordinance duly passed on first reading on the  
119 \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

- 125
- 126 Mayor
- 127 Commissioner
- 128 Commissioner
- 129 Commissioner
- 130 Commissioner Herman Robinson

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132  
133 The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
134 \_\_\_\_\_, 2021.

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136 LAKE WORTH BEACH CITY COMMISSION

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139 By: \_\_\_\_\_  
140 \_\_\_\_\_, Mayor

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142 ATTEST:

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145 \_\_\_\_\_  
146 Deborah Andrea, CMC, City Clerk  
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**EXHIBIT A**

**Chapter 23**

**CODE OF ORDINANCES ARTICLE 1 "GENERAL PROVISIONS"**

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*Division 2 - Definitions*

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**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.

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**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.

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**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.

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**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.

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**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.

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**EXHIBIT B**

## Chapter 18

## CODE OF ORDINANCES ARTICLE 2 "ADMINISTRATION"

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*Division 2 - Procedures*

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

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- 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 have the right to one (1) continuance. Affected parties, whether individually or collectively, shall have the right to request 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. If the continuance is granted, t The decisionmaking body will continue the hearing to a fixed date, time and place. 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.

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**EXHIBIT C**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

*Division 1 "Generally"*

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**Sec. 23-3.6 – Use Tables.**

*Under separate cover*

**EXHIBIT D**

**Chapter 23**

**LAND DEVELOPMENT REGULATIONS ARTICLE 4 “DEVELOPMENT STANDARDS”**

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[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.

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