

**ORDINANCE 2015-01**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO THE PUBLIC SERVICE UTILITY TAX ON ELECTRICITY AND GAS; AMENDING SECTION 21-1 OF THE *MUNICIPAL CODE OF ORDINANCES*; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPOSITION AT THE RATE OF TEN PER CENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS 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**, in Section 166.231, *Florida Statutes*, the Florida Legislature authorizes Florida municipalities to impose a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service; and

**WHEREAS**, the Florida Legislature authorizes the original imposition of a public service tax about 40 years ago; and

**WHEREAS**, prior City Councils of the City of Daytona Beach Shores enacted the public service tax on all utility services that are eligible to be taxed with the first action taken in this regard approximately 30 years ago; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has elected not to impose the public utility tax on all utility services that are eligible to be taxed; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has an obligation to ensure that the municipal government that serves the citizens of the City is adequately funded in order to provide a high quality of life to the citizens of the City; 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**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores* in that the revenues derived from the public service tax enhance the ability for the City to plan and provide, in a fiscally feasible manner, a high level of public services and facilities to the citizens of the City; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

**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 Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance and the City staff report relating to this Ordinance.
- (b). The provisions of this ordinance are enacted pursuant to the statutory and constitutional home rule powers of the City and other controlling law.
- (c). The City has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

**SECTION TWO: AMENDMENT TO SECTION 21-1, CITY CODE; PUBLIC SERVICE UTILITY TAX, ELECTRICITY AND GAS.** The City Council of the City of Daytona Beach Shores hereby amends Section 21-1 of the *Code of Ordinances of the City of Daytona Beach Shores* to read as follows:

**Sec. 21-1. - Public service utility tax, electricity and gas.**

- (a) There is hereby levied a ten ~~six~~ percent public service utility tax on the purchase of electricity within the city. Also, there is hereby levied a ten ~~six~~ percent public service utility tax on the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured). The taxes shall be levied against all purchases within the City of Daytona Beach Shores on all payments received by the seller of the taxable item from the purchaser for the purchase of such service.
- (b) The tax shall be paid by the purchaser for the use of the city, to the seller of such electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) at the time of paying the charge to the seller, but not less often than monthly.
- (c) Every seller of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the city shall collect from the purchaser, for the use of the city, the utility tax at the time of collecting the selling price charged for each transaction, and

~~[is required to]~~ shall report and to pay on or before the 20th day of each month, to the finance director of the city, all such taxes levied and collected during the preceding month.

(d) No seller shall collect a price for any purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), without collecting a utility tax levied on such purchase or purchases, unless the seller elects to pay the tax without collecting it from the purchaser.

(e) Every seller who has not elected to assume and pay the utility tax and fails to collect the tax shall be liable to the city for the amount of the tax, in a like manner as if the tax had actually been paid by the purchaser. The city manager shall cause to be brought necessary suits and procedures in the name of the city for the recovery of any utility tax due from the seller; provided, however, the seller shall not be liable for the payment of taxes upon uncollected bills.

(f) If any purchaser fails, neglects or refuses to pay any utility tax to the seller on any purchase, the seller shall have the right to discontinue further service to such purchaser until the utility tax and the seller's bill shall have been paid in full. If the seller elects to continue providing service to any purchaser who fails, neglects or refuses to pay any utility tax to the seller for that purchase, the seller shall then be responsible to pay the utility tax for the value of that purchase, regardless of the actual payment by the purchaser to the seller.

(g) Each and every seller of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured) shall keep complete records showing all purchases in the city of such commodities or service, which records shall show the price charged upon each purchase, and the date thereof, and the date of payment thereof, and said records shall be kept open for inspection by authorized agents of the city during normal business hours. The authorized agents of the city shall have the right to make copies of the foregoing records. Each such seller shall also allow the city and/or its authorized agents to conduct an audit of these seller's books and records during reasonable and normal business hours.

(h) The United States of America, the state, the county, the city and their commissions and agents shall be exempt from the payment of taxes imposed and levied by this section.

(i) All churches which are entitled to exemption from state sales and use tax shall be exempt from the payment of utility tax on church property used exclusively for church purposes. An authorized representative of the church shall execute and deliver an affidavit to the city, stating the property on which the utility tax exemption is claimed and that it is used exclusively for church purposes.

(j) If the seller of services and commodities taxed by this section collects monthly, the utility tax may be computed to the nearest whole cent on the total purchases during the monthly period.

(k) All revenues received from the utility tax levied pursuant to this section shall be deposited by the city manager into the general fund of the city. The city council is authorized and empowered to use such revenues for any lawful purpose and pledge any part or all of the taxes collected for the payment of all or any part of any issue of revenue certificates, revenue bonds or general obligation bonds of the city that may be authorized and issued by the city, and any part of said fund not so pledged may be expended for any municipal purpose.

**SECTION THREE: IMPEMETING ADMINISTRATIVE ACTIONS.** The City Manager, or delegatee, shall take any and all administrative actions necessary to implement the actions taken in this Ordinance to include, but not be limited to, providing notice to, and otherwise interacting with, the Florida Department of Revenue and any other agencies of government as may be necessary.

**SECTION FOUR: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to the imposition, collection and usage of the public utility tax and related matters are hereby ratified and affirmed.

**SECTION FIVE: CODIFICATION; CORRECTION OF SCRIVENER'S ERRORS.**

(a). The provisions of this Ordinance 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 One, Three, Four, Five, Six, Seven and Eight shall not be codified.

(b). The Code codifier is granted liberal authority to codify the provisions of this Ordinance in such manner and in such places as deemed advisable.

(c). In accordance with the City's ongoing codification program; the City Clerk, in conjunction with the City Attorney, may make corrections to the provisions of this Ordinance relative to Scrivener's errors of whatever type or nature.

**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 enactment; provided, however, that the tax rate imposed in Section Two of this Ordinance shall not take effect until July 1, 2015.

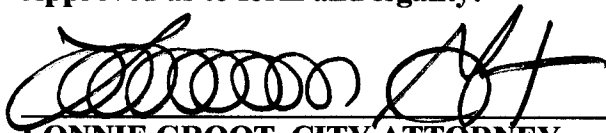
**CITY OF DAYTONA BEACH SHORES, FLORIDA**

  
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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 27 day of JAN, 2015.

Adopted on second reading this 10 day of Feb, 2015.

