

RESOLUTION 2017-05

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADOPTED PURSUANT TO CHAPTER 164, *FLORIDA STATUTES* (THE *FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT*) AND OTHER CONTROLLING LAW; REQUESTING THE COUNTY COUNCIL TO CEASE ITS AGGRESSIVE AND COMBATIVE ACTIONS AGAINST THE CITY; DECLARING THE NECESSITY OF THE VOLUSIA COUNTY COUNCIL TO ADHERE TO CONTROLLING LAW AND ENGAGE IN GOOD FAITH NEGOTIATIONS AND ALTERNATIVE DISPUTE RESOLUTION PROCESSES; EXPRESSING THE INTENT AND DESIRE OF THE CITY COUNCIL; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach Shores has been deluged with 3 lawsuits filed by the Government of Volusia County; and

WHEREAS, all of the aforementioned litigation relates to the exercise of the land use jurisdiction of the City of Daytona Beach Shores under controlling Florida law by the City Council of the City acting as the local governing body of the City; and

WHEREAS, the Mayor of the City of Daytona Beach Shores City Council recently transmitted a letter to the Chair of the Volusia County Council outlining the history of the dispute and an array of issues that could be discussed; and

WHEREAS, Chapter 164, *Florida Statutes*, also known as the *Florida Governmental Conflict Resolution Act*, provides that the purpose and intent of the *Act* is to promote, protect and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities; and

WHEREAS, it is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation; and

WHEREAS, Section 164.1051, *Florida Statutes*, provides that the *Act* shall apply to governmental conflicts such as the ones currently initiated by the County against the City and its citizens; and

WHEREAS, the County, as a result of actions by the County Attorney's Office, has taken the position that the Volusia County Council rejects the precepts of Chapter 164, *Florida*

Statutes, and, further, does not desire to engage in good faith negotiations with regard to the land use dispute between the City and the County; and

WHEREAS, the City of Daytona Beach Shores does not desire to see public funds wasted as a result of needless litigation directed against the City by the County Council as implemented by the County Attorney's Office; and

WHEREAS, the City of Daytona Beach Shores was forced to file motions in the litigation initiated by the County against the City which motions resulted in Circuit Court Judge Michael Orfinger issuing Orders requiring the process of Chapter 164, *Florida Statutes*, be implemented in the litigation; and

WHEREAS, the City of Daytona Beach Shores believes that the Orders of Judge Orfinger were self-implementing and that the parties could commence the process mandated by Chapter 164, *Florida Statutes*, and the City Manager transmitted a letter to the County Manager in an attempt to initiate the Chapter 164, *Florida Statutes*, process; and

WHEREAS, on October 5, 2017, the County Council adopted a resolution stating that it was initiating the conflict resolution process regardless of the Orders of Judge Orfinger and the transmission of communications by the City to the County seeking negotiations and alternative dispute resolution; and

WHEREAS, on October 5, 2017, the County Council also enacted Ordinance Number 2017-24 in which the County baldly and aggressively asserted preemption of the City's municipal comprehensive planning and land use regulation powers by means of application of the County's beach code relative to property located within the City Limits of the City and east of Atlantic Avenue; and

WHEREAS, County Ordinance Number 2017-24 does not rectify the issue of use of County property for the development of off-beach parking on either the lands within the City Limits of the City located east or west of Atlantic Avenue and for the County to so state, in any respect, is an affront to the home rule powers of the City; and

WHEREAS, City of Daytona Beach Shores trusts that the County Council will take action that will eliminate the waste of public tax dollars and engage in good faith negotiations under the provisions of Chapter 164, *Florida Statutes*; and

WHEREAS, although the County Council should have adopted a resolution, prior to or at the same time as filing litigation against the City, initiating the conflict resolution procedures in order to resolve the conflict in accordance with the provisions of Chapter 164, *Florida Statutes*, the City Council is appreciative of the County Council belatedly taking responsible action in order to agree to the statutorily required alternative dispute resolution processes as dictated by Chapter 164, *Florida Statutes*, and

WHEREAS, the issues of conflict are clear and the County Council should respect the rights of a local government located within Volusia County not starting conflict with a fellow

local government by means of a power grab or, at least, as a minimum, by engaging that local government in good faith negotiations and rejecting the notion of bullying or oppressively dealing with a local government in a dictatorial manner in pure contravention of the constitutional and statutory home rule powers of the City; and

WHEREAS, the City of Daytona Beach Shores will suffer material injury by reason of the County's egregious actions in attempting to strip local government comprehensive planning and land development regulatory authority from the City under the guise of beach access with regard to County Charter provisions which were in no way intended for the County to disenfranchise the City and its citizens; and

WHEREAS, the City Council reaches out to the County Council in a request that the County Council act reasonably and in good faith and to not merely seek to impose its will upon the City by burdensome and expensive litigation; and

WHEREAS, this Resolution 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 166, *Florida Statutes*, and other applicable controlling law.

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

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

- (a). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing this Resolution.
- (b). All Members of the City Council of the City of Daytona Beach Shores have executed this Resolution in order to express the unanimity of the City Council and its citizens to the home rule powers and authorities of municipal governments in the State of Florida including, but not limited to, those relating to comprehensive planning and land development regulation, and the offense taken with regard to actions being taken by the County to affront and disparage those powers.
- (c). The foregoing recitals (whereas clauses) are hereby ratified, affirmed and confirmed as being true and correct and are hereby made a part of this Resolution.

SECTION 2. INTENT AND DESIRE OF THE CITY COUNCIL.

- (a). It is the request of the City Council of the City of Daytona Beach Shores that the County Council act reasonably and rethink and reconsider its aggressive and dictatorial actions against a fellow local government and against the citizens of the City.
- (b). It is the intent and desire of the City Council of the City of Daytona Beach Shores to resolve its dispute with the County Council without being involved in wasteful and harmful litigation.

(c). It is the intent and desire of the City Council of the City of Daytona Beach Shores that the County Council act in a manner such as to ensure that the pending dispute with the City be resolved by the County either terminating its aggressive actions against the City and municipal government in general and, if the County Council continues its recalcitrant actions, by engaging in the alternative conflict resolution processes and procedures established by the Florida Legislature in Chapter 164, *Florida Statutes* (the *Florida Governmental Conflict Resolution Act*). The City Council is pleased that the initial conflict assessment phase of conflict resolution has been scheduled for October 20, 2017, but the City Council views the issues that can be resolved through good faith negotiations in a far broader sense in view of the public interest in resolving issues in a collaborative manner as opposed to having a litigious attitude as has been implemented by the County Attorney's Office.

(d). It should be noted that the Florida Legislature created the Florida Conflict Resolution Consortium in 1987 and placed its offices at Florida State University. Early successes were the result of mediating conflicts to break impasse and gridlock on public issues. In 2009, the Florida Conflict Resolution Consortium started using the name, the "FCRC Consensus Center" because, in present times, most FCRC projects focus on conflict prevention and consensus oriented collaborative planning. The City stands behind and affirms the goals of the Florida Legislature in enacting the *Florida Governmental Conflict Resolution Act* and the creation of the Florida Conflict Resolution Consortium.

(e). The City Council adopts the following statements taken from an article entitled "*Collaborative Dispute Resolution Processes*" published by Robert M. Jones, J.D., of the then Florida Growth Management Conflict Resolution Consortium (Mr. Jones has been the Director of the FCRC since 1991):

"Over the past decade, dispute resolution processes such as mediation, negotiated rule making and policy dialogues have become more common features upon the public policy landscape at every level of government. These processes, which are sometimes referred to by catch-all titles such as Alternative Dispute Resolution (ADR) or Collaborative Problem Solving (CPS), have been most commonly used on an ad hoc basis to resolve conflicts that arise during policymaking or policy implementation. These are structured public learning processes achieved through face-to-face engagement in defining problem(s); generating alternative ways to solve the problem(s); and selecting a solution that addresses the interests, needs and values of the different stakeholders."

...

"The traditional use of litigation and administrative and electoral procedures for dispute resolution has not always produced fair and wise solutions. Litigation can be time consuming and expensive. Direct participation, for the most part, is discouraged and communications become distorted. Adversarial relationship makes compliance and implementation problematic."

(f). The County Council is urged to cease its recalcitrant and combative actions and to seek collaborative resolution of the pending dispute in accordance with the processes prescribed by the Florida Legislature.

(g). With regard to the Resolution adopted by the County Council on October 5, 2017, the City Council adopts this resolution in an expression of its intent to fully adhere to the Orders of Judge Orfinger and the engagement of the County in the conflict resolution process as set forth in Chapter 164, *Florida Statutes*.

SECTION 3. IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The City Manager is hereby authorized and directed to implement the provisions of this Resolution as may be deemed necessary or appropriate by the City Council.

(b). The City Manager and City Attorney are also hereby authorized and directed to implement the provisions of this Resolution and to take any and all necessary administrative actions to bring into effect the provisions of this Resolution in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the *City of Daytona Beach Shores City Charter*.

SECTION 4. SAVINGS.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the matters which are the subject of this Resolution, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 5. CONFLICTS.

All ordinances or part of resolutions in conflict with this Resolution are hereby repealed.

SECTION 6. SEVERABILITY.

If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise to be invalid, unlawful, or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Resolution shall take effect immediately upon passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

MAYOR, HARRY H. JENNINGS

VICE MAYOR PEGGY RICE

COUNCIL MEMBER LORRAINE GEIGER

COUNCIL MEMBER MEL LINDAUER

COUNCIL MEMBER RICHARD BRYAN

Attest:

CITY MANAGER, MICHAEL T. BOOKER

CITY CLERK, CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, LONNIE GROOT

Adopted this 10th day of October, 2017.

Posted this 10th day of October, 2017.