



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING OCTOBER 26, 2021 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 - Gwyn Herstein 15 years
- 6. APPROVAL OF MINUTES**
 - A. City Council Minutes October 12, 2021
- 7. CONSENT AGENDA:**

- A. Public Safety September monthly report
- B. Community Services September, 2021 Report
- C. Building Division September, 2021 Report

8. REPORTS OF THE CITY ATTORNEY:

- A. City Attorney Report

9. REPORTS OF THE CITY MANAGER:

- A. City Manager's Report October 26, 2021

10. OLD BUSINESS:

- A. Ordinance 2021-11: Proposed Amendment to the Atlantic Avenue Estates Development Agreement; Request by owner of 3833 Cardinal Boulevard
- B. Ordinance 2021-12: Voluntary Annexation - 104 Broad Avenue
- C. Ordinance 2021-13 Sale of Property located at 136 Beachcomber.

11. NEW BUSINESS:

- A. Ordinance 2021-14: Mobile Food Vehicles
- B. Discussion on proposed construction change ordinance

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.

MINUTES
CITY COUNCIL MEETING
October 12, 2021
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Councilmember Richard Bryan, Vice Mayor Mel Lindauer, Councilmember Michael Politis, Councilmember Richard Frizalone
Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Becky Vose, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Captain Michael Fowler.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

6. APPROVAL OF MINUTES

A. City Council Minutes September 28, 2021

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR MEL LINDAUER to Approve both sets of minutes from September 28, 2021.

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

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

B. City Council Board Workshop Minutes September 28, 2021

7. CONSENT AGENDA:

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

Attorney Becky Vose reviewed her report for the council. She explained that the agenda item regarding the sale of the Beachcomber property would need to be continued. When the property was purchased using grant funds there are restrictions attached to it that need to be settled.

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report Oct. 12

City Manager Michael Booker reviewed his report for the council. He included an item regarding construction work hours on a Sunday. He determined that it is legal for construction work between the hours of 10:00 am and 6:00 pm. A call had been received that workers had been seen on the site of Oceans 25. The council held a brief discussion and determined they were not in favor of allowing construction work on Sunday. Staff will work on providing an ordinance to make this change.

10. OLD BUSINESS:

A. Ordinance 2021-13 Sale of Property located at 136 Beachcomber.

Attorney Vose read the Ordinance by title for the record.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Continue Ordinance 2021-13 until October 26, 2021.

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

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

11. NEW BUSINESS:

A. Ordinance 2021-11: Proposed Amendment to the Atlantic Avenue Estates Development Agreement; Request by owner of 3833 Cardinal Boulevard

City Planner Stewart Cruz provided a brief review of his staff report. This is the second amendment to the Atlantic Avenue Estates LLC development agreement. The Planning &

Zoning board recommended approval at their meeting earlier that morning. Vice Mayor Lindauer inquired about the fee that was requested to be waived. Mr. Cruz explained that the fee for a variance request was only \$220 while the fee for a development agreement is \$550. The council was in agreement to reduce the fee to \$220.00.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER MICHAEL POLITIS to amend the motion to state the fee was reduced to \$220.

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

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

COUNCILMEMBER RICHARD BRYAN moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve Ordinance 2021-11 on first reading as amended.

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

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

B. Ordinance 2021-12: Voluntary Annexation - 104 Broad Avenue

City Planner Stewart Cruz stated that all requirements for annexation had been met. Staff recommended approval. Property owner Heather Roberts spoke to the council. This is a voluntary annexation and she was excited to become a citizen of the Shores.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to Approve Ordinance 2021-12 on first reading.

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

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

C. Approval to cancel City Council meetings on November 23rd and December 21st due to holidays.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD BRYAN to cancel the City Council meetings on November 23rd and December 28th due to holidays.

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

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

12. COUNCIL COMMENTS:

CMBR Bryan informed the council that there were two potential bills regarding smoking in the house and senate. He will stay in touch with the representatives in Tallahassee and update the

council as necessary. Mayor Miller reminded the audience that Coffee With the Mayor would be the following day. The guest speaker is the new Tax Collector, Will Roberts. She also announced the next food truck/concert event would be November 5th.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

There were no audience comments.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

136 beachcomber, ord for Sunday work

15. ADJOURNMENT:

The meeting ended at 6:37 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY OF DAYTONA BEACH SHORES

DEPARTMENT OF PUBLIC SAFETY

3050 South Atlantic Avenue

Daytona Beach Shores, Florida 32118

Office of Director of Public Safety

Office 386-763-5333 Fax 386-763-5341

MONTHLY REPORT FOR SEPTEMBER 2021

	Sep-21	21/YTD	Sep-20	20/YTD
Police Related Calls	2,151	20,809	2,443	24,148
Fire Related Calls	28	409	63	311
Rescue Related Calls	109	954	89	759
Fire Related Alarms Sounding	19	128	10	97
Traffic Citations	201	2,144	356	3,509
Written Warnings	33	78	125	903
Building Inspections	29	111	38	453
Arrests: Adults	39	335	39	467
Juveniles	0	2	0	5
City Ordinance Charges	0	0	0	2
Florida State Statute Charges	62	577	70	889
Accidents: Total	14	206	23	199
Street/Highway	9	109	9	105
Parking Lot	5	107	14	94

Michael Fowler Acting Public Safety Director

Michael Fowler
10-13-21

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2021-09-01 through 2021-09-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
MISCELLANEOUS LE CALL	MISC	416	19.34 %	13.87
EXTRA PATROL	EP	395	18.36 %	13.17
TRAFFIC STOP	TS	359	16.69 %	11.97
PROPERTY CHECK	PRC	303	14.09 %	10.10
SUSP PERSON	SPER	69	3.21 %	2.30
SUSPECT STOP	SS	49	2.28 %	1.63
TELEPHONE HANDLE	THC	40	1.86 %	1.33
SUSP VEHICLE	SVEH	28	1.30 %	0.93
MEDICAL EMERGENCY	MED1	26	1.21 %	0.87
SUSP INCIDENT	SINC	24	1.12 %	0.80
DIRECTED PATROL REQUEST	DPR	23	1.07 %	0.77
FIRE ALARM	ALARMF	23	1.07 %	0.77
DISTURBANCE	DIST	22	1.02 %	0.73
FLAG DOWN	FLAG	21	0.98 %	0.70
NARCOTICS	NARC	19	0.88 %	0.63
CIVIL COMPLAINT	CIVIL	16	0.74 %	0.53
SCHOOL ZONE	SZ	16	0.74 %	0.53
TRESPASSERS	TRES	15	0.70 %	0.50
FOUND PROPERTY	PROPF	14	0.65 %	0.47
ASSAULT/BATTERY	ABAT	12	0.56 %	0.40
911 CK/OPEN LINE	911CK	11	0.51 %	0.37
FALL- NON EMERGENCY	TRAU3	11	0.51 %	0.37
RADAR	RADAR	11	0.51 %	0.37
RECKLESS DRIVER	RD	11	0.51 %	0.37
MVA	MV	10	0.46 %	0.33
TRAUMA EMERGENCY	TRAU1	9	0.42 %	0.30
ILLEGAL PARKING	PARK	8	0.37 %	0.27
MEDICAL NON-EMERG	MED2	8	0.37 %	0.27
WALKUP	WALKUP	8	0.37 %	0.27
WARRANT	WAR	8	0.37 %	0.27
INVESTIGATION	INV	7	0.33 %	0.23
NOISE	NOISE	7	0.33 %	0.23
ESCORT	ESCORT	6	0.28 %	0.20
INFORMATION GIVEN	INFO	6	0.28 %	0.20
SHOPLIFTING	SHOP1	6	0.28 %	0.20
THEFT	THEFT	6	0.28 %	0.20
WELL BEING CHECK	WBC	6	0.28 %	0.20
DISABLED VEHICLE	DAV	5	0.23 %	0.17
DRUNK DRIVER	DUI	5	0.23 %	0.17
FLEEING DRIVER	FLEE	5	0.23 %	0.17
HIT&RUN MVA	MVHR	5	0.23 %	0.17
SPECIAL DETAIL	SDL	5	0.23 %	0.17
STROKE / CVA	CVA	5	0.23 %	0.17
TOWED VEHICLE	TOW	5	0.23 %	0.17
ZONE ACCOUNTABILITY PATR	ZAP	5	0.23 %	0.17
ASSIST AGENCY	ASSIST	4	0.19 %	0.13

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2021-09-01 through 2021-09-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
DOMESTIC DISTURBANCE	DV	4	0.19 %	0.13
ELEVATOR CALL	ELEV	4	0.19 %	0.13
FRAUD	FRAUD	4	0.19 %	0.13
TRAUMA NON EMERG	TRAU	4	0.19 %	0.13
UNCONSCIOUS	UNC	4	0.19 %	0.13
VANDALISM	VAND	4	0.19 %	0.13
ANIMAL COMPLAINT	AC	3	0.14 %	0.10
ATTEMPTED SUICIDE	ASUI	3	0.14 %	0.10
FIGHT	FIGHT	3	0.14 %	0.10
FIREWORKS	FIREWK	3	0.14 %	0.10
OVERDOSE/POISONING	OD	3	0.14 %	0.10
SUICIDAL PERSON	SP	3	0.14 %	0.10
ATT TO CONTACT	ATC	2	0.09 %	0.07
CARDIAC ARREST	CPR	2	0.09 %	0.07
DRUNK PERSON	IP	2	0.09 %	0.07
MEDICAL UNKNOWN	ALARMM	2	0.09 %	0.07
MENTALLY ILL PER	MIP	2	0.09 %	0.07
PRISONER TRANS	PT	2	0.09 %	0.07
REPOSSESSED VEH	REPO	2	0.09 %	0.07
ARSON	ARSON	1	0.05 %	0.03
BURGLARY ALARM	ALARM	1	0.05 %	0.03
BUSINESS ALARM	ALARMB	1	0.05 %	0.03
CAR JACKING	CJ	1	0.05 %	0.03
DANGEROUS COND PD	DCPD	1	0.05 %	0.03
DEAD PERSON	DEAD	1	0.05 %	0.03
DROWNING	DROWN	1	0.05 %	0.03
HARRASSING CALLS	HCALL	1	0.05 %	0.03
JUVENILE	JUV	1	0.05 %	0.03
LASER	LASER	1	0.05 %	0.03
LOST PROPERTY	PROPL	1	0.05 %	0.03
MISC FIRE SERVICE CALL	MISCF	1	0.05 %	0.03
MISSING PERSON	MP	1	0.05 %	0.03
MVA W/ INJURIES	MVI	1	0.05 %	0.03
NE ASST- FIRE REQ	LEO2	1	0.05 %	0.03
RECOVERED SIG 10	SVR	1	0.05 %	0.03
ROAD OBSTRUCTION	RDOB	1	0.05 %	0.03
SMOKE INVESTIGATION	SMOKE	1	0.05 %	0.03
STOLEN VEHICLE	SV	1	0.05 %	0.03
TRAFFIC STOP/INV	TSB	1	0.05 %	0.03
TRAUMA CRITICAL	TRAUE	1	0.05 %	0.03
WALK & TALK	WT	1	0.05 %	0.03
TOTAL CALLS:		2,151	100.00%	71.70

NOTE: CAD-generated statistical reports are compiled from a live database of calls for service; this live database requires frequent call updating to ensure real time data is correct and maintained. When compiling and comparing statistics over time, minor discrepancies are inherent and should be expected. For final report information on crime, Uniformed Crime Reporting (UCR) statistics should be utilized.



CITY OF DAYTONA BEACH SHORES
DEPARTMENT OF PUBLIC SAFETY
3050 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Office of Director of Public Safety
Office 386-763-5333 Fax 386-763-5341

TRAINING SEMINARS ATTENDED

Month of September 2021

<i>Norman Medders</i>	<i>9/8-9</i>	<i>DRE Recert training IPTM-Jacksonville</i>
<i>Jacob Franklin</i>	<i>9/20-24</i>	<i>Speed Measurement DSC</i>
<i>Stephen Black</i>	<i>9/27-28</i>	<i>De-Escalation Techniques</i>
<i>Jack Ransom</i>		<i>DSC</i>
<i>Brianna Doonan</i>		
<i>Laura Diedesch</i>		
<i>Ashley Epling</i>		
<i>William Frank</i>		
<i>Alexander Salas</i>		
<i>Richard Rademacher</i>		
<i>Norman Medders</i>	<i>9/27-10/1</i>	<i>Building Construction for Fire Services-POFD</i>
<i>Gary Malphurs</i>	<i>9/28</i>	<i>Red Dot Pistol Course</i>
<i>Daniel Carrazana</i>		<i>Volusia County Gun Club</i>
<i>Laura Diedesch</i>	<i>9/29-10/8</i>	<i>Instructor Techniques</i>

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

SEPTEMBER 2021 STATISTICS

FIRE CALLS	CURRENT MONTH			YEAR TO DATE			PRIOR YEAR		
ENGINE RESPONSE	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
STRUCTURE FIRES	0	0	0	1	0	1	3	0	3
HAZARDOUS CONDITIONS	0	0	0	27	7	0	20	8	1
VEHICLE FIRES	0	0	0	1	1	1	0	0	0
BOAT FIRES	0	0	0	0	0	0	1	0	0
OTHER FIRES NOT LISTED	0	1	0	14	2	0	7	2	0
VEHICLE CRASHES W/ENGINE RESPONSE	1	0	0	6	3	3	5	2	0
SERVICE CALLS	12	2	1	223	23	3	240	38	12
FIRE ALARMS	19	0	0	144	2	0	111	2	3
CANCELLED EN ROUTE	4	3	2	42	17	20	64	28	31
TOTALS	36	6	3	458	55	28	451	80	50

CURRENT MONTH ESTIMATED FIRE DAMAGES

CITY: \$0
COUNTY: \$0
MUTUAL AID: \$0

INSPECTIONS	CURRENT MONTH		YEAR TO DATE		PRIOR YEAR	
	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP
HIGH RISE	10	3	63	58	59	91
HOTEL/MOTEL	6	1	35	31	22	22
ASSEMBLY	0	0	2	1	3	1
MERCANTILE	0	0	20	3	8	6
RESTAURANT	1	0	13	4	11	6
BUSINESS	1	1	64	8	27	7
OTHER	3	0	24	2	23	0
CONSTRUCTION	3	0	38	5	40	6
OCCUPATIONAL LICENSES	0	0	0	0	0	0
APARTMENTS/CONDO	0	0	18	10	7	2
TOTALS	24	5	277	122	200	141

PLANS EXAMINATION HOURS: 1 HRS

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

SEPTEMBER 2021 STATISTICS

EMS CALLS

CURRENT MONTH

YEAR TO DATE

PRIOR YEAR

	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
ALS CALLS	44	9	0	386	64	11	442	95	6
BLS CALLS	43	13	0	242	64	24	280	63	13
TOTALS	87	22	0	628	128	35	722	158	19



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DEPARTMENT OF PUBLIC SAFETY
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MONTHLY REPORT FOR SEPTEMBER 2021

Vehicle Maintenance Division: 2 Positions Assigned: Conducted routine, scheduled maintenance checks and repairs on all city vehicles (includes oil changes and tire exchanges). Additional items were:

Replace battery	veh #161
Replace battery & thermostat	veh# 127
Replace battery	veh #111
Replace siren speaker	veh #168
Replace spark plugs & coils	veh #121
Replace wiring shotgun rack	veh #149
Replace resistor assembly	veh #158
Replace battery & emergency lights	veh #M4
Install Tracer lights	veh #164
Install cargo box	veh #171

COMMUNITY SERVICES DEPARTMENT

MONTHLY REPORT - SEPTEMBER 2021

FACILITIES MAINTENANCE DIVISION:

Currently one position.

Normal monthly duties:

This division assesses any problems reported with the buildings and handles the repair if it is within his ability. He has an a/c certification so he can do a lot of the repairs inhouse. He replaces light bulbs, cleans the outside windows, paints and any other general maintenance needed with the city buildings and city owned properties.

Additionally, this month:

This employee continued replacing light fixtures in City Hall, replaced the gate operator at Public Safety, and began removing rust from the fire bay doors.

PARKS/STREETS DIVISION:

This division is normally eleven maintenance positions and one electrician position.

Normal monthly duties:

This division takes care of the maintenance, upkeep and general appearance of all the parks, streets, sidewalks and medians daily. They mow, change out lights, restock supplies, replace plants as needed, replace or repair street signs, check and clear the storm drains, as well as any other issues that may arise in the city. Although there are two divisions, they now all share in the normal monthly duties.

Additionally, this month:

The park/streets division repaired the crosswalk sign at the north end of town, repaired the drinking fountain at the dog park and filled potholes on Oceans West Blvd. They had more vandalism at McElroy park so they replaced the toilet there, started irrigation repair and relocation for the

new shuffleboard area and added clay to numerous courts at the racquet club. They also handled 1 animal control call.

The electrician had lots of repairs and installs this month, installing new LED lights in the pavilion, fixing the lights at the dog park, worked on the city sign and pole on Dunlawton after a car accident. He also cleaned up after an accident at 2737 A1A removing fuses to safely power off the pole, repaired a light behind Publix, replaced shunts/emergency stops at the public safety building as well as handling 27 electrical line locates.

SEWER DIVISION:

Currently four positions.

Normal monthly duties:

This division maintains and checks all the sewer stations daily, they do all the general maintenance of the sewer stations, generators and the property the stations are located on. This includes mowing and general outside maintenance as well as cleaning the pump areas, wet wells and floats. The division also maintains and inspects the manholes in the city, delivers past due sewer bill notices for finance every month, does cooling tower readings and grease trap inspections quarterly and has two employees in the division that are animal control officers.

Additionally, this month:

The division handled replacement of a water solenoid valve at the master station, replaced a belt on the odor control device, repaired the exhaust fan at station 6 and a valve box at 3711 Cardinal among other minor repairs. They also had 3 animal control calls, 2 pool readings and 46 sewer line locates.

City of Daytona Beach Shores

Planning & Building Division Statistics

Monthly Report – September, 2021

Planning Division

Site Plans - Submittals and Approvals:

Submitted this Month: 0
 Submitted this Fiscal Year: 5
 Approved by Staff this Month: 0
 Approved by Staff this Fiscal Year: 3
 Approved by City Council this Month: 0
 Approved by City Council this Fiscal Year: 0
 Amendments Approved by Staff this Fiscal Year: 0

Building Division

Specific Large Projects (Over \$10,000) - Submitted This Month:

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Adrian Residence	2967 South Atlantic Avenue, Unit 706	9/2	Remodel kitchen and bathrooms	\$59,889.00	\$408.94
Kochalka Residence	3831 South Atlantic Avenue, Unit 802	9/3	Remodel kitchen and bathrooms	\$37,200.00	\$283.58
Gonderman Residence	3851 South Atlantic Avenue, Unit 302	9/3	Remodel kitchen and master bathroom	\$34,200.00	\$266.51
Montagno Residence	3757 South Atlantic Avenue, Unit 401	9/3	Remodel master and guest bathrooms	\$12,500.00	\$137.65
Mireles Residence	3003 South Atlantic Avenue, Unit 16C6	9/3	Remodel kitchen and bathrooms	\$80,500.00	\$528.29
Shores Resort and Spa	2637 South Atlantic Avenue	9/8	Cut and repair access hole in ceiling	\$12,329.00	\$137.65
Carmine's Pizza	2518 South Atlantic Avenue	9/9	Remodel interior for restaurant	\$60,000.00	\$907.98
Bay Residence	2967 South Atlantic Avenue, Unit 1508	9/10	Remodel kitchen and bathroom	\$17,400.00	\$172.20
Colony Villas Condo	3750 South Atlantic Avenue	9/13	Repair concrete block and stucco	\$19,000.00	\$191.58
Simpfendoerfer Residence	3743 South Atlantic Avenue, Unit 4C	9/13	Replace drywall, cabinets, remodel bath	\$62,630.00	\$425.94

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Oceans Four	3003 South Atlantic Avenue	9/13	Replace sanitary piping in lobby ceiling	\$55,587.00	\$53.62
Barnett Residence	3 Oceans West Boulevard, Unit 3C7	9/14	Remodel interior, new cabinets, and vanities	\$35,000.00	\$266.76
Moore's Residence	3046 Esperanza Avenue	9/14	Re-roof house	\$16,812.00	\$166.82
Wright Residence	2937 South Atlantic Avenue, Unit 307	9/15	Remodel guest bathroom, new shower, knee wall, vanity	\$22,000.00	\$193.73
Holt Residence	3797 South Atlantic Avenue, Unit 502	9/15	Build out of unit, cabinets, and counter tops	\$23,000.00	\$199.11
Kimelman Residence	3767 South Atlantic Avenue, Unit 301	9/15	Build out of unit, cabinets, and counter tops	\$23,000.00	\$199.11
Aks Residence	2625 South Atlantic Avenue, Unit 26NE	9/16	New kitchen cabinets, tile for tubs	\$25,800.00	\$215.50
Winn Dixie	2200 South Atlantic Avenue	9/16	Replace two rooftop refrigeration condensers	\$48,500.00	\$373.46
Peck Plaza	2625 South Atlantic Avenue	9/16	Build generator and pressurization rooms	\$213,900.00	\$2,257.78
Donaldson Residence	4 Oceans West Boulevard, Unit 307A	9/17	Kitchen remodel, cabinets, and tops	\$30,000.00	\$238.31
Freile Residence	2937 South Atlantic Avenue, Unit 207	9/17	Kitchen remodel, cabinets, and tops, reduce bar height	\$37,000.00	\$278.13
Crabby Joe's	3701 South Atlantic Avenue	9/17	Mill overlay, seal and stripe parking lot	\$10,010.00	\$116.55
Chan Residence	2555 South Atlantic Avenue, Unit 1903	9/20	Kitchen remodel, new cabinets, and counter tops	\$21,250.00	\$193.73
Snyder Residence	2545 South Atlantic Avenue, Unit 304	9/20	Kitchen remodel, new cabinets, and counter tops	\$29,783.00	\$238.25
Salas Residence	3851 South Atlantic Avenue, Unit 202	9/21	Remodel kitchen and bathroom, new cabinets, tops	\$67,100.00	\$454.21
Sabnekar Residence	3047 South Atlantic Avenue, Unit 1404	9/22	Remodel kitchen, master, and guest bathrooms	\$126,000.00	\$740.46
Atlantic Ocean Palms	3247 South Atlantic Avenue	9/22	Concrete repairs, replace stucco	\$10,000.00	\$112.00
Sand Dollar Condo	3115 South Atlantic Avenue	9/27	Move existing condensers to new stands	\$45,570.00	\$352.26
Williams Residence	3831 South Atlantic Avenue, Unit 102	9/27	Remodel kitchen and bathrooms, new cabinets	\$48,000.00	\$340.71
Nixon Residence	2043 South Atlantic Avenue, Unit 305	9/28	Remodel kitchen and bathroom, replace door	\$13,500.00	\$146.20
Wilkerson Residence	3036 South Peninsula Drive	9/28	Install inground swimming pool with deck	\$80,000.00	\$881.50
White Surf Condo	3555 South Atlantic Avenue	9/29	Resurface pool	\$14,000.00	\$146.20
Colony Villas Condo	3750 South Atlantic Avenue	9/29	Repair multi meter service	\$11,250.00	\$234.50

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Oceans Seven Condo	2947 South Atlantic Avenue	9/29	Remove and replace drywall in common areas	\$100,000.00	\$636.53
MAX Daytona	1903 South Atlantic Avenue	9/29	Install wall, directional, and monument signs	\$47,655.00	\$80.13
Alamo Residence	2801 South Atlantic Avenue	9/30	Repipe hot and cold water lines in house	\$15,000.00	\$82.45
Sand Dollar Condo	3115 South Atlantic Avenue	9/30	Disconnect and reconnect rooftop A/C condensers	\$18,000.00	\$349.01
TOTALS	WORK ADDRESS	DATE	WORK DESCRIPTION	\$1,583,365.00	\$13,007.34

Building Division Revenue by Permit Category:

PERMIT TYPE	SEPTEMBER 2021	FISCAL YEAR-TO-DATE 2020 TO 2021	SEPTEMBER 2020	LAST FISCAL YEAR-TO-DATE 2019 TO 2020
BUILDING	\$12,949.31	\$198,670.74	\$14,236.33	\$207,006.47
ROOF	\$503.57	\$17,257.67	\$353.88	\$12,633.40
DEMOLITION	\$0.00	\$563.90	\$0.00	\$461.40
ELECTRICAL	\$2,381.85	\$31,780.97	\$2,230.13	\$35,869.19
MECHANICAL	\$3,032.16	\$43,300.37	\$10,051.59	\$35,284.94
PLUMBING	\$3,366.52	\$40,119.79	\$2,101.00	\$30,715.85
SIGN	\$347.10	\$3,211.96	\$479.00	\$2,775.29
POLITICAL SIGN BONDS	\$0.00	\$220.00	\$220.00	\$1,760.00
STORMWATER MANAGEMENT	\$0.00	\$0.00	\$0.00	\$0.00
MISCELLANEOUS	\$288.25	\$1,380.95	\$65.25	\$4,254.50
DEVELOPMENT FEES	\$506.00	\$3,216.00	\$550.00	\$4,222.90
PROMOTIONAL ACTIVITIES	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS	\$23,374.76	\$339,722.35	\$30,287.18	\$334,983.94

Building Division Activities:

ACTIVITY	SEPTEMBER 2021	FISCAL YEAR-TO-DATE 2020 TO 2021	SEPTEMBER 2020	LAST FISCAL YEAR-TO-DATE 2019 TO 2020
INSPECTIONS	291	3,565	303	2,867
FINAL CERTIFICATES OF OCCUPANCY ISSUED	0	1	1	3

TEMPORARY CERTIFICATES OF OCCUPANCY ISSUED	0	2	0	0
FINAL INSPECTIONS	181	2,167	217	1,673
FAILED INSPECTIONS	13	246	23	175

Annual Totals, Large Projects (Over \$10,000):

Projects Begun Current Fiscal Year-to-Date – 2020 to Present: \$52,808,892.00

Projects Begun Last Fiscal Year – 2019 to 2020: \$64,300,811.00

Projects Begun Two Fiscal Years Ago – 2018 to 2019: \$39,968,375.00



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 26, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council
COPIES TO: Mike Booker, City Manager
Cheri Schwab, City Clerk
FROM: John Cary, City Attorney
DATE: October 20, 2021
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 October 12, 2021. Please advise if you have any questions, comments or concerns relative to these matters.

(1) Comprehensive Plan and Zoning Ordinances

Reviewed and provided legal comments on several ordinances relating to comprehensive plan and rezoning amendments.

(2) Construction Ordinance

Drafted an ordinance relating to construction on Sundays as directed by the City Council.

(3) Beachcomber Property

Spoke with Florida Department of Environmental Protection attorney regarding the legal encumbrance on the commercial building parcel due to a 2009 grant agreement between DEP and the City. Continuing attempt to resolve the encumbrance issue.

(4) Mobile Food Vehicle Ordinance

Continued prepping the mobile food vehicle ordinance for City Council review.

(5) *Treasure Island Property*

Had a conference with legal counsel for the Treasure Island property relating to the land use and development plan in preparation for the completion of the comp plan amendment (which will trigger the 120 clock for demolition of the structure.

Respectfully, submitted,

/s/ John Cary, 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 20, 2021

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

FROM: Michael T. Booker, City Manager 

SUBJECT: City Manager's Report – October 26, 2021

Crosswalks:

- FDOT has preliminarily accepted the City Council's request for pedestrian crosswalks. Again, late spring/early summer is their timeline for installation.

Meeting Cancelled:

- The City Council cancelled the second meetings for November and December at the last meeting. However, I believe the date given for the December meeting was incorrect. It is actually December 28.

Upcoming Events:

- Food Truck Event – November 5 (Friday) – 4:30 – 8:30 p.m. at McElroy Park
- Christmas Parade – December 4 (Saturday) – 2:00 p.m. on S. Atlantic Avenue
- Drive Thru Bethlehem – December 16-19 (Thursday – Sunday) 6:00 – 8:00 p.m. at the Drive-In Christian Church
- City offices will be closed on the following dates:
November 25 & 26
December 24
December 31



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 26, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2021-11: Proposed Amendment to the Atlantic Avenue Estates Development Agreement; Request by owner of 3833 Cardinal Boulevard

SYNOPSIS:

On July 16, 2021 the City received an application to amend the Atlantic Avenue Estates, LLC - City of Daytona Beach Shores Development Agreement, which concerns a 0.7 acre four (4) lot subdivision in the 3800 block of S. Atlantic Avenue. The application was submitted by Cheryl and Anthony Aspesi, owners of the 3833 Cardinal Boulevard lot, situated in the northwest corner of the subdivision along Cardinal Boulevard. The applicants are requesting an amendment to allow the construction of a single-family residential structure with the following deviations on their property: (1) reduction of front yard setback from 30 feet to 25.5 feet, (2) reduction of rear yard setback from 25 feet to 10 feet and (3) increase in lot coverage from 35% to 39%. The applicant is also requesting the City waive (reimburse) the \$550 development agreement amendment application fee. The remaining three property owners in the subdivision have provided written support of the proposed amendment.

FISCAL IMPACT STATEMENT:

Future taxable value increases on construction of a single family home.

BACKGROUND:

I. OVERVIEW OF PROPOSED AMENDMENT

The development agreement concerns a 0.7 acre four (4) lot subdivision in the 3800 block of S. Atlantic Avenue. The application, however, only concerns the 3833 Cardinal Boulevard lot, which is situated in the northwest corner of the subdivision along Cardinal Boulevard. The entire subdivision is overgrown and undeveloped. The applicants are requesting an amendment to allow the construction of a single-family residential structure with the following deviations on their property: (1) reduction of front yard setback from 30 feet to 25 feet, (2) reduction of rear yard setback from 25 feet to 10 feet and (3) increase in lot coverage from 35% to 39%. If approved, the proposed amendment would be reflected in Sec. 3.d of the agreement as follows. NOTE: Underline represents proposed amendment language to be added to the existing agreement.

Section 3. SITE LAYOUT AND CONCEPTUAL PLANS FOR DEVELOPMENT

(d). In the event that the Property Owner elects to construct a single-family residence on any of the 4 tracts depicted in Exhibit “B” he may do so at his sole discretion provided the minimum yard sizes, minimum floor area, maximum building height, and maximum lot coverage are consistent with the requirements contained in Section 14-17 of the City’s Land Development Code for the RSF-2 Urban Single-Family Residential Detached District. Provided however, the property located at 3833 Cardinal Boulevard Daytona Beach Shores, Florida, 32118, also known as Tract 1, and more specifically described in Exhibit A attached, may be developed consistent with the following development standards: minimum front yard setback of 25 feet, rear yard setback of 10 feet, maximum lot coverage of 39%. All other land development standards shall apply.

II. ADDITIONAL REQUEST/INFORMATION

The applicant is also requesting the City waive (reimburse) the \$550 development agreement amendment application fee. If granted, the requested deviations would not apply to the remaining three lots within the subdivision. The remaining three property owners in the subdivision have provided written support of the proposed amendment.

III. OVERVIEW OF EXISTING DEVELOPMENT AGREEMENT & 1st AMENDMENT

The original Development Agreement was executed by the City to foster the development of the original tract of land, which was annexed into the City in 2015. Highlights of the Development Agreement include: (a) seven (7) benefits to the public, including, but not limited to, development of a property that was formerly a county enclave; and (b) permitting of four (4) deviations from the City’s Land Development Code, including but not limited to minimum lot sizes for duplex construction.

The original agreement was amended on December 8, 2020 to also permit single-family construction on each of the four (4) lots consistent with the dimensional requirements of the RMF-2 Urban Single-Family Residential Detached District.

IV. AUTHORIZATION OF DEVELOPMENT AGREEMENT

The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or properties to be annexed to the City limits of the City of Daytona Beach Shores, as authorized in Sections 163.3220 through 163.3243, Florida Statutes, as it may be amended from time-to-time and Chapter 15 of the Land Development Code (LDC). Deviations from the provisions of the City’s land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

V. DEVELOPMENT AGREEMENT CONTENT REQUIREMENTS

All applicable standards required in the development agreement are included in the original

development agreement pursuant to Sec. 15-4 of the LDC entitled "Development Agreement Content."

VI. DEVELOPMENT AGREEMENT NOTICE REQUIREMENTS

The development agreement shall be noticed pursuant to Sec. 15-6 "Noticing Requirements" of the LDC. Evidence of the aforementioned has been provided to the City Clerk.

VII. PLANNING ANALYSIS/FINDINGS

Sections 15-4, 15-5, 5-9 and 15-10 of the LDC establish general code requirements which may be applied to analyze the application. These requirements are summarized below.

A. Sec. 15-4. - Development agreement content.

-The relevant subsection of this section of the LDC, subsection (12), requires a "A finding that the terms and conditions of the development agreement benefit the public interest." Staff Finding: The public interests, also known as public benefits, outlined in Sec. Four (4) of the current agreement remained unchanged. However, in an email addressed to City Staff (see attached Application Exhibit), the property owner noted that approval of the application will also benefit the City through the development of the vacant property, among other things, and bring new permanent residents to the City in lieu of a potential rental and vacant property.

B. Sec. 15-5: Development agreement review; process and procedure; action by city.

-Subsection (b) of this section states that "Upon receipt of a proposed development agreement, city staff shall review the proposal and develop proposed findings, in writing, respecting recommendations of approval, approval with conditions, modifications to the proposal or denial of the proposal. City staff shall provide to the city council written recommended findings on the consistency of the application with the city's comprehensive plan and the purpose and intent of the city's land development regulations and recommend any conditions, terms, restrictions or other requirements determined to be necessary for the public health, safety, or welfare of the citizens of the city. Staff Finding: The proposed amendment is not inconsistent with the Daytona Beach Shores Comprehensive Plan. In addition, the amendment does not appear inconsistent with the purpose and intent of the Daytona Beach Shores Land Development Code as seen below:

Sec. 1-3. - Purpose.

The purpose of this Land Development Code is to establish standards, procedures and minimum requirements to achieve the following general intentions and purposes of the city council:

- 1.To establish the regulations, procedures and standards for review and approval of all proposed development in the City of Daytona Beach Shores.
- 2.To foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly, aesthetically pleasing and socially beneficial development of the City in accordance with the Comprehensive Plan.
- 3.To adopt a development review process that is: a.Efficient, in terms of time and expense; b.Effective, in terms of addressing the natural resource and public facility implications of proposed development; while also protecting and improving the quality of life in the city; c.Equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of the city.

4.To implement the city's comprehensive plan as required by the "Local Government Comprehensive Planning and Land Development Regulation Act."

5.To provide specific procedures to ensure that development orders and permits are conditioned on the availability of public facilities and services that meet the level of service requirements (concurrency).

C. Sec. 15-9: Amendment or cancellation of development agreement

-This section provides that "A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest." All property owners within the subdivision have executed the proposed agreement indicating mutual consent on their part. Staff Finding: All property owners within the subdivision have executed the proposed agreement indicating mutual consent on their part.

-This section also states that development agreements may be modified "in the city's sole discretion" and "require approval by the city council in accordance with the procedures set forth" in the ordinance. Staff Finding: The amendment of a development agreement is a legislative action. Therefore, the City Council may approve or disapprove at will providing the action in question is not contrary to controlling law.

D. Sec. 15-10: Modification/revocation of development agreement

-This section stipulates that a development agreement may be modified "in the city's sole discretion" and "require approval by the city council in accordance with the procedures set forth" in the ordinance. Staff Finding: The amendment of a development agreement is a legislative action. Therefore, the City Council may approve or disapprove at will providing the action in question is not contrary to controlling law.

E. Comparison with Surrounding Neighbourhood.

Planning staff conducted an analysis of four (4) lots north and four (4) lots south, excluding the vacant lot part of the subdivision in question, of the subject lot on the west side of Cardinal Boulevard. The analysis was conducted using the Volusia County Property Appraiser Website Aerial Mapping Measure Tool. Although there is a small but unknown margin of error that should be considered when utilizing the mapping tool due to an inherent challenge with georeferencing aerial photography relative to digitized plats, this analysis was conducted to get an idea of nearby lots in the neighbourhood. Below are the results:

1. Average front yard setback: North =27.75'; South=23' Staff Finding: Requested deviation within the range of properties analyzed.
2. Average rear yard setback: North=28.75'; South=27.75' Staff Finding: Requested deviation outside the range of properties analyzed. NOTE: If the proposed covered patio was detached from the principal building and constructed as an accessory structure, Sec. 14-34 of the LDC would permit the patio to be placed up to five (5) feet from the rear property line.
3. Average lot coverage: North=39%; South=31% Staff Finding: Requested deviation is at the high end of the range for the properties analyzed.

VIII. PLANNING AND ZONING BOARD RECOMMENDATION

Pending (10-12-21).

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

Development agreements and amendments thereof are legislative acts and there are no assumed vested rights outside of the development agreement, LDC and Comprehensive Plan. The City Council may approve or disapprove the proposed amendment at its own pleasure. However, based on the findings contained in this report, including, among other things, consistency with the Daytona Beach Shores Comprehensive Plan, infilling of residential low density residential use which is compatible with the surrounding neighborhood, and the public benefits outlined in Sec. Four (4) of the existing development planning, staff recommends approval of the proposed amendment.

SUGGESTED MOTION:

A City Council Member may motion as follows:

1. "I move to approve Ordinance 2021-11 as presented."

OR

2. "I move to approve Ordinance 2021-11, with the following amendments..."

OR

3. "I move to deny Ordinance 2021-11."

ATTACHMENT:

1. Application
2. Location Exhibit
3. Atlantic Avenue Development Agreement-Proposed 2nd Amendment-SC-8-24-21
4. Ordinance 2021-11-Aspesi-Atlantic Avenue Estates -DA Amendment-9-13-21

RECEIVED
JUL 16 2021
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

pd 8550.00
cc # 086776



City of Daytona Beach Shores
Community Services Department
2990 South Atlantic Avenue
Daytona Beach Shores, FL 32118

550.00

12021016

APPLICATION TO ENTER INTO OR AMEND A NON-PUD DEVELOPMENT AGREEMENT

Application for New Development Agreement: ☐

Application to Amend Existing Development Agreement: ☒

The Undersigned Applicant requests the City Council to decide upon this application in accordance with Daytona Beach Shores Ordinance 2013-10.

FEES MUST BE PAID AT THE TIME THE APPLICATION IS SUBMITTED

Date Submitted: 7/16/21

Current Zoning: RMF-3

Applicant's Name: Cheryl and Anthony Aspesi

Address: 1044 Forest Cir Winter Springs Phone #: 407-694-4818
FL 32708 407-687-5281

Representative: N/A

Address: _____ Phone #: _____

Email: Casperi@willowcreekchurch.org tasperi@Bakerdist.com

Property Address & Parcel ID: 3833 Cardinal Blvd Daytona Beach Shores, FL
32118

Property Owner: Cheryl and Anthony Aspesi ID# 630205070140

Legal Description of Property:

The northerly 75 ft of the west 1/2 of lots 14 and 15, Block 7, Oceanview
section of Halifax Estates, according to the map or plat thereof as
recorded in map book 11 page 100, of the public records of Volusia County, FL.
Together with and subject to the easement created under that certain
easement agreement dated November 16, 2020 and recorded in Official Records
Book 7946, Page 2744, Public Records of Volusia County, FL.

Cheryl Aspesi
Applicant's Signature

7/16/2021
Date

TO: Honorable Mayor and City Council Members

FROM: Cheryl and Anthony Aspesi

SUBJECT: Amendment to the Atlantic Avenue/City of Daytona Beach Shores Development Agreement pertaining to the portion of the property located at 3833 Cardinal Blvd., Daytona Beach Shores.

DATE: August 2, 2021

On May 25th, 2021, we took ownership of the property located at 3833 Cardinal Blvd., Daytona Beach Shores, FL. This was a lot that was previously part of a larger parcel known as the Atlantic Avenue Estates Duplex Development. The development was subdivided into 4 parcels and 3 have been sold. Our piece, referred to as Tract 1 and located in the NW corner of the original property, was sold to us without us knowing there was a developer's agreement attached to the property. We had purchased the property and have plans for a single family residence to be built but have now learned that the setback requirements in place under the developer's agreement create a hardship for us in terms of building the house we have chosen. We are therefore respectfully requesting the following setbacks be allowed so that we may proceed with the construction of our new home: We would require a front setback of 25 feet, a rear setback of 10.8 feet and a side setback of 10 feet. Our plans are for a single story, 2,044 square foot residence with a covered lanai. In order to accommodate the structure we would need these setbacks to be approved. We do not feel this would in any way be a detriment to the neighborhood by requesting these setbacks but actually feel it will increase home values in the area as well as creating an increase in the tax base for the city. We have already spoken with the neighbor next door, Fernando Castellanos, who said he had no issues with us building the home as planned and was very excited to see improvements in the neighborhood.

As you can see on the preliminary plan we submitted the front setback is only 4.5 feet less than the current zoning requirements, the side setbacks are in accordance with current requirements and would not need to be changed but the rear setback would go from 25 feet to 10 feet to allow for the covered lanai that is proposed. We are extremely desirous of having the covered lanai so that we can have some shaded, outdoor space to enjoy the surroundings. This would be a part of the total building structure (under a single roof) and more aesthetically pleasing than us having to do an add-on, unattached porch after construction, which we feel would not be as attractive or economically prudent. We know if we were to do an unattached add-on covered patio after construction we could build up to 5 feet from the property line. However, we would much prefer to have a covered lanai that is part of the structure and therefore need to have the 10 foot setback in the rear to accommodate it.

In conjunction with this, we would also appreciate if the fee for applying for this amendment would be waived, or at least reduced to the fee for a single family residence and not the \$550 for a developer making an amendment to an agreement.

We are very excited to begin construction on a new home so that we can retire to this beautiful community by the beach. We are long time Floridians who have wanted to get to "the shore" and hopefully with your kind consideration we will be able to do this very soon.

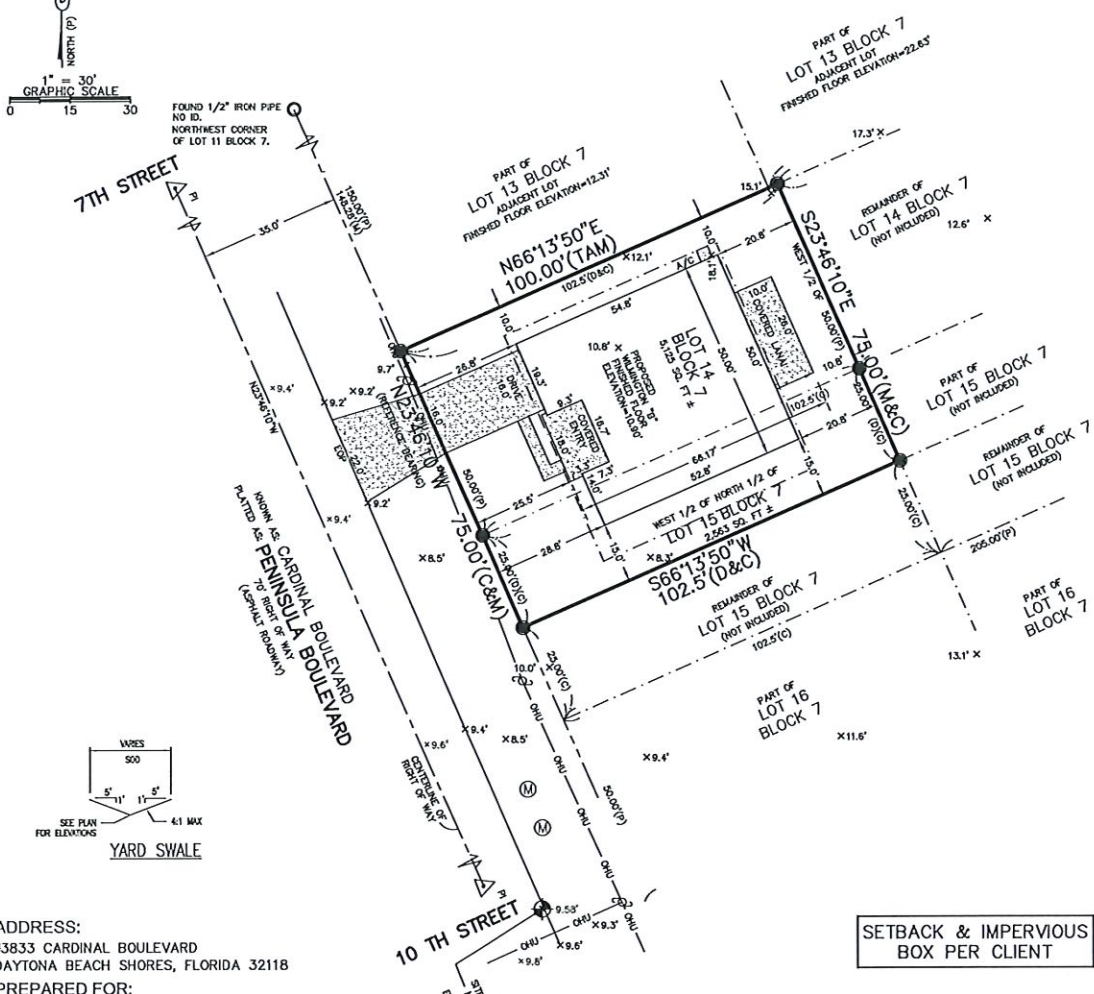
Sincerely,

Cheryl and Anthony Aspesi

PLOT PLAN

DESCRIPTION: (AS FURNISHED)

2-16-33 W 1/2 LOT 14 & W 1/2 OF N 1/2 LOT 15 BLOCK 7 OCEAN VIEW SECTION OF HALIFAX ESTATES, IN MAP BOOK 11, PAGE 100, PER OFFICIAL RECORD 1612 PAGE 0174, PER OFFICIAL RECORDS 4705, PAGES 2478-2479, PER OFFICIAL RECORDS 5532, PAGE 4310 PER OFFICIAL RECORDS 7177, PAGE 0575, PER OFFICIAL RECORDS 7183, PAGE 2271, VOLUSIA COUNTY, FLORIDA.



ADDRESS:
#3833 CARDINAL BOULEVARD
DAYTONA BEACH SHORES, FLORIDA 32118

PREPARED FOR:



BUILDING SETBACKS

FRONT: 30'
REAR: 25'
SIDE: 10'

NOTES:

- BUILDER WILL SOD ALL DISTURBED AREAS WITHIN THE RIGHT OF WAY.
- CONCRETE WILL BE 6" THICK AT RIGHT OF WAY. THE DRIVEWAY & RIGHT OF WAY, MUST CONFORM TO THE EXISTING SWALE SHAPE AND PROVIDE FOR CONTINUED POSITIVE DRAINAGE.
- THE DRIVEWAY MATERIALS, WITHIN THE RIGHT OF WAY, SHALL BE EITHER 6" INCHES OF ASPHALT MILLINGS OR 6" INCHES OF CRUSHED CONCRETE FINES.
- DRIVEWAY WIDTHS AT THE PROPERTY LINE CAN ONLY BE 24' (FEET).
- ELEVATIONS SHOWN ARE PER LOT GRADING PLANS PROVIDED BY THE CLIENT.
- ELEVATIONS ARE BASED ON NAVD 1988 DATUM.
- FINISHED FLOOR ELEVATION TO BE A MINIMUM OF 18" ABOVE THE CROWN OF ADJACENT ROADWAY

THIS PLOT PLAN IS INTENDED FOR PERMITTING PURPOSES ONLY. THIS IS NOT INTENDED FOR THE CONSTRUCTION OF THE PROPOSED HOUSE. REFER TO HOUSE PLAN AND OPTION LIST FOR CONSTRUCTION. ALL BUILDING SET BACK LINES SHOWN HEREON IS PER DATA FURNISHED BY CLIENT AND IS FOR INFORMATIONAL PURPOSES ONLY.

THIS IS NOT A SURVEY
THIS IS A PLOT PLAN ONLY

FLOOD NOTE:

I HAVE EXAMINED THE F.L.R.M. COMMUNITY PANEL NO 12127003894, DATED SEPTEMBER 22, 2017, AND FOUND THE SUBJECT PROPERTY APPEARS TO BE IN ZONE X, AREA OUTSIDE THE 100 YEAR FLOOD PLAIN. THE SURVEYOR MAKES NO GUARANTEES AS TO THE ABOVE INFORMATION. PLEASE CONTACT THE LOCAL F.E.M.A. AGENT FOR VERIFICATION.

BEARING BASIS:

BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY RIGHT OF WAY LINE OF CARDINAL BOULEVARD, BEING N23°48'10"W, AN ASSUMED BEARING.

(FIELD DATE): 05-17-21

REVISED:

SCALE: 1" = 30 FEET

APPROVED BY: JH

210524 LOTS 14 & 15

JOB NO. BLOCK 7

DRAWN BY: JH

CLIENT COMM. 07/28/21 JH

REPOSITION 07-23-21 JH

REV. SETBACKS 7-17-21 JH

ADD LANAI 07-10-21 JH

PLOT PLAN 05-29-21 JH

BOUNDARY & TOPOGRAPHIC 05-17-21 CC

ON LOT BLDG STRUCTURE CALCULATIONS	
LOT	= 7,688 SQ. FT.
LIVING AREA	= 2,044 SQ. FT.
GARAGE	= 514 SQ. FT.
ENTRY	= 203 SQ. FT.
LANAI	= 280 SQ. FT.
PATIO	= 0 SQ. FT.
DRIVEWAY	= 0 SQ. FT.
A/C PAD	= 0 SQ. FT.
WALKWAY	= 0 SQ. FT.
IMPERVIOUS	= 39% SQ. FT.
SOD	= 4,667 SQ. FT.
OFF LOT CALCULATIONS	
RIGHT OF WAY	= 0 SQ. FT.
DRIVE APRON	= 0 SQ. FT.
PUBLIC S/W	= 0 SQ. FT.
SOD	= 0 SQ. FT.
TOTALS	
AREA	= 7,688 SQ. FT.
DRIVEWAY	= 0 SQ. FT.
SIDEWALK	= 0 SQ. FT.
SOD	= 4,667 SQ. FT.

ON LOT CALCULATIONS	
LOT	= 7,688 SQ. FT.
LIVING AREA	= 2,044 SQ. FT.
GARAGE	= 514 SQ. FT.
ENTRY	= 203 SQ. FT.
LANAI	= 280 SQ. FT.
PATIO	= 0 SQ. FT.
DRIVEWAY	= 429 SQ. FT.
A/C PAD	= 9 SQ. FT.
WALKWAY	= 58 SQ. FT.
IMPERVIOUS	= 46% SQ. FT.
SOD	= 3,517 SQ. FT.
SOD	= 4,171 SQ. FT.
OFF LOT CALCULATIONS	
RIGHT OF WAY	= 1714 SQ. FT.
DRIVE APRON	= 432 SQ. FT.
PUBLIC S/W	= 0 SQ. FT.
SOD	= 1,282 SQ. FT.
TOTALS	
AREA	= 9,402 SQ. FT.
DRIVEWAY	= 861 SQ. FT.
SIDEWALK	= 58 SQ. FT.
SOD	= 5,453 SQ. FT.

LEGEND:

---	BUILDING SETBACK LINE	PI	TREE(S) TO BE REMOVED
---	CENTERLINE	PC	POINT OF INTERSECTION
---	RIGHT OF WAY LINE	PT	POINT OF CURVATURE
---	PROPOSED ELEVATIONS PER CIVIL ENGINEER	PRC	POINT OF TANGENCY
---	PROPOSED ELEVATION	PCC	POINT OF REVERSE CURVATURE
---	EXISTING ELEVATION	TYP	TYPICAL
---	PROPOSED DRAINAGE FLOW	CS	CONCRETE SLAB
---	CONCRETE	PER	PER PLAT
---	A/C	PL	PLAT BOOK
---	S/W	PBS	PAGES
---	EOP	SQ. FT.	SQUARE FEET
---	R/W	F.L.R.M.	FEDERAL EMERGENCY MANAGEMENT AGENCY
---	TRANS	FLRM	FLOOD INSURANCE RATE MAP
---	WD	NAVD	NORTH AMERICAN VERTICAL DATUM
---	PP	NOVD	NATIONAL GEODETIC VERTICAL DATUM
---	DME	LE	LANDSCAPE EASEMENT
---	FPE	DE	DRAINAGE EASEMENT
---	COMMUNICATION RISER	UE	UTILITY EASEMENT
---	FOUND 1/2" IRON ROD (NO ID)	MEG	MATCH EXISTING GRADE
---	GROUND ELEVATION	EL	ELEVATION
---	GUY ANCHOR	EQ	EXISTING GRADE
---	OVERHEAD UTILITY LINE	EQIP	ELIPTICAL CORRUGATED METAL PIPE
---	SEWER INLET	CHW	CONCRETE HEAD WALL
---	STORM MANHOLE	E	EAST
---	WOODEN UTILITY POLE	EP	EDGE OF PAVEMENT
---	WATER METER	EL	ELEVATION
---	CORRUGATED METAL PIPE	FPE	FINISHED FLOOR ELEVATION
---	CONCRETE	FND	FOUND
---	TOE OF SLOPE	ID	IDENTIFICATION
---	TOP OF BANK	INV	INVERT
---		IR	IRON ROD
---		LB	LICENSED BUSINESS
---		ME	MEASURED DATA
---		N	NORTH
---		PC	POINT OF CURVATURE
---		RD	RECORD DATA
---		S	SOUTH
---		WF	WOOD FENCE
---		W	WEST

ASM
AMERICAN SURVEYING & MAPPING, INC.
NDDS NATIONAL DUE DILIGENCE SERVICES
A DIVISION OF AMERICAN SURVEYING & MAPPING, INC.
3191 Maguire Blvd, Suite 200, Orlando, FL 32803
407-426-7979
americansurveyingandmapping.com

SURVEYOR NOTES:

- THE SURVEYOR HAS NOT ABSTRACTED THE LAND SHOWN HEREON FOR EASEMENTS, RIGHT OF WAY, RESTRICTIONS OF RECORD WHICH MAY AFFECT THE TITLE OR USE OF THE LAND.
- NO UNDERGROUND IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS SHOWN.
- NOT VALID WITHOUT THE AUTHENTIC ELECTRONIC SIGNATURE AND THE AUTHENTIC ELECTRONIC SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

Digitally signed by James W. Boleman
DN: cn=J.W. Boleman, o=American Surveying & Mapping, Inc., ou=James W. Boleman
e=jwboleman@asmapping.com
Date: 2021.07.28 07:51:57 -0400
Adobe Acrobat version: 11.0.23

JAMES W. BOLEMAN PS# 6485 DATE

Prepared by:
Tami Jo Chlan
Waterside Title Co.
1092 Ridgewood Avenue
Holly Hill, Florida 32117

File Number: 21-1127

General Warranty Deed

Made this May 25, 2021 A.D. By Atlantic Avenue Estates LLC, a Florida limited liability company whose address is: 133-15 Beach Channel Drive, Rockaway Park, New York 11694, hereinafter called the grantor, to Anthony Asprel and Cheryl Asprel, husband and wife whose post office address is: 1044 Forest Circle, Winter Springs, Florida 32708, hereinafter called the grantees:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantees, all that certain land situate in Volusia County, Florida, viz:

The Northerly 75 feet of the West 1/2 of Lots 14 and 15, Block 7, Ocean View Section of Halifax Estates, according to the map or plat thereof, as recorded in Map Book 11, Page 100, of the Public Records of Volusia County, Florida.

Together with and subject to the easement created under that certain Easement Agreement dated November 16, 2020 and recorded in Official Records Book 7946, Page 2744, Public Records of Volusia County, Florida.

Subject to restrictions, reservations and easements of record, if any, the mention of which shall not serve to reimpose the same.

Parcel ID Number: 6302-05-07-0140

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantees that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2020.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Witness 1 signature
Witness Printed Name



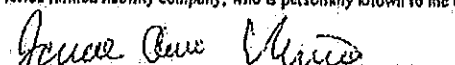
Atlantic Avenue Estates LLC,
a Florida limited liability company

By: Mark Scharff, as Member
Address: 133-15 Beach Channel Drive, Rockaway Park, New York 11694

Witness 2 signature
Witness Printed Name

State of New York
County of Kings

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this May 25, 2021, by Mark Scharff as Member of Atlantic Avenue Estates LLC, a Florida limited liability company, who is personally known to me or who has produced a driver's license as identification.


Notary Public
Print Name: Janice Evelise Velez
My Commission Expires: Nov 31, 2023

Cruz, Stewart

From: Cheryl Aspesi <CAspesi@willowcreekchurch.org>
Sent: Thursday, August 19, 2021 9:50 AM
To: Cruz, Stewart
Subject: RE: DAA12021016 Atlantic Avenue Estates DA Amendment-1st Review

Good morning,

1. By an affidavit for the mailing of the letters, you just need a word document stating that they were mailed out and when?
2. Placed the order for the ad yesterday and waiting on the documentation for that. I will send over as soon as I have it.
3. I'll send the list of the neighbors and a copy of the letter later today.
4. I put the one owner's phone number (Jareb Rossi) in the email I sent (see below). That is what was listed for his business in Port Orange so figured that was the easiest way to contact. I tried googling Mr. Goorab but didn't find anything quickly so will have to search that a little bit more.
5. Our last phone conversation we discussed that we would take out the request to eliminate the \$2,500 permit fee, which was to be used for public benefits, but since we are not removing that from the agreement than the \$2,500 will be a benefit to the public interests as it was intended originally. The only other public benefits I would see are the overall improvements to the vacant property, an increase in the tax base which would help with public interests, the fact that this will eventually become our permanent home and as permanent residents we will maintain our property and be involved in the community to a higher degree than a rental or vacant property owner would.

Hope this helps and will get the rest of the items to you asap.

Thanks and have a great day,
Cheryl

From: Cruz, Stewart [mailto:SCruz@cityofdb.org]
Sent: Wednesday, August 18, 2021 12:28 PM
To: Cheryl Aspesi
Subject: RE: DAA12021016 Atlantic Avenue Estates DA Amendment-1st Review
Importance: High

Got it. Thank you.

I will need the following from you at least a week prior to the meeting. You can email.

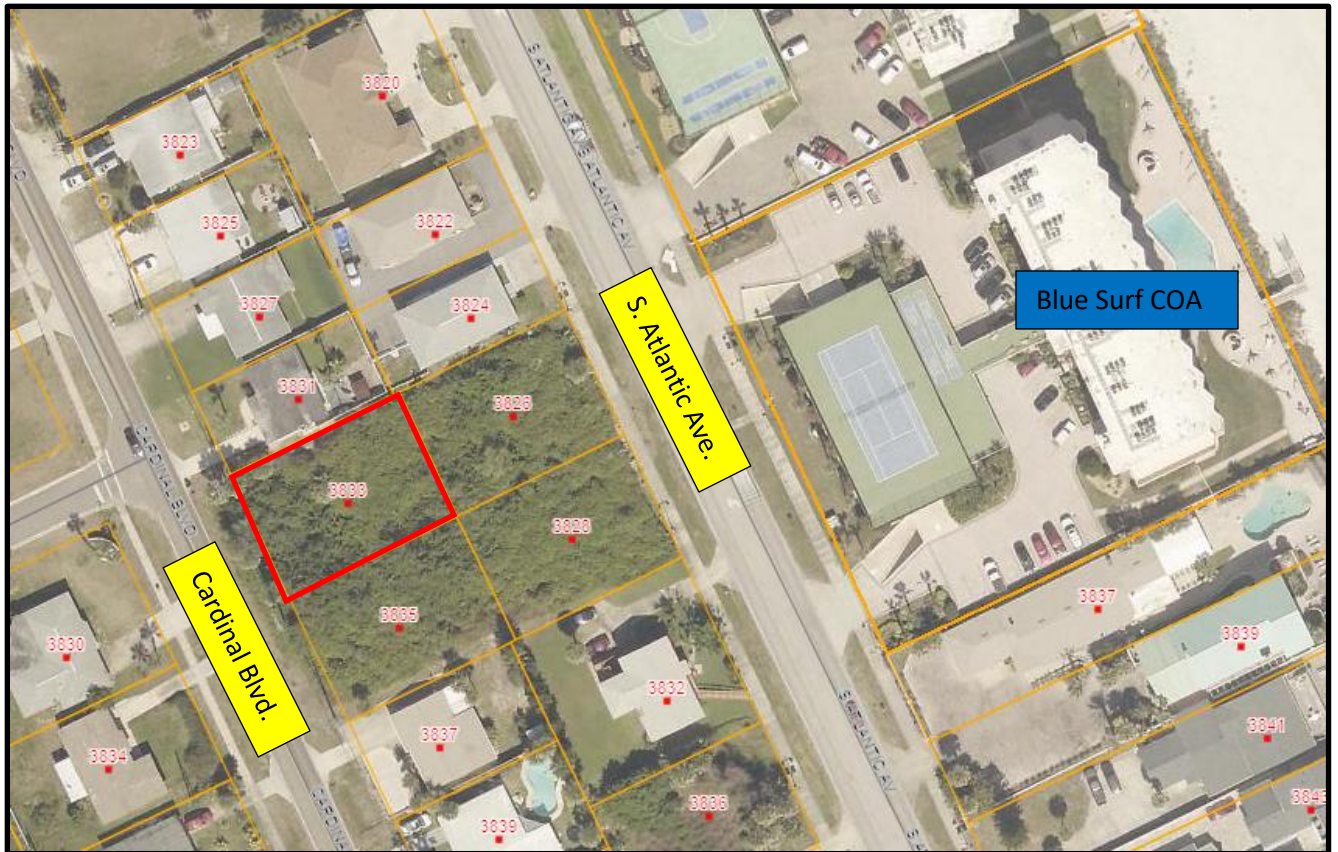
1. An affidavit from you attesting that you've mailed out the letters as required by code
2. A copy of the News Journal affidavit and proof of publication
3. A copy of the letter and list of the neighbors to whom you sent the mail

Also, besides Mark Scharff, do you have telephone numbers or email contact for the subdivision owners?

Lastly, did you ever provide a list of public benefits or benefits to the public interest as a result of the proposed amendment? If I missed it can you resend? Thank you.

stewart

AERIAL VIEW: 3833 Cardinal Boulevard



Source: Volusia County Property Appraiser, 2021

CARDINAL STREET VIEW: 3833 Cardinal Boulevard



Source: GoogleMaps, 2021

Document prepared by:
Cheryl Aspesi
1044 Forest Circle
Winter Springs, FL 32708

Return recorded document to:
City of Daytona Beach Shores City Clerk
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

**SECOND AMENDMENT TO THE ATLANTIC AVENUE/CITY OF DAYTONA BEACH SHORES
DEVELOPMENT AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE
ATLANTIC AVENUE ESTATES DUPLEX DEVELOPMENT**

The **CITY OF DAYTONA BEACH SHORES, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida (“City”), and **ANTHONY ASPESI AND CHERYL ASPESI**, husband and wife, whose mailing address is 1044 Forest Circle, Winter Springs, Florida, 32708 the record title property owner (“Property Owner”), make and enter into this **SECOND AMENDMENT TO THE ATLANTIC AVENUE/CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE ATLANTIC AVE ESTATES DUPLEX DEVELOPMENT**.

WHEREAS, the City and Atlantic Avenue Estates, LLC (“Developer”), entered into the Atlantic Avenue/City of Daytona Beach Shores Development Agreement Pertaining To The Development Of The Atlantic Avenue Estates Duplex Development, recorded in the Official Records Book 7238, Page 3066, Public Records of Volusia County, Florida as Instrument Number 2016-062949 (the “Agreement”), and

WHEREAS the Developer sold the 3833 Cardinal Boulevard portion of the development, more specifically described in Exhibit A attached, to Property Owner as recorded in the Official Records Book 8057, Page 1047, Public Records of Volusia County, Florida as instrument Number 2021-126765, and

WHEREAS, Property Owner proposes to amend the Agreement as set forth herein, and

WHEREAS, the Developer and remaining property owners in the development agree with the terms of the Agreement as set forth herein, and

WHEREAS, the City is willing to grant the Property Owner's request subject to the terms and conditions set forth herein and

WHEREAS, for purposes of this instrument, 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 the City and the Property Owner hereby agree to amend the Agreement as follows:

1. Section 3, Site Layout and Conceptual Plans for Development, of the Agreement is amended to read, in its entirety as follows:

(a). The attached Lot Configuration Plan for development of the property into eight (8) individual lots for the development of residential duplex units (Exhibit "B") is hereby approved by the terms and conditions of this Development Agreement.

(b). The attached Site Development Plan for development of the property (Exhibit "C") is hereby approved by the terms and conditions of this Development Agreement.

(c). The dimensions, lot areas, setbacks and densities shown in the Lot Configuration Plan and Site Development Plan are consistent with the requirements contained in Section 14-20 of the City's Land Development Code for the RMF-3 Multi-Family Residential District (Low Density) zoning district.

(d). In the event that the Property Owner elects to construct a single-family residence on any of the 4 tracts depicted in Exhibit "B" he may do so at his sole discretion provided the minimum yard sizes, minimum floor area, maximum building height, and maximum lot coverage are consistent with the requirements contained in Section 14-17 of the City's Land Development Code for the RSF-2 Urban Single-Family Residential Detached District. Provided

however, the property located at 3833 Cardinal Boulevard Daytona Beach Shores, Florida, 32118, also known as Tract 1, and more specifically described in Exhibit A attached, may be developed consistent with the following development standards: minimum front yard setback of 25 feet, rear yard setback of 10 feet, maximum lot coverage of 39%. All other land development standards shall apply.

2. Except as otherwise expressly provided for herein, the original Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

(Signature pages following)

Signed, sealed and delivered in the presence of:

**THE CITY OF DAYTONA BEACH
SHORES, FLORIDA, a Florida
municipal corporation**

Signature of Witness

By: _____
Nancy Miller, Mayor

Print Name of Witness

Signature of Witness

Attest:
By: _____
Cheri Schwab, City Clerk

Print Name of Witness

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Nancy Miller and Cheri Schwab, Mayor and City Clerk, respectively, of The City of Daytona Beach Shores, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

Cheryl and Anthony Aspesi (Owner)
3833 Cardinal Blvd, Daytona Beach
Shores, Florida, 32118

Signature of Witness

By: _____
Cheryl Aspesi

Print Name of Witness

Date: _____

Signature of Witness

By: _____
Anthony Aspesi

Print Name of Witness

Date: _____

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Cheryl and Anthony Aspesi, referred to in this agreement as "Property Owner". They are personally known to me and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of:

Jacob Rossi (Owner)
3835 Cardinal Blvd, Daytona Beach
Shores, Shores, Florida 32118

Signature of Witness

By: _____
Jacob Rossi

Print Name of Witness

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Jacob Rossi, referred to in this agreement as "Owner". He is ☐ personally known to me or ☐ produced identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of:

Raiyasswar Goorah (Owner)
3828 S. Atlantic Avenue
Daytona Beach Shores, FLorida 32118

Signature of Witness

By: _____
Raiyasswar Goorah

Print Name of Witness

Date: _____

STATE OF GEORGIA
COUNTY OF BIBB

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Raiyasswar Goorah, referred to in this agreement as "Owner". He is ☐ personally known to me or ☐ produced identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of:

Atlantic Avenue Estates, LLC (Owner)
3826 S. Atlantic Avenue
Daytona Beach Shores, FLorida 32118

Signature of Witness

By: _____
Mark Scharff
Managing Member

Print Name of Witness

Date: _____

STATE OF NEW YORK
COUNTY OF KINGS

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Mark Scharff as Managing Member of Atlantic Avenue Estates, LLC, referred to in this agreement as "Owner". He is ☐ personally known to me or ☐ produced identification and did not take an oath.

Notary Public
Commission No. _____

Approved as to legal form:

By: _____
John Cary, City Attorney

EXHIBIT A

The Northerly 75 feet of the West 1/2 of Lots 14 and 15, Block 7, Ocean View Section of Halifax Estates, according to the map or plat thereof, as recorded in Map Book 11, Page 100, of the public records of Volusia County, Florida. Together with and subject to the easement created under that certain Easement Agreement dated November 16, 2020 and recorded in Official Records Book 7946, Page 2744, Public Records of Volusia County, Florida.

ORDINANCE 2021-11

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF AN AMENDMENT TO THE ATLANTIC AVENUE ESTATES, LLC – CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO THE VACANT PROPERTY WITH VOLUSIA COUNTY SHORT TAX PARCEL ID 630205070140, GENERALLY LOCATED AT 3833 CARDINAL BOULEVARD, IN ACCORDANCE WITH THE PROVISIONS OF THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR NONCODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 22, 2016 the City Council of the City of Daytona Beach Shores approved the Atlantic Avenue Estates, LLC and the City of Daytona Beach Shores Development Agreement (“Agreement”) pertaining to the development of the vacant property with Volusia County Short Tax Parcel ID 6302-05-07-0150, generally located in between 3824 S. Atlantic Avenue and 3832 S. Atlantic Avenue; and

WHEREAS, on December 8, 2020 the City Council of the City of Daytona Beach Shores approved the First Amendment to Agreement; and

WHEREAS, the subject property has been subdivided and sold to four separate property owners; and

WHEREAS, Cheryl and Anthony Aspesi, owners of the 3833 Cardinal Boulevard property within the Atlantic Avenue Estates Subdivision have requested an amendment to the Agreement to provide for dimensional deviations on the 3833 Cardinal Boulevard property that would allow the construction of a single-family residential structure as provided for in the amendment Exhibit attached to this Ordinance; and

WHEREAS, all parties of the Agreement have considered and support the Second amendment to the Agreement and the City Council of the City of Daytona Beach Shores hereby approves and enacts the amended Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

WHEREAS, the property owner and 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*.

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and the property owners of the Atlantic Avenue Estates Subdivision are hereby adopted, ratified and affirmed.

SECTION TWO: APPROVAL OF AMENDMENT AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The amended Development Agreement between the City of Daytona Beach Shores and the owners of the Atlantic Avenue Estates subdivision, as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and Atlantic Avenue Estates, LLC, as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

SECTION FOUR: NONCODIFICATION AND IMPLEMENTATION; SCRIVENER'S ERRORS.

- (a). The provisions of this Ordinance shall not be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.
- (b). The City Manager, or designee(s), is hereby authorized to take any and all actions necessary to implement the provisions of this Ordinance.
- (c). The City Attorney shall assist the City Manager in the implementation of this Ordinance as may be necessary and required.
- (d). 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.

SECTION FIVE: CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

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 J. 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 _____, 2021.

Enacted on second reading this __ day of _____, 2021.

OWNER SIGNATURE BLOCK FOLLOWS:

PLENARY CONCURRENCE OF OWNER

The undersigned owner concurs in each and every respect to the provisions of the subject amendments to the subject Development Agreement and the provisions of this Ordinance.

**3833 CARDINAL BOULEVARD
OWNER**

**3833 CARDINAL BOULEVARD
OWNER**

Cheryl Aspesi

Date: _____, 2021

Anthony Aspesi

Date: _____, 2021

WITNESSES:

Signature of Witness

Printed Name of Witness

Signature of Witness

Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Cheryl and Anthony Aspesi, and they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ____ day of _____, 2021.

(Affix Notary Seal)

Notary Public; State of Florida

Print Name: _____



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 26, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2021-12: Voluntary Annexation - 104 Broad Avenue

SYNOPSIS:

Heather Roberts, owner of the unincorporated Volusia County single-family residential property located at 104 Broad Avenue (**Exhibit 1**), has petitioned the City of Daytona Beach Shores for voluntary annexation into the City's corporate limits (**Exhibit 2**) pursuant to Section 171.044, *Florida Statutes*. Ms. Roberts purchased the property in May of this year. If adopted, Ordinance 2021-12 will annex the subject property and adjacent right-of-way into the City limits of Daytona Beach Shores.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The subject property is approximately 0.22 of an acre with dimensions of 70' (road frontage) by 140' (depth). The property contains a 1,508 square foot one-story single-family residential structure (**Exhibit 3**). The proposed City future land use and zoning classifications will be similar to those of the County's and consistent with the existing neighborhood as the owner has no plan to redevelop the property. **Exhibit 4** attached provides a general description of the subject property.

Exhibit 5 attached demonstrates compliance with the voluntary annexation requirements prescribed in Section 171.044, *Florida Statutes*.

Finally, pursuant to Section 171.062, *Florida Statutes*, the property owners have also submitted applications to amend the future land use and zoning classifications of the property in question to those of the City. The future land use amendment and rezoning ordinances will be adopted subsequent to the formal annexation of the subject property.

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

Staff recommends approval of Ordinance 2021-12 as presented.

SUGGESTED MOTION:

A City Council Member may motion as follows:

"I move to approve Ordinance 2021-12 as presented."

- ATTACHMENT:**
1. Ord 2021-12-Voluntary Annexation-104 Broad Ave
 2. Ord 2021-12-Exhibit A1-Survey 1-Sketch
 3. Ord 2021-12-Exhibit A2-Survey 2-Legal
 4. Ord 2021-12-Staff Memo Exhibits

ORDINANCE NO. 2021-12

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, RELATING TO VOLUNTARY ANNEXATION OF REAL PROPERTY LOCATED AT 104 BROAD AVENUE (SHORT PARCEL IDENTIFICATION NUMBER 5335-03-05-0240) TOGETHER WITH ASSOCIATED RIGHT-OF-WAYS IN ACCORDANCE WITH SECTION 171.044, *FLORIDA STATUTES*; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; REDEFINING THE BOUNDARIES OF THE CITY; PROVIDING FOR LEGAL EFFECT AND IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR NON-CODIFICATION AND SETTING AN EFFECTIVE DATE.

WHEREAS, Heather Roberts applied for annexation of property into the City of Daytona Beach Shores and is hereby determined to be the fee simple title owner of the real property described below; and

WHEREAS, the said applicants petitioned the City of Daytona Beach Shores, pursuant to Section 171.044, *Florida Statutes*, for annexation of said property into the municipal limits of the City of Daytona Beach Shores; and

WHEREAS, the subject property is currently addressed 104 Broad Avenue; and

WHEREAS, the subject property currently has a Short Tax Parcel Identification Number 5335-03-05-0240; and

WHEREAS, the City of Daytona Beach Shores has determined that all of the property which is proposed to be annexed into the City of Daytona Beach Shores is within an unincorporated area of Volusia County, is reasonably compact and contiguous to the corporate areas of the City of Daytona Beach Shores, Florida and it is further determined that the annexation of said property will not result in the creation of any enclave (and, indeed, logically fills in the City Limits of the City and is consistent with sound principles and practices relating to the delineating of jurisdictional boundaries thereby furthering sound management in terms of the provision of public facilities and services as well as sound land use planning), and it is further determined that the property otherwise fully complies with the requirements of State law and has, further, determined that associated rights-of-way should be annexed hereby; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has taken all actions in accordance with the requirements and procedures mandated by State law; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida

hereby determines that it is to the advantage of the City of Daytona Beach Shores and in the best interests of the citizens of the City of Daytona Beach Shores to annex the aforescribed property; and

WHEREAS, the provisions of Section 166.031(3), *Florida Statutes*, provide that [a] municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2); and

WHEREAS, the provisions of Section 171.091, *Florida Statutes*, provide as follows:

Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

; and

WHEREAS, the map attached hereto as Exhibit “A” shows, describes, and depicts the property and named associated rights-of-ways which are hereby annexed into the City of Daytona Beach Shores said Exhibit being incorporated into the substantive provisions of this Ordinance as if fully set forth herein verbatim.

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

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS/ANNEXATION OF PROPERTIES.

(a). The City Council of the City of Daytona Beach Shores hereby finds that the recitations set forth are true and correct and that the requirements of Section 171.044, *Florida Statutes*, as well as all other requirements of controlling law, have been complied with in every respect.

(b). Under the authority of Section 166.031 (3), *Florida Statutes*, relating to city charter amendments, “[a] municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. . . . A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State . . .” This Ordinance shall amend the boundaries of the City to include the property annexed in this Ordinance.

SECTION TWO: ANNEXATION INTO THE CITY. The real property depicted and described by metes and bounds in Exhibit "A" appended hereto, which Exhibit is made part hereof and which property is owned by the petitioning property owners, and further described as set forth below, together with the associated rights-of-way as described below, is hereby annexed into the City Limits of the City of Daytona Beach Shores, said property being described as follows:

LOT 23, EXCEPT THE WESTERLY 35' THEREOF AND ALL OF LOT 24 AND THE WESTERLY 5.0 FEET OF LOT 25, ALL IN BLOCK "E",

TOGETHER WITH A PORTION OF THE SOUTH 1/2 OF BROAD AVENUE (PLATTED 3RD AVE), VAN VALZAH SUBDIVISION, AS RECORDED IN MAP BOOK 4, PAGE 130, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHEAST CORNER OF THE WESTERLY 35' OF SAID LOT 23; THENCE RUN NORTH ALONG THE EASTERLY LINE OF THE WESTERLY 35' OF SAID LOT 23 AND ITS NORTHERLY EXTENSION, 190.00 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF SAID BROAD AVENUE (PLATTED 3RD AVE); THENCE EAST ALONG SAID NORTH LINE, 70.00 FEET TO THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WESTERLY 5.0' OF SAID LOT 25; THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND ALONG THE EASTERLY LINE OF THE WESTERLY 5.0' OF SAID LOT 25, A DISTANCE OF 190.00 FEET TO THE SOUTH LINE OF SAID LOT 25; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 25 AND THE SOUTH LINE OF SAID LOT 24 AND THE SOUTH LINE OF SAID LOT 23, A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING.

SECTION THREE: CHANGE IN CITY BOUNDARIES/LEGAL EFFECT OF ANNEXATION. The boundary lines of the City Limits of the City of Daytona Beach Shores are hereby redefined and, upon the effective date of this Ordinance shall also encompass the annexed property as described herein and depicted in Exhibit "A". Upon this Ordinance becoming effective, the property owner of the annexed property shall be entitled to all the rights and privileges and immunities as are from time-to-time granted to property owners of the City as further provided in Chapter 171, *Florida Statutes*, and shall further be subject to the responsibilities of ownership as may from time-to-time be determined by the governing authority of the City and the provisions of said Chapter 171, *Florida Statutes*.

SECTION FOUR: ADMINISTRATIVE IMPLEMENTING ACTIONS.

(a). Within seven (7) days of the adoption of this Ordinance, the City Clerk shall file a copy of said Ordinance with the Clerk of the Court (Land Records/Recording), with the Chief Administrative Officer of Volusia County (the County Manager), with the Florida Department of State, and with such other agencies and entities as may be required by law or otherwise desirable.

(b). The City Manager, or designees within City management staff, shall ensure that the property annexed by this Ordinance is incorporated into the City of Daytona Beach Shores *Comprehensive Plan* and the *Official Zoning Map* of the City of Daytona Beach Shores in an expeditious manner and, in accordance with, and pursuant to, the provisions of Under the authority of Section 166.031(3), *Florida Statutes*, the City Manager, or designees, shall amend the boundaries of the City to include the property annexed in this Ordinance and all previously annexed properties in all maps and geographical data relating to the City Limits said properties to include, but not be limited to, annexed rights-of-way and natural features.

SECTION FIVE: CONFLICTS. Any and all ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION SEVEN: NON-CODIFICATION. This Ordinance shall be not be codified in the *City Code of the City of Daytona Beach Shores*, or the *Land Development Code of the City of Daytona Beach Shores*, or the *City of Daytona Beach Shores Comprehensive Plan* provided, however, that the actions taken herein shall be depicted on the pertinent maps of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

JOHN CARY, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2021.

Adopted on second reading this _____ day of _____, 2021.

Ordinance 2021-12

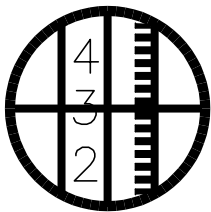
Page No.4

EXHIBIT A

(1) Location Map of Annexing Property (104 Broad Avenue)



(2) Metes and Bounds Description/Sketch (Attached)



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL. 32127
(386) 761-5385

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www.sligerassociates.com

BROAD AVENUE (PLATTED 3RD AVE) 100' R/W

NORTH LINE OF SOUTH 1/2 BROAD AVENUE

EAST 70.00'

NORTHERLY
EXTENSION OF
EASTERLY LINE

NORTHERLY
EXTENSION OF
EASTERLY LINE

NORTH LINE BLOCK "E" EAST

50'(P)

50'(P)

50'(P)

LOT 23

LOT 24

LOT 25

EXCEPTION
WESTERLY
35' OF
LOT 23

BLOCK "E", VAN VALZAH
SUBDIVISION
MAP BOOK 4, PAGE 130

140'(P)

140'(P)

140'(P)

140'(P)

NORTH 190.00'

EASTERLY LINE OF WESTERLY 35'

EASTERLY LINE OF WESTERLY 5.0'

SOUTH 190.00'

WESTERLY 35'

WESTERLY 5.0'

50'(P)

50'(P)

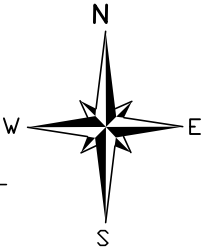
50'(P)

WEST 70.00'

SOUTH LINE LOT 23, LOT 24 & LOT 25

20' UN-NAMED ALLEY

POINT OF BEGINNING
SOUTHWEST CORNER OF
WESTERLY 35' LOT 23



SKETCH OF DESCRIPTION
NOT A BOUNDARY SURVEY

FOR: CITY OF DAYTONA BEACH SHORES, FLORIDA

DESCRIPTION:
ANNEXATION DESCRIPTION. SEE
SHEET 2 FOR LEGAL DESCRIPTION

JOB #21-1346

SCALE: 1"=30'

FIELD BOOK:

PAGE:

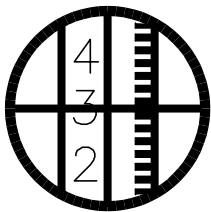
ABBREVIATIONS

(P)	PLATTED DIMENSION
(D)	DEEDED DIMENSION
(M)	MEASURED DIMENSION
(C)	CALCULATED DIMENSION
ID	IDENTIFICATION
A/C	AIR CONDITIONER
R/W	RIGHT OF WAY
CL	CENTERLINE
D	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
FP&L CO.	FLORIDA POWER & LIGHT COMPANY
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

SHEET 1 OF 2

LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



SLIGER & ASSOCIATES, INC.

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SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/ SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE ASSUMED NORTH WITH THE BEARING ON THE NORTH LINE OF BLOCK "E", VAN VALZAH SUBDIVISION, MB 4, PAGE 130, BEING DUE EAST.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR VALID DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER."
5. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.
6. DESCRIPTION PREPARED BY SLIGER & ASSOCIATES, INC. 8/11/2021.

DESCRIPTION

LOT 23, EXCEPT THE WESTERLY 35' THEREOF AND ALL OF LOT 24 AND THE WESTERLY 5.0 FEET OF LOT 25, ALL IN BLOCK "E", TOGETHER WITH A PORTION OF THE SOUTH 1/2 OF BROAD AVENUE (PLATTED 3RD AVE), VAN VALZAH SUBDIVISION, AS RECORDED IN MAP BOOK 4, PAGE 130, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
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REFERENCE:

THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND\OR INDIVIDUALS LISTED BELOW, ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHOMSOEVER.

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF DESCRIPTION	CITY OF DAYTONA BEACH SHORES, FLORIDA	8/11/2021	21-1346

SHEET 2 OF 2

FOR: CITY OF DAYTONA BEACH SHORES, FLORIDA						I HEREBY CERTIFY THAT THIS PLAT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. J.E. ZAPERT, P.L.S. NO. 4046 STEVEN T. KRUGER, P.L.S. NO. 4722 C.O. VAN KLEECK JR., P.S.M. NO. 6149 MICHAEL S. MURPHY, P.S.M. NO. 6208
	DATE	JOB NO.	P.C.	DRW.	CHECKED BY	
SKETCH OF DESCRIPTION	8/11/2021	21-1346		JZ	DH	
BOUNDARY SURVEY						
TOPOGRAPHIC SURVEY						
FOUNDATION LOCATED						
FINAL IMPROVEMENTS						
RECERTIFICATION						
PROPOSED HOUSE LOCATION						

EXHIBIT 1: Location Map of Annexing Property (104 Broad Ave.)



Source: Volusia County Property Appraiser Website, 2021

EXHIBIT 2
A: Annexation Application



City of Daytona Beach Shores 240322
Building & Codes Division
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377 Fax (386) 763-5370

RECEIVED

AUG 09 2021

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

12021020
REQUEST FOR ANNEXATION

August 7, 2021
(Date)

I (We) the undersigned am the sole property owner(s) of 104 Broad Avenue, Volusia
County, Florida. (Street Address)

By this letter, I (We) am requesting annexation into the City of Daytona Beach Shores, Florida.
It is my (our) understanding that the fee for legal advertising has been waived by the City and
that I (we) will not incur any costs for annexation.

Signed,

Heather Roberts
Signature

Heather Roberts
Name (Printed or typed)

773-332-7890
Telephone

Signature

Name (Printed or typed)

Telephone

Signature

Name (Printed or typed)

Telephone

SWORN to and subscribed before me this 7 day of August, 2021 by
Heather Roberts, who is personally known to me or produced
Identification X. Type of Identification provided IL driver license

Cheryl Lee Thibault
Notary Public - State of Florida
My Commission Expires:



Please return this form to: Annexation Committee
c/o Planning Department
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

5335-03-05-0240

[Home](#) / Parcel Summary for 3463765

[Summary](#)
[TRIM Notice](#)
[Permits](#)
[Map](#)
[Pictometry](#)
[Print](#)

Alternate Key:	3463765
Parcel ID:	533503050240
Township-Range-Section:	15 - 33 - 35
Subdivision-Block-Lot:	03 - 05 - 0240
Physical Address:	104 BROAD AVE, DAYTONA BEACH SHORES 32118
Business Name:	
Owner(s):	ROBERTS HEATHER - FS - Fee Simple - 100
Mailing Address On File:	104 BROAD AVE DAYTONA BEACH FL 32118 Update Mailing Address
Building Count:	1
Neighborhood:	3107 - ORITA SUB Neighborhood Sales
Subdivision Name:	
Property Use:	0100 - SINGLE FAMILY
Tax District:	200-UNINCORPORATED - NORTHEAST
2021 Proposed Millage Rate:	19.5951
Homestead Property:	No - Apply for Homestead Online
Agriculture Classification:	No - Additional Information
Legal 1:	E 15 FT OF LOT 23 & LOT 24 & W 5 FT OF LOT 25 BLK E PORT ORA
Legal 2:	NGE BEACH MB 4 PG 130 OR MB 15 PG 64 PER OR 3726 PG 20 PER
Legal 3:	OR 5606 PG 3453 PER OR 6608 PG 2933 PER OR 8044 PG 1247

[Values & Exemptions](#)
[Land & Buildings](#)
[Sales](#)
[Legal](#)
[Property Tax](#)

Property Values

EXHIBIT 3

A: Aerial View of Annexing Property (104 Broad Ave.)



Source: Volusia County Property Appraiser Website, 2021

B: Street View of Annexing Property (104 Broad Ave.)



Source: GoogleMaps, 2016

**EXHIBT 4
PRE-ANNEXATION FORM**

Name of Property Owner: Heather Roberts

Property Address/Tax Parcel ID: 104 Broad Avenue /5335-03-05-0240

Lot Size: 70' x 140': 9,000sf (0.23 acres)

According to Volusia County property records, does this property appear to meet Section 171.044 of Florida Statutes? Yes X No _____

How is property contiguous? East X West X North _____ South X

Property Appraiser Just/Market Value: \$207,734

Homesteaded Property: Yes _____ No X

Special Flood Hazard Area? Yes _____ No X

Improved Lot X Unimproved Lot (Vacant) _____

Existing Use: Single-family Residential

Conforming Land Use: X Non-Conforming Land Use: _____ Explain:

Existing County Zoning: R-9 Urban Single-Family Residential District

Existing County Land Use: Urban Low Intensity

Condition of Property: Poor _____ Good X Excellent _____

Water: Port Orange X Daytona Beach _____

Sanitary: Sewer X (DBS) Septic Tank _____

If septic tank on site, is sewer available? NA Yes _____ No _____

Metes and Bounds Survey conducted? Yes X No _____

Prepared by: Stewart Cruz, City Planner Date: October 1, 2021

EXHIBIT 5: Voluntary Annexation Criteria pursuant to Section 171.044, *Florida Statutes*

Section	Annexation Criteria	Criteria Met	Comments
171.044(1)	Property must be contiguous to the City.	Yes	Per Sec. 171.031(11), subject property is contiguous to the City to the East, west and south.
171.044(1)	Property must be reasonably compact.	Yes	Per Sec. 171.031(12), subject property is reasonably compact and will not create new enclaves, pockets or finger areas in serpentine patterns. In addition, the annexation will aid in reducing the larger county enclave in the vicinity.
171.044(2)	Petition bears the signatures of all owners of property.	Yes	See Exhibit 2 .
171.044(2)	Meet publication requirements.	Yes	Evidence filed with the Office of the City Clerk.
171.044(3)	Ordinance shall be filed per statute.	Pending	Ordinance filing will occur per statutory deadline subsequent to the Ordinance's adoption.
171.044(3)	Ordinance shall include a map and legal description by metes and bounds.	Yes	See Ordinance 2021-12.
171.044(4)	Annexation method shall be supplemental to any other procedure provided by general law.	N/A	
171.044(5)	Annexation shall not create enclaves.	Yes	Per Sec. 171.031(13), subject property does not create an enclave. In fact the annexation will reduce the larger County enclave that currently exists in this area.
171.044(6)	Provision of notice to County Commissioners per statute.	Yes	Notice provided via certified mail per statutory requirement.



**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 26, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM: Kurt Swartzlander, Finance Director
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Ordinance 2021-13 Sale of Property located at 136 Beachcomber.

SYNOPSIS:

After conducting an RFP for the sale of 136 Beachcomber, Kevin Purucker was awarded the purchase of the property. This Ordinance and attachments are the completion of this sale as required by the City Charter. Second reading is scheduled for the first meeting in October, with the actual closing to take place on October 15th as per the contract.

FISCAL IMPACT STATEMENT:

City shall receive proceeds from the sale of the property and the property will be returned to the tax rolls for the city.

BACKGROUND:

LEGAL REVIEW:

Approved as to form and legality. However, due to an encumbrance on legal title, recommend continuing to a date certain.

RECOMMENDATION:

Motion to continue Ordinance 2021-13

SUGGESTED MOTION:

Motion to continue Ordinance 2021-13 to a time certain on 11/9/2021 at a meeting to begin at 6:00pm.

ATTACHMENT:

1. Ordinance 2021-13 Sale of 136 Beachcomber
2. Final - warranty deed 136 Beachcomber
3. 136 Beachcomber Commercial Contract -

ORDINANCE 2021-13

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE SALE OF CITY REAL ESTATE LOCATED AT 136 BEACHCOMBER ST.; DECLARING PROPERTY AS SURPLUS; ADOPTING EXHIBITS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS, SEVERABILITY, NON-CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Section 2.18 (d) (6) of the *City Charter of the City of Daytona Beach Shores* requires that the conveyance of lands of the City must be accomplished by ordinance; and

WHEREAS, an opportunity has become apparent relative to the potential sale of certain real property owned by the City which property is addressed as 136 Beachcomber Street and assigned Volusia County Parcel Identification Number: 5322-00-04-0043 by the Volusia County Property Appraiser (hereinafter the “Property”) ; and

WHEREAS, the Property is not necessary for any City purpose at the present time or within the reasonably foreseeable future and is therefore declared to be surplus; and

WHEREAS, the City issued an Invitation to Bid in order to advertise the sale of the Property and invite potential purchasers to place a bid on the Property; and

WHEREAS, the City Council of the City of Daytona Beach Shores considered the bids at the August 24, 2021, City Council meeting, and voted to sell the property to Purucker Plaza II LLC; and

WHEREAS, the terms and conditions of the sale, as set forth in the attached purchase and sale agreement are favorable to the City; and

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 to include, but not be limited to, the *City Charter*.

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 and administrative findings and intent of the City Council.

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

SECTION TWO: SALE OF CITY PROPERTY.

The City Council hereby authorizes the sale of the Property referenced in the recitals hereinabove and the exhibits attached hereto in accordance with the terms and conditions set forth therein.

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the management and disposition of City real property are hereby ratified and affirmed.

SECTION FOUR: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions of this Ordinance shall not be codified in the *Code of Ordinances of the City of Daytona Beach Shores*.

(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.

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

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 28th day of September, 2021.

Adopted on second reading this 12th day of October, 2021.

Prepared by and Return to:
Vose Law Firm LLP
324 W Morse Blvd
Winter Park, FL 32789

Parcel ID: 531606000010

WARRANTY DEED

THIS WARRANTY DEED is made the _____ day of _____, 2021,
by the **CITY OF DAYTONA BEACH SHORES, a Florida municipal corporation,**
(hereinafter referred to as "**Grantor**") to **1901-1903 S. ATLANTIC LP, a Delaware**
limited partnership, (hereinafter referred to as "**Grantee**") whose address is 199 Bay
Street, Suite 2900, Box 459, Toronto, Ontario M5L 1G4.

W I T N E S S E T H:

THAT GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00), and
other good and valuable consideration to it in hand paid by the Grantee, the receipt whereof is
hereby acknowledged, has granted, bargained and sold to the said Grantee, its successors and
assigns forever, the following described land, all being situate in Volusia County, Florida, to wit:

Lot 1, Rosalyn Park, according to the map or plat thereof,
as recorded in Map Book 8, Page 163, of the Public
Records of Volusia County, Florida.

And

Lot 2, Rosalyn Park Plat 2, according to the map or plat
thereof, as recorded in Map Book 9, Page 235, of the
Public Records of Volusia County, Florida.

And

Lots 1 and 2, Triangle Park Subdivision, according to the
map or plat thereof, as recorded in Map Book 9, Page
252, of the Public Records of Volusia County, Florida.

Less and Except from all of the above that part taken for
the widening of South Atlantic Avenue a/k/a State Road
A 1A.

Also, Less and Except that portion of Lot 1, of Triangle
Park Subdivision, according to the map or plat thereof, as
recorded in Map Book 9, Page 252, of the Public Records
of Volusia County, Florida, described as follows:
Commencing at the Northwest corner of said Lot 1,
thence, along the South right-of-way line of Frazar
Avenue and the North line of said Lot 1, North 89°26'30"
East a distance of 28.87 feet to the Point of Beginning;
thence continue, along said South right-of-way line and
North line of Lot 1, North 89°26'30" East a distance of

20.53 feet to the Westerly right-of-way line of State Road A-1- A (South Atlantic Avenue, an 80' right-of-way); thence, along said Westerly right-of-way line, South 23°30'50" East a distance of 32.49 feet; thence, departing said Westerly right-of- way line, South 89°26'30" West a distance of 33.20 feet; thence North 00°33'30" West a distance of 29.92 feet to the Point of Beginning.

(hereinafter referred to as the **“Property”**).

THAT GRANTOR specifically releases any and all automatic phosphate, metals, minerals and petroleum reservation(s) and right(s) of entry in accordance with Florida Statutes, Section 270.11.

TOGETHER WITH all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

SUBJECT TO easements, restrictions and reservations of record, if any. However this reference thereto shall not serve to reimpose same.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND GRANTOR does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
In the presence of witnesses:

**CITY OF DAYTONA BEACH SHORES, a
Florida municipal corporation**

Signature of Witness #1

By: _____
Nancy Miller, as Mayor

Printed Name of Witness #1

ATTEST:

Signature of Witness #2

By: _____
Cheri Schwab, City Clerk

Printed Name of Witness #2

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021, by Nancy Miller, as Mayor, attested to by Cheri Schwab, as City Clerk, both of the City of Daytona Beach Shores, a Florida municipal corporation on behalf of the municipal corporation. They are personally known to me or have produced _____ and _____, respectively, as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

Commercial Contract

1. PARTIES AND PROPERTY: Purucker Plaza II LLC ("Buyer")

agrees to buy and City of Daytona Beach Shores ("Seller")

agrees to sell the property at:

Street Address: 136 Beachcomber Street, Daytona Beach Shores, FL 32118

Legal Description: 00 22-15-33 IRREG PARCEL IN GOVT LOT 4 LYING S OF BEACHCOMBER S T & W OF SR A1A MEAS 119.02 F

and the following Personal Property: _____

(all collectively referred to as the "Property") on the terms and conditions set forth below.

2. PURCHASE PRICE: \$ 217,500

(a) Deposit held in escrow by: Becky Vose \$ 13,350
("Escrow Agent") (checks are subject to actual and final collection)

Escrow Agent's address: 324 W Morse Blvd, Winter Park, FL Phone: 4076453735

(b) Additional deposit to be made to Escrow Agent

☐ within _____ days (3 days, if left blank) after completion of Due Diligence Period or
☐ within _____ days after Effective Date \$0

(c) Additional deposit to be made to Escrow Agent

☐ within _____ days (3 days, if left blank) after completion of Due Diligence Period or
☐ within _____ days after Effective Date \$0

(d) Total financing (see Paragraph 5) \$0

(e) Other \$0

(f) All deposits will be credited to the purchase price at closing.

Balance to close, subject to adjustments and prorations, to be paid
via wire transfer. \$204,150

For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of Buyer's written notice of acceptability.

3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME: Unless this offer is signed by **Seller** and **Buyer** and an executed copy delivered to all parties on or before 09/29/2021, this offer will be withdrawn and the **Buyer's** deposit, if any, will be returned. The time for acceptance of any counter offer will be 3 days from the date the counter offer is delivered. **The "Effective Date" of this Contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or 09/29/2021** Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

4. CLOSING DATE AND LOCATION:

(a) **Closing Date:** This transaction will be closed on 10/15/2021 (Closing Date), unless specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended

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on Closing Date and **Buyer** is unable to obtain property insurance, **Buyer** may postpone closing up to 5 days after the insurance underwriting suspension is lifted.

(b) Location: Closing will take place in Volusia _____ County, Florida. (If left blank, closing will take place in the county where the property is located.) Closing may be conducted by mail or electronic means.

5. THIRD PARTY FINANCING:

BUYER'S OBLIGATION: On or before _____ days (5 days if left blank) after Effective Date, **Buyer** will apply for third party financing in an amount not to exceed _____% of the purchase price or \$ _____ with a fixed interest rate not to exceed _____% per year with an initial variable interest rate not to exceed _____%, with points or commitment or loan fees not to exceed _____% of the principal amount, for a term of _____ years, and amortized over _____ years, with additional terms as follows:

Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within _____ days (45 days if left blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the mortgage broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately upon obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within _____ days (3 days if left blank) deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract. If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter. Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer** has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.

6. TITLE: **Seller** has the legal capacity to and will convey marketable title to the Property by ☒ statutory warranty deed ☐ special warranty deed ☐ other _____ free of liens, easements and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) _____

provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the Property as 136 Beachcomber Street, Daytona Beach Shores, FL 32118

(a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent and pay for the title search and closing services. **Seller** will, at (check one) ☒ **Seller's** ☐ **Buyer's** expense and within _____ days after Effective Date or at least 15 _____ days before Closing Date deliver to **Buyer** (check one) ☒ (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date. ☐ (ii.) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or

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Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller** then (i.) above will be the evidence of title.

(b) Title Examination: **Buyer** will, within 15 days from receipt of the evidence of title deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (1) **Buyer** fails to deliver proper notice of defects or (2) **Buyer** delivers proper written notice and **Seller** cures the defects within 10 days from receipt of the notice ("Curative Period"). **Seller** shall use good faith efforts to cure the defects. If the defects are cured within the Curative Period, closing will occur on the latter of 10 days after receipt by **Buyer** of notice of such curing or the scheduled Closing Date. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, **Buyer** will have 10 days from receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) Survey: (check applicable provisions below)

(i.) ☒ **Seller** will, within 5 days from Effective Date, deliver to **Buyer** copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

prepared for **Seller** or in **Seller's** possession, which show all currently existing structures. In the event this transaction does not close, all documents provided by **Seller** will be returned to **Seller** within 10 days from the date this Contract is terminated.

☒ **Buyer** will, at ☐ **Seller's** ☒ **Buyer's** expense and within the time period allowed to deliver and examine title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, ☐ **Buyer** will accept the Property with existing encroachments ☒ such encroachments will constitute a title defect to be cured within the Curative Period.

(d) Ingress and Egress: **Seller** warrants that the Property presently has ingress and egress.

7. PROPERTY CONDITION: **Seller** will deliver the Property to **Buyer** at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. **Seller** makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, **Buyer** may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable, or require **Seller** to return the Property to the required condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$ (1.5% of the purchase price, if left blank). By accepting the Property "as is", **Buyer** waives all claims against **Seller** for any defects in the Property. (Check (a) or (b))

☒ **(a) As Is:** **Buyer** has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.

☐ **(b) Due Diligence Period:** **Buyer** will, at **Buyer's** expense and within days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in **Buyer's** sole and absolute discretion. During the term of this Contract, **Buyer** may conduct any tests, analyses, surveys and investigations ("Inspections") which **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that **Buyer** deems appropriate. **Buyer** will deliver written notice to **Seller** prior to the expiration of the Due Diligence Period of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. **Seller** grants to **Buyer**, its agents, contractors and assigns, the right to enter the Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable notice, at a mutually agreed upon time; provided, however, that **Buyer**, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a mechanic's lien being filed against the Property without **Seller's** prior written consent. In the event this transaction does not close, (1) **Buyer** will repair all damages to the

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Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

(c) Walk-through Inspection: **Buyer** may, on the day prior to closing or any other time mutually agreeable to the parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

8. OPERATION OF PROPERTY DURING CONTRACT PERIOD: **Seller** will continue to operate the Property and any business conducted on the Property in the manner operated prior to Contract and will take no action that would adversely impact the Property after closing, as to tenants, lenders or business, if any. Any changes, such as renting vacant space, that materially affect the Property or **Buyer's** intended use of the Property will be permitted ☒ only with **Buyer's** consent ☐ without **Buyer's** consent.

9. CLOSING PROCEDURE: Unless otherwise agreed or stated herein, closing procedure shall be in accordance with the norms where the Property is located.

(a) Possession and Occupancy: **Seller** will deliver possession and occupancy of the Property to **Buyer** at closing. **Seller** will provide keys, remote controls, and any security/access codes necessary to operate all locks, mailboxes, and security systems.

(b) Costs: **Buyer** will pay **Buyer's** attorneys' fees, taxes and recording fees on notes, mortgages and financing statements and recording fees for the deed. **Seller** will pay **Seller's** attorneys' fees, taxes on the deed and recording fees for documents needed to cure title defects. If **Seller** is obligated to discharge any encumbrance at or prior to closing and fails to do so, **Buyer** may use purchase proceeds to satisfy the encumbrances.

(c) Documents: **Seller** will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable service and maintenance contracts that will be assumed by **Buyer** after the Closing Date and letters to each service contractor from **Seller** advising each of them of the sale of the Property and, if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by **Seller** from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters (if applicable); tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the **Buyer** or **Buyer's** lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, **Seller**, if requested by the **Buyer** in writing, will certify that information regarding the tenant's lease is correct. If **Seller** is an entity, **Seller** will deliver a resolution of its governing authority authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. **Seller** will transfer security deposits to **Buyer**. **Buyer** will provide the closing statement, mortgages and notes, security agreements, and financing statements.

(d) Taxes and Prorations: Real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by **Buyer**, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to **Buyer**, and operating expenses will be prorated through the day before closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

(e) Special Assessment Liens: Certified, confirmed, and ratified special assessment liens as of the Closing Date will be paid by **Seller**. If a certified, confirmed, and ratified special assessment is payable in installments, **Seller** will pay all installments due and payable on or before the Closing Date, with any installment for any period extending beyond the Closing Date prorated, and **Buyer** will assume all installments that become due and payable after the Closing Date. **Buyer** will be responsible for all assessments of any kind which become due and owing after Closing Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially completed as of the Closing Date but has not resulted in a lien before closing, **Seller** will pay the amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

(f) Foreign Investment in Real Property Tax Act (FIRPTA): If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** agree to comply with Section 1445 of the Internal Revenue Code. **Seller** and **Buyer** will complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

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with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the requirement.

10. ESCROW AGENT: **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the parties of such action, Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs in favor of the prevailing party.

11. CURE PERIOD: Prior to any claim for default being made, a party will have an opportunity to cure any alleged default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-complying party specifying the non-compliance. The non-complying party will have _____ days (5 days if left blank) after delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

12. FORCE MAJEURE: **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to **Buyer**, thereby releasing **Buyer** and **Seller** from all further obligations under this Contract.

13. RETURN OF DEPOSIT: Unless otherwise specified in the Contract, in the event any condition of this Contract is not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit will be returned in accordance with applicable Florida Laws and regulations.

14. DEFAULT:

(a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make the title marketable after diligent effort, **Buyer** may elect to receive return of Buyer's deposit without thereby waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the brokerage fee.

(b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1) retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1) terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving any remedy for **Buyer's** default.

15. ATTORNEY'S FEES AND COSTS: In any claim or controversy arising out of or relating to this Contract, the prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable attorneys' fees, costs, and expenses.

16. NOTICES: All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice, document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker) representing a party will be as effective as if given by or delivered to that party.

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251 **17. DISCLOSURES:**

252 **(a) Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales
253 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of
254 commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the
255 owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not
256 attach to any interest in real property. This lien right cannot be waived before the commission is earned.

257 **(b) Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special
258 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such
259 liens, if any, shall be paid as set forth in Paragraph 9(e).

260 **(c) Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in
261 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that
262 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon
263 and radon testing may be obtained from your county public health unit.

264 **(d) Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by
265 Section 553.996, Florida Statutes.

266 **18. RISK OF LOSS:**

267 **(a)** If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, **Seller** will
268 bear the risk of loss and **Buyer** may cancel this Contract without liability and the deposit(s) will be returned to
269 **Buyer**. Alternatively, **Buyer** will have the option of purchasing the Property at the agreed upon purchase price and
270 **Seller** will credit the deductible, if any and transfer to **Buyer** at closing any insurance proceeds, or **Seller's** claim
271 to any insurance proceeds payable for the damage. **Seller** will cooperate with and assist **Buyer** in collecting any
272 such proceeds. **Seller** shall not settle any insurance claim for damage caused by casualty without the consent of
273 the **Buyer**.

274 **(b)** If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the
275 right of eminent domain, or proceedings for such taking will be pending or threatened, **Buyer** may cancel this
276 Contract without liability and the deposit(s) will be returned to **Buyer**. Alternatively, **Buyer** will have the option of
277 purchasing what is left of the Property at the agreed upon purchase price and **Seller** will transfer to the **Buyer** at
278 closing the proceeds of any award, or **Seller's** claim to any award payable for the taking. **Seller** will cooperate
279 with and assist **Buyer** in collecting any such award.

280 **19. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise ☐ is not
281 assignable ☒ is assignable. If this Contract may be assigned, **Buyer** shall deliver a copy of the assignment agreement
282 to the **Seller** at least 5 days prior to Closing. The terms "**Buyer**," "**Seller**" and "**Broker**" may be singular or plural. This
283 Contract is binding upon **Buyer**, **Seller** and their heirs, personal representatives, successors and assigns (if
284 assignment is permitted).

285 **20. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between **Buyer** and **Seller**.
286 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.
287 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated
288 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or
289 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract
290 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be
291 construed under Florida law and will not be recorded in any public records.

292 **21. BROKERS:** Neither **Seller** nor **Buyer** has used the services of, or for any other reason owes compensation to, a
293 licensed real estate Broker other than:

294 **(a) Seller's Broker:** N/A
295 (Company Name) (Licensee)

296 who ☐ is a single agent ☐ is a transaction broker ☐ has no brokerage relationship and who will be compensated_ by
297 ☒ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ a listing agreement ☐ other (specify) _____
298 _____
299 _____

300 **(b) Buyer's Broker:** Oceans Luxury Realty Full Service, LLC Kevin Purucker
301 (Company Name) (Licensee)

3162 S Atlantic Ave, Daytona Beach Shores, FL 32118
(Address, Telephone, Fax, E-mail)

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302 who ☒ is a single agent ☐ is a transaction broker ☐ has no brokerage relationship and who will be compensated by
303 ☐ Seller's Broker ☐ Seller ☐ Buyer ☐ both parties pursuant to ☐ an MLS offer of compensation ☒ other (specify)
304 No compensation. Buyer and Buyer's broker waives the right to Real Estate commission.
305 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to
306 inquiries, introductions, consultations, and negotiations resulting in this transaction. **Seller** and **Buyer** agree to
307 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including
308 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is
309 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to
310 Paragraph 10, (3) any duty accepted by Broker at the request of **Seller** or **Buyer**, which is beyond the scope of
311 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and
312 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of **Seller** or **Buyer**.

313 **22. OPTIONAL CLAUSES:** (Check if any of the following clauses are applicable and are attached as an addendum to
314 this Contract):
315 ☐ Arbitration ☐ Seller Warranty ☐ Existing Mortgage
316 ☐ Section 1031 Exchange ☐ Coastal Construction Control Line ☐ Buyer's Attorney Approval
317 ☐ Property Inspection and Repair ☐ Flood Area Hazard Zone ☐ Seller's Attorney Approval
318 ☐ Seller Representations ☐ Seller Financing ☐ Other _____

319 **23. ADDITIONAL TERMS:**
320 City and Purchaser agree that Purchaser will not raise the cost of rent on existing tenants prior October 1, 2022.
321 Additionally, the City Charter of the City of Daytona Beach Shores requires the City Council to pass an ordinance in order to
322 convey real property. The Commercial Contract is contingent on the passing of a valid ordinance authorizing the sale.
323 _____
324 _____
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341 _____

342 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**
343 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL**
344 **FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE**
345 **PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE**
346 **EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR**
347 **REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER**

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348 **ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL**
349 **REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER**
350 **REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF**
351 **THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**
352 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND**
353 **FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.**

354 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other
355 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its
356 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized
357 to do so.

358

Kevin Purucker

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 Date: _____
(Signature of Buyer)

359 Kevin B Purucker Tax ID No.: _____
(Typed or Printed Name of Buyer)

360 Title: _____ Telephone: _____

361

Christopher E Purucker

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 Date: _____
(Signature of Buyer)

362 Christopher E Purucker Tax ID No.: _____
(Typed or Printed Name of Buyer)

363 Title: _____ Telephone: _____

364 Buyer's Address for purpose of notice _____

365 Facsimile: _____ Email: kpurucker@aol.com, puruckerc@gmail.com

366 _____ Date: _____
(Signature of Seller)

367 City of Daytona Beach Shores Tax ID No.: _____
(Typed or Printed Name of Seller)

368 Title: _____ Telephone: _____

369 _____ Date: _____
(Signature of Seller)

370 _____ Tax ID No.: _____
(Typed or Printed Name of Seller)

371 Title: _____ Telephone: _____

372 Seller's Address for purpose of notice: _____

373 Facsimile: _____ Email: _____

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Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.
CC-5 Rev. 9/17



CITY COUNCIL AGENDA MEMORANDUM OCTOBER 26, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Stewart Cruz, City Planner
PREPARED BY: Stewart Cruz, City Planner
SUBJECT: Ordinance 2021-14: Mobile Food Vehicles

SYNOPSIS:

Section 509.102, *Florida Statutes*, adopted in 2020, precludes local governments from prohibiting mobile food vehicles, i.e. food trucks, food trailers and other similar mobile vehicles, from operating within the entirety of their jurisdiction. Ordinance 2021-14, if approved, would allow mobile food vehicles to operate (i) on commercial and hotel properties that possess a valid development agreement and (ii) on construction sites with a valid site plan development order. The ordinance also establishes general and operating regulations in the interest of public health, safety and welfare and is conscientious of the local economic value of existing brick and mortar public food establishments. Mobile food vehicles operating at events sponsored by the City of Daytona Beach Shores are exempt from the provisions of these regulations except for life safety provisions required by controlling law.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

I. BACKGROUND & HIGHLIGHTS

Mobile food trucks are currently prohibited within city limits unless approved by the City Council by means of a Special Events Permit or through an event sponsored by the City. Over the past couple years, staff has met with proponents of two prospective businesses, i.e. a brewery and a food truck court, requesting the City allow food trucks. Staff has also received a request from a current business owner, i.e. Casual Bird restaurant located at 109 Dunlawton Boulevard, to establish a food trailer on site to complement the soon-to-be open restaurant. The food trailer would serve ice cream/gelato in the rear portion of the property, mostly behind the building, but still within some view from Dunlawton Boulevard. Finally, in 2020, the City granted an existing business temporary permission to locate a food trailer on a trial basis at Pappas Plaza. That pilot program, however, was terminated early due to public safety issues. If adopted, the regulations would be drafted to avoid the issues that led to the termination of the aforementioned pilot program. Highlights of Ordinance 2021-14 include regulations

that limit mobile food vehicles as follows:

1. Operate solely (a) on commercial and hotel properties that possess a valid development agreement and (b) on construction sites with a valid site plan development order;
2. Hours of operation from 7am - 10pm; on construction sites from 7:00am - 3:30pm;
3. Must be set back at least 50 feet from residential properties;
4. Prohibited from selling or dispensing alcohol;
5. Prohibited from emitting smoke, ash, etc.;
6. Initial and bi-annual inspections by the Public Safety Department; and
7. Subject to inspections from other relevant City departments at their discretion.

II. PLANNING ANALYSIS

Florida Statutes: The proposed ordinance is consistent with Section 509.102, *Florida Statutes*, which governs mobile food dispensing vehicles. The referenced statute preempts permitting to the state and prohibits local governments from banning food trucks within the entirety of their jurisdictions. The proposed ordinance will not require a permit from the city to operate and will allow food trucks at specific locations within the city.

Comprehensive Plan: The Daytona Beach Shores Comprehensive Plan is silent on the subject of food trucks but encourages economic development. The proposed ordinance does not contravene provisions of the Comprehensive Plan and encourages economic development. Therefore, the proposed ordinance is not inconsistent with the City's adopted comprehensive plan.

Land Use Impact: The ordinance proposes the operation of mobile food vehicles at certain locations within the city, i.e. construction sites per Sec. 5-14 of the City's Land Development Code and on hotel/commercial properties with active development agreements. There are currently two active construction sites in the city with valid site plan development orders - Max Daytona Hotel and Oceans 25 Townhomes. In addition, there are three (3) commercial properties and one (1) hotel property with active development agreements. These properties are Publix Supermarket, Volusia County Lifeguard Depot, Casual Bird Restaurant and Treasure Island, respectively. Therefore, six (6) properties that could potentially qualify to have mobile food vehicles operating on their sites at some point if the ordinance is adopted. In addition, the ordinance requires mobile food vehicles to adhere to a 50-foot setback from residential properties and prohibits the emission of deleterious substances such as smoke, ash, etc.

Overall Impact: Through the controls and regulations proposed, the ordinance considers public safety, health and welfare and is contentious about the economic value of existing brick and mortar public food establishments. Further, the ordinance allows mobile food vehicles on certain sites that could add economic value and create new destinations within the city without competing with existing restaurants.

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

On October 12, 2021, the Daytona Beach Shores Planning and Zoning Board unanimously recommended approval of Ordinance 2021-14.

Staff recommends approval of Ordinance 2021-14 as presented.

SUGGESTED MOTION:

A City Council Member may motion one of the following:

1) "I move to recommend approval of Ordinance 2021-14 as presented."

OR

2) "I move to recommend approval of Ordinance 2021-14, with the following amendments..."

OR

3) "I move to recommend denial of Ordinance 2021-14, on the basis of..."

ATTACHMENT: 1. Ord 2021-14-Mobile Food Vehicles-JMC 10-12-21

ORDINANCE 2021-14

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO MOBILE FOOD VEHICLES; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING CHAPTER 2 ENTITLED “DEFINITIONS” TO PROVIDE FOR A DEFINITION OF MOBILE FOOD VEHICLE; AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS” TO PROVIDE FOR MOBILE FOOD VEHICLES ON CERTAIN PROPERTIES WITHIN CITY LIMITS; 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 mobile food vehicles 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 mobile food vehicles 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 mobile food vehicles as part of an overall development plan can encourage redevelopment of certain blighted properties and enhance economic and social activity within the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that mobile food vehicles 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, the City of Daytona Beach Shores recognizes the need to comply with Section 509.102, *Florida Statutes*, which preempts certain regulatory abilities of local governments regarding mobile food dispensing vehicles; and

WHEREAS, the City Council of the City of Daytona Beach Shores values and recognizes the local economic importance of brick and mortar public food establishments in the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that limiting mobile food vehicle locations to commercial and hotel properties subject to an active development agreement will not negatively impact either brick and mortar public food establishments in the City or mobile food vehicle businesses; and

WHEREAS, this Ordinance is consistent with Section 509.102, *Florida Statutes*; 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, Chapter 2, entitled “Definitions,” by adding the following:

CHAPTER 2. - DEFINITIONS

Sec. 2-2. - General definitions.

Mobile Food Vehicle: Any vehicle whose operator possesses an active mobile food service license from the Florida Department of Business and Professional Regulation (DBPR) wherein food is prepared, served, or sold for takeout or immediate consumption on or in the vicinity of the premises.

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 14, entitled “Zoning Regulations,” by adding the following:

CHAPTER 14 – ZONING REGULATIONS

Sec. 14-22. - GC-1 Tourist-Oriented Commercial District.

14-22.1. Purpose and Intent.

The purpose and intent of this district is to encourage the development of an intensive commercial facility, providing a wide range of tourist oriented goods and services located adjoining at least one (1) major collector or arterial road.

14-22.3. Restriction of Exterior Sales and Services.

Except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all ~~All~~ retail sales and services shall be within a completely enclosed structure which does not create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot.

1. Items displayed outdoors shall not impede walking traffic and shall maintain a minimum five (5) foot sidewalk clearance.
2. Outdoor displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-23. - GC-2 Retail/Service Commercial District.

14-23.1. Purpose and Intent.

This restrictive district is designed to provide small attractive commercial areas, keyed to general locations designated in the Comprehensive Plan, to meet the daily retail and service needs of the resident and tourist population. These commercial areas should be designed and constructed so as to cause the least possible nuisance to adjacent residential uses.

14-23.3. Restriction of Exterior Sales and Services.

Except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all ~~All~~ retail sales and services shall be within a completely enclosed structure which does not create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot.

1. Items displayed outdoors shall not impede walking traffic and shall maintain a minimum five-foot sidewalk clearance.

2. Outdoor displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-31. - Redevelopment Districts.

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

14-31.1.1.

Purpose and Intent. To encourage the development and redevelopment of commercial property in the redevelopment areas.

14-31.1.6.

Restriction of Exterior Sales and Services.

Notwithstanding section 14-31.1.7 of this Code, and except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all retail sales and services shall occur within a completely enclosed structure and it is prohibited and unlawful for such uses to create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot on which the structure is located. It is prohibited and unlawful to violate either of the following conditions:

1. Outdoor items and displays shall not impede walking traffic and shall maintain a minimum sidewalk clearance of five (5) feet.

2. Outdoor items and displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-34. - Accessory uses and structures.

No accessory uses, structures, which shall include publication storage devices as an accessory use, shall be located in any required yard except as provided for below:

8. Mobile food vehicles may be permitted in required side and rear yards pursuant to Section 14-60.3.3 of this code.

Sec. 14-60.3. - Outside activities and uses.

1. *Outside Activities and Uses Prohibited Generally.* Except as specifically provided otherwise all activities, storage and displays shall be conducted entirely within an enclosed structure in all districts of the city.

2. *Outside Activities and Uses Specifically Permitted.*

- (a) Gift shop shell displays not greater than eighty (80) square feet.
- (b) Retail displays at least one hundred (100) feet from any public right-of-way.
- (c) Temporary promotional activities as provided in section 14-60.2.
- (d) Sidewalk cafes in the TC-MUPUDW District pursuant to an approved development agreement.
- (e) Outdoor dining pursuant to section 14-58.2.1 of this Code.
- (f) Garage sales and other customary accessory uses in the RSF-1 and RSF-2 zoning districts.
- (g) Mobile food vehicles pursuant to section 14-60.3.3 of this code.

3. Mobile Food Vehicles

(a) Location.

Mobile food vehicles as defined in Sec. 2-2 of this code are authorized to operate on (i) any active construction site pursuant to Sec. 5-14 of this code and (ii) any commercial or hotel property that is subject to an approved development agreement. All mobile food vehicles operating in the city shall adhere to the following requirements provided however, mobile food vehicles operating with a permit for a specific special event sponsored by the City of Daytona Beach Shores are exempt from the provisions of these regulations except for life safety provisions required by controlling law.

(b) Specific requirements.

- 1. The operator of a mobile food vehicle as defined in Sec. 2-2 of this code shall have the written consent of the property owner(s) prior to operation of the mobile food vehicle.
- 2. Mobile food vehicle operator shall make the mobile food vehicle available for inspection by the Public Safety Department at a location determined by the department prior to operation. The Public Safety Department shall ensure compliance with all applicable federal, state, and local fire safety statutes, regulations, ordinances, and codes. Subsequently, every mobile food vehicle shall undergo bi-annual inspection by the Public Safety Department. Failure to have the mobile food vehicle inspected prior to operation may result in a public safety officer, under the authority of the fire marshal, requiring the mobile food vehicle to shut down until the initial inspection can be conducted.
- 3. Mobile food vehicle operators shall display prominently all applicable approvals and licenses from the State of Florida Department of Business and Professional Regulations

(DBPR), Florida Department of Health, and Florida Department of Agriculture and Consumer Services.

4. Prior to performing outdoor cooking operations, workers shall be trained in emergency response procedures.
5. Initial and refresher training shall be documented and made available to an inspector upon request.
6. Mobile food vehicles shall comply with all requirements of National Fire Protection Association most current adopted edition by the Florida Administrative Code 69A (NFPA) 1 Chapter 50 Mobile and Temporary Cooking Operations.

(c) Prohibitions

Mobile food vehicle operations are prohibited from the following:

1. Selling or distributing alcoholic beverages.
2. Serving food from a free-standing barbecue grill.
3. Operating, standing or storage of the vehicle on a public right-of-way, driveway, driveway aisle, loading zone, no parking zone, required parking area or any other required vehicular use element of the site.
4. Operating in a fire lane or blocking fire hydrants or any other fire protection devices and equipment, or Americans with Disabilities Act (ADA) accessible parking spaces and/or accessible ramps.
5. Operating in a location that will impede on-site circulation of motor vehicles.
6. Operating at inactive construction sites and vacant business locations.
7. Use of sound amplification regardless of intended purpose.
8. Utilizing balloons, banners, streamers, flashing (including moving or alternating) lights, or other similar devices to attract customers.
9. Selling or dispensing food to customers in a moving vehicle or otherwise engaging in drive-up sales.

(d) General requirements.

1. Mobile food vehicle operators shall remove all waste and trash prior to vacating their location.
2. Under no circumstances shall grease or any waste materials be released into the stormwater system, tree pits, landscaped areas, open areas, sidewalks, streets, parking lots, or on any other private or public property. Outdoor food vendors shall be responsible to properly discard any waste material in accordance with controlling law.
3. There shall be no emission of visible smoke, dust, dirt, fly ash or any particulate matter from any pipes, vents or other openings, or from any other source, into the air. All fuel shall be used so as to prevent any emission of visible smoke, fly ash or cinders into the air.
4. There shall be no emission of any fumes, vapors or gases of a noxious, toxic or corrosive nature which can cause any damage or irritation to health, animals, vegetation or to any form of persons or property.

5. No mobile food vehicle equipment or process shall create noise or sounds in excess of 65dBA while operating.
6. In accordance with the Florida Department of Business and Professional Regulation guidelines, all necessary control measures shall be used to effectively minimize, or eliminate when possible, the presence of rodents, roaches, and other vermin and insects on or within the premises of all outdoor food vending operation, including mobile food trucks. Each outdoor food vendor shall maintain a log containing a written record of the control measures performed by exterminators or other pest control businesses on the mobile food truck. This log shall be open to inspection by the City.
7. Mobile food vehicle operators shall not engage in food preparation if the vending operation does not provide water and waste systems as required by the Florida Department of Business and Professional regulation or otherwise fails to meet sanitation and safety requirements.
8. All food service equipment utilized by the mobile food vehicle operator shall be maintained in good repair and a clean condition.
9. Routine inspections may be conducted by code enforcement inspectors, building code inspectors, or public safety officers at any mobile food vehicle operation at any time and at any frequency deemed appropriate by the City.

(e) Operating requirements.

1. Mobile food vehicles shall not operate on a site for more than twelve (12) consecutive hours.
2. Mobile food vehicles shall be permitted to operate between the hours of 7:00 a.m. and 10:00 p.m., provided however, mobile food vehicles on construction sites shall be limited to operate between the hours of 7:00 a.m. and 3:30 p.m.
3. Mobile food vehicles shall be self-contained when operating, except for the required trash and/or recycling receptacles that shall be attached to the vehicle and shall not impede free movement of automobiles or pedestrians.
4. No more than one (1) mobile food vehicle shall operate on any property at any one time, except as may be authorized by a special event permit or development agreement approved by the City Council.
5. Mobile food vehicles may operate in required side and rear yards provided however mobile food trucks shall maintain a distance of at least 50 feet from all residential properties.
6. When seating is provided in direct connection with an operating mobile food vehicle, American with Disability Act (ADA), restroom and other controlling law requirements shall apply.
7. Mobile food vehicles and operations shall be operated only by an authorized employee of the mobile food service license holder.
8. If at any time the Florida Department of Business and Professional Regulation revokes or suspends the mobile food vehicle's license, the City's outdoor food vending permit and/or authorization shall be deemed to have been simultaneously revoked or suspended.

SECTION THREE: ENFORCEMENT AND PENALTIES.

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

(b). Notwithstanding subsection (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.

(d). Nothing herein shall be interpreted to reduce or otherwise diminish the authority of the chief of public safety, the fire marshal, or any other city official to enforce health, safety, and welfare standards under any and all applicable laws, statutes, codes, regulations, or other similar authority.

SECTION FOUR: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to mobile food vehicles are hereby ratified and affirmed.

SECTION FIVE: 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 Four, Five, Six, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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

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 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 MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

JOHN CARY, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2021.

Adopted on second reading this _____ day of _____, 2021.



**CITY COUNCIL AGENDA MEMORANDUM
OCTOBER 26, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on proposed construction change ordinance

SYNOPSIS:

This item was brought up at the last council meeting by CMBR Frizalone. Please see the attached email chain for information to discuss.

FISCAL IMPACT STATEMENT:

BACKGROUND:

Construction on Sunday was discussed at the October 12, 2021 City Council Meeting. Following this discussion, Council directed the City Attorney to prepare an ordinance to implement their discussion. The proposed ordinance was prepared by the City Attorney and forwarded to Fred Hiatt's staff for their review and comment. The attached email response from Fred Hiatt discusses some of staff's questions and concerns.

The first concern is Council's main goal with the proposed ordinance. Does the City Council want to prohibit construction on Sundays? Or do you want to just prohibit Construction that makes noise? At the previous meeting there was some discussion about workers needing a day of rest, etc.

If the Council wants to prohibit construction (outright) on Sunday, a different Ordinance will need to be prepared. Exceptions for emergency air conditioning, roof, plumbing, electrical, may need to be considered. If the Council only wants to regulate construction from a noise perspective, a discussion is needed to make sure we know who's enforcing this ordinance, how it's being enforced (objective versus subjective), and what type of construction is impacted? Are we talking about big construction sites that include multiple workers? Or would this effect any construction in single family homes, hotels, condo units etc.?

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

- ATTACHMENT:**
1. Fwd_ Construction ordinance oct 2021
 2. Ord - Construction activities on Sundays

From: [Booker, Mike](#)
To: [Schwab, Cheri](#)
Subject: Fwd: Construction ordinance
Date: Thursday, October 21, 2021 9:58:57 AM

For agenda

Sent from my iPhone

Begin forwarded message:

From: "Hiatt, Fred" <FHiatt@cityofdb.org>
Date: October 18, 2021 at 7:25:10 PM EDT
To: John Cary <jcary@voselaw.com>
Cc: Becky Vose <bvose@voselaw.com>, "Booker, Mike" <MBooker@cityofdb.org>, "Cruz, Stewart" <SCruz@cityofdb.org>, "Swartzlander, Kurt" <kswartzlander@cityofdb.org>, "Edmunds, Steve" <SEdmunds@cityofdb.org>, "Herstein, Gwyn" <GHerstein@cityofdb.org>, "Fowler, Michael" <MFowler@cityofdb.org>
Subject: Re: Construction ordinance

Hi thank you for your help John. Per our discussion with the city manager and the mayor today we may want to look at this a little closer to make sure we are achieving the correct goal through the correct methods. Thanks I appreciate your help

Sent from my iPhone

On Oct 18, 2021, at 6:59 PM, John Cary <jcary@voselaw.com> wrote:

Fred, I discussed with Becky since she was at the meeting and could better respond. I trust that your conversation with her alleviates any need for me to respond.

Let me know if you need any further assistance, though.

John

On Mon, Oct 18, 2021 at 10:26 AM Hiatt, Fred <FHiatt@cityofdb.org> wrote:

Good Morning John,

I did not attend the last City Council meeting. However, Stewart relayed the discussion on this issue. His understanding was the Council wanted to ban construction on Sundays. I wanted to clarify that this proposed change does not ban construction on Sundays. What it will do, however, is ban construction that makes noise that crosses into a residential boundary. As a result, construction

is still allowed as long as noise doesn't cause a disturbance across a residential boundary. So if you work quietly or in commercially zoned areas, you can still conduct construction on Sundays.

I raised this issue with the City Manager and even though it doesn't ban construction outright, and even though the Council may have wanted an outright ban, he felt your approach (based on sound) should work. He also mentioned that the Council didn't express any concerns about the holidays. I shared with the City Manager that I had some reservations regarding this change. I personally feel some limited hours of construction on Sundays is often necessary and hasn't really been deemed overly obtrusive in the past. In any case, I had our staff review the proposed ordinance. Here are a few concerns we discussed:

- We feel this could impact larger development projects and their subcontractors as contractual deadlines and finish dates approach.
- We're not sure the existing special permit provisions in Chapter 16, Section 16-52(f) will work for emergency work that may need to be conducted on Sundays. Things like HVAC change outs, Reroofs, hot water heaters, etc. Under the current rules, a special permit request would need to be made in writing and granted by the CM. I don't think that timing will work for this type of thing on the weekends. We may want to consider automatic exemptions for certain types of emergency work that's time frames wouldn't lend itself to our existing special permit request process.
- Enforcement of our existing noise ordinance is handled by the Public Safety Department. They have the decibel measuring devices, etc. This current change would fall under their enforcement responsibility (unless this is changed). I'm concerned, depending on how well known this change becomes, it could become an enforcement issue. The current ordinance requires a signed, sworn complaint affidavit from the complainant. An officer would have to determine whether the noise they hear (perhaps from an adjacent condo unit's owner using a cordless drill) creates a noise disturbance. This could be somewhat subjective, hard to enforce and could become a pain for busy public safety officers.
- Some of the Whereas clauses seem to point towards an outright ban of construction altogether. Rather than just the noise component of disturbing construction. If we stick with only banning noisy construction, you may want these clauses to be related to that issue.

With that said, the ordinance as written could be placed on the Council's agenda as is. If that's the direction you'd like to proceed with, you can let me know or you can go ahead and upload to civic clerk; whichever you prefer.

There's a chance this would not become a well-known prohibition in the City and wouldn't cause any problems except occasionally on the big construction sites. Conversely, it could cause a myriad of problems as well. Of course we will proceed as the Council wishes.

Thanks,

Fred G. Hiatt,

Director/Building Official

Community Services Department

City of Daytona Beach Shores

(386)763-5365

From: John Cary <jcary@voselaw.com>
Sent: Friday, October 15, 2021 10:46 AM
To: Hiatt, Fred <FHiatt@cityofdb.org>
Cc: Becky Vose <bvose@voselaw.com>
Subject: Construction ordinance

Fred,

Please provide a staff review for this ordinance. If you're OK with it, you can put it on the next council agenda. I do not believe there should be any reason for it to go to PZB.

Thanks,

John

--

John M. Cary, Esq.
Vose Law Firm LLP
324 W. Morse Boulevard
Winter Park, Florida 32789
Phone: 407-645-3735

Cell: 321-324-3530 - Preferred contact number

Fax: 407-628-5670

email: jcary@voselaw.com

web: www.voselaw.com

Toll-Free: 866-789-VOSE

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REPRESENTATION | BUSINESS LITIGATION | BUSINESS LAW | REAL
ESTATE & DEVELOPMENT LAW

ORDINANCE 2021-__

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO CONSTRUCTION NOISE; AMENDING THE CODE OF ORDINANCES, BY AMENDING CHAPTER 16, ENTITLED “OFFENSES - MISCELLANEOUS”, SECTION 16-53, ENTITLED “NOISES PROHIBITED; UNNECESSARY NOISE STANDARD; SWORN COMPLAINT REQUIRED”; PROHIBITING CONSTRUCTION ON SUNDAYS AND CERTAIN HOLIDAYS EXCEPT IN CERTAIN CIRCUMSTANCES; 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 Council and city staff of the City of Daytona Beach Shores have determined that construction activities on Sundays and certain holidays are disruptive when the noise disturbs residential areas; and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that one day a week, as well as certain holidays where it is common to gather together with friends, family, and the community, should be set aside for peace and quiet, with minimal disturbances for the residents of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that prohibiting construction on Sundays and certain holidays is beneficial to the citizens and visitors of the City and promotes public health, safety, morals, and general welfare of the citizenry; and

WHEREAS, the Supreme Court of the State of Florida has ruled that lawmaking bodies have discretion to designate a day of the week for cessation of certain activities in *Division of Pari-Mutuel Wagering, Department of Business Regulation v. Florida Horse Council, Inc.*, 464 So.2d 128 (Fla. 1985); and

WHEREAS, the City Council of the City of Daytona Beach Shores allows exceptions for emergency work, or if granted a special permit by the city manager, or for governmental entities, or for public services utilities; 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 amending Section 16-53, entitled "Noises prohibited; unnecessary noise standard; sworn complaint required" as follows:

CHAPTER 16 – OFFENSES - MISCELLANEOUS

Sec. 16-53. – Noises prohibited; unnecessary noise standard; sworn complaint required.

(...)

(c) (3) The operation or permitting the operation of any tools or equipment used in construction, drilling or demolition work prior to 7:00 a.m. and after 7:00 p.m., Monday through Saturday, or ~~prior to 10:00 a.m. or after 6:00 p.m.~~ on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive area, unless exempted due to emergency work as defined in section 16-52(e)(6), special permit approved by the city manager as defined in section 16-52(f), ownership by an agency of government as defined in section 16-52(e)(3), or work by public services utilities.

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. 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 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 _____, 2021.

Adopted on second reading this _____ day of _____, 2021.