

## RESOLUTION 2017-06

**A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADOPTED PURSUANT TO CHAPTER 164, *FLORIDA STATUTES* (THE *FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT* INITIATING THE ENGAGEMENT IN GOOD FAITH NEGOTIATIONS AND ALTERNATIVE DISPUTE RESOLUTION PROCESSES WITH THE VOLUSIA COUNTY COUNCIL AND REQUESTING THE COUNTY COUNCIL TO ADHERE TO CONTROLLING LAW; INITIATING DISPUTE RESOLUTION RELATIVE TO THE COUNTY COUNCIL'S ADOPTION OF ORDINANCE NUMBER 2017-24 ASSERTING THAT THAT ALL COUNTY PROPERTY (WITHIN THE CITY LIMITS OF ANY CITY, BUT, TO THE POINT HEREIN, WITHIN THE CITY LIMITS OF THE CITY OF DAYTONA BEACH SHORES) BETWEEN THE BEACH AND THE EASTERNMOST NORTH-SOUTH ROADWAY IS INCLUDED IN THE COUNTY CHARTER'S PREEMPTION OF MUNICIPAL REGULATION; 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 recently been deluged with 3 lawsuits filed by the Government of Volusia County which were purportedly authorized by the County Council, but, if so, not in accordance with the provisions of controlling State law; 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 County staff, in response to the desires of the City Council of the City of Daytona Beach Shores to initiate alternative dispute resolution as is initiated herein, opposed the desire of the City to initiate the provisions of Chapter 164, *Florida Statutes*, also known as the *Florida Governmental Conflict Resolution Act*, which 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**, the County staff, also in response to the desires of the City Council of the City of Daytona Beach Shores to initiate alternative dispute resolution such as is initiated herein, proposed that the County Council adopt Ordinance Number 2017-24 asserting that all County property (within the City Limits of any Volusia County beachside city, but, to the point herein,

within the City Limits of the City of Daytona Beach Shores) between the beach and the easternmost north-south roadway is included in the County Charter's preemption of municipal regulation which Ordinance was passed by a mere 4-3 vote of the County Council (which vote the City Council would hope would be reconsidered and reversed); 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 is a bald assertion of dictatorial powers; and

**WHEREAS**, the issues of conflict are clear and the County Council should respect the rights of a local government located within Volusia County and not start 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 fellow 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**, it is the intent of the Legislature, as clearly expressed in the aforementioned *Act*, 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 one currently involving the City of Daytona Beach Shores and Volusia County; and

**WHEREAS**, Section 164.1052, *Florida Statutes*, provides that in order for a governing body of a governmental entity to initiate the conflict resolution procedures provided by the *Act* it shall first adopt a resolution by its members; 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**, Section 164.1041, *Florida Statutes*, provides that if a governmental entity files court proceedings against another governmental entity, the initiating entity shall, by motion,

request the court to issue an order staying the case and, although the County Attorney's Office has failed to do so with regard to the litigation that the County filed against the City, the City Attorney will seek such judicial action with regard to any litigation initiated to assert the invalidity of Ordinance Number 2017-24; and

**WHEREAS**, Section 164.1041, *Florida Statutes*, provides that the court proceedings on the suit shall be stayed, by order of the court, until the procedural options of Chapter 164, *Florida Statutes*, have been fully exhausted; and

**WHEREAS**, Section 164.1041, *Florida Statutes*, provides that all governmental entities are encouraged to use the procedures in this act to resolve conflicts that may occur at any time between governmental entities, but shall use these procedures before court proceedings, consistent with the provisions of this section.; and

**WHEREAS**, City of Daytona Beach Shores will suffer material injury by reason of the County's failure to comply with the procedures, processes and provisions of Chapter 164, *Florida Statutes*, as well as with regard to the application of Ordinance Number 2017-24; and

**WHEREAS**, the City Council reaches out to the County Council to act reasonably and in good faith and to not merely seek to impose its will upon the City by means of a power grab against the concept of municipal home rule and controlling Florida law.; 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). 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 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.
- (b). It is the intent and desire of the City Council of the City of Daytona Beach Shores that the engage with the City in the alternative conflict resolution processes and procedures established by the Florida Legislature in Chapter 164, *Florida Statutes* (the *Florida Governmental Conflict*

*Resolution Act*) with regard to the County’s wrongful and combative enactment of Ordinance Number 2017-24.

(c). 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.

(d). The City Council adopts the following statements taken from an article titled “*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 make compliance and implementation problematic.”

(e). 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.

### **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*.

(c). Litigation relative to the inapplicability and unlawfulness of Ordinance Number 2017-24 shall be initiated by the City Attorney as supported by the City Manager.

**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**

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**MAYOR, HARRY H. JENNINGS**

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**VICE MAYOR PEGGY RICE**

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**COUNCIL MEMBER LORRAINE GEIGER**

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**COUNCIL MEMBER MEL LINDAUER**

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**COUNCIL MEMBER RICHARD BRYAN**

*Attest:*

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**CITY MANAGER, MICHAEL T. BOOKER**

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**CITY CLERK, CHERI SCHWAB**

**Approved as to form and legality:**

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**CITY ATTORNEY, LONNIE GROOT**

**Adopted this 26<sup>th</sup> day of September, 2017.**

**Posted this 26<sup>th</sup> day of September, 2017.**