

**ORDINANCE 2013-08**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING CHAPTER 11 ½ OF THE *MUNICIPAL CODE OF ORDINANCES* RELATING TO ALARMS OF ALL TYPES AND NATURES AS DEFINED HEREIN (RECENTLY REVISED IN ORDINANCE NUMBER 2012-12); PROVIDING FOR REGULATIONS AND FEES AND CHARGES PERTAINING TO FALSE OR NUISANCE ALARMS; PROVIDING FOR ENFORCEMENT AND PENALTIES, THE ADOPTION OF ADMINISTRATIVE RULES AND IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

**WHEREAS**, the City of Daytona Beach Shores finds that a high incidence of false alarms and nuisance alarms is detrimental to the public interest and detracts from the ability of emergency personnel to devote all of their efforts in addressing bona fide calls for emergency assistance; and

**WHEREAS**, the purpose of this Ordinance is to encourage property owners and alarm companies to be diligent in the prevention and minimization of false and nuisance alarms; and

**WHEREAS**, this Ordinance governs alarm systems of any type or nature, but specifically includes and regulates fire and burglar alarms, which alarm systems are intended to summon or cause to be summoned the City's emergency response and public safety personnel to properties and to ensure, to the maximum extent feasible, the loss of resources resulting from false or nuisance alarms; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores recently took action in this area of the law by enacting Ordinance Number 2012-12 and the intent of this Ordinance is to further address the issues that arise and face the City, and costs that result to the City, as a result of nuisance alarms of any type or nature and not only false fire alarms; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds it is in the best interest and welfare of the citizens of the City to enact this ordinance; and

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, although not a land development regulation, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores* and advances the public health, safety and welfare; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute substantial additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~striketrough~~ shall constitute deletions to the original text. The renumbering of provisions is not coded.

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

**SECTION ONE: REGULATION OF FALSE ALARMS/AMENDMENT OF SECTION 11 ½ OF CITY CODE.** Section 11 1/2, *Code of Ordinances of the City of Daytona Beach Shores*, as amended by Ordinance Number 2012-12, is hereby further substantially amended and renumbered to read as follows:

**Sec. 11½-1. - Definitions.**

For the purpose of this chapter, whenever any of the following words or terms are used herein, they shall have the meanings ascribed to them in this section:

*Alarm:* Any device which is used in a building or premises for the detection of unauthorized entry, burglary, fire, rescue, or any other emergency activity, and which, when activated, emits a sound, signal, or message to alert others, whether emitted on or off the premises or to the central office of an alarm business.

*Alarm business:* Any person engaged in the business of selling, leasing, monitoring, maintaining, servicing, repairing, altering, replacing, moving, or installing any alarm for any building, place, or premises.

*Alarm system:* Any device, mechanical or electrical, which is installed or used to warn or signal emergency response or public safety personnel of danger to persons or property.

*Alarm user:* Any person using an alarm or occupying and controlling a building or premises, or a portion of a building or premises, served by an alarm.

*Class "A" alarms:* All those alarms activated by entry in response to criminal activity, fire, rescue, and alarms activated solely by an act of nature, act of God, or act of a regulated utility company completely out of the control of the alarm owner or user and not contributed to by faulty design, maintenance, installation, or use.

*False alarms:* All activated alarms, responded to by the City, which do not qualify as class "A" alarms, including, but not limited to, alarms activated through inadvertence, neglect, accident, unannounced testing, and faulty installation, or maintenance. The term also means and includes an alarm signal eliciting notification to and a response by the City personnel, when there is no evidence of any activity that warrants a call for immediate assistance or response and no person who was on or near property or has viewed a video communication from the property and called for the City to dispatch

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does not include alarms caused by an electrical storm, hurricane, tornado, or other act of God, where there is clear evidence of physical damage to the alarm system, alarms caused by the intermittent disruption of telephone circuits beyond the control of the alarm user, or alarms caused by electrical power disruption or failure in excess of two (2) hours beyond the control of the alarm user with it being the burden of proof for the owner to prove, by clear and convincing evidence, any such occurrence. False alarms are also known as *nuisance alarms* in that they detract from the ability of emergency services personnel to devote all of their efforts to addressing bona fide emergency situations and circumstances.

*Persons:* An individual partnership, association, or corporation.

*Response:* Arrival of City personnel at a location as a result of the activation of an alarm system at the location.

*Unit of real property:* Any contiguous lands within the City, which are under common ownership, or are devoted to a single use, whichever is greater. Common ownership shall include all entities from which the same natural or fictitious person or people have ultimate benefit. Contiguous lands shall include those separated by easements, sidewalks, alleys, rights of way, and water bodies.

**Sec. 11½-2. - Alarm permit required.**

It is prohibited and unlawful for a person to have an alarm installed to be operational, or use an existing alarm serving a building or premises, or portion thereof, occupied or controlled by such person, unless an alarm permit in the form of a decal in a form determined by the City Manager, or designee, has been issued hereunder, and is in force, authorizing the use of such alarm.

**Sec. 11½-3. - Application for alarm permit.**

(a) Applications for alarm permits shall be made to the City Manager, or designee, on forms provided by the City. The application shall be in a form approved by the City Manager, or designee.

(b) An amended application shall be filed within ten (10) days after any change in the information provided in the original application or the most recent amendment to the original applications.

**Sec. 11½-4. - Term of permit; nontransferability; permit fees.**

(a) Term. All alarm permits shall have a term of one (1) year from October 1 to September 30. Any permit issued after October 1 shall also expire on September 30, regardless of the date of issuance. No discount in fees shall be granted for any permit that is valid for less than one (1) year.

(b) Nontransferability. No alarm permit shall be transferable or assignable or cover more than one (1) building or premises.

(c) Permit fees. Permit fees shall be established by resolution adopted by the City Council.

**Sec. 11½-5. - Decal posting required.**

Each alarm permit holder shall be issued a numbered alarm decal and an expiration date sticker by the City, which shall be displayed in a visible location near the alarm panel. These decals shall have a serial number to identify the system and/or ownership shall indicate the name of the business, alarm company and emergency contact information and the permittee shall also post with the decal, the phone number of a person who may be contacted in the case of an emergency at the premises. It is prohibited and unlawful for any person to display any permit decal or expiration date sticker that has expired.

**Sec. 11½-6. - Excessive false alarms declared a public nuisance.**

The emission of more than three (3) false alarms within any three hundred sixty-five (365) day period of time is excessive and constitutes a serious public nuisance, and is hereby declared to be unlawful and a violation of this section.

**Sec. 11½-7. - False alarm service charge; collection.**

(a) For response to excessive false alarms by the City, the alarm user shall be charged a service fee by the City as established by resolution of the City Council for the first false alarm in excess of three (3) false alarms in any twelve (12) month period, and as established by resolution of the City Council for the second and each successive false alarm in excess of four (4) in any twelve (12) month period.

(b) If any person shall fail to appear and reset any such alarm within one (1) hour after being notified by the City to do so, then the owner or manager of the premises shall be charged a fee as established by resolution of the City Council for the first such occurrence, and a fee as established by resolution of the City Council for each succeeding occurrences, within twelve (12) months of the last failure to appear.

(c) The fees assessed in this Section shall be subject to the nuisance abatement special assessment provisions of this Code.

**Sec. 11½-8. - Corrective action report.**

For each response by the City to an alarm, the owner or manager of the premises shall, within five (5) working days, make a written report to the City Manager, or designee, on forms provided by the City, setting forth the cause of the alarm, the corrective action taken, the name and address of the service company, if any, by whom the alarm system has been inspected or repaired, and such other information as the City may require to determine the cause of the alarm, and what corrective action has been taken or may be necessary. After the receipt of the owner's report, the City will make a determination as to the alarm being class "A" or false, and notify the owner accordingly in writing. Failure to file a corrective action report shall result in assessment of an additional fee as established by resolution of the City Council.

**Sec. 11½-9. - Interference with City's telephone trunk lines prohibited; alarm business central office required; identification required.**

(a) No person shall use, or cause to be used, any telephone, or electronic device, communication networks or attachment that automatically selects a public primary

telephone trunk line of the City, and then, reproduces any prerecorded message to report any burglary, unauthorized entry, fire, rescue, or other emergency. No prerecorded messages shall report any burglary, unauthorized entry, fire, rescue or other emergency to the local dispatch center.

(b) No person shall provide a private alarm service system programmed to a central alarm reception office unless it shall have the central office staffed at all times, twenty-four (24) hours a day, including holidays.

(c) Any staff member of a private alarm service system reporting an alarm activation to which City response is requested shall identify himself and state the name and telephone number of the alarm business by which such response is requested.

**Sec. 11½-10. - Audible alarms.**

(a) All alarm sounders, which may be heard in any public place, shall be equipped and maintained to automatically cut off no longer than thirty (30) minutes after emitting audible sounds except for fire alarms, and any others required by a regulatory agency to sound longer.

(b) The City Manager, or designee, may require the external sounders of an alarm system, found to be a nuisance, disconnected, and the alarm permit revoked until the appropriate corrective action has been taken. A fee, in an amount established by resolution of the City Council, shall be assessed for any such action.

**Sec. 11½-11. – Immunity of the City; Fees Resulting from Actions of the City.**

Any person who summons, or in any way causes to be summoned, City personnel to a site by means of any alarm, or seeks an inspection of any premises, of whatsoever type or nature or for whatsoever reason, recognizes that the City shall not be liable for any resulting actions or events pertaining to the City's means or methods of responding to the alarm or conducting an inspection regardless of the circumstances, actual or perceived, at the site at the time of arrival at the site of the alarm or at the time of the inspection and regardless of processes, procedures or protocols that may have been pertinent to any particular event or circumstance. Said persons shall also be deemed to recognize that the provisions of the City's codes and ordinances relating to the payment of fees shall be applicable to their actions and to the costs and fees associated with false alarms.

**Sec. 11½-12. - Exemptions.**

This chapter shall not apply to motor vehicle alarms or to any alarm system located on premises occupied by an agency of the Federal, State, County or City government.

**SECTION TWO: ENFORCEMENT, PENALTIES, ADMINISTRATIVE RULES, AND IMPLEMENTING ADMINISTRATIVE ACTIONS.** A new Section of the *Code of Ordinances of the City of Daytona Beach Shores* is added to read as follows:

(a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance or the provisions of any City code or ordinance related hereto.

(b). The City may enforce the provisions of this Ordinance or any City code or ordinance related hereto by any lawful means available to the City under the controlling provisions of State law.

(c). The penalties for violation of this Ordinance or any City code or ordinance related hereto shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

(d). The fees and charges which are assessed under the provisions of this Ordinance as well as the fees and charges assessed under any existing City code or ordinance related hereto are determined to be reasonable fees to address nuisance abatement and the service provided to property owners in responding to alarms which originate on their properties. Upon failure of the owner, lessee or manager of the property to pay the false alarms fee(s), the unpaid fee(s) may be assessed as a lien upon the real property where the alarm system is installed in accordance with City special assessment lien processes and procedures. The City may enforce its lien against said real property and maintain in personam action against the property owner, lessee or manager to recover the unpaid fee(s) and any interest accrued thereon. In any action brought by the City for the collection of unpaid fee(s) or liens(s), the City shall be entitled to recover all costs including attorney's fees. The City Manager is hereby delegated all decision-making authority necessary to implement the provisions of this Section using reasonable discretion after consultation with the City Attorney.

(e). Whenever a fee is established for a City activity related hereto, yet the amount of that fee has not been established by the City Council, the City Manager is hereby empowered to establish an interim fee that will be in effect until action is taken by the City Council.

(f). The City Manager, or designee, is hereby delegated the authority to adopt any necessary administrative rules to implement the provisions of this Ordinance as well as any existing City code or ordinance related hereto.

(g). The City Manager, or designee, is hereby delegated the authority to implement the provisions of this Ordinance as well as any existing City code or ordinance related hereto.

**SECTION THREE: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to the regulation of alarms and the assessment of fees and costs, as well as any and all related matters, 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 as deemed appropriate. It is recognized that the section numbers set forth in Ordinance Number 2012-12 were erroneous in certain respects.

**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**

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**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.