

ORDINANCE 2012-09

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*; AMENDING APPENDIX “G”, CHAPTER 6, ENTITLED “SIGNS AND ADVERTISING” RELATING TO MURALS; AMENDING CHAPTER 8, ENTITLED “ENVIRONMENTAL IMPACT, ARCHITECTURAL GUIDELINES AND MANDATORY EXTERIOR COLOR STANDARDS,” BY AMENDING ARTICLE II, ENTITLED “MANDATORY EXTERIOR COLOR STANDARDS,” TO CREATE A NEW SUBSECTION ENTITLED “MURALS;” AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS;” BY AMENDING SECTION 14-58 ENTITLED “SPECIAL EXCEPTIONS AND CONDITIONAL USES” TO PERMIT THE USE OF COLORS NOT SELECTED TO BE ON THE CITY’S OFFICIAL COLOR PALETTE ON MURALS BY MEANS OF A SPECIAL EXCEPTION; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; 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 City of Daytona Beach Shores currently permits murals within City limits, by means of an exemption, pursuant to Section 6-3.5.e of the Daytona Beach Shores *Land Development Code*; and

WHEREAS, murals are only permitted in the GC-1, GC-2 and T zoning districts; and

WHEREAS, the application of any paint or color on the exterior of any building or structure is required to comply with the City’s Mandatory Exterior Color Standards and Official Color Palette, pursuant to Chapter 8, Article II of the Daytona Beach Shores *Land Development Code*; and

WHEREAS, the use of colors not selected to be used on the City’s Official Color Palette on murals, if developed in accordance with sound planning, land use and architectural principles, may contribute to the economic and aesthetic wellbeing of a community; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds it is in the best interest and welfare of the citizens of the City to enact this ordinance; 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 of Daytona Beach Shores*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~striketrough~~ shall constitute deletions to the original text.

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

SECTION ONE: Article II, *Land Development Code*, Chapter 6, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Signs and Advertising,” is amended to read as follows:

Sec. 6-1. - Purpose.

The purpose of these regulations concerning signs is to protect and preserve the character and appearance of the several districts within the City of Daytona Beach Shores; to provide ample opportunity to advertise in commercial areas, and in so doing, to prevent excessive advertising which would have a detrimental effect on the character and appearance of such business districts; and to limit signs in noncommercial areas to essential uses, primarily for the purpose of identifications and information, in order to protect the residential character and appearance of such districts. To realize this purpose, these regulations are established to control the number, area and height of signs which may be permitted in certain districts, and to further establish the type of location of such signs as may be permitted. Any sign allowed by either a permit or as a matter of right, whether an on-site sign or an off-site sign, may contain noncommercial speech in lieu of any other type of speech.

Sec. 6-2. - Definitions.

Definitions for this chapter shall be defined as provided in section 2-5 of this Code.

Sec. 6-3. - Permit required; application, issuance, fees.

It shall be unlawful for any person to erect, relocate or materially alter any sign within the City of Daytona Beach Shores, until a permit has been secured from the building official and fees have been paid as outlined in this section.

1. Permit Application. Application for permit shall be made upon forms provided by this building official and shall include the following information:

a. Name, address and telephone number of applicant, owner of sign and owner of real property on which the sign is to be placed.

b. Location of building, structure or lot upon which the sign is to be placed, attached or erected, together with the measured frontage of such lot on any public right-of-way.

c. Two (2) prints or drawings showing:

(1) Accurate drawing to scale, showing the sign display, construction details, dimensions of the sign, electrical plans, if applicable, together with such other information as the building official shall require in order to show full compliance with this and all other applicable laws and regulations of governmental agencies.

(2) Statement by applicant that owner or lessee of the real property has consented to the placement of the sign thereon.

2. Schedule of Application Fees. All sign permit fees and related fees shall be paid in accordance with the current "City of Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the city clerk.

3. Annual Sign Inspection. The applicant shall pay a fee to the city for an annual sign inspection and recertification of the sign in accordance with the current "City of Daytona Beach Shores Land Development Code Schedule of Fees" which is available at the office of the city clerk.

4. Electrical Displays. All signs containing electrical displays shall conform to the requirements of the city's electrical code.

5. Exceptions. The provisions of this chapter shall be or [of] uniform application with the following exceptions:

a. Signs not exceeding four (4) square feet in area required for public purposes for identification purposes only and limited to property number, post office box numbers and names of occupants on any private premises.

b. Legal notices posted by authorized persons of a governmental body.

c. Any public informational sign directing vehicular traffic and parking or pedestrian traffic over or upon private property, provided that such sign shall contain no advertising material and shall not exceed four (4) square feet in total area.

d. Identification, information or traffic control devices erected by any authorized governmental body.

e. Integral decoration or architectural festoon of buildings (wall graphics, ~~or super graphics, or murals~~). Wall graphics may be an integral decoration or architectural festoon of a building but shall not include letters, trademarks, moving parts or moving lights and shall not cover more than thirty (30) percent of any single wall surface area as allowed in section 6-9 of this Code. Condition L in section 6-9 shall also apply to ~~integral decoration or~~ architectural festoon of buildings located in the GC-RD and TC-MUPUD districts.

f. Real estate signs, displayed for the purpose of offering the specific property for sale, rent or lease by the owner or his authorized agent, provided the signs are located on the property offered for single-family residences and individually owned commercial properties and signs displayed for the purpose of offering the specific property for sale, rent or lease by the owner or his authorized agent, provided the signs are located on the property offered and are attached to or displayed from the interior of the building for multifamily residences or properties containing multiple commercial establishments. Real estate signs advertising the property for sale, lease or rent in all districts by the owner or agent shall not exceed four (4) square feet in area. Existing ground signs on property for sale, lease or rent shall strictly be limited to the advertising of the property's business and shall not be used as a "for sale sign." Condition D in Section 6-9 shall apply in the RMF-RD, TOR-RD, GC-RD and TC-MUPUD districts. Only one (1) real estate sign per site shall be allowed.

g. Flags and insignias of any government are exempt unless used in connection with commercial advertising or promotions, in which case Condition L in section 6-9 shall apply to flags located in the GC-RD and TC-MUPUD districts.

h. Motels participating in the Destination Daytona "Superior Small Lodging Program" may attach a double-faced, acrylic sign, not to exceed 18" × 24", to an existing permitted sign. Said attached signage shall be limited to the Destination Daytona Program logo and the motto which reads, "Personalized Service, Guaranteed Quality."

Sec. 6-4. – Sec. 6-7.

Sec. 6-8. - Permitted signs.

1. ~~Reserved.~~ Murals. Murals shall only be permitted pursuant to Sec. 14-58.1.2.D.1. of this Code.

2. -19.

Sec. 6-9.

Sec. 6-10. Variances

The City Council recognizes that physical and built conditions peculiar to a business premises can create problems relative to the requirements of this Ordinance. Consequently, it is the intent of the City Council to offer an expedited and fair means of addressing hardships that are created as a result of unique site conditions when applying the requirements of this Ordinance.

Sec. 6-10.1 Administrative Variances.

Sec. 6-10.1.1. Authority of the Building Official.

The Building Official is hereby authorized to grant administrative variances from the dimensional standards contained in this Ordinance where a determination of substantial hardship is made by the Building Official. Administrative variances are limited to setback, offset, spacing, height, landscaping and parking requirements contained in this Chapter and Chapter 14 of the Land Development Code that create conflict when applying the provisions of this Ordinance. However, the Building Official shall not grant any variance for (1) any sign exceeding 25 percent more than the square footage or height standards of this ordinance, (2) any sign standards elected under the flex option (3) any sign prohibited by this chapter or (4) any mural provision.

Sec. 6-10.1.2. Approval Standards.

The Building Official may grant a variance authorized by this Section if the variance requested is required by special or unique hardship because of:

- (a) Exceptional narrowness, shallowness , or shape of the premises on which the sign is located; or
- (b) Exceptional topographic conditions or physical features uniquely affecting the premises on which the sign is located; or
- (c) Exceptional conditions or features of the existing built environment uniquely affecting the premises on which the sign is located.

Sec. 6-10.1.3. Appeals.

The decision and findings of fact pursuant to this section may be appealed by any aggrieved party within thirty (30) days after rendition of the decision by the Building Official to the Board of Adjustments pursuant to Sec. 14-69.3 and Sec. 14-70 of this Land Development Code.

Sec. 6-10.1.4. Board of Adjustments

The board of adjustments, pursuant to the same powers and authority and subject to the same limitations set forth in this Code, may grant variances where a determination of substantial hardship is made by the board. However, the board shall not grant any variance for murals or a sign (1) exceeding the square footage provisions of this chapter, (2) or sign feature elected under the flex option or (3) prohibited by this chapter. Notwithstanding the aforementioned, the board may grant a variance, relating to monument signs, from the provisions of the square footage and height standards of this ordinance not exceeding twenty-five (25) percent more than the associated square footage or height standards contained in this Chapter.

Sec. 6-11. – Sec. 6-17.

SECTION TWO: Article II, *Land Development Code*, Chapter 8, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Environmental Impact, Architectural Guidelines and Mandatory Exterior Color Standards,” is amended to read as follows:

CHAPTER 8. ENVIRONMENTAL IMPACT, ARCHITECTURAL GUIDELINES AND MANDATORY EXTERIOR COLOR STANDARDS.

ARTICLE I: ENVIRONMENTAL IMPACT AND ARCHITECTURAL GUIDELINES

ARTICLE II: MANDATORY EXTERIOR COLOR STANDARDS

Sec. 8-7. Purpose and intent.

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

- (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 of Daytona Beach Shores;
- (b) Minimize incompatible visual colors which prevent orderly community development that may threaten to reduce community property values;
- (c) Enhance and sustain property values; and
- (d) Foster civic pride and community spirit by maximizing the positive impact of development.

Sec. 8-8. – Sec. 8-10.4.

8-10.5. Murals.

(1) 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. – Sec. 8-14.

SECTION THREE: Section 14-58, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Special Exceptions and Conditional Uses,” is amended to read as follows:

Sec. 14-58. Special Exceptions and Conditional Uses

Sec. 14-58.1. Special exceptions

Sec. 14-58.1.2. Special exceptions permitted in all districts.

D. The following uses are permitted as special exceptions in the GC-1, GC-2 and T zoning districts as follows:

1. Murals. Murals are artistic representations that could enhance the community’s aesthetic value, sense of place and well being. If located strategically, murals can also serve to introduce and welcome visitors to the City while illustrating the City’s past, present and vision for the future. Permitting colors not listed on the City’s Official Color Palette in commercial and hotel districts by means of special exception would regulate murals so as to enhance aesthetics within the City, limit potential adverse impacts, foster community identity and maintain public safety. Murals qualifying under the terms of this Section may only be permitted in the GC-1, GC-2 and T districts subject to the following conditions:

a. Location: Murals qualifying under the terms of this Section may only be placed on commercial and hotel properties located in a commercial or hotel/motel zoning district, respectively.

b. Size: Murals shall be limited to 30% of any single wall surface area of the primary building.

c. Public Safety: Murals must not impede or have an adverse effect on the safe and efficient movement of vehicular or pedestrian traffic.

d. Design and Application Standards:

1. A mural must exhibit exceptional design, material, and application standards, while incorporating high-quality materials that will enhance the overall development and appearance of the site.
2. The materials used in developing a mural may consist of, but are not limited to, paint and other artistic mediums such as tile or mosaic, original digital images and low-relief sculpture. All materials must be appropriate for outdoor location and climate, with special considerations for longevity.
3. A mural's color scheme shall be complementary and harmonious with the exterior colors of the building or structure, and consistent with the chosen theme. The design, location and scale of the mural shall be in keeping with and enhance the building as well as the local environment.
4. A mural shall not obscure or detract from the significant architectural features of the structure on which it is located or have an adverse effect on adjacent properties or facing properties.
5. A mural's overall features shall be designed to enhance the City's gateways and contribute to the unique character and quality of life in the City of Daytona Beach Shores.
6. There shall be no exterior lighting directed upon the mural.
7. Murals shall not cover doors or windows or other architectural elements such as cornices and pilasters.
8. Murals may only be permitted on flat planes of walls.
9. Each mural shall be an original work of art.
10. A mural shall be designed, applied and/or constructed under the supervision of a qualified artist/muralist or other qualified professional who has sufficient knowledge and experience in the design and execution of such projects, as well as with the application of the selected medium.

e. Alterations: A mural shall remain in place without alterations for a minimum period of one year. Any future alteration is subject to approval by the City Council after receiving a recommendation from the Beautification Advisory Board.

f. Maintenance Plan Required: Murals may only be approved when submitted for review with an adequate and professionally prepared maintenance plan.

g. Written consent from the property owner of the property on which a mural is to be developed is required.

h. The special exception relating to a mural may be approved for a limited period of time and such condition of use shall be incorporated into the development order relating to the approval.

i. Pursuant to Section 2-2 of this Code, due public notice shall be provided by the applicant.

j. The property owner shall be responsible for compliance with the terms of this Section and the special exception development order issued.

SECTION FOUR: ENFORCEMENT AND PENALTIES.

(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 Ordinance by any lawful means available to the City under the controlling provisions of State 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.

SECTION FIVE: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the regulation of the use of paint colors, building colors, aesthetic regulation and related matters are hereby ratified and affirmed.

SECTION SIX: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Four, Five, Six, Seven, Eight and Nine shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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 _____, 2012.

Adopted on second reading this _____ day of _____, 2012.