

34 **WHEREAS**, after conducting an analysis of the operations of other south Florida
35 municipalities with respect to the imposition of such a registration fee, Town staff has concluded
36 that many municipalities have business registration programs pursuant to which, the
37 municipalities register business enterprises; and

38 **WHEREAS**, Town staff is recommending that the Town Commission adopt this
39 Ordinance which establishes an annual business registration fee for such businesses, professions,
40 and occupations; and

41 **WHEREAS**, the Town will incur expenses as a result of regulating certain businesses in
42 the interest of protecting its residents and visitors;

43 **WHEREAS**, in enacting this Ordinance and establishing a Town business registration fee
44 procedure, the Town is authorized pursuant to Section 166. 021, F.S. to recover the
45 administrative costs of this consumer protection activity on such businesses, occupations, and
46 professions; and

47 **WHEREAS**, the Town Commission, after due notice and public hearings, has
48 determined that the adoption of registration fees would further the public health, safety and
49 general welfare.

50 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
51 **THE TOWN OF LAKE PARK:**

52 **Section 1.** The whereas clauses are hereby incorporated as true and correct as the
53 legislative findings of the Town Commission.

54 **Section 2.** Chapter 2, Article VI, Sections 2-320, 2-321, 2-322, 2-323, and 2-324 of the
55 Code of Ordinances of the Town of Lake Park, Florida are hereby created to read as follows:

56 **Article VI. TOWN BUSINESS REGISTRATION FEE ESTABLISHED.**

57 **Sec. 2-320. Business registration fee required for certain businesses.**

58 (a) Pursuant to F.S. § 166.221, the Town is authorized to levy reasonable business,
59 professional, and occupational regulatory fees, commensurate with the cost of the
60 regulatory activity, including consumer protection, on such classes of businesses,
61 professions, and occupations, the regulation of which has not been preempted by
62 the state or Palm Beach County pursuant to its Charter.

63 (b) The business registration fee shall be applicable to all persons, businesses,
64 professions, occupations, or other entities who conduct, perform, carry-on, and
65 engage in any form of business within the Town, unless the business or trade is
66 regulated by the state of Florida Department of Business and Professional
67 Regulation or the provisions of Section 205.042, Fla. Stat., which authorizes a
68 business tax to be levied and paid to the Town.

69 (c) The amount of the Town's business registration fee shall be determined by the
70 Town Commission pursuant to the Town Commission's adoption of a Resolution
71 which may be amended from time to time. The Commission may choose to
72 amend the Resolution in order to adjust the business registration fee to ensure that
73 the fee is commensurate with the Town's cost of administering the regulation of
74 those businesses, occupations, and professions subject to regulation.

75 **Sec. 2-321. Application for business registration receipt.**

76 Any person or entity which is engaged in a business, occupation, or profession who is
77 required to pay a business registration fee to the Town shall submit a technically complete,

78 witnessed and notarized application on a Town generated application form to the Town's
79 Finance Department , together with the applicable business registration fee prior to commencing
80 any business activities or operations in the Town. As a prerequisite to obtaining a business
81 registration receipt, the applicant shall present to the Town's Finance Department either: (1) a
82 copy of the applicant's current certificate of good standing or fictitious name registration issued
83 by the Division of Corporations of the Florida Department of State; or (2) a written and sworn
84 statement, signed by the applicant, which sets forth the reasons why the applicant need not
85 comply with the Fictitious Name Act, and (3) a copy of the applicant's then-current original
86 business tax receipt issue by another municipality, county, or both. The applicant may also be
87 required to provide the Town with additional relevant information pertaining to the operations of
88 the business, occupation, or profession to be registered, should the Town deem that additional
89 information and/or data is required to make an informed determination on the disposition of the
90 application. If the application is determined to be technically sufficient and complete and the
91 applicable business registration fee is paid in full, the Town shall issue the applicant a business
92 registration receipt issued in the name of the business, occupation, profession, or other form of
93 business entity.

94 **Sec. 2-322. Issuance of a business registration receipt.**

95 (a) Business registration receipts shall be sold by the Town's Finance Department
96 beginning on August 1 of each year, are due and payable on or before September
97 30 of each year, and expire on September 30 of the succeeding year. If
98 September 30 falls on a weekend or holiday, the fee is due and payable on or
99 before the first business day following September 30. A business registration

100 receipt is not valid for, and will not be issued for more than one (1) year. All
101 business registration receipts expire on September 30 of each year.

102 (b) Business registration receipts that are not renewed when due and payable, shall be
103 automatically deemed to be delinquent, and shall be subject to a delinquency
104 penalty of 10% for the month of October, plus an additional 5% penalty for each
105 subsequent month of the delinquency until paid in full. For each business
106 registration receipt obtained between October 1 and March 31, the full annual
107 business registration fee shall be paid by the applicant. For each business
108 registration receipt obtained by applicants between the period of April 1 and
109 September 1, one-half of the full annual business registration fees shall be paid by
110 the applicant. Upon payment of the applicable business registration fee the Town
111 shall issue a business registration receipt to the applicant, which receipt shall be
112 valid for a period of one year, and must thereafter be renewed for each year
113 thereafter the business, occupation or profession does business within the Town.

114 **Sec. 2-323. Conducting business based upon false statement prohibited.**

115 (a) It shall be unlawful for any person or entity to engage in any business,
116 profession, or occupation which is subject to this article to engage in its business,
117 occupation, or profession without a valid business registration receipt, or to
118 conduct business using a business registration receipt, which was issued, based by
119 the Town upon false statements made by a business tax receipt applicant or an
120 applicant's agent.

121 (b) Any business registration receipt that was issued based upon any false statement,
122 shall be deemed void *ab-initio*. In such event, the business registration receipt
123 shall not vest the business registration receipt holder with any rights or privileges,
124 nor shall the Town's issuance of the illegally issued business registration receipt
125 serve as any affirmative or other defense such as estoppel or waiver against the
126 Town. Furthermore, the illegally issued business registration receipt shall not
127 immunize or protect the business registration receipt holder (or its agent who
128 submitted same) from prosecution for transacting business without the requisite
129 business registration receipt.

130 **Sec. 3-324. Enforcement of violations of registration requirements.**

131 (a) Violations of the requirements of this article may be enforced by the Town
132 through the Town's Code Compliance Procedure in accordance with the
133 provisions of Chapter 162, Fla. Stat., and the Town Code. In the event of a
134 violation of this article, the Town also reserves its rights to pursue any and all
135 other legal remedies available to the Town.

136 (b) In any quasi-judicial, judicial, or other proceeding which is based upon a
137 violation(s) of this article, evidence that a person or entity is engaging in, or has
138 engaged in a business, occupation, or profession or other form of business entity
139 which requires a Town business registration receipt, including but not limited to
140 evidence that the violator and/or the violator's agents or tenants, displayed and/or
141 distributed advertising, signage, marketing materials and the like; placed business
142 listings in trade journals, phone books, websites, and/or other forms of media;

143 and/or any other indicia that the alleged violator is holding itself out to the public
144 as being engaged in a business, profession, occupation regulated by this article,
145 shall constitute prima facie evidence of the existence of the alleged violation. In
146 such case, there shall be a rebuttable presumption in favor of the Town that the
147 alleged violator is or was, engaging in a business, occupation, profession in
148 violation of this article, and the burden of proof shall be automatically shifted to,
149 and placed upon the violator. Thereafter, the alleged violator may seek to rebut
150 the presumption of a violation of this article by the presentation of relevant and
151 competent substantial evidence.

152 (c) A code enforcement proceeding or judicial proceeding may be commenced by
153 the Town against any person, or other entity that engages in, or manages any
154 business, occupation, profession within the Town for failing to: (1) obtain a
155 business registration receipt or for registering its business, occupation or
156 profession based upon the submission of an application which contains false
157 statements to the Town by the applicant or the applicant's agent, or, (2) failing to
158 pay the applicable business registration fee.

159 (d) Anyone who is found in violation of the provisions of this article shall be subject
160 to the imposition of a fine of up to \$250.00 per day, per violation, for each and
161 every day that a violation continues. In addition, a violator found in violation shall
162 also be subject to the imposition of the Town's delinquency penalty, and the
163 imposition of the Town's administrative costs and legal fees, the imposition of
164 liens on the real and personal property of the violator, and the award of any other

165 relief deemed necessary and appropriate by the presiding special magistrate,
166 hearing officer, compliance board, judge or tribunal.

167 (e) Any final order finding a violation of this article and imposing fines and costs for
168 the violation, shall constitute a valid lien in favor of the Town against all real and
169 personal property of the violator, as provided in Chapter 162, Fla. Stat., (2009), as
170 amended from time to time.

171 **Section 3. Severability.** If any section, subsection, sentence, clause, phrase, or portion
172 of this Ordinance is for any reason held invalid or unconstitutional by any court of competent
173 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and
174 such holding shall not affect the validity of the remaining portions thereof.

175 **Section 4. Repeal of laws in conflict.** All Ordinances or parts of Ordinances in conflict
176 herewith are hereby repealed to the extent of such conflict.

177 **Section 5. Codification.** The Sections of the Ordinance may be re-numbered or re-
178 lettered to accomplish such, and the word "Ordinance" may be changed to "Section", "article", or
179 any other appropriate word.

180 **Section 6. Effective Date.** This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 19 day of August, 2009, the foregoing Ordinance, was offered by Commissioner Rumsey who moved its approval. The motion was seconded by Commissioner Osterman and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 23 DAY OF August, 2009

Upon Second Reading this 2 day of September, 2009, the foregoing Ordinance, was offered by Commissioner Rumsey who moved its adoption. The motion was seconded by Commissioner Daly, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 11-2009** duly passed and adopted this 2 day of September, 2009.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois
Mayor, Desca DuBois

ATTEST:

Vivian M. Lemley
Town Clerk, Vivian M. Lemley
(Town Seal)
TOWN OF LAKE PARK
SEAL
FLORIDA

Approved as to form and legal sufficiency:

Thomas J. Baird
Town Attorney, Thomas J. Baird