

ORDINANCE 2022-23 – AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION,” ARTICLE X “SUPPLEMENTAL CODE COMPLIANCE PROCEDURES,” SECTION 2-86 “CODE CITATION PROCEDURES; APPEALS,” SECTION 2-87 “CIVIL PENALTIES,” AND SECTION 2-88 “CLASSIFICATION OF INFRACTIONS,” PROVIDING FOR CONSISTENCY WITH CHANGES IN CODES TO BE ENFORCED AND FOR OTHER PURPOSES; AND PROVIDING FOR SEVERABILITY, CONFLICTS, 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 has adopted supplemental code enforcement procedures in Chapter 2 “Administration”, Article X “Supplemental Code Enforcement Procedures”; and

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

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

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

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

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

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

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

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

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

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

(d) A citation issued pursuant to this section shall contain:

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

(e) A respondent may avoid an appearance before the special magistrate by timely complying with the code section cited, requesting and passing an inspection, and electing to pay a fine and administrative costs as provided on the issued citation. However, the respondent may otherwise elect to contest the violation cited and appear before the special magistrate to contest the violation cited, and at that time must bring any witnesses or evidence to be presented at the special magistrate hearing. If the respondent wishes to contest the violation, he or she shall deliver a written request for a hearing to the code enforcement clerk within the time given on the citation. The request shall include the

respondent's name, citation number, code section/ordinance number that was violated, date of issuance of the citation, and the respondent's current telephone number and mailing address. The city will mail the notice of hearing by regular mail to the mailing address provided. If a fine or costs, or both, is not paid in accordance with the citation, if the respondent fails to contest the citation within the time afforded by the citation, or if the respondent fails to appear at the special magistrate hearing, the respondent shall have waived all rights to a hearing. Thereafter, an order may be entered by the special magistrate against the respondent in an amount up to the maximum permitted by law. If the respondent fails to timely comply with the code section cited and the special magistrate determines that the violation exists, the respondent may be subject to daily fines as determined by the special magistrate. Further, if the fine and costs are not timely paid prior to the hearing and the special magistrate determines a violation occurred, the respondent will be subject to additional administrative costs and fees. Once a ~~find~~ fine is paid, or if unpaid, after the date set for payment in the code citation, it is deemed to be conclusive proof of the violation for the purpose of establishing a later repeat violation.

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

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

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

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

Sec. 2-87. - Civil penalties.

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

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

- (1) For a Class I infraction, fifty dollars (\$50.00) plus a reinspection fee, if required.
- (2) For a Class II infraction, seventy-five dollars (\$75.00) plus a reinspection fee, if required.
- (3) For a Class III infraction, one hundred twenty-five dollars (\$125.00) plus a reinspection fee, if required.
- (4) For a Class IV infraction, two hundred fifty dollars (\$250.00) plus a reinspection fee, if required.
- (5) For a Class V infraction, five hundred dollars (\$500.00) plus a reinspection fee, if required.

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

Sec. 2-88. - Classification of infractions.

(a) *Class I.*

- (1) Violations of the building code of the city, as adopted in section 9-2 of the Code of Ordinances, not specifically enumerated in this section.
- (2) Violations involving recreational vehicles or boats.
- (3) Obstruction of public right-of-way.
- (4) Violations involving conduct in parks and recreation areas, municipal beach areas, and on public property, as adopted in Chapter 7 of the Code of Ordinances, not specifically enumerated in this section.

(b) *Class II.*

- (1) Violations of the Property Maintenance Code, as adopted in section 2-75.6 of the Code of Ordinances, not specifically enumerated in this section.
- (2) Violations involving solid waste, refuse, garbage, rubbish or trash.
- (3) Violations involving fences, walls or hedges.
- (4) Violations of the sign code, as adopted in ~~Chapter 23, Article XXVIII~~ section 23.5-1, of the Code of Ordinances, not specifically enumerated in this section.
- (5) Abandoned property on private property.
- (6) Violations involving landscaping.

(c) *Class III.*

- (1) Performing work without a required permit.
- (2) Violations of the Code of Ordinances not specifically enumerated in this section.
- (3) Violations of the zoning ordinance, as adopted in Chapter 23 of the Code of Ordinances, not specifically enumerated in this section.
- (4) Violations of Chapter 14 of the Code of Ordinances (use and occupancy certificates, business tax receipts, and business regulations).
- (5) Prohibited or unsafe signs.
- (6) Violations involving a required visibility triangle.

(d) *Class IV.*

- (1) Violations of "cease and desist" or "stop work" orders.
- (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 18th day of October, 2022.

The passage of this ordinance on second reading was moved by Commissioner Stokes, seconded by Commissioner Diaz, 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 the 1st day of November, 2022.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk