

ORDINANCE 2013-09

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*; AMENDING APPENDIX "G", CHAPTER 5 ENTITLED "BUILDING PERMITS, CODES, FEES AND BOARDS," AND CHAPTER 14 ENTITLED "ZONING REGULATIONS;" BY AMENDING SECTION 5-9 ENTITLED "CONSTRUCTION SETBACK LINE" AND SECTION 14-59 ENTITLED "SETBACK LINE," RESPECTIVELY, TO PERMIT PERMANENT RECREATIONAL FACILITIES WITHIN THE FIFTY-FOOT CONSTRUCTION SETBACK LINE LANDWARD OF THE EXISTING COASTAL CONSTRUCTION CONTROL LINE; 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 Coastal Construction Control Line, as established by the Florida Department of Natural Resources, pursuant to Chapter 161, *Florida Statutes*, in 1973 is no longer commonly called "the bulkhead line;" and

WHEREAS, Chapter 161, *Florida Statutes*, relates to a wide array of policies and requirements relating to beach and shore preservation, the protection of zones of impacts on coastal areas and the protection of natural resources relating to coastal areas and communities; and

WHEREAS, the Coastal Construction Control Line established in 1973 has been relocated upland such that it is now impractical to require a landward setback construction line of fifty feet (50'); and

WHEREAS, the construction of tiki huts, pavilions and other similar structures provide recreational, economic and tourism benefits to coastal communities; and

WHEREAS, the City of Daytona Beach Shores is a coastal 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 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 ~~strikethrough~~ 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: Section 5-9, *Land Development Code*, Chapter 5, Appendix "G", *Code of Ordinances of the City of Daytona Beach Shores*, entitled "Construction setback line," is amended by deleting the following provisions:

~~Sec. 5-9. Construction setback line.~~

~~*Established. 5-9.1.*~~

~~There is hereby established a fifty (50) foot construction setback line landward from the Coastal Construction Control Line, as established by the Florida Department of Natural Resources, pursuant to Ch. 161, Florida Statutes in 1973 and commonly called "the bulkhead line."~~

~~*Structures Prohibited. 5-9.2.*~~

~~No structure will be permitted to be constructed or placed within this setback line.~~

~~*Subject to State Regulations. 5-9.3.*~~

~~The setback line shall be subject to any variances, alterations, or amendments by the Florida Department of Natural Resources, as established by law.~~

~~*Existing Structures Not in Violation. 5-9.4.*~~

~~All structures currently in place within this setback area, upon the effective date [March 10, 1982] of this section, shall not be deemed to be in violation of this section.~~

~~*Exceptions. 5-9.5.*~~

~~The prohibition of structures within this setback line shall not include swimming pools, pool equipment, sundecks or portable recreation equipment~~

SECTION TWO: Section 14-59, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Setback Line,” is amended to read as follows:

Sec. 14-59. Coastal Construction Setback Line.

Established. 14-59.1.

In multifamily residential and hotel/motel districts abutting the Atlantic Ocean there is hereby established a ~~fifty foot~~ coastal construction setback line which extends fifty feet (50’) landward from ~~any the existing coastal construction control line, as established by the Florida Department of Natural Resources, pursuant to F.S. ch. 161.~~ onsite seawall located on a parcel of property. If no onsite seawall exists on a parcel of property, the coastal construction setback line shall extend fifty feet (50’) landward from the seawall line formed when forming (by applying appropriate surveying practices) an imaginary line joining the most proximate or abutting northern and southern seawalls to form a reasonably continuous and uniform line across the subject property which is described with precision in accordance with appropriate surveying practices.

In single-family residential districts abutting the Atlantic Ocean, the coastal construction setback line shall be the building line landward from the onsite seawall, seawall line or frontal dunes, as defined in Section 161.053(5)(a), *Florida Statutes*, or its successor provision.¹ The building line shall be that line formed when joining the easternmost walls of the most proximate or abutting northern and southern principal buildings to form a reasonably continuous and uniform line across the subject property that is capable of being surveyed in accordance with generally accepted land surveying practices and principles.

Structures prohibited. 14-59.2.

No structure will be permitted to be constructed or placed within this setback line.

Subject to State Regulations. 14-59.3.

The setback line shall be subject to any variances, alterations or amendments by the Florida Department of Environmental Protection ~~Natural Resources~~, as established by law.

¹ The term is defined to mean “. . . the first natural or manmade mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.”

Existing Structures Not In Violation. 14-59.4.

All structures currently in place within this setback area, upon the effective date (March 10, 1982) of this section, shall not be deemed to be in violation of this section.

Exceptions. 14-59.5.

The prohibition of structures within this setback line shall not include swimming pools, pool equipment, sun decks, ~~or~~ portable recreation equipment, open-air recreational structures such as, but not limited to, tiki huts or pavilions, seawalls, dune walkovers and other structures of similar type and impact as determined by the Building Official. Exempt structures constructed within the setback line shall comply with all applicable local, State and Federal law, rules, codes, ordinances and regulations.

SECTION THREE: 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 FOUR: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the regulation of construction setback lines and related matters are hereby ratified and affirmed.

SECTION FIVE: 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 Three, Four, Five, Six, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

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 _____, 2013.

Adopted on second reading this _____ day of _____, 2013.