

RESOLUTION NO. 2014-03

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE PROPERTY WHICH IS THE SUBJECT OF THE PENDING LITIGATION ASSIGNED CASE NUMBER 2011-32508-CICI, IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA AND RESOLUTION NUMBER 2013-11 AS WELL AS CODE ENFORCEMENT PROCEEDINGS BEFORE THE CITY'S CODE ENFORCEMENT BOARD; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR A FINDING OF NON-COMPLIANCE AND A CONTINUING STATE OF NUISANCE CONDITIONS; PROVIDING FOR PERFORMANCE OF CERTAIN ACTIONS BY THE OWNER OF THE PROPERTY WHICH IS THE SUBJECT OF THE REFERENCED LITIGATION; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND PROVIDING FOR DIRECTION TO THE CITY MANAGER AND THE CITY ATTORNEY WITH REGARD TO NUMEROUS FUTURE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores initiated nuisance abatement litigation with regard to a matter assigned Case Number 2011-32508-CICI which litigation is pending in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, relating to that property that was formerly the Treasure Island resort property (hereinafter the "subject property"); and

WHEREAS, the action by the City Council took place after resolution of a lengthy and complex bankruptcy proceeding in the United States Court System relative to the subject property as well as litigation involving a determination as to what party would be the owner of the subject property; and

WHEREAS, the action by the City Council also took place lengthy and troublesome proceedings were held before the City's Code Enforcement Board relating to the subject property; and

WHEREAS, once ownership was established as to the subject property and, after the City-initiated litigation was commenced, the City and the owner of the subject property negotiated, mediated and otherwise communicated, in diverse ways relative to the issues at hand and which are the subject of the litigation; and

WHEREAS, ultimately the City and the owner of the subject property determined to enter an agreement in a good faith attempt to resolve the litigation and the underlying issues relating to the litigation and the subject property; and

WHEREAS, the purpose of the agreement between the City and the owner of the subject property was to settle many of the issues and matters involved in the pending litigation and with regard to the condition of the subject property; and

WHEREAS, the agreement between the City and owner of the subject property provided for applicable time frames for necessary actions to be taken; and

WHEREAS, the City Council, indeed, adopted Resolution Number 2013-11 on June 11, 2013 granting the property owner additional time to take all actions which it had promised to do; and

WHEREAS, the City Council has concluded that the subject property continues to be in non-compliance with the codes and ordinances of the City and that, indeed, the continuing state of the subject property appears to warrant additional enforcement actions and the additional legislative actions of the City Council to address the problem nature of the subject property; and

WHEREAS, it is the desire of the City Council that the subject property not in any way jeopardize the public and that all issues relating to the condition of the property including, but not limited to, its potential demolition, be resolved prior to the commencement of the 2014 hurricane season; and

WHEREAS, the City Council has determined that the actions set forth in this Resolution are necessary and appropriate and in the public interest with the subject property owner having been afforded more than reasonable opportunity to move in a substantial manner toward code compliance and in a positive manner toward the redevelopment of the subject property.

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

SECTION ONE. LEGISLATIVE FINDINGS.

- (a). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing this Resolution.
- (b). The City staff agenda memorandum relating to this Resolution is adopted herein by this reference thereto as additional findings of the City Council of the City of Daytona Beach Shores.
- (c). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Council of the City of Daytona Beach Shores and are incorporated into this Resolution as if set forth *in haec verba*.

SECTION TWO. ACTIONS OF CITY COUNCIL RELATING TO CONDITIONS OF THE SUBJECT PROPERTY.

(a). The City Council hereby finds and determines that the subject property continues to be in non-compliance with the codes and ordinances of the City and with the agreement between the City and the property owner in that, among other occurrences and conditions, the following are present on the subject property:

- (1). Doors remain off of hinges preventing the building located on the subject property from being secure from public entry, etc.*
- (2). Spalling concrete on roof of main electrical room.*
- (3). Railing is damaged and/or missing around the swimming pool area.*
- (4). Balconies with exposed rebar do not conform to threshold requirements.*
- (5). Rusted steel in ballrooms on top floor.*
- (6). Broken windows are present throughout the property.*
- (7). Missing roofing in various sections.*
- (8). Electrical breakers missing from exposed panels in kitchen.*
- (9). Conduit pipes broken leading into electric boxes.*
- (10). Compressors and electrical units on roof rusted, covers are missing and wiring is exposed.*
- (11). Pipe leading into gas meter is rusted.*
- (12). Cracks are present in sides of building structures.*
- (13). Cracking and peeling paint on exterior walls and trim.*
- (14). Backflow systems are out of inspection.*
- (15). Sign posted in front of main building requires removal.*
- (16). Fire alarm system is out of inspection and displays trouble in the system.*
- (17). Fire pump and fire sprinkler system are out of inspection.*
- (18). Fire extinguishers are out of inspection.*
- (19). Elevators are inoperable.*
- (20). The property is otherwise in a state of disrepair and presents a nuisance condition and the listing of items herein is accomplished without waiver and with full reservation of all rights and remedies available to the City under controlling law.*

(b). The City Council has determined that the City Manager and City Attorney are hereby granted full and plenary authority to re-commence the pending litigation to attain the nuisance abatement that is necessary with regard to the subject property in order to protect the public health, safety and welfare.

(c). The City Council has also determined that the City Manager and City Attorney are

hereby granted full and plenary authority to develop additional ordinances to bring before the City Council in order to attain the nuisance abatement that is necessary with regard to the subject property and other similarly situated properties, if any, in order to protect the public health, safety and welfare as well as, to the extent that the owner of the subject property will cooperate with the City, to provide potential incentives to the redevelopment of the subject property.

(d). The City Council has also determined that the City Manager and City Attorney are hereby granted full and plenary authority to develop a unilaterally written, if the owner of the subject property determines not to participate, development proposal and plan of action relative to the subject property in order that the City can do all that is feasible to move the subject property toward potential positive redevelopment.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The City Manager and City Attorney are hereby authorized to take any and all necessary administrative and legal actions that they deem necessary and appropriate in order to implement the provisions of this Resolution.

(b). The City Manager may delegate implementing administrative authority to implement the provisions of this Resolution as deemed appropriate.

SECTION FOUR. SAVINGS. The prior actions of the City of Daytona Beach Shores relating to subject property and any and all related actions and activities are hereby ratified and affirmed.

SECTION FIVE: CONFLICTS. All resolutions or parts thereof, if any, in conflict with this Resolution are hereby repealed to the extent of such conflict.

SECTION SIX. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, 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 SEVEN. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Mayor, Harry Jennings

ATTEST:

By: _____
Michael T. Booker, City Manager

Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Lonnie Groot, City Attorney

Passed and adopted on first reading this ___ day of January, 2014.

Posted this ___ day of January, 2014.