

ORDINANCE 2012-02

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE; AMENDING APPENDIX "G", CHAPTER 2 ENTITLED "DEFINITIONS," BY AMENDING SECTION 2-4 ENTITLED "SIGNS AND ADVERTISING DEFINITIONS;" AMENDING CHAPTER 6 ENTITLED "SIGNS AND ADVERTISING," BY PROVIDING FOR MONUMENT SIGNS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores has determined the need to update and revise the City's *Land Development Code* relative to the regulation of signs; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to ensure that the City's *Land Development Code* as it relates to signs is in compliance with all constitutional and other legal requirements; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to prohibit certain sign types, including billboards; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that certain types of signs create a safety hazard by distracting motorists, pedestrians and others; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to protect the safety of motorists, pedestrians and others from distraction caused by signs; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that some signs, particularly large signs, detract from the aesthetic beauty of the City's landscape; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to preserve the aesthetic beauty and ambiance of the City of Daytona Beach Shores; and

WHEREAS, the regulation of signage for purposes of aesthetics has long been recognized in controlling law and sound planning practices and principles as advancing the public welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores understands and recognizes the importance and significance of signage as a method of business advertising and communication in the context of the current economic times and media usage; and

WHEREAS, as far back as 1954, the United States Supreme Court recognized that "the concept of the public welfare is broad and inclusive," that the values it represents are "spiritual as well as physical, aesthetic as well as monetary," and that it is within the power of the legislature "to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled." Justice Douglas in *Berman v. Parker*, 348 U.S. 26, 33 (1954); *E.B. Elliott Advertising Co. v. Metropolitan Dade County*, 425 F. 2d 1141, 1151 (5th Cir. 1970), *cert. dismissed*, 400 U.S. 878 (1970); and

WHEREAS, Florida has long recognized that outdoor advertising can be regulated to promote highway safety. Likewise, Florida has sustained regulatory measures based on aesthetic considerations as promoting the general welfare. *Longview Outdoor Advertising Co., LLC v. City of Winter Garden, Fla.*, 426 F. Supp. 2d 1269, 1272 (M.D. Fla. 2006) ("[i]t is clear that Winter Garden's twin goal of furthering aesthetics and safety constitute substantial government interests."); *see also, Metromedia Inc., v. City of San Diego*, 453 U.S. 490, 507-508 (1981), ("[n]or can there be substantial doubt that the twin goals that the ordinance seeks to further-traffic safety and the appearance of the city are substantial governmental goals."); *Southlake Prop. Assocs. Ltd. v. City of Morrow*, 112 F. 3d 1114, 1116 (11th Cir.1997) (stating that aesthetics and safety have been recognized as significant governmental interests which support time, place, and manner restrictions on commercial signs); *Harnish v. Manatee County*, 783 F. 2d 1535, 1539 (11th Cir.1986) (stating that *Metromedia* and its progeny conclusively establish that aesthetics are a substantial governmental interest entitled to great respect): *Dills*, 674 F. 2d at 1381 ("[I]t is well settled that substantial governmental interest exists in the promotion of both [aesthetics and traffic safety] ... ") The regulation of the size of signs and the prohibition of certain types of signs can be based upon aesthetic grounds alone as promoting the general welfare. *See for example, Merritt v. Peters*. 65 So. 2d 861 (Fla.1953); *Dade County v. Gould*, 99 So. 2d 236 (Fla. 1957); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that aesthetics is a valid basis for zoning. Courts in Florida have found that measures designed to enhance or maintain the aesthetic appeal of a community are a valid exercise of their police power and these measures bear' a rational relationship to a legitimate purpose. "Florida has long recognized that local governments may legislate to protect the appearance of their communities as a legitimate exercise of their inherent police power." *City of Sunrise v. D.C.A. Homes*, 421 So. 2d 1084, 1085 (Fla. 4th DCA 1982); *see, also, City of Lake Wales v. Lamar Adver. Ass'n of Lakeland, Fla.*, 414 So. 2d 1030, 1032 (Fla. 1982) (recognizing that "[z]oning solely for aesthetic purposes is an idea whose time has come; it is not outside the scope of the police power"); *Metro. Dade County v. Section 11 Prop. Corp.*, 719 So. 2d 1204 (Fla. 3d DCA 1998) (reinstating administrative agency's denial of a special exception to develop land with an industrial-

looking mini self-storage facility, finding that aesthetics may be properly considered by the agency); *Lamar-Orlando Outdoor Adver. v. City of Ormond Beach*, 415 So.2d 1312, 1316 (Fla. 5th DCA 1982)(upholding an ordinance banning billboards and off-site advertising in Ormond Beach, a primarily residential community, as a valid exercise of the police power); *Moviematic Indus. Corp. v. Bd. of County Comm'rs of Metro. Dade County*, 349 So.2d 667, 669 (Fla.3d DCA 1977) (holding that "zoning regulations which tend to preserve the residential or historical character of a neighborhood and to enhance the aesthetic appeal of a community are considered valid exercises of the public power as relating to the general welfare of the community"); *City of Coral Gables v. Wood*, 305 So. 2d 261, 263 (Fla. 3d DCA 1974) (recognizing that "[a]esthetic considerations have been held to be a valid basis for zoning in Florida" and finding that an ordinance prohibiting campers or other motor vehicles designed or adaptable for human habitation from being kept or parked upon public or private property within the City of Coral Gables unless confined in a garage, reasonable and constitutional); *Sunad, Inc. v. City of Sarasota*, 122 So. 2d 611 (Fla. 1960); *Rotenberg v. City of Fort Pierce*, 202 So. 2d 782 (Fla. 4th DCA 1967); *State ex rel. Boozer v. City of Miami*, 193 So. 2d 449 (Fla. 3d DCA 1967); and

WHEREAS, Article II, Section 7 of the *Constitution of the State of Florida*¹ provides that it shall be the policy of the State of Florida to conserve and protect its scenic beauty; and

WHEREAS, the regulation of signage for purposes of aesthetics directly serves the policy of the State of Florida by conserving and protecting its scenic beauty; and

WHEREAS, the regulation of signage was originally mandated by Florida's *Local Government Comprehensive Planning and Land Development Regulation Act* in 1985 and this requirement continues to apply to the City through Section 163.3202(2)(t), *Florida Statutes*;² *Lockridge v. City of Oldsmar*, 397 F. Supp. 2d 1347 (M.D. Fla. 2005),

¹ That constitutional provision reads as follows:

Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

² Section 163.3202, *Florida Statutes*, relates to land development regulations provides as follows:

(1) Within 1 year after submission of its revised comprehensive plan for review pursuant to s. 163.3167(2), each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

1(2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

amended and superseded on reconsideration 475 F. Supp. 2d 1240 (city did not act in bad faith under Florida law in denying permits sought by business to erect billboards under former ordinance, as would avoid dismissal on mootness grounds, following repeal of former ordinance, of business's lawsuit seeking injunctive relief on grounds that ordinance violated free speech; city was required by State law to maintain and enforce its sign ordinance, and there was no evidence that city amended the ordinance in a deliberate attempt to avoid legal challenge); *Lockridge v. City of Oldsmar*, 2008 WL 926399 (11th Cir. April 7, 2008); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the City's *Land Development Code* was enacted in order to implement the City's *Comprehensive Plan* and to comply with the minimum requirements in the State of Florida's Growth Management Act as set forward at Section 163.3202, *Florida Statutes*, including the regulation of sign age and future land use; and

-
- (a) Regulate the subdivision of land.
 - (b) Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.
 - (c) Provide for protection of potable water wellfields.
 - (d) Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.
 - (e) Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.
 - (f) Regulate signage.
 - (g) Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.
 - (h) Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.
 - (i) Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.
- (3) This section shall be construed to encourage the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning. These and all other such regulations shall be combined and compiled into a single land development code for the jurisdiction. A general zoning code shall not be required if a local government's adopted land development regulations meet the requirements of this section.
- (4) The state land planning agency may require a local government to submit one or more land development regulations if it has reasonable grounds to believe that a local government has totally failed to adopt any one or more of the land development regulations required by this section. Once the state land planning agency determines after review and consultation with local government whether the local government has adopted regulations required by this section, the state land planning agency shall notify the local government in writing within 30 calendar days after receipt of the regulations from the local government. If the state land planning agency determines that the local government has failed to adopt regulations required by this section, it may institute an action in circuit court to require adoption of these regulations. This action shall not review compliance of adopted regulations with this section or consistency with locally adopted plans.
- (5) The state land planning agency shall adopt rules for review and schedules for adoption of land development regulations.

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that pursuant to the goals, objectives and policies of the City's *Comprehensive Plan*, and the City's *Land Development Code* it is required to regulate signage; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the City's *Land Development Code* and its signage regulations were intended to maintain and improve the quality of life for all citizens of the City, and to implement the City's *Comprehensive Plan*; and

WHEREAS, the City's *Comprehensive Plan* requires that the land development regulations ensure that commercial land uses (which would include signage) are located in a manner which ensures their compatibility with the type and scale of surrounding land uses; and

WHEREAS, the City's *Land Development Code* provides maximum height restrictions on all structures which are defined in a way that includes signs, in its zoning district regulations; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the specific height limitations set forth in the sign regulations do not exceed the maximum height restrictions on structures (including signs) set forth in the City's land development regulations which are incorporated in this Ordinance by reference; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the City has allowed non-commercial speech to appear wherever commercial speech appears; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to codify that practice through the specific inclusion of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that public policy and the public interest favor the eventual elimination of nonconforming uses; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the size, height and other characteristics of signs can magnify their adverse impacts on both traffic safety and aesthetics; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the enactment of this Ordinance will serve to lessen hazardous situations, as well as confusion and visual clutter otherwise caused by the proliferation, improper placement, excessive height, excessive size, and distracting characteristics of signs which compete for the attention of pedestrian and vehicular traffic; and

WHEREAS, the State policy to conserve and protect its scenic beauty will be furthered by the City Council of the City of Daytona Beach Shores by the enactment of this Ordinance and the City Council finds and determines that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size and other standards for on-premise signs, is consistent with this constitutional; policy; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that this ordinance will enhance the attractiveness and economic well-being of the City as a place to live, visit and conduct business; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that billboards detract from the natural and manmade beauty of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the preservation of the City's scenic beauty promotes tourism by establishing a visual attractiveness for the City and promoting its general economic and cultural development consistent with the City's interest in beauty; and

WHEREAS, the City Council of the City of Daytona Beach Shores agrees with the American Society of Landscape Architects' determination that billboards tend to deface nearby scenery, whether natural or built, rural or urban; and

WHEREAS, the City Council of the City of Daytona Beach Shores agrees with the courts that have recognized that outdoor advertising signs tend to interrupt what would otherwise be the natural landscape as seen from the highway, whether the view is untouched or ravished by man, and that it would be unreasonable and illogical to conclude that an area is too unattractive to justify aesthetic improvement, *see, E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F.2d 1141 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970); *John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.*, 339 N.E.2d 709, 720 (Mass. 1975); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that billboards attract the attention of drivers passing by the billboards, thereby adversely affecting traffic safety and constituting a public nuisance and a noxious use of the land on which the billboards are erected; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer, *see, Packer v. Utah*, 285 U.S. 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799(1935); and

WHEREAS, the City Council of the City of Daytona Beach Shores acknowledges that the United States Supreme Court and many federal courts have

accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area, *see, Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981) ("[b]illboards are fixed, permanent structures that are more intrusive to community aesthetics than portable sandwich boards. The externalities of billboards include perdurable visual pollution that pervades a substantial volume of our eyesight and grows into an unignorable part of our cultural landscape"), *National Advertising Co. v. City & County of Denver*, 912 F.2d 405, 409 (10th Cir. 1990); and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that by confirming in this Ordinance that non-commercial messages are allowed wherever commercial messages are permitted, the City will continue to overcome any constitutional objection that its ordinance impermissibly favors commercial speech over non-commercial speech, *see, Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1236-1237 (D. Kan.1999); *Infinity Outdoor Inc., v. City of New York*, 165 F. Supp. 2d 403, 416 (E.D.N.Y. 2001); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that in order to reconfirm that its billboard regulations meet constitutional scrutiny, it is appropriate to clearly provide in its land development regulations the fact that non-commercial messages may be placed wherever commercial messages appear, that commercial speech is not favored over noncommercial speech, and that any on-site or off-site sign permitted or allowed by law is allowed to contain non-commercial speech in lieu of any other speech; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to follow the Court's advice in the Eleventh Circuit opinion of *Granite State Outdoor Advertising v. The City of St. Petersburg*, 348 F. 3d 1278, 1282-1253; (11th Cir. 2003), *rehearing & rehearing en banc denied*, 90 Fed. Appx. 390, F. 3d, 2003 WL 23190914 (11th Cir., Dec 29, 2003), *and cert. denied* S. Ct., 2004 WL 759321, 72 USLW 3644 (U.S. Jun 07, 2004), that although time limits for sign permit reviews by city staff are not mandatory, in a content neutral sign ordinance, time limits are advisable; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and determines that anything located beside the road which tends to distract the driver of a motor vehicle directly affects traffic safety, and that signs which divert the attention of the driver and occupants of motor vehicles from the highway to objects away from it, may reasonably be found to increase the danger of accidents, and agrees with the courts that have reached the same determination, *see, In re Opinion of the Justices*, 103 N.H. 268, 169 A.2d 762 (1961); *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D.1978); and

WHEREAS, the City Council of the City of Daytona Beach Shores is mindful of the warnings from various studies regarding the effect on traffic safety of electronic, electronic changeable message and trivision signs discussed in the September 11, 2001

report sponsored by the Federal Highway Administration entitled, *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction*, and, therefore, wishes to clarify its prohibition of these sign types. *See also, Final Report, A Critical, Comprehensive Review of Two Studies Recently Released By the Outdoor Advertising Association of America*, prepared for: Maryland State Highway Administration, by Jerry Wachtel, CPE, President, The Veridian Group, Inc., Berkeley, California October 18, 2007 (concluding that traffic studies conducted by the outdoor advertising industry seeming to indicate that electronic billboards posed no traffic safety concern were both severely flawed in their methodology and thus unreliable in their conclusions. On page 13 of the report Veridian concludes that the outdoor advertising industry used "misleading and inconsistent reporting [showed] evidence of bias [and there was] evidence of internal errors and inconsistencies throughout the report"); *Traffic Safety Evaluation of Video Advertising Signs*, by Alison Smiley et al., Transportation Research record: Journal of the Transportation research Board, No. 1937, 2005 (a major study of electronic signs in Toronto, which finds that "[o]n the basis of the eye fixation study and the public survey data, it is apparent that video advertising can distract drivers inappropriately and lead to individual crashes."); *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction*, September 2001, Federal Highway Administration, U.S. Department of Transportation (a summary of existing research (as of 2001), on the subject of the safety of electronic signs and a call for additional studies); *Milwaukee County Stadium Variable Message Sign Study: Impacts of an Advertising Variable Message Sign on Freeway Traffic*, December 1994, Wisconsin Department of Transportation (study of the dangers posed by an electronic sign in Milwaukee along I-94, that concluded that "It is obvious that the variable message sign has had an effect on traffic, most notably in the increase of the side swipe crash rate"); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that municipalities may separately classify offsite and on-site advertising signs in taking steps to minimize visual pollution, *see, City of Lake Wales v. Lamar Advertising Association of Lakeland Florida*, 414 So. 2d 1030, 1032 (Fla. 1982); and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that on-site business signs are considered to be part of the business itself, as distinguished from off-site outdoor advertising signs, and finds and determines that it is well-recognized that the unique nature of outdoor advertising and the nuisances fostered by billboard signs justify the separate classification of such structures for the purposes of governmental regulation and restrictions, *see, E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F. 2d 1141,1153 (5th Cir. 1970), *cert. denied*, 400 U.S. 878,91 S. Ct. 12, 27 L. Ed. 2d 35 (1970), quoting *United Advertising Corp. v. Borough of Raritan*, 11 N.J. 144,93 A.2d 362, 365 (1952); *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F. 3d 810, 814 (9th Cir. 2003); *Get Outdoors II LLC., v. City of Diego*, 231 F. Supp. 2d. 1250, 1264 (S.D. Cal. 2005) (upholding both off-site and on-site distinctions, and the ban of billboards as constitutional); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that a prohibition on the erection of off-site outdoor advertising signs will reduce the number of driver distractions and the number of aesthetic eyesores along the roadways and highways through the City, see, *e.g.*, *E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F. 2d 1141, 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that billboard signs are public nuisances given their adverse impact on both traffic safety and aesthetics; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that billboards are a traffic hazard and impair the beauty of the surrounding area, and the prohibition of the construction of billboards will reduce these harms, see, *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the presence of billboards along the federal interstate and the federal-aid primary highway systems has prevented public property in other jurisdictions from being used for beautification purposes due to view zones established by state administrative rule; and

WHEREAS, Scenic America, Inc., recommends improvements in the scenic character of a community's landscape and appearance by prohibiting the construction of billboards, and by setting height, size and other standards for on-premise signs, see, *Scenic America's Seven Principles for Scenic Conservation*, Principle #5; and

WHEREAS, more than one hundred Florida communities have adopted ordinances prohibiting the construction of billboards in their communities in order to achieve aesthetic, beautification, traffic safety and other related goals; and

WHEREAS, at least the states of Alaska, Hawaii, Vermont, Maine and Rhode Island currently prohibit new billboard construction and are now billboard-free in an effort to promote aesthetics and scenic beauty and the State of Oregon has adopted a statewide cap and replace law, meaning that no one may erect a new billboard until they remove an existing one and, if a person wishes to erect a tri-vision billboard in Oregon, they must remove three (3) static billboards; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that in order to preserve, protect and promote the safety and general welfare of the residents of the City, it is necessary to regulate off-site advertising signs, commonly known as billboard signs or billboards, so as to prohibit the construction of billboards in all zoning districts, and to provide that the foregoing provisions shall be severable; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the prohibition of billboards as set forth herein will improve the beauty of the City, foster overall improvement to the aesthetic and visual appearance of the City, preserve and keep open areas for beautification on public property adjoining the public roadways, increase the visibility, readability and effectiveness of on-site signs by reducing and diminishing the visual clutter of off-site signs, enhance the City as an attractive place to live and work, reduce blighting influences, and improve traffic safety by reducing driver distractions; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the business of outdoor advertising in the form of off-site signs, commonly known as billboards, is not now an approved use within the City or any of its zoning districts; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the prohibition on portable signs including, but not limited to, portable billboard signs (most commonly tri-vision or LED (light emitting diode) panels mounted on trucks driven through communities), reasonably advances the governmental goal of protecting the aesthetic environment of the City, *see, Harnish v. Manatee County*, 783 F. 2d 1535 (11th Cir. 1986) (superseded on other grounds by Federal Rule of Civil Procedure); and *Don's Porta Signs, Inc. v. City of Clearwater*, 829 F. 2d 1051 (11th Cir. 1987), *cert. denied*, 485 U.S. 981 (1988); *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994) (striking the city ordinance on other grounds) (Federal and state courts have specifically identified portable signs as contributing to visual blight. *e.g., Lindsay v. San Antonio*, 821 F. 2d 1103, 1109 (5th Cir. 1987); *Barber v. Mun. of Anchorage*, 776 P. 2d 1035, 1038 (Alaska 1989) (upholding city ban on portable signs); *Showing Animals Respect and Kindness et al. v. City of West Hollywood*, No. SC 091086 (Cal. App. 2nd District Sept. 9, 2008) (holding that the ban on mobile billboard advertising was constitutional)); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that the prohibition of mobile billboard advertising within the City will promote the safe movement of vehicular traffic, reduce air pollution, and to improve the aesthetic appearance of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that off-site signs, also known and commonly referred to as "billboards," are not compatible with adjacent areas and are not an approved land use within any of the City's zoning districts; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the following amendments are consistent with all applicable policies of the City's *Comprehensive Plan*; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the provisions of this Ordinance are not in conflict with the public interest; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the provisions of this Ordinance will not result in incompatible land uses; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that various arguments have been advanced in recent years that the permitting of signs is subject to "prior restraint" scrutiny under the First Amendment; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the City's sign regulations are concerned with the secondary effects of speech including, but not limited to, aesthetics and traffic safety, and are not intended to regulate viewpoints or censor speech, and for those and other reasons that the provisions of this Ordinance are not subject to, or would not fail, a "prior restraint" analysis; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that there have never been delays in the City in connection with the permitting of signs, and there have never been delays in the City in connection with appeals from adverse permitting decisions involving signs; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that frivolous challenges to its provisions regulating signage might be advanced under the pretext that the City is unconstitutionally restraining free speech and that thus an argument of vested rights maybe advanced by a sign permit applicant, and the City Council desires to amend and modify the *Land Development Code* to codify current practice and, to the fullest extent possible, ensure that a prior restraint claim cannot be advanced in good faith against the City's sign regulations, *see, Tanner Advertising Group, L.L.C. v. Fayette County, GA*, 451 F. 3d 777 (11th Cir. 2006) (holding: (1) that advertising company had no vested property rights in denied permit applications; (2) ordinance amendment rendered moot all challenges to ordinance but claim that ordinance granted unbridled discretion to county officials to define "[a]ttention-getting devices"; (3) but company lacked standing to challenge prohibition against "[a]ttention-getting devices."); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the severability clauses set forth relative to the City's *Land Development Code* were adopted with the intent of upholding and sustaining as much of the City's regulations, including its sign regulations, as possible in the event that any portion thereof (including any section, sentence, clause or phrase) be held invalid or unconstitutional by any court of competent jurisdiction; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that under controlling Florida law, whenever a portion of a statute or ordinance is declared unconstitutional the remainder of the act will be permitted to stand provided (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be

accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the legislative body would have passed the one without the other, and (4) an act complete in itself remains after the invalid provisions are stricken, *see, e.g., Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990); *Granite State Outdoor Advertising Inc., v. City of Saint Pete Beach*, 322 F. Supp.2d 1335, 1342 (M.D. Fla. 2004) (severing out the offensive unconstitutional provisions and leaving the remaining sign ordinance intact); and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that there have been several judicial decisions where courts have not given full effect to severability clauses that applied to sign regulations and where the courts have expressed uncertainty over whether the legislative body intended that severability would apply to certain factual situations despite the presumption that would ordinarily flow from the presence of a severability clause; and

WHEREAS, the City Council of the City of Daytona Beach Shores is aware that the failure of some courts to uphold severability clauses has led to an increase in litigation by billboard developers seeking to strike down sign ordinances in their entirety so as to argue that the developers' applications to erect billboards must be granted; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that there be an ample record of its intention that the presence of a severability clause in connection with the City's sign regulations be applied to the maximum extent possible even if less speech would result from a determination that any exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that there be an ample record that it intends that each prohibited sign-type continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the City's sign regulations, other ordinance or *Land Development Code* provisions, or other laws, for any reason whatsoever; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that the prohibition on billboards continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the City's sign regulations, other ordinance or *Land Development Code* provisions, or other laws, for any reason whatsoever; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that there be an ample record that it intends that the height and size limitations on free-standing and other signs continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the City's sign regulations, other ordinance or *Land Development Code* provisions, or other laws, for any reason whatsoever; and

WHEREAS, the City Council of the City of Daytona Beach Shores is aware that sign developers seeking to attack a sign ordinance have often advanced an argument that the developer has a "vested" right to erect the billboards described in their permit applications, and argue that if they are successful in obtaining a judicial decision finding that a city's entire sign ordinance is unconstitutional, it follows that they are entitled to build any sign described in the permit applications submitted under the "unconstitutional" ordinance, and argue that this result is mandated because when they applied for their permits there was no valid constitutional ordinance in place; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to make it clear that billboards are not a compatible land use within the City and that there can be no good faith reliance by any prospective sign developer under Florida "vested rights," or any other theory, or law in connection with the prospective erection or construction of billboards within the jurisdictional limits of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that the purpose and intent provisions of its land development regulations relating to signs should be even more detailed than they are now so as to further describe the beneficial aesthetic and other effects of the City's sign regulations, and to reaffirm that the City's sign regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of the speaker; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to ensure that the City's *Land Development Code* relative to signs is in compliance with all constitutional and other legal requirements; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to continue to restrict the height and size of freestanding signs, other than statutory signs and traffic control device signs as identified or described in the *Manual on Uniform Traffic Control Devices* (as amended and revised from time to time); and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to continue to assure that billboards are effectively prohibited as a sign-type within the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores wishes to continue to assure that certain sign-types within the City are prohibited if and where they are found to be incompatible with safety and aesthetic requirements consistent with the terms and conditions of this Ordinance; and

WHEREAS, allowing exemptions or exceptions for certain signage based upon the function served by the sign is preferred to requiring permits for all such signs, or alternatively, banning all such signs; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the time limits regarding certain temporary signs have been consistently

problematic to enforce and therefore, there has been a proliferation of these signs causing unsightly clutter to the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that because certain temporary signs have been problematic regarding enforcing their time limitations, these signs should require a permit provided for by a resolution of the City Council separate from this ordinance; and

WHEREAS, under current jurisprudence, *see, e.g., Linmark Associates v. Town of Willingboro*, 431 U.S. 85 (1977), on-site real estate signs, such as "for sale" signs should be allowed given the important role and unique function that real estate signs, such as "for sale" signs, perform on the premises where they are located; and

WHEREAS, under current jurisprudence, *see, e.g., Ladue v. Gilleo*, 512 U.S. 43 (1994), signs that allow owners of property, especially residential homeowners, to freely express a particular point of view on their own property should be reasonably accommodated and may be uniquely valuable; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that under current jurisprudence, election signs are generally accorded a higher level of protection under the First Amendment to the *Constitution of the United States* than any other classification or type of speech; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that durational limitations on election signs, sometimes referred to as political signs, are frequently problematic when the limitations affect the posting of election signs prior to the election concerning the candidate or ballot issue to which they pertain, but durational limits requiring the removal of election signs following such election are generally permissible if such limits apply to other similar temporary signs, *see, e.g., Election Signs and Time Limits, Evolving Voices in Land Use Law*, 3 Wash. U.J.L. & Policy 379 (2000); Robert A. Sedler, *The Rehnquist Court and the First Amendment, Property and Speech*, 21 Wash. U.J.L & Policy 123, n.98 (2006); *McCormack v. Township of Clinton*, 872 F. Supp. 1320 (D.N.J. 1994) (finding that regulations requiring removal of signs following an election are constitutional); *Callier v. Town of Tacoma Washington*, 854 P. 2d 1046 (Wash. 1993)(likewise, finding post-election durational limits to be constitutional); *But See, Curry v. Prince George's County Md.* 33 F. Supp. 2d 447, 445 (M. Md. 1999) (finding that durational limits post-election are problematic and may not be constitutional); *Sugarman v. Village of Chester*, 192 F. Supp. 2d 282 (S.D.N.Y.2002) (ordinance requiring removal of election signs within 20 days of election deemed content-neutral where all temporary signs were subjected to durational limit of 14 days; election signs treated more favorably). *See also, Solantic, LLC v. City of Neptune Beach*, 410 F. 3d 1250, 1264-1265 (11th Cir. 2005) (sign ordinance requiring removal of election-related signs two days after election was content-based where other signs could remain indefinitely); and

WHEREAS, it is the express intent of the City Council of the City of Daytona Beach Shores to have a court sever any durational limits from this Ordinance where those limits apply to election or political signs in the event that the durational limits are found to be unconstitutional by a court of competent jurisdiction; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that free expression signs are sufficient to allow for political speech unrelated to particular candidates or ballot issues; and

WHEREAS, the City Council of the City of Daytona Beach Shores intends to expressly provide that land owners may display at least a single sign for free expression at all times, and to expressly provide that land owners may maintain signs displaying their support or opposition to political candidates and ballot issues before the election to which they pertain; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the exceptions or exemptions for and certain sign types are not intended to diminish or lessen the City's interests in aesthetics or traffic safety, but the same are adopted in recognition of the useful functions and practical needs served by such signage in the City's commerce and in the political freedom that must be accorded its citizens to freely express their points of view and political desires as expressed in the above cited cases including, *Solantic, LLC v. City of Neptune Beach*, 410 F. 3d 1250, 1264-1265 (11th Cir. 2005); and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that under current jurisprudence its sign regulations may be under-inclusive in their reach to serve the City's interests in aesthetics and traffic safety, while at the same time balancing the interests protected by the First Amendment to the *Constitution of the United States*, see, e.g., *Members of City Commission v. Taxpayers for Vincent*, 466 U.S. 789 (1984); Cordes, *Sign Regulation After Ladue: Examining the Evolving Limits of First Amendment Protection*, 74 Neb. L. Rev. 36 (1995), and the City Council of the City of Daytona Beach Shores may from time-to-time modify the sign regulations in this Ordinance so as to provide additional limitations to further serve the City's interests in aesthetics and traffic safety; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the limitations on the height, size, number, and setback of signage, adopted herein, are based upon the sign types and sign functions; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that sign types described herein are related in other ways to the functions they serve and the properties to which they relate, see Bond, *Making Sense of Billboard Law: Justifying Prohibitions and Exemptions*, 88 Mich. L. Rev. 2481 (1980); and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that limitations on various types of signs are also related to the zoning districts for the properties on which they are located; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that various signs that serve and function as signage for particular land uses, such as drive-thru restaurants, are allowed some additional features in recognition of the differing or special functions served by those land uses, but not based upon any intent to favor any particular view point or control the subject matter of public discourse; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds and determines that the sign regulations adopted in this Ordinance allow adequate alternative means of communications and freedom of speech; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that under current jurisprudence all non-commercial signs are considered to be on-premises signs; and

WHEREAS, the City's Planning and Zoning Board and the City's Beautification Advisory Board have heard the proposed ordinance and have rendered recommendations to the City Council; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

SECTION ONE. LEGISLATIVE FINDINGS AND DETERMINATIONS. A new section of the *Land Development Code, Code of Ordinances of the City of Daytona Beach Shores*, is created to read as follows:

The City Council of the City of Daytona Beach Shores finds and determines as follows:

(a). The City staff report and City Council agenda memorandum relating to this matter are hereby adopted as if fully set forth herein.

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

(c). It is not the purpose of this Ordinance to regulate or control the copy content or viewpoint of signs. Nor is it the intent of this Ordinance to afford greater protection to commercial speech than to noncommercial speech. Any sign display or device allowed under this Ordinance may contain in lieu of any other text any otherwise lawful noncommercial message that complies with all other requirements of this Ordinance. The noncommercial message may occupy the entire sign area or portion

thereof and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial or from one noncommercial message to another as frequently as desired by the sign owner provided that the sign is not prohibited and the sign continues to comply with all requirements of this Ordinance.

(d). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Council of the City of Daytona Beach Shores and incorporated into this Ordinance as if set forth *in haec verba*.

(e). This Ordinance is an exercise of the City of Daytona Beach Shores' powers as a municipality under the provisions of Article VIII, Section 2 of the *Constitution of the State of Florida*; Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*, and other applicable law.

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

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

CHAPTER 2. DEFINITIONS

Sec. 2-1. – Sec. 2.4.

Sec. 2-5. - Signs and advertising Definitions.

In addition to the following definitions, all ~~the~~ General Definitions shall apply to the regulation of signs and advertising following definitions:

Sign:

(a) Any device or display, consisting of letters, numbers, symbols, pictures, illustrations, announcements, cut-outs, insignia, trademarks, and demonstrations, designed to advertise, inform, identify, or to attract the attention of persons not on the premises on which the device or display is located, and visible from any public way. A sign shall be construed to be a single display surface or device containing elements organized, related and composed to form a single unit. In cases where material is displayed in a random or unconnected manner where there is reasonable doubt as to the intended relationship of such components, each component or element shall be considered to be a single sign. A

projecting or ground sign with sign surface on both sides of such sign shall be construed as a single sign, and the total area of such sign shall be the area computed on a single sign. In the case of freestanding low profile, ground/pole and monument signs, the sign support structure and base shall also be considered a part and parcel of the sign; however, the sign support structure and base shall not be included in sign area calculations.

(b) Any person or animal stationed at or proximate to a business site or on the public right-of-way for the purpose of attracting attention to a business by actions, props or attire.

The following shall not be included in the application of the regulations herein:

(1) Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers, names of occupants of premises or other identification of premises not having commercial connotations;

(2) Flags and insignia of any government except when displayed in connection with commercial promotion;

(3) Legal notices; identification, informational or directional signs erected or required by governmental bodies;

(4) Integral decorative or architectural features of buildings except letters, trademarks, moving parts or moving lights;

(5) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign, abandoned: A sign, including the sign support structure, which for a period of six (6) months or more, no longer identifies or advertises an onsite bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found. In making the determination that a sign advertises a business no longer being conducted, the Building Official shall consider any or all of the following: the existence or absence of a current business tax receipt, certificate of use, utility service deposit or account, use of the premises, and relocation of the business;

Sign, changeable copy: A sign, sometimes referred to as a reader board, which has letters, numbers, symbols or other characters (1) which can be manually attached to or removed from the face of a sign, without altering the face or structure of the sign or (2) which can be changed by electronic means and has a screen that utilizes light emitting diodes (LED) arranged in pixels to create messages.

Sign, height: The vertical distance measured from grade at the edge of the adjacent right-of-way to the highest point of the sign.

Sign, monument: A sign permanently affixed to the ground at its base, supported entirely by a base structure.

Sign, pole: A freestanding sign that is permanently supported in a fixed location by a structure of poles, uprights or braces from the ground and not supported by a building or a base structure.

Sign, surface area (sign area): The total surface of a sign display area. The surface area of a sign shall be determined by including the entire area within the geometrical form comprising all of the display area of the sign and including all of the elements of the display, including frames and borders; but not structural supporting elements outside of its frame. Where a sign is composed of skeleton letters, characters, or symbols applied to a background which is not a structural part of the sign, the area of the sign shall be the smallest rectangle (measured perpendicular to a horizontal grade), triangle or circle which will include the display.

Sign, width: Width shall be longest horizontal dimension of a sign.

CHAPTER 6. - SIGNS AND ADVERTISING

Sec. 6-1. - Purpose.

The purpose of these regulations concerning signs is to protect, preserve and promote the public health, safety, welfare and general aesthetic quality of the City by reducing the adverse effects of signs and displays on transportation safety, building safety, property value and streetscape and preserve the character and appearance of the several districts within the City of Daytona Beach Shores; to enhance the economy and business in the City by promoting the reasonable, orderly and effective display of signs; to provide ample opportunity to advertise in commercial areas, and in so doing, to prevent excessive advertising which would have a detrimental effect on the character and appearance of such business districts; to prevent sign overload and excessively large and tall signs which visually detract from the City's streetscape; and to limit signs in noncommercial areas to essential uses, primarily for the purpose of identifications and information, in order to protect the residential character and appearance of such districts; and to ensure that private property rights are protected both in terms of being authorized to place signs on private property in accordance with sound and generally accepted planning and land use practices and principles. To realize this purpose, these regulations are established to control the number, area and height of signs which may be permitted in certain districts, and to further establish the type of location of such signs as may be permitted. Any sign allowed by either a permit or as a matter of right, whether an on-site sign or an off-site sign, may contain noncommercial speech in lieu of any other type of speech. It is not the purpose of this Ordinance to regulate or control the copy content or viewpoint of signs. Nor is it the intent of this Ordinance to afford greater protection to commercial speech than to noncommercial speech. Any sign display or device allowed under this Ordinance may contain in lieu of any other copes any otherwise lawful noncommercial message that complies with all other requirements of this Ordinance. The noncommercial message may occupy the entire sign area or portion thereof and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to

noncommercial or from one noncommercial message to another as frequently as desired by the sign owner provided that the sign is not prohibited and the sign continues to comply with all requirements of this Ordinance.

Sec. 6-2. - Sec. 6-3.

Sec. 6-4. - General provisions.

1. Compliance with the Building Code. All signs shall be erected in a permanent, substantial and fixed manner in accordance with the provisions of the building official of the City of Daytona Beach Shores.

2. Compliance with Electrical Code. All signs which include electric wiring, lighting or electrically operated moving parts shall be inspected by the building official to ensure ~~insure~~ compliance with the electrical code of the city.

3. Location of Signs.

(a) Setbacks: No ground, pole, monument or projecting sign shall be permitted closer than fifteen (15) feet to any side lot line in any ~~zone~~ zoning district except in the case where adjoining properties have permitted signs and a minimum thirty-foot separation exists between existing signs, the side lot setback shall not apply. No ground, pole or monument sign shall be permitted closer than two (2) feet to any abutting right-of-way in any zoning district. No ground, pole, monument or projecting sign shall project vertically into any right-of-way.

(b) Corner Lot Line of Sight: No ground sign, monument sign or landscaping with height between three (3) and eight (8) feet in height, shall be permitted in the line of sight triangles adjacent to a corner abutting a right-of-way on a corner lot. This line of sight triangle shall measure twenty-five (25) feet by twenty-five (25) feet.

(c) Driveway Line of Sight: No ground sign, monument sign or landscaping with height between three (3) and eight (8) feet in height, shall be permitted in the line of sight triangles adjacent to driveway locations. This line of sight triangle shall measure seven (7) feet by twenty-five (25) feet.

4. Display of Rates and Charges Restricted. It shall be unlawful to erect, install, maintain, display or place any sign or display which designates by word or figure, rental rates, price, rate of cost of any room or apartment or any term including, but not limited to: "Lowest rates," "very low rates," "special rates," "winter rates," "low rates," "free," or any other phraseology referring to any special rates, charges [charges], prices, or terms in connection with the rentals, accessories or services of any hotel, apartment house, motel,

apartment, or rental residence. Interior displays of the foregoing type shall be permitted so long as they are not visible from the outside of the structure.

5. Signs Resembling Traffic Control Signs Prohibited. No sign shall be permitted which resembles an official traffic control device as set forth in F.S. § 316.077.

6. Signs Constituting Public Nuisance. Any sign which shall endanger the public health or materially interfere with the public comfort or convenience shall be deemed a public nuisance as defined in section 16-12 of the city Code. The procedures set forth in section 16-13 of the city Code shall control the abatement procedure under this section.

7. Sign Contractor's License. Sign contractors to be licensed: No person shall perform any work or service for compensation in the City of Daytona Beach Shores unless such person shall first have obtained a sign contractor's license from the building department and paid the license fees provided by the city, or shall be represented by a duly licensed agent or subcontractor. The fee shall be specified in the current "City of Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the city clerk.

8. Lighting: Signs that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color and signs that are of such intensity or brilliance as to cause glare or impair the vision of any motorist, cyclist, or pedestrian using or entering a public way, or that are a hazard or a nuisance to occupants of any property because of glare or other characteristics are prohibited and unlawful. It is prohibited and unlawful for a monument sign to be animated or to have an exposed neon tube, barebulb or flashing illumination.

Sec. 6-5. Labeling of signs.

Every sign hereafter erected shall have permanently affixed, in a conspicuous place thereon, in legible condition, the date of erection, the permit number, the voltage of any electrical apparatus, if any, and the name of the installer.

Sec. 6-6. Wind pressure and dead load requirements.

All signs and other advertising structures shall be designed and constructed to meet the applicable Florida Building Codes. ~~withstand a wind pressure of not less than thirty three and six tenths (33.6) pounds per square foot of area for signs up to thirty (30) feet in height and shall be constructed to receive dead loads in accordance with the requirements of the Southern [Standard] Building Code. Upon request by the building official, an engineer's drawing, may be required.~~

Sec. 6-7. Removal of ~~obsolete~~, abandoned, ~~deteriorated~~ ~~or~~ and other nonconforming signs.

1. Nonconforming abandoned Signs: ~~Any~~ All nonconforming abandoned signs which no longer advertises a bona fide business actively conducted, or a product presently sold, shall be altered to conformity or taken down and removed by the property owner, agent or person having the beneficial use of the building or of the premises lot or parcel upon which the sign may be found within thirty (30) days after written notification by the building official. Upon failure to comply with such notice within the time specified therein, the building official is hereby authorized to cause the removal of such ~~obsolete~~ abandoned sign and any expense incident thereto shall be paid by the owner of the building or structure to which such sign is attached, and the city shall have a lien upon the real property of the owner of the sign or the cost of removal. Any sign not conforming to the requirements of this chapter shall nevertheless be permitted to remain for a period not to exceed ten (10) years from the effective date of this ~~Ordinance chapter~~, provided that such nonconforming sign is not abandoned, is maintained in good repair and subject to the other provisions of this paragraph.

2. Nonconforming deteriorated signs: In the event that any nonconforming sign hereinafter deteriorates to the extent that its repair will require a cost of labor and materials equal to, or exceeding a value of fifty-one (51) percent of the value of the sign, as a whole, in such event, the building official is authorized to furnish written notice to [the owner requiring] removal of the sign within thirty (30) days. Upon failure to comply with notice of removal, the building official shall cause the removal of the sign, or so much of the building as is necessary to remove the nonconformity. Any expense incurred by the city in the removal of the nonconforming sign shall be paid by the owner of the real property or building to which such sign is attached, and the city shall have a lien upon the real property of the owner for the cost of removal. Any sign which is nonconforming due to provisions of any prior sign ordinances shall remain nonconforming and shall be removed within the time frames established by that prior ordinance. The time for removal of a prior nonconforming sign shall not be extended by the provisions of this Ordinance or any prior legislative action of the City Council the chapter (Ordinance No. 85-41).

~~3~~ 2. All snipe signs, pennants, flashing elements of existing signs, wind operated devices, sandwich signs or portable signs without a valid permit are prohibited and unlawful , shall be removed within thirty (30) days after the effective date of this chapter.

~~4~~ 3. Prior nonconforming signs: Owners of all signs that were nonconforming as of January 24, 1979, and which remain nonconforming shall be notified of such nonconformance and the requirements of the chapter. No such nonconforming signs shall be permitted to exist after April 1, 1990, which date has been extended by the city council from January 24, 1989, are prohibited and unlawful unless the city council grants or the board of adjustments has previously granted a variance to permit the continuation of said sign(s). All nonconforming signs that have been granted a variance shall be permitted to continue subject to the provisions of the variance with the exception of variances granted

by the board of adjustments subsequent to January 24, 1979, in which case such nonconforming signs shall be permitted to exist until April 1, 2000.

5. Amortization Period for Nonconforming Ground and Pole Signs: All nonconforming ground, pole or low profile sign shall be removed, modified, or altered to comply with this Ordinance no later than ten (10) years from the effective date of this Ordinance. Notwithstanding the foregoing, the following signs lawfully located on the effective date of this Ordinance at the following parcels shall not be subject to amortization; provided, however, that the signs shall not be enlarged or altered in any way to increase their nonconformity: the Aku Tiki, the Sun Viking Lodge and the Oceans PUD signs.

6. Conforming signs which are located on property on which the primary structure is vacant shall either be taken down and removed in an appropriate manner or a blank white sign face shall be installed in the sign in an appropriate manner. Vacant/empty face signs are prohibited and unlawful.

Sec. 6-7.1 Repairs, Maintenance, and Improvements of nonconforming signs.

Nonconforming Signs. Repairs, maintenance and improvements may be made to nonconforming signs throughout the amortization period established by this Ordinance so long as said nonconformity is not increased.

Sec. 6-8. - Permitted signs.

The following allowed signs require a sign permit from the City's Building Official pursuant to Sec. 6-3 of this Land Development Code.

1. *Reserved.*

2. *Construction Signs.* The erection of one (1) sign shall be permitted on property where substantial improvements are actually under construction pursuant to a current building permit. A construction sign is a sign identifying the ongoing construction activity during the time that a building permit is active and prior to the completion of the work for which the permit was issued and announcing and identifying the name of principal contractors, sub-contractor, architects, or lending institutions engaged to perform construction activity on the site. It is the obligation of contractors to appropriately place construction signs at appropriate location during the course and time period when construction activities are occurring on property.

Such sign shall not exceed sixty-four (64) square feet and may include the names of persons or firms furnishing labor, services or materials to the construction site. Such sign shall be removed prior to issuance of a certificate of occupancy by the city. Condition A in section 6-9 shall apply in the RMF-RD, TOR-RD, GC-RD and TC-MUPUD districts.

3. *Development Signs.* One (1) sign shall be permitted on the building site. The maximum sign size shall be sixty-four (64) square feet. Permits for such development signs shall be

issued for a period of one (1) year only to allow said signs on site for twelve (12) months after the building receives its certificate of occupancy. Notwithstanding the above, Condition A in section 6-9 shall apply in the GC-RD district. Such permits shall be renewed by the city manager or his designee after payment of the applicable application fee has been paid to the city and determination by the city manager that the promotion of the development is active and proceeding in good faith. Permits may be renewed annually for a period up to thirty-six (36) months after the building receives its certificate of occupancy or until such time that the building has ten (10) percent of the approved units remaining unsold, whichever occurs first. Development signs shall be approved by the city manager, or designee, on lots or parcels of land in all applicable zoned districts, after a site plan has been approved by the city council for construction upon property to be improved. Only one (1) development or future improvement sign shall be allowed on the site during the same period of time.

4. *Fishing Pier Signage.* Fishing piers within the City of Daytona Beach Shores shall be allowed one (1) pole sign with an allowable sign panel of sixty (60) square feet per side. There shall be a clearance of nine feet zero inches (9' 0") between the ground and the bottom of the sign. A clearance of two feet zero inches (2' 0") from the sidewalk to the leading edge of the sign panel must be maintained. Signs placed on railings shall be in one (1) piece not to exceed thirty (30) inches in height and eight feet zero inches (8' 0") in length. One (1) sign each shall be permitted on the north and south railing; advertising on railing signs shall exclude name brand products. One (1) wall sign shall be permitted on the west end of the bait house, not to exceed twenty-eight (28) square feet.

5. *Future Improvement Signs.* ~~One (1) sign announcing building or future improvements may be placed on any vacant lot or parcel of land in all applicable zoned districts. The maximum size shall be sixty four (64) square feet. These signs may be erected only on the designated site when a site development plan has been approved by the planning and zoning board. These signs shall be removed within eighteen (18) months of erection or when a certificate of occupancy is issued. Stated planned development must comply with existing zoning. Notwithstanding the above, Condition B in section 6-9 shall apply in the RMF RD, TOR RD, GC RD and TC MUPUD districts. Only one (1) future improvement or development sign shall be allowed on the site during the same period of time.~~

6. *Ground Signs and/or Pole Signs.* ~~The maximum surface area limit of a ground sign shall not exceed one hundred (100) square feet per side for a total not exceeding two hundred (200) square feet and shall have a maximum height of thirty (30) feet as measured from the ground to the highest point of the sign. There shall be a clearance of nine (9) feet between the ground and the bottom of the sign unless a low profile sign is used as permitted under section 6-9, district regulations. Artistic graphics and logos shall be excluded from the sign area calculation in the Tourist Zone. Only one (1) ground sign per property or parcel shall be allowed unless the property or parcel qualifies under the provisions below concerning tourist zoned properties or under paragraph 15., within this section, concerning shopping center signs.~~

Structure Width	Maximum Signage
Twenty five (25) feet or less	Thirty five (35) square feet per side
More than twenty five (25) feet but less than fifty (50) feet	Sixty (60) square feet per side
Fifty (50) feet or more	One hundred (100) square feet per side

~~Tourist-zoned properties which exceed two hundred (200) feet in front footage shall be permitted two (2) signs in any combination of pole, ground or low profile signs. One (1) sign shall be for the hotel name and trademark and the other sign shall be for hotel services. Each sign shall not exceed one hundred (100) square feet; the distance between the signs shall be a minimum of fifty (50) feet; the maximum height of each sign shall be thirty (30) feet measured from the ground to the highest point of the sign, except in the case of a low profile sign in which the maximum height shall be fifteen (15) feet; the clearance of each sign shall be nine (9) feet between the ground and the bottom of each sign. Notwithstanding the above, Condition J in section 6-9 shall apply in the RMF-RD, TOR-RD, GC-RD and TC-MUPUD districts.~~

6.1. Monument Signs.

Only one (1) monument sign per lot or parcel shall be allowed unless the lot or parcel qualifies under the provisions below concerning tourist-zoned properties or under paragraph 15., within this section, concerning shopping center signs. Monument signs shall comply with the following requirements.

Monument Sign Design Standards

<u>Zoning District</u>	<u>Maximum Height (feet)</u>	<u>Maximum Width (feet)</u>	<u>Maximum Sign Area (square footage)</u>
<u>GC-1, GC-2, GC-RD</u>	<u>8</u>	<u>8</u>	<u>48</u>
<u>Shopping Centers in GC-1, GC-2, GC-RD</u>	<u>10</u>	<u>8</u>	<u>64</u>
<u>MXD</u>	<u>8</u>	<u>8</u>	<u>48</u>
<u>RMF-1, RMF-2, RMF-3</u>	<u>6</u>	<u>8</u>	<u>36</u>
<u>T, TOR-RD</u>	<u>10</u>	<u>8</u>	<u>64</u>

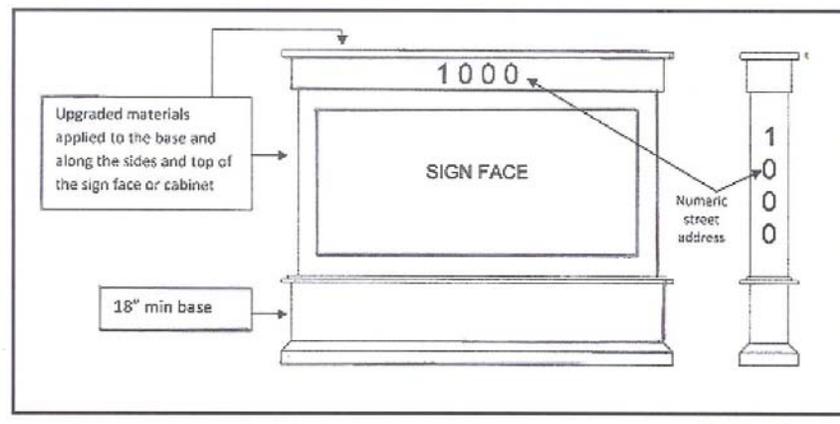
a. The monument sign support base must be a minimum of eighteen (18) inches in height. The sign cabinet shall be mounted on a decorative base. An additional two (2) feet in height may be permitted for architectural embellishments approved by the Building Official.

b. The sign structure shall complement the principal structure, with regards to materials, color, finish, and architectural features. This includes the application of materials consistent with the principal building to the base and along the sides and top of the sign face or cabinet.

c. The leading edge of the monument sign, including landscaping, shall not project vertically into the right-of-way.

d. The numeric street address of the property upon which the sign is located shall be identified on the top or bottom portion of the sides of the sign where the sign face is located. The numeric street address of the property may also be required on the front of the sign. The street address numbers shall be between six to 12 inches in height.

Example of Monument Sign meeting Design Requirements



e. Hotels with street/road frontages of two hundred (200) feet or more are allowed one (1) monument sign with a maximum sign area of sixty-four (64) square feet and one (1) additional monument with a maximum sign area of thirty-six (36) square feet. Alternatively and in lieu of the aforementioned, two (2) monument signs with a maximum sign area of fifty (50) square feet are allowed.

f. Artistic graphics and logos shall be excluded from the sign area calculation in the Tourist Zoning Districts.

g. Distances between monument signs on the same lot or parcel shall be a minimum of fifty (50) feet.

h. Landscaping shall be installed around the sign base. The size of the landscape bed around the sign base shall be equal to the total area of the sign face and shall include shrubs or groundcover plants (excluding turf grass) that will not block the sign face or the numeric street address.

(1) The quantity of shrubs or groundcover plants shall be based on the following formula: Total area of the sign face (in square feet) × .45 = the number of shrubs or groundcover plants, rounded up to the nearest whole number.

(2) The shrubs and/or groundcover plants shall be a minimum size of one-gallon container and be spaced eighteen (18) inches on center.

(3) The landscape bed around the sign shall be clearly defined, contain at least a two-inch deep layer of mulch or other decorative landscape material and create a seamless transition between the sign and ground. Where feasible, the landscape bed shall be centered around the sign.

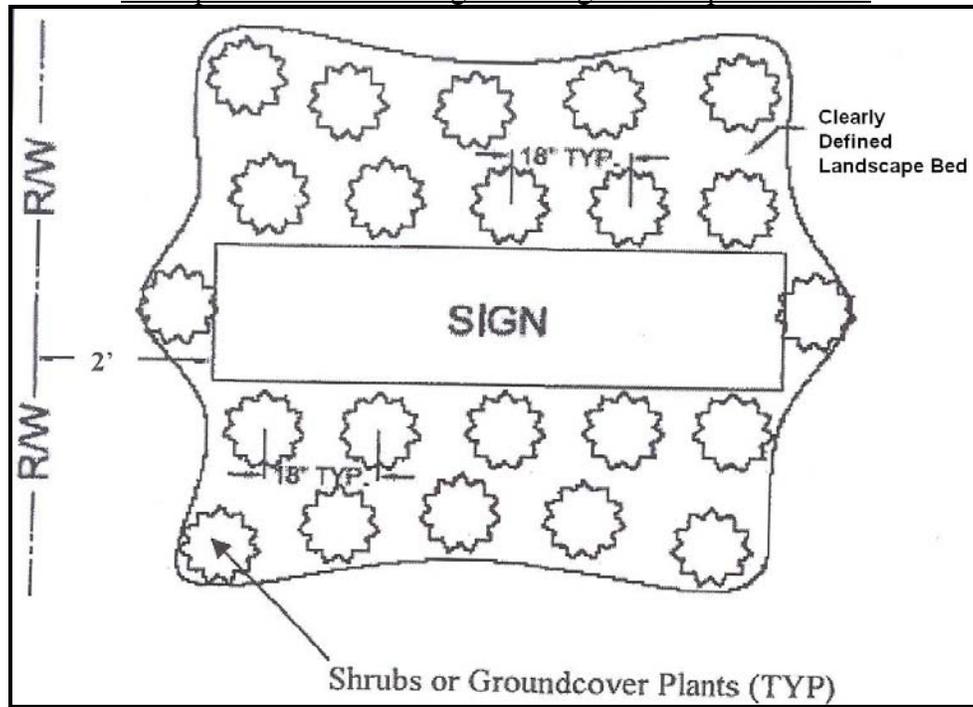
(4) The placement and type of landscaping shall be shown/identified on the plan, sketch, or blueprint submitted with the sign permit.

(5) The landscape area may contain a brick wall, a fence, landscaped earth berm, planted vegetation, and/or existing vegetation.

(6) Landscaping shall not obstruct the view of the sign face or numeric address on the sign.

(7) The Building Official may reduce or allow exceptions for signs located in areas without reasonable access to water for irrigation through the administrative variance process.

Example of Monument Sign meeting Landscape Standards



6.2 Alternative signs in lieu of Standard Monument Signs (Flex Option).

In lieu of the monument signs permitted by right under Paragraph 6.1 and Paragraph 15 of this Section, property owners may elect any one (1) of the following alternative sign options, providing however that the sign regulations established in the table below are met:

Alternative Sign Design Standards (Flex Option)

<u>Land Use</u>	<u>Alternative Sign Option</u>	<u>Maximum Height (feet)</u>	<u>Maximum Sign Area (square footage)</u>	<u>Minimum Right-Of-Way Setback (feet)</u>
<u>Commercial/Retail with gross floor area over 45,000 square feet</u>	<u>Pole Sign</u>	<u>30</u>	<u>100</u>	<u>30</u>
	<u>Monument Sign with Electronic Display</u>	<u>8</u>	<u>48</u>	<u>2</u>
<u>Hotel/Motel</u>	<u>Pole Sign</u>	<u>30</u>	<u>100</u>	<u>30</u>
	<u>Monument Sign with Electronic Display</u>	<u>10</u>	<u>64</u>	<u>2</u>
<u>Shopping Center</u>	<u>Pole Sign</u>	<u>30</u>	<u>100</u>	<u>30</u>
	<u>Monument Sign with Electronic Display</u>	<u>10</u>	<u>64</u>	<u>2</u>
<u>Commercial/Retail & Hotel/Motel with significant site constraints</u>	<u>Projecting Sign**</u>	<u>8</u>	<u>48</u>	<u>=</u>
	<u>Additional wall sign area</u>	<u>=</u>	<u>1.5 per lineal footage of largest building footage visible from the public right-of-way</u>	<u>=</u>

- a. Variances from design requirements established under this section are prohibited.
- b. With the exception of maximum height, maximum sign, minimum right-of-way setback, monument signs with electronic display shall comply with the standards established under Paragraph 6.1 and Paragraph 8(2) of this Section.
- c. Significant site constraints include, but are not limited to, nonconforming lot features, conflicts with existing parking, man-made accessories/equipment and line of sight and lack of adequate setback.
- d. Projecting signs shall not exceed eight (8) feet in height or the roof of the attached building, whichever is less. Projecting signs shall be at least nine feet above ground and shall not project more than six (6) feet from the building or encroach over the right-of-way.

7. *Identification Signs.* One (1) identification sign, at each driveway, bearing only the name of the establishment shall be erected on or affixed to the facade of a building or on a canopy or marquee. Letters shall not exceed one (1) foot in height.

~~8. *Low Profile Signs.* A low profile sign may be used in lieu of a ground sign. The leading edge of the sign, including landscaping, shall not project vertically into the right-of-way and shall be located in landscaped areas with all edges of the sign enclosed to prevent people walking into the sign or its parts. The height to the bottom of the sign panel may be less than nine (9) feet. A maximum height of fifteen (15) feet from the ground shall be allowed. Notwithstanding the above, Condition J in section 6-9 shall apply in the RMF RD, TOR RD, GC RD and TC MUPUD districts. All other criteria of a ground sign shall apply.~~

8. *Changeable copy signs (reader boards).* Changeable copy signs shall be regulated under the following guidelines and shall be prohibited for residential land uses. All signs permitted under this section shall meet the architecture and landscape design standards established under Sec. 6-8.6.1.a thru d and Sec. 6-8.6.1.f thru h.

(1) Freestanding (monument and pole) signs with manual reader boards.

(a) Changeable copy signs shall not comprise more than forty (40) percent of the permitted sign area and shall be included as part of the permitted sign area.

(b) Off-site advertising is prohibited.

(2) Light emitting diode (LED) display screens shall be permitted pursuant to Paragraph 6.2 in this Section and shall meet the following requirements:

(a) General requirements.

(1) Monument signs in shopping centers that contain a display screen shall meet the requirements of Paragraph 15 in this section..

(2) The display screen shall not be oriented toward or face a residential zoning district.

(3) A photometric plan outlining the proposed illumination levels in footcandles shall be provided with the sign permit. Illumination levels shall not exceed one-half (0.5) footcandles, as measured from adjacent rights-of-ways.

(b) Design criteria.

(1) The display screen must be integral to the design of the sign structure and shall not be the dominant element.

(2) Only the identification of tenants within the center shall be permitted. Off-site advertising is prohibited.

(3) The display area shall be no greater than thirty (30%) of the sign face. The display area shall apply toward the maximum amount of signage area permitted regardless of whether it is illuminated or utilized.

(4) The display screen shall not display more than two lines of text or logos per sign face.

(5) Copy change of the display screen shall not be more frequent than once per sixty (60) seconds.

(6) The display screen is restricted to a single permanent background color, per copy change.

(7) Any message or picture displayed shall be static in nature and shall not scroll, blink, flicker, flash, scintillate or be otherwise animated.

(8) The display screen area shall provide a high-resolution with pixel spacing of sixteen (16) millimeters or less.

(9) Dimmers shall be installed and operated to eliminate glare, and at night the sign face display light shall not exceed a brightness of two thousand five hundred (2,500) NITS (unit of light intensity, as measured by candelas per square meter), as certified by the manufacturer.

(10) An information sheet shall be submitted as part of the sign permit application which includes the manufacturing specifications of the LED display screen being installed, along with contact information of the property owner, sign contractor and the display screen maintenance provider.

9. *Political Signs or Posters.* No political sign shall be erected or placed on city-owned property. Only one (1) sign per lot, per candidate or issue, shall be allowed on each private lot. Any political sign that is erected or placed at any location in the city shall be removed within ten (10) days after any election or campaign to which such signs pertain; provided, however, that a sign may remain through any secondary, primary, or run-off election as to any candidate who is subject thereto. The candidate whose sign is erected or placed or the campaign manager or other person responsible for such erection or placing of any political sign shall deposit a fee with the city clerk. The fee shall be specified in the current Daytona Beach Shores Land Development Code Schedule of Fees which is available at the office of the city clerk. The candidate, campaign manager and treasurer or other person responsible for the erection or placing of any political sign shall be legally responsible for the removal of any political sign erected or placed as herein set forth. A political sign or poster shall not exceed eight (8) square feet per sign. Florida Statutes regarding political signs shall be observed. Condition H in section 6-9 shall apply in the GC-RD district.

10. *Portable Sign.* Portable signs may be employed for thirty (30) days to announce special events or grand openings or any valid temporary purpose provided a permit is previously issued by the building official. Only one (1) portable sign shall be located on a lot or parcel at any given time. ~~No business shall place a portable sign~~ shall be permitted on a lot or parcel for more than thirty (30) days per year. Portable signs shall not restrict a parking place and shall be placed no closer than ten (10) feet from the curb. In the event two (2) or more businesses in a shopping center apply simultaneously for a portable sign permit, the business which has not had use of such a sign for the longest period of time prior to the application shall be entitled to the permit.

11. *Private Directional Signs.* Ground directional signs may be located up to the property line. No directory sign shall be placed or erected on any space used to meet the city minimum parking requirements. Directional signs shall be limited to one (1) sign for each ingress and egress to the property and one (1) sign for each entrance to a building or structure and shall be limited to four (4) square feet in area and the letters shall not

exceed eight (8) inches in height. Condition C in section 6-9 shall apply in the RMF-RD, TOR-RD, GC-RD and TC-MUPUD districts.

11.1 *Public Information Off-Site Directional Signs.* These signs are permitted in the GC-1 and GC-2 commercial districts solely for the purpose of public service to indicate the direction or location of churches and government facilities, provided the following requirements are met:

Only one (1) sign per location or use.

The maximum size of the sign shall be three (3) square feet.

The maximum height shall be seven (7) feet to the bottom of the sign.

The sign materials and color shall be determined by the city.

12. *Projecting Signs.* A projecting sign may be erected subject to the following:

a. *Projection Limitations:* The sign shall not extend more than four (4) feet beyond the surface of the portion of the building to which it is attached and shall not extend above the highest point of any portion of the roof or appurtenances such as mansards or parapets, nor shall a sign project above any eave line, rake edge or ridge or a gable roof.

b. *Surface Area Limitations:*

Building Size (stories)	Surface Area Limits
1	12 square feet
2	24 square feet
3	36 square feet
4	48 square feet
5	60 square feet
6 and over	100 square feet or any size with a ratio of height to width of at least 2:1

c. *Minimum Clearance:* There shall be a clearance of nine (9) feet between the ground and the bottom of the sign and no sign shall overhang vertical projection of the right-of-way.

13. *Reserved.*

14. *Roof Signs, Natural Attrition.* New roof signs are expressly prohibited and only those roof signs existing as of April 1, 1990, which meet the specified requirements of section 6-6, Wind pressure and dead load requirements, of Chapter 6, Signs and Advertising, of the Municipal Code of Ordinances [this Code] shall be permitted to remain beyond said date provided said signs do not exceed one (1) square foot in area for each linear foot of structure frontage; advertise only the name of the business and are inspected and certified annually as required by the City by April first, at the owner's expense, by a professional engineer practicing structural engineering and further providing that the respective

property owner forwards a copy of the engineering report to the city to the attention of the city manager. Upon failure to comply with the above, said prohibited sign shall be removed within ten (10) days of notice being received from the City at the owner's expense.

15. *Shopping Center Signs.* Four (4) or more businesses on one (1) lot or parcel.

One (1) monument style shopping center sign shall be allowed consistent with the requirements below:

Shopping Center Sign Standards

<u>Maximum Height (feet)</u>	<u>Maximum Width (feet)</u>	<u>Maximum Sign Area (square footage)</u>	<u>Minimum Setback From Right-of-Way (feet)</u>
<u>10</u>	<u>8</u>	<u>64</u>	<u>2</u>

a. ~~One (1) ground sign, maximum surface limited to one hundred (100) square feet per side for a total not exceeding two hundred (200) square feet. Maximum height shall be thirty (30) feet measured from the ground to the highest point of the sign. There shall be a clearance of nine (9) feet between the ground and the bottom of the sign. There shall be twenty (20) percent of sign area identifying the complex and the remaining eighty (80) percent shall be devoted to tenants.~~

b. Properties that exceed one hundred fifty (150) feet in front footage along the adjacent primary right-of-way, shall be permitted ~~two (2) an additional monument ground signs. One (1) The additional sign shall be for the anchor structure, its sign area not to exceed sixty (60) square feet per side and shall meet the monument sign requirements for general commercial districts contained in Paragraph 6 of this section. The anchor structure shall be located on the end of the complex, and shall be identified by the owner as being the anchor structure. One (1) sign shall not exceed one hundred (100) square feet per side to be used as a "tenant sign," with twenty (20) percent of the sign area identifying the complex and the remaining eighty (80) percent devoted to tenants.~~

c. ~~The distance between the monument signs on the same lot or parcel shall be a minimum of fifty (50) feet. The maximum height of each sign shall be thirty (30) feet measured from the ground to the highest point of the sign. There shall be a clearance of nine (9) feet between the ground and the bottom of each sign.~~

d. The monument sign support base must be a minimum of eighteen (18) inches in height. The sign cabinet shall be mounted on a decorative base. An additional two (2) feet in height may be permitted for architectural embellishments.

e. The sign structure shall complement the principal structure, with regards to materials, color, finish, and architectural features. This includes the application of materials consistent with the principal building to the base and along the sides and top of the sign face or cabinet.

f. The leading edge of the monument sign, including landscaping, shall not project vertically into the right-of-way and shall be located in landscaped areas.

g. The numeric street address of the property upon which the sign is located shall be identified on the top or bottom portion of the side and front of the sign. The street address numbers shall be between six (6) to twelve (12) inches in height.

h. Landscaping shall be installed around the sign base. The size of the landscape bed around the sign base shall be equal to the total area of the sign face and shall include shrubs or groundcover plants (excluding turf grass) that will not block the sign face or the numeric street address.

(1) The quantity of shrubs or groundcover plants shall be based on the following formula: Total area of the sign face (in square feet) × .45 = the number of shrubs or groundcover plants, rounded up to the nearest whole number.

(2) The shrubs and/or groundcover plants shall be a minimum size of one-gallon container and be spaced eighteen (18) inches on center.

(3) The landscape bed around the sign shall be clearly defined, contain at least a two-inch deep layer of mulch or other decorative landscape material, and create a seamless transition between the sign and ground.

(4) The placement and type of landscaping shall be shown/identified on the plan, sketch, or blueprint submitted with the sign permit.

(5) The Building Official may reduce or allow exceptions for signs located in areas without reasonable access to water for irrigation through the administrative variance process.

16. *Signs on the Atlantic Ocean Beach.* Any owner may erect one (1) nonprojecting sign on the face of any seawall, bulkhead or retaining wall for identification purposes only, limited to the name of the establishment and the street address. The letters shall not exceed thirty-two (32) inches in height. The numerals shall be a minimum of six (6) inches in height, not to exceed twelve (12) inches maximum height, and be of contrasting colors so as to be easily visible to oncoming emergency vehicles. Motels or hotels may incorporate their personal logos in the sign area subject to said allowable height limitation. Where a seawall is not available, numerals shall be visible, affixed to a posted sign, easily visible from the Atlantic Ocean Beach. Signs shall be limited to seawalls with no identification on the buildings themselves. Signs, with the exception of directional signs, shall not be permitted on buildings facing the Atlantic Ocean Beach.

17. *Wall Signs.* The permitted area of signs, unless otherwise specified herein, is dependent on structure frontage. Wall signs shall be permitted on the sides as well as the front of a structure. The total combined sign area shall not exceed one (1) square foot of sign area per lineal foot of the largest structure frontage. For the purpose of determining area, the total area is that within the smallest parallelogram, triangle, circle or semi-circle or combinations thereof which will completely enclose the outside perimeter of the overall signs, including the border, if any, but excluding supports and graphics. The sign shall not extend above the highest point of any portion of the roof or appurtenances such as mansards or parapets nor shall a sign project above any eave line, rake edge or ridge of a gable roof.

18. *Banner Signs.* Banner signs may be employed for special events within the city by a permit issued through the building and codes division of the department of community services. Only one (1) banner sign shall be placed at any location, lot or parcel at any

given time. Size, location, time limitation and type of event shall be permitted under the following conditions:

Banner signs may be permitted for promotional events within the city upon receipt of any approved banner permit issued by the City through the building and codes division of the department of community services. For banner sign purposes, promotional events are defined as follows: Speed Week, Bike Week, Biketoberfest, Spring Break, grand openings, going-out-of-business sales and similar city-preapproved occasions sanctioned by the city manager. Written proof will be required with application for local events with which the City desires to identify and with which the City is satisfied the banner sign will reflect highly upon the City and promote economic or tourism development. Only one (1) banner sign shall be placed at any location, lot or parcel at any given time. Size, location, time limitation, and type of event shall be permitted under the following conditions:

1. Banner signs shall be permitted only in GC1, GC2, T, GC-RD and TC-MUPUD districts.
2. Maximum sign area shall be thirty-two (32) square feet.
3. Banners shall not be located at ground level in any right-of-way. One (1) banner sign may be permitted to be displayed during promotional events. Such signs may carry business or product logos and generic messages commemorating the event and/or welcoming visitors. The sign shall not convey specific sales information, such as prices or "specials" or any other related information of this type or nature.
4. All banners shall be preapproved by the building and codes division. All temporary banners allowed under this subsection may be installed up to one (1) week prior to the event, and must be removed no later than forty-eight (48) hours following the event with a maximum time limit of thirty (30) days.

Banner signs shall not be permitted for more than one hundred twenty (120) days (or four (4) events) in any twelve-month period. Only one (1) thirty-day period allowed in any sixty (60) consecutive days.

5. The banner sign permit fee shall be specified in the current "Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the city clerk. In the event the city installs the banner, an additional fee for installation and removal shall be assessed as specified in the current "Daytona Beach Shores Land Development Code Schedule of Fees" which schedule is available at the office of the city clerk. Requests for banner signs spanning any right-of-way, or of a size larger than allowed above, or for a duration longer than that stated above shall require approval of the city manager. Such approval shall be predicated upon the banner sign request being of such nature that it would be advertising a city-wide function approved by the city council. Banner signs erected prior to a permit being obtained or not in accordance with the sketch or the criteria specified in this ordinance shall be a violation of this ordinance.

6. Condition L in section 6-9 shall also apply to banners located in the GC-RD and TC-MUPUD districts.

19. *City Franchise Signs.* A city franchise sign may be erected subject to the following requirements:

- A. The sign shall be designed and installed by the City-approved franchisee who has been approved in accordance with city council ordinances.
- B. The sign shall include the street name identification and a portion for commercial/public informational purposes.
- C. The sign shall not project into the D.O.T. right-of-way.
- D. The sign shall not project into the city's right-of-way more than five (5) feet, unless approved by the city manager.
- E. The sign shall not be located closer than nineteen (19) feet to the paved surface of the right-of-way, unless approved by the city manager.
- F. The commercial user must be (1) a business located in the City of Daytona Beach Shores having paid the required local business tax or (2) a business located outside the city boundaries and not otherwise competing with a City of Daytona Beach Shores business existing or established in the future.
- G. Signs bearing public information as designated by the city manager may be located anywhere within the city and may exclude the street name identifications.
- H. A minimum of nine (9) feet to the bottom of the sign is required with a maximum height of fifteen (15) feet.
- I. Fees associated with the franchise signs shall be specified in the current "Daytona Beach Shores Land Development Code, Schedule of Fees," which is available at the office of the city clerk.
- J. Electrical service installation and billing charges for usage shall be the franchisee's responsibility.
- K. The franchisee shall provide a sealed survey identifying the right-of-way boundary and the paved surface as a part of the application for a sign permit.
- L. Signs including a commercial portion shall be located only on named street intersections.
- M. A commercial user must as a part of the application for a sign permit provide the city with a signed agreement including the following information:
- i. The total sign area in use at the commercial user's business location based on the requirements of section 6-8, paragraph 6, ~~Ground Signs and/or Pole Signs~~.
 - ii. The commercial portion of the city franchise sign shall be included in the computation of the maximum allowable signage at the business location. The commercial user shall not display more than the maximum permitted signage under section 6-8, paragraph 6; ~~Ground Signs and/or Pole Signs~~. The commercial user must agree to reduce the signage displayed at the business location to an amount not exceeding the maximum permitted when (1) the business requests a permit for a new/replacement of a ground/pole sign, (2) the business requests a permit for reconditioning an existing ground/pole sign, (3) the business requests a change of copy permit for a ground/pole sign or (4) upon expiration of four (4) years from the date [of] the permit application, whichever shall occur first.
- N. The franchisee shall be responsible for making and providing the information required for a sign permit application.

Sec. 6-9. - District regulations.

No sign shall be allowed except as provided in this chapter. It is prohibited and unlawful to erect or maintain a sign in violation of the provisions of this Ordinance.

Classification	RSF-1	RSF-2	RMF-1	RMF-2	RMF-3	T	MX-D	GC-1	GC-2	RMF-RD	TOR-RD	GC-RD	TC-MUPUD
Political Signs	yes	yes	yes	yes	yes	yes	<u>no</u>	yes	yes	no	no	Condition H	no
Construction Signs	yes	yes	yes	yes	yes	yes	<u>yes</u>	yes	yes	Condition A	Condition A	Condition A	Condition A
Development Signs	no	no	yes	yes	yes	yes	<u>yes</u>	yes	yes	Condition A	Condition A	Condition A	Condition A
Future Improvement Signs	no	no	yes	yes	yes	yes	<u>yes</u>	yes	yes	Condition B	Condition B	Condition B	Condition B
Private Directional Signs	no	no	yes	yes	yes	yes	<u>yes</u>	yes	yes	Condition C	Condition C	Condition C	Condition C
Real Estate Signs	yes	yes	yes	yes	yes	yes	<u>yes</u>	<u>Yes Condition D</u>	<u>Yes Condition D</u>	Condition D	Condition D	Condition D	Condition D
Wall Signs	no	no	no	no	no	yes	<u>yes</u>	yes	yes	yes	yes	yes	yes
Ground Signs	no	no	no	no	no	yes		yes	yes	Condition J	Condition J	Condition J	Condition J
Projecting Signs	no	no	no	no	no	yes	<u>yes</u>	yes	yes	no	no	no	no
Roof Signs	no	no	no	no	no	no	<u>no</u>	no	no	no	no	no	no
Portable Signs	no	no	no	no	no	no	<u>yes</u>	yes	yes	no	no	no	no
Marquee Signs	no	no	yes	no	no	yes	<u>yes</u>	yes	yes	no	no	no	Condition I
Off-Site Signs	no	no	no	no	no	no	<u>no</u>	no	no	no	no	no	no
Public Information Off-Site Directional Signs	no	no	no	no	no	no	<u>yes</u>	yes	yes	yes	yes	yes	yes
Shopping Center Signs	no	no	no	no	no	no	<u>yes</u>	yes	yes	Condition K	Condition K	Condition K	Condition K
Identification Signs	no	no	yes	yes	yes	yes	<u>no</u>	no	no	no	no	no	no
Low Profile Signs	no	no	yes	yes	yes	yes		yes	yes	Condition J	Condition J	Condition J	Condition J
Wall Graphics Murals	no	no	no	no	no	yes	<u>no</u>	yes	yes	no	no	no	no
Outdoor Advertising Signs	no	no	no	no	no	no	<u>no</u>	no	no	no	no	no	no
Spectacular Signs	no	no	no	no	no	no	<u>no</u>	no	no	no	no	no	no
Subdivision Signs	yes	yes	no	yes	yes	no	<u>no</u>	no	no	no	no	no	no
Banner Signs/Flags, Festoons	no	no	no	no	no	yes	<u>yes</u>	yes	yes	no	Condition L	Condition L	Condition L
Window Signs							<u>Conditio n E</u>			no	no	Condition E	no
Vehicles Signs							<u>no</u>			no	no	Condition G	no
Animated Signs	no	no	no	no	no	no	<u>no</u>	no	no	no	no	no	no
Monument Sign	<u>no</u>	<u>no</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>	<u>yes</u>

Condition A. Sign will be allowed on issuance of a building permit and removed prior to final certificate of completion/occupancy.

Condition B. Sign will be allowed when city council approves a final development plan. Sign shall be removed at the issuance of a building permit or three hundred sixty-five (365) days from issuance.

Condition C. Sign shall not be located off-site and shall only contain the words "exit" and/or "entrance".

Condition D. Sign will be allowed on issuance of a building permit and removed prior to final certificate of completion/occupancy. However a real estate sign for sale or lease ~~may~~ shall be placed on the existing permanent sign for the development, business or parcel, providing it is placed within the advertising part of an approved ~~business freestanding~~ sign in a like manner, to be approved by the Building Official, but shall be limited to four (4) square feet in area.

Condition E. No Sign, letters, material, fabric or paper shall cover over fifteen (15) percent of any window in any building. Percentage shall be calculated by an imaginary box at the outer edge of writing.

Condition F. Sign will be allowed on issuance of a building permit and removed prior to final certificate of completion/occupancy.

Condition G. Vehicular signs or any vehicle with a sign or signs attached thereto or placed thereon are subject to the following conditions: The vehicle shall be parked within the confines of a building OR the vehicle shall be parked in an area designated on an approved site plan for the storage of commercial vehicles owned by the business operated at the site; the designated area shall not be located in the front or side yard setback; and in no case shall signage on a vehicle be used as a means of providing additional signage otherwise permitted by this Code, cause visual blight or a safety hazard. In addition, the vehicle shall be properly licensed, and maintained in an operable condition.

Condition H. Only one (1) sign per lot, per candidate. Sign shall only be permitted for sixty (60) days prior to an election/referendum.

Condition I. A sign with removable letters shall be allowed as an accessory structure to a movie theater.

~~*Condition J.* Sign area shall be no greater than one hundred (100) square feet per side. Sign height shall be no greater than twelve (12) feet. Signs shall not exceed ninety (90) degrees.~~

Condition K. Shopping center signs shall be monument ~~low profile~~ signs.

Condition L. Two (2) flags One (1) American flag and one (1) State of Florida flag shall be allowed with or without a pole not higher than fifteen (15) feet and not placed in the front yard setback. Flags, banners and festoons are allowed for a thirty-day period during special events pursuant to chapter 16¾ of the city's Code of Ordinances or during promotional events pursuant to subsection 6-8(18) of the city's Land Development Code. Flags, banners and festoons shall be approved by the city council sixty (60) days prior to the event.

Sec. 6-10. Variances Board of adjustments.

The City Council recognizes that physical and built conditions peculiar to a business premises can create problems relative to the requirements of this Ordinance. Consequently, it is the intent of the City Council to offer a expedited and fair means of addressing hardships that are created as a result of unique site conditions when applying the requirements of this Ordinance.

Sec. 6-10.1 Administrative Variances.

Sec. 6-10.1.1. Authority of the Building Official.

The Building Official is hereby authorized to grant administrative variances from the dimensional standards contained in this Ordinance where a determination of substantial hardship is made by the Building Official. Administrative variances are limited to setback, offset, spacing, height, landscaping and parking requirements contained in this Chapter and Chapter 14 of the Land Development Code that create conflict when applying the provisions of this Ordinance. However, the Building Official shall not grant any variance for (1) any sign exceeding 25 percent more than the square footage or height standards of this ordinance, (2) any sign standards elected under the flex option or (3) any sign prohibited by this chapter.

Sec. 6-10.1.2. Approval Standards.

The Building Official may grant a variance authorized by this Section if the variance requested is required by special or unique hardship because of:

- (a) Exceptional narrowness, shallowness , or shape of the premises on which the sign is located; or
- (b) Exceptional topographic conditions or physical features uniquely affecting the premises on which the sign is located; or
- (c) Exceptional conditions or features of the existing built environment uniquely affecting the premises on which the sign is located.

Sec. 6-10.1.3. Appeals.

The decision and findings of fact pursuant to this section may be appealed by any aggrieved party within thirty (30) days after rendition of the decision by the Building Official to the Board of Adjustments pursuant to Sec. 14-69.3 and Sec. 14-70 of this Land Development Code.

Sec. 6-10.1.4. Board of Adjustments

The board of adjustments, pursuant to the same powers and authority and subject to the same limitations set forth in this Code Article X of Municipal Ord. No. 77-5, may grant variances where a determination of substantial hardship is made by the board. However, the board shall not grant any variance for a sign (1) exceeding the square footage provisions of this chapter, (2) or sign feature elected under the flex option or ~~(2)~~ (3) prohibited by this chapter. Notwithstanding the aforementioned, the board may grant a variance, relating to monument signs, from the provisions of the square footage and height standards of this ordinance not exceeding twenty-five (25) percent more than the associated square footage or height standards contained in this Chapter.

Sec. 6-11. Prohibited signs.

1. No persons shall erect a sign on or over any public property or public right-of-way, including the Atlantic Ocean Beach except for legal franchises of the city and subsection 6-8(11.1), Public Information Off-Site Directional Signs.
2. No persons shall operate or park any vehicle for the purpose of display, sale or advertising on any public right-of-way.
3. Roof signs, except as expressly permitted by section 6-8, Permitted Signs, within Chapter 6, Signs and Advertising, of the Land Development Code of Ordinances, snipe signs, banners, pennants, inflatables and wind operated devices, sandwich signs, revolving signs, flashing signs and signs with moving or alternating lights, outdoor advertising signs, off-site signs, animated signs, and spectacular signs are ~~shall be~~ prohibited and unlawful. However, nothing contained herein shall prohibit a time and temperature sign with dimensions not exceeding twenty-five (25) square feet in area.

Sec. 6-12. Penalties.

Any person, whether as owner, lessee, principal agent, employee or otherwise, who violates or causes to be violated any provision of this Ordinance shall be subject to the penalties set forth in Section 1-8 of the City Code chapter or permits any such violation or fails to comply with any of the requirements hereunder shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period not to exceed sixty (60) days, or by both such fine and imprisonment. Each day upon which such violation shall continue shall constitute a separate offense hereunder. In addition to any other remedies, whether civil or criminal, the violation of this chapter or any of the regulations, restrictions and limitations promulgated under the provisions of this chapter may be restrained by injunction, including a mandatory injunction, and otherwise abated in any manner provided by law.

Sec. 6-13. Severability clause.

(a). Should any article, section, subsection, provision or clause of this chapter be declared by any court of competent jurisdiction to be unconstitutional or invalid for any reason

whatsoever, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part judicially determined to be invalid.

(b). Severability where less speech results.

Without diminishing or limiting in any way the declaration of any other severability set in this Ordinance, the *Land Development Code*, or any other pertinent code or ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise. The intent of this Ordinance is not to restrict constitutionally guaranteed speech in any way, but, is, instead, to lawfully regulate time, place and manner of signage.

(c). Severability of provisions pertaining to prohibited signs.

Without diminishing or limiting in any way the declaration of severability set forth above in this Ordinance, the *Land Development Code*, or any adopting ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance or any other law is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance that pertains to prohibited signs, including specifically those signs and sign-types prohibited and not allowed under this Ordinance. Furthermore, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word.

Sec. 6-14. Minimum requirements.

The regulations set forth in this chapter shall be considered to be minimum requirements for the purpose of promoting the general public health, safety and welfare of the people of the City of Daytona Beach Shores, Florida.

Sec. 6-15. Conflict with other laws and other legal documents.

Where other laws, ordinances or private restricted covenants in recorded deeds or any other legally binding agreements impose greater restrictions and limitations than those provided herein, such laws, ordinances, covenants or agreements shall control and regardless of whether such laws or documents have been passed or created prior to or subsequently to the effective date of this chapter.

Sec. 6-16. Fees.

Fees associated with the sign permits shall be specified in the current "Daytona Beach Shores Land Development Code, Schedule of Fees," which is available at the office of the City Clerk.

~~Sec. 6-16. Repeal of conflicting provisions.~~

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

Sec. 6-17. Discretion for deviation.

Signs for a special athletic, civic, charitable or promotional nature may be authorized by the city council. Such authorization shall be preceded by an application indicating the applicant's name, address, place of business, organization, need and period of time required.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by means of such administrative actions as may be deemed appropriate and necessary to include, but not be limited to, the adoption of administrative rules.

SECTION FOUR. SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the enforcement of codes, ordinances and land development regulations relating to signs are hereby ratified and affirmed.

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

SECTION SIX. CODIFICATION. The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections three, four, five and six shall not be codified.

SECTION SEVEN. EFFECTIVE DATE. This Ordinance shall become effective immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, 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 _____, 2012.

Adopted on second reading this _____ day of _____, 2012.