

**ORDINANCE 2020-05**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO OUTDOOR DINING; AMENDING THE CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE; BY AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS”; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; 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 desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible and dynamic; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can help to retain and enhance existing business operations and success; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can be regulated so as to not adversely impact the appearance of the community and its public image; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recognizes that outdoor temporary promotional activities can be regulated so as to not adversely impact the public health, safety and welfare; 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 businesses, visitors, residents and citizens of the City of Daytona Beach Shores; 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

**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:** The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores, Appendix G-Land Development Code*, Chapter 14, entitled “Zoning Regulations,” by adding the following:

**CHAPTER 14 – ZONING REGULATIONS**

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**Sec. 14-22. - GC-1 Tourist-Oriented Commercial District.**

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*14-22.5. Dimensional Requirements.*

Minimum lot size: Seven thousand five hundred (7,500) square feet.

Minimum lot width: Sixty-five (65) feet.

Minimum yard size:

Front yard: Twenty (20) feet.

Rear yard: Twenty (20) feet.

Side yard: None, except when abutting any residential district in which case the side yard will be the same as the abutting district.

Maximum building height: Forty-five (45) feet.

Maximum lot coverage: Thirty-five (35) percent of total area. Accessory structures 400 square feet or less that are associated with an approved bona fide outdoor dining conditional use permit pursuant to Sec. 14-58.2.1.A. of this Land Development Code shall be exempt from this standard.

Screening: Shall be a minimum of six-foot opaque fence or wall when abutting a residential district.

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**Sec. 14-23. - GC-2 Retail/Service Commercial District.**

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*14-23.5. Dimensional Requirements.*

Minimum lot size: Seven thousand five hundred (7,500) square feet.

Minimum lot width: Sixty-five (65) feet.

Minimum yard size:

Front yard: Twenty (20) feet.

Rear yard: Twenty (20) feet.

Side yard: None, except when abutting any residential district in which case the side yard will be the same as the abutting district.

Maximum building height: Forty-five (45) feet.

Maximum lot coverage: The total area covered with principal and accessory building shall not exceed thirty-five (35) percent of the total lot area. Accessory structures 400 square feet or less that are associated with an approved bona fide outdoor dining conditional use permit pursuant to Sec. 14-58.2.1.A. of this Land Development Code shall be exempt from this standard.

Screening: Shall be a minimum of six-foot opaque fence or wall when abutting a residential district.

*14-31.1. GC-RD General Commercial-Redevelopment District.*

14-31.1.8.

*Dimensional Requirements.*

Side Yard: Ten (10) feet.

Front Yard: Twenty (20) feet.

Building Height: Forty-five (45) feet.

Rear Yard: Twenty (20) feet.

Lot Coverage: Thirty-five (35) percent. Accessory structures 400 square feet or less that are associated with an approved bona fide outdoor dining conditional use permit pursuant to Sec. 14-58.2.1.A. of this Land Development Code shall be exempt from this standard.

Minimum Lot Size: Seven thousand five hundred (7,500) square feet.

Minimum Lot Width: Seventy-five (75) feet.

Screening: Screening shall, at a minimum, be accomplished by an opaque fence or wall when abutting a residential district both of which must be six (6) feet in height.

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**Sec. 14-34. - Accessory uses and structures.**

No accessory uses, structures, which shall include publication storage devices as an accessory use, shall be located in any required yard except as provided for below:

1. In residential districts accessory uses and structures shall not be located in required front or side yards but may be located in required rear yards not less than five (5) feet from the rear lot line, provided, however, that accessory structures for the housing of persons, such as a garage apartment, shall not be located in any required yard.
2. In residential districts on double frontage lots or corner lots accessory uses and structures shall not be located in any required yard abutting the public right-of-way but may be located not less than five (5) feet of the lot lines of one (1) but not both required yards that abut upon an adjacent lot.
3. In all zoning districts fences, walls, and hedges shall be permitted subject to the requirements of section 14-44.
4. In all zoning districts boat houses and boat docks may be located in any required waterfront yard but shall not encroach within fifteen (15) feet of the side lot.
5. In all zoning districts rooftop air conditioning and ventilating units shall be so screened as to not be visible from the immediate public right-of-way.
6. a. Publication storage devices may be located in any area of any lot except in the area within the following yard areas:
  - (1) *Side Yard*: Twenty (20) feet from the property line.
  - (2) *Front Yard*: Twenty (20) feet from the property line.
  - (3) *Rear Yard*: Ten (10) feet from the property line.
- b. Notwithstanding the foregoing, it is prohibited and unlawful to place, install, use or maintain a publication storage device:
  - (1) So as to violate any relevant provision of the Americans with Disabilities Act (ADA), in existence or as amended from time to time;
  - (2) Within five (5) feet of any marked crosswalk;
  - (3) Within five (5) feet of the curb return of any unmarked crosswalk;
  - (4) Within five (5) feet of any fire hydrant, fire call box, police call box, or other emergency facility;
  - (5) Within five (5) feet of any driveway;
  - (6) In such a location as to cause a material public safety issue;
  - (7) Within such distance from a designated bus stop, bus bench or bus shelter so as to impede the entry or exit from a bus;

- (8) On any access ramp for disabled persons;
- (9) Within the limits of any designated loading zone; or
- (10) So as to interfere with access to or egress from a handicapped parking space.

c. Aside from the above regulations, the City shall not regulate the placement of a publication storage device and shall, in no event, regulate the content of the publication placed in a publication storage device when such publication does not violate law.

7. Accessory uses and structures associated with an approved bona fide outdoor dining conditional use permit pursuant to Sec. 14-58.2.1.A. of this Land Development Code may be permitted in required front and side yards, providing any permanent improvement, except for ground treatment and safety features, shall be located no less than three (3) feet from the property line.

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**Sec. 14-43. - Exceptions to required yard regulations.**

In all zoning districts every part of every required yard shall be open and unobstructed at, and above ground level, except as provided for herein or as otherwise permitted in these regulations:

- 1. Sills may not project over twelve (12) inches into a required yard.
- 2. Movable awnings may not project over two (2) feet into a required yard, provided that where the yard is less than five (5) feet in width the projection shall not exceed one-half (½) the width of the yard.
- 3. Chimneys, fireplaces, pilasters, roof overhangs, unenclosed balconies and stairways shall not project over three and one-half (3½) feet and under no circumstances shall the side yard setback be less than five (5) feet. The board of adjustments shall not grant any variance to this setback requirement.
- 4. Fences, walls and hedges are permitted in required yards subject to the provisions of section 14-44.

5. Permanent improvements associated with an approved bona fide outdoor dining conditional use permit pursuant to Sec. 14-58.2.1.A. of this Land Development Code may be permitted in required front and side yards, providing any permanent improvement, except for ground treatment and safety features, shall be located no less than three (3) feet from the property line.

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**Sec. 14-46. - Landscaping standards.**

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*14-46.5. Landscape Design Standards.*

- 1. *Minimum tree and shrub planting or preservation requirements:*

a. Trees shall not be placed where they interfere with site drainage or where they shall require frequent pruning to avoid interference with overhead power lines.

(1) Single-family residential lots. One (1) tree shall be planted or preserved for every two thousand five hundred (2,500) square feet of area of a single family residential unit site or fraction thereof in accordance with section 14-46.11, Tree Protection Requirements, Minimum Tree Coverage Requirements of the Zoning Regulations, Chapter 14 of this Code. A minimum of fifty (50) percent of all required trees shall be shade trees if it can be determined that such species are available and which are salt tolerant and wind resistant.

(2) Multi-family residential lots. One (1) tree shall be planted or preserved for every two thousand five hundred (2,500) square feet of multifamily residential unit site or fraction thereof in accordance with section 14-46.11, Tree Protection Requirements, Minimum Tree Coverage Requirements of the Zoning Regulations, Chapter 14 of this Code. A minimum of twenty-five (25) percent of all required trees shall be shade trees if it can be determined that such species are available and which are salt tolerant and wind resistant.

(3) *Non-residential lots* . One (1) tree shall be planted or preserved for every two thousand five hundred (2,500) square feet of non-residential site or fraction thereof in accordance with section 14-46.11, Tree Protection Requirements, Minimum Tree Coverage Requirements of the Zoning Regulations, Chapter 14 of this Code. A minimum of fifty (50) percent of all required trees shall be shade trees if it can be determined that such species are available and which are salt tolerant and wind resistant. Notwithstanding the requirements of this section to the contrary, the provisions hereof may be waived upon application of the property owner provided that: (i) the waiver is in conjunction with an approved bona fide outdoor dining conditional use permit, and (ii) the subject property is, and continuously has been, nonconforming to the landscape standards adopted prior to ordinance 2020-05.

2. *Landscaping the interior of vehicular use areas* : It is the intent of the City that vehicular use areas be both functional and aesthetically pleasing. It is the intent of these regulations to achieve this goal by providing for greater design flexibility while increasing minimum standards for required landscaping. A distinction is made among landscape regulations applicable to two (2) types of vehicular use areas. These are:

Off-street parking; and

Other vehicular use areas (such as "stacking" areas in automotive service stations, fast food outlets, or banks) that are used by the public, but not for parking.

Within off-street parking areas, developers are permitted to choose between two (2) design alternatives. The first, the traditional approach, required land to be set aside in the form of interior islands and perimeter landscape strips. The second eliminates interior islands, but increases tree canopy through increased planting. This design option is only available, however, if parking stalls are laid out so that four (4) stalls intersect.

Regarding vehicular use areas not used for off-street parking but that are open to the public, it is required that an area equal to a percentage of the total paved area be set aside for interior landscaping. This approach gives greater design flexibility and is relatively easily administered.

a. *Landscaping the interior of off-street parking areas.*

(1) *Design alternative one.*

(a) A minimum of fifteen (15) square feet of landscaping for each parking space shall be provided within the interior of an off-street parking area. Notwithstanding the requirements of this section to the contrary, the provisions hereof may be waived upon application of the property owner provided that: (i) the waiver is in conjunction with an approved bona fide outdoor dining conditional use permit, and (ii) the subject property is, and continuously has been, nonconforming to the landscape standards adopted prior to ordinance 2020-05.

(b) Each row of parking spaces shall be terminated by landscaped islands that measure not less than five (5) feet in width and not less than eighteen (18) feet in length. At least one (1) tree shall be planted in each terminal landscaped island. Notwithstanding the requirements of this section to the contrary, the provisions hereof may be waived upon application of the property owner provided that: (i) the waiver is in conjunction with an approved bona fide outdoor dining conditional use permit, and (ii) the subject property is, and continuously has been, nonconforming to the landscape standards adopted prior to ordinance 2020-05.

(c) Interior landscaped islands shall also be provided within each row of parking spaces. One (1) interior island shall be provided for each twelve (12) parking spaces or fraction thereof. Landscaped interior islands shall measure not less than five (5) feet in width and not less than eighteen (18) feet in length. At least one (1) tree shall be planted in each interior island.

(d) Landscaped divider medians may be used to meet interior landscape requirements. If divider medians are used, they should form a continuous landscaped strip between abutting rows of parking spaces. The minimum width of a divider median shall be five (5) feet. One (1) tree shall be planted for each forty (40) linear feet of median or fraction thereof. Trees in a median may be planted singly or in clusters.

(e) All interior landscaped areas not dedicated to trees or to the preservation of existing vegetation shall be landscaped with grass, ground cover or shrubs. Sand or other pavement shall not be considered appropriate landscape treatment.

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**Sec. 14-58. - Special exceptions and conditional uses.**

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*14-58.2.1.A. Outdoor Dining.*

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4. *Review Criteria .*

- a. In commercial districts, outdoor dining may only be permitted where a restaurant or retail establishment serving prepared food generates over fifty (50) percent of its gross sales from the sale of food as determined by the city manager. Establishments may be required by the city manager to provide quarterly reports to the city manager certifying the aforementioned. A registered state certified public accountant shall provide the required certification in accordance with sound and generally accepted accounting practices and principles.
- b. All facilities proposing outdoor dining shall have been awarded a current and valid business tax receipt and certificate of use permit.
- c. Permanent improvements associated with outdoor dining ~~shall not be located~~ may be permitted in required front and side yards (setbacks), providing any permanent improvement, except for ground treatment and safety features, shall be located no less than three (3) feet from the property line. For the purposes of this section, a permanent improvement shall mean any structure, furniture, accessory or ground treatment that is anchored and/or permanently affixed on or to the ground.
- d. Outdoor dining shall not be located in required parking or driveway elements.
- e. Outdoor dining shall not impede or obstruct the flow of pedestrian traffic. In no case shall an unobstructed walkway or sidewalk be less than five (5) feet in width.
- f. Umbrellas shall maintain seven (7) feet of vertical clearance from ground level.
- g. Temporary stanchions with chains or ropes may be approved for the outdoor dining facility, the extent and nature of which shall be set out in the conditional use permit.
- h. No fencing, railings, plantings or other barriers may be installed or erected to delineate the outdoor seating area in the public right-of-way.
- i. Outdoor dining areas shall not occupy an area more than fifty (50) percent of the total area of the primary restaurant or food preparation establishment, unless otherwise approved by the city council.
- j. Outdoor dining facilities shall not create a parking deficiency inconsistent with the required off-street parking requirements of this Code. Additional parking demand created by outdoor dining shall be provided consistent with section 14-48.6(15) of this Code, providing that an outdoor dining area which is less than one hundred (100) square feet in any district is exempt from providing additional parking.
- k. With the exception of menu boards that are conditionally approved by the city, no additional signage, including but not limited to umbrellas and furniture with signage, are allowed in the outdoor dining area.
- l. With the exception of outdoor dining in the hotel/motel districts, food preparation and kitchen service equipment shall be located inside.

m. All outdoor dining elements including, but not limited to, furniture and accessories, elements shall be of quality design, materials and workmanship, as determined by the city manager, to ensure the safety and convenience of users and to enhance the visual and aesthetic quality of the urban environment. All elements shall be of significant and adequate weight to prevent easy toppling in significant winds as determined by the city manager. All elements shall be of commercial grade.

n. All outdoor dining elements including, but not limited to, furniture and accessories, shall be of uniform design and style.

o. Outdoor dining areas shall not intrude upon designated components of egress such as exit discharge, exit discharge being defined as that portion of a means of egress between the termination of an exit and a public way.

p. Outdoor dining furniture and accessories shall be located a minimum of five (5) feet from driveways and other vehicular use areas. Use separation devices may be required to ensure a safe outdoor dining experience.

q. Lighting shall complement the existing building and outdoor dining design and shall not cause a glare to passing pedestrians or vehicles or residential districts. Seasonal lighting and decoration shall be approved by the building official. Lighting must be preapproved by the Volusia County sea turtle lighting staff.

r. All outdoor dining areas shall include adequate and proportional landscaping to enhance the patron experience. Existing landscaping may be used to satisfy this requirement as determined by the city manager.

##### *5. Operation of outdoor dining facility .*

a. Notwithstanding the abandonment provisions of this ordinance, an outdoor dining establishment may temporarily terminate the operation of the outdoor dining on a seasonal basis without the outdoor dining conditional use permit being permanently terminated. During such time that the outdoor dining may not be in operation, all tables, chairs and accessories must be removed and stored inside. The city shall be noticed in writing by the property owner of such suspension of use.

b. The property owner shall be responsible for maintaining the outdoor dining area in a clean and safe condition. All food and drink items, trash and litter shall be removed continuously throughout the establishment's hours of operation and immediately after customer leaves the premises. Public sidewalk trash containers shall not be used as a means of disposing of table waste generated by outdoor dining customers.

c. The operation of an outdoor dining area shall not be conducted in such a way as to cause a public nuisance and the operation of such business shall not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets.

- d. Any change in the location of the permitted outdoor dining area shall require a new application and permitting.
- e. An outdoor dining facility shall only be used and operated in conjunction with, and under the same management and exclusive control of, a restaurant or food preparation facility located on the same or contiguous property as may be approved by the city.
- f. The outdoor dining area's hours of operation shall be no greater than operating hours of the principal restaurant or food preparation facility.
- g. Outdoor dining shall comply with all applicable local, state and federal laws including, but not limited to, life safety codes and the Americans with Disabilities Act.
- h. An outdoor dining establishment shall temporarily terminate the operation of the outdoor dining during all severe weather warnings and events. During such time all tables, chairs and accessories not permanently installed must be removed and stored inside.
- i. Outdoor dining music, activities and noise shall conform to the noise regulations contained in chapter 16, article II of this Code.
- j. Feeding of wildlife shall be prohibited and unlawful.
- k. All outdoor dining furniture and accessories shall be maintained in good repair.

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## **SECTION TWO: ENFORCEMENT AND PENALTIES.**

- (a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.
- (b). 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*.
- (c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

**SECTION THREE: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to temporary promotional activities are hereby ratified and affirmed.

**SECTION FOUR: 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 Five, Six, Seven, Eight, Nine and Ten shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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

**SECTION SIX: 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 SEVEN: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**NANCY MILLER, 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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**RAYMOND BRANCH, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2020.