

ORDINANCE 2012-11

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO POLICIES, PROCEDURES AND CHARGES FOR PUBLIC RECORDS AND AMENDING BY SUBSTANTIAL REWORDING THE PROVISIONS OF SECTION 2-6 OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA*; RECOGNIZING THE CONSTITUTIONAL RIGHTS OF CITIZENS TO ACCESS TO PUBLIC RECORDS; PROVIDING FOR AUTHORITY AND RESPONSIBILITIES; ESTABLISHING A FEE SCHEDULE FOR COPIES OF PUBLIC RECORDS AND RELATED MATTERS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INSTRUCTIONS RELATIVE TO CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 119.01(1), *Florida Statutes*, and Article I, Section 24 of the *Constitution of the State of Florida* (the *Declaration of Rights* for each Florida citizens) mandate that all records of the City of Daytona Beach Shores are to be open for public inspection by any person subject to such limitations as are set forth in law; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that the City and its staff have a paramount duty to comply fully and effectively with the provisions of Section 119.01(1), *Florida Statutes*, and Article I, Section 24 of the *Constitution of the State of Florida*; and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that the provisions of Section 119.01(1), *Florida Statutes*, and Article I, Section 24 of the *Constitution of the State of Florida* fail to expressly address certain issues that arise when members of the public request public records and that the policies set forth in this Ordinance will greatly assist City staff in responding efficiently and effectively and in the public interest when public records requests are submitted to the City; and

WHEREAS, Section 119.07(4)(a), *Florida Statutes*, authorizes certain fees and charges when public records requests are tendered to the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores has determined that the use of information technology resources should be advanced and relied upon by the City to ensure ease of access to City public records by the public,

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

SECTION ONE: PUBLIC RECORDS/AMENDMENT OF SECTION 2-6 OF CITY CODE. Section 2-6, *Code of Ordinances of the City of Daytona Beach Shores, Florida* is amended by being substantially reworded to read as follows:¹

(a). Legislative Findings.

- (1). This Ordinance shall be known as, and may be cited as, the “City of Daytona Beach Shores Public Records and Access to Government Information Ordinance”.
- (2). The City staff report and City Council agenda memorandum relating to this Ordinance are hereby adopted as if fully set forth herein.
- (3). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.
- (4). The recitals (whereas clauses) to this Ordinance are hereby adopted as the legislative findings of the City Council of the City of Daytona Beach Shores and incorporated into this Subsection as if set forth *in haec verba*.

(b). Establishment of City of Daytona Beach Shores Public Records Access Policy.

- (1). It is the policy of the City of Daytona Beach Shores, Florida, that all public records as defined in Chapter 119, *Florida Statutes*, be open for public inspection, free of any charge, subject to such exemptions as provided by law. Charges may be assessed in accordance with State law and to ensure that the citizens of the City and State (as well as those interested in City of Daytona Beach Shores governmental matters) are afforded their constitutional and statutory rights to access public records.
- (2). It shall be the responsibility of the City Clerk to monitor compliance with the policies and procedures established in this Ordinance and implement the provisions of this Ordinance on a day-to-day basis. The City Clerk shall be the City's centralized public records contact person for tracking public records requests submitted to all City departments and offices.
- (3). The City Clerk is hereby declared to be the records custodian and manager of all City public records and shall have authority to implement the provisions of this Ordinance in consultation with the City Manager and City Attorney.
- (4). The following shall not be treated as public records requests by the City and are not subject to the provisions of this Ordinance (and the State law that it implements):
 - (A). A request that is in the form of an interrogatory or question asking the City to provide written or oral answers or information even if the answers could be derived from an inspection of public records.
 - (B). A request that the City either confirm or deny an assertion.

¹ Accordingly, this Ordinance will not be legislatively scored with ~~strikethroughs~~ and underlining.

- (C). A request for a City employee to answer questions about public records.
- (D). A request for the City to assemble data and publish a report of the data collected.
- (E). A request that the City format public records in a manner not normatively formatted by the City.
- (F). A request for personal e-mail or documents even though such documents may be located in City files. Personal e-mail or documents must not relate to City business or operations in any way in order to be treated as such.
- (G). A request that is illegible, unclear, vague or is insufficient to identify the public records requested.
- (H). Requests from the media for interviews, comments or relative to anything more than the inspection or copying of public records. All City staff receiving a request directly from the media shall immediately inform the City Clerk's office and the City Manager's office of the request, but shall not delay the provision of access to public records by doing so.

(c). Public Records Fee Schedule.

(1). *Normative Charges.* Unless specifically stated otherwise in State law, the following statutory fees will apply to copying of public records:

(A). Paper size 8 1/2" x 11", 8 1/2" x 14", or 11" x 17":

(i). Single sided page \$.15 per page.

(ii). Double sided page \$.20 per page.

(B). All Other Copies: Actual cost of duplication.

(C). Certified Copy: 1+ pages: \$1.00 per certified document.

(D). Audio Tape and CD Fees (audio tapes and CDs (if applicable) may require several days to reproduce):

(i). Audio Tapes: Actual cost to City.

(ii). Data CD: Actual cost to City.

(iii). Audio CD: Actual cost to City.

(2). *Special Service Charges.*

(A). If the records request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the City (which shall mean in excess of 15 minutes), then an additional special service charge equal to the actual cost incurred for such extensive use of information technology resources plus the labor cost of the personnel providing the service.

(B). The City Clerk shall determine the appropriate charge and such charge shall be no more than the actual costs to the City and shall be calculated in a manner which shall not deter the public from making or pursuing public records requests. The City shall charge no more than the actual cost of the City personnel's time and shall be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records and charges for extensive clerical or supervisory assistance shall not be charged if the City personnel providing such assistance were simultaneously performing regular duties. Charges may include both a City employee's salary and benefits in calculating labor costs for the special service charge, recognizing, however, that charges must be reasonable and based upon the actual labor costs incurred by or attributable to the City and the City shall charge a clerical rate for the time spent making copies, even if due to staff shortages, a more highly paid person does the work.

(C). The City shall not refuse to allow inspection or copying of public records based upon the amount of records requested or the span of time which is covered by the public records request; provided, however, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the City may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel. "Information technology resources" is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training; provided, however, that the term does not include a videotape or a machine to view a videotape. The fact that a public records request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, extensive use of such resources is required. The City may not ordinarily charge for the cost to review records for statutorily exempt material and may only impose a charge for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task.

(d). Public Records Copy Request Procedures.

(1). The following procedures shall be followed when providing copies of public records:

(A). When a request for inspection or copies of public records is received, the request shall be documented on a form which shall be completed by the City employee receiving the request. The City shall never require a person to identify him or herself or any organization with whom the person is affiliated. The City shall never discourage a person from making a request for the inspection or copying of public records. No City employee shall indicate disappointment or any similar attitude to a requestor that a request to inspect or copy public records has been made. No City employee shall ever cause any document to infer or imply that a document is to be confidential, secret or for the "eyes only" of a City employee unless the City employee so stating has cleared the document with the City Attorney as being legally confidential or exempt under

controlling law. The City shall never require a person to place a request in writing. The form is for the administrative use of the City and it shall be the obligation of each City employee to ensure that such requests are documented.

(B). If the request can be immediately honored, then the inspection or copying of the records shall be implemented immediately and the City Clerk shall be notified of the request and actions in response to the request.

(C). If the request cannot be immediately honored, the requestor shall be so advised. The request shall then immediately be referred to the City Clerk for processing. The City Clerk shall immediately acknowledge the request in writing using such information as the requestor may have provided.

(D). The City Clerk shall then promptly develop an estimate of the number of copies, CDs, tapes or other types of records necessary to fulfill the request, and the estimated charges to accomplish the request to include an estimate of any special service charge and the rationale for such charge. The estimate shall be provided to the requestor in an expeditious manner.

(E). The person requesting the public records shall pay the total estimated charges prior to the preparation and production of the requested public records.

(F). Upon payment by the person requesting the public records, the City shall produce the requested public records as soon as possible.

(G). The City shall be responsible for reviewing all records for possible exemptions to the open public records requirement.

(H). Adjustment shall be made in the amount charged for the public records upon production of the requested public records if the actual charge differs from the estimated charge. Additional amounts due must be paid to the City before the public records are produced.

(I). No conditions other than the payment of the estimated charges shall be imposed upon any person requesting public records. Any person may request and receive public records of the City. No person shall be required to identify themselves, nor shall any person be required to state their purpose as a condition of receiving public records. No charge shall be imposed for inspection of public records unless public records are requested.

(J). Each member of the City Council may request any amount of public records from the City Manager which he or she believes is reasonably necessary to accomplish the legislative and policy-making roles of a member of the City Council. Should the City Manager believe that a request is not a legitimate request, he or she may present the matter to the full City Council for a determination by a majority vote of the City Council. The City Manager shall adhere to the determination of the City Council. A member of the City Council is not required to file a public records request in order to obtain public records that are necessary to accomplish his or her duties as a City Council member. A member of the City Council shall have the right to submit a public records request as a private party as would any other person.

(K). The City Attorney may issue directives to City staff to ensure compliance with the provisions of this Ordinance including, but not limited to, the procedures of this Section as well as general compliance with controlling State law. With regard to public records requests directed to the City Attorney, the City Attorney shall advise the City Clerk of such requests and shall determine whether to accomplish the appropriate response to such requests through the City Clerk or through his or her own efforts and processes.

(L). The City's manager of risk management shall be advised of any requests to inspect or copy public records which may result from or result in a claim or litigation being filed against the City. If the City's manager of risk management determines that the request relates to a claim or may relate to a claim in the future, a set of the documents copied by a requestor, or a summary of the files inspected, shall be provided to him or her upon request.

(2). Fees for public records services may be waived by the City Manager, or designee(s), in order to assist other governmental agencies or public entities or when otherwise determined to be in the best interests of the City and fulfill a public purpose.

(3). Requestors who request research by City staff relating to outstanding City liens, assessments and other charges shall be assessed a fee of \$20.00 per parcel of real property or such other fee as may be adopted by resolution of the City Council.

(4). Requestors who request fingerprinting services by City staff shall be assessed a fee of 3.00 per set for residents of the City and \$7.00 per set for nonresidents or such other fee as may be adopted by resolution of the City Council.

(e). Dispute Resolution.

(1). In the event of disputes over access to public records or related matters, the City shall encourage the use of the Attorney General's Office and the participation in open government mediation program as established in Section 16.60, *Florida Statutes*, as an alternative for the resolution of public access disputes without resort to expensive and time-consuming litigation.

(2). The City Attorney shall represent the interests of the City in mediation proceedings and the City Manager and City Clerk shall assist in such matters.

SECTION TWO: IMPLEMENTING ADMINISTRATIVE ACTIONS/PENALTIES.

(a). The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions including, but not limited to, the adoption of administrative rules and legal directives as may be appropriate to their positions.

(b). The failure of a City officer or employee shall subject said person to such discipline as may be available to impose upon such officer or employee.

SECTION THREE: SAVINGS. The prior actions of the City of Daytona Beach Shores relative to the lawful provision of public records are hereby ratified and affirmed.

SECTION FOUR: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances 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; provided, however, that Sections Three, Four, Five, Six and Seven shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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

SECTION SIX: 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 SEVEN: 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.