

ORDINANCE 2015-03

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE DATES OF THE ELECTIONS TO REPLACE A COUNCIL MEMBER FOR A VACATED CITY COUNCIL SEAT AND FOR AN ELECTION ON NOVEMBER 3, 2015 TO FILL THE CURRENT VACANT SEAT FOR THE REMAINDER OF THE TERM VACATED; PROVIDING FOR AN AMENDMENT TO THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* WITH REGARD TO THE FILLING OF VACANCIES IN OFFICE AND ESTABLISHING DATES AMENDING THE *DAYTONA BEACH SHORES CITY CODE/CODE OF ORDINANCES* RELATING TO THE ADMINISTRATION OF CITY ELECTIONS TO PROVIDE THAT ALL SUCH ELECTIONS SHALL OCCUR AND BE IMPLEMENTED IN ACCORDANCE WITH THE PROVISIONS OF CONTROLLING LAW; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR INTERIM APPOINTMENTS OF CITY COUNCIL MEMBERS TO PROVIDE FOR THE ORDERLY TRANSITION OF OFFICE; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the provisions of Florida law and the provisions of the *City of Daytona Beach Shores City Charter*ⁱ regulate the electoral processes of the City of Daytona Beach Shores relative to City elections; and

WHEREAS, Section 100.3605, *Florida Statutes*, relates to the conduct of municipal elections and provides as follows:

- (1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.
- (2) **The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of**

the municipality and provide for the orderly transition of office resulting from such date changes. (Emphasis added).

and;

WHEREAS, the City Council of the City of Daytona Beach Shores received the resignation of Council Member Henry Fehrmann, dated June 19, 2015, which resignation was based upon the change in residency of Council Member Fehrmann as he relocated to the State of Georgia; and

WHEREAS, the *City of Daytona Beach Shores City Charter* provides as follows with regard to vacations of office and the election process that relates to the replacement of Council Members who have vacated their office:

Sec. 2.05. - Filling of vacancies.

If the unexpired term is nine (9) months or less, vacancies in the office of councilmember or mayor-councilmember shall be filled within thirty (30) days by the appointment of a successor by the majority vote of the remaining members of the council. If the majority of the remaining members of the council fail to fill the vacancy through appointment within the thirty-day period, a special election to fill the vacancy shall be called and held no later than ninety (90) days thereafter.

Vacancies in the office of councilmember or mayor-councilmember, if the unexpired term is more than nine (9) months, shall be filled by a special election called and held within ninety days, or in a regular or special election if one is scheduled within one hundred twenty (120) days of the creation of such vacancy.

Should the council fail to provide for an election within the time required by the charter, such election may be ordered by any court of competent jurisdiction.

The qualifying for candidates for a special election to fill a vacancy shall be the same as provided for regular elections in this charter.

Any successor who fills a vacancy, whether by appointment or election, shall have and possess all of the qualifications established by this charter for the office being filled.

; and

WHEREAS, discussions by City staff with the office of the Supervisor of Elections for Volusia County and a review of the upcoming Municipal General Election schedule, the prudent

expenditure of public funds, and the needs of the City as well as the general requirements pertaining to the administration and implementation of elections have resulted in the conclusion that it would be beneficial and in the public interest to amend the provisions of the *City of Daytona Beach Shores City Charter* relative to changing the dates for qualifying and for the election of members of the governing body of the City (the City Council) when vacancies occur and providing for the orderly transition of office resulting from such changes; and

WHEREAS, the provisions of Section 166.021 (4), *Florida Statutes*, provide as follows:

The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election **except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates**, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed." (**Emphasis** added).

; and

WHEREAS, the aforecited provisions of statutory law were enacted into law in 1995 by the Florida Legislature by means of the passage of House Bill 2209 (Chapter 95-178, *Laws of Florida*); and

WHEREAS, House Bill 2209 (Chapter 95-178, *Laws of Florida*) was passed by the Florida House of Representatives by a vote of 118-0 and by the Florida Senate by virtue of a vote of 37-0 and, a review of the legislative history of the legislation, indicates that all committee votes on the legislation were unanimously in favor of the legislation; and

WHEREAS, a review of the legislative staff reports for House Bill 2209 (Chapter 95-178, *Laws of Florida*) and its companion bill (Senate Bill 1720) results in the conclusion that numerous public policy arguments were advanced in favor of the legislation and that the bill was advanced in order to enhance the electoral processes of Florida municipalities ; and

WHEREAS, the Florida Attorney General has opined that the legislative changes to Section 100.3605(2), *Florida Statutes*, as enacted in 1995 by the passage of House Bill 2209 (Chapter 95-178, *Laws of Florida*), allow municipalities to amend their charters to change the election dates and qualifying periods for candidates including any changes in terms of offices necessitated by such amendment such as an extension of terms of office without a referendum election, see Attorney General Opinion 2000-61, dated October 6, 2000, issued to Mr. Frank Comparetto, Jr., City Attorney for the City of Mulberry; Attorney General Opinion 2003-52, dated November 3, 2003, issued to Mr. James C. Brady, on behalf of the Mayor and City Council of the City of Fort Lauderdale; and Attorney General Opinion 2007-34, dated July 24, 2007, issued to Mr. Robert D. Pritt, City Attorney for the City of Naples which legal authority was also noted in Attorney General Opinion 2008-38, dated July 23, 2008, issued to Ms. Maura J. Kiefer, City Attorney for the City of Indian Rocks Beach; Attorney General Opinion 2013-05, dated April 1, 2013, issued to Mr. Thomas J. Wohl, City Attorney for the City of Arcadia; and

WHEREAS, Article VIII Section 2(b) of the *Constitution of the State of Florida* states that municipalities shall have the governmental powers to enable them to conduct municipal government, perform municipal functions, render municipal services and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that the elections of the City of Daytona Beach Shores be conducted in an atmosphere that provides the upmost stability in terms of when elections will occur and related matters; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 100, *Florida Statutes*; Chapter 166, *Florida Statutes*, and other applicable controlling law; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~striketrough~~ 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 AND ADMINISTRATIVE 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) set forth herein as the legislative and administrative findings and intent of the City Council.

(b). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION TWO. CITY ELECTION DATE; REPLACEMENT FOR COUNCIL MEMBERS; AMENDMENT OF SECTION 2.05, CITY OF DAYTONA BEACH SHORES CITY CHARTER.

(a). Section 2.05 of the *City of Daytona Beach Shores City Charter* is amended to read as follows (legislatively coded text):

Sec. 2.05. - Filling of vacancies.

The unexpired term of a vacated seat of a Council Member or the Mayor-Council Member shall be filled at the next Municipal General Election to be held by the Volusia County Supervisor of Elections when held in odd years or the next State General Election to be held in November of even years.

For the interim period until the General Election at which a vacancy in the office of a Council Member or a Mayor-Council Member ~~If the unexpired term is nine (9) months or less, vacancies in the office of Council Member or a Mayor-Council Member councilmember or mayor-councilmember shall be filled within thirty (30) days by the appointment of a successor by the majority vote of the remaining members of the City Council. If the majority of the remaining members of the City Council fail to fill the vacancy through appointment within the thirty-day period, a special election to fill the vacancy shall be called and held in a manner coordinated by the City Clerk with the Supervisor of Election and adopted by resolution of the City Council no later than ninety (90) days thereafter.~~

~~Vacancies in the office of councilmember or mayor-councilmember, if the unexpired term is more than nine (9) months, shall be filled by a special election called and held within ninety days, or in a regular or special election if one is scheduled within one hundred twenty (120) days of the creation of such vacancy.~~

Should the City Council fail to provide for an election within the time required by this the Charter, such election may be ordered by any court of competent jurisdiction.

The qualifying for candidates for a special election to fill a vacancy shall be the same as provided for regular elections in this Charter.

Any successor who fills a vacancy, whether by appointment or election, must ~~shall~~ have and possess all of the qualifications established by this Charter for the office being filled.

(b). The City Council of the City of Daytona Beach Shores hereby calls an election for the purpose of filling the vacancy of the unexpired term of former Council Member Henry Fehrmann said election to be held on November 3, 2015 in conjunction with the Municipal General Election being implemented by the Supervisor of Elections of Volusia County.

(c). In order to provide for the orderly transition of office in the interim, the City Council of the City of Daytona Beach Shores shall appoint an interim Council Member to act in that office until the results of the November 3, 2015 Municipal General Election have been finalized.

This section removed by the council

SECTION THREE: NEW SECTION OF CITY CODE RELATING TO ELECTIONS. A new Section of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* is added to read as follows (all new text):

(a). All City elections shall be held in conformity with procedures and processes set forth in the provisions of the laws of the State of Florida, the provisions of the *City of Daytona Beach Shores City Charter* and in conformity with any procedures and processes that may be adopted pursuant to interlocal agreement between the City and the Volusia County Supervisor of Elections.

(b). The City Council shall establish election precincts, polling places and designate the number, boundaries and locations of same relative to the holding of any municipal election. Such election precincts and polling places shall be designated from time-to-time by the adoption of a resolution by the City Council. The City Council may take other actions in accordance with its powers under the provisions of the *City of Daytona Beach Shores City Charter* and the *Code of Ordinances of the City of Daytona Beach Shores* to implement and regulate the election processes relating to City elections.

(c). The City Clerk shall make all necessary administrative arrangements and take all administrative actions necessary for holding all City elections and shall report such actions to the City Council.

(d). Unless provided otherwise by State law or an interlocal agreement between the City and the Volusia County Supervisor of Elections, the results of the voting at each polling place shall be certified by the Supervisor of Elections and transmitted to the City Clerk.

(e). During the day of the City election the City Canvassing Board shall meet and perform the same duties as the County Canvassing Board is assigned under Section 102.141, *Florida Statutes*, with regard to the City election, unless the canvass of the votes for the City election otherwise occurs in accordance with State law or an interlocal agreement between the City and the Volusia County Supervisor of Elections otherwise provides for the canvassing of votes.

(f). Ballots for City elections shall conform as nearly as practicable to the form of ballots prescribed by State law.

(g). The City Canvassing Board shall report its findings as to each election by

adopting a resolution in substantially the following form:

A RESOLUTION BY THE CANVASSING BOARD OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR THE ANNOUNCEMENT OF THE _____, _____ CITY ELECTION.

WHEREAS, the City of Daytona Beach Shores held a regular City election on _____, _____ and the City of Daytona Beach Shores Canvassing Board was established for the said election to canvass the vote counts provided to the City by the Volusia County Supervisor of Elections; and

WHEREAS, the City of Daytona Beach Shores Canvassing Board canvassed the votes for the City's regular election which occurred on _____, _____ as counted by the Volusia County Supervisor of Elections.

NOW, THEREFORE, BE IT RESOLVED BY THE CANVASSING BOARD OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA AS FOLLOWS:

(1). As to the election for the position of Mayor of the City of Daytona Beach Shores, the votes cast by the electors of the City of Daytona Beach Shores voting at the election were as follows:

Name: _____ votes.
Name: _____ votes.

(2). As to the election for the position of Member of the City Council, the votes cast by the electors of the City of Daytona Beach Shores voting at the election were as follows:

Name: _____ votes.
Name: _____ votes.

PASSED AND ADOPTED by the Canvassing Board of the City of Daytona Beach Shores, this ____ day of _____, _____.

_____, **CHAIR**

ATTEST:

_____, *City Clerk*

SECTION FOUR: IMPLEMENTING ADMINISTRATIVE ACTIONS.

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 to bring into effect the provisions of this Ordinance as such officials may deem appropriate in their respective roles and functions under the *City of Daytona Beach Shores City*

Charter.

SECTION FIVE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to *City of Daytona Beach Shores City Charter* amendments, the conduct of elections and actions of the electorate of the City of Daytona Beach Shores in the process of electing public officials, as well as any and all related matters and processes and procedures of the City pertaining thereto, are hereby ratified and affirmed.

SECTION SIX: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions of this Ordinance shall not be codified except for Section Two and Three.

(b). The sections, divisions and provisions of this Ordinance may be renumbered or relettered as deemed appropriate by the Code codifier.

(c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION SEVEN: CONFLICTS.

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

SECTION EIGHT: 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 NINE: 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 form and legality:



LONNIE GROOT, CITY ATTORNEY

Passed on first reading this 30th day of June, 2015.

Adopted on second reading this 14th day of July, 2015.

ⁱ The pertinent provisions of the City Charter relating to the normal City election cycles read as follow:

Sec. 6.01. - State election law applicable.

All general laws of Florida relating to elections and the registration of persons qualified to vote therein which are not in conflict with this charter shall be the same for the City of Daytona Beach Shores, [and] are hereby adopted as parts hereof.

Sec. 6.02. - General election.

There shall be a general municipal election in November 2010, and every two years thereafter. The general elections shall be established by the Florida Election Code as it may be amended from time to time. The candidate receiving the plurality of votes cast in the general election shall be declared elected.

Sec. 6.03. - Nonpartisan elections.

All qualifications and elections for the office of mayor-councilmember or councilmember shall be conducted on a nonpartisan basis without regard for or designation of political party affiliations of any nominee on the ballot. Reference in general law to political parties and party primaries shall not be applicable in the elections of the mayor and members of the City Council.

Sec. 6.04. - Procedure for filing as a candidate for mayor-councilmember and councilmember.

(a) A person meeting the qualifications of office provided in Section 2.02 of this charter and seeking to become a candidate for the office of mayor-councilmember or councilmember may do so by filing a sworn qualification statement with the City Clerk which shall state the following:

- (1) The name and occupation of the person whose name is presented for a place on the election ballot; and the address of his or her place of residence in the City;
- (2) That he or she is a candidate for the office of councilmember, designating the seat number of the

position being sought, or that he or she is a candidate for the office of mayor-councilmember for the City;

(3) That he or she is a qualified elector of the City of Daytona Beach Shores; and

(4) That he or she shall be willing to serve if elected.

(b) Such qualification statement shall be filed with the City Clerk during the qualification period as defined by the charter in a form prescribed by the City Clerk.

(c) No person shall be a candidate for mayor-councilmember and councilmember at the same time, and no person shall occupy both offices at the same time.

Sec. 6.05. - Uniform filing and election dates.

(a) Any election relating to a municipal office shall be held in each even-numbered year as established by the Florida Election Code as stated in Section 6.02.

(1) Any other required or permitted municipal election shall be scheduled in accordance with law. However, the Supervisor of Elections, after consultation with the affected municipalities, may change any election date in order to avoid a conflict with a religious holiday.

(b) Candidates shall file such papers and pay such fees as may be required by law with the City Clerk during normal business hours.

Sec. 6.06. - Canvassing board.

The City Council shall certify election results.