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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**

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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

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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

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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.* The provisions of this section apply to all quasi-judicial hearings held
54 pursuant to these LDRs. Quasi-judicial hearings shall be conducted generally in
55 accordance with the following order of presentation:

- 56 1. Disclosure of ex parte communications and personal investigations
57 pursuant to subsection h below.
- 58 2. Presentation by city staff.
- 59 3. Presentation by the applicant.
- 60 4. Presentation by affected party, if applicable.
- 61 ~~45.~~ Public comment.
- 62 ~~56.~~ Cross-examination by city staff.
- 63 ~~67.~~ Cross-examination by the applicant.
- 64 8. Cross-examination by affected party, if applicable.
- 65 ~~79.~~ Cross-examination Questions by the decisionmaking body.
- 66 ~~810.~~ Rebuttal or closing argument by the applicant.
- 67 ~~911.~~ Closing of the public hearing.
- 68 ~~1012.~~ Deliberation by the decisionmaking body. ~~Motion by the decisionmaking~~
69 ~~body with explanation.~~
- 70 ~~11.~~ ~~Discussion among members of the decisionmaking body.~~
- 71 ~~12.13.~~ Action by the decisionmaking body making reference to and entry of
72 specific findings. In the case of denials a citation(s) shall be provided
73 referencing to the legal authority (e.g., code citation) forming the basis
74 of the denial.

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

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

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

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

93 irrelevant and merely designed to harass, intimidate or embarrass the individual, the
94 chair may terminate the cross-examination.

95 e) *Affected parties.* Affected parties, as defined in section 23.1-12 (Definitions), (1) shall
96 be allowed to present evidence, to produced witnesses, and to cross-examine
97 witnesses produced by others; (2) may appeal final decisions of staff, HRPB, planning
98 and zoning board, or city commission; and (3) may file suit to enforce the provisions
99 of this article should the city fail or decline to do so. Notwithstanding the foregoing;
100 however, in any suit brought by an affected party, the applicable circuit court shall
101 determine whether the affected party has the requisite standing to bring suit. An
102 affected party who wishes to participate as a party in the quasi-judicial hearing must
103 fill out a city form and deliver it to the Department of Community Sustainability at least
104 five (5) days before the hearing. Failure to follow the process shall be deemed a
105 waiver and the affected party will not be allowed to participate in the quasi-judicial
106 hearing.

107 f) *Deliberation.* After the presentations, and at the conclusion of any continuances, the
108 decisionmaking body shall deliberate on the application ~~or appeal, as the case may~~
109 ~~be.~~ Once the decisionmaking body begins its deliberations no further presentations
110 or testimony shall be permitted except at the sole discretion of the decisionmaking
111 body. The decisionmaking body's decisions must be based upon competent
112 substantial evidence in the record.

113 g) *Continuance.* The decisionmaking body may, on its own motion or at the request of
114 an applicant, continue the hearing to a fixed date, time and place. The applicant shall
115 have the right to one (1) continuance; however, all subsequent continuances shall be
116 granted at the sole discretion of the decisionmaking body. Notwithstanding the
117 foregoing, a continuance shall not be granted if to do so would delay a decision on
118 an appeal from the HRPB regarding a certificate of appropriateness beyond the
119 ninety-day requirement specified in section 23.2-17.

120 h) *Ex parte communications.* Members of the decisionmaking body shall disclose on the
121 record any ex parte communications and personal investigations regarding pending
122 quasi-judicial decisions in accordance with applicable Florida law.

123 1. Members of the decision-making body shall disclose on the record any ex parte
124 communications, site visits, expert opinions sought, and personal investigations
125 regarding pending quasi-judicial decisions prior to any final action on the matter.

126 2. The substance of any ex parte communication shall be disclosed including the
127 subject of the communication and the identity of the person, group, or entity with
128 whom the communication took place.

129 3. Any written communication shall be made part of the record.

130 4. Any site visit, personal investigation or expert opinions received shall be
131 disclosed and made part of the record.

132 5. Pursuant to section 286.0115(1), Florida Statutes, the foregoing process
133 removes the presumption of prejudice from ex parte communications.

134 i) *Official file.* All written communication received by a decisionmaking body or staff
135 concerning an application, the staff report on the application, any petitions or other
136 submissions from the public, and all other documents pertaining to the application

137 upon receipt shall be filed in the official file for the application, which shall be
138 maintained by staff. The comprehensive plan and the City Code of Ordinances shall
139 be deemed to be part of the official file. The official file shall be available for inspection
140 during normal business hours.

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

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

153
154 **Section 3.** Chapter 23 “Land Development Regulations,” Article 2,
155 “Administration,” Division 2 “Procedures,” Section 23.2-17 “Appeals” of the City’s Code of
156 Ordinances, is hereby amended by adding the words shown in underlined type and
157 ~~deleting~~ the words as struck through.

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159 Sec. 23.2-17. - Appeals.

160
161 a) *To planning and zoning board and historic resources preservation board.* An
162 applicant may appeal a final decision of the development review official to the
163 planning and zoning board or the historic resources preservation board, as
164 applicable. The procedures set forth below and in subsection d) shall be followed.

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

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

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

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

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

182 zoning board or the historic resources preservation board the procedures set forth
 183 below and in subsection d) shall be followed.

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

187 2. Thereafter, the applicant or affected party shall submit to the development review
 188 official in writing the basis for the appeal within thirty (30) days of the board's
 189 written decision; except appeals from decisions pertaining to variances shall be
 190 appealed directly to circuit court as described in subsection c). The basis of
 191 appeal must relate to the evidence and testimony presented to the planning and
 192 zoning board or the HRPB. The basis of appeal should include all evidence the
 193 appealing party would like to have the city commission review. New evidence is
 194 not allowed and shall not be considered.

195 3. The appeal shall be submitted with a city application and the applicable fee and
 196 filed with the development review official. An affected party must have
 197 participated in the hearing before the planning and zoning board or HRPB to
 198 participate in an appeal before the city commission.

199 4. The development review official shall forward the appeal, the staff report and
 200 other relevant documents reviewed at the planning and zoning board or HRPB
 201 meeting, and the board's decision to the city commission for review.

202 5. The development review official may also have the right to appeal a decision of
 203 the planning and zoning board or the HRPB.

204 46. After courtesy notice as provided in this article, the city commission shall conduct
 205 a ~~quasi-judicial~~ hearing, and shall consider those applications on appeal from the
 206 planning and zoning board or the HRPB based on the record ~~made in the~~
 207 ~~proceeding below~~ created at the planning and zoning board or the HRPB
 208 meeting. The considerations substantiating the decision of the city commission
 209 shall be discussed. The city commission shall convey its decision in writing to the
 210 appellant applicant, affected parties, if applicable, and to the development review
 211 official. The considerations substantiating the decision of the city commission
 212 shall be documented.

213 27. For appeals from the decisions of the HRPB regarding certificates of
 214 appropriateness, the city commission shall consider the appeal within ninety (90)
 215 days after the filing of the appeal. The city commission may uphold or reverse
 216 the HRPB's decision in whole or in part or remand with instructions for further
 217 consideration. ~~approve, approve with modifications or disapprove the application~~
 218 within ninety (90) days after the filing of the appeal. A reversal of an HRPB
 219 decision, whether in whole or in part, of the historic resources preservation board
 220 shall require no less than four (4) votes of the full city commission or by no less
 221 than three (3) votes of those in attendance, and in accordance with Section 23.5-
 222 4(n)(2), a reversal shall be rendered only if the city commission determines that
 223 the HRPB decision was contrary to law or arbitrary and capricious.

224 c) *To circuit court.* Any person or persons, jointly or severally, or entity, aggrieved by
 225 ~~any~~ the decision of the city commission, after first exhausting all administrative
 226 remedies, ~~may~~ shall present to a circuit court a petition for issuance of a writ of

227 certiorari pursuant to the Florida law. If a planning and zoning board or HRPB
228 variance determination is being appealed and is a part of an overall order being
229 appealed for certificates of appropriateness, site plans, etc., then the entire order shall
230 be appealed to the circuit court and it is not necessary to exhaust administrative
231 remedies by appealing any portion of the order to the city commission.

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

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- 238 1. Disclosure of ex parte communications and personal investigations.
 - 239 2. Presentation by city staff.
 - 240 3. Presentation by appealing party.
 - 241 4. Presentation by applicant, if not the appealing party.
 - 242 5. Questions by the decisionmaking body.
 - 243 6. Closing of the public hearing.
 - 244 7. Deliberation by the decisionmaking body. The decisionmaking body shall
245 be restricted to the record developed from the hearing before the
246 appropriate board which shall include submissions from the applicant and
247 affected party, if applicable. The standard of review for these
248 deliberations shall be competent, substantial evidence unless indicated
249 otherwise in these LDRs.
 - 250 8. Action by the decisionmaking body.
- 251

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

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

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

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266 **Section 7.** Effective Date. This ordinance shall become effective 10 days after
267 passage.

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270 The passage of this ordinance on first reading was moved by
271 _____, seconded by _____, and upon
272 being put to a vote, the vote was as follows:

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Mayor Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2020.

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 Pam Triolo
Vice Mayor Andy Amoroso
Commissioner Scott Maxwell
Commissioner Omari Hardy
Commissioner Herman Robinson

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Deborah Andrea, CMC, City Clerk