



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COMMISSION MEETING APRIL 11, 2023

**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 Commission Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
 - A. Presentation by James Moore Audit firm
- 6. APPROVAL OF MINUTES**
 - A. City Commission Minutes March 28, 2023
- 7. CONSENT AGENDA:**
 - A. Acceptance of AdventHealth Centra Care Exposure Hotline Contract

- B. Access Agreement & Construction License For Seawall Construction: Bella Vista Condominium, 2515 S. Atlantic Avenue
- C. Access Agreement & Construction License For Seawall Construction: Palma Bella Condominium, 3245 S. Atlantic Avenue
- D. Access Agreement & Construction License For Seawall Construction: St. Croix Condominium, 3145 S. Atlantic Avenue
- E. Access Agreement & Construction License For Seawall Construction: St. Kitts Condominium, 2853 S. Atlantic Avenue

8. REPORTS OF THE CITY ATTORNEY:

9. REPORTS OF THE CITY MANAGER:

10. OLD BUSINESS:

- A. Ordinance 2023-01: Repeal of the Supplemental Economic or Tourism Development Incentive Program (AKA The ATR Program)

11. NEW BUSINESS:

- A. Ordinance 2023-02: Floodplain Management Regulations Update
- B. Joyride Golf Cart Tours Establishment Land Use Proposal: 2120 S. Atlantic 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 COMMISSION 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 COMMISSION MEETING
March 28, 2023
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Commissioner Mel Lindauer, Vice Mayor Michael Politis, Commissioner Richard Bryan, Commissioner Chris Conomos

Staff: City Manager Kurt Swartzlander, City Clerk Cheri Schwab, City Attorney Paul Waters, Community Services Director Stewart Cruz, Economic Development and Public Affairs Director Nancy Maddox, and Public Safety Director Michael Fowler.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

- A. Employee Service Awards
Wayne Delin Maintenance Worker III 20 years
Matt Thomas D.D. Building & Codes 15 years

Community Services Director Stewart Cruz presented service awards to Wayne Delin and Matt Thomas.

6. APPROVAL OF MINUTES

- A. City Commission Minutes March 14, 2023

COMMISSIONER MEL LINDAUER moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve the City Commission Minutes of March 14, 2023.

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

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

7. CONSENT AGENDA:

- A. Public Safety February report
- B. Community Services Department Monthly Report - February 2023
- C. City Owned Public Beach Access: Granting of Temporary Access and Construction Easement To Volusia County For The Installation Of Temporary Armoring & Sand Placement

COMMISSIONER RICHARD BRYAN moved, seconded by COMMISSIONER MEL LINDAUER to Approve the consent agenda.

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

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

8. REPORTS OF THE CITY ATTORNEY:

There were no questions or concerns for the City Attorney.

9. REPORTS OF THE CITY MANAGER:

A. CM Report 3-28-23

City Manager Kurt Swartzlander presented an after-action hurricane report. There were seven areas that were discussed. The first item was pay policy and procedures during an emergency. At the last meeting, the commission adopted a resolution that addressed this issue for any future events. The second item was sewer lift stations. It was explained that a few stations do not have permanent generators. The city does have a few back-up generators but that requires an employee moving about during or just after a storm to manage. The city plans to apply for a grant through hazard mitigation money in the near future. The third item discussed was communication with the commission members. The City Manager felt he wasn't always consistent with communicating with them. For any future event, he will provide a daily action report that is also provided to the county. This way, the same message will be sent to everyone. Continuing service contracts was the fourth item discussed. The city currently has a few contracts in place, but others are needed. Examples were mutual aid, electrical and HVAC services. The fifth item discussed was power for the Community Center. The existing generator only provides power to the Commission Chambers. During each recent storm, the center was utilized and, thankfully, the power stayed on. The city has applied for a grant in the amount of \$120K to purchase a generator to power the entire building. The sixth item discussed was for a Community Information Center/Emergency Operations Center (CIC/EOC). Currently, the city doesn't have a formal one in place and during an event, approximately 50 employees are housed in various

buildings and in cramped areas. The city has applied for a grant in the amount of \$3.2 million that could be used for design and construction. The seventh, and final item discussed was evacuations. The city will pre-coordinate with the county for any up-coming storm to better prepare for an evacuation.

Mayor Miller asked CM Swartzlander to recap a recent meeting they attended with FWC, FDEM, DEP and the County of Volusia. The County was allotted funding to place trap bags on the beach in front of compromised properties. In order to place the bags, easements are required. City staff is working with the county to notify all affected property owners. Having the easement in place would also allow the county to assist in dune renourishment. There were two residents who had questions and comments regarding the easement process.

10. OLD BUSINESS:

11. NEW BUSINESS:

- A. Ordinance 2023-01: Repeal of the Supplemental Economic or Tourism Development Incentive Program (AKA The ATR Program)

Attorney Waters read the ordinance by title. At the last city commission meeting, staff was instructed to bring an ordinance forward to repeal the ATR program. If the commission wishes to utilize the ATR in the future, it can do so with a development agreement.

COMMISSIONER RICHARD BRYAN moved, seconded by COMMISSIONER MEL LINDAUER to Approve Ordinance 2023-01 on first reading.

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

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

- B. Resolution 2023-07: Hurricane Damaged Permanent Seawall Reconstruction Building Permit Fee Waiver

Attorney Waters read the resolution by title. Community Services Director Stewart Cruz explained that the commission requested staff to waive the permit fees, similar to what the County was doing. If adopted, this would waive the city component for any seawall reconstruction. It would be retroactive to February 6, 2023. The time period would be for one year and it could be extended if needed. The waiver does not apply to re-inspection fees or to surcharges imposed by the state.

COMMISSIONER CHRIS CONOMOS moved, seconded by VICE MAYOR MICHAEL POLITIS to Adopt Resolution 2023-07 on first reading.

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

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

12. COUNCIL COMMENTS:

Vice Mayor Politis provided an update from the recent TPO meeting he attended. Both Commissioners Conomos and Lindauer were impressed with their city tour last week of the various departments. Comm. Bryan announced his armoring meeting would be on April 6th at 4pm. It will be recorded and streamed live. The primary objective is for residents to work together on building sea walls or armoring to protect their property.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Devin and Danielle Eskra, who own Joyride Tours, are interested in opening a business in the city. They have recently been working with Nascar at the speedway and have received positive feedback from the residents. They are interested in the property at 2120 S. Atlantic. Their hope is to open a small restaurant in the front and have the carts in the back.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Discussion on the golf cart tour business

15. ADJOURNMENT:

The meeting ended at 7:12 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
KURT D. SWARTZLANDER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Mike Fowler, Public Safety Director
PREPARED BY: Mike Fowler, Public Safety Director
SUBJECT: Acceptance of AdventHealth Centra Care Exposure Hotline Contract

SYNOPSIS:

This contract is with AdventHealth to make available post-exposure services for employees following contact with blood and other bodily fluids in the course of their duties.

FISCAL IMPACT STATEMENT:

BACKGROUND:

In the event of a workplace exposure, Centra Care's experienced teams are available 24 hours a day, seven days a week. The Exposure Hotline offers counseling to employees who sustain a workplace exposure to blood or body fluids, exposure to communicable diseases like tuberculosis (TB) and meningitis, or an environmental exposure.

The Exposure Hotline is staffed by professional nurses trained in occupational exposures. The program follows the compliance guidelines of the U.S. Department of Health and Human Services, Centers for Disease Control (CDC) and OSHA standards and regulations.

Exposure Hotline nurses provide immediate risk assessment through triage, using the CDC guidelines, for diseases involving blood-borne pathogen exposures. They offer counseling, including emotional support, and immediate referral to appropriate health care providers. The Exposure Hotline nurse obtains source information, when available, and includes it in the Exposure report that is sent to the treating physician. In particular circumstances, occupational physicians are available to document the medical need for obtaining a court order for source testing when other attempts have been unsuccessful.

Additionally, nurses are available to respond to meet with the exposed employee and administer medications as appropriate.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval

SUGGESTED MOTION:

- ATTACHMENT:**
1. 2023 Exposure Hotline and PEN Agreement
 2. PEN Overview for Client-9-20-22

AGREEMENT FOR SERVICES

This **AGREEMENT FOR SERVICES** ("Agreement") is entered into on the _____, 2023 ("Effective Date"), by and between the _____, a _____ [type of entity: _____] [state] corporation or political subdivision of the State of [insert State] (**CLIENT**), with a mailing address of _____, and **ADVENTIST HEALTH SYSTEM/SUNBELT, INC.**, a Florida not for profit corporation doing business as **ADVENTHEALTH CENTRA CARE** (hereinafter referred to as "**AHCC**"), whose address is 2600 Westhall Lane, Box 300, Maitland, Florida 32751.

WHEREAS, Client desires to engage AHCC to provide exposure hotline services; surveillance services; post-exposure nurse ("PEN") services for management of blood, body fluid and communicable disease exposure; and other services identified in Appendix A to assist Client in improving the occupational health and wellness of personnel in Client's employee population (collectively, "Employees" and individually, "Employee"); and

WHEREAS, AHCC offers access to twenty-four hour per day, seven day per week, exposure hotline services, and Client desires to engage AHCC to provide Employees with access to exposure hotline services and assistance in areas including but not limited to initial exposure hotline counseling and ongoing medical surveillance and monitoring; and

WHEREAS, the parties enter into this Agreement upon the terms stated in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Available Services.** AHCC shall offer the services at the times and rates described in Appendix A.
2. **Employee Confidentiality and Release of Information.** Information concerning Employees will be maintained and released in accordance with applicable state and federal law. All policies and procedures of AHCC are and shall remain in compliance with privacy regulations and the security regulations promulgated pursuant to the Health Insurance Portability and Privacy Act of 1996 ("HIPAA") and state law. Client acknowledges that medical health information is not to be made a part of the Employee's personnel record. The parties agree to maintain the confidentiality of all Employee and patient information and medical records in compliance with AHCC policies and all applicable state and federal laws and regulations, including, without limitation, HIPAA and state law, as applicable. Any release of patient information or medical records to Client will require the written consent of the Employee or as otherwise required by applicable state and federal law.
3. **Eligible Individuals.** Client shall only provide the hotline number to eligible Employee. Client will make all requests for services by calling the AHCC call center representative at the telephone number AHCC provides to Client.
4. **Service Location.** Services are provided by AHCC at such locations in Florida as agreed to by AHCC and Client.
5. **Cost.** AHCC will bill Client monthly as per the services and prices agreed upon in Appendix A. Payment by Client is due within thirty (30) days of Client's receipt of invoice (except for any disputed amount which shall be due and payable by Client within thirty (30) days of resolution of the dispute).

6. **Reports.** AHCC will provide the Client with quarterly blood and bodily fluid exposure surveillance reports that contain customized statistical information regarding the utilization of services by Employees. AHCC will provide Client with other reports for specific exposures as the exposures occur.
7. **Independent Operations.** The operations of AHCC are independent and separate from the operations of Client, and AHCC shall not be subject to the direction or control of the Client except as specifically provided herein.
8. **Ownership of Records.** The records created pursuant to the provision of the services hereunder shall be the property of AHCC and are not accessible to Client, except as provided by state or federal statute and as agreed upon pursuant to this Agreement. Upon termination of this Agreement for any reason, copies of the records of Employees shall be surrendered upon the request of the Client provided each Employee signs the appropriate medical record release authorization forms. For purposes of record retention requirements of AHCC, AHCC will retain the original records and will provide copies of the records to Client. AHCC will provide Client with an estimate of the cost of record reproduction for prior approval prior to AHCC incurring electronic or paper copying costs.
9. **Term and Amendment.** The term of this Agreement is twelve (12) months (“Initial Term”) and shall become effective on the Effective Date and shall expire in one (1) year from the Effective Date. Client and AHCC may renew the Agreement for additional renewal terms of one (1) year each (each a “Renewal Term”) on an annual basis pursuant to a writing signed by both parties. Each Renewal Term and the Initial Term are collectively referred to as “Term”. Client and AHCC will review changes in pricing or terms annually and will jointly agree upon changes to the terms or pricing in the Agreement through an amendment that is signed by both parties.
10. **Termination.** This Agreement may be terminated by either party at any time by giving ninety (90) days’ prior written notice at the addresses listed in Section 12. The parties may mutually agree to terminate this agreement at any time when both parties sign a writing that identifies the termination date. Either party may terminate this Agreement immediately upon written notice to the other party (the “Breaching Party”) upon breach of this Agreement when the Breaching Party does not cure the breach within thirty (30) days after written notice of the breach. The party providing notice of the breach shall have no obligation to allow the Breaching Party to cure any breach that has been the subject of two (2) earlier notices of the same breach.
11. **Entire Agreement.** This Agreement constitutes the entire indivisible agreement between the parties and shall not be modified, amended, altered or changed except by written agreement signed by both parties.
12. **Notices.** Notices or communications herein required or permitted to be given shall be in writing and shall be deemed received as follows: (i) when personally delivered; (ii) when sent via a nationally recognized and receipted overnight courier service; and (iii) when deposited in the United States mail and sent via registered or certified mail, postage prepaid, to the other party at the following addresses:

Client:

AHCC: AdventHealth Centra Care
2600 Westhall Lane
Box 300
Maitland, Florida 32751

Each party hereto may change the address to be used for purposed of delivering notices or other communications by delivery of written notice to the other party in accordance with this Section.

13. **Assignment.** An assignment of this Agreement or the rights or obligations hereunder (whether by operation of law or otherwise) shall be invalid without the specific written consent of the other party hereto.
14. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as nor be construed to be a waiver of any subsequent breach hereof.
15. **Amendment.** This Agreement may be amended only by an instrument in writing signed by the parties hereto.
16. **Governing Law.** This agreement shall be construed and governed by the laws of the State of Florida.
17. **Attorney's Fees.** If either party hereto brings an action to enforce the terms of this agreement or to declare rights hereunder, each party shall be responsible for its own attorney's fees and court costs.
18. **Nondiscrimination.** AHCC agrees to provide services to Employees without regard to an Employee's race, color, national origin, handicap, sex, marital status, religion or any other basis proscribed by state or federal law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first written above.

CLIENT:

By: _____
NAME

TITLE

DATE

**ADVENTIST HEALTH SYSTEM/SUNBELT, INC.
DOING BUSINESS AS ADVENTHEALTH CENTRA CARE:**

By: _____
ROBERT PASWATERS, ED.D
VICE PRESIDENT / COO

DATE

Exhibit A
Occupational Health Service Offerings Fee Schedule

<u>PRODUCT / SERVICE</u>	<u>COST</u>	<u>AVAILABILITY</u>	<u>DESCRIPTION OF PRODUCT / SERVICES</u>
A. Exposure Hotline and Surveillance Services			
Exposure Hotline	\$180 per call per exposure per Employee The cost of the Exposure Hotline is separate and in addition to the cost for Post Exposure Nurse ("PEN") Services in Section B below; Specific Exposure Services in Section C below; and other charges in Section D below.	24 hours a day, seven days a week	Exposure hotline call, which is the initial point of contact for the Employee. The exposure hotline is staffed by nurses to triage the type and severity of the Employee exposure. The nurses use Centers for Disease Control and Prevention ("CDC") algorithms for evaluation. AHCC will provide a report that summarizes the exposure and recommended next steps for the Employee.
Surveillance	\$250 per exposure per Employee for up to six months. The cost of surveillance is separate and in addition to the cost for PEN Services in Section B below; Specific Exposure Services in Section C below; and other charges in Section D below.	Monday to Friday from 8 a.m. to 5 p.m.	Following exposure, AHCC nurse monitors Employee to make sure the Employees follows recommended next steps for follow-up testing, surveillance and/or medical care.

<u>PRODUCT / SERVICE</u>	<u>COST</u>	<u>AVAILABILITY</u>	<u>DESCRIPTION OF PRODUCT / SERVICES</u>
B. Post Exposure Nurse Services			
PEN Dispatch (WITH Medications)	\$875 per exposure per Employee plus mileage	24 hours a day, seven days a week	Source testing, exposed testing, and laboratory results; human immunodeficiency virus ("HIV") post-exposure prophylaxis ("PEP") medications, as needed; and mandatory physician consult with Employee.
PEN Dispatch (WITHOUT Medications)	\$650 per exposure per Employee plus mileage	24 hours a day, seven days a week	Source testing, exposed testing and laboratory results with exposure counseling and education.
PEN Dispatch - Holidays	\$950 per exposure per Employee plus mileage	24 hours per day on New Years' Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas	Source testing, exposed testing, and laboratory results; HIV PEP medications, as needed; and mandatory physician consult with Employee, as needed.
C. Specific Exposures Services			
Hepatitis B Exposure	AHCC will bill Client for the actual cost +10% of Hepatitis B Immune Globulin ("HBIG")	Daily at any AHCC location during business hours or by appointment	PEN to recommend administration of Hepatitis B Immune Globulin ("HBIG") when the source is Hep B positive and the exposed titer is inadequate for immunity. AHCC will order and procure from third-party vendor and administer at a designated AHCC clinic location. HBIG is not administered on site at the Employee's location and is not administered by PEN.
Hepatitis C Quantitative PCR	\$245 – Lab Test	24 hours a day, seven days a week	CDC updated the MMWR 2013 for 2020 to state that Hepatitis C RNA testing of the Source patient should be initiated if their Hepatitis C antibody testing comes back as "reactive" (positive for Hep C antibodies).

<u>PRODUCT / SERVICE</u>	<u>COST</u>	<u>AVAILABILITY</u>	<u>DESCRIPTION OF PRODUCT / SERVICES</u>
Communicable Disease Mass Exposure Testing	\$80 per hour per Employee with 2 hour minimum, plus mileage. ** Lab services are billed to Client per contracted rates.	24 hours a day, seven days a week	Services include testing for tuberculosis ("TB"), pertussis, scabies and other communicable disease mass exposure testing as mutually agreed by the parties.
Post Meningitis Exposure Telephonic Management Services	\$150 per Employee per exposure	24 hours a day, seven days a week	PEN coordinates with infection prevention and hospital laboratory staff to determine type of meningitis following suspected meningitis exposure by Employee and then recommends next steps for the Employee. PEN remains in telephone contact with the exposed Employee until diagnosis and/or need for treatment is confirmed.
Post-Meningitis Exposure Onsite PEN Services	\$350 per exposure per Employee plus mileage	24 hours a day, seven days a week	On-site PEN management for post-meningitis exposure with meningitis prophylaxis and physician consult. Need for treatment is confirmed.
Mileage	\$1 per mile to cover miles and tolls		
D. Additional Services			
Bloodborne Pathogen Training by PEN team	\$75 per hour	In-person or virtual	Training for bloodborne pathogen
Account Set-Up and Implementation	\$100.00		One-time, flat fee for initial setup

Exposure Hotline & Post Exposure Nurse (PEN)

Program Overview

Problem:

Occupational Exposures

Significant vs. Non-significant

Solution:

Call Exposure Hotline

Dispatch PEN Nurse

Testing & Treatment

Occupational Exposure risk to bloodborne pathogens:

HIV

- Estimated 1.1 million people with HIV infection in the US >>> (15%) persons with undiagnosed infection.
- Medication should be started as soon as possible

Hep B

- Estimated 850,000-2.2 million people chronically infected with hepatitis B virus.
- Vaccination and treatment available

Hep C

- Estimated 2.4 million people in the US with hepatitis C virus infection.
- No vaccination or preventative medication.

Blood and Body Fluid Exposure

SIGNIFICANT exposure requires a port of entry:

➤ Percutaneous (under skin)

- Needlestick or sharps injuries
- Bites? ONLY with VISIBLE source blood

➤ Mucous membrane

- Splash to eyes, nose, mouth.

➤ Non-intact skin

- Compromised skin integrity (scrapes, cuts, abrasions, open sores, etc.).

Blood and Body Fluid Exposure cont'd

SIGNIFICANT exposure also requires **blood** or other potentially infectious material:

➤ **Blood**

- Visible

➤ **Other Potentially Infectious Material (OPIM):**

- Spinal or Joint Fluids
- Pregnancy, Chest or Abdominal Fluids
- Semen and Vaginal secretions

BLOOD or OPIM + a port of entry = a significant exposure

Blood and Body Fluid Exposure cont'd

Non-SIGNIFICANT exposure:

- NON-OPIM (non-Other-Potentially Infectious Material):
 - Sputum, saliva, nasal secretions
 - Tears, sweat
 - Vomit, feces, urine

NON-OPIM that contains visible blood OR are highly likely to contain blood + a port of entry = a SIGNIFICANT exposure

Exposure Hotline Call

- Client designee(s) determine if/when to call Exposure Hotline >>> \$\$\$/Call
- 24/7 Agent obtains exposed person's demographics and source information.
 - **Determines if Significant or Non-Significant exposure**
 - Proprietary algorithm based on CDC guidelines to determine exposure type, severity, and initial recommendations
- Significant exposures are transferred to the Post Exposure Nurse (PEN)
- PEN Contacts exposed person and establishes a meeting location
- Exposure Call report is provided to Client

Post Exposure Nurse (PEN) Role

PEN will:

- Arrange **onsite** meeting location with exposed person.
- Provide initial treatment and counseling:
 - Obtain exposed person's blood for baseline values.
 - Obtain source person's blood for onsite rapid HIV testing and additional laboratory testing.
 - Rapid HIV test results are available in 20-40 minutes.
 - Connect exposed person to Physician for consultation regarding HIV prophylactic medications, when indicated.
 - Initial dose of HIV prophylactic medications is provided onsite, when indicated.
 - Provide follow-up instructions to exposed person.
- Documentation is completed in exposed person's employee health record with AH Centra Care.

Post Exposure Nurse (PEN) Credentials

- State licensed nursing professionals.
- Knowledgeable HIV counselors.
- Trained in rapid HIV testing.
- Skilled in blood draws.
- Commissioned Notaries in the State of Florida.
- Function under the orders of AdventHealth Centra Care's Medical Director, Dr. Timothy Hendrix.

Follow-up Process (after initial PEN service)

In 3-5 business days, follow-up at AH Centra Care for:

- Review of lab results of exposed and source.
- Updating of immunizations, if needed.
- Discussion of Infectious Disease (ID) physician referral, if source is positive.
- Arrange for periodic surveillance for next 6 months, as directed by the physician.
 - Surveillance may not be recommended if all source labs non-reactive.

Florida Statutes

Per 2018 Florida Statutes, Chapter 381.004 HIV Testing:

- Source person HIV testing cannot be initiated until *exposed* person's blood has been drawn and HIV consents have been signed.
- An exposed person who receives the results of an HIV test shall maintain the confidentiality of the information received and of the persons tested.
- If source patient refuses, PEN may seek a court order directing the source of the exposure to submit to HIV testing.

Additional Post Exposure Nurse (PEN) Services

Mass exposure events:

- Meningitis, Tuberculosis, Pertussis, etc.
 - PEN provides telephonic OR onsite management after determination of pathogen type and consult with physician.

Unusual Exposures:

- Chemical, medication, illicit drug, inhalation, etc.
 - Telephonic consult with health care provider to provide treatment recommendation.



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM: Stewart Cruz, Community Services Director

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: Access Agreement & Construction License For Seawall Construction: Bella Vista Condominium, 2515 S. Atlantic Avenue

SYNOPSIS:

On February 28, 2023, the City Commission of Daytona Beach Shores approved a condo - city partnership concept for seawall reconstruction on city beach access properties that experienced seawall failure as a result of hurricanes Ian and Nicole. The City Commission also directed staff to work with the City Attorney's office to provide the instruments needed to realize this partnership. Attached is an Agreement Granting Temporary Ingress, Egress and Construction License For Seawall Construction document drafted by the City Attorney and executed by the Bella Vista Condominium. Approval of the agreement/license will allow the property owner access to the public beach access to construct a seawall on the city property contiguous with the condo's seawall. The condo has received a Florida Department of Environmental Protection Permit for construction of the condo's seawall and is in the process of amending to incorporate the city's seawall.

Highlights of the agreement/license include:

1. City grants the Condo authority to access and build a contiguous seawall on the beach access property.
2. Condo will build the seawall at its own cost.
3. Condo will provide proof of adequate funds to finance the project.
4. Condo will provide adequate liability insurance by listing the City as an additional named insured to cover indemnification obligations in an amount not less than \$1,000,000.
5. Expiration date shall be 10 days after completion of the seawall of December 31, 2023.

FISCAL IMPACT STATEMENT:

No impact to the current budget.

BACKGROUND:

LEGAL REVIEW:**RECOMMENDATION:**

Approval as presented.

SUGGESTED MOTION:

Approval of the Access Agreement and Construction License for Seawall Construction to allow Bella Vista Condominium to build a contiguous seawall on the 2515 S. Atlantic Avenue Daytona Beach Shores Public Beach Access.

- ATTACHMENT:**
1. Public Beach Access Damage-2515 S. Atlantic Ave-Bella Vista
 2. Access Agreement & Construction License-Bella Vista-2515. S. Atlantic Ave.

Public Beach Access Damage: 2515 S. Atlantic Avenue



This instrument prepared by/return to:

Gretchen R.H. Vose, Esq.

Vose law Firm, LLP

324 W. Morse Blvd.

Winter Park, FL 32789

Property Appraiser's

Parcel Identification No.

AGREEMENT GRANTING TEMPORARY INGRESS, EGRESS AND CONSTRUCTION LICENSE FOR SEAWALL CONSTRUCTION

This Agreement Granting Temporary Ingress, Egress and Construction License for Seawall Construction, is entered into this 4th day of April, A.D. 2023, by and between the City of Daytona Beach Shores, a Florida municipal corporation, with an address of 2990 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118 ("City"), and BELLA VISTA CONDOMINIUM, INC. ("Grantee").

(Wherever used herein, the terms "City" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Whereas, Grantee intends to construct a seawall ("Seawall") in the location described in the attached Exhibit "A" ("Seawall Location"); and

Whereas, in order to construct the Seawall in the Seawall Location, the Grantee needs to have access to and across a location ("License Location") which is owned by the City, and which will be closed for beach access during the construction of the Seawall; and

Whereas, Grantee agrees to construct the Seawall at Grantee's sole cost and expense, and that such Seawall, its design and materials shall be subject to the approval of the City; and

Whereas, in order to ensure that no liens will attach to the City's property as a result of the construction by Grantee of the Seawall, Grantee shall provide to the City a copy of the estimate of construction costs for the Seawall, and provide proof to the City, satisfactory to the City, that funds are available to pay for the construction costs; and

Whereas, at the termination of this License, Grantee agrees to restore the License Location to a condition equal to or better than its condition prior to the grant of this License; and

Whereas, upon the completion of the construction of the Seawall, the City will become the sole owner of the Seawall located on City property; and

Whereas, Grantee, for good and valuable consideration, the sufficiency of which the parties agree is adequate, indemnifies and holds the City harmless against any and all claims, losses, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the City, or its agents, officers, or employees, arising directly or indirectly or relating

in any way to this License or the use of the License Property or the construction of the Seawall, including but not limited to those claims, losses, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. The Grantee shall also provide liability insurance to the City, with a company subject to the approval of the City, with the City listed as an additionally named insured to cover all indemnification obligations of Grantee in an amount not to be less than \$1,000,000.

Now, therefore, the City and Grantee agree, for and in consideration of the sum of \$10.00, in hand paid each to the other, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, to the following:

1. The "Whereas" clauses set forth above are affirmed and ratified and are an integral part of this Agreement as if fully set forth in this portion of this Agreement.

2. The City grants to the Grantee a non-exclusive, temporary License ("License") for construction of a seawall ("Seawall") in the location as shown on Exhibit "A" hereto, that will be constructed in accordance with plans pre-approved by the City. Such License to be located over, under, across and through that certain real property as more particularly described in Exhibit "B" attached hereto ("License Area"), together with rights of ingress and egress thereto as may be required for purposes of exercising the License rights granted hereby.

3. This License shall not become effective unless and until the Grantee has provided the City the proof of adequate funds and the liability insurance as provided above.

4. Grantee shall construct the Seawall at Grantee's sole cost and expense. During any and all construction activities in the License Area, Grantee shall be responsible for the securing and maintaining of the License Area in a safe and secure manner so as to prevent public access during construction. During the term of this temporary License, Grantee shall use and maintain the License Area in a neat and clean manner so as not to become an eyesore. Prior to the end of this temporary License, the Grantee shall, at Grantee's sole cost and expense, restore and repair the License Area and any vegetation or other improvements located thereon, to a condition equal to or better than existed immediately prior to the beginning of the temporary License. Any work performed by Grantee shall be performed in a good and workmanlike manner. If Grantee does not fulfill its duties under this Agreement, the City may, but shall not be obligated to, fulfill such duties and charge the expenses incurred, plus an administrative fee of 10% to the Grantee. The Grantee agrees to pay such expenses and administrative fee, and if necessary, cause a special assessment to be made on its residents and owners as appropriate to pay such expenses and administrative fees. If such expenses and administrative fees are not paid within twenty (20) days after invoicing for same by the City, such expenses and administrative fees shall incur interest at the highest rate permitted under Florida law until paid in full. If litigation occurs regarding such collection, or regarding any other matter relating to this Agreement, the prevailing party shall pay the other side's attorneys' fees, expenses and costs.

5. The License shall terminate automatically on the earlier of ten (10) days following completion of the construction of the Seawall, or December 31, 2023. This License may be extended at the sole discretion of the City by vote of the City Commission.

6. At the completion of the construction of the Seawall, the Seawall shall be the sole property of the City.

7. The signers of this Agreement represent that they have been fully authorized to execute this Agreement by and on behalf of the entity they represent, and that all requirements precedent to the execution of this Agreement have been properly followed. The attorneys signing below on behalf of their respective clients acknowledge that they have fully investigated the authority of the signers of this Agreement, and that by their signatures, such attorneys are representing that their respective clients are fully bound by the provisions of this Agreement.

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

Signed, sealed and delivered in presence of:

WITNESSES:

CITY OF DAYTONA BEACH
SHORES, FLORIDA

Print Name: _____

By: Nancy Miller, Mayor

Print Name: _____

ATTEST:

Attorney on behalf of City of Daytona
Beach Shores

Cheri Schwab, City Clerk

Vose Law Firm, LLP
STATE OF FLORIDA)
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ date of _____ 2023, by Nancy Miller, Mayor and Cheri Schwab, City Clerk, on behalf of the City of Daytona Beach Shores, Florida, who are personally known to me or who have produced _____ as identification.

[Notary seal]

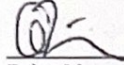
Print Name _____

Notary Public, State of Florida

My Commission Expires: _____

Signed, sealed and delivered in presence of:

WITNESSES:

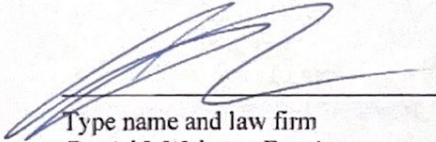


Print Name: _____

Allison Livingston

Print Name: _____

Attorney on behalf of Bella Vista Condominium, Inc.

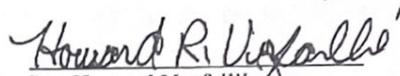


Type name and law firm
Daniel J. Webster, Esquire
Daniel J. Webster, P.A.

STATE OF FLORIDA)

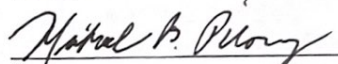
COUNTY OF VOLUSIA)

Bella Vista Condominium, Inc.



By: Howard Verfaille
Secretary Bella Vista Condo Assoc

ATTEST:



By: MICHAEL B. PILONG

Its: PRESIDENT BELLA VISTA CONDO ASSOC.

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this _____ date of _____ 2023, by _____ on
behalf of _____, who are personally known to me or who
have produced _____ as identification.

[Notary seal]

Print Name _____

Notary Public, State of Florida

My Commission Expires: _____



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM: Stewart Cruz, Community Services Director

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: Access Agreement & Construction License For Seawall Construction: Palma Bella Condominium, 3245 S. Atlantic Avenue

SYNOPSIS:

On February 28, 2023, the City Commission of Daytona Beach Shores approved a condo - city partnership concept for seawall reconstruction on city beach access properties that experienced seawall failure as a result of hurricanes Ian and Nicole. The City Commission also directed staff to work with the City Attorney's office to provide the instruments needed to realize this partnership. Attached is an Agreement Granting Temporary Ingress, Egress and Construction License For Seawall Construction document drafted by the City Attorney and executed by the Palma Bella Condominium, located at 3245 S. Atlantic Avenue. Approval of the agreement/license will allow the property owner access to the public beach access to construct a seawall on the city property contiguous with the condo's seawall. The condo has received a Florida Department of Environmental Protection Permit for construction of the condo's seawall and is in the process of amending to incorporate the city's seawall.

Highlights of the agreement/license include:

1. City grants the Condo authority to access and build a contiguous seawall on the beach access property.
2. Condo will build the seawall at its own cost.
3. Condo will provide proof of adequate funds to finance the project.
4. Condo will provide adequate liability insurance by listing the City as an additional named insured to cover indemnification obligations in an amount not less than \$1,000,000.
5. Expiration date shall be 10 days after completion of the seawall of December 31, 2023.

FISCAL IMPACT STATEMENT:

No impact to the current budget.

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

Approval as presented.

SUGGESTED MOTION:

Approval of the Access Agreement and Construction License for Seawall Construction to allow Palma Bella Condominium to build a contiguous seawall on the 3245 S. Atlantic Avenue Daytona Beach Shores Public Beach Access.

- ATTACHMENT:**
1. Public Beach Access Damage-3245 S. Atlantic Ave-Palma Bella
 2. Access Agreement and Construction License for Seawall Construction-Palma Bella-3245 S. Atlantic Ave.

Public Beach Access Damage: 3245 S. Atlantic Avenue



This instrument prepared by/return to:
Gretchen R.H. Vose, Esq.
Vose law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789

Property Appraiser's
Parcel Identification No.

AGREEMENT GRANTING TEMPORARY INGRESS, EGRESS AND CONSTRUCTION LICENSE FOR SEAWALL CONSTRUCTION

This Agreement Granting Temporary Ingress, Egress and Construction License for Seawall Construction, is entered into this ____ day of _____, A.D. 2023, by and between the City of Daytona Beach Shores, a Florida municipal corporation, with an address of 2990 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118 ("City"), and Palma Bella Condominium Associations, Inc. 3245 S. Atlantic Avenue, Daytona Beach Shores Florida, 32118 ("Grantee").

(Wherever used herein, the terms "City" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Whereas, Grantee intends to construct a seawall ("Seawall") in the location described in the attached Exhibit "A" ("Seawall Location"); and

Whereas, in order to construct the Seawall in the Seawall Location, the Grantee needs to have access to and across a location ("License Location") which is owned by the City, and which will be closed for beach access during the construction of the Seawall; and

Whereas, Grantee agrees to construct the Seawall at Grantee's sole cost and expense, and that such Seawall, its design and materials shall be subject to the approval of the City; and

Whereas, in order to ensure that no liens will attach to the City's property as a result of the construction by Grantee of the Seawall, Grantee shall provide to the City a copy of the estimate of construction costs for the Seawall, and provide proof to the City, satisfactory to the City, that funds are available to pay for the construction costs; and

Whereas, at the termination of this License, Grantee agrees to restore the License Location to a condition equal to or better than its condition prior to the grant of this License; and

Whereas, upon the completion of the construction of the Seawall, the City will become the sole owner of the Seawall located on City property; and

Whereas, Grantee, for good and valuable consideration, the sufficiency of which the parties agree is adequate, indemnifies and holds the City harmless against any and all claims, losses, judgments, costs, damages, or expenses, including attorney's fees and court costs,

incurred by the City, or its agents, officers, or employees, arising directly or indirectly or relating in any way to this License or the use of the License Property or the construction of the Seawall, including but not limited to those claims, losses, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. The Grantee shall also provide liability insurance to the City, with a company subject to the approval of the City, with the City listed as an additionally named insured to cover all indemnification obligations of Grantee in an amount not to be less than \$1,000,000.

Now, therefore, the City and Grantee agree, for and in consideration of the sum of \$10.00, in hand paid each to the other, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, to the following:

1. The "Whereas" clauses set forth above are affirmed and ratified and are an integral part of this Agreement as if fully set forth in this portion of this Agreement.

2. The City grants to the Grantee a non-exclusive, temporary License ("License") for construction of a seawall ("Seawall") in the location as shown on Exhibit "A" hereto, that will be constructed in accordance with plans pre-approved by the City. Such License to be located over, under, across and through that certain real property as more particularly described in Exhibit "B" attached hereto ("License Area"), together with rights of ingress and egress thereto as may be required for purposes of exercising the License rights granted hereby.

3. This License shall not become effective unless and until the Grantee has provided the City the proof of adequate funds and the liability insurance as provided above.

4. Grantee shall construct the Seawall at Grantee's sole cost and expense. During any and all construction activities in the License Area, Grantee shall be responsible for the securing and maintaining of the License Area in a safe and secure manner so as to prevent public access during construction. During the term of this temporary License, Grantee shall use and maintain the License Area in a neat and clean manner so as not to become an eyesore. Prior to the end of this temporary License, the Grantee shall, at Grantee's sole cost and expense, restore and repair the License Area and any vegetation or other improvements located thereon, to a condition equal to or better than existed immediately prior to the beginning of the temporary License. Any work performed by Grantee shall be performed in a good and workmanlike manner. If Grantee does not fulfill its duties under this Agreement, the City may, but shall not be obligated to, fulfill such duties and charge the expenses incurred, plus an administrative fee of 10% to the Grantee. The Grantee agrees to pay such expenses and administrative fee, and if necessary, cause a special assessment to be made on its residents and owners as appropriate to pay such expenses and administrative fees. If such expenses and administrative fees are not paid within twenty (20) days after invoicing for same by the City, such expenses and administrative fees shall incur interest at the highest rate permitted under Florida law until paid in full. If litigation occurs regarding such collection, or regarding any other matter relating to this Agreement, the prevailing party shall pay the other side's attorneys' fees, expenses and costs.

5. The License shall terminate automatically on the earlier of ten (10) days following completion of the construction of the Seawall, or December 31, 2023. This License may be extended at the sole discretion of the City by vote of the City Commission.

6. At the completion of the construction of the Seawall, the Seawall shall be the sole property of the City.

7. The signers of this Agreement represent that they have been fully authorized to execute this Agreement by and on behalf of the entity they represent, and that all requirements precedent to the execution of this Agreement have been properly followed. The attorneys signing below on behalf of their respective clients acknowledge that they have fully investigated the authority of the signers of this Agreement, and that by their signatures, such attorneys are representing that their respective clients are fully bound by the provisions of this Agreement.

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

Signed, sealed and delivered in presence of:

WITNESSES:

**CITY OF DAYTONA BEACH
SHORES, FLORIDA**

Print Name: _____

By: Nancy Miller, Mayor

Print Name: _____

ATTEST:

Attorney on behalf of City of Daytona
Beach Shores

Cheri Schwab, City Clerk

Vose Law Firm, LLP

**STATE OF FLORIDA)
COUNTY OF VOLUSIA)**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ date of _____ 2023, by Nancy Miller, Mayor and Cheri Schwab, City Clerk, on behalf of the City of Daytona Beach Shores, Florida, who are personally known to me or who have produced _____ as identification.

[Notary seal]

Print Name _____
Notary Public, State of Florida
My Commission Expires: _____

Signed, sealed and delivered in presence of:

WITNESSES:

[Signature]
Print Name: Juan M NAWARRO
[Signature]
Print Name: Sandra COOK

Palma Bella Condominium Association, Inc.

[Signature]
Michael Dixon
Vice- President
Palma Bella Condominium
Association, Inc.

ATTEST:

Attorney on behalf of Palma Bella

[Signature]
Helena Malchow
Di Masi-Burton P.A.

[Signature]
Larry Flood
Secretary
Palma Bella Condominium
Association, Inc.

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 5th date of April 2023, by Michael Dixon on
behalf of Palma Bella Condominium Assoc., Inc., who are personally known to me or who
have produced _____ as identification.

[Notary seal]



JULIE A. DZIAK
Notary Public
State of Florida
Comm# HH171314
Expires 8/30/2025

[Signature]
Print Name Julie Dziak
Notary Public, State of Florida
My Commission Expires: 08/30/2025

EXHIBIT A

(3245 S. Atlantic Avenue Seawall Area)

LEGAL DESCRIPTION

THE EASTERLY 50 FEET OF THE FOLLOWING:

A PORTION OF LOTS 17 AND 43, BLOCK "B", RIO MAR BEACHES AND A PORTION OF VACATED OCEAN BOULEVARD, AN 80 FOOT RIGHT OF WAY, PER MAP OF RIO MAR BEACHES, AS RECORDED IN PLAT BOOK 6, PAGE 95, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT 43 AND THE EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE, AN 80.00 FOOT RIGHT OF WAY AS NOW LAID OUT AND IN USE; THENCE N64°11'12"E ALONG THE NORTH LINE OF SAID LOTS 43 AND 17 AND THE EASTERLY EXTENSION THEREOF 312.06 FEET; THENCE S25°06'15"E 10 FEET; THENCE S64°11'12"W 311.93 FEET TO SAID EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE; THENCE N25°57'14"W ALONG SAID EAST RIGHT OF WAY LINE, 10.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

(3245 S. Atlantic Avenue Public Beach Access Area)

LEGAL DESCRIPTION

A PORTION OF LOTS 17 AND 43, BLOCK "B", RIO MAR BEACHES AND A PORTION OF VACATED OCEAN BOULEVARD, AN 80 FOOT RIGHT OF WAY, PER MAP OF RIO MAR BEACHES, AS RECORDED IN PLAT BOOK 6, PAGE 95, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT 43 AND THE EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE, AN 80.00 FOOT RIGHT OF WAY AS NOW LAID OUT AND IN USE; THENCE N64°11'12"E ALONG THE NORTH LINE OF SAID LOTS 43 AND 17 AND THE EASTERLY EXTENSION THEREOF 312.06 FEET; THENCE S25°06'15"E 10 FEET; THENCE S64°11'12"W 311.93 FEET TO SAID EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE; THENCE N25°57'14"W ALONG SAID EAST RIGHT OF WAY LINE, 10.00 FEET TO THE POINT OF BEGINNING.



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM: Stewart Cruz, Community Services Director

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: Access Agreement & Construction License For Seawall Construction: St. Croix Condominium, 3145 S. Atlantic Avenue

SYNOPSIS:

On February 28, 2023, the City Commission of Daytona Beach Shores approved a condo - city partnership concept for seawall reconstruction on city beach access properties that experienced seawall failure as a result of hurricanes Ian and Nicole. The City Commission also directed staff to work with the City Attorney's office to provide the instruments needed to realize this partnership. Attached is an Agreement Granting Temporary Ingress, Egress and Construction License For Seawall Construction document drafted by the City Attorney and executed by the St. Croix Condominium, located at 3145 S. Atlantic Avenue. Approval of the agreement/license will allow the property owner access to the public beach access to construct a seawall on the city property contiguous with the condo's seawall. The condo has received a Florida Department of Environmental Protection Permit for construction of the condo's seawall and is in the process of amending to incorporate the city's seawall.

Highlights of the agreement/license include:

1. City grants the Condo authority to access and build a contiguous seawall on the beach access property.
2. Condo will build the seawall at its own cost.
3. Condo will provide proof of adequate funds to finance the project.
4. Condo will provide adequate liability insurance by listing the City as an additional named insured to cover indemnification obligations in an amount not less than \$1,000,000.
5. Expiration date shall be 10 days after completion of the seawall of December 31, 2023.

FISCAL IMPACT STATEMENT:

There will be no fiscal impact to the city as the city is not expending any funds for the seawall.

BACKGROUND:

LEGAL REVIEW:**RECOMMENDATION:**

Approval as presented.

SUGGESTED MOTION:

Approval of the Access Agreement and Construction License for Seawall Construction to allow St. Croix Condominium to build a contiguous seawall on the 3145 S. Atlantic Avenue Daytona Beach Shores Public Beach Access.

- ATTACHMENT:**
1. Public Beach Access Damage-3145 S. Atlantic Ave-St. Croix
 2. Access Agreement and Construction License-St. Croix Condo 3145 S. Atlantic Ave

Public Beach Access Damage: 3145 S. Atlantic Avenue



This instrument prepared by/return to:
Gretchen R.H. Vose, Esq.
Vose law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789
Property Appraiser's Parcel Identification No.

AGREEMENT GRANTING TEMPORARY INGRESS, EGRESS AND CONSTRUCTION LICENSE FOR SEAWALL CONSTRUCTION

This Agreement Granting Temporary Ingress, Egress and Construction License for Seawall Construction, is entered into this 4th day of April, A.D. 2023, by and between the City of Daytona Beach Shores, a Florida municipal corporation, with an address of 2990 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118 ("City"), and St. Croix Condominium, Inc., a Florida not for profit corporation, with an address of 3145 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118, ("Grantee").

(Wherever used herein, the terms "City" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Whereas, Grantee intends to construct a seawall ("Seawall") in the location described in the attached Exhibit "A" ("Seawall Location"); and

Whereas, in order to construct the Seawall in the Seawall Location, the Grantee needs to have access to and across a location ("License Location") which is owned by the City, and which will be closed for beach access during the construction of the Seawall; and

Whereas, Grantee agrees to construct the Seawall at Grantee's sole cost and expense, and that such Seawall, its design and materials shall be subject to the approval of the City; and

Whereas, in order to ensure that no liens will attach to the City's property as a result of the construction by Grantee of the Seawall, Grantee shall provide to the City a copy of the estimate of construction costs for the Seawall, and provide proof to the City, satisfactory to the City, that funds are available to pay for the construction costs; and

Whereas, at the termination of this License, Grantee agrees to restore the License Location to a condition equal to or better than its condition prior to the grant of this License; and

Whereas, upon the completion of the construction of the Seawall, the City will become the sole owner of the Seawall located on City property; and

Whereas, Grantee, for good and valuable consideration, the sufficiency of which the parties agree is adequate, indemnifies and holds the City harmless against any and all claims, losses, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the City, or its agents, officers, or employees, arising directly or indirectly or relating in any way to this License or the use of the License Property or the construction of the Seawall, including but not limited to those claims, losses, judgments, costs, damages, or expenses arising

out of any accident, casualty, or other occurrence causing injury to any person or property. The Grantee shall also provide proof of liability insurance to the City, with a company subject to the approval of the City, with the City listed as an additionally named insured during the term of this temporary License to cover all indemnification obligations of Grantee in an amount not to be less than \$1,000,000.

Now, therefore, the City and Grantee agree, for and in consideration of the sum of \$10.00, in hand paid each to the other, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, to the following:

1. The "Whereas" clauses set forth above are affirmed and ratified and are an integral part of this Agreement as if fully set forth in this portion of this Agreement.

2. The City grants to the Grantee a non-exclusive, temporary License ("License") for construction of a seawall ("Seawall") in the location as shown on Exhibit "A" hereto, that will be constructed in accordance with plans pre-approved by the City. Such License to be located over, under, across and through that certain real property as more particularly described in Exhibit "B" attached hereto ("License Area"), together with rights of ingress and egress thereto as may be required for purposes of exercising the License rights granted hereby.

3. This License shall not become effective unless and until the Grantee has provided the City the proof of adequate funds and the liability insurance as provided above.

4. Grantee shall construct the Seawall at Grantee's sole cost and expense. During any and all construction activities in the License Area, Grantee shall be responsible for the securing and maintaining of the License Area in a safe and secure manner so as to prevent public access during construction. During the term of this temporary License, Grantee shall use and maintain the License Area in a neat and clean manner so as not to become an eyesore. Prior to the end of this temporary License, the Grantee shall, at Grantee's sole cost and expense, restore and repair the License Area and any vegetation or other improvements located thereon, to a condition equal to or better than existed immediately prior to the beginning of the temporary License. Any work performed by Grantee shall be performed in a good and workmanlike manner. If Grantee does not fulfill its duties under this Agreement, the City may, but shall not be obligated to, fulfil such duties and charge the expenses incurred, plus an administrative fee of 10% to the Grantee. The Grantee agrees to pay such expenses and administrative fee, and if necessary, cause a special assessment to be made on its residents and owners as appropriate to pay such expenses and administrative fees. If such expenses and administrative fees are not paid within twenty (20) days after invoicing for same by the City, such expenses and administrative fees shall incur interest at the highest rate permitted under Florida law until paid in full. If litigation occurs regarding such collection, or regarding any other matter relating to this Agreement, the prevailing party shall pay the other side's attorneys' fees, expenses and costs.

5. The License shall terminate automatically on the earlier of ten (10) days following completion of the construction of the Seawall, or December 31, 2023. This License may be extended at the sole discretion of the City by vote of the City Commission.

6. At the completion of the construction of the Seawall, the Seawall shall be the sole property of the City.

7. The signers of this Agreement represent that they have been fully authorized to execute this Agreement by and on behalf of the entity they represent, and that all requirements precedent to the execution of this Agreement have been properly followed. The attorneys signing below on behalf of their respective clients acknowledge that they have fully investigated the authority of the signers of this Agreement, and that by their signatures, such attorneys are representing that their respective clients are fully bound by the provisions of this Agreement.

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

Signed, sealed and delivered in presence of:

WITNESSES:

**CITY OF DAYTONA BEACH
SHORES, FLORIDA**

Print Name: _____

By: Nancy Miller, Mayor

Print Name: _____

ATTEST:

Attorney on behalf of City of Daytona
Beach Shores

Cheri Schwab, City Clerk

Vose Law Firm, LLP

**STATE OF FLORIDA)
COUNTY OF VOLUSIA)**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ date of _____ 2023, by Nancy Miller, Mayor and Cheri Schwab, City Clerk, on behalf of the City of Daytona Beach Shores, Florida, who are personally known to me or who have produced _____ as identification.

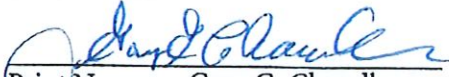
[Notary seal]

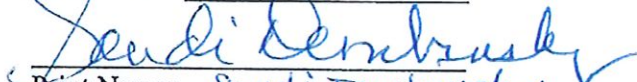
Print Name _____
Notary Public, State of Florida
My Commission Expires: _____

Signed, sealed and delivered in presence of:

WITNESSES:

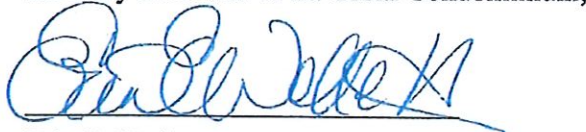
ST. CROIX CONDOMINIUM, INC.


Print Name: Gary G. Chandler

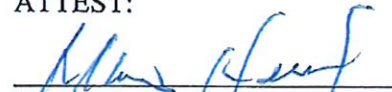

Print Name: Sandi Dembrusky


By: JoAnn Scott
Its: President

Attorney on behalf of St. Croix Condominium, Inc.


Erin E. Wollett, Esq., of Wright & Casey, P.A.

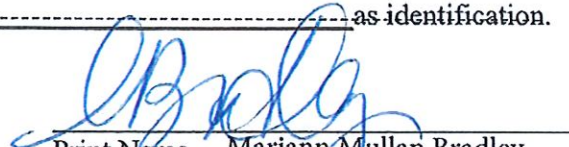
ATTEST:


By: Mario Neal
Its: Vice President

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th date of April 2023, by JoAnn Scott, as President and on behalf of St. Croix Condominium, Inc., a Florida not for profit corporation,, who are personally known to me or who have produced _____ as identification.

[Notary seal]


Print Name Mariann Mullan Bradley
Notary Public, State of Florida
My Commission Expires: October 24, 2025



MARIANN MULLAN BRADLEY
Commission # HH 168734
Expires October 24, 2025
Bonded Thru Budget Notary Services

EXHIBIT A
(3145 S. Atlantic Avenue Seawall Area)

LEGAL DESCRIPTION

THE EASTERLY 50 FEET OF THE FOLLOWING:

A PORTION OF THAT PART OF THE NORTHERLY ONE HUNDRED (100) FEET OF THE SOUTHERLY FIVE HUNDRED (500) FEET OF THE LUFBERRY TRACT AS MEASURED FROM AND PERPENDICULAR TO, THE NORTH LINE OF RIOMAR BEACHES, LYING EASTERLY OF SOUTH ATLANTIC AVENUE AS NOW LAID OUT. SAID LUFBERRY TRACT BEING OF RECORD IN MAP BOOK ONE (1), PAGE ONE HUNDRED FIFTEEN (115), OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTHERLY 100 FEET OF THE SOUTHERLY 500 FEET OF SAID LUFBERRY TRACT AND THE EAST RIGHT-OF-WAY LINE OF SOUTH ATLANTIC AVENUE, AN 80 FOOT RIGHT-OF-WAY, SAID POINT OF BEGINNING ALSO BEING A POINT ON A CURVE CONCAVE WESTERLY, HAVING A CENTRAL ANGLE OF 0°22'57", A RADIUS OF 2082.26 FEET AND A CHORD BEARING OF N15°01'48"W, RUN NORTHERLY ALONG THE ARC OF SAID CURVE AND THE EASTERLY RIGHT-OF-WAY OF SAID SOUTH ATLANTIC AVENUE 13.90 FEET; THENCE DEPART THE EASTERLY RIGHT-OF-WAY OF SAID SOUTH ATLANTIC AVENUE N74°02'44"E, 45.58 FEET; THENCE N64°22'38"E, 308.80 FEET; THENCE S25°32'59"E, 10 FEET TO THE SOUTH LINE OF THE NORTHERLY 100 FEET OF THE SOUTHERLY 500 FEET OF SAID LUFBERRY TRACT; THENCE S6°27'03"W, 237.36 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

3145 S. Atlantic Ave. Public Beach Access

LEGAL DESCRIPTION:

A PORTION OF THAT PART OF THE NORTHERLY ONE HUNDRED (100) FEET OF THE SOUTHERLY FIVE HUNDRED (500) FEET OF THE LUFBERRY TRACT AS MEASURED FROM AND PERPENDICULAR TO, THE NORTH LINE OF RIOMAR BEACHES, LYING EASTERLY OF SOUTH ATLANTIC AVENUE AS NOW LAID OUT. SAID LUFBERRY TRACT BEING OF RECORD IN MAP BOOK ONE (1), PAGE ONE HUNDRED FIFTEEN (115), OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTHERLY 100 FEET OF THE SOUTHERLY 500 FEET OF SAID LUFBERRY TRACT AND THE EAST RIGHT-OF-WAY LINE OF SOUTH ATLANTIC AVENUE, AN 80 FOOT RIGHT-OF-WAY, SAID POINT OF BEGINNING ALSO BEING A POINT ON A CURVE CONCAVE WESTERLY, HAVING A CENTRAL ANGLE OF 0°22'57", A RADIUS OF 2082.26 FEET AND A CHORD BEARING OF N15°01'48"W, RUN NORTHERLY ALONG THE ARC OF SAID CURVE AND THE EASTERLY RIGHT-OF-WAY OF SAID SOUTH ATLANTIC AVENUE 13.90 FEET; THENCE DEPART THE EASTERLY RIGHT-OF-WAY OF SAID SOUTH ATLANTIC AVENUE N74°02'44"E, 45.58 FEET; THENCE N64°22'38"E, 308.80 FEET; THENCE S25°32'59"E, 10 FEET TO THE SOUTH LINE OF THE NORTHERLY 100 FEET OF THE SOUTHERLY 500 FEET OF SAID LUFBERRY TRACT; THENCE S6°27'03"W, 237.36 FEET TO THE POINT OF BEGINNING.



**CITY COMMISSION AGENDA MEMORANDUM
APRIL 11, 2023 AGENDA**

TO: Honorable Mayor and Members of the City Commission
FROM: Stewart Cruz, Community Services Director
PREPARED BY: Stewart Cruz, Community Services Director
SUBJECT: Access Agreement & Construction License For Seawall Construction: St. Kitts Condominium, 2853 S. Atlantic Avenue

SYNOPSIS:

The St. Kitts Condominium requested authorization by the City to utilize the adjacent public beach park for storage and construction access during the reconstruction of their seawall. Attached is the license agreement drafted by the City Attorney.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

Approval as presented.

SUGGESTED MOTION:

Approval of the Access Agreement and Construction License for Seawall Construction to allow St. Kitts Condominium to utilize the Daytona Beach Shores Public Beach Park, located at 2853 S. Atlantic Avenue, for access and storage during the reconstruction of the St. Kitts seawall.

ATTACHMENT: 1. Access Agreement & Construction License-St. Kitts Condo-2853 S. Atlantic Ave

This instrument prepared by/return to:
Gretchen R.H. Vose, Esq.
Vose law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789

Property Appraiser's
Parcel Identification No.

AGREEMENT GRANTING TEMPORARY INGRESS, EGRESS AND CONSTRUCTION LICENSE FOR SEAWALL CONSTRUCTION

This Agreement Granting Temporary Ingress, Egress and Construction License for Seawall Construction, is entered into this ____ day of _____, A.D. 2023, by and between the City of Daytona Beach Shores, a Florida municipal corporation, with an address of 2990 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118 ("City"), and St. Kitts Condominium, Inc., with an address of 2422 S. Atlantic Avenue, Daytona Beach Shores, FL, 32118, ("Grantee").

(Wherever used herein, the terms "City" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Whereas, Grantee intends to construct a seawall ("Seawall") in the location described in the attached Exhibit "A" ("Seawall Location"); and

Whereas, in order to construct the Seawall in the Seawall Location, the Grantee needs to have access to and across a location ("License Location"), as illustrated in the attached Exhibit "B", which is owned by the City, and which will be closed for beach access during the construction of the Seawall; and

Whereas, Grantee agrees to construct the Seawall at Grantee's sole cost and expense, and; and

Whereas, in order to ensure that no liens will attach to the City's property as a result of the construction by Grantee of the Seawall, Grantee shall provide to the City a copy of the estimate of construction costs for the Seawall; and

Whereas, at the termination of this License, Grantee agrees to restore the License Location to a condition equal to or better than its condition prior to the grant of this License; and

Whereas, Grantee, for good and valuable consideration, the sufficiency of which the parties agree is adequate, indemnifies and holds the City harmless against any and all claims, losses, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the City, or its agents, officers, or employees, arising directly or indirectly or relating in any way to this License or the use of the License Property or the construction of the Seawall, including but not limited to those claims, losses, judgments, costs, damages, or expenses arising

out of any accident, casualty, or other occurrence causing injury to any person or property. The Grantee shall also provide liability insurance to the City, with a company subject to the approval of the City, with the City listed as an additionally named insured to cover all indemnification obligations of Grantee in an amount not to be less than \$1,000,000.

Now, therefore, the City and Grantee agree, for and in consideration of the sum of \$10.00, in hand paid each to the other, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, to the following:

1. The "Whereas" clauses set forth above are affirmed and ratified and are an integral part of this Agreement as if fully set forth in this portion of this Agreement.

2. The City grants to the Grantee a non-exclusive, temporary License ("License") for construction of a seawall ("Seawall") in the location as shown on Exhibit "A" hereto, that will be constructed in accordance with plans pre-approved by the City. Such License to be located over, under, across and through that certain real property as more particularly described in Exhibit "B" attached hereto ("License Area"), together with rights of ingress and egress thereto as may be required for purposes of exercising the License rights granted hereby.

3. This License shall not become effective unless and until the Grantee has provided the City the proof of adequate funds and the liability insurance as provided above.

4. Grantee shall construct the Seawall at Grantee's sole cost and expense. During any and all construction activities in the License Area, Grantee shall be responsible for the securing and maintaining of the License Area in a safe and secure manner so as to prevent public access during construction. During the term of this temporary License, Grantee shall use and maintain the License Area in a neat and clean manner so as not to become an eyesore. Prior to the end of this temporary License, the Grantee shall, at Grantee's sole cost and expense, restore and repair the License Area and any vegetation or other improvements located thereon, to a condition equal to or better than existed immediately prior to the beginning of the temporary License. Any work performed by Grantee shall be performed in a good and workmanlike manner. If Grantee does not fulfill its duties under this Agreement, the City may, but shall not be obligated to, fulfil such duties and charge the expenses incurred, plus an administrative fee of 10% to the Grantee. The Grantee agrees to pay such expenses and administrative fee, and if necessary, cause a special assessment to be made on its residents and owners as appropriate to pay such expenses and administrative fees. If such expenses and administrative fees are not paid within twenty (20) days after invoicing for same by the City, such expenses and administrative fees shall incur interest at the highest rate permitted under Florida law until paid in full. If litigation occurs regarding such collection, or regarding any other matter relating to this Agreement, the prevailing party shall pay the other side's attorneys' fees, expenses and costs.

5. The License shall terminate automatically on the earlier of ten (10) days following completion of the construction of the Seawall, or December 31, 2023. This License may be extended at the sole discretion of the City by vote of the City Commission.

6. The signers of this Agreement represent that they have been fully authorized to execute this Agreement by and on behalf of the entity they represent, and that all requirements precedent to the execution of this Agreement have been properly followed. The attorneys signing below on behalf of their respective clients acknowledge that they have fully investigated the authority of the signers of this Agreement, and that by their signatures, such attorneys are representing that their respective clients are fully bound by the provisions of this Agreement.

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

Signed, sealed and delivered in presence of:

WITNESSES:

**CITY OF DAYTONA BEACH
SHORES, FLORIDA**

Print Name: _____

By: Nancy Miller, Mayor

Print Name: _____

ATTEST:

Attorney on behalf of City of Daytona
Beach Shores

Cheri Schwab, City Clerk

Vose Law Firm, LLP

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ date of _____ 2023, by Nancy Miller, Mayor and Cheri Schwab, City Clerk, on behalf of the City of Daytona Beach Shores, Florida, who are personally known to me or who have produced _____ as identification.

[Notary seal]

Print Name _____
Notary Public, State of Florida
My Commission Expires: _____

Signed, sealed and delivered in presence of:

WITNESSES:

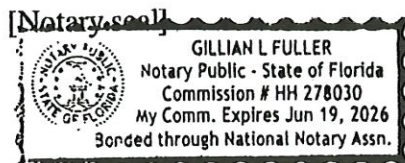
St. Kitts Condominium, Inc.

Deborah Taylor
Print Name: Deborah Taylor Vice President
Judith Batay-Corba
Print Name: JUDITH BATAY-CORBA Secretary

Denise Work
By: Denise Work
Its: President, St. Kitts Con

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5 date of April 2023, by Denise Work, on behalf of St. Kitts Condominium, Inc., who are personally known to me or who have produced _____ as identification.



Gillian Fuller
Print Name Gillian Fuller
Notary Public, State of Florida
My Commission Expires: 2026

Attorney on behalf of St. Kitts Condominium, Inc.

Name:



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2023-01: Repeal of the Supplemental Economic or Tourism Development Incentive Program (AKA The ATR Program)

SYNOPSIS:

At its March 14, 2023 meeting, the City Commission directed the City Attorney to draft an ordinance that would repeal the Supplemental Economic or Tourism Development Incentive Program, which is also known as the "Alternative Tax Relief (ATR) Program." The program was adopted in 2019; however, since then, only one (1) property, Treasure Island-2025 S. Atlantic Avenue, has an agreement with the City to benefit from this program.

Pursuant to Sec. 10-41(a) of the Daytona Beach Shores Code of Ordinances, the goals of the program are:

- (a) To promote the construction of new building or the enhanced rehabilitation of existing buildings within the incentive area thereby preserving and improving the economy, society, and culture of the city which results will enhance the quality of life of the citizens of the city; and*
- (b) To support the establishment of new businesses that will: 1. Increase the overall commercial activity within the incentive area, 2. Enhance economic or tourism development activities within the incentive area, 3. Are likely to result from development or redevelopment of properties within the incentive area, and 4. Are likely to increase property values within the city as a whole.*

The subject program was part of a three-prong approach to economic development in the City, which included: (1) lease subsidies and other incentives for businesses, (2) land purchase rebate, and (3) the Supplemental Economic or Tourism Development Incentive Program (ATR Program). The aforementioned land purchase rebate was repealed in 2021.

FISCAL IMPACT STATEMENT:

No fiscal impact to the current budget.

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

As desired by the City Commission.

SUGGESTED MOTION:

As desired by the City Commission.

ATTACHMENT: 1. Ord. 2023-01-Repealing of Supplemental Economic or Tourism
Development Incentive Program (ATR Program)

ORDINANCE 2023-01

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, REPEALING IN ITS ENTIRETY ARTICLE III, “SUPPLEMENTAL ECONOMIC OR TOURISM DEVELOPMENT INCENTIVE PROGRAM ORDINANCE”, OF CHAPTER 10 “ECONOMIC DEVELOPMENT” (CODIFIED AS SECTIONS 10-31 THROUGH 10-36) OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR NON-CODIFICATION; CONFLICTS; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Daytona Beach Shores deems it appropriate to repeal the current Article III, “Supplemental Economic or Tourism Development Incentive Program Ordinance”, of Chapter 10 “Economic Development” (codified as Sections 10-31 through 10-36) of the *Code of Ordinances of the City of Daytona Beach Shores*; and

WHEREAS, it is found to be necessary to protect the health, safety, and welfare of the citizens of the City of Daytona Beach Shores to adopt such a repeal.

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

SECTION ONE: The City Commission of the City of Daytona Beach Shores hereby repeals in its entirety Article III, “Supplemental Economic or Tourism Development Incentive Program Ordinance”, of Chapter 10 “Economic Development” (codified as Sections 10-31 through 10-36) of the *Code of Ordinances of the City of Daytona Beach Shores* which until this repeal read as follows (repealed portions shown as ~~strikethroughs~~):

CHAPTER 10. Economic Development

~~Article III. Supplemental Economic or Tourism Development Incentive Program Ordinance~~

~~Title.~~

~~This Ordinance shall be titled and may be commonly referred to as the “City of Daytona Beach Shores Supplemental Economic or Tourism Development Incentive Program Ordinance.”~~

~~Definitions.~~

~~(a).—As used in this Ordinance, unless the context shall otherwise require, the following terms shall have the following respective meanings:~~

(1).— *Benefits* means the value to the City of providing the Incentives, which generally includes:

(A).— Increased property values within the Incentive Area and the City as a whole;

(B).— Increased revenue from property taxes, business license fees and permit fees;

(C).— Increased tourism and commercial activity within the Incentive Area and the City as a whole; and

(D).— The improvement of the character of the City by enhancing existing buildings within the Incentive Area and promoting the construction of new buildings that are compatible with the desired character of the City.

(2).— *Incentive Area* means the area within the City Limits along South Atlantic Avenue/State Road A1A and County Road 4075 which Area may be modified from time to time, in which economic or tourism development activities are likely to result from development or redevelopment of properties and in which the City Council has determined that the revitalization and redevelopment thereof is essential to preserving and improving the economy, society, and culture of the City which results will enhance the quality of life of the citizens of the City.

(3).— *Development* means the activity of improving a real property to the extent of adding value to the tax base through real property improvements and the creation of employment opportunities. The definition of the term “development” set forth in Section 163.3164(14), *Florida Statutes*, which adopts the definition set forth in Section 380.04, *Florida Statutes*,¹ shall be applicable to the

¹ The referenced definition of development reads as follows; provided, however, that the reference to this statutory definition shall not be deemed to expand any permitted or other uses as set forth in the City's *Land Development Code*:

- (1) The term “development” means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.
- (2) The following activities or uses shall be taken for the purposes of this chapter to involve “development,” as defined in this section:
 - (a) A reconstruction, alteration of the size, or material change in the external

implementation and administration of this Ordinance, but is not a limitation as the intent of this Ordinance is to address both exterior and interior improvements of real property.

(4).—*Goals set forth in this Ordinance* means the objectives of the City in offering the Incentives, which generally includes:

appearance of a structure on land.

(b)—A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c)—Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any “coastal construction” as defined in s. 161.021.

(d)—Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e)—Demolition of a structure.

(f)—Clearing of land as an adjunct of construction.

(g)—Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3)—The following operations or uses shall not be taken for the purpose of this chapter to involve “development” as defined in this section:

(a)—Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b)—Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to-be-established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(c)—Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d)—The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e)—The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f)—A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g)—A change in the ownership or form of ownership of any parcel or structure.

(h)—The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

(4)—“Development,” as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, “development” refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of subsection (1).

~~(A).—Promoting the construction of new building or the enhanced rehabilitation of existing buildings within the Incentive Area thereby preserving and improving the economy, society, and culture of the City which results will enhance the quality of life of the citizens of the City; and~~

~~(B).—Supporting the establishment of new businesses that will:~~

~~(i).—Increase the overall commercial activity within the Incentive Area,~~

~~(ii).—Enhance economic or tourism development activities within the Incentive Area,~~

~~(iii).—Are likely to result from development or redevelopment of properties within the Incentive Area, and~~

~~(iv).—Are likely to increase property values within the City as a whole.~~

~~(5).—*Incentive* means a grant of any inducement having monetary value by the City that is offered to a person, firm, or corporation to pursue a Development that encourages private investment and/or creation/retention of jobs. The Incentive may also include grants from other entities that the City may be able to obtain.~~

~~(6).—*Incentive Recipient* means the private parties receiving the Incentives from the City.~~

~~(7).—*Job* means each new:~~

~~(A).—Full-time position or~~

~~(B).—Full-time equivalent position that is created as a direct result of the ongoing operation of a Development.~~

~~For the purposes of calculating the number of Jobs created by a Development, only those employed at businesses directly associated with the Development at positions permanently located within the Incentive Area shall be considered.~~

~~(b).—In addition to the definitions set forth in Subsection (a) of this Section, the definitions provided in the *City Code* and the *Florida Statutes* shall be applicable if the context so requires.~~

General Principles Relating To Award Of Grant Incentives.

(a).— ~~The City Council, at its discretion and on a case-by-case basis, subject to the provisions of this Ordinance, may enter into an Incentive Agreement with a person, firm, or corporation providing for Incentives in order to encourage and support the Development of real property within the Incentive Area.~~

(b).— ~~The Incentives shall only be provided to an Incentive Recipient after an agreement has been entered into between the City and such person, firm, or corporation, as approved by the City Attorney, which agreement shall set forth: the particulars of the Development; the Incentives to be provided; and sufficient assurances that the Benefits will accrue to the City and the Goals set forth in this Ordinance will be met by the Development (an “Incentive Agreement”). Pending the approval by the City Council of any Incentive Agreement, subject to the provisions of this Ordinance, the City Manager shall discuss the provisions of this Ordinance, aid in the completion of any Proposal and, subject to the final approval by the City Council, negotiate with the potential Incentive Recipient on behalf of the City. Each Incentive Agreement shall be approved by the City Council by adoption of a resolution. The City Council may provide Incentives in any amounts and for any periods of time.~~

Authorized Incentives.

(a).— ~~The City Council may provide to an Incentive Recipient any combination of Incentives provided for herein; provided, however, that the total amount of Incentives given to a Development must be in keeping with the Goals set forth in this Ordinance and the value of the Benefits accruing to the City and its citizens must be greater than the financial value of the Incentives to an Incentive Recipient.~~

(b).— ~~All direct Incentives of the City shall be granted in the form of payments of amounts up to,~~

~~but in no event in an amount in excess of, the sums paid in fees and taxes that have been duly paid to the City during a specified period of time after the development or redevelopment of real property. The payments are intended to be for some part or all of the increased ad valorem tax revenues derived from the development or redevelopment activities occurring on property in the nature of a tax increment above the baseline revenues deriving to the City in the pre-development or redevelopment activities with the effect upon the finances of the City being revenue neutral as to the then status quo. Upfront abatements of fees or taxes are prohibited and unlawful. Where Incentives continue for a period of more than one year, such Incentives may be graduated to increase or decrease year-to-year as the City Council sees fit, but subject to monitoring by the City to ensure compliance with the terms of any Incentive Agreement.~~

~~(c).— Funds received through such incentive grants may only be used for purposes that are determined to provide for the economic or tourism development of the City.~~

~~(d).— Funds paid through incentive grants may only be derived from lawful revenues of the City for such purposes and there is no appropriation obligation established in this Ordinance that would contravene any provision of controlling law such as the requirement that relates to the pledge of ad valorem tax revenues for the repayment of debt.~~

~~Eligibility Criteria.~~

~~(a).— In order for a Development to be eligible to receive incentives, the City Council must determine that the Development meets, or upon completion will meet, each of the following criteria:~~

~~(1).— The Development is consistent with the City of Daytona Beach Shores *Comprehensive Plan*, the implementing provisions/land development regulations of the City's *Land Development Code*, as well as the Goals set forth in this Ordinance.~~

~~(2).— Absent the provision of Incentives, the Development would be unlikely to occur or unlikely to occur at the level or scale contemplated by the developer.~~

~~(3).— The Development must be located within the Incentive Area.~~

~~(4).— The Development must have:~~

~~(A).— Real property acquisition costs of a significant type or nature, or~~

~~(B).— Significant costs of physical improvements to real property, or~~

~~(C).— Significant costs of capital improvements to City infrastructure; or~~

~~(D).— On a case-by-case basis, any other eligibility criteria that must be met upon completion of a Development in order to ensure that the Goals set forth in this Ordinance are met and that the Development provides Benefits to the City (and its citizens) in amounts that warrant the implementation of Incentives.~~

~~(b).— The provisions of this Ordinance shall be implemented by the City Council of the City of Daytona Beach Shores as it deems appropriate for the benefit of the citizens of the City on a case-by-case basis and, to that end, there shall be no entitlement to an award to any person or entity under the provisions of this Ordinance regardless of the purported attainment of criteria or any matter of like nature.~~

Disqualification for Incentives.

~~(a).— No business and no successor or affiliated business entity having one or more of the same principals and substantially the same business activity may cease business operations in the name of one business and then resume business operations in another name if the effect of such resumption is to circumvent the provisions of this Ordinance or to prolong an Incentive which has been granted.~~

(b). — ~~A business which is the subject of a code enforcement proceeding or which has an unpaid fine relating to a code enforcement proceeding of the City shall not be eligible for an Incentive under this Ordinance.~~

SECTION TWO: NON-CODIFICATION. The provisions of this Ordinance shall not be codified; provided, however, the City Clerk is directed to ensure that the codification of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* is amended to reflect the repeal of Article III, “Supplemental Economic or Tourism Development Incentive Program Ordinance”, of Chapter 10 “Economic Development” (codified as Sections 10-31 through 10-36) of the *Code of Ordinances of the City of Daytona Beach Shores*.

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

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

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

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

Passed on first reading this _____ day of _____, 2023.

Adopted on second reading this _____ day of _____, 2023.



CITY COMMISSION AGENDA MEMORANDUM APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Stewart Cruz, Community Services Director
PREPARED BY: Stewart Cruz, Community Services Director
SUBJECT: Ordinance 2023-02: Floodplain Management Regulations Update

SYNOPSIS:

Ordinance 2023-02, if adopted, would amend Chapter 2 and Chapter 10 of the Daytona Beach Shores Land Development Code, entitled "Definitions" and "Floodplain Damage Prevention," respectively, to implement administrative changes needed for the City to maintain its Federal National Flood Insurance Program (NFIP) Community Rating System (CRS) Status Class 5. The CRS Class 5 status guarantees properties located in federal special flood hazard areas (SFHA) a 25% discount on their NFIP flood insurance policy premiums.

The highlights of the proposed ordinance include:

1. All manufactured homes installed or replaced in special flood hazard areas must be elevated to or above at least the base flood elevation plus 1 foot.
2. City floodplain management definitions will become consistent with the NFIP/CRS floodplain management definitions.
3. References to regulatory floodways, which the city does not have, are eliminated.
4. Requirements for non-elevated accessory structures of certain sizes in the SFHA are established.

The proposed changes in the ordinance were drafted by the Florida Department of Emergency Management Office of Flood Management and approval from their consultant is reflected in Exhibit A attached.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

The City joined the National Flood Insurance Program (NFIP) in 1973 and currently has a NFIP Community Rating System Class 5 status (Exhibit B). In 2020 the NFIP Community Rating System

established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better. Adoption of this ordinance as presented will satisfy the minimum prerequisites in question.

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Daytona Beach Shores and such areas may be subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Participation in the NFIP's Community Rating System, which is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements, ensures citizens who purchase NFIP flood insurance policies have eligibility for premium discounts. The current premium discount for properties located in special flood hazard areas is 25% based on the City's Class 5 status.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2023-02 as presented.

SUGGESTED MOTION:

Motion to approve.

- ATTACHMENT:**
1. Ord. 2023-02. Flood Plain Management Revisions Per FDEM-Class 8 Min Standards -4-5-23
 2. Exhibit A-Approval Email from FDEM-OFM Consultant
 3. Exhibit B-Daytona Beach Shores NFIP-CRS Class 5 Certification

ORDINANCE NO. 2023-02

AN ORDINANCE OF THE CITY COUNCIL OF DAYTONA BEACH SHORES AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*; AMENDING APPENDIX “G” CHAPTER 2 ENTITLED “DEFINITIONS” AND CHAPTER 10 ENTITLED “FLOOD DAMAGE PREVENTION” PROVIDING FOR ADMINISTRATIVE AMENDMENTS TO SATISFY THE MINIMUM FEDERAL REQUIREMENTS TO MAINTAIN A COMMUNITY RATING SYSTEM RATING CLASS 8 OR BETTER STATUS, RELATED TO ACCESSORY STRUCTURES IN FLOOD HAZARD AREAS AND TO SPECIFY ELEVATION OF MANUFACTURED HOMES IN FLOOD HAZARD AREAS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, *Florida Statutes*, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Daytona Beach Shores and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Daytona Beach Shores participates in the National Flood Insurance Program and participates in the NFIP’s Community Rating System, a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements and achieved a CRS rating of Class 5, making citizens who purchase NFIP flood insurance policies eligible for premium discounts; and

WHEREAS, in 2020 the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better; and

WHEREAS, to satisfy the prerequisite and for City of Daytona Beach Shores to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated to or above at least the base flood elevation plus 1 foot, which necessitates modification of the existing requirements; and

WHEREAS, the Federal Emergency Management Agency released FEMA Policy #104-008-03 Floodplain Management Requirements for Agricultural Structures and Accessory Structures; and

WHEREAS, the City of Daytona Beach Shores has determined it appropriate to adopt

regulations that are consistent with the FEMA Policy to allow issuance of permits for non-elevated wet floodproofed accessory structures that are not larger than the sizes specified in the FEMA Policy; and

WHEREAS, the City of Daytona Beach Shores determined that it is in the public interest to amend the floodplain management regulations to better protect manufactured homes and to continue participating in the Community Rating System at the current class rating.

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 ORDAINED by the City Council of the City of Daytona Beach Shores, Florida as follows:

SECTION ONE. LEGISLATIVE FINDINGS AND DETERMINATIONS.

- (a). The City staff report and City Council agenda memorandum relating to this matter are hereby adopted as if fully set forth herein.
- (b). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.
- (c). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Council of the City of Daytona Beach Shores and incorporated into this Ordinance as if set forth *in haec verba*.
- (d). This Ordinance is an exercise of the City of Daytona Beach Shores' powers as a municipality under the provisions of Article VIII, Section 2 of the *Constitution of the State of Florida*; Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*, and other applicable law.

SECTION TWO. The City Council of the City of Daytona Beach Shores hereby amends the *Land Development Code*, Chapter 2, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Definitions,” as follows:

CHAPTER 2. DEFINITIONS

Sec. 2-1. Interpretations of certain terms and words.

For the purposes of this Land Development Code, the following terms, phrases, words and their derivations shall have the meanings given herein when not inconsistent with the text. Words used in the present tense include the future tense. Words used in the singular number include the plural and words used in the plural include the singular. The word "shall" is mandatory and the word "may" is permissive.

For the purpose of this Code, certain words or phrases shall be defined as follows. Webster's New Collegiate Dictionary (G & C Merriam Co., most recent edition) shall be used for the definition of any words not defined in this Glossary.

Sec. 2-2. General definitions.

Area of shallow flooding: ~~A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.~~

Area of special flood hazard: The area of special flood hazard shall include:

- (a) ~~All areas designated on a Flood Hazard Boundary Map as Zone A or a Flood Insurance Rate Map as Zones A, AO, AH, A1-30, AE, A99, VO, or V1-30, VE, or V. The relevant Flood Hazard Boundary Map and Flood Insurance Rate Maps, and any revisions thereto, are adopted by reference and declared to be a part of this Code.~~
- (b) ~~Other areas of the city designated on a map as having a one (1) percent or greater chance of flooding in any given year. This may include isolated topographic depressions with a history of flooding or a high potential for flooding.~~

ASCE 24: A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year. [Also defined in Florida Building Code, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation: The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Maps. [Also defined in Florida Building Code, B, Section 202.]

Coastal construction control line (setback line): The line established by the State of Florida pursuant to F.S. § 161.053, and recorded in the official records of the City, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions. That legally described line along Daytona Beach Shores' Atlantic coastal beach area officially adopted by the Governor and the Cabinet on

June 5, 1973, or as it may be amended, and east of which the erection of any structure requires prior approval from an agency of the State of Florida.

Coastal high hazard area: ~~Means an area of A~~ special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms ~~and or~~ seismic sources. Coastal high hazard areas are designated on Flood Insurance Rate Maps as Zone V1-V30, VE, or V.

Design flood: The flood associated with the greater of the following two (2) areas: [Also defined in Florida Building Code, B, Section 202.]

1. Area with a floodplain subject to a one-percent or greater chance of flooding in any year;
or
2. Area designated as a flood hazard area on the City's flood hazard map, or otherwise legally designated.

Design flood elevation: The elevation of the "design flood," including wave height, relative to the datum specified on the City's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two (2) feet. [Also defined in Florida Building Code, B, Section 202.]

Development (for the purposes of Chapter 10 Flood Damage Prevention): Any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities. See Section 163.3164 (14) and F.S. § 380.04. The citation to state law is for the purposes of ensuring the expansiveness of the definition of the term. The extent and scope of the term shall be given its broadest possible application and effect.

Elevated building: ~~A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter wall, pilings, columns (posts and piers), shear walls, or breakaway walls.~~

Existing building and existing structure: Any buildings and structures for which the "start of construction" commenced before September 7, 1973. [Also defined in Florida Building Code, B, Section 202.]

Federal Emergency Management Agency: The Federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program. Sometimes referred to as "FEMA".

Flood damage-resistant materials: Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in Florida Building Code, B, Section 202.]

~~Flood Hazard Boundary Map (FHBM): An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.~~

Flood Insurance Rate Map (FIRM): An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community. [Also defined in Florida Building Code, B, Section 202.]

~~Flood Insurance Study: The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in Florida Building Code, B, Section 202.] The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation more than one (1) foot [the water surface elevation of the base flood].~~

~~Flood protection elevation: The elevation of the base flood plus one (1) foot.~~

Floodplain: Land which will be inundated by floods known to have occurred or reasonably characteristic of what can be expected to occur from the overflow of inland or tidal waters and the accumulation of runoff of surface waters from rainfall.

Floodplain administrator: The office or position designated and charged with the administration and enforcement of Chapter 10 (may be sometimes referred to as the floodplain manager).

Floodplain development permit or approval: An official document or certificate issued by the city, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with Chapter 10.

Florida Building Code: The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

~~*Functionally dependent facility:* A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.~~

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure: Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings.

~~*Improvement, substantial:* Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds a cumulative total of fifty (50) percent of the market value of the structure either:~~

- ~~(a) Before the repair or improvement is started; or~~
- ~~(b) If the structure has been damaged and is being restored, before the damage occurred.~~

~~For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commenced, whether or not that alteration affects the external dimension of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.~~

Letter of Map Change (LOMC): An official determination issued by the Federal Emergency Management Agency that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

2. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

3. Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the City's floodplain management regulations.

4. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by the Federal Emergency Management Agency to revise the effective Flood Insurance Rate Map.

Light-duty truck: As defined in Title 40, Code of Federal. Regulations, Section 86.082-2, any motor vehicle rated at eight thousand five hundred (8,500) pounds gross vehicular weight rating or less which has a vehicular curb weight of six thousand (6,000) pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
2. Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or
3. Available with special features enabling off-street or off-highway operation and use.

Lowest floor: The lowest enclosed floor of a structure, including a basement, but not including the floor of an area enclosed only with insect screening or wood lattice as permitted by the flood damage prevention regulations in this Code. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in Florida Building Code, B, Section 202.]

Manufactured home: A structure, transportable in one (1) or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in Rule 15C-1.0101, Florida Administrative Code.]

Market value: The value of buildings and structures, excluding the land and other improvements on the parcel. Market value is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the COUNTY property appraiser.

New Construction: For the purposes of administration of Chapter 10 and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after September 7, 1973 and includes any subsequent improvements to such structures. Any structure for which the "start of construction" commenced after the effective date of the first flood management code, ordinance, or standard based upon specific technical base flood elevation data which establishes the area of special flood hazard. The term also includes subsequent improvements to such structure.

New manufactured home park or subdivision: Means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by Daytona Beach Shores.

Park trailer: A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in F.S. § 320.01.]

Recreational vehicle: A vehicle, including a park trailer, which is: [Defined in F.S. § 320.01)

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

~~A vehicular-type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreation, camping and travel use and including, but not limited to, travel trailers, truck campers, and self-propelled motor home.~~

Special flood hazard area: An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on Flood Insurance Rate Maps as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in Florida Building Code, B Section 202.] That portion of the floodplain that, on the average, is likely to be flooded at least once every one hundred (100) years. These areas are designated Zone A (Area of Special Flood Hazards) or Zone V (Area of Special Flood Hazards with Velocity) on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency.

Start of construction: The date of issuance of permits for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within one hundred eighty (180) days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns. Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in Florida Building Code, B Section 202.]

~~(Includes new construction as well as substantial improvements). The actual start of construction means the first placement of permanent construction of a structure (including a manufactured home) on site, such as the pouring of slabs or footings, installation of piles, construction of columns. Start of construction includes excavation for a basement, footings, piers or foundations or the erection of temporary forms. Permanent construction does not include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not parts of the main structure.~~

Substantial damage: Means damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal

or exceed fifty (50) percent of the market value of the building or structure before the damage occurred. [Also defined in Florida Building Code, B Section 202.]

Substantial improvement: Means any combination of repairs, reconstruction, alteration, or other improvements to a building or structure, ~~taking place during the life of a building in which the cumulative~~ the cost of which equals or exceeds fifty (50) percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in Florida Building Code, B, Section 202.]

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

~~The market value of the building should be (1) the appraised value of the building prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the building prior to the damage occurring. This term includes structures, which have incurred "substantial damage", regardless of the actual repair work performed. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions.~~

~~*Zone of imminent collapse:* Means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to ten (10) feet plus five (5) times the average annual long-term erosion rate for the site, measured from the reference feature.~~

~~*60-year setback:* Means a distance equal to sixty (60) times the average annual long-term recession rate at a site, measured from the reference feature.~~

~~*30-year setback:* Means a distance equal to thirty (30) times the average annual long-term recession rate at a site, measured from the reference feature.~~

SECTION THREE. The City Council of the City of Daytona Beach Shores hereby amends the *Land Development Code*, Chapter 10, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "Flood Damage Prevention" as follows:

CHAPTER 10. - FLOOD DAMAGE PREVENTION

ARTICLE I. - ADMINISTRATION

Sec. 10-1. - General.

10-1.1. Title.

These regulations shall be known as the Floodplain Management Regulations of the City of Daytona Beach Shores, hereinafter sometimes referred to as "this ordinance."

10-1.6.1. Finding of Fact.

1. The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damage.
3. The only flood hazard zone designations in the city are the "A" zone designation (a "special flood hazard" area) and the "V" zone which is the coastal high hazard area. Construction in these two (2) zones is prohibited and unlawful in accordance with the city's land development regulations at section 14-59.
4. ~~The city's land development regulations do not allow construction in any designated flood hazard area and therefore the only area of concern relative to flooding is in the elevation of the lowest floor of a proposed structure in relation to mean sea level and the one hundred (100) year base flood elevation.~~

10-2.3. Basis for establishing Flood Hazard Areas.

The flood insurance study for Volusia County, Florida and incorporated areas dated September 29, 2017 ~~February 19, 2014~~, and all subsequent amendments and revisions, and the accompanying flood insurance rate maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the city community services department, building division.

10-3.8. Other Duties of the Floodplain Administrator.

The floodplain administrator shall have other duties, including but not limited to:

1. Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 10-3.4;
2. ~~Require that applicants proposing alteration of a watercourse notify adjacent communities~~

~~and the Florida Division of Emergency Management, state floodplain management office, and submit copies of such notifications to the federal emergency management agency;~~

32. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to the federal emergency management agency the data and information necessary to maintain the flood insurance rate maps if the analyses propose to change base flood elevations, flood hazard area boundaries, ~~or floodway designations~~; such submissions shall be made within six (6) months of such data becoming available;

43. Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete;

54. Notify the federal emergency management agency when the corporate boundaries of the city are modified;

65. Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Public Law 97-348) and the Coastal Barrier Improvement Act of 1990 (Public Law 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on flood insurance rate maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

10-3.9. Floodplain Management Records.

Regardless of any limitation on the period required for retention of public records, the floodplain administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, including flood insurance rate maps; letters of change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this ordinance; ~~notifications to adjacent communities, the federal emergency management agency, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained~~; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at community services department, building division.

~~(Ord. No. 2013-04, § 2, 2-12-13; Ord. No. 2014-01, § 2, 2-11-14)
Sec. 10-4. — Permits.~~

10-5.1. Information for Development in Flood Hazard Areas.

The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

1. Delineation of flood hazard areas, ~~floodway boundaries~~ and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
2. Where base flood elevations, ~~or floodway data~~ are not included on the Flood Insurance Rate Maps or in the Flood Insurance Study, they shall be established in accordance with Section 10-5.2

(2) or (3).

3. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with section 10-5.2(1).

4. Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.

5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

6. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

7. Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable.

8. Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the state department of environmental protection.

~~9. Existing and proposed alignment of any proposed alteration of a watercourse.~~

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

10-5.2. Information in Flood Hazard Areas without Base Flood Elevations (approximate Zone A).

Where flood hazard areas are delineated on the flood insurance rate maps and base flood elevation data have not been provided, the floodplain administrator shall:

1. Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.

2. Obtain, review, and provide to applicants base flood elevation ~~and floodway~~ data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation ~~and floodway~~ data available from a federal or state agency or other source.

3. Where base flood elevation data are not available from another source, where available data are deemed by the floodplain administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:

a. Require the applicant to include base flood elevation data prepared in accordance with sound and generally accepted engineering practices and principles; or

b. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.

4. Where the base flood elevation data are to be used to support a letter of map change from the federal emergency management agency, advise the applicant that the analyses shall be prepared by a state licensed engineer in a format required by the federal emergency management agency, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

10-5.3. Additional Analyses and Certifications.

In addition to the requirements of this section, applicants for activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), shall have an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage

signed and sealed by a state licensed engineer for submission with the site plan and construction documents.

~~As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a state licensed engineer for submission with the site plan and construction documents:~~

~~1. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to the federal emergency management agency as specified in section 10-5.4 and shall submit the conditional letter of map revision, if issued by the federal emergency management agency, with the site plan and construction documents.~~

~~2. For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the flood insurance study or on the flood insurance rate maps and floodways have not been designated, hydrologic and hydraulic analyses that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than 1 foot at any point within the city. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.~~

~~3. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to the federal emergency management agency as specified in section 10-5.4.~~

~~4. For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.~~

10-5.4. Submission of Additional Data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from the federal emergency management agency to change the base flood elevations, ~~change floodway boundaries,~~ or change boundaries of flood hazard areas shown on flood insurance rate maps, and to submit such data to the federal emergency management agency for such purposes. The analyses shall be prepared by a state licensed engineer in a format required by the federal emergency management agency. Submittal requirements and processing fees shall be the responsibility of the applicant.

(Ord. No. 2013-04, § 2, 2-12-13; Ord. No. 2014-01, § 2, 2-11-14)

10-7.1. General.

The board of adjustments shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to F.S. § 553.73(5), the board of adjustments shall hear and decide on requests for appeals and requests for variances from the strict application

of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

10-7.2. Variance.

The board of adjustments shall hear and decide variances when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of board of adjustments may appeal such decision to the circuit court, as provided by controlling state law.

10-7.3. Limitations on Authority to grant Variances.

The board of adjustments shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 10-7.6, the conditions of issuance set forth in section 10-7.7, and the comments and recommendations of the floodplain administrator and the building official. The board of adjustments has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

10-7.3.1. ~~Reserved. Restrictions in Floodways.~~

~~A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in section 10-5.3.~~

10-7.4. Historic Buildings.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 ~~44~~ Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

ARTICLE II. - DEFINITIONS

Sec. 10-21. - General.

10-21.1. Scope.

Unless otherwise expressly stated, the words and terms contained in section 2-2 ~~2-7~~ of this Code shall, for the purposes of this ordinance, have the meanings shown in section 2-2 ~~2-7~~ of this Code.

10-21.2. Terms Defined in the Florida Building Code.

Where terms are not defined in this ordinance and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that Code.

10-21.3. Terms Not Defined.

Where terms are not defined in this ordinance or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

~~(Ord. No. 2013-04, § 2, 2-12-13)~~

ARTICLE III. - FLOOD RESISTANT DEVELOPMENT

Sec. 10-31. - Buildings and structures.

10-31.1. Design and Construction of Buildings, Structures and Facilities exempt from the Florida Building Code.

Pursuant to section 10-4.2.1, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of section 10-37.

10-31.2. Buildings and Structures Seaward of the Coastal Construction Control Lines.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

1. Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or Florida Building Code, Residential Section R322.
2. Minor structures and non-habitable major structures as defined in F.S. § 161.54 shall be designed and constructed to comply with the intent and applicable provisions of this ordinance and ASCE 24.

10-31.3. Non-elevated accessory structures.

Accessory structures are permitted below the elevations required by the Florida Building Code provided the accessory structures are used only for parking or storage and:

- (1) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas, are one-story and not larger than 600 sq. ft. and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
- (2) If located in coastal high hazard areas (Zone V/VE), are not located below elevated buildings and are not larger than 100 sq. ft.
- (3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (4) Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.

~~(Ord. No. 2013-04, § 2, 2-12-13)~~

Sec. 10-32. - Subdivisions.

10-32.1. Minimum Requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

1. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
2. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

10-32.2. Subdivision Plats.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

1. Delineation of flood hazard areas, ~~floodway boundaries~~ and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
2. Where the subdivision has more than fifty (50) lots or is larger than five (5) acres and base flood elevations are not included on the flood insurance rate maps, the information required in

section 10-5.2(1); and

3. Compliance with the site improvement and utilities requirements of section 10-33.

(~~Ord. No. 2013-04, § 2, 2-12-13; Ord. No. 2014-01, § 2, 2-11-14~~)

Sec. 10-33. - Site improvements, utilities and limitations.

10-33.1. Minimum Requirements.

All proposed new development shall be reviewed to determine that:

1. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
2. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

10-33.2. Sanitary Sewage Facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, Florida Administrative Code, and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

10-33.3. Water Supply Facilities.

All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, Florida Administrative Code, and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

10-33.4. ~~Reserved. Limitations on Sites in Regulatory Floodways.~~

~~No development, including but not limited to site improvements, and land disturbing activity involving fill or regarding, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in section 10-5.3(1) demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.~~

10-33.5. Limitations on Placement of Fill.

Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.

10-33.6. Limitations on Sites in Coastal High Hazard Areas (Zone V).

In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the state department of environmental protection and only if the engineering analysis required by section 10-5.3(4) demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with section 10-37.8(3).

~~(Ord. No. 2013-04, § 2, 2-12-13; Ord. No. 2014-01, § 2, 2-11-14)~~

Sec. 10-34. - Manufactured homes.

10-34.1. General.

All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to F.S. § 320.8249, and shall comply with the requirements of Chapter 15C-1, Florida Administrative Code, and the requirements of this Ordinance. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive

of the applicable requirements.

10-34.2. Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

1. In flood hazard area (Zone A) other than coastal high hazard areas, are designed in accordance the foundation requirements of the Florida Building Code, Residential Section R322.2 and ~~Section 10-34.4(2) of Section 10-34.4(2) of this ordinance.~~
2. In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this ordinance.

10-34.3. Anchoring.

All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

10-34.4. Elevation.

All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential Section R322.2* (Zone A) or *Section R322.3* (Zone V and Coastal A Zone). Manufactured homes that are placed, replaced, or substantially improved shall comply with the following, as applicable:

~~1. — *General Elevation Requirement.* Unless subject to the requirements of section 10-34.4.2, all manufactured homes that are placed, replaced, or substantially improved on sites located (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

~~2. — *Elevation Requirement for Certain Existing Manufactured Home Parks and Subdivisions.* Manufactured homes that are not subject to section 10-34.4.1, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:~~

~~a. — Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~

~~b. — Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above grade.~~

Sec. 10-37. - Other development.

10-37.1. General Requirements for other Development.

All development, including man-made changes to improved or unimproved real estate for which

specific provisions are not specified in this ordinance or the Florida Building Code, shall:

1. Be located and constructed to minimize flood damage;
- ~~2. Meet the limitations of section 10-33.4 if located in a regulated floodway;~~
23. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
34. Be constructed of flood damage-resistant materials; and
45. Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

~~10-37.2. Fences in Regulated Floodways.~~

~~Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of section 10-33.4.~~

~~10-37.3. Retaining Walls, Sidewalls and Driveways in Regulated Floodways.~~

~~Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of section 10-33.4.~~

~~10-37.4. Roads and Watercourse Crossings in Regulated Floodways.~~

~~Roads and watercourse crossings, including roads, bridges, culverts, low water crossings and similar means for vehicles or pedestrians to travel from one (1) side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of section 10-33.4. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of section 10-5.3(3).~~

SECTION FOUR. SAVINGS.

The prior actions of the City of Daytona Beach Shore relating to the enforcement of codes, ordinances and land development regulations relating to flood management and related programs and activities are hereby ratified and affirmed.

SECTION FIVE. CONFLICTS.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict.

SECTION SIX. CODIFICATION.

The provisions of this Ordinance 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 re-lettered 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.

SECTION SEVEN. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared.

SECTION EIGHT. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER
Approved as to form and legality:

CHERI SCHWAB, CITY CLERK

GRETCHEN R. H. VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2023.

Adopted on second reading this _____ day of _____, 2023.

Cruz, Stewart

From: Rebecca Quinn <Rebecca@RCQuinnConsulting.com>
Sent: Friday, March 17, 2023 9:10 AM
To: Cruz, Stewart
Subject: RE: Daytona Beach Shores (Volusia) Flood Ordinance Amendments (CRS)
Attachments: Daytona Beach Shores_Chpt 2_Definitions_10-17-22_RCQ.docx; Daytona Beach Shores_LDC_Chpt 10_FLOOD_10-17-22_RCQ.docx

Attached per our call. This is approved for you to move it along and put in final format. Please send it back so I can do a final proof and prepare my pre-approval checklist for DEM. Please let me see any changes, and don't hesitate to call with questions.

Rebecca Quinn, CFM
FDEM/OFM Ordinance Consultant
O: 434-296-1349
C: 443-398-5005

From: Rebecca Quinn
Sent: Monday, March 13, 2023 2:45 PM
To: Cruz, Stewart <SCruz@cityofdbbs.org>
Subject: RE: Daytona Beach Shores (Volusia) Flood Ordinance Amendments (CRS)

It's not for me to decide whether your building official needs to be on the call. He should look at the drafts and ya'll make that decision. I don't want to have a long call explaining everything, when if ya'll review ahead of a call, there will be less to talk about because we'll focus on what you have questions about. I'm sending the files again. Look at the Chapter 10 first, then Chapter 2 definitions.

Friday 17th at 1:30 is good for me.

Rebecca
O: 434-296-1349

From: Cruz, Stewart <SCruz@cityofdbbs.org>
Sent: Monday, March 13, 2023 1:53 PM
To: Rebecca Quinn <Rebecca@RCQuinnConsulting.com>; Rebecca C. Quinn <rcquinn@earthlink.net>
Subject: RE: Daytona Beach Shores (Volusia) Flood Ordinance Amendments (CRS)

Hi Rebecca, I am sorry to hear about your computer situation. I think it's happened to all of us at some point. Hopefully you were able to recover everything.

I am not sure what the deadline to adopt the ordinance is but I'd like to chat asap so Wednesday (3/15) afternoon at 130pm would work if that time slot is available. Our Building Official will not be available to participate but he can be on Friday (3/17) at 130pm if you'd like him in the conversation as well. Please confirm which date works best.

Daytona Beach Shores NFIP/CRS Class 5 Certification





CITY COMMISSION AGENDA MEMORANDUM

APRIL 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM: Noel Eaton, Planner

PREPARED BY: Noel Eaton, Planner

SUBJECT: Joyride Golf Cart Tours Establishment Land Use Proposal: 2120 S. Atlantic Avenue

SYNOPSIS:

Joyride by Devin and Danielle Eskra have presented a plan for the property at 2120 S. Atlantic Avenue (the old car wash), which is located in the GC-RD zoning district. Joyride is a golf cart tour business that would operate six-person golf cart tours around the Daytona Beach and Daytona Beach Shores area. Tour operations are currently not permitted in the GC-RD zoning district. If the City Commission directs staff to move forward with the requisite Land Development Code Amendments that would allow tour establishments in the GC-RD zoning district, Joyride has agreed to the following property improvements and standards:

- Landscape enhancements in the existing green areas of the property with focus on the areas fronting S. Atlantic Avenue.
- Placement of decorative umbrellas for outdoor dining adjacent to S. Atlantic Avenue.
- Installation of mirrored glass windows to enhance curb appeal.
- Joyride offices would be located in the south portion of the storefront abutting S. Atlantic Avenue.
- Establish a restaurant, potentially a burger and fries establishment, in the north portion of the storefront abutting S. Atlantic Avenue.
- Golf Carts will be stored inside existing car wash bays with roll down doors to avoid views from the right of way.
- A Live/Work Facility would be established in the upstairs unit (see information below for LDC amendment).
- Parking will meet the parking standards of the LDC. (Past aerial and street views show approximately thirteen (13) spaces on the subject property; six (6) on the west side of the property and seven (7) along the south property line) The number of seats proposed in the restaurant component would determine how many spaces are required.
 - Office space requires one (1) parking space for each four hundred (400) square feet of gross floor area.
 - Restaurants require one (1) parking space for each four (4) seats with a minimum of one (1) parking space for every fifteen (15) square feet of seating area PLUS one (1) parking space for every two (2) employees.

The proponents are also proposing to utilize the second floor unit on the west side of the property as a Live/Work Facility through the conditional use process. The current Live/Work regulations state that only a bona fide owners of the business may occupy the living unit portion. An additional Land Development Code amendment would need to occur to amend this requirement to allow business managers or onsite business operators to utilize the living facility associated with the Live/Work Facility for conditional use. The Live/Work facility standards also require a minimum floor area of 800 square feet for residential units. The existing residential portion on this property is approximately 704 sq/ft. If the Commission desires, this section will also need to be amended to allow for a minimum floor area of 700sq/ft for the residential portion of the Live/Work Facility.

Two renderings of the storefront's interior space have been provided as Exhibit A. The proponents have prepared a PowerPoint presentation to further illustrate their plans for the property.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

Devin and Danielle Eskra met with City Staff, including Planning and Public Safety, and have been advised to present to the City Commission. The use of a Tour Company is not defined or permitted in the City's Land Development Code today. If desired, the City Commission should direct staff to amend the Land Development Code to incorporate language related to the proposed use. This would include a definition and potential parameters for the specific use which could include permitting by right, through a conditional use or through the special exception process.

The City Commission directed staff to bring a proposal at the last meeting held on March 28th.

LEGAL REVIEW:

RECOMMENDATION:

If the Commission desires, it is recommended to direct staff to proceed with a Land Development Code amendment for a Tour Company use and the Live/Work Facility Conditional Use requirements.

SUGGESTED MOTION:

A Commissioner may make a motion as follows:

1. "I move to direct staff to proceed with a Land Development Code amendment to permit tour uses in the GC-RD zoning district and update the Live/Work Facility requirements as presented."

OR

2. The Commission can do nothing.

ATTACHMENT: 1. Exhibit A-Interior Renderings



