

**ORDINANCE NO. 2014-02 (REVISED 5/4/14)**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA REQUIRING THE MAINTENANCE OF ABANDONED, VACANT OR MULTI-STORY BUILDINGS AND STRUCTURES; PROVIDING FOR DEFINITIONS, PROCEDURES, STANDARDS AND REQUIREMENTS RELATIVE TO THE PROTECTION OF PROPERTIES AND THE PREVENTION OF PUBLIC NUISANCES AND DANGEROUS CIRCUMSTANCES; PROVIDING FOR REGISTRATION; AMENDING THE MUNICIPAL CODE OF ORDINANCES, *LAND DEVELOPMENT CODE*; AMENDING APPENDIX “G,” CHAPTER 14, ENTITLED “ZONING REGULATIONS;” AMENDING SECTION 14-52.9.(D). ENTITLED “MINIMUM MAINTENANCE STANDARDS” BY ELIMINATING THE PROVISION ALLOWING WINDOWS TO REMAIN BOARDED FOR A PERIOD OF SIX (6) MONTHS; AMENDING SECTION 19-2 OF THE *CITY CODE* TO PROVIDE FOR ADDITIONAL POTENTIAL MEANS OF COLLECTION; AMENDING SECTION 19-4 OF THE *CITY CODE* BY ADDING NEGLECTED VACANT OR ABANDONED PROPERTIES TO THE LIST OF CIRCUMSTANCES WHICH ARE DECLARED PUBLIC NUISANCES; PROVIDING FOR ACTIONS OF THE CITY MANAGER; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR THE TAKING OF ADMINISTRATIVE ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** the presence of vacant, neglected, or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area; and

**WHEREAS,** the responsibilities of maintaining vacant or abandoned buildings are with the owners, lenders, trustees, or others with property interests in the vacant or abandoned buildings; and

**WHEREAS**, certain owners, lenders, trustees, or others with property interests in the vacant or abandoned buildings have failed to adequately maintain and secure these buildings in the City of Daytona Beach Shores; and

**WHEREAS**, the City has an interest to eliminate public nuisances and to protect its neighborhoods from decline and devaluation; and

**WHEREAS**, it is the intent and purpose of the City Council of the City of Daytona Beach Shores to preserve, promote the health, safety and general welfare of the citizens of the City by enacting an ordinance addressing the problems concerning the dangers, blight and unsafe conditions as may be caused by vacant dangerous or abandoned buildings as set forth herein; and

**WHEREAS**, tropical storms, such as hurricanes, are not natural disasters, they are natural events which sometimes lead to manmade disasters and need not lead to disasters which may be preventable by human actions which the public demands in order to protect communities against hazardous events; and

**WHEREAS**, disaster mitigation must be made an essential ingredient in the actions of the City and ensuring compliance with laws, rules, regulations, codes and ordinances and the prohibition of public nuisance conditions will assist in that mitigation; and

**WHEREAS**, abandoned and vacated buildings and structures, particularly those which have been damaged in past events, represent a particularly dangerous type of public nuisance and threat to the public health safety and welfare; and

**WHEREAS**, the genesis of this Ordinance occurred many years ago in the context of ensuring that abandoned buildings were appropriately secured; and

**WHEREAS**, the provisions of this Ordinance apply to many properties within the City of Daytona Beach Shores and are particularly important as another hurricane season approaches; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores looks to property owners to act responsibly and expeditiously to ensure that the public health, safety and welfare is protected and in such a manner as their properties do not constitute dangerous circumstances and situations such as, but not limited, to attractive nuisances and properties that draw vagrants, squatters and criminal activities; 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; provided, however, that, when a section adds all new text, then no legislative coding will be present and, further; provided, however, that the failure of any legislative scoring to occur shall not affect the provisions of this Ordinance or impact the validity of the enactment of this Ordinance.

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

**SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.** A new section of the *Code of Ordinances of the City of Daytona Beach Shores* is created to read as follows and the Code codifier is authorized to incorporate the provisions of this Section as deemed appropriate into Section 19-1 of the *Code of Ordinances of the City of Daytona Beach Shores*<sup>1</sup>:

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<sup>1</sup> Section 19-1 of the *Code of Ordinances of the City of Daytona Beach Shores* currently reads as follows:

Sec. 19-1. Legislative findings and intent.

(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 has complied with all requirements and procedures of controlling Florida law.

(c) Although not a land development regulation, the provisions of this chapter are consistent with the goals, objectives, and policies of the comprehensive plan of the city and other controlling law.

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

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

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

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

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(d) The intent of the city council acting as the governing body of the city in adopting this chapter is to prohibit broadly the creation or maintenance of public nuisances within the jurisdictional limits of the city. The city council desires to maintain the high quality of life for the citizens of the city and to maintain a high quality environment for residential, business and commercial activities. The city council recognizes that the creation and maintenance of public nuisances within the city limits detracts from the high quality of life available to the citizens of the city and discourages investment within the city.

(e) Additionally, it is the intent of the city council to ensure that, in such occasions that the city uses its forces, resources, and personnel, or otherwise incurs expense in the abatement of nuisances, that the property owner of the benefitted property reimburses the city for such efforts. The taxpayers of the city should not be providing services to property owners that should rightfully be accomplished by property owners who are responsible for the upkeep and maintenance of their properties, as same is neither fair nor equitable for said taxpayers.

Ordinance is to provide standards for maintaining vacant and abandoned buildings and to establish a monitoring program for said buildings.

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

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

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

**SECTION TWO. REGULATION OF VACANT OR ABANDONED BUILDINGS.** A new section or sections of the *City Code of the City of Daytona Beach Shores, Florida* is/are created to read as follows:

(a). **Definitions.** The following definitions shall have the following meanings in this Ordinance unless the context of usage clearly demands otherwise:

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

occupying or will occupy the building or structure, or that the owner has relinquished all right, title, claim and possession of the property and the building or structure.

(2). *Deed In-Lieu of Foreclosure/Sale* means a recorded document that transfers ownership of real property from the mortgagor to the mortgagee upon consent of the mortgagee.

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

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

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

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

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

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

(9). *Multi-story building* means any building with more than two (2) stories.

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

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

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

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

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

**(b). Compliance Required.**

(1). Every owner of real property shall maintain the property in accordance with the requirements and provisions of this Ordinance.

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

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

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

**(c). Public Nuisance.**

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

(2). It is prohibited and unlawful for any building or structure to be vacant for more than sixty (60) calendar days unless one (1) of the following conditions exist:

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

(B). The building or structure, including the real property on which it is located, does not otherwise constitute a public nuisance and is not reasonably likely to become a public nuisance because the real property is actively maintained and monitored. *Actively maintained and monitored* means that the condition of the real property complies with the minimum standards set forth in this Ordinance and any and all other applicable

provisions of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) or which is otherwise being maintained in accordance with the terms and conditions of an executed and unexpired maintenance or development agreement between the City and the property owner.

(3). Unless a building or structure meets one of the conditions set forth in Subsection (2) (c) (2) (A) and (B), the owner of any vacant or abandoned building or structure, whether boarded by voluntary action of the owner or as a result of enforcement activity by City, shall rehabilitate the boarded building or structure for occupancy, in accordance with all applicable code and regulations, within sixty (60) calendar days after the building is boarded. *Rehabilitation* means taking corrective action to meet the minimum standards set forth in this Ordinance and complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

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

**(d). Structural And Building Standards.**

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

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

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

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

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

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

**(e). Fire Safety.**

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

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

(B). Is maintained in a manner where the totality of the property is free of all vegetation, weeds, dry bush, garbage, trash, debris, appliances, building materials,

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<sup>2</sup> The ASCE was founded in 1852 and represents more than 140,000 members of the civil engineering profession worldwide and is America's oldest national engineering society. One goal of the ASCE is to advance civil engineering and serve the public good by, among other things, publishing materials that can be used as guiding materials in a wide array of areas relating to civil engineering.

rubbish, accumulation of newspapers, circulars, flyers, notices, except those required by law, which may constitute a safety or fire hazard.

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

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

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

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

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

**(f). Security Standards.**

(1). All Vacant or Abandoned Property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:

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

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

(C). Doors and service openings with thresholds located ten (10) feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.

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

(E). There shall be at least one (1) operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

(F). All locks shall be kept locked. When a door cannot be made operable and is not visible from any public right-of-way, including the beach, or neighboring property,

a door shall be constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as required in this Ordinance.

(G). There shall be a sign installed that is no less than 18” x 24” in size and no greater than 30” x 30” in size posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information: (i) name and twenty-four (24) hour contact telephone number and address of the owner, responsible party, or property management company; and (ii) the statement that “THIS PROPERTY MANAGED BY-----” with the appropriate name inserted and “TO REPORT PROBLEMS OR CONCERNS CALL -----” with the twenty-four (24) hour telephone number listed. The sign shall be constructed and printed with weather resistant materials and shall be removed when the building is no longer vacant.

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

**(g). Debris Removal.**

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

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

**(h). Appearance.**

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

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

(B). Any demolition, construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the director, Building Official, or their designee.

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

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

(F). All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris, unless the pools, spas, or other areas are drained and kept dry. All Properties with pools, spas, or other areas of standing water must meet the minimum fencing requirements as set forth in the

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

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

**(i). Additional Responsibilities Relating To Multi-Story Buildings Or Structures.**

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

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

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

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

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

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

**(j). Regulation Of Dangerous Buildings.**

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

(A). Any door, aisle, passageway, stairway or other means of exit does not conform to the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(B). Any portion of the building or structure has been damaged by fire, storm, wind, flood, or by any other cause so that its structural strength or stability is appreciably

less than it was before such damage and does not meet the minimum requirements of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) for a new building or structure, purpose or location.

(C). Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.

(D). Any portion of the building or structure has settled to such an extent that its walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(E). The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.

(F). The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.

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

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

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

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

(K). Upon request by the City, a property owner shall provide the City with copies of insurance policies relating to property which is the subject of this Ordinance.

(1).(a). Whenever the City Manager, or designee, determines that the whole or any part of any building or structure is a dangerous building or otherwise abandoned, the City Manager, or designee, shall issue a notice that the building or structure is dangerous or abandoned. Such notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the most recent Volusia County Property Appraiser records, by certified mail return receipt requested or personal service. The notice shall specify the determination made by the appropriate City official and the action that will be or can be taken by the City in order to remediate the conditions set forth in the notice. Any persons receiving a copy of the notice shall have the right to appeal the determination to a hearing officer appointed by the City Council as provided

for and governed by Section 2-28 of the *City Code* and request a hearing within thirty (30) days after receiving a copy of the Notice. All costs and fees related to the hearing shall be paid by the party requesting the hearing as established by resolution adopted by the City Council. The hearing officer shall hear all arguments made relating to whether the building or structure is a dangerous building or abandoned. The person to whom the notice is directed shall have the opportunity to show cause why the hearing officer should not order appropriate remediation of the dangerous conditions or order the building or structure to be demolished or otherwise made safe, or properly maintained. The hearing officer shall take testimony of the City staff or any other person requested by the City staff, the owner of the property or any other person requested by the owner, and any interested party as determined by the hearing officer. The hearing officer shall render its final administrative decision as to what action can be taken to order the building or structure to be demolished, otherwise made safe, or properly maintained. The decision made by the hearing officer shall be final and subject only to judicial review by a Court of competent jurisdiction in which case the decision of the hearing officer shall be stayed pending a judicial determination on the matter. If it is determined by the hearing officer that the building or structure should be demolished or otherwise made safe or properly maintained, the hearing officer shall so order, fixing a time within which the owner or party in interest must comply with the order. The order may require the owner, agent, or person occupying the property to demolish or bring the building and surrounding property into compliance with the terms and conditions of the order and all applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). If the owner or party in interest fails to appear at

the properly scheduled hearing officer hearing, the hearing officer may proceed with the hearing and make all findings it deems necessary to bring the property, buildings and structures into compliance with the terms of applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the findings and determinations of the hearing officer at the hearing shall be served on the owner or party of interest in the manner prescribed in this Ordinance for notices. In the event that the owner or party in interest does not comply with the decision of the hearing officer, the City Council may in its discretion, contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure or to otherwise bring the building, structure or premises into compliance with the hearing officer's decision. The costs of the demolition, or making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the City Council to bring the property into conformance with this Ordinance shall be reimbursed to the City by the owner or party in interest whose name the property appears. Costs include, but are not limited to, actual costs incurred in bringing the property into compliance with the hearing officer's decision as well as administration fees and actual attorney fees and court costs. The costs of the City may be assessed by the City as a special assessment, with any and all liens arising as a result thereof, in accordance with the provisions of controlling law.

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

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

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

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

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

(5). Fire safety management and monitoring shall include, but not be limited to, the prohibition of storage of flammable liquids or materials on the property except for

certain expressly provided conditions agreed upon by the City. All other fuel or flammable liquid supplies not expressly authorized by the City to be present on the property shall be removed from the property including, but not limited to, debris that could be flammable, combustible materials of every nature and solid waste such as garbage.

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

**(k). Registration; Duties And Responsibilities Relating To Registration.**

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

(2). The registration must be accomplished by all owners of property that is vacant or abandoned within thirty (30) days of the effective date of this Ordinance.

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

(A). The address of the vacant or abandoned building or structure.

(B). The Property Appraiser Tax Parcel Identification Number of the real property where the vacant or abandoned building or structure is located.

(C). The name, address, and telephone number of the owner. If a notice of default has been issued, the name, address, and phone number of the mortgagee, by whatever name, shall be included. In the case of a corporation or out of area mortgagee, the local property management company or agent responsible for the security, maintenance, and monitoring of the property shall be included.

(D). The date the building or structure became vacant.

(E). Any change in the information provided pursuant to this Section including, but not limited to, a change in ownership, shall be filed with the director within fifteen (15) days of the change.

(4). The owner of any vacant or abandoned building or structure which is subject to the registration requirements of this Ordinance shall designate a responsible agent for the building or structure. Any owner who lives within sixty (60) miles of the vacant or abandoned building or structure may designate himself, herself or itself as the responsible agent.

(5). The owner of any vacant or abandoned building or structure who lives more than sixty (60) miles from the building or structure shall name a responsible agent who lives within or whose place of business is within sixty (60) miles from the building or structure. In the event an owner is a corporation, association, or other type of entity, the owner shall either have its principal place of business within the City or may designate a responsible agent who has its principal place of business within the City or lives within sixty (60) miles from the building or structure.

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

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

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

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

- (A). The date and time of the inspection;
- (B). The name and signature of the person performing the inspection;
- (C). A notation of any problems or violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense);

(D). A detailed description of any corrective action performed to address any violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the log shall be provided to the City upon request of the director, or designee.

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

**(I). Fees.**

(1). The Owner of a vacant or abandoned building or structure subject to registration shall pay a Vacant or Abandoned Building Monitoring Program annual registration fee as set forth in a resolution adopted by the City Council. Until such fee is

adopted by resolution, it shall be in the amount of \$25.00 per quarter of a year based upon a calendar year commencing on April 1, 2014.

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

**SECTION THREE: AMENDMENT TO SECTION 14-52.9, LAND DEVELOPMENT CODE.** Section 14-52.9. (D).4. *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Minimum maintenance standards” is hereby amended to read as follows:

**Section 14-52.9. Maintenance of Properties.**

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D. Minimum maintenance standards.

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4. Broken or missing windows shall be repaired, replaced, or properly abandoned.

All windows must fit tightly and have sashes of proper size and design. Abandonment of window openings shall be accomplished by using the same size material as the adjacent surface. ~~The boarding up of windows, as a result of fire or other reasons, is allowed to persist for up to six (6) months.~~

**SECTION FOUR. AMENDMENT TO SECTION 19-2 AND 19-4 OF THE CITY CODE RELATING TO THE PROHIBITION OF NUISANCES AND SPECIAL ASSESSMENTS.** Sections 19-2 and 19-4 of the *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Special assessment of costs relating to activities by the city to abate nuisances on real property” and “Prohibition of public nuisances” are amended to read as follows:

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**Sec. 19-2. Special assessment of costs relating to activities by the city to abate nuisances on real property.**

(a) A special assessment district is hereby established within the city limits to provide that special assessments may be assessed against real property that is maintained by the city under the provisions of the codes and ordinances of the city if the owner of real

property fails to maintain real property as required in this Code. Such activities for which assessments will relate include, but are not limited to, lot clearing and nuisance abatement.

(b) If real property is secured by locks or otherwise, the city shall have the authority to enter said property for purposes of maintaining the property and any additional costs incurred by the city in gaining access to the property or in re-securing the real property after property maintenance or nuisance abatement activities shall be considered assessable expenses of providing maintenance.

(c) Prior to or upon completion of the property maintenance or nuisance abatement activities by the city, the city shall mail an invoice to the real property owner requesting payment to the city for the estimated or actual costs of the completed maintenance or nuisance abatement in addition to administrative charges and fees in effect at the time of the mailing of the invoice. The real property owner shall pay the amount of the invoiced charges.

(d) If not paid, a notice of municipal special assessment lien document relating specifically to the property shall be recorded in the official records (land records) of the county.

(e) If the real property owner fails to pay the charges, the city shall cause a resolution to be prepared designating the name and address of the owner, a description of the real property, and the charges to be assessed against the real property. The resolution shall be presented to the city council by the city manager and, upon approval of the resolution by the city council, the costs stated in the resolution shall be and constitute a municipal special assessment against the real property and shall be and remain a lien against the real

property with priority over all other liens, save and except taxes. The assessment shall be payable at the time and in the manner as stated in such resolution.

(f) Upon completion of the maintenance or nuisance abatement activities and the approval of the special assessment resolution by the city council, the city manager shall cause to be published a notice directed to the property owners of the real property benefited by the city's maintenance or nuisance abatement activities which notice designates a time and place where complaints will be heard with reference to such special assessments and when such special assessments will be finally approved and confirmed by the city council. A copy of such notice shall be served upon such real property owners affected thereby at the owner's last known address as same appear on the records of the county property appraiser.

(g) At the time and place designated in the notice provided in subsection (f), the city council shall meet as an equalizing board to hear and consider any and all complaints as to such special assessments and shall adjust and equalize the special assessments, and when so equalized and approved, such special assessments shall stand confirmed and be and remain legal, valid and binding liens upon the real property against which such special assessments are made until paid. If a modification of a special assessment occurs, a revised resolution shall be recorded detailing such modification.

(h). The City Manager may negotiate agreements with the Property Appraiser and the Volusia County Revenue Division in order to arrange collection of the special assessments by other lawful means which agreements shall be subject to approval by the City Council.

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**Sec. 19-4. Prohibition of public nuisances.**

(a) A public nuisance in the city is hereby declared to be the commission of any act by any person, or the keeping, maintaining, propagation, existence or permitting of anything by any person, which presents a threat to the public health, safety and welfare of any person, or by which or through which, directly or indirectly, disease may be caused or the environment of any person rendered unclean or unwholesome by act of another or others including, but not limited to, allowing stagnant water to accumulate in swimming pools or other containment devices as determined by the code enforcement officer or his or her designee. All public nuisances are prohibited and unlawful and it is prohibited and unlawful for any person to create, establish, operate, engage in, permit, maintain, further or otherwise cause a public nuisance to exist.

(b) It is further declared, without limiting in anyway the generality of subsection (a) above to be a public nuisance for the owner or occupant of any property, establish, operate, engage in, permit, maintain, further or otherwise cause on any such property:

(1) Any building or structure to exist which:

- a. Is structurally unsafe; or
- b. Is not provided with adequate ingress and egress; or
- c. Constitutes a fire hazard; or
- d. Constitutes a health hazard; or
- e. Has unpermitted outside storage on its premises; or
- f. Is a public nuisance according to any other City of Daytona Beach Shores codes; or
- g. Is otherwise dangerous to human life.

(2) Topography which, whether in natural state or as a result of erosion or grading

operations, causes, or is likely to cause, erosion, subsidence or surface water run-off which will, or may be, injurious to persons or to adjacent public or private properties.

(3) Any condition which constitutes a fire or health hazard including, but not limited to, overgrowth of vegetation or the accumulation of debris.

(4) Any building, structure or property in such condition so that the same is defective, unsightly or in such condition of deterioration or disrepair that causes, or may be reasonably expected to cause, any diminution of the property values of buildings or structures located on adjacent lots or to the city as a whole or its residents, or interferes with the peaceful use, possession or enjoyment of such adjacent lots or improvements on such adjacent lots.

(5) Any building, structure or use which has been constructed or is maintained in violation of any applicable law, as such laws now exist or may hereafter be lawfully amended or otherwise made applicable to such building or structure including, but not limited to, the provisions of the City Code or Land Development Code.

(6) Any building, use, structure or property which does not comply with all of the regulations and provisions of the City Code or Land Development Code including, but not limited to, the land development regulations of the city assigning a zoning district or classification to property, as such land development regulations now exist, or as they may hereafter amended or otherwise made applicable to such building, use or structure.

(7) Any material the existence of which constitutes, or may constitute, a danger to persons or property including, but not limited to, hazardous materials.

(8) Any building, use or structure wherein a person engages in or persons engage in an act declared to be a nuisance in state law.

(9) Any animal, reptile or insect in such a manner as to pose a threat, disturbance, danger or menace to persons or property of another.

(10) Any device, instrument, vehicle or machinery such that the operation or maintenance causes noise, vibrations, dust, exhaust or fumes which cause or may cause discomfort or annoyance to reasonable persons of normal sensitivity or endangers the comfort, repose, health or peace of the residents in the area.

(11) Refuse, rubbish, garbage, offal, animal excrement or other waste materials which are not stored and disposed of in accordance with provisions of this code or other applicable law.

(12) A method of disposing of animal excrement in such a manner as to expose the excrement to fly or maggot infestation or resultant odor.

(13) Animal excrement so as to permit the same to run off onto any adjacent property or to provide for odor that is offensive to other property owners or residents.

(14) The accumulation or storage of abandoned, wrecked, dismantled or inoperative trailers, campers, boats, airplanes, automobiles, vehicles or other mobile equipment, or parts thereof, on any portion of a lot which is visible from the public right-of-way or any adjoining properties unless such is stored or parked in a lawful manner on the lots.

(15) An attractive nuisance which is or may be dangerous to children including, but not limited to, abandoned or broken equipment or machinery, unfenced or otherwise unprotected swimming pools, spas, ponds or excavations; refrigerators, iceboxes or deepfreeze lockers not being used, without removing the door or such portion of the latch, magnetic gasket or locking mechanism as will prevent the latching or locking of the door and uncapped or otherwise dangerous wells.

(16) Broken or discarded furniture or household furnishings or equipment, garbage or trash containers which are stored contrary to the provisions of this code, except when lawfully placed for collection at the times permitted therefore.

(17) Packing boxes, lumber, junk, trash or other materials and debris maintained outside of a building.

(18) Any building, fence, landscaping or structure, or the access thereto, so that the same is subjected to the repeated placement of graffiti thereon.

(19) The keeping, dumping, storing, placing or maintaining of any garbage, rubbish, trash, refuse, can, bottle, box, container, paper, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle part, aircraft part, farm machinery or equipment, junk or any other material that constitutes a nuisance upon any uncovered premises or uncovered portion of premises.

(20) All unpermitted encroachments or obstructions on any public street of the city, as the term "street" is defined in state law.

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**SECTION FIVE. PENALTIES; ENFORCEMENT; ADMINISTRATIVE REMEDIES.** A new section of the *Code of Ordinances of the City of Daytona Beach Shores* is created to read as follows:

(a). Any person found to be in violation of this Ordinance shall be subject to the fine provisions and code enforcement provisions to the maximum extent authorized by State law and the City of Daytona Beach Shores may take any enforcement action and seek any legal remedy available under controlling Florida law.

(b). The City Manager, in conjunction, with the City Attorney may also enforce the provisions of this Ordinance by any means authorized by controlling Florida

law including, but not limited to, the statutory and home rule code enforcement powers of the City.

(c). The City Manager, in conjunction, with the City Attorney may also engage in compliance agreements with property owners in order to attain compliance with the provisions of this Ordinance and, in so doing, is empowered to withdraw cases that have been filed to be heard by the Code Enforcement Board.

(d). The owner or owners of real property or his, her, its or their expressly authorized agent may request a determination of vested rights by paying the application fee therefor and filing a technically complete application with the City Manager, or designee. The application form shall, at a minimum, contain the following information:

(1). The name and address of the applicant who shall be the owner or all owners of the subject parcel of real property or a person expressly authorized to apply on behalf of the owner or owners.

(2). A legal description, current tax parcel identification number and survey or a sketch of the real property which is the subject of the application.

(3). The name and address of each owner of the real property.

(4). A site or development plan or plat for the real property.

(5). Identification by specific reference to any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.

(6). A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development notwithstanding provisions of City codes

or ordinances which would otherwise preclude such development or an enforcement action.

(7). Such other relevant information that the City Council may request or the applicant may desire to have initially considered.

(e). The application shall provide for a sworn statement to be executed by all owners of the real property or an authorized agent that all information set forth on the application is true and correct.

(f). The City Manager shall screen each application for a vested rights determination to determine whether the application is technically complete. The sufficiency determination shall be made within fourteen (14) calendar days after receipt of an application. If not technically complete, the application shall be promptly returned to the applicant. A technically incomplete application shall be returned to the applicant with written notification of the deficient items not provided as required by this Ordinance and the applicant shall be granted fourteen (14) additional calendar days to complete this application. If a response is not submitted to the City Manager or designee within the time specified; the application shall be deemed abandoned.

(g). Upon the City Manager, or designee, accepting a technically complete application, for which the application fee has been submitted as established by the City, the City Council shall review the application and hold a public hearing and make a final determination within twenty-one (21) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested status. At the hearing, the applicant shall present all of its, their, his or her

evidence in support of the application. The technical rules of evidence in judicial proceedings shall not be applicable, but all testimony given shall be under oath.

(h). Within seven (7) calendar days after making a final determination of vested rights status, the City Council shall provide the applicant with written notification of the determination of vested rights status. If the City Council determines that vested rights exist and that development may proceed, the applicant shall have the right to rely upon such written notification that the real property is vested and the determination that the real property is vested shall be final and not subject to appeal, revocation or modification. Thereupon, permits may be granted notwithstanding provisions of City codes or ordinances which would otherwise preclude such development or an enforcement action.

(i). The City Council's decision to deny a grant or determination of vested rights status shall be final subject, however, to appeal in accordance with State law. Decisions made by the City Council denying vested rights status pursuant to this Ordinance may be appealed by the real property owners to the Circuit Court in and for Volusia County, Florida.

#### **SECTION SIX. SAVINGS.**

The prior actions of the City of Daytona Beach Shores relating to regulations relating to property maintenance standards and vacant or abandoned property, as well as related matters and processes of the City of Daytona Beach Shores, are hereby ratified and affirmed.

#### **SECTION SEVEN: CODIFICATION.**

The provisions of this Ordinance except as herein noted, 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. Sections Six, Seven, Eight, Nine, and Ten shall not be codified. Regardless of whether this Ordinance is ever codified, the divisions and provisions of this Ordinance may be renumbered or relettered and typographical errors that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the authorization of the City Manager, or designee, without the need for a public hearing.

**SECTION EIGHT: CONFLICTS.**

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

**SECTION NINE: 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 TEN: EFFECTIVE DATE.**

(a). This Ordinance shall take effect immediately upon its final passage as to any affected party or entity in the City except Existing Process Applicants (EPA's), as defined below. The effective date of this Ordinance relative to EPA's shall be forty-five (45) days after the immediate effective date above for all other parties and entities in the

City.

(b). EPA's rights hereunder require:

(1) The City shall have received a written notice from such EPA within thirty (30) days after the general effective date above, requiring a hearing whether there should or should not be adoption or modification or other proceedings, if any, relative to their EPA property.

(2) Such notice shall entitle such EPA to a hearing as soon as reasonably practiceable after such notice. Such hearing shall address whether this Ordinance in context of the other processes, should or should not be applied, modified or confirmed after such hearing, or not to apply to such EPA.

(3) Failure of an EPA to file such notice shall waive EPA's rights relative only to this Ordinance adoption or modification, and this Ordinance shall become effective.

(4) If subsequently adopted relative to them, EPA's retain their right to challenge this Ordinance thereafter within applicable time frames whether giving such thirty (30) day notice or not, and previous challenges in writing to the Ordinance shall be deemed presented to the City.

(5) EPA's shall have full access to the courts regarding this Ordinance in accordance with controlling law.

(6) EPA's shall include those who applied for or were heretofore provided by the City within the previous two (2) months to enactment of this Ordinance, a proposed (1) Compliance Agreement, (2) Settlement Agreement, (3) Development Agreement or (4) have expressed in writing an interest in potentially qualifying for a

potential vested rights certificate relative to this Ordinance.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

\_\_\_\_\_  
**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

**Approved as to form and legality:**

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**CHERI SCHWAB, CITY CLERK**

\_\_\_\_\_  
**LONNIE GROOT, CITY ATTORNEY**

**Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.**

**Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.**