

ORDINANCE 2012-03

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO OUTDOOR DINING; AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE; AMENDING APPENDIX "G", CHAPTER 2 ENTITLED "DEFINITIONS;" AMENDING CHAPTER 14 ENTITLED "ZONING REGULATIONS," BY AMENDING SECTION 14-58 ENTITLED "SPECIAL EXCEPTIONS PERMITTED IN ALL DISTRICTS" TO CREATE A CONDITIONAL USE PERMIT PROCESS; AMENDING SECTION 14-60.3 ENTITLED "OUTSIDE ACTIVITIES AND USES;" PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, unique uses and combination of uses that are not permitted by right or special exception may contribute to the economic vitality of businesses and the City of Daytona Beach Shores if conditionally permitted; and

WHEREAS, outdoor dining is currently prohibited within the City limits of the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds it is in the best interest and welfare of the citizens and businesses of the City to enact this ordinance permitting and regulating outdoor dining in the City; and

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

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

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

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

SECTION ONE: Section 2-2, *Land Development Code*, Chapter 2, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “General Definitions,” is amended to read as follows:

Sec. 2-2. General Definitions

Conditional Use Permit: A permit issued by the City after City Council approval or administrative approval, as set forth in this Code, for a conditional use has been granted based on the conditions outlined in this Code.

Conventional Restaurant: A restaurant that is not solely providing a carry-out service and/or any restaurant that does not have a drive-thru facility.

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Small-Scale Comprehensive Plan Amendment – NOT initiated by the City							
Planning and Zoning Board Hearing		X	X				X
City Council First Reading		X	X				X
City Council Adoption Hearing		X	✓				X

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Small-Scale Comprehensive Plan Amendment – Initiated by City							
Planning and Zoning Board Hearing	(X)	(X)	(X)				X
City Council First Reading	X	X	(X)				X
City Council Adoption Hearing	(✓)	(X)	X				X

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Comprehensive Plan Amendment - NOT related to small-scale development							
Planning and Zoning Board Hearing			x				
City Council Transmittal Hearing				✓			
City Council Adoption Hearing					✓		

	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Action Requiring Notice							
Zoning Map Amendment – NOT initiated by the City							
Planning and Zoning Board Hearing		X					X
City Council First Reading		X					X
City Council Adoption Hearing		X	✓				X

	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Action Requiring Notice							
Zoning Map Amendment – Initiated by the City and involving less than 10 contiguous acres							
Planning and Zoning Board Hearing	(X)	(X)					
City Council First Reading	(X)	(X)					
City Council Adoption Hearing	(✓)	(X)					

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Zoning Map Amendment – Initiated by the City and involving 10 contiguous acres or more							
Planning and Zoning Board Hearing	X		X				
City Council First Reading	X			✓			
City Council Adoption Hearing	X				✓		

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Zoning Text Amendment – Changing the list of permitted, conditional or prohibited uses							
Planning and Zoning Board Hearing			(X)				
City Council First Reading				(✓)			
City Council Adoption Hearing					✓		

Action Requiring Notice	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Zoning Text Amendment – Other than changing the list of permitted, conditional or prohibited uses							
Planning and Zoning Board Hearing			(X)				
City Council First Reading			(X)				
City Council Adoption Hearing			✓				

	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Action Requiring Notice							
Special Exception							
Board of Adjustments Hearing		x	x				x
Conditional Use							
<u>Planning and Zoning Board Hearing</u>		x 	x 				x
<u>City Council Hearing</u>		x 	x 				x

	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Action Requiring Notice							
Variance							
Board of Adjustments Hearing		x					x

	Notice By Certified mail		Published Notice				Posted Notice
	Notice mailed at least 30 days prior to hearing to owners whose property may be changed	Notice mailed at least 30 days prior to hearing to owners of abutting property	Publication of notice in newspaper at least 10 days prior to hearing	Publication of notice in newspaper at least 7 days prior to hearing	Publication of notice in newspaper at least 5 days prior to hearing	Publication of notice at least once each week for 2 consecutive weeks	Placard posted on property at least 10 days prior to hearing
Action Requiring Notice							
Development Plan/Subdivision Plat Review							
Planning and Zoning Board Hearing			(X)				X
City Council Hearing			(X)				X
Note: X identifies a City requirement; ✓ identifies a state requirement.							

Outdoor dining: An outdoor area for the consumption of food and beverages located on the same site as and a part of an established conventional or carry out restaurant or retail establishment serving prepared food, providing tables, chairs or benches, and where patrons may consume food and beverages.

SECTION TWO: Section 14-58, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Special exceptions permitted in all districts,” is amended to read as follows:

Sec. 14-58. Special exceptions and Conditional uses

Sec. 14-58.1 Special exceptions permitted in all districts.

A. The following uses are permitted as special exceptions in all districts unless otherwise noted:

C. The following uses are permitted as special exceptions in the GC-1, GC-2 and GC-RD zoning districts as follows:

1. Internet cafes and similar establishments offering computer(s) and other devices with internet access or services for purchase or use on the premises.

a. The establishment shall not derive more than forty-nine (49) percent of its gross sales from the use of computers and/or sale of internet services or use, incidental to another bona fide business use. Such establishment shall provide the City Manager, or designee, with an accounting report and documents supporting same, prepared by a Florida licensed certified public accountant providing proof that the establishment derives no more than forty-nine (49) percent of its gross sales from the sale of computer use and/or internet services. Reports shall be provided to the City Manager within ten (10) days of the end of each quarter (each three-month period) of each year.

b. The proposed site shall front an arterial roadway.

c. The proposed site shall be at least one thousand (1,000) feet from any other such use. Such use shall not be located within the same plaza or center regardless of separation distances.

d. The City Council of Daytona Beach Shores may designate hours of operation by subsequent resolution.

e. Parking shall be paved and comply with the provision of section 14-46 and section 14-48 of this Code.

f. The special exception shall be limited to a period of one (1) year.

g. The special exception may be renewed annually by the City Council. The applicant shall provide a request for renewal to the City Manager at least sixty (60) days before the date of expiration. If a renewal is not requested pursuant to this subsection then the

special exception shall be terminated exactly one (1) year after the date of Council approval.

h. Pursuant to the authority of section 2-2 of this Code, due public notice shall be provided by the applicant.

D. Pain management clinics. In order to provide adequate protection to the community and establish and maintain the bona fide public purpose of each pain management clinic as a legitimate medical facility, pain management clinics as defined in section 2-2 of this Code, shall be allowed only upon a development order being approved granting a special exception in the GC-1, GC-2 and GC-RD zoning districts subject to the following:

1. A certificate of use, in accordance with section 14-61.1 of this Code, shall be obtained prior to the establishment of any pain management clinic.

2. A pain management clinic shall be limited to the hours of operation between 7:00 a.m. and 7:00 p.m., Monday through Saturday.

3. No pain management clinic shall be permitted to be located within one thousand five hundred (1,500) feet of another pain management clinic, measured from the nearest point of subject property lines in a straight line. Such use shall not be located within the same plaza or center regardless of separation distances. This separation requirement applies regardless of what land use or jurisdiction a pain management clinic is located.

4. The proposed site shall be at least one thousand five hundred (1,500) feet from the nearest house of worship, school, child care center and public park. The beach area adjacent to the Atlantic Ocean shall not be considered a public park for the purposes of these regulations. This separation requirement applies regardless of what land use or jurisdiction a house of worship, school, child care center or public park is located.

5. Notwithstanding section 14-60.2 and section 14-60.3 of this Code, it is prohibited and unlawful for a pain management clinic to have any outdoor seating areas, queues, or customer waiting areas. All activities of each pain management clinic including, but not limited to, sales, displays, preparation and storage, shall be conducted entirely within a completely enclosed building.

6. The proposed site shall front an arterial roadway as designated in the Daytona Beach Shores Comprehensive Plan.

7. Parking shall be paved and comply with the provisions of section 14-46 and section 14-48 of this Code.

8. The special exception may be approved for a limited period of time and such condition of use shall be incorporated into the development order relating to the approval.

9. Pursuant to the authority of section 2-2 of this Code, due public notice shall be provided by the applicant.

10. Pursuant to its authority derived from this Code, the Planning and Zoning Board is hereby assigned the duties as to the granting of special exemptions under this section and its recommendations shall be heard and in the course of final action on the application by the City Council.

Sec. 14-58.2. Conditional Uses.

1. In general. Conditional uses shall be generally limited to those uses or combination of uses which, because of their uniqueness, are not specifically identified as permitted uses, or special exception uses within any zoning district in this Code.

2. Application procedure and submission requirements. A fee established in the Schedule of Fees relating to this Code shall be paid and a written application on the prescribed form shall be made to the City in order to perfect an application for a conditional use permit. In addition, the applicant shall provide, at a minimum, the following information:

(a) A conceptual plan depicting buildings, parking, driveway and access locations, utility service points, proposed screening or buffering, outdoor lighting and signage, outdoor furniture and fixture exhibits and any other information pertinent to the specific requested use of the site; and

(b) A written statement specifically addressing the general requirements of the proposed use and stating why the application is asserted to meet the requirements of this Code and consistency with the goals, objectives and policies of the City's Comprehensive Plan.

3. Review and approval. The City Manager or designee shall review and administratively approve conditional use applications as specifically permitted by this Code. The City Council shall review and approve all other conditional use applications. Decisions of the City Manager are appealable to the City Council upon a written appeal being filed with the City Clerk within fifteen (15) days of the date of the City Manager's decision. Appeals to the City Council shall be de novo. Approvals shall be formalized by issuance of a development order. Denials shall be formalized by issuance of a denial development order in accordance with the provisions of Section 166.033, *Florida Statutes*, or its successor provision. The City Manager may delegate authority to issue administratively approved conditional use permits in which case the decision of the delegate is appealable to the City Manager upon a written appeal being filed with the City Clerk within fifteen (15) days of the date of the City Manager's delegatee's decision.

4. Notice and hearing procedures. The procedure for notice of conditional use requests shall be consistent with the conditional use Due Public Notice requirements set forth in Sec. 2-2 of this Code.

(a) Planning and Zoning Board action. The Planning and Zoning Board shall hold a public hearing to consider and make a recommendation to the City Council on conditional use applications to be heard by the City Council. The recommendation of the Planning and Zoning Board shall be forwarded to the City Council for consideration.

(b) City Council action. The City Council shall hold a public hearing to consider the application, recommendation from the Planning and Zoning Board and any additional evidence presented before taking action on a proposed conditional use. However, if the Planning and Zoning Board fails to make a recommendation within a reasonable period of time as determined exclusively in the discretion of the City Council, the City Council may take action on the conditional use without recommendation from the Planning and Zoning Board.

5. General requirements and conditions.

(a) Conditions and safeguards. In granting any conditional use the City may prescribe appropriate conditions and safeguards to ensure compliance with the requirements of this Code and to safeguard public health, safety and welfare as may be consistent with sound and generally accepted land use planning practices and principles. Such conditions may include conditions such as, but not limited to, time limits for the initiation and duration of the conditional use, specific minimum or maximum limits to normative Code requirements, or any other conditions reasonably related to the requirements and criteria of this Code and the safeguarding of the public health, safety and welfare as may be consistent with sound and generally accepted land use planning practices and principles.

(b) Review criteria. When reviewing an application for a conditional use, the City shall consider the following requirements and criteria:

(1) Traffic generation and access for the proposed use shall not adversely impact adjoining properties, businesses or general public safety;

(2) Off-street parking, loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties beyond those generally experienced in the zoning district from permitted uses;

(3) Required yards, screening or buffering, and landscaping shall be consistent with the zoning district in general and the specific needs of the abutting land uses resulting from the impacts of the proposed development;

(4) Architectural and signage treatments shall comply with the general provisions applicable to permitted uses in the zoning district and minimize impacts to abutting development; and

(5) The size, location or number of conditional uses in an area of the proposal shall be considered in order to limit the proliferation of conditional uses and in order to maintain the overall character of the zoning district as intended by the uses permitted by this Code.

6. Transfer or abandonment of a conditional use. Approved conditional uses shall be personal to the owner of the property. Therefore, ownership of a conditional use cannot be transferred to another party. The grant of a conditional use permit does not create a vested right in the use conditionally approved.

7. Violation of conditional use terms or conditions. Without limiting the generality of the provisions set forth in this Ordinance, it is prohibited and unlawful for any person to violate or to refuse or fail to comply with any term or condition of a conditional use.

8. An approval of a conditional use application which is not implemented within one (1) year of being approved shall lapse and be subject to a new application and approval process.

9. A conditional use that is abandoned for a period of six (6) months or more shall be conclusively deemed abandoned and shall be subject to a new application and approval process.

10. Permit Prerequisite: No application for a conditional use permit shall be processed by the City if the property owner owes to the City any outstanding fines, fees, taxes or other charges.

Sec. 14-58.2.1 Conditional Uses Permitted.

The following uses are permitted as conditional uses subject to the provisions of this Code.

Sec. 14-58.2.1.A. Outdoor Dining.

1. Outdoor Dining.

Outdoor dining may be allowed as a conditional use in all commercial, planned unit development and hotel/motel districts consistent with regulations of this section. Outdoor dining not associated with a conventional restaurant shall not serve alcoholic beverages.

2. Notice, review and approval.

(a) Administrative Approval: The City Manager shall have the power and authority to notice, review and administratively approve the following outdoor dining conditional use applications: (i) applications proposing six (6) tables or fewer, or, applications proposing twenty-five (25) seats or fewer; and (ii) all applications for an area facing the Atlantic Ocean in the hotel/motel zoning district, regardless of the number of tables or seats.

(b) City Council Approval: All outdoor dining applications not subject to administrative approval as set forth herein shall be noticed, reviewed and be subject to approval by the City Council pursuant to this code. Notwithstanding the threshold requirements for administrative approval contained herein, the following shall also be subject to approval by the City Council: (i) all outdoor dining proposed to be located in the vicinity of the rear yard of a commercial zoning district directly adjacent to and abutting a residential zoning district on the rear yard in question; (ii) all outdoor dining proposed to be located in the vicinity of the side yard of a commercial zoning district directly adjacent to and abutting a residential zoning district on the side yard in question; and (iii) all outdoor dining in commercial zoning districts proposed to be located on or over any building or structure.

(c) Time limitation and extensions: Outdoor dining conditional uses may be permitted for a maximum period of one (1) year. Outdoor dining conditional use permits may be renewed annually for a maximum period of one (1) year subject to approval from City Manager.

(d) Hours permitted: Outdoor dining may only be permitted and conducted between the hours of 7:00am and 10:00pm.

3. Submission Requirements.

In addition to the conditional use application submission requirements, the applicant for an outdoor dining conditional use permit shall submit a floor plan, building elevation, fire hydrants, setbacks, location of refuse containers, layout of all tables, chairs and other furniture, nearby utilities and pedestrian ingress and egress, a dimensioned sketch of the seating area, and photographs, drawings or manufacturers' brochures describing

specifications and the appearance of the proposed tables, chairs, umbrellas or other objects related to the outdoor dining.

4. Review Criteria.

(a) In commercial districts, outdoor dining may only be permitted where a restaurant or retail establishment serving prepared food generates over fifty (50) percent of its gross sales from the sale of food as determined by the City Manager. Establishments may be required by the City Manager to provide quarterly reports to the City Manager certifying the aforementioned. A registered Florida Certified Public Accountant shall provide the required certification in accordance with sound and generally accepted accounting practices and principles.

(b) All facilities proposing outdoor dining shall have been awarded a current and valid Business Tax Receipt and Certificate of Use Permit.

(c) Permanent improvements associated with outdoor dining shall not be located in required yards (setbacks). For the purposes of this section, a permanent improvement shall mean any structure, furniture, accessory or ground treatment that is anchored and/or permanently affixed on or to the ground.

(d) Outdoor dining shall not be located in required parking or driveway elements.

(e) Outdoor dining shall not impede or obstruct the flow of pedestrian traffic. In no case shall an unobstructed walkway or sidewalk be less than five (5) feet in width.

(f) Umbrellas shall maintain seven (7) feet of vertical clearance from ground level.

(g) Temporary stanchions with chains or ropes may be approved for the outdoor dining facility, the extent and nature of which shall be set out in the conditional use permit.

(h) No fencing, railings, plantings or other barriers may be installed or erected to delineate the outdoor seating area in the public right-of-way.

(i) Outdoor dining areas shall not occupy an area more than fifty (50) percent of the total area of the primary restaurant or food preparation establishment, unless otherwise approved by the City Council.

(j) Outdoor dining facilities shall not create a parking deficiency inconsistent with the required off-street parking requirements of this Code. Additional parking demand created by outdoor dining shall be provided consistent with Section 14-48.6(15) of this Code, providing that an outdoor dining area which is less than one hundred (100) square feet in any district is exempt from providing additional parking.

(k) With the exception of menu boards that are conditionally approved by the City, no additional signage, including but not limited to umbrellas and furniture with signage, are allowed in the outdoor dining area.

(l) With the exception of outdoor dining in the hotel/motel districts, food preparation and kitchen service equipment shall be located inside.

(m) All outdoor dining elements including, but not limited to, furniture and accessories, elements shall be of quality design, materials and workmanship, as determined by the City Manager, to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the urban environment. All elements shall be of significant and adequate weight to prevent easy toppling in significant winds as determined by the City Manager. All elements shall be of commercial grade.

(n) All outdoor dining elements including, but not limited to, furniture and accessories, shall be of uniform design and style.

(o) Outdoor dining areas shall not intrude upon designated components of egress such as exit discharge, exit discharge being defined as that portion of a means of egress between the termination of an exit and a public way.

(p) Outdoor dining furniture and accessories shall be located a minimum of five (5) feet from driveways and other vehicular use areas. Use separation devices may be required to ensure a safe outdoor dining experience.

(q) Lighting shall complement the existing building and outdoor dining design and shall not cause a glare to passing pedestrians or vehicles or residential districts. Seasonal lighting and decoration shall be approved by the Building Official. Lighting must be preapproved by the Volusia County Sea Turtle Lighting staff.

(r) All outdoor dining areas shall include adequate and proportional landscaping to enhance the patron experience. Existing landscaping may be used to satisfy this requirement as determined by the City Manager.

5. Operation of outdoor dining facility.

(a) Notwithstanding the abandonment provisions of this Ordinance, an outdoor dining establishment may temporarily terminate the operation of the outdoor dining on a seasonal basis without the outdoor dining conditional use permit being permanently terminated. During such time that the outdoor dining may not be in operation, all tables, chairs and accessories must be removed and stored inside. The City shall be noticed in writing by the property owner of such suspension of use.

(b) The property owner shall be responsible for maintaining the outdoor dining area in a clean and safe condition. All food and drink items, trash and litter shall be removed continuously throughout the establishment's hours of operation and immediately after customer leaves the premises. Public sidewalk trash containers shall not be used as a means of disposing of table waste generated by outdoor dining customers.

(d) The operation of an outdoor dining area shall not be conducted in such a way as to cause a public nuisance and the operation of such business shall not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets.

(e) Any change in the location of the permitted outdoor dining area shall require a new application and permitting.

(f) An outdoor dining facility shall only be used and operated in conjunction with, and under the same management and exclusive control of, a restaurant or food preparation facility located on the same or contiguous property as may be approved by the City.

(g) The outdoor dining area's hours of operation shall be no greater than operating hours of the principal restaurant or food preparation facility.

(h) Outdoor dining shall comply with all applicable local, State and Federal laws including, but not limited to, life safety codes and the *American with Disabilities Act*.

(i) An outdoor dining establishment shall temporarily terminate the operation of the outdoor dining during all severe weather warnings and events. During such time all tables, chairs and accessories not permanently installed must be removed and stored inside.

(j) Outdoor dining music, activities and noise shall conform to the noise regulations contained in the Daytona Beach Shores Code of Ordinances, Chapter 16, Article II.

(k) Feeding of wildlife shall be prohibited and unlawful.

(l) All outdoor dining furniture and accessories shall be maintained in good repair.

SECTION THREE: The City Council of the City of Daytona Beach Shores hereby amends Section 14-60.3, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Outside activities and uses,” as follows:

Sec. 14-60.3. - Outside activities and uses.

1. *Outside Activities and Uses Prohibited Generally.* Except as specifically provided otherwise all activities, storage and displays shall be conducted entirely within an enclosed structure in all districts of the City.

2. *Outside Activities and Uses Specifically Permitted.*

(a) Gift shop shell displays not greater than eighty (80) square feet.

(b) Retail displays at least one hundred (100) feet from any public right-of-way.

(c) Temporary promotional activities as provided in section 14-60.2.

(d) Sidewalk cafes in the TC-MUPUDW District pursuant to an approved development agreement.

(e) Outdoor dining pursuant to Sec. 14-58.2.1 of this Code.

(f) Garage sales and other customary accessory uses in the RSF-1 and RSF-2 zoning districts.

SECTION FOUR: ENFORCEMENT AND PENALTIES.

(a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.

(b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law.

(c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

SECTION FIVE: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the regulation of outdoor dining are hereby ratified and affirmed.

SECTION SIX: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Four, Five, Six, Seven, Eight and Nine shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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

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

SECTION NINE: EFFECTIVE DATE. This Ordinance shall take effect 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.