

**ORDINANCE 2013-10**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE; PROVIDING FOR STATUTORY DEVELOPMENT AGREEMENTS; IMPLEMENTING THE PROVISIONS OF THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH AT SECTIONS 163.3220 - 163.3243, FLORIDA STATUTES BY ADOPTING POLICIES, PROCESSES, PRACTICES AND PROCEDURES PERTAINING TO DEVELOPMENT AGREEMENTS; PROVIDING FOR NON-STATUTORY DEVELOPMENT AGREEMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION AND IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; 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**, development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project and, although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body through its general plan, and consistent with any applicable specific plan; and

**WHEREAS**, neither the applicant nor the City, the local government with land use regulatory authority over lands located within the City, is required to enter into a development agreement and, when entered, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the City’s ultimate approval, but while a development agreement must advance the City’s local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements; and

**WHEREAS**, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to

the traditional development approval process which, in practice, it is commonly used in conjunction with; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds it is in the best interest and welfare of the citizens of the City to enact this Ordinance; 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 of Daytona Beach Shores*.

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

**SECTION ONE: FINDINGS.** A new Section of the *Land Development Code*, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, is created to read as follows:

(a). Pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction.

(b). The lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning.

(c). Development agreements entered into pursuant to the *Florida Local Government Development Agreement Act*, strengthen the public planning process, encourage sound capital improvement, planning and financing; assist in assuring that there are adequate capital facilities to support development; encourage private participation in comprehensive planning; and reduce the economic cost of a development by providing assurances to a developer that, upon receipt of a development permit, the developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement.

(d). The provisions of this Ordinance, in their interpretation and application, are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this Ordinance. Nothing in this Ordinance shall be interpreted as characterizing a development agreement as anything other than a discretionary, bilateral contract between the City and the owner with consideration given by both

parties to the contract. It is the goal of the City, in this regard, for the City to engage in creative planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected.

(e). The City Council of the City of Daytona Beach Shores has determined that it is in the best interest of achieving and maintaining the quality of life in the City to provide appropriate procedures and requirements for the adoption of development agreements through the provisions of land development regulations relating to development agreements.

(f). The City's Planning and Zoning Board, sitting as the City's local planning agency has reviewed the proposed ordinance and has found that it is consistent with the City's Comprehensive Plan and in the public interest.

(g). Notwithstanding the provisions of this Ordinance, non-statutory development agreements may be entered into under the authority of the home rule powers of the City under Article VIII, Section 2 of the *Constitution of the State of Florida*, Chapter 166, *Florida Statutes*, and other controlling law.

## **SECTION TWO: AUTHORIZATION TO ENTER INTO DEVELOPMENT AGREEMENTS; DEFINITIONS.**

(a). The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or to be annexed to the City limits of the City of Daytona Beach Shores, as is authorized in Sections 163.3220 through 163.3243, *Florida Statutes*, as it may be amended from time-to-time. Deviations from the provisions of the City's land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

(b). This Ordinance does not preclude the City from approving non-statutory development agreements or issue or enter development orders and development permits of whatsoever type or nature and to issue denials in accordance with Section 166.033, *Florida Statutes*, and other controlling law.

(c). The definitions set forth in Section 163.3221, *Florida Statutes*, shall be applicable to the interpretation, application and implementation of this Ordinance.

## **SECTION THREE: APPLICABILITY.**

A property owner desiring to enter into a development agreement with the City shall make a written application for such development agreement to the City Manager, or

designee. Such written request shall identify the lands which will be subject to the development agreement and shall identify all legal and equitable owners having any interest in such property. Such ownership interest shall be certified by a title company or an attorney licensed to practice law in the State of Florida. In the event that any partnerships, joint ventures or other entities, other than individuals, own a legal or equitable interest in the subject property, all principals and other persons with interest in such partnerships or joint ventures shall be revealed. In the event that any corporation owns a legal or equitable interest in the subject property, the officers and directors and any shareholder owning more than ten percent (10%) of the interest in the corporation shall be revealed.

#### **SECTION FOUR: DEVELOPMENT AGREEMENT CONTENT.**

(a). Any development agreement approved under the provisions of this Ordinance shall contain the following requirements:

(1). A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

(2). The duration of the development agreement, which duration shall not exceed thirty (30) years, but which may be extended by mutual consent of the City and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said development agreement.

(3). The development uses permitted on the land, including population densities, building intensities and building heights.

(4). All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

(5). A description of the public facilities that will service the development including the designation of the entity that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required hereunder.

(6). The applicant may be required to provide a performance bond, letter of credit, or similar instrument, to be deposited with the City to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any site development or building permits or other development permissions. In the event that the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

(7). A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

(8). In the event that land is to be conveyed to the City in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

(9). A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include, but not be limited to, the following:

(A). Any required Comprehensive Plan amendments or changes in land use designations or changes in zoning classifications/districts assigned to property.

(B). Any required submissions to or approvals from Volusia County; the State of Florida, Departments of Economic Opportunity (DEO), Environmental Protection (DEP), Transportation (DOT), or such other department or agency of the State as may be applicable; the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other federal departments or agencies with competent jurisdiction over any aspect of the proposed development.

(10). A specific finding in the development agreement that the development permitted or proposed is consistent with the City's Comprehensive Plan and with the general purpose and intent of the land development regulations of the City. However, if amendments are required to the Comprehensive Plan or land development regulations, such amendments shall be specifically identified in the development agreement and the agreement may be contingent upon those amendments being made and approved by the appropriate governmental agencies.

(11). A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

(12). A finding that the terms and conditions of the development agreement benefit the public interest.

(13). A description of any deviations that have been granted with regard to the provisions of the City's land development regulations.

(14). A description of any vested rights in the property which is the subject of the development agreement which have been recognized and affirmed by the City.

(15). Any other pertinent information that may be found necessary and required by the City.

**SECTION FIVE: DEVELOPMENT AGREEMENT REVIEW; PROCESS AND PROCEDURE; ACTION BY CITY.**

(a). An applicant for approval of a development agreement shall submit an application subject to such administrative requirements as may be adopted by the City Manager, or designee, as well as the fee established by the City Council. No application shall be deemed accepted unless it is complete.

(b). Upon receipt of a proposed development agreement, City staff shall review the proposal and develop proposed findings, in writing, respecting recommendations of approval, approval with conditions, modifications to the proposal or denial of the proposal. City staff shall provide to the City Council written recommended findings on the consistency of the application with the City's Comprehensive Plan and the purpose and intent of the City's land development regulations and recommend any conditions, terms, restrictions or other requirements determined to be necessary for the public health, safety, or welfare of the citizens of the City.

(c). Upon receipt of the written recommendation of the City staff and any modifications to the application submitted by the applicant, the City staff shall refer the development agreement application to and agendaize the application for two (2) public hearings before the City Council.

(d). The City Council shall hold two (2) public hearings on an application for a development agreement and consider the recommendations of the City staff. The City Council shall take action on the proposed development agreement at its public hearing.

(e). At the City Council's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within any specific period of time.

(f). The City Council may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of City residents and property owners.

(g). In the event that development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms, shall not vest any development rights in the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance entitling the applicant or property owner to a continuation of the development agreement.

**SECTION SIX: NOTICING REQUIREMENTS.**

- (a). Notice of intent to consider a development agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Volusia County.
- (b). Notice of intent to hear a development agreement shall also be mailed to all affected property owners within two hundred feet (200') of the subject property approximately fifteen (15) days before the first public hearing in a manner which is deemed appropriate and effective by the City.
- (c). The day, time and place at which the second public hearing will be held shall be announced at the first public hearing.
- (d). The notice shall specify the location of the land subject to the development agreement, the development uses proposed on the property, the proposed population densities, and the proposed building intensities and height and shall specify a place where a copy of the proposed agreement can be obtained for review and copying.

**SECTION SEVEN: DURATION OF DEVELOPMENT AGREEMENT.**

- (a). The duration of the development agreement shall not exceed thirty (30) years. The agreement may be extended by mutual consent of the City Council and the developer, subject to a public hearing.
- (b). Burdens of the development agreement shall be binding upon, and the benefits of the development agreement shall inure to, all successors in interest to the parties to the development agreement.

**SECTION EIGHT: RECORDING OF DEVELOPMENT AGREEMENT; EFFECTIVE DATE OF DEVELOPMENT AGREEMENT; TRANSFERS.**

- (a). Within fourteen (14) days after the City enters into a development agreement, the City Clerk shall record the agreement with the Clerk of the Circuit Court of Volusia County.
- (b). A development agreement shall become effective only after it is recorded.
- (c). The burdens of the development agreement shall be binding upon, and the benefits of the agreements shall inure to, all successors in interest to the parties of the agreement.
- (d). A development agreement is transferable. However, so long as the land or structure or any portion thereof covered under the development agreement continues to be used for the purposes for which it was issued, then no person (including successors

and assigns of the person(s) or entity(ies) who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of the development agreement. The provisions of a development agreement run with and burden the real property to which it relates until release or amended in accordance with formal action of the City.

**SECTION NINE: AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT.**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest; provided, however, that a substantial modification of a development agreement shall, in the City's sole discretion, require approval by the City Council in accordance with the procedures set forth in this Ordinance.

**SECTION TEN: MODIFICATION/REVOCATION OF DEVELOPMENT AGREEMENT.**

(a). A substantial modification of a development agreement shall, in the City's sole discretion, require approval by the City Council in accordance with the procedures set forth in this Ordinance.

(b). If State or Federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms of a development agreement, the development agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws.

**SECTION ELEVEN: PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.**

(a). The City shall review land subject to a development agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the development agreement.

(b). If the City Council finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the City Council.

**SECTION TWELVE: 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.

**SECTION THIRTEEN: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City are hereby ratified and affirmed.

**SECTION FOURTEEN: CODIFICATION AND IMPLEMENTATION.**

(a). 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 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 Two, Three, Four, Five, Six and Seven shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

(b). The City Manager is hereby authorized to adopt rules that are administratively necessary for the implementation of this Ordinance.

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

**SECTION SIXTEEN: 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 SEVENTEEN: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013