



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING AUGUST 13, 2019

**7:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

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

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

1. Invocation and Pledge of Allegiance

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Employee Service Awards -

Stewart Cruz 15 years

Officer Billie Phillips 15 years

B. Don Stoner to speak on Lighthouse Loop Half Marathon

C. Presentation by Rafael Montalvo Strategic Plan

2. APPROVAL OF MINUTES

A. Budget Workshop Minutes July 9, 2019

B. City Council July 9. 2019 Minutes

3. CONSENT AGENDA:

A. Public Safety Monthly Report

B. Monthly Finance Report

C. Building Division Report

D. Community Services Report

E. Renewal of Non-exclusive Franchise- Acet Recycling

4. REPORTS OF THE CITY MANAGER:

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

5. REPORTS OF THE CITY ATTORNEY:

OLD BUSINESS:

NEW BUSINESS:

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

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

- C. Resolution 2019-13 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE CITY'S TENNIS FACILITY; CREATING A CITY TENNIS FACILITY OPERATIONAL COMMITTEE AND PROVIDING FOR AN ARRAY OF MATTERS RELATING TO THE COMMITTEE; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- D. Special Exception Application SPEX12019016: Banker Nonconforming Single-Family Residential Garage Expansion-3839 S. Atlantic Avenue
- E. Non-Conforming Sign Removal Incentive Grant Application: Grand Prix Motel, 2015 S. Atlantic Avenue
- F. Consideration of date and time for board interviews
- G. Consideration for contract with Stacy Conomos for promotion of economic development programs on social media
- H. Discussion on City Manager's Salary and Performance Evaluation
- 6. **COUNCIL COMMENTS:**
- 7. **AUDIENCE REMARKS/PUBLIC COMMENTS:**
- 8. **ITEMS RECOMMENDED FOR THE NEXT AGENDA:**
- 9. **ADJOURNMENT:**

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

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-763-5364, 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 7-1-1 or 1-800-955-8771.

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

MINUTES
CITY COUNCIL BUDGET WORKSHOP
July 9, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

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

Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Lonnie Groot, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

NEW BUSINESS:

A. Proposed FY2019-2020 Budget Presentation and Discussion

Finance Director Kurt Swartzlander began the discussion with a PPT explaining the budget process. He stated that the city had a 4.2 % growth in taxable value but that was still behind 2007-2008 values. The proposed rolled back rate of 5.0046 will generate the same tax revenue as the city received this year. The current rate is 5.2300. If the council approved either tax rate, the city is the 12th lowest out of the 16 cities in Volusia County. He noted that there were a few potential large projects listed in the budget such as new accounting software, hybrid vehicles and a new fire truck. The budget was reviewed by department with any questions answered at that time. It also includes two new positions; an IT technician and an electrician helper.

ADJOURNMENT:

The meeting ended at 5:59 pm.

MAYOR
NANCY MILLER

CITY MANAGER
MICHAEL T. BOOKER

ATTEST:

CITY CLERK, CHERI SCHWAB

MINUTES
CITY COUNCIL MEETING
July 9, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

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

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

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

ORDER OF BUSINESS

1. APPROVAL OF MINUTES

A. Minutes from June 11, 2019 City Council Meeting

Mayor Miller requested the City Attorney to explain that the motion made by CMBR. Politis under the discussion on electronic written communications, was too broad in nature. He will draft a policy that states when and on what terms a councilmember can act.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to Approve the minutes from June 11, 2019.

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

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

B. Minutes from June 25, 2019 City Council Meeting

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to Approve Minutes from June 25, 2019.

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

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

2. CONSENT AGENDA:

A. Approval of \$2,000. for training

COUNCILMEMBER MICHAEL POLITIS moved, seconded by VICE MAYOR RICHARD BRYAN to Approve \$2,000.00 for training.

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

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

3. REPORTS OF THE CITY ATTORNEY:

The City Attorney handed out a draft letter requesting an Attorney General Opinion (AGO) regarding the recent firefighter cancer legislation that was enacted. With the city considered a public safety department, as defined by law, the officers are not full-time firefighters. The new legislation would have an impact that can affect the budget. There were no objections to requesting the opinion. Attorney Groot also handed out a draft ordinance for partially revising the city code. He would like to put it on the next agenda to begin its review. He also asked for a follow-up work session regarding the City Charter.

4. REPORTS OF THE CITY MANAGER:

The City Manager congratulated Director Dembinsky for becoming the 2nd Vice President for the Florida Police Chief Association. He thanked Director Swartzlander for his work on the budget. Facilitator Rafael Montalvo will be presenting the follow-up from the strategic planning sessions. He reminded the council that the meeting for July 23rd and August 27th were cancelled.

OLD BUSINESS:

- A. Ordinance 2019-06 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO A COMPREHENSIVE ECONOMIC DEVELOPMENT PROGRAM; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR ECONOMIC DEVELOPMENT ACTIVITIES SUCH AS GRANT AGREEMENTS, DEVELOPMENT AGREEMENTS AND A BUSINESS LOYALTY PROGRAM; PROVIDING FOR THE CREATION OF THE CITY OF DAYTONA BEACH SHORES ECONOMIC DEVELOPMENT PROGRAM TRUST FUND; PROVIDING FOR AN ARRAY OF IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

CMBR Lindauer explained that he would like to flip the lease subsidy percents to the original plan of 30/20/10. The remaining council were in agreement. Audience member Christos Mavronas spoke. He owns Steve's Famous Diner and is hoping to purchase the property at 2400 S. Atlantic Avenue to open a soup and sandwich restaurant. He asked if he would qualify for the incentives. CMBR Frizalone responded that he would qualify since he had not closed on the property yet.

COUNCILMEMBER MEL LINDAUER moved, seconded by VICE MAYOR RICHARD BRYAN to Adopt Ordinance 2019-06 on second reading with the staff recommended amendments relating to: 1) addressing the Certificate of Use Fee as a one-time fee 2) to specifically refer to facade and beautification grants as examples of the other types

of agreements authorized to enhance the high quality economic development of the city 3) capping the total benefits under a lease subsidy, facade or beautification or similar agreement to \$20,000.00 additionally: to modify the lease subsidy amounts to be descending incentives with up to 30% for the first year of the lease, up to 20% for the second year of the lease and up to 10% for the third year of the lease with the grants to be generally based upon the number of new jobs created, the desirability of the type of business for the city and the capital investment to be made.

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

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

NEW BUSINESS:

- A. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, SETTING THE PROPOSED MILLAGE RATES FOR THE CITY FOR FISCAL YEAR 2019-2020; PROVIDING AN EFFECTIVE DATE.

Attorney Groot read the full text of the resolution with the proposed millage rate of 5.0046 (the rolled back rate). The council discussed the proposed millage rate. Mayor Miller stated that there were several items that were still waiting for cost estimates. She felt utilizing the current rate of 5.23 initially would be beneficial and then once the estimates were in, the rate could be lowered in September at adoption.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to adopt Resolution 2019-12 on first reading.

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

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

- B. Nonconforming Sign Removal Incentive Grant Application: 3226 S. Atlantic Avenue, Water's Edge Apartments

City Planner Stewart Cruz read from his staff report. The owner previously received a now expired sign grant in 2018 for \$5,200. Mr. Cruz added that no funds were given to the applicant in 2018. He would like to receive another grant award for the same amount. Mr. Cruz informed the council that the grant amount this year is capped at \$3,900. This is the first time an applicant has requested grant funds twice and it is the council's option to award the grant money.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by VICE MAYOR RICHARD BRYAN to approve the Nonconforming Sign Removal Incentive Grant Application for the Water's Edge Apartments in the amount of \$3,900 on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

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

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

C. Discussion on Request For Proposals (RFP) for City owned land located at 2900 South Atlantic Avenue.

It was explained that all submittals would be reviewed by the Economic Development Agency. A short list would be created and those would be interviewed by the entire City Council. The following audience members spoke:

Rick Brown stated that he lives across the street from the property and did not want additional houses built. He believed the property should be for community usage as it was part of the Oceans West PUD. It was explained to him that this corner piece was not part of that PUD. Investor Doug Cook previously purchased it and the city acquired it from him. It is currently zoned as commercial use.

Deanna Buricharat explained that she lived in the Cloverleaf North and was speaking for many of the residents there. The main concern is safety. The additional traffic that would be generated by adding many apartments or townhomes would make travel on Oceans West Blvd. very difficult. Marcia Holman reviewed the RFP from the website and felt there were many errors. She felt 30 days were not enough time to receive valid responses. She also thought many parts did not very professional.

John Schmitz commented that he was glad to see the section forbidding flipping the property. He felt some funds from the sale could be used for facade grants.

Michael Kane inquired if the city had a written economic plan.

David Lesley did not want the property to be sold at all. He questioned whether CMBR Frizalone was violating the Sunshine Law with his weekly meetings.

CMBR Frizalone explained that he understands the residents. It appears high end townhomes are more favorable than an apartment complex. The traffic would be manageable. CMBR Politis added that the council can control the development through the RFP process. The council discussed the number and type of units to include in the RFP and it was decided to use 24 - 25 townhome units.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to proceed with the RFP process for the property at 2900 South Atlantic Avenue..

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

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

COUNCIL COMMENTS:

CMBR Frizalone stated there was good news regarding the application for a USTA grant for the proposed sixth tennis court. He explained that there were audience members who signed up to speak regarding GVTL league play. It seemed that the informal tennis committee has placed a rule that requires 50% of players are residents. With the reservation system, you can reserve a court and bring 3 non-residents to play with you. That is only 25%. He felt creating a council designated tennis authority to create policies and rules was necessary. He nominated CMBR Politis who has past GVTL experience, to work with the committee. CMBR Politis stated that he would help in any way possible. CMBR Lindauer welcomed the new businesses, Flapjack Johnny's and hopefully the new soup and sandwich restaurant. He explained that he had created a slogan for the economic

development literature, "Daytona Beach Shores open for business". Mayor Miller introduced Johnny from Flapjack Johnny's. She reminded the audience about the next Coffee with the Mayor. Director Dembinsky will be in attendance to answer any questions by the residents. There is a lecture on Thursday night by Bea Schemer on Remembering the Holocaust. Vice-Mayor Bryan had questions regarding the proposed tennis committee. He would like a resolution added on the next meeting agenda.

AUDIENCE REMARKS/PUBLIC COMMENTS:

Ellen Frizalone spoke on the ability of the GVTL league to play here. Since the courts are open to the public, she didn't think it was fair for an informal committee to impose a 50% resident requirement. She stressed the need for a council appointed tennis advisory committee.

Carl Campbell also spoke on allowing the GVTL to have the courts to play on each month. Bob Knight stated that he was a former Shores resident. He felt that the rules posted don't allow for any league play and requested the council to allow this to happen.

It was mentioned that the rosters for GVTL had to be submitted by August 16th. The council will not meet again until August 13th. Attorney Groot explained that the council by consensus could allow league play with only the 25% residency requirement. After a brief discussion, the council agreed to the 25% residency for the league play at 9:30 am.

ITEMS RECOMMENDED FOR THE NEXT AGENDA:

A resolution to create the tennis advisory committee

ADJOURNMENT:

The meeting ended at 9:09 p.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY OF DAYTONA BEACH SHORES

DEPARTMENT OF PUBLIC SAFETY

3050 South Atlantic Avenue

Daytona Beach Shores, Florida 32118

Office of Director of Public Safety

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

MONTHLY REPORT FOR JUNE 2019 *sl*

	<i>Jun-19</i>	<i>19/YTD</i>	<i>Jun-18</i>	<i>18/YTD</i>
<i>Police Related Calls</i>	2,976	18,317	2,404	15,580
<i>Fire Related Calls</i>	49	246	33	207
<i>Rescue Related Calls</i>	101	591	116	670
<i>Fire Related Alarms Sounding</i>	17	71	11	86
<i>Traffic Citations</i>	460	2,798	462	2,603
<i>Written Warnings</i>	109	715	156	1,174
<i>Building Inspections</i>	54	319	79	540
<i>Arrests: Adults</i>	59	360	57	402
<i>Juveniles</i>	0	3	2	11
<i>Civil Citations</i>	10	89	1	109
<i>City Ordinance Charges</i>	0	0	0	0
<i>Florida State Statute Charges</i>	68	677	95	750
<i>Accidents: Total</i>	36	147	22	153
<i>Street/Highway</i>	16	79	11	96
<i>Parking Lot</i>	20	68	12	58

Stephan Dembinsky Public Safety Director

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2019-06-01 through 2019-06-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
EXTRA PATROL	EP	787	26.44 %	26.23
TRAFFIC STOP	TS	694	23.32 %	23.13
MISCELLANEOUS LE CALL	MISC	355	11.93 %	11.83
PROPERTY CHECK	PRC	269	9.04 %	8.97
SUSP PERSON	SPER	65	2.18 %	2.17
SUSP VEHICLE	SVEH	49	1.65 %	1.63
WALK & TALK	WT	44	1.48 %	1.47
TELEPHONE HANDLE	THC	33	1.11 %	1.10
FLAG DOWN	FLAG	29	0.97 %	0.97
SUSP INCIDENT	SINC	29	0.97 %	0.97
NARCOTICS	NARC	26	0.87 %	0.87
DISTURBANCE	DIST	25	0.84 %	0.83
MVA	MV	25	0.84 %	0.83
MEDICAL EMERGENCY	MED1	23	0.77 %	0.77
TRESPASSERS	TRES	20	0.67 %	0.67
TRAFFIC CONTROL	TC	19	0.64 %	0.63
FIRE ALARM	ALARMF	18	0.60 %	0.60
DIRECTED PATROL REQUEST	DPR	17	0.57 %	0.57
MEDICAL NON-EMERG	MED2	17	0.57 %	0.57
CIVIL COMPLAINT	CIVIL	16	0.54 %	0.53
INVESTIGATION	INV	16	0.54 %	0.53
RECKLESS DRIVER	RD	16	0.54 %	0.53
TOWED VEHICLE	TOW	15	0.50 %	0.50
911 CK/OPEN LINE	911CK	14	0.47 %	0.47
FALL- NON EMERGENCY	TRAU3	14	0.47 %	0.47
WALKUP	WALKUP	14	0.47 %	0.47
SUSPECT STOP	SS	13	0.44 %	0.43
ASSIST AGENCY	ASSIST	12	0.40 %	0.40
NOISE	NOISE	12	0.40 %	0.40
ELEVATOR CALL	ELEV	11	0.37 %	0.37
FOUND PROPERTY	PROPF	11	0.37 %	0.37
HIT&RUN MVA	MVHR	11	0.37 %	0.37
ILLEGAL PARKING	PARK	11	0.37 %	0.37
INFORMATION GIVEN	INFO	11	0.37 %	0.37
STEP ZONE	STP	11	0.37 %	0.37
ANIMAL COMPLAINT	AC	10	0.34 %	0.33
DISABLED VEHICLE	DAV	9	0.30 %	0.30
RADAR	RADAR	9	0.30 %	0.30
THEFT	THEFT	9	0.30 %	0.30
WARRANT	WAR	9	0.30 %	0.30
ASSAULT/BATTERY	ABAT	8	0.27 %	0.27
FLEEING DRIVER	FLEE	8	0.27 %	0.27
FRAUD	FRAUD	8	0.27 %	0.27
ROAD OBSTRUCTION	RDOB	8	0.27 %	0.27
DRUNK PERSON	IP	7	0.24 %	0.23
SPECIAL DETAIL	SDL	7	0.24 %	0.23

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2019-06-01 through 2019-06-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
BURGLARY ALARM	ALARM	6	0.20 %	0.20
CITY ORDINANCE VIOLATION	COV	6	0.20 %	0.20
DRUNK DRIVER	DUI	6	0.20 %	0.20
MENTALLY ILL PER	MIP	6	0.20 %	0.20
WELL BEING CHECK	WBC	6	0.20 %	0.20
BUSINESS ALARM	ALARMB	5	0.17 %	0.17
MEDICAL UNKNOWN	ALARMM	5	0.17 %	0.17
MISSING PERSON	MP	5	0.17 %	0.17
DOMESTIC DISTURBANCE	DV	4	0.13 %	0.13
FIGHT	FIGHT	4	0.13 %	0.13
SHOPLIFTING	SHOP1	4	0.13 %	0.13
SUICIDAL PERSON	SP	4	0.13 %	0.13
TRAFFIC LITE OUT	TLO	4	0.13 %	0.13
TRAUMA EMERGENCY	TRAU1	4	0.13 %	0.13
VANDALISM	VAND	4	0.13 %	0.13
ATT TO CONTACT	ATC	3	0.10 %	0.10
CARBREAK	CB	3	0.10 %	0.10
CARDIAC ARREST	CPR	3	0.10 %	0.10
LOST PROPERTY	PROPL	3	0.10 %	0.10
MVA W/ INJURIES	MVI	3	0.10 %	0.10
REPOSSESSED VEH	REPO	3	0.10 %	0.10
STROKE / CVA	CVA	3	0.10 %	0.10
TRAUMA CRITICAL	TRAUE	3	0.10 %	0.10
TRAUMA NON-EMERG	TRAU2	3	0.10 %	0.10
WELL BEING CHECK MEDICAL	WBCF	3	0.10 %	0.10
BURG/RESD	BURGR	2	0.07 %	0.07
ESCORT	ESCORT	2	0.07 %	0.07
FAILURE TO PAY	FTP	2	0.07 %	0.07
FIRE OUTSIDE STRUCTURE	FOS	2	0.07 %	0.07
MISC FIRE SERVICE CALL	MISCF	2	0.07 %	0.07
UNCONSCIOUS	UNC	2	0.07 %	0.07
911 CK/OPN LINE/MED HAZ	911MED	1	0.03 %	0.03
DEAD PERSON	DEAD	1	0.03 %	0.03
ENVIRONMENTAL	ENV	1	0.03 %	0.03
FIRST AID CALL	FAID	1	0.03 %	0.03
FORGED CHECK	CHECK	1	0.03 %	0.03
HAZARDOUS COND W INJ	HZMI	1	0.03 %	0.03
HOLD UP ALARM	ALARMH	1	0.03 %	0.03
JUVENILE	JUV	1	0.03 %	0.03
LASER	LASER	1	0.03 %	0.03
LOST/FOUND PET INFO	PET	1	0.03 %	0.03
MISSING PERSON RECOVERED	MPR	1	0.03 %	0.03
MVA MAJOR	MVMI	1	0.03 %	0.03
MVA W/ HAZARD	MVH	1	0.03 %	0.03
NE ASST- FIRE REQ	LEO2	1	0.03 %	0.03
PANIC ALARM	ALARMP	1	0.03 %	0.03

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2019-06-01 through 2019-06-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
POWER LINES HAZARD	PL	1	0.03 %	0.03
STRUC FIRE COMM/HIGHRISE	SFCH	1	0.03 %	0.03
TOTAL CALLS:		2,976	100.00%	99.20

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

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

JUNE 2019 STATISTICS

FIRE CALLS	CURRENT MONTH			YEAR TO DATE			PRIOR YEAR		
ENGINE RESPONSE	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
STRUCTURE FIRES	0	0	2	1	0	2	1	0	2
HAZARDOUS CONDITIONS	2	0	0	17	6	2	6	1	1
VEHICLE FIRES	0	0	0	0	0	0	1	0	0
BOAT FIRES	0	0	0	0	0	0	0	0	0
OTHER FIRES NOT LISTED	2	0	0	7	3	2	6	2	0
VEHICLE CRASHES W/ENGINE RESPONSE	3	0	0	9	0	0	5		0
SERVICE CALLS	25	4	0	105	27	3	106	8	2
FIRE ALARMS	15	2	0	67	4	3	84	1	1
CANCELLED EN ROUTE	6	3	0	37	13	10	43	7	10
TOTALS	53	9	2	243	53	22	252	19	16

CURRENT MONTH ESTIMATED FIRE DAMAGES

CITY: \$0
COUNTY: \$0
MUTUAL AID: \$10,000

INSPECTIONS	CURRENT MONTH		YEAR TO DATE		PRIOR YEAR	
	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP
HIGH RISE	5	2	25	49	29	56
HOTEL/MOTEL	6	1	35	35	56	108
ASSEMBLY	0	1	3	5	4	6
MERCANTILE	4	3	11	11	23	18
RESTAURANT	5	1	11	3	15	13
BUSINESS	5	4	44	19	38	40
OTHER	2	0	36	0	51	7
CONSTRUCTION	15	0	42	0	42	5
OCCUPATIONAL LICENSES	0	0	0	0	0	0
APARTMENTS/CONDO	0	0	9	8	17	12
TOTALS	42	12	216	130	275	265

PLANS EXAMINATION HOURS: 2 HRS

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

JUNE 2019 STATISTICS

EMS CALLS	CURRENT MONTH			YEAR TO DATE			PRIOR YEAR		
	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
ALS CALLS	36	8	1	286	49	9	355	49	4
BLS CALLS	48	6	2	197	39	9	239	22	2
TOTALS	84	14	3	483	88	18	594	71	6



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

TRAINING SEMINARS ATTENDED

Month of June 2019

<i>Vincent Castellano</i>	<i>6/5</i>	<i>The Leading Edge FTO DSC</i>
<i>David Williams Norman Medders</i>	<i>6/7</i>	<i>Agency Inspector DSC</i>
<i>Kristy Brown Jeff Zephir Kathryn Gotz David Williams</i>	<i>6/10-11</i>	<i>Communicating with people who are deaf Green Cove Springs</i>
<i>Darius DeBarros</i>	<i>6/10-11</i>	<i>Hand to Hand Combat Jacksonville</i>
<i>Gary Malphurs</i>	<i>6/10-14</i>	<i>Interviews & Interrogation DSC</i>
<i>Carlos Rodriguez Liz Ortman</i>	<i>6/11</i>	<i>Forensic Services Seminar Orlando</i>
<i>Joanne Sweeney</i>	<i>6/24-28</i>	<i>Accreditation Conference Orlando</i>
<i>David Lockwood</i>	<i>6/26</i>	<i>ADA Roundtable Orlando</i>
<i>Norman Medders Bill Frank</i>	<i>6/26-28</i>	<i>FL IA conference Clearwater</i>



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MONTHLY REPORT FOR JUNE 2019

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

Replace clutch assembly	weed eater
Replace alternator	veh #130
Replace backup camera	veh #140
Replace battery	veh #140
Replace rotors	veh #140
Replace door moulding	veh #125
Replace chain saw bar	chain saw
A/C repair	veh #121
Repair hood lift support	veh 125
Repair damaged glove compartment	veh #130

EXECUTIVE SUMMARY

Fiscal Year-To-Date Financial Report

Month Ending June, 2019

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CURRENT YEAR OPERATIONAL PERFORMANCE				
Fund or Fund Segment	YTD Revenue	YTD Expense	Revenue Less Expense	Margin %
General Fund Operations	\$11,812,699	\$8,620,385	\$3,192,313	27%
General Obligation Debt Service	\$2,831,167	\$2,419,421	\$411,746	15%
General Obligation Construction	\$0	\$6,500	(\$6,500)	
General Fund Sub-Total	\$14,643,866	\$11,046,306	\$3,597,560	25%
Sewer Fund Operations	\$2,227,675	\$1,759,722	\$467,953	21%
Sewer Fund Restricted Impact Fee	\$56,677	\$0	\$56,677	100%
Sewer Fund Sub-Total	\$2,284,352	\$1,759,722	\$524,630	23%
TOTAL ALL FUNDS FISCAL YTD	\$16,928,218	\$12,806,029	\$4,122,190	24%

CASH / INVESTMENT POSITIONS PERFORMANCE				
	Current Month Current Year	Current Month Prior Year	12-Month Change	Percent Change
General Fund (excl. G.O. Funds)	\$18,825,286	\$17,333,996	\$1,491,290	9%
Sewer Fund	\$9,045,090	\$8,229,762	\$815,328	10%
Sub-Total Operating Funds	\$27,870,375	\$25,563,758	\$2,306,617	9%
Gen. Obligation [GO] Construction & Debt	\$2,405,629	\$2,316,011	\$89,618	4%
TOTAL ALL FUNDS	\$30,276,004	\$27,879,769	\$2,396,235	9%

PROJECTED FISCAL YEAR END (FYE) CASH FLOW FROM NORMAL OPERATIONS**			
	General Fund	Sewer Fund	Total
Current Cash vs. Prior Year Ending Cash	\$3,613,985	\$429,574	
Add Back for Current Year CS Construction Expense	\$0	N/A	
Historical Mean Projected Remaining Cash Flow	(\$2,026,383)	\$380,468	
PROJECTED FYE NORMALIZED CASH FLOW	\$1,587,602	\$810,042	\$2,397,644

Saleable Investment Properties: (Cost Basis)	
2900 S. Atlantic Ave.	\$2,796,053
2608-12 S. Atlantic Ave.*	\$917,535

* This property is currently producing rental income.

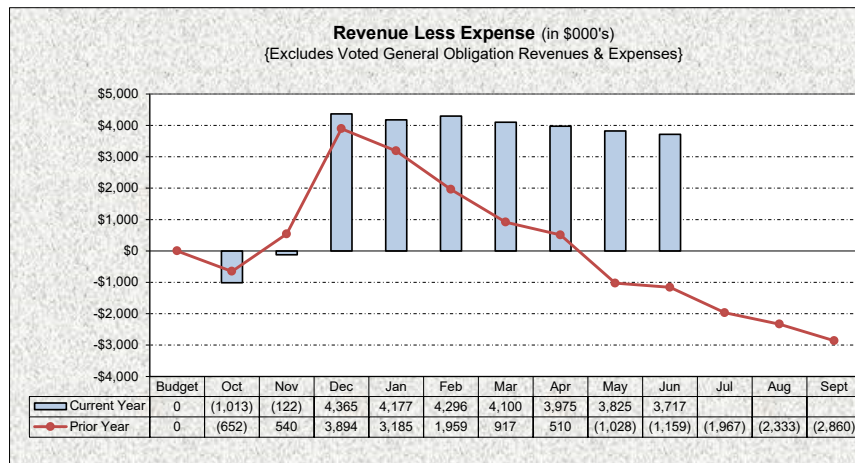
All Funds Budget Performance Summary Report (in 000's)

19-Jul-19

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NON-G.O. FUNDS	June, 2019		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favorable / (Unfavorable)	% vs. Prior Year
Revenues ('000s)					
General Fund	\$13,913	\$11,813	\$11,899	(\$86)	-1%
Utility Fund	\$3,440	\$2,284	\$2,236	\$49	2%
Total Revenues & Appropriations	\$17,353	\$14,097	\$14,134	(\$37)	0%
Expenses ('000s)					
General Fund Less Capital	\$12,871	\$8,469	\$8,690	\$221	3%
General Fund Capital	\$1,042	\$151	\$4,811	\$4,659	97%
Utility Fund	\$3,440	\$1,760	\$1,792	\$32	2%
Total Expenses & Appropriations	\$17,353	\$10,380	\$15,293	\$4,913	32%
Revenue Less Expense ('000s)					
General Fund	\$0	\$3,192	(\$1,602)	\$4,795	
Utility Fund	\$0	\$525	\$443	\$81	
Revenue Less Expense	\$0	\$3,717	(\$1,159)	\$4,876	

VOTED GENERAL OBLIGATION	June, 2019		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favor / (Unfavor)	% vs. Prior Year
General Obligation Revenue	\$2,890	\$2,831	\$2,869	(\$38)	-1%
General Obligation Expense	\$2,890	\$2,426	\$2,431	\$5	0%
Voted Gen. Oblig. Rev. Less Exp.	\$0	\$405	\$438	(\$33)	



	Current Year	Prior Yr
Prior Year (No G.O.)		
Budget	0	0
Oct	(1,013)	(652)
Nov	(122)	540
Dec	4,365	3,894
Jan	4,177	3,185
Feb	4,296	1,959
Mar	4,100	917
Apr	3,975	510
May	3,825	(1,028)
Jun	3,717	(1,159)
Jul		(1,967)
Aug		(2,333)
Sept		(2,860)

General Fund Detail Budget Report

19-Jul-19

	June, 2019		VERSUS PRIOR YEAR TO DATE		
	Amended Current Budget	Current YTD Actual	Prior YTD	Actual	Vs. Prior Yr. Favorable / (Unfavorable) % vs. Prior Year
Revenues/Sources					
Ad-Valorem Taxes	8,035,600	8,021,230	7,720,699	300,530	4%
Business Taxes	100,800	100,269	97,831	2,439	2%
Utility Taxes	1,080,100	691,287	729,576	(38,289)	-5%
Permits & Franchise Fees	918,700	536,659	604,861	(68,203)	-11%
Intergovernmental	802,100	469,639	516,984	(47,344)	-9%
Donations	0	0	0	0	
Charges for Services	1,466,100	1,166,637	1,209,472	(42,835)	-4%
Fines & Forfeitures	84,700	138,841	100,510	38,331	38%
Non-G.O. Interest	154,700	155,872	112,729	43,143	38%
Unrealized Investment G/(L)	0	0	0	0	
Miscellaneous & Fixed Asset Sales	47,500	25,115	322,864	(297,748)	-92%
Internal Services	676,200	507,150	483,000	24,150	5%
Non G.O. Transfer In-Fund Balance	546,400	0	0	0	
Non-G.O. Gen. Fund Revenue	\$13,912,900	\$11,812,699	\$11,898,526	(\$85,827)	-1%

Operating Expenditures

Excluding CAPITAL Expense					
Legislative	179,400	91,529	116,954	25,425	22%
Executive	699,400	520,820	499,249	(21,571)	-4%
Finance	586,900	441,647	405,973	(35,674)	-9%
Legal Counsel	166,900	75,196	96,381	21,185	22%
Comp. Planning	125,500	85,659	84,284	(1,375)	-2%
Other Gov't Services	269,100	181,184	180,136	(1,048)	-1%
Public Safety Operations	5,415,300	3,953,207	3,784,134	(169,073)	-4%
Building Dept.	535,700	382,708	375,226	(7,482)	-2%
Phy. Envir. -- Solid Waste/Recycle	1,135,300	666,295	722,957	56,662	8%
Public Works Operations	1,178,300	796,602	771,581	(25,021)	-3%
Inventory	0	0	0	0	
Benefit Termination Payout	29,400	32,508	56,970	24,462	43%
Parks & Rec	394,800	205,192	712,917	507,725	71%
Community Center	165,200	127,526	0	(127,526)	
Senior Center	172,900	113,824	121,695	7,871	6%
Contingency/Transfers	1,015,000	0	0	0	
Long-Term Debt	802,300	795,084	761,729	(33,355)	-4%
Non-G.O. Operations Expense	12,871,400	8,468,982	8,690,186	\$221,204	3%
Non-G.O. CAPITAL Expense	1,041,500	151,403	4,810,563	\$4,659,160	
Total Non-G.O. Expense	13,912,900	8,620,385	13,500,749	\$4,880,364	
Non-G.O. Revenue Less Expense	\$0	\$3,192,313	(\$1,602,224)	\$4,794,537	299%

General Obligation (G.O.) Debt Service

Debt Service Ad-Valorem Revenue	2,870,300	2,821,919	2,863,906
Debt Service Interest Revenue	13,200	9,249	4,896
UG Utils- Debt Service Expense	2,883,500	2,419,421	2,403,649
G.O. Revenue Less Expense	\$0	\$411,746	\$465,153

G.O. Construction

Streetscape Prjct.- Fund Bal Rev. Transfer	6,500	0	0
Streetscape. - Construction Expense	6,500	6,500	27,300
G.O. Construction Rev. Less Exp.	\$0	(\$6,500)	(\$27,300)

Utility Fund Detail Budget Report

07/19/19

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	June, 2019		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favorable / (Unfavorable)	% vs. Prior Year
Operations Revenues					
Charges for Services	\$3,349,500	\$2,160,095	\$2,136,512	\$23,584	1%
Interest	74,000	56,980	40,023	16,957	42%
Sale of Fixed Assets / Misc.	0	10,600	(295)	10,895	3696%
Total Operating Revenues	\$3,423,500	\$2,227,675	\$2,176,240	\$51,436	2%
Operations Expenditures					
Sewer Operating Incl. Depreciation	\$3,423,500	\$2,014,900	\$2,005,073	(\$9,827)	0%
- Less Debt Service Principal [a]		(255,177)	(212,987)		
- Less Not Offset Capital Expense [b]		0	0		
Total Operating Expense	\$3,423,500	\$1,759,722	\$1,792,086	(\$9,827)	-1%
Operations Margin	\$0	\$467,953	\$384,154		
% Gain/(Loss)		27%			

Impact Fee Revenues					
Sewer Impact Fees	16,000	56,125	\$59,067	(\$2,942)	-5%
Impact Fee Interest	700	552	251	301	120%
Total IF Revenue	\$16,700	\$56,677	\$59,318	(\$2,641)	-4%
Impact Fee Expense					
Sewer Impact Fee Exp	16,700	0	\$0	\$0	
Total IF Expense	\$16,700	\$0	\$0	\$0	
Impact Fee Margin	\$0	\$56,677	\$59,318	(2,641)	-4%
% Gain/(Loss)		100%			

TOTAL FUND PERFORMANCE

TOTAL FUND Revenue	\$3,440,200	\$2,284,352	\$2,235,557	\$48,795	
TOTAL FUND Expense	\$3,440,200	\$1,759,722	\$1,792,086	\$32,364	
FUND Revenue Less Expense	\$0	\$524,630	\$443,471	\$81,159	

[a] In Enterprise Funds, debt service principal payment expenses are credited against the debt liability on the balance sheet, reducing the debt on the Balance Sheet and eliminating the expense from the Income Statement.

[b] In Enterprise Funds, the expense of Capital is allocated to depreciation, which in this report is included in the listed operating expense.

FISCAL YEAR-TO-DATE CAPITAL BUDGET ACCOUNT REPORT
June, 2019

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07/19/19

Department	Description	Budgeted*	Paid
51/10-20 Executive/Legislative			0
5190 Other Gov't			
5210 Pub. Safety Admin	CID Vehicle 1	27,000	0
5211 Patrol/Fire/Rescue	Patrol Vehicle (2)	77,200	0
5240 Building & Codes			
5410 Pub. Works Admin	Vehicle	40,000	31,960
5412 Pub. Works Bldg. Maint	Sr. Ctr. Roof Replace	62,000	
	Sr. Ctr. Mansard Repair	35,000	
	City Hall Sign	45,000	34,126
	Lift for Community Center	12,000	
5413 Pub. Works Streets	Solar Message Board	20,000	
	Gas Tax Financed		
	Appropriated Road Improvements	60,000	17,510
	Crosswalks	120,000	
5720 Parks	Roller for Tennis Courts	10,000	0
5720 Parks	Improvements	81,800	55,841
5751 Community Center	Microphone System	12,000	11,967.00
	Machinery & Equipment	0	0.00
5752 Senior Center	Sr Center Improvements	439,500	0.00
	Machinery & Equipment	0	0.00
GENERAL FUND TOTAL		1,041,500	151,403
401-5350 Sewer Operating	IMPROVEMENTS		
	Sewer Engineering and Project Cost	2,575,000	
	EQUIPMENT		
	Station 3 Generator	50,000	47,165
	Station 4 Generator	50,000	52,705
	New Vactron	210,000	
	Vehicle 118	60,000	
	Capital Offset to Depreciation Exp	(2,945,000)	(99,870)
401-5351 Sewer Impact Fee			
UTILITY FUND TOTAL		0	0
Contraband (non-budgeted)			
TOTAL FROM CONTRABAND		0	0
GRAND TOTAL		1,041,500	151,403

INVESTMENT REPORT

June, 2019

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7/19/2019

Policy Restrictions

Investment	Invest Class	Must	Int.Cap	Policy Class Cap	Current	In Limits
SBA	SBA			None	0.0%	
US Gov't Securities	USGS			50%	0.0%	Yes
Cash & CDs	CASH			None	100.0%	
Money Market Funds	MMF			20%	0.0%	Yes
Fed Instrum. & Agncy	FIA			30%	0.0%	Yes
Collat. Mortg. Obligtns.	CMO			20%	0.0%	Yes
Commercial Paper	CP			10%	0.0%	Yes
FMIT	FMIT			None	0.0%	

Performance @Period Ending: June, 2019

Institution	Account	Asset	Invest Class	Restriction	Account Value	Period Int. Rate	% of Portfolio
SBA: Prime	131031	Investment	SBA	General Fund	\$529	2.55%	0%
SBA: Prime	131032	Investment	SBA	Sewer Fund Operating	\$529	2.55%	0%
TOTAL SBA					\$1,057		0.0%
Bank of America	004537065882	Cash	CASH	Working Cash	\$6,637,262	0.70%	22%
Bank of America	898013183744	Cash	CASH	UG Util Building	\$2,405,629	0.70%	8%
Bank of America	005562564319	Cash	CASH	Sewer Operating	\$3,784,887	0.70%	13%
Bank of America	005562564351	Cash	CASH	Sewer Impact Fee	\$105,721	0.70%	0%
Seacoast Bank	4810004966	Cash	CASH	Sewer Operating	\$5,153,953	1.24%	17%
Seacoast Bank	4810000706	Cash	CASH	Working Cash	\$10,422,753	1.24%	34%
Seacoast Bank	4810003566	Cash	CASH	Loan Reserve	\$1,764,742	1.24%	6%
TOTAL BANKS					\$30,274,947		100.0%

TOTAL CURRENT VALUE @ PERIOD END	\$30,276,004
WEIGHTED AVERAGE TOTAL RETURN FOR CURRENT MONTH	1.01%

CHANGE IN CASH & INVESTMENTS (Incl. interfund transfers)	Current Value	Vs. Last Month	Vs. Prior Year To Date	Vs. Prior Fiscal Yr. End
G.O. Construction & Debt Service Funds	\$2,405,629	(\$28,939)	\$89,618	\$328,739
General Fund (excl. G.O. Funds)	\$18,825,286	(\$234,016)	\$1,491,290	\$3,285,246
Sewer Fund	\$9,045,090	\$121,277	\$815,328	\$429,574
TOTAL	\$30,276,004	(\$141,679)	\$2,396,235	\$4,043,559
Percent Change for Current	N/A	-0.5%	8.6%	15.4%

Portfolio Report
June, 2019

GENERAL FUND						
Agent	Security Type (Last Digits Account ID)	Cost Basis	Yield to Cost	Market Value	Gain / Loss	Annual Income @ Cur. Int%
SBA	Investment-General (031)	\$529	2.55%	\$529	\$0	\$13
BoA	Cash-Pool Cash Account (5882)	\$8,600,521	0.70%	\$8,600,520.52	\$0	\$60,204
	<i>Contraband Pool Cash in 5882</i>	\$39,880		\$39,879.54	\$0	\$0
	<i>Pool Cash Due to Sewer Fund</i>			(\$2,003,138)		\$0
	<i>Pool Cash Due to Sewer Impact Fees</i>					\$0
BoA	Cash- UG Utility [Bldg] (3744)	\$2,405,629	0.70%	\$2,405,629	\$0	\$16,839
Seacoast	Cash-Pool Cash Account (0706)	\$10,422,753	1.24%	\$10,422,753	\$0	\$129,242
Seacoast	Cash-Loan Reserve (3566)	\$1,764,742	1.24%	\$1,764,742	\$0	\$21,883
ALL GENERAL FUND			1.07%	\$21,230,915	\$0	\$228,181
		PRIOR MONTH		\$21,493,870		

SEWER OPERATING						
SBA	Investment (032)	\$529	2.55%	\$529	\$0	\$13
BoA	Cash (4319)	\$1,781,749	0.70%	\$1,781,749	\$0	\$12,472
Seacoast	Cash (4966)	\$5,153,953	1.24%	\$5,153,953	\$0	\$63,909
	<i>Cash-Pool Cash Due From Gen. Fund</i>			\$2,003,138		\$0
ALL SEWER OPERATING FUND			0.85%	\$8,939,369	\$0	\$76,395
		PRIOR MONTH		\$8,818,153		

SEWER IMPACT FEES (Restricted)						
BoA	Cash (4351)	\$105,721	0.70%	\$105,721	\$0	\$740
	<i>Cash-Pool Cash Due From Gen. Fund</i>			\$0		\$0
ALL SEWER IMPACT			0.70%	\$105,721	\$0	\$740
		PRIOR MONTH		\$105,660		

ALL FUNDS		1.01%	\$30,276,004	\$0	\$305,316.25
		PRIOR MONTH		\$30,417,683	
		MONTHLY CHANGE		(\$141,679)	
		MONTHLY CHANGE %		-0.5%	

City of Daytona Beach Shores

Planning & Building Division Statistics

Monthly Report – June, 2019

Planning Division

Site Plans - Submittals and Approvals:

Submitted this Month: 1
 Submitted this Fiscal Year: 9
 Approved by Staff this Month: 0
 Approved by Staff this Fiscal Year: 5
 Approved by City Council this Month: 0
 Approved by City Council this Fiscal Year: 2
 Amendments Approved by Staff this Fiscal Year: 1

Building Division

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

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Milani Residence	3023 South Atlantic Avenue, Unit 1002	6/4	Kitchen remodel, new cabinets, tops, and floors	\$18,600	\$177.58
Mull Residence	3757 South Atlantic Avenue, Unit 405	6/5	Remodel kitchen & master bath	\$74,061	\$494.02
Tropic Shores Condo	3111 South Atlantic Avenue	6/5	Concrete restoration, new handrails	\$850,000	\$3,042.71
Turtle Inn Beach Club	3233 South Atlantic Avenue	6/6	Replace 3 water heaters	\$26,792.00	\$47.86
Fennell Residence	3023 South Atlantic Avenue, Unit 403	6/7	Remodel guest bathroom, shower and vanity	\$11,400.00	\$129.10
Staton Residence	2987 South Atlantic Avenue, Unit 902	6/7	Remodel kitchen, master, and guest baths	\$29,200.00	\$238.07
Simon Residence	2731 South Atlantic Avenue	6/10	Replace 8 windows, 1 sliding glass door	\$15,549.00	\$161.50
Paez Residence	2987 South Atlantic Avenue, Unit 2105	6/12	Remodel kitchen, master and guest baths	\$40,000.00	\$295.20
Reynolds Residence	3 Oceans West Boulevard, Unit 3C2	6/13	Kitchen cabinets and tops, bath vanities and showers	\$25,000.00	\$209.87
Davis Residence	2937 South Atlantic Avenue, Unit 703	6/13	Kitchen and bath cabinets, tops, and tile	\$15,450.00	\$161.50
Ortiz Residence	2917 South Atlantic Avenue, Unit 1005	6/14	Replace window and sliding glass doors	\$14,600.00	\$154.75
Hilton Tapestry	2323 South Atlantic Avenue	6/14	Repair concrete walkways	\$452,553.00	\$2,085.51

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Boucher Residence	3761 South Atlantic Avenue, Unit 3	6/19	Remodel 2 baths, vanities, and tops	\$20,000.00	\$182.96
McCalip Residence	4 Oceans West Boulevard, Unit 601C	6/19	Replace windows and doors	\$28,775.00	\$232.56
City of Daytona Beach Shores	3000 Bellemead Drive	6/20	Install monument sign at Veterans' Park	\$15,860.00	\$0.00
Colony Villas	3750 South Atlantic Avenue	6/20	Replace gang meter, disconnects, and AC pullouts	\$27,753.00	\$70.08
Malcom Residence	4 Oceans West Boulevard, Unit 306D	6/21	Replace 1 window and 2 sliding glass doors	\$11,490.00	\$129.10
Sea Shell Villas	3760 S. Atlantic Avenue	6/24	Remove shingles and replace with vinyl siding	\$16,000.00	\$161.50
Chamberland Residence	3757 South Atlantic Avenue, Unit 506	6/24	Replace 2 sliding glass doors	\$15,790.00	\$161.50
Richardson Residence	3 Oceans West Boulevard, Unit 2D1	6/25	Remodel kitchen and 2 baths	\$23,500.00	\$204.49
Gregory Residence	225 Bonner Avenue	6/26	Build and attached garage	\$60,000.00	\$470.98
Drive-In Church	3140 South Atlantic Avenue	6/27	Install new fire sprinkler system in Fellowship Hall	\$32,255.00	\$348.95
TOTALS	WORK ADDRESS	DATE	WORK DESCRIPTION	\$1,824,628.00	\$9,159.79

Building Division Revenue by Permit Category:

PERMIT TYPE	JUNE 2019	FISCAL YEAR-TO-DATE 2018 TO 2019	JUNE 2018	LAST FISCAL YEAR-TO-DATE 2017 TO 2018
BUILDING	\$11,305.21	\$105,388.27	\$9,125.07	\$126,783.12
ROOF	\$167.50	\$13,405.24	\$319.85	\$19,474.03
DEMOLITION	\$0.00	\$0.00	\$0.00	\$120.00
ELECTRICAL	\$1,539.08	\$18,593.26	\$1,762.50	\$18,060.78
MECHANICAL	\$3,145.30	\$25,149.51	\$3,415.20	\$32,411.52
PLUMBING	\$2,066.83	\$21,852.79	\$1,661.76	\$21,384.32
SIGN	\$193.00	\$1,866.03	\$129.25	\$2,384.14
POLITICAL SIGN BONDS	\$0.00	\$0.00	\$0.00	\$0.00
STORMWATER MANAGEMENT	\$0.00	\$0.00	\$0.00	\$0.00
MISCELLANEOUS	\$129.00	\$1,682.94	\$263.55	\$2,896.49
DEVELOPMENT FEES	\$135.00	\$4,085.00	\$0.00	\$640.00
PROMOTIONAL ACTIVITIES	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS	\$18,680.92	\$192,023.04	\$16,677.18	\$224,154.40

Building Division Activities:

ACTIVITY	JUNE 2019	FISCAL YEAR-TO-DATE 2018 TO 2019	JUNE 2018	LAST FISCAL YEAR-TO-DATE 2017 TO 2018
INSPECTIONS	254	2,060	259	2,259
FINAL CERTIFICATES OF OCCUPANCY ISSUED	0	0	0	1
TEMPORARY CERTIFICATES OF OCCUPANCY ISSUED	0	0	0	2
FINAL INSPECTIONS	163	1,439	183	1,363
FAILED INSPECTIONS	13	196	13	125

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

Projects Begun Current Fiscal Year-to-Date – 2018 to Present: \$20,935,107.00

Projects Begun Last Fiscal Year – 2017 to 2018: \$39,968,375.00

Projects Begun Two Fiscal Years Ago – 2016 to 2017: \$24,944,320.00

COMMUNITY SERVICES DEPARTMENT

MONTHLY REPORT - JUNE 2019

FACILITIES MAINTENANCE DIVISION:

Currently three positions.

Normal monthly duties:

This division is responsible for setting up and cleaning rooms for all rentals and City activities for the Senior Center, Tile Room, Council Chambers, Community Center, City Hall, and Public Safety. Two of the employees have janitorial type duties, like emptying the trash and cleaning the bathrooms in all the buildings, vacuuming the floors, dusting and taking care of whatever else is needed regarding the city buildings' cleaning needs. One employee has the maintenance type duties. He assesses any problems reported with the buildings and handles the repair if it is within his ability. He replaces the a/c filters and light bulbs, cleans the outside windows, paints and any other general maintenance needed with the city buildings.

PARKS/STREETS DIVISION:

Currently eleven maintenance positions and one electrician position.

Normal monthly duties:

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

Additionally, this month:

The division finished up and set up for the grand opening of the new dog park. They poured concrete at the new Veterans Park, tore out and reformed concrete walk ways at St. Croix walk over, installed a new irrigation pump at Andrinopoulos Park and put up and took down the free concert banner. The electrician worked on having lights installed at the Veterans Park behind the community center, worked on exterior lighting issues at public safety, repaired bollards at the Beachcomber park and handled 35 power line locates.

SEWER DIVISION:

Currently four positions.

Normal monthly duties:

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

Additionally, this month:

The division took cooling tower readings this month, cleaned the sewer line at Van Park and the Pavilion, repaired the airline on the dump truck, repaired the sewer lateral at the Sunoco and pulled the motor at station 6 for rebuilding. They replaced 19 and raised 30 sewer valve boxes around station 11, handled 3 animal control calls and did 42 sewer locates.



CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"

Office of the City Manager

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

MEMORANDUM

DATE: August 5, 2019

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

FROM: Michael T. Booker, City Manager

SUBJECT: City Manager Report – August 13, 2019

Copyright Registration

- The City has been registered with ASCAP, BMI, and SESAC regarding song copyrighting. These are the three (3) major music copyrighters in the U.S.

Economic Development Program

- Please see attached.
- In addition to these incentives, a business expo is being considered as well as property maintenance standards and posting properties that are eligible for economic incentives.
- I also suggest that each of these incentives have a sunset provision of 3 to 5 years in order to establish a finite time frame to encourage businesses, property owners and potential buyers to take advantage of them.

Shopping Center

- I am seeking permission from City Council to list the City-owned shopping center located at 136 Beachcomber. The appraisal came in at \$300,000. However, the property would be eligible for incentives to assist in development/improvement of the center.

cc:
City Department Heads

Economic Development Program (EDP)

The City's EDP is a unique multi-faceted approach to encourage, stimulate and retain businesses while improving the overall quality of life in the community.

Trust Fund

An EDP Trust fund has been established by the City as a funding mechanism for the program.

Lease Subsidy

A lease subsidy is available to new businesses as follows:

Year 1	-	Up to 30% of total monthly lease
Year 2	-	Up to 20% of total monthly lease
Year 3	-	Up to 10% of total monthly lease

The total amount of the lease subsidy over the 3-year period should not exceed \$20,000.

Development Assistance

Up to a 10% discount may be available to a purchaser of City-owned property for high quality development.

Purchasers of privately-owned property may be eligible for a 10% build-out grant for desirable, quality development. This "build out" grant is subject to qualifications and it is capped at \$20,000.

Business Loyalty

Eligible existing businesses may receive up to a 50% waiver for Certificate of Use fees and local business tax for up to 3 years.

Existing businesses in otherwise good standing may be eligible for a façade improvement grant in an amount not to exceed \$20,000.

For Additional Information

For additional details and information, please contact Stewart Cruz, City Planner, at (386) 763-5361.



CITY COUNCIL AGENDA MEMORANDUM AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

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

SYNOPSIS:

An ordinance that provides an additional means of encouraging economic development within the City is being proposed.

FISCAL IMPACT STATEMENT:

The incentives that would be authorized under the proposed ordinance are developed in a manner that are intended to be revenue neutral as to current revenue levels and, thus, maintain the status quo as to the current ad valorem taxes and fees deriving from real properties that would be the subject of the incentives.

Revenues from future years would be affected although the net overall intent of the proposed ordinance is to generate lasting development activity that will contribute to the future financial health of the City while enhancing development on some sites and spurring positive development activity on other sites.

BACKGROUND:

The proposed ordinance would provide a supplemental tool in the City's economic development program tool box by providing the City with the ability to enter economic incentive agreements relative to the area within the City Limits along South Atlantic Avenue (U.S. Route 1 or U.S. Highway 1), which area may be modified by the City Council if needed in the future. The area is one 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 revitalization and redevelopment is essential to preserving and improving the economy, society, and culture of the City and the quality of life of the citizens of the City.

The City Council may provide to an incentive recipient any combination of incentives provided for in the proposed ordinance, but the total amount of Incentives awarded to a development must be consistent with the expressed goals of the City and the value of the benefits accruing to the City and its citizens must be greater than the financial value of the Incentives which are awarded.

Incentives would be granted in the form of payments of amounts up to, but in no event in the amount in excess of equal to, the sums paid in fees and taxes that have been 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 1 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 agreement.

Funds received through incentive grants may only be used for purposes that are determined to provide for economic or tourism development of the City. Funds paid through grants may only be derived from lawful revenues of the City for such purposes and there is no appropriation obligation established in the proposed 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.

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's *Comprehensive Plan* as well as the goals set forth in the proposed 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 of the City are met and that the development provides benefits to the City and its citizens in amounts that warrant the implementation of Incentives.

The proposed ordinance would be implemented by the City Council 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.

The City Attorney has assisted in the preparation of the proposed ordinance and the development of this agenda item and has no legal objection to the proposal.

RECOMMENDATION:

City staff recommends that the City Council consider Ordinance Number 2019-08 and approve the Ordinance on first reading.

SUGGESTED MOTION:

"I move to approve Ordinance Number 2019-08 on first reading."

ATTACHMENT: 1. Econ Dev Incentives Ord-LNG-7-29-19

ORDINANCE 2019-XX

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

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has the desire to ensure that the City of Daytona Beach Shores and its environs are desirable for economic or tourism development of a positive nature for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, Section 166.021(8), *Florida Statutes*, provides as follows:

“(8) (a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) A contract between the governing body of a municipality or other entity engaged in economic development activities on behalf of the municipality and an economic development agency must require the agency or entity receiving municipal funds to submit a report to the governing body of the municipality detailing how the municipal funds are spent and detailing the results of the economic development agency's or entity's efforts on behalf of the municipality. By January 15, 2011, and annually thereafter, the municipality shall file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the municipality's website.

(e)1. By January 15, 2011, and annually thereafter, each municipality having annual revenues or expenditures greater than \$250,000 shall report to the Office of Economic and Demographic Research the economic development incentives in excess of \$25,000 given to any business during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. Economic development incentives include:

a. Direct financial incentives of monetary assistance provided to a business from the municipality or through an organization authorized by the municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.

b. Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.

c. Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.

d. Below-market rate leases or deeds for real property.

2. A municipality shall report its economic development incentives in the format specified by the Office of Economic and Demographic Research.

3. The Office of Economic and Demographic Research shall compile the economic development incentives provided by each municipality in a manner that shows the total of each class of economic development incentives provided by each municipality and all municipalities.

(f) This subsection does not limit the home rule powers granted by the State Constitution to municipalities."

; and

WHEREAS, Section 187.201(16), *Florida Statutes*, (part of the *State Comprehensive Plan*)

provides as follows:

“(16) URBAN AND DOWNTOWN REVITALIZATION.—

(a) Goal.—In recognition of the importance of Florida's vital urban centers and of the need to develop and redevelop downtowns to the state's ability to use existing infrastructure and to accommodate growth in an orderly, efficient, and environmentally acceptable manner, Florida shall encourage the

centralization of commercial, governmental, retail, residential, and cultural activities within downtown areas.

(b) Policies.—

1. Provide incentives to encourage private sector investment in the preservation and enhancement of downtown areas.
2. Assist local governments in the planning, financing, and implementation of development efforts aimed at revitalizing distressed downtown areas.
3. Promote state programs and investments which encourage redevelopment of downtown areas.
4. Promote and encourage communities to engage in a redesign step to include public participation of members of the community in envisioning redevelopment goals and design of the community core before redevelopment.
5. Ensure that local governments have adequate flexibility to determine and address their urban priorities within the state urban policy.
6. Enhance the linkages between land use, water use, and transportation planning in state, regional, and local plans for current and future designated urban areas.
7. Develop concurrency requirements that do not compromise public health and safety for urban areas that promote redevelopment efforts.
8. Promote processes for the state, general purpose local governments, school boards, and local community colleges to coordinate and cooperate regarding educational facilities in urban areas, including planning functions, the development of joint facilities, and the reuse of existing buildings.
9. Encourage the development of mass transit systems for urban centers, including multimodal transportation feeder systems, as a priority of local, metropolitan, regional, and state transportation planning.
10. Locate appropriate public facilities within urban centers to demonstrate public commitment to the centers and to encourage private sector development.
11. Integrate state programs that have been developed to promote economic development and neighborhood revitalization through incentives to promote the development of designated urban infill areas.
12. Promote infill development and redevelopment as an important mechanism to revitalize and sustain urban centers.”

; and

WHEREAS, Section 187.201(21), *Florida Statutes*, (part of the *State Comprehensive Plan*)

provides as follows:

“(21) THE ECONOMY.--

(a) Goal. --Florida shall promote an economic climate which provides economic stability, maximizes job opportunities, and increases per capita income for its residents.

(b) *Policies*.--

1. Attract new job-producing industries, corporate headquarters, distribution and service centers, regional offices, and research and development facilities to provide quality employment for the residents of Florida.
2. Promote entrepreneurship and small and minority-owned business startup by providing technical and information resources, facilitating capital formation, and removing regulatory restraints which are unnecessary for the protection of consumers and society.
3. Maintain, as one of the state's primary economic assets, the environment, including clean air and water, beaches, forests, historic landmarks, and agricultural and natural resources.
4. Strengthen Florida's position in the world economy through attracting foreign investment and promoting international banking and trade.
5. Build on the state's attractiveness to make it a leader in the visual and performing arts and in all phases of film, television, and recording production.
6. Promote economic development for Florida residents through partnerships among education, business, industry, agriculture, and the arts.
7. Provide increased opportunities for training Florida's workforce to provide skilled employees for new and expanding business.
8. Promote economic self-sufficiency through training and educational programs which result in productive employment.
9. Promote cooperative employment arrangements between private employers and public sector employment efforts to provide productive, permanent employment opportunities for public assistance recipients through provisions of education opportunities, tax incentives, and employment training.
10. Provide for nondiscriminatory employment opportunities.
11. Provide quality child day care for public assistance families and others who need it in order to work.
12. Encourage the development of a business climate that provides opportunities for the growth and expansion of existing state industries, particularly those industries which are compatible with Florida's environment.
13. Promote coordination among Florida's ports to increase their utilization.
14. Encourage the full utilization by businesses of the economic development enhancement programs implemented by the Legislature for the purpose of extensively involving private businesses in the development and expansion of permanent job opportunities, especially for the economically disadvantaged, through the utilization of enterprise zones, community development corporations, and other programs designed to enhance economic and employment opportunities.”

; and

WHEREAS, Section 187.201(24), *Florida Statutes*, (part of the *State Comprehensive Plan*)

provides as follows:

(23) TOURISM.—

(a) Goal.—Florida will attract at least 55 million tourists annually by 1995 and shall support efforts by all areas of the state wishing to develop or expand

tourist-related economies.

(b) Policies.—

1. Promote statewide tourism and support promotional efforts in those parts of the state that desire to attract visitors.
2. Acquire and manage public lands to offer visitors and residents increased outdoor experiences.
3. Promote awareness of historic places and cultural and historical activities.

; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible, dynamic, and modern as well as an economy that attracts and retains high quality businesses and economic generators to the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida desires to protect the public health, safety and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and determines that the provisions of this Ordinance provide for public benefits and serve public purposes; and

WHEREAS, this Ordinance, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores*; and

WHEREAS, the City Council of the City of Daytona Beach Shores, as the governing body of the City, through the adoption of its *Comprehensive Plan* and other adopted documents, has established as a matter of policy that fostering the revitalization and redevelopment of the City's "Incentive Area," as further defined in this Ordinance, brings about positive economic, social and cultural impacts within the City and greatly enhances the quality of life of the City's citizens; and

WHEREAS, it is essential to the City's efforts to foster revitalization and redevelopment

within the Incentive Area that the City offer certain Incentives as set forth in this Ordinance that will encourage private investment in the Incentive Area; and

WHEREAS, the goals (the “Goals”) of the City in offering the Incentives are as follows:

(a). To promote the construction of new buildings or the rehabilitation of existing buildings within the Incentive Area; and

(b). To support the establishment of the categories of new businesses that the City Council determines will:

(i). Significantly increase the overall commercial activity within the Incentive Area,

(ii). Attract the City’s residents and tourists into the Incentive Area, and

(iii). Increase the property values within the City as a whole.

; and

WHEREAS, while the Incentives may benefit the Incentive Recipients (as defined in this Ordinance), the primary beneficiary of the Incentives will be the City and its citizens who shall realize the following benefits (the “Benefits”):

(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 preserving existing buildings within the Incentive Area or promoting the construction of new

buildings that are compatible with the desired character of the City.

; and

WHEREAS, the Incentives, as provided for in an Incentive Agreement (as defined in this Ordinance), shall be structured in such a way that the value of the Benefits to the City will exceed their value to the Incentive Recipients; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*; and other applicable controlling law; and

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

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT. The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) set forth herein as the legislative and administrative findings and intent of the City Council which, together with the agenda materials, memorandum and staff reports, to the extent that they exist, shall be maintained consistent with the maintenance schedule for ordinances, as public records of the City.

SECTION TWO: SUPPLEMENTAL ECONOMIC OR TOURISM DEVELOPMENT PROGRAM. The City Council of the City of Daytona Beach Shores hereby enacts the following provisions into the *City Code*:

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 preserving 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 (U.S. Route 1 or U.S. Highway 1), 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 implementation and administration of this Ordinance.

¹ The referenced definition of development reads as follows:

- (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 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).

(4). *Goals* means the objectives of the City in offering the Incentives, which generally includes:

(A). Promoting the construction of new building or the 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 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 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 the amount in excess of equal to, 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* 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 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 THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager, or designee, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance.

SECTION FOUR: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

SECTION FIVE: SAVINGS; EFFECT OF ORDINANCE.

(a). The prior actions of the City of Daytona Beach Shores in terms of the matters relating to any and all actions and activities of the City pertaining to the economic or tourism development of the City, or of an associated nature, are hereby ratified and affirmed.

(b). Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any type or nature be lost, impaired or affected by this Ordinance.

SECTION SIX: CODIFICATION; SCRIVENER'S ERRORS.

(a). Section Two of this Ordinance shall be codified and all other sections shall not be codified.

(b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.

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

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

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

Passed and adopted this ___ day of _____, 2019.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2019.

Adopted on second reading this __ day of _____, 2019.



CITY COUNCIL AGENDA MEMORANDUM AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

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

SYNOPSIS:

An ordinance enhancing the City's current ordinances relating to code enforcement vis-a-vis buildings that are uninhabitable is being proposed for enactment by the City Council.

FISCAL IMPACT STATEMENT:

The City is taking actions to streamline and refine the City's code enforcement processes such as by moving to the special magistrate process as is the trend in local governments throughout the State.

The enhanced code enforcement process should contribute in a favorable way to the City's economic development efforts by demonstrating to those who would invest or increase their investment in the City that the City is dedicated to maintaining high standards of property maintenance within the City. In turn, property values in the City are likely to increase which positively impacts the tax base of the City. And, of course, a high quality City attracts, as a general matter, investors and tourists.

BACKGROUND:

The proposed ordinance enhances and supplements the provisions of Section 19-1.2 of the *City Code* relating to the regulation of vacant or abandoned buildings.

Among other things, the proposed ordinance provides for the periodic inspection of buildings and structures within the City. If the results of inspections finds any building or structure to be in a dilapidated, unsanitary, unsafe or uninhabitable condition, a hearing before a special magistrate can be held to condemn the building or structure. If the property owner does not correct the issues with the building or structure, the property owner may be required to demolish the building or structure. If the property owner fails to do so, the City may take demolition action. If the City does so, the expenses incurred by the City may be imposed against the property as a special assessment lien.

As part of the ongoing inspection process, the proposed ordinance enhances the certificate of use process by incorporating a certificate of habitability process for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses when a building or structure has been vacant for a period exceeding 60 calendar days.

Additionally, the proposed ordinance adopts the provisions of the *International Property Maintenance Code* as tailored to the needs of the City.

LEGAL REVIEW:

The City Attorney has drafted the proposed ordinance and has worked with the City's economic development team and other City staff in developing the provisions of the proposed ordinance.

RECOMMENDATION:

It is recommended that the City Council approve Ordinance Number 2019-70 on first reading.

SUGGESTED MOTION:

"I move to approve Ordinance Number 2019-70 on first reading."

ATTACHMENT: 1. 2019-09 code enforcement enhancement

ORDINANCE 2019-09

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

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has the desire to ensure that the City of Daytona Beach Shores and its environs are free from the deleterious effects of vacant buildings and structures, as well as nuisance conditions generally, for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida desires to protect the public health, safety and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has implemented a modern system of code enforcement within the City, but desires to further enhance that system as set forth herein for the benefit of the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and determines that the provisions of this Ordinance provide for public benefits and serve public purposes; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*;

In this Ordinance, when text is being amended, ~~striketrough-text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

Chapter 162, *Florida Statutes*; Chapter 166, *Florida Statutes*; Section 60.05, *Florida Statutes*; Section 823.01, *Florida Statutes*; Section 823.05, *Florida Statutes*; and other applicable controlling law; and

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

WHEREAS, this Ordinance, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores*.

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

PART I. LEGISLATIVE FINDINGS AND INTENT AND CONFORMING AMENDMENTS TO CITY CODE

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance, as the legislative findings and intent of this Ordinance, the recitals (whereas clauses) to this Ordinance, the City staff report and City Council agenda memorandum relating this Ordinance.

(b). There is a public need to enhance economic activity in specific targeted areas of the City of Daytona Beach Shores, as identified by the City Council. The economic well-being of the citizens of the City of Daytona Beach Shores and the economic resources of the City of Daytona Beach Shores would be enhanced by the provision and implementation of selected economic development activities.

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(c). Section 16-12 of the *City Code* generally defines the prohibition against nuisances as follows: “Any person who shall, upon any real property owned or occupied by him within the limits of the City, conduct or carry on any trade, business or occupation, or keep, maintain or permit any property, building or structure or other matter or thing or course of conduct which shall endanger the public health or materially interfere with the public comfort or convenience, shall be deemed to have created a public nuisance”¹

(d). Without modifying or reducing the generality of Section 16-12 of the *City Code*, Section 19-4 of the *City Code* prohibits a wide array of public nuisances.

(e). Additionally, Section 19-1.2 of the *City Code* regulates vacant or abandoned buildings located within the City and the City Council hereby ratifies, affirms and adopts the legislative

¹ The text “and shall be guilty of a misdemeanor” is not applicable. Section 775.08, *Florida Statutes*, the Florida Legislature has specifically classified and defined the various types of offenses. That Section, in essence, defines four (4) terms which are: (1). felony; (2). misdemeanor; (3). noncriminal violation; and (4).crime.

Subsection (4) of Section 775.08, *Florida Statutes*, provides that “[t]he term ‘crime’ shall mean a felony or misdemeanor.” Subsection (1) defines “felony” and Subsection (2) defines the term “misdemeanor”. It is clear that violation of City ordinances are not felonies and Subsection (2) states specifically that “[t]he term ‘misdemeanor’ shall not mean a conviction for . . . any municipal or county ordinance.” Subsection (3) defines the term “noncriminal violation” and also provides that a noncriminal violation “... shall not mean any conviction for any conviction for any violation of any municipal or county ordinance.” Thus, in sum, the violation of a City ordinance is neither a crime nor a noncriminal violation.

Violation of a City ordinance is, thus, best classified as precisely what it is - “violation of a City ordinance.”

The maximum penalty for violation of a City ordinance (outside of the code enforcement board/special magistrate or hearing officer process or a State law) is confinement for sixty (60) days and a fine of \$500.00.

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findings and intent set forth in Section 19-1 of the *City Code*.² Further, it is the intent of the City Council that the cited provisions and the provisions of this Ordinance be applied and administered in harmony; provided, however, that, should any conflict arise, the more stringent provision shall be applicable.

(f). Further, Section 19-2 of the *City Code* provides for a Citywide special assessment district and the imposition of special assessments for costs relating to activities by the City to abate nuisances on real property located within the City.

(g). Section 1-8 of the *City Code* provides for the general penalties relative to code and ordinance violations with the City which provision relates to the provisions of this Ordinance said provision allowing the City to take and assert various remedies against property owners such as proceeding under the special magistrate/code enforcement board provisions of Chapter 162,

2 Sec. 19-1. - Legislative findings and intent.

(a) The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this ordinance the city staff report and city council agenda memorandum relating to this ordinance.

(b) The recitals set forth above in the "whereas clauses" are hereby adopted as legislative findings of the City Council of the City of Daytona Beach Shores.

(c) Neglected vacant or abandoned buildings are a major source of blight in the City of Daytona Beach Shores and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area.

(d) It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in vacant or abandoned buildings to maintain, secure, and prevent these buildings from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this ordinance is to provide standards for maintaining vacant and abandoned buildings and to establish a monitoring program for said buildings.

(e) It is critical that coastal communities that are subject to the threats of hurricanes and other storm events take every reasonable action to provide for the safety or life and property during such events and ensure that property owners do likewise.

(f) The provisions of this ordinance shall be construed, applied and implemented in conjunction with the provisions of the codes and ordinances of the city together with all other applicable controlling laws (as that term is used in its broadest sense).

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

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Florida Statutes, which provides for fines of up to \$250.00 per day (\$500.00 per day for repeat violations and \$5,000.00 for one time violations which are irreparable or irreversible in nature) to issuing citations and proceeding in County Court for fines of up to \$500.00 and confinement in jail for a period of up to 60 days as well as an array of diverse other remedies..3

(h). The aforesated purposes and intents of the above-referenced provisions of the *City Code* are hereby ratified and affirmed by the City Council for the public interest and in order to protect the citizens of the City.

SECTION TWO: CODE ENFORCEMENT ENHANCEMENT PROGRAM..__The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

3 Sec. 1-8. - General penalty; continuing violations.

(a) Whenever in this Code or in any ordinance of the City any act is prohibited or is made or declared to be prohibited, unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be prohibited and unlawful in whatsoever manner, the violation of any such provision of the Code or any ordinance shall be punished by a fine not exceeding \$500.00. Any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance of the City shall be deemed a public nuisance and shall be subject to abatement and code enforcement by the City utilizing any remedy available under law. The City may prosecute violations by any means authorized by controlling law and may seek any legal remedy available under controlling law. Each occurrence (violation of a code or ordinance) shall constitute a separate violation and subject the violator to separate penalties. Any code or ordinance violation may result in the City Attorney, with the consent of the City Manager, bringing suit on behalf of the City against the person or persons, or entity or entities, causing or maintaining the violation. Notwithstanding the foregoing, the City shall not seek imprisonment as a penalty for any violation of the Code.

(b) Notwithstanding the provisions of subsection (a), the City Council may prescribe a different punishment and a tailored enforcement process for any violation of this Code.

(c) As used in this section, the phrase "violation of this Code" means any of the following: (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance. (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance. (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(d) As used in this section, the phrase "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty unless the context requires otherwise.

(e) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(f) Violations of this Code may be abated by injunctive or other equitable or civil relief, and no bond shall be required, nor proof of intent or scienter. The imposition of a penalty does not prevent equitable relief.

(g) In any litigation commenced by the City to enforce the provisions or to enjoin a violation of this Code, the City shall be entitled to reasonable attorney's fees incurred in such litigation.

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Sec. 19-1.2. - Regulation of vacant or abandoned buildings.

(a) *Definitions.* The following definitions shall have the following meanings in this Section ordinance unless the context of usage clearly demands otherwise and the definitions otherwise set forth in the City Code and the Florida Statutes shall apply when the context requires and, further, the term hearing officer shall mean and include the City's special magistrate:

(1) *Abandoned* means a parcel of real property including, but not limited to, a residence, building, structure, or any structural improvement on real property, that is vacant and is (i) under a current notice of default and/or notice of trustee's sale; (ii) subject to foreclosure sale where title was retained by the mortgagee of a mortgage, by whatever name; or (iii) transferred under a deed in-lieu of foreclosure/sale and the term also means buildings or structures that have been inspected by the city and the inspection does not reveal the property owner or anyone claiming under him, her or it is presently occupying or will occupy the building or structure, or that the owner has relinquished all right, title, claim and possession of the property and the building or structure.

(2) *Deed in-lieu of foreclosure/sale* means a recorded document that transfers ownership of real property from the mortgagor to the mortgagee upon consent of the mortgagee.

(3) *Default* means the failure to comply or fulfill any contractual obligation under the mortgage, by whatever name.

(4) *Director* means the director of the city department or office designated by the City Manager to administer this Section ordinance.

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(5) *Foreclosure* means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the mortgagor (borrower) defaults on the real estate loan.

(6) *Mortgage (by whatever name)* means an instrument by which title to real property is lienied in favor of a mortgagee by a mortgagor as security for a real estate loan. This definition applied to any and all subsequent mortgages.

(7) *Mortgagee* means any person, partnership, association, company, corporation, or any other person or entity holding a mortgage, by whatever name on a property and, typically, means a lender under a note secured by a mortgage, by whatever name.

(8) *Mortgagor* means a borrower under a mortgage, by whatever name who gives a mortgage as security for the payment of a debt.

(9) *Multi-story building* means any building with more than two stories.

(10) *Notice of default* means a recorded notice that a default had occurred under a mortgage, by whatever name, and the mortgagee intends to proceed with a foreclosure sale of the real property or asserts any of its rights under the mortgage, by whatever name.

(11) *Owner* means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a parcel of real property.

(12) *Real Property* means any improved real estate, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.

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(13) *Unoccupied* means a commercial building, commercial structure, or hotel/motel which has no associated, authorized business operating from the premises as evidenced by lack of a current certificate of use or lack of current utility usage including water, sewer, garbage and power and/or a residential building which has no observable, authorized tenancy.

(14) *Vacant* means any building or structure which has remained unoccupied for a period of more than 60 calendar days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be vacant for purposes of this Section ~~ordinance~~ if demolition, construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit.

(b) *Compliance required.*

(1) Every owner of real property shall maintain the property in accordance with the requirements and provisions of this Section ~~ordinance~~ and all other requirements of the City Code.

(2) Every owner of real property is liable for violation of this Section ~~ordinance~~ regardless of any contract or agreement the owner has with any third party.

(3) Except as otherwise provided herein, the director shall have the authority to enforce the provisions of this Section ~~ordinance~~.

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(c) *Public nuisance.*

(1) Any real property in violation of this Section ~~ordinance~~ shall constitute a public nuisance.

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(2) It is prohibited and unlawful for any building or structure to be vacant for more than 60 calendar days unless one of the following conditions exist:

a. The building or structure is subject to an active building permit for demolition, construction, alteration, modification, rehabilitation, or repair and the owner is progressing diligently to complete the demolition, construction, alteration, modification, rehabilitation, or repair within the time frame set forth in the building permit.

b. The building or structure, including the real property on which it is located, does not otherwise constitute a public nuisance and is not reasonably likely to become a public nuisance because the real property is actively maintained and monitored. Actively maintained and monitored means that the condition of the real property complies with the minimum standards set forth in this Section ~~ordinance~~ and any and all other applicable provisions of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) or which is otherwise being maintained in accordance with the terms and conditions of an executed and unexpired maintenance or development agreement between the City and the property owner.

(3) Unless a building or structure meets one of the conditions set forth in subsection (2)(c)(2)a. and b., the owner of any vacant or abandoned building or structure, whether boarded by voluntary action of the owner or as a result of enforcement activity by City, shall rehabilitate the boarded building or structure for occupancy, in accordance with all applicable code and regulations, within 60 calendar days after the building is boarded. Rehabilitation means taking corrective action to meet the minimum standards set forth in this Section ~~ordinance~~ and complies

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with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(d) *Structural and building standards.*

(1) All vacant or abandoned property shall be maintained in structurally sound condition and meet the following minimum building standards:

a. Complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. All electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.

c. All fences, walls, arbors, or other similar structures, whether made of masonry, wood, metal, vinyl or other materials, shall be maintained in a structurally sound condition in accordance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

d. The City hereby adopts by this reference thereto (a copy of which is attached to this Section ordinance and, thus, shall be maintained in the office of the City Clerk) the American Society of Civil Engineers (ASCE) ² "Guideline for Structural Condition Assessment of Existing Buildings" (publication "SEI/ASCE 11-99), or the latest version of that document. This publication shall be used by City personnel in making assessments, evaluations and determinations as set forth in this Section ordinance.

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(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(e) *Fire safety.*

(1) All vacant or abandoned property shall be maintained in a manner which does not create an unreasonable risk of fire and which meets the following minimum fire safety standards:

a. Adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. Is maintained in a manner where the totality of the property is free of all vegetation, weeds, dry bush, garbage, trash, debris, appliances, building materials, rubbish, accumulation of newspapers, circulars, flyers, notices, except those required by law, which may constitute a safety or fire hazard.

c. Is maintained in a manner where the totality of the property is free of any storage of flammable liquids or other materials which would constitute a safety or fire hazard.

d. Is maintained in a manner where the heating and air conditioning facilities or heating and air conditioning equipment are either removed pursuant to valid permit or maintained in accordance with applicable codes and ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable permits, codes and ordinances.

e. Is maintained in a manner where all existing fire protection systems are kept in operating condition in accordance with applicable codes and ordinances, unless written authorization for removal of those systems has been granted by the City's Fire Marshal.

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f. Is maintained in a manner where no fire hydrants, including private hydrants, that provide water flow, are removed, tampered with, or taken out of service, unless authorized in writing by the City's Fire Marshal.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(f) *Security standards.*

(1) All vacant or abandoned property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:

a. All windows, doors, gates, fences or any other opening of such size that may allow access of persons, animals, or other elements, to the interior of the property, building or structure shall be secured, locked, closed, or maintained in such a manner so as to prevent unauthorized entry and create an attractive nuisance.

b. Windows, sliding doors, or similar openings shall provide either intact glazing or resistance to entry equivalent to or greater than that of a solid sheet of one-quarter-inch plywood, painted to protect it from the elements, cut to fit the opening, and securely nailed using 6D galvanized nails spaced not more than six inches on the center.

c. Doors and service openings with thresholds located ten feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.

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d. Exterior doors, other than the operable door to be maintained, may be closed from the interior of the building or structure by toe nailing them to the door frame using 10D or 16D galvanized nails.

e. There shall be at least one operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

f. All locks shall be kept locked. When a door cannot be made operable and is not visible from any public right-of-way, including the beach, or neighboring property, a door shall be constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as required in this Section ordinance.

g. There shall be a sign installed that is no less than 18 inches × 24 inches in size and no greater than 30 inches × 30 inches in size posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information:

(i) name and 24 hour contact telephone number and address of the owner, responsible party, or property management company; and

(ii) the statement that "THIS PROPERTY MANAGED BY—————" with the appropriate name inserted and "TO REPORT PROBLEMS OR CONCERNS CALL —————" with the 24 hour telephone number listed. The sign shall be constructed and printed with weather resistant materials and shall be removed when the building is no longer vacant.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

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(g) *Debris removal.*

(1) All vacant or abandoned property including, but not limited to, all adjoining yard areas shall be maintained free of debris, combustible materials, litter, garbage, or any other item that gives the appearance the property is vacant or abandoned by maintaining adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(h) *Appearance.*

(1) All vacant or abandoned property must be maintained in a manner which minimizes the appearance of vacancy and meets the following minimum appearance standards:

a. The property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over within 24 hours with similar exterior grade paint to match the color of the exterior of the building or structure.

b. Any demolition, construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the director, building official, or their designee.

c. All exterior surfaces shall be maintained to prevent entry including, but not limited to, replacement or repair to any broken windows, doors or siding materials and be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.

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d. All landscaping including, but not limited to, grass, turf, trees, hedges, shrubs, flowers, and other similar materials, shall be maintained in accordance with codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) and in such condition as not to create the appearance of a vacant or abandoned building or structure.

e. All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris, unless the pools, spas, or other areas are drained and kept dry. All properties with pools, spas, or other areas of standing water must meet the minimum fencing requirements as set forth in the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(i) *Additional responsibilities relating to multi-story buildings or structures.*

(1) Each owner of a multi-story vacant or abandoned building or structure shall provide to the City Manager, or designee, a structural engineering analysis completed by a certified State of Florida Professional Engineer detailing the existing conditions present with regard to the vacant or abandoned building or structure. The structural engineering analysis shall include details regarding the structural integrity of the building or structure and its components, shall identify all potential life safety threats, and shall address the building or structure's ability to withstand the windload it was originally built to withstand.

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(2) The structural engineering analysis shall be provided to the City Manager, or designee, within 30 days of the effective date of this Section ~~ordinance~~ and each January 1 of each year during which the vacant or abandoned building or structure remains vacant or abandoned.

(3) The structural engineering analysis shall be provided to the City at the owner's expense and the data provided will form the basis on which the determination will be made regarding whether or not the existing building or structure on the should remain in place pending potential redevelopment.

(4) If the structural engineering analysis demonstrates that the existing building or structure may remain without providing a potential threat to the public health, safety and welfare, it may remain in place subject to the owner's continuing obligation to keep the structure secure and the in compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(5) If the structural engineering analysis demonstrates that the existing structure represents a potential threat to the public health, safety and welfare, the owner shall expedite and facilitate the removal of said potential threat or existing building or structure.

(6) Expedient removal of said potential threat or existing building or structure shall take place 90 or fewer days from said structural analysis or as prescribed by the building official.

(j) *Regulation of dangerous buildings.*

(1) As used in this Section ~~ordinance~~ dangerous building means any building or structure which has one or more of the following defects or conditions and is not subject to an executed and unexpired maintenance or development agreement as provided for in this Section ~~ordinance~~:

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- a. Any door, aisle, passageway, stairway or other means of exit does not conform to the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).
- b. Any portion of the building or structure has been damaged by fire, storm, wind, flood, or by any other cause so that its structural strength or stability is appreciably less than it was before such damage and does not meet the minimum requirements of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) for a new building or structure, purpose or location.
- c. Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.
- d. Any portion of the building or structure has settled to such an extent that it's walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).
- e. The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.
- f. The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.

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g. The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants or criminals, or enables persons to utilize the building or structure for committing a nuisance or an unlawful or immoral act.

h. A building or structure used or intended to be used for dwelling, commercial, or industrial purposes, including the adjoining grounds, which because of dilapidation, decay, damage, faulty construction or otherwise, is unsanitary or unfit for its intended use or is in a condition that is reasonably determined, using sound and generally accepted public health management practices and principles, is likely to cause sickness or disease or is otherwise a dangerous building.

i. When a building or structure is vacant or dilapidated and the interior of the building is exposed to the elements or otherwise accessible for entrance by trespassers.

j. Any multi-story building not kept secure and in compliance with the City's codes and ordinances together with all applicable controlling laws (as that term is used in its broadest sense).

k. Upon request by the City, a property owner shall provide the City with copies of insurance policies relating to property which is the subject of this Section ~~ordinance~~.

1.

i. Whenever the City Manager, or designee, determines that the whole or any part of any building or structure is a dangerous building or otherwise abandoned, the City Manager, or designee, shall issue a notice that the building or structure is dangerous or abandoned. Such notice shall be served on each owner of or party in interest in the building or structure in whose name the

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property appears on the most recent Volusia County Property Appraiser records, by certified mail return receipt requested or personal service. The notice shall specify the determination made by the appropriate City official and the action that will be or can be taken by the City in order to remediate the conditions set forth in the notice. Any persons receiving a copy of the notice shall have the right to appeal the determination to a hearing officer appointed by the City Council as provided for and governed by section 2-28 of the *City Code* and request a hearing within 30 days after receiving a copy of the notice. All costs and fees related to the hearing shall be paid by the party requesting the hearing as established by resolution adopted by the City Council. The hearing officer shall hear all arguments made relating to whether the building or structure is a dangerous building or abandoned. The person to whom the notice is directed shall have the opportunity to show cause why the hearing officer should not order appropriate remediation of the dangerous conditions or order the building or structure to be demolished or otherwise made safe, or properly maintained. The hearing officer shall take testimony of the City staff or any other person requested by the City staff, the owner of the property or any other person requested by the owner, and any interested party as determined by the hearing officer. The hearing officer shall render its final administrative decision as to what action can be taken to order the building or structure to be demolished, otherwise made safe, or properly maintained. The decision made by the hearing officer shall be final and subject only to judicial review by a court of competent jurisdiction in which case the decision of the hearing officer shall be stayed pending a judicial determination on the matter. If it is determined by the hearing officer that the building or structure should be demolished or otherwise made safe or properly maintained, the hearing

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officer shall so order, fixing a time within which the owner or party in interest must comply with the order. The order may require the owner, agent, or person occupying the property to demolish or bring the building and surrounding property into compliance with the terms and conditions of the order and all applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). If the owner or party in interest fails to appear at the properly scheduled hearing officer hearing, the hearing officer may proceed with the hearing and make all findings it deems necessary to bring the property, buildings and structures into compliance with the terms of applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the findings and determinations of the hearing officer at the hearing shall be served on the owner or party of interest in the manner prescribed in this Section ~~ordinance~~ for notices. In the event that the owner or party in interest does not comply with the decision of the hearing officer, the City Council may in its discretion, contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure or to otherwise bring the building, structure or premises into compliance with the hearing officer's decision. The costs of the demolition, or making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the City Council to bring the property into conformance with this Section ~~ordinance~~ shall be reimbursed to the City by the owner or party in interest whose name the property appears. Costs include, but are not limited to, actual costs incurred in bringing the property into compliance with the hearing officer's decision as well as administration fees and actual attorney fees and court costs. The costs of the

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City may be assessed by the City as a special assessment, with any and all liens arising as a result thereof, in accordance with the provisions of controlling law.

ii. The following list is a non-exclusive list of the factors which may be considered by a hearing officer or the City Council, as the case may be, when establishing objective requirements necessary to attain compliance with this Section ~~ordinance~~ relative to the condition of a building, structure or premises:

(1) A monitoring program for inspection and maintenance conducted on a periodic basis of no less frequency than once each 12 month period to be reviewed and approved by a licensed engineer or contractor.

(2) Elimination of access by the general public to the building, structure or premises. Such limitations shall include, but need not be limited to, preventing unauthorized entry or trespass to the building, structure or premises by means such as unsecured doors, windows as well as the fencing of the property. Access to a building, structure or premises shall be provided by at least an operable door with reasonable accommodation made to provide access to public safety officials to address emergency conditions or situations occurring upon or within the building, structure or premises. Signs shall be posted on the exterior of the property stating that trespassing is prohibited which signs shall be of a size and nature and posted in a manner that complies with controlling Florida law and authorized the citation, removal or other appropriate action to prosecute or remove trespassers. The property owner shall provide the City with written authorization to cite trespassers upon the property; provided, however, that the City may

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exercise its normative police powers relative to the property as it deems warranted and appropriate.

(3) A monitoring program for electrical, natural gas, sanitary sewer, plumbing and other utility services relating to the property.

(4) Elimination of the risk of damage caused by airborne objects or materials with the removal of shard risks.

(5) Fire safety management and monitoring shall include, but not be limited to, the prohibition of storage of flammable liquids or materials on the property except for certain expressly provided conditions agreed upon by the City. All other fuel or flammable liquid supplies not expressly authorized by the City to be present on the property shall be removed from the property including, but not limited to, debris that could be flammable, combustible materials of every nature and solid waste such as garbage.

(6) Wind resistance and collapse prevention shall be reviewed at least every 12 months.

(k) *Registration; duties and responsibilities relating to registration.*

(1) The owner of any vacant or abandoned building or structure other than a single-family residence shall register in the property in the City's "Vacant or Abandoned Building Monitoring Program" pursuant to this Section ~~ordinance~~.

(2) The registration must be accomplished by all owners of property that is vacant or abandoned within 60 calendar ~~30~~ days of the day that the property becomes vacant or abandoned ~~effective date of this ordinance~~.

(3) The registration information shall, at a minimum, include:

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- a. The address of the vacant or abandoned building or structure.
 - b. The property appraiser tax parcel identification number of the real property where the vacant or abandoned building or structure is located.
 - c. The name, address, and telephone number of the owner. If a notice of default has been issued, the name, address, and phone number of the mortgagee, by whatever name, shall be included. In the case of a corporation or out of area mortgagee, the local property management company or agent responsible for the security, maintenance, and monitoring of the property shall be included.
 - d. The date the building or structure became vacant.
 - e. Any change in the information provided pursuant to this section including, but not limited to, a change in ownership, shall be filed with the director within 15 days of the change.
- (4) The owner of any vacant or abandoned building or structure which is subject to the registration requirements of this Section ~~ordinance~~ shall designate a responsible agent for the building or structure. Any owner who lives within 60 miles of the vacant or abandoned building or structure may designate himself, herself or itself as the responsible agent.
- (5) The owner of any vacant or abandoned building or structure who lives more than 60 miles from the building or structure shall name a responsible agent who lives within or whose place of business is within 60 miles from the building or structure. In the event an owner is a corporation, association, or other type of entity, the owner shall either have its principal place of business within the City or may designate a responsible agent who has its principal place of business within the City or lives within 60 miles from the building or structure.

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(6) The designation of responsible agent shall constitute an authorization by the owner for the responsible agent to act on behalf of the owner with regard to all requirements under this Section ~~ordinance~~ and may accept all notices, including all notices pursuant to this this Section ~~ordinance~~, all notices of proposed abatements or code enforcement actions, of whatever type or nature, relating to the subject property.

(7) The owner's designation of a responsible agent shall not relieve the owner of any obligation to comply with the provisions of this Section ~~ordinance~~.

(8) The owner or responsible agent of a vacant or abandoned building or structure which is required to be registered in the vacant or abandoned building monitoring program shall inspect or cause the inspection of such vacant or abandoned building or structure not less than one time in every two-week period.

(9) Such owner or responsible agent shall keep or cause to be kept a written log of all inspections. The log shall contain, at a minimum, the following information:

- a. The date and time of the inspection;
- b. The name and signature of the person performing the inspection;
- c. A notation of any problems or violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense);
- d. A detailed description of any corrective action performed to address any violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the log shall be provided to the City upon request of the director, or designee.

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(10) The City Manager, upon a finding that conditions exist within the City that warrant registration of single family residences, may issue a proclamation that includes single family residences within the requirements for registration as set forth herein.

(l) *Fees.*

(1) The owner of a vacant or abandoned building or structure subject to registration shall pay a vacant or abandoned building monitoring program annual registration fee as set forth in a resolution adopted by the City Council. Until such fee is adopted by resolution, it shall be in the amount of \$25.00 per quarter of a year based upon a calendar year ~~commencing on April 1, 2014.~~

(2) The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be otherwise prorated.

PART II. AMENDMENTS TO *CITY CODE* RELATING TO ENHANCED CODE ENFORCEMENT PROGRAM/CONDEMNATION AND DEMOLITION

SECTION THREE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; CONDEMNATION AND DEMOLITION. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS

Authority To Condemn.

The City Council hereby authorizes and empowers the City's special magistrate to condemn and order to be demolished and removed, or to be put in a sound state of repair, any and all buildings and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition. Additionally, City officials, as designated herein in emergency circumstances, are authorized to demolish and remove, or to be put in a sound state of repair, any and all buildings

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and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition as set forth in the City's codes and ordinances.

Periodic Inspection Of Buildings; Notice Of Condemnation; Hearing.

(a). The persons designated building official, the fire chief, a code enforcement inspector and such other persons designated by the City Manager, are authorized to periodically inspect buildings and structures within the City, and if such official finds any building or structure to be in a dilapidated, unsanitary, unsafe or uninhabitable condition, shall report such fact in writing to the City Manager, specifying in detail the condition of the building or structure. The City shall thereupon determine whether or not a public hearing shall be held to condemn such building or structure. If the City Manager determines such hearing will be held, he or she shall cause to be placed upon such building or structure a notice of condemnation, and simultaneously therewith direct to be delivered to the owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the County, a notice to the owner of the property involved, that the building or structure thereon has been found by officials of the City to be in dilapidated, unsanitary, unsafe or uninhabitable condition, and that the City intends to condemn the same. Such notice shall further provide that a hearing will be held before the City's special magistrate at a stated time and at a stated place, and that at such time and place a full determination will be made by the City's special magistrate as to the condition of the building or structure. If the owner cannot be located for personal delivery or receipt of certified or registered mail of the notice, after reasonable inquiry, then the notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation

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published within the City and the property posted with a notice, and such service shall be deemed sufficient to show that the notice requirements of this section have been met without regard to whether or not the property owner actually received such notice.

(b). The property owner and the City Manager, or designee, at the hearing, shall be heard and to present such relevant evidence as they desire. The City's special magistrate may accept evidence from the general public as deemed appropriate for the particular case.

(c). In the event that a mortgagee is evidenced in a title search, the mortgagee shall be noticed at the address set forth on the mortgage, if any, as well as at any address indicated on reasonably available records such as the records of the Florida Department of State.

Uninhabitable, Dilapidated, Unsafe Or Unsanitary Buildings Or Structures.

(a). A building or structure shall be uninhabitable, dilapidated, unsafe or unsanitary when:

(1). An order has been issued by the City under its codes or ordinances finding that a public nuisance exists; and

(2). The building or structure is found to have one or more of the following characteristics:

a. It is vacant, unguarded and open at doors or windows;

b. There is a deleterious accumulation of debris;

c. Its condition creates hazards with respect to means of egress and fire protection as provided for the particular occupancy;

d. There is a falling away, hanging loose or loosening of any siding, block, brick, or other building material;

e. There is deterioration of the building or structure or structural parts;

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- f. It is partially destroyed;
 - g. There is an unusual sagging or leaning out of plumb of the building or structure or any parts of the building or structure and such effect is caused by deterioration or over-stressing;
 - h. The electrical or mechanical installations or systems create a hazardous condition;
 - i. An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems;
 - j. Combustible material is located on the property in an unsafe manner;
 - j. It is in substantial non-compliance with the *International Property Maintenance Code* as enacted by the City.
- (b). A building or structure found to be uninhabitable, dilapidated, unsafe or unsanitary as provided in this section shall be subject to demolition.
- (c). The City shall implement the provisions of the adopted *International Property Maintenance Code*, as enacted by the City, in conjunction with the provisions of this Ordinance.
- (d). The City may sell any material salvaged from any demolished building or structure and any other property contained therein or thereupon and credit the proceeds against the cost of demolition or removal, or where an independent contractor is employed to demolish or remove any such building or structure, to convey such material or property to the contractor as compensation or partial compensation for such demolition or removal. Should the proceeds from the disposition of such materials or property exceed the cost of such demolition or removal, such excess shall be used, applied, or paid over in accordance with the written directions of the parties entitled thereto.

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(e). The City Manager is authorized to expend such funds as may be necessary to carry out the provision of this Ordinance. Nothing contained herein shall require the City Council to appropriate or the City Manager expend any funds to carry out the purpose of this Ordinance. The authority granted herein is permissive and shall not be construed to impose an obligation on the City to condemn any building or structure.

(f). Nothing herein precludes exercise of emergency powers by the City otherwise available in the face of imminent threat to public safety.

(g). The provisions of this Ordinance shall not be deemed to repeal or modify any provision of a City code or ordinance relating to condemning of buildings and structures but the provisions herein shall be supplemental and in addition to the powers that may be exercised by the City through its City Council or its officers and employees.

Order Of Condemnation; Repair Or Removal.

If the City's special magistrate determines upon hearing as provided in this Ordinance that such building or structure should be condemned, such fact shall be stated in writing to the property owner including reasonable specifications as to the deficiencies justifying such condemnation and the property owner shall be given a reasonable time, according to the size, condition and location of such building or structure, in which to cause the building or structure to be demolished and removed, the illegal conditions abated, or placed in a state of sound repair, and in the event of failure on the part of the property owner within such time period to effect the demolition and removal, abatement or repair, then such building or structure may be demolished and removed by the City and the cost of the same specially assessed as a lien against the land.

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The order of condemnation shall be delivered to the property owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the county. The lack of a signed returned receipt shall not constitute a failure to notify owners or interested parties. Service shall be deemed complete upon mailing. The order of condemnation shall be recorded in the public records of the County as a municipal special assessment lien in accordance with the *City Code*. The recordation of such order of condemnation as a municipal special assessment lien as provided in this Section shall constitute notice to any subsequent purchasers, transferees, grantees, mortgagors, mortgagees, lessees, lienors, and all persons having, claiming or acquiring any interest in the property described therein, or affected thereby. No condemned building or structure stating that the same is condemned shall be occupied or used for any purpose during the period of time the same is condemned unless an order of the special magistrate provides to the contrary and, absent, such an order, the continuing status of the building or structure shall be that it is condemned.

Demolition By City; Municipal Special Assessment Lien.

If, within the time stated in the order of condemnation/municipal special assessment lien provided for in this Ordinance, the property owner fails to demolish and remove or repair such condemned building or structure, and has not shown cause before the City's special magistrate which justifies an extension of time, the City's special magistrate shall forthwith order such building or structure to be demolished or removed by the City and the actual costs including administrative costs of the same specially assessed as a municipal special assessment lien upon the land as set forth in the *City Code*. The City may enforce its municipal special assessment lien

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and maintain a personal action against the property owner or owners at the same time to recover such cost and any and all interest accrued thereon. In any suit by the City either at law or in equity for the collection of the amount of the lien, the City shall be entitled to recover its actual costs and attorney's fee for the suit and such costs and attorney's fee shall also become a lien upon the land. Any lien for costs and fees incurred pursuant to the implementation of this Ordinance shall constitute a lien for special assessments, and with the same penalties and rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens.

Emergency Powers.

The City Manager, or designees, shall have the power to promptly cause a building, structure or portion thereof to be made safe or cause its removal in cases of emergency which have been determined to involve imminent danger to human life or health. For this purpose such building, structure or portion thereof, or land on which such structure stands or abutting land, may be entered by such official with such assistance and at such cost as the official may deem necessary. The official may order the vacation of adjacent structures and may protect the public by appropriate fencing or such other means as may be necessary, and for this purpose may close a public or private way. All costs incurred by the City pursuant to this Section shall be assessed and enforced as stated in this Ordinance and other controlling provisions of the City's codes and ordinances.⁴

Implementing Administrative Actions.

⁴ Reference is directed to the provisions of Sections 933.20 through 933.30, *Florida Statutes*. In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative rules, the seeking of administrative inspection warrants, and the imposition of liens; all such actions being taken in concert with the City Attorney.

**PART III. AMENDMENTS TO CITY CODE RELATING TO CERTIFICATE OF USE AND HABITABILITY
INTERNATIONAL PROPERTY MAINTENANCE CODE⁵ ADOPTION**

SECTION FOUR: CODE ENFORCEMENT ENHANCEMENT PROGRAM; HABITABILITY REQUIREMENTS. The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

Sec. 14-61.1. - Zoning confirmation; certificate of use or habitability.

(a) A zoning confirmation and certificate of use process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, prior to a certificate of use being issued by the City and a certificate of use is required for all new occupancies or changes in occupancies relative to all commercial and industrial uses within the City. It is prohibited and unlawful to place commercial or industrial property in use without first obtaining a zoning confirmation and certificate of use from the City.

⁵ This model code is published by the International Code Council (ICC) which is a non-profit organization dedicated to developing model codes and standards used in the design, build and compliance process. The International Codes (I-Codes) are the widely accepted, comprehensive set of model codes used in the US and abroad to help ensure the engineering of safe, sustainable, affordable and resilient structures. All 50 states and the District of Columbia have adopted the I-Codes® at the state or jurisdictional level. Internationally, code officials recognize the need for a modern, up-to-date property maintenance. The *International Property Maintenance Code*® governs the maintenance of existing buildings and is designed to meet this need through model code regulations that contain clear and specific property maintenance requirements with required property improvement provisions.

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(b) A certificate of habitability process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, upon a building or structure located on such property being vacant for a period exceeding 60 calendar days. It is prohibited and unlawful to allow a building or structure located on a commercial or industrial property to be vacant without timely receiving a certificate of habitability from the City with an associated plan of maintenance while the building or structure is vacant to ensure that the building or structure is and remains habitable and safe to the public while vacant. A certificate of habitability shall be applied for every 6 months after the initial certificate of habitability application is due and it is prohibited and unlawful to maintain a vacant building or structure without being granted a timely certificate of habitability and appropriately displaying the certificate of habitability on the vacant building or structure. A certificate of habitability is required for each building or structure located on a parcel of property.

(c) ~~(b)~~ An application for a zoning confirmation and certificate of use or a certificate of habitability for a building or structure shall be submitted to the City in such form as the City Manager, or designee, shall prescribe.

(d) ~~(c)~~ The owner or lessee or agent of either shall make application for zoning confirmation and certificate of use prior to commencing the use of property or for a certificate of habitability within 5 calendar days after a building or structure has been vacant for a period of 60 calendar days.

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(e) ~~(d)~~ Zoning confirmation and certificate of use or a certificate of habitability shall only be issued by the City when the use on the property is found to be in compliance with all applicable land development regulations of the City or the use is a legal non-conforming use.

(f) ~~(e)~~ Prior to the change in occupancy relative to a parcel of real property, and as part of the zoning confirmation and certificate of use application process, a site plan shall be submitted to the City for review and approval which site plan shall include, but not be limited to, a parking plan depicting the parking lot that will serve the applicant business. Within 5 days after a building or structure has been vacant for a period of 60 calendar days, the property owner shall file an application with the City requesting a certificate of habitability which shall contain a statement identifying a plan of maintenance while the building or structure is vacant.

(g) ~~(f)~~ Upon acceptance of a completed application, the application shall be forwarded to the City's pertinent staff for approval of proper zoning, compliance with the pertinent land development regulations and building regulations of the City. The Public Safety Department shall evaluate the property and inspect the property, as necessary, to ensure compliance with the fire codes and applicable safety codes.

(h) ~~(g)~~ The City may engage in inspections⁶ by City inspectors as determined to be necessary and desirable with regard to the property under consideration. If it is determined that the applicant's business location does not comply with the requirements of the City's land development regulations, building codes, fire codes, or safety codes, such application shall be denied by the City and the applicant shall not be permitted to engage in the business at such

⁶ Reference is directed to the provisions of Sections 933.20 through 933.30, *Florida Statutes*.

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location or, in the case of a vacant building or structure, administratively ordered to remedy all identified issues.

(i) ~~(h)~~ Upon approval of the zoning confirmation and other matters set forth in this section by the City a certificate of use shall be issued to the applicant and the applicant shall prominently display the certificate of use at the property for which the certificate of use was issued or, in the case of a certificate of habitability, upon approval of the vacant building or structure maintenance plan, a certificate of habitability shall be issued.

(j) ~~(i)~~ The Building Official/Community Services Director may revoke a permit or approval issued under the provisions of this section in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based or, in the case of a certificate of habitability, the vacant building or structure maintenance plan has not been adhered to.

(k) ~~(j)~~ Right of appeal.

(1) If the designee of the City Manager denies a certificate of use or certificate of habitability, or the Building Official/Community Services Director revokes a certificate of use or certificate of habitability the applicant therefore shall have the right to appeal such action to the City Manager by filing a notice of appeal with the City Manager within ten (10) days after such action. The City Manager, within fifteen (15) days of such appeal, shall hold an informal hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the City Manager to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on

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the action. The City Manager, after hearing from all interested parties, shall either sustain or reverse the action. The City Manager shall issue a written decision.

(2) If the applicant desires to appeal the decision of the City Manager, the applicant shall have the right to appeal the decision of the City Manager to the City's special magistrate City Council by filing a notice of appeal with the City Clerk within ten (10) days after such action. The City's special magistrate City Council shall, as soon as practicable, hold a hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations or if the certificate of habitability should have been granted or not revoked. Written notice of the hearing shall be provided by the City Clerk to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the action. The City's special magistrate City Council, after hearing from all interested parties, shall either sustain or reverse the action of the City Manager and shall issue a written decision which shall be final City action on the matter.

(l) ~~(k)~~ applicant for a zoning confirmation and certificate of use or certificate of habitability shall pay a fee for applying as well as a fee for each appeal as established in the schedule of fees adopted by the City Council.

(m) ~~(l)~~ Fortunetellers, astrologers, pain management clinics and similar enterprises.

(1) No certificate of use will be issued to any person engaged in the business of fortunetelling, astrology, palmistry, spiritualists or mediums or other occupation professing to foresee or predict the future or recall past events by any physical or spiritual means, or involving a pain management clinic until such person shall furnish the following information to the City:

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- a. The place or places of residence of the applicant for the five (5) years immediately preceding application.
 - b. The address and nature of business engaged in for five (5) years immediately preceding the date of application.
 - c. The names and present addresses of all persons, whether adults or minors, connected with or associated with the proposed business or occupation.
- (2) The City shall direct an inquiry to the Volusia County Sheriff and the City's Chief of Police in order that they can accomplish such investigation(s) and issue such report(s) as they deem appropriate in order to evaluate the moral and law abiding character of the applicant.
- (3) The applicant for a pain management clinic certificate of use shall provide to the City proof of registration with the Florida Department of Health, pursuant to F.S. § 458.3265 or 459.0137, as amended, prior to the issuance of a certificate of use for the business. If the registration of a pain management clinic is revoked or suspended by the Florida Department of Health, the certificate of use shall be revoked automatically and shall not be appealable ~~subject to subsection (j) above~~.
- (4) The application for a certificate of use for a pain management clinic shall include an affidavit by the owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended, attesting to the fact that no employee, full-time, part-time, contract, independent or volunteer has been convicted of or has pled guilty or nolo contendere at any time to an offense constituting a felony in this State or in any other state involving the prescribing, dispensing,

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supplying, selling or possession of any controlled substance within a five-year period prior to the date of employment at the pain management clinic.

(5) If at any time the City determines that a pain management clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this section or any other applicable code or law, the City may revoke the certificate of use through the process outlined in ~~section 14-61.1~~ of this Code.

(6) The application for a certificate of use for a pain management clinic shall disclose, in detail, the names and addresses of the owners and operators of the pain management clinic and shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended.

(7) A copy of each fortuneteller, astrologer, pain management clinic and similar enterprise's certificate of use shall be posted in a conspicuous location at or near the entrance to the business in order that it may be easily observed and read at any time.

SECTION FIVE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; HABITABILITY REQUIREMENTS. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

(a). The City of Daytona Beach Shores hereby adopts the 2018 version of the *International Property Maintenance Code*® as published by the International Code Council subject to the conditions set forth in this Section and all references to the local jurisdiction shall be to the City of Daytona Beach Shores.

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(b). The general purpose of the adoption of the *International Property Maintenance Code*® is to facilitate its application is making determinations of habitability as set forth in Section Four of this Ordinance.

(c). With regard to any conflict between the *International Property Maintenance Code*® and the *City Code* and *Florida Statutes*, the local and State law provisions shall prevail and apply.

(d). When a provision version of the *International Property Maintenance Code*® requires the establishment of a regulatory standard by local or the establishment of a local fee the standard set forth in the *City Code* or the fee adopted by the City Council shall be applicable. By way of example, Section 302.4 of the *International Property Maintenance Code*® relates to weed growth and, thus, the standard set forth in Section 13-5 of the *City Code* relating to and restricting the growth of weeds would be applicable. When a standard is not prescribed in the *City Code* as to a particular matter, the provision shall not be enforced by the City.

(e). With regard to processes and procedures, the processes and procedures set forth in Chapter 162, *Florida Statutes*, and the provisions of the *City Code* shall control and be applicable.

PART IV. TECHNICAL AND ADMINISTRATIVE PROVISIONS

SECTION SIX: IMPLEMENTING ADMINISTRATIVE ACTIONS.

Without in any way limiting the provisions of this Ordinance, the City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the purposes and provisions of this Ordinance as such Charter officials may deem appropriate in their respective roles and functions under the *City*.

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SECTION SEVEN: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the code enforcement and nuisance abatement actions of the City of Daytona Beach Shores and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION EIGHT: CODIFICATION; SCRIVENER'S ERRORS.

- (a). The provisions of Sections One through Seven of this Ordinance shall be codified while the remaining Sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the codification of the provisions of this Ordinance.
- (b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION NINE: CONFLICTS.

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

SECTION TEN: 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.

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SECTION ELEVEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

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

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2019.

Adopted on second reading this day of , 2019.

In this Ordinance, when text is being amended, ~~striketrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.



CITY COUNCIL AGENDA MEMORANDUM AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

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

SYNOPSIS:

This resolution creates a tennis facility operational committee as desired by the City Council.

FISCAL IMPACT STATEMENT:

BACKGROUND:

At its meeting of July 9, 2019, the City Council discussed the issues relating to the operations and programs of the City's tennis facility.

To date, no committee has been formed by the City Council to formulate or implement policies related to the tennis facility.

Resolution Number 2019-13 creates a committee to address policy and operational issues as directed to be presented to the City Council at this meeting.

The proposed Resolution Number 2019-13 provides a means for the City Council to take action as it deems to be appropriate relative to the creation, etc, of the committee. Also, the City Council determined that it desired to appoint a City Council Liaison Member to address tennis facility issues. This agenda item also provides the City Council with the ability and mechanism to appoint such a Member.

LEGAL REVIEW:

The system of governance under which the City operates is a general version of the Council-Manager form of government. Specifically, Section 2.11 of the *City Charter* relating to the general powers and duties of the City Council states that "All powers of the City shall be vested in the City Council except as otherwise provided by law and this Charter." Thus, it is the power and role of the City Council to establish policies, fees, and all like matters involving City facilities and only the City Council can delegate authority to the City Manager, the City Attorney or a City board, commission or committee to accomplish any such matter.

It is clear that any informal tennis advisory group that ever sought policy and operational control of the tennis facility never had any legal standing to, in any way, make any policy or implement operational decisions or to act otherwise relative to the City owned and City funded tennis facility. Any actions to any effect that purported to take any power from the City were inappropriate and ineffective in any way. The City, and the City alone, acting through the City Council and not City management and not the City Attorney, has the authority to establish policy as to the use and operation of the City's tennis facility. The City Council may lawfully delegate its powers to others, but, even in such events, the City Council may overrule actions if it determines that they do not service the public interest.

For example, at the last City Council meeting, the City Council determined that the 25% team membership rule would be in effect vis-à-vis the use of the courts at the tennis facility, etc., and that the tennis committee would be made up of City residents subject to the 4/5ths vote rule now set forth in the *City Code* which provides for a means to appoint non-residents to the committee should that be the desire of the City Council.

The result of this action by the City Council will be that tennis facility decisions will be transparent and open to the public and that meetings and decisions affecting the public will be held in accordance with the requirements of the *Sunshine Law*.

There are 3 potential motions to make relative to this agenda item as follows:

- (1). Approval of Resolution Number 2019-13 as presented or modified.
- (2). Appointment of a Community Tennis Liaison City Council Member.
- (3). If possible, initial appointment of members to the Committee.

RECOMMENDATION:

It is recommended that City Council review proposed Resolution Number 2019-13 and take action on the resolution as it deems appropriate.

Further, it is recommended that the City Council appoint a Community Tennis Liaison City Council Member.

Further, if possible, the City Council may appoint initial members to the Committee as established in the Resolution.

SUGGESTED MOTION:

I move to adopt Resolution Number 2019-13 as presented.

OR

I move to adopt Resolution Number 2019-13 modified as follows

_____.

AND

"I move to appoint Council Member _____ as the Community Tennis Liaison City Council Member.

AND (IF POSSIBLE)

I move to appoint the following persons to the Committee:

_____.

ATTACHMENT: 1. res 2019-13 Tennis Facility Committee

RESOLUTION 2019 –13

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

WHEREAS, the City Council of the City of Daytona Beach Shores is very proud of the tennis facility which it offers to its citizens and other tennis players throughout the areas nearby to the City; and

WHEREAS, in addition to the tennis facility providing high quality clay courts with underground watering; the facility borders a lovely garden area and memorial park dedicated to veterans and is part of the City's Community Center complex; and

WHEREAS, the tennis facility includes a shaded area with seating and restroom and other high quality facilities and is located nearby other City recreational amenities such as pickle ball courts and a dog park; and

WHEREAS, the tennis facility has recently been the location of United States Tennis Association tournament play and the City has been blessed with highly successful teams representing the City in State competitions; and

WHEREAS, a publicly owned recreational facility such as the tennis facility requires high caliber management and organization to ensure that the facility is optimally used and maintained for the benefit of the taxpaying citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores, in addition to funding high quality operation and maintenance of the City's beautiful new clay 5-court tennis facility, has taken numerous actions in committing to fund a sixth clay court; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to establish a policy of the City to ensure that the City's tennis facility is optimally maintained and operated; and

WHEREAS, the creation of a Tennis Facility Operational Committee will be beneficial to the citizens of the City of Daytona Beach Shores and the users of the facility and will be a sound step in the implementation of a well-managed program of tennis operations and competition at the tennis facility as well as sound utilization for the facility.

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

SECTION ONE; LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts the provisions of the City Council agenda memorandum relating to this matter as legislative findings relative to the adoption of this Resolution.

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

(c). The City Council of the City of Daytona Beach Shores hereby adopts the mission of the Greater Volusia Tennis League (GVTL) as a goal of the City which is to provide the opportunity for everyone to enrich their lives by playing the lifetime sport of tennis and to encourage and conduct the game in the interest of healthful recreation and physical fitness. Further, the City Council adopts the mission statement of the United States Tennis Association (USTA) which is to promote and develop the growth of tennis with the USTA accomplishing that mission by engaging in a wide and diverse array of programs to promote and foster community tennis, player development, professional tennis and diversity and inclusion within the game of tennis recognizing tennis as a truly lifetime sport.

(d). As part of the actions taken in this Resolution, the City Council of the City of Daytona Beach Shores hereby finds it desirable to appoint a Community Tennis Liaison City Council Member to work with groups that are desirous of using the City's tennis facility.

SECTION TWO. CREATION OF TENNIS FACILITY OPERATIONAL COMMITTEE.

(a). *Creation; Membership:* There is hereby created a City of Daytona Beach Shores Tennis Facility Operational Committee. The Tennis Facility Operational Committee shall consist of up to 5 residents of the City. Additionally, the Community Tennis Liaison City Council Member shall serve, *ex officio* on the Committee as Chair, attend meetings of the Committee (but only vote in the event of a tie vote) and work with the Committee in all respects.

(b). *Procedural Matters:* The general provisions of the *City Code* relating to the creation and operations of boards, commissions and committees shall apply to the Tennis Facility Operational Committee.

(c). *Tennis Facility Operational Committee; Duties:* The Tennis Facility Operational Committee shall meet at the call of its Chair and shall have the following duties:

(1). Inform and advise the City of community issues and opportunities as they relate to the operations of City's tennis facility.

(2). Develop and implement policies and programs related to the use of the City's tennis facility to include the evaluation of other Florida local government tennis programs, facilities and policies and the adoption and implementation of successful programs and policies with regard to the City's tennis facility.

(3). Assist the City in disseminating information about the operation, policies and programs of the City's tennis facility.

(4). Encourage team competition involving the City, its residents and teams designating the City as its home within the GVTL and to reach out to other communities to engage in collaborative efforts to enhance the game of tennis within the City.

(5). Develop and implement promotional activities and programs involving the game of tennis for the benefit of the citizens of the City.

(6). Encourage competition and training in accordance with the programs offered by the USTA.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The Tennis Facility Operational Committee; the City Manager, or designee; and the City Attorney are hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed necessary and appropriate.

(b). It is the intent of the City Council that the implementation of the policies and programs developed by the Tennis Facility Operational Committee relative to the City's tennis facility be seamlessly implemented by the City Manager and the City Attorney for the benefit of the citizens of the City.

SECTION FOUR. SAVINGS.

The prior actions of the City of Daytona Beach Shores relating to the City's tennis facility and related activities are hereby ratified and affirmed.

SECTION FIVE. CONFLICTS.

All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION SIX. SEVERABILITY.

If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION SEVEN. EFFECTIVE DATE.

This Resolution shall become effective immediately upon adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

MAYOR, NANCY J. MILLER

Attest:

CITY MANAGER, MICHAEL T. BOOKER

CITY CLERK, CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, LONNIE GROOT

Adopted this 13th day of August, 2019.

Posted this __ day of _____, 2019.



CITY COUNCIL AGENDA MEMORANDUM

AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

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

SYNOPSIS:

SPEX12019016, if approved, would entitle the property owners, Donald and Carolyn Banker, to expand an existing residential garage structure on the property located at 3839 South Atlantic Avenue, by adding a second story for residential use above and within the existing garage footprint. The subject property is located in the T-RMF-1 "Hotel/Motel-Multifamily Residential (High Density)" Zoning District and is assigned the *Comprehensive Plan's* "High Intensity" Future Land Use designation. According to the Volusia Property Appraiser's website (2019), the property was purchased by the current owner in 2010. Both the current zoning district and the current *Comprehensive Plan* future land use designation and policies predated 2010 were in effect at the time the property was acquired by the property owner.

The existing single-family residential use is a legal, but nonconforming, use on the property.

FISCAL IMPACT STATEMENT:

The Fiscal Year 2018/2019 budget has sufficient funds to implement all administrative and technical functions associated with the permitting and inspection obligations of the City associated with the special exception. If approved, the just value of the property may be impacted.

BACKGROUND:

On April 29, 2019 applicant/owner submitted a completed special exception application (**EXHIBIT A**) requesting "continued use of single-family residence with renovation to garage to add second story within the existing building footprint" pursuant to Sec. 14-29.5 and Sec. 14-69.1.4.f of the *Daytona Beach Shores Land Development Code (LDC)* relative to property located at 3839 South Atlantic Avenue .

Relevant sections of the *LDC* read as follow:

- Sec. 14-29.5. Development of "Small Lot" as Special Exception.

A development of a "small lot" pursuant to this chapter, shall be a special exception utilizing the conditions contained in section 14-69.1, 4.f., and shall pertain to the T Hotel/Motel District only.

- Sec. 14-69.1.4.f.

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

- 14-29.6. Authority of Planning and Zoning Board.

That pursuant to the authority of section 14-69.1, 5., the planning and zoning board is hereby assigned the duties to the granting of special exceptions under this provision. In addition, any recommendations by the planning and zoning board shall be heard and require final approval by the City Council after a public hearing. The developer shall provide due public notice pursuant to section 2-2 of the time and place that the planning and zoning board and the City Council will consider the request for special exception for small lots.

The owner/applicant is seeking to expand the residential garage structure by adding a second story within the existing garage footprint located on the property. The subject property is located in the T-RMF-1 "Hotel/Motel-Multifamily Residential (High Density)" District. This is a dual zoning district which permits the following uses and densities:

- Sec. 14-18. - RMF-1 Multi-Family Residential District (High Density).

14-18.2. Permitted Principal and Prohibited Uses and Structures.

Permitted Uses: Multifamily dwellings.

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

- 14-18.4. Dimensional Requirements. Minimum density: Thirty-five (35) units per acre. Maximum density: Sixty (60) units per acre.

- Sec. 14-21. - T Hotel/Motel District.

14-21.2. Permitted Principal and Prohibited Uses.

Permitted Principal Uses:

1. Hotels, motels and tourist accommodations.
2. In connection with and accessory to hotel, motel and tourist accommodation facilities for the sale of sundries, flowers, gifts and souvenirs; newspapers and magazines and the like, personal service facilities such as barber or beauty shops; restaurants, coffee shops and cocktail lounges, shall be subject to the following limitations:
 - a. All such facilities shall be designed and scaled to serve the guests of the accommodating establishment, and hotels, motels and tourist accommodations having less than one hundred (100) rooms shall not have restaurant, lounges or coffee shops which have a combined occupancy load of more than two (2) persons per unit based upon the occupancy load established by the building official using the codes then currently adopted by the City.
 - b. All such facilities shall be accessible only from a foyer, interior court or corridor of the accommodating establishment.
3. All uses permitted in RMF-1 as long as they meet all dimensional requirements of an RMF-1 district.
4. Travel agency.

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

- 14-21.4. Dimensional Requirements. Minimum density: Thirty-five (35) units per acre. Maximum density: Seventy (70) units per acre.

Sec. 14-10 of the *LDC* provides for the interpretation of uses permitted and reads:

- Sec. 14-10. - Interpretation of uses permitted.

Uses not designated as permitted by right or accessory to those permitted by right or allowed as special exception shall be prohibited from that district. Special exceptions shall only be permitted according to the additional regulations imposed, approved and permitted in accordance with the provisions of this ordinance.

Sections 14-18 and 14-21 of the *LDC* do not include single-family uses as permitted principal uses. Therefore, the existing single-family use is nonconforming. Chapter 14 of the *LDC* address nonconforming uses with the relevant subsection below:

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

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

1. No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land or structure than was occupied at the effective date of adoption or amendment of this ordinance;
2. No other nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance;
3. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land or structure.

. The addition of a second story on the existing garage within the garage structure footprint constitutes an enlargement or increase in the nonconforming single-family use. According to the Volusia Property Appraiser's website (2019), the property was purchased by the current owner in 2010. Current *LDC* regulations, zoning and *Comprehensive Plan* future land use designations and policies predated 2010. Thus, the property owner acquired the property under those legal constraints.

The existing single-family residential use is a legal, but nonconforming, use.

ADDITIONAL PLANNING ANALYSIS:

The Future Land Use Classification of the subject property is "High Intensity." *Daytona Beach Shores Comprehensive Plan* policies relevant to high intensity uses are found below:

- Policy 1-1.1.2: Maintain and enforce land Development regulations consistent with the following standards:

2. High Intensity Uses - **hotels/motels and timeshares** shall have densities up to a maximum of 70 units per gross acre; **condos, multi-family residential units, and apartments** shall have a maximum density of 60 units per gross acre (site specific density to be controlled by *Land Development Code*)

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

Neither of the above policies prescribe single-family residential as a use in the high intensity future land use classification. In addition, both of the policies call for a high intensity density development. A single-family residential expansion is inconsistent with these policies.

Other relevant *Comprehensive Plan* policies:

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

Policy 1-1.1.3 states that new development or redevelopment shall be consistent with the zoning district classifications. As seen in the Background section of this staff report, the subject property has a zoning of T-RMF-1 “Hotel/Motel-Multifamily Residential (High Density)” District. The proposed garage expansion is inconsistent with both the list of uses permitted and minimum density permitted in these districts.

Lastly, Florida law requires development consistency with the comprehensive plan and reads as follows:

- **Florida Statute Sec. 163.3194(1)(a) Legal status of comprehensive plan.**—After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

PLANNING AND ZONING BOARD:

On July 8, 2019 the Daytona Beach Shores Planning and Zoning Board recommended, by a vote of 3 -1, denial of SPEX12019016 based on the facts of the application being inconsistent with the City's *Comprehensive Plan*.

LEGAL REVIEW:

City staff is correct that the current use of the property is a legal, but nonconforming use, that cannot be lawfully expanded under controlling law.

Section 163.3194, *Florida Statutes*, states that local government comprehensive plans shall have a most important legal status and that no public or private development may be permitted except in conformity with the goals, objectives and policies of the pertinent comprehensive plan. The statute does not allow local governments to have any discretion as to whether a proposed development should be consistent with their comprehensive plans. Consistency with a comprehensive plan is, therefore, **not a discretionary matter**. The case of *Pinecrest Lakes, Inc. v. Shidel* stands clearly for that position as, indeed, in that case the courts ruled that a complete demolition and removal of several multi-story buildings could be ordered because the development was inconsistent with the applicable local government comprehensive plan.

The statutory definition of what is meant by consistent states that a development order is consistent with a comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by a development order are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and meet the criteria set forth in the implementing land development regulations. Compatible means in harmony with. Each development order must “further” the goals or policies of the comprehensive plan by advancing the provisions of the comprehensive plan. City staff has reached the conclusion that that is not the case as to this application.

The expectation of consistency with a comprehensive plan is very high. When courts examine the issue, they do not defer to the local government in the government’s decision of what is or isn’t consistent, as is done in some other reviews of local government determinations. Strict scrutiny is the legal test in the comprehensive plan consistency context. The courts have defined strict scrutiny based on the meaning of the two words, saying strict implies rigid exactness or precision. A thing scrutinized has been subjected to minute investigation. Strict scrutiny is, thus, the process whereby a court makes a detailed examination of a statute, rule or order of a tribunal for exact compliance with, or adherence to, a standard or norm. It is the antithesis of a deferential review. This means that, since the courts will adhere to that standard, every decision on a development order must exactly comply with the applicable provisions of the controlling comprehensive plan.

The Florida Supreme Court defined the role of the local comprehensive plan in relation to zoning in the *Board of County Commissioners of Brevard County v. Snyder*. The Court held that a property owner who is seeking rezoning or development approval must demonstrate that its application is consistent with the comprehensive plan and complies with the land development regulations. Once the owner has met this legal requirement, the burden shifts to the local government to demonstrate that denial of the petition accomplishes a legitimate public purpose and is not arbitrary, discriminatory or unreasonable. A tie goes to the local government. If the record contains substantial competent evidence in favor of the local government and in favor of those opposing the local government’s action, and the action is reasonable, the local government’s judgment will be upheld.

Additionally, Section 166.033, *Florida Statutes*, provides as follows (please note **emphasized text**):

"(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional

information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (4), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) **When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.**

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164, but does not include building permits.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality shall attach such a disclaimer to the issuance of development permits and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply."

The above-referenced definition of the term "development permit" is as follows:

"(16) 'Development permit' includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." (Section 163.3164(16), *Florida Statutes*).

Thus, if this application is denied, a denial development order must be issued which must cite to the applicable portions of each ordinance, rule, statute, or other legal authority supporting the denial of the application. For example, if a goal, objective or policy of the *City's Comprehensive Plan* were to be the basis for a denial, then such goal, objective or policy must be part of the motion proposing the denial. A denial development order would be drafted to implement the actions of the City Commission in the event of such occurrence. Accordingly, any motion to deny must state, with particularity, the basis for the proposed denial.

The term "development order" is defined as follows and, as can be seen, refers to the "granting,

denying, or granting with conditions an application”

“(15) Development order’ means any order granting, denying, or granting with conditions an application for a development permit.” (Section 163.3164(15), *Florida Statutes*).

RECOMMENDATION:

Staff recommends denial of SPEX12019016 pursuant to Section 163.3194(1)(a), *Florida Statutes*, due to the fact that the proposed expansion of the conforming use is inconsistent with the *Daytona Beach Shores Comprehensive Plan* as concluded in the planning analysis noted in this agenda memo.

SUGGESTED MOTION:

A City Council Member may move as follows:

1. “I move to deny the application on the basis of inconsistency with City's *Comprehensive Plan* as stated in the City staff report.

OR

2. “I move to deny the application on the basis of the following . . . (inconsistency with City's *Comprehensive Plan*, etc.)

OR

3. “I move to approve SPEX12019016 as presented.”

OR

4. “I move to approve SPEX12019016 with the following conditions...”

- ATTACHMENT:**
1. Exhibit A-Banker SPEX Application
 2. Exhibit B-Area Zoning Map
 3. Exhibit C-Area Future Land Use Map

JAMES A. STOWERS, P.A.
ATTORNEY AT LAW

JAMES A. STOWERS
Phone: 386.383.4232
Email: jstowerslaw@gmail.com

Please Reply To:
PO Box 732013
Ormond Beach, FL 32173

April 26, 2019

VIA HAND DELIVERY

Mr. Stewart Cruz
City Planner
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

RECEIVED
APR 29 2019
404576
BUILDING DEPT
CITY OF DAYTONA BEACH

Re: Special Exception Request for 3837 & 3839 S. Atlantic Avenue

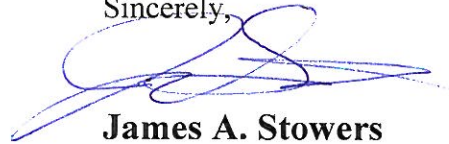
Dear Mr. Cruz:

My firm is privileged to represent Mr. Donald Banker regarding his Special Exception application for property located at 3837 & 3839 S. Atlantic Avenue in Daytona Beach Shores (the "Property"). As you know, Mr. Banker currently maintains the Property as a single-family residence. Due to the Property's size, Mr. Banker is seeking to make a renovation to the garage portion of the residence. Attached, please find the Special Exception Application and associated materials related to the request. We look forward to working with the City of Daytona Beach Shores and the Board of Adjustments to address the necessary action needed to get the Property renovated.

* * * * *

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



James A. Stowers
Direct Dial (386) 383-4232
Email jstowerslaw@gmail.com



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

CC # 1007
F 220.00
RECEIVED
404576
APR 29 2019
PLANNING AND CODES DEPARTMENT
CITY OF DAYTONA BEACH SHORES

12019016
APPLICATION FOR SPECIAL EXCEPTION

The Undersigned Applicant requests the Board of Adjustments OR Planning and Zoning Board, as required, to hear and decide upon this application in accordance with Article X, AND Section 14-58 of the Land Development Code.

Date Submitted: 26 / April / 2019

Applicable Section of Code: §14.29.5 LDC
§14-69.1.4.f LDC

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

Applicant's Name: Donald Banker

Address: 400 Washington Street Lynchburg, VA 24504

Phone #: N/A

Fax #: N/A

Property Address: 3837 & 3839 S. Atlantic Avenue Daytona Beach Shores, FL 32118

Parcel Number: 630205060190

Existing Property Use: Single-Family Residence

Requested Special Exception: Continued use of single-family residence with renovation to garage to add second story within the existing building footprint.

Representing Agent/Attorney (if any): James Stowers, Esq.

Address: PO Box 732013 Ormond Beach, FL 32173

Phone #: (386) 383-4232

Fax #: N/A

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

Legal description of the property:

LOT 19 BLK 6 OCEAN VIEW SEC HALIFX ESTS MB 11
PG 100 PER OR 5084 PG 2995 PER OR 5484 PG 1029
PER OR 6500 PG 4182 PER OR 6771 PGS 2709-2710

LOT 20 BLK 6 OCEAN VIEW SEC HALIFAX EST MB
11 PG 100 PER OR 5049 PGS 0208 PER OR 5484 PG
1030 PER OR 6500 PG 4213

Description of your request:

The applicant's request is to permit the property owner to pursue a renovation of his single-family property to modify his garage in order to construct a second story. The renovation will not increase the original footprint of the garage. As far as any expansion of a non-conforming use, the property is currently utilized as a single-family residence, so the expansion of the existing structure within the same building footprint will not expand this use.

Please explain how your application meets the following special exception criteria:

- 1. In granting any special exceptions the Board shall find that such grant will not authority (sic)(adversely) affect the public interest.**

The construction of a second story on top of the existing garage of the single-family residential structure will have no negative impact on the public interest. If anything, the work completed will simply add to the property's taxable value and allow the property owner to continue use of their private property.

- 2. In granting any special exception, the Board may prescribe appropriate conditions and safeguards pursuant to this ordinance and the regulations enacted under it which are consistent with the protection of the public health, safety, morals and general welfare. Violation of such conditions and safeguards when made a part of the terms under which a special exception is granted shall be deemed a violation of the ordinance and regulations promulgated hereunder.**

Agree (x)

Disagree ()

Explanation: Applicant understands that certain conditions may be incorporated into the approval of this request. The property owner is willing to stipulate to the condition that no added impervious surface will be created as part of the request. Additionally, the property owner is willing to stipulate that no expansion of the existing structural footprint of the existing single-family residential structures may occur as part of this special exception request.

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

Agree (x)

Disagree ()

Explanation: The property owner is willing to stipulate to certain timing considerations as part of this special exception application.

- 4. The following standards shall be applicable in determining whether the Board shall grant or deny a special exception, in addition to the aforementioned provisions, or provisions set forth in zoning regulations adopted pursuant to this ordinance.**

- a. The grant of a special exception shall be in harmony with the purpose and intent of this ordinance and the zoning regulations and any comprehensive plans promulgated hereunder, particularly those applicable to the zoning classification in which the special exception is located.**

The City's Land Development Code ("LDC") provides relief for certain nonconforming lots that are of a limited size, thus limiting the potential uses under the application zoning district. As such, the LDC provides a "relief valve" of the special exception process with a standard merely that the request does not *"adversely affect the natural environment, natural resources or scenic beauty or give rise of any pollution of the air, land or water, or cause unnecessarily injurious heat, noise or odor."* This language is consistent with similar efforts within the City of Daytona Beach Shores to protect the rights of property owners to use their property, even when that use is non-conforming. In the City's Comprehensive Plan, Policy 5.1.59 specifically references properties being built back to their existing residential development pre-disaster density and intensity. Additionally, the LDC zoning designations appear to consistently create use hierarchies where less intense uses are permitted; whereas, in those districts where only less intense uses are permitted, more intensive uses are prohibited. Fortunately, in the current matter the existing non-conforming use and lot size issues are not of a nature that they are more intense or dense than the maximums allowed under the LDC.

- b. The Board may not grant a special exception unless the applicant has demonstrated his compliance, or ability to comply with, the conditions imposed by the zoning regulations.**

The property is currently utilized as a single-family residence on a non-conforming lot. The property and use are permitted under the existing zoning regulations. As for the question of securing a building permit to modify the garage to add a second story, that request falls under the special exception section of non-conforming lots with the question for the Board of Adjustments to be simply whether the request will *"adversely affect the natural environment, natural resources or scenic beauty or give rise of any pollution of the air, land or water, or cause unnecessarily injurious heat, noise or odor."*

- c. The Board must find that the applicant has submitted sufficient evidence to assure that he is or will be able to comply with all requirements of the city or state agencies having jurisdiction over the particular use, and the board may require appropriate guarantees to assure compliance.**

The property owner is confident that the extremely limited scope of the request and the work to be conducted on the property are of a nature that working with the City via the building permit process will meet any standard or concern set forth herein. No expansion of the structure's footprint is suggested or planned, and the work will be completed consistent with the City's building permit standards.

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

The City of Daytona Beach Shores has one designated evacuation route, which is Atlantic Avenue north to International Speedway Boulevard and south to Dunlawton Avenue. The property is located on South Atlantic Avenue. The special exception requested will not create any additional traffic congestion or otherwise create a hazard or danger to the public. Alternatively, the denial of the special exception could result in the property owner being forced down a path of increasing the number of units on the property, thus creating the very type of additional traffic that this special exception request is eliminating.

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

The property immediately north of the property includes a multi-story (10 story) condominium complex. The area immediately north of the garage that is part of this special exception request consists of a raised tennis court over an underground parking garage. As such, the addition of a second story over the garage would merely bring the garage structure to a level consistent with the tennis court structure located on the north side of the adjacent property's entrance driveway and underground parking access tunnel. As for the property to the south, that too is a single-family home. Given that the addition is anticipated to "square off" the existing second story, we do not see that this will materially impact the property to the south either. Accordingly, we see no way in which the requested special exception will have any adverse effects on surrounding lands, buildings or natural resources.

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

The special exception request is of an exceedingly limited nature and will merely result in the garage structure having a similar height to the elevated tennis court located just north of the property. Accordingly, we see no adverse effect of the nature referenced by this standard.

5. The Board shall find that the special exception is consistent with the Daytona Beach Shores Comprehensive Plan.

The Daytona Beach Shores Comprehensive Plan includes future land uses that list the maximum densities and intensities. Nothing in these theoretical maximums prohibit existing residential uses that are not inconsistent with the character of the Future Land Use Plan and the City. Accordingly, the applicable special exception request is consistent with the Daytona Beach Shores Comprehensive Plan.

6. When reviewing an application for a special exception, the Planning and Zoning Board and City Council shall also consider the following requirements and criteria:

a. Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety.

This application will allow the property owner to construct an addition to his existing garage. The special exception request will result in zero additional traffic generation and access will remain the same.

b. Off-street parking, loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that which generally experienced in the district with regard to normative development activity.

N/A

c. Required yards, screening or buffering and landscaping shall be consistent with the district in general and the specific needs of the abutting land uses as determined by the City.

As referenced earlier, the structure will be constructed at a location that will ensure compatibility with the adjacent second-story tennis court located to the north across the drive aisle located on the adjacent condominium property.

e. Size, location or number of special exception uses in an area shall be limited so as to maintain the overall character of the district as generally intended by this Code.

This special exception is of an exceedingly limited nature, as most oceanfront lots within Daytona Beach Shores are either conforming or have otherwise been redeveloped. With the number of lots that could even make this special exception request being so limited, there is little doubt that this request will have no negative impact on the overall character of the district.

APPLICANT's SIGNATURE

[Signature]

STATE OF Virginia

COUNTY OF Richmond

Sworn to and subscribed before me this 24 day of April 20
19, by Donald Baker who is personally known to me or has produced
and who did (did not) take an oath.

[Signature]

My Commission Expires: November 30 2019



APPLICANT AFFIRMATION (Sec. 14-58.1.1)

Applicant's Affirmation: By signing below, I hereby state that all information contained in this application and all documentation submitted herewith is true and correct to the best of (my) (our) knowledge and belief. I acknowledge that I fully understand the requirements relating to the specific special exception use that I am applying for and that I fully understand the process for the application that I am submitting, as outlined in the City's Code of Ordinances. Moreover, I acknowledge and agree that the following conditions shall apply to my permit, if approved, and that the city may impose further conditions pursuant to the City's Code of Ordinances:

Transfer or abandonment of special exceptions. Special exceptions shall run with the property and the ownership of a special exception use may be transferred to another party. A special exception use that is not initiated within two (2) years of being granted shall not be established without a new public hearing in accordance with requirements of this Section and shall be deemed abandoned. A special exception use that is abandoned, after establishment, for a period of six (6) months or more shall not be reestablished without a new public hearing in accordance with requirements of this Section.

Violation of special exception terms or conditions. It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of a special exception. Violations may be prosecuted or enforced in any manner as may be provided by law for prosecution or enforcement of municipal ordinances.

Expiration or abandonment of special exception purpose. If a special exception does not begin to serve the purpose for which it was granted permission within two (2) years from the date of approval of the special exception it shall expire and be deemed, conclusively, to have been abandoned. The submittal of a site development plan will constitute meeting the requirements of this provision. If after receiving approval the site development plan expires, the special exception will also expire and a new application must be submitted and approved in accordance with this Section.

APPLICANT's SIGNATURE



STATE OF

Virginia

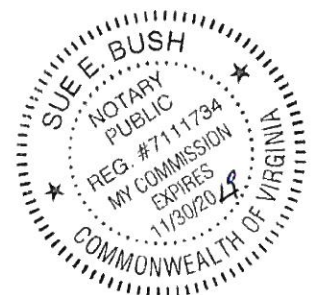
COUNTY OF

Stafford

Sworn to and subscribed before me this 20 day of April 2019, by Donald Barker who is personally known to me or has produced _____ and who did (did not) take an oath.

Sue E. Bush

My Commission Expires: November 30 2019



Authorization of Owner

I/We Donald Banker
As the acting owner(s) related to the special exception request of the property described as:

630205060190

(Legal description or parcel ID number(s))

Authorize James Stowers, Esq. to act as our agent to seek
(Applicant's name)
the referenced variance request for the above described property.


Owner's Signature

DONALD BANKER
Type or Print Owner's Name

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 3/26/19
(Date)
by Donald Banker, who is personally known to me or
(Name of person acknowledging)
who has produced known To Me as identification and
(Type of identification)
who did not take an oath.



Linda Johnson Whitmore
Notary Public, State of Florida VA

Linda Johnson Whitmore
Type or Print Name

Commission No.: 7505927

My Commission Expires: 3/31/23

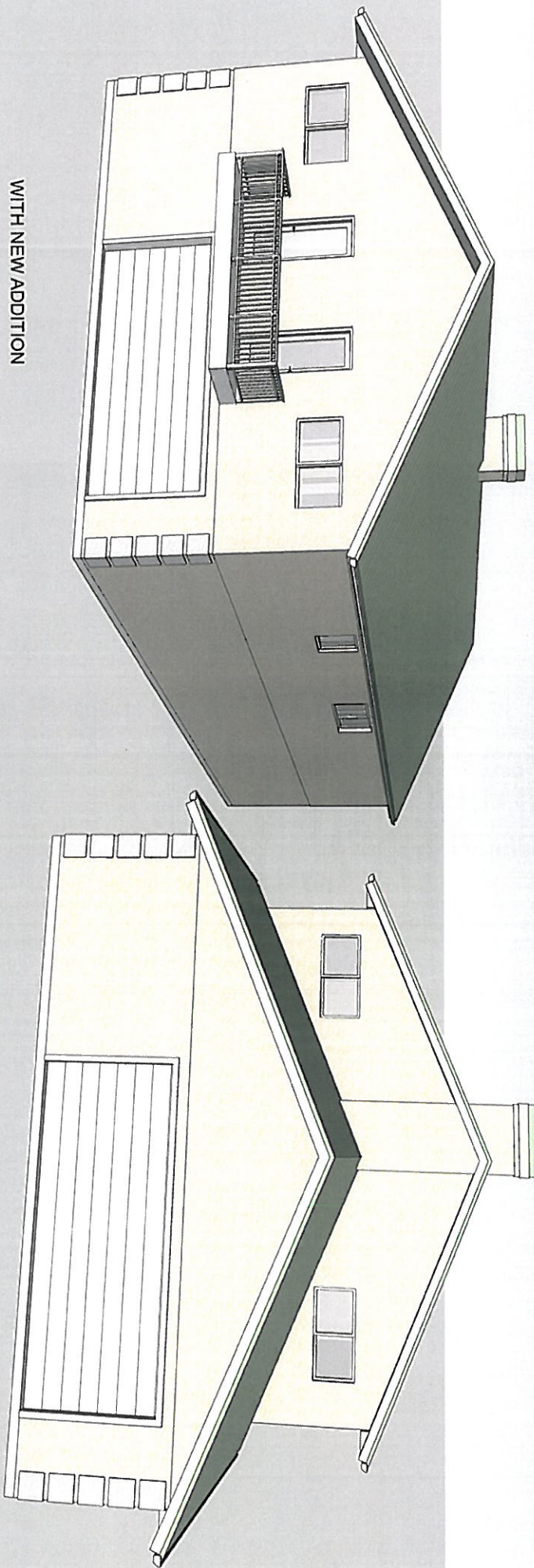


EXHIBITS REQUIRED FOR SPECIAL EXCEPTION

1. Recent survey, certified by a licensed professional surveyor in the State of Florida, showing location of all structures on site and a complete legal description.
2. Statement of ownership and control of the project.
3. Eleven (11) 24"x36" sets of the site plan, including the following items:
 - a. Title or Name of the Project
 - b. Architect or Engineer's Name
 - c. Date
 - d. North arrow based on an exact survey of the property drawn to scale of sufficient size
 - e. Boundaries of the project, any existing streets, buildings, water courses, easements and section lines
 - f. Total area of site
 - g. Project location map
 - h. Exact location of all buildings, structures, retaining walls, buildings, parking and access locations, utility service points, proposed screening or buffering, supplemental details necessary to address the review criteria and satisfy any specific requirements for such use described in Sec. 14-58, and any other information pertinent to the specific requested use of the site
 - i. Access and traffic flow
 - j. Off-street parking and off-street loading areas with clearly delineated parking spaces
 - k. Landscaping clearly delineated by shading
 - l. Building elevations with shading of proposed area to be changed, if applicable
 - m. If more than one story is proposed, area to be changed shall be shaded as an overlay

NOTE: All drawings shall be signed and sealed by a registered civil engineer, architect, landscape architect, or other person as required under this Code, or by Florida general law.

4. Two sets of photographs showing elevations of the building (if applicable), the property included in this application, and adjacent properties.
5. Comply with due public notice requirements for the Board of Adjustments hearing (see attached due public notice definition and sample legal advertisement, notice letter and affidavit).

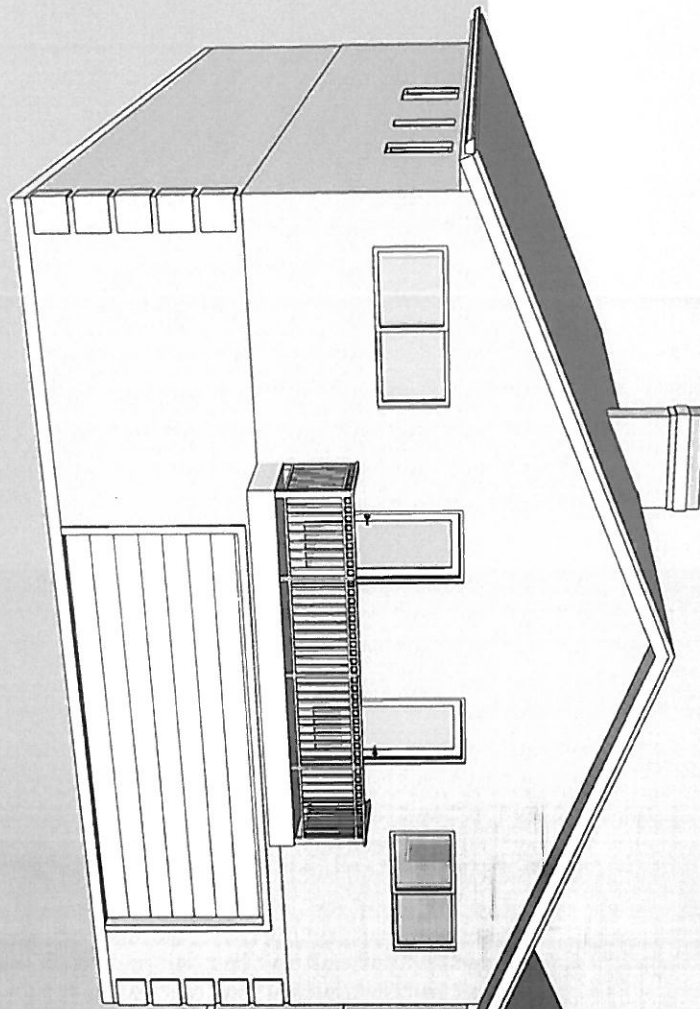


WITH NEW ADDITION

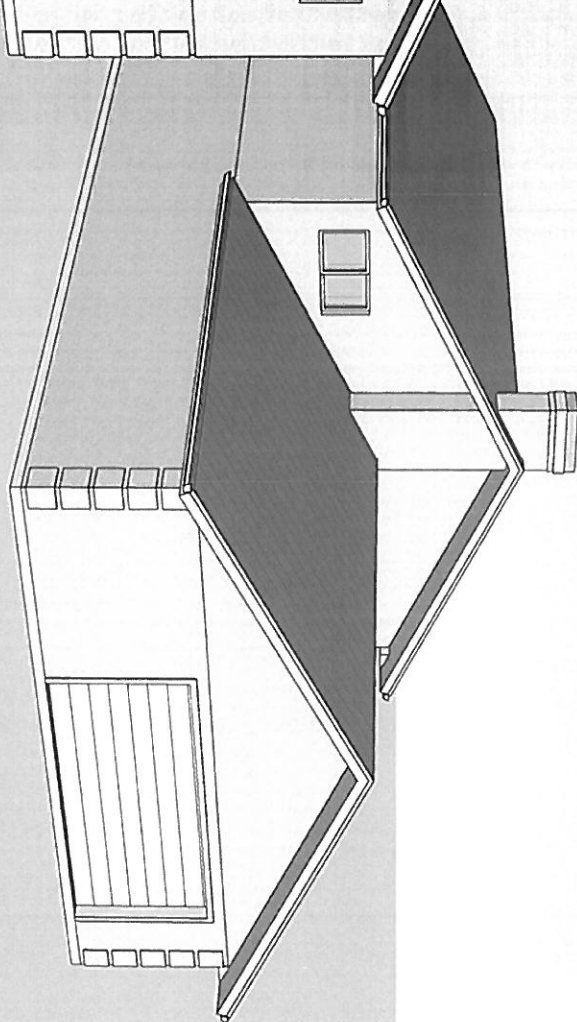
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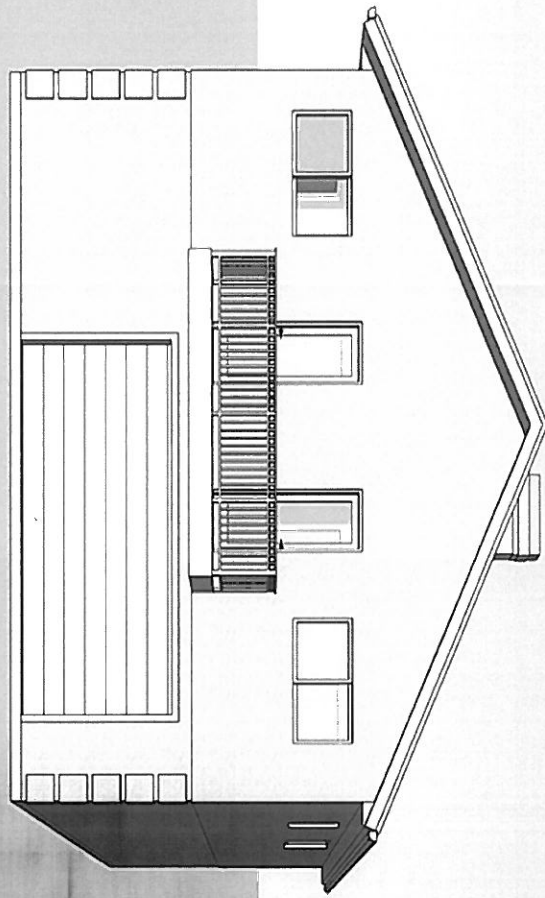
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APR 29 2019
BUILDING DEPARTMENT
CITY OF DRY TOWN, OHIO
407576

WITH NEW ADDITION

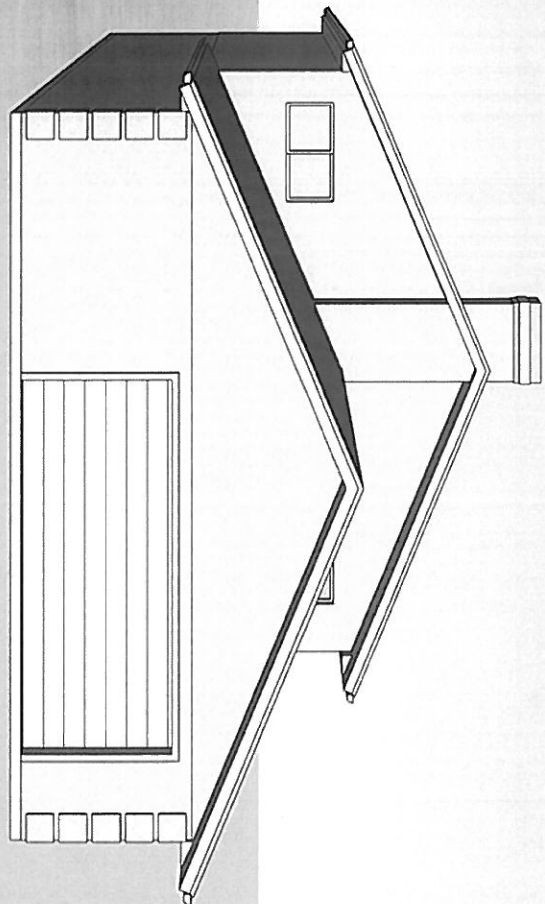


EXISTING





WITH NEW ADDITION



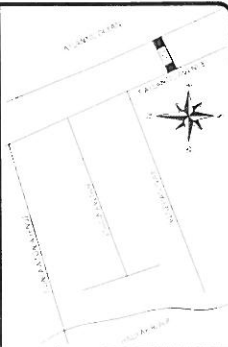
EXISTING

3841 South Atlantic Avenue – Property directly south of the applicant.



MAP OF SURVEY

VICINITY MAP (NOT TO SCALE)



DESCRIPTION

THIS SURVEY WAS CONDUCTED FOR THE PURPOSE OF DETERMINING THE BOUNDARY AND LOCATION OF THE SURVEYED PROPERTY.

NOTES

1. THE SURVEY WAS CONDUCTED ON THE 15TH DAY OF MAY, 2010, AT THE LOCATION OF THE SURVEYED PROPERTY.

2. THE SURVEY WAS CONDUCTED BY JAMES STOWERS, P.A., A PROFESSIONAL SURVEYOR, WHO IS LICENSED IN THE STATE OF FLORIDA.

3. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.

4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.

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10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.

ACCURIGHT

10000 W. 10TH AVE. SUITE 100
FORT LAUDERDALE, FL 33304
PHONE: (954) 581-1111

JAMES STOWERS P.A.
SURVEYOR
10000 W. 10TH AVE. SUITE 100
FORT LAUDERDALE, FL 33304

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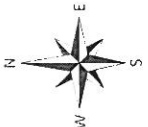
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10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.

BOUNDARY SURVEY DATE: 4.10.10

DATE	TIME	LOCATION	DESCRIPTION
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	1. THE SURVEY WAS CONDUCTED ON THE 15TH DAY OF MAY, 2010, AT THE LOCATION OF THE SURVEYED PROPERTY.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	2. THE SURVEY WAS CONDUCTED BY JAMES STOWERS, P.A., A PROFESSIONAL SURVEYOR, WHO IS LICENSED IN THE STATE OF FLORIDA.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	3. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	7. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	8. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	9. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.
4.10.10	10:00	10000 W. 10TH AVE. SUITE 100	10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING AND MAPPING ACT, CHAPTER 469, F.S.

BOUNDARY AND LOCATION SURVEY



10000 W. 10TH AVE. SUITE 100
FORT LAUDERDALE, FL 33304
PHONE: (954) 581-1111

3832 South Atlantic Avenue – Property directly north of the applicant.



3837 & 3739 South Atlantic Avenue - Applicant's Property.

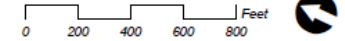


Zoning Map

City of Daytona Beach Shores, FL

Sheet 5 of 5

Daytona Beach Shores	Zoning Category	RMF-1	T-RMF-1	GC-1	P
Address Numbers	RSF-1	RMF-2	MXD	GC-2	
County Zoning	RSF-2	RMF-3	PUD	GC-RD	



CERTIFICATE OF AUTHENTICITY

This is to certify that this Official Zoning Map supercedes and replaces the Official Zoning Map adopted on April 22, 1987 as part of Ordinance No. 87-21 of Daytona Beach Shores, Florida.

By: _____
Mayor

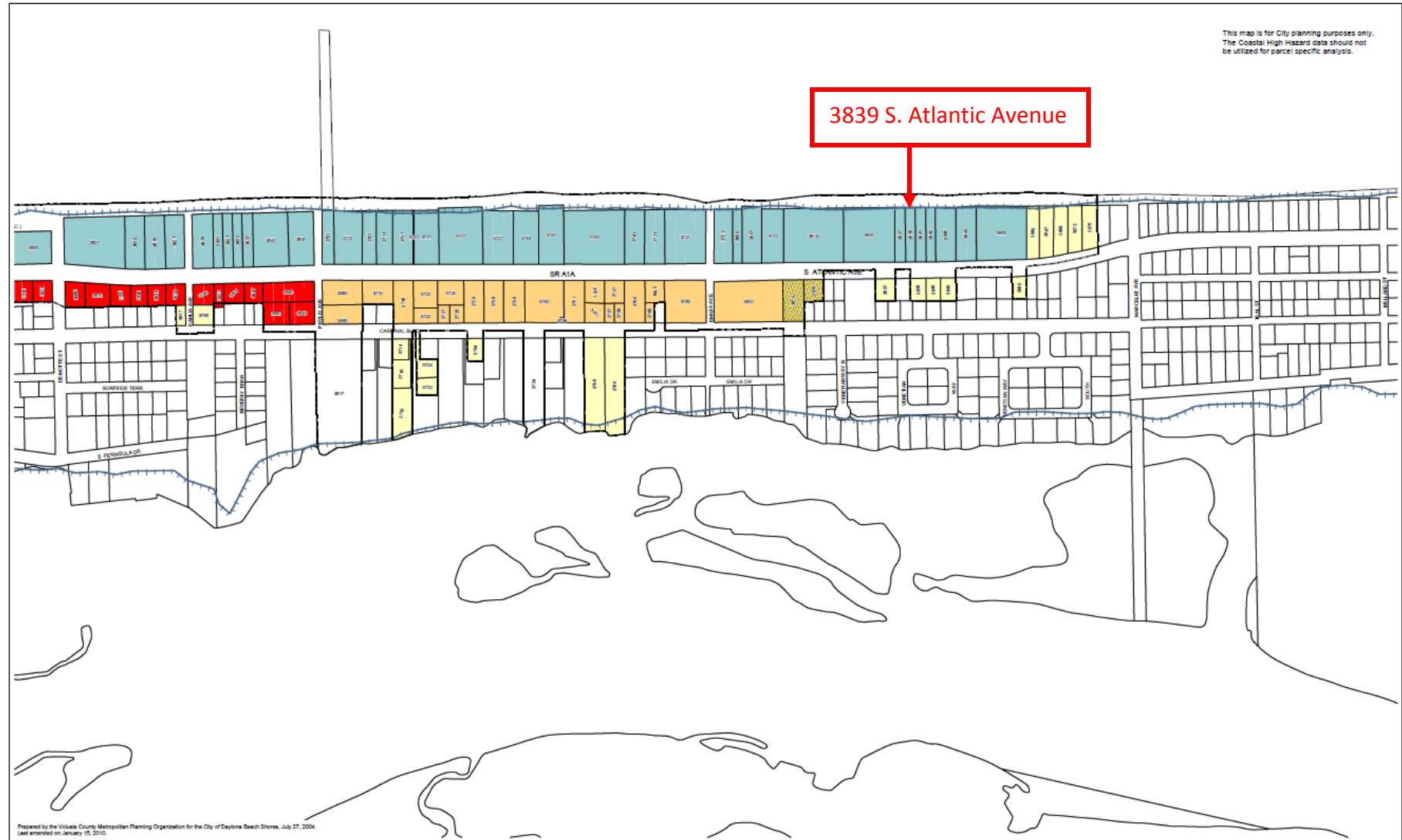
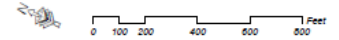
Attest: _____
City Manager

[City Seal]

Future Land Use Map - 2020 **City of Daytona Beach Shores, FL**



Sheet 5 of 5





CITY COUNCIL AGENDA MEMORANDUM

AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Stewart Cruz, City Planner

PREPARED BY: Stewart Cruz, City Planner

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

SYNOPSIS:

Gitesh Bhana, President of Bhana Corporation, which owns the Grand Prix Motel located at 2015 S. Atlantic Avenue, is applying for a Nonconforming Sign Removal Incentive Grant. The sign grant, if approved, would be used to assist the business with the costs associated in replacing the existing nonconforming pole sign with a new conforming monument sign. The current fiscal year sign grant is a 50-50 match capped at \$3,900.

FISCAL IMPACT STATEMENT:

The Fiscal Year 2018/2019 Budget has adequate funding to finance the proposed grant. \$60,000 was budgeted. As seen below, the available amount in this fiscal year's budget for sign grants is \$26,200.

Initial Budget \$60,000

1. Beach Quarters \$6,500-FY 2016/2017 Complete/Reimbursement-Bal. \$53,500
2. Fantasy Island II \$5,200-FY 2017/2018-Complete/Reimbursed-Bal. \$48,300
3. Waters Edge \$5,200-FY 2017/2018-Expired-Bal. \$48,300
4. Biggins \$5,200-FY 2017/2018-Complete/Reimbursed-Bal. \$43,100
5. Sand & Surf \$5,200-FY2017/2018-Complete/Reimbursed- Bal. \$37,900
6. Flamingo Inn \$3,900-FY 2018/2019-Complete/Reimbursed-Bal. \$34,000
7. Island Beachware \$3,900-FY 2018/2019-Under Construction-Bal. \$30,100
8. Waters Edge \$3,900-FY 2018/2019-Permitting-Bal. \$26,200

BACKGROUND:

The City received the subject Nonconforming Sign Removal Incentive Grant Application on July 18, 2019 from the Bhana Corporation, which owns the Grand Prix Motel located at 2015 S. Atlantic Avenue. The sign grant would be used to assist the business with the costs associated in replacing

the existing nonconforming pole sign with a new conforming monument sign.

After conducting an analysis of the program eligibility requirements and other program parameters, staff has determined that the application qualifies and meets all grant requirements. Three sign quotes were provided as required. The applicant's preferred sign vendor, Coastline Signs, is the lowest bid provided at \$12,500. The proposal appears to meet the applicable City sign standards. If approved, the applicant would qualify for a grant of \$3,900.

NOTE: Sign grant application including quotes and rendering will be provided to the City Council under a separate cover prior to the August 13, 2019 hearing.

LEGAL REVIEW:

The City Attorney has reviewed this agenda item and has no legal objection to the approval of the grant by the City Council.

RECOMMENDATION:

Staff recommends **approval** of the sign grant on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

SUGGESTED MOTION:

A City Council member may move as follows:

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

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
AUGUST 13, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration of date and time for board interviews

SYNOPSIS:

The City Council needs to set a date and time in September to perform board interviews to fill board vacancies for the upcoming year.

FISCAL IMPACT STATEMENT:

BACKGROUND:

With the adoption of Ordinance 2019-05, the City Council will now meet once a year to hold interviews for upcoming board appointments. The boards affected are the Planning & Zoning and the new Public Art and Beautification Committee.

LEGAL REVIEW:

The City Attorney would also like to schedule work shops on the *City Charter* review process and the *City Code* revision ordinance to ensure a complete understanding of all issues.

RECOMMENDATION:

City staff recommends that the City Council establish dates and times to meet.

SUGGESTED MOTION:

No motion is needed just a consensus for a meeting date and time.

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
AUGUST 13, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration for contract with Stacy Conomos for promotion of economic development programs on social media

SYNOPSIS:

During a recent economic development meeting, it was discussed to hire someone to help promote the program and incentives.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The members of the Economic Development Agency felt this would be very helpful in promoting the City's economic development efforts.

LEGAL REVIEW:

The City Attorney has no legal objection to the policy decision of engaging an independent contractor. The City Attorney revised the draft independent contractor agreement and has no legal objection to the revised agreement. The City Attorney recommends that the City Council establish a "not to exceed" budget amount for the 90 days of work. There was no discussion as to fiscal impact and, it would seem that, inasmuch as there is no budget established, the establishment of a maximum contract exposure to the City would be prudent. The agreement does not have any insurance requirements established as to the independent contractor which would be normative in most procurement activities. The City Attorney recommends that a City Procurement Policy be adopted to address procurement of services such as the services proposed to be procured in the proposed agreement.

RECOMMENDATION:

It is staff's recommendation to approve the contract.

SUGGESTED MOTION:

I move to approve the contract with Stacy Conomos.

ATTACHMENT: 1. Conomos Independent Contractor Agreement-REVISED-LNG-8-7-19 # 2
PM

**City of Daytona Beach Shores/Stacy Conomos Independent Contractor
Agreement**

This Agreement, made and entered into this____ day of August 2019, by and between the City of Daytona Beach Shores, a Florida municipal corporation, hereinafter referred to as “the City,” whose address is 2990 South Atlantic Avenue Daytona Beach Shores, Florida 32118, and Stacy Conomos, hereinafter referred to as “Conomos” whose address is on file with the City.

Witnesseth:

Whereas, the City is desirous of retaining the services of an independent contractor for promotion of the economic development programs of the City on social media platforms; and

Whereas, Conomos wishes to have her services procured by the City to perform the duties and responsibilities as set forth herein and acknowledges said position with the City is exempt under the provisions of the *Fair Labor Standards Act* and under the terms and conditions of this Agreement.

Now, Therefore, in consideration of these premises and of good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree to the following:

Section 1. Scope of Agreement/Recitals.

The recitals set forth in the whereas clauses above are adopted by the parties and incorporated herein as a substantive part of this Agreement.

Section 2. Duties and Responsibilities.

(a). The City hereby agrees to procure the services of Conomos and Conomos agrees to provide her services to the City to accomplish the duties and responsibilities as prescribed below:

(1). For promotion of the economic development programs of the City in mailers, surveys, direct contact and on social media platforms.

(2). Work to promote Economic Development efforts with local businesses and professional organizations (i.e. real estate and hospitality).

(b). All of the foregoing shall be accomplished to the satisfaction of the City.

Section 3. Term.

(a). This Agreement shall be for a term commencing August ____, 2019, the date of execution hereof, and shall be in effect for 90 days. It may be extended at the written agreement of both parties.

Section 4. Compensation.

(a). In consideration for the services provided by Conomos, the City will pay Conomos \$15.00 per hour for services rendered. Conomos will turn in a signed timesheet and will be paid biweekly.

(b). Conomos agrees that she is an independent contractor of the City and is an exempt independent contractor under the *Fair Labor Standards Act* and will not be entitled to any overtime wage payments.

(c). The City will provide Conomos with a computer work station and a City

issued tablet during the duration of her tenure as an independent contractor.

Section 5. Devotion of Time.

Conomos agrees to devote fully adequate productive time, ability and attention to the business of the City during the term of this Agreement.

Section 6. Compliance with Law.

Conomos agrees to abide by and comply with all local, State and Federal statutes, laws, ordinances, codes, rules and regulations and, with specificity, the provisions of the *Code of Ethics for Public Officers and Employees* as set forth in Chapter 112, *Florida Statutes*, and other controlling law, as well as all City ordinances, rules, regulations, policies and procedures of the City during the term of this Agreement such as, but not limited to, the *Code of Ethics* of the City and the personnel rules and regulations of the City.

Section 7. Breach of Agreement.

(a). If Conomos breaches any of the terms of this Agreement or fails to fully perform her duties and responsibilities, this Agreement be subject to immediate termination. Such termination shall be in addition to, and shall not prejudice, any other remedy to which the City may be entitled, either at law, in equity, or under this Agreement.

(b). Nothing herein shall provide Conomos with property rights in her engagement with the City.

Section 8. Indemnification.

(a). Conomos agrees to fully and completely hold harmless, indemnify and defend the City, its officials, officers, employees, and agents against any and all claims,

demands, losses, damages, actions, causes of actions, or lawsuits for damages, arising from, allegedly arising from, or related to the provision of services hereunder by the Conomos at the facilities of the City or in any way related thereto as well as with regard to any usage of any City facility.

(b). Conomos shall be entitled to the same protections, if any, as any other City independent contractor in terms of liability for actions taken within the scope of services as set forth herein on City property.

(c). Conomos shall pay and discharge or appeal, at her sole costs and expense, any and all judgments, damages, costs, and expenses arising, in any way, from the use of the City's facilities for non-City activities.

(d). Conomos covenants not to sue the City. This indemnification is plenary and complete as to the activities of Conomos.

Section 9. Assignments/Transfers.

Conomos shall not assign or transfer her rights and obligations under this Agreement to any person or entity. Conomos may enter into subcontracts for any of the individual services to be performed hereunder by her if specifically authorized by means of the prior written consent of the City.

Section 10. Governing Law/Venue/Compliance With Law.

(a). This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the City of Daytona Beach Shores.

(b). Venue for any dispute shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

(c). Conomos shall fully comply with all applicable local, State, and Federal

environmental regulations and laws and all laws of any other type or nature.

Section 11. Specific Performance/Time Is Of The Essence.

(a). Strict compliance shall be required with each and every provision of this Agreement.

(b). The parties agree that failure to perform the obligations established in this Agreement shall result in irreparable damage, and that specific performance of these obligations may be obtained by suit in equity.

(c). Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

Section 12. Attorney's Fees.

In the event of any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial level, or upon appeal.

Section 13. Force Majeure.

The parties agree that in the event that the failure by either party to accomplish any action required hereunder within a specific time period ("Time Period") constitutes a default under terms of this Agreement and, if any such failure is due to any unforeseeable or unpredictable event or condition beyond the control of such party including, but not limited to, acts of God, acts of government authority (other than the City's own acts), acts of public enemy or war, terrorism, riots, civil disturbances, power failure, shortages of labor or materials, injunction or other court proceedings beyond the control of such party, or severe adverse weather conditions ("Uncontrollable Event"),

then notwithstanding any provision of this Agreement to the contrary, that failure shall not constitute a default under this Agreement and any Time Period proscribed hereunder shall be extended by the amount of time that such party was unable to perform solely due to the Uncontrollable Event.

Section 14. Interpretation.

(a). Conomos and the City agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

(b). This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this Agreement.

Section 15. Captions.

Sections and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement, or any provision hereto.

Section 16. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

Section 17. Modifications/Amendments/Non-Waiver.

(a). Amendments to and waivers of the provisions herein shall be made by the parties only in writing by formal amendment as set forth herein.

(b). Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

Section 18. Notices.

(a). Whenever either party desires to give notice unto the other, notice may be sent to:

For the City:

City Manager Michael T. Booker
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, Florida 32118

For Conomos:

Address on file with City.

(b). Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices.

Section 19. No Authority to Bind City.

Conomos has no authority to enter into contracts or agreement on behalf of the City. This Agreement does not create a partnership between the parties.

Section 20. Termination.

This Agreement may be terminated by either party for any reason upon 30 days

written notice, provided via United States Mail to the addresses herein.

Section 21. Event of Termination.

In the event of the termination of this Agreement prior to the completion Conomos' tenure as an independent contractor specified herein, Conomos shall be entitled to the compensation earned through to the time of termination, computed *pro rata*. Conomos shall be entitled to no further compensation as of the date of termination.

Section 22. Severability.

The validity, interpretation, construction and effect of this Agreement shall be in accordance with and governed only by the laws of the State of Florida. Should any litigation occur as a result of or in conjunction with this Agreement, any such disputes shall be litigated in Volusia County, Florida. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable

Section 23. Requirement Of A Writing.

Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

Section 24. Entire Agreement/Integration.

(a). It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters hereof.

In Witness Whereof, the parties hereto have set their hands and seals the
day, month and year above written.

Witness:

Signature

Stacy Conomos

Printed Name

Attest:

**City Of Daytona Beach Shores,
Florida**

Cheri Schwab
City Clerk

Michael T. Booker
City Manager



CITY COUNCIL AGENDA MEMORANDUM AUGUST 13, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on City Manager's Salary and Performance Evaluation

SYNOPSIS:

Mayor Miller requested the item be placed on the agenda for discussion.

FISCAL IMPACT STATEMENT:

The City Manager's contract is based upon a formula. The contract cannot be modified without the approval of the City Manager.

BACKGROUND:

The current City Manager's evaluation format has been used for the past ten years. The City Council has the right to update and change the format if it desires to do so as a collegial body.

LEGAL REVIEW:

The *City Charter* provides as follows:

Sec. 3.03. - Compensation and annual evaluation of manager.

The City Council shall establish the salary and other benefits of the City Manager, and shall at least annually review the salary. On the occasion of the annual salary review the Council shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record.

The City Council, as a public body, has the sole and exclusive power to develop the performance evaluation form that it desires to use at a public meeting and to mandate the use of the performance evaluation form.

The City Council must develop the performance evaluation form and discuss the completed performance evaluation forms at a public meeting. The *Government-In-The-Sunshine-Manual*, published by the Florida Attorney General and First Amendment Foundation, states as follows:

A board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the

public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO. AGO 93-90. However, meetings of individual school board members with the superintendent to discuss the individual board members' evaluations do not violate the Sunshine Law when such evaluations do not become the board's evaluation until they are compiled and discussed at a public meeting by the school board for adoption by the board. AGO 97-23. (**Emphasis** added).

It would be totally inappropriate and unlawful for one Member of the City Council to complete a performance evaluation form in private and to file that performance evaluation form with the City Clerk, or other person, and for another Member of the City Council to read the performance evaluation form prepared by the other Member. That would constitute a violation of the *Sunshine Law*.

As noted in prior communications to the City Council, the City Attorney had understood that during the 10 or so years that he has worked with the City, no performance evaluations of the City Manager by the City Council were occurring. Mr. Bill Colbert, who had worked with the City, as legal counsel, for the prior 10 or so years was, likewise, unaware of any performance evaluations of the City Manager occurring.

The City Attorney has proposed revisions to Section 3.03 of the *City Charter*. Ultimately, the City Manager and the City Attorney work under appointment by the City Council. The City Council determines whether or not to abide by the provisions of the *City Charter*. However, if the City Council determines to proceed with performance evaluations of the City Manager, such process must be one that is open and transparent and compliant with the *Sunshine Law*.

It is noted that the City Charter states that the salary of the City Manager shall be annually reviewed. However, under the current contract between the City Council and the City Manager, the salary is set by a formula we is understood to be the average base salary of the city managers of the cities of Daytona Beach, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ponce Inlet, Port Orange and South Daytona. That salary is to be calculated as of October 1 of each year. (This reflects the last document that the City Attorney has found in his office's files and he is unaware of the calculation).

RECOMMENDATION:

The *City Charter* provides for an annual review of the salary and the performance of the City Manager by the City Council and the City Council has the right to determine the evaluation format that it desires to use.

SUGGESTED MOTION:

There is no motion required for this agenda item, but any City Council Member may make a motion to provide for any desired action.

ATTACHMENT: None