



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING NOVEMBER 9, 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:**
- 6. APPROVAL OF MINUTES**
 - A. City Council Minutes October 26, 2021
- 7. CONSENT AGENDA:**
 - A. Bid Waiver-Court 6

B. Renewal of Non-Exclusive Franchise - Creech Enterprises, Inc., dba Southeast Containers

C. Renewal of Non-Exclusive Franchise - Samsula Waste, Inc.

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report November 9, 2021

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report November 9, 2021

10. OLD BUSINESS:

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

B. Ordinance 2021-14: Mobile Food Vehicles

11. NEW BUSINESS:

A. Ordinance 2021-15: Comprehensive Plan Future Land Use Map amendment for recently annexed single-family residential property located at 104 Broad Avenue

B. Ordinance 2021-16: Comprehensive Plan Future Land Use Map Amendment-131 Glen Myra Avenue

C. Ordinance 2021-17: Rezoning application for recently annexed property located at 104 Broad Avenue

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 26, 2021
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

1. CALL TO ORDER BY MAYOR

Present: Vice Mayor Mel Lindauer, Mayor Nancy Miller, Councilmember Michael Politis, Councilmember Richard Bryan, 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 Director Stephan Dembinsky.

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

City Planner Stewart Cruz presented Gwyn Herstein with a 15-year service award.

6. APPROVAL OF MINUTES

A. City Council Minutes October 12, 2021

VICE MAYOR MEL LINDAUER moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the City Council Minutes of October 12, 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

7. CONSENT AGENDA:

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

COUNCILMEMBER MICHAEL POLITIS moved, seconded by VICE MAYOR MEL LINDAUER to Approve the consent agenda.

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

8. REPORTS OF THE CITY ATTORNEY:

- A. City Attorney Report

City Attorney Becky Vose provided a brief summary of her submitted report. She explained that Ordinance 2021-13 for the sale of the Beachcomber property would need to be continued again. They are still waiting on the DEP to correct the record.

9. REPORTS OF THE CITY MANAGER:

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

City Manager Michael Booker reviewed his submitted report. Mayor Miller requested additional information be shared regarding the Christmas Parade on December 4th. Recreation Director Nancy Maddox explained that after the parade was finished, there would be music, food trucks, a performance by the Orlando Philharmonic Orchestra and finally, the tree lighting at dusk.

10. OLD BUSINESS:

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

The City Attorney read the ordinance by title. There was no one who wished to speak for or against the project.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2021-11 on second 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

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

The City Attorney read the ordinance by title.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2021-12 on second 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. Ordinance 2021-13 Sale of Property located at 136 Beachcomber.

The City Attorney read the ordinance by title.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Continue Ordinance 2021-13 until the City Council meeting on November 9, 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 2021-14: Mobile Food Vehicles

The City Attorney read the ordinance by title. City Planner Stewart Cruz explained that recently the state legislature passed a bill that precludes local governments from prohibiting mobile food vehicles. The proposed ordinance would allow the following regulations on food trucks: operate solely on commercial and hotel properties that possess a valid DA and on construction sites with a valid site plan development order; hours of operation are regulated; set back at least 50 feet from residential properties; prohibited from selling or dispensing alcohol; prohibited from emitting smoke, ash, etc./.; bi-annual inspections by the Public Safety Department; and subject to inspections from other relevant City departments at their discretion. The few properties that were eligible to have a mobile food vehicle were stated for

the record. Both city staff and the Planning & Zoning Board recommended approval. Vice Mayor Lindauer inquired if there was a sound regulation and the response was the guidelines are the same for a restaurant. CMBR Politis explained that he would rather support a brick and mortar establishment as those provide employment and are normally longer lasting. He appreciated the restrictions that the city would have in place.

Audience member Chris Chibbaro is the owner of Millie's Restaurant. He stated that he was okay with the proposed ordinance. He felt a few food trucks could exist with the restaurants in the city.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER RICHARD BRYAN to Approve Ordinance 2021-14 on first reading.

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

Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone

No: Mel Lindauer, Michael Politis

B. Discussion on proposed construction change ordinance

City Planner Stewart Cruz explained that Community Services Director Fred Hiatt could not attend the meeting but had concerns with the proposed ordinance to eliminate construction work on Sunday. He felt there could be unintended consequences such as, if an air conditioner broke or a roof started leaking on a Sunday and it had to wait to be repaired until Monday morning. It was explained that many homeowners do their own work on the weekends. Staff would like more direction from the council before moving forward with the ordinance. CMBR Frizalone felt common sense should dictate if the home repair or construction noise was too loud. The ordinance was drafted after a noise complaint came in from construction work happening on a Sunday. After a brief discussion, it was determined that the council did not have an objection to working on Sunday, they just don't want neighbors disturbed. City Planner Cruz stated that policy was currently on the books and Public Safety provided enforcement. Director Dembinsky explained the officers would enforce loud noise, but they need a complaint first and a signed affidavit.

12. COUNCIL COMMENTS:

All the councilmembers felt the recent large truck event went very smoothly compared to the one a few months ago. Mayor Miller announced the next *Coffee with the Mayor* would have Director Dembinsky and Captain Fowler as guest speakers. CMBR Bryan announced that the Senate had created a bill (SB 224) that would allow local governments to restrict smoking on beaches and in public parks. He hoped that it would have enough support to be passed. There is a similar version in the House (HB 105).

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

There were no audience comments.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

The meeting ended at 7.09 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



1400 N.W. 13th Avenue
Pompano Beach, FL 33069

Job #17630

October 22, 2021

PROPOSAL

Billing:

City of Daytona Beach Shores
2990 S. Atlantic Ave.
Daytona Beach Shores, FL 32118

Job Address / Shipping:

Oceans Racquet Club
3000 S. Atlantic Ave
Daytona Beach Shores, FL 32118

Contact: Tony Byrd
Telephone: 386-523-6284
E-mail: Tbyrd@cityofdb.org

Dear Tony:

Thank you for taking the time to allow me an overview of your project needs. Fast-Dry Courts, Inc. proposes to provide the scope of work described as furnish and install one (1) shade shelter (between HydroCourts #5 and #6) measuring 7' x 19' hip type 4-leg awning with 1-5/8" painted steel frame bolted to new 4" thick concrete pad, measuring 8' x 20', with 8" thickened edge and dual vapor barrier for the total cost of **\$33,950.00**. Work to include splitting existing fence by removing 20 linear feet of brick curb and 10' tall chain link fence, and three (3) lines poles; installing two (2) 3" O.D. terminal poles (black) with fiberglass tension bars and heavy mil spec attaching hardware; excavating 5' x 10' x 20' area of of HydroCourt and relocating sub-surface irrigation system to create room for proposed pad. *NOTE: Awning cover will be laminated PVC or Sunbrella fabric in Owner's choice of standard solid colors.*

Fast-Dry Courts, Inc. has a proven 32 year track record of exceeding customer expectations. As a family-owned and operated company, we have completed over 9,192 projects with professionalism, quality, and performance. It is our commitment to quality and professionalism that led the American Sports Builders Association (ASBA) to recognize Fast-Dry Courts, Inc. for excellence in tennis court construction for an unprecedented 23 consecutive years. Over 68% of our projects last year were from existing customers or referrals. Our Project Managers have at least 13 years of experience. Furthermore, we are a licensed General Contractor, bondable and insured up to \$3,000,000.00.

Should you wish to move forward, a formal agreement will be required prior to job scheduling and commencement. Due to the volatility of pricing for construction materials, this proposal is subject to change, unless extended in writing by Fast-Dry Courts, Inc. If you have any further questions, please call me at (800) 432-2994.

Sincerely,

Fast Dry Courts, Inc.
Sean Froehling
Account Executive

www.fast-dry.com & www.10-s.com

National: (800) 432-2994 - Local: (954) 979-3111 - Fax: (954) 978-8479
CONSTRUCTION <> RESURFACING <> MAINTENANCE <> SUPPLY



City of Daytona Beach Shores
Department of Community Services
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377
Fax (386) 763-5370



RECEIVED
OCT 28 2021
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

NON-EXCLUSIVE FRANCHISE APPLICATION

\$1,000 pd
CK 6099

**CONSTRUCTION AND DEMOLITION DEBRIS
AND/OR RECYCLABLES COLLECTION**

Applicant (Firm):

Creech Enterprises, Inc. dba Southeast Containers

Business Address:

2960 S. Novak Rd. South Daytona, FL 32119

Business Phone:

386-547-4182

Authorized Rep. Name & Title:

Lowry Creech, V.P.

Authorized Rep. Contact Phone:

386-547-4185

Items Required for Application Submission:

- ☒ **Application:** completed, signed by applicant, & notarized
- ☒ **Non-Exclusive Franchise Agreement:** completed, signed by franchisee, & attested-to
- ☒ **Proof of Liability Insurance** – All policies must have the City listed as additionally insured. Each franchisee shall secure and maintain a public liability insurance policy with the following minimum coverages:
 - \$1,000,000.00 for one (1) person injured
 - \$3,000,000.00 for more than one (1) person injured
 - \$3,000,000.00 for property damage
- ☒ **Performance Bond** in the amount of \$10,500.00.
- ☒ **Business Tax Receipt:** current, in the company's name
- ☒ **Disposal Plan:** Documentation of plan for disposal of all construction and demolition materials and/or recyclables collected within the City at an approved and licensed disposal site or recycling recovery facility.
- ☒ **Employee Policy:** Written policy addressing the hiring and retention of employees with regard to driving violations and random testing for use of illegal substances.

 I agree, as authorized representative, that I have received a copy of, read, and will comply with all provisions contained in DBS Ordinance Number 2009-07 and any applicable administrative rules.

[Signature] I agree, as authorized representative, that the franchisee will be, and shall be, subject to the schedule of liquidated damages set forth in Exhibit "A."

[Signature] I agree, as authorized representative, that the City Manager, or designee, may conduct an investigation into information contained herein and related to criminal or personal records for myself as an individual or, if a corporation, for itself and its officers and directors.

[Signature] I agree, as authorized representative, that, for the right and privilege of utilizing the streets and roadways of the City of Daytona Beach Shores, Florida, and to compensate the City for the burden of monitoring and regulating the above business, the undersigned applicant agrees to abide by all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations.

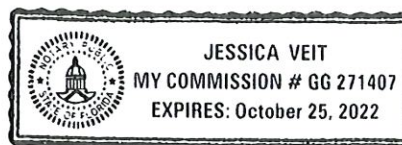
[Signature] I agree, as authorized representative, the franchisee and its surety indemnify and save harmless the City, all its officers, officials, representatives, agents and employees from and against any and all claims, liability and damages arising, in any way, from or based on the violation of any such laws, codes, ordinances, rules and regulations and any orders or other decrees, whether by the franchisee, the franchisee's employees, agents or subcontractors as to any claims, liability, or damages which are based, in any way whatsoever, on the franchisee's conduct, misconduct or omissions.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY AS PROVIDED FOR IN FLORIDA STATUTES 837.01, THAT THE FOREGOING AND PROVIDED INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

[Signature]
Signature of Applicant

SWORN TO AND SUBSCRIBED BEFORE
ME BY Lanny Green,
THIS 28 DAY OF October 2021.

Jessica Veit
Notary Public



☒ Documentation reviewed and complete: [Signature] on 11-2-21
Comm. Services Director Fred Hiatt Date

☐ Approved by City Manager: _____ on _____
M. Booker Date

☐ Franchise Issued by: _____ on _____
F. Hiatt Date



City of Daytona Beach Shores
Department of Community Services
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377
Fax (386) 763-5370



NON-EXCLUSIVE FRANCHISE APPLICATION

CONSTRUCTION AND DEMOLITION DEBRIS AND/OR RECYCLABLES COLLECTION

Applicant (Firm): Samsula Waste, Inc.
Business Address: 363 S. State Road 415, New Smyrna Beach, FL 32168
Business Phone: (386) 423-6769
Authorized Rep. Name & Title: Charles Y McDonald, President
Authorized Rep. Contact Phone: (386) 547-4575

Items Required for Application Submission:

- ☒ **Application:** completed, signed by applicant, & notarized
- ☒ **Non-Exclusive Franchise Agreement:** completed, signed by franchisee, & attested-to
- ☒ **Proof of Liability Insurance** – All policies must have the City listed as additionally insured. Each franchisee shall secure and maintain a public liability insurance policy with the following minimum coverages:
 - \$1,000,000.00 for one (1) person injured
 - \$3,000,000.00 for more than one (1) person injured
 - \$3,000,000.00 for property damage
- ☒ **Performance Bond** in the amount of \$10,500.00.
- ☒ **Business Tax Receipt:** current, in the company's name
- ☒ **Disposal Plan:** Documentation of plan for disposal of all construction and demolition materials and/or recyclables collected within the City at an approved and licensed disposal site or recycling recovery facility.
- ☒ **Employee Policy:** Written policy addressing the hiring and retention of employees with regard to driving violations and random testing for use of illegal substances.

CYM **I agree**, as authorized representative, that I have received a copy of, read, and will comply with all provisions contained in DBS Ordinance Number 2009-07 and any applicable administrative rules.

Cym I agree, as authorized representative, that the franchisee will be, and shall be, subject to the schedule of liquidated damages set forth in Exhibit "A."

Cym I agree, as authorized representative, that the City Manager, or designee, may conduct an investigation into information contained herein and related to criminal or personal records for myself as an individual or, if a corporation, for itself and its officers and directors.

Cym I agree, as authorized representative, that, for the right and privilege of utilizing the streets and roadways of the City of Daytona Beach Shores, Florida, and to compensate the City for the burden of monitoring and regulating the above business, the undersigned applicant agrees to abide by all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations.

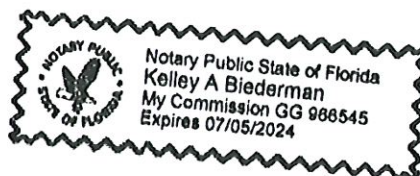
Cym I agree, as authorized representative, the franchisee and its surety indemnify and save harmless the City, all its officers, officials, representatives, agents and employees from and against any and all claims, liability and damages arising, in any way, from or based on the violation of any such laws, codes, ordinances, rules and regulations and any orders or other decrees, whether by the franchisee, the franchisee's employees, agents or subcontractors as to any claims, liability, or damages which are based, in any way whatsoever, on the franchisee's conduct, misconduct or omissions.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY AS PROVIDED FOR IN FLORIDA STATUTES 837.01, THAT THE FOREGOING AND PROVIDED INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.


Signature of Applicant

SWORN TO AND SUBSCRIBED BEFORE
ME BY Charles Y. McDonald,
THIS 15 DAY OF October 2021.

Kelley A. Biederman
Notary Public



☒ Documentation reviewed and complete: Fred Hiatt on 11-3-21
Comm. Services Director Fred Hiatt Date

☐ Approved by City Manager: _____ on _____
M. Booker Date

☐ Franchise Issued by: _____ on _____
F. Hiatt Date



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
NOVEMBER 9, 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: November 3, 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 26, 2021. Please advise if you have any questions, comments or concerns relative to these matters.

(1) Sign Ordinance Variance

Provided legal advice to staff regarding interpretation of a code provision relating to a variance to the sign code.

(2) Variance – Sign Code

Advised staff as to the legality of a variance of the sign code that was requested by a local commercial property.

(3) Variance – Stormwater Code

Advised staff as to the legality of a variance of the stormwater code.

(4) PUD Code Interpretation

Advised staff as to the interpretation of the code relating to multiple code sections for a PUD-zoned property.

(5) *Treasure Island Property*

Had a conference with legal counsel for the Treasure Island property relating to the development agreement, in advance of the anticipated approval of the comp plan amendment.

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: November 3, 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 – November 9, 2021

Promotion:

City Planner, Stewart Cruz, has been promoted to Deputy Director of Community Services. He will also continue to function as our City Planner.

Retirements:

As most of you are aware, both Brian Edwards and Fred Hiatt are in the FRS DROP.

If they stay until their planned retirement deadlines, they will retire in May and June respectively. The Assistant CM and I have been planning and continue to plan a smooth transition.

Veteran's Day:

Recently, Volusia County Council agreed to consider adding Veterans Day as an official holiday for County employees next year. As a city that has a number of veterans and military families, I suggest DBS City Council also consider doing the same.



**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 9, 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:

SUGGESTED MOTION:

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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17. DISCLOSURES:

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

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

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

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

18. RISK OF LOSS:

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

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

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

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

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

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

(Address, Telephone, Fax, E-mail)
who ☐ is a single agent ☐ is a transaction broker ☐ has no brokerage relationship and who will be compensated_ by ☐ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ a listing agreement ☐ other (specify) _____

(b) Buyer's Broker: Oceans Luxury Realty Full Service, LLC Kevin Purucker
(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.
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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**

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

4:15 PM EDT 4:17 PM EDT
dotloop verified dotloop verified
CC-5 Rev. 9/17

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

dotloop verified
09/21/21 4:15 PM EDT
QPHT-TCLQ-LPVM-OLEJ

 Date: _____
(Signature of Buyer)

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

360 Title: _____ Telephone: _____

361

Christopher E Purucker

dotloop verified
09/21/21 4:17 PM EDT
3PUF-DTMW-QCQ5-X1JQ

 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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CITY COUNCIL AGENDA MEMORANDUM NOVEMBER 9, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Stewart Cruz, City Planner
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Ordinance 2021-14: 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 food dispensing vehicles, from operating within the entirety of their jurisdiction. Since the City has not adopted an ordinance to address this statute, food trucks may currently operate within city limits on virtually any property, except for certain residential and public properties, with limited restrictions. Ordinance 2021-14, if approved, would address this deficiency by only allowing mobile food vehicles to operate on (i) commercial and hotel properties that possess a valid development agreement and (ii) 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 NOVEMBER 9, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2021-15: Comprehensive Plan Future Land Use Map amendment for recently annexed single-family residential property located at 104 Broad Avenue

SYNOPSIS:

Ordinance 2021-15, if adopted, would amend the City's Adopted Comprehensive Plan Update (2030) Future Land Use Map by assigning the residential low intensity future land classification to the recently annexed single-family residential property located at 104 Broad Avenue (Exhibit A). The application (Exhibit B) was submitted by Heather Roberts, owner of the subject property. Applying a City future land use designation is a requirement of Florida Law whenever a property is annexed. The property is 0.225 acres and is occupied by a 1,508 square foot residential structure. The proposed amendment is compatible with the current Volusia County future land use category and as such, the use will remain as single-family residential.

FISCAL IMPACT STATEMENT:

BACKGROUND:

A. BACKGROUND

The subject property, located at 104 Broad Avenue, was recently annexed into the corporate limits of the City of Daytona Beach Shores pursuant to the voluntary annexation process outlined in Section 171.044, Florida Statutes . However, Section 171.062, Florida Statutes limits regulatory and development control over an annexed property if the area annexed was subject to a county land use plan and county zoning and the municipality does not adopt a comprehensive plan and zoning amendment that include the annexed area. Therefore, the County land use plan and zoning regulations would remain in full force and effect until the City changes the future land use classification and zoning designation of the subject property. The purpose of this application is to realize the former. Additionally, the property owner has also submitted an application to rezone the property to the City's RSF-2 Urban Single-Family Residential Detached District, consistent with the existing and surrounding land uses and current Volusia County R-9 District zoning classification. The rezoning will occur subsequent to the future land use amendment associated with the subject property.

B. PLANNING ANALYSIS

See Exhibit C for planning analysis.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2021-15 as presented.

SUGGESTED MOTION:

A City Council Member member may motion as follows:

1. "I move to approve Ordinance 2021-15 as presented."

OR

2. "I move to approve Ordinance 2021-15, with the following amendments..."

OR

3. "I move to deny Ordinance 2021-15, on the basis of the following..."

- ATTACHMENT:**
1. ORD 2021-15-CPA 104 Broad Ave
 2. EXHIBIT A-Location Map-104 Broad Ave
 3. EXHIBIT B-Application
 4. Exhibit C-Ord 2021-15-Planning Anaysis-FLUMA-104 Broad-Heather Roberts

ORDINANCE NO: 2021-15

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING *THE CITY OF DAYTONA BEACH SHORES COMPREHENSIVE PLAN*, AMENDING CHAPTER 1, “FUTURE LAND USE ELEMENT”, BY AMENDING MAP L-4 ENTITLED, “GENERALIZED FUTURE LAND USE MAP (2030)” ASSIGNING THE RESIDENTIAL LOW INTENSITY FUTURE LAND USE DESIGNATION TO ANNEXED SINGLE-FAMILY RESIDENTIAL PROPERTY GENERALLY LOCATED AT 104 BROAD AVENUE, SHORT TAX PARCEL ID 5335-03-05-0240; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* directly relates to small scale development activities as provided in Section 163.3187(1)(c), *Florida Statutes*; and

WHEREAS, the Volusia County Growth Management Commission has issued a determination of consistency in accordance with Section 202.3 of the *Charter of Volusia County, Florida*, for the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan*; and

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

WHEREAS, Heather Roberts, owners of the real property with short tax parcel ID 5335-03-05-0240 and generally located at 104 Broad Avenue, submitted an owner initiated future land use map amendment application to the City of Daytona Beach Shores on August 9, 2021; and

WHEREAS, Heather Roberts, owners of the subject property, are requesting the City of Daytona Beach Shores amends the future land use classification of the subject real property to Residential Low Intensity; and

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

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

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

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

SECTION ONE: CHANGE IN FUTURE LAND USE ELEMENT/FUTURE LAND USE MAP. Chapter 1, “Future Land Use Element,” containing the Official Future Land Use Map (Map L-4) of the *City of Daytona Beach Shores Comprehensive Plan* is hereby amended to change the Future Land Use Designation of a +/-0.23 acre property from Volusia County Urban Low Intensity to Daytona Beach Shores Residential Low Intensity as to property as described in Exhibit “A” as follows:

Location Address	Short Tax Parcel ID	Daytona Beach Shores Future Land Use Designation
104 Broad Avenue	5335-03-05-0240	Residential Low Intensity

SECTION TWO: IMPLEMENTING ADMINISTRATIVE ACTIONS. The Community Services Director is hereby authorized to transmit copies of the adopted amendment to the *City of Daytona Beach Shores Comprehensive Plan* to the appropriate agencies and to any other unit of local government who has filed a written request for a copy in accordance with the provisions of Section 163.3187(1)(c)2.b, *Florida Statutes* and *Volusia Growth Management Rules*.

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

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

SECTION FIVE. NON-CODIFICATION. This Ordinance shall be not be codified in the *City Code of the City of Daytona Beach Shore* 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 in the *City of Daytona Beach Shores Comprehensive Plan* and on the Future Land Use Map of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall become effective, in accordance with the provisions of Section 163.3187, *Florida Statutes*, thirty-one (31) days after enactment; provided, however, if this Ordinance is challenged within thirty (30) days after enactment, this Ordinance shall not become effective until the Florida Department of Community Affairs, acting as the State Land Planning Agency, or the Administration Commission, respectively, issues a final order determining that the small scale development amendment to the *City of Daytona Beach Shores Comprehensive Plan* set forth in this Ordinance is in compliance.

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.

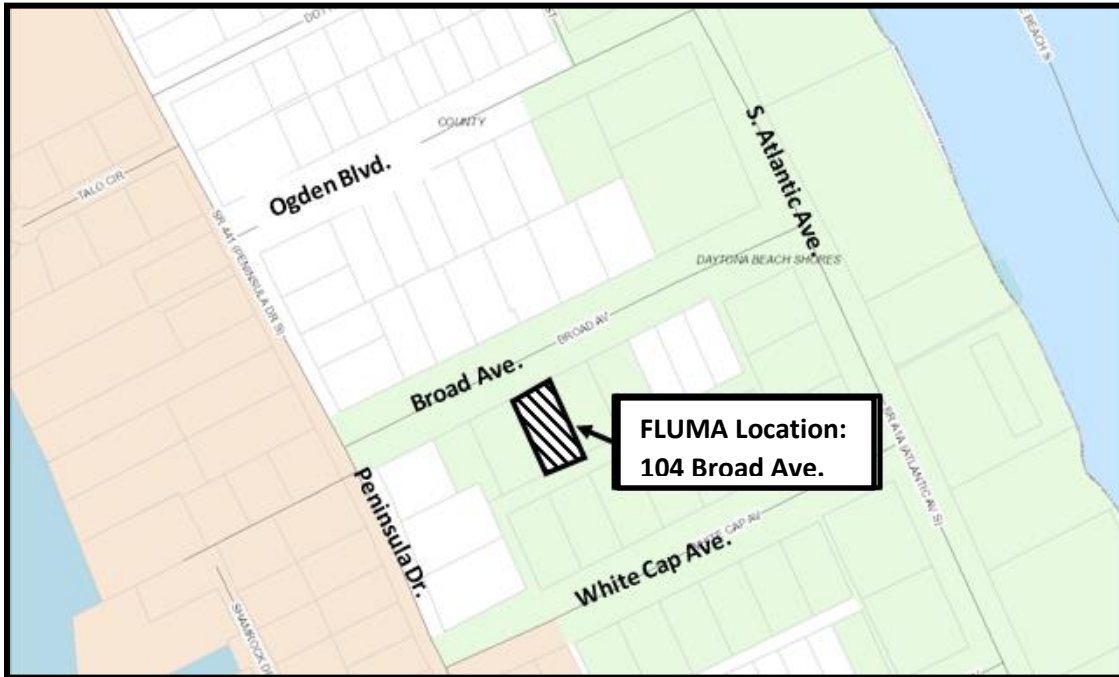
Adopted on second reading this _____ day of _____, 2021.

EXHIBIT A

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", 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, 140.00 FEET TO THE NORTH LINE BLOCK "E" EAST; THENCE EAST ALONG SAID NORTH LINE BLOCK "E" EAST, 70.00 FEET TO THE NORTHEAST CORNER OF THE WESTERLY 5.0' OF SAID LOT 25; THENCE SOUTH ALONG THE EASTERLY LINE OF THE WESTERLY 5.0' OF SAID LOT 25, A DISTANCE OF 140.00 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.

EXHIBIT A
FLUMA Location Map: 104 Broad Avenue





City of Daytona Beach Shores
COMMUNITY SERVICES DEPARTMENT
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Phone (386) 763-5377 Fax (386) 763-5370

240322

RECEIVED

AUG 09 2021

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

12021022

APPLICATION FOR COMPREHENSIVE PLAN/FUTURE LAND USE MAP
AMENDMENT

The Undersigned Applicant requests the Planning and Zoning Board AND City Council to hear and decide upon this application in accordance with Sec. 2-2 of the Land Development Code and Florida Law.

Date Submitted: 8 / 7 / 21

Applicable Section of the Comprehensive Plan: _____

Fees must be paid at the time the application is submitted.

Applicant's Name: Heather Roberts

Address: 104 Broad Avenue Daytona Beach Shores Phone #: 773-332-7890
FL 32117

Property Address: _____

Existing Property Use: _____

Representing Attorney (if any): _____

Address: _____ Phone #: _____

NOTES: 1) Notarized letter of authorization from owner MUST be submitted if application is filed by anyone other than the owner. 2) A completed application MUST be submitted at least 45 days prior to the anticipated Planning and Zoning hearing date.

Legal description of the property:

Residential house

Description of your request:

H Roberts
Applicant's Signature

8 / 7 / 21
Date

EXHIBIT C
PLANNING ANALYSIS
Ordinance 2021-15

A. INTRODUCTION

The proposed amendment seeks to change the future land use designation of a single-family residential property, recently annexed into the City, from Volusia County *Urban Low Intensity* (0.2-4.0 units/acre) to Daytona Beach Shores *Residential Low Intensity* (0-4.0 units/acre). The +/- 0.225 acre property is located at 104 Broad Avenue. The subject application received on August 9, 2021, if approved, would result in the second 2021 small-scale comprehensive plan amendment for the City of Daytona Beach Shores in accordance with Section 163.3187, *Florida Statutes*.

B. PROPOSED AMENDMENT ITEM(S)

Item 1: Map Amendment - Chapter 1, Future Land Use Element: amending Map L-4 entitled, “Generalized Future Land Use Map (2030),” to change the future land use classification of the annexing property located at 104 Broad Avenue from Volusia County *Urban Low Intensity* to Daytona Beach Shores *Residential Low Intensity*:

Overview:

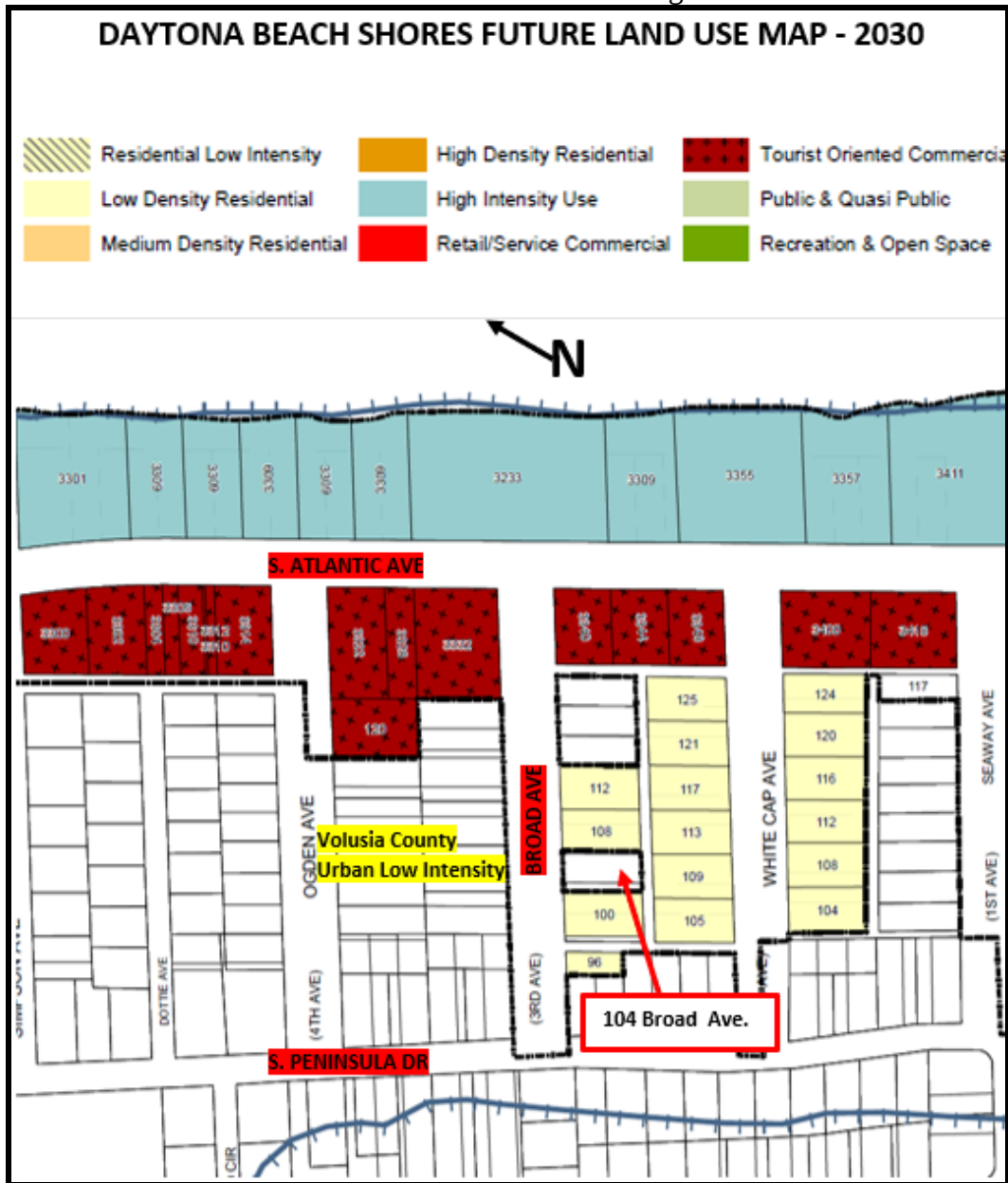
The property houses a 1,508 square foot single-family residential structure, which was built in 1956 (Volusia County Property Appraiser, 2021). The current Volusia County Future Land Use (FLU) and Zoning designations on the property are *Urban Low Intensity* (0.2-4 units/acre) and “R-9” (Urban Single-Family Residential District), respectively. The surrounding future land use designations and zoning classifications are depicted in **Table 1** below while the future land use is illustrated in **Figure 1**. The subject request is to change the FLU designation to Daytona Beach Shores *Residential Low Intensity* (0-4 units/acre).

Table 1: Abutting Zoning and Future Land Use Classification

Location	Zoning		Future Land Use	
	Existing	Proposed	Existing	Proposed
Subject Property	R-9*	RSF-2+	Volusia County Urban Low Intensity	Residential Low Intensity
North	R-9		Volusia County Urban Low Intensity	
South	RSF-2		Residential Low Density	
East	RSF-2		Residential Low Density	
West	RSF-2		Residential Low Density	

Notes: *R-9 = Volusia County *Urban Single-Family Residential District*; +RSF-2 = *Urban Single-Family Residential Detached District*.

FIGURE 1: 104 Broad Avenue - Surrounding Future Land Use



Description, Data and Analysis:

The analysis conducted below demonstrates the amendment's compliance with the City's Comprehensive Plan and the Florida Administrative Code for future land use map amendments. Therefore, the analysis shows that there will not be any significant impacts on the environment, roadways, public schools and utilities as the allowable densities and use will remain the same.

I. IMPACTS OF PROPOSED AMENDMENT

The current Volusia County *Urban Low Intensity* Future Land Use (FLU) classification allows a maximum density of four (4) units per acre. Under the proposed Daytona Beach Shores FLU designation, *Residential Low Intensity*, the maximum density allowed is also four (4) units per acre. Therefore, the proposed land use amendment would not result in any change in residential density permitted. Further, given the +/-0.225 acre size of the property, the proposed amendment would only allow one (1) residential unit on site, which is the same as currently allowed under the Volusia County FLU classification.

The property is currently occupied by a single-family residential structure. Additionally, the proposed Daytona Beach Shores zoning for this property, RSF-2 Urban Single-Family Residential Detached District, would permit only one residential dwelling unit on site. So, from a practical and planning perspective the proposed future land use change will result in no net change in density and impacts.

In accordance with the Daytona Beach Shores Comprehensive Plan Update (2030) and standard practice from the Florida Department Economic Opportunity (DEO) and other review agencies, an impact comparison analysis of the proposed amendment has been completed based upon the theoretical maximum development potential under the current future land use designation versus the designation proposed (**Table 2** below). The following seven public facilities and services were examined and discussed briefly below: (1) Transportation, (2) Sanitary Sewer, (3) Potable Water, (4) Solid Waste, (5) Stormwater Drainage, (6) Recreation, and (7) Public Schools.

Table 2: Impact Analysis (Theoretical Max.)

Development Variable	Current Future Land Use (0.2-4 units/acre)	Proposed Future Land Use (0.2-4 units/acre)	Change
Residential Units Allowed	1	1	None
Population ¹	1.75	1.75	None
AM / PM Peak Hour Trips ²	1.5/2.02	1.5/2.02	None
Sanitary Sewer (gallons/day) ³	250	250	None
Potable Water (gallons/day) ⁴	192.5	192.5	None
Solid Waste (lbs./person) ⁵	17.5	17.5	None
Stormwater Drainage ⁶	n/a	n/a	n/a
Recreation/Open Space	See summary below	See summary below	None
Public School Student(s)	0.396	0.396	None

Notes:

1. Population: 1.75 persons per single-family dwelling
2. Transportation: Rates are for peak hour of adjacent street traffic
Single-family residential unit = 0.75 AM trips, 1.01 PM trips
3. Sanitary Sewer: 250 gallons per dwelling unit per day
4. Potable Water: 110 gallons per capita per day
5. Solid Waste: 10 pounds per capita per day
6. Stormwater Drainage: LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code.
7. Public School: Generation rates = 0.396 per single-family unit.

Sources:

2010 US Census

ITE Trip Generation Manual, 7th Edition

Policy 9-1.3 Daytona Beach Shores Comprehensive Plan Update (2030)

Transportation:

The subject property is a single-family lot with vehicular transportation access to the abutting Broad Avenue, which is a local road connecting to both S. Peninsula Drive (SR441) and S. Atlantic Avenue (SR A1A). S. Peninsula Drive is a two laned minor arterial road and S. Atlantic Avenue (SRA1A) is a five laned principal arterial road, pursuant to the City's Comprehensive Plan, respectively. The two roads connect to Dunlawton Boulevard (SR421) and International Speedway Boulevard (US92) which are both principal arterial roads leading to the interstate system. The allowable Level-Of-Service (LOS) standard for S. Peninsula Drive is "D." Both Atlantic Avenue (SR A1A). S. Peninsula Drive are operating at acceptable levels of service. Since the City has no vested trips for this road there will be no net change in vehicular trips as demonstrated in **Table 2** above, hence the allowed LOS standard will continue to be maintained.

Sanitary Sewer:

The City's adopted LOS standard for sanitary sewer is 250 gallons per dwelling unit per day. Using this standard, the proposed land use would theoretically generate a demand of 250 gallons per day. However, since no increase in the number of entitled dwelling units would occur there is no net change in theoretical demand. Regardless it should be noted the City of Port Orange sewer treatment facilities are currently operating at an acceptable level of service.

Potable Water:

The City's adopted LOS standard for potable water is 110 gallons per capita per day. Using this standard, the proposed land use would theoretically create a demand of 192.5 gallons of water per day. No increase in number of theoretical dwelling units or demand will occur. In addition, the current potable water usage is already accounted for in Port Orange's current consumptive use permit (CUP).

Solid Waste Collection:

The proposed land use allows for one (1) residential unit that would be expected to support a population of 1.75 persons, which together would theoretically generate 17.5 pounds of solid waste per day. Solid waste generated within the City of Daytona Beach Shores is collected by Waste Pro, which delivers it to the Volusia County landfill. The 3,000-acre landfill is a Class I facility with a projected life span to the year 2050.

Stormwater Drainage:

The City's adopted LOS standard for stormwater is the 25-year, 24-hour storm event. More specifically, the stormwater facilities must be capable of treating and conveying the runoff from such a storm without causing flooding of adjacent properties or polluting any receiving water bodies. In addition, the Comprehensive Plan requires that there be no net loss of stormwater retention function as a result of development. Therefore, if the property is developed the parcel

must have the same ability to store and discharge water after development as it does before development occurs. The applicants would be required to address stormwater retention on the property in accordance with these City standards.

Recreation and Open Space:

The proposed amendment would theoretically add 1.77 residents to the City. The City's most recent population count was 4,247 (2010 US Census). Policy 7-1.2.1 and Policy 9-1.3.1 in the City's Comprehensive plan establish the LOS standards for recreation facilities within the City. Considering the City's population and the City's recreational LOS standards, it is easy to conclude that Daytona Beach Shores currently has adequate capacity for all recreational facilities as required by the City's Adopted Comprehensive Plan and seen in **Table 3** below.

Table 3: Recreation Facilities Analysis

Type of Park/ Recreational Facility	Unit of Measure/LOS Standard	Current LOS (Facilities)	Deficit
Playgrounds	one per 10,000 people	1	None
Neighborhood Park	one per 10,000 people	5	None
Community Park	one per 25,000 people	1	None
Children's Play Areas	one per 10,000 people	1	None
Baseball/Softball Field	one per 15,000 people	1	None
Tennis Courts	one per 2,000 people	11	None
Community Center	one per 20,000 people	1	None
Exercise Trail	one per 14,000 people	1	None
Nature Study Trail	one per 14,000 people	1	None

Public Schools:

Based on the Volusia County School District's student generation rate for a single-family dwelling unit, the proposed land use could generate at least one (1) full time student. This is exactly the same that could be generated by the existing Volusia County future land use due to the residential density neutrality of the proposed change. Therefore, no increase impact on existing public school facilities is expected. Further, due to the aforementioned, the FLU amendment is exempt from the School District review.

II. LAND USE COMPATIBILITY

The FLU of the surrounding area is primarily residential low intensity (single-family) in character (**Figure 1**). The subject property is located in a single-family neighborhood with Recreation/Open Space and Multifamily High Intensity to the east. **Figure 2**.

Figure 2: Aerial View of 104 Broad Avenue and Surrounding Neighborhood



Source: Volusia County Property Appraiser, 2021

Considering the above along with **Table 1** contained in the body of this staff report, it is clear that the proposed land use, which is a density neutral land use request, is consistent with the existing and future land use of the surrounding neighborhood.

III. APPLICABLE PLANS, CODES AND REGULATIONS

Future Land Use Element (Daytona Beach Shores Comprehensive Plan):

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

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

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

Capital Improvement Element

Policy 9-1.3: The City shall use the following Level of Service (LOS) standards in reviewing the impacts of new development and redevelopment on public facility provisions:

- (a) **Sanitary Sewers:** 250 gallons per dwelling unit per day
- (b) **Solid Waste:** 10 pounds per capita per day
- (c) **Drainage:** 25-year, 24-hour design storm
- (d) **Potable Water:** 110 gallons/capita/day (gcd) for Port Orange Service Area
150 gcd for Daytona Beach Service Area
- (e) **Roadways:** Arterials: LOS "D" at peak hour
Collectors: LOS "C" at peak hour
- (f) **Recreation:** See Table 3 above

IV. REVIEW CRITERIA AND STAFF FINDINGS

1. The amendment shall not decrease the LOS Standard for hurricane evacuation routes below LOS Standard D and (b) the amendment shall not increase the clearance time for evacuation of the population in the Hurricane Vulnerability Zone above 16 hours.

Staff finding: The proposed land use amendment is density neutral. Consequently, no increase in traffic is anticipated as a result of the proposed change, therefore: (a) there will be no decrease in the adopted LOS Standard Van Avenue, S.R. 441 and S.R. A1A; and (b) considering the aforementioned, the hurricane evacuation clearance time shall remain the same for the subject roads in question.

2. Written assurances from service providers for sewage treatment, potable water, and solid waste shall be provided when there is a future land use map amendment result in an increase in density or intensity.

Staff finding: The proposed land use amendment is density neutral and the site is already developed. Therefore, no increase in demand is anticipated and no written assurances are needed from service providers since services are already being provided for at the accepted LOS standard.

3. The amendment shall not result in objectionable land use designations inconsistent with the character of the overall future land use plan.

Staff finding: The proposed amendment will not result in an incompatible land use designation with adjacent parcels, the neighborhood or overall character of the future land use plan. The proposed *Residential Low Intensity* (0-4 units/acre) designation will provide for a single-family residence and is therefore compatible with the surrounding residential low-density (single-family) space land uses.

4. The amendment shall not decrease the LOS Standards for public facilities adopted in Policy 9-1.3 of the City's Comprehensive Plan.

Staff finding: The proposed land use amendment is density neutral, therefore, no increase demand on public facilities is anticipated.

V. CONCLUSION:

The proposed land use amendment is consistent with overall goals, objectives, and Policies of the Daytona Beach Shores Comprehensive Plan (2030).



CITY COUNCIL AGENDA MEMORANDUM NOVEMBER 9, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2021-16: Comprehensive Plan Future Land Use Map Amendment-131 Glen Myra Avenue

SYNOPSIS:

Ordinance 2021-16, if adopted, would amend the City's Adopted Comprehensive Plan Update (2030) Future Land Use Map by assigning the tourist oriented commercial future land classification to a 2004 annexed property located at 131 Glen Myra Avenue (Exhibit A). The application (Exhibit B) was submitted by Dr. Tracy Denison, owner of the subject property, however, annexation occurred under previous ownership. Applying a City future land use designation is a requirement of Florida Law when a property is annexed. The property is 0.17 acres (50' x 148') and is currently vacant. The proposed amendment would be consistent with the adjacent properties on S. Atlantic Avenue, which are also owned by the Denisons.

FISCAL IMPACT STATEMENT:

BACKGROUND:

A. BACKGROUND

The subject property, located at 131 Glen Myra Avenue, with Volusia County Parcel ID 533501060400, was annexed into the corporate limits of the City of Daytona Beach Shores in 2004 pursuant to the voluntary annexation process outlined in Section 171.044, Florida Statutes . However, Section 171.062, Florida Statutes limits regulatory and development control over an annexed property if the area annexed was subject to a county land use plan and county zoning and the municipality does not adopt a comprehensive plan and zoning amendment that include the annexed area. Therefore, the County land use plan and zoning regulations would remain in full force and effect until the City changes the future land use classification and zoning designation of the subject property. The purpose of this application is to realize the former. In 2005 the City adopted Ordinance 2005-08, which rezoned the property to GC-1 "Tourist Oriented Commercial" District, however, the rezoning does not become effective until the future land use map amendment becomes adopted consistent with Florida Law. Hence the reason for the proposed future land use map amendment.

B. PLANNING ANALYSIS

See Exhibit C for planning analysis.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2021-16 as presented.

SUGGESTED MOTION:

A City Council member may motion as follows:

1. "I move to approve Ordinance 2021-16 as presented."

OR

2. "I move to approve Ordinance 2021-16, with the following amendments..."

OR

3. "I move to deny Ordinance 2021-16, on the basis of the following..."

- ATTACHMENT:**
1. ORD 2021-16-CPA-Denison- 131 Glen Myra Ave
 2. Exhibit A-131 Glen Myra
 3. Exhibit B-131 Glen Myra FLUMA Application
 4. Exhibit C-Ord 2021-16-Planning Analysis-FLUMA-131 Glen Myra-Denisons

ORDINANCE NO: 2021-16

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING *THE CITY OF DAYTONA BEACH SHORES COMPREHENSIVE PLAN*, AMENDING CHAPTER 1, “FUTURE LAND USE ELEMENT”, BY AMENDING MAP L-4 ENTITLED, “GENERALIZED FUTURE LAND USE MAP (2030)” ASSIGNING THE TOURIST ORIENTED COMMERCIAL FUTURE LAND USE DESIGNATION TO VACANT PROPERTY GENERALLY LOCATED AT 131 GLEN MYRA AVENUE, SHORT TAX PARCEL ID 5335-01-06-0400; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan* directly relates to small scale development activities as provided in Section 163.3187(1)(c), *Florida Statutes*; and

WHEREAS, the Volusia County Growth Management Commission has issued a determination of consistency in accordance with Section 202.3 of the *Charter of Volusia County, Florida*, for the proposed amendment to the *City of Daytona Beach Shores Comprehensive Plan*; and

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

WHEREAS, Tracy and Douglas Denison, owners of the real property with short tax parcel ID 5335-01-06-0400 and generally located at 131 Glen Myra Avenue, submitted an owner initiated future land use map amendment application to the City of Daytona Beach Shores on September 22, 2021; and

WHEREAS, Tracy and Douglas Denison, owners of the subject property, are requesting the City of Daytona Beach Shores amends the future land use classification of the subject real property to Tourist Oriented Commercial; and

WHEREAS, the real property with short tax parcel ID 5335-01-06-0400 and generally located at 131 Glen Myra Avenue, was annexed into the City limits of the City of Daytona Beach Shores on July 28, 2004 without an accompanying Daytona Beach Shores future land use or zoning designation pursuant to Florida Law; and

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

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

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

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

SECTION ONE: CHANGE IN FUTURE LAND USE ELEMENT/FUTURE LAND USE MAP. Chapter 1, “Future Land Use Element,” containing the Official Future Land Use Map (Map L-4) of the *City of Daytona Beach Shores Comprehensive Plan* is hereby amended to change the Future Land Use Designation of a +/-0.17-acre property from Volusia County Urban Low Intensity to Daytona Beach Shores Tourist Oriented Commercial as to property as described in Exhibit “A” as follows:

Location Address	Short Tax Parcel ID	Daytona Beach Shores Future Land Use Designation
131 Glen Myra Avenue	5335-01-06-0400	Tourist Oriented Commercial

SECTION TWO: IMPLEMENTING ADMINISTRATIVE ACTIONS. The Community Services Director is hereby authorized to transmit copies of the adopted amendment to the *City of Daytona Beach Shores Comprehensive Plan* to the appropriate agencies and to any other unit of local government who has filed a written request for a copy in accordance with the provisions of Section 163.3187(1)(c)2.b, *Florida Statutes* and *Volusia Growth Management Rules*.

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

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

SECTION FIVE. NON-CODIFICATION. This Ordinance shall be not be codified in the *City Code of the City of Daytona Beach Shore* 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 in the *City of Daytona Beach Shores Comprehensive Plan* and on the Future Land Use Map of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall become effective, in accordance with the provisions of Section 163.3187, *Florida Statutes*, thirty-one (31) days after enactment; provided, however, if this Ordinance is challenged within thirty (30) days after enactment, this Ordinance shall not become effective until the Florida Department of Community Affairs, acting as the State Land Planning Agency, or the Administration Commission, respectively, issues a final order determining that the small scale development amendment to the *City of Daytona Beach Shores Comprehensive Plan* set forth in this Ordinance is in compliance.

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.

EXHIBIT A

LOTS 40 & 41 INC BLK F RIO MAR BEACHES PER OR 5233 PG 3206 PER OR 5348 PG 1388

EXHIBIT A: 131 Glen Myra Avenue, Aerial Map and Street View





12021025



City of Daytona Beach Shores
COMMUNITY SERVICES DEPARTMENT
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Phone (386) 763-5377 Fax (386) 763-5370

RECEIVED

SEP 22 2021

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

APPLICATION FOR COMPREHENSIVE PLAN/FUTURE LAND USE MAP
AMENDMENT

236645

The Undersigned Applicant requests the Planning and Zoning Board AND City Council to hear and decide upon this application in accordance with Sec. 2-2 of the Land Development Code and Florida Law.

Date Submitted: 09 / 22 / 2021

Applicable Section of the Comprehensive Plan: _____

Fees must be paid at the time the application is submitted.

Applicant's Name: Douglas R Denison & Tracy N Denison

Address: 104 W Ocean Dunes Rd, Daytona Beach, FL 32118 Phone #: 386-566-7365

Property Address: Glen Myra Ave, Daytona Beach Shores, FL 32118 PID# 533501060400

Existing Property Use: R-9

Representing Attorney (if any): _____

Address: _____ Phone #: _____

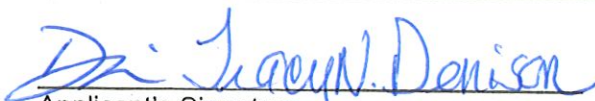
NOTES: 1) Notarized letter of authorization from owner MUST be submitted if application is filed by anyone other than the owner. 2) A completed application MUST be submitted at least 45 days prior to the anticipated Planning and Zoning hearing date.

Legal description of the property:

LOTS 40 & 41 INC BLK F RIO MAR BEACHES PER OR 5233 PG 3206 PER OR 5348 PG 1388

Description of your request:

Change Land use from County to City Commercial


Applicant's Signature

9 / 22 / 21
Date

EXHIBIT C
PLANNING ANALYSIS
Ordinance 2021-16

A. INTRODUCTION

The proposed amendment seeks to change the future land use designation of a 2004 annexed property, from Volusia County *Urban Low Intensity* (0.2-4.0 units/acre) to Daytona Beach Shores *Tourist Oriented Commercial*. The +/- 0.17 acre property (50' x 148') is located at 131 Glen Myra Avenue. The subject application received on September 22, 2021, if approved, would result in the third 2021 small-scale comprehensive plan amendment for the City of Daytona Beach Shores in accordance with Section 163.3187, *Florida Statutes*.

B. PROPOSED AMENDMENT ITEM(S)

Item 1: Map Amendment - Chapter 1, Future Land Use Element: amending Map L-4 entitled, "Generalized Future Land Use Map (2030)," to change the future land use classification of the annexing property located at 131 Glen Myra Avenue from Volusia County *Urban Low Intensity* to Daytona Beach Shores *Tourist Oriented Commercial*:

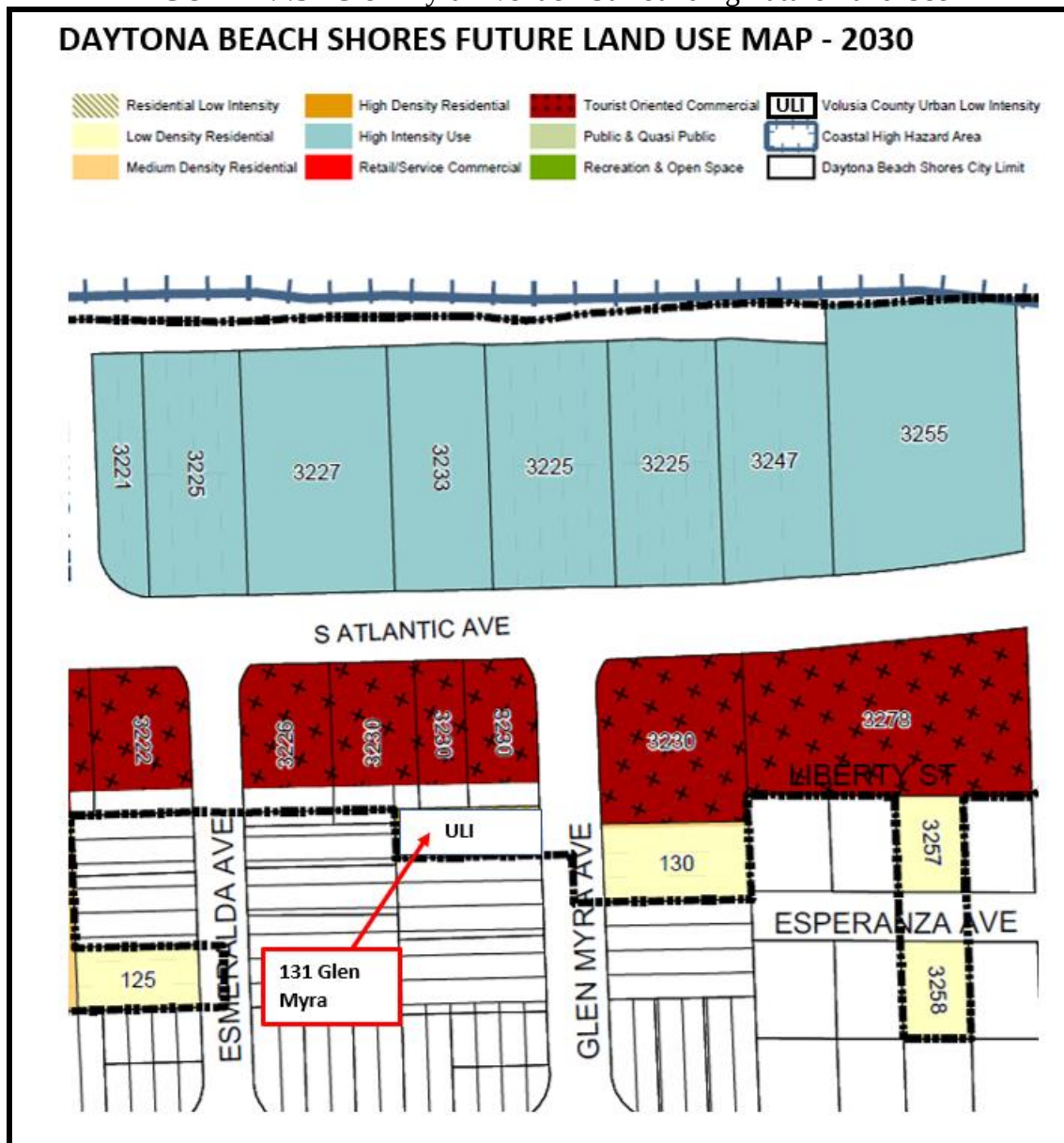
Overview:

The 0.17 acre property is currently vacant and abuts additional properties on S. Atlantic Avenue owned by the property owner. The current Volusia County Future Land Use (FLU) is *Urban Low Intensity* (0.2-4 units/acre). The surrounding future land use designations is depicted in **Table 1** below while the future land use is illustrated in **Figure 1**. The subject request is to change the FLU designation to Daytona Beach Shores *Tourist Oriented Commercial*.

Table 1: Abutting Zoning and Future Land Use Classification

Location	Future Land Use	
	Existing	Proposed
Subject Property	Volusia County Urban Low Intensity	Tourist Oriented Commercial
North	Volusia County Urban Low Intensity	
South	Residential Low Density & Tourist Oriented Commercial	
East	Tourist Oriented Commercial	
West	Volusia County Urban Low Intensity	

FIGURE 1: 131 Glen Myra Avenue - Surrounding Future Land Use



Description, Data and Analysis:

The analysis conducted below demonstrates the amendment's compliance with the City's Comprehensive Plan and the Florida Administrative Code for future land use map amendments. Therefore, the analysis shows that there will not be any significant impacts on the environment, roadways, public schools and utilities as the allowable densities and use will remain the same.

I. IMPACTS OF PROPOSED AMENDMENT

The current Volusia County *Urban Low Intensity* Future Land Use (FLU) classification allows a maximum density of four (4) units per acre. Under the proposed Daytona Beach Shores FLU designation, *Tourist Oriented Commercial*, which is a commercial future land use classification. Therefore, the proposed land use amendment would not result in an increase in residential density permitted. Further, given the +/-0.17 acre size of the property, the proposed amendment would only allow one (1) residential unit on site, which is the same as currently allowed under the Volusia County FLU classification.

In accordance with the Daytona Beach Shores Comprehensive Plan Update (2030) and standard practice from the Florida Department Economic Opportunity (DEO) and other review agencies, an impact comparison analysis of the proposed amendment has been completed based upon the theoretical maximum development potential under the current future land use designation versus the designation proposed (**Table 2** below). The following seven public facilities and services were examined and discussed briefly below: (1) Transportation, (2) Sanitary Sewer, (3) Potable Water, (4) Solid Waste, (5) Stormwater Drainage, (6) Recreation, and (7) Public Schools.

Table 2: Impact Analysis (Theoretical Max.)

Development Variable	Current Future Land Use (0.2-4 units/acre)	Proposed Future Land Use	Change
Residential Units Allowed	1	0	-1
Population ¹	1.75	0	-1.75
AM / PM Peak Hour Trips ²	1.5/2.02	17.7/13	+16.2/+10.98
Sanitary Sewer (gallons/day) ³	250	740	+490
Potable Water (gallons/day) ⁴	192.5	740	+547.5
Solid Waste (lbs./person) ⁵	17.5	74	+56.5
Stormwater Drainage ⁶	n/a	n/a	n/a
Recreation/Open Space	See summary below	N/A	N/A
Public School Student(s)	0.396	N/A	-1

Notes:

1. Population: 1.75 persons per single-family dwelling
2. Transportation: Rates are for peak hour of adjacent street traffic
Single-family residential unit = 0.75 AM trips, 1.01 PM trips
Specialty Retail Center per 1000sf = 6.84AM trips, 5.02PM trips
Site FAR 1.4/Lot cover 35%, Building height = 4 stories: GFA = 2,590sf
3. Sanitary Sewer: Single family: 250 gallons per dwelling unit per day
Commercial: 1/10 gallons per sf per day (Port Orange LOS Std)
4. Potable Water: Residential: 110 gallons per capita per day
Commercial: 1/10 gallons per sf per day (Port Orange LOS Std)
5. Solid Waste: Residential: 10 pounds per capita per day
Commercial: 10lbs/1000 square feet
6. Stormwater Drainage: LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code.
7. Public School: Generation rates = 0.396 per single-family unit.

Sources:

2010 US Census

Transportation:

The subject property has vehicular transportation access to the abutting Glen Myra Avenue, which is a local road connecting to both S. Peninsula Drive (SR441) and S. Atlantic Avenue (SR A1A). S. Peninsula Drive is a two laned minor arterial road and S. Atlantic Avenue (SRA1A) is a five laned principal arterial road, pursuant to the City's Comprehensive Plan, respectively. The two roads connect to Dunlawton Boulevard (SR421) and International Speedway Boulevard (US92) which are both principal arterial roads leading to the interstate system. The allowable Level-Of-Service (LOS) standard for S. Peninsula Drive is "D." Both Atlantic Avenue (SR A1A). S. Peninsula Drive are operating at acceptable levels of service. The City has no vested trips for this road however there will be a change in vehicular trips as demonstrated in **Table 2** above. However, the net change, which is an additional +16.2AM and +10.98PM peak hour trips, will not significantly impact the current LOS and hence, said LOS for both connecting arterials will continue to be maintained.

Sanitary Sewer:

The City's adopted LOS standard for sanitary sewer is 250 gallons per dwelling unit per day. The City does not have a sewer LOS standard for commercial land uses. Therefore, since the City's sewer is treated by the City of Port Orange, the aforementioned city's commercial sewer LOS standard of 1/10 gallons per square foot per day was used. This resulted in a net increase of 490 gallons per day. The City of Port Orange sewer treatment facility currently has an additional 2.1MGD (million gallons per day) treatment capacity which means the additional sewer generated is de minimis.

Potable Water:

The City's adopted LOS standard for potable water is 110 gallons per capita per day. The City does not have a potable water LOS standard for commercial land uses. Therefore, since the City's potable water in this part of town is provided by the City of Port Orange, the aforementioned city's commercial potable water LOS standard of 1/10 gallons per square foot per day was used. This resulted in a net increase of 547.5 gallons per day. The City of Port Orange potable water facility currently has an additional allowable daily capacity of 5.94MGD. Therefore the proposed increase in potable water demand is de minimis.

Solid Waste Collection:

The proposed land use is expected to generate 17.5 pounds of solid waste per day. Solid waste generated within the City of Daytona Beach Shores is collected by Waste Pro, which delivers it to the Volusia County landfill. The 3,000-acre landfill is a Class I facility with a projected life span to the year 2050.

Stormwater Drainage:

The City's adopted LOS standard for stormwater is the 25-year, 24-hour storm event. More specifically, the stormwater facilities must be capable of treating and conveying the runoff from

such a storm without causing flooding of adjacent properties or polluting any receiving water bodies. In addition, the Comprehensive Plan requires that there be no net loss of stormwater retention function as a result of development. Therefore, if the property is developed the parcel must have the same ability to store and discharge water after development as it does before development occurs. The applicants would be required to address stormwater retention on the property in accordance with these City standards.

Recreation and Open Space:

The proposed future land use is commercial, which does not permit residential use. Hence, no recreation analysis is applicable or required.

Public Schools:

The proposed future land use is commercial, which does not permit residential use. Hence, no student generation analysis is applicable or required. However, the change from urban low intensity to commercial would see a reduction in one public school student generated.

II. LAND USE COMPATIBILITY

The FLU of the surrounding area is residential low intensity (west) and commercial (east) in character (**Figure 1**). This is also reflected in **Figure 2** below which depicts an aerial view of the neighborhood.

Figure 2: Aerial View of 131 Glen Myra and Surrounding Neighborhood



Source: Volusia County Property Appraiser, 2021

Considering the above along with **Table 1** contained in the body of this staff report, it is clear that the proposed land use, which is a density neutral land use request, is consistent with the existing and future land use of the surrounding neighborhood.

III. APPLICABLE PLANS, CODES AND REGULATIONS

Future Land Use Element (Daytona Beach Shores Comprehensive Plan):

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

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

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

Capital Improvement Element

Policy 9-1.3: The City shall use the following Level of Service (LOS) standards in reviewing the impacts of new development and redevelopment on public facility provisions (see Table 2 above)

IV. REVIEW CRITERIA AND STAFF FINDINGS

1. The amendment shall not decrease the LOS Standard for hurricane evacuation routes below LOS Standard D and (b) the amendment shall not increase the clearance time for evacuation of the population in the Hurricane Vulnerability Zone above 16 hours.

Staff finding: The proposed land use amendment is density neutral but increases intensity. However, the di minimis increase in traffic (+16.2AM/+10.98PM peak hour trips), will not significantly impact the current LOS and hence, said LOS for both connecting arterials will continue to be maintained; and (b) considering the aforementioned, the hurricane evacuation clearance time should also not be impacted significantly.

2. Written assurances from service providers for sewage treatment, potable water, and solid waste shall be provided when there is a future land use map amendment result in an increase in density or intensity.

Staff finding: Written assurances will be provided from service providers assuring the accepted LOS standards are being maintained.

3. The amendment shall not result in objectionable land use designations inconsistent with the character of the overall future land use plan.

Staff finding: The proposed amendment will not result in an incompatible land use designation with adjacent parcels, since the adjacent properties to the east also possess the same future land use classification.

4. The amendment shall not decrease the LOS Standards for public facilities adopted in Policy 9-1.3 of the City's Comprehensive Plan.

Staff finding: The proposed land use amendment provides for de minimis increase in public facilities demanded, therefore the LOS standards will be maintained.

V. CONCLUSION:

The proposed land use amendment is consistent with overall goals, objectives, and policies of the Daytona Beach Shores Comprehensive Plan (2030) and the required Florida Statutes.



CITY COUNCIL AGENDA MEMORANDUM NOVEMBER 9, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

SUBJECT: Ordinance 2021-17: Rezoning application for recently annexed property located at 104 Broad Avenue

SYNOPSIS:

Ordinance 2021-17, if adopted, would amend the City's Official Zoning Map by assigning the "RSF-2 Urban Single-Family Residential Detached District" to the recently annexed single-family residential property located at 104 Broad Avenue (Exhibit A). The application (Exhibit B) was submitted by Heather Roberts, owner of the subject property, and is a requirement of Florida Law when a property is annexed. The property is 0.23 acres and is occupied by a 1,508 square foot residential structure. The proposed amendment is compatible with the current Volusia County zoning district (R-9, Urban Single-Family Residential District).

FISCAL IMPACT STATEMENT:

BACKGROUND:

A. BACKGROUND

The subject property, located at 104 Broad Avenue, was recently annexed into the corporate limits of the City of Daytona Beach Shores. However, Section 171.062, Florida Statutes limits regulatory and development control over an annexing property if the area annexed was subject to a county land use plan and county zoning such that said regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment and zoning change that includes the annexed area. The purpose of this application is to realize the latter. The property owners have also submitted an application to amend the future land use classification of the property in question to Residential Low Intensity, consistent with the existing and surrounding land uses and current Volusia County Urban Low Intensity future land use classification. The zoning change will be adopted subsequent to the formal future land use amendment of the subject property.

B. PLANNING ANALYSIS

See Exhibit C for planning analysis.

LEGAL REVIEW:**RECOMMENDATION:**

Staff recommends approval of Ordinance 2021-17 as presented.

SUGGESTED MOTION:

A City Council member may motion as follows:

1. "I move to approve Ordinance 2021-17 as presented."

OR

2. "I move to rapprove Ordinance 2021-17, with the following amendments..."

OR

3. "I move to deny Ordinance 2021-17, on the basis of the following..."

- ATTACHMENT:**
1. Ord. 2021-17-RZ-104 Broad Ave
 2. EXHIBIT A-Location Map
 3. Exhibit B-104 Broad Ave- RZ
 4. Exhibit C-104 Broad Ave-Rezoning Planning Analysis

ORDINANCE NO. 2021-17

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ASSIGNING THE RSF-2 URBAN SINGLE-FAMILY RESIDENTIAL DETACHED DISTRICT ZONING CLASSIFICATION TO ANNEXED SINGLE-FAMILY RESIDENTIAL PROPERTY GENERALLY LOCATED AT 104 BROAD AVENUE, SHORT TAX PARCEL ID 5335-03-05-0240; PROVIDING MODIFICATION OF THE OFFICIAL ZONING MAP; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the property described in Section One herein was annexed into the City of Daytona Beach Shores on October 26, 2021, and an appropriate City zoning classification must be assigned to the real property in accordance with the requirements of controlling law; and

WHEREAS, the City Council of the City of Daytona Beach Shores has received recommendation from staff and the Planning and Zoning Board for the assignment of zoning classification to said annexed property and has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds such rezoning consistent with the *City of Daytona Beach Shores Comprehensive Plan* and deems it in the best interest of the inhabitants of said City to amend the Official Zoning Map as hereinafter set forth,

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

SECTION ONE: REZONING OF REAL PROPERTY. The property described hereinafter which was annexed into the City of Daytona Beach Shores pursuant to Ordinance No. 2021-12 is hereby rezoned and assigned the Daytona Beach Shores zoning classification as follows:

Short Tax Parcel ID #5335-03-05-0240, as described in Exhibit “A” as attached, is assigned the RSF-2, Urban Single-Family Residential Detached District Zoning Classification.

SECTION TWO: AMENDMENT OF OFFICIAL ZONING MAP. The Official City Zoning Map is hereby amended to conform with the rezoning assigned herein.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager, or designee, is authorized to take any and all required administrative actions to

implement the provisions of this Ordinance including, but not limited to, providing notice of this rezoning to the Volusia County Council in accordance with applicable law.

SECTION FOUR. 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*; provided, however, that the actions taken herein shall be depicted on the Official Zoning Map of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION FIVE: 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.

EXHIBIT A

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", 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, 140.00 FEET TO THE NORTH LINE BLOCK "E" EAST; THENCE EAST ALONG SAID NORTH LINE BLOCK "E" EAST, 70.00 FEET TO THE NORTHEAST CORNER OF THE WESTERLY 5.0' OF SAID LOT 25; THENCE SOUTH ALONG THE EASTERLY LINE OF THE WESTERLY 5.0' OF SAID LOT 25, A DISTANCE OF 140.00 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.

EXHIBIT A

1: Aerial View: 104 Broad Ave.



Source: Volusia County Property Appraiser Website, 2021

2: Street View: 104 Broad Ave.



Source: GoogleMaps, 2016



City of Daytona Beach Shores
Community Services Department
2990 South Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377

240322
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AUG 09 2021

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

12021021

APPLICATION TO AMEND ZONING MAP

The Undersigned Applicant requests the Planning and Zoning Board and City Council to decide upon this application in accordance with Section 14-66 and 14-67 of the Land Development Code.

FEES MUST BE PAID AT THE TIME THE APPLICATION IS SUBMITTED

Date Submitted: 8/7/21

Current Zoning: _____

Requested Zoning: RSF-2

Applicant's Name: Heather Roberts

Address: 104 Broad Avenue Phone #: 773-332-7890

Representative: _____

Address: _____ Phone #: _____

Property Address & Parcel ID: _____

Property Owner: Heather Roberts

NOTE: If applicant is not property owner, attach a notarized statement of authorization

Legal Description of Property:

HR Roberts
Applicant's Signature

8-7-21
Date

THE PLANNING & ZONING BOARD WILL APPLY THE CRITERIA IN SECTION 14-66(4) OF THE LAND DEVELOPMENT CODE WHEN CONSIDERING ZONING MAP AMENDMENTS. PLEASE EXPLAIN HOW YOUR REQUEST MEETS THE FOLLOWING CRITERIA: (YOU MAY ATTACH ADDITIONAL SHEETS)

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

Favorable

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the area affected.

Favorable

3. The proposed zoning will efficiently use or unduly burden water, sewer, solid waste disposal or other necessary public facilities, including schools.

Efficiently use

4. The proposed zoning will efficiently use or unduly burden transportation facilities.

Efficiently use

5. The proposed zoning will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

Favorably

6. The proposed zoning is basically consistent with the comprehensive land use plan.

Yes

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect new conditions?

No

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

No

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding areas?

Not applicable

10. Would the proposed changes constitute "spot zoning"?

No

11. Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

No

12. Is the change solely for the benefit of the owner and to the detriment of the community?

No

13. Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

No

14. Would the requested change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

No

EXHIBIT C
PLANNING ANALYSIS
Ordinance 2021-17

A. INTRODUCTION

The proposed application/ordinance if approved would change the zoning district classification of the annexing single-family residential property located at 104 Broad Avenue from Volusia County *R-9 Urban Single-Family Residential District* to Daytona Beach Shores *RSF-2 Urban Single-Family Residential Detached District*. The subject application was submitted on August 9, 2021. The subject property contains an acreage of approximately 0.23 and has a single-family residential structure on site.

B. EXISTING ZONING AND CURRENT LAND USE

Table 1 below provides a narrative description of the zoning district classifications and current land uses (i.e., existing development) for the subject property and surrounding area while **Figure 1** provides an aerial view of the subject property and surrounding land uses and **Figure 2** is a zoning map of the same while **Figure 3** provides a street view of the property in question.

Table 1: Zoning and Land Use Area Description

Location	Zoning	Current Land Use
Subject Property	R-9*	Single Family Residence
North	R-9	Single Family Residence
South	RSF-2	Single Family Residence
East	RSF-2	Single Family Residence
West	RSF-2	Single Family Residence

Notes: *R-9 = Volusia County *Urban Single-Family Residential District*; + PUD = Daytona Beach Shores *Planned Unit Development District*.

Figure 1: Aerial View-104 Broad Avenue and Surrounding Neighborhood



Source: Volusia County Property Appraiser, 2021

Figure 2: 104 Broad Avenue – Zoning Map Of Surrounding Neighborhood

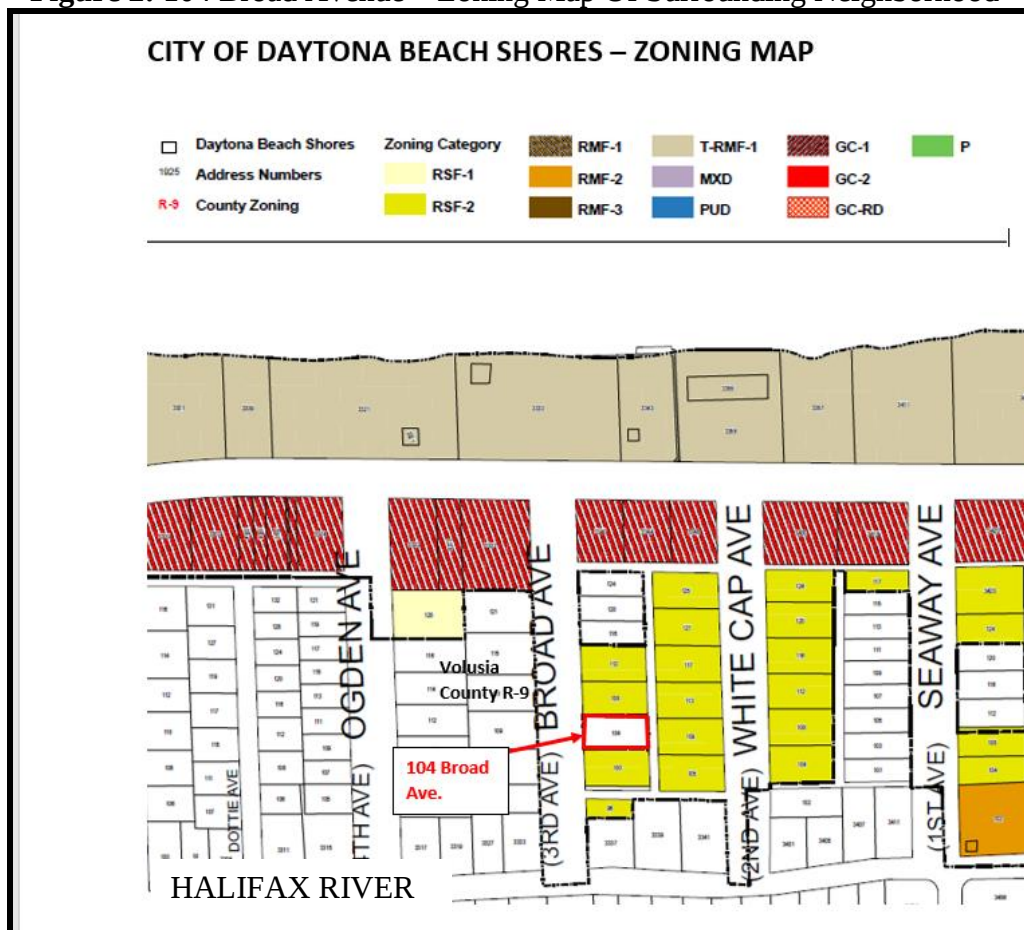


Figure 3: 104 Broad Avenue – Street View



Source: GoogleMaps, 2018

As noted in **Table 1** above, the subject property is currently zoned Volusia County R-9 Urban Single-Family Residential District. According to the Volusia County Land Development Code, the purpose, intent and permitted uses of the existing zoning district is as follows:

“R-9 Urban Single-Family Residential District”:

Purpose and intent: The purpose and intent of the R-9 Urban Single-Family Residential Classification, is to provide medium-low-density residential developments, preserving the character of existing or proposed residential neighborhoods.

Permitted principal uses and structure: In the R-3 Urban Single-Family Residential Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

Cluster and zero lot line subdivisions.

Communication towers not exceeding 70 feet in height above ground level.

Essential utility services.

Exempt excavations (refer to subsection 72-293(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article.

Exempt landfills.

Fire stations.

Home occupations, class A.

Houses of worship.

Parks and recreational areas accessory to residential developments.

Public schools.

Publicly owned parks and recreational areas.

Publicly owned or regulated water supply wells.

Single-family standard or manufactured modular dwelling.

C. PROPOSED ZONING

The proposed zoning for the subject property is RSF-2 Urban Single-Family Residential Detached District. According to the Daytona Beach Shores Land Development Code, the purpose, intent and permitted uses of the proposed zoning district is as follows:

“RSF-2 Urban Single-Family Residential Detached District”:

Purpose and Intent: The purpose and intent of the RSF-2 Urban Single-Family Residential Detached District is to provide medium residential density for the purpose of preserving the character of existing residential neighborhoods and generally implementing the city's land use plan within, but not necessarily limited to, those areas shown for single-family use.

14-17.2. Permitted Principal Uses and Structures:

Single-family dwelling.

Telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq.

14-17.3. Permitted Accessory Uses and Structures.

Home occupations regulated by section 14-45 and other accessory uses or structures customarily incidental to the permitted principal use or structure.

D. COMPREHENSIVE PLAN

The City is in the process of amending its Adopted Comprehensive Plan (2030) Future Land Use Map to assign the City's *Residential Low Intensity* future land use (FLU) classification to the subject property. This FLU classification allows up to four (4) residential units per acre, which is same as the current Volusia County *Urban Low Intensity* FLU for the property in question. Therefore, the existing acreage and proposed zoning will restrict the use to one single-family residential unit.

Objective 1-1.4 of the Comprehensive Plan states that land uses which are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged through the prohibition of objectionable uses such as industries and warehousing. The proposed future land use and proposed zoning are not objectionable or inconsistent with the future land use map and surrounding neighborhood. Therefore, the proposed zoning classification is consistent with the City's Adopted Comprehensive Plan (2030) and proposed FLU classification.

E. REVIEW AND COMMENTS

The subject application was initiated by the property owner, Heather Roberts. The subject property is located at 104 Broad Avenue and has an acreage of 0.23+/- . The site has vehicular and pedestrian access to the abutting Broad Avenue which connects to S. Peninsula Drive and S. Atlantic Avenue.

The proposed zoning change will be consistent with the previous Volusia County zoning and adjacent zoning district classifications. The property is currently occupied with a single-family residential structure. According to the property owner, no redevelopment is intended and the proposed change is density neutral.

Since the application in question regards a single-family residential property, it is exempt from the City's Concurrency Review Process as it does not substantially impact any of the City's public facilities or infrastructure. Further, adequate potable water, sewer, solid waste, recreation, public school and transportation facility capacities are currently available and serve the subject property.

F. FINDING OF FACTS

When considering a request to change zoning, the Planning and Zoning Board shall consider the following criteria pursuant to Section 14-66 of the Land Development Code. Below are staff's

findings considering each criterion outlined in the aforementioned section of the Code. The applicant's responses to the criteria are attached in the **Exhibit B** (owner's application).

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

The proposed zoning change will not provide an unfavorable impact on the environment or natural resources of the area. The property in question is currently developed with a single-family residential structure. If redeveloped, consistency with the City's Land Development Code will be required. Further, the proposed zoning change would not permit hazardous uses such as industry, which could have an unfavorable impact on the environment and natural resources of the area.

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the area affected.

The proposed zoning will generally have a neutral impact on the economy of the area as the property is currently developed and no redevelopment or change in entitlement is sought. The zoning is also consistent with the Volusia County Zoning District classification and the proposed zoning change is density and use neutral.

3. The proposed zoning will efficiently use or unduly burden water, sewer, solid waste disposal or other necessary public facilities, including schools.

The subject property is currently developed as a single-family residence. This existing use will not unduly burden public facilities. The subject property is currently being served with or has access to transportation, public schools, water, sewer, and solid waste disposal services. All existing public facilities have adequate capacity and the proposed rezoning will not provide any more impact on said facilities than the current Volusia County Zoning currently permits (see **Table 2** below).

Table 2: Impact Analysis (Theoretical Max.)

Development Variable	Current Future Land Use (0.2-4 units/acre)	Proposed Future Land Use (0.2-4 units/acre)	Change
Residential Units Allowed	1	1	None
Population ¹	1.75	1.75	None
AM / PM Peak Hour Trips ²	0.75/1.01	0.75/1.01	None
Sanitary Sewer (gallons/day) ³	250	250	None
Potable Water (gallons/day) ⁴	192.5	192.5	None
Solid Waste (lbs./person) ⁵	17.5	17.5	None
Stormwater Drainage ⁶	n/a	n/a	n/a
Recreation/Open Space	See summary below	See summary below	None
Public School Student(s)	0.396	0.396	None

Notes:

1. Population: 1.75 persons per single-family dwelling
2. Transportation: Rates are for peak hour of adjacent street traffic

- | | |
|-------------------------|--|
| | Single-family residential unit = 0.75 AM trips, 1.01 PM trips |
| 3. Sanitary Sewer: | 250 gallons per dwelling unit per day |
| 4. Potable Water: | 110 gallons per capita per day |
| 5. Solid Waste: | 10 pounds per capita per day |
| 6. Stormwater Drainage: | LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code. |
| 7. Public School: | Generation rates = 0.396 per single-family unit. |

Sources:

2010 US Census

ITE Trip Generation Manual, 7th Edition

Policy 9-1.3 Daytona Beach Shores Comprehensive Plan Update (2030)

4. The proposed zoning will efficiently use or unduly burden transportation facilities.

The proposed zoning will not unduly burden transportation facilities. There is already adequate vehicular access from the abutting S. Peninsula Drive road and the existing system of local, collector and arterial road network. The adjacent transportation network currently operates above the adopted level of services.

5. The proposed zoning will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

The proposed zoning change involves a single-family residential property being rezoned to a Daytona Beach Shores compatible single-family residential zoning district classification. Hence, the rezoning will not impact the ability of people to find adequate housing since the change will neither create new housing nor eliminate existing housing stock.

6. The proposed zoning is basically consistent with the comprehensive land use plan.

The City is in the process of amending its Adopted Comprehensive Plan (2030) Future Land Use Map to assign the City's *Residential Low Intensity* future land use (FLU) classification to the subject property. This FLU classification allows up to four (4) residential units per acre, which is same as the current Volusia County *Urban Low Intensity* FLU for the property in question.

Objective 1-1.4 of the Comprehensive Plan states that land uses which are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged through the prohibition of objectionable uses such as industries and warehousing. The existing single-family residence, proposed future land use and proposed zoning are not objectionable or inconsistent with the future land use map and surrounding neighborhood. Therefore, the proposed zoning classification is consistent with the City's Adopted Comprehensive Plan (2030) and proposed FLU classification.

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect new conditions?

The physical, economic or environmental conditions relative to the property in question and the surrounding area have not changed so as to require a zoning change. However, the subject property was annexed into the City through the voluntary annexation process pursuant to Section 171.044, *Florida Statutes*. However, Section 171.062, *Florida Statutes* limits regulatory and development control over an annexing property if the area annexed was subject to a county land use plan and county zoning and said regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area, hence, the purpose of this application to amend the zoning classification of the subject property.

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

There was no mistake made in the original zoning of the property. The property was annexed into the City from unincorporated Volusia County; therefore the appropriate City zoning classification must be assigned so that the City may provide developmental and regulatory control.

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding areas?

The proposed zoning change is consistent with the existing Volusia County zoning district classification and is density and use neutral. Therefore, the proposed change will maintain a stabilizing effect on the surrounding areas.

10. Would the proposed changes constitute "spot zoning"?

Spot zoning generally occurs when an individual parcel is assigned a zoning classification that is incompatible with the surrounding area. However, the proposed zoning change is consistent with the existing Volusia County zoning district classification in the area and the amendment is density and use neutral. Further, the proposed zoning classification will provide an existing use that is identical to the City's and County's zoning classification in the neighborhood. Therefore, the proposed change does not constitute spot zoning.

11. Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

The proposed change involves rezoning one individual property which was annexed into the City's corporate limits. The proposed zoning classification is consistent with the existing neighborhoods use, future land use and zoning classifications. Therefore, the proposed change is not the singling out of a small parcel of land allowing a use that is totally different from that of the surrounding area.

12. Is the change solely for the benefit of the owner and to the detriment of the community?

The proposed change involves rezoning one individual property which was annexed into the City's corporate limits. The proposed zoning classification is consistent with the existing neighborhood uses, future land use and zoning classifications. Therefore, the proposed change would not be solely for the benefit of the owner and to the detriment of the community but instead the change would benefit the entire community by maintaining the existing land use of the property and the integrity of the neighborhood.

13. Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

The proposed change is consistent with the neighborhood existing and future land uses and therefore serves the entire community by maintaining the neighborhood's single-family residential characteristics.

14. Would the requested change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

The rezoning will not materially diminish the value of the surrounding properties or substantially alter the characteristics of the neighborhood since the proposed rezoning will ensure the single-family nature of the community is maintained.