



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING

May 10, 2016

**7:00 p.m., Community Center, 3048 S. Atlantic Ave.
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

CEREMONIAL MATTERS:

PRAYER

PLEDGE OF ALLEGIANCE

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

BUSINESS OF THE CITY COUNCIL:

ORDER OF BUSINESS

- 2. APPROVAL OF THE MINUTES:** April 26, 2016 City Council Meeting
- 3. CONSENT AGENDA:**
 - Approval to spend \$2,500 from Contraband on SGT's exam
- 4. REPORTS OF THE CITY ATTORNEY:**
- 5. REPORTS OF THE CITY MANAGER:**

OLD BUSINESS:

6. Ordinance 2016-06 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADDING SECTIONS TO THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES* RELATING TO THE PROHIBITION OF CANNABIS (MARIJUANA) AND CANNABIS RELATED DRUG PARAPHERNALIA; PROVIDING FOR ENFORCEMENT PROCEDURES AND PROCESSES; AMENDING SECTIONS 1-8 AND 16-25 OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, DIRECTIONS TO THE CODE CODIFIER AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE. **Second Reading and Public Hearing.**

NEW BUSINESS:

7. AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO ECONOMIC DEVELOPMENT AND GOVERNMENTAL SIGNAGE PERTAINING TO ECONOMIC DEVELOPMENT ACTIVITIES OF THE CITY; PROVIDING FOR THE LICENSING OF ECONOMIC ACTIVITY SIGNAGE WITHIN THE CITY AND PROVIDING FOR CONDITIONS, PROCEDURES, PROCESSES, FEES AND ASSOCIATED MATTERS RELATING THERETO; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTING ACTIONS AND APPEALS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. **First Reading.**

8. RECOMMENDATION FOR CONSTRUCTION MANAGER FOR COMMUNITY CENTER

9. COUNCIL COMMENTS:

10. AUDIENCE REMARKS/PUBLIC COMMENTS:

11. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

12. ADJOURNMENT:

Notice is hereby given to all interested parties that if a person should decide to appeal any decision made at the aforementioned meeting of the City Council, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Please be advised that all City Council Meetings are recorded. Note: Individuals covered by the

Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the Office of the City Clerk at 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, or telephone 386-763-5364 at least seven working days prior to the meeting.

PRESENTATIONS AND PUBLIC NOTICES:

MINUTES
CITY COUNCIL MEETING
April 26, 2016
3048 S. Atlantic Ave. Daytona Beach Shores, FL 32118

Present: Mayor Harry Jennings, Vice Mayor Peggy Rice, CouncilMember Jennie Celona CouncilMember Lorraine Geiger and CouncilMember Billie Wheeler. *Staff: City Manager Michael Booker, City Clerk Cheri Schwab, City Attorney Lonnie Groot, City Planner Stewart Cruz, Finance Director Steve Whitmer, Community Services Director Fred Hiatt, and Public Safety Director Stephan Dembinsky.*

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES: None.

2. APPROVAL OF THE MINUTES: April 12, 2016 City Council Meeting

CMBR CELONA moved, seconded by CMBR WHEELER to approve the minutes of April 12, 2016.

Vote: Motion carried by unanimous roll call vote (summary: **Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

3. CONSENT AGENDA:

- Monthly Departmental Reports
- Monthly Financial Report
- Approval to spend \$500 from Contraband for annual fishing tournament

CMBR WHEELER moved, seconded by CMBR RICE to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (summary: **Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

4. REPORTS OF THE CITY ATTORNEY: None.

5. REPORTS OF THE CITY MANAGER: The City Manager reported that the plans for the updates to the pedestrian refuge islands were at FDOT. They are currently working on them.

OLD BUSINESS: None.

NEW BUSINESS:

6. Ordinance 2016-05 AN ORDINANCE OF THE CITY OF DAYTONA BEACH

SHORES, VOLUSIA COUNTY FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING *THE CITY OF DAYTONA BEACH SHORES COMPREHENSIVE PLAN*, AMENDING CHAPTER 1, "FUTURE LAND USE ELEMENT", BY AMENDING POLICY 1-1.1.2(6) TO ELIMINATE BUILDING HEIGHT IN CERTAIN ZONING DISTRICTS; PROVIDING FOR A SAVINGS AND RATIFICATION PROVISION; PROVIDING FOR IMPLEMENTING ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE. **First Reading.**

City Manager Booker stated that he had received numerous calls, letters and visitors on this topic. Councilmembers have also been contacted. He felt the Council should take the time to study the issue more completely. The Mayor announced that anyone who had signed up to speak on this item could do so under Audience Comments.

7. Ordinance 2016-06 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADDING SECTIONS TO THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES* RELATING TO THE PROHIBITION OF CANNABIS (MARIJUANA) AND CANNABIS RELATED DRUG PARAPHERNALIA; PROVIDING FOR ENFORCEMENT PROCEDURES AND PROCESSES; AMENDING SECTIONS 1-8 AND 16-25 OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, DIRECTIONS TO THE CODE CODIFIER AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE. **First Reading.**

CMBR RICE moved, seconded by **CMBR GEIGER** to approve **Ordinance 2016-06** on **first reading.**

Director Dembinsky explained that this Ordinance would provide uniformity with the county on the issue of marijuana enforcement. It would change the offense from criminal status to a civil one. CMBR Wheeler had some concerns with appointing a hearing officer. Attorney Groot explained that it would be handled similar to the hearing officer for dilapidated buildings. He also noted that marijuana is still illegal, this would just provide for a different punishment.

Vote: Motion passed (summary: **Yes = 3, No = 2**).

Yes: CouncilMember Lorraine Geiger, Mayor Harry Jennings, Vice Mayor Peggy Rice.

No: Council Member Jennie Celona, CouncilMember Billie Wheeler.

8. Resolution 2016-03 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, AMENDING THE GENERAL FUND BUDGET, PROVIDING FOR APPROPRIATIONS; PROVIDING AN EFFECTIVE DATE. **Public Hearing.**

CMBR RICE moved, seconded by **CMBR WHEELER** to adopt **Resolution 2016-03** on **first reading.**

Vote: Motion carried by unanimous roll call vote (summary: **Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Billie Wheeler, CouncilMember Jennie Celona, Mayor Harry Jennings, Vice Mayor Peggy Rice.

9. COUNCIL COMMENTS: CMBR Wheeler attended a leadership seminar in Virginia with the Florida League of Cities Executive Board. Many topics were discussed that affect multiple states. Both CMBR Geiger and Mayor Jennings congratulated the Culture & Entertainment Board and Lynn Bishop for another successful event.

10. AUDIENCE REMARKS/PUBLIC COMMENTS:

Several residents spoke in opposition of the proposed change in building height. They felt it could obstruct views and cast shadows on the beach and pool decks.
Two residents spoke in favor of the proposed change stating it would provide economic growth to the city.

11. ITEMS RECOMMENDED FOR THE NEXT AGENDA: None.

12. ADJOURNMENT: The meeting ended at 7:50 pm.

**MAYOR
HARRY H. JENNINGS**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



**DAYTONA BEACH SHORES
DEPARTMENT OF PUBLIC SAFETY**

MEMORANDUM

To: Michael Booker, City Manager
From: Stephan Dembinsky, Public Safety Director *SD*
Date: May 3, 3016
Re: contraband forfeiture
File: PS16-05-01

I would like the approval of council to utilize \$2500. From contraband forfeiture for the writing of the Sergeants exam.

Reports of the City Attorney

Reports of the City Manager

ORDINANCE 2016-06

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADDING SECTIONS TO THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES* RELATING TO THE PROHIBITION OF CANNABIS (MARIJUANA) AND CANNABIS RELATED DRUG PARAPHERNALIA; PROVIDING FOR ENFORCEMENT PROCEDURES AND PROCESSES; AMENDING SECTIONS 1-8 AND 16-25 OF THE *CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, DIRECTIONS TO THE CODE CODIFIER AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, underlined words shall constitute additions to the original text of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* (all new text may be noted specifically), *** shall constitute ellipses, and strike through shall constitute deletions to the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

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

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts the City agenda materials relating to the enactment of this Ordinance as well as the County agenda materials relating to the enactment of County Ordinance Number 2016-06 as the legislative and administrative findings and intent of the City Council.

(b). This Ordinance 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.

(c). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION TWO. POSSESSION OF CANNABIS (MARIJUANA) AND CANNABIS RELATED DRUG PARAPHERNALIA; PROHIBITED. New provisions of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* are enacted to read as follows (all new text):

Possession of Cannabis (Marijuana) and Drug Paraphernalia; Prohibited.¹

(a). It is prohibited and unlawful for a person to possess 20 grams of cannabis (as defined in Section 893.02(3), *Florida Statutes*, or its successor provision)² or to possess drug paraphernalia that relates to such amount of cannabis.³

¹ It is noted that the provisions of Section 20-6 of the *Volusia County Code* (Chapter 20 constituting the *Beach Code*) provides as follows:

Preemption of county and municipal ordinances.

This Chapter shall govern conduct on the beach. It shall be construed to preempt the provisions of all County and municipal ordinances relating to the beach, whether in conflict or not, and to preempt on the beach the provisions of all County and municipal ordinances of general application that prohibit, proscribe or permit conduct or activities which this chapter prohibits, proscribes or permits. Zoning and building codes are preempted only as they conflict with article III of this Chapter pertaining to access and obstructions on the beach. Provisions of Federal and State park rules and regulations, where applicable, shall preempt the provisions of this chapter where in conflict.

² The statutory definition of the term “cannabis” is as follows:

all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “low-THC cannabis,” as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986.

³ Section 893.146, *Florida Statutes*, provides as follows:

Determination of paraphernalia.—In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object, in time and space, to a direct violation of this act.
- (3) The proximity of the object to controlled substances.
- (4) The existence of any residue of controlled substances on the object.
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the

(b). Violations of this Ordinance are punishable in the amount of \$100.00 in accordance with the procedures set forth in this Ordinance and notwithstanding the provisions of Section 1-8 of this Code.

(c). The City shall enforce this provision in collaboration with County and other officials and officers.

Enforcement by Hearing Officer/Special Magistrate; Selection; Processes and Procedures.

(a). It is the intent of this of this Ordinance to establish a hearing officer/special magistrate with the authority to impose administrative/noncriminal fines for violations of this Ordinance and to provide an equitable, expeditious, effective and an inexpensive method of enforcing this Ordinance. Other provisions of the *City Code* and City ordinances may use this process by adoption.

(b). The City hearing officer/special magistrate shall have jurisdiction to hear and decide cases in which violations are alleged under this Ordinance.

(c). Hearing officer/special magistrates shall be appointed by the City Council and shall be an attorney duly licensed to practice law in the State of Florida. The City may utilize the services of one or more hearing officer/special magistrates to conduct hearings under this Ordinance.

(d). Hearing officer/special magistrates shall have the power to:

object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

(6) Instructions, oral or written, provided with the object concerning its use.

(7) Descriptive materials accompanying the object which explain or depict its use.

(8) Any advertising concerning its use.

(9) The manner in which the object is displayed for sale.

(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.

(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

(12) The existence and scope of legitimate uses for the object in the community.

- (1). Adopt rules for the conduct of hearings;
- (2). Subpoena alleged violators and witnesses to its hearings. Subpoena evidence to its hearings. Law enforcement officers of the City may serve subpoenas;
- (3). Administer oaths and take testimony under oath; and
- (4). Issue orders having the force of law finding a violation of this Ordinance.
- (e). Hearing officer/special magistrates shall serve for terms established by the City Council. Hearing officer/special magistrates shall be subject to removal, with or without cause, from their positions at any time during their term, by the City Council. Hearing officer/special magistrates shall not be considered to be City employees, although they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.
- (f). The City Attorney shall act as legal counsel to the City to assist, as needed, in the presentation of cases. Because only attorneys may hold the position of hearing officer/special magistrate, the City Council shall not be required to retain an attorney to represent the hearing officer/special magistrate.
- (g). Hearing officer/special magistrates shall have the jurisdiction to hear and decide alleged violations of this Ordinance.
- (h). The jurisdiction of the hearing officer/special magistrates shall not be exclusive. Enforcement action by the City may be taken under any other process or procedure authorized by controlling law.
- (i). The hearing officer/special magistrate shall not have the power to initiate proceedings.
- (j). The City shall, upon issuance of a citation under the provisions of this Ordinance, either

accept the payment of the fine imposed upon the violator or notify the violator and provide him or her a form to request a hearing before the hearing officer/special magistrate.

(k). If a hearing is requested, the City shall coordinate the calling of hearings by the hearing officer/special magistrate. The City shall provide scheduling of a hearing room and clerical staff as may be reasonably required by the hearing officer/special magistrate to conduct hearings and perform his or her duties. All hearings by the hearing officer/special magistrate shall be open to the public and minutes shall be kept of all hearings.

(l). At each case before the hearing officer/special magistrate, each party shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. The general public shall not be entitled to present evidence although members of the general public may be called as witnesses by either party.

(m). The alleged violator shall have the right, at his or her own expense, to be represented by an attorney at any hearing.

(n). All testimony before the hearing officer/special magistrate shall be under oath and shall be recorded. The alleged violator or the City may cause a verbatim record of the proceedings to be made.

(o). The burden of proof shall be with the City attorney to show by the greater weight of evidence that a violation of this Ordinance occurred.

(p). At the conclusion of the hearing, the hearing officer/special magistrate shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law, and shall render relief in the order affording the proper relief consistent with powers granted in this part of this Ordinance. A written order shall be issued within a reasonable period of time

subsequent to the hearing. An appeal shall be filed within 30 days of the execution of the order to be appealed.

(q). A certified copy of an order imposing the fine provided for herein may be recorded in the public records of Volusia County or any other county, and thereafter such order shall constitute a lien against the violator. The violator shall pay all costs of the proceedings incurred by the City.

Costs of the proceedings means all costs incurred by or on behalf of the City

SECTION THREE: AMENDMENT TO SECTION 16-25. Section 16-25 of the *Code of Ordinances of the City of Daytona Beach Shores* is amended to read as follows:

Sec. 16-25. - Possession of certain drugs prohibited; possession of drug paraphernalia.

(a). For the purposes of this section:

(1). The words "barbiturate" or "barbiturates" mean each of the salts and derivatives of barbituric acid, also known as "malonylurea," and derivatives, compounds, mixtures or preparations thereof. "Barbiturate" or "barbiturates" include hypnotic and somnifacient drugs, whether or not derivatives of barbituric acid, except that this law shall not apply to narcotics, as now or hereafter defined by the legislature of the state, or bromides.

(2). The words "central nervous system stimulant" or "central nervous system stimulants" mean amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidylacetate or any of the salts of any of the foregoing.

(3). The words "hallucinogenic drug" mean ~~cannabis as defined in subsection (4)~~, lysergic acid and lysergic acid amide, LSD (lysergic acid diethylamide), DMT (dimethyltryptamine), peyote, mescaline, psilocyn, psilocybin, including their salts and derivatives, or any compounds, mixtures and every substance neither chemically nor physically distinguishable from them, and

all derivatives of same, and any other drug to which the drug abuse laws of the United States apply, and *Rivea corymbosa* (ololiuqui) when used as a hallucinogen.

(4). ~~The word "cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.~~

(5). Nothing contained in the foregoing portions of this section shall be construed to include items commonly known as patent or proprietary preparations which are sold over the counter and do not require a prescription.

(b). The actual or constructive possession or control of a barbiturate, central nervous system stimulant or hallucinogenic drug ~~including cannabis~~ as herein defined in a quantity of less than five grams is hereby prohibited.

(c). It is prohibited and ~~shall be~~ unlawful for any person to possess, have under his control, sell or deliver any device, contrivance, instrument or paraphernalia with the intent that said device, contrivance, instrument or paraphernalia be used for unlawfully injecting, smoking, or using any drug controlled by this section.

(d). This section shall not apply to any person who has obtained the drug herein prohibited on a written prescription of a person duly authorized to practice medicine, dentistry, veterinary medicine or naturopathy in the state, or to those persons exempted from the operation of the

Florida Drug Abuse Law by the provisions of F.S. § 893.04, which section is by reference made a part hereof. Further, this Section shall be construed and implemented in *pari materia* and in harmony with all other provisions of this Code.

~~(e).— Any person violating any of the subsections or provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed \$500.00 or by imprisonment not to exceed a period of 60 days, or both.~~

SECTION FOUR: AMENDMENT TO SECTION 1-8. Section 1-8 of the *Code of Ordinances of the City of Daytona Beach Shores* is further amended to read as follows:

Sec. 1-8. - General penalty; continuing violations.

(a). Whenever in this Code or in any ordinance of the City any act is prohibited or is made or declared to be prohibited, unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be prohibited and unlawful in whatsoever manner, the violation of any such provision of the Code or any ordinance shall be punished by a fine not exceeding \$500.00. Any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance of the City shall be deemed a public nuisance and shall be subject to abatement and code enforcement by the City utilizing any remedy available under law. The City may prosecute violations by any means authorized by controlling law and may seek any legal remedy available under controlling law. Each occurrence (violation of a code or ordinance) shall constitute a separate violation and subject the violator to separate penalties. Any code or ordinance violation may result in the City Attorney, with the consent of the City Manager, bringing suit on behalf of the City against the person or persons, or entity or entities, causing or maintaining the violation. Notwithstanding the foregoing, the City

shall not seek imprisonment as a penalty for any violation of the Code.

(b). Notwithstanding the provisions of Subsection (a), the City Council may prescribe a different punishment and a tailored enforcement process for any violation of this Code.

(c). As used in this Section, the phrase "violation of this Code" means any of the following:

(1). Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(2). Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.

(3). Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(d). As used in this Section, the phrase "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty unless the context requires otherwise.

(e). The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(f). Violations of this Code may be abated by injunctive or other equitable or civil relief, and no bond shall be required, nor proof of intent or scienter. The imposition of a penalty does not prevent equitable relief.

(g). In any litigation commenced by the city to enforce the provisions or to enjoin a violation of this Code, the City shall be entitled to reasonable attorney's fees incurred in such litigation.

SECTION FIVE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the enforcement of its codes and ordinances, and controlling State law, and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION SIX: CODIFICATION; SCRIVENER'S ERRORS; DIRECTIONS TO CODE CODIFIER.

(a). The provisions of Sections Two, Three and Four of this Ordinance shall be codified and all other sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the provisions of this Ordinance.

(b). The sections, divisions and provisions of this Ordinance may be renumbered or relettered as deemed appropriate by the Code codifier.

(c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

(d). The Code codifier shall take all actions, in conjunction with the City Attorney, to implement the provisions of Section 1-8 of the *City Code* which provides that “[n]otwithstanding the foregoing, the City shall not seek imprisonment as a penalty for any violation of the Code.”

The Municipal Code Corporation shall be instructed to delete any provisions of the *City Code* that are inconsistent with the aforementioned provision of the *City Code*.

SECTION SEVEN: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION EIGHT: 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 NINE: 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 to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2016.

Adopted on second reading this __ day of _____, 2016.

ORDINANCE 2016-07

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO ECONOMIC DEVELOPMENT AND GOVERNMENTAL SIGNAGE PERTAINING TO ECONOMIC DEVELOPMENT ACTIVITIES OF THE CITY; PROVIDING FOR THE LICENSING OF ECONOMIC ACTIVITY SIGNAGE WITHIN THE CITY AND PROVIDING FOR CONDITIONS, PROCEDURES, PROCESSES, FEES AND ASSOCIATED MATTERS RELATING THERETO; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTING ACTIONS AND APPEALS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 166.021(9), *Florida Statutes*, provides as follows:

“(9)(a) The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

(d) Nothing contained in this subsection shall be construed as a limitation on the home rule powers granted by the State Constitution for municipalities.”

; and

WHEREAS, Section 187.201(21), *Florida Statutes*, (part of the *State Comprehensive Plan*) provides as follows:

“(21) THE ECONOMY.--

(a) Goal. --Florida shall promote an economic climate which provides economic stability, maximizes job opportunities, and increases per capita income for its residents.

(b) *Policies*.--

1. Attract new job-producing industries, corporate headquarters, distribution and service centers, regional offices, and research and development facilities to provide quality employment for the residents of Florida.

2. Promote entrepreneurship and small and minority-owned business startup by providing technical and information resources, facilitating capital formation, and removing regulatory restraints which are unnecessary for the protection of consumers and society.

3. Maintain, as one of the state's primary economic assets, the environment, including clean air and water, beaches, forests, historic landmarks, and agricultural and natural resources.

4. Strengthen Florida's position in the world economy through attracting foreign investment and promoting international banking and trade.

5. Build on the state's attractiveness to make it a leader in the visual and performing arts and in all phases of film, television, and recording production.

6. Promote economic development for Florida residents through partnerships among education, business, industry, agriculture, and the arts.

7. Provide increased opportunities for training Florida's workforce to provide skilled employees for new and expanding business.

8. Promote economic self-sufficiency through training and educational programs which result in productive employment.

9. Promote cooperative employment arrangements between private employers and public sector employment efforts to provide productive, permanent employment opportunities for public assistance recipients through provisions of education opportunities, tax incentives, and employment training.

10. Provide for nondiscriminatory employment opportunities.

11. Provide quality child day care for public assistance families and others who need it in order to work.

12. Encourage the development of a business climate that provides opportunities for the growth and expansion of existing state industries, particularly those industries which are compatible with Florida's environment.

13. Promote coordination among Florida's ports to increase their utilization.

14. Encourage the full utilization by businesses of the economic development enhancement programs implemented by the Legislature for the purpose of extensively involving private businesses in the development and expansion of permanent job opportunities, especially for the economically disadvantaged, through the utilization of enterprise zones, community development corporations, and other programs designed to enhance economic and employment opportunities.”

; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible, dynamic, and modern as well as an economy that attracts and retains high quality businesses and economic generators to the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores has concluded that a positive means and method to economically develop the City of Daytona Beach Shores in an effective and beneficial manner would be to provide for a system of economic development activity signage whereby the City could provide for governmental speech at targeted locations that encourage economic development activity relating to real property sales and purchases within the City; and

WHEREAS, a significant part of the economic activity within the City of Daytona Beach Shores is generated by real property transaction and the purchase of properties by persons who become permanent or regular residents of the City and the City Council of the City of Daytona Beach Shores has concluded that the City signage program as herein provided will promote targeted essential economic activity within the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the residents and citizens of the City of Daytona Beach Shores and to further the public health, safety and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to ensure and enhance the economic development of the City and the economic wellbeing of the citizens of the City; and

WHEREAS, in the United States Supreme Court case of *Walker v. Texas Division, Sons of Confederate Veterans*, dealt with the issue was whether the content on state-issued specialty license plates should be considered free speech and protected from government oversight and held that the First Amendment does not apply in the case of license plates, since the content on state-issued license plates is “government speech,” which, according to the decision, is not protected by the First Amendment; and

WHEREAS, it was noted with regard to the *Walker* decision that the governmental nature of the license plates was clear from their faces in that the State name was placed across the top of every plate; that it was required by the State that vehicle owners display the license plates, the State issues every license plate, and owned the designs of the license plates; and the State maintained direct control over the messages conveyed on license plates, by giving the Board final approval over each design; and

WHEREAS, in the United States Supreme Court case of *Reed v. Town of Gilbert, Arizona*, the Court placed substantial restrictions on ordinances regarding signs and billboards, deciding that limiting signs based on their content is discrimination; and

WHEREAS, the recent case of *David Benoit Mech, d.b.a. The Happy/Fun Math Tutor v. School Board Of Palm Beach County, Florida*, United States Court Of Appeals For The Eleventh Circuit (No. 15-10778, November 23, 2015), demonstrates an example as to how, with the adoption of policies such as are set forth in this Ordinance and the implementing rules relating to this Ordinance, the City may engage in lawful governmental speech and make

determinations in the context of programs and activities which exhibit strong indicia of government endorsement and control; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to engage in governmental speech in the form of economic development activity signage publication and licensure in order to assist in the positive and ongoing economic development of the City while controlling matters relative to the aesthetics and public safety of the City in a manner that is beneficial to the public interest; an

WHEREAS, the City Council of the City of Daytona Beach Shores has complied with all procedural and substantive requirements of controlling law in enacting this Ordinance; and

WHEREAS, this Ordinance 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 ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) set forth herein as the legislative and administrative findings and intent of the City Council.

(b). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION TWO. GOVERNMENT SPEECH ON SIGNAGE—LICENSURE OF ECONOMIC DEVELOPMENT ACTIVITY SIGNAGE. New provisions of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* are enacted to read as follows:

Government speech on signage—licensure of economic development activity signage.

(a). Signs relating to economic development activities as determined to be promoted by the City may be erected and displayed on City property and rights-of-way or private property that is determined to be appropriate by the City in order to accomplish the purposes of this Ordinance, subject to obtaining a license from the City in accordance with the rules and conditions set forth herein and notwithstanding any provision of Chapter 6, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

(b). The initial economic development activities that are provided general approval for licensure under the provisions of this Ordinance are “open house” signs which provide for the marketing of real property within the City in order to ensure that such economic development activity is incentivized and that displays of such signage occurs only at appropriate locations within the City as determined by the City. Additional types of economic activities may be approved by resolution adopted by the City Council.¹ “Open house²” signage would be directional in nature to ensure that persons interested in engaging the purchase or sale of real property located within the City are able to locate or direct persons to locations within the City in an attempt to generate economic activity within the real estate market of the City.

(c). An economic development activity sign license must be obtained from the City

¹ The Code codifier is authorized to codify any additional economic activities that may be authorized by the City Council in such manner as may be determined to be appropriate in the manner in which the *City Code* is codified.

² An “open house” sign can relate to a scheduled period of time in which a house, dwelling or other property is designated to be open for viewing for potential buyers. Open house can also refer to the real estate property itself.

before an economic development activity sign may be placed at a licensed location. The economic development activity sign license will allow the license holder or his or her assigns to place an economic development activity sign(s) at an approved locations or at locations within the City.

(d). The economic development activity sign license shall contain conditions such as, but not limited to, place, time and date(s) limitations, such as locations, times at which signage may be displayed or dates such as weekends or longer or shorter periods of time, all such limitations depending upon the type of property being promoted for economic development by the City or the nature of the real estate market.

(e). The economic development activity signs shall be constructed by the City and available for purchase by applicants upon the issuance of a license. Each sign shall be issued with a numbered seal affixed for identification purposes and shall be issued under a specific license.

(f). Economic development activity signs shall not be placed in any center median and shall not be placed at a location such that a sign would obstruct the vision of traffic on a roadway. Any signs determined to be in a location that causes an immediate hazard to public safety may be immediately removed by the City. Economic development activity signs may only be utilized during daylight hours and may not remain on display overnight under any circumstances. Faded, bent, discolored or otherwise-worn signs may not be used and shall be subject to removal by the City. Economic development activity signs may only direct traffic to properties located within the City. Economic development activity signs shall not be illuminated and shall be installed directly into the ground on the provided, metal-frame stand only. An economic development activity sign shall be located no less than sixty feet (60') from any other

economic development activity sign. No such sign may have any attachment of any type placed on the sign (such as balloons or other attention getting devices) although the signs may be designed by the City such that informational slots for specific information may be placed in a slot or other device which is part of the sign.

(g). The City Council shall, by adoption of a resolution, establish the application fee and licensing fee for the economic development signage program as provided in this Ordinance.

(h). Any sign displayed without a current license or in violation of the provisions of this Ordinance or the conditions named in the current economic development activity sign license may be removed by the City. Removal of three (3) signs issued under one license within any one (1) licensing period shall be cause for revocation or non-renewal of the license. If revoked, a new license may be applied for and will be issued, but shall be subject to the approval of the City Manager.

SECTION THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS; APPEALS.

(a). The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by the promulgation of rules and the development and usage of forms and processes.

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

(c). Decisions of the City Manager may be appealed to the City Council upon the filing of an appeal, and payment of all appropriate fees, within ten (10) days of the action of the

City Manager which is the subject of the appeal.

SECTION FOUR: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to economic development, sign regulation and any and all activities of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION FIVE: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions of this Ordinance Sections One through Four shall be codified and all other sections shall not be codified.

(b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.

(c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

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 to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2016.

Adopted on second reading this __ day of _____, 2016.

**RECOMMENDATION FOR CONSTRUCTION
MANAGER FOR COMMUNITY CENTER**

Council comments

Audience remarks

Items for the next agenda