



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING

June 10, 2014

**7:00 p.m., Community Center, 3048 S. Atlantic Ave.
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

CEREMONIAL MATTERS:

PRAYER

PLEDGE OF ALLEGIANCE

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES: Presentation on extending the Halifax Heritage Byway

BUSINESS OF THE CITY COUNCIL:

ORDER OF BUSINESS

2. APPROVAL OF THE MINUTES: May 27, 2014 City Council Meeting

3. CONSENT AGENDA:

- **Re-appoint Mona Goodman to Culture & Entertainment Board**
- **Re-appoint Lorraine Geiger to Culture & Entertainment Board**
- **Re-appoint Stan Alexander to Board of Adjustments**
- **Appoint Jim Lilly to alternate for Planning & Zoning Board**
- **Approval of Interlocal Agreement for creation of the Metropolitan Planning Organization**

END CONSENT AGENDA

4. REPORTS OF THE CITY ATTORNEY:

5. REPORTS OF THE CITY MANAGER:

OLD BUSINESS: None.

NEW BUSINESS:

6. Resolution 2014-05 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, AMENDING THE GENERAL FUND BUDGET, PROVIDING FOR APPROPRIATIONS; PROVIDING AN EFFECTIVE DATE. **Public Hearing.**

7. Resolution 2014-06 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA RELATING TO CITY COUNCIL MEETINGS AND PROVIDING FOR A POLICY REGARDING PRAYER AS A CEREMONIAL MATTER BEFORE BUSINESS OCCURRING AT MEETINGS OF THE CITY OF DAYTONA BEACH SHORES CITY COUNCIL; PROVIDING FOR APPOINTMENT OF A CHAPLAIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. **Public Hearing.**

8. Authorization to borrow up to \$4 million for extension of sewer system to Daytona Beach Bethune Point Wastewater Treatment Plant.

9. Appointment of voting delegate for 88th Annual FLC Conference

10. COUNCIL COMMENTS:

11. AUDIENCE REMARKS/PUBLIC COMMENTS:

12. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

13. ADJOURNMENT:

Notice is hereby given to all interested parties that if a person should decide to appeal any decision made at the aforementioned meeting of the City Council, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Please be advised that all City Council Meetings are recorded. Note: Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the Office of the City Clerk at 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, or telephone 386-763-5364 at least seven working days prior to the meeting.

David R. Damore, P.A.
Aaron D. Delgado, P.A.
Matthew E. Romanik, P.A.*
Robert W. Rawlins, III, P.A.



Telephone: 386.255.1400
Facsimile: 386.255.8100
Toll Free: 877.509.1400
www.communitylawfirm.com

DAMORE, DELGADO, ROMANIK & RAWLINS

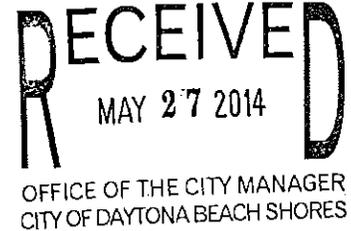
Eric A. Latinsky, P.A.
Daniel M. Leising, P.A.
The Whited Law Firm, P.A., *Of Counsel*

ACCOMPLISHED, AGGRESSIVE & EXPERIENCED TRIAL ATTORNEYS

227 Seabreeze Boulevard
Daytona Beach, Florida 32118
**Board Certified Workers' Compensation*

May 21, 2014

Mayor Harry Jennings
Councilwoman Billie Wheeler
2990 South Atlantic Ave.
Daytona Beach Shores, FL. 32118



RE: Halifax Heritage Byway

Dear Mayor Jennings and Councilwoman Wheeler,

I am the Vice Chair of the Corridor Advocacy Group seeking to extend the Byway, which currently terminates at State Rd. 40 and A1A, through and including Ponce Inlet, with some perpendicular in roads into the historic main streets of towns that ultimately became Daytona Beach. Many of the local communities through which the Byway is proposed to travel have already endorsed the project and are eager to see the project move forward. I know Councilwoman Wheeler has conferred with the Chair of the Corridor Advocacy Group and indicated potential support of the project. Would it be possible for us to make a brief presentation at an upcoming City Council Meeting? We would like the opportunity to inform the City Council about the project and answer any questions you might have. If you would be willing, and could let us know what potential dates would be convenient for you, I will promptly check on our availability and try and coordinate a date soon.

I look forward to meeting you and working with you.

Sincerely,
A handwritten signature in cursive script, appearing to read 'Matthew E. Romanik'.

Matthew E. Romanik, Esquire
MER/jmr

MINUTES
CITY COUNCIL MEETING
May 27, 2014
3048 S. Atlantic Ave. Daytona Beach Shores, FL 32118

Present: Mayor Harry Jennings, Vice-Mayor Peggy Rice, Council Member Jennie Celona, Council Member Henry Fehrmann, and Council Member Billie Wheeler. **Staff:** City Manager Michael Booker, City Clerk Cheri Schwab, City Attorney Lonnie Groot, Community Services Director Fred Hiatt, and Public Safety Director Stephan Dembinsky.

1. **CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:** None.
2. **APPROVAL OF THE MINUTES:** May 13, 2014 City Council Meeting

CMBR WHEELER moved, seconded by CMBR RICE to approve the minutes of May 13, 2014.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: CouncilMember Billie Wheeler, CouncilMember Henry Fehrmann, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

3. **CONSENT AGENDA:**
 - **Monthly Departmental Reports**
 - **Monthly Financial Report**
 - **Approval of Cooperation Agreement for Community Development Block Grant (CDBG) for years 2015, 2016 and 2017**

END CONSENT AGENDA

CMBR CELONA moved, seconded by CMBR WHEELER to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: CouncilMember Billie Wheeler, CouncilMember Henry Fehrmann, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

4. **REPORTS OF THE CITY ATTORNEY:** None.
5. **REPORTS OF THE CITY MANAGER:** The City Manager thanked Director Fred Hiatt and his Public Works Department for their hard work on the median on Dunlawton Avenue.

OLD BUSINESS:

6. **Ordinance 2014-02 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. Third Reading and Public Hearing.

City Attorney Lonnie Groot informed the council that the ordinance would strengthen the city on code enforcement issues. Vacant buildings can pose a public safety concern during a storm event. The revised Section 10 relates to the effective date. For most properties, it will be effective immediately. If a property can be considered an EPA (Existing Process Applicant), they may request a hearing within 30 days to determine whether there should be any modification for them. The effective date would then be 45 days later. The RAIT property has asked to be singled out as there are ongoing negotiations with the property and its owners. Attorney Mark Watts who represents RAIT thanked staff for negotiating with his client. They had hoped for a Development Agreement to be presented tonight as well. This will give them time to wrap up and get an agreement satisfactory to the city. He noted on the record that he gave the City Clerk a copy of a letter from February 21, 2014 written by Attorney Ron Weaver in protest of the Ordinance.

CMBR FEHRMANN moved, seconded by CMBR WHEELER to adopt Ordinance 2014-02 on third reading.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

Yes: CouncilMember Billie Wheeler, CouncilMember Henry Fehrmann, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

NEW BUSINESS:

7. Approval for marketing expenditures

The cost for the marketing campaign valued at \$10,000 would be \$4,600. There is approximately \$1,600 available in that account. The City Manager noted that funds could be used from other accounts if the council desired.

Audience member Lowell Wynn inquired how the council would determine if the marketing was effective before they renewed any contract. He provided an example using sales tax returns from 3 years ago compared to the current year to see if any increase occurred. City Manager Booker agreed

that it is hard to measure. The Mayor added with the economy getting stronger and condo sales increasing it would be hard to judge how effective the advertising had been.

CMBR WHEELER moved, seconded by CMBR RICE authorized the City Manager to look for \$3,000 to cover the marketing expense for the television commercial.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

Yes: CouncilMember Billie Wheeler, CouncilMember Henry Fehrmann, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

8. COUNCIL COMMENTS: Vice Mayor Rice appreciated the show of American flags yesterday in the Court of Flags for Memorial Day. CMBR Wheeler mentioned the recent Volusia League of Cities banquet. C & E Boardmember Lynn Bishop won an award for Citizen of the Year. She also mentioned Cherise Wintz held another Zumbathon on April 26 for Operation Changing Lives. There was a recent article in the paper spotlighting the non-profit. CMBR Celona congratulated the Public Safety Department on their recent gambling machine sting operation. CMBR Fehrmann commented on the Publix construction. The new building is starting to take shape. He also stated that the Ocean Café should be selling beer and wine by the end of the week. Mayor Jennings reminded the audience that Representative Dave Hood is holding a Town Hall meeting on June 9th.

9. AUDIENCE REMARKS/PUBLIC COMMENTS: Lyn Bishop thanked the council for the nomination and Citizen’s Award. She felt the support of the City Council was terrific.

10. ITEMS RECOMMENDED FOR THE NEXT AGENDA: None.

11. ADJOURNMENT: There being no further business to be considered, the meeting adjourned at approximately 7:53 pm.

**MAYOR
HARRY H. JENNINGS**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY OF DAYTONA BEACH SHORES
APPOINTMENT INFORMATION FORM

Please type, if possible. (Or print clearly)

DATE: 5-12-14

BOARD(S) DESIRED: Culture & Entertainment Board

NAME: Mona M. Goodman

ADDRESS(ES): H: 1 Ocean W. Blvd. #12B ZIP: 32118

W: _____ ZIP: _____

PHONE: H: 386 322-1944 W: _____

EMPLOYER: retired ~ 15 yrs.

POSITION: _____ HOW LONG _____

EDUCATION: SCHOOL NO. YEARS DEGREES

HIGH SCHOOL Philadelphia High School for Girls - Graduated 1942

COLLEGE Garrett Jr. College - Assoc. in Liberal Arts

- 1. Are you a resident of City of Daytona Beach Shores? Y N _____
- 2. Are you a registered voter? Y N _____
- 3. Do you own property in Daytona Beach Shores? Y N _____
- 4. Are you currently serving on a City board? Y N _____
- 5. Have you ever served on a City board? Y N _____
If yes, when, where and which board? _____

Daytona Beach Shores - Since Culture & Entertainment Committee first became The Culture & Entertainment Board.

6. How long have you lived in Daytona Beach Shores? 20 yrs.

REFERENCES: (Please do not use current council members)

NAME

ADDRESS

PHONE

Ernie Wilson - 1 Ocean W. Blvd #12B3 (761-4155)

Barbara Miles of Ocean W. Blvd #19B5 (386-761-2629)

WORK EXPERIENCE:

1 yr Shipping Dept for clothing Co. Philadelphia - 2 yrs. inspector
of airplanes altimeters for U.S. Gov't - 2 yrs. Mgr. of store, York
3 yrs. owner Mgr. Clothing Store, Barnesville, Ga., 5 yrs. Sales for Shaker
Retired from Sata position at 75 yrs of age.

WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARD(S)?

I enjoy the work we are doing for our community

Mona M. Goodman
(Signature)

Please Note: If you have any questions, please call the Office of the City Clerk, 763-5364.
Return this form in person or by mail to the City Clerk, City Hall, 2990 S. Atlantic Avenue,
Daytona Beach Shores, FL 32118. Faxes will not be accepted.



**CITY OF DAYTONA BEACH SHORES
APPOINTMENT INFORMATION FORM**

Please type, if possible. (Or print clearly)

DATE: 5-19-14

BOARD(S) DESIRED: Culture & Entertainment

NAME: LORRAINE GEIGER

ADDRESS(ES): H: 2983 SEA OATS CIR ZIP: 32118

W: _____ ZIP: _____

PHONE: H: 386-322-4959 W: cell 386-405-1225

EMPLOYER: RETIRED

POSITION: _____ HOW LONG _____

EDUCATION: SCHOOL NO. YEARS DEGREES

HIGH SCHOOL Newwood High 4 _____

COLLEGE Cincinnati Tech 2 ASSOC

.....
1. Are you a resident of City of Daytona Beach Shores? Y N _____

2. Are you a registered voter? Y N _____

3. Do you own property in Daytona Beach Shores? Y N _____

4. Are you currently serving on a City board? Y N _____

5. Have you ever served on a City board? Y N _____
If yes, when, where and which board? 2006

C&E Board

6. How long have you lived in Daytona Beach Shores? 16 years

REFERENCES: (Please do not use current council members)

NAME	ADDRESS	PHONE
Lynn Bishop	4 Oceans Blvd #202.D	760-9190
Cindy Schmitz	Oceans TRACE	
Mel Lindauer	SEA Oats Circle	

WORK EXPERIENCE:

Procter & Gamble - Lab Analyst -

Honeywell - Electronics Engineer

WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARD(S)?

Continued growth of the CEE Board
w/ the best group of volunteers possible

Lorraine Greer
(Signature)

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CITY OF DAYTONA BEACH SHORES
APPOINTMENT INFORMATION FORM

Please type, if possible. (Or print clearly)

DATE: 05/21/14

BOARD(S) DESIRED: Adjustment

NAME: Stefan Alexander

ADDRESS(ES): H: 2924 Sea Oats ^{Circle} ZIP: 32118

W: N/A ZIP: _____

PHONE: H: 386/768/3338 W: N/A

EMPLOYER: N/A

POSITION: N/A HOW LONG _____

EDUCATION: SCHOOL NO. YEARS DEGREES

HIGH SCHOOL Sesbrow _____

COLLEGE DRCC AA

.....
1. Are you a resident of City of Daytona Beach Shores? Y N _____

2. Are you a registered voter? Y N _____

3. Do you own property in Daytona Beach Shores? Y N _____

4. Are you currently serving on a City board? Y N _____

5. Have you ever served on a City board? Y N _____
If yes, when, where and which board? _____

Adjustment

6. How long have you lived in Daytona Beach Shores? 10 years

REFERENCES: (Please do not use current council members)

NAME	ADDRESS	PHONE
<i>Thom Lo Clesimo</i>	<i>1801 W. International Speedway</i>	<i>386-405-8615</i>
<i>Dance Reim</i>	<i>1801 W. International Speedway</i>	<i>386-405-6008</i>
<i>Jose Rodriguez</i>	<i>1801 W. International Speedway</i>	<i>386-681-6205</i>

WORK EXPERIENCE:

Const. Mgr - International Speedway

WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARD(S)?

Enjoy helping our community

[Signature]
(Signature)

Please Note: If you have any questions, please call the Office of the City Clerk, 763-5364. Return this form in person or by mail to the City Clerk, City Hall, 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118. Faxes will not be accepted.



CITY OF DAYTONA BEACH SHORES
APPOINTMENT INFORMATION FORM

Please type, if possible. (Or print clearly)

DATE: 5-24-14

BOARD(S) DESIRED: Code Enforcement and/or Planning

NAME: James W. Lilly

ADDRESS(ES): H: P.O. Box 2623 ZIP: 32118
W: Daytona Beach ZIP: 32115

3 oceans west Blvd.
2A3
Daytona Beach
Shores, FL 32118

PHONE: H: 386-589-4460 W: _____

EMPLOYER: Self

POSITION: _____ HOW LONG long time

EDUCATION: SCHOOL NO. YEARS DEGREES

HIGH SCHOOL Waverly 4 Year

COLLEGE Florida Atlantic 2 Post Grad.
Orbuna University of BS

.....

1. Are you a resident of City of Daytona Beach Shores? Y N _____

2. Are you a registered voter? Y N _____

3. Do you own property in Daytona Beach Shores? Y N _____

4. Are you currently serving on a City board? Y N _____

5. Have you ever served on a City board? Y N _____
If yes, when, where and which board? _____

Code + another I can't remember

6. How long have you lived in Daytona Beach Shores? 12 years

REFERENCES: (Please do not use current council members)

NAME	ADDRESS	PHONE
Ran Brown	3 Oceanus West SBS	386-304-9723
John Schmitz	2959 Oceanus Tract SBS	386-334-1377
Dick Fillingame	33 Oceanway Face #165	386-767-9186

WORK EXPERIENCE:

Real Estate Broker - Florida + Ohio licensed

Builder - homes + Apartments - Designer

Property Manager - Florida licensed

WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARD(S)?

using work experience

to pay-it-back to my community



(Signature)

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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**INTERLOCAL AGREEMENT FOR CREATION OF THE
METROPOLITAN PLANNING ORGANIZATION**

THIS INTERLOCAL AGREEMENT for the formation of a Metropolitan Planning Organization is made and entered into on this [] day of [], by and between the FLORIDA DEPARTMENT OF TRANSPORTATION; the COUNTIES OF VOLUSIA (also representing the Daytona Beach International Airport, Volusia Transit, and the Coastal Division) and FLAGLER (also representing Flagler County Airport); the CITIES OF Deltona, Palm Coast, Daytona Beach, Port Orange, Ormond Beach (also representing the Ormond Beach Municipal Airport), DeLand (also representing the DeLand Municipal Airport) , New Smyrna Beach (also representing the New Smyrna Beach Municipal Airport), Edgewater, DeBary, South Daytona, Holly Hill, Orange City; and the Small Cities Alliance (Cities of Flagler Beach, Daytona Beach Shores, Ponce Inlet, Lake Helen, Bunnell, Oak Hill, Pierson, and Beverly Beach); collectively “the parties”.

RECITALS

WHEREAS, the federal government, under the authority of Title 23 United States Code (USC) §134 and Title 49 USC §5303, requires each metropolitan area, as a condition for the receipt of federal capital or operating assistance, to have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the metropolitan area;

WHEREAS, the parties to this Interlocal Agreement desire to participate cooperatively in the performance, on a continuing basis, of a coordinated, comprehensive transportation planning process to assure that highway facilities, mass transit systems, bicycle and pedestrian facilities, rail systems, air transportation and other facilities will be properly located and developed in relation to the overall plan of community development;

WHEREAS, Title 23 USC §134 and Title 49 USC §§5303-5305, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Section 339.175, Florida Statutes (F.S.), provide for the creation of Metropolitan Planning Organizations to develop transportation plans and programs for urbanized areas;

WHEREAS, pursuant to Titles 23 USC §134(d), 49 USC §5303, 23 CFR §450.310(b), and Section 339.175(2), F.S., a determination has been made by the Governor and units of general purpose local government representing at least 75 percent of the affected population (including the largest incorporated city, based on population as named by the Bureau of Census) in the urbanized areas to designate a Metropolitan Planning Organization;

WHEREAS, pursuant to this Interlocal Agreement, the parties wish to collectively participate in the metropolitan planning process as the River to Sea Transportation Planning Organization for the Palm Coast-Daytona-Port Orange and Deltona urbanized areas, herein after referred to as “the Transportation Planning Organization” or “the TPO”. Further, the parties approved by unanimous vote an apportionment and boundary plan for presentation to the Governor on the 26th day of March 2013;

WHEREAS, pursuant to Section 339.175(4), F.S., the Governor, by letter dated the 14th day of March 2014, approved the apportionment and boundary plan submitted by the TPO;

WHEREAS, pursuant to Title 23 CFR §450.314(a), and Section 339.175(10), F.S., an agreement must be entered into by the Department, the TPO, and the governmental entities and public transportation operators to

identify the responsibility of each party for cooperatively carrying out a comprehensive transportation planning process;

WHEREAS, this Interlocal Agreement is required to create the Transportation Planning Organization and delineate the provisions for operation of the TPO;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with Section 339.175(10), F.S.;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with statutory requirements set forth in Section 163.01, F.S., relating to Interlocal Agreements; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

ARTICLE 1 RECITALS; DEFINITIONS

Section 1.01. Recitals. Each and all of the foregoing recitals are incorporated herein and acknowledged to be true and correct to the best of the parties' knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Interlocal Agreement.

Section 1.02. Definitions. The following words when used in this Interlocal Agreement (unless the context shall clearly indicate the contrary) shall have the following meanings:

Interlocal Agreement means and refers to this instrument, as may be amended from time to time.

Department means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, F.S.

FHWA means and refers to the Federal Highway Administration.

FTA means and refers to the Federal Transit Administration.

Long Range Transportation Plan (LRTP) is the 20-year transportation planning horizon which includes transportation facilities; identifies a financial plan that demonstrates how the plan can be implemented and assesses capital improvements necessary to preserve the existing metropolitan transportation system and make efficient use of existing transportation facilities; indicates proposed transportation activities; and in ozone/carbon monoxide nonattainment areas is coordinated with the State Implementation Plan, all as required by Title 23 USC §134(c), Title 49 USC §5303, Title 23 CFR §450.322, and Section 339.175(7), F.S.

Metropolitan Planning Area means and refers to the planning area determined by agreement between the TPO and the Governor for the urbanized area containing at least a population of 50,000 as described in Title 23 USC §134(b)(1), Title 49 USC §5303, and Section 339.175(2)(c) and (d), F.S., and including the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, which shall be subject to the Transportation Planning Organization's planning authority.

MPO means and refers to the Metropolitan Planning Organization formed pursuant to this Interlocal Agreement as described in 23 USC §134(b)(2), 49 USC §5303, and Section 339.175(1), F.S.

TPO is an alternate designation that means and refers to a metropolitan planning organization formed pursuant to this Interlocal Agreement as described in 23 USC §134(b)(2), 49 USC §5303, and Section 339.175(1), F.S.

Transportation Improvement Program (TIP) is the staged multi-year program of transportation improvement projects developed by a Metropolitan Planning Organization consistent with the Long Range Transportation Plan, developed pursuant to 23 USC §134(j), 49 USC §5303, 23 CFR §450.324 and Section 339.175(8), F.S.

Unified Planning Work Program (UPWP) is the biennial program developed in cooperation with the Department and public transportation providers, that identifies the planning priorities and activities to be carried out within a metropolitan planning area to be undertaken during a 2-year period, together with a complete description thereof and an estimated budget, all as required by 23 CFR §450.308, and Section 339.175(9), F.S.

ARTICLE 2 PURPOSE

Section 2.01. General Purpose. The purpose of this Interlocal Agreement is to establish the TPO and recognize the boundary and apportionment approved by the Governor. This Interlocal Agreement shall serve:

- (a) To assist in the development of transportation systems embracing various modes of transportation in a manner that will maximize the mobility of people and goods within and through this metropolitan planning area and minimize, to the maximum extent feasible for transportation-related fuel consumption and air pollution;
- (b) To develop transportation plans and programs, in cooperation with the Department, which plans and programs provide for the development of transportation facilities that will function as a multi-modal and intermodal transportation system for the metropolitan planning area;
- (c) To implement and ensure a continuing, cooperative, and comprehensive transportation planning process that results in coordinated plans and programs consistent with the comprehensively planned development of this affected metropolitan planning area in cooperation with the Department;
- (d) To assure eligibility for the receipt of federal capital and operating assistance pursuant to Title 23 USC §134 and Title 49 USC §§5303, 5304, 5305, 5307, 5309, 5310, 5311, 5314, 5326, 5337 and 5339, 5340; and
- (e) To carry out the metropolitan transportation planning process, in cooperation with the Department, as required by federal, state and local laws.

Section 2.02. Major TPO Responsibilities. The TPO is intended to be a forum for cooperative decision making by officials of the governmental entities which are parties to this Interlocal Agreement in the development of transportation-related plans and programs, including but not limited to:

- (a) The LRTP;
- (b) The TIP;
- (c) The UPWP;
- (d) Incorporating performance goals, measures, and targets into the process of identifying and selecting needed transportation improvements and projects;
- (e) A congestion management process for the metropolitan area and coordinated development of all other transportation management systems required by state or federal law;
- (f) Assisting the Department in mapping transportation planning boundaries required by state or federal law;
- (g) Supporting the Department in performing its duties relating to access management, functional classification of roads, and data collection; and
- (h) Performing such other tasks required by state or federal law.

Section 2.03. Coordination with the Department and Consistency with Comprehensive Plans. Chapter 334, F.S., grants broad authority for the Department's role in transportation. Section 334.044, F.S., includes the legislative intent declaring that the Department shall be responsible for coordinating the planning of a safe, viable, and balanced state transportation system serving all regions of the State. Section 339.155, F.S., requires the Department to develop a statewide transportation plan, which considers, to the maximum extent feasible, strategic regional policy plans, TPO plans, and approved local government comprehensive plans. Section 339.175(5), F.S., specifies the authority and responsibility of the TPO and the Department to manage a continuing, cooperative, and comprehensive transportation planning process for the metropolitan area.

In fulfillment of this purpose and in the exercise of the various powers granted by Chapters 334 and 339, F.S., the parties to this Interlocal Agreement acknowledge that decisions made by the TPO will be coordinated with the Department. All parties to this Interlocal Agreement acknowledge that actions taken pursuant to this Interlocal Agreement will be consistent with local government comprehensive plans.

ARTICLE 3 MPO/TPO ORGANIZATION AND CREATION

Section 3.01. Establishment of TPO. The TPO for the metropolitan planning area as described in the membership apportionment plan approved by the Governor is hereby created and established pursuant to this Interlocal Agreement to carry out the purposes and functions set forth in Articles 2 and 5. The legal name of this Transportation Planning Organization shall be the River to Sea TPO.

Section 3.02. TPO to operate pursuant to law. In the event that any election, referendum, approval, permit, notice, other proceeding or authorization is required under applicable law to undertake any power, duty, or responsibility hereunder, or to observe, assume, or carry out any of the provisions of this Interlocal Agreement, the TPO will, to the extent of its legal capacity, comply with all applicable laws and requirements.

Section 3.03. Governing board to act as policy-making body of TPO. The governing board established pursuant to Section 4.01 of this Interlocal Agreement shall act as the policy-making body for the TPO, and will be responsible for coordinating the cooperative decision-making process of the TPO’s actions, and will take required actions as the TPO.

Section 3.04. Data, reports, records, and other documents. Subject to the right to claim an exemption from the Florida Public Records Law, Chapter 119, F.S., the parties shall provide to each other such data, reports, records, contracts, and other documents in its possession relating to the TPO as is requested. Charges are to be in accordance with Chapter 119, F.S.

Section 3.05. Rights of review. All parties to this Interlocal Agreement and the affected federal funding agencies (e.g., FHWA, FTA, and FAA) shall have the rights of technical review and comment on TPO’s projects.

**ARTICLE 4
 COMPOSITION; MEMBERSHIP; TERMS OF OFFICE**

Section 4.01. Composition and membership of governing board.

- (a) The membership of the TPO shall consist of 19 voting members and 6 non-voting members/advisor(s). The names of the member local governmental entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

County Representation

County representation includes six (6) seats. These seats are distributed as follows:

County	# Seats
Volusia County	5
Flagler County	1
Total Seats	6

Municipal Representation

The twelve (12) largest cities by population will be provided one voting seat and each seat will carry a weighted vote.

Large Cities (in order of population size):

City	# Seats
Deltona	1
Palm Coast	1
Daytona Beach	1
Port Orange	1
Ormond Beach	1
DeLand	1
New Smyrna Beach	1
Edgewater	1
DeBary	1
South Daytona	1
Holly Hill	1
Orange City	1
Total Seats	12

The remaining small cities included in the planning area will be grouped together and provided with one voting seat that will be weighted based on the cumulative population of the small cities.

Small City Alliance (in order of population size):

City	# Seats
Flagler Beach	
Daytona Beach Shores	
Ponce Inlet	
Lake Helen	
Bunnell	
Oak Hill	
Pierson	
<u>Beverly Beach</u>	
Total Seats	1

The vote of each member shall be weighted in the following manner:

- 33.3% of the total vote shall be allocated among the six (6) county representatives and weighted based on population served
- 66.7% of the total vote shall be divided among the twelve (12) large cities and the Small City Alliance and weighted equal to the proportion of the population contained within their respective municipality and within the MPA.

Population percentages shall be determined initially using the decennial census figures and updated every five (5) years using population estimates from the University of Florida’s Bureau of Economic and Business Research (BEBR). A member may request an update during the interim period if major changes are documented (i.e. annexation)

Non-voting members of the TPO include a representative from the Volusia County School Board, the Flagler County School Board, the Chairperson of the Technical Coordinating Committee, the Chairperson of the Citizens Advisory Committee and the Chairperson of the Bicycle and Pedestrian Advisory Committee.

The FDOT District 5 Secretary, or his/her designee, shall serve as a non-voting advisor to the TPO Board.

- (b) All voting representatives shall be elected officials of general purpose local governments, except to the extent that the TPO includes, as part of its apportioned voting membership, a member of a statutorily authorized planning board or an official of an agency that operates or administers a major mode of transportation. All individuals acting as a representative of the governing board of the county, the city, or authority shall first be selected by said governing board.
- (c) The voting membership of an MPO/TPO shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations and shall be in compliance with 339.175(3) F.S.

- (d) In the event that a governmental entity that is a member of the TPO fails to fill an assigned appointment to the TPO within sixty days after notification by the Governor of its duty to appoint a representative, the appointment shall then be made by the Governor from the eligible individuals of that governmental entity.

Section 4.02. Terms. The term of office of members of the TPO shall be four years. The membership of a member who is a public official automatically terminates upon said official leaving the elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the governmental entity represented by the member. A vacancy shall be filled by the original appointing entity. A member may be appointed for one or more additional four year terms. The term of appointment for members of the Small City Alliance will be consistent with other appointments to the TPO; however, voting representation will rotate on a semi-annual basis (to occur in October and April).

ARTICLE 5 AUTHORITIES, POWERS, DUTIES AND RESPONSIBILITIES

Section 5.01. General authority. The TPO shall have all authorities, powers and duties, enjoy all rights, privileges, and immunities, exercise all responsibilities and perform all obligations necessary or appropriate to managing a continuing, cooperative, and comprehensive transportation planning process as specified in Section 339.175(5) and (6), F.S.

Section 5.02. Specific authority and powers. The TPO shall have the following powers and authority:

- (a) As provided in Section 339.175(6)(g), F.S., the TPO may employ personnel and/or may enter into contracts with local or state agencies and private planning or engineering firms to utilize the staff resources of local and/or state agencies;
- (b) As provided in Section 163.01(14), F.S., the TPO may enter into contracts for the performance of service functions of public agencies;
- (c) As provided in Section 163.01(5)(j), F.S., the TPO may acquire, own, operate, maintain, sell, or lease real and personal property;
- (d) As provided in Section 163.01(5)(m), F.S., the TPO may accept funds, grants, assistance, gifts or bequests from local, state, and federal resources;
- (e) The TPO may promulgate rules to effectuate its powers, responsibilities, and obligations enumerated herein; provided, that said rules do not supersede or conflict with applicable local and state laws, rules and regulations; and
- (f) The TPO shall have such powers and authority as specifically provided in Section 163.01 and Section 339.175(5) and (6), F.S., and as may otherwise be provided by federal or state law.

Section 5.03. Duties and responsibilities. In addition to those duties and responsibilities set forth in Article 2, the TPO shall have the following duties and responsibilities:

- (a) As provided in Section 339.175(6)(d), F.S., the TPO shall create and appoint a technical advisory committee;

- (b) As provided in Section 339.175(6)(e), F.S., the TPO shall create and appoint a citizens' advisory committee;
- (c) As provided in Section 163.01(5)(o), F.S., the TPO membership shall be jointly and severally liable for liabilities, and the TPO may respond to such liabilities through the purchase of insurance or bonds, the retention of legal counsel, and, as appropriate, the approval of settlements of claims by its governing board;
- (d) As provided in Section 339.175(9), F.S., the TPO shall establish an estimated budget which shall operate on a fiscal year basis consistent with any requirements of the UPWP;
- (e) The TPO, in cooperation with the Department, shall carry out the metropolitan transportation planning process as required by Title 23 CFR Parts 420 and 450, and Title 49 CFR Part 613, Subpart A, and consistent with Chapter 339, F.S., and other applicable state and local laws;
- (f) As provided in Section 339.175(10)(a), F.S., the TPO shall enter into agreements with the Department, operators of public transportation systems and the metropolitan and regional intergovernmental coordination and review agencies serving the metropolitan area. These agreements will prescribe the cooperative manner in which the transportation planning process will be coordinated and included in the comprehensively planned development of the area;
- (g) Perform such other tasks presently or hereafter required by state or federal law;
- (h) Execute certifications and agreements necessary to comply with state or federal law; and
- (i) Adopt operating rules and procedures.

ARTICLE 6 FUNDING; INVENTORY REPORT; RECORD-KEEPING

Section 6.01. Funding. The Department shall allocate to the TPO for performance of its transportation planning and programming duties, an appropriate amount of federal transportation planning funds consistent with the approved planning funds formula.

Section 6.02. Inventory report. The TPO agrees to inventory, to maintain records of and to insure proper use, control, and disposal of all nonexpendable tangible property acquired pursuant to funding under this Interlocal Agreement. This shall be done in accordance with the requirements of Title 23 CFR Part 420, Subpart A, Title 49 CFR Part 18, Subpart C, and all other applicable federal regulations.

Section 6.03. Record-keeping and document retention. The Department and the TPO shall prepare and retain all records in accordance with federal and state requirements, including but not limited to 23 CFR Part 420, Subpart A, 49 CFR Part 18, Subpart C, 49 CFR §18.42, and Chapter 119, F.S.

Section 6.04 Compliance with laws. All parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement. Specifically, if a party is acting on behalf of a public agency the party shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the party.
- (b) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the party upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Section 7.01. Constitutional or statutory duties and responsibilities of parties. This Interlocal Agreement shall not be construed to authorize the delegation of the constitutional or statutory duties of any of the parties. In addition, this Interlocal Agreement does not relieve any of the parties of an obligation or responsibility imposed upon them by law, except to the extent of actual and timely performance thereof by one or more of the parties to this Interlocal Agreement or any legal or administrative entity created or authorized by this Interlocal Agreement, in which case this performance may be offered in satisfaction of the obligation or responsibility.

Section 7.02. Amendment of Interlocal Agreement. Amendments or modifications of this Interlocal Agreement may only be made by written agreement signed by all parties here to with the same formalities as the original Interlocal Agreement. No amendment may alter the apportionment or jurisdictional boundaries of the TPO without approval by the Governor.

Section 7.03. Duration; withdrawal procedure.

- (a) Duration. This Interlocal Agreement shall remain in effect until terminated by the parties to this Interlocal Agreement. The Interlocal Agreement shall be reviewed by the parties at least every five years, concurrent with the decennial census, and/or concurrent with a new Federal Reauthorization bill, and updated as necessary.
- (b) Withdrawal procedure. Any party, except the Department and the unit of general purpose local government that represents the central city or cities within the River to Sea TPO's jurisdiction, as defined by United States Bureau of the Census, may withdraw from this Interlocal Agreement after presenting in written form a notice of intent to withdraw to the other parties to this Interlocal Agreement and the TPO, at least 90 days prior to the intended date of withdrawal. Upon receipt of the intended notice of withdrawal:
 - (1) The withdrawing member and the TPO shall execute a memorandum reflecting the withdrawal of the member and alteration of the list of member governments that are signatories

to this Interlocal Agreement. The memorandum shall be filed in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located; and

(2) The TPO shall contact The Office of the Governor and the Governor, with the agreement of the remaining members of the TPO, shall determine whether any reapportionment of the membership is appropriate. The Governor and the TPO shall review the previous TPO designation, applicable federal, state and local law, and TPO rules for appropriate revision. In the event that another entity is to be afforded membership in the place of the member withdrawing from the TPO, the parties acknowledge that pursuant to Title 23 CFR §450.310(1)(2), adding membership to the TPO does not automatically require redesignation of the TPO. In the event that a party who is not a signatory to this Interlocal Agreement is afforded membership in the TPO, membership shall not become effective until this Interlocal Agreement is amended to reflect that the new member has joined the TPO.

Section 7.04. Notices. All notices, demands and correspondence required or provided for under this Interlocal Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be sent to the duly appointed TPO representative as follows:

Mayor **Jim Ardell**, Beverly Beach

Commissioner **John Rogers**, Bunnell

Commissioner **Robert Gilliland**, Daytona Beach

Mayor **Harry Jennings**, Daytona Beach Shores

Council Member **Lita Handy-Peters**, DeBary

Mayor Pro Tem **Leigh Matusick**, DeLand

Mayor **John Masiarczyk**, Deltona

Councilman **Gene Emter**, Edgewater

Commissioner **Marshall Shupe**, Flagler Beach

Commissioner **Barbara Revels**, Flagler County

Commissioner **Penny Currie**, Holly Hill

Commissioner **Rick Basso**, Lake Helen

Vice-Mayor **Jason McGuirk**, New Smyrna Beach

Mayor **Doug Gibson**, Oak Hill

Commissioner **Ron Saylor**, Orange City

Mayor **Ed Kelley**, Ormond Beach

Vice-Mayor **Jason DeLorenzo**, Palm Coast

Mayor **James Sowell**, Pierson

Council Member **Joe Perrone**, Ponce Inlet

Council Member **Bob Ford**, Port Orange

Vice Mayor **Nancy Long**, South Daytona

Council Member **Pat Patterson**, Volusia County

Council Member **Joshua Wagner**, Volusia County

Council Member **Deb Denys**, Volusia County

Council Member **Pat Northey**, Volusia County

Council Member **Joyce Cusack**, Volusia County

Secretary **Noranne Downs, P.E.**, FDOT District V

A party may unilaterally change its address or addressee by giving notice in writing to the other parties as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

Section 7.05. Interpretation.

- (a) Drafters of the Interlocal Agreement. The Department and the members of the TPO were each represented by or afforded the opportunity for representation by legal counsel and participated in the drafting of this Interlocal Agreement and in choice of wording. Consequently, no provision should be more strongly construed against any party as drafter of this Interlocal Agreement.
- (b) Severability. Invalidation of any one of the provisions of this Interlocal Agreement or any part, clause or word, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect; provided, that such remainder would then continue to conform to the terms and requirements of applicable law.
- (c) Rules of construction. In interpreting this Interlocal Agreement, the following rules of construction shall apply unless the context indicates otherwise:
 - (1) The singular of any word or term includes the plural;
 - (2) The masculine gender includes the feminine gender; and

(3) The word “shall” is mandatory, and “may” is permissive.

Section 7.06. Enforcement by parties hereto. In the event of any judicial or administrative action to enforce or interpret this Interlocal Agreement by any party hereto, each party shall bear its own costs and attorney’s fees in connection with such proceeding.

Section 7.07. Interlocal Agreement execution; Use of counterpart signature pages. This Interlocal Agreement, and any amendments hereto, may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

Section 7.08. Effective date; Cost of recordation.

- (a) Effective date. This Interlocal Agreement shall become effective upon its filing in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located. Any amendment hereto shall become effective only upon its filing in the Office of the Clerk of the Circuit Court for each county in which a party hereto is located.
- (b) Recordation. The TPO hereby agrees to pay for any costs of recordation or filing of this Interlocal Agreement in the Office of the Circuit Court for each county in which a party is hereto located. The recorded or filed original, or any amendment, shall be returned to the TPO for filing in its records.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on behalf of the referenced legal entities and hereby establish the above designated TPO.

Signed, Sealed and Delivered in the presence of:

Authorized Representative, Beverly Beach

Authorized Representative, Daytona Beach

Print Name, Title

2735 N. Oceanshore Blvd.
Beverly Beach, FL 32136

Print Name, Title

P.O. Box 2451
Daytona Beach, FL 32115

Authorized Representative, Bunnell

Authorized Representative, Daytona Beach Shores

Print Name, Title

1769 E. Moody Blvd.
Bunnell, FL 32110

Print Name, Title

2990 S. Atlantic Ave.
Daytona Beach Shores, FL 32118

Authorized Representative, DeBary

Print Name, Title

219 Bunker Court
DeBary, FL 32713

Authorized Representative, DeLand

Print Name, Title

120 South Florida Ave.
DeLand, FL 32720

Authorized Representative, Deltona

Print Name, Title

2345 Providence Blvd.
Deltona, FL 32725

Authorized Representative, Edgewater

Print Name, Title

P.O. Box 100
Edgewater, FL 32132

Authorized Representative, Flagler Beach

Print Name, Title

P.O. Box 70
Flagler Beach, FL 32136

Authorized Representative, Flagler County

Print Name, Title

1769 E. Moody Blvd., Building 2, Suite 301
Bunnell, FL 32110

Authorized Representative, Holly Hill

Print Name, Title

1065 Ridgewood Ave
Holly Hill, FL 32117

Authorized Representative, Lake Helen

Print Name, Title

P.O. Box 39
Lake Helen, FL 32744

Authorized Representative, New Smyrna Beach

Print Name, Title

77 Cunningham Dr.
New Smyrna Beach, FL 32168

Authorized Representative, Oak Hill

Print Name, Title

234 U.S. Highway 1
Oak Hill, FL 32759

Authorized Representative, Orange City

Print Name, Title

205 East Graves Ave.
Orange City, FL 32763

Authorized Representative, Ponce Inlet

Print Name, Title

75 Buschman Drive
Ponce Inlet, FL 32127

Authorized Representative, Ormond Beach

Print Name, Title

1089 W. Granada Blvd.
Ormond Beach, FL 32174

Authorized Representative, Port Orange

Print Name, Title

1000 City Center Circle
Port Orange, FL 32119

Authorized Representative, Palm Coast

Print Name, Title

1769 E. Moody Blvd., Building 2
Bunnell, FL 32110

Authorized Representative, South Daytona

Print Name, Title

P.O. Box 214960
South Daytona, FL 32121

Authorized Representative, Pierson

Print Name, Title

106 N. Center Street
Pierson, FL 32180

Authorized Representative, Volusia County

Print Name, Title

123 W. Indiana Ave
DeLand, FL 32720

Secretary Noranne Downs, P.E., FDOT District V
719 South Woodland Blvd.
DeLand, FL 32720

DONE AND EXECUTED at the regular meeting of the River to Sea TPO on the ____ day of _____, 201__ .

Reports of the City Attorney

Reports of the City Manager

RESOLUTION 2014 - 05

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, AMENDING THE GENERAL FUND BUDGET, PROVIDING FOR APPROPRIATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, upon an audit, the IRS has determined that it improperly awarded The City federal gasoline excise taxes after the City had claimed that it was not entitled to the tax rebate; and,

WHEREAS, the County has paid the City for three months of continuing fire service protection after it originally terminated this contract; and,

WHEREAS, the City has expended funding beyond the original budget for the Pickleball Court / Pavilion Rest Room project and desires to maintain the integrity of the 2014-15 fiscal year budget by allocating the excess expense from planned contingency;

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

SECTION ONE: The Fiscal Year 2013-14 budget is amended as shown in Attachment 1.

SECTION TWO: This Resolution shall be effective immediately upon its adoption.

CITY OF DAYTONA BEACH SHORES, FL

HARRY J. JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERYL SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Adopted on first reading this _____ day of _____, 2014.

ATTACHMENT #1

BUDGET AMENDMENT #1			H:\[BudgetTrans& Amends FY13-14.xls]Current Year				
Bud. Amendment Date: 6/10/2014		FY 13-14					
GENERAL Fund							
Date	G/L Code		Amount	Beg. Budget	End Budget	Revenue / Expense Action	R/E Link ID
6/10/2014	13350	35420	(\$33,400)	\$8,400	(\$25,000)	Corrected Excise Taxes	A
6/10/2014	13420	42210	\$33,400	\$0	\$33,400	Corrected Co. Fire. Protection	B
CHANGE REVENUE			\$0	\$8,400	\$8,400		
6/10/2014	15720	60630	\$79,000	\$94,100	\$173,100	Pickleball/Pavillion RR Project	C
6/10/2014	15800	90900	(\$79,000)	\$1,036,600	\$957,600	Contingency	D
CHANGE EXPENSE			\$0	\$1,130,700	\$1,130,700		

R/E Link ID Descriptions:

- A. Corrects federal fuel excise taxes improperly awarded to City by the Federal government over past three years, and eliminates the budget for this year's tax award.
- B. Recognizes revenue from the County Fire Protection agreement.
- C. Increases budget funding to Pickleball / Pavilion Rest Room project in excess of budgeted amounts.
- D. Allocates contingency to cover the budget increase for unfunded expenses for the Pickleball / Pavillion Rest Room project.

RESOLUTION NO. 2014-06

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA RELATING TO CITY COUNCIL MEETINGS AND PROVIDING FOR A POLICY REGARDING PRAYER AS A CEREMONIAL MATTER BEFORE BUSINESS OCCURRING AT MEETINGS OF THE CITY OF DAYTONA BEACH SHORES CITY COUNCIL; PROVIDING FOR APPOINTMENT OF A CHAPLAIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores is an elected legislative and deliberative public body, serving the citizens of Daytona Beach Shores, Florida; and

WHEREAS, the City Council wishes to establish and maintain a tradition of solemnizing its proceedings by allowing for an opening prayer at each City Council meeting, for the benefit and blessing of the City Council and the citizens of the City of Daytona Beach Shores and in order to celebrate community spirit and focus the corporate mind of the City Council and others on the importance of liberty and harmony within the Daytona Beach Shores community under a government of laws; and

WHEREAS, the City Council now desires to adopt this formal, written policy to clarify and codify its practices relating to prayer; and

WHEREAS, our Country's Founders recognized that we possess certain rights that cannot be awarded, surrendered, nor corrupted by human power, and the Founders explicitly attributed the origin of these, our inalienable rights; and

WHEREAS, these rights ultimately ensure the self-government manifested in our City Council upon which we desire to invoke guidance and blessing during its deliberations and as a ceremony of, and plea for, a harmonious a productive spirit within the Daytona Beach Shores community; and

WHEREAS, prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in 1789 President George Washington issued a proclamation in which he stated “it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor”; and

WHEREAS, in 1863 President Abraham Lincoln issued a proclamation in which he gave thanks for the “bounties, which are so constantly enjoyed that we are prone to forget the source from which they come, others have been added, which are of so extraordinary a nature, that they cannot fail to penetrate and soften even the heart which is habitually insensible to the ever watchful providence of Almighty God. In the midst of a civil war of unequalled magnitude and severity, which has sometimes seemed to foreign States to invite and to provoke their aggression, peace has been preserved with all nations, order has been maintained, the laws have been respected and obeyed, and harmony has prevailed everywhere except in the theatre of military conflict”; and

WHEREAS, there have been close to 150 national calls to prayer, humiliation, fasting and thanksgiving by the President of the United States between 1789 and 2010, there have been 58 Presidential Proclamations for a “National Day of Prayer” between 1952 and 2010, and every President since 1952 has signed a National Day of Prayer proclamation; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded that, “[t]he opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the

founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.” *Id.*, at 786; and

WHEREAS, the City Council desires to avail itself of the Supreme Court’s recognition that it is constitutionally permissible for a public body to “invoke divine guidance” on its work. *Id.*, at 792, and such invocation “is not, in these circumstances, an „establishment” of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.” *Id.*; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), that “[o]ur history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” *Id.*, at 675; and

WHEREAS, the Supreme Court further stated, that “government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Id.*, at 693 (O’Connor, Justice, concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), that “[w]e are a religious people whose institutions presuppose a Supreme Being.” *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a “custom of opening sessions of all deliberative bodies and most conventions with prayer...,” *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, “[t]he content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it should not be the job of the courts or deliberative public bodies “to embark on a sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative public body. *Id.*; and

WHEREAS, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers, *see, e.g., Lee v. Weisman*, 505 U.S. 577, 588-589 (1992); and

WHEREAS, in *Pelphrey, et al v. Cobb County, Georgia, et al*, 547 F.3d 1263 (11th Cir., Oct. 28, 2008), the United States Court of Appeals for the Eleventh Circuit, which includes Florida within its jurisdictional limits, held that the practice of allowing clergy to offer uncensored religious invocations at the beginning of sessions of a county commission and county planning commission did not violate the Establishment Clause, as long as the invocations did not advance or disparage a belief or affiliate government with specific faith; and

WHEREAS, most recently, on May 5, 2014 the United States Supreme Court ruled in the case of *Town of Greece v. Galloway* (Docket Number 12-696), and the Court held that the Town's practice of opening its town board meetings with a prayer offered by members of the clergy does not violate the Establishment Clause when the practice is consistent with the tradition long followed by Congress and state legislatures, the town does not discriminate against

minority faiths in determining who may offer a prayer, and the prayer does not coerce participation with non-adherents; and

WHEREAS, Article I, Section 3 of the *Constitution of the State of Florida* relates to religious freedom and provides that “[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”; and

WHEREAS, the City Council hereby intends to adopt a policy that does not proselytize or advance any faith, or show any purposeful preference of one religious view to the exclusion of others, but, in the context of offering prayer within the ceremonial part of meeting, that praises our Providence and Creator; seeks guidance and blessing upon the community of Daytona Beach Shores; and urges protection upon our citizens and our soldiers, marines, sailors and members of the Air Force and Coast Guard who are in danger while serving our Nation and protecting our freedoms and liberties; and

WHEREAS, the City Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, the City Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Florida constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA:

SECTION 1. LEGISLATIVE FINDINGS. The foregoing findings are incorporated herein by reference and made a part hereof.

SECTION 2. POLICY OF THE CITY COUNCIL. In order to solemnize proceedings of the City Council, it is the policy of the City Council to allow for prayer to be offered before its meetings during ceremonial matters for the benefit of the City Council and those who, in the exercise of their own beliefs and consciences, desire to engage in such ceremonial activity.

SECTION 3. PRAYER AS AGENDA ITEM. The matter of prayer shall be listed as part of the ceremonial items on City Council agendas, as provided in this Resolution, and shall not be listed or recognized as an agenda item for the meeting or as part of the public business to be transacted at a meeting.

SECTION 4. VOLUNTARY PRAYER. No member or employee of the City Council or any other person in attendance at the meeting shall be required to participate in any prayer that is offered and the participation or non-participation in such activities shall not have any significance relative to any business matter to be brought before the City Council.

SECTION 5. PRAYER BY CLERGY.

(a). The Reverence Robert Kemp-Baird is hereby appointed to serve in the capacity of City Council Chaplain and the City Council Chaplain shall provide prayer during the ceremonial matters part of the City Council agenda. Future appointments shall occur in a manner such as has been accomplished by the adoption of this Resolution.

(b). In the absence of the City Council Chaplain, the Mayor may ask a member of the City Council or City staff to provide the prayer. The Mayor, using absolute discretion, may do likewise as to special meetings of the City Council.

(c). The policies set forth in this Resolution are intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation within the Daytona Beach Shores community.

SECTION 6. RESPECT OF DIVERSE FAITHS. This Resolution is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for or against, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Daytona Beach Shores and its environs.

SECTION 7. NO PAYMENT BY CITY. No speaker shall receive compensation for his or her service under the provisions of this Resolution.

SECTION 8. CONFLICTS. All resolutions or part of resolutions in conflict with this Resolution are hereby repealed.

SECTION 9. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon passage and 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, 2014.

Posted this _____ day of, 2014.

Schwab, Cheri

From: Whitmer, Stephen
Sent: Thursday, May 22, 2014 1:35 PM
To: Schwab, Cheri
Cc: Booker, Michael
Subject: Agenda Item for June 10th

ITEM: Authorization from Council to borrow up to \$4.0 million against Sewer Fund revenues for the extension of the sewer system's ability to send wastewater to the Daytona Beach Bethune Point Wastewater Treatment Plant.

BACKGROUND:

The City has an inter-local agreement (ILA) with the City of Daytona Beach (CoDB) that solicits our sending our City's wastewater to CoDB at dramatically reduced processing charges vs. our current provider. To execute this agreement requires the construction of the necessary infrastructure to send our wastewater to their treatment plant.

This ILA requires that DBS and CoDB reach an agreement regarding the sharing of the final construction costs required to construct such infrastructure. At this point, we expect to be moving fairly quickly into this negotiation, however we do not anticipate that we would move forward with the project at a cost greater than \$4.0M, although such is not out of the realm of possibility if it proves financially beneficial. Anything above \$4.0M, we would propose to finance with cash reserves and return to Council for such authorization.

I have completed our financial modeling of the project, and have floated the project to lenders to determine the cost of borrowing, which came back at 2.4% for a ten year term. Incorporating that into our model, the project at \$4M has a minimum

30-year net gain to the City of \$2.89M, or a Net Present Value (NPV) of \$2.27M discounted at the latest 30-year CPI. If we assume that the processing charges from our current vendor do not remain static and instead rise at an average rate of 0.5% per year, our 30-year net gain would be substantially higher (\$5.13M raw with an NPV of \$3.57M).

By borrowing this \$4M, it frees the City to utilize some of its cash reserves in the Sewer Fund (~\$4.5M) to pay off an existing note with a balance of \$2.1M and an interest rate of 2.913% if it so desires. This would save approximately \$54K in interest charges, reflecting the difference between the anticipated borrowing rate of 2.4% vs. the existing note rate of 2.913% on the remaining 9.2 year term of this note.

REQUEST:

Authorization to borrow up to \$4.0M to execute the City's wastewater treatment ILA with the City of Daytona Beach should we reach agreement to do so.

Stephen R. Whitmer, Ed.D
Finance Director
City of Daytona Beach Shores
386-763-5329



RECEIVED
MAY 23 2014

OFFICE OF THE CITY MANAGER
CITY OF DAYTONA BEACH SHORES

301 South Bronough Street • Suite 300 • P.O. Box 1757 • Tallahassee, FL 32302-1757 • (850) 222-9684 • Fax (850) 222-3806 • www.floridaleagueofcities.com

TO: Municipal Key Official
FROM: Michael Sittig, Executive Director
DATE: May 19, 2014

SUBJECT: 88th Annual FLC Conference –“*Cities take on Technology*”
VOTING DELEGATE AND RESOLUTION INFORMATION
August 14-16, 2014 – Westin Diplomat, Hollywood

As you know, the Florida League of Cities' Annual Conference will be held at the Westin Diplomat, Hollywood, Florida on August 14-16. This year we are celebrating “*Cities take on Technology*”, which will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

It is important that each municipality designate one official to be the voting delegate. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida for 2013.

Registration materials will be sent to each municipality in the month of June. Materials will also be posted on-line. Call us if you need additional copies. The League adopts resolutions each year to take positions on commemorative, constitutional or federal issues. We have attached the procedures your municipality should follow for proposing resolutions to the League membership. A resolution is not needed to become a voting delegate. If you have questions regarding resolutions, please call Allison Payne at the League at (850) 701-3602 or (800) 616-1513, extension 3602. **Proposed resolutions must be received by the League no later than July 9, 2014.**

If you have any questions on voting delegates, please call Gail Dennard at the League (850) 701-3619 or (800) 616-1513, extension 3619. **Voting delegate forms must be received by the League no later than August 11, 2014.**

Attachments: Form Designating Voting Delegate
Procedures for Submitting Conference Resolution

President **R.C. Wu**, Councilmember, Pensacola

First Vice President **Lori C. Moseley**, Mayor, Miramar • Second Vice President **Matthew D. Surrency**, Mayor, Hawthorne

Executive Director **Michael Sittig** • General Counsel **Harry Morrison, Jr.**

**88th Annual Conference
Florida League of Cities, Inc.
August 14-16, 2014
Hollywood, Florida**

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities, designate one of their officials to cast their votes at the Annual Business Session. League By-Laws requires that each municipality select one person to serve as the municipalities voting delegate. Municipalities do not need to adopt a resolution to designate a voting delegate.

Please fill out this form and return it to the League office so that your voting delegate may be properly identified.

Designation of Voting Delegate

Name of Voting Delegate: _____

Title: _____

Municipality of: _____

AUTHORIZED BY:

Name

Title

Return this form to:

Gail Dennard
Florida League of Cities, Inc.
Post Office Box 1757
Tallahassee, FL 32302-1757
Fax to Gail Dennard at (850) 222-3806 or email gdennard@flcities.com

Council comments

Audience remarks

Items for the next agenda