



**Agenda  
City Council**

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**Monday, October 3, 2016**

**7:00 PM**

**Council Chambers**

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**MEMORANDUM TO:**

The Honorable Mayor and  
Members of the City Council  
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council.

**OPENING CEREMONIES: INVOCATION, FOLLOWED BY SALUTE TO THE FLAG**

**ROLL CALL**

**APPROVAL OF MINUTES**

- a. 16-478 Regular City Council Meeting Held September 19, 2016

**ANNOUNCEMENTS**

**COURTESY OF THE FLOOR TO VISITORS**

**MAYOR AND CITY COUNCIL**

**CITY CLERK**

**CITY MANAGER**

- a. 16-479 Presentation on Airshow, Dave Harrell, Sports and Entertainment Officer for the City of Jacksonville
- b. 16-480 Approval of a Revocable Encroachment Permit for the Donna Foundation to Install Commemorative Pavers in the Oceanfront Park
- c. 16-481 Recommend the Appointment of Susan Haag as an Alternate Special Magistrate

- d. 16-482 Acceptance of the Local Justice Assistance Grant (JAG) #2016-H3720-FL-DJ, in the Amount of \$11,445
- e. 16-483 Approval to Execute a Contract for Professional Tennis Services with Daniel L. Carozza, Jr., in Response to RFP No. 10-1516 Titled RFP to Hire Tennis Professional and Tennis Instructor
- f. 16-484 Approve an Emergency Purchase for Services with Golf Range Netting Inc., for the Installation of 30,000 Square Feet of Protective Netting and Associated Hardware at Beaches Energy Services' Jacksonville Beach Substation

## **RESOLUTIONS**

## **ORDINANCES**

- a. 16-485 **ORDINANCE NO. 2016-8079 (Second Reading)**

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA AMENDING THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES BY ADDING CHAPTER 22, ENTITLED NUISANCES CAUSED BY HUMAN SIGN SPINNERS ON PUBLIC PROPERTY AND PUBLIC RIGHTS-OF-WAY DIRECTING COMMERCIAL MESSAGES TO PASSING MOTORISTS; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 22; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION. (This Ordinance prohibits outdoor sign spinners on public property.)**

- b. 16-486 **ORDINANCE NO. 2016-8080 (Second Reading)**

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 31 OF THE CITY OF JACKSONVILLE BEACH CODE OF ORDINANCES, BY ADDING A NEW ARTICLE V ENTITLED MOBILE BILLBOARD ADVERTISING; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 31, ARTICLE V; PROVIDING SEVERABILITY; EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION. (This Ordinance prohibits mobile billboard advertising.)**

c. 16-488      **ORDINANCE NO. 2016-8082 (First Reading)**

**AN ORDINANCE TO REPEAL IN ITS ENTIRETY CHAPTER 18 "NOISE," OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AND REPLACING IT WITH A NEW CHAPTER 18 THAT INCLUDES SECTION 18-7 "LOW VOLUME OUTDOOR AMPLIFIED AND ACOUSTIC SOUND," PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES. (This Ordinance would allow restaurants and bars with outdoor seating to play low volume music.)**

**ADJOURNMENT**

**NOTICE**

*In accordance with Section 286.0105, Florida Statutes, any person desirous of appealing any decision reached at this meeting may need a record of the proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.*

*The public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk or to the recording secretary prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.*

*In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, extension 10, no later than one business day before the meeting.*

**Minutes of Regular City Council Meeting  
held Monday, September 19, 2016, at 7:00 P.M.  
in the Council Chambers, 11 North 3<sup>rd</sup> Street,  
Jacksonville Beach, Florida.**



**OPENING CEREMONIES:**

Council Member Buck gave the invocation, followed by the salute to the flag.

**CALL TO ORDER:**

Mayor Latham called the meeting to order at 7:00 P.M.

**ROLL CALL:**

Mayor: William C. Latham

Council Members: Lee Buck                      Keith Doherty                      Christine Hoffman  
Bruce Thomason                      Phil Vogelsang                      Jeanell Wilson

Also present were City Manager George Forbes, and City Clerk Laurie Scott.

**APPROVAL OF MINUTES**

It was moved by Ms. Wilson, seconded by Ms. Hoffman, and passed unanimously, to approve the following minutes, as presented:

- Special Council Meeting held on September 6, 2016
- Regular City Council Meeting held on September 6, 2016
- Special Council Meeting held on September 12, 2016

**ANNOUNCEMENTS:**

City Manager George Forbes presented and read several social media posts thanking Beaches Energy Service crews. They traveled to the City of Tallahassee to help repair the damage to their electric systems following Hurricane Hermine.

**COURTESY OF THE FLOOR TO VISITORS:**

**Speaker:**

- James Sorrell, 1410 Pinewood Road, Jacksonville Beach, requested more information regarding agenda items from other City Boards be posted on the City's website. It would make it easier for the citizens to be prepared when attending the meetings and help the citizens to understand how the City Boards function.

**MAYOR AND CITY COUNCIL**

**CITY CLERK:**

**CITY MANAGER:**

- (a) **Item #16-464, Accept the Monthly Financial Reports for the Month of August 2016**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, and passed unanimously, to accept the monthly financial reports for the month of August 2016, as submitted by the Chief Financial Officer.

- (b) **Item #16-465, Approve the Sea & Sky Air Show Special Event Permit**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve the Sea & Sky Air Show as described in a memo from the Chief of Police dated September 11, 2016.

Police Chief Pat Dooley stated the air show will be held on November 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup>, 2016. He reviewed the plans for the Sea & Sky Spectacular Air Show event [slides on file]. He discussed the logistics, safety and security, staging areas, transportation, food/beverage/alcohol vendor locations, event production and hours, road closures, publicity, manpower and pedestrian safety. He reported that bicycles and skateboards would not be permitted in the event area.

Mr. Doherty asked about the delivery schedule during the three days. Chief Dooley answered they were asking for no deliveries to be made between the hours of 8:30 A.M. and 5:00 P.M. in order to keep commercial vehicles out of the event area.

Mr. Thomason asked if the number of support personnel would be the same as past years. Chief Dooley confirmed it would be the same level of service.

Mr. Thomason asked if motorized skateboards would be allowed. Chief Dooley answered that no skateboards of any kind or scooters would be permitted in the event area.

Mr. Vogelsang asked Mr. Forbes about the monetary value from vendor and beer sales. Mr. Forbes answered the City of Jacksonville Beach does not get any monetary value from those sales. Chief Dooley added the City of Jacksonville coordinates with the vendors. The City of Jacksonville Beach provides location and security.

Ms. Wilson inquired about the shuttle service and who runs the system. Chief Dooley stated the City of Jacksonville is responsible for that service.

Commander Scott Campbell, Air Operations Officer, Naval Station Mayport, reported that the Mayport runway is under construction so the aircraft will be flying in from NAS Jacksonville for the air show.

Mayor Latham asked Mr. Forbes if the City of Jacksonville Beach will post on the website about bicycles and skateboards being prohibited in the inner perimeter. Chief Dooley answered it would be on the website for the event and posted at the entrances.

**Roll call vote:** Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham. The motion carried unanimously.

**(c) Item #16-477, Approval of Jacksonville Symphony as a City-Sponsored Special Event**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve the Jacksonville Symphony as a City-sponsored special event.

Mr. Forbes stated the Jacksonville Symphony would like to perform a free concert for one hour at the SeaWalk Pavilion on Friday, October 7, 2016, beginning at 8 P.M. The Symphony will pay the costs of their employees and production costs. By sponsoring the event, the City will waive the facility rental fee.

**Roll call vote:** Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, Buck, and Mayor Latham. The motion carried unanimously.

**(d) Item #16-466, Approve the Attached Negotiated Settlement Between the City of Jacksonville Beach and Brothers Five of Jacksonville, a Florida General Partnership and Duval Royal Investments, Inc**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve and authorize the Mayor and City Manager to sign the attached Settlement Agreement and to pay the settlement from the General Liability Fund.

Mr. Forbes explained this settlement agreement is due to a lawsuit received about the Sign Code due to a 2015 Supreme Court decision regarding content neutral and temporary signs. There was also a dispute regarding the Burger King pole sign. This is a global settlement for five lawsuits. The important components of the settlement require:

- The former Burger King pole sign will be removed no later than December 31, 2016. [They can use the sign until December 31, 2016.]
- All lawsuits will be dismissed with prejudice.
- The City will pay to Brothers Five of Florida and Duval Royal a total of \$6,000 and waive any fines.
- Each party shall pay its own attorneys' fees.

Mr. Forbes pointed out on Page 6, Paragraph 7, of the settlement agreement, the second line should read "human sign wavers." Also, on Page 7, the third line of the second paragraph should read "any and all code enforcement fines."

**Roll call vote:** Ayes – Hoffman, Thomason, Vogelsang, Wilson, Buck, Doherty, and Mayor Latham. The motion carried unanimously.

**(e) Item #16-467, Authorize the Mayor and City Manager to Execute a Cost-Share Agreement with St. Johns River Water Management District for a Grant in the Amount of \$84,517 to Pay for One-third of the Estimated Cost of the Project to Extend the City's Sanitary Sewer System Along the Private Portion of Hopson Road**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to authorize the Mayor and City Manager to execute the agreement with the St. Johns River Water Management District for the thirty-three percent cost-share grant of \$84,517 to extend the sanitary sewer system along the private portion of Hopson Road, as described in the memorandum from the Public Works Director dated September 9, 2016.

Mr. Forbes stated there is an area along Hopson Road where there is no City water or sewer available. A grant was received from the St. Johns River Management District to pay for one-third of the cost of extending the City sewer system. At the same time, there will also be a water line installed. It is a private road and the City will need to get an easement from the property owners to allow the water and sewer lines to be installed. The City will be special assessing the property owners for part of the cost of the water and sewer lines and that will be sent to the City Council for their approval.

Mr. Forbes explained that the grant states the project must be completed by September 30, 2017 and construction should begin by June 30, 2017.

Ty Edwards, Public Works Director, added the project design is being performed in-house. He also stated the City has spoken with several of the property owners regarding the project.

Ms. Wilson asked if once the main water line is installed would the residents be required to connect to the line. Mr. Forbes answered it is mandated by City Code that the property owner has to connect if they are within a certain distance to the line. He commented that this extension is adding fire protection that was not there before.

Mr. Vogelsang asked about the project design cost. Mr. Edwards answered it was being performed in-house by City staff. Mr. Vogelsang suggested there should be discussion regarding the special assessment costs up front before spending time and effort in designing it if the property owners are not willing to agree.

Mr. Thomason asked at what point are the property owners notified that the City is in the process of making this project happen. Mr. Edwards answered once the design is finished and there is a better idea of the engineering estimate, then the property owners will be contacted.

**Roll call vote:** Ayes – Thomason, Vogelsang, Wilson, Buck, Doherty, Hoffman, and Mayor Latham. The motion carried unanimously.

**(f) Item #16-468, Approve the Purchase of a Hyper-converged Blade Center and Storage Area Network from CDW for \$498,180 Based on Pricing from the State of Florida Contract**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve the purchase of a hyper-converged Blade Center and Storage Area Network from CDW for \$498,180 based on pricing from the State of Florida Contract, as described in the memorandum from the Chief Financial Officer dated September 8, 2016.

Mr. Forbes explained the City is in the process of purchasing a new Enterprise Resource Planning system. Our current servers and storage are at maximum capacity and will not be able to fully support the capabilities of the new Enterprise Resource Planning system. The purchase of servers and storage will address the immediate need for additional capacity and storage, enable full system functionality from the start, and reduce costs associated with multiple implementations.

This price is for two systems, a primary and a backup. The primary system will be located on-site while the backup system will be located at the City's disaster recovery site in Jacksonville.

Mr. Buck asked about adding costs for potential change orders. Mr. Forbes answered that usually occurs in construction projects and this is a straight purchase from a State of Florida contract.

Ms. Wilson asked if there is an annual renewal or license fee. Mr. Forbes replied there will be renewal fees for the software licenses.

Karen Nelson, Chief Financial Officer, commented that this purchase is for the hardware only.

Mr. Doherty asked if there is a warranty for this hardware. Ms. Nelson answered it has a five-year warranty.

**Roll call vote:** Ayes – Vogelsang, Wilson, Buck, Doherty, Hoffman, Thomason, and Mayor Latham. The motion carried unanimously.

**(g) Item # 16-469, Approval to Execute a 2-Year Contract with TC Delivers Pursuant to RFP No. 09-1516 for Mail Pick Up and Insert Services**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve a 2-year contract with TC Delivers for mail pick up and insert services, effective October 1, 2016, as described in the memorandum from the Chief Financial Officer dated September 8, 2016.

Mr. Forbes explained that the City's mail is taken to the main Post Office in Jacksonville. The local Post Office does not accept bulk mail. The City has a high volume production inserter machine to fold and insert bills. That machine was purchased in 2008 and spare parts are no longer available. A Utility Billing employee transports the mail daily to the main Post Office.

The purpose of this RFP was to contract with a qualified vendor that specializes in automated mail processing services to pick up mail, fold, insert and deliver it to the United States Post Office. The City currently process between 500 and 3,000 mailings each day.

Ms. Wilson asked if there would be a decrease in staff due to the automated service. Mr. Forbes responded there would not be a decrease in staff.

Mr. Doherty asked if there are plans to encourage customers to go digital with their utility billing. Mr. Forbes explained the City has emphasized Ebills for two years and progress is being made.

**Roll call vote:** Ayes – Wilson, Buck, Doherty, Hoffman, Thomason, Vogelsang, and Mayor Latham. The motion carried unanimously.

**(h) Item # 16-470, Award Unit Price Bid #1516-14, Titled 2nd Street North Parking Lot Improvements Project, to the Lowest, Responsive Bidder**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to award Unit Price Bid Number 1516-14, titled "2<sup>nd</sup> Street North Parking Lot Improvements Project" to the lowest responsive and responsible bidder, *R. B. Gay Construction Company, Incorporated*, and authorize *Construction Administration Services* with the project's design firm, *Waitz and Moyer, Incorporated*, as described in the memorandum from the Public Works Director dated September 10, 2016.

Mr. Forbes stated this project consists of building a new parking lot on 2<sup>nd</sup> Street North. The bids received ranged from \$786,153.18 to a high of \$1,308,483.10. The project includes 88 regular parking spaces; four ADA parking spaces; three low speed vehicle parking spaces; a public parking entry sign; 23 public dual bike racks; paver hardscape, landscape and irrigation; and 23 public parking spaces added/retained in the adjacent street rights-of-way. The project also includes a police storage facility of about 2,500 square feet.

Mr. Doherty questioned if there was a time frame for this project due to the variation in bids received. Mr. Edwards stated there is a six-month schedule once the actual construction begins.

Ms. Wilson asked if this would be a paid parking lot. Mr. Forbes answered it would be a paid parking lot like the other City parking lots.

**Roll call vote:** Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham. The motion carried unanimously

- (i) **Item #16-471, Approval to Execute Continuing Professional Engineering Services Contracts with *Hanson Professional Services, Inc., Jones Edmunds & Associates, Inc., Four Waters Engineering, Inc., and Applied Technology & Management, Inc.*, in Response to RFQ Number 07-1516 for a Period of Five (5) Years**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to award Continuing Professional Engineering Services contracts to Hanson Professional Services, Incorporated, Jones Edmunds and Associates, Incorporated, Four Waters Engineering, Incorporated, and Applied Technology and Management, Incorporated, for a period of five (5) years and authorize the Mayor and City Manager to execute contracts with these firms as described in the memorandum from the Public Works Director dated September 9, 2016.

Mr. Forbes explained that every five years the City sends out Request for Proposals for continuing service engineers for small to intermediate scope construction projects. Proposals were sent to 16 firms and 12 responses were received. Four engineering firms were chosen to select from for these projects.

**Roll call vote:** Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, Buck, and Mayor Latham. The motion carried unanimously.

- (j) **Item #16-472, Approve Contracts, Effective January 1, 2017 with:**

- **Florida Blue for Medical Insurance**
- **MetLife for Dental Insurance**
- **SunLife for Life Insurance**
- **Advantica for Voluntary Vision Insurance**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve contracts with Florida Blue, MetLife, SunLife, and Advantica for employee health, dental, life, and vision.

Mr. Forbes explained that these were the same companies that currently provide insurance coverage to the City. The medical coverage increased 4.27%, which is significantly below national averages.

**Roll call vote:** Ayes – Hoffman, Thomason, Vogelsang, Wilson, Buck, Doherty, and Mayor Latham. The motion carried unanimously.

## **RESOLUTIONS:**

### **Item # 16-473 RESOLUTION NO. 1964-2016**

Mayor Latham requested that the City Clerk read Resolution No. 1964-2016, by title only, whereupon Ms. Scott read the following:

**“A RESOLUTION AMENDING THE OPERATING BUDGET OF THE CITY OF JACKSONVILLE BEACH, FLORIDA FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016”**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution 1964-2016, authorizing the year-end budget adjustment.

Mr. Forbes stated the budget is amended twice a year, and this is the year-end adjustment.

**Roll call vote:** Ayes – Thomason, Vogelsang, Wilson, Buck, Doherty, Hoffman, and Mayor Latham. The motion carried unanimously

**ORDINANCES:**

**(a) Item #16-474, ORDINANCE NO. 2016-8079 (First Reading)**

Mayor Latham requested that the City Clerk read Ordinance No. 2016-8079 (First Reading), by title only, whereupon Ms. Scott read the following:

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA AMENDING THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES BY ADDING CHAPTER 22, ENTITLED NUISANCES CAUSED BY HUMAN SIGN SPINNERS ON PUBLIC PROPERTY AND PUBLIC RIGHTS-OF-WAY DIRECTING COMMERCIAL MESSAGES TO PASSING MOTORISTS; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 22; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION.**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Ordinance No. 2016-8079, adding a new Chapter 22 to the City Code of Ordinances entitled, Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists.

Mr. Forbes explained this ordinance is to prohibit human sign spinners in the City of Jacksonville Beach. This is for commercial messages only. A human sign spinner is defined as a person that holds or controls a human commercial advertising sign and who waves, twirls, spins or otherwise uses some form of action or movement to attract the attention of any passing motorist or vehicular traffic to any commercial advertising message that is displayed on the sign.

Mr. Forbes added that on Page 4 of the ordinance, Section 22-3, Paragraph 3, the word “jurisdiction” should be added after the word “competent.”

Susan Erdelyi, City Attorney, stated the human sign spinner language was in the previous Sign Code and was omitted during the Sign Code revision because the Sign Code addresses land development regulations.

Ms. Wilson stated that the previous sign spinner regulations were not enforced. She commented that when Council Members hold political signs, they exempt themselves. Ms. Erdelyi explained holding political signs is legal.

Ms. Erdelyi added that this ordinance does not address private property.

**Roll call vote:** Ayes – Vogelsang, Buck, Doherty, Hoffman, Thomason, and Mayor Latham.

Nays – Wilson.

The motion passed by a 6-1 vote.

**(b) Item #16-475, ORDINANCE NO. 2016-8080 (First Reading)**

Mayor Latham requested that the City Clerk read Ordinance No. 2016-8080 (First Reading), by title only, whereupon Ms. Scott read the following:

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 31 OF THE CITY OF JACKSONVILLE BEACH CODE OF ORDINANCES, BY ADDING A NEW ARTICLE V ENTITLED MOBILE BILLBOARD ADVERTISING; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 31, ARTICLE V; PROVIDING SEVERABILITY; EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to Adopt Ordinance No. 2016-8080, amending Chapter 31, Traffic and Motor Vehicles of the City Code of Ordinances, by adding a new Article V, Mobile Billboard Advertising.

Mr. Forbes explained this ordinance addresses mobile billboard advertising. "Mobile billboard advertising" is defined as any vehicle, or wheeled conveyance which carries, pulls, or transports any sign for the primary purpose of commercial advertising along the streets or highways of the city. The attached regulations prohibit this type of vehicle from operating in the city. However, they do not apply to a vehicle which displays an advertisement or business identification of its owner, so long as such vehicle is engaged in the usual business of regular work of the owner, and is not used mainly to display advertisements.

Mr. Forbes added that in the City Code, the definition of vehicle sign states the sign must cover more than 20 square feet of the vehicle. If the sign is less than 20 square feet, it is exempt. Buses and taxicabs are also exempt.

Mr. Forbes pointed out scrivener's errors in the ordinance. At the bottom of the pages, it should state "Ordinance No. 2016-8080." In Section 31-86, the word "this" should be deleted three times. In Section 31-86, Paragraph 6, the word "jurisdiction" should be added after the word "competent." On the last page, Section 5 should read Codification of this Ordinance in the "Code" of Ordinances.

Mr. Vogelsang asked Mr. Forbes how this ordinance would affect a company that has more than one truck and it is not the owner driving the truck. Mr. Forbes answered in most cases, the sign would be under 20 square feet and if it is being driven as part of doing business and not advertising, then it should not be a problem.

Mr. Doherty stated Beachside Buggies might have a concern as they rely on advertising so they can provide a free service. Mr. Forbes answered if those signs are less than 20 square feet they are exempt. If the signs are larger than that, then Beachside Buggies can adjust the signs.

Ms. Wilson asked how this ordinance would apply to wrapped vehicles. Mr. Forbes answered it would depend on the size of the signage and could be looked at on a case by case basis.

**Roll call vote:** Ayes – Buck, Hoffman, Thomason, and Mayor Latham.

Nays – Wilson, Doherty, and Vogelsang.

The motion passed by a 4-3 vote.

Mayor Latham reminded the audience that this is the first reading of the two ordinances and the second reading will be in two weeks.

There being no further business, the meeting adjourned at 8:26 P.M.

Submitted by: Laurie Scott  
City Clerk

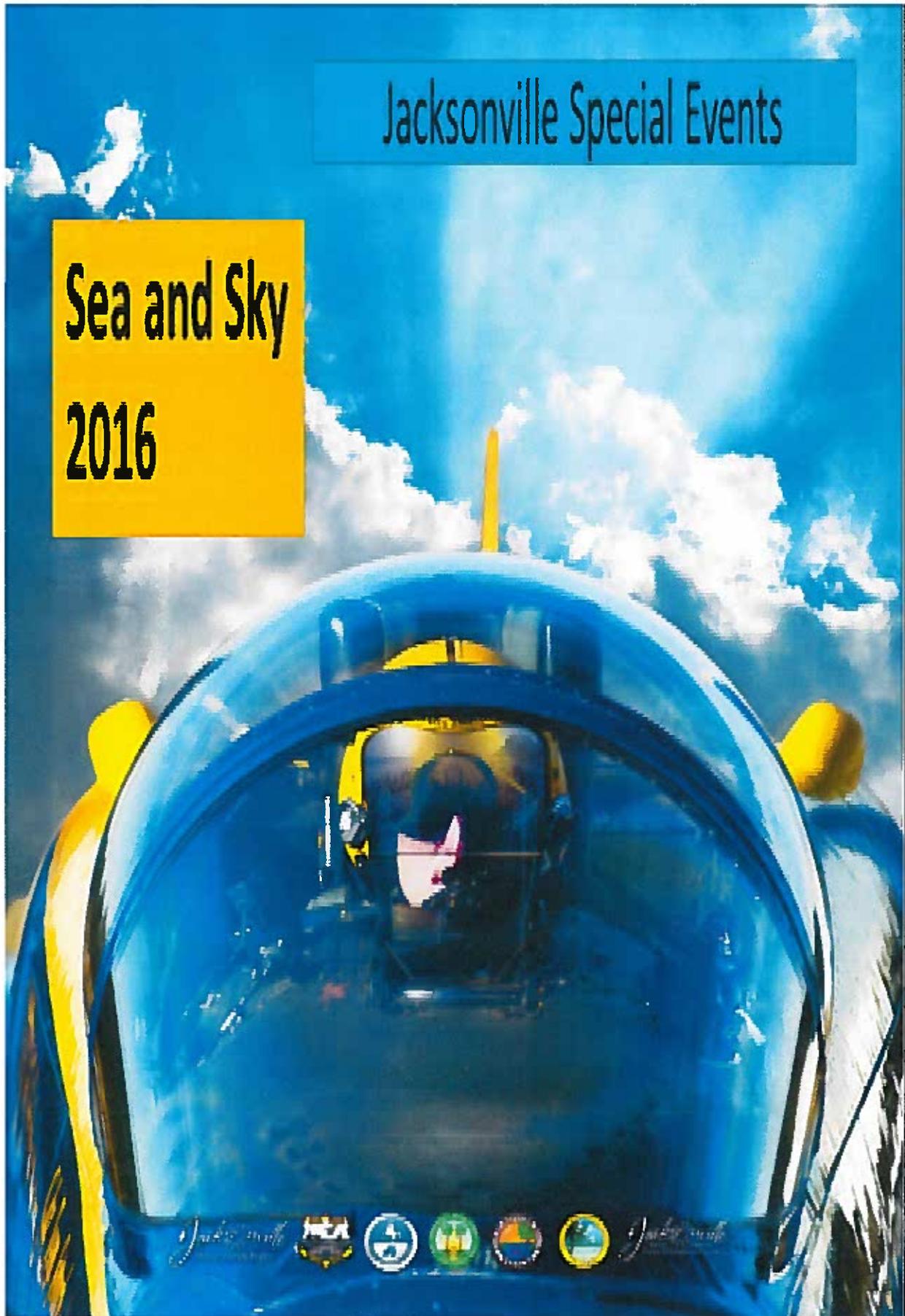
Approval:

\_\_\_\_\_  
William C. Latham, MAYOR

Date: \_\_\_\_\_

# Jacksonville Special Events

## Sea and Sky 2016



## Sheri Gosselin

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**From:** Patrick K. Dooley  
**Sent:** Monday, September 26, 2016 6:32 PM  
**To:** Sheri Gosselin; Anthony Dziedzicki  
**Subject:** Fwd: 10/3 City Council meeting  
**Attachments:** COJB Presentation.pptx

Here is the points from Dave Herrell. You replace the one e made and sent to you. Thanks.

Sent from my Verizon 4G LTE smartphone

----- Original message -----

**From:** "Herrell, Dave" <DHerrell@coj.net>  
**Date:** 9/26/16 18:07 (GMT-05:00)  
**To:** "Patrick K. Dooley" <pdooley@jaxbchfl.net>  
**Subject:** 10/3 City Council meeting

Chief,

Please find attached.

- Big few weeks for the City and the Beaches community.
- Thank you to the Mayor and the City for your partnership, collaboration and teamwork.
- Sea & Sky Spectacular and Navy vs. Notre Dame will be a special weekend to celebrate our military community.
  - o Sea and Sky will take place November 5 & 6, 2016 at Jacksonville Beach from 10am – 4pm
  - o Recruitment and school field trip day will be November 4, 2016 from 9am – 3pm
  - o This year we added in paid public and corporate VIP cabanas
  - o VyStar Credit Union will be providing complimentary stadium-style seating in the Seawalk Pavilion

Thank you,

Dave

### **Dave Herrell**

Sports and Entertainment Officer  
City of Jacksonville | Sports and Entertainment Office  
117 W. Duval Street, Suite 280  
Jacksonville, FL 32202  
904.630.3497 (o)  
386.916.0992 (m)  
904.630.4744 (f)  
[DHerrell@coj.net](mailto:DHerrell@coj.net)  
@dherrell

## **Jacksonville Special Events Bullet Points**

### **Air Show 2016**

- Friday is a rehearsal day with a VIP event scheduled for the day in the pier parking lot for city officials. This event is closed to the public and alcohol will be served in the pier parking lot only.
  
- VIP event is to showcase the event for all elected city officials, Chamber of Commerce, and other visiting Navy Officials (Vice Chief of Naval Operations).
  
- VIP event is also to showcase the event in conjunction with the Navy/Notre Dame football game and CBS broadcasting personnel.
  
- Friday night is a VIP event at the Hyatt downtown to include all air show performers, Blue Angels, and guests of Jacksonville Special Events.



presented by  
The Law Offices of Ron Sholes, P.A.  
NOVEMBER 11, 2016



OCTOBER 29, 2016



NOVEMBER 5, 2016

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6268

Fax: 904.247.6276

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**MEMORANDUM**

**TO:** The Honorable Mayor  
Members of the City Council

**FROM:** George Forbes  
City Manager

**DATE:** September 23, 2016

**RE:** Revocable Encroachment Permit for the Donna Foundation Paver Project at the Oceanfront Park

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**ACTION REQUESTED**

Approval of a Revocable Encroachment Permit for the Donna Foundation to install commemorative pavers in the Oceanfront Park.

**BACKGROUND**

The Donna Foundation raises money to be used exclusively to help First Coast women living with breast cancer. A primary fundraiser continues to be the nationally known 26.2 with Donna run. A significant portion of the route of both the full marathon and the half-marathon occurs in Jacksonville Beach.

A few months ago, the Donna Foundation approached the City with the idea of installing commemorative pavers in one of the City's parks. Sales of the pavers would be used as an additional fundraiser for the charity. At a workshop on August 1, 2016, the President of the Donna Foundation, Donna Deegan, presented the idea to the City Council and asked for them to consider the project. Based on interest from the City Council, a draft agreement for the project was prepared and is attached for your review.

In the agreement, the City agrees to allow the Donna Foundation to install commemorative pavers in Oceanfront Park. The City will not be responsible for maintaining or repairing the pavers. The Donna Foundation agrees that:

- Installation plans must be approved by the Public Works Director



- The project will be installed by a licensed contractor
- The project will be maintained by the Foundation
- The Foundation, at its own expense, will keep in good repair any pavers or other fixtures constructed, placed, or maintained on the property
- The project will be inspected monthly by the Foundation
- \$1,000,000 liability insurance covering the project will be maintained and that the City will be named as additional insured on the policy
- Upon termination of this agreement, the City will not be responsible for any maintenance of the pavers installed by the Foundation and may remove the pavers or replace them with other pavers at its sole discretion

The agreement may be terminated by either party with 90 days notice.

#### **RECOMMENDATION**

Approve the Revocable Encroachment Permit with the Donna Foundation for a commemorative paver project at the Oceanfront Park.

**REVOCABLE ENCROACHMENT PERMIT AGREEMENT**

THIS REVOCABLE ENCROACHMENT PERMIT AGREEMENT (“AGREEMENT”) is made this \_\_\_ day of \_\_\_\_\_, 2016 by and between the CITY OF JACKSONVILLE BEACH, FLORIDA (the “CITY”) and the DONNA FOUNDATION (“PERMITTEE”).

WHEREAS, the PERMITTEE is an organization that raises money to be used exclusively helping women living with breast cancer, a public purpose; and

WHEREAS, PERMITTEE conducts the Donna Marathon, a nationally recognized run, the course of which runs through the length of the City of Jacksonville Beach in addition to the neighboring communities of Ponte Vedra, Neptune Beach and Atlantic Beach; and

WHEREAS, PERMITTEE desires to occupy and use CITY PROPERTY for the purpose of installing commemorative pavers to honor friends, family members and loved ones of those touched by breast cancer; and

WHEREAS, the CITY and PERMITTEE wish to set the terms and conditions of such an installation.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. PERMIT

Subject to all the terms and conditions herein, the CITY grants to PERMITTEE a nonexclusive license to occupy and use its PROPERTY (the “PROPERTY”) as described in **Exhibit A (areas highlighted in yellow)** and for the purpose of installing commemorative pavers as set forth in **Exhibit B (the “PROJECT”)**.

The PROJECT allowed by the permit shall meet all applicable Building Codes, and all other land use and code requirements of the CITY.

2. TERMS OF AGREEMENT

The PROPERTY may be used and occupied by the PERMITTEE solely for the purpose of installing commemorative pavers on a portion of the CITY’s PROPERTY in a manner as depicted in **Exhibit B**. Pavers must be installed by a contractor licensed by the State of Florida. Pavers must be installed in compliance with installation plans approved by the Director of Public Works.

3. TERMINATION

- a) Either party may terminate this AGREEMENT by giving written notice to the other party specifying the date of termination, such notice to be given not less than ninety (90) days before the date specified therein.
- b) Should the PERMITTEE move the Donna Marathon to a location outside the City of Jacksonville Beach, or should the Donna Marathon no longer be held, this

AGREEMENT will be considered to be terminated.

- c) Upon termination of this AGREEMENT, the CITY will not be responsible for any maintenance of the pavers installed by the PERMITTEE and may remove the pavers or replace them with other pavers at its sole discretion and at its sole cost. This information shall be provided by the PERMITTEE to the purchasers of commemorative pavers pursuant to **Exhibit C**.

#### 4. MAINTENANCE

PERMITTEE shall, at its own expense, keep and promptly maintain in good repair the area, any pavers or other fixtures constructed, placed, or maintained on the PROPERTY. PERMITTEE shall be responsible for all damage to the PROPERTY arising out of or resulting from the use of the PROPERTY by the PERMITTEE, and to the pavers.

The CITY will not maintain pavers or any other fixtures associated with this project. If the pavers or any other fixtures associated with this project are damaged or broken during any maintenance activity or for any reason, the CITY will not be responsible for repairing the damage to them. Repairs must be made pursuant to paragraph 5, below.

#### 5. DAMAGE TO PROPERTY AND PAVERS

PERMITTEE shall be responsible for all damage to the PROPERTY arising out of or resulting from the use of the PROPERTY by the PERMITTEE, and to the pavers. The CITY shall notify PERMITTEE immediately upon discovery of any damage to the PROPERTY. PERMITTEE shall correct and repair the damage within fifteen (15) calendar days of notification or knowledge of the damage unless otherwise directed by the CITY. If the damage is not corrected or repaired within fifteen (15) calendar days, the CITY may correct or repair the damage and bill the PERMITTEE, or terminate this agreement. Any repairs billed by the CITY to the PERMITTEE under this section must be paid within thirty (30) calendar days.

The pavers shall not unnecessarily hinder or obstruct the free use of the PROPERTY, unreasonably interfere with the travel and use of the PROPERTY and public rights-of-way by the public, or removal thereof, or obstruct or impede traffic.

In the event it is necessary for the CITY or other utility to enter upon the PROPERTY, the PERMITTEE shall replace, at their sole expense, any and all pavers or material necessarily displaced during the action of maintaining, repairing, operating, replacing or adding to the utilities and facilities of the CITY or utility provider; provided, however, that in the event PERMITTEE does not wish to replace such items, PERMITTEE shall have the right to terminate the AGREEMENT in accordance with Section 3(a) thereof.

PERMITTEE must perform a monthly inspection of and perform any necessary maintenance to the pavers to assure that the improvements remain level, intact, and free from debris.

#### 6. INDEMNIFICATION

PERMITTEE agrees to indemnify and hold harmless the CITY, its officers, employees and

insurers, from and against all liability, claims and demands arising out of the placement, use and operation of pavers upon the PROPERTY. PERMITTEE agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at PERMITTEE'S sole expense, or, at the option of the CITY, agrees to pay the CITY or reimburse the CITY for the defense costs incurred by the CITY in connection with any such liability, claims or demands. PERMITTEE also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees.

#### 7. INSURANCE

PERMITTEE agrees to procure an insurance policy which includes and covers the PROPERTY that is the subject of this AGREEMENT, and to name the CITY as an additional insured thereon. Such insurance policy shall at a minimum include liability and PROPERTY damage insurance, with a combined single limit for bodily injury and PROPERTY damage of one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per occurrence. A Certificate of Insurance showing the CITY as an additional insured shall be provided to the CITY within thirty (30) days of execution of this AGREEMENT, and annually on or before November 30<sup>th</sup> thereafter. Failure to provide the Certificate of Insurance shall be grounds for immediate termination of this AGREEMENT and revocation of the permit granted herein.

#### 8. NOTICES

Any notice given pursuant to this AGREEMENT by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the CITY:

CITY of Jacksonville Beach c/o City Manager  
11 Third Street North  
Jacksonville Beach, FL 32250  
904-247-6268

To PERMITTEE:

The Donna Foundation  
11762 Marco Beach Drive  
Suite 6  
Jacksonville, FL 32224  
(904) 551-0732

#### 9. MISCELLANEOUS

- a) AGREEMENT Binding. This AGREEMENT shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties, subject to any other conditions and covenants contained herein.
- b) Applicable Law and Venue. The laws of the State of Florida and applicable federal, state and local laws, rules, regulations and guidelines shall govern this AGREEMENT, and the venue for any legal proceeding arising out of this AGREEMENT shall be Duval County, Florida.

- c) Amendment. This AGREEMENT may not be amended except in writing by mutual AGREEMENT of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver. Provided, however, that the parties agree that the City Manager, in his reasonable discretion, can approve revisions to the location, materials, fixtures or structures of the commemorative paver installation. Expansion of the boundary in the future will be determined by City Council.
- d) Headings. The headings of the sections of this AGREEMENT are inserted for reference purposes only and are not restrictive as to content.
- e) Assignment. PERMITTEE may not assign or transfer this AGREEMENT, except upon the express written authorization of the CITY.
- f) No Third-Party Beneficiaries. Except as expressly provided herein, there are no intended third-party beneficiaries to this AGREEMENT.
- g) Severability. If any provision of this AGREEMENT is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions shall remain in full force and effect.
- h) Integration. The foregoing constitutes the entire AGREEMENT between the parties and no additional or different oral representation, promise, or AGREEMENT shall be binding on any of the parties with respect to the subject matter of this AGREEMENT.
- i) Survival. All express representations, indemnifications, or limitations of liability included in this AGREEMENT will survive its completion or termination for any reason for a period of five (5) years.
- j) Waiver. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or the remainder of this Agreement.
- k) Taxes. The PERMITTEE is responsible to pay any taxes applicable to this permit.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT effective the day and year first above written.

Signatures on the next page.

**CITY OF JACKSONVILLE BEACH**

By: \_\_\_\_\_  
William C. Latham, Mayor

By: \_\_\_\_\_  
George D. Forbes, City Manager

ATTEST:

\_\_\_\_\_  
Laurie Scott, CITY Clerk

**DONNA FOUNDATION (PERMITTEE):**

By: \_\_\_\_\_  
Donna Deegan, President



**EXHIBIT B – Commemorative Pavers Specifications**

## EXHIBIT C

I \_\_\_\_\_ understand that in purchasing a commemorative paver from the Donna Foundation I am making a donation to the foundation and have no contractual relationship with the City of Jacksonville Beach. I also understand that:

1. The City of Jacksonville Beach will not maintain commemorative pavers or any other fixtures associated with this project. If the commemorative pavers or any other fixtures associated with this project are damaged or broken during any maintenance activity or for any reason, the City of Jacksonville Beach will not be responsible for repairing the damage to them. Repairs must be made by the Donna Foundation.
2. The Donna Foundation is required, at its own expense, to keep and promptly maintain in good repair the commemorative pavers or other fixtures constructed by the Donna Foundation.
3. Upon termination of the Donna Foundation permit with the City of Jacksonville Beach, the City of Jacksonville Beach will not be responsible for any maintenance of the pavers installed by the Donna Foundation and may remove the commemorative pavers or replace them with other pavers at its sole discretion.

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6263

Fax: 904.247.6169

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

MEMORANDUM

TO: George D. Forbes  
City Manager

FROM: Ann Meuse  
Director of Human Resources 

DATE: September 21, 2016

RE: Appointment of Alternate Special Magistrate for Code Enforcement

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ACTION REQUESTED:

Recommend the appointment of Susan Haag as an alternate special magistrate.

BACKGROUND:

The City's special magistrate, Sonya Hoener, resigned to take a full-time position with the City of Jacksonville. The City advertised for a special magistrate and received applications from following candidates:

- Angela Mathews Gale
- Laura Boekman
- Susan Haag
- William Tedford
- John McE. Miller

The City formed an evaluation committee, which consisted of the Director of Planning and Development, the Code Enforcement Inspector, and the Human Resources Director, who interviewed the five candidates. Based on the interviews performed, the evaluation committee considered all of



Memo

Page 2

the candidates qualified to act as the City's special magistrate. The committee recommended the appointment of Angela Mathews Gale as the City's special magistrate and Laura Boeckman as an alternate special magistrate. On September 6, 2016 they were appointed by the City Council. Ms. Boeckman has now informed the City that due to conflicts with her present employment, she will not be able to accept the position of alternate special magistrate for the City.

The evaluation committee is recommending the appointment of Susan Haag as the City's alternate special magistrate (Attached is her resume). Ms. Haag is currently working as a Civil Traffic Hearing Officer and presides over trials in traffic court. She manages a pre-trial calendar and trial calendar, including the acceptance of pleas in civil traffic cases. She also has extensive legal experience with the State of Florida, having worked for the Department of Children and Families and the Medicaid Fraud Control Unit, all of which makes her a qualified candidate to be the City's alternate special magistrate.

**RECOMMENDATION:**

Appoint Susan Haag as the City's alternate special magistrate and authorize the Mayor and City Manager to execute a special magistrate agreement with her.

Attachment

# Susan Lain Haag

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3809 LaVista Circle #212 - Jacksonville, FL 32217 - 904-386-1899 - susanlainhaag@yahoo.com

## **PROFESSIONAL ACCOMPLISHMENTS:**

Experienced attorney, member of the Florida Bar, with strong communication, business and marketing skills, committed to professional excellence, sustainable results, personal integrity and high ethical standards.

## **EMPLOYMENT AND EXPERIENCE:**

### **Civil Traffic Hearing Officer**

August 2015 – Present

- Accept pleas in civil traffic ticket cases and preside over trials

### **Board of Directors, USA Triathlon**

March 2013 – Present

- Currently serving in voluntary capacity with the 500,000 member national governing body for triathlon and paratriathlon events in the United States
- Serve as the Board liaison to the Women Committee promoting female participation and mentoring in the United States
- Work with the International Triathlon Union (ITU) Women's Commission on advancing woman's leadership roles and recognition

### **Attorney, State of Florida**

Department of Children and Families

Jacksonville, Florida

March 2013 – September 2013

- Successfully handled complex children's advocacy and legal rights cases

### **Assistant Attorney General, State of Florida**

Medicaid Fraud Control Unit

Jacksonville, Florida

March 2004 – January 2012

- Highly successful record of prosecuting healthcare fraud as well as abuse, neglect and exploitation of the elderly

### **Attorney, Spohrer, Wilner, Maxwell & Matthews**

Jacksonville, Florida

June 2002 – November 2003

- Handled complex legal matters focusing on nursing home abuse and personal injuries

### **Assistant State Attorney, Fourth**

**Judicial Circuit**

Jacksonville, Florida

March 1993 – June 2002

- Nassau County Division Chief: Supervised four attorneys while maintaining own homicide and felony case load

#### **EDUCATION:**

##### **Juris Doctorate, 1992**

University of Florida, College of Law, Gainesville, FL

- University of Florida Trial Team
- Honors Legal Research and Writing
  - Huber Hurst Excellence in Research Award, 1991
- Journal of Law & Public Policy
  - Senior Development Editor
- President, John Marshall Student Bar Association
- President, Law College Counsel
- President, Phi Delta Phi Legal Fraternity

##### **Bachelor of Arts with Honors, American Studies, 1988**

Smith College, Northampton, MA

#### **PROFESSIONAL ACTIVITIES:**

- Florida Bar Association
- Jacksonville Bar Association
- Florida Association of Women Lawyers (Board Member)
- Jacksonville Women Lawyers Association (Past President)
- Jacksonville Trial Lawyers
- Association of Trial Lawyers of America
- Academy of Florida Trial Lawyers

#### **PERSONAL:**

- USA Triathlon National Board of Directors
- USA Triathlon Women's Committee
- International Triathlon Union (ITU) Women's Commission
- Board of Directors, Young Professionals Supporting the Zoo
- Member USA Triathlon's International Long Course Championship Team, 2003-2007
- Susan G. Komen Breast Cancer Foundation, Board of Directors, 2005-2011
- USA Triathlon Referee
- World Record Holder for Female with the most full distance triathlons at 90 (swim 2.4 miles, bike 112 miles and run 26.2 miles)

403 5<sup>th</sup> Avenue North, Unit A  
Jacksonville Beach, FL 32250

## William L. Tedford

(c) (904) 445-7629  
Email: billytedford@gmail.com

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<b>Bar Admissions</b>	Member of the Florida State Bar Member of the New York State Bar Member of the North Carolina State Bar	September 2007 February 2009 February 2013
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<b>Profile/Skills</b>	Skilled trial attorney with wide range of litigation experience that includes criminal defense, small claims and replevin matters, family law, insurance defense and appellate practice. Demonstrated commitment to community and public service. Lead counsel for approximately thirty-nine (39) jury trials, the majority of which were felony level offenses. Vast experience drafting pleadings, motions, and general correspondence. Superb research and writing skills. Self-starter with extensive experience with depositions, motion arguments and trial work. Strong advocacy skills have led to successful litigation results. Strong moral character, with excellent interpersonal skills. Highly motivated and able to work in supportive work environment.
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<b>Education</b>	State University of New York at Brockport B.S. Psychology, B.A. Criminal Justice	Brockport, New York 2004
	Florida Coastal School of Law Juris Doctorate Overall GPA: 3.07      Overall Class Rank: 71/319 (Top 22%)	Jacksonville, Florida 2007

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<b>Legal Experience</b>	<u>Adjunct Professor – Business Law and Ethics</u> Florida State College at Jacksonville 9911 Old Baymeadows Road, Jacksonville, FL 32256 Supervisor: Karen J. Arlington, M. Ed. (904)-997-2645	(January 2016–Present) Part-time/Adjunct Position
	Preparation of course work focusing on business law and ethics. Students learn the fundamentals of business law from both a theoretical and practical perspective. Hybrid course consisting of classroom and online curriculum. Preparation of syllabus, assignments and exams.	

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	<u>Assistant Vice President – Senior Claims Counsel</u> Fidelity National Title Group 601 Riverside Avenue, Jacksonville, FL, 32282 Supervisor: Jennifer Gaytan (Managing Counsel)	(July 2014–Present) 40+ hours/week
	Management and administration of both owner and lender claims in relation to title insurance policies throughout Northeast and Southeast regions. Heavy investigation required in the review of each individual claim. Coordinating with underwriters and personnel in the management of civil litigation. High level of interaction with office personnel and Company personnel throughout the Northeast and Southeast.	

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	<u>Adjunct Professor – Criminal Procedure</u> Roberts Wesleyan College 2301 Westside Drive, Rochester, New York 14624 Supervisor: Kirby Trask, Chair (585) 594-6680	(August 2013–July 2014) Part-time/Adjunct Position
	Preparation of course work focusing on criminal procedure and criminal law. Students learn the fundamentals of criminal procedure/law from both a theoretical and practical perspective. Emphasis of course was placed on combining casebook materials with real-life examples of how criminal procedure/law function. Students became familiar with Constitutional perspectives forming groundwork for comprehending course materials.	

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	<u>Assistant Public Defender</u> Genesee County Public Defender's Office 1 West Main Street, Batavia, New York 14020	(Apr. 2010–June 2011; Feb. 2012–July 2014) 50+ hours/week
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Supervisor: Gary A. Horton/Jerry Ader, Public Defender (585) 344-2550 ext. 2280)  
Criminal litigation attorney managing heavy caseload of both misdemeanor and felony level offenses. Lead trial attorney experience. Courtroom presence on daily basis. Extensive experience drafting, briefing, and arguing complex motions. Heavy involvement with Integrated Domestic Violence Court, handling both criminal cases and any accompanying family court matters. High level of community based service and involvement in supportive group environment; for example, assisting troubled veterans in local Veteran's Court program.

**Associate Attorney**

*(July 2011-February 2012)*

Law Offices of L. Lee Lockett (now "Stone Lockett")  
1540 The Greens Way, Jacksonville Beach, Florida 32250  
Supervisor: L. Lee Lockett (904) 356-3335

50+ hours/week

Employed as a criminal litigation attorney sharing the management of heavy caseload with senior partner. The experience included some drafting and briefing of appeals for senior partner review. Extensive experience with depositions of witnesses and law enforcement in furtherance of gaining favorable evidence and testimony. Effectively represented clients in small claims and replevin matters, and other administrative hearings. Gained valuable experience with the business aspect of a legal practice (i.e. advertising, retaining clients, the value of first impressions at initial consults).

**Assistant Public Defender**

*(Nov. 2007-March 2010)*

Duval County Public Defender's Office  
407 N. Laura Street, Jacksonville, Florida 32202  
Supervisor: Matthew Shirk, Public Defender (904) 255-4673

50+ hours/week

Criminal defense attorney managing substantial caseload of both misdemeanor and serious felony level offenses. Lead trial attorney for thirty (30) jury trials. Peer recognition and acknowledgment of successful trial work. Demonstrated leadership role through welcomed mentoring responsibilities for new attorneys. Participated in informal training of new young attorneys, mainly regarding procedural aspects of the courtroom and trial practice. Extensive experience with depositions of eyewitnesses, law enforcement and state experts.

**Awards and Honors**

**Trial Attorney of the Year** 2009  
Duval County Public Defender's Office (FL)

**Trial Team Award of the Year – Victoria Roberts Trial** 2009  
Duval County Public Defender's Office (FL)

Successful not guilty verdict for client charged with three (3) counts of Assault on Law Enforcement. Large fight at a local night club spilled onto the public streets. Client was mistakenly suspected to somehow be involved. While attempting to drive away from a violent crowd, she was shot twice by law enforcement. Successful presentation of the defense of excessive use of police force in obtaining not guilty verdict on all counts.

**Employee of the Year** 2012  
Genesee County Public Defender's Office (NY)

**Community**

**Batavia High School Mock Trial, Attorney Coach** *Batavia, New York*  
2011 & 2013 Regional Champions *2011-2014*  
(Genesee, Livingston, Orleans, and Wyoming County Competition)

Assisting high school students with preparations of trial materials for Statewide and Regional competitions. Educated students on rules of evidence, objections, and criminal procedure. Yearly competition preparations would focus on case specific factual scenario. Conducted weekly/bi-weekly practices with assistance of teacher coaches. Provided general and individual feedback to students in preparations for and subsequent to team competitions.

**Boy Scouts of America, Troop 60** *Attica, New York*  
Eagle Scout Award Recipient *1996*

**RESUME AND CURRICULUM VITAE OF**  
**JOHN McE. MILLER, ESQUIRE**

**PRIMARY AREAS OF PRACTICE:** Specialization in commercial transactions, real estate, including closings, escrow and title insurance, contracts, corporations, business organizations, wills, trusts and probate, and real property law. Also practicing in the areas of appellate law and general civil matters.

**PROFESSIONAL:** President, Rock Solid Business Law, LLC (2012 - present); President, John McE. Miller, P.A., (1991 to 2011); Partner, Bartlett, Miller & Morehead (1994 to 1996); Partner, Bartlett & Miller (1992 to 1994); Senior Associate, Slott & Barker, P.A. (1987-1991); Associate, Taylor, Day, Rio & Mercier (1985 to 1987). Clerkships: Howell, Liles, Braddock & Milton, Jacksonville, Florida (1984); Waring, Cox, Memphis, Tennessee (1983). Third year practice in Virginia, Roanoke Legal Aid Society, (1984 to 1985).

**LEGAL:** President Jacksonville Beaches Bar Association (1994 to 1995). Member of the Florida Bar, Real Property Probate and Trust Section, American Bar Association, Jacksonville Bar Association, and Jacksonville Beaches Bar Association.

**EXPERIENCE:** Mr. Miller has concentrated a majority of his practice in the areas of business organizations, contracts, residential and commercial closings, transactions and litigation.

**PERSONAL AND EDUCATIONAL:** Born March 20, 1960 in Richmond, Virginia. Married Krista Ferner April 20, 2002. Previous resident of Tuskegee, Alabama; St. Petersburg, Florida; Montgomery, Alabama; Lake Lure, North Carolina; Atlanta, Georgia; Memphis, Tennessee; Lexington, Virginia; and Jacksonville, Atlantic Beach and Jacksonville Beach, Florida, 1985 to present.

Graduated from Rhodes College, B.A. History, (emphasis on European Renaissance & Enlightenment), 1982. President, Alpha Tau Omega fraternity; two year letterman, football).

Graduated from Washington and Lee University School of Law, J.D., 1985. W & L International Law Society Moot Court Competition finalist (1983); W & L Mock Trial Team (1984); Phi Delta Phi; President, Class of 1985.

Honors Studies, British Studies at Oxford, St. Johns College, Oxford, England (1982).

Admitted to the Florida Bar in 1985. Admitted to United States District Court, Middle District of Florida in 1985. Admitted to Bar of United States Supreme Court in 2002.

**CIVIC:** Jacksonville Chamber Small Business Leader of the Year 2016; President, Beaches Business Association (2009-2011); Jacksonville Chamber of Commerce, Beaches Division Board, Chair Public Policy Committee; Small Business Resource Network; Northeast Florida Association of Realtors; Election Protection Attorney; Palms Presbyterian Church; Board of Directors, Palms Presbyterian Preschool, Beaches Residents in Support of the Symphony, Ponte Vedra Professionals Networking Group, Beaches Hospitality Network, Beaches Historical Society, Board of Directors; Pablo Towers.

**STATEMENT OF PURPOSE:** To provide legal services with the highest degree of professionalism. To practice law with honesty and integrity. To fully represent clients' goals and interests in the pursuit of justice and equity.

**REPRESENTATIVE PUBLISHED CASES:**

Hunter v. Royal, 619 So. 2d 12 (5<sup>th</sup> DCA 1993). Decision in favor of preservation of Florida Wetlands and Environment. Easement holder not permitted to build a dock into river upon easement not created for that purpose.

Foster v. Arthur, 519 So. 2d 1092 (1<sup>st</sup> DCA 1988). Gun control decision. Owner of firearm, a dangerous instrumentality, can be liable for entrusting a gun to a person who is known to be violent and dangerous.

Also, prepared a brief for Supreme Court of Florida on behalf of St. Johns County in St. Johns County, Florida v. ABG Real Estate Development Co. In this case, citizens successfully repelled rezoning for fast food drive-through restaurant which was detrimental to safety and welfare of community.

City of  
Jacksonville Beach  
Police Department  
101 Penman Road, South  
Jacksonville Beach  
FL 32250  
Phone: 904.247.6343  
Fax: 904.247.6342

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**To:** George D. Forbes, City Manager  
**From:** Patrick K. Dooley, Chief of Police  
**Subject:** Request to Accept 2016 Local Justice Assistance Grant (JAG) Grant.  
**Date:** August 31, 2016

### ACTION REQUESTED

Acceptance of the Local Justice Assistance Grant (JAG) #2016-H3720-FL-DJ, in the amount of \$11,445.

### BACKGROUND

The Police Department has been notified that they are eligible to receive a Justice Assistance Grant from the Department of Justice for FY-2016-2017, in the amount of \$11,445. The Police Department intends to use the funds to:

1. Purchase five (5) portable cameras costing \$540.00 each, for a total of **\$2,700**. This equipment will be used to collect digital video during special events or special details;
2. Purchase five (5) tint meters to allow officers to enforce window tint violations in Jacksonville Beach. Each meter is \$80.00 for a total of **\$400**;
3. Purchase four (4) handheld metal detector wands to screen subjects at special events for weapons. These units cost \$680.00 each for a total of **\$2,720**;
4. Purchase 100 police sashes to distribute to plain clothes officers during special events and to use during plain-clothes details to facilitate the quick identity of officers when responding to active incidents. The police sashes cost \$33.00 each for a total of **\$3,300.00**;
5. Purchase one (1) camcorder and wireless sound system for promotional recordings and for training. This system will cost **\$1,450**; and
6. Purchase a portable sound system for **\$875**. This equipment will be used during public ceremonies and announcements.



1995

**RECOMMENDATION**

Approve the acceptance of Justice Assistance Grant #2016-H3720-FL-DJ in the amount of \$11,445 for the items described in this memo from Chief Dooley dated August 31, 2016.

**Budget Detail Worksheet**

<u>Items</u>	<u>Computation</u>	<u>Total Cost</u>
(5) Portable cameras	\$540.00 each	\$2,700.00
(5) Tint Meters	\$80.00 each	\$400.00
(4) Hand Held Detectors	\$680.00 each	\$2,720.00
(100) Police Banners	\$33.00 each	\$3,300.00
(1) Camcorder with case	\$1,300.00	\$1,300.00
(1) Wireless Sound System	\$150.00	\$150.00
(1) Portable Sound System	\$875.00	<u>\$875.00</u>
		Total \$11,445

**TOTAL AMOUNT OF THE GRANT: \$11,445**

**Portable Camera**



**Tint Meter**



**Hand Held Detectors**



**Police Banners**



**Camcorder with Case**



## Wireless Sound System



## Portable Sound System



City of Jacksonville

Beach

2508 South Beach

Parkway

Jacksonville Beach

FL 32250

Phone: 904.247.6226

Fax: 904.270.1639

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**TO:** George Forbes  
City Manager

**FROM:** Mary Ellen Donner  
Director of Parks and Recreation

**DATE:** September 24, 2016

**RE:** Contract for Professional Tennis Services.

**ACTION REQUESTED:**

Approval to execute a contract for Professional Tennis Services with **Daniel L. Carozza Jr.**, in response to RFP No. 10-1516 titled RFP to Hire Tennis Professional and Tennis Instructor.

**BACKGROUND:**

RFP Number 10-1516 titled RFP to Hire a Tennis Professional and Tennis Instructor was advertised in August 2016. The intent was to solicit proposals from qualified individuals for professional tennis services at the City's tennis facilities located at Huguenot Park and South Beach Parkway. The Tennis Professional's responsibilities will include instruction, management of court play and the operation of the Pro Shop. The Tennis Professional will be paid based on a percentage of sales and instruction. The Tennis Instructor will be paid an hourly rate and is only required to provide tennis instruction.

Eligibility requirements for the Tennis Professional included: professional certification by a nationally recognized tennis organization; the ability to demonstrate strong management and organizational background; at least 5 years teaching experience; and at least three (3) references. Eligibility requirements for the Tennis Instructor included: the ability to demonstrate strong management and organizational background; at least two (2) years teaching experience; and three (3) references.

Invitations were sent to eight (8) individuals and three (3) responses were received. **Daniel L. Carozza Jr.**, **Danny Witt** and **Richard Lamb** submitted proposals for the Tennis Professional. **Richard Lamb** also submitted a proposal for the Tennis Instructor. This was the only submittal for the Tennis Instructor.

An evaluation committee consisting of the Parks and Recreation Director Mary Ellen Donner, Budget Officer Ashlie Gossett, current interim tennis instructor Krista Bastien, and current tennis member Rick Sanborn, collectively evaluated



each response, based on qualifications and experience. The committee's collective scoring sheet is attached.

Both **Daniel Carozza** and **Danny Witt** provided qualifications and experience that exceeded requirements. **Daniel Carozza** received the highest overall score due to clearly defined strategies for management of the courts and the Pro Shop. He provided a logical, structured process for court assignments that were flexible to accommodate sudden changes, and outlined a thorough weekly teaching schedule that accommodated all ages. He also suggested innovative marketing strategies to promote the Pro Shop and tennis facility through networking and social media avenues.

Although **Danny Witt's** response was above average overall, the proposal lacked specific detail on implementation for plans to manage the courts and Pro Shop.

The response from **Richard Lamb** did not include sufficient detail for consideration for either the Tennis Professional or the Tennis Instructor. For these reasons, staff recommend award for the Tennis Professional to **Daniel L. Carozza Jr.**

The Tennis Professional will be an independent contractor and not an employee of the City. The teaching schedule will include a maximum of twenty (20) hours per week at Huguenot Park and a maximum of nine (9) hours per week at South Beach Park. The time table of hours will be determined by the City.

The instruction price for tennis patrons is attached. The City will collect all tennis instruction revenues and pay 70% of the instruction price to the Tennis Professional.

The Tennis Professional will be required to furnish \$1,000,000 liability insurance. The initial contract term of the contract is one (1) year, with the option to renew for up to three (3) years with the approval of the City Manager.

**RECOMMENDATION:**

Approve a contract for Professional Tennis Services with **Daniel L. Carozza Jr.**, as outlined in the Memorandum from the Parks and Recreation Director, dated September 24, 2016.

## Evaluation Committee Collective Score Sheet and Summary Notes

Scoring Scale:

- 4 = Excellent:       The proposal successfully addresses all relevant aspects of the criterion. Any shortcomings are minor.
- 3 = Above Average:   The proposal addresses the criterion well but a small number of shortcomings are present.
- 2 = Average:         The proposal broadly addresses the criterion, but there are significant weaknesses.
- 1 = Below Average:   The criterion is inadequately addressed or cannot be assessed due to missing or incomplete information.

RESPONDENT	EVALUATION CRITERIA			TOTAL	RANK
	1 Qualification & Experience	2 Management of Court Play	3 Operation of Pro Shop		
<b>Daniel Carozza</b>	3.75	3.75	3.75	11.25	1
<b>Danny Witt</b>	3.75	3.0	3.0	9.75	2
<b>Richard Lamb</b>	2.0	1.75	0	3.75	3

**Evaluation Criterion 1: Qualifications & Experience**

Provide a detailed narrative of professional qualifications and experience, copy of USTA pro card and at least three professional references.

VENDOR	COMMENTS	SCORE
<p><b>Daniel Carozza</b></p>	<p>15 years professional tennis experience.                      Director of Junior Development and Head Professional in Atlanta, Alpharetta and Sandy Springs, Georgia.                      Provide current registration card from USPTA.                      References include GM at Polo Golf &amp; Country Club, GM in Sandy Springs and GM in Alpharetta, GA.                      Extensive experience teaching as well as supervision of teaching staff.                      Pro shop management as well as court maintenance experience.                      Exceeds required qualification levels.</p>	<p><b>3.75</b></p>
<p><b>Danny Witt</b></p>	<p>20 years professional tennis experience.                      Provided current USPTA membership card.                      Fletcher graduate first played tennis at Huguenot.                      UNF graduate and All-American tennis player.                      St. Johns County contract for 5 years.                      Current self-employed owner of Witt Tennis primarily on junior development from age 5 to college level.                      Other professional tennis experience at Queens Harbor, Deerwood, and Jacksonville Golf &amp; Country Club.                      UNF Athletic Hall of Fame 2014.                      References from: USTA General Manager, San Jose Country Club GM, Todd Martin tennis professional.                      Exceeds required qualification levels.</p>	<p><b>3.75</b></p>
<p><b>Richard Lamb</b></p>	<p>18 years professional tennis experience.                      Provided resume from 1998 through 2008.                      Included instructor and coaching experience in Alabama, Tennessee and Sawgrass Country Club until 2008.                      Provided numerous client references including several group references from Country Club members.                      Provided USPTA card but is not current.                      Meets required qualification but lacked information past 2008. Pro card not current.</p>	<p><b>2.0</b></p>

**Evaluation Criterion 2: Management of Court Play**

Provide narrative on how to manage court play to ensure optimum access, enforce court rules, regulations and etiquette. Describe how to manage tournament and ideas to further promote recreation on the tennis courts.

VENDOR	COMMENTS	SCORE
<b>Daniel Carozza</b>	Developed court assignment through logical, structured process and is flexible to accommodate changes. Priority for court assignment to league play versus casual play, then priority by check in procedure. Employees may expel players violating rules. Provided detailed weekly tennis teaching program to include all levels from tiny tot through seniors from beginner through intermediate levels. Also detailed annual tournaments and events to promote recreation on the tennis courts. The outline and strategy was logical and clearly defined.	<b>3.75</b>
<b>Danny Witt</b>	Provided a master court reservation calendar to assign courts for social, walk up and instruction. Will seek feedback from current patrons before implementing teaching programs for adults and kids. Will use City website and Beaches Leader to promote the facilities. Experienced in creating innovative programs to increase activity at the facility. Respondent has sufficient experience and logical approach, but did not elaborate on how to implement or achieve plans. Rely on feedback from current patrons.	<b>3.0</b>
<b>Richard Lamb</b>	Provided a statement intending to enforce rules for proper attire, court etiquette and court time usage. Will implement a robust tennis program for all ages and levels of play, including clinics, individual lessons and tournaments. Response was weak because it did not describe how to achieve the intended court management.	<b>1.75</b>

**Evaluation Criterion 3: Operation of Pro Shop**

Provide narrative describing the various services they intend to provide in the Pro Shop.  
 Provide a proposed method for advertising and method for ensuring customer satisfaction, dealing with public input and complaints.

VENDOR	COMMENTS	SCORE
<b>Daniel Carozza</b>	Will offer racket stringing, gripping, racket demos, new racket sales, ball sales and racket accessory sales. Provided Rainedout.net as a service to notify players instantly via text. Will use USTA/League assistance for players to join flex league or USTA membership. Will maintain active player lists in the Pro Shop for players looking to join teams. Will use "Tennis Match" to match players of similar levels. Will post flyers on activity bulletin and use email to include local businesses and community organizations. Also use Social Media to promote tournaments and events. Will set up "Quality Assurance" email for customer complaints and service issues. Clearly outlined services and how to implement each.	<b>3.75</b>
<b>Danny Witt</b>	Will offer racquet stringing, grip repair and ball sales, at minimum. Determine basic soft goods based on player needs and feedback. Previous shops had \$35K inventory with \$100K annual sales. All staff to promote Pro Shop services. Will train staff to problem solve, listen to feedback and offer excellent customer service. Strive to be detailed and organized. Issues and complaints dealt with and resolved quickly. Respondent provided a good strategy but did not provide sufficient detail on how to execute.	<b>3.0</b>
<b>Richard Lamb</b>	No response.	<b>0</b>

**CONTRACT AGREEMENT  
FOR  
PROFESSIONAL TENNIS SERVICES**

THIS AGREEMENT ("AGREEMENT") is made and entered into as of the **4<sup>th</sup> day of October, 2016** ("Effective Date"), by and between the CITY OF JACKSONVILLE BEACH, FLORIDA, a municipality organized and existing under the laws of the State of Florida, hereinafter called the CITY, and **DANIEL L. CAROZZA JR.**, hereinafter referred to as CONTRACTOR:

**SECTION 1. SCOPE OF SERVICES**

CONTRACTOR shall perform the duties of a contracted CONTRACTOR and shall exercise such duties in a professional, responsible manner including, but not limited to abiding by all applicable federal, state, and local laws, rules and regulations. The Scope of Services for CONTRACTOR is set forth in Exhibit "A" and is attached hereto and incorporated herein by this reference.

**SECTION 2. TERM OF AGREEMENT**

The AGREEMENT shall be for a term of beginning on **October 4<sup>th</sup> 2016** and ending on **September 30<sup>th</sup> 2017**. The AGREEMENT may be renewed up to three additional years. Session is defined as a four to eight-week period in which classes are taught. A Season shall be defined as Winter, Spring, Summer, or Fall. A Workshop is defined as a one-day instructional lesson.

**SECTION 3. COMPENSATION**

CITY shall pay CONTRACTOR 70% of all revenue collected by the CITY per Session. Revenue is determined based on the per class fee, the number of participants enrolled at the end of the program, plus any revenues retained from participants who received partial refunds and revenues collected from drop in enrollments. No compensation will be paid for participants who have not enrolled in the class or drop in participants who have not paid the drop in fee. CITY will retain 30% of the revenue as an administrative support fee to cover CONTRACTOR'S use of court, equipment, administration, utilities, and the like.

Compensation for additional services may be rendered if, and only if, mutually agreed to in writing, in advance, by both parties.

**Pricing-EXHIBIT 'D'** contains pricing for tennis instruction at Huguenot Park. Private lesson rates reflect levels comparable to City of Jacksonville Parks and Recreation Department at Boone Park and Southside Tennis Center. Pricing for junior and adult clinics should also be comparable at \$10/hr, however rates for junior and adult clinics at Huguenot Park have been advertised as \$8 on the City of Jacksonville Beach website for some time. Contractor's proposal is to continue current pricing per the website listings through the current season and give (90) days notice on or about October 1, 2016 of clinic rate changes to be effective January 1, 2017. These rate changes will equally match the current junior and adult clinic rates for City of Jacksonville Parks and Recreation Department at Boone Park and Southside Tennis Center.

**Compensation for Additional Services-**In addition to teaching recreational classes and workshops, Contractor is authorized to provide the follow tennis services: Private and Semi-Private lessons, league team coaching, round robins, tournaments, charity events, and special events. Net revenue from these services and events will be divided 70% to the Contractor and 30% to the City.

**Pro Shop-**Contractor has exclusive rights to sell tennis merchandise in the Huguenot Park Tennis Shop including: Tennis Rackets, tennis balls, tennis grips and accessories. Contractor has the exclusive rights to provide stringing services in the Huguenot Park Tennis Shop. Contractor agrees to pay City 5% of net sales from the sale of merchandise and the stringing services performed.

Refunds to participants may be processed pursuant to the Parks and Recreation Department Refund Policy. Participants may receive a refund from the class for any reason prior to the second meeting date of the class. After the second class, the CITY will approve refund requests on a case by case basis and if approved, will prorate the refund amount based on the number of classes attended. CITY will manage a waiting list for classes. CITY will call new participants from the waiting list to replace refunded participants through the conclusion of the second week of class. Waiting lists expire at the conclusion of the second week. After the second week has concluded, enrollments will be processed for participants who are registering in person for classes still eligible for registration. After the first week, walk in enrollments will be accepted at the discretion of the CONTRACTOR, not to exceed the maximum number of participants allotted for the class. CITY reserves the right to cancel any program, event, or service due to insufficient participants or any other cause and will not pay for any service not actually performed. CITY reserves the right to contract with a replacement CONTRACTOR in the event the CONTRACTOR chooses not to teach the class or is unable to fulfill the terms of the class/program/workshop as advertised to the public.

Payment will be made by electronic deposit or CITY check as determined by the CITY. Payment will be mailed within twenty-one (21) days after CONTRACTOR completes the last class of the Session. CONTRACTOR has thirty (30) days to report any error in payment and must do so in writing. If this AGREEMENT is terminated as a result of an event listed in the Force Majeure section of this AGREEMENT, compensation will be pro-rated based on the number of classes taught.

CITY reserves the right to cancel any program, event, or service due to insufficient participants or any other cause.

#### **SECTION 4. POSTING OF COURT USAGE RULES**

**Posting of Court Use Rules-**Contractor's proposed additions to City's posted rules governing use of tennis courts at Huguenot Park and South Beach Park. Patrons of tennis courts may not use courts for paid tennis instruction unless authorized by City. Carts, baskets, hoppers, or any equipment used for tennis instruction may not be used on courts except by authorized City tennis instructors. Jacksonville Parks and Recreation Department has similar posted court usage rules that limit the number of tennis balls patrons can use per court to (6). These rules are posted at Boone Park and Southside Tennis Center.

**SECTION 5. PARTICIPANT INFORMATION**

CITY staff will provide CONTRACTOR with the names of the participants enrolled in the class and the age of the participant on a class roster used for attendance. CITY will not provide contact information such as the participant's address, phone number, or e-mail address unless it is pertinent to scope of the services as determined by CITY. In such cases participant information may not be shared or sold and shall remain confidential with the CONTRACTOR. CITY staff will call participant rosters to communicate when classes are canceled or modified. At the end of each session, CONTRACTOR shall return to the CITY the class roster with attendance numbers completed.

**SECTION 6. MATERIALS**

CONTRACTOR is required to provide class materials, equipment, and supplies that are not a physical part of the room and not covered in the 30% fee taken by the CITY. CONTRACTOR may charge a supply fee to the participant to directly offset consumable supplies required for the class. Program participants shall be given a supply list with the opportunity to buy the supplies directly from a local retailer. CONTRACTOR must demonstrate supply costs to CITY upon request.

**SECTION 7. FEE COLLECTION**

Included in the administrative support fee paid by the CONTRACTOR as 30% of the revenue, the CITY will provide for the collection of participant fees at various program locations. CONTRACTOR may NOT collect supply fees directly from participants. The supply fee shall be advertised in conjunction with the program cost. CONTRACTOR is completely responsible for all administration of the supply fees including: participant inquiries, and refund requests.

**SECTION 8. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that CONTRACTOR'S services are performed as an independent contractor and the CITY shall not be responsible to provide unemployment compensation benefits for the CONTRACTOR. It is further understood and agreed that CONTRACTOR is not an employee of the CITY for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act or for purposes of the Collection of Income Tax at Source of Wages. CONTRACTOR shall be solely responsible for all taxes that result from receipt of the compensation set forth above, including, but not limited to, Social Security, Self-Employment Tax and all income taxes.

**SECTION 9. CRIMINAL BACKGROUND CHECK**

CONTRACTOR agrees that CONTRACTOR and CONTRACTOR'S employees, volunteers, and substitutes shall be fingerprinted and background checked by CITY prior to rendering services or any time as requested by CITY. The cost of the background check shall be paid for by the CONTRACTOR.

**SECTION 10. AUDIT OF CLASS/PROGRAM/WORKSHOP**

CITY reserves the right to conduct a class/program/workshop audit at any time without prior notice to the CONTRACTOR.

**SECTION 11. CLASS/PROGRAM/WORKSHOP NAMES**

CONTRACTOR'S acceptance of this AGREEMENT does not imply exclusivity in regards to program instruction, program type, or program name. CITY shall be the owner of all class/program/workshop names and reserves the right to use class/program/workshop names in any facility with any CONTRACTOR, unless the CONTRACTOR has established the legal authority to the name. The CONTRACTOR shall show proof to the CITY of this legal authority as requested by the CITY. CONTRACTOR cannot take a class/program/workshop name and obtain a copyright or trademark authority to the name without the CITY's advance written permission.

**SECTION 12. ADA COMPLIANCE**

CONTRACTOR agrees to and shall maintain compliance with the requirements of the Americans with Disabilities Act (ADA). The CONTRACTOR or the program participants may make requests to the CITY for assistance. CITY may provide assistance in the following forms:

- a. Review program plans and make recommendations to modify the plans to include all participants; and/or
- b. Provide a staff assistant on a temporary or permanent basis to transition the participant for inclusion into the activity.

CONTRACTOR shall not insist a participant to be removed from a workshop on the basis of a disability recognized by the Americans with Disabilities Act.

**SECTION 13. REMOVAL OF CLASS/PROGRAM/WORKSHOPS PARTICIPANTS**

Participants are required to adhere to Jacksonville Beach Municipal Code Parks and Recreation Rules and Regulations. CONTRACTOR is responsible for providing this information to their staff, volunteers, and substitutes.

**SECTION 14. CONTRACTOR REPRESENTATIVES**

CONTRACTOR is required to provide a list with names and signatures of representatives who have authorization to sign Payment Authorization forms on behalf of the CONTRACTOR. CONTRACTOR is responsible for informing the CITY in writing of any changes to authorized representatives.

**SECTION 15. FUNDING OUT CLAUSE**

Funding of this AGREEMENT is dependent on budget appropriations set each fiscal year. If necessary funds to continue with the specified services of this AGREEMENT are not allocated by the CITY, this AGREEMENT shall terminate upon exhaustion of the appropriated funds.

**SECTION 16. INSURANCE**

CONTRACTOR shall procure and maintain liability insurance for the duration of the AGREEMENT against claims for injuries to persons and damages to property arising from or in connection with the performance of this AGREEMENT. The liability insurance coverage shall be primary for any such claims and shall be in an amount no less than \$1,000,000 for personal injury and property damage per occurrence, with the CITY named as an additional insured. If aggregating,

the aggregate shall apply separately to the performance under this AGREEMENT or be twice the required limit. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. Insurer shall furnish the CITY with original endorsements affecting the coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

#### **SECTION 17. WAIVER**

No consent or waiver, express or implied, by either party to this AGREEMENT or any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or omission of the other party, or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

#### **SECTION 18. APPLICABLE LAW**

This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Florida. Both parties agree that the courts of the State of Florida shall have jurisdiction of any claim arising in connection with this agreement. In the event of litigation arising out of this agreement, the prevailing party shall be entitled to the award of attorney's fees and costs at both the trial and appellate level.

#### **SECTION 19. COMPLIANCE WITH LAWS**

The CONTRACTOR shall, in the performance of its obligations hereunder, comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this AGREEMENT, including but not limited to the Federal Occupational Safety and Health Act (OSHA), state labor and worker's compensation laws, and all state and federal laws prohibiting or regulating discrimination by reason of race, sex, age, religion, national origin, sexual orientation, and gender identity or expression.

#### **SECTION 20. SEVERABILITY**

In the event that any provision of this AGREEMENT shall be held to be invalid or unenforceable, the remaining provisions of this AGREEMENT shall remain valid and binding on the parties hereto.

#### **SECTION 21. INDEMNITY**

**A: General Indemnity.** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, indemnify and pay on behalf of the CITY, CITY's officers, directors, partners, agents, contractors, and employees from and against any and all costs, losses, and damages, including claims for bodily injury, disease, death, personal injury and damage to property or loss of use resulting therefrom, and for professional liability, (including, but not limited to all fees and charges of contractors, architects, attorneys, and other professionals, and all court, arbitration, or other resolution costs) caused by the negligent acts or omissions of CONTRACTOR or CONTRACTOR's officers, directors, partners, agents, contractors, employees, and CONTRACTOR's consultants, agents, and contractors in the performance and furnishing of CONTRACTOR's services under this Agreement, unless such claims are a result of the

CITY's sole negligence. Such payments on behalf of the CITY shall be in addition to all other legal remedies available to the CITY and shall not be considered to be the CITY's exclusive remedy.

**B: Copyright and Intellectual Property Rights.** At CONTRACTOR's expense as described herein, CONTRACTOR shall indemnify, defend and hold CITY and its affiliates and their respective directors, officers, employees, and contractors and agents harmless from and against any claims that any of the professional services allegedly infringe a patent, copyright, trademark, trade secrets or other intellectual property right by defending against such claim and paying all amounts that a court awards or that CONTRACTOR agrees to in settlement of such claim. CONTRACTOR shall also reimburse the CITY for all reasonable expenses incurred by the CITY in respect of each claim. To qualify for such defense and payment, CITY must: (i) give CONTRACTOR prompt written notice of such claim; and (ii) allow CONTRACTOR to control, and fully co-operate with CITY in the defense and all related negotiations. CONTRACTOR's obligation under this Section is conditional upon CITY's agreement that, if the professional services become, or in CONTRACTOR's opinion (as stated in writing to CITY by CONTRACTOR) is likely to become the subject of an infringement claim, then CITY shall permit CONTRACTOR, at CONTRACTOR's expense, either to procure the right for CITY to continue to use such intellectual property contained in the professional services or to replace or modify it so that it becomes non-infringing and retains in all material respects comparable functionality in the CITY's environment. CONTRACTOR shall have no obligation with respect to any claim to the extent it is based on (i) CITY's use of the intellectual property contained in the professional services in violation of this Agreement; (ii) modifications or user controlled features not authorized by CONTRACTOR; (iii) custom programming for which CONTRACTOR does not develop the specifications or where the code at issue is supplied by CITY. This subsection states CONTRACTOR's entire obligation regarding intellectual property right infringement

**SECTION 22. NOTICES**

All notices which are required or permitted to be given hereunder must be given in writing and must either be delivered personally to the party to whom such notice is given or sent to it by certified mail, postage prepaid and return receipt requested, addressed to such party at the address which is designated below (or such other address as may hereafter be designated by either party by written notice thereof to the other).

CITY: City of Jacksonville Beach  
Parks and Recreation Department  
Attn: Director  
2508 South Beach Parkway  
Jacksonville Beach, FL 32250

CONTRACTOR: Daniel L. Carozza Jr.  
807 Cedar St.  
Neptune Beach, FL 32266

**SECTION 23. MODIFICATION**

This AGREEMENT can be modified or amended only by a document duly executed by the parties hereto or their authorized agents.

**SECTION 24. FORCE MAJEURE**

In the case that the CONTRACTOR'S use of the contracted space is interrupted or cancelled because such space or any part thereof is destroyed, damaged, or rendered unusable in the sole opinion of the CITY'S designated representative due to fire, flood, storm, earthquake or in the event that any other casualty of unforeseen circumstances including but not limited to strikes, labor disputes, war, acts of vandalism, destruction, public disobedience, terrorism, or the action of civil or military authorities, shall make the fulfillment of this AGREEMENT by the CITY difficult or impossible, this AGREEMENT may be cancelled by the CITY. The CITY shall not in any case be held liable or responsible to the CONTRACTOR for any damage caused by such cancellation and the CITY shall be relieved from any further liability by reason of this AGREEMENT.

**SECTION 25. TERMINATION**

The obligation to provide further services under this Agreement may be terminated:

- 24.1 *For cause.* By either the CITY or CONTRACTOR upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 24.2 *For convenience.* By the CITY, effective upon the receipt of notice by CONTRACTOR. The CITY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the City Council.

**SECTION 26. EXECUTION IN COUNTERPARTS**

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Facsimile or electronic transmissions of documents and signatures shall have the same force and effect as originals.

**SECTION 27. ENTIRE AGREEMENT**

The AGREEMENT and exhibits ("AGREEMENT Documents") constitute the entire AGREEMENT between the parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements with respect thereto not incorporated in such AGREEMENT Documents are hereby canceled.

**SECTION 28. PROHIBITION AGAINST CONTINGENT FEES**

The CONTRACTOR warrants that no person or entity has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT

compensation, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee.

**SECTION 29. NONEXCLUSIVE CONTRACT**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the CONTRACTOR. This Contract shall not restrict the CITY from acquiring similar, equal or like goods and/or services from other entities or sources.

**SECTION 30. CONTRACTOR AS INDEPENDENT CONTRACTOR**

It is expressly agreed and understood that the CONTRACTOR is in all respects, an independent contractor as to the WORK and is in no respect an agent, servant, or employee of the CITY. This Agreement specifies the WORK to be done by the CONTRACTOR, but the method to be employed to accomplish the WORK shall be the responsibility of the CONTRACTOR.

**SECTION 31. RIGHT TO REQUIRE PERFORMANCE**

The failure of either the CITY or CONTRACTOR at any time to require performance by the other party of any provisions hereof shall in no way affect the right of the performing party thereafter to enforce the same. Nor shall waiver by such party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

**SECTION 32. HEADINGS**

The headings used in this Agreement are for general reference only and do not have special significance.

**SECTION 33. TIME OF ESSENCE**

Time is of the essence as to each and every provision of this AGREEMENT.

**SECTION 34. AUTHORITY**

CONTRACTOR represents and warrants that the person signing this AGREEMENT on behalf of CONTRACTOR has all requisite authority to bind CONTRACTOR to the terms and obligations of this AGREEMENT.

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CONTRACT AGREEMENT

Effective Date: 10/04/2016

Term: 12 months  
(with option to renew)

Professional Tennis Services

City of Jacksonville Beach and Daniel L. Carozza Jr.

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IN WITNESS WHEREOF, this AGREEMENT is hereby executed as of the Effective Date.

**CITY: CITY OF JACKSONVILLE BEACH, FLORIDA**

BY: \_\_\_\_\_  
William C. Latham, Mayor

BY: \_\_\_\_\_  
George D. Forbes, City Manager

ATTEST: \_\_\_\_\_  
Laurie Scott, City Clerk

Date Signed: \_\_\_\_\_

**CONTRACTOR: DANIEL L. CAROZZA JR.**

BY: \_\_\_\_\_  
Daniel L. Carozza Jr.

ATTEST: \_\_\_\_\_

Date Signed: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

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**EXHIBIT "A"****SCOPE OF SERVICE**

CONTRACTOR shall teach recreational classes/workshops for the benefit of the residents of Jacksonville Beach (the "Services"). Classes/workshops held during the term of this AGREEMENT shall be agreed to in writing by both parties on a Class List form, an example of which is attached to this agreement as Exhibit "B".

The CONTRACTOR shall be paid per the terms indicated in Section C ("Compensation") of the AGREEMENT.

**OBLIGATIONS OF CONTRACTOR**

1. CONTRACTOR shall provide CITY a copy of current, valid USPTA Certification/Insurance Certification prior to the commencement of the first scheduled class and/or workshop.
2. Complete criminal background check and fingerprinting prior to commencement of first scheduled class.
3. Copy of City of Jacksonville Beach business license as required by the CITY. CONTRACTOR shall provide CITY with proof of a valid City of Jacksonville Beach business license renewal fourteen (14) days prior to the expiration of the business license. FAILURE TO MEET THIS OBLIGATION MAY RESULT IN CONTRACTOR'S CLASSES BEING CANCELLED FOR THE SESSION AND/OR TERMINATION OF THE AGREEMENT.
4. Copy of Insurance Certificate. CONTRACTOR shall provide the CITY with proof of certificate of insurance renewal fourteen (14) days prior to the expiration of the certificate of insurance. FAILURE TO MEET THIS OBLIGATION MAY RESULT IN CONTRACTOR'S CLASSES BEING CANCELLED FOR THE SESSION AND/OR TERMINATION OF THE AGREEMENT.
5. CONTRACTOR shall check in at the front desk for every class to obtain their folder. Included in the folder is any administrative materials needed for the class, including the daily attendance roster. CONTRACTOR shall return this folder to the front desk at the conclusion of each class.
6. CONTRACTOR shall record class attendance each class. CONTRACTOR shall submit a signed attendance report at the end of each week. FAILURE TO MEET THIS OBLIGATION MAY RESULT IN CONTRACTOR NOT BEING PAID. CONTRACTOR shall return any materials provided by the CITY within seven (7) days of the completion of the scheduled workshop/class or termination of this AGREEMENT.
7. CONTRACTOR shall distribute evaluations to participants upon receipt from CITY staff and return completed evaluations at the conclusion of the class/workshop.
8. CONTRACTOR shall deliver Service(s) as advertised by CITY. CONTRACTOR shall not advertise, print, or publish any promotional material in connection with the instruction and/or Service to be conducted under this AGREEMENT using the names "City of Jacksonville Beach" or "City of Jacksonville Beach Parks and Recreation Department" or use the CITY logo without prior written approval from CITY.
9. CONTRACTOR shall provide for makeup schedules or provide for a qualified substitute to fulfill the commitments herein established. Make-up schedules shall have prior approval of the CITY to ensure there are no scheduling conflicts with other facility programs.
10. CONTRACTOR, or designated approved substitute, shall be physically present to teach a class. If CONTRACTOR or approved substitute is unable to teach the class, the class will be cancelled and participants will receive credit for that class.

11. If CONTRACTOR is unable to teach a class, CONTRACTOR shall notify City management staff at least one hour prior to the start of class. Such notice shall be given even if an approved substitute is available to teach the class. If there are circumstances that prevent one-hour notice, CONTRACTOR shall provide as much prior notice as possible.
12. CONTRACTOR or approved substitute may not wear jewelry, including but not limited to, facial piercings, that may create a safety hazard. Controversial or offensive tattoos, as determined by the City, shall be covered during each class.
13. List of qualified substitutes. Prior to the commencement of the first scheduled class, substitutes shall submit the following:
  - a. Proof of certifications/licenses. (For classes/workshops requiring a certified CONTRACTOR).
  - b. Criminal background and fingerprint as required in Section 9 "Criminal Background" of the AGREEMENT.
  - c. A current certificate of insurance naming the CITY as additional insured (unless the substitute is included on any required certificate of insurance provided by the CONTRACTOR).
14. CONTRACTOR shall provide a detailed list of required supplies, including costs, if requested by CITY, as stated in the Material Section of the AGREEMENT (when applicable).

**OBLIGATIONS OF THE CITY**

1. CITY shall contact CONTRACTOR about any facility issues that may affect CONTRACTOR's workshops.
2. CITY shall provide all services related to registration, which includes but is not limited to receiving of class fees and issuing refunds.
3. CITY shall maintain and secure facilities.

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**EXHIBIT "B"**

City of Jacksonville Beach Parks and Recreation  
Huguenot Park Tennis Facility

**2016 Fall CLASS LIST**

Contractor Name: \_\_\_\_\_

This Class List will serve as your confirmation as to what classes you will be teaching at Huguenot Park Tennis Facility during the Fall 2016 Sessions. There are no classes on holidays and facility closures, therefore fees are prorated accordingly. Please review your class information carefully. If you would like to make changes, mark them directly on the list and initial next to any changes you make. If you would like to add a new class, please attach it to your list. Additions or changes must be approved and initialed by the Facility Supervisor/Manager.

Contractor will not be allowed to teach the classes until all of the following criteria have been met:

1. Contracted Contractor Agreement has been executed.
2. Business license and insurance, as required, are current and copies have been submitted to City.
3. This Class List has been signed by you and approved by the Facility Supervisor/Manager.

**Fall 2016**

Fall Session I:

Fall Session II:

Break Week:

Fall Session III:

**Class List:**

**Class name**

Class description.

Location: Facility Name

AGE	DAY	TIME	DATE	COST	CODE
-----	-----	------	------	------	------

<b>SIGNATURE CONFIRMATION</b>		
Contractor's Signature: _____	Date: _____	Facility Supervisor/Manager: _____

**EXHIBIT "C"**  
**PARKS AND RECREATION**  
**Patron Code of Conduct**

Purpose

The City of Jacksonville Beach Parks and Recreation Department has established a policy to ensure that all patrons have the opportunity to safely enjoy parks, programs, and facilities without infringement from those who fail to follow established rules and regulations. The patron Code of Conduct identifies behaviors that infringe upon the rights of others. Violations of the Department's Code of Conduct will not be tolerated.

All staff are authorized to address any violation of the Code of Conduct by informing the patron that they must stop the behavior or they will be asked to leave the program, park, or facility. The violation will then be reviewed by management staff and progressive action taken as appropriate. Further actions may include, but are not limited to, expulsion from the program, suspension, or trespass. When patrons fail to comply with rules, regulations, laws, and/or ordinances, staff is directed to call the Jacksonville Beach Police Department, or school police, as appropriate.

Violations of the Department's Code of Conduct include, but are not limited to, the following:

1. Failure to obey any city laws or ordinances (Jacksonville Beach Municipal Code).
2. Failure to obey posted or published program, park, facility rules or follow staff member instructions.
3. Misuse, destruction, theft, or damage of materials, equipment, furniture of City of Jacksonville Beach Parks and Recreation Department's property or property of others.
4. Vandalism or littering.
5. Any action that constitutes a violation of federal, state, or county laws and ordinances.
6. Possession of weapons, instruments used as weapons, fireworks, or explosives.
7. Harassment/bullying (racial, religious, or sexual) of participants or staff.
8. Inappropriate behavior, language, hygiene, or clothing that impacts the ability of participants or patrons to be able to enjoy or use a park, program, or facility.
9. Smoking in areas designated as "no smoking".
10. Possession, use, or sale of alcohol or controlled substances.
11. Being under the influence of alcohol or a controlled substance.
12. Inconsiderate or discourteous behavior toward staff or participants.
13. Sleeping in a facility or in a park.
14. Soliciting money or panhandling.
15. Bringing luggage, sleeping bags, or carts into a recreation center (unless it is for a Department-organized activity).
16. Parking in non-designated areas.
17. Unnecessary rough actions against an opposing player, staff, or spectator such as pushing, shoving or physical violence during sporting events or other activities.
18. Abusive or threatening language or gestures, whether or not directed at a person.
19. Intentionally throwing equipment in anger or disgust.
20. Any action that disrupts or obstructs any league contest program or event, or a Parks and Recreation program or activity.
21. Entering any facility when prohibited to do so.

22. Any activity, in the judgment of a staff member, which places oneself or others at risk of injury, or infringes upon the rights of other participants or staff.

**EXHIBIT "D"**

**Proposed Pricing for Huguenot Park Tennis Instruction**

<b><u>Private Lessons</u></b>	<b><u># Players</u></b>	<b><u>Current</u></b>	<b><u>6-Sep-16</u></b>	<b><u>1-Jan-17</u></b>
Private (1hr)	1	N/A	\$45.00	\$45.00
Private (1/2 hr)	1	N/A	\$25.00	\$25.00
Semi-Private/Group (1hr)	4-Feb	N/A	\$48.00	\$48.00
<b><u>Adult Clinics</u></b>				
Beginner-2.5 or below (1hr)	8-Apr	N/A	\$8.00	\$10.00
Intermediate-3.0/3.5 (1hr)	8-Apr	N/A	\$8.00	\$10.00
Advanced-4.0 or higher (1hr)	8-Apr	N/A	\$8.00	\$10.00
Sunday AM Adult Clinic&RR-All levels (1hr)	4+	\$8.00	\$8.00	N/A
Sunday AM Adult Clinic&RR-All levels (1 1/2 hr)	4+	\$8.00	N/A	10
<b><u>Team Coaching</u></b>				
League Team Coaching (1 hr)	10-Jun	N/A	\$65.00	\$65.00
League Team Coaching (1 1/2 hr)	10-Jun	N/A	\$90.00	\$90.00
<b><u>Junior Development</u></b>				
Junior Clinics (all ages)	8-Apr	\$8.00	\$8.00	\$10.00

\*\*Proposed increase to match City of Jacksonville



BEACHES ENERGY  
SERVICES

**TO:** George D. Forbes  
City Manager

**FROM:** Allen Putnam  
Director of Beaches Energy Services

**DATE:** September 24, 2016

**SUBJECT:** Emergency Installation of New Protective Netting at the Jacksonville Beach substation

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**ACTION REQUESTED:**

Approve an Emergency purchase for services with Golf Range Netting Inc., for the installation of 30,000 square feet of protective netting and associated hardware at Beaches Energy Services' Jacksonville Beach substation.

**BACKGROUND:**

The protective netting at the Jacksonville Beach substation was seriously damaged on September 13, 2016 as a result of the combination of age and the wind gusts associated with Tropical Storm Julia. The damage to the net has increased the risk of damage to substation equipment. The last time a golf ball actually hit an important piece of equipment within this particular substation a \$25,000 insulator had to be replaced. In addition, the condition of the net is partially limiting the use of the driving range at the City Golf Course.

Beaches Energy Services solicited five (5) quotes. Only two (2) quotes were received. After reviewing the information provided in each quote, I wish to select Golf Range Netting, Inc. as the service provider. They have provided a shorter project time, their warranty on both netting and parts and labor is 7 years, and their netting system is built to transmission line standards. I believe the higher quoted price is justified for the increase in quality and warranties that Beaches Energy Services will receive.

**RECOMMENDATION:**

Approve an Emergency purchase for services with Golf Range Netting Inc., for the installation of a protective netting system for Beaches Energy Services' Jacksonville Beach substation.

Quote matrix:

Organization	Turn Key (Yes/No)	Delivery & Installation	Warranty - Netting	Warranty - Parts and Labor	Standards	Quote
Action Sports Net	Yes	3-4 Weeks	6 years	2 years	Only hardware	\$39,865.90
Golf Range Netting, Inc.	Yes	2 weeks	7 years	7 years	Transmission Power Line Grade	\$70,400.00
Net Repair Guy		No quote provided				N/A
Net Connections, LLC		No quote provided				N/A
Top Golf		No quote provided				N/A



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## MEMORANDUM

**To:** George D. Forbes, City Manager

**From:** William C. Mann, Planning and Development Director 

**Re:** Ordinance No. 2016-8079, adding Chapter 22 - *Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists* to the City Code of Ordinances.

**Date:** September 9, 2016

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### ACTION REQUESTED:

Adoption of Ordinance No. 2016-8079, adding a new Chapter 22 to the City Code of Ordinances entitled *Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists*. (Applicant – William C. Mann, Planning and Development Director)

### BACKGROUND:

In 2015, the City enacted comprehensive sign regulations in response to a recent Supreme Court case that impacted the constitutionality of municipal sign codes. In connection with that legislation, the City's sign code expert who drafted those regulations recommended removing the human sign spinner prohibition from the City's sign regulations contained in Chapter 34 - *Land Development Code* and instead placing it under a non-land development section of the City's code. The City's comprehensive sign code is contained in the City's land development code, which regulates signs that are attached to or connected to land. Human sign spinners are more appropriately governed in a separate section of the City's code that addresses conduct related to distracting traffic and drivers; therefore, Chapter 22 - *Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists* is being added to address the traffic safety concerns that result from human sign spinners.



The attached ordinance provides definitions, describes violations, provides remedies, fines and penalties relative to violations, and also identifies the Police Department and Code Enforcement officers as the City personnel with the authority to issue citations of sign spinning regulations. The attached ordinance also amends Section 2-147 of the City Code to add Chapter 22 - *Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists* to the items of jurisdiction of the City's Special Magistrate.

**RECOMMENDATION:**

Adopt Ordinance No. 2016-8079, adding a new Chapter 22 to the City Code of Ordinances entitled *Nuisances Caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists*

**ORDINANCE NO. 2016-8079**

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA AMENDING THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES BY ADDING CHAPTER 22, ENTITLED NUISANCES CAUSED BY HUMAN SIGN SPINNERS ON PUBLIC PROPERTY AND PUBLIC RIGHTS-OF-WAY DIRECTING COMMERCIAL MESSAGES TO PASSING MOTORISTS; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 22; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION.**

**WHEREAS**, the City of Jacksonville Beach finds and determines that the temporary display of commercial signs placed on public property and public rights-of-way should be prohibited on grounds of traffic safety;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there is a nuisance posed by the display of commercial signs that are held or controlled by human sign wavers, twirlers, and spinners (herein collectively referenced as "human sign spinners") while standing or sitting on public rights-of-way, where one or more commercial sign messages are directed and/or otherwise oriented in whole or in part to passing motorists and vehicular traffic transiting nearby on adjoining streets and highways;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the nuisance posed by the foregoing conduct is a serious threat to public safety;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the display through movement of commercial signs by human sign spinners while located on public property or public rights-of-way may be addressed under a sign ordinance, but may also be addressed by a separate stand-alone nuisance ordinance due, in part, to the imminent and/or potential threat to public safety that requires regulation;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there has been an expanding proliferation of human sign spinners that are distracting passing motorists by their display of commercial messages that are intended to attract, or that do attract, the attention of drivers, and that there is a need for regulation in the form of a stand-alone nuisance ordinance to prohibit sign spinning or similar conduct by human sign spinners while on public property or public rights-of-way;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the regulation of commercial speech, in contrast to noncommercial speech, is not prohibited on First Amendment grounds and that the prohibition of sign spinning on public property and public rights-of-way is not based upon the content of any particular commercial speech, but is intended to be a content-neutral regulation of such commercial speech;

**WHEREAS**, the City of Jacksonville Beach finds and determines that sign spinners have been characterized as different than an average sign that remains placid in that their animation

(through movement) captivates (or could captivate) every set of eyes on the road, and that such spinners convert main streets and boulevards into giant check-out lanes;

**WHEREAS**, the City of Jacksonville Beach finds and determines that it is important to exercise control over public property and the public rights-of-way where sign spinning activity directed to passing motorists is occurring, and that enforcement of the law extend to all code enforcement personnel and the Jacksonville Police Department;

**WHEREAS**, the internet provides examples of sign spinners at work at such sites as <http://www.youtube.com/watch?v=2EfjKDjdg4k> (last visited June 17, 2016), <http://www.youtube.com/watch?v=eSGjQyEVzEo&feature=related> (last visited June 17, 2016);

**WHEREAS**, the City of Jacksonville Beach finds and determines that there are ample alternative modes of communication for disseminating commercial messages, including permanent and temporary onsite signs, and an array of other advertising mediums that extends to and includes the internet, radio, television, print media, direct mail, pamphlets, and the like;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the regulation and prohibition of the nuisance described herein shall not limit the City from addressing any other proliferation of sign spinning outside of public property and public rights-of-way to the extent that it is determined to be appropriate or necessary to do so;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the federal district court in the *Granite-Clearwater* decision addressed a restriction in the Clearwater Code at Section 3-1803.S which prohibited signs that are “carried, waved or otherwise displayed” in public rights-of-way or “in a manner visible from public rights-of-way” and “directed toward such displays intended to draw attention for a commercial purpose, and is not intended to limit the display of placards, banners, flags or other signage by persons demonstrating in demonstrations, political rallies or similar events,” and found that such restriction was content or viewpoint-neutral and justified by Clearwater’s stated interests in safety and aesthetics, and that the additional guidance provided in that provision assured that government officials were not given unbridled discretion [see *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1340-1341 (M.D.Fla. 2002), *aff’d in part and rev’d in part on other grounds*, 351 F.3d 1112 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004)];

**WHEREAS**, it is a clear that the Supreme Court has repeatedly acknowledged the distinction between non-commercial speech and commercial speech (see *Infinity Outdoor, Inc. v. City of New York*, 165 F.Supp. 2d 403, 423-425 (E.D.N.Y. 2001), and that the definition for commercial advertising sign set forth herein sufficiently satisfies constitutional scrutiny in its identification of commercial speech;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the Code of Ordinances’ severability clause was adopted with the intent of upholding and sustaining as much of the City’s regulations as possible in the event that any portion thereof (including any section, sentence, clause or phrase) be held invalid or unconstitutional by any court of competent jurisdiction;

**WHEREAS**, the City of Jacksonville Beach finds and determines that under Florida law, whenever a portion of a statute or ordinance is declared unconstitutional, the remainder of the act will be permitted to stand provided (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the legislative body would have passed the one without the other, and (4) an act complete in itself remains after the valid provisions are stricken [*see, e.g., Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990)];

**WHEREAS**, the City of Jacksonville Beach finds and determines that the City of Jacksonville Beach has previously adopted and enacted severability provisions in connection with its ordinance code provisions, and that the City of Jacksonville Beach wishes to ensure that severability provisions apply to the provisions enacted by this ordinance;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there is an ample record of its intention that the presence of a severability clause in connection with these regulations so that they be applied to the maximum extent possible, even if less speech would result from a determination that any provisions herein are invalid or unconstitutional for any reason whatsoever; and

**WHEREAS**, the City of Jacksonville Beach finds and determines that it is appropriate to adopt this ordinance for the reasons hereinabove set forth;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:**

**SECTION 1: CHAPTER 22** of the Jacksonville Beach Code of Ordinances shall be adopted to read as follows:

**CHAPTER 22. NUISANCES CAUSED BY HUMAN SIGN SPINNERS ON PUBLIC PROPERTY AND PUBLIC RIGHTS-OF-WAY DIRECTING COMMERCIAL MESSAGES TO PASSING MOTORISTS.**

**Section 22-1. Definitions.**

For the purposes of this chapter, the following definitions shall apply:

1. "Human sign spinner." A person that holds or controls a human commercial advertising sign and who waves, twirls, spins or otherwise uses some form of action or movement to attract the attention of any passing motorist or vehicular traffic to any commercial advertising message that is displayed on the sign.

2. "Human commercial advertising sign." A commercial sign held or controlled by a person while standing or sitting on public property or on public rights-of-way, where a commercial advertising sign message is directed or otherwise oriented in whole or in part to passing motorists and vehicular traffic transiting nearby on an adjoining street or highway.

3. "Commercial advertising sign." A commercial advertising sign is an advertising sign that directs attention to a commercial activity, commercial product, commercial business, commercial service, commercial event or commercial activity conducted, sold or offered for sale on private property.

**Section 22-2. Violation.**

1. Violation. It shall be unlawful and a violation of Chapter 22 for a human sign spinner to display a human commercial advertising sign while standing or sitting on public property or on public rights-of-way, by waving, twirling, spinning or otherwise using some form of action or movement in a manner whereby a commercial advertising message is directed or oriented in whole or in part to any passing motorist or vehicular traffic transiting nearby on an adjoining street or highway.

2. Separate violation. Each day that a violation of Chapter 22 occurs at a location on public property or on public rights-of-way shall be deemed a separate violation for purposes of the remedies, fines and penalties set forth herein. If a violation of Chapter 22 occurs on the same day at a location on public property or on public rights-of-way that is more than one hundred feet from any other location where a violation of Chapter 22 has occurred on the same day, then the violation shall be considered a separate violation for the purpose of the remedies, fines and penalties set forth herein even though the violation occurred on the same day.

**Section 22-3. Remedies, Fines and Penalties.**

1. Each person that holds or controls a human commercial advertising sign in violation of Chapter 22 shall be responsible for a civil fine and penalty as provided for in Sec. 2-174 of the Jacksonville Beach Code of Ordinances.

2. The Jacksonville Police Department and any and all designated Code Enforcement Officers are authorized to issue a citation to a person when, based upon personal investigation, there is reasonable cause to believe that the person has committed a violation of Chapter 22. A warning notice is not required for the issuance of a citation for a violation of Chapter 22.

3. In addition to the remedies set forth above, the City of Jacksonville Beach may seek injunctive or other available civil relief from a court of competent jurisdiction to compel enforcement of the provisions of the Chapter.

**SECTION 2.** Chapter 2, Administration, Section 2-173 shall be revised by adding Chapter 22 to the jurisdiction of the special magistrate and renumbering Sec. 2-173(a)(9), et seq., as follows:

Sec. 2-173. – Jurisdiction of special magistrate.

(a) Except as otherwise provided in this Code of Ordinances, the special magistrate shall have the jurisdiction and authority to hear and decide alleged violations of the code of the City, including, but not limited to the following:

- (9) Chapter 22. Nuisances caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists.
- (10) Chapter 27. Residential and Commercial Solid Waste Collection, Disposal, and Assessment.
- (11) Chapter 28. Streets, Sidewalks, and Other Public Places.
- (12) Chapter 32. Utilities.
- (13) Chapter 34. Land Development Code.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase of this Ordinance, or the particular application thereof, shall be held invalid by any court, administrative agency or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses and phrases under application shall not be affected thereby.

**SECTION 4. Effective Date.** This Ordinance shall take effect immediately upon passage and adoption.

**SECTION 5.** Codification of this Ordinance in the Code of Ordinances of the City of Jacksonville Beach is hereby authorized and directed.

**AUTHENTICATED THIS \_\_\_ DAY OF \_\_\_\_\_, A.D., 2016.**

\_\_\_\_\_  
William C. Latham, MAYOR

\_\_\_\_\_  
Laurie Scott, CITY CLERK

City of

Jacksonville Beach

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## MEMORANDUM

**To:** George D. Forbes, City Manager

**From:** William C. Mann, Planning and Development Director 

**Re:** Ordinance No. 2016-8080, amending Chapter 31 of the City Code of Ordinances to add regulations relating to mobile billboard advertising, supporting traffic safety.

**Date:** September 9, 2016

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### ACTION REQUESTED:

Adoption of Ordinance No. 2016-8080, amending Chapter 31- *Traffic and Motor Vehicles* of the City Code of Ordinances, by adding a new Article V. Mobile Billboard Advertising (Applicant – William C. Mann, Planning and Development Director)

### BACKGROUND:

In 2015, the City enacted a comprehensive sign code in response to a recent Supreme Court case that impacted the constitutionality of municipal sign codes. In connection with that legislation, the City's sign code expert recommended removing the prohibition on mobile billboards from the sign code and instead placing it under the traffic and motor vehicle chapter of the City's code. The City's comprehensive sign code is contained in the City's land development code, which regulates signs that are attached to or connected to land. Mobile billboards are more appropriately addressed in the traffic and motor vehicle section of the City code; therefore, Chapter 31, the Traffic and Motor Safety section of the City code, is being amended to add Article V. which addresses the traffic safety concerns that accompany mobile billboard advertising.

"Mobile billboard advertising" is defined as any vehicle, or wheeled conveyance which carries, pulls, or transports any sign for the primary purpose of commercial advertising along the streets or highways of the city. The attached regulations prohibit this type of vehicle from operating in the city. However, they do not apply



to a vehicle which displays an advertisement or business identification of its owner, so long as such vehicle is engaged in the usual business or regular work of the owner, and is not used merely or mainly to display advertisements.

The attached ordinance also amends Section 2-147 of the City Code to add Chapter 31, Article V. Mobile Billboards to the items of jurisdiction of the City's Special Magistrate.

**RECOMMENDATION:**

Adopt Ordinance No. 2016-8080, amending Chapter 31- *Traffic and Motor Vehicles* of the City Code of Ordinances, by adding a new Article V. Mobile Billboard Advertising.

**ORDINANCE NO. 2016-8080**

**AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 31 OF THE CITY OF JACKSONVILLE BEACH CODE OF ORDINANCES, BY ADDING A NEW ARTICLE V ENTITLED MOBILE BILLBOARD ADVERTISING; PROVIDING DEFINITIONS, VIOLATION, REMEDIES, FINES AND PENALTIES, AND AMENDING SECTION 2-173 OF THE CITY OF JACKSONVILLE BEACH'S CODE OF ORDINANCES TO EXTEND THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE CHAPTER 31, ARTICLE V; PROVIDING SEVERABILITY; EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION.**

**WHEREAS**, the City of Jacksonville Beach finds and determines that mobile billboard advertising on city streets and highways should be prohibited on grounds of traffic safety;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there is a nuisance posed by the display of mobile billboard advertising oriented in whole or in part to motorists and vehicular and other traffic on city streets and highways;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the nuisance posed by the foregoing conduct, if and when it occurs, would represent a serious threat to public safety, and this conduct was previously prohibited under the City of Jacksonville Beach's land development regulations from 2010 to 2015;

**WHEREAS**, the City of Jacksonville Beach finds and determines that mobile billboard advertising along city streets and highways display would be better addressed by a separate stand-alone ordinance due to the threat to public safety that requires regulation;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there are ample alternative modes of communication for disseminating commercial messages, including permanent and temporary onsite signs, and an array of other advertising mediums that extend to and include the internet, radio, television, print media, direct mail, pamphlets, and the like;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the regulation and prohibition of the nuisance described herein, namely mobile billboard advertising on and along city streets and highways, shall not limit the City from addressing any other proliferation of signs posing nuisances and threats to traffic safety to the extent that it is determined to be appropriate or necessary to do so;

**WHEREAS**, it is a clear that the Supreme Court has repeatedly acknowledged the line between non-commercial speech and commercial speech (*see Infinity Outdoor, Inc. v. City of New York*, 165 F.Supp. 2d 403, 423-425 (E.D.N.Y. 2001)), and that the definition for commercial advertising set forth herein sufficiently satisfies constitutional scrutiny in its identification of commercial speech;

**WHEREAS**, the City of Jacksonville Beach finds and determines that the Code of Ordinances' severability clause was adopted with the intent of upholding and sustaining as much of the City's regulations as possible in the event that any portion thereof (including any section,

sentence, clause or phrase) be held invalid or unconstitutional by any court of competent jurisdiction;

**WHEREAS**, the City of Jacksonville Beach finds and determines that under Florida law, whenever a portion of a statute or ordinance is declared unconstitutional, the remainder of the act will be permitted to stand provided (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the legislative body would have passed the one without the other, and (4) an act complete in itself remains after the valid provisions are stricken [*see, e.g., Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990)];

**WHEREAS**, the City of Jacksonville Beach finds and determines that it has previously adopted and enacted severability provisions in connection with its ordinance code provisions, and that the City of Jacksonville Beach wishes to ensure that severability provisions apply to the provisions enacted by this ordinance;

**WHEREAS**, the City of Jacksonville Beach finds and determines that there is an ample record of its intention that the presence of a severability clause in connection with these regulations so that they be applied to the maximum extent possible, even if less speech would result from a determination that any provisions are invalid or unconstitutional for any reason whatsoever; and

**WHEREAS**, the City of Jacksonville Beach finds and determines that it is appropriate to adopt this ordinance for the reasons hereinabove set forth;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:**

**SECTION 1: CHAPTER 31, TRAFFIC AND MOTOR VEHICLES**, of the Jacksonville Beach Code of Ordinances is hereby amended by adding a new Article V, which shall read as follows:

**ARTICLE V. - MOBILE BILLBOARD ADVERTISING.**

**Sec. 31-83. Short title.**

Article V of this chapter shall be known and may be referred to as the "City of Jacksonville Beach mobile billboard control ordinance."

**Sec. 31-84. Definitions.**

For the purposes of this Article V, the following definitions shall apply:

1. "Mobile billboard advertising." Any vehicle, or wheeled conveyance which carries, conveys, pulls, or transports any sign for the primary purpose of commercial advertising along city streets or highways of the City of Jacksonville Beach, Florida."

2. "Commercial advertising." Commercial advertising is advertising that directs attention to a commercial activity, commercial product, commercial business, commercial service, commercial event or commercial activity conducted, sold or offered for sale on private property.

**Sec. 31-85. Violation.**

1. Violation. It shall be unlawful and a violation of Article V of Chapter 31 for any vehicle, or wheeled conveyance to carry, convey, pull, or transport any sign for the primary purpose of displaying commercial advertising along any city street or highway of the City of Jacksonville Beach, Florida; and it shall be unlawful and a violation of Article V of Chapter 31 for any vehicle, or wheeled conveyance to park along a city street or highway of the City of Jacksonville Beach, Florida for the primary purpose of displaying commercial advertising along that city street or highway.

2. Separate violation. Each day that a violation of Article V of Chapter 31 occurs shall be deemed a separate violation for purposes of the remedies, fines and penalties set forth herein.

3. Extent of Application. This Article V does not apply to:

a. Any vehicle which displays an advertisement or business identification of its owner, as long as such vehicle is engaged in the usual business or regular work of the owner, and not used merely, mainly or primarily to display advertisements;

b. Buses; or

c. Taxicabs.

It is not the intent of the City to violate the Interstate Commerce Clause of the United States Constitution. Therefore, mobile billboards may pass through the City of Jacksonville Beach in a manner consistent with legitimate constitutional rights.

**Section 31-86. Remedies, Fines and Penalties.**

1. Any person that drives any vehicle or wheeled conveyance in violation of Article V shall be responsible for a civil fine and penalty as provided for in Sec. 2-174 of the Jacksonville Beach Code of Ordinances.

2. Any person that parks any vehicle or wheeled conveyance in violation of Article V shall be responsible for a civil fine and penalty as provided for in Sec. 2-174 of the Jacksonville Beach Code of Ordinances.

3. Any person that owns any vehicle or wheeled conveyance that is driven in violation of Article V shall be responsible for a civil fine and penalty as provided for in Sec. 2-174 of the Jacksonville Beach Code of Ordinances.

4. Any person that parks any vehicle or wheeled conveyance that is driven in violation of Article V shall be responsible for a civil fine and penalty as provided for in Sec. 2-174 of the Jacksonville Beach Code of Ordinances.

5. The Jacksonville Beach Police Department and any and all designated Code Enforcement Officers are authorized to issue a citation to a person when, based upon personal investigation, there is reasonable cause to believe that the person has committed a violation of Article V. A warning notice is not required for the issuance of a citation for a violation of Article V.

6. In addition to the remedies, fines and penalties set forth above, the City of Jacksonville Beach may seek injunctive or other available civil relief from a court of competent jurisdiction to compel enforcement of the provisions of Article V.

**SECTION 2.** Chapter 2, Administration, Section 2-173 shall be revised by adding Chapter 31, Article V. Mobile Billboard Advertising to the jurisdiction of the special magistrate and renumbering Sec. 2-173(a)(12), et seq., as follows:

Sec. 2-173. – Jurisdiction of special magistrate.

(a) Except as otherwise provided in this Code of Ordinances, the special magistrate shall have the jurisdiction and authority to hear and decide alleged violations of the code of the City, including, but not limited to the following:

(9) Chapter 22. Nuisances caused by Human Sign Spinners on Public Property and Public Rights-of-Way directing Commercial Messages to Passing Motorists.

(10) Chapter 27. Residential and Commercial Solid Waste Collection, Disposal, and Assessment.

(11) Chapter 28. Streets, Sidewalks, and Other Public Places.

(12) Chapter 31, Article V. Mobile Billboard Advertising.

(13) Chapter 32. Utilities.

(14) Chapter 34. Land Development Code.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase of this Ordinance, or the particular application thereof, shall be held invalid by any court, administrative agency or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses and phrases under application shall not be affected thereby.

**SECTION 4. Effective Date.** This Ordinance shall take effect immediately upon passage and adoption.

**SECTION 5.** Codification of this Ordinance in the Code of Ordinances of the City of Jacksonville Beach is hereby authorized and directed.

**AUTHENTICATED THIS \_\_\_ DAY OF \_\_\_\_\_, A.D., 2016.**

\_\_\_\_\_  
William C. Latham, MAYOR

\_\_\_\_\_  
Laurie Scott, CITY CLERK



POLICE DEPARTMENT  
Patrick K. Dooley  
Chief of Police

City of  
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**To:** George D. Forbes, City Manager  
**From:** Patrick K. Dooley, Chief of Police  
**Subject:** Request to repeal Chapter 18 "Noise" of the Code of Ordinances of the City of Jacksonville Beach, Florida, in its entirety, and replace it with new Chapter 18 "Noise," which includes a section on Low Volume Outdoor Amplified and Acoustic Sound Permits  
**Date:** September 27, 2016

**ACTION REQUESTED**

Repeal Chapter 18, "Noise" and replace it with a new Chapter 18, to include Section 18-7, "Low Volume Outdoor Amplified and Acoustic Sound."

**BACKGROUND**

Chapter 18, "Noise" was adopted in 2002, and last updated in 2006; the chapter regulates sound levels throughout the city. Parts of this ordinance were made obsolete when City Council mandated that no new "Outside Sound Amplification" permits be issued; however, businesses that had been previously issued these permits were "grandfathered," and allowed to continue to emit outdoor amplified music under the previous section of the ordinance.

Currently, there are 16 locations that are still permitted to have outside music. This has created an inequity for many newer businesses which have outdoor dining in the city and would like to provide low volume background music to entertain customers.

To avoid conflict and/or confusion, I am recommending the repeal of the current Chapter 18 in its entirety, and replacement with new Chapter 18. The major **changes to the ordinance have been highlighted in yellow**. Additionally, a strike out copy of the previous chapter 18 has been provided. **The changes and additions to Chapter 18 are as follows:**

1. The Downtown Action Plan directed staff to research and present an ordinance that would allow establishments that provide outdoor dining to play music at low volume to further increase the beach ambiance, while seeking to protect, preserve and promote the health, safety and quality of life of its residents and visitors. The result is the new section to the Code of Ordinances, Section 18-7, "Low Volume Outdoor and Acoustic Sound." This allows for outdoor dining with background sound played at low volume. This is a pilot project that expires on December 31, 2018, unless re-adopted by the City Council.



2. Low volume is defined in the ordinance as “sound played at a level such that a person outside of the property line of the source of the sound, speaking in a normal tone of voice, is plainly audible and can be heard clearly and understandably by another person standing a maximum of thirty-six inches (36”) away from the person speaking, without the aid of a listening device.”
3. Section 18-7(4)(i) will allow the current 16 businesses permitted under the 2002 Outdoor Sound Amplification Permit ordinance to be “grandfathered,” to operate under that portion of the ordinance. However, any change in the ownership, name, or location of the business immediately terminates their grandfathered permit. They can only obtain a new outdoor sound permit under the low volume sound standards (18-7(g)).
4. Section 18-5, “Violations; Penalties,” changes terminology from “warning” to “Notice of Violation”.
5. Section 18-6, “Mobile noise” includes minor changes highlighted in yellow.
6. Changes throughout the chapter for minor scrivener’s errors.

### **RECOMMENDATION**

Adopt Ordinance 2016-8082, that repeals the existing Chapter 18 Noise in its entirety, and replaces it with a new chapter on noise that includes a section on Low Volume Outdoor Amplified and Acoustic Sound Permits.

Introduced By: \_\_\_\_\_  
1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_

**ORDINANCE NO. 2016-8082**

**AN ORDINANCE TO REPEAL IN ITS ENTIRETY CHAPTER 18 “NOISE”, OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AND REPLACING IT WITH A NEW CHAPTER 18, THAT INCLUDES SECTION 18-7 “LOW VOLUME OUTDOOR AMPLIFIED AND ACOUSTIC SOUND”, PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

**WHEREAS**, there exists the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten the residents and guests of the city, and

**WHEREAS**, the city understands that outdoor dining adds to the ambiance of an establishment, and with that, music played at a low volume can further increase that ambiance, and

**WHEREAS**, Chapter 166, Florida Statutes, authorizes the City Council, acting for the City of Jacksonville Beach, Florida, to adopt Ordinances and Resolutions necessary for the exercise of its powers and to prescribe fines and penalties for the violation of Ordinances in accordance with law, and

**WHEREAS**, through citizen input, the City Council has determined a need to more effectively control and abate noise disturbances in the city, and

**WHEREAS**, the city seeks to protect, preserve and promote the health, safety, welfare, and quality of life of its residents and guests by the reduction, control, and prevention of noise, and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:**

**SECTION 1.** That Chapter 18. Noise of the Code of Ordinances of the City of Jacksonville Beach, Florida is hereby repealed in its entirety, and a new Chapter 18. Noise is hereby adopted and shall read as follows:

**Sec. 18-1. Legislative findings; declaration of necessity.**

It is found and declared that:

- (1) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city is a condition which has existed for some time and the amount and intensity of such noises is increasing;
- (2) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

**Sec. 18-2. - Noncompliance with chapter declared unlawful; exception.**

It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which exceeds the limits set forth in this chapter.

**Sec. 18-3. - Noise limitations.**

- (a) **Definitions.** For the purpose of this section, certain words and phrases used herein are defined as follows:

*A-band level* is the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dB(A).

*Daytime* is defined as 7:00 a.m. to 10:00 p.m. and *nighttime* is defined as 10:00 p.m. to 7:00 a.m. in commercial and manufacturing use occupancies.

*Daytime* is defined as 7:00 a.m. to 10:00 p.m. and *nighttime* is defined as 10:00 p.m. to 7:00 a.m. in residential use occupancies.

*Decibel* is a unit of level equal to ten (10) times the logarithm (base 10) of the ratio of any two (2) quantities proportional to power.

*Emergency work* is the work made necessary to protect persons or property from exposure to danger.

*Noise level* is the sound pressure level as measured in dB(A) by a sound level meter.

*Outdoor restaurant or bar* means any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

*Person* is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

*Sound-level meter* is an instrument including a microphone, an amplifier, an outlet meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

*Sound pressure level*, in decibels, of sound is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

**Plainly Audible shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.**

All time referred to in this chapter shall be the then current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

**(b) Classification of use occupancies; projection of noise from one use to another.**

- (1) *Classification.* For purposes of defining the "use occupancy", all premises containing habitually occupied sleeping quarters shall be considered in residential use.

All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use.

All premises where manufacturing is legally permitted shall be considered manufacturing use.

In cases of multiple uses, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.

- (2) *Projection of noise.* Sound or noise projecting from one use occupancy to another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.

**(c) Measurement of noise.**

- (1) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for sound level meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.
- (2) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

- (3) The measurement shall be made at any point outside of the property line from where the noise is being transmitted.
- (4) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three (3) feet of any ground, wall, floor, ceiling, roof or other plane surface.
- (5) All noise measurements provided for in this chapter will be made by officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this chapter.

**(d) Tables of noise level limits:**

- (1) *Table I.* Table I specifies noise levels which represent limits which if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city which exceeds the noise level limits of Table I except as expressly authorized by this chapter.

**TABLE I**

**Maximum Allowable Noise Level Limits  
in dB(A) for Residential,  
Commercial, and Manufacturing Occupancies**

These levels may not be exceeded more than three (3) times in any continuous sixty-minute period.

District	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Residential	70	65
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Commercial	75	75
Manufacturing	70	65

- (2) *Table II.* Table II specifies noise levels which if produced by moving vehicles will interfere with the peace, quiet, and general welfare of the city and its inhabitants.

**TABLE II**  
**NOISE LEVEL LIMITS FOR**  
**MOVING MOTOR VEHICLES\***

- (1) *Trucks and buses.* Eighty-five (85) dB(A) measured fifty (50) feet from the source.
- (2) *Passenger cars, motorcycles, and other motor vehicles.* Seventy (70) dB(A) measured at fifty (50) feet from the source.

\*The measurement is made as the vehicle drives past. If the reading is above that listed in (1) or (2) of Table II at any time, the vehicle is in violation of this chapter. All distances are measured from the center of vehicle or center of the driving lane in which the vehicle is being driven.

**(e) Motor vehicles.**

- (1) *Stationary vehicles.* It shall be unlawful to start, operate, or perform repair work on a motor vehicle which creates a noise or sound which exceeds the noise level limits in Table II.
- (2) *Moving vehicle.* It shall be unlawful to operate a motor vehicle in such a manner as to exceed the noise level limits of Table II when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

**(f) Building operations.** It shall be unlawful for any person to erect (including excavate), demolish, alter, or repair any building other than between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, or at any time on Sundays or the following observed holidays: New Years Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, and Christmas, except in the case of urgent necessity in the interest of public safety and then only with a permit approved by the city manager, which permit may be renewed for a period of three (3) days or less while emergency continues.

**(g) Exemptions.** The following uses and activities shall be exempt from noise level regulations:

- (1) Air conditioners and lawn mowers when this equipment is functioning in accord with the manufacturers' specifications and with all manufacturers' mufflers and noise reducing equipment in use and in proper operating condition.
- (2) Non-amplified crowd noises resulting from the activities such as those planned by student, governmental or community groups.
- (3) Reserved.
- (4) Noises of safety signals, warning devices and emergency pressure relief valves.

- (5) Noises resulting from any authorized emergency vehicle while responding to an emergency call or acting in time of emergency.
- (6) Noises resulting from emergency work as defined in section 18-3(a).
- (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with sections 18-3(h) (Special Event Permits). Regulation of noises emanating from operations under permit shall be according to the conditions and limits contained in sections 18-3(h).
- (8) Noises made by persons having obtained a permit to use the streets are exempt from Table I.
- (9) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of this chapter. Any aircraft operating under the technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal regulations are also exempt.

**(h) *Special event permits.*** Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter may be made in writing to the city manager or his/her designee. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which the permit shall be effective. The city manager or his/her designee may grant the relief as applied for under the following conditions:

- (1) The city manager or his/her designee may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.
- (2) *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:
  - (a) The function must take place on public property.
  - (b) The function must be staged between the hours of 8:00 a.m. and 10:00 p.m.
  - (c) Functions for which the permits are issued shall be limited to a noise level not to exceed eighty-five (85) dB(A) more than three (3) times in any continuous sixty-minute period, when measured in accordance with section 18-3(c). The city manager or his/her designee may, at his/her sole discretion, establish a lower maximum noise level based on

the location or other relevant circumstances relating to the specific special event or noisemaking device.

**(I) Other.** Special permits for non-entertainment special purposes may be issued under the following conditions:

- (a) 1. If the special purpose relates to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business; or,  
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and,
- (b) If the special purpose be a recurring purpose, that it not recur more often than four (4) times each calendar year; and
- (c) 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or,  
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and,
- (d) Except in emergency situations, as determined by the city manager **or his/her designee**, the special permit may be issued only for hours between 7:00 a.m. and 11:00 p.m. on week days; and,
- (e) Special permits may be issued for no longer than one week, renewable by further application to the city manager **or his/her designee**.
- (f) No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building which at any time exceeds the noise level limits in Table I except those used for emergency warnings.

**Sec. 18-4. - Noises prohibited; unnecessary noise standard; statement of intent; sworn complaint required.**

a. Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Table I or II, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

b. Noises prohibited by this section are unlawful notwithstanding the fact that no violation of section 18-3 is involved, and notwithstanding the fact that the activity complained about is exempted in section 18-3(g). Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive:

- (1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.
- (2) The using, operating or permitting to be placed, used or operated any radio, television, tape or record player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound, any prolonged sounds made by people, and the keeping of any animal or bird which by causing frequent or long continuous noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners thereto.
- (3) Any person making a complaint under this section shall be required to sign a sworn complaint prior to an arrest being made, otherwise no such complaint will be honored.

#### Sec. 18-5. - Violations; penalties.

##### a. Notice of Noise Violation

- (1) When the city manager or an official designated by the city manager determines that there is a violation of the noise level limits contained within Table I in section 18-3(d)(1), he/she shall issue an official Notice of Noise Violation to the person or persons responsible for the noise. The Notice of Noise Violation shall advise the person of the violation of the allowable noise limits, and of the possible penalty if he/she fails to reduce or eliminate the noise to such allowable limits.
- (2) After the person or persons responsible for the noise are given such notice, a reasonable time to comply with the same shall be given. If the limits of Table I in section 18-3(d)(1) continue to be exceeded, a "reasonable time" is instantly. Absent special circumstances, "reasonable time" (where Table I limits are not exceeded) as used in this section is considered fifteen (15) minutes in the case of nonvehicular noise emitters.
- (3) For the purposes of this section, it is sufficient notice for all prohibited noises if the person or persons responsible for any succeeding noises are provided a Notice of Violation of one offending noise of the same type per twenty-four-hour period.
- (4) If a person or persons have been issued one written Notice of Noise Violation, no other notice shall be necessary within that sixty-day period following the notice for enforcement of the provisions of this chapter for any additional violations occurring within the same sixty-day period.

(b) *Arrest; confiscation of noise emitter:*

- (1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the **Notice of Noise Violation** as prescribed in section 18-5(a), the person so **provided a Notice of Violation** and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-11 of the Jacksonville Beach Code of Ordinances. Each day the violation continues shall be considered as a separate offense.
- (2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter or emitters if they are convicted three (3) times under this chapter within a twelve-month period and if the convictions were for noises created by the same or same type of noise emitter.

(c) *Responsibility of owner of property.* The owner, tenant or lessee of property, or a manager, overseer or agent, or any person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the noise is also punished.

(d) *Violation may be declared public nuisance.* The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter **that** endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

**Sec. 18-6. - Mobile noise.**

(a) It shall be unlawful for the driver of a vehicle to operate or permit the operation of any sound amplification system which can be heard **and is plainly audible** outside the vehicle from fifty (50) or more feet while moving or parked on any street, highway, parking lot or other public property within the city.

(b) It shall be unlawful for any person to operate any type of portable sound amplification device so as to emit noise that is **plainly** audible fifty (50) feet or more from the source. Said violation can result in the confiscation of the equipment until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the device within the limits prescribed by this section.

(c) Violations of this section shall not require a warning prior to issuing the citation.

**Sec. 18-7. – Low Volume Outdoor Amplified and Acoustic Sound.**

**(a) Definitions.** For the purpose of this section, certain words and phrases used herein are defined as follows:

***Acoustic sound*** shall mean the sound that solely or primarily uses instruments that produce sound through acoustic means, as opposed to electric or electronic means.

***Alcoholic beverage establishment*** shall mean any commercial establishment located in the city which allows for alcoholic beverages (e.g., beer, wine, or liquor, etc.) to be sold for consumption on the premises.

***Amplified entertainment*** shall mean any type of music or other entertainment delivered through and by an electronic system, including live bands and disc jockeys.

***Amplified Sound*** shall mean any type of sound delivered through and by electric or an electronic system.

***Emergency work*** shall mean the work made necessary to protect persons or property from exposure to danger.

***Enclosed Building*** shall mean a structure with a roof and enclosed walls.

***Entertainment sound*** shall mean any sound originating from an event, performance, or act designed to entertain others.

***Licensed Establishment*** shall mean any business, within the city of Jacksonville Beach, licensed to sell food, beverages, and/or alcoholic beverages. The provisions of this section shall apply to the following state alcoholic beverage license types: **1-COP** (beer only consumption on premises), **2-COP** (beer and wine consumption on premises), **4-COP Quota License** (beer, wine, and liquor package sales and consumption on premises), **4-COP-S** (beer, wine, and liquor consumption on premises in connection with the operation of a hotel, motel, motor court, or condominium), **4-COP-SRX** (beer, wine, and liquor consumption on premises in connection with a restaurant), **4-COP-SBX** (beer, wine, and liquor consumption on premises in connection with a bowling alley), **11-GC** (beer, wine, and liquor consumption on premises in connection with a golf club), **11-C** (beer, wine, and liquor in connection with a bona fide club, including fraternal or benevolent association lodges or clubs, social clubs, and tennis, racquetball, cabana, or beach clubs, for consumption on premises by members and their guests only), **ODP** (beer, wine, and liquor consumption on premises for a bona fide non-profit civic organization for a period not to exceed three (3) days and no more than three (3) times per year), and any other business within the city licensed to sell/distribute food, beverages, or alcoholic beverages.

***Low volume*** shall mean sound played at a level such that a person outside of the property line of the source of the sound, speaking in a normal tone of voice, is plainly audible and can be heard clearly and understandably by another person standing a maxi-

mum of thirty-six inches (36") away from the person speaking, without the aid of a listening device.

*Momentarily* shall mean a very short time equaling less than 30 seconds.

*Noise* shall mean any sound or vibration which may disturb or annoy reasonable persons of normal sensitivities; or causes, or tends to cause, an adverse effect on the public health and welfare; or endangers or injures people; or endangers or injures personal or real property.

*Outdoor gathering area* shall mean the area outside the confines of an enclosed building, and within the property line of the premises, designated for a person or persons to congregate. (e.g., patio, lanai, porch, terrace, veranda, sundeck, deck, courtyard, balcony, etc.)

*Outdoor restaurant or bar* shall mean any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot and has, in place, tables and chairs set up to accommodate patrons for seating, during all hours of operation. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

*Person* is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

*Plainly Audible* shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

*Previously Issued Outside Sound Amplification Permits* defines businesses holding a valid Outside Sound Amplification Permit as of August 1<sup>st</sup>, 2016, and shall be permitted to be subject to the provisions of Ordinance No. 2002-7834 voted into law on June 3<sup>rd</sup>, 2002.

*Property line of the premises* shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

All references to time in this chapter shall be the current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

(b) *Low Volume Outdoor Amplified and Acoustic Sound permits.*

(1) *Permit required.* Any person or business owning or operating a licensed establishment as defined in Section 18-7(a) that is located in the City of Jacksonville Beach, and which provides for low volume outdoor acoustic or amplified sound, shall possess a Low Volume Outdoor Amplified and Acoustic Sound Permit. This permit authorizes licensed establishments to provide outdoor amplified and acoustic entertainment to originate from within the property line of a licensed business, to utilize outdoor sound amplification equipment, and to otherwise permit the generation of amplified sound in unenclosed parts of the licensed premises.

(2) *Exemptions.*

- a. Indoor emergency signaling devices alerting an emergency shall not be deemed amplified or acoustic sound.
- b. An exterior burglar alarm shall not be deemed amplified and acoustic sound.

(3) *Standards applicable to indoor entertainment sound.*

- a. Except as otherwise permitted in this section, no licensed establishment in the City of Jacksonville Beach shall convey any entertainment sound, originating from within the licensed establishment's enclosed building, to the outside confines of the enclosed building, including any outdoor gathering areas.
- b. No licensed establishment shall be in violation of the noise restrictions in Section 18-4, *Noises prohibited*.
- c. Amplified and acoustic entertainment sound originating within the enclosed building housing the licensed establishment shall not be conveyed outside the building by any means, including but not limited to open windows, open doors except entrance doors when opened momentarily, as needed for ingress and egress of persons, or any other means which conveys or facilitates amplified music from inside the confines of the building to the outside of the building, unless such sound is low volume, as defined in section 18-7(a).

(4) *Standards applicable to outdoor entertainment sound.*

- a. Any licensed establishment providing outdoor amplified or acoustic sound, including background music, must possess a valid Outdoor Amplified and Acoustic Sound Permit.
- b. Licensed establishments holding an Low Volume Outdoor Amplified and Acoustic Sound Permit shall not generate any sound within or from their outdoor dining area that exceeds a level such that a person outside of the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood, over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.

- c. Outdoor amplified and acoustic sound shall be limited to sound producing devices such as low volume amplified sound, low volume acoustic, low volume orchestral instrument, or low volume stringed instruments.
- d. Outdoor disc jockeys and amplified bands are strictly prohibited, unless specifically allowed in writing as part of a permit issued pursuant to Section 4-5 Temporary extension of licensed premises of Chapter 4 Alcoholic beverages.
- e. All sound must originate within the property line of the licensed establishment which holds a Low Volume Outdoor Amplified and Acoustic Sound Permit.
- f. Any sound originating within the enclosed building of a licensed establishment shall not be conveyed to the outdoor dining area unless that music is electronically channeled through the low volume speakers, and shall not generate any sound that exceeds a level such that a person outside the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.
- g. Operation of any amplified and acoustic sound between the hours of 10:00 p.m. and 8:00s a.m. the following day is prohibited.
- h. Removing and/or resituating outdoor seating and tables as permitted, while generating outdoor amplified and acoustic sound, is prohibited.
- i. Previously Issued Outside Sound Amplification Permits. Beginning on August 1, 2002, persons or businesses owning or operating an outdoor restaurant, bar, or any other establishment utilizing outdoor sound amplification equipment; and is otherwise permitted to generate amplified sound or noise in unenclosed parts of a premise, is required to possess a valid Previously Issued Outside Sound Amplification Permit.

(5) Renewal for Previously Issued Outside Sound Amplification Permit.

- a. Renewal for a Previously Issued Outside Sound Amplification Permits shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit.
- b. Persons or businesses possessing a previously issued Outside Sound Amplification Permit shall file with the city, a sketch plan showing the proposed location and orientation of the equipment to be used, the street address and specific location at that address for the proposed use, the hours of operation of the equipment, a valid business tax receipt for licensed establishment, verification of compliance by licensed establishment with city zoning, code regulations, certi-

fication from the applicant that the equipment will be monitored to ensure that it is operated within the decibel levels permitted, and The name and street address where notices related to this section are to be mailed.

- c. For outdoor restaurants, bars or other establishments adjacent to a public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean, the amplification devices shall be directed away from any adjacent public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean; and otherwise operated in accordance with this chapter.
- d. Any person or business owning or operating an outdoor restaurant, bar, or other establishment located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, said centerline being the western corporate limit of the City of Jacksonville Beach; as measured in a straight and continuous line from any point on or at the property line of such restaurant, bar, or other establishment, to the nearest point of the centerline of the Atlantic Intracoastal Waterway, may make application for an outdoor sound amplification permit. If such permit is granted by the City of Jacksonville Beach, the person or business is permitted to generate amplified sound or noise in unenclosed parts of a premise up to, but not to exceed, a maximum decibel level of 40 dB(A). The maximum decibel level established in this section applies only to outdoor restaurants, bars, or other establishments located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, as defined above. All other outdoor restaurants, bars, or other establishments throughout the City of Jacksonville Beach must meet the requirements for maximum noise levels set forth in section 18-3(d)(1); Table 1.
- e. No permit shall be valid for the operation of any outside sound amplification equipment between the hours of 10:00 p.m. and 10:00 a.m. the following day.
- f. A permit shall be effective for a one-year period beginning on October 1<sup>st</sup> of each year, and is renewable for additional one-year periods upon reapplication and payment of the annual fee.
- g. Permit not transferrable. Any change in the ownership, name, and/or location of a licensed establishment with a valid Previously Issued Outside Sound Amplified Permit, as described in this section, shall cause the permit to be immediately invalid, and will only be issued as new Low Volume Outdoor Amplified and Acoustic Sound Permit.

**(6) Application for a Low Volume Outdoor Amplified and Acoustic Sound Permit.**

- a. An application for a low volume outdoor amplified and acoustic sound permit shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit. The permit shall be issued within thirty (30) days of receipt of a complete application.

b. *Minimum information required.* Any licensed establishment wishing to produce low volume outdoor amplified and acoustic sound shall complete an application form provided by the city. An annual fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the permit. The application form shall include, but not be limited to, the following information:

i. Name and street address of the owner of the licensed establishment;

ii. Valid business tax receipt for licensed establishment;

iii. The hours of operation of the licensed establishment and a listing of the hours of operation of the entertainment sound equipment proposed to be used under the Outdoor Amplified and Acoustic Sound Permit, if approved;

iv. Verification of compliance by licensed establishment with city zoning and code regulations;

v. Specific type of state alcoholic beverage license held by the licensed establishment, if applicable;

vi. A sketch plan of the proposed location and orientation of the equipment to be used, the proposed orientation of outdoor seating and tables, and including a certification signed by the applicant that the equipment will be monitored to ensure that it is operated within the sound levels permitted; and

vii. The name and street address where notices related to this section are to be mailed.

The city clerk shall review the application and, if the application is complete, and the licensed establishment is in compliance with the Code of Ordinances, a permit shall be issued allowing low volume outdoor amplified and acoustic sound. A Low Volume Outdoor Amplified and Acoustic Sound Permit is issued by the city clerk. The permit shall contain conditions and limitations as listed in this ordinance including, but not limited to, hours of operation.

(7) *Permit not transferrable.* Any change in the ownership of a licensed establishment after the issuance of the permit shall cause the permit to be immediately invalid and cause the new owner to reapply for the permit. The city shall be notified im-

mediately, and the licensed establishment shall apply for a new permit if a transfer of ownership of the licensed establishment has occurred. Until such time as the new owner of the licensed establishment makes application for a new permit and is approved for the permit, the privilege of low volume amplified and acoustic sound shall be suspended.

(8) *Renewal.* Such permit shall be renewed by the city annually on or before the 31th day of December, provided that none of the following has occurred:

- a. The permit has been suspended by the special magistrate and the conditions of the suspension have not been met;
- b. A transfer of ownership of the licensed establishment has occurred, and this information was not provided to the city; or
- c. A change in location of the licensed establishment has occurred, and this information was not provided to the city.

(9) *Expiration ("Sunset") date.* Section 18-7(6), Low Volume Outdoor Amplified and Acoustic Sound Permit, shall expire on December 31, 2018, unless the city council of the City of Jacksonville Beach amends this section by extending the expiration or repealing this paragraph in its entirety.

(10) *Notice of violation, hearing, and penalties.*

- a. *Low Volume Outdoor amplified sound is a privilege.* The ability of a licensed establishment to generate outdoor amplified and acoustic sound, during the licensed establishment's hours of operation, on any day of the week is hereby declared to be and is a privilege subject to suspension, and no person may reasonably rely upon a continuation of that privilege. As a condition of the continuation of the privilege, licensed establishments are required to take all necessary steps to minimize the sound level originating from the licensed establishment. The following are representative, but not all-inclusive, of activities that may result in suspension of the privilege of amplified and acoustic sound:
  - i. Violations of any provisions of Chapter 18 of the City of Jacksonville Beach Code of Ordinances, relating to noise and sound limitations;
  - ii. Failure to obtain a Low Volume Outdoor Amplified and Acoustic Sound Permit or failure to renew the permit as required; or

- iii. Failure to renew a Previously Issued Outside Sound Amplification Permit as required.
- b. Action by city manager. The Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit can be revoked at any time by the city manager or his/her designee if the operation fails to follow the terms of the permit or for a violation of any city ordinance. The city manager's or his/her designee revocation of a permit may be appealed to the special magistrate.
- c. Notice of violations, hearings, and penalties.
  - i. Finding of violation. In order to invoke the enforcement provisions of this section, a violation must be verified and documented by a police officer or code enforcement officer. A violation by a licensed establishment of any section of this ordinance shall result in a written notice of violation, issued by a police officer. The notice of violation shall be served by hand delivery or certified mail to the owner, proprietor, manager, or highest-ranking employee then on the premises of the licensed establishment. Issuance of a notice of violation of this section shall not prevent the filing of charges against the licensed establishment or any person for any other violation of the Code of Ordinances or state statutes.
  - ii. Jurisdiction of the special magistrate. A notice of violation shall be taken before the city's special magistrate for consideration of suspension of the licensed establishment's Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit. The special magistrate shall exercise jurisdiction over such matters as set forth in Article VI, Section 2-170 of the Code of Ordinances of the City of Jacksonville Beach.
  - iii. Action by the special magistrate. Upon completion of the hearing, the special magistrate shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall be suspended. A suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit for a first finding by the special magistrate of a violation shall be not less than thirty (30) days nor more than ninety (90) days. A second and any subsequent finding by the special magistrate of a violation of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit within one year (three hundred sixty-five (365) days) of the date of completion of the most recent

suspension period shall result in a suspension of not less than ninety (90) days nor more than one hundred eighty (180) days. In addition to any suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, the special magistrate may issue a fine of not more than five hundred dollars (\$500.00) per violation of this section. The special magistrate shall base his/her ruling upon substantial, competent evidence presented that supports a finding of non-compliance with this section. The special magistrate's written order of suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall state the effective date of the suspension and shall give the licensed establishment ten (10) calendar days of the notice of suspension.

iv. *Failure of license holder to appear.* If a licensed establishment served with a notice of violation fails to appear at the hearing after having received proper notice, the special magistrate shall take testimony from city staff and other relevant testimony, as available, and shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Outdoor Acoustic Sound Permit shall be suspended for a period of time as set forth in this section. A ruling that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit be suspended shall take effect on the tenth calendar day after the order is issued. The enforcement of such order shall be stayed if the licensed establishment files a request for a rehearing with the city clerk's office before the date the order is scheduled to take effect. In such case, the licensed establishment shall be rescheduled for a hearing before the special magistrate. At that hearing, the special magistrate shall take testimony from the licensed establishment, and other relevant testimony, as available, and shall deliver a ruling upholding the previous order suspending the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, amending the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, or rescinding the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit. If the special magistrate upholds a suspension of the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, such suspension shall take effect ten calendar day after the ruling is issued.

v. *Modification of ownership status to avoid suspension.* Any licensed establishment that has had a Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit suspended cannot

avoid the consequences of the special magistrate's action by changing its business name or corporate status.

vi. Alternative enforcement procedures. The enforcement procedures contained herein are alternative procedures, and the city reserves the right to arrest, prosecute, or take action utilizing any other enforcement procedures authorized by law.

**Sec. 18-8. – Severability**

Each separate provision of chapter 18 and the ordinances herein shall be deemed to be severable. If any provision, word or section within this chapter or ordinances herein is deemed unconstitutional or otherwise invalid, such determination shall not affect the validity of any other provisions, section or word of this chapter or ordinances.

**SECTION 2.** That all ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

**SECTION 3.** This ordinance shall take effect upon its adoption in accordance with the law.

**DONE IN OPEN MEETING THIS \_\_\_ DAY OF \_\_\_\_\_, A.D. 2016.**

\_\_\_\_\_  
William C. Latham, MAYOR

\_\_\_\_\_  
Laurie Scott, CITY CLERK

~~SECTION 1. That Chapter 18. Noise of the Code of Ordinances of the City of Jacksonville Beach, Florida is hereby repealed in its entirety, and a new Chapter 18. Noise is hereby adopted and shall read as follows:~~

### ~~Chapter 18-NOISE~~

#### ~~Sec. 18-1. Legislative findings; declaration of necessity.~~

~~It is found and declared that:~~

- ~~(1) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city is a condition which has existed for some time and the amount and intensity of such noises is increasing;~~
- ~~(2) The making, creation or maintenance of such excessive unnecessary, unnatural or unusually loud noises which are prolonged, unusual or unnatural in their time, place and use affect and are detrimental to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city;~~
- ~~(3) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.~~

#### ~~Sec. 18-2. Noncompliance with chapter declared unlawful; exception.~~

~~It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which exceeds the limits set forth in this chapter.~~

#### ~~Sec. 18-3. Noise limitations.~~

~~(a) *Definitions.* For the purpose of this section, certain words and phrases used herein are defined as follows:~~

~~*A-band level* is the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dB(A).~~

~~*Daytime* is defined as 7:00 a.m. to 10:00 p.m. and *nighttime* is defined as 10:00 p.m. to 7:00 a.m. in commercial and manufacturing use occupancies.~~

~~Daytime is defined as 7:00 a.m. to 10:00 p.m. and nighttime is defined as 10:00 p.m. to 7:00 a.m. in residential use occupancies.~~

~~Decibel is a unit of level equal to ten (10) times the logarithm (base 10) of the ratio of any two (2) quantities proportional to power.~~

~~Emergency work is the work made necessary to protect persons or property from exposure to danger.~~

~~Noise level is the sound pressure level as measured in dB(A) by a sound level meter.~~

~~Outdoor restaurant or bar means any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.~~

~~Person is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.~~

~~Sound level meter is an instrument including a microphone, an amplifier, an outlet meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.~~

~~Sound pressure level, in decibels, of sound is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.~~

~~All time referred to in this chapter shall be the then current legal time in the City of Jacksonville Beach.~~

~~All technical definitions are in accordance with American Standard S1.1 1960 entitled, "Acoustical Terminology."~~

~~(b) Classification of use occupancies; projection of noise from one use to another:~~

~~(1) Classification. For purposes of defining the "use occupancy", all premises containing habitually occupied sleeping quarters shall be considered in residential use.~~

~~All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use.~~

~~All premises where manufacturing is legally permitted shall be considered manufacturing use.~~

~~In cases of multiple uses, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.~~

~~(2) Projection of noise. Sound or noise projecting from one use occupancy to another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.~~

~~(c) *Measurement of noise.*~~

~~(1) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for sound level meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.~~

~~(2) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.~~

~~(3) The measurement shall be made at any point outside of the property line from where the noise is being transmitted.~~

~~(4) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three (3) feet of any ground, wall, floor, ceiling, roof or other plane surface.~~

~~(5) All noise measurements provided for in this chapter will be made by the city manager or other officials of the city designated by the city manager who are qualified to operate the apparatus used to make the measurements as provided for in this chapter.~~

~~(d) *Tables of noise level limits:*~~

~~(1) *Table I.* Table I specifies noise levels which represent limits which if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city which exceeds the noise level limits of Table I except as expressly authorized by this chapter.~~

**TABLE I**

**Maximum Allowable Noise Level Limits  
in dB(A) for Residential,  
Commercial, and Manufacturing Occupancies**

These levels may not be exceeded more than three (3) times in any continuous sixty-minute period.

District	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Residential	70	65
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Commercial	75	75
Manufacturing	70	65

- (2) ~~Table II.~~ Table II specifies noise levels which if produced by moving vehicles will interfere with the peace, quiet, and general welfare of the city and its inhabitants.

**TABLE II  
NOISE LEVEL LIMITS FOR  
MOVING MOTOR VEHICLES\***

- (1) ~~Trucks and buses.~~ Eighty five (85) dB(A) measured fifty (50) feet from the source.
- (2) ~~Passenger cars, motorcycles, and other motor vehicles.~~ Seventy (70) dB(A) measured at fifty (50) feet from the source.

\*The measurement is made as the vehicle drives past. If the reading is above that listed in (1) or (2) of Table II at any time, the vehicle is in violation of this chapter. All distances are measured from the center of vehicle or center of the driving lane in which the vehicle is being driven.

(e) ~~Motor vehicles.~~

- (1) ~~Stationary vehicles.~~ It shall be unlawful to start, operate, or perform repair work on a motor vehicle which creates a noise or sound which exceeds the noise level limits in Table II.
- (2) ~~Moving vehicle.~~ It shall be unlawful to operate a motor vehicle in such a manner as to exceed the noise level limits of Table II when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle trav-

~~el. Normal operation includes normal acceleration, deceleration and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.~~

~~(f) *Building operations.* It shall be unlawful for any person to erect (including excavate), demolish, alter, or repair any building other than between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, or at any time on Sundays or the following observed holidays: New Years Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, and Christmas, except in the case of urgent necessity in the interest of public safety and then only with a permit from the city manager, which permit may be renewed for a period of three (3) days or less while emergency continues.~~

~~(g) *Exemptions.* The following uses and activities shall be exempt from noise level regulations:~~

- ~~(1) — Air conditioners and lawn mowers when this equipment is functioning in accord with the manufacturers' specifications and with all manufacturers' mufflers and noise reducing equipment in use and in proper operating condition.~~
- ~~(2) — Non-amplified crowd noises resulting from the activities such as those planned by student, governmental or community groups.~~
- ~~(3) — Reserved.~~
- ~~(4) — Noises of safety signals, warning devices and emergency pressure relief valves.~~
- ~~(5) — Noises resulting from any authorized emergency vehicle while responding to an emergency call or acting in time of emergency.~~
- ~~(6) — Noises resulting from emergency work as defined in section 18-3(a).~~
- ~~(7) — Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with sections 18-3(h) and 18-3(i). Regulation of noises emanating from operations under permit shall be according to the conditions and limits contained in sections 18-3(h) and 18-3(i).~~
- ~~(8) — Noises made by persons having obtained a permit to use the streets are exempt from Table I.~~
- ~~(9) — Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of this chapter. Any aircraft operating under the technical difficulties in any kind of distress, under emergency orders of air traffic control~~

~~or being operated pursuant to and subsequent to the declaration of an emergency under federal regulations are also exempt.~~

~~(h) Outside sound amplification permits. Beginning on August 1, 2002, any person or business owning or operating an outdoor restaurant, bar, or any other establishment utilizing outdoor sound amplification equipment, and is otherwise permitted to generate amplified sound or noise in unenclosed parts of a premise, is required to obtain an outside sound amplification permit.~~

~~(1) Application for an outside sound amplification permit shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit. The permit shall be issued within thirty (30) days of receipt of a complete application.~~

~~(2) An applicant for an outside sound amplification permit shall submit a sketch plan showing the proposed location and orientation of the equipment to be used, the street address and specific location at that address for the proposed use, the hours of operation of the equipment, and certification from the applicant that the equipment will be monitored to ensure that it is operated within the decibel levels permitted.~~

~~(3) For outdoor restaurants, bars or other establishments adjacent to a public right of way, public easement, public property, or public or private body of water other than the Atlantic Ocean, the amplification devices shall be directed away from any adjacent public right of way, public easement, public property, or public or private body of water other than the Atlantic Ocean; and otherwise operated in accordance with this chapter.~~

~~(4) Any person or business owning or operating an outdoor restaurant, bar, or other establishment located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, said centerline being the western corporate limit of the City of Jacksonville Beach, as measured in a straight and continuous line from any point on or at the property line of such restaurant, bar, or other establishment, to the nearest point of the centerline of the Atlantic Intracoastal Waterway, may make application for an outdoor sound amplification permit. If such permit is granted by the City of Jacksonville Beach, the person or business is permitted to generate amplified sound or noise in unenclosed parts of a premise up to, but not to exceed, a maximum decibel level of 40 dB(A). The maximum decibel level established in this section applies only to outdoor restaurants, bars, or other establishments located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, as defined above. All other outdoor restaurants, bars, or other establishments throughout the City of Jacksonville Beach must~~

~~meet the requirements for maximum noise levels set forth in section 18-3(d)(1); Table 1.~~

- ~~(5) No permit shall be valid for the operation of any outside sound amplification equipment between the hours of 10:00 p.m. and 10:00 a.m. the following day.~~
- ~~(6) A permit shall be effective for a one year period beginning on October 1<sup>st</sup> of each year, and is renewable for additional one year periods upon reapplication and payment of the annual fee.~~
- ~~(7) Suspension of outside sound amplification permit.
  - ~~a. If any person or business violates the permit restrictions established for outside sound amplification, a written warning will be given to the person or business identifying the nature of the violation.~~
  - ~~b. If a second violation occurs at the location within thirty (30) days of delivery of the written warning, the permit for outside sound amplification shall be suspended for a period of fourteen (14) days, effective upon delivery of written notice thereof.~~
  - ~~c. If three violations occur at the location within a sixty (60) day period, the permit for outside sound amplification shall be suspended for the remainder of the one year period of the permit, effective upon written notice thereof.~~
  - ~~d. Any person whose permit is suspended may appeal within ten (10) days of receiving notice of the suspension. A hearing shall be held by the code enforcement board as soon as is practical, but not more than thirty (30) days from the date of receipt of a written request for a hearing. The permittee may present evidence on his behalf at the hearing and may be represented by counsel at the hearing, but the formal rules of evidence shall not apply. The code enforcement board shall affirm, modify, or reverse the order of suspension, but may not increase the suspension to one greater than that originally imposed. The decision of the hearing shall be determined the final administrative action.~~
  - ~~e. All notices required hereunder shall be deemed delivered upon hand delivery to the owner or any other person in control of the permitted location.~~~~

~~(I) *Special event permits.* Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter may be made in writing to the city manager or his duly authorized representative. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which the permit shall be effective. The city manager or his duly authorized representative may grant the relief as applied for under the following conditions:~~

- ~~(1) The city manager may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.~~
- ~~(2) *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:~~
- ~~—(a) The function must take place on public property.~~
  - ~~—(b) The function must be staged between the hours of 9:00 a.m. and 11:00 p.m.~~
  - ~~—(c) Functions for which the permits are issued shall be limited to a noise level not to exceed eighty five (85) dB(A) more than three (3) times in any continuous sixty minute period, when measured in accordance with section 18-3(c). The city manager or his/her designee may, at his/her sole discretion, establish a lower maximum noise level based on the location or other relevant circumstances relating to the specific special event or noisemaking device.~~
- ~~(3) *Other.* Special permits for non-entertainment special purposes may be issued under the following conditions:~~
- ~~——(a) 1. If the special purpose relates to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business; or,~~
    - ~~2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and,~~
  - ~~(b) If the special purpose be a recurring purpose, that it not recur more often than four (4) times each calendar year; and~~
  - ~~——(c) 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or,~~
    - ~~2. If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and,~~
  - ~~(d) Except in emergency situations, as determined by the city manager, the special permit may be issued only for hours between 7:00 a.m. and 11:00 p.m. on week days; and,~~
  - ~~(e) Special permits may be issued for no longer than one week, renewable by further application to the city manager.~~

- ~~(4) — No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building which at any time exceeds the noise level limits in Table I except those used for emergency warnings.~~

~~Sec. 18-4. — Noises prohibited; unnecessary noise standard; statement of intent; sworn complaint required.~~

~~a. Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Table I or II, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.~~

~~b. Noises prohibited by this section are unlawful notwithstanding the fact that no violation of section 18-3 is involved, and notwithstanding the fact that the activity complained about is exempted in section 18-3(g). Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive:~~

- ~~(1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.~~
- ~~(2) The using, operating or permitting to be placed, used or operated any radio, television, tape or record player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound, any prolonged sounds made by people, and the keeping of any animal or bird which by causing frequent or long continuous noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners thereto. Quieter standards are expected during nighttime hours.~~
- ~~(3) Any person making a complaint under this section shall be required to sign a sworn complaint prior to an arrest being made, otherwise no such complaint will be honored.~~

~~Sec. 18-5. — Violations; penalties.~~

a. ~~Warnings: Notice of Noise Violation~~

- ~~(1) Except for persons or businesses with a valid outside sound amplification permit as provided in section 18-3(h), when the city manager or an official designated by the city manager determines in compliance with section 18-3(c), that there is a violation of the noise level limits contained herein, he/she shall issue an official warning to the person or persons responsible for the noise. The warning shall advise the person of the violation of the allowable noise limits, and of the possible penalty if he/she fails to reduce or eliminate the noise to such allowable limits.~~
- ~~(2) After the person or persons responsible for the noise are given such warning a reasonable time to comply with the same shall be given. If the limits of Table I in section 18-3(d)(1) are exceeded, a "reasonable time" is instanter. Absent special circumstances, "reasonable time" (where Table I limits are not exceeded) as used in this section is considered fifteen (15) minutes in the case of nonvehicular noise emitters.~~
- ~~(3) For the purposes of this section, it is sufficient warning for all prohibited noises if the person or persons responsible for any succeeding noises are warned of one offending noise of the same type per twenty four hour period.~~
- ~~(4) If a person or persons have been issued one written warning no other warning shall be necessary within that sixty day period following the warning for enforcement of the provisions of this chapter for any additional violations occurring within the same sixty day period.~~

~~(b) Arrest; confiscation of noise emitter:~~

- ~~(1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the warning as prescribed in section 18-5(a), the person so warned and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-11 of the Jacksonville Beach Code of Ordinances. Each day the violation continues shall be considered as a separate offense.~~
- ~~(2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter or emitters if they are convicted three (3) times under this chapter within a twelve month period and if the convictions were for noises created by the same or same type of noise emitter. Upon the third conviction, the appropriate court shall confiscate the noise emitter and deposit it with the city manager, or his/her designated representative, until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the emitter within the limits prescribed by this chapter. Any further conviction shall result in permanent confiscation by the appropriate court.~~
- ~~(3) The city manager shall notify the operator of any device which produces noise in excess of the limits set by Table I in section 18-3(d)(1) that it is a health hazard. The city manager, or his/her designated representative, shall have the power and~~

authority to have the device removed or toned down instanter until such time as it can be otherwise operated in compliance with this chapter.

~~(c) *Responsibility of owner of property.* The owner, tenant or lessee of property, or a manager, overseer or agent, or any person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the noise is also punished.~~

~~(d) *Violation may be declared public nuisance.* The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.~~

#### ~~Sec. 18-6. Mobile noise.~~

~~(a) It shall be unlawful for the driver of a vehicle to operate or permit the operation of any sound amplification system which can be heard outside the vehicle from fifty (50) or more feet while moving or parked on any street, highway, parking lot or other public property within the city.~~

~~(b) It shall be unlawful for any person to operate any type of portable sound amplification device so as to emit noise that is audible fifty (50) feet or more from the source. Said violation can result in the confiscation of the equipment until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the device within the limits prescribed by this section.~~

~~(c) Violations of this section shall not require a warning prior to issuing the citation.~~

#### ~~Sec. 18-7. Separability.~~

~~Each separate provision of chapter 18 shall be declared independent of all other provisions herein and if any provision of chapter 18 is declared to be invalid, all other provisions thereof shall remain valid and enforceable.~~

~~—SECTION 3. That all ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.~~

~~—SECTION 4. This ordinance shall take effect upon its adoption in accordance with the law.~~