

RESOLUTION NO. 2015-03

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 COMPLIANCE; ENCOURAGING THE CONTINUATION OF AN ONGOING STATE OF NON-NUISANCE CONDITIONS; ENCOURAGING 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 AND RESERVATION OF POLICE POWERS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE AND RECORDING OF RESOLUTION.

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 after lengthy 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 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 the future developability 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 in order for the subject property to attain the status of code compliance and a memorandum of understanding (hereinafter the "MOU") relating to certain technical and detailed matters of code compliance was entered; and

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

WHEREAS, the City Council has concluded that the subject property has achieved a state of compliance with the codes and ordinances of the City subject to the provisions of this Resolution; 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 proceed in a manner that enhances and encourages the positive redevelopment of the property in a high quality manner; and

WHEREAS, it is the desire of the City Council that the current code compliance status of the subject property be sustained in the interim period between the adoption of this Resolution and the redevelopment of the subject property; and

WHEREAS, it is the desire of the City Council that the subject property be secured as a business premises in a sound and generally accepted manner consistent with normative property management practices and principles in the interim period between the adoption of this Resolution and the redevelopment of the subject property; and

WHEREAS, the City Council is reasonably relying upon the assurances of good faith and diligence of the owner of the subject property to maintain the subject property in a code compliant state while proceeding with redevelopment of the subject in a positive manner to enhance the economic use of the subject property; and

WHEREAS, the City Council has reasonably relied upon the expert opinions and determinations made by professionals such as licensed Florida Professional Engineer Charles R. Adams relative to the safety and soundness of the structure; and

WHEREAS, the City Council has worked diligently with its legal counsel and City staff in an effort to attain positive actions relative to the subject property in a fiscally prudent manner; 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 the opportunity to move forward in a positive manner toward code compliance and in a manner appreciating the economic investment of the property owner in 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 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; FINDING OF COMPLIANCE; DESIRE TO ENSURE FUTURE COMPLIANCE.

- (a). The City Council hereby finds and determines that the subject property has attained compliance with the codes and ordinances of the City and with the agreement between the City and the property owner; provided, however that:
 - (1). The provisions of the MOU relating to the removal of all roofing systems, including bar joists, is deviated from such that the metal bar joists on the top floor of the structure located on the subject property may remain in place. The City is relying upon the letter, dated March 3, 2015 from Florida Professional Engineer Charles R. Adams as to this matter.
 - (2). The provisions of the MOU relating to the removal of all plywood, is deviated from such that the plywood coverings of the holes (as mandated by the Occupational Safety and Health Administration (hereinafter "OSHA") located within the structure located on the subject property may remain in place. The City is relying upon the letter, dated March 3, 2015 from Florida Professional Engineer Charles R. Adams as to this matter.
 - (3). A re-inspection of the subject property by City staff with the above-reference engineer will occur on March 20, 2015 relative to the existing aluminum railings and lumber guardrails as required by OSHA and the sealing of the lower staircase as required in the MOU. The City Manager, or designee, shall execute an affidavit to be attached to this Resolution indicating that the subject re-inspection was successful.
- (b). The City Council encourages the owner of the subject property to ensure that adequate provision is made to secure the structure and the improvements located on the subject property and protect such structure and improvements from vandalism and devolution of the soundness

thereof.

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, subsequent to the affidavit reference hereto being attached to this Resolution, such implementing actions including, but not being limited to, the resolution of the pending litigation.

(b). The City of Daytona Beach Shores shall continue to ensure that its codes and ordinances are faithfully enforced and that the public health, safety and welfare are protected against public nuisances and that all public nuisances are abated in accordance with the controlling provisions of law.

SECTION FOUR. SAVINGS; RESERVATION OF POLICE POWERS.

(a). 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.

(b). By taking the actions set forth herein, the City of Daytona Beach Shores does not waive, and shall not be deemed or construed to have waived, its police powers and, without limiting the generality of the foregoing, the City specifically reserves its right to protect the public health, safety and welfare and to take any and all actions available to the City under controlling law to abate public nuisances.

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

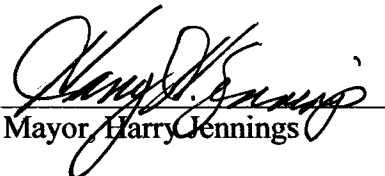
SECTION SIX. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent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

SECTION SEVEN. EFFECTIVE DATE; RECORDING.

(a). This Resolution shall take effect immediately upon its adoption.

(b). Upon the re-inspection affidavit, as referenced herein, being attached to this Resolution, the City Clerk shall provide a duplicate original to the owner of the subject property, upon request, which Resolution may be recorded by the owner of the subject property in the Official Records (Land Records) of Volusia County, Florida.

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 20th day of March, 2015.

Posted this 20th day of March, 2015.

**AFFIDAVIT OF FRED HIATT RELATING TO CITY OF DAYTONA BEACH SHORES'
RESOLUTION NUMBER 2015-03**

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

Before the undersigned authority, personally appeared Fred Hiatt who, after being duly sworn, deposes and states:

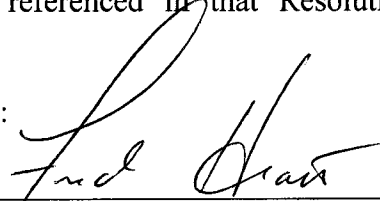
(1). My name is Fred Hiatt, and I am over 21 years of age. I am employed by the City of Daytona Beach Shores, Florida (the "City") as a Building Official – Community Services Director. I make this affidavit in that capacity and under delegation of the City Manager.

(2). I am familiar with the property and building located at 2025 S. Atlantic Avenue located within the City and commonly known as the Treasure Island Hotel property as well as the actions of the City relating thereto including, but not limited to, the adoption of Resolution Number 2015-03 by the City Council.

(3). This Affidavit is issued pursuant to the provisions of Section Two (a) (3) of City Resolution Number 2015-03 in that the re-inspection referenced in that Resolution was successful.

FURTHER AFFIANT SAYETH NOT.

Affiant:



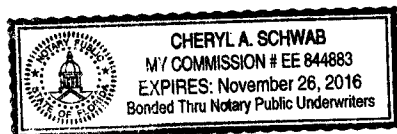
FRED HIATT,
Building Official
Community Service Director

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

SWORN TO AND SUBSCRIBED on this day, before me, an officer duly authorized in the State and County aforesaid to administer oaths and take acknowledgements, by FRED HIATT, to me personally known (or produced _____ as identification), who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid on this 2 day of April, 2015.



Cheryl A Schwab
NOTARY PUBLIC
State of: Florida
Name: Cheryl A Schwab
My Commission Expires: 11/26/2016