

**ORDINANCE 2017-12**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO BUILDING HEIGHT AND PERMITTED AND PROHIBITED USES; AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE; AMENDING APPENDIX “G”, AMENDING CHAPTER 2 ENTITLED “DEFINITIONS,” BY AMENDING SECTION 2-2 ENTITLED “GENERAL DEFINITIONS” TO PROVIDE A DEFINITION FOR LARGE LOTS AND AMENDING THE DEFINITION OF BUILDING HEIGHT; AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS,” BY AMENDING SECTION 14-18 ENTITLED “RMF-1 MULTI-FAMILY RESIDENTIAL DISTRICT (HIGH DENSITY),” SECTION 14-21 ENTITLED “T HOTEL/MOTEL DISTRICT,” SECTION 14-24 ENTITLED “PUD PLANNED UNIT DEVELOPMENT,” SECTION 14-32 ENTITLED “TC-MUPUDE TOWN CENTER MIXED USE PLANNED UNIT DEVELOPMENT EAST DISTRICT,” AND SECTION 14-26, ENTITLED “P PUBLIC/QUASI PUBLIC,” TO, AMONG OTHER THINGS, INCREASE THE MAXIMUM PERMITTED BUILDING HEIGHT ON LARGE LOTS IN SOME OF THE AFOREMENTIONED ZONING DISTRICTS AS WELL AS TO PROVIDE FOR MINIMUM AND MAXIMUM DENSITIES AND TO PROVIDE FOR THE PROHIBITED USE OF OFF BEACH PARKING; PROVIDING FOR ENFORCEMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION INCLUDING, BUT NOT LIMITED TO RATIFICATION OF ACTIONS OF THE CITY COUNCIL AS WELL AS ALL FINDINGS RELATING THERETO; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the City Council of the City of Daytona Beach Shores enacted Ordinance Number 2017-05 on August 22, 2017 amending the *Daytona Beach Shores Comprehensive Plan* to restrict building height to twelve (12) stories in the RMF-1 Multi-

family Residential (High Density) District, T Hotel/Motel District and planned unit development districts, except on large lots as defined by the land development code; and

**WHEREAS**, the T Hotel/Motel District and RMF-1 Multifamily Residential (high Density District building height regulations of the *City of Daytona Beach Shores Land Development Code* were adopted in 1998; and

**WHEREAS**, the ceiling height of luxury residential and hotel units have increased over time to ten feet (10') or more; and

**WHEREAS**, the twelve (12) story/one hundred and ten feet (110') building height restriction precludes developments from realizing their entitled maximum density; and

**WHEREAS**, realizing maximum entitled density results in increased ad valorem revenue to the benefit of the citizens of Daytona Beach Shores and its visitors; and

**WHEREAS**, realizing maximum entitled density results in increased residential and visitor population to support existing local westside businesses and encourage westside redevelopment in Daytona Beach Shores; and

**WHEREAS**, as building height increase greater building setbacks are required resulting in smaller building footprints, lesser shadow effect and wider breezeways and view corridor for the public benefit; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds that it is in the best interests and welfare of the citizens of the City to enact this Ordinance allowing a controlled increase in the maximum building height permitted; and

**WHEREAS**, Section 166.021(9), *Florida Statutes*, provides as follows:

“(9) (a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward

the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) Nothing contained in this subsection shall be construed as a limitation on the home rule powers granted by the State Constitution for municipalities.”

; and

**WHEREAS**, Section 187.201(21), *Florida Statutes*, (part of the *State Comprehensive Plan*) provides as follows:

“(21) THE ECONOMY.--

(a) Goal. --Florida shall promote an economic climate which provides economic stability, maximizes job opportunities, and increases per capita income for its residents.

(b) *Policies*.--

1. Attract new job-producing industries, corporate headquarters, distribution and service centers, regional offices, and research and development facilities to provide quality employment for the residents of Florida.

2. Promote entrepreneurship and small and minority-owned business startup by providing technical and information resources, facilitating capital formation, and removing regulatory restraints which are unnecessary for the protection of consumers and society.

3. Maintain, as one of the state's primary economic assets, the environment, including clean air and water, beaches, forests, historic landmarks, and agricultural and natural resources.

4. Strengthen Florida's position in the world economy through attracting foreign investment and promoting international banking and trade.

5. Build on the state's attractiveness to make it a leader in the visual and performing arts and in all phases of film, television, and recording production.

6. Promote economic development for Florida residents through partnerships among education, business, industry, agriculture, and the arts.

7. Provide increased opportunities for training Florida's workforce to provide skilled employees for new and expanding business.
8. Promote economic self-sufficiency through training and educational programs which result in productive employment.
9. Promote cooperative employment arrangements between private employers and public sector employment efforts to provide productive, permanent employment opportunities for public assistance recipients through provisions of education opportunities, tax incentives, and employment training.
10. Provide for nondiscriminatory employment opportunities.
11. Provide quality child day care for public assistance families and others who need it in order to work.
12. Encourage the development of a business climate that provides opportunities for the growth and expansion of existing state industries, particularly those industries which are compatible with Florida's environment.
13. Promote coordination among Florida's ports to increase their utilization.
14. Encourage the full utilization by businesses of the economic development enhancement programs implemented by the Legislature for the purpose of extensively involving private businesses in the development and expansion of permanent job opportunities, especially for the economically disadvantaged, through the utilization of enterprise zones, community development corporations, and other programs designed to enhance economic and employment opportunities.”

; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible, dynamic, and modern as well as an economy that attracts and retains high quality businesses and economic generators to the City of Daytona Beach Shores; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has concluded that a positive means and method to economically develop the City of Daytona Beach Shores in an effective and beneficial manner would be to encourage high intensity development along the Atlantic Ocean as consistent with the densities that are established in the City's *Comprehensive Plan*; and

**WHEREAS**, a significant part of the economic activity within the City of Daytona Beach Shores is generated by the high intensity development of properties abutting the Atlantic Ocean; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of Daytona Beach Shores and to further the public health, safety and welfare; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires to ensure and enhance the economic development of the City and the economic wellbeing of the citizens of the City in the face of trying economic times and circumstances as well as the likelihood of the passage of the Florida Homestead Exemption Increase Amendment which is on the ballot in Florida as a legislatively referred constitutional amendment on to be voted upon on November 6, 2018; and

**WHEREAS**, the economic development of the City as planned for the properties abutting the Atlantic Ocean is a key element to the ultimate positive and necessary redevelopment of the West side of Atlantic Avenue (Florida State Road A1A); and

**WHEREAS**, the goal of economic development by Florida local governments is to expand economic activity, primarily through capital investment and resulting impacts and new economic activity creates new wealth, which when spent in the economy, induces the creation of additional jobs and, to the extent this goal is achieved, the local government's tax base is expanded and it is possible to realize an increase in tax revenues in order to provide the funds needed to serve the public with adequate public services and facilities; and

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

**WHEREAS**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores* and protects the City against assertions and applications that would violate the City's land use constitution; and

**WHEREAS**, the recitals to this Ordinance (whereas clauses) are adopted as the legislative findings and intent of the City Council of the City of Daytona Beach Shores; and

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

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

**SECTION ONE:** Section 2-2, *Land Development Code*, Chapter 14, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "General Definitions," is amended to read as follows:

**Sec. 2-2. - General definitions.**

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*Building height:* Building height means the vertical distance measured from the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or the average height level between eaves and ridge for gable, hip and gambrel roofs, ~~except in the "RMF-1 Multifamily Residential District (High Density)," all planned unit development districts, and the "T Hotel/Motel District" located on S. Atlantic Avenue wherein building height means the vertical distance measured from the average crown of the road which is calculated by averaging the lowest point and the highest point of the roadway parallel to the frontage of the lot, to the highest point of a flat roof, or the deck line of a mansard roof, or the average height level between eaves and ridge for gable, hip and gambled [gambrel] roofs.~~

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Lot, large: Any lot in the T Hotel/Motel District, RMF-1 Multifamily Residential District, PUD Planned Unit Development District or TC-MUPUDE Town Center Mixed Use Planned Unit Development East District qualifying by definition as either a "Large Lot-A" or "Large Lot-B."

Lot-A, large: Any large lot whose road frontage as measured on South Atlantic Avenue is greater than one hundred twenty feet (120') but less than three hundred and fifty feet (350').

Lot-B, large: Any large lot whose road frontage as measured on South Atlantic Avenue is three hundred and fifty feet (350') or more.

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**SECTION TWO:** Section 14-18, *Land Development Code*, Chapter 14, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "RMF-1 Multi-Family Residential District (High Density)," is amended to read as follows:

**Sec. 14-18. - RMF-1 Multi-Family Residential District (High Density).**

*14-18.1. Purpose and Intent.*

The purpose and intent of the RMF-1 Multi-Family Residential District is to provide for multifamily residential living, catering to the needs of the citizens of the city desiring a well-maintained and natural on-site environment for multifamily living.

*14-18.2. Permitted Principal and Prohibited Uses and Structures.*

Permitted Uses: Multifamily dwellings.

Telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq.

Prohibited Use: Off-beach parking facilities and parks are prohibited. Off-beach parking and parks established on properties located in this zoning district prior to the effective date of this Ordinance are grandfathered from this provision regardless as to whether the establishment of the use was improvident.

*14-18.3. Permitted Accessory Uses and Structures.*

Accessory uses or structures customarily incidental to the permitted principal use or structure.

*14-18.4. Dimensional Requirements.*

Minimum lot size:

Area: Seven hundred twenty-six (726) square feet for each dwelling unit.

Width: Fifty (50) feet.

Minimum floor area:

One (1) bedroom: One thousand (1,000) square feet.

Two (2) bedrooms: One thousand two hundred (1,200) square feet.

Three (3) bedrooms: One thousand four hundred (1,400) square feet.

Required enclosed parking: A minimum of one (1) parking place per unit shall be underground or within an enclosure. The balance of the required parking may be in open areas, subject to the provisions of section 14-48.6.

Minimum "green" area: Thirty (30) percent of lot size, measured to seawall. Landscaped areas shall be located so that no less than thirty (30) percent of the provided front yard and twenty-five (25) percent of the provided side yards are landscaped.

Minimum setbacks:

Front yard: Thirty (30) feet. Porte cocheres or marquees may extend over the required front yard a maximum of twelve (12) feet.

Rear yard from seawall or coastal construction control line established in August 1973: Fifty (50) feet.

Side yard: Abutting any street: Same as interior lot.

Interior lot:

a. A minimum of seven (7) feet side yard setback for any building up to and including twenty (20) feet in height.

b. An additional one (1) foot of side yard setback for each three (3) feet of height from twenty (20) feet to sixty-five (65) feet.

c. An additional one (1) foot of side yard setback for each two and one-half (2½) feet of height from sixty-five (65) feet and up.

Bulkhead line: See ~~Ordinance 82-6~~ (section 5-9 of this Code).

For all structures exceeding sixty-five (65) feet in height, the total combined side yard setback requirements on both sides of the building together, may be divided at the owner's option, provided that the smaller of the two (2) side yard setback dimensions shall not be less than twenty-five (25) percent of the combined total and shall not be less than twenty-two (22) feet. For all structures exceeding twelve (12) stories, a minimum side yard setback of forty feet (40') is required. Variances from this requirement are prohibited.

In determining the minimum yard size measurements, except for the rear yard, under this section, the sole criterion shall be a measurement from the applicable lot line to the closest "structure" as that term has been defined in section 2-2 of this Code.

Underground parking garages shall not be constructed within ten (10) feet of any side or fifteen (15) feet of any front lot line and shall maintain the fifty-foot rear yard requirement. Underground parking structures shall be waterproofed and constructed in a manner that does not impede the installation or maintenance of required landscaping and associated irrigation systems above the garage. The top of any underground garage shall not exceed Elevation 20 (NGVD 29) or the predevelopment average site elevation or the

crown of the road, whichever is greater. Any exposed walls of underground garages shall be screened by heavy landscaping.

As to the rear yard, swimming pools, decks and other recreational facilities shall be allowed, subject to the provisions of section 14-48.6, as amended, relating to "Hotels and Motels." The provisions of section 14-48.6, as amended, relating to parking shall also apply.

Side yard setback will be established upon the height of the roof line of the structure. ~~Height, as applied to a building, means the vertical distance from the average crown of the road to the highest finished roof surface, in the case of flat roofs, or to a point at the average height of roofs having a pitch of more than one (1) foot in four and one half (4½) feet.~~

Maximum lot coverage by building: Thirty-five (35) percent of total lot area.

Maximum building height: ~~Twelve (12) stories, not to exceed one hundred ten (110) feet above the average crown of the road.~~ Large Lot-A: Sixteen (16) stories plus an additional two (2) stories for parking. Large Lot-B: Twenty-three (23) stories plus an additional two (2) stories for parking. An additional one (1) story for parking is permitted when a project provides the following: (1) A minimum of twenty (20) percent additional off-street parking in excess of the minimum required off-street parking; and (2) a minimum of ten (10) percent additional landscaping in excess of the minimum required landscaping. Building height variances are prohibited.

Minimum density: Thirty-five (35) units per acre.

Maximum density: ~~Greater than thirty five (35) and a maximum of sixty~~ Sixty (60) units per acre.

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**SECTION THREE:** Section 14-21, *Land Development Code*, Chapter 14, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "T Hotel/Motel District," is amended to read as follows:

**Sec. 14-21. - T Hotel/Motel District.**

*14-21.1. Purpose and Intent.*

This district recognizes the importance of attractive, well-ordered facilities for tourist accommodations and the importance of tourism in the economy of the district and the region. The T districts have access to major thoroughfares. It is not intended that these areas provide commercial facilities of a character open to the general public nor provide automotive services. The district is a specialized one, designed to protect and enhance the basic economy of the area. It is generally intended to use T district to implement the comprehensive plan within but not necessarily limited to those areas of the district shown as "hotel/motel."

*14-21.2. Permitted Principal and Prohibited Uses.*

Permitted Principal Uses:

1. Hotels, motels and tourist accommodations.
2. In connection with and accessory to hotel, motel and tourist accommodation facilities for the sale of sundries, flowers, gifts and souvenirs; newspapers and magazines and the



like, personal service facilities such as barber or beauty shops; restaurants, coffee shops and cocktail lounges, shall be subject to the following limitations:

a. All such facilities shall be designed and scaled to serve the guests of the accommodating establishment, and hotels, motels and tourist accommodations having less than one hundred (100) rooms shall not have restaurant, lounges or coffee shops which have a combined occupancy load of more than two (2) persons per unit based upon the occupancy load established by the building official using the codes then currently adopted by the city.

b. All such facilities shall be accessible only from a foyer, interior court or corridor of the accommodating establishment.

3. All uses permitted in RMF-1 as long as they meet all dimensional requirements of an RMF-1 district.

4. Travel agency.

5. Telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq.

6. Hotel suites.

Prohibited Use: Off-beach parking facilities and parks are prohibited. Off-beach parking and parks established on properties located in this zoning district prior to the effective date of this Ordinance are grandfathered from this provision regardless as to whether the establishment of the use was improvident.

*14-21.3. Permitted Accessory Uses and Structures.*

Auditoriums, lecture halls or conference rooms accessory to a hotel or motel. Parking lots and parking garages, private and commercial. Other accessory uses and structures incidental to the permitted uses and structures.

*14-21.3.1. Permitted Temporary Use.*

1. Promotional Activities shall comply with Section 14-60.2.

*14-21.4. Dimensional Requirements.*

Minimum lot size:

Area: Six hundred twenty-two point two hundred eighty-six (622.286) square feet for each dwelling unit.

Width: Fifty (50) feet.

Minimum "green" area: Twenty (20) percent of lot size measured to seawall or coastal construction control line established in August 1973. Landscaped areas shall be located so that no less than thirty (30) percent of the provided front yard and twenty-five (25) percent of the provided side yards are landscaped.

Minimum setbacks:

Front yard: Thirty (30) feet. Porte cocheres or marquees may extend over the required front yard a maximum of twelve (12) feet.

Rear yard from seawall or coastal construction control line established in August 1973: Fifty (50) feet.

Side yard: Abutting any street: Same as interior lot.

Interior lot:

a. A minimum of seven (7) feet side yard setback for any building up to and including twenty (20) feet in height.

b. An additional one (1) foot of side yard setback for each three (3) feet of height from twenty (20) feet to sixty-five (65) feet.

c. An additional one (1) foot of side yard for each two and one-half (2½) feet of height from sixty-five (65) feet and up.

Bulkhead line: See ~~Ordinance No. 82-6~~ (section 5-9 of this Code).

For all structures exceeding sixty-five (65) feet in height, the total combined side yard setback requirements on both sides of the building together, may be divided at the owner's option, provided that the smaller of the two (2) side yard setback dimensions shall not be less than twenty-five (25) percent of the combined total and shall not be less than twenty-two (22) feet. For all structures exceeding twelve (12) stories, a minimum side yard setback of forty feet (40') is required. Variances from this requirement are prohibited.

In determining the minimum yard size measurements, except for rear yard, under this section, the sole criterion shall be a measurement from the applicable lot line to the closest "structure" as that term has been defined in section 2-2 of this Code.

Underground parking garages shall not be constructed within ten (10) feet of any side or fifteen (15) feet of any front lot line and shall maintain the fifty-foot rear yard requirement. Underground parking structures shall be waterproofed and constructed in a manner that does not impede the installation or maintenance of required landscaping and associated irrigation systems above the garage. The top of any underground garage shall not exceed Elevation 20 (NGVD 29) or the predevelopment average site elevation or the crown of the road, whichever is greater. Any exposed walls of underground garages shall be screened by heavy landscaping.

As to the rear yard, swimming pools, decks and other recreational facilities shall be allowed, subject to the provisions of section 14-48.6, as amended, relating to "Hotels and Motels." The provisions of section 14-48.6, as amended, relating to parking, shall also apply.

Side yard setback will be established based upon the height of the roof line of the structure. Height, as applied to a building, means the vertical distance from the average crown of the road to the highest finished roof surface in the case of flat roofs or to a point at the average height of roofs having a pitch of more than one (1) foot in four and one-half (4½) feet.

Minimum building spacing requirements: A separation requirement of twenty-two (22) feet minimum shall be maintained between buildings exceeding thirty (30) feet in height when more than one (1) building is erected on a recorded lot.

Maximum lot coverage by building: Thirty-five (35) percent of total lot area.

Maximum building height: ~~Twelve (12) stories, not to exceed one hundred ten (110) feet above the average crown of the road.~~ Large Lot-A: Sixteen (16) stories plus an additional two (2) stories for parking. Large Lot-B: Twenty-three (23) stories plus an additional two (2) stories for parking. An additional one (1) story for parking is permitted when a project provides the following: (1) A minimum of twenty (20) percent additional off-street parking in excess of the minimum required off-street parking; and (2) a minimum of ten (10) percent additional landscaping in excess of the minimum required landscaping. Building height variances are prohibited.

Minimum density: Thirty-five (35) units per acre.

Maximum density: Seventy (70) units per acre.

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**SECTION FOUR:** Section 14-24, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “PUD Planned Unit Development,” is amended to read as follows:

**Sec. 14-24. - PUD Planned Unit Development.**

*Declaration of Need.*

The City of Daytona Beach Shores needs to establish a method to provide for optional planned residential development on tracts of land suitable in size, location and character for the uses proposed to be planned and developed and to provide a greater dimension to the scope of planning to meet the needs of the city and discourage planning to meet solely the spatial requirements of the land.

*14-24.2. Unified Ownership.*

All land within the PUD shall be under the ownership of the applicant, be it an individual, partnership or corporation, or groups of individuals, partnerships, or corporations. PUD applicants shall present firm evidence at the time of application of unified ownership of the entire area within the proposed PUD.

*14-24.3. Permitted and Prohibited Use Uses and Structures.*

Permitted Uses:

Multiple-family dwelling units, town houses, garden apartments, cluster housing units, single-family dwelling units, timeshare units, and hotels.

Parks, playgrounds, swimming pools, clubhouses and other recreation facilities to serve residents of the project.

Semipublic clubs, community centers and civic and social organizational facilities.

Public utility facilities and structures.

Houses of worship, schools, outpatient medical clinics, nursing homes, child care centers.

Neighborhood commercial uses and theme parks which are determined at the time of preliminary approval that such use(s) is appropriate to the PUD development of Daytona Beach Shores.

Prohibited Use: Off-beach parking facilities and parks are prohibited on properties located east of South Atlantic Avenue (State Road A1A and County Road 4075). Off-beach parking and parks located on properties located east of South Atlantic Avenue prior to the effective date of this Ordinance are grandfathered from this provision regardless as to whether the establishment of the use was improvident.

*14-24.4. PUD Density.*

The maximum density of a planned unit development shall be three (3) units per gross acre greater than the density permitted in the residential or other zoning district that applied over the property at the time the PUD zoning was approved or amended. If the PUD encompasses more than one (1) zoning district, the overall PUD density shall be computed from each zoning district separately and each district's dwelling units added together to arrive at the total number of living units in the PUD. If a commercial zoning district applied to a portion of the property at the time of rezoning to PUD, the maximum density calculated for that commercially zoned portion of the property shall be the same

density calculated for the residentially zoned portion of the property, or the largest residential district of the property if more than one (1) residential zoning district applied to the property. Maximum density shall not conflict with the city's adopted Comprehensive Plan.

*14-24.4.1. Oceanfront PUD Density Calculation.*

The density for an oceanfront PUD shall be calculated from the mean high-water line to the right-of-way of S. Atlantic Avenue. In no case shall the density be calculated using any property located on the west side of S. Atlantic Avenue.

*14-24.5. Commercial Activities.*

Commercial activities permissible in a PUD shall be those designed and scaled to serve the needs and requirements of the PUD residents. PUD commercial use areas normally may not be located along exterior or perimeter streets but shall be located in an area accessible from local streets within the PUD. When commercial activities are approved as a part of a PUD, such commercial activities shall not commence operation until the total project has been approved.

*14-24.6. Minimum Parcel Size.*

A PUD shall have a minimum of fourteen (14) acres. A lesser minimum area may be approved if the city council determines that the intent and purpose of these PUD regulations and expressed municipal development policy can be served in the particular case before the council.

*14-24.7. Minimum Street and Sidewalk Requirements.*

All streets within the PUD shall be public unless private streets are approved by the city council. The city council shall not approve a private street if such street will be needed to serve the area adjoining the proposed PUD.

When streets are to be private, the developer shall establish a legal organization or entity to own and manage the streets and a method for the organization or entity to assess the property owners having beneficial use of the streets. The method of assessment shall provide the legal right for the managing organization or entity to impose liens against any properties for which payment of any assessment is not made. Collection of assessments and enforcement of the payment thereof shall be the responsibility of the organization or entity, and shall not be the responsibility of the city. Payment of the assessments imposed by the organization or entity by a property owner shall not relieve that property owner from any taxes, fees, charges or assessments imposed by the city.

Legal documents establishing common ownership and management of the streets in the PUD shall provide for clear notice to purchasers and prospective purchasers of properties in the PUD that the organization or entity shall have the authority to make assessments and impose liens as provided in this section. Furthermore, such documents shall provide for clear notice that the city shall never be obligated to accept maintenance responsibility for the private streets. Clear notice shall include a covenant contained within the deed of conveyance. The street and public utility services proposed within a subdivision of lots shall be built or guaranteed by a performance and payment bond or letter of credit in an amount equal to 125 percent of the costs of constructing the street and the public utilities prior to approval of the subdivision plat by the city council.

Street rights-of-way within a PUD shall conform to the following minimum requirements:

*1. Public (City-Maintained) Streets:*

a. *Minimum Right-of-Way Widths:*

- (1) City-maintained collector streets: Sixty (60) feet.
- (2) City-maintained local streets: Fifty (50) feet.

b. *Minimum Pavement Widths:*

- (1) City-maintained collector streets: Twenty-two (22) feet.
- (2) City-maintained local streets: Twenty-two (22) feet.

2. *Public Streets:*

a. *Minimum Right-of-Way Widths:*

- (1) Private local streets: Thirty (30) feet.
- (2) Private Service access ways: Twenty (20) feet.

b. *Minimum Pavement Widths:*

- (1) Private local streets:
  - (a) Two-way: Twenty (20) feet.
  - (b) One-way: Ten (10) feet.
- (2) Private Service access ways: Sixteen (16) feet.

*14-24.8. Sidewalk Requirement.*

Sidewalks shall be installed within the road right-of-way on both sides of the road. Sidewalks shall have a minimum width of four (4) feet. Within a private road right-of-way, the city council may require sidewalks on only one (1) side of the road if the pedestrian access system provides complete access to the site, including the major points of ingress and egress, in the PUD. Sidewalks shall be designed to allow accessibility and use by the handicapped.

*14-24.9. Minimum Lot Area and Yard Requirements.*

No minimum lot size or yards shall be required within a PUD except that the front yard on dedicated public streets shall be twenty (20) feet for the first story of building height. For each additional story up to and including four (4) stories the front yard shall increase five (5) feet. For each additional story up to and including eight (8) stories the front yard shall increase four (4) feet. For each additional story over eight (8), the front yard shall increase three and one-half (3.5) feet. Porte cocheres or marquees may extend into the required front yard a maximum of twelve (12) feet but in no case shall the front setback be less than twenty (20) feet.

Peripheral yards abutting the PUD boundary on the ocean and river shall be fifty (50) feet. All other peripheral yards abutting the PUD boundary shall be two and one-half (2.5) feet for every one (1) story of building height plus ten (10) feet. For all structures exceeding twelve (12) stories, a minimum side yard setback of forty (40) feet is required. Variances from this requirement are prohibited.

The city council may require greater peripheral yards when it is determined that the proposed use may have adverse effects upon adjoining properties or prejudice development on adjoining properties.

Underground parking garages shall not be constructed within ten (10) feet of any side or fifteen (15) feet of any front lot line and shall maintain the fifty-foot ocean rear yard setback. Underground parking structures shall be waterproofed and constructed in a manner that does not impede the installation or maintenance of required landscaping and associated irrigation systems above the garage.

*14-24.10. [14-24.9.5.] Building Height.*

Building height for PUDs in the City of Daytona Beach Shores shall be limited to ~~one hundred ten (110) feet above the average crown of the road. Twenty-three (23) stories plus an additional two (2) stories for parking. An additional one (1) story for parking is permitted when a project provides the following: (1) A minimum of twenty (20) percent additional off-street parking in excess of the minimum required off-street parking; and (2) a minimum of ten (10) percent additional landscaping in excess of the minimum required landscaping. Building height variances are prohibited.~~

~~14-24.10.1 [14-24.9.5.1.] Exception.~~

~~The building height restriction contained in section 12-24.10 [14-24.9.5.] shall not apply to PUDs located entirely in the Town Center District pursuant to the city's CRA Master Plan and the city's adopted Comprehensive Plan. Nothing herein shall exempt or is intended to exempt any PUD from the building height limitation of twelve (12) stories established by the city's adopted Comprehensive Plan.~~

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**SECTION FIVE:** Section 14-32, *Land Development Code*, Chapter 14, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "TC-MUPUDE (Town Center Mixed Use Planned Unit Development East)," is amended to read as follows:

**Sec. 14-32. - TC-MUPUDE (Town Center Mixed Use Planned Unit Development East).**

*Purpose and Intent.*

The City of Daytona Beach Shores needs to establish a method to provide for optional planned unit development for the east side of S.R. A1A on tracts of land suitable in size, location and character for the uses proposed to be planned and developed and to provide a greater dimension to the scope of planning to meet the needs of the city and discourage planning to meet solely the spatial requirements of the land. The MUPUDE district shall only be permitted on sites located east of South Atlantic Avenue (State Road A1A) in the Town Center Future Land Use category as identified in the City's Comprehensive Plan.

*14-32.2. Unified Ownership.*

All land within the MUPUDE (hereafter PUD) shall be under the ownership of the applicant, be it an individual, partnership or corporation, or groups of individuals, partnerships, or corporations. PUD applicants shall present firm evidence at the time of application of unified ownership of the entire area within the proposed PUD.

*14-32.3.1. Permitted and Prohibited Uses and Structures. (East Side A1A)*

*Ground Floor Uses:* Arcade, art gallery, bowling alleys, retail bakery, bank, beauty salon, clothing cleaning, health spa, fitness center, gift shop, internet cafe, new clothing store, performance theater, convention center, restaurant and tennis club, multifamily residential, timeshare units, and hotel units. Multifamily residential units shall not be located on the same floor as timeshare and or hotel units. Use location shall be clearly defined in the PUD development agreement. Changing of floor designations shall not constitute a substantial change in the PUD but shall be approved in writing by the building official and the fire marshal.

*Other Floor Uses:* Multifamily residential, timeshare units, and hotel units. Multifamily residential units shall not be located on the same floor as timeshare and or hotel units. Use location shall be clearly defined in the PUD development agreement. Changing of floor designations shall not constitute a substantial change in the PUD but shall be approved in writing by the building official and the fire marshal.

Prohibited Use: Off-beach parking facilities and parks are prohibited. Off-beach parking and parks established on properties located in this zoning district prior to the effective date of this Ordinance are grandfathered from this provision regardless as to whether the establishment of the use was improvident.

*14-32.3.2. Permitted Accessory Uses and Structures.*

Any use or structure customarily incidental to the permitted principal use or structure, including but not limited to sidewalk restaurant and cafe. Accessory uses and structures that are not clearly defined in the PUD development agreement shall be approved in writing by the building official and fire marshal.

*14-32.3.3. Permitted Conditional Uses.*

Dumpsters, sales offices and outdoor golf to be approved in writing by the building official and fire marshal.

*14-32.4. PUD Density.*

The maximum density of a planned unit development shall be seventy (70) units per acre for mixed use multifamily residential/hotel units/timeshare units. This density shall apply to new construction with an approved PUD development agreement and will not apply to any conversions of existing hotel, motel or condominium developments. The minimum density required in this district shall be thirty-five (35) units per acre.

*14-32.5. Oceanfront PUD Density Calculation.*

The density for an oceanfront PUD shall be calculated from the mean high-water line to the right-of-way of S. Atlantic Avenue. In no case shall the density be calculated using any property located on the west side of S. Atlantic Avenue.

*14-32.6. Minimum Parcel Size.*

A PUD shall have a minimum of five (5) acres. A parcel size of less than five (5) acres, but in no case less than three (3) acres, may be approved as a PUD if the City Council finds the project to be of significant public interest and benefit in the provisions of the development order approving the PUD.

*14-32.7. Minimum Street and Sidewalk Requirements.*

All streets within the PUD shall be public unless private streets are approved by the city council. The city council shall not approve a private street if such street will be needed to serve the area adjoining the proposed PUD.

When streets are to be private, the developer shall establish a legal organization or entity to own and manage the streets and a method for the organization or entity to assess the property owners having beneficial use of the streets. The method of assessment shall provide the legal right for the managing organization or entity to impose liens against any properties for which payment of any assessment is not made. Collection of assessments and enforcement of the payment thereof shall be the responsibility of the organization or entity, and shall not be the responsibility of the city. Payment of the assessments imposed by the organization or entity by a property owner shall not relieve that property owner from any taxes, fees, charges or assessments imposed by the city.

Legal documents establishing common ownership and management of the streets in the PUD shall provide for clear notice to purchasers and prospective purchasers of properties in the PUD that the organization or entity shall have the authority to make assessments and impose liens as provided in this section. Furthermore, such documents shall provide for clear notice that the city shall never be obligated to accept maintenance responsibility for the private streets. Clear notice shall include a covenant contained within the deed of conveyance. The street and public utility services proposed within a subdivision of lots shall be built or guaranteed by a performance and payment bond or letter of credit in an amount equal to one hundred twenty-five (125) percent of the costs of constructing the street and the public utilities prior to approval of the subdivision plat by the city council. Street rights-of-way within a PUD shall conform to the following minimum requirements:

1. *Public (City-Maintained) Streets:*

a. *Minimum Right-of-Way Widths:*

(1) City-maintained collector streets: Sixty (60) feet.

(2) City-maintained local streets: Fifty (50) feet.

b. *Minimum Pavement Widths:*

(1) City-maintained collector streets: Twenty-two (22) feet.

(2) City-maintained local streets: Twenty-two (22) feet.

2. *Public Streets:*

a. *Minimum Right-of-Way Widths:*

(1) Private local streets: Thirty (30) feet.

(2) Private service access ways: Twenty (20) feet.

b. *Minimum Pavement Widths:*

(1) Private local streets:

(a) Two-way: Twenty (20) feet.

(b) One-way: Ten (10) feet.

(2) Private service access ways: Sixteen (16) feet.

14-32.8. *Sidewalk Requirement.*

Sidewalks shall be installed within the road right-of-way on both sides of the road. Sidewalks shall have a minimum width of four (4) feet. Within a private road right-of-way, the city council may require sidewalks on only one (1) side of the road if the pedestrian access system provides complete access to the site, including the major points of ingress and egress, in the PUD. Sidewalks shall be designed to allow accessibility and use by the handicapped.

14-32.9. *Yard Requirements and Building Height.*

No minimum yards shall be required within a PUD except that the front yard on dedicated public streets shall be twenty (20) feet for the first story of building height. For each additional story up to and including four (4) stories the front yard shall increase five (5) feet. For each additional story up to and including eight (8) stories the front yard shall increase four (4) feet. For each additional story over eight (8), the front yard shall increase three and one-half (3.5) feet. Porte cocheres or marquees may extend into the required front yard a maximum of twelve (12) feet but in no case shall the front setback be less than twenty (20) feet. Peripheral yards abutting the PUD boundary on the ocean shall be fifty (50) feet. All other peripheral yards abutting the PUD boundary shall be two and one-half (2.5) feet for every one (1) story of building height PLUS ten (10) feet. For



all structures exceeding twelve (12) stories, a minimum side yard setback of forty (40) feet is required. Variances from this requirement are prohibited.

The city council may require greater peripheral yards when it is determined that the proposed use may have adverse effects upon adjoining properties or prejudice development on adjoining properties.

Underground parking garages shall not be constructed within ten (10) feet of any side or fifteen (15) feet of any front lot line and shall maintain the fifty-foot ocean rear yard setback. Underground parking structures shall be waterproofed and constructed in a manner that does not impede the installation or maintenance of required landscaping and associated irrigation systems above the garage.

Building Height: ~~Twelve (12) stories maximum.~~ Twenty-three (23) stories plus an additional two (2) stories for parking. An additional one (1) story for parking is permitted when a project provides the following: (1) A minimum of twenty (20) percent additional off-street parking in excess of the minimum required off-street parking; and (2) a minimum of ten (10) percent additional landscaping in excess of the minimum required landscaping. Building height variances are prohibited.

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**SECTION SIX:** Section 14-26, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “- P Public/Quasi Public,” is amended to read as follows:

**Sec. 14-26. - P Public/Quasi Public.**

14-26.1. *Purpose and Intent.*

The purpose and intent of the Public/Quasi Public District is to best satisfy the internal, recreational and governmental service needs of the entire community. This district has been developed for implementing the city's land use plan within, but not necessarily limited to, those areas shown for Public/Quasi Public.

14-26.2. *Permitted Accessory Uses and Structures.*

Parks, churches and government offices, telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq., etc.

14-26.3. *Prohibited Use.*

A. Off-beach parking facilities and parks are prohibited on properties located east of South Atlantic Avenue (State Road A1A and County Road 4075) unless approved under the terms of a statutory development agreement as authorized by Chapter 15, Appendix “G”, Land Development Code, of the City’s Code of Ordinances. Off-beach parking and parks located on properties located east of South Atlantic Avenue prior to the effective date of this Ordinance are grandfathered from this subsection regardless as to whether the establishment of the use was improvident.

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**SECTION SEVEN: ENFORCEMENT.** The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of

State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

**SECTION EIGHT: SAVINGS AND LEGISLATIVE FINDINGS.**

(a). The prior actions of the City of Daytona Beach Shores relating to the regulation of the matters and uses which are the subject of this Ordinance are hereby ratified and affirmed.

(b). Further, the prior actions of the City relative to the appeal of application number SASP12017014 and the appeal of application number SASP12017015 pertaining to the issuance of denial development orders for the construction of an off-beach parking lots as well as the denial development orders relating to proposed Ordinance Number 2017-09 and proposed Ordinance Number 2017-10 are ratified and affirmed as well as all findings relating thereto.

(c). The City Manager and his staff have developed, through analysis and study, materials that relate to the importance of ensuring high intensive development along the Atlantic Ocean and the adverse fiscal impacts that would result if the properties abutting the Atlantic Ocean are not developed in a high intensity manner are set forth in the City's *Comprehensive Plan*. Those materials are part of the overall basis for the legislative findings and intent of the City Council of the City of Daytona Beach Shores.

(d). The recitals (whereas clauses) to this Resolution are adopted as the legislative findings and the legislative intent of the City Council of the City of Daytona Beach Shores.

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

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

**SECTION ELEVEN: 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 TWELVE: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment or the date which Ordinance Number 2017-05 becomes effective whichever is later.

**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 \_\_\_\_\_, 2017.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2017.