

## Agenda Item 12 (Legislative Hearing)

### **Land Development Code Text Amendments**

DEV2017-130

Amending Article 5 of the LDC

## **STAFF REPORT**

**DATE:** January 18, 2018

**TO:** Planning Board Members

**FROM:** Dennis Mrozek, AICP, Planning Manager

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### **AMENDMENT REQUEST**

A request by the Development and Administrative Services Department, Planning Division, to amend Article 5 of the Land Development Code (LDC) to allow Tattoo Establishments as a permitted use in additional zoning districts.

### **BACKGROUND**

In April 2017, the City Commission approved Ordinance 17-116 to allow tattoo establishments as a permitted use in the BA (Business Automotive) zoning district and removed the prohibition on tattoo establishments in the North Ridgewood Overlay District and Redevelopment areas. Prior to Ordinance 17-116, tattoo establishments were only permitted in the M-5 (Heavy Industry) and Planned Development zoning districts outside of redevelopment areas.

Since the approval of this LDC text amendment by the City Commission, only one business license application has been submitted to the City for a tattoo establishment in a permitted zoning district (BA zoning district). However, three rezoning applications have been submitted to allow tattoo establishments as part of a new Planned Development zoning district. The process to rezone a property to a Planned Development zoning designation can be costly and time consuming, taking as much as six months to complete the process.

At the December 21, 2017 Planning Board meeting, staff introduced a discussion item to the Planning Board members to consider whether it would be appropriate to allow tattoo establishments in additional zoning districts throughout the City. Based on that discussion, staff is presenting a proposed LDC text amendment that would allow tattooing as a permitted use (with use specific standards) in the following zoning districts:

- BR-1 – Business Retail-1
- BR-2 – Business Retail-2
- RDB-5 – Redevelopment Beachside-Atlantic Avenue Retail
- RDD-7 – Redevelopment Downtown-Local Business Services
- RDM-3 – Redevelopment Midtown-Activity Center Mixed Use

**PROPOSED LDC TEXT AMENDMENT**

Staff is requesting to the following amendments to the LDC in order to allow tattooing as a permitted use in additional zoning districts in the City (deletions indicated by ~~strikethrough~~; additions indicated by underline):

| Table 5.2.A.2: Principal Use Table for Residential, Business, Industrial, Tourist, and Specialty Districts |                      |                       |        |        |        |    |                    |    |      |      |    |                      |     |     |     |                   |     |     |     |                     |    |    |                        |  |                          |
|--|----------------------|-----------------------|--------|--------|--------|----|--------------------|----|------|------|----|----------------------|-----|-----|-----|-------------------|-----|-----|-----|---------------------|----|----|------------------------|--|--------------------------|
| P = Permitted by Right    S = Allowed with a Special Use Permit    Blank Cell = Not Permitted by Right     |                      |                       |        |        |        |    |                    |    |      |      |    |                      |     |     |     |                   |     |     |     |                     |    |    |                        |  |                          |
| Use Category   | Use Type             | Residential Districts |        |        |        |    | Business Districts |    |      |      |    | Industrial Districts |     |     |     | Tourist Districts |     |     |     | Specialty Districts |    |    | Use-Specific Standards |  |                          |
|  |                      | SFR-5                 | MFR-12 | MFR-20 | MFR-40 | RP | OP                 | BP | BR-1 | BR-2 | BA | M-1                  | M-3 | M-4 | M-5 | T-1               | T-2 | T-4 | T-5 | AG                  | HM | MS |                        |  |                          |
| Retail Sales and Service Uses  | Tattoo Establishment |                       |        |        |        |    |                    |    | P    | P    | P  |                      |     |     | P   |                   |     |     |     |                     |    |    |                        |  | 5.2.B.22.a<br>5.2.B.22.1 |

| Table 5.2.A.3: Principal Use Table for Redevelopment Districts   |                      |           |       |       |       |       |       |       |       |       |        |          |       |       |       |       |       |       |         |       |       |       |       |       |                        |            |
|--|----------------------|-----------|-------|-------|-------|-------|-------|-------|-------|-------|--------|----------|-------|-------|-------|-------|-------|-------|---------|-------|-------|-------|-------|-------|------------------------|------------|
| P = Permitted by Right    S = Allowed with a Special Use Permit    Blank Cell = Not Permitted By Right |                      |           |       |       |       |       |       |       |       |       |        |          |       |       |       |       |       |       |         |       |       |       |       |       |                        |            |
| Use Category   | Use Type             | Beachside |       |       |       |       |       |       |       |       |        | Downtown |       |       |       |       |       |       | Midtown |       |       |       |       |       | Use-Specific Standards |            |
|  |                      | RDB-1     | RDB-2 | RDB-3 | RDB-4 | RDB-5 | RDB-6 | RDB-7 | RDB-8 | RDB-9 | RDB-10 | RDB-11   | RDD-1 | RDD-2 | RDD-3 | RDD-4 | RDD-5 | RDD-6 | RDD-7   | RDM-1 | RDM-2 | RDM-3 | RDM-4 | RDM-5 |                        | RDM-6      |
|  | Tattoo Establishment |           |       |       |       | P     |       |       |       |       |        |          |       |       |       |       |       |       | P       |       |       |       |       |       |                        | 5.2.B.22.a |

**ARTICLE 5 – USE STANDARDS**

**Sec. 5.2. Principal Uses.**

**2. Standards for Specific Principal Uses.**

**22. Commercial: Retail Sales and Service Uses.**

**l. Tattoo Establishment.** A tattoo establishment shall comply with all federal state and local regulations.

i. Where a tattoo establishment is permitted, it shall be subject to the following additional standards and considerations:

- (a) The use shall not be located within 500 feet of a single family residential district, as measured from the nearest point of the use and the property containing the residential district zoning.
- (b) The use shall not be established within 1,000 feet of an existing tattoo parlor.
- (c) The use shall not operate between the hours of 12:00 a.m. and 8:00 a.m.
- (d) Off-street parking shall be provided for the use in accordance with the provisions of this Code.

## **TEXT AMENDMENT REVIEW STANDARDS**

The purpose of Section 3.4.B.1 is to provide a uniform means for amending the text of the Land Development Code whenever the public necessity, convenience, general welfare, comprehensive plan, or appropriate land use practices justify or require doing so.

The advisability of amending the text of this Code is a matter committed to the legislative discretion of the City Commission and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the City Commission shall weigh the relevance of and consider whether and the extent to which the proposed amendment:

**a. Is consistent with the comprehensive plan;**

The proposed text amendments are consistent with the comprehensive plan.

**b. Is in conflict with any provision of this Code or the Code of Ordinances;**

The proposed amendments are in compliance with the LDC and Code of Ordinances.

**c. Is required by changed conditions;**

Due to case law established in December of 2015 by the United States Court of Appeals for the Eleventh Circuit, Brad Buehrle vs. City of Key West, it is advisable for the City to amend its regulations to permit the act of tattooing by right in additional zoning districts.

Although the courts found that tattooing is a protected form of artistic expression under the First Amendment, the City's Land Development Code (LDC) ensures that land uses are located in a rational and efficient manner. Staff finds the characteristics of the tattooing use to be similar to that of personal services establishments. Per the LDC, personal service establishments are *primarily engaged in the provision of frequent or recurrent needed services of a personal nature. Examples include hair salons, tanning salons, and nail care stores.*

**d. Addresses a demonstrated community need;**

The Eleventh Circuit's opinion joined the Ninth Circuit's 2010 decision in Anderson v. City of Hermosa Beach, finding tattooing to be a protected form of artistic expression under the First Amendment. Allowing tattoo establishments in additional zoning districts as a permitted use reduces time and costs associated with rezoning properties to allow this use. Allowing tattooing as a permitted use by right enables only staff review and approval of the use request, subject to LDC use specific and development standards.

As an alternative to allowing tattooing as a permitted use, consideration has been given to expanding tattooing uses in additional zoning districts as a Special Use. A Special Use in a particular zoning district is a use that may be appropriate in the district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. Special Use approval process requires a neighborhood meeting, advisory board review and recommendation, and City Commission action. The process can be as time consuming as a Planned Development rezoning application and nearly as costly.

- e. Is consistent with the purpose and intent of the zoning districts in this Code, or would improve compatibility among uses and would ensure efficient development within the city;**

Staff finds tattoo uses consistent with the purpose and intent of the zoning districts subject to the proposed text amendment.

Business Retail-1 Purpose

The purpose of the Business Retail-1 (BR-1) district is to accommodate a wide range of retail sales and service uses (from florists, jewelry stores, and gift shops to department and variety stores, furniture stores, and home and building supply centers), but excluding auto oriented uses (gas stations, vehicle repair and servicing, drive-in or drive-through businesses). It also accommodates multifamily residential development and limited institutional and commercial uses, generally as special uses or public or semi-public uses.

Business Retail-2 Purpose

The purpose of the Business Retail-2 (BR-2) district is to accommodate a wide range of retail sales and service uses (from florists, jewelry stores, and gift shops to department and variety stores, furniture stores, and home and building supply centers), but excluding auto oriented uses (gas stations, vehicle repair and servicing, drive-in or drive-through businesses). It also accommodates commercial docking facilities, multifamily residential development, and limited institutional and commercial uses, generally as special uses or public or semi-public uses.

Redevelopment Beachside-Atlantic Avenue Retail Purpose

The purpose of the Redevelopment Beachside – Atlantic Avenue Retail (RDB-5) district is to encourage relatively large-scale commercial development with a retail emphasis and a high quality of design.

Redevelopment Downtown-Local Business Services Purpose

The purpose of the Redevelopment Downtown – Local Business Services (RDD-7) district is to provide appropriate areas for the location of offices, business services, and low-intensity industrial uses, and to promote functional groupings of commercial and industrial uses for the convenience of the public.

Redevelopment Midtown-Activity Center Mixed Use Purpose

The purpose of the Redevelopment Midtown – Activity Center Mixed Use (RDM-3) district is to provide for a mix of medium- and large-scale commercial uses and public gathering spaces that capitalize on the high-volume traffic at the corner of Nova Road and International Speedway Boulevard and in close proximity to college campuses. Residential uses are encouraged on the upper floors of nonresidential establishments.

- f. Would result in a logical and orderly development pattern; and**

The proposed amendment does allow for consistent development patterns, as permitting tattoo establishments in additional zoning districts (*Maps-Attachment A*) allows the use to be placed in districts which allows other uses of similar intensity.

- g. Would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.**

Staff does not anticipate any environmental impacts with the proposed amendment.

### **RECOMMENDATION**

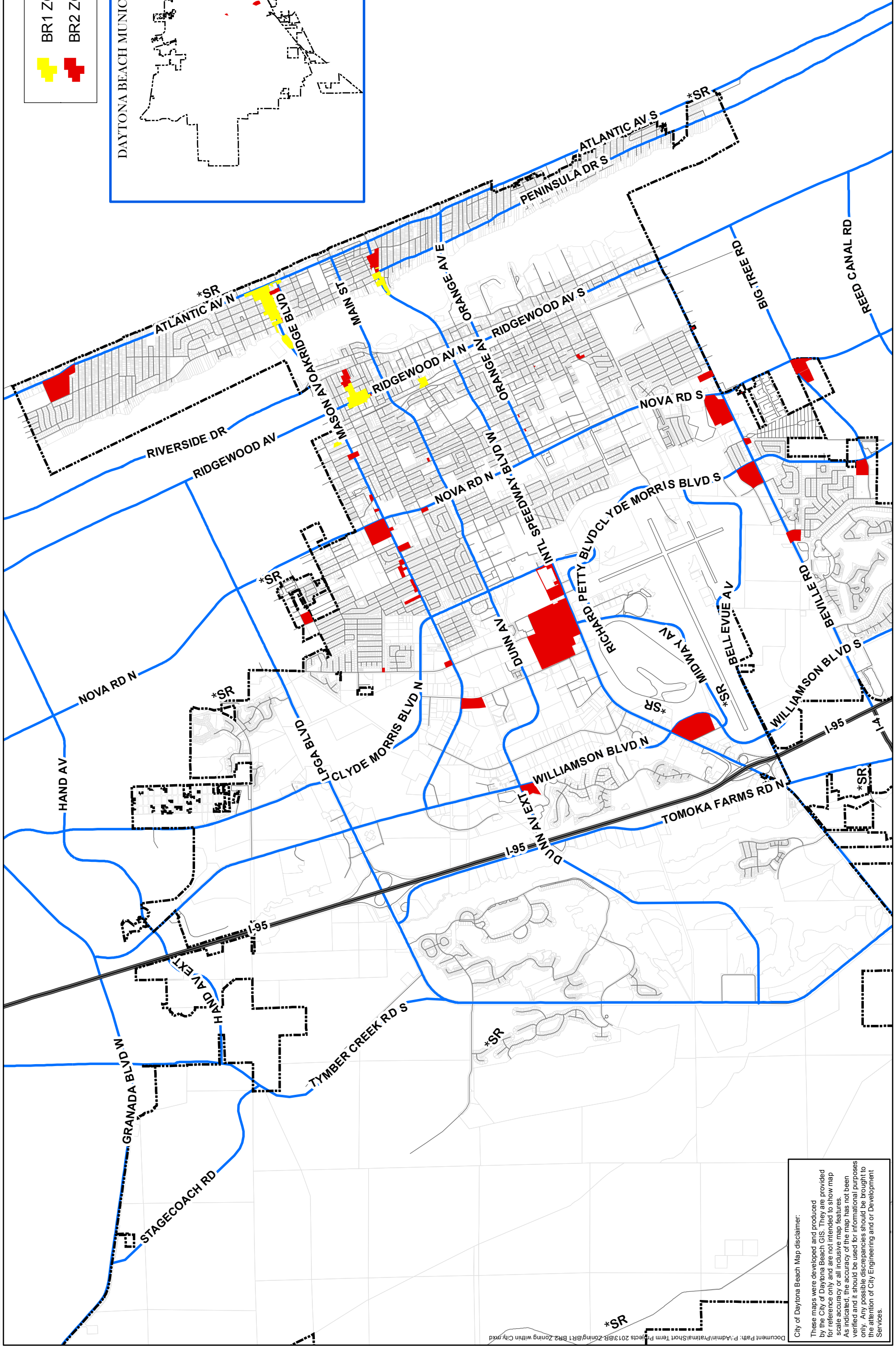
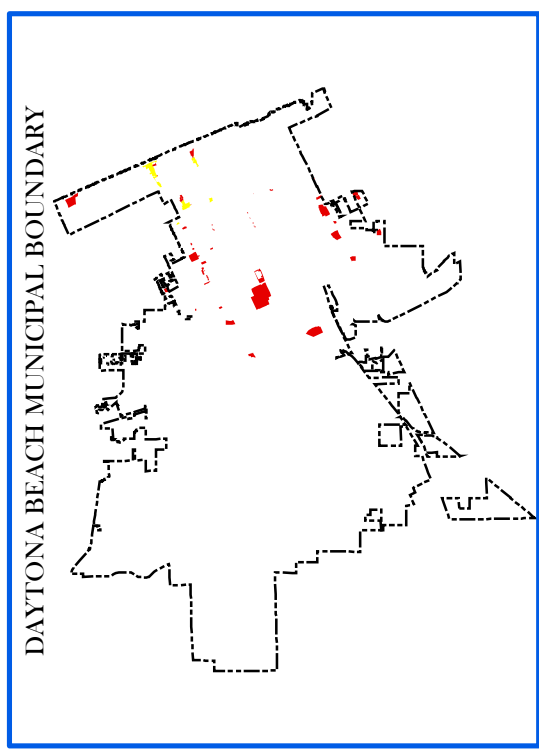
Based on staff analysis and review of the above standards, approval of the requested text amendments concerning tattooing in Article 5 is recommended. A majority vote of the Planning Board members present and voting is required to recommend approval to the City Commission.



The City of Daytona Beach BR1 and BR2 Zoning

BR1 ZONING

BR2 ZONING



City of Daytona Beach Map disclaimer:  
 These maps were developed and produced by the City of Daytona Beach GIS. They are provided for reference only and are not intended to show map scale accuracy or all inclusive map features. As indicated, the accuracy of the map has not been verified and it should be used for informational purposes only. Any possible discrepancies should be brought to the attention of City Engineering and or Development Services.

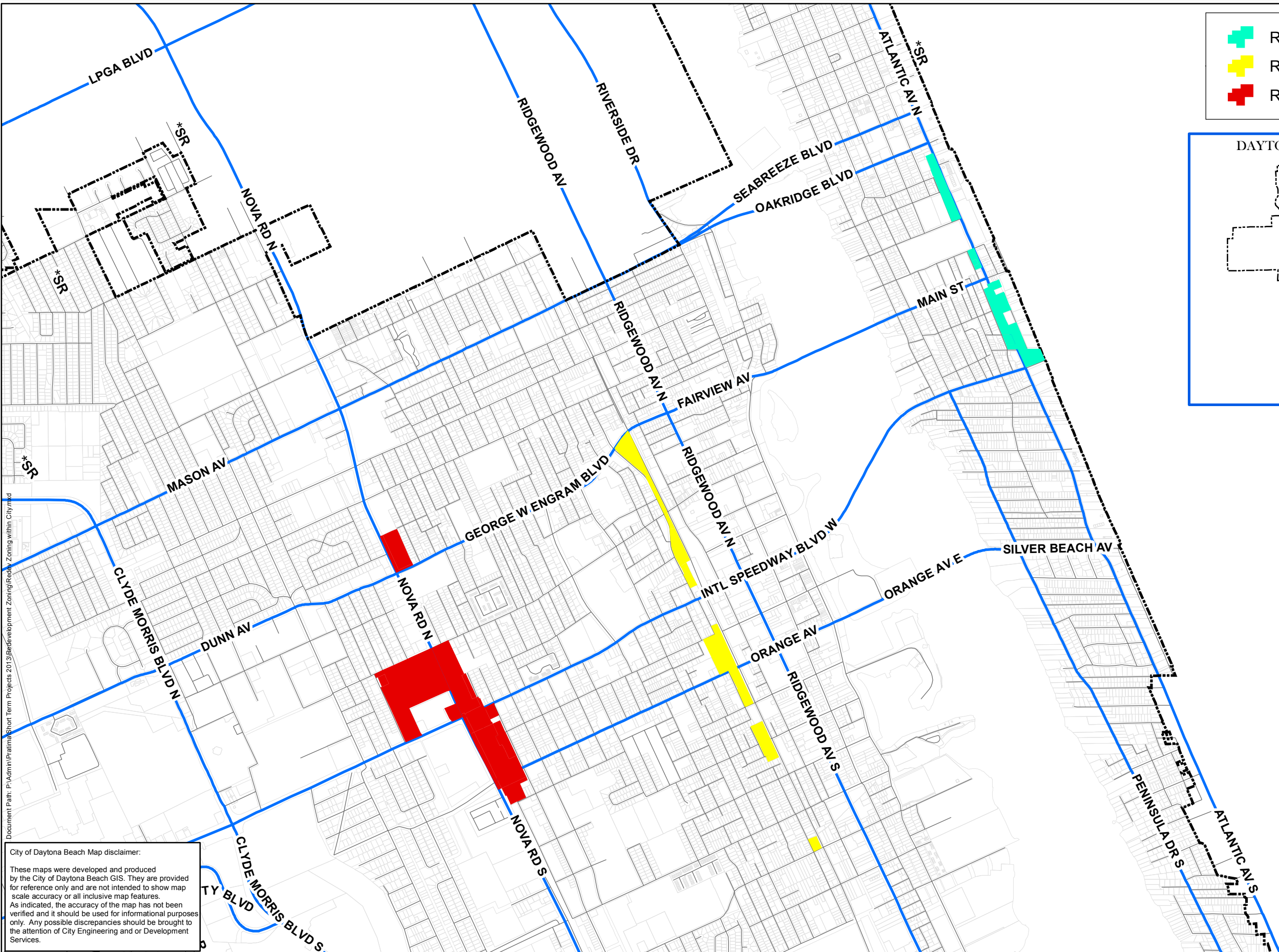
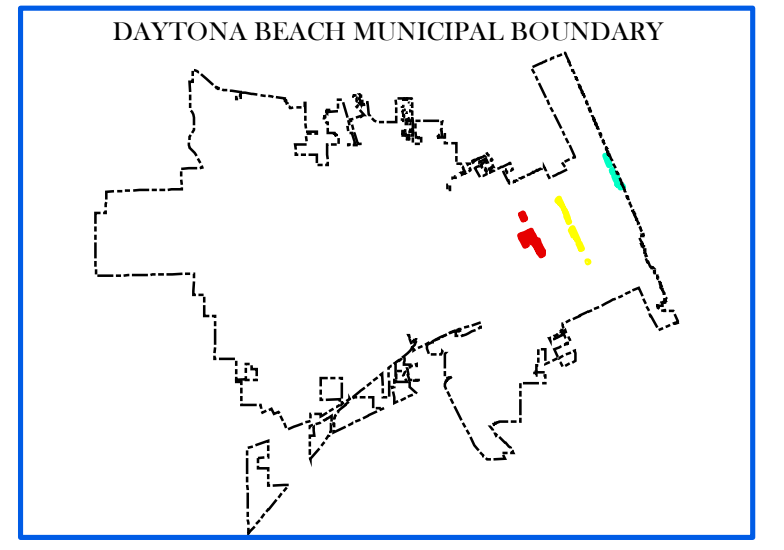


# The City of Daytona Beach Redevelopment Districts Zoning



## Attachment A

- RDB5 Redevelopment District Zoning
- RDD7 Redevelopment District Zoning
- RDM3 Redevelopment District Zoning



Document Path: P:\Admin\Pratt\Short Term Projects 2013\Redevelopment Zoning\Rea... Zoning within City.mxd

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