

RESOLUTION 2018-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA PROVIDING FOR FURTHER IMPLEMENTATION OF THE PROVISIONS OF SECTION 2.04 OF THE CITY CHARTER RELATING TO FORFEITURE OF OFFICE.; 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 provisions of Section 2.04 of the *City Charter of the City of Daytona Beach Shores (City Charter)* relates to matters pertaining to forfeitures of City elective office; and

WHEREAS, Section 2.04(b) of the *City Charter* provides that:

Forfeiture of office shall also occur through malfeasance, nonfeasance, neglect of duty, incompetence, and permanent inability to perform the duties of the office of councilmember or mayor-councilmember. The council shall be the judge to determine whether sufficient grounds for removal from office shall have occurred. In discharging that responsibility the council shall have the power to subpoena witnesses, administer oaths, and require the production of evidence.

; and

WHEREAS, on June 26, 2018 the City Council took action to, in part, implement the provisions of Section 2.04(c) of the *City Charter* which states as follows:

Charges of conduct constituting grounds for removal from office shall be presented at an official meeting of the council. Upon motion duly adopted, an investigation into said charges shall be conducted by a committee of such composition as may be determined by the council. The councilmember moving for the investigation herein provided shall not be a member of the investigation committee.

; and

WHEREAS, the City Council now desires to determine the composition of the committee of inquiry referenced in Section 2.04(c) of the *City Charter*; 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*, the *City Charter*, and other applicable controlling law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY 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. ESTABLISHMENT AND APPOINTMENT OF COMMITTEE: SCOPE OF INQUIRY.

- (a). The City Council hereby appoints former Circuit Judge Clayton D. Simmons of Clayton D. Simmons P.A. as the committee of inquiry relative to the matters set forth herein. In accordance with the provisions of Section 2.04(d) of the *City Charter* former Judge Simmons shall, within a period of not less than ten (10) days, or more than thirty (30) days, present all findings with respect to the charges outlined herein to the full City Council after receipt of which, the City Council shall determine, by motion, whether formal charges shall be presented and further proceedings be scheduled.
- (b). The following are the matters that shall be the subject of the inquiry, as well as any matters that may arise during the course of the inquiry with regard to which former Judge Simmons believes should be brought to the attention of the City Council:
 - (1). Whether Council Member Richard Bryan committed malfeasance or neglect of duty by appearing before the Volusia County Council on June 19, 2018 well knowing that such individual

action was inappropriate after engaging in similar conduct in February, 2018.

(2). Whether Council Member Richard Bryan committed malfeasance or neglect of duty by interfering with the Chapter 164, *Florida Statutes*, conflict resolution process in his appearance before the Volusia County Council on June 19, 2018 well knowing that such individual action was inappropriate after engaging in similar conduct in February, 2018.

(3). Whether Council Member Richard Bryan committed malfeasance or neglect of duty by usurping the collective authority of the City Council which was involved in the Chapter 164, *Florida Statutes*, conflict resolution process by appearing before the Volusia County Council on June 19, 2018 well knowing that such individual action was inappropriate after engaging in similar conduct in February, 2018.

(4). Whether Council Member Richard Bryan committed malfeasance or neglect of duty by alleging, in emails of June 25, 2018, and publicly at the June 26, 2018 meeting of the City Council, that the City Attorney had falsely and untruthfully stated matters to the City Council relative to . Council Member Bryan's presentation before the Volusia County Council on June 19, 2018.

SECTION 3. IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Resolution as may be deemed necessary or appropriate in accordance with controlling law as such officers may deem appropriate in their respective roles and functions under the *City Charter*.

SECTION 4. SAVINGS.

The prior actions of the City Council of the City of Daytona Beach Shores in terms of the matters relating the seating and removal of City officers, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 5. CONFLICTS.

All resolutions 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

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 July, 2018.

Posted this 10th day of July, 2018.