



## **A G E N D A**

### **ORMOND BEACH PLANNING BOARD**

#### **Regular Meeting**

**June 12, 2014**

**7:00 PM**

#### **City Commission Chambers**

22 South Beach Street

Ormond Beach, FL

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

- I. ROLL CALL**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. NOTICE REGARDING ADJOURNMENT**

THE PLANNING BOARD WILL NOT HEAR NEW ITEMS AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

- V. APPROVAL OF THE MINUTES: May 8, 2014**
- VI. PLANNING DIRECTOR'S REPORT**
- VII. PUBLIC HEARINGS**

**A. LUPA 14-079: 815, 855, 915, and 935 Ocean Shore Boulevard Condominium Associations, Small Scale Comprehensive Plan Amendment**

The applicant has requested that this item be continued.

**B. RZ 14-080: 815, 855, 915, and 935 Ocean Shore Boulevard Condominium Associations, Amendment to Official Zoning Map**

The applicant has requested that this item be continued.

**C. Case # 14-86: Interlocal Service Boundary Agreement between the City of Ormond Beach and Volusia County for unincorporated lands located within the Municipal Service District located on US 1 North from approximately 600 feet east and west of Airport Road to 1901 US 1 North.**

This is a request for the Planning Board to review and recommend an action on a proposed Interlocal Service Boundary Agreement, and a Planning and Services Delivery Sub-agreement, between the City of Ormond Beach and County of Volusia, Florida, regarding a North US 1 Joint Planning and Municipal area; approving an alternative annexation process; providing the City of Ormond Beach with land use and regulatory authority; setting forth a 5 year amortization schedule for itinerant uses that are classified as High Impact Use on Vacant or Unimproved Land, approving itinerant vendor criteria over portions of unincorporated Volusia County. within approximately 600 feet east and west of US 1 North rights-of-way from the intersection of Airport Road to 1901 US 1 North.

**VIII. OTHER BUSINESS**

**IX. MEMBER COMMENTS**

**X. ADJOURNMENT**

**M I N U T E S**  
**ORMOND BEACH PLANNING BOARD**  
**Regular Meeting**

May 8, 2014

7:00 PM

**City Commission Chambers**  
22 South Beach Street  
Ormond Beach, FL 32174

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**I. ROLL CALL**

Members Present

Pat Behnke  
Harold Briley, Vice Chair  
Lewis Heaster  
Al Jorczak  
Rita Press  
Doug Wigley  
Doug Thomas, Chair

Staff Present

Ric Goss, AICP, Planning Director  
Steven Spraker, AICP, Senior Planner  
S. Laureen Kornel, AICP, Senior Planner  
Becky Weedo, AICP, Senior Planner  
Randy Hayes, City Attorney  
Melanie Nagel, Recording Technician

**II. INVOCATION**

Lewis Heaster led the invocation.

**III. PLEDGE OF ALLEGIANCE**

**IV. NOTICE**

**REGARDING**

**ADJOURNMENT**

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**V. MINUTES**

**April 10, 2014**

**Mr. Briley moved to approve the April 10, 2014 Minutes. Mr. Jorczak seconded the motion. Vote was called, and the motion unanimously approved.**

## **VI. PLANNING DIRECTOR'S REPORT**

Mr. Goss reported that the Riptides Special Exception was approved at the City Commission meeting. Also, coming up in June will be the Interlocal Service Boundary Agreement that the City has been working on with Volusia County which would allow us to have jurisdictional and regulatory authority over unincorporated land on US 1 North. The agreement is complex and will be furnished to board members prior to the regular agenda packets.

## **VII. PUBLIC HEARINGS**

### **A. LUPA 14-079: 815, 855, 915 and 935 Ocean Shore Boulevard Condominium Associations, Small Scale Comprehensive Plan Amendment**

Mr. Hayes stated that a lot of information had come in on the first two items on the agenda late in the process. The applicant has agreed to continue these items to the June 12, 2014 Planning Board meeting, so Mr. Hayes requested a motion be made to continue items A and B.

**Mr. Jorczak moved to continue LUPA 14-079 to the June 12, 2014 Planning Board meeting. Mr. Heaster seconded the motion. The motion carried unanimously (7-0).**

### **B. RZ 14-080: 815, 855, 915 and 935 Ocean Shore Boulevard Condominium Associations, Amendment to Official Zoning Map**

**Mr. Jorczak moved to continue RZ 14-080 to the June 12, 2014 Planning Board meeting. Ms. Behnke seconded the motion. The motion carried unanimously (7-0).**

### **C. SE 14-078: 200 Highland Avenue – A1A Landscaping, LLC, Special Exception for Outdoor Activity Use**

Ms. Kornel stated this is a Special Exception to allow outdoor activity at 200 Highland Avenue to include permanent product displays, including pavers and two pergolas, and to allow sales of finished hardscape material. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Mr. Jorczak asked if there was a height requirement for the landscape buffer to the residential area. Mr. Briley believes it would be six foot, same as fencing. Ms. Kornel stated the existing plantings were expected to get to seven feet, and the calculated mandatory buffer would include two trees, two shrubs and 20 ground covers.

Ms. Behnke asked where raw material would be stored. Ms. Kornel said they would not be storing raw material.

Ms. Press stated this was similar to what was approved on Nova Road. She inquired about approving some townhouses a couple of years ago, across the street from this location. Mr. Spraker remarked that Dollar General still has approval for a 2<sup>nd</sup> and 3<sup>rd</sup> phase of their project.

Mr. Wigley asked if the height of the pergolas would interfere with anything. He also inquired about things hanging on the pergolas, such as wind chimes. Ms. Kornel stated that the applicant could address those issues.

Mr. Heaster remembers that a previous Special Exception had submitted a site plan of what would be displayed. He is curious as to what will be displayed outside. Ms. Kornel's understanding is that there will be a series of different types of pavers displayed and two pergolas. Mr. Heaster questioned if this Special Exception would allow him to display other items for sale. Mr. Goss stated that it would have to be finished product – no soft materials. Ms. Kornel added that items can only be located within the highlighted area, which is surrounded by the fence.

Mr. Tom Anthony, A1A Landscaping, is the applicant, and stated that they will not be storing any raw material outside. All pergolas will be built to code and sizing as specified by the Building Department. The pergolas are treated like a shed and can't be any taller than eight feet and cannot exceed 120 square feet. They would not be visible from a great distance. Mr. Wigley asked if he would be displaying anything on the pergolas. Mr. Anthony stated possibly some hanging plants, but no wind chimes and possibly a fire pit display under the pergola or a decorative fountain display.

Mr. Thomas asked if there were any more comments.

**Mr. Briley moved to approve SE 14-078 Special Exception as submitted. Ms. Press seconded the motion. Vote was called, and the motion unanimously approved (7-0).**

**D. LUPA 14-074 640 North Nova Road, Tomoka Oakwood North Condominium Association, Small Scale Comprehensive Plan Amendment.**

Ms. Kornel stated that the next three items were all related, and were at the request of applicant Martin Wohl. The first request is to change the existing Land Use designation to High Density Residential that would allow the existing developed site density to be conforming with the city's Comprehensive Plan. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Ms. Behnke stated she was not in agreement with this, even though a lot of it was theoretical, it is still a possibility to build upward on this property.

Mr. Jorczak wanted to know if there was a way to approve the Land Use change, but restrict the capability to no more than what they currently have, height-wise. Ms. Kornel stated that the Land Use could be changed and then the Zoning to PRD, limiting the height. Ideally the applicant is looking for a Land Use change to HDR, and a zoning change from R-5 to R-6, and the Land Development Code Amendment that changes the density and height of the R-6 Zoning. As part of the analysis, it was found that there are other properties within the R-6 Zoning that have density and height nonconformities. R-5 Zoning only allows 12 units per acre, so we need the property zoning changed to the R-6 Zoning which is 32 units, in order to make density conforming.

Mr. Goss explained that we shouldn't be mixing Land Use, Zoning and Land Development, because the density is much higher than what can actually be done under Zoning. This property was originally in a zoning district that allowed 75' height, and then the city changed the zoning, which then made it non-conforming. The attempt is to get these properties into conforming status.

Mr. Briley questioned if the zoning could be changed and then a restriction put on the height. Mr. Goss is concerned about doing a PRD for just this property, because there are

several other properties that have the R-6 category, and whatever has occurred here will apply at the other properties. This particular property can't get mortgages approved through Fannie May because it is a non-conforming property. Mr. Briley asked what the allowable height of a building is currently in R-6. Mr. Goss stated that it is currently at 30 feet, but they want to change the R-6 height to 75 feet, which is what it was originally set at. Think of this as a pyramid, where the broad part of the base is the land use, and as we get to the zoning, the density is even smaller, and as we get to land development, the density is even less than that.

Mr. Thomas stated that so many properties over the years have become non-conforming because of ordinances and changes that have been made, and we will never catch up at taking non-conforming properties and conforming them, because we will always be a step behind. We will always have non-conforming properties. When Mr. Thomas drove to the property being discussed, and saw the 5-story building that is there now, and imagined a 75 foot building being there, he has a problem with that.

Ms. Press wanted clarification that the main reason people asked for a change is because of the difficulty of getting mortgages or reverse mortgages. Mr. Goss stated that there was a person doing a due diligence and came to the City, and the planners made a determination of the property, and realized it was non-conforming due to height and density. Sun Trust, who was the proposed mortgager, backed out because Fannie May wouldn't buy the paper, because the property was non-conforming. Right now, the only person who can buy one of these properties is someone with cash. Ms. Press feels this is a serious dilemma, and it needs to be addressed. Mr. Goss stated that we are trying to hold these people harmless, because the City made them non-conforming. We are trying to make all of the R-6 properties conforming so we don't have properties all over the City that can't get mortgages.

Doug Wigley stated that the City caused this to happen. We created the problem and we need to correct it. Mr. Briley pointed out that at one time this property was conforming, the rules changed, and now we need to make sure they are conforming again.

Mr. Martin Wohl, 640 North Nova Road, applicant representing the Condominium Association, stated that the average age of the residents is 65, and they cannot survive if they cannot buy and sell their properties. If they have to leave for some reason, they would have to just walk away from their mortgage. When the units were built in 1973 the zoning was set one way. Then in 1978 the zoning was changed, making the units non-conforming, which up until now was not an issue. Now Federal Regulations have changed that have trapped them. They just want to be able to buy and sell, get a reverse mortgage, or get an equity credit line, but this has now become a problem. They have no intentions of rebuilding, they just want to get out from under being non-conforming.

Ms. Suzanne Sandkamp, 31 N. Saint Andrews Dr, stated that the condos are directly behind her home. When she bought the home in 1999, there was a beautiful buffer between her property and the condos. Everything has been mowed down, there is no vegetation and the wildlife is gone. People now walk the fence line, watching her kids in the pool, looking into neighbor's windows, which is an issue for her. Ms. Sandkamp is concerned that if the zoning is changed, they don't know what will happen with the land behind them. No one can predict catastrophic events, and if this property were to be blown down, they could build a larger building, which would de-value her property. She

feels the City needs to come up with another way to make the condos conforming, without changing the Land Use.

Ms. Behnke asked what happened to the buffer that had been in place. Ms. Sandkamp replied that it had been mowed down. Everything is gone, the vegetation and wildlife is gone. It was her understanding that it was a dog park area, but residents are out standing by the fence and not walking dogs.

Ms. Mary Whiteside, 29 Saint Andrews Drive, is very concerned about this. The hurricane was used as an excuse to cut every tree that was a buffer in the neighborhood. As she sits on her porch drinking coffee, residents from the condo are walking their dogs, and parting the plants and bushes to look through to their house. They are not great neighbors. If they get the densities being proposed, in theory they could build an extra condo, or add on to the existing one. It will destroy the value of the property that she owns. She would be very happy for the City to come up with a way that would allow the condo owners to get a mortgage and get them in compliance, but would not allow them to have the chance at any time to build another huge condo that would loom over her house. When she bought her house in 1991, she was told by the City that the buffer zone was for the power lines, and that nothing could be built there, and it would always stay there.

Mr. Bob Whiteside, 29 Saint Andrews Drive, has come as a representative of the Homeowners Association. Part of the problem with rezoning in this area is the possibility of a density increase in our properties. We are already looking at several new homes going in close by, and then if something happened to this condo, and a larger one was put up in its place, the density problem will become much worse, and it will de-value all of their properties. When the house was bought in 1991, they were told that there was a buffer easement area right behind their house. After the hurricanes in 2004, they came through and cut down everything in the buffer area.

Mr. Wigley stated that the power lines run on the northeast side of the condo property. Behind the Whiteside property is not a utility easement that he knows of. From the aerial view, which was taken in 2012, there are a lot of trees in the buffer area. Mr. Whiteside stated that is all canopy, but there is no lower level buffer anymore. Mr. Thomas stated that is something that needs to be taken up with code enforcement.

Chair Thomas asked if there were any more comments.

**Mr. Wiley moved to approve LUPA-14-074, capping the density at 20 units per acre. Mr. Heaster seconded the motion. Vote was called. Ms. Press for; Mr. Wigley for; Ms. Behnke against; Mr. Briley for; Mr. Heaster for; Mr. Jorczak for; Mr. Thomas for. The motion carried (6-1).**

**E. RZ 14-075: 640 North Nova Road, Tomoka Oakwood North Condominium Association, Amendment to Official Zoning Map.**

Ms. Kornel stated this is an application from Mr. Wohl for re-zoning of 640 North Nova Road from R-5 to R-6. The amendment is needed because R-5 is not allowed under the HDR Land Use designation, and because of the non-conformity to code. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Mr. Jorczak asked if the Board would be capping this at 20 units also. Ms. Kornel stated that we are recommending that the R-6 Zoning change from 12 units per acre to 32 units per acre, and the height from 30 to 75 feet. Mr. Goss stated that the Land Use Plan takes precedence over the Zoning Code if there is a conflict. That is why we put the 20 unit cap on the Land Use Plan map, even though the Zoning might state 32 units per acre.

Mr. Thomas asked if we change the zoning for this property, what about the next one, does it have to be zoned this way. Mr. Hayes commented that the Land Use and Zoning apply across the board. There are a number of properties that suffer the same ill-effects of the current zoning and land use, so this needs to be processed for what it is.

Ms. Press stated that the city has solved two problems here. We solved this in the sense that there will never be any taller or larger units than what we have right now. It also makes the other 13 or so properties conforming. Ms. Kornel said there would only be one property that would not be conforming.

Chair Thomas asked if there were any more comments.

**Mr. Jorczak moved to approve RZ-14-075: Amendment to Official Zoning Map. Mr. Wigley seconded the motion. Vote was called. Mr. Wigley for; Ms. Behnke against; Mr. Briley for; Mr. Heaster for; Mr. Jorczak for, Ms. Press for; Mr. Thomas for. The motion carried (6-1).**

**F. LDC 14-076: LDC Amendment – Amending the Multifamily Density and Height of Section 2-19, R-6 Multifamily Medium High Density Zoning District.**

Ms. Kornel stated this is a request from Mr. Wohl for the Land Development Code amendment to change the multi-family density from 12 units per acre to 32 units per acre and the multifamily maximum building height from 30 feet to 75 feet. The amendment is based on the non-conformity to density and height of the Tomoka Oakwood North Condominium at 640 North Nova Road, but it will apply to all properties zoned R-6 in the City of Ormond Beach. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Mr. Hayes pointed out that the density on the particular project (640 North Nova Road) would be locked at 20 units per acre, based on the Land Use Amendment.

Mr. Wigley questioned if this issue would be affected by Fannie May too. Mr. Goss stated that it is his understanding that any unit looking for a secondary mortgage purchase from the primary purchaser, if it goes through Fannie May, will be non-conforming. Mr. Thomas asked if any other properties have come forward about the problems with Fannie May. Mr. Goss stated that he wasn't aware of any. Ms. Press wondered if they even knew they were non-conforming.

Ms. Behnke questioned about the buffer between the condominium and the single family homes. Mr. Thomas said they were talking visual, not how many feet of buffer. Ms. Behnke feels that every person is entitled to privacy in their own home, and if they don't have that, they should have it. Ms. Press wondered if there was a program where someone would come in and re-forest that area. Mr. Briley stated if it is on private property then it would be up to the property owner.



Mr. Wigley stated that a lot of underbrush was cleared out as a result of the fires of 1998. There is nothing to prevent people from putting a buffer on their own fence line. Ms. Kornel also added that as a certified arborist, when a tree canopy grows up, it changes the area under the trees due to the shade and amount of sun light that the underbrush gets.

Mr. Wahl had an email from Wells Fargo pointing out that the language in the Fanny May for condo properties that are considered ineligible for financing, are condo or coop projects that represent illegal but non-conforming use of the land, if zoning regulations prohibit rebuilding the improvements to the current density in the event of their partial or full destruction.

Ms. Suzanne Sandkamp wanted to comment on the vegetation along the fence line. It did not die off due to the fire of 1998. She purchased her house in 1999, and the vegetation was above the fence line. The vegetation under the tree canopy is gone because the vegetation area is mowed down every week and they trim any of the vines that she planted along the fence. It was suggested to Ms. Sandkamp to talk to Code Enforcement about the buffer area, because she is entitled to that area.

Chair Thomas asked if there were any more comments.

**Mr. Wigley moved to approve LDC-14-076: LDC Amendment. Mr. Heaster seconded the motion. Vote was called. Ms. Behnke against; Mr. Briley for; Mr. Heaster for; Mr. Jorczak for, Ms. Press for; Mr. Wigley for; Mr. Thomas against. The motion carried (5-2).**

**G. SE 14-081: Special Exception – 815 and 821 North US Highway 1, Special Exception for Recreational Facilities, Outdoor.**

Mr. Spraker stated this is a request for a Special Exception for outdoor recreation facilities. The request involves two properties – 815 North US Highway 1 and 821 North US Highway 1. Mr. Spraker explained the location, orientation, and characteristics of the property, and presented the staff report. Mr. Spraker stated staff is recommending approval of the Special Exception application.

Mr. Thomas asked if the applicant could come back and ask for live music at a later date. Mr. Spraker said yes, or if the Board were inclined to allow it now, they could do it. Mr. Thomas was curious why it wasn't included.

Ms. Press inquired as to where the parking would be. Mr. Spraker replied that it would be on the 821 North US Highway 1 property. Mr. Spraker continued that the time of operation for the outdoor use would be different than the two businesses that are already using the building, so parking shouldn't be a problem.

Mr. Heaster inquired if they would have to build an office area. Mr. Spraker stated that there is office space in the existing building that they would use. Mr. Spraker concluded that the use will have an outdoor storage rack for the kayaks and paddle boards.

Ms. Behnke stated she loved the idea, but her only concern was the outdoor storage. Ms. Behnke stated that the live music should be put into the Special Exception right away. Mr. Heaster stated that the applicants could possibly put up some fencing around the outdoor storage area to block it from view.

The applicant, Mr George Moremen, 341 Melrose Avenue is satisfied with the way the application is written. Mr. Moremen stated he did not have a problem with putting fencing up around the outdoor storage area.

Mr. Moremen stated he envisioned any music will just be people with guitars sitting by the camp fire singing. And the hours would be until sunset, with a few people hanging around later by the camp fire. Mr. Moremen concluded, in the future, there may be trained guides to point out animals and birds and give some of the history of Ormond Beach.

Mr. Jorczak was happy to hear Mr. Moremen mention the estuary and wildlife. Mr. Jorczak stated any element of taking care of the environment will be beneficial to the wildlife that exists there. Mr. Jorczak concluded any noise or loud music that is kept reasonable for the residents across the way would be appreciated.

Mr. Briley thinks this is a great project and something we are lacking.

Ms. Press stated this is a perfect place for a use like this, and there are so many tourists that come off I-95 and down US 1.

Mr. Heaster asked Mr. Moremen if he would be opposed to putting up fencing around the outdoor storage. Mr. Moremen replied absolutely not. Mr. Thomas thinks this is a great project, with a great location, and a great addition to US 1.

Mr. John Crockenberg, 783 North US1, adjoining property owner, came in support of this project because he thinks everyone is on target that it will be a great facility on the waterway. The connection to Sanchez Park will be pretty significant. As far as the music is concerned, the particular buffer that was discussed is an 8 acre parcel and should have a dimming effect.

Mr. Dave Crabtree, Ormond Crabhouse, stated he was in support of this business, and thought that music facing to the west would be no problem, since there is nothing that direction but railroad tracks.

Chair Thomas asked if there were any more comments.

**Ms. Behnke moved to approve SE-14-081: Special Exception with the addition of the ability to provide live music to be consistent with the River Grille and to provide additional fencing around the outdoor storage. Mr. Briley seconded the motion. Vote was called, and the motion unanimously approved (7-0).**

## **OTHER BUSINESS**

Mr. Jorczak questioned Mr. Goss about an article in the Sunday, May 4 News Journal, where there was a list of items that had failed in the State Legislature. One of those items was HB-703, under Environmental Regulations, and Mr. Jorczak quoted what was in the newspaper. "Local government's policies on springs and wetlands will remain intact, and officials must have a super majority vote to change their Comprehensive Plans. After an outcry from environmentalists, the proposed changes to the Growth Management Rules stalled in both the House and the Senate." Mr. Jorczak stated that he doesn't understand what a super majority vote is, and whose officials are involved in it. Mr. Goss stated that

it would be the elected officials and super majority would mean 4 out of 5, or 5 out of 7, and would be the City Commission.

## **VIII. MEMBER COMMENTS**

Mr. Heaster commented that he thought it was great that the adjoining property owners to the US 1 Special Exception stayed for over two hours to support Mr. Moremen.

Mr. Thomas asked if Code Enforcement was under the Planning Department. Mr. Goss answered absolutely not, that it is under the Police Department. Mr. Thomas wondered if anyone had been by the Texaco station lately, and wanted to know who owns it. There are broken windows and food all over the floor. Mr. Hayes stated that there currently is no property maintenance code, and the code enforcement efforts are limited to structural and safety problems. Mr. Thomas would like someone to look into this. Mr. Goss stated that there is interest in potential development on this site.

Ms. Press would like to urge everyone to attend the workshop at the library on May 14 at 5:30 p.m. which will address unoccupied homes in the city, and why we need structural maintenance codes. Mr. Jorczak commented that he has seen the presentation and Ms. Press and her group did a fantastic job of putting together a tremendous amount of data and trying to put it in the context of how we might look toward solving these problems.

Mr. Jorczak asked about the inter-local agreement with the county, and how is that going to weigh in on our ability to deal with problems on the US 1 corridor. Mr. Hayes stated that this has been a lengthy process since 2010, with a number of issues that had to be resolved. He feels it is a pretty good document, and will give the City jurisdictional control over areas that are defined as a joint project area and municipal service area. We will have jurisdiction over things even though the lands are in the unincorporated county. A Comp Plan Amendment will have to be done for all of that land, so there will be a period of time before we can actually subject the area to our regulations. It presents an exciting opportunity to revitalize the corridor. Once we get the agreement in place and our regulations are in place, we will proceed to deal with some of the other issues.

Mr. Thomas asked if there were any more questions. There were no additional questions.

## **IX. ADJOURNMENT**

The meeting was adjourned at 9:25p.m.

Respectfully submitted,

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Ric Goss, AICP, Planning Director

ATTEST:

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Doug Thomas, Chair

*Minutes transcribed by Melanie Nagel.*

## Goss, Ric

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**From:** Monaco, Vivien [vmonaco@burr.com]  
**Sent:** Monday, June 02, 2014 4:09 PM  
**To:** Goss, Ric  
**Cc:** Hayes, Randy  
**Subject:** Re: Oceanshore Condo

Ric,

Thank you for your email. I am in Commissioner briefings in Orange County all day today and will be at the County Commission meeting tomorrow, so it will be Wednesday at the earliest before I can fully respond. However, please accept this email as my request on behalf of the four condominium associations to continue the future land use request and the rezoning request for at least one additional month. When we have a chance to talk, we can discuss if we should continue to another time certain and when that should be.

Sent from my iPhone



Vivien Monaco • *Attorney at Law*

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On Jun 2, 2014, at 11:00 AM, "Goss, Ric" <[Ric.Goss@ormondbeach.org](mailto:Ric.Goss@ormondbeach.org)> wrote:

Ms. Monaco: We are having long distance issues dialing out of our office so I have decided to respond to you by email. First, we have no land use plan amendment cycle. This requirement was deleted when the 2011 Community Planning Act became effective. As to nonconformities and unrelated to your client's transient accommodate amendment, the Department is making an amendment to R6 which will raise the height and density from the current 30 foot height/12 u/a to 75 feet/32 u/a respectively. Consequently, 815, 855, 915, and 935 will be conforming as it pertains to density and height. The amendment was filed by a condominium association which was considered non-conforming and Fannie-Mae refused to by the mortgages from the banks on the secondary market because it was non-conforming. As to the process of amending the Comp Plan whether it be a land use plan amendment or a policy change, I have provided two flow charts depicting the process. The former is considered small scale and will be processed under DEO's Small Scale Amendment process. Our experience to date, indicates the amendment takes about 60 days from the Planning Board meeting to meet public hearing

requirements at the City Commission level. This 60 days does include any appeal period which is 30 days from the effective date of the ordinance acted upon by the City Commission. A policy amendment, will take longer since it is considered a large scale amendment to the Plan and will be processed as an Expedited amendment. This former will take between 90-120 days. Ric

Richard "Ric" P. Goss, AICP  
Planning Director  
City of Ormond Beach  
22 South Beach Street  
POB 277  
Ormond Beach, Florida 32175-0277

386.676.3343 (direct line)  
386.676.3238 (Department line)  
386.676.3361 (FAX)  
[Ric.Goss@ormondbeach.org](mailto:Ric.Goss@ormondbeach.org)

**Notice:**

*Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.*

<Visio-Expedited LUPA\_REV1.pdf>

<Visio-Small Scale LUPA\_REV1.pdf>

# STAFF REPORT

## City of Ormond Beach Department of Planning

**DATE:** June 12, 2014

**SUBJECT:** Ormond Beach-Volusia County Interlocal Service  
Boundary Agreement

**APPLICANT:** City of Ormond Beach

**NUMBER:** 14-86

**PROJECT PLANNER:** Richard P. Goss, AICP

### **A. INTRODUCTION:**

The Legislature provided the Interlocal Service Boundary Agreement (ISBA) Act as an alternative to F.S. 171, Part I, for local governments regarding the annexation of territory into a municipality and the subtraction of territory from the unincorporated area of the county. The principal goal was to encourage local governments to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community. It is also intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation. As a result, the use of Part II encourages intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments; promotes sensible boundaries that reduce the costs of local governments, avoid duplicating local services, and increase political transparency and accountability; and is designed to prevent inefficient service delivery and an insufficient tax base to support the delivery of those services.

On September 7, 2010 the Ormond Beach City Commission adopted an Initiating Resolution (Resolution 2010-131) inviting the county to participate in discussions for negotiation of an Interlocal service boundary agreement for a specified area subject to approval by the governing bodies of the city and county.

On October 7, 2010 the Volusia County approved a Responding Resolution to the City of Ormond Beach's request to negotiate an Interlocal Service Boundary Agreement for the US 1 N. gateway corridor.

### **B. FS 171.203 INTERLOCAL SERVICE BOUNDARY AGREEMENTS:**

The Interlocal Service Boundary Agreement has been prepared pursuant to Florida Statute 171.203. An Interlocal Service Boundary Agreement may address any issue concerning service delivery, fiscal responsibilities, or boundary adjustment. The agreement may include, but need not be limited to, provisions that:

1. Identify a municipal service area.
2. Identify an unincorporated service area.
3. Identify the local government responsible for the delivery or funding of the following services within the municipal service area or the unincorporated service area:
  - a) Public safety.
  - b) Fire, emergency rescue, and medical.
  - c) Water and wastewater.
  - d) Road ownership, construction, and maintenance.
  - e) Conservation, parks, and recreation.
  - f) Stormwater management and drainage.
4. Address other services and infrastructure not currently provided by an electric utility as defined by s. 366.02(2) or a natural gas transmission company as defined by s. 368.103(4). However, this paragraph does not affect any territorial agreement between electrical utilities or public utilities under chapter 366 or affect the determination of a territorial dispute by the Public Service Commission under s. 366.04.
5. Establish a process and schedule for annexation of an area within the designated municipal service area consistent with s. 171.205.
6. Establish a process for land use decisions consistent with part ii of Chapter 163, including those made jointly by the governing bodies of the county and the municipality, or allow a municipality to adopt land use changes consistent with part II of Chapter 163 for areas that are scheduled to be annexed within the term of the interlocal agreement; however, the county comprehensive plan and land development regulations shall control until the municipality annexes the property until the municipality annexes the property and amends its comprehensive plan accordingly.
7. Address other issues concerning service delivery, including the transfer of services and infrastructure and the fiscal compensation to one county, municipality, or independent special district from another county, municipality, or independent special district.
8. Provide for the joint use of facilities and the co-location of services.
9. Include a requirement for a report to the county of the municipality's planned service delivery, as provided in s. 171.042, or as otherwise determined by agreement.

10. Establish a procedure by which the local government that is responsible for water and wastewater services shall, within 30 days after the annexation or subtraction of territory, apply for any modifications to permits of the water management district or the Department of Environmental Protection which are necessary to reflect changes in the entity that is responsible for managing surface water under such permits.
11. If the interlocal service boundary agreement addresses responsibilities for land use planning under chapter 163, the agreement must also establish the procedures for preparing and adopting comprehensive plan amendments, administering land development regulations, and issuing development orders.

In summary, the process begins when a governmental entity approves an initiating resolution and invites another jurisdiction to participate. The invited jurisdiction then passes a Responding Resolution and the parties join together to resolve their differences and memorizes the negotiated results in the form of an agreement. For review and action by the Planning Board are the following documents that form the negotiated agreement:

1. Interlocal Boundary Service Agreement and Sub-agreement for Planning and Service Delivery;
2. Itinerant Vendor Criteria; and
3. Draft Ordinance.

### **C. ANALYSIS OF CITY AND COUNTY PROPOSED ISBA:**

The proposed ISBA is presented to the Planning Board and City Commission in two parts. The first part is the ISBA itself. As a sub-agreement to the ISBA, the Planning and Services Delivery agreement is provided. The ISBA and the sub-agreement accomplish the following:

1. The agreement applies only to those commercial parcels contained in Resolution 92-70 which is the Interlocal Agreement between Volusia County and Ormond Beach regarding water and sewer provision. There are no residential parcels. ***(See reference to Map in paragraph 1, page 2 of ISBA and paragraph 2, Page 1 of the Planning and Service Delivery Agreement)***
2. Permits the City of Ormond Beach to apply a City land use and zoning to Volusia County unincorporated lands prior to annexation. ***(See paragraph 4 a. and b., Page 2 of Planning and Services Delivery Sub-Agreement)***
3. All unincorporated lands subject to the Agreement that remain in Volusia County shall be subject to the following city regulatory provisions:
  - a) City Charter,
  - b) City Code of Ordinances,
  - c) City Comprehensive Land Use Plan,



- d) City Land Development Code,
- e) Non-codified City ordinances, resolutions, and regulations, and
- f) Florida Building Code

***(See paragraph 4 c., Page 2 of Planning and Services Delivery Sub-agreement)***

4. The city may begin the land use plan amendment process which includes the State's Department of Economic Opportunity (DEO) approval in advance of annexation. ***(See paragraph 5 b., Page 5 & 6 of Planning and Services Delivery Sub-Agreement)***
5. Requires all parcels needing sewer or water to annex into the city first with site plan approval by the city – not County. ***(See paragraph 5 d. i., Page 6 of Planning and Services Delivery Sub-Agreement)***
6. Establishes an alternative annexation process to FS 171 Part 1 thus the prohibition against the creation of enclaves no longer applies. ***(See paragraph 5 d. ii., Page 6 of Planning and Services Delivery Sub-Agreement)***
7. All parcels receiving service after the 1991 Agreement that did not execute a document to annex shall be annexed by the City regardless of whether or not enclaves are created based upon the theory of "implied consent." ***(See paragraph 5 d. i., Page 6 of Planning and Services Delivery Sub-Agreement)***
8. Requires coordination between unincorporated VC and Ormond Beach on the following types of applications:
  - a) Comprehensive Plan Amendments. ***(See paragraph 4 a., Page 2 of Planning and Services Delivery Agreement)***
  - b) Site plans and subdivisions. ***(See paragraph 4 g., Page 5 of Planning and Services Delivery Agreement)***
9. Authorizes the City to have sole and complete jurisdiction over itinerant vendor and merchant activities and outdoor entertainment activities. ***(See Paragraph 4 e., Page 3 of Planning Services Agreement)***
10. Establishes an Alternative Dispute Resolution between the city and Volusia County regarding any dispute over the implementation of the agreement. ***(See Paragraph 6, Page 4 of ISBA)***

#### **D. ITINERANT VENDOR CRITERIA:**

The City will have total authority over Itinerant Vendor activities as indicated in Section C., 10. The Criteria while not part of the ISBA will be incorporated into the City's Land Development Code. The criterion includes:

1. A reference to the properties within the ISBA boundary map;
2. Provides 13 definitions that govern the administration of Itinerant Vendors;
3. Distinguishes between Category Use (High Impact Use on Improved Land) and High Impact Use on Vacant or Unimproved Land). On this latter definition, a five year amortization schedule applies beginning with the effective date of the agreement.
4. Provides a rationale for the proposed Land Classification and amortization of a particular land category;
5. Details specific provisions for which a Master Vendor and Itinerant Vendor permit will be issued; and
6. Provides provisions for which an Outdoor Entertainment Activity permit will be issued.

#### **E. SUBSEQUENT ACTION BY CITY:**

The following actions upon execution of this agreement shall be required:

1. Beginning within six months of the date that the Agreement becomes effective the formal land use plan amendment process for all unincorporated lands subject to the Agreement shall begin. Public hearings before the Planning Board and City Commission will occur for the proposed land use plan for the unincorporated lands in Volusia County.
2. Upon approval of the Land Use plan amendments by the City, Volusia County, VGMC and DEO, the City shall apply its zoning designations to the unincorporated lands. Public hearings before the Planning Board and City Commission will occur on proposed zoning designations consistent with the land use designations approved in paragraph 1 of the Section E.

Until the land use plan amendment process is completed, Volusia County's comprehensive plan, zoning and land development regulations apply to all unincorporated lands subject to the agreement. ***(Paragraph 3 c., Page 2 of Planning and Service Delivery Sub-agreement)***

3. During the rezoning process, the City shall amend the Land Development Code to incorporate the proposed Itinerant Merchant Vendor provisions identified under Section D of this report. This will involve public hearings before the Planning Board and City Commission also.

#### **D. CONCLUSION:**

In summary, the principal goal of this agreement is to enable the City of Ormond Beach and Volusia County to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community. This agreement is intended to establish a flexible process for adjusting municipal boundaries and to address a wider range of the effects from

annexation. The agreement encourages intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts that Ormond Beach has had with some incompatible development that has occurred under Volusia County control. Finally, it is also the intent of this agreement to recognize the City's involvement with the planning and service delivery for US 1 North corridor which dates back to the 1970's. The provision of water and sewer as a regional provider is a growth management tool. However, with unfolding events that have occurred over several years it is clear that the provision of utility services is not an effective growth management tool unless it is supported with appropriate Interlocal agreements with Volusia County which has unincorporated lands within the corridor. This agreement provides for common sense boundaries that will reduce the costs to Ormond Beach and Volusia County, avoid duplicating services, increase political transparency and accountability, and ensure the corridor is developed according to the vision that has been articulated by the City Commission in countless past actions.

#### **F. RECOMMENDATION:**

Staff recommends that the Planning Board support the agreement and forward a recommendation of support to the City Commission.

Attachments: as

# **Interlocal Service Boundary Agreement**

**City of Ormond Beach and  
The County of Volusia**

**Interlocal Service Boundary Agreement:  
City of Ormond Beach and County of Volusia**

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**INTERLOCAL SERVICE BOUNDARY AGREEMENT  
BETWEEN THE CITY OF ORMOND BEACH AND  
COUNTY OF VOLUSIA**

This Interlocal Service Boundary Agreement ("ISBA"), inclusive of Sub-Agreements (collectively referred to as "the Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Ormond Beach ("City") and County of Volusia ("County"), sometimes herein referred to as "Party" or "Parties as the context requires.

WHEREAS, the City possesses Municipal Home Rule Powers pursuant to Article VIII, Section 2(b), Florida Constitution, Chapter 166, Florida Statutes (2012), and Article I, of the City of Ormond Beach Charter; and

WHEREAS, the County possesses powers of self government and home rule as provided by the Volusia County Charter and Chapter 125, Part II, Florida Statutes; and

WHEREAS, the City and County entered into an interlocal agreement dated September 12, 1991, establishing a utility service area for the U.S. 1 corridor ("1991 U.S. 1 Interlocal Service Area Agreement"); and

WHEREAS, in furtherance of the 1991 U.S. 1 Interlocal Service Area Agreement, the City and County also entered into a Joint Project Agreement dated July 16, 1992 ("1992 JPA"), establishing terms and conditions for the extension of water and sewer lines, and providing terms for the reimbursement of development fees for development projects in the unincorporated territory of the County; and

WHEREAS, the Parties agreed, in paragraph-10 of the 1991 U.S. 1 Interlocal Service Area Agreement, to continue to study the feasibility of future expansion of the municipal service area described in that agreement; and

WHEREAS, the Municipal Annexation or Contraction Act, Chapter 171, Part I, Florida Statutes, and the Interlocal Service Boundary Agreement Act, Chapter 171, Part II, Florida Statutes, recognizes the use of interlocal service boundary agreements and joint planning agreements as a means to coordinate planning and delivery of services related to future land use, public facilities and services, and protection of natural resources in advance of annexation; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, requires that counties and cities include in their respective planning efforts intergovernmental coordination and particularly, mechanisms for identifying and implementing joint planning areas; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes (2012), encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as annexation, joint planning, and the delivery of services; and

WHEREAS, the City and the County wish to identify lands that are logical candidates for future annexations, the appropriate land uses and infrastructure needs and the provider for such lands, and to ensure protection of natural resources; and

WHEREAS, Sections 163.3171(4), 171.203(6)(f) and (7) , Florida Statutes (2012), allows an interlocal service boundary agreement to establish a process for land use decisions consistent with part II of Chapter 163, including those which may allow a municipality to adopt land use changes consistent with part II of Chapter 163 for areas that are scheduled to be annexed within the term of an interlocal agreement; and

WHEREAS, Section 171.204, Florida Statutes, allows a municipality to annex land that is not contiguous to the municipality, creates an enclave or is not reasonably compact when a county and municipality enter into a joint planning agreement under Section 163.3171; and

WHEREAS, Section 171.207, Florida Statutes, expressly authorizes a county to transfer its powers, over lands that are in the unincorporated territory of a county, to a municipality; and section 171.208, Florida Statutes, expressly authorizes a municipality to exercise its powers, extraterritorially, over such lands; and

WHEREAS, Sections 163.3171(4), 171.207 and 171.208, Florida Statutes, authorizes a municipality, in accordance with an interlocal agreement, to amend its comprehensive plan to include lands that are situated in the unincorporated territory of a county, prior to the annexation of those lands; and authorizes a municipality to exercise extrajurisdictional authority over such lands, in advance of annexation; and

WHEREAS, the extension of City and County facilities and services, and the annexation of lands, are most efficiently provided if the process and timing of long range planning, annexation, and development review processes by the City and County are clearly identified and part of a coordinated joint effort, and the commitment by the City and County to do so are material inducements to the parties for entering into this Agreement; and

WHEREAS, the City and the County find that the benefits of intergovernmental communications and coordination will accrue to both Parties; and

WHEREAS, an interlocal service boundary agreement may, under section 171.203, Florida Statutes, address any issue concerning service delivery, fiscal responsibilities, or adjustment of territorial boundaries, which may include but are not necessarily limited to:

1. Identification of a Municipal Service Area ("MSA"), which for purposes of this Agreement is defined (consistent with section 171.202(11), Florida Statutes) as being unincorporated land depicted in Map 1 attached to this Agreement that:

- a. may receive municipal services from the City, and/or
- b. may be annexed by the City;

2. Delivery or funding of various services for public safety; fire, emergency, medical, and water and wastewater; the construction, maintenance and ownership of roads;

conservation, parks, and recreation; stormwater management and drainage; and various other services;

3. Providing a process and schedule for the annexation of lands in a MSA;
4. Establishing procedures for the adoption of comprehensive plan amendments, land use changes, administering land development regulations, and issuing development orders consistent with Chapter 163, Part II, Florida Statutes;
5. Addressing other service delivery issues, such as those related to itinerant vendor activities;
6. Land use planning; and

WHEREAS, an interlocal service boundary agreement that addresses responsibilities for land use planning must establish procedures for adopting comprehensive plan amendments, administration of land development regulations, and the issuance of development orders consistent with Chapter 163, Florida Statutes; and must, in accordance with section 171.204, Florida Statutes, include a joint planning agreement under section 163.3171, Florida Statutes, which is to be adopted into a municipal comprehensive plan; and

WHEREAS, the City adopted initiating Resolution No. 2010-131 on September 7, 2010, and the County adopted responding Resolution No. 2010-196 on October 7, 2010, in accordance with Section 171.203, Florida Statutes (2012), for the purpose of negotiating and entering into an interlocal service boundary agreement; and

WHEREAS, the elected officials of the City and the County have met and negotiated in good faith to resolve issues related to annexation and joint planning, and coordinating the provision of public services and infrastructure, and the Parties wish to memorialize their understanding in this Agreement; and

WHEREAS, this Agreement is entered into pursuant to the authority of Article VIII of the Florida Constitution and Chapters, 125, 163, 166 171, and 180 , Florida Statutes (2012).

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree as follows:

1. *Incorporation of Recitals.* The recitals above are true and correct and are incorporated into this ISBA and all Sub-Agreements, as if fully set forth herein, as the legislative findings of the City and County.
2. *Incorporation of Sub-Agreements and Map 1.* The following Sub-Agreements and Map 1 attached hereto are fully incorporated as if fully set forth herein:
  - a. Planning and Services Delivery Sub-Agreement



- b. Map 1 (depicting the interlocal boundary service area, joint planning area, and municipal service area)
- c. Any Sub-Agreement that may be approved and executed after the approval and effective date of this Agreement
- d. 1992 Joint Project Agreement (regarding water and sewer line extension and development fee reimbursement)

3. Term and Effective Date of Agreement. The ISBA and all attached Sub-Agreements shall become effective when filed with clerk of court for Volusia County Circuit Court, in accordance with section 163.01(11), Florida Statutes. The initial term of the Agreement and all attached Sub-Agreements shall be ten (10) years from the effective date of the Agreement. At the end of the fifth year, the County and City shall review the effectiveness and performance of this Agreement. Based upon the review, this Agreement, including any or all Sub-Agreements, may continue for the remainder of the initial term, be amended as the parties desire, or be terminated in accordance with paragraph 5 of this Agreement.

4. Renewal of Agreement. The City and County shall, in the event the Parties desire to extend the initial term of the Agreement, initiate negotiations in accordance with section 171.203(12), Florida Statutes, no later than eighteen months prior to the termination of the initial term.

5. Termination of Agreement. The County or City may terminate this Agreement or any Sub-Agreement at anytime upon written notice of termination to the other Party delivered no later than May 1<sup>st</sup> in order for termination to be effective on December 31<sup>st</sup> of the same calendar year. A Party delivering such notice of termination may, in such Party's sole discretion, revoke such notice of termination at any time prior to the termination date. Lands that have been annexed prior to termination of any agreement and services provided to said lands shall not be affected by the termination. Jurisdiction over any affected transportation facilities including roadways, parks, and other public facilities shall not be affected, except though a separate agreement in writing that has been approved by both parties.

6. Dispute Resolution. The County and City agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either Party may initiate the dispute resolution process by providing written notice to the other Party. Initiation of the dispute resolution process shall operate as a stay of the action which is the subject of the dispute.

- a. Notwithstanding the foregoing, in the event that either Party determines in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon the filing and any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution

procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.

- b. Within ten (10) days of the abatement order, the allegedly aggrieved party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all governmental bodies involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict.
- c. If discussions between the Parties at the conflict resolution meeting fail to resolve the dispute, within forty (40) days of the receipt of the notice described in subparagraph a, above, the Parties shall conduct mediation in the presence of a neutral third party mediator. If the Parties are unable to agree upon a mediator, the County shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Volusia County, Florida. The mediation contemplated by this section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.
- d. If the Parties are unable to reach a mediated settlement, within fifty (50) days of the receipt of the initial notice of conflict, the parties shall hold a joint intergovernmental meeting. If the joint intergovernmental meeting does not successfully resolve the issues identified in the notice of conflict, the entities participating in the dispute resolution procedures described herein may avail themselves of any otherwise available rights, including the suspension of abatement of existing actions.
- e. The Parties agree this dispute resolution procedure is intended to satisfy the requirements of section 163.01(5)(p), section 171.212, Florida Statutes and Chapter 164, Florida Statutes (2012).

7. Duplication of Services. In furtherance of the purpose of this Agreement, the City and County shall not undertake any action that will result in the overlapping, duplication, or competition of services or exercise of powers provided herein without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. Notice. All notices, consents, approvals, waivers, and elections that either Party requests or gives under this Agreement shall be in writing and shall be provided by certified mail, return receipt requested; or by hand delivery for which a receipt is obtained. Notices shall be mailed or delivered to the addresses set forth below or as either Party may otherwise designate in writing.

If to the County: County of Volusia  
Attn: County Manager  
Copy to: County Attorney  
123 West Indiana Avenue  
DeLand, FL 32720

If to the City: City of Ormond Beach  
Attn: City Manager  
Copy to: City Attorney  
22 South Beach Street  
Ormond Beach, FL 32174

Notices, consents, approvals, waivers, and elections will be deemed given when received by the Party for whom intended.

9. Sole Benefit. This Agreement is solely for the benefit of the County and City, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement, either expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity other than the Parties any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties and their respective representatives, successors and assigns.

10. Authority. The County and City each represent and warrant to the other its respective authority to enter into this Agreement, acknowledge the validity and enforceability of this Agreement. The County and City hereby represents, warrants and covenants this Agreement constitutes a legal, valid and binding contract enforceable by the Parties in accordance with its terms, and that the enforceability hereof is not subject to any impairment by the applicability of any public policy or police powers.

11. Enforcement. This Agreement shall be enforceable by the Parties hereto by whatever remedies are available in law or equity, including but not limited to injunctive relief and specific performance. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed as a waiver (or continuing waiver) of such terms, covenants, or conditions; nor shall any waiver or relinquishment of any right or power hereunder be deemed to be a waiver or relinquishment of such right or power at any other time.

12. Defense. If this Agreement or any portion hereof is challenged by any judicial, administrative, or appellate proceeding (each Party hereby agreeing with the other not to initiate or acquiesce to such challenge or not to appeal any decision invalidating any portion of this Agreement), the Parties collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through to a final judicial determination, unless both Parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating any portion of this Agreement.

13. Amendments. Amendments to the Agreement may be offered by either Party at any time. Proposed amendments shall be in writing and must be approved by a majority of the governing bodies of each Party. No amendment shall be effective until approved by the governing bodies of the City and County.

14. Supremacy. The Parties agree and covenant, having given and received valuable consideration for the promises and commitments made herein, it is their desire, intent and firm agreement to be bound by and observe the terms of this Agreement. Except as otherwise provided by this Agreement or by law, in the event the terms of this Agreement conflict with previous agreements between the Parties, the terms of this Agreement shall control.

15. Entire Understanding. Except as otherwise specifically set forth herein or in any subagreement, this Agreement embodies and constitutes the entire understanding of the Parties with respect to the subject matters addressed herein, and all prior agreements, understandings, representations and statements, oral or written, are superseded by this Agreement. The City and County further acknowledge that they each participated in drafting this Agreement, and in the event of a dispute regarding the Agreement, it shall not be construed by a court of competent jurisdiction or other tribunal more or less favorably on behalf of either Party on the basis of a claim that a Party did not participate in drafting the Agreement or any part thereof.

16. Governing Law and Venue. The laws of the State of Florida shall govern this Agreement, and venue for any action to enforce the provisions of this Agreement shall only be in the Circuit Court in and for Volusia County, Florida. Federal Jurisdiction and venue, if applicable shall only be in the Middle District of Florida, Orlando Division. If circumstances arise which cause a conflict between this paragraph and paragraph 6 ("Dispute Resolution") paragraph 6 shall control.

17. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provision hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

18. Compliance with Chapter 171, Part II, Florida Statutes. The Parties agree that this Agreement meets the requirements of Chapter 171, Part II, Florida Statutes. The Parties intend for this Agreement to be broadly construed to effectuate the purposes and provisions set forth herein, specifically those provisions that provide for the transfer of powers over lands within the JPA/MSA by the County to the City; and the authority by the City to exercise powers extraterritorially over said lands, including but not necessarily limited to the application and enforcement of the codes described in paragraph 4,c of the Planning and Services Delivery Sub-Agreement.

19. Amendment of Intergovernmental Coordination Element of Comprehensive Plans. Consistent with Section 171.203(9), Florida Statutes (2012), the Parties, within six (6) months of the effective date of this Agreement, shall amend their respective Intergovernmental Coordination Elements of their adopted Comprehensive Plans to establish consistency and compliance with this Agreement.

20. Adoption by County. The County shall adopt this Agreement by ordinance in accordance with Sections 171.203(14) and 125.66, Florida Statutes (2012).

21. Adoption by City. The City shall adopt this Agreement by ordinance in accordance with Sections 171.203(14) and 166.041, Florida Statutes (2012).

22. 1991 U.S. 1 Interlocal Agreement. The interlocal service area agreement dated September 12, 1991, between the City and County establishing a utility service area for the U.S. 1 corridor shall be deemed terminated on the effective date of this ILSBA and Planning and Services Delivery Sub-Agreement, and shall be superseded and replaced by the ISBA and Planning and Services Delivery Sub-Agreement.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the resolution by which each party approved and adopted this Agreement.

COUNTY OF VOLUSIA

By: \_\_\_\_\_  
Jason P. Davis, County Chair

Approved as to form and legality:

Attest: \_\_\_\_\_  
James T. Dinneen, County Manager

\_\_\_\_\_  
County Attorney

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Jason P. Davis and James T. Dinneen, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [ ] personally known to me, or [ ] have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida at Large

*Printed, typed or stamped name, commission and Expiration  
of commission term:*

CITY OF ORMOND BEACH

By: \_\_\_\_\_  
Ed Kelley, Mayor

Approved as to form and legality:

Attest: \_\_\_\_\_  
Joyce Shanahan, City Manager

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Ed Kelley and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [ ] personally known to me, or [ ] have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida at Large

*Printed, typed or stamped name, commission and Expiration  
of commission term:*

## Planning and Services Delivery Sub-Agreement

This Planning and Services Delivery Sub-Agreement is made and entered into this day of \_\_\_\_\_, 2014, by and between the City of Ormond Beach ("City") and Volusia County ("County").

WHEREAS, this Sub-Agreement is made and entered into in furtherance of the Interlocal Service Boundary Agreement ("ISBA"), and it is a material part of the ISBA; and

WHEREAS, this Sub-Agreement is intended to satisfy the requirements of Chapter 171 (Parts I & II), Florida Statutes and Chapter 163 (Part II), Florida Statutes; and

WHEREAS, the "Whereas" recitals in the ISBA are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the City and the County enter into this Sub-Agreement as follows:

1. *Incorporation of recitals as legislative findings; purpose.* The recitals stated in the ISBA and this Sub-Agreement are incorporated herein by reference as the legislative findings of the City and County. This Sub-Agreement is intended to satisfy the requirements of Chapter 171 (Parts I & II), Florida Statutes and Chapter 163 (Part II), Florida Statutes, specifically sections 171.203, 171.204 and 163.3171.

2. *Incorporation of Map 1.* The unincorporated area depicted in Map 1 attached to the ISBA shall constitute the Joint Planning Area ("JPA") and Municipal Service Area ("MSA"), which terms may herein be used synonymously and interchangeably as the context requires.

3. *Planning Process and Implementation.*

a. The City and the County shall amend the Intergovernmental Coordination Element of their respective comprehensive land use plans in accordance with Section 171.203(9), Florida Statutes (2012), within six months of the effective date of the ISBA, by adopting a policy referencing said agreement. The County's policy shall read as follows, and shall be inserted in Chapter 14 of the county comprehensive plan:

14.1.2.13 Pursuant to Chapter 171, Part II, Florida Statutes, Volusia County and the City of Ormond Beach have established an Interlocal Service Boundary Agreement (ISBA) adopted on \_\_\_\_\_, 2014. The agreement allows the City to annex properties within the Joint Planning Area that would not otherwise be eligible for annexation subject to the provisions established in the ISBA.

- b. The City shall adopt a Municipal Service Area (MSA), as that term is defined in Section 171.202(11), Florida Statutes, as an amendment to its comprehensive land use plan within six months of the effective date of the ISBA, in accordance with Section 171.203(11), Florida Statutes (2012). The MSA shall include the area depicted in Map 1, population projections for the MSA, and data and analysis supporting the provision of public facilities for the MSA.
- c. Section 171.207, Florida Statutes, expressly authorizes a county to transfer its powers to a municipality over lands that are within a JPA/MSA; and section 171.208, Florida Statutes, expressly authorizes a municipality to exercise its powers, extraterritorially, over such lands. In accordance with Sections 163.3171(4) and 171.203(6)(f), Florida Statutes, the County comprehensive plan, zoning, and land development regulations shall apply to all lands in the JPA/MSA until the City annexes the land at issue or amends its comprehensive plan with respect to those lands. The City is authorized and empowered, pursuant to section 163.3171(4), Florida Statutes, to amend and apply its comprehensive plan to the lands within the JPA/MSA in advance of the annexation of those lands. In addition, the City's codes and regulations shall apply in advance of annexation upon the adoption by the City of a comprehensive plan amendment; and the City shall be authorized and empowered, pursuant to sections 163.3171(4), 171.207 and 171.208, Florida Statutes, to exercise extraterritorial powers over such lands.

4. Planning, Development and Administrative Authority. The City shall have sole and singular authority within the boundaries of the JPA to apply the City's Comprehensive Land Use Plan and Zoning Map categories over unincorporated parcels, to administer the codes and regulations described in paragraph 4,c below, and to provide for the enforcement of codes:

- a. Land Use Designations. The City shall be authorized to amend its future land use map for the purpose of governing any and all unincorporated lands within the JPA. The City shall coordinate the amendment with the County prior to processing it by submitting a copy of the proposed amendment to the County no less than thirty (30) calendar days prior to the initial hearing. In the event the County desires to object to the proposed amendment, it must file a written objection, stating a good faith basis for same, with the City no later than fifteen (15) days prior to the initial hearing on the amendment. The Parties shall make a good faith effort to resolve a dispute regarding a proposed amendment. If the Parties are not able to resolve a dispute regarding a proposed amendment, the County may pursue available remedies under applicable law.
- b. Zoning Classifications. The City shall be authorized to amend the City's zoning map for all unincorporated lands within the JPA after a City land use designation has been adopted.
- c. Application of Codes. The following codes and ordinances (as may be approved or amended from time to time) shall apply in their entirety to unincorporated land in the JPA:
  - i. City Charter,



- ii. City Code of Ordinances,
  - iii. City Comprehensive Land Use Plan
  - iv. City Land Development Code,
  - v. Non-codified City ordinances, resolutions, and regulations, and
  - vi. Florida Building Code
- d. Stormwater Conveyance Services. The County shall continue to administer and enforce its regulations regarding county stormwater conveyance systems within the boundaries of the JPA. The City will review and approve all new development in the JPA with regard to stormwater conveyance systems including but not limited to water quality, discharge volume and flow rate, as well as storm attenuation and flood control. The City shall not permit any construction, additions, renovations, or alterations of any improvements to real property, in a manner that is inconsistent or conflicts with County policy unless specific written approval is received from the County Engineer, which approval shall not be unreasonably delayed or withheld. The County shall continue to accept stormwater runoff and maintain stormwater conveyance systems when County predevelopment conditions related to stormwater are met.
- e. Itinerant Vendor and Merchant Activities. The City shall have sole and complete jurisdiction over itinerant vendor and merchant activities, and outdoor entertainment activities, within the boundaries of the JPA/MSA, including the issuance of licenses and permits.
- f. Roads; transfer of jurisdiction. This paragraph is intended to satisfy the requirements of section 335.0415(3), Florida Statutes.
- i. County Thorough Roads. The County shall retain jurisdiction, ownership and control of the entire length of County Thoroughfare Roads within the JPA/MSA regardless of any parcel annexations by the City, including the existing thoroughfare roads listed below and subsequent revisions to the County's thoroughfare roadways as illustrated in Figure 2-1, Volusia County Comprehensive Plan:
    - (1) Broadway Avenue, from Tymber Creek Road to Atlantic.
    - (2) Airport Road, from the Florida East Coast Railroad to US 1.
  - ii. Non-thoroughfare Roads. The permanent transfer within the JPA/MSA of non-thoroughfare roadway maintenance responsibilities from the County to the City shall occur as follows:
    - (1) For purposes of this agreement, "road segment" shall mean the portion of a County road between two intersecting roads.
    - (2) Except for the those roads identified in paragraph "f,i" above, non-thoroughfare county roads within or adjacent to the existing City

boundary shall become roads under the City's jurisdiction and maintenance responsibility when at least fifty-one percent (51%) of the road segment is either within or adjacent to the existing City.

- (3) All County non-thoroughfare roads within the MSA shall transfer to the City's jurisdiction and maintenance responsibility by segment upon the annexation of at least fifty-one percent (51%) of a road segment.
- (4) The 51% segment ratio shall be calculated based on the frontage of annexed parcels on each side of the road segment between two intersecting roads.
- (5) Once 51% or more of a segment is annexed, the entire road segment between the two intersecting roads will be deemed annexed into the City and transferred to the City's jurisdiction, and ownership; and the City will be fully responsible for all maintenance and other responsibilities.
- (6) As the City accepts jurisdiction and responsibility over a road segment, it shall have the same right of access for purposes of maintenance as the County, to the fullest extent the County is able to grant such right.
- (7) Any County or City agreements for road improvements with other governmental or private entities existing at the time of the approval of this Sub-Agreement, if any, shall remain in full force and effect; except in the event of a conflict with this Sub-Agreement, in which case the terms of this Sub-Agreement shall prevail. It is the intention of the parties that no additional "mutual agreements" shall be necessary to effect road segment annexation. This Sub-Agreement is intended to convey the will of the parties concerning all road segments within the JPA/MSA.

iii. Transportation Planning and Coordination.

- (1) The City and County agree to use the adopted Volusia Transportation Planning Organization (TPO) Transportation Impact Analysis (TIA) Guidelines to coordinate the review and mitigation of development impacts on road, transit, bicycle and pedestrian systems based upon a mutually agreed upon TIA methodology. The TIA Guidelines shall utilize the latest adopted level of service standards and transportation plans within the impacted jurisdiction's comprehensive plans including the adopted Volusia TPO Long Range Transportation Plan.

- (2) In the event the standards or plans may be different, the TIA methodology and/or mitigation plan shall address coordination. When necessary, comprehensive plans shall be updated to reflect the latest coordination plans. In the event the TIA Guidelines are ever repealed or become no longer applicable, the City and County agree to continue to utilize the latest adopted version for the purpose of plan review and mitigation coordination.
- iv. Funding. The City and County agree to work together to obtain funding sources for capital transportation improvements, including capital and operating expenses for the provision of transit service, within the JPA/MSA.
- v. Maintenance. The City and County may enter into maintenance agreements for certain segments of permanent County roads within the JPA/MSA. The County agrees that the City shall be justly compensated for any and all maintenance responsibilities that may be transferred to the City through a maintenance agreement.
- vi. Continuing jurisdiction. All roads over which jurisdiction is transferred to the City under the terms of this Sub-Agreement shall be maintained by the City unless otherwise agreed to in a separate maintenance agreement. If a road is transferred to the City, to the extent available, the County shall provide all as-builts, surveys, maintenance maps and GIS files that identify County maintenance responsibilities. Road transfers include associated roadway drainage and right-of-way infrastructure that includes but is not limited to sidewalks, guardrails, signs and multi-use trails.
- g. Land Development and Planning. The City shall provide site plans and subdivision plans to the County for review and comment. The County shall have thirty (30) days from receipt of plans to submit its comments or recommendations to the City. The City shall notify the County of the date and time at which a proposed site plan will be presented to the city's local planning agency (i.e., planning board) for its review and recommendation to the city commission, as well as the date and time at which a proposed site plan will be presented to the city commission for final action. The County's comments or recommendation shall be included in any city staff analysis that is presented to the city planning board and city commission. The County may submit or present its comments or recommendations directly to the city planning board and city commission, regardless whether or not they have been incorporated into the site plan.
- h. Enforcement of Codes. The City shall enforce City or County codes within the JPA/MSA, whichever may apply.
- 5. Joint Planning Area ("JPA"). The following additional findings are intended to satisfy the requirements of Section 171.204(2), Florida Statutes (2012):

- a. Urban in Character. The unincorporated area in the JPA as depicted in Map 1 is anticipated for municipal annexation because it is “urban in character”, as that term is defined by section 171.031(8) Florida Statutes (2012).
- b. Comprehensive Plan Amendment and Future Land Uses to be Established by the City. The City may, in accordance with section 163.3171(4), Florida Statutes, amend its comprehensive land use plan, including its future land use map, for lands in the JPA in advance of annexation.
- c. Transportation: as may be addressed in a separate sub-agreement.
- d. Annexation as a Condition to Receiving Water and Sewer Services.
  - i. Annexation as a condition of municipal utility connection has long been and continues to be authorized by Section 180.02(3), Florida Statutes, and the home rule constitutional and proprietary powers of the City. The City and County entered into an interlocal agreement dated September 12, 1991, establishing a utility service area for the U.S. 1 corridor (“1991 U.S. 1 Interlocal Service Area Agreement”) described as being “those lands lying 660 feet east and 660 feet west of the right-of-way lines of U.S. 1, including the hinterlands under single development control lying beyond that point referred to as the Service Area.” The 1991 Interlocal Service Area Agreement conferred to the City the exclusive right to extend water and/or sewer facilities and provide utility service within the designated Service Area in accordance with the City’s water and sewer connection policy, which policy required and continues to require the consent of a property owner to annex into the City as a condition to connecting to the City’s water and/or sewer facilities. Connection to the City’s water and/or sewer facilities constitutes express or implied consent by a property owner to the annexation of the land benefitting from the receipt of such services. The City’s annexation and utility provision policies and regulations are set forth in Chapter 3, Article V, Section 3-61(B)(2)(b) and (c), of the Ormond Beach Land Development Code (formerly Ordinance 91-33 adopted on August 20, 1991).
  - ii The City may require, in accordance with section 171.204, Florida Statutes and the City’s annexation and utility provision policies and regulations, the annexation of land in the JPA/MSA regardless whether the land is contiguous, creates an enclave or is not reasonably compact at the time of annexation.
  - iii In accordance with section 171.204, Florida Statutes, before the annexation of land that is not contiguous to the City, or that will create an enclave, or land that is not being served by water or sewer utilities at the time of the proposed annexation, the City shall transmit for review to the state Department of Economic Opportunity a comprehensive land use plan amendment for the lands that are to be annexed. After considering the

DEO's review, the City may approve concurrently, through separate and distinct actions, the annexation and comprehensive land use plan amendment.

iv With respect to land that is contiguous to the City, that does not create an enclave or pocket, and is being served water or sewer services by the City at the time of the proposed annexation, the City agrees to process a Future Land Use Map ("FLUM") amendment to its comprehensive land use plan prior to or concurrent with the annexation. The FLUM amendment and annexation must be accomplished as separate and distinct actions.

e. School Facilities. The JPA shall be served by the schools zoned by the Volusia County School District and shall not conflict with the Interlocal Agreement between Volusia County and the Volusia County School District, as amended. The City agrees to work with the Volusia County School District to further the requirements and goals of the School Interlocal Agreement between the County and the School District.

IN WITNESS WHEREOF, each of the undersigned has executed this Sub-Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the resolution by which each party approved and adopted this Agreement.

COUNTY OF VOLUSIA

By: \_\_\_\_\_  
Jason P. Davis, County Chair

Approved as to form and legality:

Attest: \_\_\_\_\_  
James T. Dinneen, County Manager

\_\_\_\_\_  
County Attorney

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Jason P. Davis and James T. Dinneen, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [ ] personally known to me, or [ ] have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida at Large

*Printed, typed or stamped name, commission and Expiration  
of commission term:*

CITY OF ORMOND BEACH

By: \_\_\_\_\_  
Ed Kelley, Mayor

Approved as to form and legality:

Attest: \_\_\_\_\_  
Joyce Shanahan, City Manager

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Ed Kelley and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [ ] personally known to me, or [ ] have produced \_\_\_\_\_ as identification.

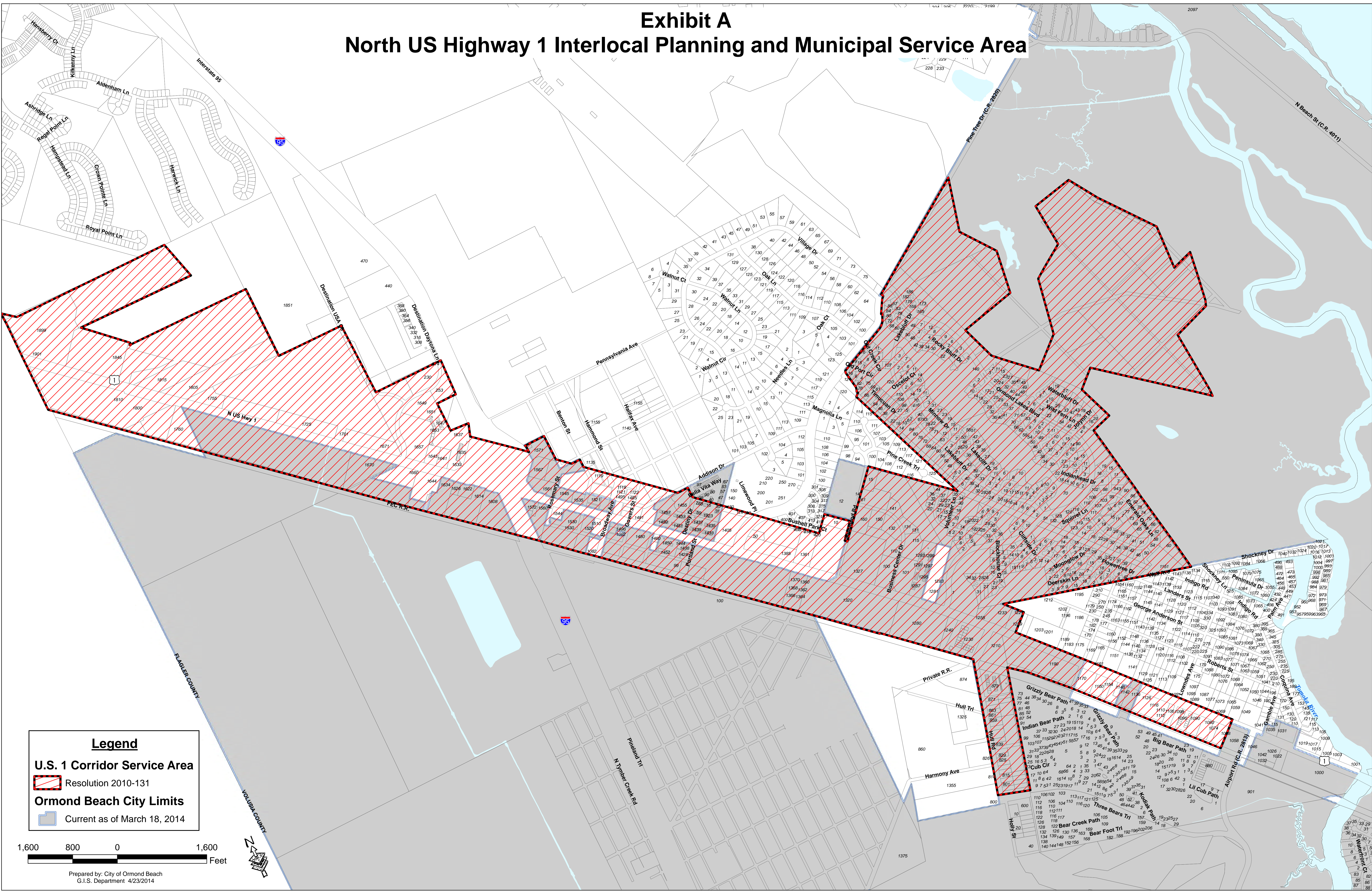
\_\_\_\_\_  
Notary Public, State of Florida at Large

*Printed, typed or stamped name, commission and Expiration  
of commission term:*



# Exhibit A

## North US Highway 1 Interlocal Planning and Municipal Service Area



**Legend**

**U.S. 1 Corridor Service Area**

Resolution 2010-131

**Ormond Beach City Limits**

Current as of March 18, 2014



Prepared by: City of Ormond Beach  
G.I.S. Department 4/23/2014



## Itinerant Vendor Criteria

These Itinerant Vendor Criteria are to be established in furtherance of the Interlocal Service Boundary Agreement, and Planning and Services Delivery Sub-Agreement between the City of Ormond Beach and County of Volusia regarding the North U.S. 1 Joint Planning Area/Municipal Service Area (JPA/MSA). The criteria are intended to be established as part the city's adopted land development regulations.

1. *Incorporation of Map 1.* The unincorporated area depicted in Map 1 attached to the ISBA shall constitute the Joint Planning Area (JPA) and Municipal Service Area (MSA) for purposes of the following criteria.
2. *Area of application.* These provisions shall apply to all land in the unincorporated territory of Volusia County as more fully described and depicted in the JPA/MSA to the Interlocal Service Boundary Agreement and Planning and Services Delivery Sub-Agreement.
3. *Definitions.*
  - a. **Improved land** shall mean land on which permanent improvements consisting of one or more buildings are being utilized for the express purpose of engaging in a primary and lawful business use.
  - b. **Vacant or unimproved land** shall mean land on which permanent improvements consisting of one or more buildings do not exist or are NOT being utilized for the express purpose of engaging in a primary and lawful business use.
  - c. **Local business tax receipt (BTR)** shall have the meaning prescribed in Chapter 205, *Florida Statutes*. Specifically, it is a receipt issued by the County or City granting a privilege to engage in a lawful business activity, exclusive of any fees for applicable licenses, permits, registrations, examinations or inspections.
  - d. **Business use** shall be broadly construed to mean any lawful activity that is commonly and customarily recognized as a business or commercial activity, regardless whether or not such activity is for-profit or not-for-profit.
  - e. **Primary business use** shall mean a chief, dominate or main business use of permanent and continuous existence, on a year-round basis, on improved land that is authorized by a valid local business tax receipt, regardless whether such activity is for-profit or not-for-profit.
  - f. **Itinerant commercial activity** shall mean a business use or activity of intermittent or temporary existence, or not being of a permanent and continuous existence on a year-round basis, regardless whether such use or activity is for-profit or not-for-profit. These activities commonly include but shall not be limited



to tattoo services, food vending, retail, and portable stationary simulation rides. Itinerant commercial activity shall not be a primary business use.

- g. **Master Vendor Permit** shall mean a permit that is issued to a property owner authorizing one or more individual itinerant vendors to conduct itinerant commercial activities on the property owner's land for a temporary duration specified in the permit.
- h. **Itinerant Vendor Permit** shall mean a permit issued to an individual person or business authorizing the person or business to engage in itinerant commercial activities at a specific location and for a temporary duration specified in the permit.
- i. **High Impact Use** shall mean itinerant commercial uses or activities.
- j. **High Impact Use on Improved Land Category** shall mean itinerant commercial use or activities on improved land.
- k. **High Impact Use on Vacant or Unimproved Land Category** shall mean itinerant commercial uses or activities on vacant or unimproved land.
- l. **Outdoor Entertainment Activity** shall mean an activity specific to a primary business use, that is typically smaller in scope than Recognized Event Activities, and that must occur on site as an accessory activity to the principal business use of the property. For purposes of this definition, music, participant contests, auto exhibits, games and similar activities hosted on-site of a primary business use shall not be Outdoor Entertainment Activity. Administrative approvals shall be required for outdoor entertainment activities. Except during and for the limited exception provided in paragraph 5 below for land in the High Impact Use on Vacant or Unimproved Land Category, Outdoor Entertainment Activity shall not be allowed or permitted on vacant or unimproved land.
- m. **Outdoor Entertainment Activity Permit** shall mean a permit issued for outdoor entertainment activity that is to occur on the property where a primary business use occurs, and for a temporary duration specified in the permit; except only that outdoor entertainment activities may be allowed during and for the limited exception provided in paragraph 5 below, for land in the High Impact Use on Vacant or Unimproved Land Category.
- n. **Recognized Special Events** shall mean Daytona Beach Bike Week Festival, as established by the Bike Week Executive Committee; Daytona Beach Biketoberfest Special Event, as established by the Biketoberfest Development Committee of the Daytona Beach Area Convention & Visitors Bureau; Daytona Speed Weeks, encompassing that time period commencing with the Rolex 24 Hour Race and ending with the Daytona 500 Race, as established by the Daytona International Speedway; and Pepsi 400 Race, as established by the Daytona

International Speedway and any other specially licensed outdoor entertainment activity involving more than one property owner.

4. Category of Use.

- a. **High Impact Use on Improved Land Category.** Itinerant commercial uses or activities are deemed to have significant impacts on the use of improved land, including but not necessarily limited to intensive parking, traffic, and pedestrian safety. The following businesses are known to engage in itinerant commercial uses or activities in the unincorporated territory of the County, as of the effective date of the Agreements and shall be allowed to continue engaging in such uses or activities after the effective date of said Agreements:

1. Recognized Special Event Host:

- i. 1635 N. US Hwy 1, (Destination Daytona, activities as specified in County Development Order)
- ii. 1065 N. US Hwy 1, (Standard Cycle/Biker Haven)
- iii. 1068 N. US Hwy 1, (Iron Horse Saloon)
- iv. 1106 N. US Hwy 1, (Hired Gun)
- v. 253 Destination Daytona Lane, (J&P Cycles)
- vi. 1658 US Hwy 1, (Love's Travel Stop)
- vii. 1622 N. US Hwy 1, (Sunshine#230 Store)
- viii. 1080 N. US 1, (Harris Village RV Park)
- ix. 1105 N. US Hwy 1, (Low Country Oysters of Ormond Beach)
- x. 1481 N. US Hwy 1, (Annie Oakley's Saloon)
- xi. 1074 N. US Hwy 1, (Ocean Club)
- xii. 470 Destination Daytona Blvd, (Wyotec)
- xiii. 1041 N. US Hwy 1, (J Discount#2)

2. Outdoor Entertainment Activity:

- i. 1635 N. US Hwy 1, (Destination Daytona, activities as specified in County Development Order)
- ii. 1068 N. US Hwy 1, (Iron Horse Saloon)
- iii. 1065 N. US Hwy 1, (Standard Cycle/Biker Haven)
- iv. 1105 N. US Hwy 1, (Low Country Oysters of Ormond Beach)

- b. **High Impact Use on Vacant or Unimproved Land.** Itinerant commercial uses or activities are deemed to have the same significant impacts on vacant or unimproved land as those impacts that occur on improved land. Business establishments and lands that are not described in paragraph 4a(1) and (2) above shall be in the High Impact Use on Vacant or Unimproved Land Category for purposes of this Agreement. Itinerant Commercial Activities and Outdoor Entertainment Activities for lands within the High Impact Use on Vacant or

Unimproved Land Category shall be subject to the amortization schedule described in paragraph 5 below.

5. *Rationale for Use of Land Classification and Amortization.* Property values in Florida are based on the aggregate total of building improvement and land value. Much of the total taxable value in property involves a building improvement to land value ratio of approximately 70:30. Consequently, vacant land reserved solely for the purpose of itinerate commercial activities or uses for an event that has limited duration is problematic for several reasons, including:

- a. Pays little in taxes to offset the costs of public service impacts related to the event;
- b. Vacant or unimproved land is not assessed by the property appraiser for the income to property owners generated by itinerate commercial activities or uses;
- c. Vacant or unimproved land that is used solely for itinerate commercial activities or uses have debilitating effects on adjacent property values and the North U.S. 1 corridor in general.

In order to promote the use of land for primary business use purposes, an amortization schedule shall be imposed for itinerant activities and uses, and outdoor entertainment activities, as follows:

**High Impact Use on Improved Land.** The businesses and land described in paragraph 4a (1) and (2) above shall be exempt from the amortization schedule that applies to those businesses and land in the High Impact Use on Vacant or Unimproved Land Category described below and from the Outdoor Activity provisions of the City's Land Development Code that would require authorization and approval by a Special Exception development order.

**High Impact Use on Vacant or Unimproved Land; Amortization Schedule.** Lands that are subject to the High Impact Use on Vacant Land Category described in paragraph 4b above may host Itinerant Commercial Activities and Outdoor Entertainment Activities during Recognized Special Events for a period that shall automatically terminate five years from the effective date of the Interlocal Service Boundary Agreement. Permits for Itinerant Commercial Activities and Outdoor Entertainment Activities must be obtained from the City's Site Plan Review Committee in accordance with the requirements of Section 6 or 7 of this Agreement as a condition of engaging in such activities. Itinerant Commercial Activities and Outdoor Entertainment Activities shall be prohibited after the five year termination date prescribed in this section.

6. *Specialized Itinerant Provisions in the North US 1 Corridor.*

- a. Specialized Itinerant Provisions ("SIP") applications shall be approved administratively by the City's Site Plan Review Committee.
- b. All retail and service activities shall occur outside public rights-of-way.

- c. A fully completed application for a Master Vendor Permit shall include attachments containing the following information:
1. A single site plan 8.5 x 11 inches, drawn to scale must show all necessary elements and shall include the following if applicable:
    - i. Location of existing facilities/structures
    - ii. Location of proposed temporary facilities/structures
    - iii. Proposed traffic flow and provisions for ingress/egress
    - iv. Measures for security/crowd control
    - v. Measures for provision of medical care
    - vi. Lighting
    - vii. Solid waste disposal
    - viii. Parking
    - ix. Location of bands and or music venues
    - x. Sanitation facilities
    - xi. Vendor permits (i.e., vendor list with Vendor Names, goods and/or services to be provided.)
  2. A list or schedule of events that are to occur at the location for the duration of the permit, including any host drinking contests or games, motorcycle/car washes (excluding those held by a church, school, or civic organizations). Contests involving disrobing or wet t-shirt contests, slaw/pudding/jello wrestling, bobbing or similar contests are prohibited.
  3. Individual itinerate vendors will be required during special events to have a permit to do business
  4. No person or business receiving a Master Vendor Permit or Individual Vendor Permit may engage in any of the following activities:
    - i. Activities involving the operation of aircraft;
    - ii. Events involving the discharge of explosive devices in violation of state or federal law;
    - iii. Activities in which farm animals or wild animals interact with the public;
    - iv. Outdoor event involving the exhibition of moving, driver-occupied motorized vehicles such as stunt shows, dynodrag or dyno unit or burn-out pit activities.
    - v. Activities involving the discharge of any toxic or harmful substance.
  5. Portable side-by-side stationary racing dynamometers for bike drag race simulation are permitted.

6. All vendors setting up outside a permanent building, using a tent or other temporary structure are required to have an inspection by the Building Division 24 hours prior to operating.
7. A vendor may be allowed the use of one portable out-door sign in the form of a sandwich board or other similar design to be used for advertisement of daily specials, events or services of the vendor during the event. The sign may only be set out each day at the opening of business hours and shall be removed each day at the end of business hours. All signs shall require a sign permit. The sign shall not exceed 16 square feet in size and must be constructed of sufficient material to withstand adverse weather events.
8. Vendor activities and advertising must at all times be confined to the vendor space identified either in the Master Vendor Permit or Individual Vendor License.
9. Vendor is required to leave said vending space 8 hours after the event officially closes.
10. Food vendors must operate in compliance with the requirements of the Division of Hotels and Restaurants of the Florida Department of Business and Professional regulation. Food vendors must show proof that they meet all applicable health department regulations and hold all valid food service licenses required for their operations.
11. Zoning restrictions on tattoo services shall not apply during recognized events but must operate in compliance with the provisions set forth in F.S. §877.04, as amended, and any other applicable state laws and city regulations.

7. Outdoor Entertainment Activity (OEA) Provisions. The following items shall be required for approval of an OEA permit:

- a. The permit shall be administratively reviewed and approved in accordance with the city's regulations;
- b. The permit shall be for an individual outdoor activity only;
- c. A drawing to scale depicting the placement of structures, tents, lighting and sound plans, and provisions for vehicular parking and access;
- d. Department of Health approval for food vendors if applicable;

- e. Provisions for adequate security and traffic control approval from the Ormond Beach Police Department;
- f. Provisions for emergency services and fire;
- g. Written notarized authorization for unlimited and unconditional 24 hour access to the site for city inspectors;
- h. Compliance with local and state laws and regulations regarding food and beverage concession operations; and
- i. Vendors must possess a valid Business Tax Receipt.

**ORDINANCE NO. 2014-\_\_**

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERLOCAL SERVICE BOUNDARY AGREEMENT, AND A PLANNING AND SERVICES DELIVERY SUB-AGREEMENT, BETWEEN THE CITY OF ORMOND BEACH AND COUNTY OF VOLUSIA, FLORIDA, REGARDING A NORTH U.S. 1 JOINT PLANNING AND MUNICIPAL SERVICE AREA; APPROVING ITINERANT VENDOR CRITERIA; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**WHEREAS**, in accordance with the Interlocal Service Boundary Act, Chapter 171, Part II, Florida Statutes, the city commission of the City of Ormond Beach approved on September 7, 2010, Resolution No. 2010-131 (Initiating Resolution) and the county council of the County of Volusia approved on October 7, 2010, Resolution No. 2010-05 (Responding Resolution) identifying certain issues along the N. U.S. 1 corridor, and

**WHEREAS**, officials from the city and county have over the ensuing months since the approval of the resolutions discussed the issues, and have negotiated and agreed upon a proposed Interlocal Service Boundary Agreement, a Planning and Services Delivery Sub-Agreement, and Itinerant Vendor Criteria in an effort to address the issues, copies of the agreements and criteria being attached hereto as Exhibits “A”, “B” and “C”, respectively, and

**WHEREAS**, on June 12, 2014, the city’s planning board (local planning agency) held a public meeting for the purpose of considering the Interlocal Service Boundary Agreement, Planning and Services Delivery Sub-Agreement, and Itinerant Vendor Criteria, and recommended approval of the same, and

**WHEREAS**, city commission concurs with the recommendation of the city's planning board (local planning agency), and has further determined that the approval of the Interlocal Service Boundary Agreement, Planning and Services Delivery Sub-Agreement, and Itinerant Vendor Criteria, will serve the best interests and welfare of the general public, now therefore,

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:**

**SECTION ONE.** The foregoing recitals are incorporated herein by reference as the legislative findings of the city commission of the City of Ormond Beach.

**SECTION TWO.** The city commission hereby approves the Interlocal Service Boundary Agreement, Planning and Services Delivery Sub-Agreement, and Itinerant Vendor Criteria attached hereto as Exhibits "A", "B" and "C" respectively; and, authorizes and directs the mayor, city manager and city attorney, or their designees, to execute those agreements.

**SECTION THREE.** The city commission further authorizes and directs the city's planning director, and his designees, to initiate all necessary and appropriate action to amend the city's comprehensive land use plan and/or land development regulations consistent with the Interlocal Service Boundary Agreement, Planning and Services Delivery Sub-Agreement, and Itinerant Vendor Criteria.

**SECTION FOUR.** A copy of this Ordinance (including the Itinerant Vendor Criteria), the Interlocal Service Boundary Agreement, and the Planning and Services Delivery



Sub-Agreement shall be recorded with the clerk of court for Volusia County Circuit Court, in accordance with section 163.01(11), Florida Statutes.

**SECTION FIVE.** This Ordinance and the agreements attached hereto as Exhibits “A” and “B” have been approved in accordance with sections 171.203(14) and 166.041, Florida Statutes.

**SECTION SIX.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION SEVEN.** In the event any section or provision of this Ordinance is declared by any court of competent jurisdiction to be unconstitutional or invalid, such declaration shall not be deemed to affect the validity of this Ordinance as a whole or any other section or provision hereof.

**PASSED UPON** at the first reading of the City Commission, this \_\_\_\_ day of \_\_\_\_\_, 2014.

**PASSED UPON** at the second and final reading of the City Commission, this \_\_\_\_ day of \_\_\_\_\_, 2014.

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**ED KELLEY**  
Mayor

**ATTEST:**

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**J. SCOTT McKEE**  
City Clerk