

**MINUTES
SOUTH DAYTONA
PLANNING AND APPEALS BOARD
Regular Meeting**

April 21, 2021

6:00 P.M.

South Daytona City Council Chambers
1672 South Ridgewood Avenue
South Daytona, FL

PURSUANT TO SECTION 286.0105 FLORIDA STATUTES, if an individual decides to appeal any decisions made with respect to any matter considered at a meeting or hearing, that individual will need a record of the proceeding and will need to ensure that a verbatim record of the proceeding is made. The City does not prepare or provide a verbatim record of the proceedings.

In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in the proceedings should contact the City of South Daytona's Deputy City Clerk at (386) 322-3011 for assistance at least 48 hours before the date of the meeting.

I. CALL TO ORDER AND ROLL CALL

Members Present

Abe Agront, Chairman
David Beery
Marian (Sam) Buckman
Rick Jackson
Jerry Masters

Staff Present

Les Gillis, City Manager
Wade Vose, City Attorney
S. Laureen Kornel, Comm. Dev. Director
Lauren Rizzo, Recording Secretary
Amber Kraft, Planning Technician

Members Excused

Phil Trimarchi, Vice-Chairman
Ari Morse

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF THE MINUTES: March 17, 2021

Ms. Buckman made a motion to approve the March 17, 2021 meeting minutes. Mr. Masters seconded the motion. Hearing no objections, the minutes were unanimously approved (5-0).

IV. DISCLOSURE OF EXPARTE COMMUNICATION

None disclosed.

V. PUBLIC HEARINGS

A. LDC 2021-09: Recreational Vehicle Storage Land Development Code Amendment amending Chapter V, Sections 5.5 and 5.7

Ms. Kornel presented the Land Development Code amendment (LDC). The purpose of the proposed amendment is to correct an inconsistency under Article V, Sections 5.5 and 5.7 of the Code to align RV storage with the special exception criteria already existing in the LDC. Currently the LDC lists RV storage as a permitted use under the Business Heavy Commercial and Light Industrial zoning classifications. The code also lists special exception criteria or conditions for RV storage. This is an inconsistency within the LDC. To align the use with the special exception criteria, staff is proposing to amend the LDC to list RV storage as requiring a Special Exception under the Business Heavy Commercial and Light Industrial zoning classifications. Without the amendment, RV storage would remain as a permitted use under the Business Heavy Commercial and the Light Industrial zoning classifications and the inconsistency would remain. The amendment meets the criteria to amend the LDC and the proposed changes are not considered substantive. Staff recommends approval of the requested amendment as proposed in the staff report. The amendment will tentatively be reviewed at the May and June Council meetings for approval.

Ms. Kornel further explained that the LDC has various uses that are allowed under certain zoning classifications. Currently, RV storage is listed as permitted use. There are special exception uses, which also require public hearings and certain criteria. A permitted use is staff approval. If the use is a special exception, then the Board will review the item followed by Council approval. The City Council will have the final authority on whether the use will be allowed.

Mr. Jackson asked if there are any special exceptions for someone living in RV's while an RV is in storage. Ms. Kornel advised there are provisions in the Code of Ordinances, that prohibit living in RVs. Mr. Jackson said that is not what we want. Ms. Kornel continued we do not permit living in RVs. If that is occurring, then the Code Enforcement department would get involved. The City does not allow people to live in their RV's while they are constructing their homes either. Chairman Agront asked if this is going to affect older storage units that also have RV storage. Ms. Kornel stated the amendment would only apply to new projects and not those already permitted. If a hurricane came and that use went away, an application would have to be made for a special exception to allow the use.

Mr. Beery asked if the site must be certified. Is that suggesting that if there is a problem with BHC or LI that is not well known that this would not be permitted at all. Ms. Kornel responded, that is correct.

Mrs. Buckman asked who the Development Review Committee is? Ms. Kornel responded the committee is internal made up of staff with the purpose of reviewing development applications. There are a lot of applications that do not come before the Planning and Appeals Board or Council as they are reviewed internally through the technical review

committee which is made up of the Fire and Police Departments, Community Development, Code Enforcement, Redevelopment and others.

Mr. Jackson asked what are we asked to do? Ms. Kornel responded, to recommend approval to the City Council to make a motion that RV storage be stricken from the BHC and LI permitted uses and added as a special exception use.

Ms. Buckman made a motion to recommend approval of Case No. LDC 2021-09 to amend Article V, Section 5.5, Subsections (M)(2), and (N)(2), and Section 5.7(C)(13) of the LDC to clarify regulations related to the Recreational Vehicle Storage use providing that the use in the Business Heavy Commercial and Light Industrial districts shall be a special exception rather than a permitted use and clarifying the special exception criteria for RV and Boat Storage, Parking, and Rental. Mr. Jackson seconded the motion. Hearing no objections, the motion passed with a unanimous vote for approval (5-0).

B. COO 2021-10: Code of Ordinances Amendment Prohibiting Simulated Gambling Devices

Ms. Kornel stated that simulated gambling devices are prohibited. The City regulates what businesses go where and we have a Verification of Use application. Recently we have received requests that could potentially become gambling establishments. For public health, safety, general welfare and interests of the citizens of the City, staff has been directed to add language in the Code of Ordinances to prohibit simulated gambling devices to supplement the already existing state regulations, which prohibit gambling simulated devices. The language proposed is similar language used in other local jurisdictions and throughout the state of Florida.

Mr. Jackson asked if there is such a thing as illegal simulated gambling? City Attorney Vose stated the term simulated gambling is common usage among local Governments in Florida, when they are getting into regulating gambling activity. For many years, people coming in and putting in "store front casinos" in Volusia County is an area that we have had a long history of these facilities going in. Applicants come in under various names, like "sweepstakes centers, amusement centers, adult amusement centers, internet café's, and senior amusements centers", all manors of different things that they say they are. What they really are doing is coming in with tables with computers hooked up to a system and getting paid cash or some other form of payment for their winnings. Every couple of years they will come up with another angle to try to get around the Florida Statue. In 2013 the Florida Legislature completed modifications to the Florida Statue that tried to close all the alleged loopholes to make it more stringent. There were some issues, as it comes down to a matter of enforcement. We have a State Statue to make it criminal, from jurisdiction to jurisdiction for different States and County offices. When we only rely solely on the State Statue it ties the City's hands, and we can point to the States actions or send in our local law enforcement to deal with the problem afterwards.

Mr. Jackson asked what happens if they do not get a permit? Attorney Vose stated they are simply absolutely prohibited anywhere in the City. The City's plan is to implement some

revisions to the Business Tax Receipt process that it is part of it, by which applicants will come in and planning staff will check what business they are applying for and are going to ask much more rigorous questions to be more specific. The City expects everything in writing to check it, under oath, where they would have to provide a yes or no feedback about specific questions about simulated gambling devices. These devices are basically computer systems with specific software, that you can look up the serial numbers to see what games are on them. On a regular basis staff has been getting these types of requests and putting this tool in place will help to stop it before it becomes a problem, as opposed to it being law enforcement and code enforcement issues, which is much more resource intensive.

Chairman Agront asked if you have an organization and they want to do a non-profit and they have an account would that be a violation of the ordinance, if they go in as charity or whatever, but it's still considered gambling? Attorney Vose advised almost all the requests he has seen or personally been to, don't actually comply with state law. For a good cause everyone kind of looks the other way. Attorney Vose stated that he is not speaking about that here, he is speaking to this ordinance that is directed to simulated gaming devices.

Mr. Jackson asked, if this activity is currently going on in an already permitted business unannounced to anybody, it would take law or code enforcement to make it known to the right people to get it stopped? Attorney Vose, continued, correct. To our knowledge there is not a facility operating at this moment. Some have tried to use an existing facility even without going through the proper processes of any business. Mr. Beery added, that with his experience that several are operating in Daytona Beach. They open around eight o'clock in what is supposed to be a vacant building. Attorney Vose advised that he cannot speak specifically for Daytona Beach because he does not want to call out particular jurisdictions. In a lot of jurisdictions their governing bodies and their top people do not care, and that is why they flourish.

Chairman Agront asked, does this amendment also apply to private social clubs that deal with this activity. Attorney Vose advised that this applies to any facility, whether it is commercial or non-profit and that is intentional because a lot of these facilities, historically have tried to skirt past some of the state laws. They will team up with some anomaly, come up with some nonprofit, and do all the business in the name of the nonprofit, but all the profits are being passed off to someone elsewhere who runs these schemes and then the nonprofit is left. Attorney Vose would not recommend exempting out of this, because it has never been better for nonprofits.

Mr. Jackson motioned to recommend approval to amend Article III, Chapter 3.5 of the Code of Ordinances to prohibit the use and operation of "simulated gambling devices" within the City of South Daytona. Ms. Buckman seconded the motion. Hearing no objections, the motion passed with a unanimous vote for approval (5-0)

VI. OTHER BUSINESS AND DISCUSSION ITEMS

There was none.

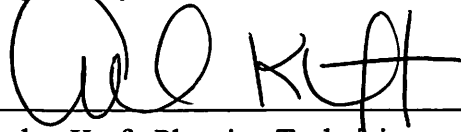
VII. MEMBER COMMENTS

There was none.

VIII. ADJOURNMENT

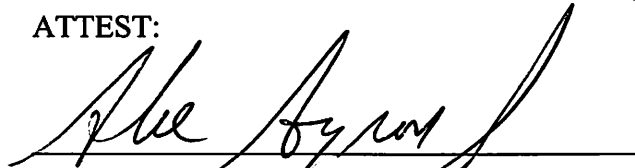
A motion was made by Mr. Jackson to adjourn the meeting. Ms. Buckman seconded the motion. The meeting was adjourned at 6:30 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amber Kraft', written over a horizontal line.

Amber Kraft, Planning Technician

ATTEST:

A handwritten signature in black ink, appearing to read 'Abe Agront', written over a horizontal line.

Abe Agront, Chairman

Minutes transcribed by Amber Kraft