

**ORDINANCE 2017-11**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA REPEALING ARTICLE II, CHAPTER 8 OF APPENDIX “G” (LAND DEVELOPMENT CODE) OF THE MUNICIPAL CODE OF ORDINANCES ENTITLED “MANDATORY EXTERIOR COLOR STANDARDS”; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION ACTIONS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; 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**, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its Comprehensive Plan and protecting the public health, safety, and general welfare; and

**WHEREAS**, the provisions of Article II, Chapter 8 of Appendix “G” (*Land Development Code*) of the *Municipal Code of Ordinances* entitled “Mandatory Exterior Color Standards”<sup>1</sup> are no longer necessary to accomplish the vision of the City of Daytona Beach Shores and, indeed, have been made unenforceable to a significant extent by virtue of recent actions by the Florida Legislature<sup>1</sup>; 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* and protects the City against assertions and applications that would violate the City's land use constitution; and

**WHEREAS**, the recitals to this Ordinance (whereas clauses) are adopted as the legislative findings and intent of the City Council of the City of Daytona Beach Shores.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

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<sup>1</sup> See Committee Substitute for/ Committee Substitute for House Bill which was passed during the 2017 Regular Legislative Session by the Florida Legislature and has been initially codified as Chapter 2017-149, *Laws of Florida*.

**SECTION ONE: REPEAL OF ARTICLE II, CHAPTER 8 OF APPENDIX “G” (LAND DEVELOPMENT CODE) OF THE MUNICIPAL CODE OF ORDINANCES ENTITLED “MANDATORY EXTERIOR COLOR STANDARDS”.** Article II, Chapter 8 of Appendix “G” (*Land Development Code*) of the *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Mandatory Exterior Color Standards,” is hereby repealed.

**SECTION TWO: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to the regulation of the matters and uses which are the subject of this Ordinance are hereby ratified and affirmed.

**SECTION THREE: CODIFICATION.** The Code codifier is granted liberal authority to take all actions consistent with the repealer provision herein.

**SECTION FOUR: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION FIVE: 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 SIX: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**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 \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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<sup>i</sup> ARTICLE II. - MANDATORY EXTERIOR COLOR STANDARDS

Sec. 8-7. - Purpose and intent.

The general purpose of these mandatory exterior color standards is to maintain and enhance an attractive physical environment within the City. The general intent of these standards is to:

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- (a) Create and maintain a strong community image, identity and a sense of place, through the use of acceptable colors and color combinations on buildings and/or structures that will have a substantial impact upon the character of the City;
  - (b) Minimize incompatible visual colors which prevent orderly community development that may threaten to reduce community property values or which would detract from the high standard of living and quality of life afforded to citizens of the City;
  - (c) Enhance and sustain property values and recognize vested rights when fair and equitable; and
  - (d) Foster civic pride and community spirit by maximizing the positive impacts of development on the community.

Sec. 8-8. - General provisions.

A painting permit is required for all painting and the application of any exterior treatment such as, by way of example and not limitation, sidings, plaster, stucco or tiles, on the exterior of any building or structure or component thereof in the City unless otherwise exempt under the terms of this article.

8-8.1. Applicability.

- (a) These standards shall apply to the exterior of all applicable buildings and structures, as set forth hereinafter.
- (b) All new buildings or structures shall comply with these standards.
- (c) Additions. All existing buildings or structures unto which twenty (20) percent or more is added to the total mass of said building or structure shall cause the entire building or structure to comply with the terms of these standards and the official color palette.
- (d) Routine exterior painting, recoating, rehabilitation or maintenance:
  - (1) Which affects less than one (1) building or structure face; or
  - (2) Which does not affect twenty (20) percent or more of the overall building or structure facade or structure; or
  - (3) Which relates to hotels, motels and multifamily residential structures in the T and RMF-1 zoning districts that have received site plan development approval and/or fully permitted and painted prior to March 22, 2006 and, with regard to which, no color will be modified, are exempt from section 8-11.1(2). However, a paint permit shall still be required. Said routine painting, recoating, rehabilitation or maintenance exterior color shall match the existing exterior color of the building or structure in question.
- (e) Routine exterior painting, recoating, rehabilitation or maintenance which affect :
  - (1) One (1) or more building or structure face; or
  - (2) An aggregate of fifty (50) percent or more of the overall building or structure facade or structure over the life of the building or structure shall cause the entire building or structure to comply with the terms of this article and the official color palette unless the building or structure is a hotel, motel and multifamily residential structure in the T and RMF-1 zoning districts that has received site plan development approval and/or fully permitted and painted prior to March 22, 2006 and, with regard to which, no color will be modified.
- (f) Destruction. If a building or structure is destroyed by any means, natural or manmade, beyond fifty (50) percent of its appraised value, then when redevelopment of that building or structure occurs, it must meet the standards of this article.
- (g) Integral decoration or architectural festoon of buildings or structures (wall graphics, super graphics, or murals) shall comply with the terms of this article and the official color palette.
- (h) All new awnings, valances and other similar external building or structure accessories shall comply with the official color palette pursuant to section 8-10.4.

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(i) The recovery or rehabilitation of existing awnings, valances or other similar external building or structure accessories which affect an aggregate of forty-nine (49) percent or less of the total square footage of the subject accessory over the life of the building or structure shall match the existing color of the existing awning, valance or other similar external building or structure accessory.

(j) The recovery or rehabilitation of existing awnings, valances and other similar external building or structure accessories which affect an aggregate of fifty (50) percent or more of the overall building or structure facade over the life of the building or structure shall cause the entire building or structure to comply with the terms of this article and the official color palette.

#### 8-8.2. Exemptions.

(a) Door frames and window frames are exempt from these standards provided they are compatible with the existing color scheme on the building or structure.

(b) Flashings, fascia and drip edges that are of the original prepainted color by the manufacturer are exempt from these standards provided they are compatible with the color scheme on the building or structure.

(c) All roofs, excluding mansard roofs, are exempt from these standards provided that the color of the roof material is consistent with the original color prepainted by the manufacturer and said color is consistent with the associated building's or structure's architectural style and exterior color.

(d) Wall signs are exempt from these standards.

(e) Railings are exempt from these standards provided they are compatible with the color scheme on the building or structure and said railings are aluminum and match the original color prepainted by the manufacturer. All other railings shall meet the terms of this article.

(f) Coin, credit card, or other money-operated dispensing machines such as vending machines, fuel pumps, publication storage devices are exempt from these standards provided said machines, fuel pumps, publication storage devices are portable and not affixed to the ground or hard wired.

(g) Notwithstanding the provisions of section 8-8.2(c), parapets and partial mansard roofing are exempt from these standards provided said parapets and partial mansard roofing is treated with shingles, metal roof panels and other similar prepainted treatments by the manufacturer. However, the painting of any parapet or partial mansard roofing shall comply with the terms of this article.

(h) Hotels, motels and multifamily residential structures in the T and RMF-1 zoning districts that have received site plan development approval and/or fully permitted and painted prior to March 22, 2006 and, with regard to which, no color will be modified are exempt from these standards.

#### 8-8.3. Required Submittal Items.

1. Manufacturer provided color sample, including, if available, the name and numerical paint code equivalent of the corresponding adopted color palette.

2. In the case of all new building or structure construction and all applications that are heard by the Beautification Advisory Board or City Council, color architectural elevation renderings, of all faces of the building or structure, noting the surface material and texture being proposed shall be required.

3. In the case of accessory structures a color sample is required. Color photographs indicating surface material and texture may also be provided.

4. All applications or appeals that are heard by the Beautification Advisory Board or the City Council shall list total percentage of surface area each color occupies on each face of the building or structure and on the entire building or structure. These applications shall also include appropriate color renderings of the finished buildings or structures.

5. All other information required by the City to aid in the approval process.

Sec. 8-9. - Establishment of a color palette.

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The City Council hereby adopts a color palette, which shall be the controlling document and standards in the administration of these color standards. The official color palette shall be made available at the office of the City Clerk and the Building Department. This official color palette shall only be changed by resolution. The range of colors in the color spectrum located between two (2) consecutive rows on the official color palette shall also be made a part of the official color palette. All color treatment on buildings or structures shall be consistent with the official color palette, as amended, or as otherwise provided in this article.

Sec. 8-10. - General criteria.

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8-10.1. Color.

1. Colors authorized by these standards shall be earth tones or pastels as set forth in the official color palette.
2. Colors commonly found in natural materials such as wood, brick or stone, are permitted for use unless such material has been artificially colored in a manner which would be contrary to the intent of these standards.
3. Only one (1) base color per building or structure face may be permitted by the City.
4. Color treatment shall be generally consistent for the entire building or structure, accessory building or structure.
5. Fluorescents, neon and other high intensity colors are prohibited and unlawful.
6. Accents, i.e., colors or applications used to highlight a building or structure facade, shall not occupy more than ten (10) percent of a building or structure elevation.
7. All unfinished building or structure faces or portions thereof, including cement based stucco and concrete blocks, shall be painted consistent with the terms of this article.
8. Trims shall be limited to that area immediately adjacent to and around the perimeter of any element, feature or the perimeter of a building or structure. Trim width shall be reasonably applied and shall not visually overwhelm the trimmed feature or element. Trims shall not exceed more than ten (10) percent of the surface area of any building or structure elevation.
9. Color treatment including, but not limited to, awnings, valances and similar external accessories, on buildings or structures housing more than one (1) business and buildings located in commercial strip plazas shall be consistent with the overall facade of the building or structure. Only a single base color may be permitted.
10. In cases where more than a single principal building or structure occupies a property, compatible colors shall be utilized to reflect an overall unified image.
11. Outparcels and accessory buildings and structures within a site shall utilize colors compatible with the principal building or structure.
12. Colors shall be used to achieve compatibility with the surrounding area, consistent with this article.
13. Non-exempt roofs may utilize any color located on the official color palette providing said color is compatible with the color scheme on the building in question.

8-10.2. Color Combinations and Usage.

1. Any color indicated on the official color palette may be used in combination with another color(s) located on the official color palette pursuant to this section.
2. Color combinations shall not be used to create new colors.

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3. Any color located on the official color palette may be used for accents and trims. Bases, also known as body colors, shall be limited to colors located on the first, second and/or third row on each page of the official color palette. Colors located between the first and second and second and third row on each page of the official color palette may also be used as base colors. Shades of white are exempt from this subsection.

#### 8-10.3. Accessory Structures.

(1) Fences, walls and screens. Any enclosure, fence or wall, which is visible from any public right-of-way, shall include the use of colors and finishes consistent with the principal structure.

(2) Signs.

(a) The color treatment of all new or renovated freestanding sign support structures, sign cabinets and frames shall be consistent with that of the principal conforming structure. Where a principal structure is nonconforming, the color treatment of all new or renovated freestanding signs shall be consistent with the terms of these standards and the official color palette.

#### 8-10.4. Awnings, Valances and Other External Accessories.

1. Awnings, valances and other decorative and functional external accessories on buildings or structures may be treated with any color located on the official color palette.

2. External accessories with colors not located on the official color palette are prohibited unless the subject colors are official by the City's Beautification Advisory Board and City Council pursuant to section 8-11.3(5).

#### 8-10.5. Murals.

Murals may utilize colors not selected to be placed on the city's official color palette; provided, however, that said murals may only be approved by the city council after receiving a recommendation from the beautification advisory board pursuant to section 14-58 of this Code. This provision shall not be interpreted or construed in any way to allow colors not on the city's official color palette for any use other than murals.

### Sec. 8-11. - Administration.

#### 8-11.1. Application Process.

1. Required permit applications pursuant to this article shall be submitted to the City's Building Department for a determination of completeness.

2. The required fee shall be submitted at the time of application.

3. Applications shall be submitted at the time of an application for:

(a) Site plan review or modification;

(b) Building permit review (if site plan review or modification is not required); or

(c) A painting permit.

4. No building permits shall be issued without prior approval of the proposed color scheme.

5. Applications shall be official, approved with specific conditions or modifications, or denied based upon their conformity or nonconformity with the terms of this article.

#### 8-11.2. Approval.

The City pursuant to the following shall determine final approval of all complete painting permit applications:

1. Class I applications: Applications for exemptions and applications that do not require site plan approval and involve no more than two (2) colors on the building or structure shall be reviewed by the Chief Building Official for approval.

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2. Class II applications: Applications that do not require regular site plan approval but involve three (3) or more colors on the building or structure shall be reviewed by the City's Beautification Advisory Board for approval.

3. Class III applications: Applications that require regular site plan approval shall be reviewed by the Beautification Advisory Board and the City Council for approval.

#### 8-11.3. Appeals.

1. Within thirty (30) calendar days of the approval or denial of a completed application, any aggrieved party may appeal any decision by the City staff in writing to the City Clerk for hearing by the Beautification Advisory Board or City Council, as appropriate, indicating, with specificity, the grounds for the appeal.

2. The required fee shall be submitted at the time of application.

3. Class I application appeals shall be heard by the Beautification Advisory Board within ninety (90) days whose decision can be submitted to the City Council on appeal and for a final determination.

4. Appeals which contest the decision made under section 8-11.3(3) and Class II shall be heard by the City Council.

5. Class III applications shall be heard by the City Council after the application is submitted to Beautification Advisory Board for recommendation.

6. Appeals that request the approval of a color not found on the official color palette shall be heard by the Beautification Advisory Board for a recommendation and final decision shall be made by the City Council.

7. Except in the case of awnings, valances and similar external building or structure accessories, a resolution to amend the official color palette is required subsequent to a successful appeal application which introduces a new color not found on the official color palette.

#### 8-11.4. Variances.

No application for exterior color variances shall be accepted by the City under any provision of any City code or ordinance.

#### Sec. 8-12. - Vested rights.

(a) Projects having received a building permit or site plan development order prior to the effective date of this article shall be exempt from the terms of this article so long as the permit or development order remains in effect.

(b) Any property owner who contends that the application of this section to his or her property illegally interferes with a vested right may submit an application for determination of vested rights to the Chief Building Official for administrative relief. The application shall contain all evidence known to the property owner that supports the property owner's contention that the enforcement of this article to his or her property illegally interferes with a vested right.

(c) An application which contains an allegation of a regulatory taking, shall be evaluated pursuant to the following:

1. Whether the property owner will be denied substantially all beneficial use of the property.

2. Consideration of economic impact.

3. The extent to which these regulations have interfered with the property owner's investment-backed expectations.

(d) The following is a nonexclusive list of the factors to be analyzed under these criteria:

1. The history of the property.

2. Any change in development when ownership changed.

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3. The present nature and extent of the property.
  4. The reasonable expectations of the property owner and the neighboring property owners.
  5. Any diminution of the property owner's investment-backed expectations.

(e) The Chief Building Official shall make a determination within twenty (20) calendar days of receipt of a complete application whether to grant or deny such an application. Determination made by the Chief Building Official pursuant to this section may be appealed to the Board of Adjustments within thirty (30) days pursuant to section 14-69.3 of the Land Development Code.

Sec. 8-13. - Penalty.

- (a) It is prohibited and unlawful for any person to fail to comply with the requirements of this ordinance.
- (b) The City may enforce the provisions of this article by any means allowed by controlling law.
- (c) The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the Code of Ordinances of the City of Daytona Beach Shores, Florida or as may be available under the controlling provisions of State law.

Sec. 8-14. - Permit fees established.

The City Council shall establish all permit fees by resolution. The established fees shall be set forth in the current "City of Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the City Clerk.