



## **SPECIAL CITY COUNCIL MEETING**

November 17, 2021 at 6:30 PM

**City Council Chambers, 16 Colomba Rd.**

**DeBary, Florida 32713**

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### **AGENDA**

#### **CALL TO ORDER**

Invocation

Flag Salute

#### **ROLL CALL**

**PUBLIC PARTICIPATION:** For any items **ON THE AGENDA**, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

#### **DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11)**

#### **PRESENTATIONS**

Sheriff Mike Chitwood, Volusia Sheriff's Office

#### **NEW BUSINESS**

1. City Manager is requesting City Council award the construction contract for 317 Glen Club Drive – urgent drainage improvements to the lowest responsive and responsible bidder, THADCON, LLC.
2. Staff is requesting the Mayor and City Council approve Resolution No. 2022-02 to amend the fiscal year 2020-2021 budget.
3. Staff is requesting City Council discussion and feedback on a draft ordinance to limit automotive sales locations, clarifying the definition of automotive service stations, and creating provisions for nonconforming uses.
4. Staff is requesting City Council discussion and feedback on a draft ordinance, regulating mobile food dispensing vehicles.
5. Staff is requesting City Council discussion and feedback on a draft ordinance for nuisance abatement.

#### **COUNCIL MEMBER REPORTS / COMMUNICATIONS**

Member Reports/ Communications

- A. Mayor and Council Members
- B. City Manager
- C. City Attorney

#### **DATE OF UPCOMING MEETING / WORKSHOP**

Regular City Council Meeting December 1, 2021, 6:30 p.m.

#### **ADJOURN**

If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing he/she will need a record of the proceedings, and for such purpose he/she 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 (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.



**City Council Meeting  
City of DeBary  
AGENDA ITEM**

<p><b>Subject:</b> Award Contract for 317 Glen Club Drive Urgent Drainage Improvements to THADCON, LLC</p> <p><b>From:</b> Carmen Rosamonda, City Manager</p> <p><b>Meeting Hearing Date</b> November 17, 2021</p>	<p><b>Attachments:</b>  <input type="checkbox"/> Ordinance  <input checked="" type="checkbox"/> Proposal – Scope of Services  <input type="checkbox"/> Supporting Documents/ Contracts  <input type="checkbox"/> Other</p>
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**REQUEST**

City Manager is requesting City Council to Award the Construction Contract for the 317 Glen Club Drive – Urgent Drainage Improvements to the lowest responsive and responsible bidder, THADCON, LLC.

**PURPOSE**

The purpose of the 317 Glen Club Drive – Urgent Drainage Improvements is to replace existing stormwater piping that has collapsed causing subsidence on private property.

**CONSIDERATIONS**

On September 22, 2021, City Council approved a waiver of the purchasing procedures for the 317 Glen Club Drive – Urgent Drainage Improvements. City Council required two quotes from qualified contractors. Contract Bid Documents for the project were developed by Staff. Four qualified local Contractors were contacted and requested to submit a proposal for the project.

On November 1, 2021 at 3:00 PM, the City of DeBary received three (3) sealed bids at City Hall. All bids were unsealed and read aloud at the public bid opening with representatives of the bidders present. The results of the bid are;

<u>Contractor</u>	<u>Bid Amount</u>
1. THADCON, LLC	\$156,463.00
2. GPS Civil Construction	\$178,431.00
3. GREGORI Construction	\$244,839.00

THADCON, LLC has dual Florida licensing as a General Contractor and an Underground Utility Contractor. THADCON, LLC is headquartered in Daytona Beach, Florida and has performed similar stormwater projects for the City of Daytona Beach and Daytona Beach Shores, Florida, as well as other Central Florida public and private entities.

KHARE Construction Services, LLC conducted the public bid opening and tabulated all bids in spreadsheet format, confirming mathematic accuracy and responsiveness with the Instructions to Bidders. Required Bid Documents are received and confirmed.

KHARE Construction Services, LLC, Task Order 1121-01 is attached for City Council approval. The purpose of Task Order 1121-01 is to establish a budget for Construction Management and Inspection Services for the project. The proposed budget amount of Work Order 1121-01 is not to exceed \$16,124.00.

**COST/FUNDING**

Funding for the project is budgeted from the Stormwater Fund.

**RECOMMENDATION**

It is recommended that the City Council: Award the Contract for Construction of the 317 Glen Club Drive – Urgent Drainage Improvements, to the lowest responsive and responsible bidder, THADCON, LLC for the low bid amount of \$156,463.00, with a Contingency Budget of 10% or \$15,646.30 to be included for the total budgeted amount of \$172,109.30.

City Council is recommended to approve Work Order No. 1121-01 in the amount of \$16,124.00, to KHARE Construction Services, LLC for Construction Management and Inspections Services as related to the 317 Glen Club Drive – Urgent Drainage Improvements.

**IMPLEMENTATION**

THADCON, LLC has responded to the Urgent nature of the project and has expressed its intent to begin the Work by the earliest possible date which is tentatively scheduled for November 29, 2021.

**ATTACHMENTS**

KHARE – Proposal and Scope of Services  
KHARE – Work Order No. 1121-01

**Exhibit B  
WORK ORDER  
FOR  
MASTER AGREEMENT FOR PUBLIC WORK PROJECTS  
CONSTRUCTION INSPECTION SERVICES  
CONSTRUCTION COSTS LESS THAN \$2,000,000**

**WORK ORDER NO.:** KHARE – 1121-01

**PROJECT:** 317 Glen Club Drive – Urgent Pipe Replacement  
Construction Management and Inspection Services

**CITY:** City of DeBary, Florida

**COUNTY:** Volusia County

**CONSTRUCTION MANAGER:** KHARE Construction Services, LLC.

**CONSULTANT'S ADDRESS:** 1457 Mt. Laurel Drive  
Winter Springs, Florida 32708

Execution of the Work Order by CITY shall serve as authorization for the CONSTRUCTION MANAGER to provide for the above project, professional services as set out in the Scope of Services attached as Exhibit "A," to that certain Agreement of January 20, 2021 between the CITY and the CONSTRUCTION MANAGER and further delineated in the specifications, conditions and requirements stated in the following listed documents which are attached hereto and made a part hereof.

**ATTACHMENTS:**

TIME SHEETS  
 TASK ORDER  
 SCOPE OF SERVICES

The CONSULTANT shall provide said services pursuant to this Work Order, its attachments and the above-referenced Agreement which is incorporated herein by reference as if it had been set out in its entirety. Whenever the Work Order conflicts with said Agreement, the Agreement shall prevail.

**TIME FOR COMPLETION:** The work authorized by this Work Order shall be commenced and completed as directed by the City Manager.

**METHOD OF COMPENSATION:**

(a) This Work Order is issued on a:

- FIXED FEE BASIS
- TIME BASIS METHOD WITH A NOT-TO-EXCEED AMOUNT
- TIME BASIS METHOD WITH A LIMITATION OF FUNDS AMOUNT

(b) If the compensation is based on a "Fixed. Fee Basis, then the CONSTRUCTION MANAGER shall perform all work required by this Work Order for the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). In no event shall the CONSTRUCTION MANAGER be paid more than the Fixed Fee Amount.

(c) If the compensation is based on a "Time- Basis Method" with a Not-to-Exceed Amount, then the CONSULTANT shall perform all work required by this Work Order for a sum not to exceed **SIXTEEN THOUSAND ONE HUNDRED TWENTY FOUR DOLLARS and ZERO CENTS. (\$16,124.00)**. The CONSTRUCTION INSPECTION AND MANAGEMENT compensation shall be based on the actual work required by this Work Order as directed by the City Manager.

(d) If the compensation is based on a "Time Basis Method" with a Limitation of Funds Amount, then the CONSULTANT is not authorized to exceed the limitation of Funds amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) without prior written approval of the CITY. Such approval, if given by the CITY, shall indicate a new Limitation of Funds amount. The CONSTRUCTION MANAGER shall advise the CITY whenever the CONSTRUCTION MANAGER has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The City shall compensate the CONSTRUCTION MANAGER for the actual work performed under this Work Order.

Payment to the CONSTRUCTION MANAGER shall be made by the CITY in strict accordance with the payment terms of the above-referenced Agreement.

It is expressly understood by the CONSTRUCTION MANAGER that this Work Order, until executed by the CITY, does not authorize the performance of any services by the CONSTRUCTION MANAGER and that the CITY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSTRUCTION MANAGER to perform the services called for under this Work Order if it is determined that to do so is in the best interest of the CITY.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Work Order for the purposes stated herein.

KHARE Construction Services, LLC

By: \_\_\_\_\_

Kevin J Hare, President

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

CITY OF DEBARY, FLORIDA

By: \_\_\_\_\_

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

November 5, 2021

Carmen Rosamonda, City Manager  
City of DeBary  
16 Colomba Road  
DeBary, Florida 32713

Work Order 1121-01  
Proposal for Construction Management and Inspection Services  
City of DeBary  
317 Glen Club Drive – Urgent Drainage Improvements

Good day Carmen,

Thank you for the opportunity to make this Proposal to the City of DeBary to provide professional Construction Management and Inspection Services for the 317 Glen Club Drive – Urgent Drainage Improvements project. The Scope of Services for Construction Management and Inspection Services is described below as activities that are documented by detailed timesheets for Work completed and estimated billable hours for construction services through completion of the project as necessary to achieve results as desired by the City.

Summary of Services

The Construction Management Services proposed herein by KHARE Construction Services, LLC for the City of DeBary is described below;

**Pre-Construction Phase – October 1, 2021 to November 5, 2021.**

KHARE Construction Services, LLC began preliminary construction services for the 317 Glen Club Drive – Urgent Drainage Improvements on August 4, 2021 as directed by the City Manager. Construction services completed from August 4, 2021 to September 30, 2021 was funded by Work Order 0921-05.

Construction Management and Inspection Services beginning October 1, 2021 through November 5, 2021 are proposed for funding under Work Order 1121-01. Construction services consisted of development of the Contract Documents, meetings with residents for notification of the proposed project, meetings with City Engineer to finalize design, conduct pre-bid meetings with Contractors, conduct bid opening, review bids for accuracy and compliance, coordination with Manager and Staff, draft Agenda Item for recommendation to City Council, upload Agenda Item and supporting documents to MUNICODE Meetings. Services provided are documented by detailed timesheets for the period October 1, 2021 to November 5, 2021 amount to a total cost of \$6,844.00.

**Total Pre-Construction Phase for the period, October 1, 2021 to November 5, 2021 – \$6,844.00**

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**Pre-Construction Phase – November 8, 2021 to Contractor Mobilization – ESTIMATED**

Prepare for presentation to City Council. Meet with City Manager to confirm presentation outline. Meet with IT Director to prepare for visual display of project plan for City Council information. Present recommendation of award to City Council at November 17, 2021 meeting. With City Council approval, prepare original Contracts and send to Contractor for execution. After receiving executed Contracts, coordinate with City Clerk to have Construction Contract executed by Mayor and placed in City Contract File. Estimate of billable time – **8 hours**

Preliminary work to coordinate start up and scheduling with the Construction Contractor. Coordinate and conduct the Pre-Construction Conference at City Hall. Contact and meet with residents for project start up. Estimate of billable time – **4 hours**

**Construction Phase – Expected Start Date (November 29, 2021) through Contract Completion and Final Payment - ESTIMATED**

Estimate of billable time for construction administration, construction monitoring, site Inspections and documentation for the Construction Contract duration, 30 calendar days – 4 weeks - estimated at 15 hours per week. Estimate of billable time - **60 hours**.

Administration of monthly invoices submitted by Contractor – **8 hours**

**Summation of estimated billable time;** Pre-construction Phase 11/8/21 to Contractor Mobilization, and Construction Phase services – **80 hours total**.

**Total Construction Phase – \$9,280.00**

**Total Pre-Construction Phase - October 1, 2021 to November 5, 2021 – \$6,844.00**

**TOTAL – TASK ORDER 1121-01 - \$16,124.00.**

Summary of Limitations

The following items are not applicable to this proposal and the Construction Manager will not be responsible for the following;

1. Project design documents that are signed and sealed by the City's Professional Engineer.
2. Construction Contractor - "Means and Methods".
3. Construction Contractor - Safety Requirements.
4. Construction Contractor - Maintenance of Traffic.

If I may assist in your consideration of this proposal in any way, please let me know. Thanks again.

Kevin J. Hare  
Construction Manager





## City Council Meeting City of DeBary AGENDA ITEM

<b>Subject:</b> Resolution 2022-02 FY 2020-2021 Budget Amendment	<b>Attachments:</b> <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other
<b>From:</b> Elizabeth Bauer, Finance Director	
<b>Meeting Hearing Date</b> November 17, 2021	

### **REQUEST**

Staff is requesting the Mayor and City Council approve Resolution 2022-02 to amend the fiscal year 2020-2021 budget.

### **PURPOSE**

This agenda item is needed at this time to adjust certain line items of the fiscal year 2020-2021 budget.

### **CONSIDERATIONS**

Four funds will be affected by this amendment, General Fund, Solid Waste Fund, Stormwater Fund and Southwest Sector Mobility Fee Fund. The adjustments can be accommodated using revenue and expenditure accounts without reducing reserves.

- General Fund – The half cent sales tax collections came in over our conservative budget and can cover several items that are over budget in the General Fund. The additional half cent sales tax revenue will cover overages for the Muse property purchase, fire department repairs & maintenance, design of the new fire station, animal control costs, and operating cost for parks & recreation department. Building permit revenue and related expenses are being increased. Adjustments are also needed for the donated vehicle for the volunteer firefighter’s vehicle and recognizing deferred revenue and related expenditure for the West Highbanks turn lane.
- Solid Waste Fund – The revenue and expenditures are being increased due to growth of approximately 222 residential units within the city.
- Stormwater Fund – The refunding of the Series 2016 Bond was replaced with the Series 2021 Bond. The bond proceeds, refunding payment and costs of issuance need to be budgeted.
- Southwest Sector Mobility Fee Fund – The budgeted revenue and expenditures need to be adjusted based on actual collections and payments due under the Rivington Mobility Fee Credit Agreement. The reserves are also being increased in this fund.

**RECOMMENDATION**

It is recommended that the City Council approve Resolution 2022-02 to Amend the FY 2020-2021 budget.

**ATTACHMENTS**

Resolution 2022-02

Schedule A

**RESOLUTION 2022-02**

**A RESOLUTION OF THE CITY OF DEBARY, FLORIDA; AMENDING THE FISCAL YEAR 2020-2021 BUDGET, CHANGING CERTAIN REVENUES, EXPENDITURES AND RESERVES AND PROVIDING FOR AN EFFECTIVE DATE.**

**IT IS HEREBY RESOLVED BY THE CITY OF DEBARY AS FOLLOWS:**

**SECTION 1.** The City Council hereby ratifies and adopts the amendment hereto attached to and made part of this Resolution as Schedule "A" to the City of DeBary's Fiscal Year 2020-2021 Annual Operating Budget.

**SECTION 2.** This Resolution shall take effect immediately upon its adoption.

**ADOPTED BY** the City Council of the City of DeBary, Florida this 17th day of November, 2021.

**CITY COUNCIL  
City of DeBary**

\_\_\_\_\_  
Karen Chasez, Mayor

Attest:

\_\_\_\_\_  
Annette Hatch, CMC, City Clerk

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

SEAL:

City of DeBary

Budget Amendment for FY 2021

Presented to City Council 11/17/2021

### Schedule A

Account number	Type	Description	Budget	Actual	Variance	Amendment	Final Budget	Notes
001-3300-335-1800	R	Half Cent Sales Tax	863,641.00	1,357,000.49	493,359.49	274,000.00	1,137,641.00	Increased Collection
001-3200-322-0000	R	Building Permits	600,000.00	1,225,620.65	625,620.65	650,000.00	1,250,000.00	Increased building dept
001-2401-524-3110	E	Building - Prof. Svc.	480,000.00	981,936.52	501,936.52	520,000.00	1,000,000.00	revenue with related exp
001-1900-519-6100	E	Gen Gov't - Land	-	257,788.25	257,788.25	258,000.00	258,000.00	Muse Property Purchase
001-2200-522-4610	E	Fire - Repair + Maint Bldgs	6,000.00	35,102.20	29,102.20	17,000.00	23,000.00	Bay Doors + Termites
001-2200-522-6200	E	Fire - Bldgs	110,000.00	48,419.95	(61,580.05)	56,000.00	166,000.00	Neel-Schaffer CC 4/7/21
001-2200-522-4660	E	Fire - Equipment Repair	25,000.00	37,990.67	12,990.67	13,000.00	38,000.00	Engine Repair Overage
001-6200-562-3413	E	Animal Control	74,200.00	85,193.95	10,993.95	11,000.00	85,200.00	Prior Yr Catch Up Inv
001-7203-572-4610	E	Parks Maint - Bldgs + Grounds	114,750.00	133,834.68	19,084.68	20,000.00	134,750.00	Town hall reno overage
001-7203-572-4660	E	Parks Maint - Equip	22,700.00	28,951.69	6,251.69	7,000.00	29,700.00	Well 7.7k/other equip repairs
001-7203-572-5200	E	Parks Maint - Operating Sup	66,500.00	88,407.94	21,907.94	22,000.00	88,500.00	Chem/clay/supplies
001-3600-366-0000	R	Donations	-	6,500.00	6,500.00	5,000.00	5,000.00	Fire Volunteer Truck
001-2200-522-6400	E	Fire - Equipment Capital	31,690.00	36,681.70	4,991.70	5,000.00	36,690.00	Fire Volunteer Truck
001-3600-369-9000	R	Misc Income	19,500.00	72,000.00	52,500.00	72,000.00	91,500.00	W Highbanks Turnlane
001-4100-541-6300	E	Public Works - Inf	916,140.00	73,156.49	(842,983.51)	72,000.00	988,140.00	Teds - W Highbanks 7/7/21
101-3400-343-4000	R	Solid Waste Svc Charges	1,810,000.00	1,836,788.17	26,788.17	20,000.00	1,830,000.00	Growth in units
101-3400-343-4100	R	Solid Waste Non Tax Coll	-	32,954.34	32,954.34	30,000.00	30,000.00	Growth in units
101-3400-534-3400	E	Solid Waste - Contracted Svcs	1,325,000.00	1,372,842.59	47,842.59	50,000.00	1,375,000.00	Growth in units
120-3800-385-0000	R	Proceeds - Refunding Bond	-	2,685,000.00	2,685,000.00	2,685,000.00	2,685,000.00	Debt refinancing
120-3800-538-7100	E	Debt Svc - Principal	616,000.00	3,264,000.00	2,648,000.00	2,648,000.00	3,264,000.00	Debt refinancing
120-3800-538-7300	E	Debt Svc - Cost of Issue	-	36,000.00	36,000.00	37,000.00	37,000.00	Debt refinancing
127-3200-324-3100	R	Impact Fees - Mobility - Res	-	390,168.00	390,168.00	400,000.00	400,000.00	Adj residentail revenue
127-3200-324-3200	R	Impact Fees - Mobility - Comm	20,000.00	-	(20,000.00)	(20,000.00)	-	Adj residentail revenue
127-4100-541-4900	E	Other Chrgs - Mobility Fee Credits	-	232,922.00	232,922.00	280,000.00	280,000.00	Mobility credit payments due
127-9001-590-9900	E	Reserves	113,193.00	-	(113,193.00)	100,000.00	213,193.00	Increase reserve



**City Council Meeting  
City of DeBary  
AGENDA ITEM**

<b>Subject:</b> Automotive Sales Discussion	<b>Attachments:</b> <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Supporting Documents/ Contracts <input checked="" type="checkbox"/> Other
<b>From:</b> Matt Boerger, Growth Management	
<b>Meeting Hearing Date</b> November 17, 2021	

**REQUEST**

A request for feedback on a draft ordinance to limit automotive sales locations, clarifying the definition of automotive service stations, and creating provisions for nonconforming uses.

**PURPOSE**

The purpose of this item is to explore whether to move forward with a draft ordinance to limit automotive sales to industrial zoning districts, amend the definition of automotive service stations, and to provide for discontinuance and amortization of nonconforming uses.

**CONSIDERATIONS**

The City has identified, during its previous strategic planning session, that it would like to revitalize the US 17-92 corridor. Much of this area is developed with antiquated uses and structures that will likely not conform with the City’s vision for future revitalization.

More specifically, automotive sales are permitted in the B-4 (General Commercial), B-5 (Heavy Commercial), and I-1 (Light Industrial) classifications. This use would likely conflict with revitalization efforts and future investment in the area. If there is consensus amongst the City Council, staff will draft an ordinance to remove automotive sales as a permitted use in the B-4 and B-5 classifications. This would primarily affect the US 17-92 corridor.

While the City may phase out automobile sales in certain areas, it should be noted that existing automobile sales would need to be vested, or “grandfathered” in their right to continue between users (owners and/or operators) for a grace period. Any amended language to the existing permitted uses would need to provide for discontinuance of nonconforming uses and amortization of nonconforming uses. If the operation of a nonconforming use has been discontinued for a period of six (6) months or greater, the use would be considered abandoned and would not be permitted to be reestablished on the property. Automotive sales that become nonconforming uses shall cease operations prior to the 10<sup>th</sup> anniversary of the code amendment causing them to be nonconforming uses, although the City Council may agree to extend the amortization of any individual property’s nonconforming automotive sales use.

**COST/FUNDING**

N/A

**RECOMMENDATION**

It is recommended that City Council provide Staff direction on whether move forward with a draft ordinance phasing out automobile sales in certain areas of the City.

**IMPLEMENTATION**

If an Ordinance is approved, the amended language will be incorporated into the Land Development Code.

**ATTACHMENTS**

N/A

**SECTION 2 ADOPTION.** Chapter I, Section 1-3 of the City of DeBary Land Development Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not being included are not being amended):

Sec. 1-3. – Definitions and rules of construction

\*\*\*

(c) *Words and terms defined.* The following words and phrases, as used in this Code, shall have the following meanings:

\*\*\*

*Automobile service station.*

- (1) *Type A* shall mean any premises used for the servicing of motor vehicles, including engine tuneups and repair; wheel balancing, alignment, brake service; the retail sale of fuel, lubricants and other products necessary to the operation and maintenance of motor vehicles, and the installation of such products, plus the sale of refreshments, but excluding the rebuilding or reconditioning of engines, and body repair. Automobile, boat, motorcycle, mobile home and recreational vehicles sales not included.
- (2) *Type B* shall mean in addition to Type A uses, any repair, rebuilding or reconditioning of any motor vehicle. Automobile, boat, motorcycle, mobile home and recreational vehicle sales not included.

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**SECTION 3 ADOPTION.** Chapter I, Section 1-12 of the City of DeBary Land Development Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 1-12. - Nonconforming lots, structures, and uses.

(a) *Nonconforming lots.*

- (1) A lot or parcel of land is nonconforming if it does not meet the minimum area and dimensional requirements of the district in which it is located.
- (2) Any lot or parcel made nonconforming solely as a result of eminent domain proceedings instituted by any governmental agency, or through a voluntary conveyance in lieu thereof, shall be deemed to be a conforming lot or parcel for all purposes. However, all development activity on such a lot or parcel shall be in accordance with district yard requirements at the time of development.
- (3) Where two or more existing nonconforming lots with continuous frontage are under the same ownership, or where a nonconforming lot has continuous frontage with a large tract under the same ownership, nonconforming lots shall be combined to form one or more building sites meeting the lot requirements of the district.
- (4) Development of a single-family dwelling shall be permitted on a nonconforming lot of at least 5,000 square feet and 50 feet or more in width at the front building line in any district in which the use is permitted, if remedy of the nonconformity by combination with other lots under the same owner is not available.

(5) The City Council shall have jurisdiction to authorize variances from the requirements of this subsection.

(b) *Nonconforming buildings and structures.*

(1) A building or structure is nonconforming if it does not meet the building setback, height, or bulk limitations of this Code.

(2) An existing nonconforming building or structure may be maintained and repaired, but shall not be structurally added onto or altered to further the nonconformance unless the additions or alterations are for the purpose of a conforming use of the building or structure.

(3) Existing nonconforming buildings and structures shall be made to comply with these regulations if the value of the buildings and structures on a lot after the damage is less than 50 percent of the value immediately preceding the damage as determined by the county property appraiser. This provision shall not apply to the reconstruction of a legal nonconforming single-family dwelling.

(c) *Nonconforming uses.*

(1) A use of land or of any building or structure is nonconforming if any of the following conditions apply:

a. The use is not currently permitted in the district in accordance with this Code.

b. The density of the use exceeds the density currently permitted in the district in accordance with this Code.

c. The site does not meet the applicable off-street parking requirements of this Code.

(2) An existing nonconforming use of any building or structure shall not be extended, enlarged, or expanded.

(3) An existing nonconforming use of any building or structure shall not be rebuilt or repaired if the value of the buildings and structures on a lot after the damage is less than 50 percent of the value immediately preceding the damage as determined by the county property appraiser. This provision shall not apply to the reconstruction of a legal nonconforming single-family dwelling.

(4) Modifications shall not be granted from any of these restrictions. No modification shall be permitted from dimensional and density restrictions in order to reestablish a nonconforming use.

(5) *Discontinuance.* If the operation or use of a lawful *nonconforming* use on any property (or portion thereof) has been discontinued for a continuous period of six (6) months, such *nonconforming* use will be deemed abandoned and may not be reestablished on such property (or portion thereof) without further action by the city. Upon abandonment of a nonconforming use, the use of the land, buildings and accessory structures (or portions thereof) shall be subject to all regulations specified by this code for the zoning district in which such property is located. The vacating of premises or a building or non-operative status of the use shall be evidence of a discontinued use. The city manager shall have the authority to render a decision as to whether there is a discontinuance of a lawful *nonconforming* use upon a property for the proscribed period. The city manager's written



decision pursuant to this subsection may be appealed to the city council pursuant to section 1-7.

- (d) *Vested development.* There are within the City, various properties, the development of which was previously declared to be "vested" under the regulations of the county. It is the intent of this Code that such "vested" status shall not be changed solely by virtue of the adoption of this Code.
- ~~(d) *Vested development.* There are within the City, various properties, the development of which was previously declared to be "vested" under the regulations of the county. It is the intent of this Code that such "vested" status shall not be changed solely by virtue of the adoption of this Code.~~
- (e) For vested developments that are legal non-conforming uses, the City Manager may permit the addition of accessory structures including fences as well as aesthetic site improvements such as landscaping, if such improvements meet the following conditions and are not for the purpose of expanding or enlarging the nonconforming use.
- (1) The non-conforming use shall not be enlarged or increased nor extended to occupy a greater area of land than was originally occupied.
  - (2) The improvement must comply with all other applicable laws and regulations including overlay district requirements and required setbacks.
  - (3) No new non-conformities shall be created.
  - (4) The maximum lot coverage must not exceed that required by the site's zoning classification.
- (f) *Nonconforming site improvements (not including structure).* Where an existing site improvement (landscaping, parking lot layout, etc.) is non-conforming with the current regulations related to such, nothing in this section shall prohibit minor site improvements that result in the reduction of this non-conformity.
- (g) *Illegal uses.* This section does not authorize the continuance of any use or nonconformity which was not validly in existence at the time of the adoption of this Code.
- (h) *Amortization of certain nonconforming uses.* Notwithstanding any provision to the contrary in this code, any automotive, motorcycle, watercraft, recreational vehicle or other vehicular sales use that becomes a nonconforming use as the result of any amendment to this code shall be amortized and cease operations prior to the tenth (10<sup>th</sup>) year anniversary of the code amendment causing such use to become a nonconforming use. After the aforesaid tenth (10<sup>th</sup>) year anniversary of the use becoming a nonconforming use due to a code amendment, such use will become an illegal use and shall be discontinued. Upon request and for good cause shown by a property owner impacted by this subsection, the city council may, by written agreement, agree to extend the amortization of such use and impose conditions for the granting of such extension.

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**SECTION 4 ADOPTION.** Chapter 3, Article III, Division 3 of the City of DeBary Land Development Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 3-102. – B-4 General Commercial Classification.

(b) *Permitted principal uses and structures.* In the B-4 General Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

\*\*\*

~~Automobile and motorcycle vehicles sales.~~

\* \* \* \* \*

Sec. 3-103 – B-5 Heavy Commercial Classification.

(b) *Permitted principal uses and structures.* In the B-5 Heavy Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

\*\*\*

~~Automotive, boat, motorcycle, mobile home and recreational vehicle sales.~~

\* \* \* \* \*

Sec. 3-107. – I-1 Light Industrial Classification.

(b) *Permitted principal uses and structures.* In the I-1 Light Industrial Classification, no premises shall be used except for the following industrial uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Permitted and special exception uses must also be consistent with the uses permitted by the property's future land use designation on the City's adopted Future Land Use Map. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

\*\*\*

Automotive, boat, motorcycle, mobile homes and recreational vehicles sales.



**City Council Meeting  
City of DeBary  
AGENDA ITEM**

<b>Subject:</b> Mobile Food Dispensing Vehicles	<b>Attachments:</b> <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Supporting Documents/ Contracts <input checked="" type="checkbox"/> Other
<b>From:</b> Matt Boerger, Growth Management	
<b>Meeting Hearing Date</b> November 17, 2021	

**REQUEST**

A request for feedback on a draft ordinance, regulating mobile food dispensing vehicles.

**PURPOSE**

The purpose of this ordinance is to receive feedback on whether to establish regulations of mobile food dispensing vehicles.

**CONSIDERATIONS**

Currently, mobile food dispensing vehicles and regulations thereof are absent in the Land Development Code and the Code of Ordinances.

The proposed ordinance establishes in what zoning classifications mobile food dispensing vehicles shall be permitted. Regulations regarding administrative procedures, permitted hours of operation, frequency and duration, permitted and prohibited locations, standards for the operation of mobile food dispensing vehicles, and defines prohibited conduct. Standards for the granting of Special Exceptions for mobile food dispensing vehicles, when appropriate, are established. The sign code would be amended to add regulations to signs for food trucks.

Food vendors have a right to operate in municipalities and that certain regulations thereof are necessary to protect the health, safety, and welfare of the citizens. Licensing of mobile food dispensing vehicles is preempted to the State; and

**COST/FUNDING**

N/A

**RECOMMENDATION**

It is recommended that City Council provide direction to Staff on whether to bring forward an Ordinance regulating food trucks.

**IMPLEMENTATION**

If the Ordinance is approved, the amended language will be incorporated into the Land Development Code and the Code of Ordinances.

**ATTACHMENTS**

Draft ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEBARY, FLORIDA, CREATING LAND DEVELOPMENT REGULATIONS FOR MOBILE FOOD DISPENSING VEHICLES BY AMENDING CHAPTER 2, ARTICLE III, DIVISION 3, SECTION 2-153 OF THE CITY OF DEBARY CODE OF ORDINANCES, CONCERNING SCHEDULE OF VIOLATIONS AND PENALTIES, SECTION 1-3, DEFINITIONS, CHAPTER 3, ARTICLE III, DIVISION 3 REGARDING ZONING CLASSIFICATIONS OF THE CITY OF DEBARY LAND DEVELOPMENT CODE, CHAPTER 3, ARTICLE III, DIVISION 4 REGARDING SPECIAL EXCEPTIONS, BY ADDING A NEW SUBSECTION 3-139 TO CHAPTER 3, ARTICLE III, DIVISION 4, CITY OF DEBARY LAND DEVELOPMENT CODE TO CREATE SUPPLEMENTAL REGULATIONS CONCERNING MOBILE FOOD DISPENSING VEHICLES, BY AMENDING CHAPTER 5, ARTICLE II, CITY OF DEBARY LAND DEVELOPMENT CODE CONCERNING SIGNAGE REGULATIONS, BY CREATING A NEW CHAPTER 5, ARTICLE II, CITY OF DEBARY LAND DEVELOPMENT CODE CONCERNING SIGNAGE REGULATIONS FOR MOBILE FOOD DISPENSING VEHICLES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 509.102, Florida Statutes, the licensing of mobile food dispensing vehicles is preempted to the state and are regulated as public food service establishments; and

**WHEREAS**, the City desires to amend the Land Development Code to make zoning and land development regulations for mobile food dispensing vehicles consistent with Section 509.102, Florida Statutes; and

**WHEREAS**, the City Council determines that this Ordinance is in the best interest of the health, safety and welfare of the citizens of the City of DeBary and is consistent with the Comprehensive Plan.

**IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:**

**SECTION 1 RECITALS.** The above recitals are true and correct and incorporated herein as legislative findings of the City Council.

**SECTION 2 ADOPTION.** Chapter 2, Article III, Division 3, Section 2-153 of the Code of Ordinances of the City of DeBary, Florida, is hereby amended as follows (words that are ~~stricken~~

~~out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 2-153. – Schedule of violations and penalties.

The city manager is hereby authorized to establish and implement a schedule of violations and penalties. Revisions, alternation, deletions and amendments to the schedule of violations and penalties may hereafter be approved via resolution by the city council.

Chapter/Section	Code Requirement	Class
Section 811	Parking and storage of vehicles, shelters or watercraft	Class I
Section 30-36	Property maintenance, weeds, accumulation of waste, rubble, debris, storage of junk, trash debris or litter.	Class I
Section 30-104	Abandoned vehicles prohibited	Class I
Section 14	Buildings and building regulations	Class I
Ordinance 11-99, sections 5 and 6 and LDC, Sec. 5-34 and Sec. 5-35	Violations of the City of DeBary Sign Regulations; Prohibited and temporary signs	Class I
Code of Ordinances, section 30-13 through 30-170	Noise: Violation of City of DeBary Noise Ordinance	Class I
LDC, per zoning and any applicable overlay districts	Exterior storage or display in commercial/industrial zoning districts not permitted per City Code	Class II
Code of Ordinances, section 30-111	Major repairs of boats and motor vehicles in a residential area	Class II
LDC, section 3-127	Violations of section 3-127, LDC, Home Occupations	Class II
Code of Ordinance section 10-46	Animals: Barking dogs, birds or other animals creating a nuisance.	Class II
Code of Ordinances, Chapter 18, Article I	Conducting a business, profession or occupation without a valid Business Tax Receipt	Class II
<u>LDC, section 3-139</u>	<u>Mobile food dispensing vehicles</u>	<u>Class II</u>
LDC, per zoning designation of property	Operating an illegal designated use	Class III
LDC, zoning regulations	Residential Zoning: Using a single-family residence as a rooming house or multi-family dwelling.	Class III
LDC, section. 3-130	Occupancy or storage of a mobile home or motor home, other than permitted by code.	Class III
Code or Ordinances, Chapter 30, Article 7	Illegal discharges into a drainage system	Class IV
F.S. ch. 515 and Code of Ordinances section 14-73	Swimming pool not completely enclosed by a fence or screen enclosure.	Class IV
Code of Ordinance, section 14-87	Excavation and/or fill operation without valid permit or approval.	Class IV
Code of Ordinance, section 30-224	Hazardous/unsanitary/unsafe conditions of buildings or structures; as well as electrical, gas, mechanical and plumbing systems	Class IV

**SECTION 3 ADOPTION.** Chapter 1, Section 1-3 of the Land Development Code of the City of DeBary, Florida, is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 1-3. - Definitions and rules of construction.

\*\*\*

(c) Words and terms defined. The following words and phrases, as used in this Code, shall have the following meanings:

\*\*\*

Mobile food dispensing vehicle means any vehicle that is a licensed public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal, or as may be from time to time defined in section 509.102, Florida Statutes.

\*\*\*

**SECTION 4 ADOPTION.** Chapter 3, Article III, Division 3, Land Development Code of the City of DeBary, Florida, is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 3-83 – P Public Use Classification

(c) *Permitted special exceptions.* Additional regulations/requirements governing permitted special exceptions are located in section 3-134.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-100 – B-2 Neighborhood Commercial Classification

(c) *Permitted special exceptions.* Additional regulations/requirements governing permitted special exceptions are located in section 3-134.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-101. – B-3 Shopping Center Classification.

(b) *Permitted principal uses and structures.* In the B-3 Shopping Center Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-102. – B-4 General Commercial Classification

(b) *Permitted principal uses and structures.* In the B-4 General Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-103. – B-5 Heavy Commercial Classification

(b) *Permitted principal uses and structures.* In the B-5 Heavy Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-104. – B-6 Highway Interchange Commercial Classification.

(b) *Permitted principal uses and structures.* In the B-6 Highway Interchange Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager:

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-106. – B-9 General Office Classification

(b) *Permitted principal uses and structures.* In the B-9 General Office classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

Mobile food dispensing vehicles.

\* \* \* \* \*

Sec. 3-107. – I-1 Light Industrial Classification

(b) *Permitted principal uses and structures.* In the I-1 Light Industrial Classification, no premises shall be used except for the following industrial uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Permitted and special exception uses must also be consistent with the uses permitted by the property's future land use designation on the City's adopted Future Land Use Map. Also, reference Article, II Overlay Districts, for any additional applicable regulations.

Mobile food dispensing vehicles.



**SECTION 5 ADOPTION.** Chapter 3, Article III, Division 4, Section 3-134 of the Land Development Code of the City of DeBary, Florida, is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 3-134. – Special exceptions

The following uses or structures are permitted as special exceptions only when listed as permitted special exceptions in Chapter 3, Article II, Overlay Districts, and Chapter 3, Article III, Division 3, Zoning Classifications:

(21) Mobile food dispensing vehicles

a. P Public Use Classification.

1. Notwithstanding the restrictions provided for in Sec. 3-139(d), the City Council shall determine the permitted hours of operation, frequency, and duration that mobile food dispensing vehicles shall be granted in the Public Use classification.
2. The prohibited locations provided for in Sec. 3-139(e)(2) shall be enforced unless waived by the City Council in writing in conjunction with the Special Exception.
3. The applicant shall obtain a City of DeBary Business Tax-Receipt as prescribed in Article I of Chapter 18 of the City of DeBary Code of Ordinances and Sec. 3-139(c).
4. Prohibited conduct as provided for in Sec. 3-139(h) shall apply and shall not be waived.

b. B-2 Neighborhood Commercial Classification.

1. The applicant shall obtain a City of DeBary Business Tax-Receipt as prescribed in Article I of Chapter 18 of the City of DeBary Code of Ordinances and Sec. 3-139(c).
2. Notwithstanding the restrictions provided for in Sec. 3-139(d), the City Council shall determine the permitted hours of operation, frequency, and duration that mobile food dispensing vehicles shall be granted in the Neighborhood Commercial Classification, provided that said variations to said restrictions shall not be less restrictive than what is provided in this code.
3. The prohibited locations provided for in Sec. 3-139(e)(2) shall not be waived. Additional prohibited locations may be added by the City Council as a condition to granting the Special Exception.
4. The standards for operation provided for in Sec. 3-139(f) shall not be waived. Additional standards of operation may be added by the City Council as a condition to granting the Special Exception.

5. Prohibited conduct as provided for in Sec. 3-139(h) shall apply and shall not be waived.

c. Prohibited locations waived. The prohibited locations provided for in Sec. 3-139(e)(2) may be permitted by Special Exception by the City Council for a mobile food dispensing vehicle, unless the property in which a mobile food dispensing vehicle is being requested is zoned B-2.

d. If the terms of the Special Exception do not address a relevant requirement, restriction, or element provided for in Sec. 3-139, then the operation of the mobile food dispensing vehicle shall default to what is required in that section.

**SECTION 6 ADOPTION.** Chapter 3, Article III, Division 4, Land Development Code of the City of DeBary, Florida, is hereby amended to create a new Section 3-139 to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 3-139 – Mobile Food Dispensing Vehicles

(a) Purpose and intent.

It has been found that mobile food vendors have a right to operate in municipalities and that certain regulations thereof are necessary to protect the health, safety, and welfare of the residents of the City of DeBary and members of the general public. It is therefore the intent of this section to establish appropriate times, locations, standards for operations of mobile food dispensing vehicles, and procedures for application for a Business Tax-Receipt in connection thereof.

(b) Applicability

The provisions of this section shall apply and shall not apply as prescribed in Florida Statute 509.013.

(c) Procedures

Mobile food dispensing vehicles may operate in the City of DeBary in compliance with the following procedures:

(1) Submit an application for a City of DeBary Business Tax-Receipt as prescribed in Article I of Chapter 18 of the City of DeBary Code of Ordinances, as well as all applicable documents described in the application furnished by the City of DeBary.

(2) Provide a copy of the following documents upon submittal of application for Business Tax-Receipt:

a. Copy of mobile food dispensing vehicle license granted by the Department of Business and Professional Regulation (DBPR) as prescribed in Florida Statute 509.241.

b. Proof of satisfactorily completed required inspections as prescribed in Florida Statute 509.032

- c. Fire code inspection form provided by the City of Orange City Fire Department verifying that the mobile food dispensing vehicle has passed all required inspections.
- d. Proof of approval by the Florida Department of Health.
- e. A notarized letter of authorization from the owner explicitly permitting the operations of the requested food truck on their property. If the applicant is the property owner, then a warranty deed verifying ownership shall be submitted.

(3) Any other permits or licenses applicable to the application shall be acquired prior to a Business Tax-Receipt being issued.

(4) All required fees, taxes, and outstanding fines shall be paid, and a mobile food dispensing vehicle shall not be in operation until such fees, taxes, and fines are paid.

(d) Hours of operation, frequency, duration

(1) Hours of operation. Mobile food dispensing vehicles shall not operate at any time other than the below prescribed hours. Mobile food dispensing vehicles are permitted to begin setting up to one hour before the earliest time permitted on that day and removed no more than one hour after the latest permitted hour on that day:

- a. Sunday: 9:00 A.M. until 9:00 P.M.
- b. Monday: 7:00 A.M. until 9:00 P.M.
- c. Tuesday: 7:00 A.M. until 9:00 P.M.
- d. Wednesday: 7:00 A.M. until 9:00 P.M.
- e. Thursday: 7:00 A.M. until 9:00 P.M.
- f. Friday: 7:00 A.M. until 10:00 P.M.
- g. Saturday: 9:00 A.M. until 10:00 P.M.

(2) Frequency. No parcel may host more than one (1) food truck for more than one (2) day per calendar week, with the exception of parcels with a host business with one hundred (100) or more full time equivalent employees per 8-hour shift, which may have up to three (3) mobile food dispensing vehicles operating simultaneously once per calendar week.

(3) Duration. A mobile food dispensing vehicle may not be located on the same parcel for more than 24 hours in a single calendar week.

(4) Exception. This subsection does not apply to mobile food dispensing vehicles participating in a special event hosted by the City of DeBary.

(e) Locations, permitted and prohibited.

(1) Permitted locations. Mobile food dispensing vehicles shall not be permitted on any properties unless they are located in one of the following zoning classifications:

- a. P as a Special Exception.
- b. B-2 as a Special Exception.

- c. B-3 as a permitted use.
- d. B-4 as a permitted use.
- e. B-5 as a permitted use.
- f. B-6 as a permitted use.
- g. B-9 as a permitted use.
- h. I-1 as a permitted use.
- i. Active BPUDs, IPUDs, and MPUDs with a Special Event permit.
- j. Sites, regardless of zoning classification, located in the Transit Oriented Development (TOD) overlay district with a Special Event permit required.
- k. Other sites as granted by Special Event permits at the City of DeBary's discretion.

(2) Prohibited locations. Mobile food dispensing vehicles, regardless of zoning classification, shall not be located on any properties or sites that contain one or more of the following conditions, unless a Special Exception in accordance with section 3-134(21) is obtained:

- a. Unimproved properties.
- b. Properties that do not contain an active commercial or industrial principal use.
- c. Properties, regardless of zoning classification, where any dwelling units are located.
- d. Sites that are within one hundred fifty (150) feet of the boundaries of any parcel that is zoned for residential use, or contains an active residential use.
- e. Sites that are within three hundred (300) feet of the front entrance of any licensed restaurant located in a principal structure during the hours said restaurant is open for business.
- f. Otherwise permissible properties and sites where existing paved parking does not meet the standards of the Land Development Code, or if the mobile food dispensing vehicle would reduce parking below the minimum standards of the Land Development Code.

(f) Standards for operation of mobile food dispensing vehicles

(1) Temporary dining and seating. One ten (10) foot by ten (10) foot table per vehicle, no more than twenty (20) feet.

(2) Maximum vehicle size: A vending booth or conveyance shall not exceed a size of ten feet in width and 20 feet in length. If the vending conveyance is a trailer, the trailer shall be unhitched from the motorized vehicle and stabilized prior to operating the vending conveyance and it is the trailer alone that will be considered the vending conveyance for purposes of the size limitation. Tent structures shall not be permitted.

(3) Clearance. Mobile food dispensing vehicles shall have a minimum clearance from the following:

- a. Applicable setbacks for the parcel's zoning classification
- b. Buildings: Ten (10) feet.
- c. Handicap parking spaces and access ramps and ingress and egress for handicapped users: Ten (10) feet.
- d. Loading zones: Ten (10) feet.
- e. Driveways: Ten (10) feet.
- f. Driveway throats: Ten (10) feet.
- g. Drive aisles: Five (5) feet.
- h. Fire lanes: Fifteen (15) feet
- i. Fire control devices: Fifteen (15) feet
- j. Public rights-of-way: Five (5) feet.
- k. Combustible material: Twenty-five (25) feet.

(4) Sound. The mobile food dispensing vehicle site shall conform to the standards of Article IV, Chapter 30 of the City of DeBary Code of Ordinances.

(5) Lights. The mobile food dispensing vehicle site shall conform to the standards of subsection 6 of Section 30-36 of Article II of Chapter 30 of the City of DeBary Code of Ordinances.

(6) Trash disposal and pickup. From setup to vacating, trash disposal and pickup shall have at least one trash receptacle per mobile food dispensing vehicle and at least one trash receptacle per ancillary seating area. Each receptacle shall be no less than 32 gallons. Receptacles shall be emptied and removed from the site when the vehicle has been removed from it.

(g) Exceptions

(1) Mobile Food Dispensing Vehicles operating under a Special Event permit shall abide by the terms of said permit notwithstanding this code. The terms of the Special Event permit may differ from subsections (d), (e), and (f) of this section.

(h) Prohibited conduct

(1) It is prohibited to violate the provisions of this article.

(2) The sale of alcoholic beverages or spirits without a license provided by the State of Florida.

(3) Discharge or cause to discharge water, grease, or other liquid waste anywhere on the site.

(4) Creating or causing hazardous or unsafe conditions, excess noise, excess heat or glare, vibration, or electronic interference.

(5) Free-standing barbecue grills.

- (6) Selling of products to occupants of motor vehicles.
  - (7) Vacating a site without removing and disposing of all trash or materials remaining from activities associated with that of the mobile food dispensing vehicle.
  - (8) Sell anything other than that which the vendor has been licensed by the State of Florida to sell.
  - (9) Dump waste or wastewater on site or at any other place in the City of DeBary other than where licensed to do so.
  - (10) Connecting to permanent water and sewer utilities.
  - (11) Connecting to permanent electrical utilities via an extension cord greater than ten (10) feet.
  - (12) Utilizing sound amplification.
  - (13) The preparation of food outside of the vehicle.
- (i) Enforcement, penalties.
- (1) City Code Enforcement shall be responsible for the enforcement of the provisions of this section.
  - (2) Mobile food dispensing vehicles operating in non-compliance of any of the provisions of this section or any referenced provisions of separate sections shall cease all operations and vacate the location and shall be subject to a citation in accordance with Sec. 2-153 of the City of DeBary Code of Ordinances.
  - (3) The first and second (if applicable) offenses will be a class II citation and will have a fine(s) as proscribed in Sec. 2-151(a) of the City of DeBary Code of Ordinances. The third offense, if applicable, will result in a mandatory court hearing as proscribed in Sec. 2-151(a) of the City of DeBary Code of Ordinances. In addition, the third offense will result in the revocation of the offending entity's Business Tax-Receipt as proscribed in Sec. 18-11 of the City of DeBary Code of Ordinances.

**SECTION 7 ADOPTION.** Chapter 5, Article I, Section 5-34, Land Development Code of the City of DeBary, Florida, is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Sec. 5-34 – Prohibited signs

- (7) Any A-frame sign except as permitted by ~~Sec. 5-XX~~, Mobile food dispensing signs.

**SECTION 8 ADOPTION.** A new Chapter 5, Article II, Land Development Code of the City of DeBary, Florida, is hereby created to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

~~Sec. 5-XX~~ – Mobile food dispensing signs

- (a) Number of signs permitted.

(1) Only one (1) sign of each type as described in subsection (b) of this section shall be permitted on the subject site.

(2) All advertising and signage that are off-premise are prohibited for mobile food dispensing vehicles.

(b) Permitted signs.

(1) Sandwich board/A-frame sign. One (1) sandwich board/A-frame sign up to six (6) square feet in area shall be permitted subject to the following conditions.

a. The permitted sandwich board/A-frame sign shall be placed no more than six (6) feet away from the mobile food dispensing vehicle.

b. Said sign shall not obstruct or impede pedestrian or vehicular traffic.

c. Said sign shall not be allowed in any right-of-way.

(2) Mounted signs. Mounted signs shall not be regulated.

(3) Painted signs. Painted signs shall not be regulated.

(c) Prohibited signs.

(1) All signs or forms of advertising not explicitly permitted by subsection (b) of this section.

**SECTION 9 SEVERABILITY.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 10 CONFLICTS.** This Ordinance shall control over any Ordinances or parts of Ordinances in conflict herewith to the extent that such conflict exists.

**SECTION 11 CODIFICATION.** Sections 2, 3, 4 and 5 of this Ordinance shall codified and be made a part of the City of DeBary Land Development Code. The City Clerk is given liberal authority to correct typographical errors and to renumber the sections and subsections. Grammatical, typographical and similar like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance.

**SECTION 12 EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage and adoption.

**APPROVED** on first reading on \_\_\_\_ day of \_\_\_\_\_ 2021.

**ADOPTED** at the second reading on \_\_\_\_ day of \_\_\_\_\_ 2021.

**CITY COUNCIL  
City of DeBary**

---

Karen Chasez, Mayor

Attest:

---

Annette Hatch, CMC, City Clerk

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

SEAL:

s:\aka\clients\debary,city of\general d334-16191\mobile food vendors\ordinance adopting code provisions regarding mobile food vendors 10-14-2021.doc





## City Council Meeting City of DeBary AGENDA ITEM

<b>Subject:</b> Corrective action and City obligations	<b>Attachments:</b> <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Supporting Documents/ Contracts <input checked="" type="checkbox"/> Other
<b>From:</b> Matt Boerger, Growth Management	
<b>Workshop Date</b> November 17, 2021	

### REQUEST

A request for feedback from City Council on a draft ordinance for nuisance abatement.

### PURPOSE

The purpose of this ordinance is to make the process of abating nuisances more efficient and to clarify the City as not being obligated to abate the nuisance.

### CONSIDERATIONS

Currently, Section 30-39 of Article II of Chapter 30 of the Code of Ordinances provides property owners that have been provided a notice of violation of Article II of Chapter 30 of the Code of Ordinances 21 days from receipt or delivery of the notice to correct the cited nuisance. Section 30-40 of Article II of Chapter 30 provides property owners 21 days to appeal the violation. Section 30-41 of Article II of Chapter 30 states that the City shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three (3) times per year.

The proposed ordinance decreases the timeline for abatement and appeal from 21 days to 10. The language in Section 30-41 stating the city shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three times per year would be struck out and replaced with the following provision: *"In no event shall the city's actions to cause the mowing or clearing of a lot or a nuisance obligate the city to cause similar actions to occur in the future"*. In the past, there has been confusion on whether the city has the obligation and not merely the right to have any nuisance abated. Additionally, the significantly long wait time of 21 days from the time a violation like "high grass and weed" is identified has the potential to cause additional stress and harm to the surrounding area. This amended language clarifies that the city causing the mowing or clearing of a lot or a nuisance does not create any future obligations to cause similar actions, as well as, reduce lag time in addressing nuisance abatement.

### COST/FUNDING

N/A

**RECOMMENDATION**

N/A

**IMPLEMENTATION**

If an Ordinance is approved, the amended language will be incorporated into the Code of Ordinances.

**ATTACHMENTS**

Draft Ordinance

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, AMENDING ARTICLE II, CHAPTER 30, CITY OF DEBARY CODE OF ORDINANCES RELATING TO PROPERTY MAINTENANCE; AMENDING CORRECTIVE ACTION PERIOD AND CLARIFYING CITY'S OBLIGATIONS; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII, § 2(b) of the Florida Constitution and § 166.021, Florida Statutes, the City of DeBary may regulate and govern property maintenance to ensure the well-being of its citizens; and

**WHEREAS**, the City Council has determined that this Ordinance is in the best interest of the public health, safety and welfare.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF DEBARY THAT:**

**SECTION 1. Recitals.** The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

**SECTION 2. Amendment.** Article II, Chapter 30, City of DeBary Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions; provisions not referenced are not modified):

Sec. 30-39. - Notice to correct violation.

The code enforcement officer is empowered to enter upon and inspect lots on which a nuisance declared by this article is suspected to exist. In the event inspection reveals the presence of a nuisance, the code enforcement officer shall notify the record owners by registered or certified mail, return receipt requested, of such nuisance, or by hand delivery by the code enforcement officer or deputy sheriff. Said notice shall be sent to the last available address of the owners of record as found in the public records. Said notice shall advise the owner that a nuisance exists on said owner's lot or lots and said nuisance shall be abated by the owner. The notice shall specify what corrective action shall be taken by the owner to abate the nuisance and that failure to abate the nuisance will result in the code enforcement officer's abating said nuisance and that a lien for the costs and administrative expenses of said abatement shall be recorded against the property for failure to abate the nuisance. The owner shall have 10 calendar ~~21~~ days from receipt or delivery of the notice to correct the nuisance. The notice shall also state that the owner has a right to appeal the determination of the code enforcement officer to the special master and that said appeal, upon payment of the fee in accordance with section 30-40, shall be filed within 15 days of receipt or delivery of the notice from the code enforcement officer.

Sec. 30-40. - Appeals.

Within 15 days after the receipt or delivery of the notice from the code enforcement officer pursuant to section 30-39, the owner of the lot may make written request for a hearing before the special master to appeal the decision of the code enforcement officer and to show that the condition alleged in the notice does not exist or that such condition does not constitute a nuisance. Filing of such appeal shall toll the 10 calendar ~~21~~-day period to correct the nuisance until the decision of the special master is rendered. Failure to notify or to timely appear for the hearing shall be deemed a waiver of the lot owner's right to appeal. The code enforcement officer shall give the owner seeking such hearing written notice of the date and location of the scheduled hearing. At the hearing before the special master, the city and the lot owner may introduce such competent, substantial evidence as is deemed relevant and necessary. Thereafter the special master shall render a decision on said hearing. In order to defray the expense of processing an appeal to the special master, the fee for said appeal shall be as established by resolution and listed in appendix A; provided, however, that the city shall refund the appeal fee to the applicant if the special master concurs with the applicant in its decision. Following review by the special master, or waiver of the right to appeal by the owner, the owner shall have exhausted his administrative remedies.

Sec. 30-41. - Posting of lot; abatement of nuisance.

In the event no appeal is filed as provided in section 30-40 or the notice is returned undelivered, upon the expiration of the 10 calendar day ~~21~~-day period after receipt or attempted delivery of the notice to correct the nuisance, the code enforcement officer shall re-inspect the lot to ascertain whether or not the nuisance has been abated. Should the code enforcement officer determine that the subject lot still constitutes a nuisance as defined in this article, and has notified the owner as such, and the owner has failed to abate said nuisance within the allowed time, the code enforcement officer shall abate said nuisance; provided, however, if the notice to abate said nuisance, sent by certified or registered mail, is returned, undelivered, the code enforcement officer shall post a copy of the notice on the lot in a conspicuous place. After ten days following the posting of said notice, the code enforcement officer shall abate said nuisance. In no case will the nuisance be abated by the code enforcement officer earlier than 10 ~~21~~ days from the mailing of the notice. The code enforcement officer, through his agents or authorized contractors, is authorized to enter upon the lot and take such steps as are reasonably necessary to effect abatement. ~~The city shall not be required to have any lot mowed or cleared or the nuisance abated by its contractors or agents more than three times per year.~~ In no event shall the city's actions to cause the mowing or clearing of a lot or a nuisance obligate the city to cause similar actions to occur in the future.

**SECTION 3.**      **Conflicts.** In the event of any conflict between this Ordinance and other ordinances or parts thereof, this Ordinance shall govern and control to the extent any such conflict exists.

**SECTION 4.**      **Codification.** It is the intention of the city council of the City of DeBary, Florida, and it is hereby ordained that Section II of this Ordinance shall become and be made a part of the Code of Ordinances of the City of DeBary, Florida, and city staff is directed to cause the codification of the amendments set forth in this Ordinance. So that the provisions of

this Ordinance may be renumbered or relettered to accomplish such intention; the word “*Ordinance*” may be changed to “*Section*”, “*Article*”, or other appropriate word.

**SECTION 5. Severability.** If any clause, section, or other part of this Ordinance is held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part will be considered eliminated and have no effect with regard to the validity of the other provisions of this Ordinance.

**SECTION 6. Effective Date.** This Ordinance takes effect immediately upon its adoption.

FIRST READING AND PUBLIC HEARING: \_\_\_\_\_, 2021.

SECOND READING AND PUBLIC HEARING: \_\_\_\_\_, 2021.

APPROVED:

CITY OF DEBARY CITY COUNCIL

\_\_\_\_\_  
Karen Chasez, Mayor

ATTESTED:

\_\_\_\_\_  
Annette Hatch, City Clerk