

**ORDINANCE NO. 2014-10**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE, APPENDIX "G", SECTION 12-4.32; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE ESTABLISHMENT OF SEWER SYSTEM UTILIZATION CHARGES UNDER THE CIRCUMSTANCE OF DAMAGED, DISFUNCTIONAL AND/OR OTHERWISE NON-CONFORMING OR INNACURATE METERS THAT ARE OWNED, READ, AND OPERATED BY GOVERNMENT AGENCIES OTHER THAN THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS BY THE CITY MANAGER ; 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.**

**WHEREAS**, controlling State law prohibits municipal enterprise funds from incurring operational financial deficits; and

**WHEREAS**, maintaining public health requires that the City generate revenues necessary to effectively maintain and operate its sewer utility; and

**WHEREAS**, the City of Daytona Beach Shores generates its sewer utility revenues from water meter readings taken by other government agencies on equipment owned and operated by those agencies; and

**WHEREAS**, the City of Daytona Beach Shores maintains the requisite account records to evaluate any substantive change in the pattern of meter reading data; and

**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 purpose of this Ordinance is to ensure that the best interests and welfare of the citizens of the City are protected; 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 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: LEGISLATIVE FINDINGS AND INTENT.**

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.

**SECTION TWO. UTILITY USE CHARGE ADJUSTMENTS.** Section 12-4.32, Appendix “G”, *Land Development Code, Code of Ordinances of the City of Daytona Beach Shores, Florida* is amended to read as follows:

***12-4.32. Service Use Charge.***

1. *Levied; Rate.* There is hereby levied and imposed a sewer service use charge as is currently in effect ~~of nine dollars and seventy cents (\$9.70) for the first three thousand (3,000) gallons of water consumed per month and four dollars and eighty five cents~~

~~(\$4.85)~~ for each one thousand (1,000) gallons or part thereof consumed per month thereafter which service use charge shall ~~will~~ be imposed on each customer of water in the City. The service use charge shall continue to be reviewed annually to revise the rates as necessary to ensure that adequate revenues are generated to pay the cost of operation and maintenance, including replacement and treatment cost increases, and that the system provides for proportional distribution of costs among users. The City will notify users annually of the rate structure in effect to adequately maintain adequate revenues and the City Manager, or designee, may take all necessary administrative actions to implement the rate structure of the City as it may be modified from time-to-time.

a. Levied rate for out-of-City customers connected to the Sewer System. There is hereby levied and imposed a service use charge equal to one hundred fifty (150) percent of the service use charge specified in section 12-4.32.1 for those properties connected to the Sewer System that are not within the City limits of Daytona Beach Shores. Minimum charges and initial service billings shall reflect this surcharge.

2. *Sewage Credits; Service Charge.* Sewage credits shall be issued for water line leaks due to breakage or for water used to fill pools or cooling towers or for water used for irrigation and sprinkler systems which do not impact the sanitary sewage system when such occurrences are found to have been proven to have occurred by the customer receiving service. Any person wishing to receive credit for filling a pool must notify the City and pay a fifteen dollar (\$15.00) service charge at least forty-eight (48) hours in advance. The City sewer department must read the water meter both before and after a pool is filled for a sewer credit to be issued. Any person wishing to receive a sewage credit for water used in cooling towers or for irrigation and sprinkler systems must have a

separate certified water meter installed specifically for this purpose at their cost. Any person wishing to receive credit for water line leaks due to breakage whereupon water leakage has occurred from said water line that does not impact the sanitary sewage system must submit a formal request for credit with documentation to include a City plumbing permit indicating repair of the leak by a licensed plumbing contractor or property owner with an invoice of the material used for the repair. The sewer department shall, upon receipt by the City of a formal request with aforementioned documentation, perform an inspection and verify that no impact occurred, as a result of said water line leak, to the sanitary sewage system. Upon proper verification by the sewer department, the finance department shall review the previous twenty-four (24) months billings.

The City Manager may issue a credit in the following manner: The credit issued shall be for excess water consumption billed during the period in which the leak occurred and the credit shall be for excess consumption above the annual average for the previous twelve (12) months but in no way shall the sewer billing for the period in which the leak occurred be less than the consumption during the same period the previous year.

3. *Payment.* This sewage charge shall be paid at City Hall or the City's banking institution, the address of which shall be printed on the sewage bill, by each person responsible for the payment of their respective water bill. Payment is due upon receipt and shall be considered delinquent if not paid by the stated due date on the sewer billing. Payments received at the City's banking institution on the stated due date must arrive there before the institution's daily cutoff time otherwise they will be credited to the customer's account on the following business day resulting in a delinquency. The City shall not accept postmarked dates for payment of bills due the City. Payments shall only

be accepted without penalty when they are received by the due date and not by the date postmarked. The City shall not be responsible for delay or loss of mail.

4. *Late Charges.* A ten (10) percent late charge shall be assessed on all billings paid later than the fifteenth day of the month. At that time, any previously exempted or otherwise unpaid deposits will be charged to the customer's account. Billings delinquent three (3) or more times during any twelve (12) calendar months shall be assessed an additional deposit in the amount of one hundred dollars (\$100.00) or three (3) months' average billing, based upon the prior twelve (12) months' water consumption, whichever is greater. Upon notification, from Daytona Beach or Port Orange that water service to said premises has been disconnected, this deposit will be applied to the customer's bill. Late charges and additional deposits shall be included on subsequent billing statements.

5. *Water Disconnection.* In any case wherein the charges of sewer service remain unpaid for thirty (30) days after the initial date of billing, the city shall take the necessary actions to cause water service to be disconnected to the premises where the charges have accrued. A door tag indicating the disconnection of service shall be posted at the premises. The failure to note or receive such notice shall not be cause for reconnection of service. Prior to reconnection, payment shall be made to the City in cash, money order, certified or cashier's check. Said payment shall be full payment and shall include all past due amounts, including penalties, current amounts due for city Services, and an additional deposit as required by section 12-4.32.4. Interlocal agreements with the cities of Port Orange and Daytona Beach are in effect and provide for discontinued water service to delinquent customers.

6. *Lien for Unpaid Bills.* If the failure to pay the service charge continues for a period of one hundred twenty (120) days from when said charge has become due, the City shall send to the property owner of record for said bill a notice that a lien for the unpaid sewage charges will be placed upon the real property so served. This notice shall be sent by certified mail return receipt requested. If, within thirty (30) days of the mailing of this letter, the City has not received a payment in full, it shall be entitled to impose a lien upon the real property so served. This lien shall be recorded in the Public Records of Volusia County, Florida and may be foreclosed upon in a manner as provided in F.S. § 159.17. The City shall be entitled to its attorneys' fees and costs in the foreclosure proceedings.

7. *Minimum Charge.* A minimum charge of three thousand (3,000) gallons per month shall be levied on each user and/or property owner where sewer lines serve the property. The City of Daytona Beach Shores shall have, and at all times reserves, the power and right to not accept the meter read data as provided by other government agencies for any City of Daytona Beach Shores utility client for any billing periods, and invoice its sewer utility customers for any billing periods' sewer utility utilization based on the higher of the following measures: (1) the utilization meter reading(s) from the identical billing period(s) in the prior year; (2) the average utilization meter reading for the latest preceding 3-month billing period wherein such reading is deemed by the City of Daytona Beach Shores to be an accurate reflection of use; (3) the average utilization meter reading for the latest preceding 12-month billing period wherein such reading is deemed by the City of Daytona Beach Shores to be an accurate reflection of use.

8. *Exemptions.* Properties in the City where there is no sewer service available at the property line of said properties or properties which are connected to another municipality's sewer system are exempt from the provisions of this section.

9. *Changes in Rates.* Revisions to the rates may be implemented by adoption of a resolution by the City Council.

**SECTION THREE 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). Whenever a fee is established for a City activity related to the matters set forth herein, the City Manager is hereby empowered to proposed to the City Council an ordinance that will provide for the revision of such fees or related matters by adoption of resolutions as opposed to the enactment of ordinances.

(b). 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.

(c). 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 FOUR. SAVINGS.**

The prior actions of the City of Daytona Beach Shores relating to the collection of utility fees, the operation of utility systems and the management of utility systems, as well as matters and processes of the City relating thereto, are hereby ratified and affirmed.

**SECTION FIVE: 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 Four, Five, Six, Seven and eight 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 SIX: CONFLICTS.**

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

**SECTION SEVEN: 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 EIGHT: EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its final passage.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**HARRY JENNINGS, MAYOR**

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

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**CHERI SCHWAB, CITY CLERK**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.