



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING OCTOBER 13, 2020

**6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
 - A. Employee Service Award - Officer Trevor Wyman 20 Years
 - B. Proclamation on Domestic Violence
- 6. APPROVAL OF MINUTES**
 - A. City Council Minutes September 22, 2020
 - B. City Council Special Minutes September 25, 2020

7. CONSENT AGENDA:

8. REPORTS OF THE CITY ATTORNEY:

- A. City Attorney Report

9. REPORTS OF THE CITY MANAGER:

- A. City Manager Report October 13, 2020

10. OLD BUSINESS:

- A. Ordinance 2020-03: Comprehensive Plan Amendment to create a new Future Land Use Goal, Objective and Policy that would allow the limited expansion of nonconforming single-family residential uses and structures on properties with the High Intensity Future Land Use.
- B. Ordinance 2020-11: Temporary Promotional Activities
- C. Ordinance 2020-12: Land Development Code Amendment Relating To Expansion of Non-Conforming Single-Family Residential Uses/Structures

11. NEW BUSINESS:

- A. Ordinance 2020-14 Relating to Trespass on City Property
- B. Discussion on number of Planning & Zoning Board members
- C. Consideration to cancel the City Council Meetings for November 24 and December 22

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC

AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-7635364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 711 or 1 8009558771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

WHEREAS, one in every four women will experience domestic violence during her lifetime; and

WHEREAS, victims should have help to find the compassion, comfort and healing they need, and domestic abusers should be punished to the full extent of the law; and

WHEREAS, fleeing domestic violence has caused women and children to be the fastest growing homeless population; and

WHEREAS, those experiencing domestic violence are encouraged to seek help by contacting the City of Daytona Beach Shores Public Safety Department at (386) 763-5321; The Beacon Center, which is Volusia County’s certified domestic abuse shelter at their 24-hour hotline at 386-255-2102; or The Family Life Center's 24-hour crisis hotline at 386-437-3505; and

WHEREAS, the President of the United States and Congress as well as other federal agencies have expressed a commitment to eliminating domestic violence both nationally and internationally;

Now Therefore I, Nancy Miller, by virtue of the authority vested in me as MAYOR of the City of Daytona Beach Shores, do hereby proclaim October 2020 as Domestic Violence Awareness Month in the City of Daytona Beach Shores in recognition of the important work done by domestic violence programs and victim’s service providers, and urge all citizens to actively participate in scheduled activities and programs by community organizations to work toward the elimination of personal and institutional violence against women and girls.

In witness whereof I have hereunto set my hand and caused the seal of this city to be affixed.

Mayor _____
Date *October 1, 2020* _____

MINUTES
CITY COUNCIL MEETING
September 22, 2020
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Becky Vose, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

- A. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Miller announced the agenda item. Finance Director Kurt Swartzlander explained that the Daytona News Journal made an error in printing the display ads. The ads will be reprinted in Wednesday's edition and the public hearing will be continued until Friday, September 25th at 5:01 pm. There were no changes made to either the millage rate or budget since the Sept. 9th meetings. Mayor Miller opened the public hearing but there were no public comments. City Attorney Vose read Resolution 2020-11 in its entirety. The public hearing was recessed until September 25th.

- B. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Miller opened the public hearing on the budget. There were no public comment to be made. City Attorney Vose read Resolution 2020-12 by title only. Mayor Miller recessed the hearing until September 25th.

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

6. APPROVAL OF MINUTES

- A. City Council Minutes September 9, 2020

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to approve the City Council Minutes of September 9, 2020.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

7. CONSENT AGENDA:

- A. Public Safety August monthly report
- B. Community Services August 2020 monthly Report
- C. Building Division August 2020 monthly Report
- D. August Financial Report

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

8. REPORTS OF THE CITY ATTORNEY:

- A. City Attorney Report 9/22

Attorney Vose reviewed her submitted report. The firm had worked on Code Enforcement issues, an Economic Development grant for Go Juice, and the resolution with Bank of American for debt repayment.

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report September 22, 2020

The City Manager provided an update on the construction of the 6h tennis court. It will be ready later this Fall. Beginning in October, some classes will resume at the Community Center. The IT department hopes to have the chambers ready to live stream the meetings in the near future. A few months ago, someone brought to the council's attention that the city spent 37% of the budget on personnel costs. It was intimated that this was a high percentage and out of line with select cities. The City Manager provided two tables of comparable cities both in size and coastal status, including Volusia County. Daytona Beach Shores is the 7th lowest percentage of 24 cities.

Public Safety Director Dembinsky received the 5th Amendment between Daytona Beach Shores and Volusia County for fire suppression services. It is a 2-year contract whereby the county pays \$65,000 each year. He asked that it be added to agenda for approval.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to Approve the 5th Amendment to the County Fire Suppression Services Agreement.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

Mr. Booker informed the council that earlier that day, he received word from USTA that the city would receive a \$20,000 grant for the 6th tennis court.

10. OLD BUSINESS:

A. Ordinance 2020-10: Amendment to Shores 109, LLC - City of Daytona Beach Shores Development Agreement

City Planner Stewart Cruz reminded the council that this ordinance would amend an existing Development Agreement with Shores 109 LLC. The developer had to scale down the project to fit his budget due to increased construction costs. The city's obligation is still \$57,000 for two easements needed on the property. City staff recommends approval.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to adopt Ordinance 2020-10 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

11. NEW BUSINESS:

A. Ordinance 2020-12: Land Development Code Amendment Relating To Expansion of Non-Conforming Single-Family Residential Uses/Structures

City Planner Stewart Cruz explained that the proposed ordinance would amend the Land Development Code to implement the comprehensive plan amendment, thereby allowing the limited expansion of non-conforming single family residential structures. The expansion would allow structures that meet the criteria to expand to "fill in" and or "square off" up to the current building footprint and no higher than the roof line. If adopted, there are very few properties that would benefit. Staff recommended approval.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MICHAEL POLITIS to approve Ordinance 2020-12 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

B. Bank of America Bond Pre-payment Resolution

Finance Director Kurt Swartzlander explained that the resolution was a requirement by Bank of America in order to pay off the debt in advance. The resolution will allow the City Manager to pay off the debt as money becomes available. One loan is set to paid prior to September 30th of this year. The remaining two would be paid in 2021 once the tax revenue is collected. This allows the city to be debt free while not raising taxes.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to adopt Resolution 2020-13 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

C. Economic Development Grant Application 12020025: Smith & Juice, LLC - Go Juice

City Planner Stewart Cruz stated that the city had received a grant application on August 25th requesting a new business lease subsidy grant totaling \$11,880 over the course of three years. The business is a Go Juice franchise. They have signed a five year lease on the property and intend to build out the interior. Both the Economic Development Committee and staff recommend approval. The business hopes to be open by the first of the year.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve Economic Development Grant Application 12020025: Smith & Juice, LLC - Go Juice.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

D. Appointment of Board Member to Planning & Zoning Board for three year term

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to Appoint John Schmitz to the Planning & Zoning Board for three year term.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

E. Discussion on issuing RFP for sale of 136 Beachcomber property.

Finance Director Kurt Swartzlander stated that the city had received multiple offers for the property over the last few months. It had been appraised at \$300,000. Staff felt a formal Request For Proposal would be more appropriate. After a brief discussion, the council came to a consensus to have staff work with the City Attorney to put together an RFP.

12. COUNCIL COMMENTS:

Vice Mayor Bryan wanted to discuss the payment of debt. It was his opinion that the city could save approximately \$40,000 over the next four years if the remaining two swaps were not paid next year. The remaining councilmembers did not share his opinion and wanted to pay the swaps off as discussed and voted on previously. Vice Mayor Bryan also felt the city should not purchase the ultra violet system to aide in aerosol transmission related to COVID19. He felt there was no real dat to support the purchase and other alternatives such as air purifiers would work. Mayor Miller announced that the new Chase Bank should be open by the second week in October. There is a concert on Friday with the Endless Summer Band.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Harry Jennings applauded both city staff and the council members for arranging to pay off the remaining debt. He felt it would be a great opportunity to go back into the county enclaves and attempt to annex them into the city. We have a better tax rate then the county offers.

Tony Rembiszewski was concerned with the number of banks that had closed in the city as it was an inconvenience to drive over the bridge. Mayor Miller explained that many people just utilize online banking now and this is happening all over, not just in our city.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

The meeting ended at 6:59 pm.

MAYOR

CITY MANAGER

NANCY MILLER

MICHAEL T. BOOKER

ATTEST:

CITY CLERK, CHERI SCHWAB

MINUTES
CITY COUNCIL MEETING
September 22, 2020
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

Staff: City Clerk Cheri Schwab

2. NEW BUSINESS:

A. Interview Board Member for Re-Appointment

There was only one board member up for re-appointment to the Planning & Zoning Board, John Schmitz. Mayor Miller thanked him for his time previously served as Chairman. She inquired what he felt the biggest accomplishment of the board had been. Mr. Schmitz responded with making the meetings more efficient. An example he provided was having the board review Development Agreements. When asked what the biggest obstacle for the board had been, his response was allowing citizens an unlimited time to speak. The board recently enacted the three minute rule for speakers similar to the City Council. Mayor Miller asked if he was appointed for another three year term, what changes if any would he like to see. Mr. Schmitz answered that he would like to see the board go back to only a five member board. He also felt that the alternate board members should attend the meetings on a regular basis. The Mayor explained that there would be an item on an upcoming agenda to discuss the number of board members. Mr. Schmitz thanked the council and remarked he still enjoys serving on the board.

3. ADJOURNMENT:

The meeting ended at 5:41 pm.

MAYOR
NANCY MILLER

CITY MANAGER
MICHAEL T. BOOKER

ATTEST:

CITY CLERK, CHERI SCHWAB

MINUTES
CITY COUNCIL MEETING
September 25, 2020
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis
Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

- A. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Miller reopened the public hearing at 5:01 pm. City Manager Michael Booker read Resolution 2020-11 in its entirety. The final millage rate will be set at 5.046 mills and the voted debt service at 1.7350 mills. There were no public comments.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to adopt RESOLUTION 2020-11 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Miller opened the hearing for the budget resolution. City Manager Michael Booker read Resolution 2020-12 by title only. There were no public comments.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to adopt RESOLUTION 2020-12 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

3. AUDIENCE REMARKS/PUBLIC COMMENTS:

4. ADJOURNMENT:

The meeting ended at 5:07 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



Article II, Section 8, *Constitution of the State of Florida*: ***“Ethics in government.—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”***

“LIFE IS BETTER HERE.”

**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 13, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council
COPIES TO: Mike Booker, City Manager
Cheri Schwab, City Clerk
FROM: Becky Vose, City Attorney
DATE: October 6, 2020
SUBJECT: ***City Attorney Report***

The following is intended as my written report to the City Council for matters arising subsequent to its last meeting of September 22, 2020. Please advise if you have any questions, comments or concerns relative to these matters.

(1) *Interagency Training Agreement*

The City Attorney reviewed and approved a proposed Interlocal Agreement for a Fire Training Tower to be constructed in Port Orange to be used by numerous local government fire services.

(2) *Economic Development Meeting*

The City Attorney attended an economic development meeting and provided legal counsel at the meeting.

(3) *Legal Advice as to Code Requirements for Fortunetellers*

The City Attorney provided legal advice as to background checks for fortunetellers and the effect of negative background information and the possible need to clarify the current city code provisions. The City Attorney also provided a legal review of a draft ordinance for the regulation of fortunetellers.

(4) *Legal Review of Shared Parking Ordinance*

The City Attorney provided a legal review and suggested edits of a draft ordinance for shared parking modifications in the land development code.

(5) *Legal Review of Proposed Modification of the Development Agreement for Atlantic Avenue Estates*

The City Attorney provided legal review of the lot configuration plan, site development plan, and the proposed amendment to the Development Agreement for Atlantic Avenue Estates.

(6) *Legal Advice as to Local Government Officials Involvement in Political Activities*

The City Attorney has conducted legal research and rendered legal advice as to the City posting information on its website for purposes of educating the citizenry as to ECHO and Volusia Forever Grants

Respectfully, submitted,

/s/ Becky Vose, City Attorney



CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"

Office of the City Manager

Phone (386) 763-5373 Fax (386) 763-5360

MEMORANDUM

DATE: October 6, 2020

TO: City Council: Mayor Nancy Miller; Vice Mayor Richard Bryan,
Council Member Rick Frizalone; Council Member Mel Lindauer, and
Council Member Michael Politis

FROM: Michael T. Booker, City Manager

SUBJECT: City Manager's Report – October 13, 2020

Halifax Health Services:

Halifax Health Services has chosen Crunch Construction to perform the demolition of our former Senior Center to make way for their urgent care facility.

Volusia County Polling Place:

The only polling place for registered voters in Daytona Beach Shores will be the Community Center. Election day is November 3rd.

Bocce Courts:

As of this writing, the finishing touches to the bocce ball courts. Lock boxes for the equipment will also be installed.



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 13, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2020-03: Comprehensive Plan Amendment to create a new Future Land Use Goal, Objective and Policy that would allow the limited expansion of nonconforming single-family residential uses and structures on properties with the High Intensity Future Land Use.

SYNOPSIS:

This is the second reading of Ordinance 2020-03, which, if adopted would amend the Daytona Beach Shores Comprehensive Plan to create a new Future Land Use goal, objective and policy that would allow the limited expansion of nonconforming single-family residential uses and structures on properties in the High Intensity Future Land Use (beachside) areas of the City. The impetus for this ordinance was direction from the City Council at its August 13, 2019 City Council meeting wherein the City Council inquired about a process for permitting the limited expansion of beachside nonconforming single-family properties in High Intensity (hotel/motel) areas. If approved, these properties would be able to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure. The state and Volusia Growth Management Commission have both approved the proposed amendment.

FISCAL IMPACT STATEMENT:

The current fiscal year has adequate funding to implement all technical and administrative actions needed to implement the subject proposal.

BACKGROUND:

On August 13, 2019 the Daytona Beach Shores City Council denied Special Exception SPEX12019016 relating to the expansion of a nonconforming single-family residence located at 3839 S. Atlantic Avenue (**Exhibit A**). The property was nonconforming because it is located in the High Intensity category on the Future Land Use Map of the City's Comprehensive Plan. High Intensity uses include hotels, motels and multifamily residential uses. Expanding nonconforming uses and structures are prohibited by City Code and inconsistent with the Comprehensive Plan. However, at the public hearing the City Council inquired about a way to allow the special exception . Ordinance 2020-03, if approved, would allow the property owner and others in similar situations to expand their nonconforming single-family uses and structures per the proposed goal, objective and policy below. **Exhibit B** attached illustrates the effect of the amendment if approved.

PROPOSED AMENDMENT LANGUAGE:

Goal 1-3: Goal 1-3: To protect private property rights by allowing certain limited changes to nonconforming uses that are fair and reasonable.

Objective 1-3.1: The City shall allow limited expansion of single-family residential uses and structures, even when non-conforming, with regard to properties which are designated a High Intensity Future Land Use Classification.

Policy 1-3.1.1: By December 31, 2020 the City shall amend the Land Development Code to allow the expansion of single-family residential structures pursuant to Objective 1-3.1 to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.

LEGAL REVIEW:

This change is approved as to form and legality.

RECOMMENDATION:

The state Land Planning Agency and Volusia Growth Management Commission have both approved the proposed amendment (**Exhibit C**). Staff recommends approval of Ordinance 2020-03 as presented.

SUGGESTED MOTION:

A Council Member may move as follows:

1. "I move to recommend approval of Ordinance 2020-03 as presented"
- OR
2. "I move to recommend approval of Ordinance 2020-03 with the following conditions..."
- OR
3. "I move to deny Ordinance 2020-03 on the basis of the following"

- ATTACHMENT:**
1. Exhibit A-CCMinutes-8-13-19
 2. Exhibit B-Illustration Effect of Proposed Amendment
 3. Exhibit C-External Agency Approval
 4. ORD 2020-03-CC 2nd Reading-SF Nonconforming Expansion
 5. Ord. 2020-03 Exhibit A

MINUTES
CITY COUNCIL MEETING
August 13, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

Staff: City Clerk Cheri Schwab, City Attorney Lonnie Groot, City Planner Stewart Cruz, Community Services Director Fred Hiatt, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

ROLL CALL BY CITY CLERK

1. Invocation and Pledge of Allegiance

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Employee Service Awards -

Stewart Cruz 15 years

Officer Billie Phillips 15 years

Community Services Director Fred Hiatt presented Stewart Cruz with his 15-year service award.

Public Safety Director Stephan Dembinsky presented Sgt. Billie Phillips with his 15-year service award.

B. Don Stoner to speak on Lighthouse Loop Half Marathon

Don Stoner spoke to the council requesting permission to hold the 8th Annual Lighthouse Loop Half Marathon and 5K. This year only the runners participating in the half marathon would run through the city. Part of the proceeds raised will be donated to the Volusia County High Schools. The council granted permission for the race.

C. Presentation by Rafael Montalvo Strategic Plan

Rafael Montalvo recapped the process of the strategic planning exercise that began in January and concluded in May. The five goals and their objectives were reviewed. The goals were: A) A vibrant, walkable City of Daytona Beach Shores with a redeveloped west side B) Pedestrian and vehicle safety on State Road A1A C) Transparency in government and effective communication among elected officials and staff, residents and businesses D) A range of recreational programs that meet the needs of residents, and introduce non-residents to the City E) A positive, cooperative relationship with Volusia County that promotes the early identification and cooperative resolution of issues F) Continued high levels of service for all public safety services.

2. APPROVAL OF MINUTES

A. Budget Workshop Minutes July 9, 2019

B. City Council July 9. 2019 Minutes

COUNCILMEMBER LINDAUER moved, seconded by COUNCILMEMBER FRIZALONE to approve both the Budget Workshop Minutes and the City Council Meeting of July 9, 2019.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

3. CONSENT AGENDA:

A. Public Safety Monthly Report

B. Monthly Finance Report

C. Building Division Report

D. Community Services Report

E. Renewal of Non-exclusive Franchise- Acet Recycling

COUNCILMEMBER LINDAUER moved, seconded by COUNCILMEMBER FRIZALONE to Approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

4. REPORTS OF THE CITY MANAGER:

A. City Manager's report for August 13, 2019

Finance Director Swartzlander was the Acting City Manager for the meeting. He provided the following report: the City has been registered with ASCAP, BMI and SESAC regarding song copyrighting; incentives for the economic development program are being developed; permission to list the city-owned property at 136 Beachcomber is being requested. It was appraised at \$300,000. It was noted, that the property would need to be sub-divided from Beachcomber Park, but that is a relatively quick simple process. The council gave their permission to list the property. He reminded everyone that the second meeting in August had been cancelled and that the first meeting in September would be held on Monday the 9th. He reported that the representatives for Halifax Health had signed the lease agreement for the Urgent Care building. It will be added to the next agenda.

5. REPORTS OF THE CITY ATTORNEY:

Attorney Groot reviewed his written report that he sent to the Council. He is drafting a policy for actions of individual City Councilmembers. Work sessions for both the charter and code amendments need to be scheduled. He updated the status on the opioid litigation case. The city is part of a group that consists of 16 counties and 9 cities. There has been no response yet on the AGO opinion regarding the recent fire cancer legislation. With the recent court decision relating to invocations, Resolution 2014-06 was shared with the Council. That resolution appointed Reverend Robert Kemp-Baird as the City Council Chaplain. Attorney Groot explained that the past practice of the city would be legally defensible. Mayor Miller responded that she would like to continue with past practice.

OLD BUSINESS:

NEW BUSINESS:

- A. Ordinance 2019-08 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ESTABLISHING THE CITY OF DAYTONA BEACH SHORES SUPPLEMENTAL ECONOMIC OR TOURISM DEVELOPMENT PROGRAM; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

Attorney Groot explained that the proposed Ordinance was part of the progressive economic development program. It specifically deals with Ad Valorem Tax and the ability to enter into agreements to provide tax relief in reverse. The city could give back a percentage of taxes for a designated length of time. It was explained that it is a tax neutral event for the city. CMBR Lindauer questioned one of the allowed development activities as being a landfill. He was assured that the Council would look at each agreement on a case-by-case basis and determine whether to approve it or not. Audience member Jim Cameron congratulated the council on their continued proactive movement.

COUNCILMEMBER LINDAUER moved, seconded by VICE MAYOR BRYAN to approve Ordinance 2019-08 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. Ordinance 2019-09 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO A PROGRAM OF ENHANCED CODE ENFORCEMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE CONDEMNATION AND DEMOLITION OF DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS; PROVIDING FOR A CERTIFICATE OF HABITABILITY; PROVIDING FOR ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE (AS MODIFIED); PROVIDING FOR AN ARRAY OF IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR REQUIREMENTS AND PROHIBITIONS; AMENDING SECTIONS 14- 61.1 AND 19-1.2. OF THE CITY CODE; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Groot explained that the proposed ordinance could be considered a de-incentive. It allows the city's code enforcement division to go one step further by adopting the International Property Maintenance Code. It will require a certificate of use and a certificate of habitability on new property.

COUNCILMEMBER POLITIS moved, seconded by VICE MAYOR BRYAN to approve Ordinance 2019-09 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- C. Resolution 2019-13 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE CITY'S TENNIS FACILITY; CREATING A CITY TENNIS FACILITY OPERATIONAL COMMITTEE AND PROVIDING FOR AN ARRAY OF MATTERS RELATING TO THE COMMITTEE; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Miller explained that she felt the issues within the tennis community had been resolved and this agenda item could be removed from consideration. Vice Mayor Bryan agreed there was no need for a tennis committee.

Audience member Honey Burget inquired if teams were allowed to play during the morning. She felt teams took away the courts from the residents. The response was affirmative, that GVTL teams could play as long as a resident made the reservation. She felt it was a conflict of interest and directed a few remarks towards CMBR Frizalone. Attorney Groot stated there was no conflict of interest as the facility is open to the public.

CMBR Politis explained that he was a member of GVTL at Oceanside Country Club. He appreciated the camaraderie of the team players and enjoys visiting other facilities. CMBR Frizalone requested that two GVTL men's teams be allowed to play at night and the council agreed.

D. Special Exception Application SPEX12019016: Banker Nonconforming Single-Family Residential Garage Expansion-3839 S. Atlantic Avenue

The Councilmembers began by stating that all had received a phone call from Attorney Stowers but only CMBR Politis had a conversation with him.

City Planner Stewart Cruz read from his staff report. The applicant submitted an application on April 29, 2019. If the special exception was granted, it would entitle the property to expand its residential garage structure. The owner would like to add a second floor over the garage. The property is located in the T-RMF-1 High Density (Hotel/Motel-Multifamily Residential) zoning district and is assigned the Comprehensive Plan's High Intensity Future Land Use. Both of these designations were in place prior to 2010 when the owner bought the property. The relevant Land Development Codes that are applicable do not mention a single family structure. The home as it exists is a legal non-conforming structure. Section 14-29.5 of the LDC refers to development of a small lots and pertains to the hotel/motel district only. Sections 14-18 and 14-21 do not include single-family uses as a permitted principle use. Florida Statutes Section 163.3194(1)(a) explains the legal status of the comprehensive plan. All development undertaken, and all actions taken shall be consistent with such plan adopted. The application came before the Planning & Zoning Board and they voted to deny the project based on the fact of the application being inconsistent with the comprehensive plan. Staff recommended denial of the application for the same reason. Exhibits were shown to the council displaying the location of the property along with the zoning and future land use maps. City Attorney Groot informed the council that if the development is inconsistent with your comprehensive plan, the law prohibits you to approve it.

Attorney James Stowers spoke for the applicant. He explained that the owner would like to do a small home renovation. He agrees that the property is a non-conforming structure. The house was originally built in 1970's and the owner only wants to expand the garage. It is only a 600 foot expansion. He felt that Section 14.29 of the LDC was very specific to small narrow lots on the east side of S. Atlantic Avenue. He felt it met some of the criteria for a small lot exception. It was his view that the expansion would not impact the public negatively and that the Florida Statutes would agree with him.

Donald Banker spoke on his own behalf. He explained that he purchased the house in 2010, but didn't do any due diligence. The house is not being rented out, it is only for family. They now have a larger family with 11 grandchildren and would like to build two more bedrooms and a bathroom.

The City Attorney reiterated, all new development must be consistent with the zoning classification. The use being proposed is a resident use, but the zoning is multi-family use. Council inquired of a legal way to allow the expansion. It was explained that it would need a comprehensive plan amendment. Director Fred Hiatt explained that staff has to adhere to the comprehensive plan and the law when it was reviewing the application.

COUNCILMEMBER POLITIS moved, seconded by COUNCILMEMBER FRIZALONE to approve the Special Exception Application SPEX12019016 as presented.

Vote: Motion denied by roll call vote (**summary:** Yes = 2 No = 3).

Yes: Councilmember Richard Frizalone, Councilmember Michael Politis

No: Nancy Miller, Richard Bryan, Mel Lindauer

- E. Non-Conforming Sign Removal Incentive Grant Application: Grand Prix Motel, 2015 S. Atlantic Avenue

City Planner Stewart Cruz provided details from his staff report. The sign grant is capped this year at \$3,900 and there are adequate funds for this project. The applicant did receive three bids and the lowest bidder was Coastal Sign. All requirements have been met and staff recommended approval.

COUNCILMEMBER LINDAUER moved, seconded by COUNCILMEMBER POLITIS to approve the Grand Prix Motel Nonconforming Sign Removal Incentive Grant application in the amount of \$3,900 on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- F. Consideration of date and time for board interviews

Interviews need to be scheduled for potential new Planning & Zoning Board members, Public Art & Beautification Committee members as well as the Special Magistrate. After a short discussion, it was decided to meet on Friday, September 20th at 1:00 pm.

- G. Consideration for contract with Stacy Conomos for promotion of economic development programs on social media

CMBR Frizalone provided a brief background on Ms. Conomos and her ability to utilize the social media platform. This would help advertise the new program and it's incentives.

COUNCILMEMBER FRIZALONE moved, seconded by COUNCILMEMBER POLITIS to approve the contract with Stacy Conomos for promotion of economic development programs on social media.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

H. Discussion on City Manager's Salary and Performance Evaluation

Mayor Miller began by stating that the current City Charter provided that the City Manager evaluation was a public record that should be reviewed during a public meeting. In the past, the evaluations were not discussed during a council meeting, but going forward that would be corrected. She stated that the current contract reads the city manager has an active part in the discussion. She requested to schedule a workshop before the next meeting at 5:30 pm to discuss the new format. The Mayor felt the council could use the forms provided to them for this year's evaluation. CMBR Lindauer shared his opinions from a recent meeting with the City Manager. It was his opinion that the City Manager was overstepping his bounds in relation to directing the City Attorney. He felt City Manager Booker had displayed unacceptable conduct in recent emails regarding this evaluation and the City Attorney. CMBR Politis stated that the remarks made by CMBR Lindauer were not appropriate as the City Manager was not present to defend himself. He stated that he would be out of the country on September 9th and requested an alternate date for the workshop. It was decided to hold the workshop on September 20th at 11:00 am.

Vice Mayor Bryan felt the current form did not have measurable objectives. He would like to have some included on a future format.

Audience member Rosana Scaccia spoke on behalf of the Peoples Voice PAC. They support having objectives for employee evaluations.

6. COUNCIL COMMENTS:

Mayor Miller inquired if the council would object to starting the meeting at 6:00 pm from now on. The others had no objection and the City Attorney stated he would prepare a resolution. She would also like to begin holding a monthly workshop prior to a council meeting to allow the members to have discussion on upcoming items. She reminded the audience that her Coffee with the Mayor was tomorrow (August 14th). Beginning in September, the start time will be moved to 10:00 am.

CMBR Lindauer explained that he has begun working with the existing businesses. He had a very productive lunch with Jim Cameron who is in charge of governmental relations with the Daytona Chamber. Vice Mayor Bryan requested the City Attorney determine what is involved with creating a small lot comp plan amendment for the Bankers.

7. AUDIENCE REMARKS/PUBLIC COMMENTS:

Rick Brown stated that he had been trying to research the vacant lot at 2900 S. Atlantic Avenue. He still feels it is a part of the Bellemead PUD and should remain green space. Mayor Miller asked Director Hiatt his opinion and he responded that it was not part of the final PUD. He invited Mr. Brown to his office to discuss the matter.

Linda Toffolon from the Daytona Diner inquired why an existing business had to wait three years to be eligible for any economic incentives. New businesses are awarded them immediately. Attorney Groot responded that the business loyalty program wouldn't start until 2022.

8. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

9. ADJOURNMENT:

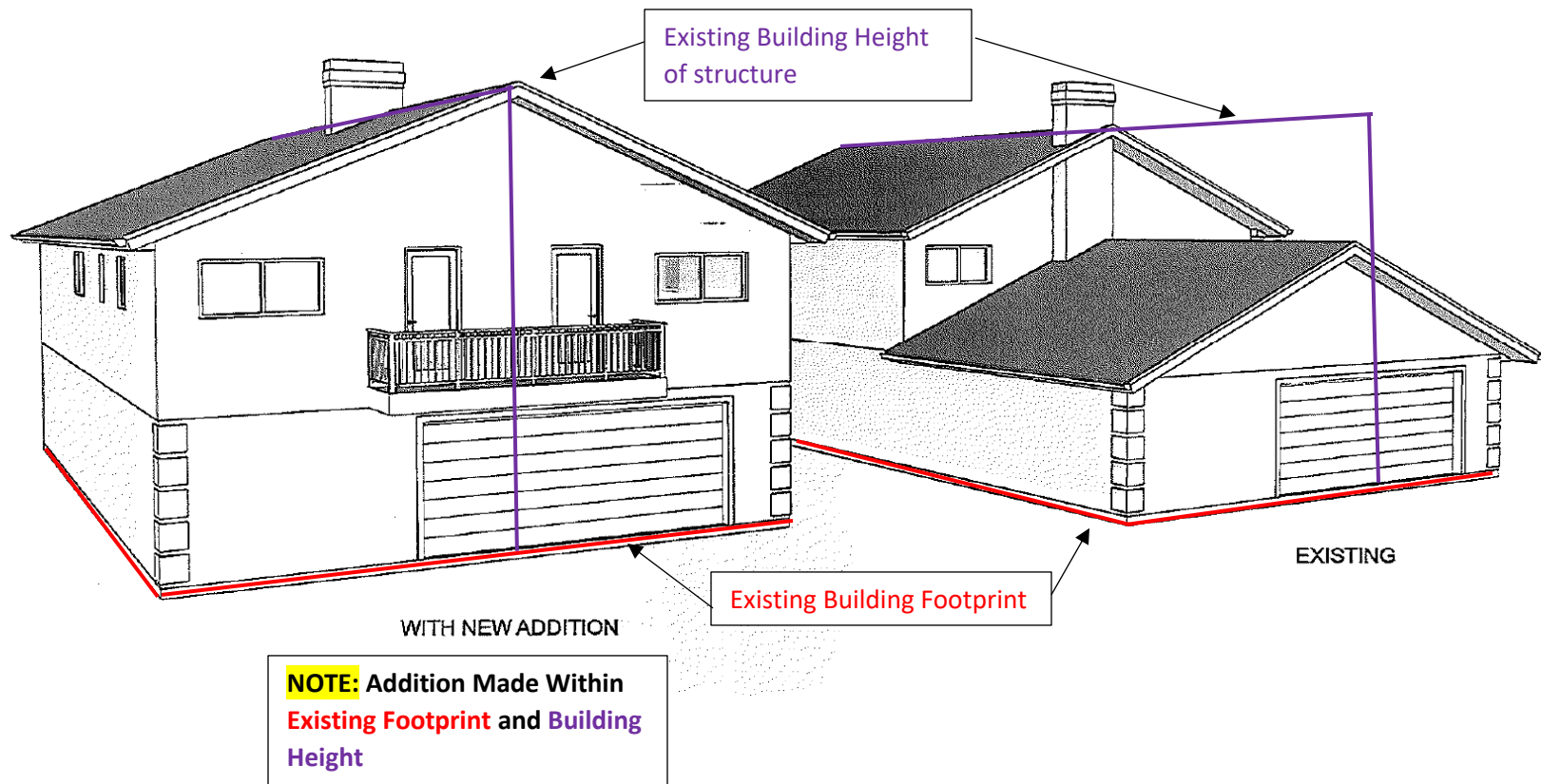
The meeting ended at 9:54 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



Policy 1-3.1.1: By December 31, 2020 the City shall amend the Land Development Code to allow the expansion of single-family residential structures subject to Objective 1-3.1 to expand **within and up to the existing building footprint** but in no case shall expansion **extend beyond the current building height of the structure.**



Volusia Growth Management Commission

September 28, 2020

Stewart Cruz, AICP, City Planner
City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, FL 32118

**RE: VGMC Case #20-058, City of Daytona Beach Shores
Large Scale Amendment – CPA12020001/Non-Conforming Single-Family
Structures
Certificate of Consistency**

Dear Mr. Cruz,

VGMC Case #20-058 qualifies for certification in accordance with Chapter 90, Article II. of the Volusia County Code of Ordinances, Volusia Growth Management Commission Consistency Certification Rules and Organization. Based upon the lack of objection filed by another unit of local government, VGMC Case #20-058 is hereby deemed certified as consistent without the need for a public hearing.

The Volusia Growth Management Commission appreciates the efforts of the City of Daytona Beach Shores to further intergovernmental cooperation and coordination in Volusia County. If you have any questions regarding this matter, please do not hesitate to call me.

Sincerely,

Sid Vihlen, Jr.
VGMC Chairman

Ron DeSantis
GOVERNOR



Dane Eagle
EXECUTIVE DIRECTOR

September 25, 2020

The Honorable Nancy Miller
Mayor, City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

Dear Mayor Miller:

The Department of Economic Opportunity ("Department") has reviewed the proposed comprehensive plan amendment for the City of Daytona Beach Shores (Amendment No. 20-01ESR) received on September 3, 2020. The review was completed under the expedited state review process: **We have no comment on the proposed amendment.**

The City should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment. In addition, the City is reminded that:

- Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the City. **If the City receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.**
- **The second public hearing**, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, **must be held within 180 days** of your receipt of agency comments or the amendment shall be **deemed withdrawn** unless extended by agreement with notice to the Department and any affected party that provided comment on the amendment pursuant to Section 163.3184(3)(c)1., F.S.
- **The adopted amendment must be rendered to the Department.** Under Section 163.3184(3)(c)2. and 4., F.S., the **amendment effective date** is 31 days after the Department notifies the City that the amendment package is complete or, if challenged, until it is found to be in compliance by the Department or the Administration Commission.

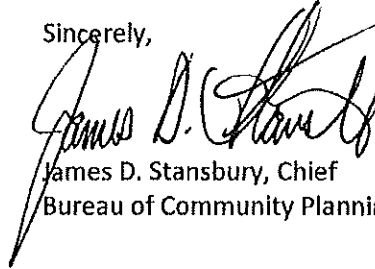
Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
850.245.7105 | www.FloridaJobs.org
www.twitter.com/FLDEO | www.facebook.com/FLDEO

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

The Honorable Mayor Miller
September 25, 2020
Page 2 of 2

If you have any questions concerning this review, please contact Wisnerson Benoit, Planning Analyst, by telephone at (850) 717-8524 or by email at Wisnerson.Benoit@deo.myflorida.com.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Stansbury".

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/wb

Enclosure(s): Procedures for Adoption

cc: Fred Hiatt, Community Services Director, City of Daytona Beach Shores
Hugh Harling, Jr., P.E., Executive Director, East Central Florida Regional Planning Council

ORDINANCE NO: 2020-03

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING *THE CITY OF DAYTONA BEACH SHORES COMPREHENSIVE PLAN*, AMENDING CHAPTER 1, “FUTURE LAND USE ELEMENT”, BY CREATING A NEW FUTURE LAND USE GOAL TO ALLOW LIMITED EXPANSION OF NONCONFORMING SINGLE-FAMILY RESIDENTIAL USES AND STRUCTURES ON PROPERTIES WITH THE HIGH INTENSITY FUTURE LAND USE CLASSIFICATION; PROVIDING FOR A SAVINGS AND RATIFICATION PROVISION; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach Shores is committed to planning and managing the future growth of the City; and

WHEREAS, the City of Daytona Beach Shores has the authority to amend its Comprehensive Plan pursuant to Part II, Chapter 163, *Florida Statutes*; and

WHEREAS, the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* directly relates to the amendment of the text of a comprehensive plan as provided in Section 163.3184, *Florida Statutes*; and

WHEREAS, the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* is being submitted under the expedited state review process as provided in Section 163.3184, *Florida Statutes*; and

WHEREAS, the Volusia County Growth Management Commission (VGMC) has issued a determination of consistency in accordance with Section 202.3 of the *Charter of Volusia County, Florida*, for the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan*, attached as Exhibit “A”; and

WHEREAS, the proposed comprehensive plan amendment does not conflict with the determination of consistency issued by the VGMC in accordance with Section 202.3 of the *Charter of Volusia County, Florida*; and

WHEREAS, the Planning and Zoning Board, which is the local planning agency of the City, and City Council of the City of Daytona Beach Shores have conducted public hearings and issued notices required by Florida law in the preparation and enactment of this Ordinance; and

WHEREAS, on August 13, 2019 the City Council of the City of Daytona Beach Shores inquired as to a way in which the City could allow the reasonable expansion nonconforming single-family residential uses and structures in the High Intensity Future Land Use Classification; and

WHEREAS, the City Council of the City of Daytona Beach Shores declares that the purpose and intent of the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* is to guide future growth and development; encourage and maximize the most appropriate use of the land, water and other resources, consistent with the public interest, promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; provide adequate facilities and services; conserve and protect natural resources within the City, while protecting private property rights; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that this Ordinance serves the best interest of the City of Daytona Beach Shores; and

WHEREAS, underlined words shall constitute additions to the original text of the Comprehensive Plan, *** shall constitute ellipses, and ~~strike through~~ shall constitute deletions to the Comprehensive Plan.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AS FOLLOWS:

SECTION ONE: CHANGE IN TEXT OF FUTURE LAND USE ELEMENT. The text of Chapter 1, “Future Land Use Element,” of the *City of Daytona Beach Shores Comprehensive Plan* is hereby amended to allow the expansion of nonconforming single-family uses and structures in the High Intensity Future Land Use Classification as depicted in Exhibit “A”.

SECTION TWO: IMPLEMENTING ADMINISTRATIVE ACTIONS. The Community Services Director is hereby authorized to transmit copies of the adopted amendment to the *City of Daytona Beach Shores Comprehensive Plan* to the appropriate agencies and to any other unit of local government who has filed a written request for a copy in accordance with the provisions of Section 163.3184, *Florida Statutes*, and *Volusia Growth Management Rules*. The City Manager and the City Attorney are hereby authorized to take any and all necessary actions to defend the enactment and implementation of this Ordinance and assert the legal compliance status of this Ordinance.

SECTION THREE: SAVINGS AND RATIFICATION. The City of Daytona Beach Shores hereby ratifies and affirms that action taken by the City Council and the City as a whole to date

relative to the comprehensive planning programs action activities of the City. The applicability and effect of the *City of Daytona Beach Shores Comprehensive Plan* are hereby ratified and shall remain in full force and effect consistent with the provisions of this Ordinance.

SECTION FOUR: CONFLICTS. All ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: SEVERABILITY. If any section or portion of a section of this Ordinance, or application of any provision of this Ordinance, proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Ordinance.

SECTION SIX. CODIFICATION. This Ordinance shall be codified in the *City of Daytona Beach Shores Comprehensive Plan* as deemed appropriate by the Code codifier.

SECTION SEVEN: EFFECTIVE DATE. The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the State Land Planning Agency (the Florida Department of Economic Opportunity) notifies the local government that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the State Land Planning Agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

CITY OF DAYTONA BEACH SHORES, FLORIDA

Mayor, Nancy Miller

ATTEST:

Michael T. Booker, City Manager

Cheri Schwab, City Clerk

Approved as to form and content:

GRETCHEN R. H. "BECKY" VOSE, CITY ATTORNEY

Passed upon first reading this ____ day of _____, 2020.

Ordinance 2020-03
Page No.3

Adopted on second reading this ____ day of _____, 2020.

EXHIBIT A

CHAPTER 1: FUTURE LAND USE ELEMENT

GOAL 1-1: Effectively manage future development by designating appropriate areas for new growth that does not compromise environmental integrity, is responsive to market needs and is consistent with sound land planning practices.

Objective 1-1.1: Future growth will be managed through the preparation, adoption and implementation of land development regulations that are compatible with this Element and coordinated with the availability of public facilities and services. The City shall discourage urban sprawl through the designation of appropriate densities (see Policy 2 under this Objective) that will retain the compact development already in place and other land use strategies and regulatory provisions. All future development in the City shall maintain at least a 50-foot setback from the Coastal Construction Control Line (CCCL). With this requirement, as well as adherence to controlling provisions of Federal and State law, such as the regulations of the Florida Department of Environmental Protection, new development shall be protected from any storm surge that occurs as a result of tropical storms. This objective shall be measured through the implementation of the following policies.

Policy 1-1.1.1 The City shall enact and enforce land development regulations that, at a minimum:

- a. Regulate the quality of new development through appropriate site plan review and other land use criteria;
- b. Provide for recreational lands and facilities to meet the Level of Service standards contained in the Recreation and Open Space Element of this Comprehensive Plan;
- c. Provide for adequate off-street parking and loading facilities;
- d. Provide that all new development with regard to on-site drainage and stormwater management facilities meet the minimum standards set forth in the Stormwater Management Sub-Element of this Comprehensive Plan;
- e. Regulate signage;
- f. Provide that building permits shall not be issued that result in the reduction of service levels below the standards set forth in this Comprehensive Plan;
- g. Require that all new development maintain a minimum setback of 50 feet from the Coastal Construction Control Line (CCCL), and require, through inclusion in the City's land development regulations, that all new development take into account the potential for storm surges from the ocean;
- h. Require that, prior to the issuance of a development order or building permit, written assurances shall be obtained from any municipal or County agency providing infrastructure or services, that available capacity exists to support the proposed development at the adopted Level of Service standard for the relevant facility or service to be provided.
- i. Regulate erosion control and beach and dune stabilization; and
- j. Require the preservation of any significant on-site historical, cultural or archaeological features meeting the National Register Eligibility Criteria.

Standard/Measure: Enact and enforce land development regulations.

Time Frame: Continuous

Policy 1-1.1.2: Enact and enforce land development regulations consistent with the following density standards:

1. Residential

- a. Low Intensity: up to 4 units per gross acre
- b. Low Density: up to 12.0 units per gross acre
- c. Low Density-Riverside: between 12.1 and 15 units per gross acre. Properties shall be developed as a planned unit development (PUD) and meet the following criteria: (i) land shall abut the Halifax River, (ii) land shall have a minimum parcel size of three (3) acres, (iii) land must be served by public infrastructure including but not limited to potable water and wastewater lines, and (iv) land shall have direct access to a major thoroughfare as determined by the City.
- d. Medium Density: between 12.1 and 35.0 units per gross acre
- e. High Density: between 35.1 and 60 units per gross acre (site specific density to be controlled by land development regulations)

2. High Intensity Uses – Hotel, motel and timeshare developments shall have densities up to a maximum of 70 units per gross acre. Condominium, multi-family residential, and apartment developments shall have a maximum density of 60 units per gross acre (site specific density to be controlled by City’s land development regulations).

3. Commercial Facilities - Commercial intensities shall not exceed 35% lot coverage, a building height of 45 feet or a floor area ratio of 1.4.

4. Public Facilities – Public facilities shall be regulated by off-street parking requirements (approximately three off-street parking spaces shall be required for every 1,000 square feet of public facility use).

5. Recreational Facilities – Recreational facilities shall be provided in accordance with the Level of Service standards established within this Comprehensive Plan.

6. Building Height – Except for large lots, as defined in the City’s land development regulations, in PUDs (planned unit development), T (hotel/motel), and RMF-1 (multifamily residential-high density) districts, new buildings shall be limited to a height of 12 stories.

7. View Corridors – View corridors shall be preserved by limiting the north to south width of new buildings and the application of other appropriate land use planning practices and principles.

Standard/Measure: Ensure that adequate land development regulations are in effect to reasonably ensure public views while allowing reasonable development upon properties.

Time Frame: Continuous

Policy 1-1.1.3: Maintain and enforce land development regulations consistent with the location and extent of land uses as discussed within the Element and indicated on the Future Land Use Map. To this end, the map that accompanies the new Land Development Regulations shall reflect the Future Land Use Plan Map 2020, in terms of ensuring that zoning districts shall be consistent with the map. All new development and redevelopment activities shall be required to be consistent with the zoning district classifications.

Standard/Measure: Maintain and enforce land development code.

Time Frame: Continuous

Policy 1-1.1.4: The land development regulations shall maintain and enforce performance standards that address buffering and open space requirements, especially between condominium and hotel/motel developments.

Standard/Measure: Maintain and enforce land development code.

Time Frame: Continuous

Policy 1-1.1.5: (a) The City shall maintain at least the Level of Service standards prescribed in Policy 2-1.1.1 at all times on its roadway network throughout the City. This shall include Dunlawton Boulevard, including the bridge. The maintenance of this Level of Service standard is important to ensure that an efficient flow of traffic can be maintained on these primary roads in the event of a hurricane threat. (b) Maintain the clearance time of the population in the Hurricane Vulnerability Zone at sixteen (16) hours based on a level of service standard “D” during the time of a category 5-storm event as measured on the Saffir-Simpson scale. This policy is consistent with the stated objectives contained in the Coastal Management Element of the Volusia County Comprehensive Plan regarding hurricane evacuation and Section 163.3178 (9) (b), F.S. and based on the most current East Central Florida Regional Planning Council hurricane study.

Standard/Measure: Monitoring of annual traffic counts from the Florida Department of Transportation for S.R. A1A, including the Dunlawton Boulevard.

Time Frame: Continuous

Policy 1-1.1.6: Coordinate Hazard Mitigation Reports with Development and Redevelopment. Should Daytona Beach Shores be included in a Presidential Disaster Declaration, the City shall use the interagency hazard mitigation report as the basis for prohibiting redevelopment of uses which are inconsistent with the report recommendations. Additionally, the City shall use the interagency hazard mitigation report to prevent new uses which are inconsistent with the report recommendations from locating in the area included in the Presidential Disaster Declaration. Finally, should an interagency hazard mitigation report be issued for Daytona Beach Shores, the City shall consider adopting a program for eliminating existing uses which are inconsistent with the report recommendations.

Policy 1-1.1.7: Condo-Hotels and Timeshares. The City of Daytona Beach Shores shall have adopted land development regulations governing condo-hotels and timeshares. These regulations shall include minimum standards for both new construction and the conversion of existing units to either condo-hotels or timeshares.

Policy 1-1.1.8: By December 31, 2012 the City of Daytona Beach Shores shall establish criteria allowing and regulating assisted living facilities within the City, including but not limited to the following:

1. Assisted living facilities shall only be permitted in the medium and low density residential future land use classifications.
2. Facilities shall not be permitted on parcels with an area less than one (1) acre.

Objective 1-1.2: Future redevelopment activities shall take the form of replacing the outmoded and inefficient existing hotels and motels that were built in the 1950s and early 1960s. These uses are found primarily on the east side of S.R. A1A, north of Florida Shores Boulevard to the City limits at the north end, and south of Van Avenue to the south City limits ending at the Wilbur-by-the-Sea area. These

redevelopment activities shall be consistent with the goals, objectives, and policies set forth in this Element. Additionally, no land development shall be permitted that is detrimental to the natural resources of the City. In this context, no land development order shall be issued that denigrates existing topographic or soil conditions. Additionally, prior to the issuances of any development order, written assurances shall be obtained from the appropriate municipal agency providing infrastructure that available capacity exists to properly support the proposed development activity at the adopted Level of Service standard for the relevant facility or service to be provided.

Policy 1-1.2-1: The Land Development Regulations will maintain and enforce provisions for mixed land use development that allows for office, residential, hotel, and commercial designations. The City shall encourage mixed use development along the westside of A1A with Daytona Beach Shores.

Standard/Measure: Maintain and enforce mixed use regulations in the LDC.
Time Frame: Continuous

Policy 1-1.2.2: The City's existing policy of requiring written assurance from any entity providing sewage treatment, potable water, or solid waste disposal shall be maintained throughout the planning period.

Standard/Measure: Maintain and enforce this policy in the Land Development Code.
Time Frame: Continuous

Policy 1-1.2.3: The City shall continue to enforce regulations that require that any new development protects and enhances all natural resources.

Standard/Measure: Maintain and enforce this policy in the Land Development Code.
Time Frame: Continuous

Policy 1-1.2.4: By December 31, 2010 the City of Daytona Beach Shores shall establish guidelines for the drafting of land development regulations that will encourage land uses that contribute to the economic vitality of the redevelopment area within the City, including but not limited to the following:

1. Adverse land uses such as body art, spirituals, mediums and palm readers, shall be prohibited.
2. Mixed uses shall be permitted in the town center.
3. Incentives shall be provided for the development of LEED certified facilities.

Objective 1-1.3. The economic base of the City shall be broadened by allowing within the tourist oriented commercial and retail/service commercial future land use categories mixed use developments that allow for office uses, as well as residential, hotel and commercial facilities.

Policy 1-1.3.1: The above-mentioned land shall be designated in the new land development code.

Standard/Measure: Maintain and enforce this policy in the Land Development Code.
Time Frame: Continuous

Policy 1-1.3.2: The City administration, working in coordination and cooperation with the Chamber of Commerce, or any other entity shall initiate a promotional campaign to effectively market this land to private developers.

Standard/Measure: Development of marketing program.

Time Frame: Continuous

Objective 1-1.4. Land uses that are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged. This shall take the form of not allowing any objectionable uses (industrial, warehousing, etc.) in the new Land Development Code that will be adopted subsequent to this Comprehensive Plan.

Policy 1-1.4.1: The City shall maintain and enforce land development regulations, including minimum requirements for parking, landscaping, open space, buffering, and lot coverage, to ensure consistency between land uses.

Standard/Measure: Maintain and enforce this policy in the Land Development Code.

Time Frame: Continuous

Policy 1-1.4.2: Location of Public/Quasi-Public Land Uses. The City of Daytona Beach Shores shall allow public/quasi-public land uses within all land use categories shown on the Future Land Use Map. Public and quasi-public land uses include: governmental administration buildings; public schools and not-for-profit educational institutions; hospital facilities and supportive health care units; arts and cultural or civic facilities; essential public services and facilities; cemeteries; fire and emergency operation facilities; utilities; and religious institutions.

Policy 1-1.4.3: High Intensity Uses. The City of Daytona Beach Shores Future Land Use Map shall indicate a land use category of “High Intensity.” This land use category shall allow hotels/motels; condos; multi-family residential units; apartments; and timeshares. The maximum density for hotels/motels and timeshares shall be 70 units per gross acre, while condos, multi-family residential units, and apartments shall have a maximum density of 60 units per gross acre. The density of each specific development site shall be controlled by Land Development Code.

Policy 1-1.4.4: Future Land Use Map Designations for Public Schools. The City of Daytona Beach Shores shall allow elementary, middle and other similar low-intensity schools to be located within the Public and Quasi-Public, Low Density Residential, Medium Density Residential, High Density Residential, Retail/Service Commercial, and High Intensity Uses Land Use categories shown on the Future Land Use Map (FLUM). High schools and similar high-intensity schools shall be allowed in Public and Quasi-Public, Medium Density Residential, High Density Residential, Retail/Service Commercial, and High Intensity Uses Land Use categories shown on the FLUM. Due to the fact that the City of Daytona Beach Shores is located entirely within the Coastal High Hazard Area, it is unlikely that any new public schools would be located within the City.

Policy 1-1.4.5: Coordination with Volusia County School Board. The City will meet with the Volusia County School Board and staff to establish Policies and Standards for locating new schools.

Policy 1-1.4.6: School Siting Criteria. The following criteria shall be used in locating public schools within Daytona Beach Shores:

I. General Guidelines.

- A. Proposed school sites shall be located away from industrial uses, limited access roadways, railroads, and similar land uses to avoid noise, odors, dust, and traffic impacts and hazards.
- B. Disrupting influences caused by school yard noise and traffic indicate that schools be sensitive to adult communities, nursing homes and similar land uses through site design.
- C. Schools shall be designed to minimize the impacts to adjacent neighborhoods through control of site aspects including traffic access, landscaping, buffers, and site design and layout provided by the Volusia County School District.

II. Site Acceptability

- A. School size and land area requirements for elementary, middle, and high schools shall meet the minimum standards established by the Volusia County School Board.
- B. Schools should be centrally located within their intended attendance zones, to the maximum extent possible, and be consistent with walking and bus travel time standards of the school district. High schools shall be exempted from this provision due the large land area requirement.
- C. The site should be of sufficient size to ensure that buildings and ancillary facilities, and future expansions can be located away from floodplains, flood prone areas, wetlands and other environmentally sensitive areas, coastal high hazard areas and will not interfere with historic or archaeological resources.
- D. Public utilities (e.g., water, sewer, stormwater) must be available to the site.
- E. Access to the site should be from a collector road (local roads for elementary schools) and avoid the need for slow down zones, if possible.
- F. Ingress and egress should not create detrimental impacts on roads adjacent to the site.
- G. Approaches to the site should be safe for pedestrians, bicycles, cars and buses.
- H. A mass transit or bus stop should be located near the site.

III. School Specific Site Location Recommendations

- A. **Elementary Schools.** Elementary schools serve a neighborhood or group of neighborhoods where students have a short distance to walk. Land uses should be predominately residential and include housing types and densities sufficient to meet the school's enrollment capacity with students that are predominately within walking distance of the school.

- B. **Middle Schools.** Middle schools have a community orientation and the mix of land uses can include more commercial uses than would be allowed in a neighborhood. Enrollment comes from two or more elementary schools.
- C. **High Schools.** High schools should be buffered from residential areas. Enrollment for high schools comes from two or more middle schools. The campus should be large enough to encourage students to remain onsite and to ensure sufficient parking or parking controls to avoid disruptive offsite parking.

Policy 1-1.4.7: Collocation of Facilities. The City of Daytona Beach Shores shall seek to co-locate public facilities, such as parks, libraries, and community centers, with schools to greatest extent possible. In collocating facilities, the City shall use the following guidelines:

- **Elementary Schools.** Playgrounds can be collocated with elementary schools. In areas with densities high enough to support them, a neighborhood park with facilities for the elderly, a neighborhood recreation center, and a library sub-branch can be included.
- **Middle Schools.** A community park and athletic fields are appropriate to locate with middle schools. A community center, if the school will not be used for this purpose, and a library sub-branch or branch can be included depending on the school's location and the population served.
- **High School.** Community parks with a community center, if the school will not be used for this purpose, and athletic field can be collocated with high schools. A main or branch library is also appropriate. If justified by the population to be served, a district park could be collocated with the school.

Policy 1-1.4.8 Town Center (TC) Future Land Use Designation: The Town Center future land use category is intended to be a convenient and flexible special character district that authorizes horizontal and vertical mixed-use development within an existing redevelopment area where the comprehensive redevelopment of large tracts of land is envisioned.

Individual development within the TC shall follow consistent standards and coordinate with each other in order to create a cohesive area with a strong sense of place and identity. Development on land designated TC is intended to feature high quality architecture and well designed urban form that promotes pedestrian activity spread throughout the day which reduces transportation impacts and a-balances a mix of land uses.

Criteria for TC Designation

- 1) Lands designated TC must be in the South Atlantic Corridor Redevelopment Area.
- 2) The initial area designated TC must be no less than 25 acres in size to allow sufficient land for a functional mix of uses. Once established smaller tracts of lands contiguous to the Town Center may be added so long as the Town Center remains compact and functional.
- 3) Lands designated TC must be served by public infrastructure including but not limited to potable water and wastewater lines.
- 4) The land area designated TC shall be served by South Atlantic Avenue and at least one existing or proposed collector roadway.

Mix of Uses

The Town Center shall incorporate a mixture of the following land uses up to the maximum units or gross square footages identified below:

Residential (up to 1250 units with no single site exceeding 70 units per acre)
Hotel (up to 500 rooms with no single site exceeding 70 units per acre)
Commercial (up to 250,000 square feet)
Office (up to 130,000 square feet)
Public/Quasi-Public (52,000 sq feet)

The land uses within the Town Center shall be mixed horizontally and/or vertically. The overall composition of the Town Center shall comply with the following ranges based on the gross aggregate area of the Town Center:

40% to 60% Residential
20% to 30% Commercial
10% to 40% All Other Uses

Character Guidelines

Development within the Town Center future land use designation shall meet the following guidelines intended to ensure that the character of the Town Center is high quality, urban, pedestrian-oriented and functional.

- The core of the Town Center will be oriented towards the intersection of existing or proposed collector roadways, not South Atlantic Avenue.
- The core street(s) shall be lined with buildings in order to create a consistent street wall.
- The core street(s) and South Atlantic Avenue shall feature sheltered transit stops.
- Street-level uses will be reserved for nonresidential development with active street fronts.
- The core streets of the Town Center shall feature wide sidewalks to encourage the development of a lively streetscape and accommodate sidewalk cafes and other similar activities.
- Onsite parking shall be placed either underground, in above ground parking structures wrapped by habitable structures or surface lots on the interior of properties screened by buildings.
- High quality architecture designed to help form a lively urban space and identify the Town Center as a distinctive place shall be required.

Objective 1-1.5: The City shall promote the compatibility of between low and higher density development. This Objective shall be achieved through the implementation of the following Policies.

Policy 1-1.5.1: Projects should be designed with special consideration given to compatibility with the surrounding uses and any adjacent developments. Compatibility is defined as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is unduly negatively impacted by the other.

Policy 1-1.5.2: The City shall require planned unit developments for parcels three (3) acres or more undergoing future land use changes yielding a greater density.

Policy 1-1.5.3: The City shall require planned unit developments provide compatible architecture and adequate setbacks when adjacent to lower density development.

Policy 1-1.5.4: The City shall adopt a future land use – zoning compatibility matrix. The matrix shall be consistent with the comprehensive plan.

Policy 1-1.5.5: The City shall require compatibility between commercial areas and adjacent lower intensity uses through the use of landscape and open space buffering.

Objective 1-1.6: The City shall promote the compatibility of land use with that of adjoining jurisdictions. This Objective shall be achieved through the implementation of the following Policies.

Policy 1-1.6.1: The City shall consider adjoining existing land use and plans when reviewing development proposals adjacent to the City limits.

Policy 1-1.6.2: The City shall continue to participate in available intergovernmental coordination committees such as the Metropolitan Planning Organization (MPO), Volusia Council of Governments (VCOG), the Volusia Growth Management Commission (VGMC) and associated technical committees.

Policy 1-1.6.3: The City shall work with adjacent jurisdictions and intergovernmental coordination committees to develop and utilize a system of intergovernmental negotiation for siting locally unpopular public and private land uses. Such a system should consider the area of population served, the impact on land development patterns or important natural resources, and the cost-effectiveness of service delivery.

Policy 1-1.6.4: The City shall consider compatible architecture and setbacks when a new development is proposed adjacent to a lower density development in an adjoining jurisdiction.

Goal 1-2: To ensure that development patterns are energy efficient and reduce green house gas emissions by reducing the need to travel by private car, supporting public transit and promoting the development of renewable energy resources and use of holistic design principles.

Objective 1-2.1: To promote compact, mixed-use, and energy efficient development to encourage pedestrian, bicycle and transit use, leading to a more energy efficient community and a reduction in greenhouse gas emissions.

Policy 1-2.1.1: The City shall encourage an urban design pattern in redevelopment areas, where appropriate, that will minimize travel requirements among living, working, shopping and recreation areas.

Policy 1-2.1.2: The City shall develop land use policies that will encourage energy efficiency and the use of renewable energy sources.

Policy 1-2.1.3: The City shall encourage the maintenance, restoration and adaptive reuse of existing urban areas, including buildings, infrastructure and other assets, to reduce energy use and Vehicle Miles Traveled (VMTs).

Policy 1-2.1.4: The City shall encourage urban design strategies that maximize the use of renewable, sustainable, active and passive sources of energy design in architecture.

Policy 1-2.1.5: The City shall identify and remove obstacles to energy conservation and renewable energy systems in the City's Land Development Code.

Goal 1-3: Goal 1-3: To protect private property rights by allowing certain limited changes to nonconforming uses that are fair and reasonable.

Objective 1-3.1: The City shall allow limited expansion of single-family residential uses and structures, even when non-conforming, with regard to properties which are designated a High Intensity Future Land Use Classification.

Policy 1-3.1.1: By December 31, 2020 the City shall amend the Land Development Code to allow the expansion of single-family residential structures pursuant to Objective 1-3.1 to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 13, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Stewart Cruz, City Planner
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Ordinance 2020-11: Temporary Promotional Activities

SYNOPSIS:

At the August 25 City Council meeting, the City Council directed staff to agendize the Temporary Promotional Activity (TPA) ordinance, formerly Ordinance 2020-03, for their consideration. The original TPA ordinance was approved by the City Council in February of this year and sunsetted in May.

Highlights of Ordinance 2020-11 include, but are not limited to:

1. Designed for hotel and commercial properties to promote grand openings, product displays, sales, etc, associated with the business.
2. Limited to 21 calendar days per year (minimum of 3 days per activity).
3. Activity hours restricted to 7am to 10pm and subject to the City's noise regulations.
4. Permit application and fee required 10 days prior to activity.
5. Outdoor alcohol sales and consumption limited to public food establishments with outdoor dining permit.
6. All merchandize must be located under tents, not to exceed 500 square feet.
7. Activity shall not impede or obstruct pedestrian or vehicular traffic, fire lanes, sidewalks, etc.
8. Activity limited to 2 banners and 1 TPA accessory.
9. Activity components must be secured overnight or when not in use.
10. Activity shall not create public nuisance or hazard and must not jeopardize public health, safety or welfare.

Proposed Ordinance 2020-11, if approved, does not have a sunset provision, however, if needed, could be amended or repealed in the future.

FISCAL IMPACT STATEMENT:

Adopting this ordinance may result in a minimal increase in permit receipts.

BACKGROUND:

Ordinance 2020-11 (attached), formerly Ordinance 2020-03, was originally drafted at the request of a business owner seeking to have an outdoor promotional activity, including a tent, during Bike Week earlier this year. The ordinance was approved in February 2020 for 60 days. However, during that time period only one TPA application and event was approved and conducted, respectively. The event took place during Bike Week and no complaints were received by the City.

Due to the current economic climate, Mayor Miller asked that this item be revisited. At the August 25, 2020 City Council meeting staff was directed to agendaize the TPA ordinance for an effective date in October.

The ordinance was drafted in a way that attempts to provide economic opportunities for businesses while being cognizant on the City's public, health safety and welfare. If necessary, the ordinance could be amended or repealed in the future.

LEGAL REVIEW:

This ordinance is approved as to form and legality.

RECOMMENDATION:

In January 2020, the Planning and Zoning Board unanimously recommended approval of the original TPA ordinance. No substantial changes have been made to the current TPA ordinance.

The City Council directed staff to bring forward the TPA ordinance for their consideration, without the sunset provision.

SUGGESTED MOTION:

A City Council member may move as follow:

"I move to approve Ordinance 2020-11 as presented."

OR

"I move to approve Ordinance 2020-11 with the following conditions or amendments..."

OR

"I move to deny Ordinance 2020-11 on the basis of..."

ATTACHMENT: 1. Ordinance 2020-11-Temporary Promotional Activity-SC-9-1-20

ORDINANCE 2020-11

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO TEMPORARY PROMOTIONAL ACTIVITIES; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING SECTION 2-2 ENTITLED “GENERAL DEFINITIONS”; BY AMENDING CHAPTER 6, ENTITLED “SIGNS AND ADVERTISING”; BY AMENDING SECTION 14-31.1, ENTITLED “GC-RD GENERAL COMMERCIAL-REDEVELOPMENT DISTRICT”; BY AMENDING SECTION 14-60.2 ENTITLED “TEMPORARY PROMOTIONAL ACTIVITY PERMITS, STANDARDS IN THE GC-1 AND GC-2 COMMERCIAL DISTRICTS AND T HOTEL/MOTEL DISTRICT”; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible and dynamic; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can help to retain and enhance existing business operations and success; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can be regulated so as to not adversely impact the appearance of the community and its public image; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can be regulated so as to not adversely impact the public health, safety and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the businesses, visitors, residents and citizens of the City of Daytona Beach Shores; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Section 2-2, entitled “General Definitions,” by adding the following:

Temporary promotional accessory: A ground-based attention getting device used to attract public attention to a temporary promotional event including, but not limited to, air dancer, inflatable, statue, carving, art display, promotional or fluttering flag, and other similar device. Accessories shall not exceed 12 feet in height and shall not be larger than 150 cubic feet.

Temporary promotional activity: A temporary indoor or outdoor event on a commercial or hotel property, parcel or lot including but not limited to grand openings, product displays, sales and promotion of a new or existing bona fide business and its products or services.

SECTION TWO: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Chapter 6, entitled “Signs and Advertising,” as follows:

Sec. 6-8. - Permitted signs.

18. *Banner Signs* . Banner signs may be employed for special events within the city by a permit issued through the building and codes division of the department of community services. Only one (1) banner sign shall be placed at any location, lot or parcel at any given time. Size, location, time limitation, and type of event shall be permitted under the following conditions:

Banner signs may be permitted for promotional events within the city upon receipt of any approved banner permit issued by the city through the building and codes division of the department of community services. For banner sign purposes, promotional events are defined as follows: Speed

Week, Bike Week, Biketoberfest, Spring Break, grand openings, going-out-of-business sales and similar city-preapproved occasions sanctioned by the city manager. Written proof will be required with application for local events with which the city desires to identify and with which the city is satisfied the banner sign will reflect highly upon the city and promote economic or tourism development. Except for temporary promotional activity banners permitted pursuant to Sec. 14-60.2 of this Land Development Code, Only only one (1) banner sign shall be placed at any location, lot or parcel at any given time. Size, location, time limitation, and type of event shall be permitted under the following conditions:

- (1) Banner signs shall be permitted only in GC1, GC2, T, GC-RD and TC-MUPUD districts.
- (2) Maximum sign area shall be thirty-two (32) square feet.
- (3) Banners shall not be located at ground level in any right-of-way. One (1) banner sign may be permitted to be displayed during promotional events. Such signs may carry business or product logos and generic messages commemorating the event and/or welcoming visitors. The sign shall not convey specific sales information, such as prices or "specials" or any other related information of this type or nature.
- (4) All banners shall be preapproved by the building and codes division. All temporary banners allowed under this subsection may be installed up to one (1) week prior to the event, and must be removed no later than forty-eight (48) hours following the event with a maximum time limit of thirty (30) days. Banner signs shall not be permitted for more than one hundred twenty (120) days (or four (4) events) in any twelve-month period. Only one (1) thirty-day period allowed in any sixty (60) consecutive days.
- (5) The banner sign permit fee shall be specified in the current "Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the city clerk. In the event the city installs the banner, an additional fee for installation and removal shall be assessed as specified in the current "Daytona Beach Shores Land Development Code Schedule of Fees" which schedule is available at the office of the city clerk. Requests for banner signs spanning any right-of-way, or of a size larger than allowed above, or for a duration longer than that stated above shall require approval of the city manager. Such approval shall be predicated upon the banner sign request being of such nature that it would be advertising a city-wide function approved by the city council. Banner signs erected prior to a permit being obtained or not in accordance with the sketch or the criteria specified in this ordinance shall be a violation of this ordinance.
- ~~(6) Condition L in section 6-9 shall also apply to banners located in the GC-RD and TC-MUPUD districts.~~

Two (2) banner signs approved in conjunction with a bona fide temporary promotional activity shall be permitted for the duration of the event pursuant to Sec. 14-60.2 of this Land Development Code.

Sec. 6-11. - Prohibited signs.

1. No persons shall erect a sign on or over any public property or public right-of-way, including the Atlantic Ocean beach except for legal franchises of the city and subsection 6-8(11.1), Public Information Off-Site Directional Signs.
2. No persons shall operate or park any vehicle for the purpose of display, sale or advertising on any public right-of-way.
3. Roof signs, except as expressly permitted by section 6-8, Permitted Signs, within Chapter 6, Signs and Advertising, of the Land Development Code of Ordinances, snipe signs, pennants, inflatables and wind operated devices, sandwich signs, revolving signs, flashing signs and signs with moving or alternating lights, outdoor advertising signs, off-site signs, animated signs, and spectacular signs are prohibited and unlawful, except when approved in conjunction with a bona fide temporary promotional activity. However, nothing contained herein shall prohibit a time and temperature sign with dimensions not exceeding twenty-five (25) square feet in area.

SECTION THREE: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores, Appendix G-Land Development Code*, Section 14-31.1, entitled “GC-RD General Commercial-Redevelopment District,” as follows:

Sec. 14-31.1 GC-RD General Commercial-Redevelopment District.

Sec. 14-31.1.11 Permitted Temporary Use.

Promotional activities shall comply with section 14-60.2.

SECTION FOUR: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores, Appendix G-Land Development Code*, Section 14-60.2, entitled “Temporary promotional activity permits, standards in the GC-1 and GC-2 Commercial Districts and T Hotel/Motel District,” as follows:

Sec. 14-60.2. Temporary promotional activity permits, standards in the GC-RD, GC-1 and GC-2 Commercial Districts and T Hotel/Motel District.

1. General: A temporary promotional activity, also known as a TPA, shall be limited to promotional activities, exhibits, displays and sales directly and customarily associated with the principal and accessory uses of a business, as determined by the City Manager or his designee.

TPA permits shall only be issued to one (1) tenant space per primary address. Outdoor promotional activities are permitted between the hours of 7am and 10pm subject to the City's noise regulations. A TPA permit shall not authorize itinerant vending.

2. Application: (i) An application shall be submitted to the City Manager, or designee, on the approved form provided by the City. (ii) Applications shall be submitted at least ten (10) days prior to the start of the requested TPA. (iii) Fees established by the City Council shall be paid in full at the time of application submission. (iv) Applications shall contain a site sketch exhibit indicating dimensions, tent capacity, egress and location and placement of all TPA components relative to all buildings and structures, parking and property lines. (v) TPA permits may only be obtained by the business owner. (vi) TPA shall be authorized by the property owner.
3. Transfers: TPA permits shall not be transferable.
4. Duration: Temporary promotional activities shall not exceed 21 days per calendar year for any business tenant space with a primary address. A TPA permit shall be issued for a minimum of three (3) days.
5. Hazards and Public Nuisances: Temporary promotional activities shall not create public nuisances or hazards jeopardizing the public health, safety or welfare.
6. Tents and removal of outdoor components: Temporary promotional activities may occur within temporary outdoor structures such as tents, as approved by the City Manager, or designee, not to exceed 500 square feet per business. All components associated with the TPA shall be removed immediately after event closing.
7. Area restrictions: A TPA shall not occupy more than 500 square feet PLUS an additional square footage two times the lineal footage of the business' frontage. TPA areas shall not exceed 25% of the business' required off-street parking area. In no case shall the total TPA areas permitted on a multi-business property, lot or parcel exceed 25% of the property's total required off-street parking area. All merchandise shall be displayed under a temporary outdoor structure, as approved by the Building Official.
8. Access and setbacks: Temporary promotional activities shall not impede or obstruct pedestrian or vehicular traffic, building egress, occupy or block driveways, drive aisles, fire lanes, sidewalks and sight triangles, as determined by the Building Official. All TPA components shall set back at least five (5) feet from rights-of-way and side lot lines and at least 50 feet from residential properties.
9. Location: Promotional activities may occur inside or outside. However, outdoor temporary promotional activities shall only be permitted in front of or in an area adjacent to the business subject to the terms and conditions of this section. TPA components and activities shall not occur inside required landscape islands or planter boxes.

10. Prohibitions: (i) Amusements (ii) Outdoor adult entertainment activities, sales and displays. (iii) Outdoor body art services. (iv) Vehicular washing events. (v) Outdoor alcohol sales and consumption, except as approved by an active outdoor dining conditional use permit. (vi) Tethered airborne accessories. (vii) Trampolines, jump houses and other similar recreation equipment and devices.

11. Signage and temporary promotional accessories: Each TPA shall be permitted two (2) banner signs, not to exceed 32 square feet each and one (1) temporary promotional accessory. All other signage, including, but not limited to, mobile and portable signage on trailers, is prohibited.

12. Security and Safety: All TPA components shall be safely secured overnight and when not in use against vandalism and theft. TPA components, including, but not limited to, tents and accessories, shall be installed, maintained and removed pursuant to manufacturer's instructions.

13. Enforcement and Violations:

~~1. Application shall be on an appropriate form provided by the City and submitted at least sixty (60) days prior to the initiation of the requested temporary promotional activity. The City Council may determine appropriate fees for this permit by resolution.~~

~~2. The temporary promotional activities shall be in accordance with the existing licensed business activity(s) for each site; temporary promotional activities shall not consist of outside sales.~~

~~3. Outdoor displays shall not impede pedestrian or vehicular traffic, occupy or block driveways, drive aisles, fire lanes and shall not be placed in any required parking area nor within one hundred (100) feet of any right-of-way.~~

~~4. No temporary promotional activities may occur within temporary structures such as tents or trailers.~~

~~5. Site plans shall be attached to the application for any temporary promotional activity permit.~~

~~6. Temporary signs, including banners, shall comply with the Land Development Code regarding temporary signage, including but, not limited to section 6-8(18), Banner Signs.~~

~~7. The enforcement official, or his or her designated representative, shall make an inspection of the properties involved. If the enforcement official denies the permit, the applicant may appeal the ruling to the City Council within ten (10) days of the enforcement official's ruling.~~

~~8. Temporary promotional activity permits shall be personal to the permittee and shall not be transferable.~~

~~9. Temporary promotional activities shall not authorize itinerant vending.~~

10-It shall be a violation of the Land Development Code to violate the terms of any temporary promotional activity permit. In addition to other remedies such as Code Enforcement Board Special Magistrate action, the City Manager is authorized to immediately suspend or revoke a temporary promotional activity permit, without prior warning, if the City Manager determines that the temporary promotional activity is being conducted in a manner that violates any portion of this [section 14-60.2](#), or in a manner that poses an imminent threat to public health, safety or welfare. Upon revocation of a temporary promotional activity permit, the permittee shall immediately cease the temporary promotional activity authorized by the permit. The permittee shall be required to obtain a new permit and pay new permit fees before the permit activity may be resumed. Upon suspension of a temporary promotional activity permit, the temporary promotional activity permittee must close down the temporary promotional activities authorized by the permit until the suspension order is lifted. Suspension or revocation shall be effective immediately upon notice to the permittee. Notice to the permittee shall be deemed to be given when delivered to the permittee or to any person listed in the permit application as managing or supervising the temporary promotional activity or, if no such person appears to be on the site of the temporary promotional activity at the time of the issuance, to any other person who appears to be in control of the temporary promotional activity or who appears to be acting on the temporary promotional activity permittee's behalf.

SECTION FIVE: ENFORCEMENT AND PENALTIES.

- (a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.
- (b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.
- (c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

SECTION SIX: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to temporary promotional activities are hereby ratified and affirmed.

SECTION SEVEN: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Five, Six, Seven, Eight, Nine and Ten shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION EIGHT: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION NINE: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION TEN: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

GRETCHEN R. H. "BECKY" VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2020.

Adopted on second reading this _____ day of _____, 2020.



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 13, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2020-12: Land Development Code Amendment Relating To Expansion of Non-Conforming Single-Family Residential Uses/Structures

SYNOPSIS:

Ordinance 2020-12, if approved on second reading, will amend the City's Land Development Code to implement the adopted comprehensive plan amendment (Ordinance 2020-03), thereby allowing nonconforming single-family residential structures to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.

FISCAL IMPACT STATEMENT:

Adequate budget funds are available to administer the implementation of this ordinance.

BACKGROUND:

Ordinance 2020-12 was drafted to amend the City's Land Development Code to implement Ordinance 2020-03 which adopted a Comprehensive Plan Amendment CPA12020001 (Exhibit A) relating to the expansion of nonconforming single-family residential uses and structures on properties with a High Intensity Future Land Use Map designation. These properties are located beachside, east of S. Atlantic Avenue, with a T-RMF-1 (Hotel/Motel-Multifamily Residential-High Density) zoning district classification. Since single-family residential uses and structures are not listed as permitted uses in these zoning districts the single-family residential structures and uses, many of which predated the City's zoning regulations, are nonconforming and not allowed to expand. If adopted, Ordinance 2020-12 would permit the expansion of these structure and uses consistent with language below, which is articulated in the ordinance:

..."nonconforming single-family residential uses and structures on properties, which are designated a High Intensity Future Land Use Classification on the City's Future Land Use Map, shall be permitted to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure."

The effect of this language is illustrated in Exhibit B attached. Essentially, structures that meet the criteria will be able to expand to "fill in" and or "square off" the the structure up to the current building

foot print and no higher than the roof line. Additions or expansions beyond the afore-stated limitations are not permitted. Currently only a few properties would benefit from this provision, if adopted.

LEGAL REVIEW:

This item is approved as to form and legality.

RECOMMENDATION:

Staff recommends approval of Ordinance 2020-12 as presented.

SUGGESTED MOTION:

A City Council Member may motion as follows:

1. "I move to **approve** Ordinance 2020-12 as presented."

OR

2. "I move to approve Ordinance 2020-12 with the following amendments..."

OR

3. "I move to deny Ordinance 2020-12 on the basis of..."

- ATTACHMENT:**
1. Ordinance 2020-12-Nonconforming SF Residential Expansion-LDC-8-21-20-JC-8-31-20
 2. Exhibit A- Comprehensive Plan Amendment Language
 3. Exhibit B-Illustration Effect of Proposed Amendment

ORDINANCE 2020-12

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO NONCONFORMING SINGLE FAMILY-RESIDENTIAL USES AND STRUCTURES; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING SECTION 14-11 ENTITLED “TYPES OF NONCONFORMING STATUS”; TO ALLOW THE LIMITED EXPANSION OF NONCONFORMING SINGLE-FAMILY RESIDENTIAL USES AND STRUCTURES ON PROPERTIES WITH A HIGH INTENSITY FUTURE LAND USE CLASSIFICATION; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, the City of Daytona Beach Shores is committed to planning and managing the future growth of the City; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, on August 13, 2019, the City Council of the City of Daytona Beach Shores inquired as to a way in which the City could allow the reasonable expansion nonconforming single-family residential uses and structures in the High Intensity Future Land Use Classification; and

WHEREAS, the City Council of the City of Daytona Beach Shores declares that the purpose and intent of the proposed amendment to the City of Daytona Beach Shores Land Development Code is to guide future growth and development; encourage and maximize the most appropriate use of the land, water and other resources, consistent with the public interest; promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; provide adequate facilities and services; conserve and protect natural resources within the City, while protecting private property rights; and

WHEREAS, the Planning and Zoning Board, which is the local planning agency of the City, and City Council of the City of Daytona Beach Shores have conducted public hearings and issued notices required by Florida law in the preparation and enactment of this Ordinance; and

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of Daytona Beach Shores; and

WHEREAS, this Ordinance is consistent with the goals, objectives, and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Section 14-11, entitled “Types of Nonconforming status,” by adding the following:

Sec. 14-11. - Types of nonconforming status.

Within the districts established by this ordinance or amendments that may later be adopted there may exist:

1. Lots;
2. Uses of land;
3. Structures;

which lawfully existed before this ordinance was passed or amended but which would be prohibited, regulated or restricted under the terms of this ordinance.

It is the intent of this ordinance to permit these nonconformities to continue in their present condition in accordance with subsection 14-11.3 but not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. There are three (3) types of nonconforming status, as follows:

14-11.1. Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, notwithstanding district dimensional requirements, a single-family dwelling and customary accessory buildings may be erected on any single lot of record as defined herein which existed at the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to all other regulations for the district in which such lot is located.

14-11.2. Nonconforming Uses of Land and Uses of Structures.

Where at the effective date of adoption or amendment of this ordinance, a lawful use of land or use of structure exists which would not be permitted under the regulations imposed by this ordinance, the use may be continued provided:

2. No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land or structure than was occupied at the effective date of adoption or amendment of this ordinance; provided however, nonconforming single-family residential uses and structures on properties, which are designated a High Intensity Future Land Use Classification on the City's Future Land Use Map, shall be permitted to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.
3. No other nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance;
4. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land or structure.

14-11.3. Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity but any structure or portion thereof may be altered to decrease its nonconformity; provided however, nonconforming single-family residential uses and structures on properties, which are designated a High Intensity Future Land Use Classification on the City's Future Land Use Map, shall be permitted to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its fair market value at the time of destruction, at the expense of the owner it shall not be reconstructed, except in conformity with the provisions of this ordinance. This provision shall not apply to structures that have become nonconforming as a result of the maximum building height Ordinance No. 98-22.
3. Should any such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

SECTION TWO: ENFORCEMENT AND PENALTIES.

(a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.

(b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

(c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

SECTION THREE: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to nonconforming single-family residential structures are hereby ratified and affirmed.

SECTION FOUR: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Two, Three Four, Five, Six, and Seven shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION FIVE: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION SIX: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION SEVEN: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

ATTEST:

**_____
MICHAEL T. BOOKER, CITY MANAGER CHERI SCHWAB, CITY CLERK**

APPROVED AS TO FORM AND LEGALITY:

**_____
GRETCHEN R. H. “BECKY” VOSE, CITY ATTORNEY**

Passed on first reading this _____ day of _____, 2020.

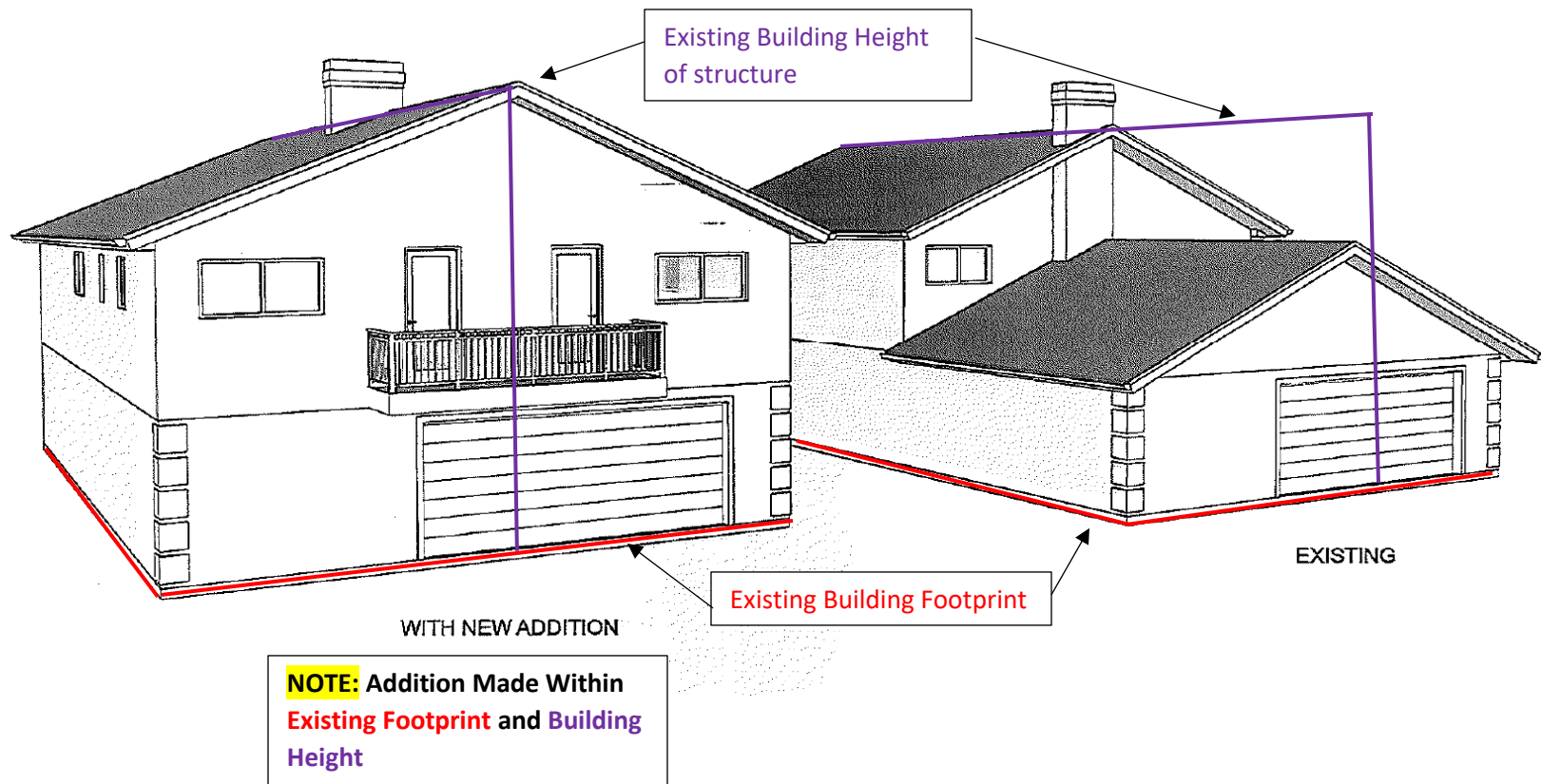
Adopted on second reading this _____ day of _____, 2020.

Comprehensive Plan Amendment CPA12020001
Nonconforming Single-Family Residential Expansion

Goal 1-3: To protect private property rights by allowing certain limited changes to nonconforming uses that are fair and reasonable.

Objective 1-3.1: The City shall allow limited expansion of single-family residential uses and structures, even when non-conforming, with regard to properties which are designated a High Intensity Future Land Use Classification.

Policy 1-3.1.1: By December 31, 2020 the City shall amend the Land Development Code to allow the expansion of single-family residential structures pursuant to Objective 1-3.1 to expand within and up to the existing building footprint of the existing structure but in no case shall expansion extend beyond the existing building height of the highest part of the roof structure.



Policy 1-3.1.1: By December 31, 2020 the City shall amend the Land Development Code to allow the expansion of single-family residential structures subject to Objective 1-3.1 to expand **within and up to the existing building footprint** but in no case shall expansion **extend beyond the current building height of the structure.**



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 13, 2020 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Stephan Dembinsky, Director of Public Safety
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Ordinance 2020-14 Relating to Trespass on City Property

SYNOPSIS:

The Public Safety Director requested an ordinance to allow his officers and city directors to be able to trespass persons who violate laws or city rules or policies on city property.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The ordinance provides that a public safety officer or city director may provide a trespass warning to any person who violates a state law, city ordinance, or any other city rule or terms of use on city property. The first warning results in the person being prohibited from using the specific public space where the violation was committed for one year, while a second warning results in a two-year trespass. A person may be arrested for violating a trespass warning. A person who has been provided a warning may request a waiver for the purpose of exercising First Amendment activities. Additionally, the ordinance provides a process for an appeal to the Special Magistrate.

LEGAL REVIEW:

The ordinance is approved as to form and legality.

RECOMMENDATION:

Staff recommends approval of the ordinance on first reading.

SUGGESTED MOTION:

Move to approve the ordinance on first reading and schedule the ordinance for second reading.

ATTACHMENT: 1. Ord 2020-14 trespass

ORDINANCE 2020-14

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO TRESPASS ON CITY PROPERTY; AMENDING THE *CODE OF ORDINANCES*, BY CREATING CHAPTER 16, ENTITLED “OFFENSES MISCELLANEOUS”, SECTION 16-10, ENTITLED “TRESPASS”; PROVIDING CRITERIA FOR TRESPASS; PROVIDING FOR PROCEDURES; PROVIDING FOR AN APPEAL; PROVIDING FOR ENFORCEMENT AND PENALTIES, A SAVINGS PROVISION, CODIFICATION, CONFLICTING ORDINANCES, SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, the City of Daytona Beach Shores owns and operates certain buildings and structures for the benefit of the public; and

WHEREAS, the City of Daytona Beach Shores owns real property, including parking lots, plazas, and parks; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires, for the safety and enjoyment of city employees, residents, and visitors, to keep the buildings and structures smoke free; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that certain public properties are not open to the public at all times; and

WHEREAS, the City Council of the City of Daytona Beach Shores has the legal right to prohibit people from being on public property when the public property is not open to the public or when rules or terms of use of the public property are violated; and

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the businesses, visitors, residents and citizens of the City of Daytona Beach Shores, and to be necessary for the health, safety, and welfare of the community; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Chapter 16, entitled “Offenses-Miscellaneous,” by creating Section 16-10, now entitled “Trespass” as follows:

CHAPTER 16 – OFFENSES MISCELLANEOUS

Sec. 16-10. – Trespassing Prohibited.

- (a) City sworn law enforcement officers, or city department heads, or their designees, having control over a City facility, building, or outdoor area, including municipal parks and the Community Center interior and exterior areas, are authorized to issue a trespass warning to any individual who violates any City ordinance, rule, regulation, or term of use, including the Community Center Facilities Use Operations Manual, or any State law or lawful directive of a City employee or official which violation was committed while on or within a City facility, building, or outdoor area, including municipal parks and the Community Center interior and exterior areas, (but excluding city rights-of-way), for the specific property where the violation occurred.
- (b) For the purpose of this section, right-of-way shall include those sidewalks which are closest to a paved street, provided that the street side edge of the sidewalk is within 20 feet of the curbline closest to the property.
- (c) Trespass warnings shall be issued as follows:
 - a. For the first violation, the individual may be issued a trespass warning for a period not to exceed one year.
 - b. For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two years.
- (d) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the City employee or official having control over the City park, facility, building, or outdoor area. The written trespass warning shall advise of the right to appeal and the location and telephone number for filing the appeal.
- (e) Any person found on or within any City facility, building, or outdoor area, including municipal parks and the Community Center interior and exterior areas, in violation of a

trespass warning may be arrested for trespassing, except as otherwise provided in this section.

- (f) The City employee or official having control over a City facility, building, or outdoor area, including municipal parks and the Community Center interior and exterior areas, may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.
- (g) This section shall not be construed to limit the authority of any City employee or official to issue a trespass warning to any person for any lawful reason for any City property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or official.
- (h) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:
 - a. An appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning, and shall include the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal.
 - b. The appeal shall be filed at the Code Enforcement department on the second floor of City Hall.
 - c. Appeals shall be heard by the Special Magistrate.
 - d. Within five days following the filing of the appeal, a hearing date shall be established for the soonest regular hearing date that the hearing can reasonably be scheduled. Notice of the hearing shall be provided to the appellant in one of two ways:
 - i. By leaving or posting the notice at the information desk of the Daytona Beach Shores Public Safety Department, or
 - ii. By telephone if a telephone number has been provided. If appellant can not be reached by telephone, then notice at the information desk shall be sufficient.
 - e. The Special Magistrate shall hold the hearing as soon as possible within the regularly established parameters for hearings. In no event shall the hearing be held more than 40 days from the date of the filing of the appeal.
 - f. Copies of documents in the City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
 - g. The appellant and the City shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses, and to present evidence. The appellant shall have the right to bring a court reporter, at their own expense.

- h. The Special Magistrate shall consider the testimony, reports, or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.
 - i. The City shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.
 - j. If the appellant fails to attend a scheduled hearing, the Special Magistrate shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
 - k. Within five business days of the hearing, the Special Magistrate shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the information desk of the Daytona Beach Shores Public Safety Department.
 - l. The decision of the Special Magistrate shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant. The City may not appeal any decision of the Special Magistrate.
 - m. The trespass warning shall remain in effect during the appeal and review process, including any judicial review.
- (i) *Prohibition.* It is prohibited and unlawful for any person to fail to comply with the requirements of this section.
- (j) *Enforcement.* The City may enforce the provisions of this section by any lawful means available to the City under the controlling provisions of State law, through the through the procedures provided within this section, and through the issuance of fines or administrative citations under Sections 1-8 and 2-29.
- (k) *Penalties.* As prescribed in Sections 1-8 and 2-29 of this Code, and any applicable state statute.

SECTION TWO: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to temporary promotional activities are hereby ratified and affirmed.

SECTION THREE: CODIFICATION. Section One of this ordinance shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance to be consistent with the other sections of the *Code of Ordinances*.

SECTION FOUR: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**
Approved as to form and legality:

GRETCHEN R. H. “BECKY” VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2020.

Adopted on second reading this _____ day of _____, 2020.



**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 13, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on number of Planning & Zoning Board members

SYNOPSIS:

The Chairman of the Planning & Zoning Board would like the Council to reconsider the number of regular members.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

The City Attorney only recommends that the number of planning board members be an odd number to avoid tie votes.

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. 2019-05 City Board reorganization final

ORDINANCE 2019-05

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO PROCESSES, MEETING NOTICES, AGENDAS, OPEN GOVERNMENT AND MINUTES PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES; PROVIDING FOR THE AMENDMENT OF SECTION 2-8, SECTION 14-62 THROUGH SECTION 14-64 AND SECTION 14-68 AND THE REPEAL OF SECTIONS 5-15, SECTION 8½-31 THROUGH SECTION 8½-34, SECTION 2-51 THROUGH SECTION 2-53 AND SECTION 14-70 OF THE *CITY CODE OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*, and other applicable controlling law; and

WHEREAS, in this Ordinance, when text is being amended, ~~strikethrough~~—text represents deletions from the current text of the *Code of Ordinances of the City of Daytona Beach Shores* while underlined text represents deletions.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) set forth herein as the legislative

Underlined text is added language to *City Code* and ~~strikethrough~~ text is deleted language to *City Code*.
When all new text is presented, no underlining is shown.

and administrative findings and intent of the City Council.

(b). The City Council of the City of Daytona Beach Shores hereby reaffirms its commitment to being a government that operates “in the Sunshine” for the benefit of its citizens and the general public.

(c). The provisions of this Ordinance are enacted pursuant to the statutory and home rule powers of the City of the City of Daytona Beach Shores to establish and maintain the appropriate operations of City to ensure the utmost engagement of the public in City decision making processes and transparency of actions for the benefit of the public.

(d). The City Council of the City of Daytona Beach Shores appreciates the public service provided by the members of the various City boards, commissions and committees and desires and directs that such bodies operate under normative and consistent administrative processes and procedures and receive the training and support that they require in order to accomplish the role and function of local government assigned to each such body.

(e). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION TWO. SUBSTANTIAL REVISION AND AMENDMENT TO SECTION 2-8, CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES RELATING TO ORGANIZATIONAL PROVISIONS PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES. Section 2-8 of the *Code of Ordinances of the City of Daytona Beach Shores* is amended to read as follows:

Sec. 2-8. - General provisions relating to City Council appointed boards, commissions and committees and Council appointments.

(a). Applicability. This section applies to all boards, commissions or committees, except to the extent otherwise specified in Federal or State law or otherwise provided in this

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

Code. This Section shall not apply to any City canvassing board, as may be established from time-to-time, or any ad hoc City staff committee or ad hoc group of citizens accomplishing a specific purpose, but not acting in a governmental collegial nature; provided, however, that the provisions of State law relative to public records, public meetings, public notices, participation by the public, the creation and approval of minutes and similar procedural requirements shall be applicable as to all City activities involving collegial decision making or recommendations.

(b). *Positions; qualifications; residency.* Each member shall be appointed to a specific numbered position by the City Council. No member may be a paid or elected official or employee of the City. Absent a controlling provision in Federal, State, County or City law, ordinance, rule or regulation, every appointee must, at the time of appointment, be a resident of the City and an elector of Volusia County; provided, however, that this requirement may be waived by a fourth-fifths vote of the City Council if it is found in the best interests of the City to do so. A member who ceases to meet a requirement for qualification, shall be deemed to have resigned upon the failure to maintain the qualification for office and shall be replaced at any time thereafter by the City Council, but may continue to serve on an interim basis until a successor is qualified and appointed if the member's interim service is approved by a fourth-fifths vote of the City Council.

(c). *Terms.* Each position shall have a 3-year term of office with each beginning on October 1 of a calendar year. Each member appointed shall serve for the specific term, or the unexpired portion thereof, of the specific position to which the member is appointed. A qualified member shall also serve after the expiration of a term of office until a successor is appointed.

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(d). *Vacancies.* In the event of death, resignation, removal from office or any other vacancy, a successor shall be appointed to serve the remaining unexpired portion of the specific term of office of the vacant position.

(e). *Removal.* The City Council may, by majority vote, remove a member for cause upon written charges after notice and public hearing by reason of (i) 3 unexcused absences within a 12-month period as determined by the City Council or (ii) misfeasance, malfeasance or dereliction of duty or such other conduct that provides for removal under a controlling provision of law.

(f). *Officers.* The City Council may, from time-to-time, designate one member as the presiding officer who shall serve until another presiding officer is designated. A chairperson and vice-chairperson shall be elected from the members at the first meeting of each calendar year and may serve in that capacity for no more than 2 consecutive terms unless service of more consecutive terms are approved by a fourth-fifths vote of the City Council.

(g). *No compensation.* Members shall receive no compensation for their services, but may be reimbursed for travel and other expenses associated with their duties.

(h). *Quorum.* A quorum is half the number of the voting membership, including alternate members who are participating as voting members, of the board, commission or committee. The only appropriate action in the event of a non-quorum is to continue the meeting; provided, however, that the attending members of the body may discuss matters of a non-quasi-judicial nature and matters that are not, and will not be, the subject of a noticed public hearing. Continuances of meetings and hearings may be accomplished administratively without the vote

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of a quorum due to inclement weather conditions, emergency circumstances and administrative necessity when the Chairperson of the body concurs in such action proposed by City staff and, in such circumstances, a designated member of City staff shall attend the meeting, if possible, and announce a continuance of the meeting or hearing to a date that is approved by the Chairperson. In the event of the unavailability of the Chairperson to make decisions as set forth in this Subsection, the Vice-Chairperson or, if no Vice-Chairperson is in office, the member with the longest service on the body shall make such determinations. In the event of a continuance under the provisions of this Subsection, City staff shall take all reasonable and appropriate actions to notice the meeting or hearing and to ensure that all affected parties are advised of the new date of the meeting or hearing.

(i). Term limits. No member shall serve more than 3 consecutive terms on the same board, commission, or committee unless service of more consecutive terms are approved by a fourth-fifths vote of the City Council.

(j). Absences. Each regular member and each alternate member shall notify the designated City staff liaison when it is anticipated that the member will be absent from a meeting. At the meeting, the body may vote to excuse the absence provided that the staff liaison was notified at least 24 hours prior to the scheduled meeting; provided, however, that less notice will be acceptable in the event of exigent circumstances facing the member and causing the absence.

(k). Alternate members. In addition to appointing regular members, the City Council may also appoint alternate members in such numbers as it deems appropriate to serve in the

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event of absences by regular members. Alternate members shall have all of the rights and privileges of regular members and shall be subject to the same requirements as regular members. Alternate members may attend all meetings of the body to which appointed, but may only vote when filling the position of an absent member either for an entire meeting or a particular vote or set of votes at a meeting depending upon the duration of the absence of a member; provided, however, that once a member is absent from a meeting, that member shall not regain his or her seat on the body unless a quorum is lacking in the meeting subsequent to his or her absence. Alternate members shall not participate in the debate on matters that are quasi-judicial in nature when not sitting as a voting member, but the chairperson, in his or her discretion, may permit participation of alternate members when matters are advisory in nature. Alternate members may serve in the absence of a member of the body whether for an entire meeting or for a particular vote or set of votes at a meeting. If more than one alternate is appointed to a body, they shall serve in a rotational method or by means of the order of appointment if no rotation has been established with the first appointed alternate member serving first. It is the duty of members to advise the staff liaison of their expected absence from a meeting as early as possible.

(l). *Method of creation.* Advisory bodies shall be created by resolution as opposed to ordinance except in unusual circumstances or in the event that controlling law requires otherwise.

(m). *Rules of procedure.* All proceedings shall be guided by the latest edition of Roberts Rules of Order in a manner which allows the body to function in an organized manner, but without technical adherence thereto. Motions for reconsideration may only be heard at the

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next session of a body occurring after the meeting at which the vote desired to be reconsidered occurred. Any member of the body, regardless of whether he or she voted at the prior meeting, may move for reconsideration provided that such moving member did not vote on the non-prevailing side at the prior meeting with regard to such vote. If a matter that was determined at an advertised public hearing is later determined to be reconsidered, public notice shall be published consistent with the requirements that were applicable when the vote that is to reconsidered was taken and an explanation of the reconsideration process shall be incorporated into the public notices relating to the matter.

(n). *Bylaws; applicable laws.* Unless otherwise empowered by Federal, State, County or City law, ordinance, rule or regulation, no bylaws shall be adopted by the body and matters within the jurisdiction of the body shall be implemented in accordance with the provisions of the creating *City Code* provision, ordinance or resolution. The provisions of Florida law relating to public records, public notices, participation by the public, the creation and approval of minutes and public meetings shall apply to all City board, commissions and committees except to the extent explicitly provided otherwise in state law. If Federal law requires certain processes and procedures, then the board, commission or committee subject to such requirement, shall ensure that full compliance is maintained. All actions and activities of each body shall be accomplished in full compliance with the requirements of open and transparent government under the guidance of the City Attorney who shall also guide and direct adherence to the requirements of law relative to quasi-judicial proceedings of all bodies. The City Clerk shall endeavor to maximize public notice of meetings and hearings of the City as well and public information relative to the

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actions taken at such meetings and hearings to include, but not be limited to, the use of technology for the provision of notices and records relating to the boards, commissions or committees of the City insofar as practicable.

(o). *Staff support; compliance with controlling law.* The City Manager shall provide staff support and other operational support to a board, committee or commission consistent with a determination as to the needs of the body and the availability of staff and other resources. The City Attorney shall provide legal guidance to all boards, committees, and commissions to ensure that each body, in accordance with the processes and procedures promulgated by the City Clerk, provides approved and executed minutes for each meeting, that all agendas and minutes comport with controlling law, that public participation is allowed in all appropriate circumstances and that the controlling provisions of law relating to open government are honored and respected. The City Manager shall be responsible for appointing a City staff liaison for each board, commission or committee. Designated staff liaisons are authorized to provide support and assistance for each board, commission or committee, including expenditures budgeted for that purpose. The City Council may require a report of the activities of a body at any time.

(p). *Permanent bodies.* The following board of the City of Daytona Beach Shores currently exists in accordance with the provisions of this Code and other controlling law: Planning and Zoning Board.

(q). *Other bodies.* Other boards, committees, and commissions, by whatever name (such as task forces) may be created or appointed from time-to-time under authority of the City Council and their actions shall be subject to the provisions of this Code and controlling State law

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relative to the noticing of hearings/meetings and the maintenance of minutes of such activities unless the body is an ad hoc body of volunteers functioning in a manner which operates a program or event.

(r). Transitional provision; repealers; amendments.

(1). Commencing on the effective date of this Ordinance, all members of City bodies shall continue to serve in their appointed capacity. If consistent with the requirements of State law, each appointed member whose appointment is made after the term of a current member concludes, shall be appointed for a term of office which terminates on September 30 of a year and, in the event that a term in excess of the normative term is necessary to provide for such termination date with the appointee serving a full term, then the initial term of appointment to establish such termination date shall be for a term in excess of the normative term duration which will end on the following September 30. It is permissible if the result of this transitioning provision results in non-staggering terms notwithstanding any other provision of the City Code to the contrary.

(2). All provisions of Section 5-15 of the Code of Ordinances of the City of Daytona Beach Shores relating to the Beautification Advisory Board are hereby repealed; provided, however, that the members of that Board shall continue in service as the Public Arts and Beautification Committee as created by resolution of the City Council. Further, all provisions of the Code of Ordinances of the City of Daytona Beach Shores are hereby repealed which relate to the Board with regard to land development regulation within the City.

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(3). All provisions of Section 8½-31 through Section 8½-34 of the Code of Ordinances of the City of Daytona Beach Shores relating to the Culture and Entertainment Board are hereby repealed and all funds appropriated to that Board, which are not encumbered, shall be transferred to fund the programs and projects of the City's Community Center.

(4). Section 2-51 through Section 2-53 of the Code of Ordinances of the City of Daytona Beach Shores relating to the Planning and Zoning Board are hereby repealed; provided, however that the following Sections of the Code of Ordinances of the City of Daytona Beach Shores are amended as follows:

Sec. 14-62. - Creation of the planning and zoning board.

The City Council establishes a planning and zoning board which shall consist of seven ~~(7) five-(5)~~ members to be known as "The Daytona Beach Shores Planning and Zoning Board." The jurisdiction of the said planning and zoning board shall be throughout the incorporated areas of the City. ~~The board members shall be appointed for a term of three (3) years and shall serve at the pleasure of the city council; provided, however, that initial appointments shall be made as follows: two (2) members shall be appointed for a term of one (1) year; two (2) members shall be appointed for terms of two (2) years; and one (1) member shall be appointed for a term of three (3) years. Not less than three (3) board members shall be residents of Daytona Beach Shores and the remaining regular and alternate members must directly or indirectly own real property in the City. In the event an appointed member moves outside the City which results in less than three (3) resident members or a nonresident member no longer directly or indirectly owning real property in the City, a vacancy shall be said to exist and a reappointment to such position made.~~

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~~The City Council may appoint two (2) alternate members to the Planning and Zoning Board, who shall serve three (3) year terms. Alternate members shall be governed by section 2-8 of the Code of Ordinances, including the two (2) consecutive term limitation. Alternate members attending a board meeting shall have the right to participate as a regular member except that an alternate member cannot vote unless the alternate is sitting for an absent or disqualified regular member. Alternate members not sitting at the dais for an absent or disqualified regular member, shall sit at the staff table during the board meeting.~~

Sec. 14-63. -Planning and zoning ~~Zoning~~ board functions, powers and duties.¹

The functions, powers and duties of the planning and zoning board shall be as follows:

1. Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions. Such information and material may include maps and photographs of manmade and natural physical features of the area concerned, statistics on past trends and present conditions with respect to the population, property values, economic base, land use, environmental impact and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts and necessary protection therefor.

2. Recommend principles and policies for guiding action in the development and protection of Daytona Beach Shores.

¹ At second reading of this Ordinance, the City Council transferred the provisions of Section 14-69 to this Section and assigned the powers, duties and responsibilities of the former Board of Adjustments to the Planning and Zoning Board. Section 14-69 shall be, accordingly, deleted by the Code Codifier.

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3. Hear requests, whether initiated by the commission or otherwise, for creation of new zoning classifications or changes or amendments in the zoning regulations or zoning classifications, or for new or different uses in any zoning classification, and to make recommendations to the City Council concerning the same.

4. Serve as the City's Local Planning Agency pursuant to Section 163.3174, *Florida Statutes*, and have all powers set forth therein.

5. Hear and decide such special exceptions as specifically authorized under the terms of the zoning regulations; to decide such questions as are involved in the determination of when special exceptions should be granted; and to grant special exceptions with appropriate condition and safeguards or to deny special exceptions when not in harmony with the purpose and intent of this ordinance or any regulation enacted under the authority of the *Land Development Code*.

6. To act as the Fire Code Board of Adjustment and Appeals having the power to hear appeals of decisions and interpretations of the Fire Marshal and to consider alternatives to the *Florida Fire Prevention Code*. Such decisions shall be based on whether the alternatives or interpretations being appealed provide for relates to special situations arising from historic, geographic or unusual conditions; or if the alternative requirements result in a level of protection to life, safety or property equal to or greater than the applicable minimum fire safety standards. Decisions shall be rendered at the hearing and shall include the reasons for the decision. Such decisions shall be final, but subject to such remedy as may be available at law or in equity. All appeals granted must be exercised within six (6) months of the order or they shall be

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automatically deemed null and void. One (1) six (6) month extension may be granted by the Board if a written request for an extension has been submitted to the City in writing prior to the expiration of the six (6) month period.

7. In terms of exercising its authority under the provisions of the *Land Development Code*, the Planning and Zoning Board shall adhere to the following:

a. In granting any special exceptions the Board shall find that such grant will not adversely affect the public interest.

b. In granting any special exception, appropriate conditions and safeguards may be imposed which are consistent with the protection of the public health, safety, morals or general welfare. Violation of such conditions and safeguards when made a part of the development order under which a special exception is granted shall be deemed a violation of the *Land Development Code*.

c. The Board may prescribe a reasonable time limit within which the action for which the special exception is required shall be begun or completed or both.

d. The following standards shall be applicable in determining whether the Board shall grant or deny a special exception:

i. The grant of a special exception shall be in harmony with the purpose and intent of the *Land Development Code*, particularly those applicable to the zoning classification in which the special exception is located.

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ii. The Board may not grant a special exception unless the applicant has demonstrated his compliance, or ability to comply with, the conditions imposed.

iii. The Board must find that the applicant has submitted sufficient evidence to assure that he, she, they or it is or will be able to comply with all requirements of the.

iv. The Board shall find that the proposed use will not generate an undue amount of traffic congestion which would tend to create a hazard or danger to the public or to persons in the vicinity from such use, or create a public nuisance.

v. The Board shall find that the special exception will not materially alter the character of the surrounding neighborhood or adversely affect the value of surrounding lands, buildings or natural resources.

vi. The Board shall find that the special exception will not adversely affect the natural environment, natural resources or scenic beauty, or give rise of any pollution of the air, land or water, or cause unnecessarily injurious heat, noise or odor.

8. The Planning and Zoning Board may authorize, after due public notice, the time and place of the meeting, and application upon a form prescribed by the Building Official, such variance or variances from the terms of the *Land Development Code* as will not be contrary to the public interest when, owing to special conditions, the literal enforcement of the provisions

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of the *Land Development Code* would result in unnecessary hardship or practical difficulty. Such variance application shall be heard only if it is presented by a person owning fifty-one (51) percent or more of the specific area of land involved or upon administrative application by the City; provided, however, that no lot coverage or maximum north-south width variance or variances may be granted from the terms of the T or RMF-1 zoning regulations:

a. To justify any variance, the applicant must demonstrate all of the following:

i. Special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable generally to other lands, structures or buildings in the same zoning classification.

ii. The special conditions or circumstances do not result from the actions of the applicant and are not primarily economic or financial in nature.

iii. Literal interpretation or enforcement of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification under the terms of the *Land Development Code*.

iv. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

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v. The variance sought will not authorize or extend any nonconforming use or other nonconformity with respect to the land or structures in question.

vi. The granting of the variance will be in harmony with the general intent and purpose of the *Land Development Code*, will not be injurious to the area involved or surrounding properties and will not authorize a use of the property not permitted by its zoning classification.

vii. The variance sought will be consistent with the City's Comprehensive Plan.

b. In granting any variance, the Planning and Zoning Board may prescribe appropriate conditions and safeguards in conformity with of the *Land Development Code*. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of the *Land Development Code*.

c. The Planning and Zoning Board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed, or both.

d. No nonconforming use of neighboring lands, structures or buildings in the same zoning classification and no permitted use of lands, structures or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.

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9. The Planning and Zoning Board may hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the *Land Development Code*.

10. Appeals of final decisions of the Planning and Zoning Board may be made to the City Council upon the filing of a written appeal detailing the asserted errors of the decision within thirty (30) days of the date of the rendering of the decision. Appeals shall be heard de novo.

Sec. 14-64. - General rules of procedure.

1. ~~The board shall elect a chairman, vice-chairman and secretary among its members.~~

2. ~~The board shall meet at regular intervals to be determined by it in order to carry out its responsibilities, and at such other times as the board shall determine. It shall adopt such rules as are consistent with this ordinance for the transaction of its business and keep a properly indexed record of its resolutions, transactions, findings and determinations, which records shall be public. Such rules shall become effective upon approval of the City Council.~~

2. 3. The A quorum shall be necessary before the board can vote on any matter. A quorum shall consist of three (3) members. However the affirmative vote of three (3) members shall be required to take any action as to make any recommendation to the City Council.

4. ~~The City Manager, or other designated alternate, shall be responsible for taking the minutes, maintaining the records and preparing reports for the Planning and Zoning Board.~~

(4). Section 14-70 of the *Code of Ordinances of the City of Daytona Beach Shores* relating to the Board of Adjustments is hereby repealed and Section 14-68 of the *Code of*

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Ordinances of the City of Daytona Beach Shores, relating to that Board, is hereby amended² to read as follows:

~~Sec. 14-68. Board of adjustments created; composition.~~

~~1. The Board of Adjustments shall be made up of five (5) members and such alternate members as appointed by the City Council. All members shall be appointed by the City Council. No member of the Board of Adjustments shall be a paid or elected official or employee of the City of Daytona Beach Shores. At least three (3) members of the Board of Adjustments shall be residents of the City of Daytona Beach Shores and the others shall be real property taxpayers of the City. The City Council may appoint not more than two (2) alternative members, designating them as such and these alternative members shall be residents or real property taxpayers of the City. These alternative members may act in the temporary absence or disability of any regular member or may act when a regular member is otherwise disqualified in a particular case that may be presented to the Board.~~

~~2. Members of the Board of Adjustments shall serve for overlapping terms of not less than three (3), nor more than five (5), years thereafter until their successors are appointed. One (1) member shall serve for five (5) years, two (2) members for four (4) years, and two (2) members for three (3) years. Any vacancy occurring during the unexpired term of office of any member shall be filled by the City Council for the remainder of the term. Such vacancies shall be filled within thirty (30) days after the vacancy occurs.~~

² The entirety of the provision was deleted by the City Council on second reading of this Ordinance.

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~~3.—The Board of Adjustments shall elect a chair and a vice-chair from among its members. The terms of all such officers shall be for one (1) year with eligibility for reelection without limitation.~~

~~Sec. 14-70. -- Procedure, board of adjustments.~~

~~The Board of Adjustments may establish such procedures as it deems necessary for hearing matters before it in accordance with the controlling provisions of law relative to administrative due process under the guidance of the City Attorney.~~

{Editor's Note: The following is the deleted text from the current Section 2-8}:

~~(1)—Terms of office.~~

~~(a)—Members shall serve with no limit to number of terms, subject to the approval of the city council for future appointments.~~

~~(b)—A member shall not serve on more than one board at a time. A "board" shall mean any board created by the City of Daytona Beach Shores ordinances or resolutions.~~

~~(c)—The term limitation set forth in subparagraph (a) above shall only apply to consecutive terms as a regular member of a board or as an alternate member of a board. Said term limitation shall not prohibit an alternate member from serving as a regular member or a regular member from serving as an alternate member even though the combined consecutive terms would exceed the above limitation.~~

~~(2)—Attendance. The Charter of the City of Daytona Beach Shores governs the council's attendance as follows:~~

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~~"Absence from three consecutive regular meetings of the council shall operate to vacate the seat of a member unless a leave of absence is first granted by the council or such absence is excused by the council by motion setting forth the fact of such excuse, duly entered in the minutes."~~

~~The members of the board shall adhere to the same standards of attendance as stated for council members.~~

~~Board members shall submit a request for leave of absences or request for the excusal of absence to the city manager for placement on the council agenda when three absences are anticipated.~~

~~(3) — Chairman.~~

~~(a) — Each board shall annually elect its chairman and vice-chairman from among its members. While preference should be given to those members who have had a minimum of one year's service on the board, the board may elect as its chairman a member with less than one year's service on the board. The chairman shall serve a term of one year and may not serve more than two consecutive terms as chairman on the same board.~~

~~(b) — The board chairman or his designee shall attend one monthly regularly scheduled meeting of the city council.~~

~~(c) — The chairman's duties shall also apply to the position of vice-chairman when serving in the chairman's absence.~~

~~(4) — Orientation.~~

~~(a) — Upon acceptance of appointment to a city board or multi-jurisdictional board, each new board member shall be required to attend an orientation session. This orientation session will acquaint the new members with items such as, but not limited to the following:~~

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~~History and organization of city government and of the applicable city or multi-jurisdictional board;~~

~~Responsibilities of board members;~~

~~Explanation of "Government in the Sunshine" and Financial Disclosure Laws; and~~

~~Presentation of the city's growth management plan and its relationship to all boards.~~

~~(b) — The city council encourages the departments and agencies providing guidance and staff support to each respective board or commission to provide initial and ongoing orientation assistance for the board members.~~

~~(5) — Annual report. Each board shall prepare an annual report on its activities and provide said report to the city council by September 30th of each year.~~

SECTION THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance and to provide support, training and guidance to the boards, commissions or committees of the City as such Charter officials may deem appropriate in their respective roles and functions under the *City Charter* and, further, to agendaize matters before a Code Enforcement Special Magistrate in accordance in accordance with the needs of the City.

SECTION FOUR: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the operations of boards, commissions and committees, within the City of Daytona Beach Shores

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and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION FIVE: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions Section Two of this Ordinance be codified while the remaining sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the provisions of this Ordinance.

(b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

(c). The Code codifier shall, as may be needed, change referenced throughout the *City Code* and *Land Development Code*, as the case may be, from the Board of Adjustments to the Planning and Zoning Board such as, but not limited to, Section 6-10, Section 10-7, Section 14-43, Section 14-76, Section 14-82, and Section 1-5.7 and Section 2-2.

SECTION SIX: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict such as, but not limited to, Section 5-15.6.

SECTION SEVEN: SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent

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provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION EIGHT: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this 11th day of June, 2019.

Passed on second reading this 25th day of June, 2019.

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**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 13, 2020 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM: Mike Booker, City Manager

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration to cancel the City Council Meetings for November 24 and December 22

SYNOPSIS:

Due to the holidays, the council usually cancels the second meeting in both November and December.

FISCAL IMPACT STATEMENT:

BACKGROUND:

With the upcoming Winter holidays, the council usually votes to cancel the second meeting for both November and December. The dates for 2020 are November 24th and December 22nd.

LEGAL REVIEW:

The City Council has discretion to take this action.

RECOMMENDATION:

SUGGESTED MOTION:

I move to cancel the meetings on November 24 and December 22.

ATTACHMENT: None