



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING SEPTEMBER 9, 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

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

- A. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE TENTATIVE LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE TENTATIVE BUDGET FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.
- C. Employee Service Award - Kelley Register 25 years

1. APPROVAL OF MINUTES

2. CONSENT AGENDA:

- A. Volusia County- Interlocal Agreement for Municipal Services-3yr Renewal
- B. Purchase of drug awareness/crime prevention materials
- C.
- D.
- E.

3. REPORTS OF THE CITY ATTORNEY:

4. REPORTS OF THE CITY MANAGER:

- A. City Manager Sept. 9 report

OLD 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.

NEW BUSINESS:

- A. AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA IMPLEMENTING SECTION 3.05 (4) OF THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* RELATING DUTIES OF THE CITY MANAGER AND THE ADOPTION OF CITY BUDGETS BY ORDINANCE; 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. Resolution 2019-14 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR THE REGULAR MEETING TIMES OF CITY COUNCIL MEETINGS AND WORK SESSIONS; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- C. Resolution 2019-15 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ESTABLISHING THE COMMITMENT OF THE CITY TO ADHERE TO AND IMPLEMENT THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- D. Consideration to approve the lease with Halifax Health regarding an Urgent Care Facility.
- E. Consideration of City Council policy regarding actions of individual City Council Members
- F.
- G.

5. COUNCIL COMMENTS:

6. AUDIENCE REMARKS/PUBLIC COMMENTS:

7. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

8. 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 386-76375364, 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 72121 or 180095528771.

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.



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT:

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE TENTATIVE LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

SYNOPSIS:

As per Florida Statue the City of Daytona Beach Shores must adopt a tentative millage rate before adopting its final millage rate. In July the City Council adopted a proposed rate of 5.2300. The council may adopt the proposed rate or go lower than the proposed but cannot go above without re-advertising to all property owners within the city limits.

FISCAL IMPACT STATEMENT:

Dependent upon council action.

BACKGROUND:

1. Mayor: Call up the Item to Adopt the FY 2019-20 tentative Millage Rates and tentative Budget stating it is a Public Hearing.
2. City Manager: Provides background.
3. Mayor: Open the Public Hearing on the FY 2019-20 Budget.
4. Mayor: State that the tentative millage rate of **5.2300 mills** is a tax increase of **4.50%** over the rolled back tax rate of **5.0043 mills**.
5. Mayor: Open public comment to allow members of the public to speak and to ask questions prior to adoption of the tentative millage rates and budget.
6. Mayor: Close public comment and ask the City attorney to read the title of tentative Millage-Levy Resolution Number 2019-16.

7. City Attorney: Reads the title of the Millage-Levy Resolution Number 2019-16.
8. Mayor: I will entertain a motion to adopt the tentative Millage-Levy Resolution Number 2019-16, setting the millage rate at **5.2300 mills**, which is **4.50%** higher than the rolled back rate of **5.0043 mills** and combined with the General Obligation Bond Issue of **1.7977 mills** the overall millage rate is **7.2077 mills**.
9. Mayor: Discuss the motion, and vote on it.
10. Mayor: After adoption, publicly announce the following;
- "the tentative operating millage rate is set at 5.2300 per \$1,000 of taxable value or 4.50% higher than the rolled back millage rate of 5.0043 and combined with the General Obligation Bond Issue of **1.7977 mills** the overall millage rate is **7.2077 mills**. The second and final hearing on the millage rate is scheduled for September 24th, 2019 at 7:00 pm"
11. Mayor: Close the public hearing on the first reading of the Tentative Millage Rates.
16. Mayor: Call the vote.

LEGAL REVIEW:

The City Attorney recommends the use of the alternative attached draft resolution at the discretion of the City Council.

RECOMMENDATION:

SUGGESTED MOTION:

The above litany provided by the City Attorney sets forth the motions that are anticipated.

- ATTACHMENT:** 1. 1st PH for adoption of Tentative Millage Res-KDS 9-5-19-Post LG Same Date

RESOLUTION 2019-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADOPTING THE TENTATIVE MILLAGE RATES TO BE LEVIED FOR FISCAL YEAR 2019-2020 BY CITY OF DAYTONA BEACH SHORES CITY GOVERNMENT IN ACCORDANCE WITH THE PROVISIONS OF STATE LAW; ADOPTING THE TENTATIVE MILLAGE RATES FOR FISCAL YEAR 2019-2020 FOR THE CITY AT THE OVERALL COMBINED RATE OF 7.0277 MILLS WITH 5.2300 MILLS AS OPERATING MILLAGE AND 1.7977 MILLS FOR VOTED DEBT SERVICE; EXPRESSING LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT; ESTABLISHING THE DATE, TIME AND PLACE FOR THE SECOND PUBLIC HEARING ON THE MILLAGE RATES TO BE SEPTEMBER 24, 2019 AND THE SECOND PUBLIC HEARING ON THE PROPOSED BUDGET ON THE SAME DATE AT 7:00 P.M.; AND PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS, A SAVINGS PROVISION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in accordance with the provisions of controlling State law the City Manager has submitted to the City Council an annual budget for the various funds of the City as well as a plan of revenues to be generated to support that budget; and

WHEREAS, controlling State law requires the annual budget to be adopted by Resolution, and

WHEREAS, the proposed annual budget of the City of Daytona Beach Shores has been reviewed, evaluated and considered at various public meetings and hearings held by the City Council of the City; and

WHEREAS, City Council approval is required in order to establish and to approve the millage rates to be levied within the City of Daytona Beach Shores; and

WHEREAS, in accordance with the provisions of the *City of Daytona Beach Shores Charter*, the *Code of Ordinances of the City of Daytona Beach Shores* and controlling State law the City Manager has submitted to the City Council an annual budget for the various funds of the City as well as a schedule of taxes and revenues and proposed millage rates to fund that budget; and

WHEREAS, the City Council desires to fund an adopted annual operating budget for the fiscal year beginning October 1, 2019 and terminating on September 30, 2020 specifying certain projected revenues and expenditures for the operations of Daytona Beach Shores municipal government; and

WHEREAS, the City's budget presumes that each City department generally will, to the best of their ability, maintain its expenditures within its allocated budgeted level and exercise prudence in expending funds during the course of the City's fiscal year; and

WHEREAS, from time-to-time circumstances and events may require that the original City budget may need revision; and

WHEREAS, the City Council, in its judgment and discretion, has the authority in the future to adjust the budget to more closely coincide with actual and expected events; and

WHEREAS, the City Council has the continuing and overriding responsibility to take all necessary steps and actions to ensure that sound economic, financial and fiscal management policies are implemented and maintained in the City for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Manager and City staff provide assistance and guidance to develop, implement and maintain the economic, financial and fiscal management policies of the City Council for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council is vested with the budgetary authority and control relating to City of Daytona Beach Shores Government operations, the provision of adequate levels of service with regard to essential public services and facilities and the maintenance of public benefits provided and the protection of the public health, safety and welfare by City Government to the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council is responsible for the determination as to the appropriate staff levels within City Government and the establishment and budgeting of the staffing levels and positions assigned to each particular department, office and function of City Government and for the funding, creation, abolishment, and other economic, fiscal and financial decisions relating to the staffing of City Government; and

WHEREAS, it is the desire and goal of the City Council for City Government to function as an efficient governmental organization; and

WHEREAS, the City Manager is charged with ensuring that the alignment and organization of the City's departments, offices and functions are sound and consistent with highly productive public administration practices, procedures and systems; and

WHEREAS, the City Council has concluded that the actions taken herein will provide positive economic and budgetary benefits to the City and the City Council has concluded that the results of such actions will benefit the citizens of the City of Daytona Beach Shores, and

WHEREAS, it is the goal and desire of the City Council to provide a continuing high quality level of service to the citizens of the City of Daytona Beach Shores with regard

to the provision of essential and beneficial levels of service and the provision of adequate public facilities to serve the needs of the citizens; and

WHEREAS, the City Council hereby finds and concludes that the level of service and the system of public facilities provided to the citizens of the City of Daytona Beach Shores will be positively and favorably impacted as a result of the City Council taking the necessary economic, fiscal, financial, and budgetary actions as set forth in this Resolution; and

WHEREAS the City Council of the City of Daytona Beach Shores hereby finds and concludes that the actions taken herein are consistent with sound and generally accepted public management and finance principles and controlling applicable law and serve an important public purpose; and

WHEREAS, the gross taxable value for operating purposes not exempt from taxation within the City of Daytona Beach Shores, Volusia County has been certified by the County Property Appraiser to the City of Daytona Beach Shores as \$1,660,522,075.

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

SECTION 1. LEGISLATIVE/ADMINISTRATIVE INTENT AND FINDINGS.

The intent and findings set forth in the above recitals (whereas clauses) are hereby adopted as the legislative and administrative intent and findings relative to the provisions of this Resolution.

SECTION 2. ADOPTION OF TENTATIVE MILLAGE RATES.

(a). After careful consideration of the estimate of receipts and the estimate of expenditures of the City of Daytona Beach Shores, Florida (“the City”), it is hereby determined and established that the rates of taxation necessary to meet such expenses will be, for each of the hereinafter stated purposes, the amounts estimated, declared and hereby levied, to-wit:

(1). In order to meet the estimate of General Fund expenses of the City, it is hereby determined and declared that the total operating millage shall be at the rate of 5.2300 mills or \$5.2300 per \$1,000 of taxable value, and the same is hereby levied and imposed upon all non-exempt taxable property within the corporate limits of the City for those purposes hereinafter described to provide for the expenditures as estimated in the Fiscal Year 2019-2020 Annual Budget. The millage rate to be levied of 5.2300 mills is greater than the “rolled-back” millage rate of \$5.0043 per \$1,000 of taxable value or 4.50% greater than the “rolled-back” rate.

(2). In order to pay interest upon and payment requirements for the outstanding general obligation bond issue of the City, and for the purpose of paying the expenses of servicing

such bonds, it is hereby determined and declared that the debt service millage shall be at the rate of 1.7977 mills or \$1.7977 per \$1,000 of taxable value, and the same is hereby levied and imposed on all non-exempt taxable property within the corporate limits of the City for the purposes hereinbefore stated in this Subsection. Voters approved certain streetscaping and improvements including the undergrounding of utilities.

(b). The City Council had concluded that the tax rates set forth herein are fiscally prudent and sound.

**SECTION 3. IMPLEMENTING ADMINISTRATIVE ACTIONS;
COMMUNICATIONS WITH VOLUSIA COUNTY PROPERTY APPRAISER
AND VOLUSIA COUNTY REVENUE DIVISION - TAX COLLECTION;
ESTABLISHMENT OF FINAL PUBLIC HEARING DATE.**

(a). The City Manager is hereby directed to certify to the Volusia County Property Appraiser and to the Volusia County Revenue Division - Tax Collection the millage rates as herein set and levied for the purposes herein stated, pursuant to the controlling laws of the State of Florida. The City Manager is hereby directed to advise the Volusia County Property Appraiser of the City's tentative millage rates as hereinbefore set forth, of its rolled-back millage rate computed pursuant to Section 200.065(1), *Florida Statutes*, and Rule 12D-17.0035, *Florida Administrative Code*, and of the date, time and place at which the City will hold a public hearing to consider the tentative millage rates and the proposed Fiscal Year 2019-2020 Annual Budget.

(b). The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed necessary and appropriate.

(c). A second and final public hearing on the aforementioned tentative millage rates and on the proposed Fiscal Year 2019-2020 Annual Budget will be held on September 24, 2019, at 7:00 p.m., in the Council Chambers of the Daytona Beach Shores 3000 Bellemead Drive; Daytona Beach Shores, Florida 32118. The City Manager shall take all necessary implementing actions to provide for such public hearing.

SECTION 4. CONFLICTS.

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

SECTION 5. SAVINGS.

The prior actions of the City Council of the City of Daytona Beach Shores in terms of the matters relating hereto, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 6. 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 to be invalid, unlawful, or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and 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 9th day of September, 2019.

Posted this 9th day of September, 2019.



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT:

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE TENTATIVE BUDGET FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

SYNOPSIS:

As per Florida Statute the City council must adopt a tentative budget in advance of the Final budget adoption.

FISCAL IMPACT STATEMENT:

Dependent upon council action.

BACKGROUND:

1. Mayor: Call up the Item to Adopt the FY 2019-20 tentative Budget stating it is a Public Hearing.
2. City Manager: Provides background.
3. Mayor: Ask the City Attorney to read the title of the Tentative Budget Resolution Number 2019-17.
4. City Attorney: Reads the title of the Budget Resolution Number 2019-17.
5. Mayor: I will entertain a motion to adopt Resolution Number 2019-17 adopting the FY 2019-2020 tentative Annual Budget of \$18,103,800.
6. Mayor: Discuss the motion, and vote on it.
7. Mayor: Close the public hearing on the first reading of the tentative budget.

LEGAL REVIEW:

The City Attorney has prepared the litany set forth herein and recommends that the City Council use the alternative resolution in its discretion.

RECOMMENDATION:

SUGGESTED MOTION:

The above litany/script sets forth the desired actions.

ATTACHMENT: 1. 1st PH for adoption of Tentative Budget Res-KDS 9-5-19-Post LNG - same date.

RESOLUTION 2019-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA TENTATIVELY ADOPTING A CITY BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019 AND ENDING SEPTEMBER 30, 2020 WITH REGARD TO THE CITY OF DAYTONA BEACH SHORES INCLUDING REVENUES AND EXPENDITURES AND CAPITAL PROJECTS; PROVIDING FOR LEGISLATIVE/ADMINISTRATIVE FINDINGS; PROVIDING FOR DELEGATION TO, AND IMPLEMENTING ACTIONS BY, THE CITY MANAGER; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in accordance with the *City Charter of the City of Daytona Beach Shores, Florida*, the City Manager of the City of Daytona Beach Shores, Florida has made and submitted to the City Council of the City of Daytona Beach Shores, Florida an estimate for budget of revenues and expenditures of the City of Daytona Beach Shores, Florida for the Fiscal Year beginning October 1, 2019 and ending September 30, 2020, and a Capital Budget, such estimate or budget having been made with particular application to the various departments of the City, a true copy of which is hereto attached and by reference made a part of this Resolution; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida, held a public hearing as required by Section 200.065, *Florida Statutes*, and other controlling law; and

WHEREAS, each and every item contained and set forth in the City budget prepared by the City Manager, which incorporates a complete financial plan of all City funds and activities for the Fiscal Year beginning October 1, 2019 and ending September 30, 2020, has been carefully reviewed, evaluated and considered by the City Council; and

WHEREAS, the City of Daytona Beach Shores of Volusia County, Florida, set forth the appropriations and revenue estimate for the Budget for Fiscal Year 2019-2020 in the amount of \$18,103,800.

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

SECTION 1. LEGISLATIVE/ADMINISTRATIVE FINDINGS. The recitals set forth in the whereas clauses to this Resolution are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. ADOPTION OF CITY BUDGET. The City of Daytona Beach Shores budget, as prepared and submitted by the City Manager to the City Council, is hereby tentatively adopted as the budget for the City of Daytona Beach Shores, Florida, for the Fiscal Year beginning October 1, 2019 and ending September 30, 2020 as well as the capital budget as prepared and submitted by the City Manager to the City Council.

SECTION 3. COLLECTION AND USE OF CITY FUNDS. Upon collection of any revenues by City, the City Manager, or the Finance Director of the City, as directed by the City Manager, shall allocate from each dollar collected and received, the several amounts to the respective funds for purposes for which the same are hereby authorized and approved within the context of the tentatively adopted City budget.

SECTION 4. DUTIES OF THE CITY MANAGER. The City Manager is authorized and directed to take any and all necessary actions as he may deem reasonably necessary in order to implement the provisions of this Resolution. The City Council hereby authorizes the City Manager, in accordance with the provisions of the *City Charter of the City of Daytona Beach Shores, Florida*, to approve the transfer of budgeted funds. The City Manager may delegate such authority in appropriate circumstances as determined to exist from time-to-time consistent with sound public management and accountability practices and principles.

SECTION 5. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 6. SAVINGS.

The prior actions of the City Council of the City of Daytona Beach Shores in terms of the matters relating hereto, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 7. 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 to be invalid, unlawful, or unconstitutional.

SECTION 8. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and 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 9th day of September, 2019.

Posted this 9th day of September, 2019.

**COUNTY OF VOLUSIA STANDARD INTERLOCAL
AGREEMENT FOR PROVISION OF MUNICIPAL
SERVICES TO THE CITY OF DAYTONA BEACH SHORES, FLORIDA**

THIS AGREEMENT is entered into by and between the County of Volusia, a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4613, hereinafter referred to as **COUNTY**, and the City of Daytona Beach Shores, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, with administrative offices at 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as **CITY**.

RECITALS

1. The COUNTY is authorized by Section 125.01(1)(p), Florida Statutes, to enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance, or performance by one unit on behalf of the other, of any of either agency's authorized functions.
2. Public agencies (including COUNTY and CITY) are authorized by Section 163.01(14), Florida Statutes, to enter into contracts for the performance of service functions of such public agencies, but shall not be deemed to authorize the delegation of the constitutional or statutory duties of county or city officers. The parties expressly deny any intent, expressed or implied, in this Agreement to provide for a delegation by CITY of such constitutional or statutory duties to COUNTY.
3. The foregoing authorization for such agreements is granted to counties and cities for the purpose of permitting local governments to make the *most efficient use* of their powers by enabling them to cooperate with the other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities as set forth in Section 163.01(2), Florida Statutes.
4. Pursuant to Section 768.28, Florida Statutes, neither the COUNTY nor the CITY waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into this Agreement. This Agreement does not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence, or to assume any liability for the other party's negligence.
5. The City Council of CITY, after evaluation of options for the provision to its residents of the municipal services enumerated herein, has made a legislative determination that the interests of its residents will be best served by contracting with COUNTY for provision of such services, which services will be performed by COUNTY personnel.

6. COUNTY certifies that it has qualified personnel or subcontractors to perform the services enumerated herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

PART I. GENERAL PROVISIONS

7. The foregoing representations are hereby adopted as a material part of this Agreement.

8. **PURPOSE.** The purpose of this Agreement is for the COUNTY to provide specified *municipal* services and equipment to the CITY (hereinafter, the Contract Services), at an agreed upon level of service (LOS) herein specified, in lieu of the CITY using its own personnel and equipment therefor.

9. **COUNTY DEPARTMENTS.** COUNTY shall manage the delivery of the Contract Services by allocating service task responsibilities along the organization lines of the COUNTY'S DEPARTMENTS (hereinafter, Departments). The Director of the applicable Department (or his or her designee) shall be the COUNTY'S liaison to CITY for purposes of performance, interpretation and implementation of this Agreement.

10. **MUNICIPAL SERVICES.** The Contract Services purchased by CITY herein are *municipal* level of services as described in the attached Addendum. Such Contract Services shall be provided by COUNTY resources distinct from the level of services that are funded by county-wide ad valorem and other county-wide revenues (hereinafter, "County Services"), which services COUNTY would provide irrespective of this Agreement, and which services COUNTY will continue to provide notwithstanding this Agreement. The CITY government shall pay COUNTY for the Contract Services provided for herein.

11. **NO PLEDGE OF AD VALOREM TAXES.** The parties agree that this Agreement does not constitute a general indebtedness of the CITY within the meaning of any constitutional, statutory, or charter provision or limitation and it is expressly agreed by the parties that the COUNTY shall not have the right to require or compel the exercise of ad valorem taxing power of CITY, or taxation of any real or personal property therein for payment of any monetary obligations due under the terms of this Agreement. It is further agreed that this Agreement and any funds called for to be paid hereunder shall not constitute a lien upon any real or personal property of CITY, any part thereof, and that the obligation for monetary payments called for to be made hereunder shall be deemed to exist for less than a year at any point in time and shall be entirely subject to the legislative budgetary discretion of the CITY and the COUNTY.

12. **DIVISION OF MANAGEMENT RESPONSIBILITIES.** The Contract Services specified in this Agreement reflect the general managerial and policy decisions of the CITY. The CITY may identify specific tasks within the Services described in Article 21 of this Agreement to be performed by COUNTY, and the portion of the relevant budget to be allocated thereto, including, but not limited to the location, and nature of specific projects. Except as set forth below,

the COUNTY shall have the responsibility for the operational management of the provision of the actual service. It is the intent of the CITY that the CITY'S general management decisions referenced above are to be the exercise of a legislative, planning level function of the CITY, and that the CITY shall not undertake to exercise specific operational control over the provision of the Contract Services except as set forth below in this Article 12 or specifically set forth in the Addendum referenced in Article 21. Should the CITY direct or exercise operational control in fact and there be liability to third parties and/or to the COUNTY that flows therefrom, then the CITY shall have responsibility for all liability arising therefrom subject to the provisions in recital number 4 and Article 13 of this Agreement. For all other services provided by the COUNTY where specific professional standards are applicable to the performance of service tasks, the COUNTY'S designated officer in charge (OIC), or his or her designee, shall have the authority for decision making within that realm. The relevant COUNTY Department Director, or the OIC, shall be available on a regular basis to the City Manager to provide consultation and recommendations to the City Manager in his or her general management decisions as contemplated herein. The CITY shall make no claim against the COUNTY predicated upon the theory that the failure to provide services at a given time caused damages to the CITY or a third party complainant.

13. **SOVEREIGN IMMUNITY.** Each party to this Agreement expressly retains all rights, benefits and immunities of sovereign immunity that they presently enjoy under the Constitution and Statutes of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes. Notwithstanding anything set forth in any article of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability which may have been adopted or may be adopted by the Florida Legislature, and any liability of either party for damages shall not exceed the statutory limits of liability for tort, regardless of the number or nature of any claim which may arise, including but not limited to, a claim sounding in tort, equity, or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any party, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

14. **PERSONNEL MATTERS.** COUNTY shall allocate manpower and equipment for the performance of the Contract Services on an as needed basis. This Agreement shall not require any particular COUNTY employee to be dedicated full time to the Contract Services. All COUNTY personnel assigned to perform Contract Services shall remain subject to the COUNTY Merit System of Rules and Regulations for all purposes contemplated thereunder, including, but not limited to initial appointment and probation, training and assignment, promotions, merit and cost-of-living raises, annual leave and sick leave, and disciplinary actions. Any claim of a disciplinary nature by CITY regarding a COUNTY employee shall be referred to the Department Director, who shall remain the appointment authority for such employee, for all purposes designated under the COUNTY Merit System of Rules and Regulations. Such COUNTY employees shall have no right to elect or choose any procedures available to CITY employees.

15. **TERM.** This Agreement shall commence on **October 1st, 2019** and shall terminate at midnight on **September 30th, 2022** unless terminated pursuant to the provisions of Article 16.

16. **TERMINATION.** Either party may terminate this Agreement without cause or further liability to the other, upon written notice to the party representative specified in Article 17, given no less than **90** days prior to the requested termination date. Such notice shall be delivered by certified mail, return receipt requested, and the date of the notice shall be the date the receipt therefor is signed by an employee, official, or representative of the other party.

17. **NOTICE.** Notice as required to be given in this Agreement shall be provided to the following persons:

- a. **COUNTY:** County Manager, George Recktenwald, Thomas C. Kelly Administration Center, 123 W. Indiana Avenue, DeLand, Florida 32720.
- b. **CITY:** City Manager, Michael Booker, 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118.

18. **THIRD PARTIES.** In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this Agreement arising from the performance of the obligations and responsibilities of the parties herein or for any other reason.

19. **DISPUTE RESOLUTION.** Any disputes concerning non-performance, or other aspects of this agreement for which either party initiates litigation to enforce its rights hereunder, shall be subject to the provisions of Chapter 164, Florida Statutes, the “Florida Governmental Conflict Resolution Act.”

20. **SEVERABILITY.** If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a court of competent jurisdiction, such judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.

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PART II. SPECIFIC SERVICES

21. **LEVEL OF SERVICE.** COUNTY agrees to provide the personnel and equipment at the level of service specified in the *The Delivery of Municipal Services to the City of Daytona Beach Shores Fiscal Years 2019-20, 2020-21 and 2021-22* which is hereby attached as the eleven page Addendum to this Agreement and is incorporated in this Agreement by this reference. Should the CITY desire the COUNTY provide services either different in kind, or at a service level different than that contemplated herein, the City Manager shall make written request therefor to the County Manager or his designee and such notice shall be sent in accordance with Article 17. Any mutually agreed-upon modification to the kind of service and/or level of service to be provided by the COUNTY shall be reduced to writing and approved by the appropriate officials of both parties. Any reduction in level of service desired by the CITY shall only be effective at the beginning of a new contract year unless both parties agree otherwise. Upon the written agreement of the COUNTY to provide a change to services which increases the level of service, the new level of service shall commence within sixty days following the date of execution of the written agreement by the COUNTY or the beginning of a new contract year whichever shall first occur. The foregoing shall not be construed as requiring the COUNTY to agree to make a change to the kind of service and/or increase to the level of service to be provided by the COUNTY. Upon a change in kind of service and/or increase in the level of service to be provided by the COUNTY compensation to the COUNTY shall be immediately adjusted to conform to the new service provided.

22. **COMPENSATION.** CITY shall pay the COUNTY in accordance with the compensation set forth in the Addendum. CITY shall pay the sum invoiced within thirty (30) days of receipt of the bill from COUNTY.

23. **ENTIRE AGREEMENT.** This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

This space intentionally left blank

IN WITNESS WHEREOF, the parties to this County of Volusia Standard Interlocal Agreement for Provision of Municipal Services to the City of Daytona Beach Shores have caused the same to be signed by their duly authorized representatives on the dates indicated below.

ATTEST:

COUNTY OF VOLUSIA

By: _____
Name: George Recktenwald
Title: County Manager
Dated: _____

By: _____
Name: Ed Kelley
Title: County Chair
Dated: _____

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: _____
Name: Cheri Schwab
Title: City Clerk
Dated: _____

By: _____
Name: Nancy Miller
Title: Mayor
Dated: _____

By: _____
Name: Michael Booker
Title: City Manager
Dated: _____

Approved as to form
and correctness:

Lonnie N. Groot
City Attorney

ADDENDUM

COUNTY OF VOLUSIA, FLORIDA

**The Delivery of Municipal Services
to the
City of Daytona Beach Shores**

Fiscal Years 2019-20, 2020-21 and 2021-22

**DEPARTMENT OF PUBLIC WORKS SERVICES
CITY OF DAYTONA BEACH SHORES
FY 2019-20, 2020-21 AND 2021-22**

Services	Annual Cost
Road and Bridge	As Needed and As Determined by CITY
Traffic Engineering	As Needed and As Determined by CITY

Public Works Services Overview

The City of Daytona Beach Shores (CITY) contracts with the County of Volusia (COUNTY) to provide services from the Department of Public Works Divisions of Road & Bridge and Traffic Engineering.

Compensation

Compensation will account for actual services provided and will be charged in accordance with the following unless otherwise specified in the below description of services:

- a. **Labor (First 40 hrs of work week)**: Work hours x current hourly wage rate x current overhead rate at the time of service. Labor will be charged to the nearest one-quarter hour.
- b. **Overtime Labor (Hours over 40 for work week)**: Work hours x current hourly wage rate at time of service x 1.5 x current overtime overhead rate at the time of service. Overtime labor will be charged to the nearest one-quarter hour.
- c. **Parts, Materials and Chemicals**: All parts, materials and chemicals that are used will be billed at actual cost.
- d. **Equipment**: All equipment will be billed at the Public Works equipment rate at the time of service.

After hours work shall be work that was performed during those hours other than regular time and shall include holidays. Holidays are defined as those days officially designated as holidays by the Volusia County Council. After hours work shall be compensated based on both work time and travel time. There is a minimum two (2) hour after-hours call-out charge.

Billing

The COUNTY shall send the CITY a monthly invoice with documentation. The CITY shall pay all charges made in accordance with this Agreement within 30 days of receipt of the invoice, regardless of whether one or multiple CITY departments/divisions received services under this agreement.

Road and Bridge Division

The COUNTY may perform general maintenance and repair work on an “as available” basis for CITY maintained roadway and drainage infrastructure. For all requested work, the COUNTY will provide the CITY with a written cost estimate. The CITY manager or designee must then provide the COUNTY written authorization prior to commencement of the work, with the COUNTY’s cost estimate as an attachment referenced in the authorization.

All Road and Bridge services are subject to the availability of personnel and equipment at the sole discretion and determination of the COUNTY.

Traffic Engineering Division

A. Maintenance and Operation of Traffic Control Devices

The CITY is responsible for the maintenance and operation of the Traffic Control Devices identified in Exhibit “A”. The COUNTY, at the request of the CITY, shall maintain and operate these traffic control devices to ensure uniform traffic control of the road network. The coordination of the CITY’S traffic control devices with the COUNTY will promote an integrated and balanced traffic network in Volusia County to the benefit of all residents.

The COUNTY shall also maintain and operate auxiliary equipment such as overhead internally illuminated street name signs, fire preemption devices, transit priority devices, audible pedestrian signals, high intensity LED signs, and other devices associated with those identified in Exhibit “A” as requested by the CITY. The CITY will reimburse the COUNTY for all operational work performed on auxiliary equipment at the CITY’s request regardless of whether the signal is a City, County or State signal.

The CITY and COUNTY may modify Exhibit “A” throughout the life of this Agreement to account for new or removed Traffic Control Devices by written notification from the CITY’S Public Works Director to the Volusia County Traffic Engineering Director.

Service requests for the maintenance and operation of traffic control devices covered by this agreement shall be satisfied by the COUNTY when personnel and equipment are available.

1. Preventative (Routine) Maintenance

Preventive (routine) maintenance is a program to inspect and perform a set of standard actions to reduce the chance of a traffic control device failure. This maintenance also includes the repair and/or replacement of components as necessary to ensure continued proper operation of the devices.

a. Traffic Signal Preventive Maintenance

The COUNTY shall perform a minimum of two (2) preventive maintenances per year on each Traffic Signal, Traffic Signal with Pedestrian Features, and Emergency Traffic Signal as identified in Exhibit "A". The preventive maintenance will be done to current COUNTY standards, which are consistent with Florida DOT standards. The COUNTY's current standard for mast arms is galvanized steel. If the CITY requests painted mast arms, the CITY shall be responsible for maintaining the paint and will notify the COUNTY at least one week prior to performing preventative painting maintenance.

b. Traffic Signal Rebuild

Traffic Signal overheads should be rebuilt every 5 – 10 years due to the impact of the environment on the electronic components. The COUNTY will recommend a traffic signal rebuild when multiple failures requiring immediate repair occur in the same year. The COUNTY will submit a recommendation and a cost estimate to the CITY for the rebuild and the work will not be completed without the written approval of the CITY.

c. Flasher Inspection and Timing (School Flashers, RRFBs, Warning Flashers, etc.)

- i. The COUNTY shall perform a minimum of one (1) flasher inspection per year, including the verification or new programming of each school flasher timing.
- ii. The COUNTY shall perform an initial (one-time) assessment and inventory of all school flashers, if none is available. This is a separate task from the annual inspection.

2. Response (Emergency) Maintenance

Response (emergency) maintenance is the immediate repair of a failed traffic control device to restore the device to normal operation. Response maintenance repairs can be either a Final Repair or a Temporary Repair as defined below:

Final Repair – The traffic control device is returned to normal operation.

Temporary Repair – The traffic control device is set into a mode of safe operation (such as on flash) until a final repair can be made. If the device is not able to be placed into a mode of safe operation, alternative traffic control methods (i.e. stop signs) will be implemented by the City.

During business hours (7:00AM - 3:30 PM, Monday through Friday), the CITY shall contact Volusia County Traffic Engineering (386-736-5968) to request response maintenance

repairs. At all other times, the CITY shall contact the County Central Dispatch Center (Sheriff Operations Center) (386-736-5999).

The CITY shall identify three (3) City employees and provide contact information for each to the COUNTY for the purpose of providing emergency follow up information. Any call for response maintenance repairs from either the CITY or from the County Central Dispatch Center (Sheriff's Office Dispatch) will be responded to by the COUNTY and the services performed will be paid for by the CITY.

The COUNTY shall establish the priority of each response maintenance call based on the number of calls, the resources available and the nature of each call.

If response maintenance repairs are significant in nature (signal pole knock-down, traffic control device rebuild) the COUNTY will begin work on a Temporary Repair while contacting the CITY for authorization to complete the Final Repair. The Temporary Repair will be kept in place and maintained by the CITY until the COUNTY receives written authorization from the CITY for the Final Repair. Upon request, the COUNTY will provide the CITY with a cost estimate for the Final Repair. It is the CITY'S responsibility to collect insurance or other compensation from the parties that damaged the city equipment.

If COUNTY personnel cannot complete a response maintenance repair, COUNTY personnel will complete a Temporary Repair. The COUNTY will contact the CITY for written authorization to issue a Notice to Proceed to one of the COUNTY'S contractors to complete the repair. Upon request, the COUNTY will provide the CITY a cost estimate from the Contractor.

3. Operational Maintenance – Traffic Signal Timing and Equipment Upgrades

Traffic signal retiming may be required every few years due to changes in traffic flow. Controllers will be inventoried and brought up to COUNTY standards.

Requests received by the COUNTY from the Public or the CITY regarding traffic signal malfunctioning, signals not operating correctly or signals needing retiming shall be handled as Response Maintenance to ensure all equipment and controller timings are functioning correctly.

a. Signal Timing Modification

The CITY can request that the COUNTY complete a study to retime an intersection. Upon request, the COUNTY will provide the CITY with a cost estimate. If CITY approves the retiming effort, then the COUNTY will conduct the study and implement any necessary retiming.

b. Equipment Upgrades

The COUNTY will upgrade controllers to the current COUNTY standard. All CITY equipment replaced by the COUNTY will be disposed of by the COUNTY.

4. Design Modifications

Design modifications are changes to the approved design and operation of an existing traffic control device/signal. Design modifications can include changes in signal locations, configuration or displays among other design aspects.

The COUNTY will not begin work on any design modifications without an engineering study signed and sealed by a Professional Engineer licensed in the State of Florida. The COUNTY can provide the CITY with a cost estimate to complete the modification upon request.

The COUNTY can provide the CITY left-turn warrants and left-turn display (protected versus protected-permitted or Flashing Yellow Arrow conversion) studies upon request. If the study recommends a change, which is approved by the CITY, the COUNTY can then implement the modification. Cost estimates for the COUNTY to complete the above work can be provided to the CITY as requested.

5. Maintenance of Traffic

During preventive maintenance, the COUNTY or its contractor shall be responsible for maintaining safe traffic flow. During response (emergency) maintenance when law enforcement personnel are necessary to maintain safe traffic flow or worker safety, the COUNTY or its contractor shall notify local police to arrange for law enforcement.

In case of an Act of God emergency situation (e.g., hurricane, summer thunder or winter storm, tornado) that causes the loss of power to multiple traffic signals or major damage to traffic signals, the CITY shall arrange for any necessary law enforcement or placement of temporary traffic control devices (e.g., stop signs) at all appropriate traffic signal locations. Where the CITY has made previous modifications for emergency service generator hook-ups, the COUNTY will coordinate with the CITY on the need to place said generators. It will be the CITY'S responsibility to ensure the emergency service generator(s) are fueled and operational.

6. Equipment and Stock

The COUNTY will provide all equipment, parts and materials for work done for the CITY. The COUNTY shall maintain standard signal equipment in stock. The COUNTY may not stock auxiliary items such as emergency preemption devices, audible pedestrian signals and transit priority devices, but will order on an as-needed basis.

7. Electrical and Communication Costs

The CITY shall retain the responsibility to pay all related traffic control device power and communication costs. The CITY shall be responsible for the installation of any necessary communication devices in any master cabinet and shall pay the monthly charges for such communications.

8. Red Light Running Cameras and License Tag Readers

Red Light Running Cameras and License Tag Readers are typically maintained and operated through a separate agreement between the CITY and a Vendor. The COUNTY will not provide any services related to Red Light Running Cameras or License Tag Readers. If the CITY desires to install Red Light Running Cameras or License Tag Readers on Traffic Control Devices maintained by the COUNTY along state or county roads, the CITY agrees to (1) install and pay for any separate power service hook-ups, (2) reimburse the COUNTY for any power or lighting damage repairs if any device is installed within the controller cabinet to monitor the red indication output, and (3) the CITY will hold harmless the COUNTY for any power or lighting damage emanating from the COUNTY Traffic Control Device infrastructure and power service.

9. Emergency Vehicle Preemption

Emergency vehicle preemption devices on CITY (or COUNTY) emergency vehicles improve the safety of first responders and motorists on Volusia County's roadways while also reducing response times to life-threatening emergencies. If the CITY elects to utilize emergency vehicle preemption, the following Standard Operating Procedure shall be implemented to ensure the technology is used effectively and efficiently:

a. Use of only Opticom GPS vehicle kits

Commitment to Opticom GPS ensures that an emergency vehicle that comes to a stop on approach to an intersection will not lock up the intersection in an extended preemption. The CITY will upgrade any Opticom Infrared vehicle kits within 12 months. If the CITY requires more than 12 months to complete the upgrades, the CITY will notify the COUNTY and provided an estimated completion date.

b. Use of Opticom GPS only when traveling in the emergency mode

The CITY shall establish a directive that allows for the use of Opticom emergency vehicle preemption equipment only when responding or transporting in the emergency mode. The CITY shall ensure Opticom GPS units will not be used when the vehicle's emergency lighting is not activated.

c. Passive installation design

Opticom GPS vehicle kits will be wired to only activate when the vehicle's primary emergency lighting is activated. This design will prevent the potential for inappropriate use of the emergency vehicle preemption system.

d. Information sharing with employees

The CITY shall disseminate a directive to its employees explaining the functions and limitations of emergency vehicle preemption. This document will specifically instruct employees not to presume that a green light will be guaranteed and clearly asserts that Opticom preemption devices will only be used in the emergency mode.

e. Potential for Future Requirements from the Florida Department of Transportation

The Florida Department of Transportation (DOT) required each local jurisdiction in Seminole, Orange and Osceola counties to activate the license key and enter into an annual maintenance agreement with Opticom, to assign a unique identity number for each vehicle, and to monitor the usage of emergency vehicles to minimize any potential misuse of Opticom. If the Florida DOT requires this in Volusia County, the local jurisdictions will need to budget for the additional expense. The license key is approximately \$750 per intersection and there will be an ongoing annual maintenance agreement fee with Opticom.

10. Florida DOT Requirements for State Roads

If the CITY has entered into the Florida DOT Signal Maintenance Agreement (750-010-22 4/15), the COUNTY shall also maintain the following devices identified in Exhibit "A": emergency fire signal, pedestrian flashing beacon, speed activated warning displays, traffic warning beacons, travel time detector, UPSW/battery backup and traffic signal interconnected and maintained (TSIM) locations.

a. Preventative (Routine) Maintenance

This maintenance includes locates and preventative maintenance of all electronic signal equipment with the exception that the COUNTY will not structurally maintain any mast arms. Furthermore, for new mast arms, or mast arm structures subject to a separate agreement with the Florida DOT regarding painted mast arm structures, the COUNTY is unable to perform Periodic Maintenance and recommends that the CITY procure the services of a Traffic Signal Contractor to perform periodic maintenance.

b. Response (Emergency) Maintenance

If restoration of services is delayed and stop signs or other methods to maintain traffic (e.g., law enforcement personnel) are required, the COUNTY shall notify the CITY to provide the appropriate response. In addition, the COUNTY shall coordinate with the CITY on how to respond to critical detection device malfunctions. The COUNTY shall notify the CITY if 8% of all critical detection devices are malfunctioning at any one time.

c. Performance Measures and Reporting

The County shall submit to the Florida DOT an Annual Report prior to June 30 of each year detailing critical detection device malfunctions, traffic signal preventative maintenance inspections, annual conflict monitoring testing, and personnel (and location) overseeing interconnected signals. The COUNTY will identify the number of critical detection devices for each location on Exhibit "A."

d. Retainage

The CITY shall indemnify and hold harmless the COUNTY for any retainage held back by the Florida DOT due to the CITY's failure to comply with the requirements of the Florida DOT Agreement based upon the CITY's failure to act once notified by the Florida DOT or COUNTY.

e. Florida DOT Agreement Cancellation

If the CITY notifies the Florida DOT of the CITY's intent to cancel the Florida DOT Agreement, the CITY shall also notify the COUNTY. If COUNTY notifies the Florida DOT of COUNTY's intent to cancel the Florida DOT Agreement, the COUNTY shall also notify the CITY.

B. Other Services

Other traffic engineering services not identified in this agreement can be requested by the CITY in writing. The services are subject to the availability of personnel and equipment at the sole discretion and determination of the COUNTY. These services include:

1. Administrative Services

Administrative Services involving new or replacement signal design or COUNTY staff appearance or attendance before CITY meetings per CITY Staff request.

2. Traffic Counts and Studies

Traffic Counts and Studies involving annual daily traffic counts on city roads and unique traffic studies responding to and resolving traffic related complaints from the public or elected officials. Such studies could include, but not limited to: Spot Speed, Multi-Way Stop, Signal Warrant, Vehicle Classification and Turning Movement Count.

3. Other Services

Other services include, but are not limited to, additional on-call personnel, traffic control for special events (parades, festivals), house moving, etc.

Natural and Manmade Disaster Emergency Response Services Department of Public Works

The COUNTY can provide Emergency Response Services for state and federally declared disasters as requested by the CITY for the above listed services. The emergency response services are subject to the availability of personnel and equipment at the sole discretion and determination of the COUNTY. Emergency services provided by the COUNTY will be billed to the CITY in accordance with this Agreement.

EXHIBIT A
CITY OF DAYTONA BEACH SHORES - TRAFFIC CONTROL DEVICES
7/24/2019

WITHIN COASTAL ZONE ☒ YES ☐ NO
FDOT ADDENDUM APPLICABLE ☒ YES ☐ NO

Asset #	Location	TS	IMTS	ICB	PFB	FDS	SAWD BOS	TWB	UPS	OPT	Mast Arm	Painted
072N	S ATLANTIC AV @ EMILIA AV				RRFB							
082E	S ATLANTIC AV @ BELLEMEAD DR (PUBLIX)				RRFB							
082N	S ATLANTIC AV @ BELLEMEAD DR (PUBLIX)				RRFB							
082S	S ATLANTIC AV @ BELLEMEAD DR (PUBLIX)				RRFB							
082W	S ATLANTIC AV @ BELLEMEAD DR (PUBLIX)				RRFB							
135	SR A1A/ATLANTIC AV @ BOTEFUHR AV	✓									✓	✓
136	SR A1A/ATLANTIC AV @ MOORE AV	✓									✓	✓
137	SR A1A/ATLANTIC AV @ FIRE STATION					✓					✓	✓

TS - Traffic Signal
IMTS – Traffic Signal Interconnected & Monitored
ICB – Intersection Control Beacon
PFB - Pedestrian Flashing Beacon (SZ) - School Zones & (RRFB) - Rectangular Rapid Flashing Beacon
FDS - Emergency Fire Dept Signal
SAWD/BOS – Speed Activated Warning Display or Blank Out Sign
TWB - Traffic Warning Beacon (LE LED) - Leading Edge LED
UPS - Uninterruptible Power Supply/Battery Backup
OPT - Opticom (F) – Fire (B) – Bus Priority

**DAYTONA BEACH SHORES PUBLIC
SAFETY DEPARTMENT**

**CONTRABAND FORFEITURE
EXPENDITURE REQUEST**

August 9, 2019
File: PS19-08-01

FUNDING REQUEST

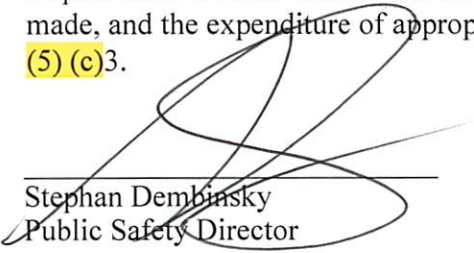
The Daytona Beach Shores Public Safety Department seeks Council approval for the expenditure of state contraband forfeiture monies under the "additional law enforcement" provision of FSS 932.7055 (5) (c)3. The Department is required to use these monies for the purpose of drug awareness/crime prevention.

Crime Prevention Materials

The Department of Public Safety would like to utilize \$1,500.00 from the state contraband forfeiture account for crime prevention materials.

Certification of Compliance:

The undersigned, as Public Safety Director of the City of Daytona Beach Shores, Florida, hereby requests, pursuant to Section 932.704, Florida Statutes, that the City Commission authorize the appropriation to, and expenditure by, the Daytona Beach Shores Public Safety Department of funds held in the City's Special Law Enforcement Trust Fund. The request is made, and the expenditure of appropriated funds shall be in conformity with Section 932.7055 (5) (c)3.


Stephan Dembinsky
Public Safety Director

8.13.19

Date



CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"

Office of the City Manager

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

MEMORANDUM

DATE: September 9, 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 – September 9, 2019

3D Imaging

- I have been informed by Larry Bartlett, Volusia County Property Appraiser, that his office will be testing 3D imaging software in Daytona Beach Shores. Given the large number of condos in the city, he felt it would be a great place to start.

Economic Development

- Signs have been ordered and applications have been developed to promote the City's Economic Development Incentives.
- Stacy Conomos, our Economic Development Liaison, has been working hard with Council Members Lindauer and Frizalone to lay the groundwork to improve business relations and to promote programs to assist new businesses and retain existing businesses.

Museum

- I have received some preliminary designs for the City Museum, and I will schedule some time to discuss options with Don Large prior to our current fiscal years' end.

City Manager Evaluations

- For your convenience, attached are evaluations from ICMA, New Smyrna Beach, Port Orange, South Daytona, Ponce Inlet, Edgewater, Ormond Beach and Daytona Beach. You may find it helpful to review these evaluations prior to the September 20 workshop.

cc:
City Department Heads

Attachments



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 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 (State Road A1A), 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 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.

Since first reading the identification of South Atlantic Avenue as State Road A1A has been corrected as a result of excellent proofreading by the City Clerk and the statutory definition of development, as cited and referenced in the Ordinance, has been clarified, thanks to the good comment by Council Member Lindauer to ensure that uses that were not desired by the City were not encouraged.

Also, Stewart Cruz, after reviewing the ordinance, provided comments that were addressed in the revised document. Likewise, Fred Hiatt provided a helpful clarification that was addressed in the revised document.

A comparison document between the first and second reading documents is attached for review and perusal.

LEGAL REVIEW:

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 enact the Ordinance on second reading.

SUGGESTED MOTION:

"I move to adopt Ordinance Number 2019-08 on second reading."

- ATTACHMENT:**
1. Econ Dev Incentives Ord-LNG-8-26-19
 2. Econ Dev Incentives Ord - Comparison - LNG-8-26-19

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 set forth in this Ordinance”) 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 enhancing existing buildings within the Incentive Area and promoting the construction of new buildings that are compatible with the desired character of the City.

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

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

adopts the definition set forth in Section 380.04, *Florida Statutes*,¹ shall be applicable to the implementation and administration of this Ordinance, but is not a limitation as the intent of this

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

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

Ordinance is to address both exterior and interior improvements of real property.

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

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

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

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

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

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

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

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

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

(7). *Job* means each new:

(A). Full-time position or

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

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

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

General Principles Relating To Award Of Grant Incentives.

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

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

Authorized Incentives.

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

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

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

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

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

Eligibility Criteria.

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

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

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

- (3). The Development must be located within the Incentive Area.
- (4). The Development must have:
 - (A). Real property acquisition costs of a significant type or nature, or
 - (B). Significant costs of physical improvements to real property, or
 - (C). Significant costs of capital improvements to City infrastructure; or
 - (D). On a case-by-case basis, any other eligibility criteria that must be met upon completion of a Development in order to ensure that the Goals set forth in this Ordinance are met and that the Development provides Benefits to the City (and its citizens) in amounts that warrant the implementation of Incentives.
- (b). The provisions of this Ordinance shall be implemented by the City Council of the City of Daytona Beach Shores as it deems appropriate for the benefit of the citizens of the City on a case-by-case basis and, to that end, there shall be no entitlement to an award to any person or entity under the provisions of this Ordinance regardless of the purported attainment of criteria or any matter of like nature.

Disqualification for Incentives.

- (a). No business and no successor or affiliated business entity having one or more of the same principals and substantially the same business activity may cease business operations in the name of one business and then resume business operations in another name if the effect of such resumption is to circumvent the provisions of this Ordinance or to prolong an Incentive which has been granted.
- (b). A business which is the subject of a code enforcement proceeding or which has an unpaid fine relating to a code enforcement proceeding of the City shall not be eligible for an Incentive under this Ordinance.

SECTION 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.

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)~~ 1 TOURISM.—

~~(a)~~ 1 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 set forth in this Ordinance”) 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~~enhancing existing buildings within the Incentive Area and promoting the construction of new buildings that are compatible with the desired character of the City.

(2). *Incentive Area* means the area within the City Limits along South Atlantic Avenue ~~(U.S. Route 1 or U.S. Highway 1);~~State Road A1A and County Road 4075 which Area may be modified from time-to-time, in which economic or tourism development activities are likely to result from development or redevelopment of properties and in which the City Council has determined that the revitalization and redevelopment thereof is essential to preserving and improving the economy, society, and culture of the City which results will enhance the quality of life of the citizens of the City.

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

adopts the definition set forth in Section 380.04, *Florida Statutes*,¹ shall be applicable to the implementation and administration of this Ordinance, but is not a limitation as the intent of this

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

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

Ordinance is to address both exterior and interior improvements of real property.

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

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

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

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

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

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

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

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

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

(7). *Job* means each new:

(A). Full-time position or

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

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

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

General Principles Relating To Award Of Grant Incentives.

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

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

Authorized Incentives.

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

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

but in no event in ~~the~~an 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*, the implementing provisions/land development regulations of the City's *Land Development Code*, as well as the Goals set forth in this Ordinance.

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

- (3). The Development must be located within the Incentive Area.
- (4). The Development must have:
 - (A). Real property acquisition costs of a significant type or nature, or
 - (B). Significant costs of physical improvements to real property, or
 - (C). Significant costs of capital improvements to City infrastructure; or
 - (D). On a case-by-case basis, any other eligibility criteria that must be met upon completion of a Development in order to ensure that the Goals set forth in this Ordinance are met and that the Development provides Benefits to the City (and its citizens) in amounts that warrant the implementation of Incentives.
- (b). The provisions of this Ordinance shall be implemented by the City Council of the City of Daytona Beach Shores as it deems appropriate for the benefit of the citizens of the City on a case-by-case basis and, to that end, there shall be no entitlement to an award to any person or entity under the provisions of this Ordinance regardless of the purported attainment of criteria or any matter of like nature.

Disqualification for Incentives.

- (a). No business and no successor or affiliated business entity having one or more of the same principals and substantially the same business activity may cease business operations in the name of one business and then resume business operations in another name if the effect of such resumption is to circumvent the provisions of this Ordinance or to prolong an Incentive which has been granted.
- (b). A business which is the subject of a code enforcement proceeding or which has an unpaid fine relating to a code enforcement proceeding of the City shall not be eligible for an Incentive under this Ordinance.

SECTION 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 SEPTEMBER 9, 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.

The following minor edit has occurred between first and second reading of the Ordinance which edit occurs on Page 39:

"(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."

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 adopt Ordinance Number 2019-09 on second reading.

SUGGESTED MOTION:

"I move to enact Ordinance Number 2019-09 on second reading."

ATTACHMENT: 1. 2019-09 Code Enforcement Enhancement-LNG-8-28-19

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 CODE*⁵ 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.

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.

(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*.

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.

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.

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.

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 SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Kurt Swartzlander, Finance Director
SUBJECT:

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA IMPLEMENTING SECTION 3.05 (4) OF THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* RELATING DUTIES OF THE CITY MANAGER AND THE ADOPTION OF CITY BUDGETS BY ORDINANCE; 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:

This item is required under the City Charter and is an implementation ordinance specifying how the budget is to be adopted and administered.

FISCAL IMPACT STATEMENT:

This ordinance has no fiscal impact.

BACKGROUND:

The proposed ordinance is one of a series of actions that are needed to implement the provisions of the *City Charter*, make the *City Code* and actions consistent with the *City Charter*, etc. Many of these items have been articulated in documents provided to the City Council.

LEGAL REVIEW:

Section 3.05. of the *City Charter* relates to the powers and duties of the City Manager and Subsection (4) requires the City Manager to "lan and prepare the budget annually for action by the City Council and submit to the Council a budget message and capital program in a format to be prescribed by ordinance and to be responsible for the administration of the budget once it is officially adopted." No ordinance has yet been enacted to implement that provision.

In terms of budget implementation, Section 7.08 of the *City Charter* relates to bids, contracts and expenditures. The ordinance provides that the City Manager may transfer budgetary funds on an inter-departmental basis and

may award procurements that are budgeted and which have been attained through competitive processes such as State contracts or “piggybacked” or cooperative procurement contracts consistent with the spending authority currently in place (\$25,000.00) as there has been no purchasing policy adopted by the City to date..

Also, the ordinance authorizes the Finance Director to transfer budgetary funds on an intra-departmental basis may award procurements, as delegated by the City Manager, that are budgeted and which have been attained through competitive processes such as State contracts or “piggybacked” or cooperative procurement contracts.

All actions must be taken in a manner which respect the budgetary decisions of the City Council in terms of the mandated use of funds for specific projects and activities and procurement awards in excess of the City Manager's authority must be brought forward to the City Council for approval and award of an appropriate contract to a vendor.

RECOMMENDATION:

City staff recommends approval of Ordinance Number 2019-XX on first reading.

SUGGESTED MOTION:

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

ATTACHMENT: 1. Budget Ordinance Implementation

ORDINANCE 2019-11

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA IMPLEMENTING SECTION 3.05 (4) OF THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* RELATING DUTIES OF THE CITY MANAGER AND THE ADOPTION OF CITY BUDGETS BY ORDINANCE; 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, Section 3.05 (4) of the *City of Daytona Beach Shores City Charter* relates to the powers and duties of City Manager and provides that:

The City Manager shall have the power and shall be required to:

(1) – (3)

(4) Plan and prepare the budget annually for action by the City Council and submit to the Council a budget message and capital program in a format to be prescribed by ordinance; and to be responsible for the administration of the budget once it is officially adopted.

(5) – (9)

which provision the City Attorney has recommended revising; and

WHEREAS, controlling State law requires the annual budget to be adopted by means of using certain required processes and procedures; and

WHEREAS, the said proposed annual budgets are reviewed by the City Council at public hearings as required by controlling State law and are otherwise reviewed, evaluated and considered by the City Council; and

WHEREAS, the City Council desires to enact the Ordinance required by Section 3.05 (4) of the *City Charter*; and

WHEREAS, the City Council will continue to adopt an annual operating budget for each fiscal year beginning specifying certain projected revenues and expenditures for the operations of Daytona Beach Shores municipal government; and

WHEREAS, the City's budget presumes that each City department generally will, to the best of their ability, maintain its expenditures within its allocated budgeted level and exercise prudence in expending funds during the course of the City's fiscal year; and

WHEREAS, from time-to-time circumstances and events may require that the original City budget may need revision; and

WHEREAS, the City Council, in its judgment and discretion, has the authority in the future to adjust the budget, in accordance with the procedural requirements of controlling State law, to more closely coincide with actual and expected events; and

WHEREAS, the City Council has the continuing and overriding responsibility to take all necessary steps and actions to ensure that sound economic, financial and fiscal management policies are implemented and maintained in the City for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City staff is tasked with providing diligent assistance and guidance to develop, implement and maintain the economic, financial and fiscal management policies of the City Council for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council is vested with the budgetary authority and control relating to City of Daytona Beach Shores Government operations, the provision of adequate levels of service with regard to essential public services and facilities and the maintenance of public benefits provided and the protection of the public health, safety and welfare by City Government to the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council is responsible for the determination as to the appropriate staff levels within City Government and the establishment and budgeting of the staffing levels and positions assigned to each particular department, office and function of City Government and for the funding, creation, abolishment, and other economic, fiscal and financial decisions relating to the staffing of City Government; and

WHEREAS, it is the desire and goal of the City Council for City Government to function as an efficient governmental organization; and

WHEREAS, the City maintains an alignment and organization of the City's departments, offices and functions to ensure that they are sound and consistent with highly productive public administration practices, procedures and systems; and

WHEREAS, the City Council has concluded that the actions taken herein will provide positive economic and budgetary benefits to the City and the City Council has concluded that the results of such actions will benefit the citizens of the City of Daytona Beach Shores, and

WHEREAS, it is the goal and desire of the City Council to provide a continuing level of service expected by the citizens of the City of Daytona Beach Shores with regard to the provision of essential and beneficial levels of service and the provision of adequate public facilities to serve the needs of the citizens; and

WHEREAS, the City Council hereby finds and concludes that the level of service and the system of public facilities provided to the citizens of the City of Daytona Beach Shores will be positively and favorably impacted as a result of the City Council taking the necessary economic, fiscal, financial, and budgetary actions as set forth in this Ordinance in accordance with controlling State law; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and concludes that the actions taken herein are consistent with sound and generally accepted public management and finance principles and controlling applicable law and serve an important public purpose.

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance, 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). 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.

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

(d). To the extent necessary, this Ordinance shall be deemed to be corrective and remedial in nature.

SECTION TWO: ANNUAL CITY BUDGET.

(a). The annual City budget shall be developed and adopted in accordance with the requirements of controlling Florida law.

(b). Amendments to the annual budget shall be developed and adopted in accordance with the requirements of controlling Florida law.

(c.) The City Manager may transfer budgetary funds on an inter-departmental basis to accommodate the needs of the City to address the efficient management of the City and may award procurements that are budgeted and which have been attained through competitive processes such as State contracts or “piggybacked” or cooperative procurement contracts.

(d). The Finance Director may transfer budgetary funds on an intra-departmental basis to accommodate the needs of the City to address the efficient management of the City and may award procurements, as delegated by the City Manager, that are budgeted and which have been attained through competitive processes such as State contracts or “piggybacked” or cooperative procurement contracts.

(e). All actions shall be taken in a manner which respect the budgetary decisions of the City Council in terms of the mandated use of funds for specific projects and activities.

(f) Any expenditures exceeding the City Manager’s spending authority, which has not been approved by the budgetary decisions of the City Council, which spending authority has been established by City practice in the

amount of \$25,000.00, shall be brought forward to the City Council for approval of the expenditure by means of awarding an appropriate contract to a vendor.¹

SECTION THREE: 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*.

SECTION FOUR: 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 FIVE: 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.

¹ Sec. 7.08. - Bids, contracts and expenditures.

Upon approval of the City Council, the following expenditures may be made without competitive bidding;

- (a) All expenditures, including expenditures for real or personal property acquisition, not exceeding twenty-five thousand dollars (\$25,000.00);
- (b) Expenditures for salaries and contracted, professional or personal services;
- (c) Expenditures for work done in the operation of any City department;
- (d) Expenditures for parts, supplies and materials necessary to make emergency repairs, to protect property or preserve the peace in the event of an emergency such as a storm, riot or conflagration.

All other expenditures shall be authorized and directed by the City Council only upon contract to the lowest responsible responsive bidder, and after publication in a newspaper of general circulation one time of a notice calling for such bids, said publication to be not less than ten (10) days before the date of receiving such bids. The council shall reserve the right to reject any and all bids submitted pursuant to this section.

All municipal general obligation debt issues shall require the approval of the voters in the form of a referendum held for that purpose, except refunding bond issues that generate an overall savings to the City.

(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 SIX: CONFLICTS.

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

SECTION SEVEN: SEVERABILITY.

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

SECTION EIGHT: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY 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.



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Resolution 2019-14 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR THE REGULAR MEETING TIMES OF CITY COUNCIL MEETINGS AND WORK SESSIONS; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

SYNOPSIS:

This proposed Resolution is the direct result of Mayor Miller's request at the Council Meeting of August 13, 2019. The council agreed to move the start time of meetings to 6:00 pm. It was also agreed to begin monthly workshop meetings.

FISCAL IMPACT STATEMENT:

BACKGROUND:

At the last City Council meeting Mayor Miller recommended that the City Council normal meeting time be moved from 7:00 p.m. to 6:00 p.m. and that the City Council schedule a routine tentative time for work sessions to be held.

Mayor Miller stated that her goal was to benefit the citizens of the City by having a meeting time that was more conducive to them and to ensure that the City Council could hold work sessions as needed on an array of items that come before the City Council.

The City Council has the power and authority to schedule its meetings and times of meetings (except for organizational meetings which the *City Charter* prescribes as time).

In sum, the proposed resolution provides as follows commencing on October 1, 2019:

- (1). The regular meetings of the City Council shall commence at 6:00 p.m. on the second and fourth Tuesdays of each month.
- (2). The first regular meeting of the City Council each month shall be preceded by a work session of the City Council which shall commence at 4:00 p.m.
- (3). The organizational meetings of the City Council shall commence as required by the provisions of Section 2.14 of the *City Charter*.
- (4). Work sessions may include board interviews or matters of a like nature as well as any other business of the City Council.
- (5). Consensus of the City Council may be attained at a work session, but no votes shall be taken at a work session.
- (6). The Mayor may determine that a regularly scheduled work session is not required and cancel any such work session.

LEGAL REVIEW:

The City Attorney prepared the proposed resolution, etc. and has no legal objection to the City Council taking the proposed action. Unlike ordinances, resolutions do not require 2 readings, etc.

RECOMMENDATION:

It is recommended that the City Council adopt Resolution 2019-14.

SUGGESTED MOTION:

I move to adopt Resolution 2019-14.

ATTACHMENT: 1. res 2019-14 City Council Procedures -Time Of MeetingsLNG-8-15-19

RESOLUTION 2019-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR THE REGULAR MEETING TIMES OF CITY COUNCIL MEETINGS AND WORK SESSIONS; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

(a). The City Council of the City of Daytona Beach Shores, as the local governing body of the City with all powers of the City vested therein, has the authority to adopt such rules governing its meetings as it may deem expedient and in the best interests of the City.

(b). Section 2.14 of the *City Charter* relates to meetings of the City Council and provides, in pertinent part, that:

The organizational meeting of the City Council shall be at 7:00 p.m. at council chambers or as otherwise designated by motion of the City Council at the first regularly scheduled City Council meeting after the municipal election. . . . Thereafter the City Council shall meet at such times as may be prescribed by resolution, except that it shall meet no less than once each month. . . .

; and

(c). The City Attorney has proposed numerous changes to the text of Section 2.14 of the *City Charter* which are pending further consideration and action by the City Council.

(d). The Mayor has suggested and the City Council has agreed to revise the meeting times of the regular (non-organizational) meetings of the City Council to better handle the business of the City Council and address the needs of the citizens of the City.

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

SECTION 2. TIMES OF CITY COUNCIL MEETINGS; WORK SESSIONS.

(a). The City Council of the City of Daytona Beach Shores hereby adopts the following meeting schedule commencing on October 1, 2019:

(1). The regular meetings of the City Council shall commence at 6:00 p.m. on the second and fourth Tuesdays of each month.

(2). The first regular meeting of the City Council each month shall be preceded by a work session of the City Council which shall commence at 4:00 p.m.

(3). The organizational meetings of the City Council shall commence as required by the provisions of Section 2.14 of the *City Charter*.

(4). Work sessions may include board interviews or matters of a like nature as well as any other business of the City Council.

(5). Consensus of the City Council may be attained at a work session, but no votes shall be taken at a work session.

(b). The Mayor may determine that a regularly scheduled work session is not required and cancel any such work session.

SECTION 3. IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Resolution as may be deemed necessary or appropriate in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the *City Charter*.

SECTION 4. SAVINGS.

The prior actions of the City Council of the City of Daytona Beach Shores in terms of the matters relating hereto, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 5. CONFLICTS.

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

SECTION 6. 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 to be invalid, unlawful, or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and 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 9th day of September, 2019.

Posted this 9th day of September, 2019.



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Resolution 2019-15 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ESTABLISHING THE COMMITMENT OF THE CITY TO ADHERE TO AND IMPLEMENT THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

SYNOPSIS:

A proposed resolution is being submitted for City Council action at the suggestion of Council Member Mel Lindauer with regard to ensuring that the City is complying with the provisions of the *Americans With Disabilities Act* (ADA) and in order to protect the City from the costs and expenses of claims and litigation arising under the ADA.

FISCAL IMPACT STATEMENT:

This resolution has no fiscal impact to the current budget. However, funds are budgeted annually to address minor repairs or updates to existing structures or facilities as they are identified.

BACKGROUND:

Local governments and others (such as businesses) have been the targets of claims alleging violations of the *Americans With Disabilities Act* (ADA). Council Member Lindauer recently attended educational sessions at the Florida League of Cities annual conference and learned of an effective strategy to defend the City against ADA claims. After discussion the matter with the City Attorney who has taken action for the City of Sanford to address similar issues, Council Member Lindauer expressed the desire to propose the resolution that has been drafted for consideration by the City Council.

LEGAL REVIEW:

The City Attorney has drafted the proposed resolution and supports the efforts of Council Member Lindauer in proposing actions that will protect the City. The resolution is consistent with sound and generally accepted public management practices and principles and implements proactive risk management by the City.

The City Attorney consulted with the attorney with whom Council Member interacted at the Florida League of Cities conference relative to the matter.

RECOMMENDATION:

Staff recommends the approval of Resolution Number 2019-15.

SUGGESTED MOTION:

"I move to approve Resolution Number 2019-15."

ATTACHMENT: 1. res 2019-15 ADA

RESOLUTION 2019-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ESTABLISHING THE COMMITMENT OF THE CITY TO ADHERE TO AND IMPLEMENT THE PROVISIONS OF THE *AMERICANS WITH DISABILITIES ACT*; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the *Americans with Disabilities Act (ADA)* provides protections for individuals with disabilities in employment, public accommodations, and municipal services and programs; and

WHEREAS, within disability compliance laws, the 5 Titles of the *ADA*, the Amendments Act of 2008, and the 504 Rehabilitation Act each govern a different area of compliance:

- (1). Title I – Employment and Jobs;
- (2). Title II – State and Local Governments;
- (3). Title III – Public Accommodations and Commercial Facilities;
- (4). Title IV – Accessible Telecommunications;
- (5). Title V – Miscellaneous Provisions; and
- (6). The *ADA Amendments Act of 2008*,

; and

WHEREAS, the *504 Rehabilitation Act of 1973* also federally protects qualified individuals with disabilities from discrimination with any organization that receives federal financial assistance; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to affirm its commitment to addressing the needs of persons with disabilities that are protected by law and its desire to serve all who are in need of accommodation; and

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

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Resolution to be in the best interest of the residents and citizens of the City of Daytona Beach Shores and to further the public health, safety and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores has complied with all procedural and substantive requirements of controlling law in enacting this Resolution.

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

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

(a). City staff has received training for making the City's web content more accessible to accommodation software for the visually impaired and is in the process of implementing new software to expand accessibility to readers and other accommodations and the Mayor and City Council of the City of Daytona Beach Shores desire to establish a policy of *ADA* accessibility for the City's websites and digital communications to certify current and continued compliance with *ADA* accessibility.

(b). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Resolution 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 2. COMMITMENT TO *AMERICANS WITH DISABILITIES ACT (ADA)*.

(a). The City shall adhere to the controlling provisions of the *ADA* with regard to its activities,

facilities and programs. People with disabilities are protected from discrimination under a variety of laws, including the *ADA* and other controlling law. City programs may not discriminate against people based upon a disability and the City must offer all services, programs, and activities in ways that allow equal participation. The City does not discriminate on the basis of sex, color, religion, national origin, age, or disability in the programs and activities which it operates. This policy extends to employment by, admission to, and participation in, the programs, services, and activities of the City.

(b). The Mayor and City Council hereby require the City Manager to maintain policies and practices to ensure the current and continued compliance of the City's digital content with *ADA* requirements and to maximize the accessibility of civic content for all users and is further directed to continually update and maintain the City's website to ensure that it remains fully accessible.

(c). The City Manager shall appoint an *ADA* Coordinator who shall oversee accessibility compliance for the City with respect to *ADA* Title II, the *ADA Amendments Act of 2008* and the *504 Rehabilitation Act*. The ADA coordinator shall receive and respond to ADA grievances and complaints that have been filed both locally and Federally and shall serve as a liaison between disability advocacy groups and the City with a key role of ensuring that problems are resolved and that needed services are received by persons with disabilities.

(d). The ADA Coordinator shall also ensure that the City's *ADA Transition Plan* is regularly reviewed, updated and presented to the City Council for consideration and shall ensure that such Plan is available on the City's website together with such other information that may be of assistance to persons with disabilities.

SECTION 3. IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement

the provisions of this Resolution as may be deemed necessary or appropriate in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the *City Charter*.

SECTION 4. SAVINGS.

The prior actions of the City Council of the City of Daytona Beach Shores in terms of the matters relating hereto, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 5. CONFLICTS.

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

SECTION 6. 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 to be invalid, unlawful, or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and 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 9th day of September, 2019.

Posted this 9th day of September, 2019.



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration to approve the lease with Halifax Health regarding an Urgent Care Facility.

SYNOPSIS:

FISCAL IMPACT STATEMENT:

BACKGROUND:

The City Manager has been working with the City Attorney to finalize an agreement relative to the lease of City property located at 3048 South Atlantic Avenue (former City Council Chambers, etc.) by Halifax Health for use as an urgent care facility. Mr. Bill Griffin and attorney Kelly Kwiatek of Halifax Health have been the points of contact during negotiations. A proposed lease has been the result of very amicable and collaborative negotiations.

The final proposed lease provides for the following essential terms and conditions with, of course, additional required provisions:

(1). Halifax leases from the City 3,100 square feet of a building to be constructed and the grounds and parking lot area to be improved as depicted in the exhibit.

(a). Prior to the commencement of the lease, the City will demolish the current building located to the south of (but, connected to) the building which is being leased, and shall construct a modified building on the remainder property, a parking lot with 12 spaces and access drives required for ingress and egress. The total aggregate expenditure to accomplish all of the obligations of the City is \$150,000.00 and the City may opt out of should the City determine that such maximum expenditure amount will be or has been exceeded.

(b). Prior to the commencement of the lease, Halifax will, at its sole expense, make repairs to the

building's roof. Halifax will bear all costs associated with the relocation of any utilities that may be required. Halifax will make improvements to the interior of the building at its cost, but the City shall waive its permitting fees relative to such work. Halifax will, at its expense, widen the driveway to the north of the building to allow for emergency access. Halifax's maximum capital investment in the facility shall be \$600,000.00 and, if exceeded, Halifax may opt out of the lease. The firm of Parker Mynchenberg & Associates Inc. is approved to do the work.

- (2). The initial lease term of 20 years begins on the date that the work on the building is accomplished by Halifax after the City's demolition work is accomplished. City staff and Halifax will need to coordinate these demolition and construction efforts closely.
- (3). Halifax shall use the property as a medical urgent care facility and imaging services and the facility shall be open 7 days a week with normal operating hours of 8:00 a.m. to 7:00 p.m. on Mondays through Fridays and either 8:00 a.m. to 2:00 p.m. or 9:00 a.m. to 3:00 p.m. on Saturdays and Sundays, but the City Manager may approve extended hours of operation and may approve adjustments in operational times. The facility shall be appropriately staffed when open to provide urgent medical care.
- (4). Halifax has the option to renew for 2 additional 10 year periods.
- (5). Annual gross rent is \$12,000.00 which shall be adjusted each year by a Consumer Price Index.
- (6). Halifax pays all property taxes that may be assessed.
- (7). Halifax and the City agree work together to address potential benefits to the City such as work force testing and the like.
- (8). Halifax pays all water, sewer services, electricity, heat, air conditioning, gas, oil, and all other utilities services.
- (9). Insurance and indemnification provisions are provided.
- (10). Halifax may assign the Lease to an entity affiliated with the Halifax which offers medical urgent care services or to a sublessee who provides additional imaging services. 50% of any sublease revenue shall be paid to the City.

LEGAL REVIEW:

The City Attorney has no legal objection to the proposed lease.

RECOMMENDATION:

It is staff's recommendation to approve the lease with Halifax Health.

SUGGESTED MOTION:

"I move to approve the lease with Halifax Health."

- ATTACHMENT:**
1. Halifax Amendment 1
 2. Halifax Lease Agreement

HALIFAX AS LESSEE

ADDENDUM TO GROSS LEASE AGREEMENT

THIS ADDENDUM TO GROSS LEASE AGREEMENT is by and between HALIFAX HOSPITAL MEDICAL CENTER, a special taxing district of the State of Florida, hereinafter referred to as the "Lessee" and CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the "Lessor". Lessee and Lessor may be referred to collectively as the "Parties" in this Addendum.

The following amendments are made to the Gross Lease Agreement between the Parties effective the ____ day of _____, 2019 for the lease of the premises located at 3048 South Atlantic Avenue, Daytona Beach Shores, Florida:

1. Lessor agrees that prior to the Lease Term Commencement Date it will, at its sole expense, demolish the building located to the south of (but, connected to) the Building which is part of the Leased Premises, and shall construct thereon, subsequent to the demolition, a parking lot (12 parking spaces) and access drives required for ingress and egress to be used by Lessee, its employees, guests and invitees. Lessor further agrees that it shall be responsible for maintaining the parking lot and all access drives in good condition, reasonable wear and tear excepted, in a professional manner throughout the Lease Term.
2. Lessee agrees that prior to the Lease Term Commencement Date it will, at its sole expense, make repairs to the Building's roof, including but not limited to replacement of tiles as deemed reasonably necessary, to cause the roof to be in good order and condition and in compliance with all applicable State, County and City laws, ordinances, rules and regulations.
3. Lessee agrees that it will bear all costs associated with the relocation of any utilities that may be required in connection with the improvements made to the Leased Premises by either Lessor or Lessee pursuant to this Addendum for Lessee's benefit.
4. Lessor agrees that Lessee may make such improvements to the interior of the Building as may be required to make the Building suitable for operating a medical urgent care center. All such modifications shall be performed at the sole cost of Lessee in a good and workmanlike manner and in accordance with all applicable Federal, State, County and City laws, ordinances, rules and regulations; provided, however, that the City shall waive its permitting fees relative to such work by the Lessee.

5. The total aggregate expenditure to accomplish all of the obligations of the Lessor, as set forth herein, shall be \$150,000.00 and the Lessor may opt out of the Gross Lease Agreement and this Addendum thereto at any time should the Lessor determine that such maximum expenditure amount will be or has been exceeded. The Lessee's maximum capital investment in the facility shall be \$600,000.00 (subject to approval by Lessee's Board of Commissioners) and, should the Lessee determine that said amount will be exceeded, the Lessee may opt out of this Lease by providing the Lessor with notice of such election on or before October 31, 2019. To that end, the Lessor hereby approves the use of the firm of Parker Mynchenberg & Associates Inc. to accomplish the design, land development and project permitting for the facility.

6. Lessee agrees that in the event it subleases any portion of the Leased Premises pursuant to the provisions of the Gross Lease Agreement (other than to an entity affiliated with Lessee, it shall pay to Lessor an amount equal to 50% of any sublease revenue in excess of the Lessee's lease payment in effect at the time of such sublease received by Lessee. Such payment shall be made by Lessee to Lessor at such frequency as the same is paid by the sublessee to Lessee in addition to the rent due under the Gross Lease Agreement.

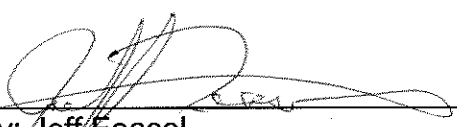
7. The Parties agree that the Lessor, its employees, guests and invitees shall have the right to use the parking lots located on the Leased Premises during the non-operating hours for Lessee's urgent care center.

8. All capitalized terms used herein and not specifically defined shall have the same meaning assigned to them in the Gross Lease Agreement.

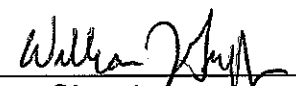
9. This Addendum shall be effective as of the Effective Date of the Gross Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum to Gross Lease Agreement on the date(s) indicated.

**HALIFAX HOSPITAL MEDICAL
CENTER**


By: Jeff Feasel
Title: President & CEO
Date: 9/8/19


Witness Signature
Printed Name: DEBORAH SABOTKA


Witness Signature
Printed Name: William J. Griffin

Attest:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

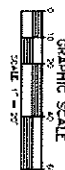
Nancy J. Miller, Mayor

Date: _____

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney



NO.	DATE	DESCRIPTION	AMOUNT
		RECEIVED	
		PAID	
		DEPOSIT	
		WITHDRAWAL	
		TRANSFER	
		INTEREST	
		COMMISSION	
		ROYALTY	
		GIFT	
		LOAN	
		RENT	
		SALES	
		EXPENSES	
		INCOME	
		LOSS	
		GAIN	
		NET	
		TOTAL	

WITH HALIFAX ASSIGNMENT RIGHTS

GROSS LEASE AGREEMENT

THIS GROSS LEASE AGREEMENT ("Lease"), entered into effective the ____ day of ____, 2019 is by and between HALIFAX HOSPITAL MEDICAL CENTER, a special taxing district of the State of Florida, *Laws of Florida*, with all the powers of a body corporate, hereinafter referred to as the "Lessee", and CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the "Lessor".

WITNESSETH:

Lessor, in consideration of the payments to be made by Lessee of the rents specified herein, and in consideration of the performance by Lessee of the covenants hereinafter provided, does hereby lease to Lessee the premises described in the attached Exhibit A ("Leased Premises"). The following express stipulations and conditions are hereby assented to by the parties:

1. **Leased Premises.** The Leased Premises are more particularly described as the building consisting of approximately 3,100 square feet ("Building") located at 3048 South Atlantic Avenue, Daytona Beach Shores, Florida and the grounds and parking lot area of 18 parking spaces surrounding the premises (collectively, the "Leased Premises") as depicted in the attached Exhibit A.

2. **Lease Term.** The initial term of this Lease shall be for a period of twenty (20) years beginning on the ____ day of ____, 2019 ("Lease Term Commencement Date"), and ending on the ____ day of ____, 20__ (hereinafter referred to as the "Initial Lease Term").

3. **Option to Renew.** Lessee shall have the option to renew this Lease for two (2) additional ten (10) year periods ("Renewal Terms"). Together the Initial Lease Term and any Renewal Terms shall be referred to as the "Lease Term". The Renewal Terms shall be upon the same conditions set forth in this Lease, and at a rent to be mutually agreed upon by Lessor and Lessee at the time the option to renew is exercised. This provision for option to renew shall be void and without effect if Lessee is in default under any of the terms and conditions of this Lease at the time of attempting to exercise the option. The option to renew shall be automatic unless Lessee notifies Lessor in writing at least one hundred eighty (180) days before the expiration of the original term of this Lease or any extension thereof.

4. **Annual Gross Rent.** The Annual Gross Rent due for the Leased Premises shall be Twelve Thousand and 00/100 Dollars (\$12,000.00). The Annual Gross Rent shall be payable annually in advance commencing on the Lease Term Commencement Date and on the same day of each year annually thereafter. Rent shall

be adjusted at the anniversary date of each year by the Consumer Price Index for All Urban Consumers (CPI-U) as published by, the U.S. Bureau of Labor Statistics.

In addition, the Lessee shall pay all property taxes that may be assessed upon the Leased Premises as a result of the Lessee's use of the Leased Premises. The Annual Gross Rent payable pursuant to this Gross Lease Agreement shall be without offset or deduction (except as otherwise provided herein) and free and clear of any and all impositions, real estate taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Leased Premises and its common areas. Part and parcel of the rent is the Lessee's obligation to operate a medical urgent care facility on the Leased Premises for the benefit of the public and failure to do so shall constitute a breach of this Lease.

Additionally, the Lessor and the Lessee agree to work together to address potential benefits to the Lessor that would be available at the Premises relative to work force testing and the like. The goal of this provision is, insofar as applicable, to minimize costs to the Lessor while ensuring that the Lessee recoups the cost of supplies used in conducting such work force testing. The Lessee shall not be required to procure any additional equipment, personnel or unusual costs to provide work force testing services to the Lessor.

5. **Acceptance of the Premises.** Unless otherwise provided by addendum hereto, Lessee accepts the Leased Premises in its present condition with the demolition and construction contemplated in the Addendum To Gross Lease Agreement with a maximum capital expenditure of \$150,000.00 to accomplish said demolition and construction. The Lessee's maximum capital investment in the facility shall be \$600,000.00 (subject to approval of Lessee's Board of Commissioners) and, should the Lessee determine that said amount will be exceeded, the Lessee may opt out of this Lease by providing the Lessor with notice of such election on or before October 31, 2019. To that end, the Lessor hereby approves the use of the firm of Parker Mynchenberg & Associates Inc. to accomplish the design, land development and project permitting for the facility.

6. **Place of Rental Payment.** The Annual Gross Rent payment shall be mailed or delivered by Lessee to Lessor at Daytona Beach Shores City Hall, 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, or such other place as Lessor may designate in writing.

7. **Utilities.** Lessee shall pay for all water, sewer services, electricity, heat, air conditioning, gas, oil, and all other utilities services consumed in the Leased Premises.

8. **Insurance.** Lessor shall keep the Leased Premises insured against loss by fire or casualty with extended coverage in an amount determined by the Lessor and said policies shall include a standard waiver of subrogation clause against Lessee.

Lessee shall at all times and at its cost maintain public liability insurance or a program of self-insurance covering the Leased Premises, with limits of at least \$200,000.00 for personal injury and death and \$50,000.00 for property damage, with waiver of subrogation against Lessor. Lessee shall at all times and at its expense maintain insurance against loss by fire and other casualty with extended coverage on its furniture, fixtures, inventory, equipment, supplies and personal property in an amount determined by Lessee, and said policies shall include a standard waiver of subrogation clause against Lessor.

To the extent and limits permitted by law as a public entity protected by the limited statutory waiver of sovereign immunity, the Lessee shall assume all responsibility for the Leased Premises and shall indemnify, release Lessor and hold harmless Lessor with regard to all elements of the Lessee's use of the Leased Premises. The Lessee and the Lessor are not partners or engaged in a joint venture with regard to any services provided by the Lessee on the Leased Premises or in any other way.

9. **Use of Premises.** Lessee shall use and occupy the Leased Premises solely for use as a medical urgent care facility and imaging services and for no other use unless agreed to in advance by Lessor in writing. The facility shall be open seven (7) days a week with normal operating hours of 8:00 a.m. to 7:00 p.m. on Mondays through Fridays and either 8:00 a.m. to 2:00 p.m. or 9:00 a.m. to 3:00 p.m. on Saturdays and Sundays; provided, however, that the City Manager may approve extended hours of operation as may be requested by Lessee and may approve adjustments in operational times as may be requested by Lessee that he or she deems to be consistent with the approvals of the Lessor's governing body. The facility shall be appropriately staffed when open to provide urgent medical care. On or before December 31 of each year, the Lessor may require that a meeting between the Lessee and Lessor relative to the operations of the uses conducted on the Leased Premises during the year in which the request was made.

10. **Interruption of Service.** Lessor does not warrant that any services to be provided by Lessor will be free from interruption due to causes beyond Lessor's reasonable control. In the event of temporary interruption of services or unavoidable delay in the making of repairs, the same shall not be deemed an eviction or disturbance of Lessee's use and possession of the Leased Premises nor render Lessor liable to Lessee for damage by abatement of rent or otherwise, nor shall the same relieve Lessee from performance of Lessee's obligations under this Lease. Temporary disruption is considered that which would inhibit normal operations for less than forty-eight (48) hours.

11. **Waiver of Claim.** Each party hereto waives and releases all claims against the other, as well as its agents, employees, and servants, with respect to, and they shall not be liable for, injury to person or damage to property sustained by the other or by any occupant of the Leased Premises, or any other person occurring in or about the Leased Premises resulting directly or indirectly from any existing or future condition, defect, matter or thing in the Leased Premises or any part of it, or from equipment or appurtenance therein, or from accident, or from any occurrence, act, or from negligence or omission of any tenant or occupant of the Leased Premises, or of any other person;

but nothing in this paragraph shall be deemed to relieve either party from liability for damages or injuries to person or property caused by or resulting from the negligence of that party, its agents, servants or employees. This paragraph shall apply especially, but not exclusively, to damage caused as aforesaid or by flooding, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures and shall apply equally whether any such damage results from the act or omission of other tenants, occupants or of any other persons, and whether such damage be caused by or result from anything or circumstance above mentioned, or any other thing or circumstance, whether of a like or wholly different nature. All property in the Leased Premises belonging to Lessee, its agents, employees or invitees, or to any occupant of the Leased Premises, shall be there at the risk of Lessee or other person only, and Lessor shall not be liable for damage thereto, or theft, misappropriation, or loss thereof.

12. Repair and Care of Premises.

(a) Lessee Repairs. Lessee agrees that during the term of this Lease it shall keep the interior of the Leased Premises in good order. Lessee shall, at its own expense, make repairs and replacements to the Leased Premises which are necessitated by Lessee's own use, misuse or negligence. Lessee shall not place or cause to be placed in the Leased Premises anything which causes a condition whereby the design load of the floor on which the Leased Premises is located is exceeded without the Lessor's prior written consent. Notwithstanding the provisions of this subparagraph, Lessee shall not be obliged to make such repairs as are necessitated by fire or other perils provided for by extended coverage clauses (whether or not caused by the active or passive negligence of the Lessee) for which damage or loss insurance is carried by the Lessor and for which insurance proceeds are recovered for the benefit of the Lessor.

(b) Lessor Repairs. Except for repairs and replacements required of Lessee under the prior subparagraph, Lessor shall be responsible for all other maintenance and repair services in and to the Leased Premises and the building components serving the Leased Premises.

(c) General Maintenance of Common Areas. Lessor shall arrange to keep the exterior parking lot, driveways, and sidewalks clean and free from rubbish and other obstructions and in good repair; arrange for refuse disposal and collection, water and sewer; arrange for irrigation of the landscaping; arrange periodically for window washing and grass cutting and yard maintenance; and arrange for illumination of the parking lot, grounds, and common exterior building signs.

13. Compliance with Laws and Regulations. Lessee shall comply with all Federal, State, County and City laws, ordinances, rules and regulations affecting or respecting the use or occupancy of the Leased Premises by the Lessee or the business at any time thereon transacted by the Lessee, and Lessee shall comply with all rules which may be hereafter adopted by Lessor for the protection, welfare and orderly management of the Leased Premises.

14. **Holding Over.** Upon expiration of this Lease, Lessee's continued possession of the Leased Premises shall be deemed a month-to-month tenancy terminable by Lessor or Lessee upon ninety (90) days prior written notice.

15. **Signs.** Any signs installed by Lessee shall be at the sole expense of Lessee, shall conform to all standards established by Lessor, shall be maintained in good repair, and shall be removed by Lessee at expiration of this Lease at Lessee's expense.

16. **Warranty of Quiet Enjoyment** Lessee, upon paying the rents and keeping and performing the covenants of this Lease to be performed by Lessee, shall peacefully and quietly hold, occupy, and enjoy said premises during said term or any renewal thereof without any let, hindrance or molestation by Lessor or any persons lawfully claiming under Lessor. It is recognized that the Leased Premises are located next to a Public Safety complex that involves law enforcement, fire emergency and other various emergency services and operations as well as being proximate to public recreational facilities of diverse natures at which a wide array of events occur.

17. **Assignment and Subletting.**

(a). Except as set forth in Subsections 17 (b) and 17 (c) below of this Lease, Lessee shall not assign this Lease nor sublet all or any part of the Leased Premises without first securing Lessor's written consent which consent shall be in the Lessor's sole and absolute discretion. If Lessor does consent to an assignment or subletting, the assignee and/or sublessee shall first be obliged in writing to likewise assume all of the obligations of Lessee under this Lease and Lessee shall, for the full term of this Lease, continue to be jointly and severally liable with such assignee or sublessee for the payment of rents and the performance of all obligations required of Lessee under this Lease. Notwithstanding the foregoing, the term "Lessee", as used herein, shall include all joint venturers, subsidiaries or related or similar entities that will conduct operations on the Premises as set forth in the established use of the premises as permitted herein; provided, however, that the Lessee shall provide notice to the Lessor of such involvement in the use of the Premises.

(b). Notwithstanding the provisions of Subsection (a) of this Section, Lessee may, without first securing Lessor's consent, assign its rights and obligations, in whole or part, to an entity affiliated with the Lessee and which offers the services required under this Lease.

(c). Notwithstanding the provisions of Subsection (a) of this Section, Lessee may, without first securing Lessor's consent and without additional compensation to the Lessor, sublet a portion of the Premises to a sublessee who will provide additional imaging services to the residents of the City Daytona Beach Shores.

18. **Fire or Other Casualty.** In the event the Leased Premises shall be destroyed or so damaged or injured by fire or other casualty during the life of this Lease,

whereby the same shall be rendered untenable, then Lessor shall have the right to render such premises tenable by repairs within one hundred twenty (120) days therefrom and this Lease shall not terminate. If the Leased Premises are not rendered tenable within said time, it shall be optional with either party hereto to cancel this Lease, and in the event of such cancellation, the rent shall be paid only to the date of such fire or casualty. The cancellation herein mentioned shall be evidenced in writing. During any time that the Leased Premises are untenable due to causes set forth in this paragraph, the rent or a just and fair proportion thereof shall abate.

19. **Eminent Domain.** If the whole of the Leased Premises shall be taken by any public authority under the power of eminent domain, or if so much of the Leased Premises or grounds shall be taken by any such authority under the power of eminent domain so that the Lessee cannot continue to operate its business in the Leased Premises, then the term of this Lease shall cease as of the day possession shall be taken by such public authority and the rent shall be paid up to that day with proportionate refund by Lessor of any such rent as may have been paid in advance or deposited as security. The amount awarded for any taking under the power of eminent domain shall belong to and be the property of the Lessor whether such amount be awarded as compensation for the diminution in value to the leasehold or to the fee of the premises or as damage to the residue.

20. **Waiver.** No waiver of any of the covenants and agreements herein contained or of any breach thereof shall be taken to constitute a waiver of any other subsequent breach of such covenants and agreements or to justify or authorize the non-observance at any other time of the same or any other covenants and agreements hereof.

21. **Notices.** All notices required under this Lease to be given to Lessee may be given to its Legal Department at 303 North Clyde Morris Boulevard, Daytona Beach, Florida 32114, or at such other place as Lessee may designate in writing. Any notices to be given to Lessor shall be given to it at City Hall (ATTN: City Manager), 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, or at such other place as Lessor may designate in writing. All notices shall be in writing and shall be sent by certified mail, postage prepaid, or by personal delivery.

22. **Subordination.** This Lease is subject and subordinate to all mortgages which may now or hereafter affect the Leased Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgages. In confirmation of such subordination, Lessee shall execute promptly any subordination certificate that Lessor may request.

23. **Fixtures; Alterations; Unauthorized Use of Premises.** Lessee shall not, without Lessor's prior written consent, attach any permanent fixtures in or to the Leased Premises or change, alter or make additions to the Leased Premises, nor attach or affix any article thereto, nor permit any annoying sound device, install any additional locks, overload any floor, or deface the premises. Any attached fixtures or any alterations,

additions or improvements made or attached by Lessee upon the property shall, on the expiration or termination of this Lease, if requested by Lessor, be promptly removed at the Lessee's expense and the Leased Premises restored by Lessee at its expense to its original condition, ordinary wear and tear excepted. Any such fixture, alteration, addition and/or improvement not requested to be removed shall remain on the Leased Premises and shall become and remain the property of Lessor. All Lessee's fixtures, installations and personal property not removed from the Leased Premises upon expiration or termination, and not required by Lessor to have been removed as provided in this paragraph, shall be conclusively presumed to have been abandoned by Lessee and title thereto shall pass to Lessor under this Lease as by a bill of sale.

24. **Redelivery of Premises.** Lessee shall, on the expiration of this Lease, deliver up the Leased Premises in as good order and condition as it now is or may be put by Lessor, reasonable use and ordinary wear and tear thereof and damage by fire or other unavoidable casualty, condemnation or appropriation excepted, and Lessee shall promptly surrender all keys to the Leased Premises to Lessor.

25. **Examining and Exhibiting Premises.** Lessor or its duly authorized agent shall have the right to enter the Leased Premises at all reasonable times to examine the condition of the same and to make repairs to the Leased Premises. Upon notice by Lessee of intent to not renew this lease, Lessor or its authorized agent shall have the right to enter the Leased Premises at all reasonable times with twenty-four (24) hour advance notice and approval by Lessee, such approval to not be unreasonably withheld, for the purposes of exhibiting the same to prospective Lessees.

26. **Cleanliness of Premises.** Lessee shall keep the interior of the Leased Premises clean and shall not store any refuse, trash or hazardous materials, other than medical waste normally generated in medical offices, in the Leased Premises or in or around the building, other than in the refuse containers provided by Lessor. All medical waste and hazardous waste shall be removed daily by Lessee in a legally approved method. Lessee, at its own expense, shall provide housekeeping services for the interior of the Leased Premises.

27. **Rights Reserved to Lessor.** Lessor shall have the following rights exercisable without notice and without liability to Lessee:

(a) To approve the weight, size and location of safes, computers and other extraordinarily heavy articles or equipment in and about the Leased Premises;

(b) With prior written consent of Lessee, to decorate and to make, at Lessor's own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to the Leased Premises or any part thereof, and to perform any acts related to the safety, protection and preservation thereof, and during such operations to take into and through the Leased Premises or any part of the Leased Premises all material and equipment required and to close or temporarily suspend operation of entrances, doors, corridors or other facilities, provided that Lessor shall cause as little inconvenience or

annoyance to Lessee as is reasonably necessary in the circumstances, and shall not do any act which permanently reduces the size of the Leased Premises. Lessor may do any such work during ordinary business hours and Lessee shall pay Lessor for overtime and other expenses incurred if such work is done during other hours at Lessee's request.

28. Rights and Remedies Reserved to Lessor. All rights and remedies of Lessor herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law.

(a) If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act shall be filed by or against Lessee, or any voluntary or involuntary proceedings in any court shall be instituted to declare Lessee insolvent or unable to pay Lessee's debts, or Lessee makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for Lessor or for the major part of Lessee's property, then and in any such event Lessor may, if Lessor so elects, but not otherwise, and with or without notice of such election and with or without entry or other action by Lessor, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Lessor shall forthwith upon such termination be entitled to recover damages in an amount equal to the then present value of the base rent specified in this Lease for the residue of the stated term hereof, less the fair rental income of the premises received by Lessor for the residue of the stated term.

(b) If Lessee defaults in the prompt payment of the Annual Gross Rent and such default continues for thirty (30) days after the same becomes due and payable; or in the performance or observance of any other provision of this Lease and such other default continues for thirty (30) days after notice thereof has been given to Lessee; or if the leasehold interest of Lessee is levied upon under execution or attached by process of law; or if Lessee abandons the Leased Premises; then and in any such event Lessor, if it so elects forthwith or at any time thereafter while such default continues, either may terminate Lessee's right to possession without terminating this Lease, or may terminate this Lease.

(c) Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of the Lessee's right to possession without termination of the Lease, the Lessee shall surrender possession and vacate the Leased Premises immediately and deliver possession thereof to the Lessor.

(d) Lessee shall be deemed to have abandoned the Leased Premises if the Annual Gross Rent is not currently paid and Lessee is absent from the Leased Premises for a period of thirty (30) days. If the Lessee abandons the Leased Premises or otherwise entitles the Lessor to so elect, and if the Lessor elects to terminate the Lessee's right to possession only, without terminating the Lease, the Lessor may, at the Lessor's option, enter into the Leased Premises, remove the Lessee's signs and other evidences of tenancy, and take and hold possession thereof as provided herein without such entry and possession terminating the Lease or releasing the Lessee, in whole or in part, from the Lessee's obligation to pay the rent hereunder for the full term.

Upon and after entry into possession without termination of the Lease, the Lessor may relet the Leased Premises or any part thereof for the account of the Lessee to any person, firm or corporation other than the Lessee for such rent, for such time, and upon such terms as the Lessor in the Lessor's sole discretion shall determine. In any such case, the Lessor may make repairs in or to the Leased Premise, and redecorate the same to the extent deemed by the Lessor necessary or desirable, and the Lessee shall, upon demand, pay the cost thereof together with the Lessor's expenses of the reletting. If the consideration collected by the Lessor upon any such reletting for the Lessee's account is not sufficient to pay the full amount of unpaid rent reserved in this Lease, together with the costs of repairs, alterations, additions, redecorating, and the Lessor's expenses, the Lessee shall pay to the Lessor the amount of each deficiency upon demand.

(e) Lessee shall pay all Lessor's costs, charges and expenses, including the fees of counsel, agents and others retained by Lessor, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation, negotiation, bankruptcy or insolvency proceeding or transaction or appeal including those in which Lessee causes Lessor, without Lessor's fault, to become involved or concerned.

(f) If Lessee violates any of the terms and provisions of this Lease, or defaults in any of its obligations hereunder, other than the payment of rent or other sums payable hereunder, such violation may be restrained or such obligation enforced by injunction.

29. Liens.

The Lessor and the Lessee agree and understand that public property, such as the Premises, is exempt from having liens filed against it. Under the provisions of Part I of Chapter 713, *Florida Statutes*, relating to construction liens, the term "owner" does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity. The Lessor and the Lessee further agree and understand that contractor actions conducted on public property are subject to the provisions of Section 255.05, *Florida Statutes*, relating to bonds of contractors engaging in constructing on public buildings.

30. Estoppel Certificate. Lessee and Lessor, upon request, one from the other, shall give or exchange with, one with the other, estoppel certificates which shall confirm to others, if true, that the Lease is in full force and effect, that neither party is in default and/or such other information regarding the Lease as may be reasonably appropriate and factual.

31. Validity. It is understood and agreed that in the event any provision of this Lease shall be adjudged, decreed, held or ruled to be invalid, such portion shall be deemed severable, and it shall not invalidate or impair the agreement as a whole or any other provision of the agreement. If a court of competent jurisdiction determines the entire Lease to be void or illegal, this Lease shall be immediately terminated and rent shall be paid only up to the date of such determination.

32. **Binding Agreement.** This Lease and all provisions, covenants and conditions thereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties hereto, except that no person, firm, corporation or court officer holding under or through Lessee while Lessee is in violation of any of the terms, provisions or conditions of this Lease, shall have any right, interest or equity in or to this Lease, the terms of this Lease or the premises covered by this Lease.

33. **Entire Agreement.** This Lease document and any addenda attached hereto constitute the entire agreement between the parties and supersedes all prior agreements. No waiver, modifications, additions, or addenda to this Lease Agreement shall be valid unless in writing and signed by both the Lessor and Lessee. The attachments listed here by subject title are a part of this Lease:

Exhibit "A" – Sketch.

Exhibit "B" – Addendum to Gross Lease Agreement.

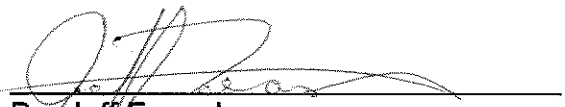
34. **No Recording.** Neither this Lease nor any evidence hereof shall be placed in the public records of the county in which the Leased Premises are located.

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

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written.

HALIFAX HOSPITAL MEDICAL
CENTER

KPD



By: Jeff Feasel

Title: President & CEO

Date: 8/8/19



Witness Signature

Printed Name: DEBORAH SABOTKA



Witness Signature

Printed Name: WILLIAM J. GRIFFIN

Attest:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Nancy J. Miller, Mayor
Date: _____

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney



CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 9, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Lonnie Groot, City Attorney

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration of City Council policy regarding actions of individual City Council Members

SYNOPSIS:

In response to the recent motion made by Council Member Politis which was approved by the City Council relative to independent actions of City Council Members, the City Attorney promised to provide the City Council with an alternative potential policy to adopt with regard to unilateral statements and actions by individual City Council Members.

At its meeting of August 13, 2019 the City Council expressed its desire to discuss this matter in an in depth manner at a later meeting of the City Council.

FISCAL IMPACT STATEMENT:

There is no fiscal impact as to this matter except that the effective workings of the City Council produce well reasoned decisions that are legally defensible.

BACKGROUND:

The City Council is the governing body of the City and all powers of the City not specifically vested otherwise in the *City Charter*, which are few, are vested in the City Council. Thus, each City Council may determine how to govern its own proceedings and meetings.

As noted in the synopsis to this agenda item, In response to the recent motion made by a Council Member which was approved by the City Council relative to independent actions of City Council Members, the City Attorney promised to provide the City Council with an alternative potential policy to adopt with regard to unilateral statements and actions by individual City Council Members.

Accordingly, the following draft policy is provided for review and consideration by the City Council (which draft policy derives from a policy from the 109 page *City Of Walnut Creek (California) City Council Handbook* (available upon request):

POLICY:

The Daytona Beach Shores City Council acts as a collegial body in making decisions and

establishing policy. While the Mayor has some additional ceremonial and administrative responsibilities, no Council Member has any power beyond those of the other Council Members. In the establishment of policy, voting and in all areas all Council Members are, essentially, equal. Except where the law requires a certain number of affirmative votes, a majority vote of the City Council establishes policy and makes decisions for the City. While an individual member may disagree with a decision of the City Council, a decision of the majority binds the City Council to a course of action and directs City staff to implement that action and the City Attorney to defend that action. In turn, it is the role of each City Council Member and City staff and the City Attorney to ensure that the policy and other decisions of the City Council are implemented. Accordingly, no City Council Member or member of City staff or the City Attorney shall act in any manner which adversely impacts or works against the policy decisions of the City Council acting as a body.

With regard to quasi-judicial actions of the City Council, it is important for each Council Member to recognize that decisions of a quasi-judicial nature are subject to review by the Courts and that such decisions are made by the body as a whole and should not be undermined by any individual Council Member after a decision had been reached in a collegial manner whether at the hearing on the matter or after the hearing and the City Council chambers or at any other location.

The purpose of this Policy is not to restrain individual Council Members from exercising his or her First Amendment right to free speech, but is to call on each Council Member to respect the decisions of the City Council as the local governing body of the City when it acts in a collegial decision making process.

If the City Council desires to adopt the above as its governing Policy, it may, of course, do so. Or, the City Council could revise the above language or develop new language of its own.

It should be noted that Vice Mayor Bryan has made the following comments to the City Attorney relative to this matter:

"Ironically, the motion was brought up after a discussion of written communication between Council Members and 3 Council Members said it would be useful if it were legal at some point in the future. It is hard to imagine someone proposing such a 'policy' in writing. One of the advantages of such written communications is to inhibit such irrational decisions being made on the spur of the moment in an emotionally charged atmosphere.

The Courts often have dissenting opinions and they do not undermine the decision of the majority as far as the law is concerned.

I would suggest that we consider as a replacement for the existing "policy" language the much more succinct (than your proposed language) language (as follows):

Only a majority vote at a noticed public meeting expresses the will of the City Council. The Mayor, Vice Mayor, or any other Councilmember speaks only for herself or himself and does not (and cannot) speak for the majority of the City Council. He/she can reference a majority vote duly taken but that is different from speaking for the City Council.

The City Council prefers that a Council Member only make statements that are consistent with a past majority vote, but recognizes that each Council Member has a First Amendment right to disagree with the majority.

Certainly, one should feel free to speak out against problematic and/or unconstitutional "policies" as you and the Mayor have done with the subject 'policy'."

LEGAL REVIEW:

It may be of interest to the City Council that an issue, similar to this matter, was recently the subject of a bit of controversy with regard to an action taken by a member of the Planning and Zoning Commission (P&ZC) of a city which the City Attorney represents. The P&ZC member suggested appellate rights to opponents of a land use proposal after a vote in which s/he was on the non-prevailing side. Indeed, after the hearing had concluded and the meeting was adjourned, s/he made comments in the media relative to the matter that were critical of the decision of the body.

It would be beneficial for the City Council to adopt any policy which it feels appropriate with regard to general matters voted on by the City Council.

It is critical to ensure that quasi-judicial decisions are dealt with in a most professional manner to ensure that the land use and other quasi-judicial decisions of the City are not open to protracted and expensive legal challenges.

RECOMMENDATION:

The Mayor may accept a developed consensus of the City Council and the City Council may express its desire to incorporate any adopted new policy into the existing policies of the City Council.

SUGGESTED MOTION:

None. The development of City Council is the goal.

ATTACHMENT: 1. City Council policy

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