

**ORDINANCE 2014- 07**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING CHAPTER 12 OF THE *MUNICIPAL CODE OF ORDINANCES* RELATING TO RECOVERED MATERIALS DEALERS; PROVIDING FOR REGISTRATION PURSUANT TO THE PROVISIONS OF SECTION 403.7046, *FLORIDA STATUTES*; PROVIDING FOR THE AUTHORIZATION OF FEES; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR PROHIBITED ACTS, VIOLATIONS, ENFORCEMENT AND PENALTIES, THE ADOPTION OF ADMINISTRATIVE RULES AND IMPLEMENTING ADMINISTRATIVE ACTIONS; 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**, the City of Daytona Beach Shores is limited by the provisions of controlling State law with regard to the regulation of recovered materials in that, pursuant to Section 403.7046(1), *Florida Statutes*, as promulgated in Rule 62-722, *Florida Administrative Code*, any person who handles, purchases, receives, recovers, sells, or is an end user of recovered material is required to apply for an annual certification to the Florida Department of Environmental Protection (FDEP) and, by February 1 of each year, registrants must report all required information to the FDEP and to all counties from which they received materials; and

**WHEREAS**, Section 403.7046(3), *Florida Statutes*, however, specifies that local governments cannot enact any ordinance that prevents a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source separated recovered materials; and<sup>1</sup>

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<sup>1</sup> The entirety of Section 403.7046, *Florida Statutes*, relating to the regulation of recovered materials provides as follows:

- (1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials; persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by

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such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to \$50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to the requirements of this section or any rule adopted pursuant to this section, which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 119.07(1). For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b) Before engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules adopted pursuant thereto.

**WHEREAS**, the provisions of Section 403.7046(3)(b), *Florida Statutes*, provides that local governments may, however, establish a registration process whereby a recovered materials dealer must register with a local government before engaging in business within the jurisdiction of the local government; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires to implement and effectuate the provisions of Section 403.7046(3)(b), *Florida Statutes*; and

**WHEREAS**, the purpose of this Ordinance is to ensure that the best interests and welfare of the citizens of the City are protected and the provisions of all laws, codes and ordinances enacted under the police power to protect the public health, safety and welfare shall apply to recovered materials dealers; 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**, although not a land development regulation, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores* and advances the public health, safety and welfare; and

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(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

(4) A recovered materials dealer or an association whose members include recovered materials dealers may initiate an action for injunctive relief or damages for alleged violations of this section. The court may award to the prevailing party or parties reasonable attorney fees and costs.

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute substantial additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text. The renumbering of provisions is not coded.

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

**SECTION ONE: REGISTRATION OF RECOVERED MATERIAL DEALERS.**

The following new sections of the *Code of Ordinances of the City of Daytona Beach Shores* are added to read as follows:

**Registration of exempt recovered materials dealers.**

(a). *Registration required.* Any person who is exempt by controlling State law<sup>2</sup> from the requirement to obtain a franchise to collect, transport, and dispose of recovered materials and who wishes to collect, transport, and dispose of recovered materials within the City, shall either register in accordance with this Section or obtain a nonexclusive franchise to provide such services.

(b). *Application for registration.*

(1). Applications for registration shall be made on application forms approved or provided by the City Manager, or designee, and shall contain, at a minimum, the information required by Section 403.7046, *Florida Statutes*, or its successor provision(s).

(2). The applicant shall state whether it is a processor, a transporter, or both.

(3). The application must be accompanied by each of the following:

(A). A copy of state certification as required by Section 403.7046, *Florida Statutes*.

(B). Disclosure of ownership as set forth below.

(C). Proof of insurance as set forth below.

(D). An application fee in the amount set forth in resolution adopted by the City Council.

(c). *Certificate.* The City shall issue a certificate of registration to any applicant who qualifies. The certificate is valid for 5 years. Any person whose certificate of registration is scheduled to expire or whose certificate has expired may apply for a new registration.

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<sup>2</sup> See Footnote 1.

(d). *Operating requirements for registrants.* Registrants shall comply with the following operating requirements:

(1). *Disclosure of ownership.* A registrant shall annually provide 2 copies of a notarized statement disclosing the names of its owners, general and limited partners, or corporate or registered name under which it will conduct its business as authorized by this Ordinance.

(2). *Service standards.* A registrant shall meet the service standards for nonexclusive franchisees set forth in this Ordinance, to the extent applicable. In addition, a registrant shall handle recovered materials containers with reasonable care and return them to the approximate location from which they were collected. A registrant shall adequately clean up all materials spilled during its collection operation as prescribed by the City. A registrant shall use only trucks that are capable of preventing spillage or accidental release of recovered material during transport.

(3). *Emergencies.* A registrant shall not be required to provide collection services when all appropriate recycling sites are closed or a City emergency or imminent emergency exists, as determined by the City Manager. The registrant shall resume collections when instructed to do so by the City Manager.

(4). *Non-agency.* A registrant shall not be deemed an agent of the City and shall be responsible for any losses or damages of any kind arising from its performance or nonperformance under its registration. The registrant shall defend at its own expense or reimburse the City for its defense, at the City's option, of any and all claims and suits brought against the City, its elected or appointed officers, officials, employees and agents resulting from the registrant's performance or nonperformance of service pursuant to the registration.

(5). *Insurance.* A registrant shall purchase and maintain commercial motor vehicle insurance as required by Chapter 627, Florida *Statutes*, or its successor provision(s), and workers compensation insurance as required by Chapter 440, *Florida Statutes*, or its successor provision(s). Failure to maintain required insurance shall result in revocation of registration.

(6). *Other laws, rules, and regulations.* A registrant shall procure at its own expense all local, State and Federal franchises, certificates, permits, licenses and other authorizations necessary for the conduct of its operations including, but not limited to, payment of the local business tax. A registrant and its employees, officers, and agents shall comply with all relevant Federal, State and local laws and regulations, code enforcement orders, orders of regulatory bodies, and mandatory guidelines, applying to the collection or processing services being rendered. Additionally, the provisions of Section 12-17 of the *City Code* shall apply to the activities of all registrants in order to protect the public health, safety and welfare and in accordance with the police powers of the City.

(7). *Limited effect of registration.* Registration under this exemption will not relieve the registrant from having to obtain a franchise to provide non-exempt services, such as for

collection and disposal or refuse. In addition, registration does not award the registrant authorization to operate a materials recovery facility as defined by Section 403.703, *Florida Statutes*, or its successor provision(s).

(e). *Separation of residential and commercial materials.* Curbside collection of designated recyclable materials from commercial generators will be allowed only with prior approval of the City Manager. When considering a request to provide curbside collection, the City Manager shall consider each of the following factors:

(1). Accessibility of collection vehicles to property.

(2). Available space for placement of containers.

(3). Predominant use of property.

(4). Safety.

(f). *Delivery of materials.* All recovered materials shall be delivered to a recovered materials dealer certified by the Florida Department of Environmental Protection or Its subsequent responsible agency.

(g). *Reports.* The registrant shall submit to the City Manager reports as authorized by Section 403.7046(3)(a), *Florida Statutes*, or its successor provision(s), and implementing regulations promulgated by the Florida Department of Environmental Protection or its successor agency of comparable authority.

(h). *Rights of existing franchisees.* Any existing franchisee that becomes eligible to register under this Section may apply for registration. If the City grants registration, the franchise will be amended to eliminate requirements established under the franchise relating to collection, transport and disposal of recyclable materials, or terminated, as applicable.

(i). *Approval of registration.* Upon approval of an application, the registrant shall pay to the City a registration fee in the amount set forth in resolution adopted by the City Council. Although the certificate is valid for 5 years, the registration shall be paid on a yearly basis and failure to pay the annual registration fee shall void the registration.

#### **Denial, suspension, and revocation of registration.**

(a). Upon findings of fact supporting just cause, the City Manager shall deny a registration in the case of application for new or renewed registration, and suspend or revoke a registration for a specified period of time in the case of previously issued registration. The term "just cause" means repeated violation of:

(1). State or local laws and regulations;

- (2). Code enforcement orders;
  - (3). Orders of regulatory bodies; or
  - (4). Violations of mandatory guidelines relating to the applicant's or registrant's operation; or loss of state certification as a recovered materials dealer.
- (b). Prior to denial, suspension, or revocation, the City shall provide written notice of intent to the applicant or registrant at the address provided in the application for registration. The notice shall include a summary of the charges against the applicant or registrant. If the applicant or registrant files a notice of appeal in accordance with the provisions of this Ordinance, the denial, suspension, or revocation, will not become effective until the completion of the appeal process.

**Notices.**

Notices authorized or required by this Ordinance shall be in writing and shall be provided to the address as listed in the application for franchise or registration, or on the franchisee's or registrant's business tax receipt if different from the address listed in the application. Notice shall be deemed to be provided five calendar days after being placed in regular U.S. Mail, or next business day if delivered overnight by recognized national courier service.

**Appeal procedure.**

- (a). A written appeal may be filed within 15 calendar days after notice of any City Decision to deny a franchise application or application for registration, or to terminate, suspend, or revoke an existing franchise or registration, within 15 calendar days after notice of such decision. The appeal must be filed with the City Clerk, who shall coordinate the appeal hearing.
- (b). The appeal will be placed on the City Council agenda and heard by the City Council at the next practicable City Council meeting.
- (c). At the hearing the City Council will hear such evidence as the Council deems desirable in order to determine whether to uphold the City Manager's decision. The hearing will be informal. The party appealing the decision shall have the right to present evidence. The City Council may, in its discretion, refer the matter to a hearing officer and may delegate authority to make a final determination on the appeal or make a recommendation to the City Council relative to the matter.
- (d). At the conclusion of the hearing and the appeal process, the decision of the City Manager may be upheld, reversed or modified. The City Council's decision will be final action unless the City Council has delegated authority to a hearing officer to make such decision.

**SECTION TWO: ENFORCEMENT, PENALTIES, ADMINISTRATIVE RULES, AND IMPLEMENTING ADMINISTRATIVE ACTIONS.** A new Section of the *Code of Ordinances of the City of Daytona Beach Shores* is added to read as follows:

(a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance or the provisions of any City code or ordinance related hereto.

(b). The City may enforce the provisions of this Ordinance or any City code or ordinance related hereto by any lawful means available to the City under the controlling provisions of State law. Additionally, the provisions of Section 12-17 of the *City Code* shall apply to the activities of all registrants in order to protect the public health, safety and welfare and in accordance with the police powers of the City.

(c). The penalties for violation of this Ordinance or any City code or ordinance related hereto 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.

(d). Whenever a fee is established for a City activity related hereto, yet the amount of that fee has not been established by the City Council, the City Manager is hereby empowered to establish an interim fee that will be in effect until action is taken by the City Council.

(e). The City Manager, or designee, is hereby delegated the authority to adopt any necessary administrative rules to implement the provisions of this Ordinance as well as any existing City code or ordinance related hereto.

(f). The City Manager, or designee, is hereby delegated the authority to implement the provisions of this Ordinance as well as any existing City code or ordinance related hereto.

**SECTION THREE: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to the regulation of solid waste and recovered materials, as well as any and all related matters, are hereby ratified and affirmed.

**SECTION FOUR: 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 and Seven shall not be codified.

**SECTION FIVE: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION SIX: 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 SEVEN: EFFECTIVE DATE.** This Ordinance shall take effect on August 1, 2014.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.