

ORDINANCE NO. 2014-06

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA AMENDING THE MUNICIPAL CODE OF ORDINANCES, *LAND DEVELOPMENT CODE*; PROVIDING FOR DETERMINATIONS OF VESTED RIGHTS; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR ADMINISTRATIVE ACTIONS BY THE CITY MANAGER AND CITY ATTORNEY; PROVIDING FOR CONFLICTS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND CORRECTIONS OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

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 Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to this Ordinance.

(b). The City Council of the City of Daytona Beach Shores hereby recognizes the controlling principles of law relative to statutory and equitable vesting of rights in real property and the benefit of property owners and the City being able to determine through a formal process the extent and nature of land use entitlements that are vested in a particular lands.

(c). By enacting this Ordinance, the City Council of the City of Daytona Beach Shores does not intend to create, establish or vest any new property rights in real property nor limit, in any way or manner, the land development regulatory authority of the City.

SECTION TWO. VESTED RIGHTS DETERMINATIONS. A new section or sections of the *City Code of the City of Daytona Beach Shores, Florida* is/are created

to read as follows:

(a). The owner or owners of real property or his, her, its or their expressly authorized agent may request a determination of vested rights relative to any property right asserted to exist under the controlling principles of law by paying the application fee therefor and filing a technically complete application with the City Manager, or designee. The request shall be for a vested rights certificate allowing certain development to proceed and establishment of the land use entitlements vested in a particular parcel or parcels of real property.

(b). In such circumstances as the City Manager may deem appropriate and beneficial, the City Manager may institute the process that will result in determination of vested rights relative to property rights vested in a particular parcel or parcels of real property which process will result in the issuance of a vested rights certificate detailing the land use entitlements vested in such property.

(c). The application form shall, at a minimum, contain the following information:

(1). The name and address of the applicant who shall be the owner or all owners of the subject parcel of real property or a person expressly authorized to apply on behalf of the owner or owners.

(2). A legal description, current tax parcel identification number and survey or a sketch of the real property which is the subject of the application.

(3). The name and address of each owner of the real property.

(4). A site or development plan or plat for the real property.

(5). Identification by specific reference to any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.

(6). A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development notwithstanding the moratorium.

(7). Such other relevant information that the City Manager or City Council may request or the applicant may desire to have initially considered.

(d). The applicant shall provide a sworn statement to be executed by all owners of the real property or an authorized agent that all information set forth on the application is true and correct.

(e). The City Manager shall screen each application for a vested rights determination to determine whether the application is technically complete. The sufficiency determination shall be made within 14 calendar days after receipt of an application. If not technically complete, the application shall be promptly returned to the applicant. A technically incomplete application shall be returned to the applicant with written notification of the deficient items not provided as required by this Ordinance and the applicant shall be granted 14 additional calendar days to complete this application. If a response is not submitted to the City Manager or designee within the time specified; the application shall be deemed abandoned.

(f). Upon the City Manager, or designee, accepting a technically complete application, for which the application fee has been submitted, the City Council shall review the application and hold a public hearing and make a final determination within

21 calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested status. At the hearing, the applicant shall present all of its, their, his or her evidence in support of the application. The technical rules of evidence in judicial proceedings shall not be applicable, but all testimony given shall be under oath.

(g). Within 7 calendar days after making a final determination of vested rights status, the City Council shall provide the applicant with written notification of the determination of vested rights status.

(h). If the City Council determines that vested rights exist and that development may proceed, the applicant shall have the right to rely upon such written notification that the real property is vested and the determination that the real property is vested shall be final and not subject to appeal, revocation or modification.

(i). The City Council's decision to grant or determine vested rights status shall be final subject, however, to appeal in accordance with State law. Decisions made by the City Council pursuant to this Ordinance may be appealed by the real property owners to the Circuit Court in and for Volusia County, Florida.

(j). Whenever the City Manager determines that it would be advisable or beneficial to do so, the City Manager may appoint a hearing officer as provided for and governed by Section 2-28 of the *City Code*. The hearing officer may be assigned the responsibility of making findings of fact or conclusions of law, or both relative to the vested rights status of real property. With the approval of the City Council, the City Manager may delegate final determination authority to the hearing officer, in which case,

the decision of the hearing officer relative to vested rights status shall be final subject, however, to appeal in accordance with State law.

(k). Final decisions made pursuant to this Ordinance may be appealed by the real property owners to the Circuit Court in and for Volusia County, Florida.

(l). The City Manager shall procure the opinion of the City Attorney relative to all applications and decisions made under this Ordinance. The City Manager may adopt rules and accomplish administrative actions that implement the provisions of this Ordinance,

SECTION THREE. SAVINGS.

The prior actions of the City of Daytona Beach Shores relating to development rights and vested rights, as well as matters and processes of the City relating thereto, are hereby ratified and affirmed.

SECTION FOUR: CODIFICATION.

The provisions of this Ordinance except as herein noted, 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 re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article" or other appropriate word. Sections Three, Four, Five, Six and Seven shall not be codified. Regardless of whether this Ordinance is ever codified, the divisions and provisions of this Ordinance may be renumbered or relettered and typographical errors that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the authorization of the City Manager, or designee, without the need for a public hearing.

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 its final passage.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY H. JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER
Approved as to form and legality:

CHERI SCHWAB, CITY CLERK

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2014.

Adopted on second reading this _____ day of _____, 2014.