

ORDINANCE 2017-03

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO APPEALS AND SUBSTANTIALLY REVISING AND AMENDING SECTION 2-27 OF THE CODE OF ORDINANCES OF THE CITY; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR AN APPEAL PROCESS RELATIVE TO CITY ACTIONS AND ACTIVITIES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; 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 relating to this Ordinance.

(b). The provisions of this Ordinance are intended to address appeals when applicants for approvals by the City relative to land use or other quasi-judicial matters are determined by a City board, by whatever name, or City staff, when no specific appeal process is provided, but the provisions of this Ordinance are not applicable to internal administrative and personnel matters that are within the powers of the City Manager in terms of the management of the City and its personnel.

(c). The City Council of the City of Daytona Beach Shores hereby finds that not all of the City's codes and ordinances provide for administrative appeals with regard to permit issuance or denial or other similar actions of the City.

(d). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance and all decisions made by the City to which the provisions of Section 166.033, *Florida Statutes*, is applicable shall be implemented in strict adherence to that statutory provision.

(e). In the event that Federal or Florida law, to which the City is subject, provides for a mandatory appellate process, the provision of such preemptive Federal or Florida law shall be applicable and the City shall adhere to such mandatory process.

SECTION TWO. GENERAL APPEAL PROCESS. Section 2-27 of the *Code of Ordinances of the City of Daytona Beach Shores* is substantially revised and amended to read as follows:

- (a) In such cases when a specific permitting activity or process of the City, or other activity of the City does not provide for an appellate process when a permit is denied, or a City action is taken, and an applicant or other person affected by the action of the City would be in violation of a City code or ordinance to conduct the activity without the issuance of a permit or would otherwise be in noncompliance with the requirements of the City, the applicant for the permit, or the person adversely affected by the action of the City, may appeal the denial or other action to the City Manager or, if the City Manager is the official vested with the initial power to grant a permit or take an action, to the City Council; **provided, however, that, if the City Manager reverses the decision of City staff, then the matter shall be presented to the City Council for automatic review.** Appeals must be filed within 30 days from the date of the denial, or action of the City, and must specifically state in writing and in detail the basis of the appeal. Engaging in unpermitted activity while a permit has been denied is prohibited and unlawful notwithstanding the fact that an appeal may have been filed and be pending and the payment of any sum due must be timely made in order for the matter to be heard and this appeal process shall not be used for the purposes of delaying payment and all payments due shall be subject to payment in accordance with the normative billing practices of the City while the appeal is pending. Actions taken by the City in its code enforcement processes shall not be subject to appeal under the provisions of this Section.
- (b) The City Council shall establish an appeal fee relative to this section by adoption of a resolution.
- (c) The City Council and City Manager may refer any appeal made to them to a hearing officer as set forth in Section 2-28.
- (d) All appeals to the higher level shall be de novo; provided, however, that appeals to the Courts of decisions by the City Council shall be subject to judicial rules of procedure to include, but not be limited to, the requirement that a record be presented to the appellate court and that such appeals are on the record of the proceeding below.
- (e) The City Attorney shall assist with regard to all procedural matters relating to appeals and, in appropriate cases, may be assigned responsibility as a hearing officer or an advocate.
- (f) When appropriate, decisions shall comport to the requirements of Section 166.033, *Florida Statutes*.
- (g) When no specific appellate period is prescribed, an appeal must be filed within 30 days of the date of an order being rendered. The term *rendered* means that the order has been filed with the City Clerk.
- (h) The City Council may adopt such rules as it may deem necessary and appropriate to govern its proceedings upon appeals and may prescribe rules for City boards as deemed appropriate to govern their proceedings.

(i). Appeal hearings shall be held as soon as practicable after the filing of a notice of appeal which date shall be established by the City Manager.

(j). Appeals relating to land use matters shall be noticed by advertising in a newspaper when deemed necessary by the City Manager, after consultation with the City Attorney, to ensure that the principles of administrative due process are honored by the City and afforded to all parties. Likewise, the City Clerk shall mail notices to all nearby property owners as may have been required for the original land use hearing and shall transmit notice setting forth the time, place and purpose of the hearing. And, the City Manager, or designee, shall cause notices setting forth the time, place and purpose of the hearing to be posted in a conspicuous place or places on or about the land described in the application. Affidavit proof of the required publication, mailing and posting of the notices shall be presented into evidence at the hearing.

(k). All parties desiring to be heard at an appeal hearing may appear in person, by agent or by attorney. The appellant shall be entitled to make an initial presentation. All other parties shall be entitled to offer statements in rebuttal to such presentation. The appellant may rebut the arguments of the opponents.

(l). Actions on appeals shall be announced by the presiding officer immediately following the vote determining such action and shall thereafter be embodied in a written order prepared in accordance with controlling law.

(m). The City shall adhere to the principle of administrative res judicata relative to its decisions.

(n). At all times the City shall afford the essential rights of administrative due process to all parties said determinations and processes being implemented after consultation with the City Attorney.

(o). An appeal shall not be perfected unless and until the appeal fee relating to the matter is paid in full within the appeal period prescribed.

SECTION THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative policies,

SECTION FOUR: SAVINGS.

The prior actions of the City of Daytona Beach Shores relating to the appeal of City decisions and matters relating thereto are hereby ratified and affirmed.

SECTION FIVE: 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, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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.

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 _____ day of _____, 2017.

Adopted on second reading this _____ day of _____, 2017.