

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO PUBLIC NUISANCES AND NUISANCE ABATEMENT; PROVIDING FOR LIENS UPON REAL PROPERTY AND THE IMPOSITION OF SPECIAL ASSESSMENTS UPON PROPERTIES WHICH REQUIRE LOT CLEARING, REAL PROPERTY MAINTENANCE OR NUISANCE ABATEMENT TO BE CONDUCTED BY THE CITY; PROVIDING FOR A FORM OF NOTICE OF MUNICIPAL SPECIAL ASSESSMENT LIEN; PROVIDING FOR PROHIBITED AND UNLAWFUL PUBLIC NUISANCES; AMENDING APPENDIX G, SECTION 14-52.9(B), NUISANCES DEFINED BY ADDING AN ADDITIONAL CRITERIA; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PENALTIES AND REMEDIES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND THE REPEAL OF SECTIONS 13-7 THROUGH 13-11 OF THE *CITY CODE* AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores, Florida, as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; and other applicable controlling law; and

Whereas, the holdings of various appellate courts of the State of Florida uphold diverse special assessment programs when the requisite special benefit is provided to real property as well as broad authority for local governments to take a wide array of actions in order to abate and remedy public nuisances that adversely affect the public health, safety and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

- (a). The City staff report and City Council agenda memorandum relating to this matter are hereby adopted as if fully set forth herein.
- (b). The City of Daytona Beach Shores has complied with all requirements and procedures of controlling Florida law.
- (c). Although not a land development regulation, the provisions of this Ordinance are consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores* and other controlling law.

(d). The intent of the City Council of the City of Daytona Beach Shores acting as the governing body of the City of Daytona Beach Shores, Florida in adopting this Ordinance is to prohibit broadly the creation or maintenance of public nuisances within the jurisdictional limits of the City of Daytona Beach Shores. The City Council desires to maintain the high quality of life for the citizens of the City and to maintain a high quality environment for residential, business and commercial activities. The City Council recognizes that the creation and maintenance of public nuisances within the City Limits detracts from the high quality of life available to the citizens of the City and discourages investment within the City.

(e). Additionally, it is the intent of the City Council of the City of Daytona Beach Shores to ensure that, in such occasions that the City uses its forces, resources and personnel, or otherwise incurs expense in the abatement of nuisances, that the property owner of the benefitted property reimburses the City for such efforts. The taxpayers of the City should not be providing services to property owners that should rightfully be accomplished by property owners who are responsible for the upkeep and maintenance of their properties, as same is neither fair nor equitable for said taxpayers.

SECTION TWO: IMPOSITION OF SPECIAL ASSESSMENTS. A new section of the *City Code of the City of Daytona Beach Shores, Florida* is created to read as follows:

Special assessment of costs relating to activities by the City to abate nuisances on real property.

(a). A special assessment district is hereby established within the City Limits of the City of Daytona Beach Shores to provide that special assessments may be assessed against real property that is maintained by the City under the provisions of the codes and ordinances of the City if the owner of real property fails to maintain real property as required in this Code. Such activities for which assessments will relate include, but are not limited to, lot clearing and nuisance abatement.

(b). If real property is secured by locks or otherwise, the City shall have the authority to enter said property for purposes of maintaining the property and any additional costs incurred by the City in gaining access to the property or in re-securing the real property after property maintenance or nuisance abatement activities shall be considered assessable expenses of providing maintenance.

(c). Prior to or upon completion of the property maintenance or nuisance abatement activities by the City, the City shall mail an invoice to the real property owner requesting payment to the City for the estimated or actual costs of the completed maintenance or nuisance abatement in addition to administrative charges and fees in effect at the time of the mailing of the invoice. The real property owner shall pay the amount of the invoiced charges.

(d). If not paid, a notice of municipal special assessment lien document relating specifically to the property shall be recorded in the official records (land records) of the County.

(e). If the real property owner fails to pay the charges, the City shall cause a resolution to be prepared designating the name and address of the owner, a description of the real property, and

the charges to be assessed against the real property. The resolution shall be presented to the City Council by the City Manager and, upon approval of the resolution by the City Council, the costs stated in the resolution shall be and constitute a municipal special assessment against the real property and shall be and remain a lien against the real property with priority over all other liens, save and except taxes. The assessment shall be payable at the time and in the manner as stated in such resolution.

(f). Upon completion of the maintenance or nuisance abatement activities and the approval of the special assessment resolution by the City Council, the City Manager shall cause to be published a notice directed to the property owners of the real property benefited by the City’s maintenance or nuisance abatement activities which notice designates a time and place where complaints will be heard with reference to such special assessments and when such special assessments will be finally approved and confirmed by the City Council. A copy of such notice shall be served upon such real property owners affected thereby at the owner's last known address as same appear on the records of the Volusia County Property Appraiser.

(g). At the time and place designated in the notice provided in Subsection (f), the City Council shall meet as an equalizing board to hear and consider any and all complaints as to such special assessments and shall adjust and equalize the special assessments, and when so equalized and approved, such special assessments shall stand confirmed and be and remain legal, valid and binding liens upon the real property against which such special assessments are made until paid. If a modification of a special assessment occurs, a revised resolution shall be recorded detailing such modification.

SECTION THREE: FORM OF NOTICE OF MUNICIPAL SPECIAL ASSESSMENT LIEN. A new section of the *City Code of the City of Daytona Beach Shores, Florida* is created to read as follows:

Form of notice of municipal special assessment lien.

The following document, in substantially the following form, shall be used by the City relative to the establishment of municipal special assessment liens:

Tax and Identification Number: _____

Prepared by:	Name of Preparer
	Address of Preparer
	City, State, and Zip Code of Preparer
Return Recorded Document to:	Name of person to return to
	Address of person to return to

	City, State, and Zip Code of person to return to
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**NOTICE OF MUNICIPAL SPECIAL ASSESSMENT LIEN FOR SERVICES
PROVIDED TO PROPERTY**

WHEREAS, _____, whose mailing address is _____, is/are the recorded owner or owners of the hereinafter described real property located at _____, Volusia County, Florida, Tax Parcel Identification Number _____; and

WHEREAS, pursuant to City of Daytona Beach Shores Ordinance Number XXXX-XX (or codified section number) City activities relating to (lot clearing/property maintenance/the abatement of public nuisances/etc.) occurred on said property on _____; and

WHEREAS, the City of Daytona Beach Shores (accomplished such work/maintenance/abated said nuisance(s)) on, _____ at a cost to the public and in a manner, which specially benefited the subject property.

WHEREAS, the City of Daytona Beach Shores finds and determines all conditions precedent to the levying of this Notice Of Municipal Special Assessment Lien on the subject real property have been accomplished and that the property owner(s) shall have the right to ensure that the sums assessed are fair, equitable, equalized and attributable to the special benefit deriving to the subject property and its owner(s).

NOW, THEREFORE, the City of Daytona Beach Shores files this Notice of Municipal Special Assessment Lien as follows:

- 1.) In the amount of \$_____ for the costs of (lot clearing/maintenance/nuisance abatement).
- 2.) Plus \$_____ for administrative charges.
- 3.) Total amount of \$_____ and said total sum, is hereby levied against the following described real property in the City of Daytona Beach Shores, Volusia County, to wit:

TAX IDENTIFICATION PARCEL NUMBER:

PROPERTY ADDRESS:

LEGAL DESCRIPTION:

DONE and ORDERED this _____ day of _____, 20_____.

Mayor or City Manager
City of Daytona Beach Shores
Attest:

SECTION FOUR: PROHIBITION OF PUBLIC NUISANCES. A new section of the *City Code of the City of Daytona Beach Shores, Florida* is created to read as follows:

(a). A public nuisance in the City is hereby declared to be the commission of any act by any person, or the keeping, maintaining, propagation, existence or permitting of anything by any person, which presents a threat to the public health, safety and welfare of any person, or by which or through which, directly or indirectly, disease may be caused or the environment of any person rendered unclean or unwholesome by act of another or others including, but not limited to, allowing stagnant water to accumulate in swimming pools or other containment devices as determined by the code enforcement officer or his or her designee. All public nuisances are prohibited and unlawful and it is prohibited and unlawful for any person to create, establish, operate, engage in, permit, maintain, further or otherwise cause a public nuisance to exist.

(b). It is further declared, without limiting in anyway the generality of Subsection (a) to be a public nuisance for the owner or occupant of any property, establish, operate, engage in, permit, maintain, further or otherwise cause on any such property:

(1). Any building or structure to exist which:

- (A). Is structurally unsafe; or
- (B). Is not provided with adequate ingress and egress; or
- (C). Constitutes a fire hazard; or
- (D). Constitutes a health hazard; or
- (E). Has unpermitted outside storage on its premises; or
- (F). Is otherwise dangerous to human life.

(2). Topography which, whether in natural state or as a result of erosion or grading operations, causes, or is likely to cause, erosion, subsidence or surface water run-off which will, or may be, injurious to persons or to adjacent public or private properties.

(3). Any condition which constitutes a fire or health hazard including, but not limited to, overgrowth of vegetation or the accumulation of debris.

(4). Any building, structure or property in such condition so that the same is defective, unsightly or in such condition of deterioration or disrepair that causes, or may be reasonably expected to cause, any diminution of the property values of buildings or structures located on adjacent lots or to the City as a whole or its residents, or interferes with the peaceful use, possession or enjoyment of such adjacent lots or improvements on such adjacent lots.

(5). Any building, structure or use which has been constructed or is maintained in violation of any applicable law, as such laws now exist or may hereafter be lawfully amended or otherwise made applicable to such building or structure including, but not limited to, the provisions of the *City Code* or *Land Development Code*.

- (6). Any building, use, structure or property which does not comply with all of the regulations and provisions of the *City Code* or *Land Development Code* including, but not limited to, the land development regulations of the City assigning a zoning district or classification to property, as such land development regulations now exist, or as they may hereafter amended or otherwise made applicable to such building, use or structure.
- (7). Any material the existence of which constitutes, or may constitute, a danger to persons or property including, but not limited to, hazardous materials.
- (8). Any building, use or structure wherein a person engages in or persons engage in an act declared to be a nuisance in State law.
- (9). Any animal, reptile or insect in such a manner as to pose a threat, disturbance, danger or menace to persons or property of another.
- (10). Any device, instrument, vehicle or machinery such that the operation or maintenance causes noise, vibrations, dust, exhaust or fumes which cause or may cause discomfort or annoyance to reasonable persons of normal sensitivity or endangers the comfort, repose, health or peace of the residents in the area.
- (11). Refuse, rubbish, garbage, offal, animal excrement or other waste materials which are not stored and disposed of in accordance with provisions of this code or other applicable law.
- (12). A method of disposing of animal excrement in such a manner as to expose the excrement to fly or maggot infestation or resultant odor.
- (13). Animal excrement so as to permit the same to run off onto any adjacent property or to provide for odor that is offensive to other property owners or residents.
- (14). The accumulation or storage of abandoned, wrecked, dismantled or inoperative trailers, campers, boats, airplanes, automobiles, vehicles or other mobile equipment, or parts thereof, on any portion of a lot which is visible from the public right-of-way or any adjoining properties unless such is stored or parked in a lawful manner on the lots.
- (15). An attractive nuisance which is or may be dangerous to children including, but not limited to, abandoned or broken equipment or machinery, unfenced or otherwise unprotected swimming pools, spas, ponds or excavations; refrigerators, iceboxes or deepfreeze lockers not being used, without removing the door or such portion of the latch, magnetic gasket or locking mechanism as will prevent the latching or locking of the door and uncapped or otherwise dangerous wells.
- (16). Broken or discarded furniture or household furnishings or equipment, garbage or trash containers which are stored contrary to the provisions of this code, except when lawfully placed for collection at the times permitted therefore.

(17). Packing boxes, lumber, junk, trash or other materials and debris maintained outside of a building.

(18). Any building, fence, landscaping or structure, or the access thereto, so that the same is subjected to the repeated placement of graffiti thereon.

(19). The keeping, dumping, storing, placing or maintaining of any garbage, rubbish, trash, refuse, can, bottle, box, container, paper, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle part, aircraft part, farm machinery or equipment, junk or any other material that constitutes a nuisance upon any uncovered premises or uncovered portion of premises.

(20). All unpermitted encroachments or obstructions on any public street of the City, as the term "street" is defined in State law.

SECTION FIVE: AMENDMENT TO SECTION 14-52.9(B) (APPENDIX "G"); NUISANCES DEFINED. Section Appendix G, 14-52.9(B), Nuisances defined, of the *City Code of the City of Daytona Beach Shores, Florida* is amended to read as follows:

14-52.9. Maintenance of Properties.

A. Intent. The intent of subsection 9 is to provide regular inspection of all properties within the city; to ensure compliance with city codes, pertaining to those sites; and, specifically, to ensure that improvement required on final site plans or building permits are properly maintained.

B. Nuisances defined. It is a public nuisance for any person owning, leasing, occupying or having charge of any premises in this city to maintain or permit to exist, such premises in such a manner that any one or more of the following conditions exist thereon:

1. Any public nuisance known at common law or in equity jurisprudence, as set forth in F.S. ch. 823, Public Nuisances.

2. All violations pertaining to premises as defined in the Municipal Code of Ordinances of the City of Daytona Beach Shores, section 16-12 through 16-14

3. Any attractive nuisance which constitutes an imminent threat to the health, safety, and welfare of children, whether in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to, any abandoned wells, shafts, basements, or excavations, unprotected and/or hazardous pools, ponds, or other bodies of water, abandoned refrigerators and motor vehicles, any structurally unsound fences or structures, or any lumber, trash, fences, debris or vegetation, which may prove a hazard for inquisitive minors.

4. Insufficient ventilation or illumination, as defined in the Standard Building Code.

5. Inadequate or unsanitary sewerage or plumbing facilities, as is defined by the Standard Building Code.

6. Whatever renders air, food or drink an imminent threat to the health, safety, and welfare of human beings.

7. Any place or premises which have been determined by the city's code enforcement board, per F.S. § 893.138, to have been used on more than two (2) occasions as the site of the unlawful sale, delivery, possession, or storage of controlled substances.

8. Land, the topography, geology, or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare, or to adjacent properties.

9. The failure to close, by such means as are acceptable to the building official, all doorways, windows and other openings into vacant structures.

10. Broken windows constituting hazardous conditions and inviting trespassers and malicious mischief.

11. Vegetation, including dry grass, dead shrubs, dead trees, combustible refuse and waste, or any material growing upon the area between the traveled way and the property line, sidewalks, or upon private property, which by reason of size, manner of growth and location would create any of the following: a condition likely to constitute a fire hazard to any building, improvement, or other property, or when dry, will in reasonable probability constitute a fire hazard; or a condition likely to harbor rats, vermin, or similar creatures constituting a health hazard.

12. Dead, decayed, diseased or hazardous trees, weeds as prohibited in section 13-5 of the Municipal Code of Ordinances of Daytona Beach Shores, or other vegetation constituting an imminent threat to health, safety and welfare.

13. Waste on the premises which, by reason of its location or condition, would materially hamper or interfere with the suppression of fire or the use of rescue or emergency vehicles upon the premises, or adjacent premises.

14. All yards, swale areas, walkways, driveways, parking areas, vacant lots, landscape areas, and open space areas not properly maintained, consistent with the following standards: they shall be free of refuse and debris; all paved areas shall be maintained reasonably free of holes and cracks; all landscaped material shall be maintained reasonably free of weeds and foreign matter and shall be kept in reasonably healthy condition at all times, and all dead material, including trees, shall be replaced consistent with the requirements of the Land Development Code, section 14-46, Landscaping Standards.

15. Whatever is dangerous to human life, or is detrimental to health, as determined by the director of community services pursuant to section 13-4 of the Municipal Code of Ordinances Daytona Beach Shores.

16. Exterior walls: Every exterior wall shall be free of holes, breaks, loose or rotting boards, or timbers and any other condition which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building. All siding material and other exterior surfaces of walls shall be kept in good repair. The term "good repair" shall include the requirement that the surface be kept reasonably clean and free from a substantial amount of mildew or other substances which would alter its intended appearance. All exterior surfaces, except brick, stone, or other materials not requiring application of a weatherproofing coating, shall be kept painted, with a good quality final coat of exterior paint (or equivalent substance) and any primer coating must be overlaid with a final coat of regular paint or equivalent. The final coat of paint or equivalent subject to the elements shall be maintained in such condition that its appearance does not show excessive fading, streaking, peeling, blistering, discoloring, cracking, or similar imperfections.

17. Care of premises: It shall be unlawful for the owner or occupant of a building, structure or property, to utilize the premises for the open storage of any abandoned motor vehicle, ice box, refrigerator, stove, glass, building materials, building rubbish or similar items, as specified in section 13-6 of the Municipal Code of Ordinances of the City of Daytona Beach Shores, except as allowed by the zoning regulations. It shall be the duty and responsibility of every such owner or occupant to keep the premises of the property clean and to remove from same all such abandoned items as listed above, including, but not limited to, weeds, dead trees, trash, garbage, etc., upon notice from the code enforcement officer. Premises shall be kept free from health hazards, including debris accumulation and breeding conditions for mosquitoes.

18. Any other public nuisance defined, described or identified anywhere in the Daytona Beach Shores Code of Ordinances.

C. Unsafe structures. All buildings, or structures which either have become unsafe, structurally flawed or defective or are unsanitary for human occupancy, or do not have adequate ingress and egress, constituting a fire hazard, or otherwise, are dangerous to human life; or, which in relation to existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, or which constitute a nuisance, as defined in paragraph B., are considered unsafe structures. All such unsafe structures are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition, as authorized by paragraph E.

D. Minimum maintenance standards.

1. All buildings shall present a neat and fresh appearance and be free of all peeling paint, rust, graffiti, and deteriorated or mismatched roofing material.
2. All parts of any building and/or structure shall be structurally sound. Rotten or weakened sections shall be repaired, replaced, or removed.
3. Nonfunctional elements on any building, structure, or premises, such as unused sign poles, brackets, empty electrical conduit, etc., shall be removed and the remaining surface shall, if

damaged, be repaired or rebuilt to match adjacent surfaces and the original condition. All loose wires and/or conduits shall be secured.

4. Broken or missing windows shall be repaired, replaced, or properly abandoned. All windows must fit tightly and have sashes of proper size and design. Abandonment of window openings shall be accomplished by using the same material as the adjacent surface. The boarding up of windows, as a result of fire or other reasons, is allowed to persist for up to six (6) months.

5. Awnings that are torn, badly faded, frayed, or structurally compromised shall be repaired, replaced, or removed.

6. All roofs, gutters, and downspouts shall be maintained to prevent damage to the structure and adjoining properties.

7. All retaining walls, seawalls, nonstructural walls, and fences shall be structurally sound, in good repair and maintained to present cared-for aesthetic appearance.

8. Dumpsters must be screened by enclosures which present a painted, rust-free, and neat appearance. Dumpsters may not be exposed to view from the street.

9. Lighting devices and supports, outdoor service and seating areas, signs, and their supporting elements shall be structurally sound, free of graffiti, overgrowth and debris, and maintained in a painted, rust-free, cared-for appearance.

10. All parking areas shall be kept free of potholes. Broken pavement, to the point of being a hazard, shall be repaired. All dead tree limbs and dead trees shall be removed from parking areas and trees replaced.

11. All vacant lots should be kept free of overgrowth, weeds, trash, and debris.

12. Landscaping shall be kept in a neat and well-maintained condition.

13. All dead tree limbs and dead trees shall be removed from the site and trees replaced with live trees.

E. Relief due to proven hardship. If it appears to be physically or economically impractical to bring the property completely up to the code standard for any specific item, a variance for more limited compliance may be sought from the appropriate board or council.

F. Enforcement. Violations of this section shall be subject to the enforcement by the ~~code enforcement board pursuant to sections 2-26 through 2-36 and generally, sections 13-7 through 13-11, and 16-12 through 16-14 of the Municipal Code of Ordinances of the City of Daytona Beach Shores~~ in any way authorized by State or Federal law and any way authorized by any code or ordinance of the City.

SECTION SIX: PENALTIES/ENFORCEMENT. A new section of the *City Code of the City of Daytona Beach Shores, Florida* is created to read as follows:

(a). In addition to potential prosecution, any person found to be in violation of this Ordinance shall be subject to the fine provisions and code enforcement provisions of controlling State law to the maximum extent authorized by State law.

(b). Additionally, the City of Daytona Beach Shores may abate the violation in accordance with the procedures set forth in controlling Florida law and seek any remedy available under controlling law.

SECTION SEVEN: IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by means of such administrative actions as may be deemed appropriate and necessary.

SECTION EIGHT: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to code enforcement, nuisance abatement and related matters are hereby ratified and affirmed.

SECTION NINE: CODIFICATION/INTENT/REPEALERS.

(a). The provisions Sections One, Two, Three, Four, Five and Six of this Ordinance shall, as determined by the Code Codifier, become and be made a part of the *City Code of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

(b). The Code codifier shall organize the provisions of the *City Code of the City of Daytona Beach Shores, Florida* such that the City Code shall contain a chapter that particularly relates to public nuisances.

(c). Sections 13-7 through 13-11 of the *City Code of the City of Daytona Beach Shores, Florida* are hereby repealed.

SECTION TEN: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION ELEVEN: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION TWELVE: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2012.

Adopted on second reading this _____ day of _____, 2012.