

ORDINANCE 2015-27

AN ORDINANCE AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE BY ADDING A NEW ARTICLE TO BE NUMBERED AND CAPTIONED AS ARTICLE VII, NORTH U.S. HIGHWAY 1 INTERLOCAL PLANNING AND MUNICIPAL SERVICE AREA; BY ADDING DIVISION 1, ITINERANT MERCHANT REGULATIONS FOR RECOGNIZED SPECIAL EVENTS AND OUTDOOR ENTERTAINMENT ACTIVITY; TEMPORARY CAMPSITES: SECTION 2-74, MUNICIPAL SERVICE AREA AND JOINT PLANNING AREA; PURPOSE; SECTION 2-75, LEGISLATIVE FINDINGS; SECTION 2-76, DEFINITIONS; SECTION 2-77, HIGH IMPACT USES ON LAND; CLASSIFICATION AND CATEGORY OF USE; RATIONALE; SECTION 2-78, AMORTIZATION SCHEDULE FOR VACANT OR UNIMPROVED LAND CATEGORY; SECTION 2-79, APPLICATION, LICENSE AND PERMIT REQUIREMENTS FOR ITINERANT COMMERCIAL ACTIVITY; SECTION 2-80, TEMPORARY CAMPSITES; SECTION 2-81, RESERVATION OF POWER; SECTION 2-82, ENFORCEMENT; BY REGULATING ITINERANT MERCHANT USES AND ACTIVITIES DURING RECOGNIZED SPECIAL EVENTS AND OUTDOOR ENTERTAINMENT ACTIVITIES; PROVIDING CLASSIFICATIONS OF LAND FOR IMPROVED LAND AND VACANT OR UNIMPROVED LAND; PROVIDING REGULATIONS FOR TEMPORARY CAMPSITES DURING RECOGNIZED SPECIAL EVENTS; PROVIDING LICENSE AND PERMIT REQUIREMENTS; PROVIDING A FIVE YEAR AMORTIZATION PERIOD FOR VACANT OR UNIMPROVED LAND; PROVIDING FOR THE INCLUSION OR REMOVAL OF LAND FROM THE IMPROVED LAND CATEGORY; RESERVING POWER TO THE CITY COMMISSION; PROVIDING FOR ENFORCEMENT OF THESE REGULATIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, the North U.S. Highway 1 corridor serves as the most northern gateway (Gateway) into the County of Volusia, and the cities of Ormond Beach (City), Daytona Beach, Holly Hill, South Daytona, and Port Orange (collectively the cities), and

WHEREAS, the North U.S. Highway 1 corridor has for many years been a focus of the City's efforts to revitalize the Gateway, to eliminate blight, to encourage redevelopment and economic development on lands adjacent to and near the Gateway, and

WHEREAS, in furtherance thereof, the city commission long ago established Gateway standards and policies, and

WHEREAS, tourists, visitors, residents, business owners, and other property owners travel on the Gateway to and from various points of destination in the cities, and

WHEREAS, certain lands in the North U.S. Highway 1 corridor are located in the unincorporated territory of the County and certain other lands are located within the municipal boundaries of the City, said lands having been subject to different and often confusing zoning, land use, development and other regulations by the County and the City, and

WHEREAS, differences between County and City standards have resulted in the inefficient planning and development of lands adjacent to and near the Gateway, and have resulted in the inefficient delivery of public services and resources, and

WHEREAS, despite the efforts and expenditure by the City of significant resources to encourage the redevelopment and economic development of lands within the municipal boundaries of the City adjacent to and near the Gateway (including by way of example but not limited to the Ormond Beach Sports Complex, Ormond Crossings commercial/residential

mixed use development, S.R. Perott distribution center, Hull Point Business Park, Ormond Business Park, and Ormond Commerce Park), certain other lands in the unincorporated territory of the County (primarily vacant or unimproved lands) in the MSA and adjacent to the Gateway remain in blighted conditions, and

WHEREAS, the City of Ormond Beach and County of Volusia entered into an Interlocal Service Boundary Agreement (ISBA), which became effective on August 28, 2014 (recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida) establishing a Municipal Service Area (MSA) for the North U.S. Highway 1 corridor, and

WHEREAS, in accordance with the requirements of section 171.203(9), Florida Statutes and the ISBA, the city commission approved Ordinance 2014-42 (on January 20, 2015) amending the future land use element and the intergovernmental coordination element of the City's Comprehensive Land Use Plan; and approved Ordinance 2015-5 (on January 20, 2015) amending the future land use map designation of the City's Comprehensive Land Use Plan appertaining to the MSA, and

WHEREAS, the city commission approved on April 7, 2015, Ordinance 2015-13 and Ordinance 2015-14, establishing zoning districts for the lands within and subject to the MSA, and

WHEREAS, the Gateway is in the MSA, and

WHEREAS, certain lands in the MSA and adjacent to the Gateway have hosted under the County's jurisdiction tourist related special events during Biketoberfest, Bike Week,

Daytona Speedway race events, and certain other outdoor entertainment activities in accordance with the County's itinerant merchant regulations as provided by Article III of the Volusia County Code of Ordinances, and

WHEREAS, the County's itinerant merchant regulations allowed itinerant merchant activities related to special events to occur on a temporary basis and for a limited duration under certain conditions, and

WHEREAS, the County adopted its itinerant merchant regulations to provide reasonable regulations for these temporary events and activities and to protect the health, safety and welfare of the general public, and

WHEREAS, under the County's itinerant merchant regulations, host licenses were issued upon certain conditions for a limited period of one year and individual vendor permits were issued upon certain conditions for a limited period of six months, allowing itinerant merchant activities to occur on a temporary basis during recognized special events, and

WHEREAS, the limited duration of host licenses and individual vendor permits issued by the county did not establish a right or expectation that itinerant merchant activities could occur beyond the limited time periods for the special events as authorized by a host licenses or individual vendor permit, and

WHEREAS, the County authorized by special exception temporary campsites and related itinerant merchant activities, subject to certain conditions, for temporary periods and limited durations during recognized special events, and

WHEREAS, the limited duration of the special exception authorizing temporary campsites and related itinerant merchant activities during recognized special events did not establish a right or expectation that temporary campsites and related itinerant merchant activities could occur beyond the limited time period and limited duration provided by the special exception, and

WHEREAS, the city commission desires to establish regulations for itinerant merchant activities and temporary campsite activities for lands in and subject to the MSA consistent with the City's long-standing policy to eliminate blight, encourage the revitalization and economic development of lands in the MSA and adjacent to and near the Gateway; and for the protection of the health, safety and welfare of visitors, tourists, residents, property owners and the general public who are otherwise affected by itinerant merchant activities associated with recognized special events, and

WHEREAS, the city commission recognizes special event activities occur on improved lands and unimproved lands in the MSA, as those terms are defined in the regulations to be adopted herein, and

WHEREAS, the city commission recognizes that itinerant commercial activities and temporary campsite activities generate significant adverse impacts related to intensive traffic, intensive parking needs, pedestrian safety, noise, and visual and aesthetic blight, which requires the utilization of additional public resources beyond the needs that would otherwise be required, and

WHEREAS, the city commission determines that itinerant merchant activities and temporary campsite activities that occur on unimproved land generate the same significant impacts that are generated by itinerant merchant activities that occur on improved land; however, the owners of improved land pay a disproportionately higher rate for the provision of public resources that are required to manage itinerant merchant activities, because: (a) owners of vacant or unimproved land pay far less in ad valorem taxes to offset the public service impacts, than do owners of improved land, (b) vacant or unimproved land is not assessed for the income received by property owners that are generated by itinerant merchant activities or temporary campsite activities, and (c) vacant or unimproved land used primarily for itinerant merchant activities or temporary campsite activities remain in blighted conditions and have debilitating effects on adjacent property values, and

WHEREAS, the city commission further determines that the nature and proximity of itinerant merchant activities and temporary campsite activities on lands in the MSA adjacent to the Gateway have debilitating visual effects on passing motorists, including visitors, tourists, residents, and families with children who must utilize the Gateway route to travel through special event and itinerant merchant activities to reach their intended destinations in the cities, and

WHEREAS, the city commission finds these regulations are necessary to protect the health, safety and welfare of the general public; that they serve both a rational basis and compelling government interest to promote the purposes stated herein; and that deference should be afforded to its legislative findings by any court of competent jurisdiction in the resolution of

any issue, should any arise, related to the adoption, implementation, enforcement or administration of these regulations, and

WHEREAS, the Planning Board of the City of Ormond Beach, as the local planning agency, has conducted a public hearing on May 14, 2015 on the requested amendment and has made recommendations thereon to the city commission, and

WHEREAS, all applicable notice requirements of Section 166.041(3)(a), *Florida Statutes*, have been complied with, and

WHEREAS, the city commission finds the amendment to be consistent with the provisions of the *Comprehensive Plan* of the City of Ormond Beach, and in the overall best interest of the public health, safety and welfare, now therefore,

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

SECTION ONE. Chapter 2, District and General Regulations of the City of Ormond Beach *Land Development Code* is hereby amended by adding a new article to be numbered and titled Article VII, North U.S. Highway 1 Interlocal Planning and Municipal Service Area, which shall read as follows:

**ARTICLE VII. NORTH U.S. HIGHWAY 1 INTERLOCAL
PLANNING AND MUNICIPAL SERVICE AREA**

**Division 1: Itinerant Merchant Regulations for Recognized
Special Events and Outdoor Entertainment
Activity; Temporary Campsites.**

**Sec. 2-74. Municipal Service Area and Joint Planning Area;
purpose.**

- (a) These regulations apply to lands in and subject to the North U.S. Highway 1 Municipal Service Area and Joint Planning Area (MSA/JPA) as established by the Interlocal Service Boundary Agreement (ISBA) between the city and County of Volusia recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida, which became effective on August 28, 2014.
- (b) As a predicate to establishing the regulations in this article, the city commission approved, in accordance with the requirements of section 171.203(9), Florida Statutes and the ISBA, on January 20, 2015, Ordinance 2014-42 and Ordinance 2015-5 amending the future land use element, the intergovernmental element, and the future land use map of the city's comprehensive land use plan; and approved on April 7, 2015 Ordinance 2015-13 and Ordinance 2015-14 establishing zoning districts for lands in and subject to the MSA.

Sec. 2-75. Legislative findings.

- (a) The North U.S. Highway 1 corridor serves as the northern most gateway (Gateway) into the County of Volusia and the cities of Ormond Beach (City), Daytona Beach, Holly Hill, South Daytona and Port Orange (collectively the cities). Visitors, tourists, residents, and business owners utilize the Gateway to travel to and from various destination points in the cities. The city commission has for many years encouraged the revitalization of the Gateway to eliminate blight and promote economic development, including the adoption of Gateway standards and policies.
- (b) Certain lands in the MSA and adjacent to the Gateway are located in the unincorporated territory of the county and certain other lands are located within the municipal boundaries of the city, which resulted in the lands being subject to different and confusing zoning, land use, development, and other regulations. Those different standards have resulted in the inefficient planning and development of lands, as well as the inefficient delivery of public services and resources. Despite the efforts and expenditure of significant resources by the City to encourage the revitalization and economic development of lands within the city adjacent to and near the Gateway

(including by way of example but not limited to Ormond Beach Sports Complex, Ormond Crossings commercial/residential mixed use development, S.R. Perott distribution center, Hull Point Business Park, Ormond Business Park, and Ormond Commerce Park), other lands in the unincorporated territory of the county within the MSA remain in blighted conditions (primarily vacant or unimproved lands).

- (c) The city commission recognizes that certain lands in the MSA adjacent to the Gateway have hosted under the county's jurisdiction tourist related special events for limited durations or on a temporary basis in accordance with itinerant merchant regulations adopted by the county, which allowed for the issuance of a host license for a one year period and the issuance of individual vendor permits for a six month period upon the satisfaction of certain conditions. The issuance of host licenses and individual vendor permits for limited periods did not establish a right or expectation that itinerant merchant activities could occur beyond the duration of the recognized special event as authorized by a host license or individual vendor permit.
- (d) The city commission recognizes the County authorized by special exception temporary campsite activities on vacant or unimproved land during special events, subject to certain conditions, and being limited in time and duration; and that the conditions of the special exception did not create a right or expectation that temporary campsite activities could occur beyond the limited time and duration prescribed by the special exception.
- (e) The city commission recognizes that special event activities occur on improved and unimproved lands in the MSA, as those terms are defined in these regulations, and the city commission desires to establish reasonable regulations for itinerant merchant activities and temporary campsite activities consistent with the city's policies to eliminate blight and encourage economic revitalization in the MSA and along the Gateway.

- (f) The city commission recognizes that itinerant merchant activities and temporary campsite activities generate significant impacts related to intensive traffic, intensive parking needs, pedestrian safety, noise, and visual and aesthetic blight, which require additional public resources beyond the needs that would otherwise be required; that these significant impacts are generated on and from improved and unimproved lands in the MSA adjacent to the Gateway, however the owners of improved land pay a disproportionately higher rate for the provision of public resources that are required to manage itinerant merchant activities and temporary campsite activities, because: (a) owners of vacant or unimproved land pay far less in ad valorem taxes to offset the public service impacts, than do owners of improved land, (b) vacant or unimproved land is not assessed for the income received by property owners that are generated by itinerant merchant activities or temporary campsite activities, and (c) vacant or unimproved land that is used primarily for itinerant merchant activities or temporary campsite activities during recognized special events remain in blighted conditions and have debilitating effects on adjacent property values.
- (g) The city commission has determined the nature of itinerant merchant activities and temporary campsite activities that occur on lands in the MSA adjacent to the Gateway have debilitating visual effects on passing motorists, including visitors, tourists, residents, and families with children who must utilize the Gateway route, passing through the itinerant merchant activities, to reach their points of destinations, whether it be the city's Ormond Beach Sports Complex for youth recreational activities, residential neighborhoods, businesses, or other destination points in other cities.
- (h) The city commission has therefore determined that these itinerant merchant and temporary campsite regulations are necessary to protect the health, safety and welfare of the general public; to promote the elimination of blight and encourage economic development to revitalize the MSA and Gateway, and to protect property values; that these regulations serve both a rational basis and compelling

government interest; and that the findings of the city commission should be afforded broad deference by any court of competent jurisdiction in the resolution of any issue, should any arise, regarding these regulations.

Sec. 2-76. Definitions.

The following definitions apply to this article. For words that are not defined in this section, the definitions in section 1-22 of this Code shall apply if not in conflict with this article. For words that are not defined by this section or section 1-22 of this Code, the definition in the most recent edition of Webster's New Collegiate Dictionary shall apply if not in conflict with this article.

Building means a permanent structure having a roof that is impervious to weather and enclosing a space with four walls that is utilized for a primary business use.

Business use shall mean a 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.

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. It must be authorized by a valid local business tax receipt, regardless whether such activity is for-profit or not-for-profit. It does not include itinerant commercial activity or a temporary campsite activity; nor does it include land for which a business tax receipt has issued where discernible business activity that is customarily associated with such business is not being conducted. The purpose of this definition and these regulations is to ensure that vacant, unimproved or blighted land is not utilized primarily or solely for itinerant commercial activities or temporary campsite activity for limited periods during temporary special events.

High Impact Use shall mean itinerant commercial uses or activities on improved land, or on vacant or unimproved land; and shall include activities related to temporary campsites.

Improved Land Category shall mean itinerant commercial use or activities on improved land.

Vacant or Unimproved Land Category shall mean itinerant commercial uses or activities on vacant or unimproved land; it shall also include temporary campsite activity.

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 business use in accordance with all legal requirements.

Itinerant commercial activity shall mean a commercial 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.

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.

Local business tax receipt (BTR) shall have the meaning prescribed in Chapter 205, Florida Statutes. It is a receipt issued by the city or county granting a privilege to engage in a lawful business activity, exclusive of any fees for applicable licenses, permits, registrations, examinations or inspections.

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. The permit duration may be annual or 6 months in duration.

Outdoor Entertainment Activity shall mean an activity specific to a primary business use, that is typically smaller in scope than Recognized Special Event activities, and that must occur on site as an accessory activity to the primary 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 section 2-78 of this Article, for land in the Vacant or Unimproved Land Category, Outdoor Entertainment Activity shall not be allowed or permitted on vacant or unimproved land. No Outdoor Entertainment Activity Permit shall be required for accessory use events conducted totally on site with the primary business use and which do not exceed an anticipated attendance of 500 or more participants. An inspection fee each may be required if tents are proposed, outside vendor food preparation is involved or other activities requiring inspection is proposed.

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 section 2-78 of this article, for land in the Vacant or Unimproved Land Category.

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 properly owner or includes 500 or more participants.

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 business use; and shall include land for which a business tax receipt has issued authorizing a business use where discernible business activities that are customarily associated with such business are not being conducted.

Temporary Campsites shall mean that land described in section 2-80 of this article upon which campsites and related activities of a temporary nature and limited duration may be authorized during Recognized Special Events. Temporary campsites shall not constitute a primary business use.

Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate shall have the meanings described in Chapter 874, Florida Statutes, as the same presently exists or may be hereafter amended. Organized or criminal gangs shall also include, but shall not be limited to, those organizations or gangs described in the most recent editions of the national gang report or other national gang threat assessment published by the National Gang Intelligence Center, the Federal Bureau of Investigation, or any other state or nationally recognized agency or authority on criminal gangs; and shall include any organization or gang that meets the elements of Chapter 874, Florida Statutes, regardless of any conviction or official adjudication. Organized or criminal gang associate shall also include any owner of, or other person having an equitable, beneficial or leasehold interest in, land, property, building, structure, business, object, device, motorcycle or vehicle who allows or permits his or her land, property, building, structure, business, object, device, motorcycle or vehicle to be occupied or utilized by an organized or criminal gang, or to facilitate or permit unlawful activity, or for the assembly of organized or criminal gang members or gang associates.

Sec. 2-77. High impact uses on land; classification and category of use; rationale.

(a) High Impact Uses. Itinerant commercial uses or activities generate significant impacts on the use of improved land, and (including temporary campsite activity) on vacant or unimproved land, including but not necessarily limited to intensive parking needs, intensive traffic, pedestrian safety, noise, and visual and aesthetic blight. 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 or

unimproved land that is used primarily or solely for the purpose of hosting itinerate commercial activities or uses, and temporary campsite activities, for a Recognized Special Event that has limited duration is problematic because:

- (1) Owners of vacant or unimproved land pay little in taxes to offset the costs of public service impacts related to the event;
- (2) Vacant or unimproved land is not assessed by the property appraiser for the income to property owners generated by itinerate commercial activities or uses, or temporary campsite activities;
- (3) Vacant or unimproved land that is used primarily or solely for itinerate commercial activities or uses, or temporary campsite activities, have debilitating effects on adjacent property values in the MSA and adjacent Gateway.

To promote the use of land for primary business use purposes, an amortization schedule shall be imposed for itinerant merchant activities and uses, for outdoor entertainment activities, and for temporary campsites, for the Vacant or Unimproved Land Category as provided in section 2-78 this Article.

- (b) *Improved Land Category.* According to the host itinerant merchant records of the County, the improved lands with primary business uses described below engaged in itinerant commercial uses or activities during recognized special events in the unincorporated territory of the county during the 2013-2014 year immediately preceding the effective date of the ISBA, and during the 2014-2015 year following the effective date of the ISBA. Lands with primary business uses in this category shall be allowed to continue engaging in such uses or activities after the effective date of the ISBA and shall be exempt from the amortization schedule that applies to the Vacant or Unimproved Land Use Category for so long as said lands are used for primary business use purposes:

(1) Recognized Special Event Host:

- i. 1635 N. US Hwy 1 (Destination Daytona, activities as specified in the 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/Eagles Nest)
- 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)
- xiv. 1069 & 1077 N. US Hwy 1 (Paul's Mobile Village/Hog Pen)
- xv. 1090 N. US Hwy 1 (Kurras Mobile Village/Wild Bill)

(2) Outdoor Entertainment Activity:

- i. 1635 N. US Hwy 1 (Destination Daytona, activities as specified in the 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)
- v. 1069 & 1077 N. US Hwy 1 (Paul's Mobile Village/Hog Pen)
- vi. 1090 N. US Hwy 1 (Kurras Mobile Village/Wild Bill)

(c) Amortization Scheduled for Vacant or Unimproved Land Category. Itinerant commercial uses or activities, including temporary campsite activities, 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 included in the Improved Land Category described in paragraph (b) of this section shall be in the Vacant or Unimproved Land Category for purposes of these regulations. Itinerant Commercial Activities and Outdoor Entertainment Activities, and Temporary Campsites, for lands in the Vacant or Unimproved Land Category shall be subject to amortization as provided in section 2-78 of this article:

Sec. 2-78. Amortization schedule for Vacant or Unimproved Land Category.

(a) Vacant or Unimproved Land Category; amortization schedule. Lands that are subject to the Vacant or Unimproved Land Category described section 2-77(c) of this article above may host Itinerant Commercial Activities and Outdoor Entertainment Activities, or Temporary Campsite activities as provided by section 2-80 of this article, during Recognized Special Events for a period that shall automatically terminate five years from the effective date of the Interlocal Service Boundary Agreement (said effective date being August 28, 2014). Licenses and permits for Itinerant Commercial Activities and Outdoor Entertainment Activities must be obtained in accordance with the requirements of Section 2-79, and must be obtained for Temporary Campsite activities in accordance with section 2-80, of this article as

a condition of engaging in such activities. Itinerant Commercial Activities and Outdoor Entertainment Activities, and Temporary Campsites, shall be prohibited after the five year termination date prescribed in this section.

(b) Primary business use; inclusion or exclusion from list based on reasonable cause and accounting. In the event a city official who is responsible for administering, implementing or enforcing these regulations has reasonable cause to believe any land in the Improved Land Category is not being utilized for a primary business use as required by these regulations, then in such event the owner of, or other person having an equitable, beneficial or leasehold interest in, such lands or business shall, upon request by the city official, produce proof or evidence sufficient to demonstrate that the land is being used for a primary business use. A request for proof or evidence may include:

- i. Inspection of the land and/or business use.
- ii. Marketing or advertisement material.
- iii. Evidence of the utilization of goods, services, and wares by customers (e.g., sales receipts; receipts evidencing the delivery of goods, services, or wares, etc.).
- iv. Monthly sales tax remittance, quarterly Internal revenue Code 941 filing, annual federal tax return, and/or other financial documentation that is deemed reasonable and appropriate under the circumstances.
- v. Any other documentation reasonably related to a request for information to substantiate a primary business use.

A failure to provide the information requested within the time period prescribed in a written request for information or the failure to provide information satisfactory to demonstrate the land is being utilized for a primary business use shall result in the land being removed by the city commission from the Improved Land Category. The absence of primary business use activity for a period of sixty consecutive days shall create a rebuttable presumption

that a primary business use does not exist or has been abandoned. In such event, the lands and business shall be subject to the amortization requirements in this section.

(c) Request for inclusion of land in the Improved Land Category. In the event an owner of land who's land and business is not included in the Improved Land Category believes his or her land and business should be included in that category, said owner may produce to the appropriate city officials the same type of evidence described in paragraph (b) of this section in support of such claim, and upon an affirmative finding by the city official a recommendation shall be made to the city commission for inclusion of the land and business in the Improved Land Category.

(d) Removal of land/business from Improved Land Category. The city commission reserves the right and authority to remove lands and businesses from the Improved Land Category in the absence of a primary business use. The amortization requirements of section 2-78 of this article shall apply to any such land/business so removed.

Sec. 2-79. Application, license and permit requirements for itinerant commercial activity.

Applications for a host license and individual vendor permit for itinerant commercial activity shall be reviewed by members of the city's Site Plan Review Committee, and upon a determination an application satisfies all conditions provided herein and any other conditions that may be deemed to be reasonably necessary, a license or permit shall be issued administratively by the Site Plan Review Committee:

Recognized Special Events.

(a) All retail and service activities shall occur outside public rights-of-way.

(b) A Master vendor shall be responsible to ensure all individual itinerant vendors operating under the Master Vendor Permit comply with these provisions.

(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 (i.e., arranged through Volusia County Sheriff's Office, Ormond Beach Police Department, or State Highway Patrol)
- v. Measures for the provision of medical care
- vi. Lighting
- vii. Solid waste disposal
- viii. Parking
- ix. Location of bands, music venues, dance venues, and motorcycle/car wash venues
- x. Sanitation facilities
- xi. Vendor permits (i.e., vendor list with vendor names, goods and/or services to be provided.)

(2) If more than one event is anticipated to occur throughout the year, a list of events with approximate event dates and anticipated participant level shall be provided for each event. A permit and/or inspection shall be determined based upon the information provided.

(3) 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.

(4) Individual itinerate vendors will be required during special events to have an Itinerant Vendor Permit to do business.

(5) 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 are displayed or interact with the public;

iv. Outdoor event involving the exhibition of moving, driver-occupied motorized vehicles such as stunt shows, dyno-drag or dyno unit; except that the Wall of Death and burn-out pit activities, only, are allowed; or

v. Activities involving the discharge of any toxic or harmful substance.

(6) Portable side-by-side stationary racing dynamometers for bike drag race simulation are permitted.

(7) The Master Vendor shall have the following set up times:

i. Recognized Special Events: up to 5 days prior to the official start up of the event.

ii. All other events: 24 hours.

- (8) All vendors setting up outside a permanent building, using a tent or other temporary structure shall have an inspection by the city's building division 24 hours prior to operating.
- (9) 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. Any other form of sign including but not necessarily limited to human sign, human signage, or any sign held by, attached to, affixed to, or covering any person is prohibited.
- (10) 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.
- (11) Individual Vendors shall physically vacate the vending space after the event officially closes, as follows:
- i. Recognized Special Event – 72 hours
 - ii. All other events – 24 hours
- (12) 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.
- (13) 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.

- (14) Motorcycle/car wash events or activities that are not a primary business use are prohibited.
- (15) All forms of dance, music, or other live entertainment events or activities, as authorized by a license or vendor permit, must be a minimum of fifty feet from the nearest paved edge of the North U.S. Highway 1 (Gateway) right-of-way, and must be completely screened from view from the Gateway by an opaque cover or material approved by members of the Site Plan Review Committee. These distance and screening requirements are determined to be reasonable time, place, manner restrictions for the protection of the health, safety and welfare of the general public, particularly considering the mix of motorists traveling on the Gateway and pedestrians and spectators traversing on or along the Gateway.
- (16) Dance poles are prohibited.
- (17) Dance stages and dance platforms shall not exceed a height of 18-inches from the ground; and shall only be available for use by customers, patrons or spectators. No other use shall be allowed for any purpose or by any other persons, specifically including any use by an employee, agent, independent contractor, or volunteer of any host land owner or vendor.
- (18) Must be open to and accessible by members of the general public; and must not discriminate against race, color, gender, religion, creed, nation origin, sex, age, or sexual orientation, or handicap.
- (19) No land, property, business, or structure shall be used for any unlawful purpose, or purpose inconsistent with the Land Development Code or Code of Ordinances of the City of Ormond Beach;

and shall not be used by an organized or criminal gang, or for the assembly of organized or criminal gang members, or for the assembly of associates of organized or criminal gang members.

(d) *Outdoor Entertainment Activity (OEA)*. In addition to applicable provisions for Special Event Activities, the following items shall be required for the approval of an OEA permit:

- (1) The permit shall be administratively reviewed and approved in accordance with the city's regulations.
- (2) The permit shall be for an individual outdoor activity only.
- (3) A drawing to scale depicting the placement of structures, tents, lighting and sound plans, and provisions for vehicular parking and access.
- (4) Department of Health approval for food vendors if applicable.
- (5) Provisions for adequate security and traffic control approval from the Ormond Beach Police Department.
- (6) Provisions for emergency services and fire;
- (7) Written notarized authorization for unlimited and unconditional 24 hour access to the site for city inspectors.
- (8) Compliance with local and state laws and regulations regarding food and beverage concession operations.
- (9) Vendors must possess a valid Business Tax Receipt or Registration.
- (10) OEA involving less than 500 participants and located on site with the sponsoring business use shall be considered accessory to that business use and may be included in the list of activities for an annual Master Vendor Permit.

- (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.
- (12) Motorcycle/car wash events or activities that are not a primary business use are prohibited.
- (13) All forms of dance, music, or other live entertainment events or activities, as permitted by a license or permit, must be a minimum of fifty feet from the nearest paved edge of the North U.S. Highway 1 (Gateway) right-of-way, and must be completely screened from view from the Gateway by an opaque cover or material approved by members of the Site Plan Review Committee. These distance and screening requirements are determined to be reasonable time, place, manner restrictions for the protection of the health, safety and welfare of the general public, particularly considering the mix of motorists traveling on the Gateway and pedestrians and spectators traversing on or along the Gateway.
- (14) Dance poles are prohibited.
- (15) Dance stages and dance platforms shall not exceed a height of 18-inches from the ground; and shall only be available for use by customers, patrons or spectators. No other use shall be allowed for any purpose or by any other persons, specifically including any use by an employee, agent, independent contractor, or volunteer of any host land owner or vendor.
- (16) Must be open to and accessible by members of the general public; and must not discriminate against race, gender, religion, creed, nationality, or sexual orientation.
- (17) Land and/or business shall not be used for any unlawful purpose, or purpose inconsistent with the

Land Development Code or Code of Ordinances of the City of Ormond Beach; and shall not be used by an organized or criminal gang, or for the assembly of organized or criminal gang members, or for the assembly of associates of organized or criminal gang members.

Sec. 2-80. Temporary campsites.

- (a) The land at 1725 North U.S. Highway 1 (Parcel No. 3126-00-00-0080) is vacant or unimproved land and is in the Vacant or Unimproved Land Category. On December 20, 2012, Volusia County issued a special exception (Case # S-12-041) for a three-year period that will expire on December 20, 2015 authorizing the operation of temporary campsites three days before, during, and three days after Recognized Special Events, subject to certain conditions.
- (b) Temporary campsites may be authorized at 1725 North U.S. Highway 1 (Parcel # 3126-00-00-0080) during Recognized Special Events, subject to filing an application that must be reviewed and approved by members of the Site Plan Review Committee. Upon satisfying the conditions described herein, and any other condition that is reasonably required by the SPRC members, a license or permit shall be issued subject to the following conditions:
- (1) The license or permit shall be valid only for a one year period, beginning on October 1 of a given year and expiring on September 30 the following year.
 - (2) Temporary campsites shall only be allowed three days before, during, and three days after a Recognized Special Event.
 - (3) Temporary campsites shall not exceed 100 in number and shall be limited to the areas depicted on a site plan to be approved by the SPRC members.
 - (4) The size of individual campsites, number of portable toilets, hand wash sinks, and portable water and shower facilities shall comply with Volusia County Health Department requirements.

- (5) Public safety, building inspection, and public health personnel shall have complete and unlimited access to the premises at all times.
- (6) The land owner shall be responsible for ensuring the provision of fire protection services.
- (7) Recreational vehicles with self contained holding tanks for wastewater shall secure all sewer waste line caps to prevent leakage; and signs must be posted prohibiting the discharge of wastewater.
- (8) Adequate traffic control must be provided, including the provision of one or more uniformed law enforcement officers.
- (9) An adequate number of solid waste containers must be provided, and emptied and cleaned on a regular as-needed basis. The premises shall be kept completely clear of litter and waste material.
- (10) Special event contests are prohibited.
- (11) Compliance with all applicable city, county, state and federal laws and regulations is required at all times.
- (12) Must be open to and accessible by members of the general public; and must not discriminate against race, gender, religion, creed, nationality, or sexual orientation.
- (13) Land and/or business shall not be used for any unlawful purpose, or purpose inconsistent with the Land Development Code or Code of Ordinances of the City of Ormond Beach; and shall not be used by an organized or criminal gang, or for the assembly of organized or criminal gang members, or for the assembly of associates of organized or criminal gang members.
- (14) Any other condition that is reasonably required by the SPRC members.

(15) Any use or activity that is not specifically authorized by the license or permit shall be prohibited.

(16) A violation of any of the prescribed conditions or a violation of any other applicable city, state or federal law may result in the immediate revocation the license or permit.

(c) The amortization requirements provided in section 2-78 of this article shall apply to the land at 1725 North U.S. Highway 1 (Parcel # 3126-00-00-0080).

Sec. 2-81. Reservation of power.

(a) The policy of the city commission is to encourage owners of land and businesses in the MSA adjacent to and near the Gateway to eliminate blight, and to revitalize and develop land for primary business use purposes, especially including vacant or unimproved land; and to discourage the use of blighted, vacant or unimproved land primarily or solely for itinerant merchant activities or uses, or temporary campsites, during Recognized Special Events.

(b) In furtherance of the policies expressed in these regulations, the city commission reserves the complete and absolute right and power to add land to the Improved Land Category, land that is in the Vacant or Unimproved Land Category in the event such land is redeveloped or developed in accordance with the city's Gateway standards and other applicable development requirements.

(c) The city commission further reserves the complete and absolute right and power to remove land from the Improved Land Category upon a determination by the city commission that the land is not being used for a primary business use purpose.

Sec. 2-82. Enforcement.

(a) Any violation of the requirements or provisions in this article may be enforced through the special magistrate code enforcement system as provided in Chapter 2, Article VII of the Code of Ordinances, or any other legal or equitable action or proceeding as provided by law. No enforcement

remedy shall be the exclusive remedy, and any remedy may be exercised separately from or concurrent with any other remedy, including the revocation of any license or permit.

- (b) Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, including the assembly thereof, is prohibited on all land, property, building, structure, business, object, device, motorcycle or vehicle throughout the incorporated boundaries of the city and the MSA. The prohibitions provided in this Article shall be broadly construed, administered, and enforced in favor of the city, and may be enforced in accordance with Article X, Chapter 14 of the Code of Ordinances.

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

SECTION THREE. In the event any work, phrase, clause, sentence, paragraph, term or provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, such judicial determination shall not affect any other work, clause, phrase, sentence, paragraph, term or provision, of this Ordinance, and the remainder of this Ordinance shall remain in full force and effect.

SECTION FOUR. This Ordinance shall take effect immediately upon its adoption.

PASSED UPON at the first reading of the City Commission, this 2nd day of June, 2015.

PASSED UPON at the second and final reading of the City Commission, this
23rd day of June, 2015.

ED KELLEY
Mayor

ATTEST:

J. SCOTT McKEE
City Clerk