



**Town of Surfside
Regular Town Commission Meeting**

AGENDA

April 10, 2018

7 p.m.

**Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154**

Rule 7.05 Decorum. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the commission shall be barred from further appearance before the commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the commission members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or his or her remarks shall be permitted. Signs or placards may be disallowed in the commission chamber by the presiding officer. Persons exiting the commission chambers shall do so quietly.

Rule 6.05 Agenda. The good and welfare portion of the agenda set for 8:15 p.m. shall be restricted to discussion on subjects not already specifically scheduled on the agenda for discussion and debate. In no event shall this portion of the agenda be allotted more than 45 minutes with each speaker to be given no more than three minutes, unless by vote of a majority of the members of the commission present, it is agreed to extend the time frames. Likewise, commission members shall be restricted to speaking three minutes each unless an extension is granted in the same manner as set forth in the prior sentence.

Any person who received compensation, remuneration or expenses for conducting lobbying activities is required to register as a lobbyist with the Town Clerk prior to engaging in lobbying activities per Town Code Sec. 2-235. "Lobbyist" specifically includes the principal, as defined in this section, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee. The term "lobbyist" specifically excludes any person who only appears as a representative of a not-for-profit corporation or entity (such as charitable organization, a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect, or contingent, to express support or opposition to any item.

Per Miami Dade County Fire Marshal, the Commission Chambers has a maximum capacity of 99 people. Once reached this capacity, people will be asked to watch the meeting from the first floor.

** Denotes agenda items as "must haves" which means there will be significant impacts if the item is not addressed tonight. If these items have not been heard by 10 p.m., the order of the agenda will be changed to allow them to be heard.*

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**
- D. Mayor and Commission Remarks – Mayor Daniel Dietch**
- E. Agenda and Order of Business Additions, deletions and linkages**
- F. Community Notes – Mayor Daniel Dietch**
- G. Legislature Update by Senator Campbell – Mayor Daniel Dietch**
- H. Legislative Session Update from Fausto Gomez – Guillermo Olmedillo, Town Manager**

2. Quasi-Judicial Hearings

- 3. Consent Agenda** *(Set for approximately 7:30 p.m.) All items on the consent agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request that an item be removed from the Consent Agenda and discussed separately. If the public wishes to speak on a matter on the consent agenda they must inform the Town Clerk prior to the start of the meeting. They will be recognized to speak prior to the approval of the consent agenda.*

Recommended Motion: To approve all consent agenda items as presented below.

A. Minutes – Sandra Novoa, MMC, Town Clerk

- **March 13, 2018 Regular Town Commission Meeting Minutes**

***B. Town Manager's Report – Guillermo Olmedillo, Town Manager**

***C. Town Attorney's Report – Weiss Serota, Town Attorney**

D. Committee Reports – Guillermo Olmedillo, Town Manager

- **January 25, 2018 Sustainability Subcommittee Meeting Minutes**
- **February 26, 2018 Parks and Recreation Committee Meeting Minutes**

E. Pelican Harbor Seabird Station Donation – Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, RATIFYING AND APPROVING A DONATION TO THE PELICAN HARBOR SEABIRD STATION IN SUPPORT AND SPONSORSHIP OF THEIR PROGRAMS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

F. Ruth K. Broad K-8 Parent Teacher Association Donation - Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, RATIFYING AND APPROVING A DONATION TO THE RUTH K. BROAD K-8 PARENT TEACHER ASSOCIATION FOR A MEMORIAL SCULPTURE FOR MARJORY STONEMAN DOUGLAS HIGH SCHOOL; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

G. Certifying Election Results – Sandra Novoa, Town Clerk

RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CERTIFYING AND DECLARING THE RESULTS OF THE TOWN OF SURFSIDE GENERAL MUNICIPAL ELECTION HELD ON MARCH 20, 2018 FOR THE ELECTION OF MAYOR AND FOUR (4) TOWN COMMISSIONERS; AND PROVIDING FOR AN EFFECTIVE DATE.

H. Arbor Day Proclamation Approval – Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN OF SURFSIDE ADOPTING A PROCLAMATION HONORING THE IMPORTANCE OF TREES FOR THE TOWN OF SURFSIDE'S COMMUNITY AND ENVIRONMENT AND ENCOURAGING THE PLANTING OF TREES; PROCLAIMING APRIL 17, 2018 IN THE TOWN OF SURFSIDE AS "ARBOR DAY"; PROVIDING APPROVAL AND AUTHORIZATION; PROVIDING FOR AN EFFECTIVE DATE.

4. Ordinances

(Set for approximately 7:45 p.m.) (Note: Good and Welfare must begin at 8:15)

A. Second Reading Ordinances

1. Ordinance Repealing Section 86-1 "Surfboards" of the Town's Code of Ordinances - Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, REPEALING SECTION 86-1 "SURFBOARDS" OF THE TOWN'S CODE OF ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

2. Maintenance in the Right-of-Way Including Trees and Mulch – Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING ARTICLE III, PROPERTY MAINTENANCE STANDARDS, OF CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, AND CHAPTER 90, ZONING, TO PROHIBIT USE OF MULCH IN THE RIGHT-OF-WAY AND ADDRESS PROPERTY OWNER MAINTENANCE RESPONSIBILITIES FOR PUBLIC RIGHT-OF-WAY ADJACENT TO PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

3. Maximum Building Length – Guillermo Olmedillo, Town Manager {Deferred to May, 8, 2018 Commission Meeting at 7:00 p.m. or soon thereafter}

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-51 “MAXIMUM FRONTAGE OF BUILDINGS AND FACADE ARTICULATIONS.” OF “CHAPTER 90 ZONING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ADDRESS FAÇADE ARTICULATIONS, MAXIMUM BUILDING LENGTHS AND BUILDING SEPARATIONS IN THE H30C AND H40 ZONING DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

4. Surfside Development Approval Procedures – Guillermo Olmedillo, Town Manager {Deferred to May, 8, 2018 Commission Meeting at 7:00 p.m. or soon thereafter}

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING DIVISION 3, “SPECIAL EXCEPTIONS, ZONING CHANGES, CONDITIONAL USES AND VARIANCES,” OF ARTICLE II, “ADMINISTRATION AND ENFORCEMENT,” OF CHAPTER 90 “ZONING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ADDRESS DEVELOPMENT APPLICATION PROCEDURES AND REQUIREMENTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Set for approximately 8:00 p.m.) (Note: Good and Welfare must begin at 8:15)

B. First Reading Ordinances

- 1. Lighting Regulations for Marine Turtle Protection – Guillermo Olmedillo, Town Manager**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN CODE BY CREATING ARTICLE VI, "LIGHTING REGULATIONS FOR MARINE TURTLE PROTECTION" OF CHAPTER 34 "ENVIRONMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR EFFECTIVE DATE.

5. Resolutions and Proclamations

(Set for approximately N/A p.m.) (Note: Depends upon length of Good and Welfare)

6. Good and Welfare (Set for approximately 8:15 p.m.)

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications

- A. Resiliency Fund Requirement for Commercial Development Approach – Guillermo Olmedillo, Town Manager**
- B. Miami-Dade County League of Cities Director and Alternate Director Designation – Guillermo Olmedillo, Town Manager**
- C. One-Way Street Trial Report – Guillermo Olmedillo, Town Manager**
- D. Board and Committee Appointees/Liaisons – Verbal – Sandra Novoa, Town Clerk**
- E. Cone of Silence Procurement Procedures – Lily Arango, Town Attorney**
- F. Firearm Preemption Lawsuit – Mayor Daniel Dietch**
- G. Residential Construction Regulation – Mayor Daniel Dietch**

- H. Special Commission Meetings on the 4th Tuesday of the Month - Verbal –**
Guillermo Olmedillo, Town Manager
- I. Town Manager's Health and Life Insurance Policy – Vice Mayor Daniel**
Gielchinsky

10. Adjournment

Respectfully submitted,



Guillermo Olmedillo
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS THAT ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-861-4863 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsidesidefl.gov.

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



**Town of Surfside
Regular Town Commission Meeting
MINUTES
March 13, 2018
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order

Mayor Dietch called the meeting to order at 7:02 p.m.

B. Roll Call of Members

Town Clerk Novoa called the roll with the following members present: Mayor Dietch, Commissioner Paul, Commissioner Karukin, and Vice Mayor Cohen. Commissioner Gielchinsky was absent.

C. Pledge of Allegiance

Police Chief Allen led the Pledge of Allegiance

Commissioner Gielchinsky arrived at 7:07 p.m.

Mayor and Commission Remarks – Mayor Daniel Dietch

This being the last Commission meeting before the election, members of the Commission encouraged all to vote in the upcoming election and also expressed their pleasure and privilege serving with their colleagues and serving the community. Administrative Staff, Board Members, Ad Hoc Committee Members, and volunteers were acknowledged by the Mayor.

D. Agenda and Order of Business Additions, deletions and linkages

Item 4A4 and Item 5B are linked. Item 4A5 is linked to Item 5A.

Regarding Item 9C of the last meeting, Commissioner Cohen made a motion for reconsideration of the Beach Furniture Ordinance Policy specifically, (Items 6 and 7) the overnight storage of beach furniture and prohibition of sheds on the beach. The motion received a second from Commissioner Gielchinsky and the motion carried 5/1 with Commissioner Karukin voting in opposition. The Item will be added to the agenda as 9G.

Commissioner Gielchinsky made a motion to allow the Town Attorney to hold an Attorney/Client Executive Session at a time and date coordinated by the Town

Manager regarding the case before the County Court in Miami of Victor May, plaintiff vs. Sandra Novoa, Town Clerk. The motion received a second from Commissioner Paul and all voted in favor.

E. Community Notes – Mayor Daniel Dietch

The Mayor recognized Officer John Gentile and Dina Goldstein who received prestigious awards. Mayor Dietch announced upcoming community events which can be found in the Gazette and on the Town's website.

F. Miami-Dade Fire Rescue Department Annual Report Presentation by Fire Chief Dave Downey– Guillermo Olmedillo, Town Manager

Fire Chief Dave Downey provided an annual report to the Town Commission.

G. Presentation of One Dollar Salary to the Mayor and the Members of the Town Commission – Guillermo Olmedillo, Town Manager

Town Manager Olmedillo presented the Mayor and Commissioners with their one-dollar salary.

2. Quasi-Judicial Hearings

A. Request for Extension of Design Review Board Approval for 9408 Bay Drive – Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF SURFSIDE, FLORIDA; APPROVING AN EXTENSION TO A DESIGN REVIEW BOARD APPROVAL FOR PROPERTY GENERALLY LOCATED AT 9408 BAY DRIVE, SURFSIDE, FL, FOR A SINGLE FAMILY HOUSE; AND PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the resolution.

Mayor Dietch explained the quasi-judicial process and the duties of the Commission.

Town Clerk Novoa confirmed compliance with all advertising notice requirements.

Town Attorney Arango asked members of the Commission if they have had any further ex-parte communications with the Applicant or any objector. All members of the Commission answered no.

Town Clerk Novoa swore in parties wishing to speak in favor or against the item.

Town Manager Olmedillo presented the item. The applicant spoke on the item and answered questions from the Commission.

Commissioner Karukin made a motion to approve the DRB request. The motion received a second from Vice Mayor Cohen and all voted in favor.

Commissioner Gielchinsky made a motion to take Item 9G next. The motion received a second from Vice Mayor Cohen and all voted in favor.

3. Consent Agenda

Commissioner Paul pulled Items from the Town Manager's Report: page 40 Traffic Mitigation; page 42 Item 6 Street Closure; page 44, Item 12 Traffic; page 57 Beach

Commissioner Karukin made a motion to approve all consent agenda items as presented below, minus all the pulled items. The motion received a second from Commissioner Paul and all voted in favor.

Pulled Items: Commissioner Paul skipped page 40 and commented on the Items she pulled. There was discussion about the pulled items.

Commissioner Karukin made a motion to approve the pulled items from the consent agenda. The motion received a second from Commissioner Gielchinsky and all voted in favor with Vice Mayor Cohen absent.

A. Minutes – Sandra Novoa, MMC, Town Clerk

- **February 13, 2018 Special Town Commission Meeting Quasi-Judicial Hearing Meeting Minutes**
- **February 13, 2018 Regular Town Commission Meeting Minutes**
- **February 27, 2018 Special Town Commission Meeting Minutes**

***B. Town Manager's Report – Guillermo Olmedillo, Town Manager**

***C. Town Attorney's Report – Weiss Serota, Town Attorney**

D. Committee Reports – Guillermo Olmedillo, Town Manager

- **January 22, 2018 Parks and Recreation Committee Meeting Minutes**
- **January 25, 2018 Planning and Zoning Board Meeting Minutes**
- **February 5, 2018 Tourist Board Meeting Minutes**

E. Fourth of July Fireworks– Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH ZAMBELLI FIREWORKS MANUFACTURING CO. FOR THE TOWN'S FOURTH OF JULY FIREWORKS DISPLAY; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING PROCEDURES; AND PROVIDING FOR AN EFFECTIVE DATE.

Approved on consent.

F. Document Scanning – Guillermo Olmedillo, Town Manager

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AGREEMENT WITH BLUE DIGITAL CORP. FOR DOCUMENT SCANNING SERVICES FOR THE BUILDING DEPARTMENT; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Approved on consent.

G. Urging Resolution to Retain NOAA Fisheries Headquarters on Virginia Key –
Commissioner Tina Paul

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, URGING CONCERTED LOCAL ACTIONS TO TAKE STEPS NECESSARY TO RETAIN THE NOAA FISHERIES HEADQUARTERS ON VIRGINIA KEY; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Approved on consent.

4. Ordinances

A. Second Reading Ordinances

1. Maintenance in the Right-of-Way, Including Trees and Mulch - Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING ARTICLE III, PROPERTY MAINTENANCE STANDARDS, OF CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, AND CHAPTER 90, ZONING, TO PROHIBIT USE OF MULCH IN THE RIGHT-OF-WAY AND ADDRESS PROPERTY OWNER MAINTENANCE RESPONSIBILITIES FOR PUBLIC RIGHT-OF-WAY ADJACENT TO PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the ordinance. The Town Attorney made note of a change in the ordinance.

Commissioner Paul made a motion for discussion. The motion received a second from Commissioner Gielchinsky. Commissioner Karukin expressed his concerns about the ordinance. Town Manager Olmedillo gave an overview of the item. The Commission discussed the item and Commissioner Karukin suggested language changes to be made to the ordinance.

Mayor Dietch opened the public hearing. Public Speaker Victor May spoke about clarification of the wording of the ordinance. No one else wishing to speak, the Mayor closed the public hearing.

Commissioner Karukin made a motion to defer the item. The motion received a second from Commissioner Paul and all voted in favor.

2. Amending Section 2-235 “Lobbying”– Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 2-235 – “LOBBYING” REGARDING LOBBYISTS’ APPEAL OF FINES FOR EXPENDITURE REPORTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the ordinance.

Commissioner Gielchinsky made a motion to approve. The motion received a second from Commissioner Karukin. Mayor Dietch opened the public hearing. No one wishing to speak, the Mayor closed the public hearing. The motion carried 4/1 with Commissioner Paul absent for the vote.

3. Driveway Modifications - Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 “ZONING,” SECTION 90-61 “PAVING IN FRONT AND REAR YARDS IN H30 AND H40 DISTRICTS,” TO ADDRESS DRIVEWAYS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the ordinance.

Commissioner Gielchinsky made a motion to approve. The motion received a second from Commissioner Karukin. Mayor Dietch opened the public hearing. No one wishing to speak, the Mayor closed the public hearing. The motion carried 4/1 with Commissioner Paul absent for the vote.

4. Solar Photovoltaic Incentives – Guillermo Olmedillo, Town Manager
[Linked to item 5B]

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 14-29. – “PERMIT FEES” – TO PROVIDE FOR WAIVER OF PERMIT FEES AND EXPEDITED PERMIT AND DEVELOPMENT REVIEW TO BE

**ADOPTED BY RESOLUTION; PROVIDING FOR SEVERABILITY;
PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR
CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Novoa read the title of the ordinance.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Gielchinsky. Mayor Dietch opened the public hearing. No one wishing to speak, the Mayor closed the public hearing. The motion carried 4/1 with Commissioner Paul absent for the vote.

5. Amending Chapter 34 “Environment” of the Town’s Code of Ordinances to Create Section 34-11, “Prohibition on Distribution, Sale or Use of Plastic Straws” – Guillermo Olmedillo, Town Manager *[Linked to item 5A]*

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF
SURFSIDE, FLORIDA, AMENDING CHAPTER 34 “ENVIRONMENT”
OF THE TOWN’S CODE OF ORDINANCES TO CREATE SECTION
34-11, “PROHIBITION ON DISTRIBUTION, SALE OR USE OF
PLASTIC STRAWS;” PROVIDING FOR CODIFICATION;
PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS;
AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Sandra Novoa read the title of the ordinance.

Commissioner Paul made a motion to approve. The motion received a second from Vice Mayor Cohen. Mayor Dietch opened the public hearing. No one wishing to speak, the Mayor closed the public hearing. Commissioner Paul suggested the screening of the movie “Straws” as part of the Education Program. The motion carried 5/0.

B. First Reading Ordinances

1. Ordinance Repealing Section 86-1 “Surfboards” of the Town’s Code of Ordinances – Guillermo Olmedillo, Town Manager

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF
SURFSIDE, FLORIDA, REPEALING SECTION 86-1 “SURFBOARDS”
OF THE TOWN’S CODE OF ORDINANCES; PROVIDING FOR
CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING
FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Novoa read the title of the ordinance.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Paul. Mayor Dietch opened the public hearing. Public Speaker Jeffery Platt wanted clarification that this ordinance only

pertained to surfboards and not kiteboards. No one else wishing to speak, the Mayor closed the public hearing. The motion carried 5/0.

2. Maximum Building Length – Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-51 “MAXIMUM FRONTAGE OF BUILDINGS AND FACADE ARTICULATIONS.” OF “CHAPTER 90 ZONING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ADDRESS FAÇADE ARTICULATIONS, MAXIMUM BUILDING LENGTHS AND BUILDING SEPARATIONS IN THE H30C AND H40 ZONING DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the ordinance.

Mayor Dietch opened the public hearing.

Public Speakers:

- Neisen Kasdin spoke in opposition of the ordinance. Commissioner Gielchinsky made a motion to extend 2 minutes speaking time to Mr. Kasdin. The motion received a second from Vice Mayor Cohen and the motion carried 4/1 with Commissioner Karukin voting in opposition. Commissioner Gielchinsky made a motion to extend an additional 6 minutes speaking time to Mr. Kasdin. The motion received a second from Vice Mayor Cohen and the motion carried 4/1 with Commissioner Karukin voting in opposition.

-Frederic Marq asked that his property be grandfathered in.

-George Kousoulas gave his point of view and offered some suggestions. Vice Mayor Cohen made a motion to extend 2 minutes speaking time to Mr. Kousoulas. The motion received a second from Commissioner Paul and all voted in favor.

No one else wishing to speak, the Mayor closed the public hearing.

Responding to Commissioner Paul, Town Planner Sinatra spoke about exclusions of the historic districts. Commissioner Karukin offered his insight on the item. There was further discussion and opinions by the Commission. For the record, Town Planner Sinatra stated the intent and purpose of the ordinance.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Paul. The motion carried 3/2 with Commissioner Gielchinsky and Vice Mayor Cohen voting in opposition.

3. Surfside Development Approval Procedures Update – Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING DIVISION 3, “SPECIAL EXCEPTIONS, ZONING CHANGES, CONDITIONAL USES AND VARIANCES,” OF ARTICLE II, “ADMINISTRATION AND ENFORCEMENT,” OF CHAPTER 90 “ZONING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO ADDRESS DEVELOPMENT APPLICATION PROCEDURES AND REQUIREMENTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Deputy Clerk Riera read the title of the ordinance. Town Manager Olmedillo gave a brief explanation of the ordinance.

Commissioner Paul made a motion to approve. The motion received a second from Commissioner Gielchinsky and all voted in favor.

5. Resolutions and Proclamations

- A. Amending the Town’s Schedule of Civil Penalties and Administrative Fees to be Assessed for Violation of the Town’s Code, Specifically for violations of Section 34-11, “Prohibition of Distribution, Sale or Use of Plastic Straws”** – Guillermo Olmedillo, Town Manager *[Linked to item 4A5]*

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN’S SCHEDULE OF CIVIL PENALTIES AND ADMINISTRATIVE FEES TO BE ASSESSED FOR VIOLATION OF THE TOWN’S CODE, SPECIFICALLY FOR VIOLATIONS OF SECTION 34-11, “PROHIBITION ON DISTRIBUTION, SALE OR USE OF PLASTIC STRAWS”; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the resolution.

Commissioner Karukin made a friendly amendment that the fines be reduced from \$250 to \$150 for commercial properties. Town Manager Olmedillo explained why the fines were set at \$250.

Commissioner Gielchinsky made a motion to approve and accepted the friendly amendment with the fines being reduced from \$250 to \$150 for commercial properties. The motion received a second from Commissioner Paul. Mayor Dietch opened the public hearing. Public Speaker Victor May spoke about fines. No one else wishing to speak, the Mayor closed the public hearing. The motion carried 5/0.

- B. Solar Photovoltaic Schedule** – Guillermo Olmedillo, Town Manager *[Linked to Item 4A4]*

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, WAIVING ALL TOWN BUILDING PERMIT FEES AND REQUIRING EXPEDITED DEVELOPMENT AND REVIEW PROCESSES FOR PHOTOVOLTAIC SOLAR SYSTEM INSTALLATIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Novoa read the title of the resolution.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Paul and all voted in favor.

C. A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MUNILYTICS, INC. FOR INTERIM FINANCE DIRECTOR SERVICES; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE. – Guillermo Olmedillo, Town Manager

Town Clerk Novoa read the title of the resolution. Town Manager Olmedillo presented the item and answered questions from the Commission.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Paul and all voted in favor.

6. Good and Welfare

The Mayor opened the meeting to public speakers.

Public Speakers:

- Marsha Maya spoke about beach replenishment.
- Marianne Meischied spoke about the lack of enforcement on the Beach Chair Ordinance.
- Victoria Saife disagrees with one-way streets and spoke about sidewalks, traffic and flooding. Commissioner Paul made a motion to extend two minutes speaking time. The motion received a second from Commissioner Karukin and all voted in favor with Commissioner Gielchinsky and Vice Mayor Cohen absent for the vote.
- Dustin Tischler spoke in favor of the one-way street and believes it is safer.
- Norma Parron spoke on improvements needed in the town.
- Ron Glass had some photos to share with the Commission.
- Manty Sabates Morse spoke about the last meeting and why there was low turnout.
- Jeffery Platt, Jay Steinman, Marvin Kirshenblatt, Meir Cosiol, Silvia Coltrane, all spoke about the beach, the sand, lounge chairs and are pleased the ordinance will be looked at further.
- Victor Mayor spoke about members of the Commission leaving the dais at various times during the meeting.
- Eli Tourgeman also spoke on the beach chair item.

-Peter Neville spoke about members of the Commission leaving the dais when someone from the public is speaking. He also spoke about one-way streets.

No one else wishing to speak, the Mayor closed the public speaking.

The Mayor gave an update on beach renourishment. The Commission encouraged citizens to write their representatives in support of beach renourishment.

No one else wishing to speak, the meeting resumed with Item 9G.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications

A. Beach Raking – Guillermo Olmedillo, Town Manager

Town Manager Olmedillo presented the item and the cost which will have to be added to this year's budget. The Commission discussed the item.

Public Speaker Jeffery Platt feels we do not need this additional service.

Assistant Town Manager Duncan Tavares provided additional information.

Commissioner Karukin, Commissioner Paul and Mayor Dietch were not in favor of going forward on the item, thus no direction was given.

B. Sustainability Initiatives – Guillermo Olmedillo, Town Manager

Town Manager Olmedillo gave an update. The Commission discussed the item. Public Speaker George Kousoulas spoke on the item.

Commissioner Karukin made a motion to extend the meeting an additional 30 minutes. The motion received a second from Commissioner Paul and all voted in favor.

C. Turtle Lighting – Guillermo Olmedillo, Town Manager

Town Manager Olmedillo presented the item and spoke on the need for an ordinance.

Commissioner Karukin had concerns about cost. Commissioner Paul skipped over to Item 9E as it ties in with this item and is in favor of a policy to address the issue of protecting the turtles. Town Attorney Arango suggested getting data on this item from Miami-Dade County with an amortization schedule for older buildings. Other municipalities policies will also be explored.

Vice Mayor Cohen left the meeting at 11:08 p.m.

Public Speaker George Kousoulas spoke on the item.

Commissioner Paul made a motion to move forward with the turtle ordinance and to include the budget impact and an amortization schedule for older construction. The motion received a second from Commissioner Gielchinsky and all voted in favor with Vice Mayor Cohen absent.

D. Supplemental Social Services for the Miami Beach School Feeder Pattern –

Mayor Daniel Dietch

Mayor Dietch presented the item and directed the Town Manager to explore the interest within the community to support a child psychologist to supplement the existing social service available in the Miami Beach school feeder pattern.

E. Beach Management for Turtle Season – Commissioner Tina Paul

Commissioner Paul decided not to discuss the item.

F. Pelican Harbor Seabird Station 29th Anniversary & Year of the Bird

Fundraising Event – Commissioner Tina Paul

Commissioner Paul presented the item.

Commissioner Karukin had concerns about the policy regarding donations. There was discussion regarding the policy.

Commissioner Gielchinsky made a motion to add item 9H, Ruth K. Broad PTA to the agenda. The motion received a second from Commissioner Paul and all voted in favor with Vice Mayor Cohen absent.

Commissioner Paul made a motion to add item 9I, One-Way Street Meeting to the agenda. The motion received a second from Commissioner Gielchinsky and all voted in favor with Vice Mayor Cohen absent.

Commissioner Paul made a motion to extend the meeting to 11:45 p.m. The motion received a second from Commissioner Karukin and all voted in favor with Vice Mayor Cohen absent.

Commissioner Paul made a motion to waive the policy which may conflict with approval and made a motion to sponsor the Pelican Harbor Seabird Station in the amount of \$1,000 and Item 9H to collaborate with our neighboring municipalities and donate \$1,000 towards a sculpture to be donated to Marjorie Stoneman Douglas High School in memory of the students who were killed. Passing the gavel, the motion received a second from Mayor Dietch and all voted in favor with Vice Mayor Cohen absent.

G. Reconsideration of Beach Furniture Ordinance Policy (added item) -Vice Mayor Cohen

Vice Mayor Cohen presented the item. The Mayor gave a brief overview. Town Manager Olmedillo spoke on the meetings he has had with condo owners and their attorneys and their concerns. Members of the Commission spoke of feedback they received from the community and presented their thoughts.

The item was paused to go to Good and Welfare as it is a time certain item.

Discussion resumed after Good and Welfare.

Town Manager Olmedillo recommended a meeting with stakeholders and will come back in 60 days with a presentation. The prohibition of sheds will stay at this time.

Commissioner Gielchinsky made a motion to adopt the Town Manager's recommendations. Mayor Dietch made a friendly amendment that the item not be stacked up with regular agenda items but to hold a special meeting on May 1, 2018. The friendly amendment was accepted by Commissioner Gielchinsky and the Town Manager. The motion received a second from Vice Mayor Cohen and all voted in favor.

H. Ruth K Broad Elementary School (added item) – Mayor Daniel Dietch
Motion to approve under Item 9F.

I. One-Way Street Meeting (added item) – Mayor Daniel Dietch
The Commission discussed the item.

Commissioner Karukin made a motion to extend the meeting to midnight. The motion received a second from Commissioner Paul and all voted in favor with Vice Mayor Cohen absent.

There was discussion about renaming the title of the One-Way Street Meeting Workshop on March 28, 2018 to a Special One-Way Street Meeting.

10. Adjournment

Commissioner Karukin made a motion to adjourn. The motion received a second from Commissioner Gielchinsky and the meeting adjourned at 11:56 p.m.

Respectfully submitted,

Accepted this _____ day of _____, 2018

Daniel Dietch, Mayor

Attest:

Sandra Novoa, MMC

Commissioner Karukin made a motion to extend the meeting to midnight. The motion received a second from Commissioner Paul and all voted in favor with Vice Mayor Cohen absent.

There was discussion about renaming the title of the One-Way Street Meeting Workshop on March 28, 2018 to a Special One-Way Street Meeting.

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Respectfully submitted,

Accepted this ____ day of _____, 2018

Daniel Dietch, Mayor

Attest:

Sandra Novoa, MMC



TOWN MANAGER'S REPORT APRIL 2018

COMMUNITY PROGRAMS / INITIATIVES / ENHANCEMENTS

- I. **SEE CLICK FIX REPORT** – See Attachment “A”
- II. **SOCIAL MEDIA REPORT** – See Attachment “B”
- III. **DEVELOPMENT APPLICATIONS STATUS**

A. 9116 Harding – The property has recently been sold and the new owner has added two properties. The revised site will include pools and an amenity building for the four units. Design Review Group (“DRG”) meeting was held on December 7, 2017 and will be scheduled for an upcoming Development Impact Committee (“DIC”) meeting. A Planning and Zoning Board meeting will be scheduled.

B. 8851 Harding – The applicant has resubmitted plans for a 28 unit development. The DIC meeting was held on March 26, 2018. A Planning and Zoning Board meeting will be scheduled.

C. 8995 Collins – A site plan was submitted on May 19, 2017. A DRG meeting was held on June 19, 2017. The applicant submitted the revised drawings and a second DRG meeting was held on August 24, 2017. Revisions were required and a third DRG meeting was held on September 28, 2017. The DIC meeting was held on November 16, 2017. The application was heard at the February 22, 2018 Planning and Zoning Board meeting where it was deferred. Once the applicant revises the plans and staff reviews, it will be scheduled for another Planning and Zoning Board meeting.

IV. TOWN DEPARTMENTS

Code Compliance Division

A. Code Violation Cases: As of March 26, 2018, the total number of active, open cases being managed is 207; of these cases, 104 cases are still under investigation and are working towards compliance; 8 cases are on-hold; 19 are in the Special Master hearing queue; 19 cases

are in post-Special Magistrate action status; and 57 cases have been issued liens and remain unpaid. Properties with unpaid liens are sent reminder letters on a quarterly basis.

B. Collected Civil Penalty Fines: Unresolved code compliance cases accrue fines until the code violation is resolved. After the violation is abated, then the property owners are notified to remit the fine amount due. In many cases, the fine amount is either paid, resolved via a settlement agreement, or referred to the Town's Special Master for a hearing and ruling on the fine amount due. The following is a summary by fiscal year of the fine amounts collected:

- FY 17/18: 36 cases have paid/settled through March 26, 2018 for a total collection of \$10,840
- FY 16/17: 117 cases have paid/settled through September 25, 2017 for a total collection of \$40,842
- FY 15/16: 152 cases paid/settled for a total of \$137,282

Finance Department

- A. Monthly Budget to Actual Summary as of February 28, 2018 – See Attachment "C"**


Police Department

A. March 2018 Significant Incidents/Arrests:

- Update: Burglary Arrests-03/02/2018: 9400 block of Bay Drive, 9000 block of Carlyle Avenue and 9100 block of Byron Avenue. Three juvenile subjects were arrested for three counts of Unoccupied Burglary that occurred on 02/23/2018 and 02/27/2018 and Loitering and Prowling on 03/02/2018
- Battery on LEO /Disorderly Intoxication/Resisting Officer Without Violence/Criminal Mischief- 03/04/2018 at 2320 hours: 900 block of 93rd Street. The subject was arrested

B. Traffic Mitigation Update:

#	Initiatives	Update(s)
Short Term (0 – 6 months)		
1	95 Street & Harding Avenue (westbound), left Turn lane added. 300 block of 95 th Street (eastbound), right turn lane added.	On 04-27-2017, the traffic lanes in the 200 block of 95 Street, between Collins Avenue and Harding Avenue were modified to improve the traffic flow. New lane pavement markers delineate the new vehicular traffic flow for westbound traffic on 95 Street approaching Harding Avenue. The pavement markings allow vehicles to travel in two lanes west of the alleyway with one lane designated for travel westbound only on 95 Street across Harding Avenue, and the other lane designated as a left turn only lane for

		<p>vehicles turning southbound onto Harding Avenue. Three parking spaces on the North East side of 95 Street & Harding Avenue have been eliminated to allow for a westbound travel lane.</p> <p>As of Tuesday 08-22-2017, the traffic flow in the 300 block of 95th Street, between Abbott Avenue and Harding Avenue, has been altered. The new lane pavement markers delineate the new vehicular traffic flow for eastbound traffic on 95th Street approaching Harding Avenue. The pavement markings allow vehicles to travel in two lanes east of the alleyway with one lane designated for travel eastbound only on 95th Street across Harding Avenue, and the other lane designated as a right turn only lane for vehicles turning southbound onto Harding Avenue. The loading zone at this location has been eliminated to allow for a right turn only lane. Please refer to the traffic diagram below.</p> 
2	New Stop Signs at all intersections west of Harding Avenue	<p>Public Works installed stop signs at the following locations:</p> <ul style="list-style-type: none"> • 89th Street & Byron Avenue (east-west) • 90th Street & Abbott Avenue (east-west) • 90th Street & Carlyle Avenue (east-west) • 92nd Street & Abbott Avenue (east-west) • 92nd Street & Carlyle Avenue (east-west)
3	New Stop Bar Reflectors	Completed
4	New Speed Bumps	<p>New speed bumps have been installed at the following locations:</p> <ul style="list-style-type: none"> • 8900 block of Abbott Avenue • 9100 block of Abbott Avenue • 9300 block of Abbott Avenue • <u>9500 block of Byron Avenue (second speed bump)</u>

5	Revisit Street Closure <ul style="list-style-type: none"> o 94th Street / Abbott Avenue 	Town Commission approved a motion against revisiting this item.
6	New Street Closure <ul style="list-style-type: none"> o Byron Avenue (northbound) at 88th Street 	<p>Requires study, Miami-Dade County and Miami Beach approval. Pending meetings / agreements.</p> <p>On Wednesday, 11/29/17, Town Manager, Chief Allen and PW Director Randy Stokes attended a meeting with Miami-Dade County and City of Miami Beach administration regarding the closure of northbound traffic at 88th Street and Byron Avenue.</p> <p>The above meeting resulted in a plan to add curbing to the 88th Street median extending it to Abbott Avenue. The result will prohibit drivers from executing illegal U turns disrupting the traffic flow and area residents which has been a continuous problem.</p> <p>The following traffic modification Project has been developed to improve the traffic flow at 88th Street and Abbott Avenue.</p>  <p>Public Works completed the installation of the pictured vehicular traffic pattern at 88th Street & Abbott Avenue. On March 12, 2018, a 60 day testing period will begin before final approval.</p> <p><u>The 60 day trial period before final approval continues. There have been no traffic accidents reported and no matters of concern have been brought to the attention of the Police Department.</u></p>
7	Loop Detector Installation	CGA was authorized to move forward with the preparation of the bid documents for the traffic loops at three signalized intersections along Harding Avenue. CGA will need to provide updated scope of services and fee in order to provide traffic counts and traffic analysis at subject

		<p>intersections (before and after traffic analysis) per commission request at 05/09/17 meeting. The east Stop Bar at 93 Street & Harding Avenue will be moved back.</p> <p>On August 8, 2017, CGA submitted their additional service agreement for completing the before and after traffic analysis at the signalized intersections along Harding Avenue that new traffic loops are being installed. At the Commission meeting where the Post Design Services contract was approved, the Mayor and Commission asked if CGA could do a before and after analysis in order to evaluate the change in traffic operations at these subject intersections. The traffic counts are currently scheduled for the 29th, 30th or 31st of August (second week of regular school).</p> <p>Loop detectors have been approved for Harding Avenue at 88th, 93rd and 94th Streets.</p> <p>On November 3, 2017, CGA submitted for review and approval Work Authorization No. 106 for Surfside Traffic Signal Modification – Traffic Analysis. The scope of the project includes Pre – Post Construction Analysis of four intersections on Harding Avenue at 88th, 93rd, 94th and 95th Streets. Total cost not to exceed \$14,200.62.</p> <p>On January 29, 2018, a Traffic Signal Modification Mandatory Pre-Bid Opening was held at 10:30 a.m. The Assistant Town Manager, CGA, Public Works and Police Department representatives attended. No bidders attended.</p> <p><u>On March 8, 2018, a Traffic Signal Modification Mandatory Pre-Bid Opening was held at 2:00 p.m. The Town has received two bids. The Public Works Department and CGA are evaluating the bids. Once the bids are evaluated and ranked, Town staff will present their recommendation for final bid selection and award to the Town Commission.</u></p>
8	Install a centerline curb on 95 th Street between Abbott and Byron Avenues	Public Works installed delineators to deter trucks from traveling west on 95 th Street.
9	Eliminate Crosswalks on Collins (north) & Harding (south) Avenues	FDOT stated that eliminating crosswalks would hinder pedestrian travel and further study would be required before they can agree to that recommendation.

10	<p>Create Vehicular Circulation Plans for New Construction Projects</p> <ul style="list-style-type: none"> Minimize lane closures 	<p>MOT's and circulation plans for new construction projects was a primary topic of discussion with FDOT and the surrounding jurisdictions representatives. A plan to improve the coordination of projects and to enhance communication by FDOT providing notice well in advance of all approved MOT's to the three jurisdictions was agreed upon. The early notice system has shown an improvement.</p>
11	Evaluate Sidewalk Options	<p>Town Commission approved a motion to continue to evaluate pedestrian safety options in Surfside.</p>
12	<p>Install traffic light at 96th Street & Abbott Avenue</p> <p>Eliminate left hand turn at 96th Street & Byron Avenue</p>	<p>Town Manager Olmedillo, Chief Allen, Captain Yero and Randy Stokes, from the Town and Eric Czerniejewsky from CGA, spent a few hours with Ramon Sierra, FDOT District 6. Several simulations were run, and the result is that the back-up traffic in the east bound direction made congestion worse on 96th Street. This will not allow the vehicles turning right from Byron to move, causing a longer back-up on Byron and creating additional congestion on Harding and Collins.</p> <p>FDOT will not eliminate the left turn at 96 Street & Byron Avenue.</p>
13	Install a crosswalk at 90 th Street & Harding Avenue (north side)	<p>FDOT agreed to reconsider installing a traffic signal at the location, pending study (count). The Town installed traffic delineators designed to allow a left turn only onto Harding Avenue, preventing vehicles from traveling westbound across the intersection.</p>
14	<p>Send demand letters to mapping companies</p> <p>Waze – Free Community-based GPS, Maps & Traffic Navigation App</p>	<p>Completed</p> <p>The Town became a Participating Member of the Connected Citizens Program. This is the Town's effort to address in real-time reported accidents and improve navigation throughout the Town.</p>
Intermediate Term (7 – 18 months)		
15	<p>Create One-Way Streets</p> <ul style="list-style-type: none"> 88th, 89th, 90th and 91st Street between Collins & Harding Avenues 	<p>A Town meeting was held July 18th, 2017, to present a new traffic pattern plan making 89th Street one-way only for westbound vehicular traffic from Collins Avenue to Hawthorne Avenue and 90th Street one-way only for eastbound vehicular traffic from Bay Drive to Collins Avenue.</p> <p>The Town Commission approved to conduct a test of a new streetscape design on 89th and 90th Streets, between Harding and Hawthorne. The test consists of creating a safe</p>

	<p>pedestrian path and a green area in what is currently the paved area of those streets. Because width of the street will be narrowed during the test, the streets will be changed to a one-way system, with 89th Street traffic moving from east to west and 90th Street traffic moving from west to east. The streets will be marked with paint to designate the pedestrian area as well as the green/parking area. The test is scheduled to begin in early December and run for a period of 60 days. At the end of the test period, staff will present a report to the Town Commission.</p> <p>The new streetscape testing was initiated December 14, 2018. The testing has gone smoothly with no incidents to report thus far. A main focus has been directed toward providing information, answering questions and educating residents and all who travel the area on the details and goals of the project.</p> <p>At the February 13th, 2018 Town Commission Meeting the Town Administration was granted time extension of sixty days to the One-Way Street Project in order to survey the streets for ADA compliance in the pedestrian lanes and to acquire more data on traffic counts.</p> <p>A One-Way Streets Town Hall Meeting was held on March 28th, 2018.</p> <p><u>Notifications for the March 28th One-Way Streets Town Hall Meeting have been distributed via the following channels:</u></p> <ul style="list-style-type: none">• <u>Publicly Noticed Meetings and Agenda Packets (Town Commission & Planning & Zoning)</u>• <u>Letter mailed to residences on 89th and 90th streets for first meeting held in July (similar to planning & zoning notices)</u>• <u>Door hangers to residences on 89th and 90th streets</u>• <u>Posted notice at Publix and Starbucks</u>• <u>Multiple e-blasts</u>• <u>Website notices on the calendar and town news</u>• <u>Included in multiple gazette newsletters</u>• <u>Channel 93</u>• <u>Nextdoor postings on the Town's page</u>• <u>Delivery of meeting notices to residencies on 89th and 90th streets for second meeting held in March</u>• <u>Surveys on Nextdoor and SurveyMonkey</u>
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		<u>Town collected resident feedback through a number of these channels including emails and phone calls</u>
16	Design 91 st Street Improvements <ul style="list-style-type: none"> o Sidewalk, landscaping and buried utilities 	Pending design and engineering cost estimates.
17	Road closure of 95 th Street and Abbott Avenue	<p>On November 7, 2017, CGA submitted for review and approval Work Authorization No. 108 for Traffic Feasibility Study for Abbott Avenue and 95th Street. The project includes Traffic Analysis and Modeling of the road closure at 95th Street and Abbott Avenue. Total cost will not exceed \$20,149.58.</p> <p>On January 29, 2018, the Town Manager held a meeting with CGA Traffic Engineer Eric Czerniejewski, Asst. Town Manager Duncan Tavares, Public Works Director Randy Stokes and Captain Yero to review and discuss the Feasibility Study results.</p>
Long Term (19+ months)		
18	Gate the area west of Harding Avenue and create a special taxing district	This item is provided here as a place holder.

#	Parking / Taxis	Update
1	<p>The Town of Surfside added 18 new single parking spaces and 2 loading zones in the streets that are east of Collins Avenue. These new parking spaces provide additional parking options for residents and visitors to our Town. The additional loading zones provide a safe location for trucks and other vehicles to deliver goods and services to residents.</p> <p>The total number of single parking spaces added is now 12.</p>	<p>The additional parking spaces are located in the following locations:</p> <ul style="list-style-type: none"> • 100 block of 88th Street (4 spaces) effective 06-01-2017 • 100 block of 90th Street (4 spaces) effective upon completion of on-going construction project • 100 block of 92nd Street (4 spaces) effective 06-01-2017 • 100 block of 96th Street (6 spaces) six single pay parking spaces were removed and the area was designated a Tow-Away Zone. <p>The additional loading zones are located in the following locations:</p> <ul style="list-style-type: none"> • 100 block of 89th Street - effective 06-01-2017 • 100 block of 94th Street - effective 06-01-2017
2	Taxi Cab Stands added and changed	<ul style="list-style-type: none"> • The Taxi Cab Stand at 94th Street & Collins Avenue was reduced from (4) vehicles to (2) vehicles.

		<ul style="list-style-type: none">• 94th Street & Harding Avenue (across from Publix) will have a (2) vehicle Taxi Cab Stand. *One metered parking space has been added.• In the 200 block of 92nd Street (North side in front of the Marriott) one metered parking space was removed and replaced with a (1) vehicle Taxi Cab Stand.• A (2) vehicle Taxi Cab Stand has been added to the south side of the 200 block of Collins Avenue. <p>On 11/15/17, Chief Allen met with the management of the Azure Condominium regarding the taxi stand at 94th Street & Collins Avenue. They had no complaints regarding the location of the stand and were not aware of complaints or traffic concerns from residents of the condo. The taxis crossing Collins Avenue do not interfere with the exiting of cars from their building. The manager was happy that the stand was reduced from four to two taxis.</p> <p>One person has voiced opposition with the location of the taxi stand being across the street because it is unsightly and wants it moved.</p> <p>Chief Allen next met with the valet manager of the Grand Beach Hotel who said the two taxi stand is working out well and when a taxi is needed they signal for one from the stand. Chief Allen also met with the General Manager of the hotel regarding the concern and asked for one space for a taxi on the hotel property. The GM agreed. The space is just inside the garage and is now opened for taxi use.</p>
3	2018 Parking Permits for the 9400 and 9500 blocks of Byron Avenue	The 2018 Byron Avenue Parking Permits are only for residents and their guests on the 9400 & 9500 blocks of Byron Avenue. The application and the registration process instructions were included in the December 2017 Surfside Gazette. Residents must provide proof of residency and may obtain up to 3 permits per household. Only residents and their guests may park in these areas with the proper permit all other vehicles are subject to being issued a parking citation.

C. National Public Safety Telecommunications Week

The National Public Safety Telecommunications Week is April 08 – 14, 2018. This week is celebrated annually and honors the thousands of men and women who answer emergency calls, dispatch emergency professionals and equipment, and render life-saving assistance to citizens.

Communications Supervisor Susie, Communications Operator Tameka Burnell, Communications Operator Kenia Castillo and Communications Operator Jorge Villar are honored by the Command Staff and their colleagues for their service to the law enforcement profession as communication operators. Thank you all for your dedication, professionalism, and all that you do each and every day.

D. Police Events:

- The Surfside Police Department will host a Mobile Department of Motor Vehicles event for residents to apply for and renew their driver's licenses on April 19th from 10:00 a.m. to 2:00 p.m. in the Commission Chambers.
- The Surfside Police Department will host a community blood drive on April 25 from 12:00 p.m. – 3:00 p.m. The blood mobile will be in the Town Hall lot.
- The monthly Bike with the Chief is April 25 at Town Hall at 5:00 p.m.
- Coffee with the Cops is April 26 at Starbucks at 10:00 a.m.
- The Prescription Drug Drop Off Day is April 28th from 10:00 a.m. to 2:00 p.m. in the Town Hall Lobby. Dina Goldstein will manage this event.
- The Police Departments of Surfside, Aventura, Bal Harbour, Bay Harbour Islands and Sunny Isles Beach will host a Shred a Thon and DEA Drug Take Back on April 28th at Bill Bird Marina (Haulover Park) from 10:00 a.m. to 2:00 p.m. A CSA will be assigned to attend.

Respectfully submitted:

by: 

Guillermo Olmedillo, Town Manager



Town of Surfside, FL

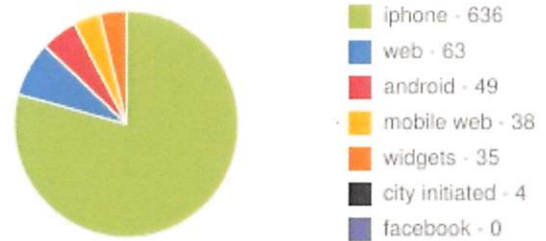
Between Jan 01, 2014 and Mar 26, 2018

825 requests were opened

821 requests were closed

The average time to close was 29.8 days.

Requests by Source



REQUEST CATEGORY	OPENED	CLOSED	DAYS TO ACK.	DAYS TO CLOSE
Other	200	198		24.6
Beach Issue	132	131		24.8
Parking Issue	81	81		3.6
Code Compliance (Violation)	93	93		40.4
Police (Safety Concern)	73	73		8.7
Code Compliance (Safety Concern)	55	55		48.8
Street lights (PW)	39	39		173.1
Utilities (Water/Sewer) (PW)	25	25		10.9
Construction Issues	24	23		14.3
Drainage/Flooding (PW)	16	16		24.0
Solid Waste (Residential) (PW)	15	15		36.0
Dog Stations (P & R)	13	13		5.3
Barking Dog	12	12		20.0
96 Street Park (P & R)	10	10		3.2
Surfside Dog Park (P & R)	8	8		1.1

Community Center (P & R)	7	7	0.1
Pothole (PW)	5	5	31.7
Solid Waste (Commercial) (PW)	4	4	5.4
Hawthorne Tot-Lot (P & R)	4	4	5.2
Beach Patrol	3	3	0.7
Dead Animal	3	3	21.0
Graffiti (PW)	3	3	25.2
Graffiti (in park) (P & R)	0	0	0.0
Veterans Park (P & R)	0	0	0.0



Town of Surfside, FL

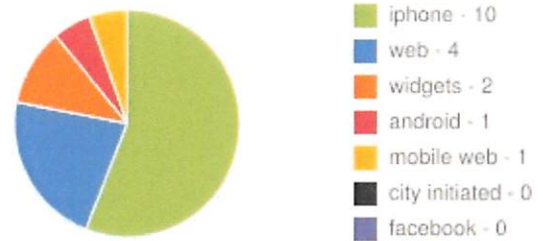
Between Mar 01, 2018 and Mar 26, 2018

18 requests were opened

20 requests were closed

The average time to close was 8.9 days.

Requests by Source



REQUEST CATEGORY	OPENED	CLOSED	DAYS TO CLOSE
Beach Issue	6	8	9.8
Parking Issue	4	4	3.8
Code Compliance (Violation)	2	2	5.1
Other	2	2	18.5
Construction Issues	2	1	9.1
Code Compliance (Safety Concern)	1	1	7.9
Drainage/Flooding (PW)	1	1	0.0
Utilities (Water/Sewer) (PW)	0	1	18.8
96 Street Park (P & R)	0	0	0.0
Barking Dog	0	0	0.0
Beach Patrol	0	0	0.0
Community Center (P & R)	0	0	0.0
Dead Animal	0	0	0.0
Dog Stations (P & R)	0	0	0.0
Graffiti (in park) (P & R)	0	0	0.0
Graffiti (PW)	0	0	0.0

Mar 01, 2018 to Mar 26, 2018

1 of 2

Hawthorne Tot-Lot (P & R)	0	0	0.0
Police (Safety Concern)	0	0	0.0
Pothole (PW)	0	0	0.0
Solid Waste (Commercial) (PW)	0	0	0.0
Solid Waste (Residential) (PW)	0	0	0.0
Street lights (PW)	0	0	0.0
Surfside Dog Park (P & R)	0	0	0.0
Veterans Park (P & R)	0	0	0.0



TOWN OF SURFSIDE
MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA, 33154-3009
Telephone (305) 861-4863

TO: Town Commission

FROM: Guillermo Olmedillo, Town Manager

DATE: April 10, 2018

SUBJECT: April Social Media Report

The Public Information Program (communications policy) which was approved by the Town Commission on July 11, 2017 determines the role of the Town's Public Information Representative; advances the Town's strong commitment to transparency and accountability; and defines and manages the manner in which the Mayor, Commission, Town Manager and key staff interact with leadership, Town Departments, the community and media with regard to the dissemination of information to the public.

As part of the Public Information Program, the Town's Public Information Representative will add regular communication from Mayor Daniel Dietch to keep residents and businesses informed about initiatives that directly impact them and the Surfside community. This information will be shared via written and/or video messages distributed through e-blasts, Town website, monthly Gazette, Nextdoor, Channel 93 and community bulletin boards.

In addition, the Public Information Program states: "As a best practice, the Mayor and/or the Town Manager is designated to speak on behalf of the Town and on a town-wide basis. On occasion a member of the Commission may be appointed to be the spokesperson due to alignment of knowledge or as a designated representative of the Town to outside organizations."

This additional form of communication will be implemented following the April Town Commission meeting.

From March 22 to March 26, 2018, the Town of Surfside conducted an informal, unscientific survey on Nextdoor and SurveyMonkey to receive additional feedback on the One-way Street Trial. The Nextdoor survey was limited in scope by the constraints placed by the platform on such

surveys. The SurveyMonkey was sent out via the Town's website e-blast and was placed on the homepage. The objective was to give the public a platform to express their views, especially what (if anything) they actually liked about the trial, without the fear of retribution. Results from these surveys were shared at the March 28th Town Hall meeting (See below under March 22*).

The Town's Public Information Representative continued to post updates on Nextdoor (See Exhibit "A").

It is important to reiterate that the Nextdoor platform is not a replica of the Town's website and Gazette and should not be viewed as such. To that end, information presented on Nextdoor often refers back to the Town's primary communication tools. The Town encourages residents to find information on the Town's website (www.townofsurfsidefl.gov) and/or by contacting the Town directly.

MARCH NEXTDOOR POSTS

3/1: Beach Showers Under Renovation

Please note the beach showers at the end of 89th and 92nd Streets will be undergoing remodeling during March and April. The showers may be closed or have limited access during the construction period. Also, the beach shower at the end of 96th Street will be undergoing repair and is unavailable until further notice. We appreciate your patience and understanding while we work to make these amenities better for all.

3/1: Surfside Beach Cleanup this Sun., March 4th

Calling all Surfsiders! Please join us for a beach cleanup effort in partnership with Miami is Not Plastic from 8 a.m. to noon this Sunday, March 4. This is a great opportunity to earn volunteer hours, while also learning about conservation and protecting the ocean, marine life and our beloved sea turtles. All are welcome to participate. Please meet behind the Surfside Community Center at 9301 Collins Avenue. To learn more and to RSVP, visit http://www.volunteercleanup.org/jenniferroc/surfside_sea_turtle_beach_cleanup.

3/2: Mayoral Candidates Forum found on Town website....

In case you missed last night's Mayoral Candidates Forum, you can still watch the debate at <https://www.townofsurfsidefl.gov/departments-services/town-clerk/public-records/videos>

Simply click on the "Misc" tab to find a recorded video and be sure to save the date of Tuesday, March 20th to vote in the 2018 Spring election.

3/2: Community Update: Burglary Arrests

Thanks to the diligence of our Surfside Police Department, the culprits behind the recent residential burglaries have been caught. Please see attached flyer for more details.

3/5: Broad Causeway Bridge to be closed from 10 p.m. to 5 a.m., Tuesday night

Heads up road warriors! The Broad Causeway Bridge (96th Street/S.R. 922) in Bay Harbor Islands will be closed overnight, Tuesday, March 6, during the hours of 10 p.m. to 5 a.m. so crews can conduct repair work on the main span. Please plan your travel routes accordingly. Thank you.

3/7: Warning: Extreme beach conditions

Please be aware of the extreme beach conditions including riptides and erosion, which are expected to continue through this week. As the safety of our residents and visitors is our highest priority, lifeguard operations remain in effect. However, our lifeguards' visibility is restricted due to the extensive structural damage received to our lifeguard stand and the erosion of the beach. Therefore, it is important to heed warnings and use the beach at your own risk.

For now, Surfside's Parks & Recreation Department has removed the department's beach chairs at 93rd Street. **Please note, no chairs or setup are permitted in the dune area at any time.** For

updates on beach conditions, please sign-up for town notifications at <https://www.townofsurfsidefl.gov/news-and-events/subscribe> and/or call the Community Center front desk at 305-866-3635. Thank you.

3/12: 2018 Spring Election on March 20

Voting is your right and responsibility. Let YOUR voice be heard! During the upcoming spring election, residents will elect the Mayor and all four Commissioners for two-year terms. The Town is also proposing a Charter Amendment that will be on the March 20 Special Election ballot.

In case you missed the recent Mayoral Candidates Forum, Commission Candidates Forum and/or the information session held on the proposed Charter Amendment, please visit <https://www.townofsurfsidefl.gov/departments-services/town-clerk/public-records/videos> and simply click on the "Misc" tab to find recorded videos of all three.

Please note, the General and Special Election will take place at Town Hall Commission Chambers, from 7 a.m. to 7 p.m. on Tuesday, March 20. To learn more, pick-up a copy of the March Gazette or visit www.townofsurfsidefl.gov.

3/12: Third Thursdays Block Party with Jungle Island on Thurs., March 15

Surfside's Tourism Bureau invites all *party animals* to the next Third Thursdays block party, featuring special guest stars from **Jungle Island**. Admission is free to the public at this special edition pet-themed event, where locals and visitors are encouraged to bring their pets — furry and fine-feathered friends, reptiles, galore! Pet-lovers can also take home a new forever friend from Jamie's Rescue, a non-profit dog rescue organization based in Miami.

At this coming Third Thursdays event, guests can rock out to local band, *Brothers of Others*, and *woof down* delicious fare available for purchase from popular food trucks, including **Ms. Cheezious** and Off the Wall. While kids can participate in the action too, with interactive activities from face painting, pet balloons, and floral workshop by florist, Zoom Bloomz, to the popular Metal Monkey Workshop, which empowers children to make crafts using basic tools. Not to mention, Jungle Island, a favorite South Florida landmark, will also be on-site with various macaws and cockatoos to educate and interact with visitors. Guests can enter for a chance to win neat pet prizes.

Festivities to take place from 6 p.m. to 9 p.m. this Thursday, March 15 at 95th Street, between Collins and Harding Avenues. Admission is FREE and there will be complimentary cocktail tastings by Miami Cocktail Company for those 21 and over with a valid ID. See you there!

3/13: Town Commission Meeting at 7 p.m. Tonight

A regular Town Commission meeting will be held at 7 p.m. tonight at Town Hall, while a Board and Committees Recognition will take place at 5:30 p.m. Be sure to join us!

3/13: Traffic Safety Operation today in Surfside

The Florida Department of Transportation (FDOT) District Six and various local law enforcement agencies are conducting a multi-agency traffic safety enforcement and educational detail in support of FDOT's ongoing Drive Safe Aggressive Driving Awareness Campaign. This operation is

currently taking place along SR A1A/Collins Avenue and Harding Avenue, in the Town of Surfside, between SR 922/96 Street and 88 Street, through noon today.

This event is being coordinated by the Northeast Community Traffic Safety Team (NE CTST) with the assistance of the Florida Department of Transportation's Community Traffic Safety Program (CTSP) and is headed by the Surfside Police Department. The goal of the CTSP is to reduce the number and severity of traffic crashes through a comprehensive, multi-jurisdictional approach that combines the four E's of safety: enforcement, emergency services, education, and engineering.

Law enforcement is focusing on aggressive driving, red-light running, speeding, seatbelt use, impaired/distracted driving, move-over law compliance, driver's license and insurance compliance, bicycle/pedestrian compliance and general traffic safety. Educational materials will be provided by FDOT to all participating law enforcement personnel to distribute to the public during the operation.

3/15: Third Thursdays Block Party is Tonight

Enjoy the happiest of hours with your pets, neighbors and friends at tonight's Third Thursdays event, presented by Surfside's Tourism Bureau. This special edition pet-themed block party will include fine-feathered friends from Jungle Island, Ms. Cheezious and Off the Wall food trucks, live band, kids' activities and much more! Third Thursdays takes place from 6 p.m. to 9 p.m. at 95th Street between Collins and Harding Avenues. See you there!

3/16: Spring Egg Hunt at 96th Street Park on Sun., March 18

They say you shouldn't put all your eggs in one basket, but it's more than encouraged at the 2018 Spring Egg Hunt. Hop over to the 96th Street Park and join our Parks & Recreation Department for the Town's annual egg hunt from 10 a.m. to noon on Sunday, March 18. The morning will be filled with exciting activities including the hunt, arts & crafts, face painting and much more. The event is free for all Surfside residents and hotel guests with proof of ID. Due to space availability, guests of Surfside residents will not be permitted. For more information, call (305) 866-3635.

3/19: Rock Your Vote at Tomorrow's 2018 Spring Election

Let your voice be heard. Be sure to vote in the Town-wide Spring Election. Voting takes place at Town Hall Commission Chambers, from 7 a.m. to 7 p.m. tomorrow, March 20. Residents have the opportunity to elect their Commissioners, Mayor and to vote YES or NO on the Charter Amendment.

3/20: Election today! Surfside shuttle bus hours extended to 8 p.m. tonight...

Just a friendly reminder, the Town-wide Spring Election takes place at Town Hall Commission Chambers, from 7 a.m. to 7 p.m. today. Be sure to get out and vote! For the convenience of our Surfside registered voters, the Surfside shuttle bus hours have been extended to 8:00 p.m. tonight.

For important election information, as well as to review the shuttle bus schedule and map route, please visit:

<https://www.townofsurfsidefl.gov/departments-services/town-clerk/election-information-and-results>

3/21: Election results are in!

In case you missed it, election results are in:

<http://results.enr.clarityelections.com/FL/Dade/74378/194218/en/summary.html>

We thank our residents for taking the time yesterday to vote in the General Municipal and Special Election, and look forward to continuing to make Surfside a great place to live, work, stay and play.

3/22: Poll: How do you feel about the one-way streets trial on 89th and 90th Streets?*

We value our resident feedback and would like to hear from you. Please take one minute to answer this brief informal and anonymous survey on the one-way streets trial. Survey will close at noon on Monday, March 26.

Results will then be presented at the 6 p.m. Town Hall meeting on Wednesday, March 28. Additionally, town staff will share findings from the trial. Surfside residents are encouraged to attend the meeting and participate by providing constructive feedback. Thank you.

Choose one:

- Enhances the walkability of the community
- Creates confusion for drivers
- Provides a safer environment for drivers and pedestrians
- Adds time to my commute
- Helps mitigate traffic intrusion
- Do not care either way

3/25: Enroll your kids in Spring Adventure Camp...

If you are staying in town for spring break, don't forget to sign-up your kids for our 2018 Spring Adventure Camp, which will take place March 26 - 30. Camp runs from 8 a.m. to 6 p.m. at the Community Center for children ages 6 to 12-years-old. Your child's spring break will be filled with outdoor adventures including surfing, paddle boarding, obstacle races, sand castles, as well as arts and crafts, cooking projects and much more.

For more information and how to register, please check out our camp page at

http://www.townofsurfsidefl.gov/docs/default-source/default-document-library/spring-camp-2018-flyer.pdf?sfvrsn=d7784994_6

3/26: Bike with the Chief on Wed., March 28

Want to keep up with the Police Chief? Join Chief Allen and police staff for a bike ride through the community to learn about important community initiatives. The ride will be leaving from Town Hall beginning at 5 p.m. on Wednesday, March 28. For more information call Dina Goldstein at (305) 861-4862. There's also a one-way street meeting at 6 p.m. at Town Hall.

Additionally, our men and women in blue want to meet with you. Stop by Starbucks in Surfside to enjoy Coffee with the Cops beginning at 10 a.m. on Thursday, March 29. Residents, business owners and visitors can meet with the Police Chief and his staff to discuss community issues and

provide valuable feedback to the Police Department. For more information, call Dina Goldstein at (305) 861-4862.

3/28: One-way Streets Meeting at 6 p.m. Tonight

The Town Manager will present findings, as well as collective feedback received from Surfside residents on the one-way streets trial at 6 p.m. tonight at Town Hall. Residents are encouraged to attend.

3/31: Surfside Continues Mission to be Sustainable City

Did you know the Town Commission recently adopted a resolution to prohibit the distribution, sale or use of plastic straws in any commercial establishment, town facility, town property or by any special event permittee, in an effort to help reduce ocean pollution and protect marine life including the Town's beloved loggerhead sea turtles?

Did you also know Town Commission recently established incentives to promote the use of solar photovoltaic systems for Surfside residents and businesses?

And did you know **Town of Surfside Mayor Daniel Dietch** recently joined more than 200 mayors from across the United States to express his support for the **Clean Power Plan (CPP)** – an essential public health protection and climate change solution that sets the first-ever federal limits on carbon pollution from power plants and helps cities transition to a clean energy economy?

To find out about additional sustainability initiatives by the Town of Surfside, visit www.townofsurfsidefl.gov.

TOWN OF SURFSIDE, FLORIDA
MONTHLY BUDGET TO ACTUAL SUMMARY

FISCAL YEAR 2017/2018

AS OF

February 28, 2018

42% OF YEAR EXPIRED (BENCHMARK)

Agenda Item #

Page

1 of 3

Agenda Date:

April 10, 2018

GOVERNMENTAL FUNDS	ACTUAL	ANNUAL BUDGETED	% BUDGET
GENERAL FUND			
REVENUE	\$ 10,009,220	\$14,598,096	69%
EXPENDITURES	5,191,227	\$14,598,096	36%
Net Change in Fund Balance	4,817,993		
Fund Balance-September 30, 2017 (Unaudited)	8,635,086 ^A		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 13,453,079</u>		
TOURIST RESORT FUND			
REVENUE	\$ 254,422 ^B	\$1,081,553	24%
EXPENDITURES	525,260	\$1,081,553	49%
Net Change in Fund Balance	(270,838)		
Fund Balance-September 30, 2017 (Unaudited)	485,480		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 214,642</u>		
POLICE FORFEITURE FUND			
REVENUE	\$ 12,620	\$78,192	16%
EXPENDITURES	12,320	\$78,192	16%
Net Change in Fund Balance	\$ 300		
Fund Balance-September 30, 2017 (Unaudited)	164,714		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 165,014</u>		
TRANSPORTATION SURTAX FUND			
REVENUE	\$ 81,897	\$434,250	19%
EXPENDITURES	154,818	\$434,250	36%
Net Change in Fund Balance	(72,921)		
Fund Balance-September 30, 2017 (Unaudited)	457,730		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 384,809</u>		
BUILDING FUND			
REVENUE	\$ 1,596,502	\$1,657,000	96%
EXPENDITURES	399,077	\$1,657,000	24%
Net Change in Fund Balance	1,197,425		
Fund Balance-September 30, 2017 (Unaudited)	1,805,195		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 3,002,620</u>		
CAPITAL PROJECTS FUND			
REVENUE	\$ 306,977	\$1,552,911	20%
EXPENDITURES	57,069	\$1,552,911	4%
Net Change in Fund Balance	249,908		
Fund Balance-September 30, 2017 (Unaudited)	535,765		
Fund Balance-February 28, 2018 (Reserves)	<u>\$ 785,673</u>		

NOTES:

* Many revenues for February 2018 are received in subsequent months (timing difference) and are recorded on a cash basis in the month received.

A. Includes \$2,000,000 available for hurricane/emergencies. The balance of \$6,635,086 is unassigned fund balance (reserves).

B. Resort Tax Revenues total collected through February 2018 is \$858,044 (\$289,511 is the Tourist Resort Fund and \$568,533 is the General Fund).

ENTERPRISE FUNDS	ACTUAL
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ANNUAL BUDGETED	% BUDGET
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WATER & SEWER FUND

REVENUE	\$ 1,533,754	\$3,677,158	42%
EXPENDITURES	982,546	\$3,677,158	27%
Change in Net Position	551,208		
Unrestricted Net Position-September 30, 2017 (Unaudited)	(498,265)		
Restricted Net Position	1,765,319 C1		
Unrestricted Net Position-February 28, 2018 (Reserves)	\$ 1,818,262 C2		

MUNICIPAL PARKING FUND

REVENUE	\$ 502,901	\$1,203,158	42%
EXPENDITURES	348,949	\$1,203,158	29%
Change in Net Position	153,952		
Unrestricted Net Position-September 30, 2017 (Unaudited)	821,473		
Unrestricted Net Position-February 28, 2018 (Reserves)	\$ 975,425		

SOLID WASTE FUND

REVENUE	\$ 782,086	\$1,767,886	44%
EXPENDITURES	693,339	\$1,767,886	39%
Change in Net Position	88,747		
Unrestricted Net Position-September 30, 2017 (Unaudited)	416,159		
Unrestricted Net Position-February 28, 2018 (Reserves)	\$ 504,906		

STORMWATER FUND


REVENUE	\$ 267,053	\$691,330	39%
EXPENDITURES	200,486	\$691,330	29%
Change in Net Position	66,567		
Unrestricted Net Position-September 30, 2017 (Unaudited)	3,772,536		
Restricted Net Position	347,140 C3		
Unrestricted Net Position-February 28, 2018 (Reserves)	\$ 4,186,243		

NOTES:(con't)

C1. The Restricted Net Position of \$1,765,319 includes \$1,522,319 for renewal and replacement, and \$243,000 for State Revolving Loan reserves.

C2. The reserves balance of \$1,818,262 is the result of a change in current net position as of February 2018 of \$551,208, net position as of September 30, 2017 (unaudited) of (\$498,265), and also includes Restricted Net Position of \$1,765,319.

C3. The Restricted Net Position of \$347,140 includes \$266,140 for renewal and replacement, \$81,000 for State Revolving Loan reserves.



Christopher Wallace, Interim Finance Director



Guillermo Olmedillo, Town Manager

Town of Surfside
Fund Balance (Reserves)
2/28/2018

FUND	9/30/2015	9/30/2016	9/30/2017	2/28/2018
General	\$ 5,905,726	\$ 7,368,408	\$ 8,635,086	\$ 13,453,079
Tourist Resort	339,396	363,407	485,480	214,642
Police Forfeiture	113,431	141,755	164,714	165,014
Transportation Surtax	440,662	354,264	457,730	384,809
Building	-	-	1,805,195	3,002,620
Capital Projects	182,903	1,154,352	535,765	785,673
Water & Sewer	(2,705,871)	(2,827,890)	(498,265)	1,818,262
Municipal Parking	1,089,165	1,111,941	821,473	975,425
Solid Waste	340,391	245,941	416,159	504,906
Stormwater	4,051,768	3,392,370	3,772,536	4,186,243
Total	\$ 9,757,571	\$ 11,304,548	\$ 16,595,873	\$ 25,490,673



TOWN OF SURFSIDE
Office of the Town Attorney
 MUNICIPAL BUILDING
 9293 HARDING AVENUE
 SURFSIDE, FLORIDA 33154-3009
 Telephone (305) 993-1065

TO: Town Commission

FROM: Lillian M. Arango, Town Attorney

CC: Guillermo Olmedillo, Town Manager

DATE: April 10, 2018

SUBJECT: Office of the Town Attorney Report for April 10, 2018

This Office attended/prepared and/or rendered advice for the following Public Meetings:

March 5, 2018 - Tourist Board Meeting

March 8, 2018 – Town Hall Meeting – Charter Amendment

March 13, 2018 - Town Commission Meeting

March 19, 2018 – Election Canvassing at Miami-Dade County Elections Department

March 20, 2018 – Election Canvassing at Miami-Dade County Elections Department

March 23, 2018 - Election Canvassing at Miami-Dade County Elections Department

March 26, 2018 – DIC for 9116 Harding Ave, 303 Surfside Blvd, and 8851 Harding Ave

March 29, 2018 – Sustainability, Design Review Board and Planning & Zoning Board

Members of the firm drafted the resolutions and ordinances for these meetings in addition to drafting or assisting with the preparation of a number of the communications and reviewing, revising and, as appropriate, negotiating the legal requirements of the relative agreements and supporting documents.

Commission support:

Attorneys of the firm have worked with members of the Town Commission to address concerns and research specific issues and are always available, either in the office or by phone or email. We appreciate your support as we have worked to transition the office, fine-tune schedules, evaluate and adjust prior practices. Transitions are always challenging, but often a time to make improvements or adjustments which will improve quality and service.

Staff support:

Members of the firm have met with and provided extensive support to staff, boards and committees with application review, contract and agreement review and negotiation, unsolicited proposal (P3) process and ordinance, procurement and purchasing (including staff workshop on procurement issues), Request for Proposals for Community Center Food Concession, bid documents for traffic improvements, code enforcement, building permit and enforcement issues, subpoenas and public records requests, research, document review, legal review of various issues, and Town Code interpretation and application.

Key issues:

The workload has been diverse and has included specific issue support to every department. Key issues have included:

- Negotiation and document drafting for several interlocal issues
- Various development and quasi-judicial applications
- Agreement for Interim Finance Director Services
- Unsolicited Proposal (P3) – Abbott Lot and Town Hall Site
- Code of Ethics and Lobbying Code
- Roof Height Ordinance
- Freeboard Ordinance
- Sign Code Amendment Ordinance
- Various Urging Resolutions
- Amendments to the Town's Purchasing Code
- Anti-Semitic Ordinance

- Pension Board Ordinance
- Tree Planting and Mulch In the Public Right Away Ordinance
- Ethics Ordinance
- Driveway Modifications
- Ordinance Banning Plastic Straws and Resolution Establishing Fees/Fines for Violations
- Solar Panel Permitting Ordinance and Resolution Providing for Waiver of Fees and Expediting of Permit Process
- Ordinance Lifting Prohibition on Surfboards
- Ordinance on Building Lengths and Building Separations
- Ordinance Revising Development Application Procedures
- Ordinance on Marine Turtle Lighting
- Ordinance on Development Approvals Procedures
- Ordinance on Cone of Silence Procurement Process
- Sensible Gun Reform Resolution
- Plastic Bag Ban Legislation and Analysis
- Tourist Board Agreements and Procurement
- Public Records and Subpoena Requests for Documents
- Sustainability Initiatives and Legislation
- Election Canvassing

Litigation:

We have no information to provide on any cases or claims at this time.

Special Matters: Continued monitoring of new case law and legislation from Federal, State and County. Matters which we will continue to work on, some of which you may anticipate in the upcoming months, include issues related to receipt and evaluation of unsolicited proposals, sign code revisions, freeboard regulations and ordinances, ordinance providing for revisions to development application procedures, ordinance on building length and separations, ordinance on marine turtle lighting regulations, ordinance on cone of silence procurement procedures, ordinances and resolutions addressing solar panels and plastic straws, interlocal agreements for shuttle services, recycling ordinance, short term rental provisions, sustainability initiatives and legislation, election and canvassing matters, and various procurements.



Town of Surfside

SUSTAINABILITY SUB COMMITTEE OF THE PLANNING & ZONING BOARD MEETING MINUTES

January 25, 2018 – 5:00 p.m.

Town Hall – Chief Terrill Williamson Police Training Room
9293 Harding Ave, 2nd Floor, Surfside, FL 33154

1. Call to Order/Roll Call

The meeting was called to order by Chair Kousoulas at 5:06 p.m.

The following were present:

- Vice Chair Bertha Goldenberg
- Lou Cohen
- Deborah Cimadevilla
- Moshe Behar

Absent: Chair Kousoulas

Also present:

- Daniel Dietch, Town Mayor
- Guillermo Olmedillo, Town Manager
- Duncan Tavares, Asst. Town Manager
- Sarah Sinatra Gould, Town Planner
- Kathy Mehaffey, Town Attorney
- William Fleck, Planning and Zoning Vice Chair
- Virginia Walsh, Miami-Dade County Water & Sewer Dept.
- Elora Riera, Deputy Town Clerk

2. Approval of Minutes – December 7, 2017

Committee Member Cohen moved to approve the minutes as written. Committee Member Cimadevilla seconded the motion and all voted in favor.

3. Sea Level Rise Modeling

Virginia Walsh from Miami-Dade County Water and Sewer Department presented a PowerPoint regarding sea level rise the groundwater modeling level analysis for the water service area in the Town.

Ms. Walsh answered questions from the Committee members and Staff. The Committee requested that Ms. Walsh provide them with images of certain sections of the Town to see what the groundwater levels have been and what they currently are.

Vice Chair Goldenberg presented maps of the Town depicting different projections of sea level rise and coastal flooding impacts.

4. Dune Management Proposal

Town Planner Sinatra commented that at the last meeting, the Committee indicated that they wanted to implement a beach management plan as well as a survey of the Town and the dunes. She provided the Committee with a proposal that would have to be presented to the Town and stated that it would need to go into the next budget cycle since it has not been budgeted. Town Planner Sinatra stated that if this is something that the Committee wants, it would be presented to the Planning and Zoning Board for inclusion in the potential budget.

Committee Member Cohen made a motion to move this forward to the Planning and Zoning Board.

Committee Member Cimadevilla asked how long this project would take to implement and Town Planner Sinatra replied that the budget is not until October 1st and given that the Town gives authorization after the budget is approved, it would not be implemented until early 2019.

Committee Member Cimadevilla seconded the motion and all voted in favor.

5. Public Comment

Jennifer Rotker of 9016 Collins Avenue spoke regarding the overflow of garbage on the beach and the hotels disposing of their trash.

Discussion ensued regarding trash on the beach.


6. Adjournment

Committee Member Cohen moved to adjourn the meeting at 6:16 p.m. Committee member Cimadevilla seconded the motion and all voted in favor.

Respectfully submitted:

Accepted this 29 day of March, 2018
Lou Cohen
Bertha Goldenberg
Bertha Goldenberg, Vice Chair

Attest:


Elora Riera, CMC
Deputy Town Clerk



Town of Surfside

PARKS & RECREATION COMMITTEE MEETING MINUTES

February 26, 2018 – 7:00 p.m.

Surfside Community Center
9301 Collins Avenue
Surfside, FL 33154

1. Call to Order/Roll Call

The meeting was called to order by Chair Logan at 7:00 p.m.

The following were present:

Chair Retta Logan
Vice Chair Eliana Salzhauer
Committee Member Zoya P. Javier
Committee Member Jeffrey Platt

Absent:

Committee Member Shlomo Danzinger

Also present:

Tim Milian, Parks and Recreation Director
Tina Paul, Town Commission Liaison
Lindsay Fast, Tourism Director
Elora Riera, Deputy Town Clerk

2. Approval of Minutes: January 22, 2018

Committee Member Platt made a motion to approve the minutes. The motion was seconded by Vice Chair Salzhauer and all voted in favor.

3. 5K Run Recap

Parks & Recreation Director Milian commented that the 5K was a great event. There were approximately 160 participants.

4. Spring Programming

Parks & Recreation Director Milian explained that the teen fitness program will be starting in March. He also reported on the following upcoming Spring events:

- Egg Hunt on March 18th
- Spring Camp from March 26-30
- Splash into Spring on March 25th
- Earth Day on April 22nd

Discussion ensued regarding Summer Camp.

5. Possible Additional Lifeguard Stand

This item was discussed before Item #3.

Tourism Director Fast commented that this was recommended by the Tourist Board members to see if there were funds in the budget for an additional lifeguard stand.

Discussion ensued regarding the need for an additional lifeguard stand and the possibility of bringing this back in March to discuss in more depth.

After some discussion, Vice Chair Salzhauer made a motion not to move forward with the purchasing of an additional lifeguard stand. The motion was seconded by Chair Logan and the motion carried 4-0 on roll call vote.

Discussion ensued regarding the renovation and replacement of the current lifeguard stand.

6. Public Comments

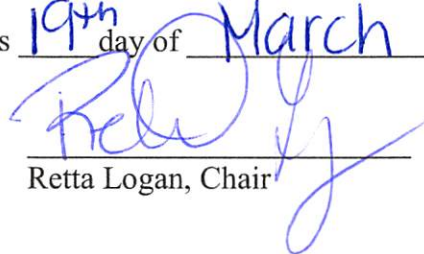
Commissioner Paul commented on the Seniors Valentine's Day Brunch.

7. Adjournment

Committee Member Platt made a motion to adjourn the meeting at 7:56 p.m. The motion received a second from Committee Member Javier and all voted in favor.

Respectfully submitted:

Accepted this 19th day of March, 2018


Retta Logan, Chair

Attest:


Elora Riera, CMC
Deputy Town Clerk



**Town of Surfside
Town Commission Meeting
April 10, 2018
7:00 pm**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

MEMORANDUM

Agenda #: 3E
Date: April 10, 2018
From: Guillermo Olmedillo, Town Manager
Subject: Pelican Harbor Seabird Station Donation

This resolution ratifies the \$1000 donation to the Pelican Harbor Seabird Station approved at the March 13, 2018 Town Commission meeting. The donation provides funds for support and sponsorship of their programs and includes the release of a bird to the wild at the Town's Earth Day Event on April 22, 2018.


DT / MG

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COMMISSION OF THE
TOWN OF SURFSIDE, FLORIDA, RATIFYING AND
APPROVING A DONATION TO THE PELICAN HARBOR
SEABIRD STATION IN SUPPORT AND SPONSORSHIP OF
THEIR PROGRAMS; PROVIDING FOR
IMPLEMENTATION; AND PROVIDING FOR AN
EFFECTIVE DATE.**

WHEREAS, on March 13, 2018, the Town Commission of the Town of Surfside (“Town”) approved a donation to the Pelican Harbor Seabird Station, a non-profit organization (“Pelican Harbor”), for annual fund-raising in support of its wildlife hospital and programs dedicated to the rescue, rehabilitation, and release of sick, injured or orphaned pelicans, seabirds and other native wildlife; and

WHEREAS, the Town Commission wishes to ratify the donation in the amount of \$1,000.00 to Pelican Harbor approved at its March 13, 2018 Commission meeting and provide that the funds shall be used towards support and sponsorship of their programs, including Pelican Harbor’s attendance at the Town’s Earth Day Event on April 22, 2018 and release of a bird to the wild; and

WHEREAS, the Town Commission finds that the donation and the use of the funds as indicated in this Resolution are in the best interest of the Town and its residents.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION
OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

Section 1. Recitals. The above Recitals are true and correct and incorporated herein by this reference.

Ratification and Approval of the Donation. The donation to Pelican Harbor in the amount of \$1,000 is ratified and approved, and providing that the funds shall be used towards

support and sponsorship of their programs, including Pelican Harbor's attendance at the Town's Earth Day Event on April 22, 2018 and release of a bird to the wild; and

Section 2. **Authority to Implement the Donation.** The Town Mayor is hereby authorized to take all action necessary to implement the donation and the purposes of this Resolution.

Section 3. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 10th day of April, 2018.

Motion by _____,

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



**Town of Surfside
Town Commission Meeting
April 10, 2018
7:00 pm**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

MEMORANDUM

Agenda #: 3F
Date: April 10, 2018
From: Guillermo Olmedillo, Town Manager
Subject: Ruth K. Broad K-8 Parent Teacher Association Donation

This resolution ratifies the \$1000 donation to the Ruth K. Broad K-8 Parent Teacher Association approved at the March 13, 2018 Town Commission meeting. The donation provides funds for a memorial sculpture to be gifted to the Marjory Stoneman Douglas High School within one (1) year of the date of approval.


DT / MG



Town of Surfside

Funding for Not-For Profit

Or Other

Charitable Organizations

APPLICATION

1. Legal name of Organization: Ruth K Broad Parent Teacher Association
Mailing Address: 1155 93rd Street, Bay Harbor Islands, FL 33154
Contact Number: 305 865-7912

2. Does your corporation/organization fall within Section 501 (c)(3) or Section 501(a) of the Internal Revenue Code?

YES X (Proof of tax exempt status will be provided) NO

3. Contact person (If different from above): Monica Campbell
Official Title: RKBBH K-8 PTA President
Mailing Address: 1155 93rd Street, Bay Harbor Islands, FL 33154
Contact Number: 305 865-7912

X Not-for-Profit Charitable

4. Provide a brief description of the organization's goals and objectives:

The goals and objectives of the RKBBH K-8 PTA include; promoting the welfare of our children; securing adequate laws for the care and protection of children and youth; and developing strong relationships between educators and the general public to create united efforts to secure for all children and youth the highest advantages of physical, mental, social, and spiritual education.

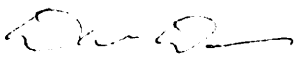
5. Amount of Funding Requested: \$1,000

6. Provide a brief description of how Town funds would be spent and identify the community need(s) to be addressed. This should include exactly will be provided and to how many people (Town residents):

RKBBH K-8 Upper Academy Art Students are fundraising for a Memorial Sculpture to be gifted to Marjory Stoneman Douglas High School. Please see attached.

CERTIFICATION:

As official signatory, I hereby certify that the information included in this application is complete and correct.

Signature: 

Print Name: Daniel Dietch

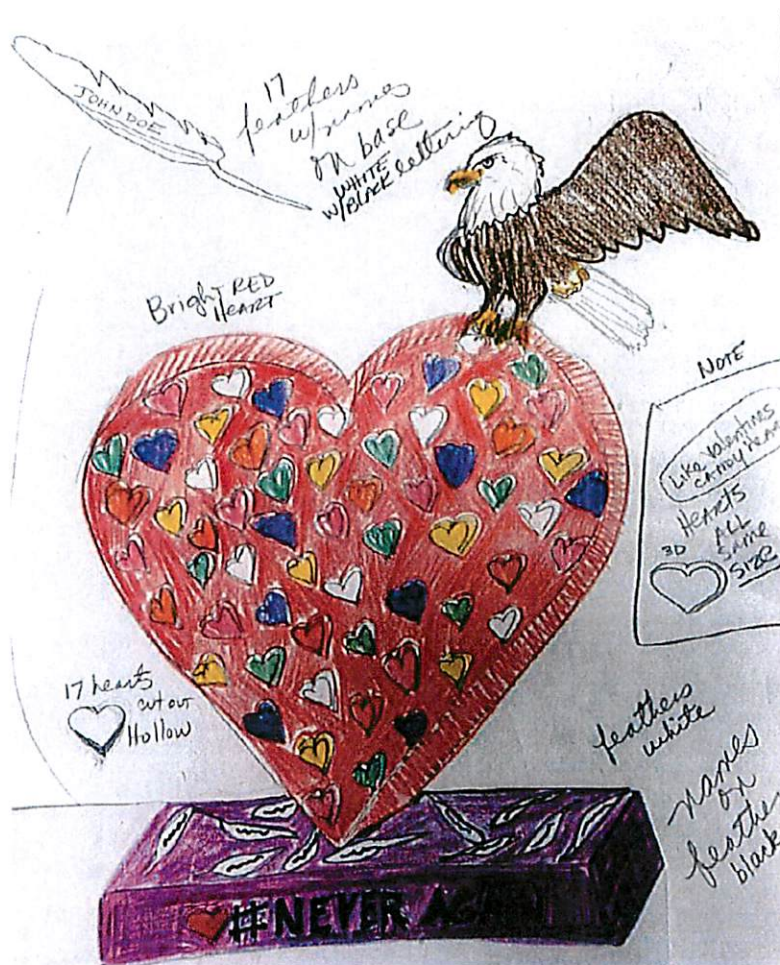
Title: Mayor

Date: March 13, 2018

Submit application and documents to:

Town of Surfside
c/o Town Manager Office
9293 Harding Avenue
Surfside, FL. 33154

Marjorie Stoneman Douglas High School Memorial Sculpture



Dear Bobcat Family,

Mrs. Vidal-Santos, and her Upper Academy art students are working on a 6-foot memorial sculpture that will be gifted to Marjorie Stoneman Douglas High School.

To cover costs, we have designed a **#Never Again** T-shirt that students may wear on Wednesdays. Adult sizes are also available.

We are asking our Bobcat family to unite and donate money. Our PTA will be collecting cash/checks donations.

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COMMISSION OF THE
TOWN OF SURFSIDE, FLORIDA, RATIFYING AND
APPROVING A DONATION TO THE RUTH K. BROAD
PARENT TEACHER ASSOCIATION FOR A MEMORIAL
SCULPTURE FOR MARJORY STONEMAN DOUGLAS
HIGH SCHOOL; PROVIDING FOR IMPLEMENTATION;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on March 13, 2018, the Town Commission of the Town of Surfside (“Town”) approved a donation to the Ruth K. Broad Parent Teacher Association, a not-for-profit organization (“Association”), for a memorial sculpture to be gifted to the Marjory Stoneman Douglas High School in memory of the tragic school shooting and its victims that occurred on February 14, 2018; and

WHEREAS, the Town Commission wishes to ratify the donation in the amount of \$1,000.00 to the Association approved at its March 13, 2018 Commission meeting and provide that the funds shall be used towards the memorial sculpture to be gifted to Marjory Stoneman Douglas High School within one (1) year of the date of approval or by March 13, 2019; and

WHEREAS, the Town Commission finds that the donation and the use of the funds as indicated in this Resolution are in the best interest of the Town and its residents.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION
OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

Section 1. **Recitals.** The above Recitals are true and correct and incorporated herein by this reference.

Section 2. **Ratification and Approval of the Donation.** The donation to the Association in the amount of \$1,000 is ratified and approved, and the funds shall be used for a memorial sculpture to be gifted to the Marjory Stoneman Douglas High School within one (1)

year of the date of approval of the donation or by March 13, 2019, in memory of the tragic school shooting and its victims that occurred on February 14, 2018

Section 3. **Authority to Implement the Donation.** The Town Mayor is hereby authorized to take all action necessary to implement the donation and the purposes of this Resolution.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this _____ day of April, 2018.

Motion by _____,

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Agenda Item # –

Date – April 10, 2018

Subject – Certification of Surfside General Municipal Election – March 20, 2018

Background – The Town of Surfside elected one Mayor and 4 Commissioners. In the Commissioner race, the highest vote getter will serve as the Vice Mayor for the two-year term.

Analysis – The results of the March 20, 2018 Town of Surfside General Municipal Election were certified on March 23, 2018 by the Miami-Dade County Supervisor of Elections, Christina White. For the Town record, the Town Commission must now certify the election results.

Budget Impact – The budgeted amount for this election for FY 17/18 is \$30,000. The Town has not received the invoice from Miami-Dade County Elections as of March 28, 2018.

Staff Impact –N/A

Recommendation – It is recommended that the Town Commission adopt the attached resolution.

Sandra Novoa, Town Clerk

ER/

RESOLUTION NO. 18 - _____

**RESOLUTION OF THE TOWN COMMISSION OF THE
TOWN OF SURFSIDE, FLORIDA CERTIFYING AND
DECLARING THE RESULTS OF THE TOWN OF
SURFSIDE GENERAL MUNICIPAL ELECTION HELD ON
MARCH 20, 2018 FOR THE ELECTION OF MAYOR AND
FOUR (4) TOWN COMMISSIONERS; AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, the Town Commission held a general municipal election on Tuesday, March 20, 2018, for the election of Mayor and four Commissioners of the Town of Surfside, Florida; and

WHEREAS, the qualifying period for said election closed on Monday, February 5, 2018; and

WHEREAS, Daniel Dietch and Victor May qualified as candidates for the Office of Mayor, and

WHEREAS, Barry Cohen, Daniel Gielchinsky, Michael Karukin, Tina Paul and Eli Tourgeman qualified to run for Town Commissioner; and

WHEREAS, an election was held on March 20, 2018 as called and the returns of the Inspectors and Clerk of the General Election have been delivered to the Town Commission; and

WHEREAS, the Miami-Dade County Canvassing Board has canvassed the returns, has tabulated the ballots of the absentee voters and has determined the total number of votes at such election for the candidates as shown by said returns.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. The above and foregoing recitals are true and correct.

Section 2. That the Town Commission finds, declares and certifies the results of the General Municipal Election held on Tuesday, March 20, 2018 for the Office of the Mayor and the Office of Town Commissioners pursuant to Certificate of County Canvassing Board Miami-Dade County (See Exhibit "A" attached).

Section 3. It is hereby certified and declared that pursuant to the votes cast in the General Municipal Election held on Tuesday, March 20, 2018, Daniel Dietch was duly elected Mayor, Daniel Gielchinsky was duly elected Vice Mayor and Barry Cohen, Michael Karukin and Tina Paul were duly elected to the Town Commission for the term which shall commence at 8:00 p.m. on Wednesday, March 21, 2018 and end on the third Wednesday in March 2020.

Section 4. That the Town Clerk is hereby authorized and directed to perform any and all incidental duties in connection herewith as required by law.

PASSED and **ADOPTED** on this 10th day of April, 2018.

Motion by _____,

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

SUMMARY REPT-GROUP DETAIL

Gen Municipal & Spec Elec
March 20, 2018
Surfside, Florida

OFFICIAL RESULTS

Run Date:03/23/18 08:54 AM

Report EL45A

Page 001

	TOTAL VOTES	%	ED OSS	ED IVO	VBM	PROV
PRECINCTS COUNTED (OF 1)	1	100.00				
REGISTERED VOTERS - TOTAL	3,331					
BALLOTS CAST - TOTAL	902		569	0	333	0
VOTER TURNOUT - TOTAL		27.08				
 Mayor						
Vote for 1						
Daniel Dietch	721	83.45	456	0	265	0
Victor May	143	16.55	87	0	56	0
Total	864		543	0	321	0
Over Votes	2		0	0	2	0
Under Votes	36		26	0	10	0
 Office of Town Commissioner						
Vote for 4						
Barry Cohen	511	20.24	314	0	197	0
Daniel Gielchinsky	523	20.71	328	0	195	0
Michael Karukin	511	20.24	304	0	207	0
Tina Paul	514	20.36	316	0	198	0
Eli Tourgeman	466	18.46	291	0	175	0
Total	2,525		1,553	0	972	0
Over Votes	4		4	0	0	0
Under Votes	1,079		719	0	360	0
 Proposal						
Vote for 1						
Yes/Sp/Wi	403	49.15	269	0	134	0
No/No/Non	417	50.85	258	0	159	0
Total	820		527	0	293	0
Over Votes	0		0	0	0	0
Under Votes	82		42	0	40	0

[Handwritten signatures and dates]
 3/23/2018
 3/23/2018
 3/23/18



TOWN OF SURFSIDE
PROCLAMATION, CERTIFICATE, COIN AND KEY TO THE TOWN
REQUEST FORM
 OFFICE OF THE TOWN CLERK

Request for: Proclamation ☒ Certificate ☐ Key ☐ Coin ☐ (check one)

Date of Request:

Name of Requestor:

Organization:

Address:

Phone / E-Mail:

Name of Individual / Organization to be honored:

Title for Proclamation or Certificate:

Date of Recognition:

Reason for Recognition (Please attach 4 – 6 "whereas clauses" as draft text for a Proclamation):

Document is to be:

- Presented at a Commission Meeting in April 2018 (month / year)
- Presented at the following event _____ (Please attach event information to the request form)
- Picked up by _____ on _____ (date)

Administrative Use Only

Proclamation _____ Certificate _____ Key _____ Coin _____

Approved: Yes _____ No _____ If no, state reason: _____

Approved Date: _____

Date Submitted for Mayor's Signature: _____

Date Issued: _____

Completed by: _____



Proclamation

Whereas, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

Whereas, Arbor Day is now observed throughout the nation and the world; and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

Whereas, as trees grow, they help mitigate the impacts of climate change by removing carbon dioxide from the air, storing carbon in the trees and soil, and releasing oxygen into the atmosphere; and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

Whereas, trees in our town increase property values, enhance the economic vitality of the business areas, and beautify our community; and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal; and

Whereas, the Town Commission urges all citizens to celebrate Arbor Day and to support efforts to protect our trees and natural habitats; and

Whereas, the Town Commission urges all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Now, therefore, the Town of Surfside, does hereby proclaim April 17, 2018 as "Arbor Day," and we call upon all citizens to celebrate Arbor Day and to support efforts to protect our trees and natural habitats.

In witness thereof, I have hereunto set my hand this 10th day of April 2018.

*Daniel Dietch, Mayor
Town of Surfside, Florida*

RESOLUTION NO. 18 - _____

A RESOLUTION OF THE TOWN OF SURFSIDE ADOPTING A PROCLAMATION HONORING THE IMPORTANCE OF TREES FOR THE TOWN OF SURFSIDE'S COMMUNITY AND ENVIRONMENT AND ENCOURAGING THE PLANTING OF TREES; PROCLAIMING APRIL 17, 2018 IN THE TOWN OF SURFSIDE AS "ARBOR DAY"; PROVIDING APPROVAL AND AUTHORIZATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

WHEREAS, as trees grow, they help stop climate change by removing carbon dioxide from the air, storing carbon in the trees and soil, and releasing oxygen into the atmosphere; and

WHEREAS, trees in our town increase property values, enhance the economic vitality of the business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the Town Commission of the Town of Surfside, hereby proclaims April 17, 2018 as "Arbor Day," and

WHEREAS, the Town Commission urges all citizens to celebrate Arbor Day and the importance of trees, and to support efforts to protect our trees and natural habitats; and

WHEREAS, the Town Commission urges all citizens to plant trees to promote the well-being of this and future generations.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above and foregoing are true and correct and are incorporated herein by reference.

Section 2. Approval and Authorization. The Town Commission approves and authorizes the Town Manager and/or his designee to take all actions necessary to implement this Resolution to proclaim April 17, 2018 as “Arbor Day” in the Town of Surfside (Attachment “A”).

Section 3. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 10th day of April, 2018.

Motion by _____,

Second by _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



Town of Surfside
9293 Harding Ave, 2nd Floor
Surfside, FL 33154

COMMISSION COMMUNICATION

Agenda #: 4A1
Date: April 10, 2018
Subject: Surfboard Prohibition
ORDINANCE REPEALING SECTION 86-1 "SURFBOARDS" OF THE TOWN'S CODE OF ORDINANCES.

Background:

To adopt an ordinance on second reading to repeal the prohibition on surfboards contained in Section 86-1 of the Town's Code originally adopted in 1960.

Analysis:

A discussion item related to repealing Section 86-1 of the Surfside Code of Ordinances was introduced at the February 13, 2018 Commission Meeting. The Town Commission directed the Town Attorney to prepare an Ordinance to amend Chapter 86 of the Town's Code of Ordinances by repealing Section 86-1.

Pursuant to the Commission's direction at the February 13, 2018 Commission Meeting, the Town Attorney has prepared the attached Ordinance repealing Section 86-1 in its entirety for the Commission's consideration on second reading. The repeal of Section 86-1 removes the prohibition on use of surfboards in any area of the Town not specifically designated for such purpose. As no areas of the Town were designated for use of surfboards, Section 86-1 effectively created a ban or prohibition on surfing in the Town.

No changes to the Ordinance were directed at first reading of the Ordinance on March 13, 2018.

Budget Impact:

N/A

Staff Impact:

N/A

Recommendation:

It is recommended that the Town Commission move to approve the Ordinance on second reading to amend Chapter 86 of the Town's Code of Ordinances by repealing Section 86-1, removing the prohibition on surfing in the Town.



Daniel Dietch, Town Mayor

ORDINANCE NO. 2018-_____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, REPEALING SECTION 86-1 "SURFBOARDS" OF THE TOWN'S CODE OF ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") Commission wishes to amend Chapter 86 of the Town's Code of Ordinances to repeal Section 86-1 which prohibits the use of surfboards in any area in the Town not specifically designated for such sport by posted signs; and

WHEREAS, the Town Commission finds that this Ordinance is in the best interest of the Town.

NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:¹

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Town Code Amended. The Code of the Town of Surfside, Florida is hereby amended by repealing Section 86-1 in its entirety as follows:

Chapter 86 – WATERWAYS

Article I. – IN GENERAL

~~Sec. 86-1. – Surfboards.~~

~~(a) Legislative findings. The town commission does make a legislative determination and finding that the uncontrolled use of surfboards in the town has resulted in serious injury to persons and property; that, if not controlled, additional injury to persons and property will result; and, that the public health, welfare and safety require that regulations be implemented to control surfing and prevent additional injury to persons and property.~~

~~(b) Use prohibited. The use of surfboards is prohibited in any area in the town not specifically designated for such sport by posted signs.~~

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicted with highlighted ~~double-strikethrough~~ and double underline.

~~(e) *Penalty for violation.* Any person violating any of the provisions of this section shall, upon conviction thereof, be punished as provided in section 1-8.~~

Section 3. **Codification.** It is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 13th day of March, 2018.

PASSED AND ADOPTED on second reading on the 10th day of April, 2018.

On Final Reading Moved By: _____

On Final Reading Second By: _____

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch
Mayor

65 **ATTEST:**

66

67

68 _____

69 Sandra Novoa, MMC

70 Town Clerk

71

72 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**

73 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

74

75

76 _____

77 Weiss Serota Helfman Cole & Bierman, P.L.

78 Town Attorney



Town of Surfside Commission Communication

Agenda Item # 4A2

Agenda Date: April 10, 2018

Subject: Maintenance in the Right-of-way, Including Trees and Mulch

Background: The Town Manager, at the December 13, 2017 Town Commission meeting, highlighted the consequences to power service from the interference of inappropriately maintained trees, particularly in the right-of-way, and to storm drains caused by mulch placed in the right-of-way. The Town Commission directed staff to prepare an ordinance to address these situations with costs to be borne by the owner of the abutting property charged with maintaining the areas. The Town Commission has asked for more clarity on enforcement and standards for tree trimming near power lines.

Analysis: The attached ordinance clarifies that trees and all landscaping, both on the property and in adjacent right-of-ways, must be maintained free and clear of power lines and in a manner that will prevent interference with above- and below-ground utilities. It further clarifies in the relevant sections, that the Town Manager has the authority to perform or have performed, at the property owner's expense, such maintenance on the property and in the adjacent right-of-way. Pursuant to Section 14-89(g), such costs, if not paid by the property owner, may be placed as a lien against the property. The Ordinance also prohibits the placement of mulch in the right-of-way.

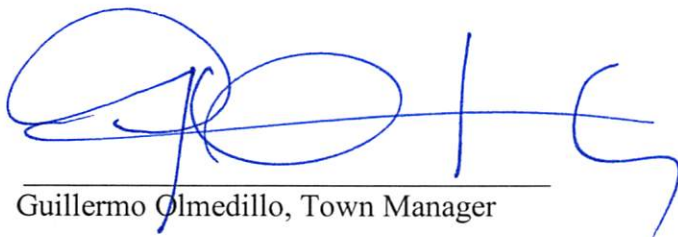
Finally, at first reading, the Commission expressed the desire to use regular code enforcement procedures where possible and to ensure that property owners were given adequate notice and opportunity to address violations prior to the Town taking action. Revisions have been made to address these concerns at lines 119-122 and 207-208.

At its March meeting, the Town Commission requested standards for tree trimming near power lines and a longer period of time for property owners to cure tree trimming violations. These have been added to the Ordinance. It should be noted that the proposed ordinance is set up just like all other codes. In all events, except where there are imminent threats to the life, safety or welfare, we process violations through standard code enforcement procedures. This Ordinance is drafted to provide *additional* tools in the event that a property owner does not comply under standard code enforcement procedures or there is an imminent threat. This Ordinance is intended to eliminate threats from trees *before* an emergency exists (such as an approaching hurricane). The Town does not have sufficient time, resources, or windows of physical safety, in which to perform tree trimming maintenance once a hurricane is approaching.

Budget Impact: The extra costs for maintenance will be charged to the property owners as currently provided. At the March Commission meeting staff was asked about the possibility of setting a fee for the tree trimming in the same manner as one has been set for lawn mowing. Unfortunately, tree trimming costs are directly related to the type, condition, and size of a tree and given the variety of tree species and sizes, it is impossible to set a standard fee which even remotely accurately reflects the costs. As such, we are proposing that the fee be the actual cost of the trimming plus a \$100 administrative fee to cover the costs of arranging and managing the trimming process.

Staff Impact: The Departments of Public Works and Code Compliance will coordinate their inspection and enforcement activities.

Recommendation: The Planning and Zoning Board reviewed the Ordinance at its February 22, 2018 meeting and recommended approval with a recommendation that staff develop a list of shade/drought tolerant grasses and groundcovers that would be acceptable in place of mulch. Staff will develop a list of alternatives, but does not recommend codifying such a list. Staff recommends a motion to approve the Ordinance.



Guillermo Olmedillo, Town Manager

ORDINANCE NO. 18 - _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING ARTICLE III, PROPERTY MAINTENANCE STANDARDS, OF CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, AND CHAPTER 90, ZONING, TO PROHIBIT USE OF MULCH IN THE RIGHT-OF-WAY AND ADDRESS PROPERTY OWNER MAINTENANCE RESPONSIBILITIES FOR PUBLIC RIGHT-OF-WAY ADJACENT TO PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida
2 Statutes, provide municipalities the authority to exercise any power for municipal purposes,
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4 **WHEREAS**, the Town Code of Ordinances (the “Town Code”) requires property owners to
5 maintain the right-of-way. including sod, landscaping and trees, adjacent to their property; and

6 **WHEREAS**, many property owners fail to maintain said right-of-ways, and particularly the
7 trees in such right-of-ways, in a manner which does not interfere with above- and below-ground
8 utilities and particularly power lines; and

9 **WHEREAS**, untrimmed trees cause particular risk and damage during storm events and in
10 Hurricane Irma, created a number of power issues; and

11 **WHEREAS**, the Town desires to more stringently enforce the existing maintenance
12 requirements of the Town Code in order to preserve and protect the public welfare, especially in
13 light of forecast increases in storm activity during upcoming hurricane seasons; and

14 **WHEREAS**, the Town desires to clarify the requirements for property owner maintenance of
15 trees and landscaping on both private property and the adjacent right-of-way in order to maintain
16 FPL lines free and clear and eliminate interference and potential damage to above- and below-
17 ground utilities; and

18 **WHEREAS**, the Town Code provides that failure to maintain property, including adjacent
19 right-of-way, may result in the Town performing or arranging for such maintenance and that the
20 cost of such maintenance may be imposed upon the property owner and liened against the
21 property; and

22 **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town,
23 held its hearing on the proposed amendment on February 22, 2018 with due public notice and
24 input; and

25 **WHEREAS**, the Town Commission held its first public hearing on February 13, 2018 of the
26 proposed amendments to the Code of Ordinances having complied with the notice requirements
27 by the Florida Statutes; and

28 **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing on
29 these regulations on March 13, 2018 and April 10, 2018 as required by law on and further finds
30 the proposed change is consistent with the Comprehensive Plan and in the best interest of the
31 community.

32
33 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
34 **THE TOWN OF SURFSIDE, FLORIDA¹:**

35
36 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by
37 this reference:

38
39 **Section 2. Town Code Amended.** Chapter 14, Buildings and Building Regulations,
40 Article III, Property Maintenance Standards, of the Town of Surfside Code of Ordinances is here
41 by amended to read as follows¹:

42 **CHAPTER 14 – BUILDINGS AND BUILDING REGULATIONS**

43 * * *

44 **ARTICLE III. - PROPERTY MAINTENANCE STANDARDS**

45 **Sec. 14-51. - Established.**

46 (a) The owner of every single-family or multiple-family dwelling or commercial property, or
47 his appointed agent, shall be responsible for maintaining the exterior in a clean, sanitary and

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~striketrough~~. Additions between first and second reading are shown in double underline. Deletions between first and second reading are shown in ~~double striketrough~~. Additions at final reading are shown in highlighted double underline and deletions at final reading highlighted double striketrough.

safe condition. All structures and all parts thereof shall be maintained in good repair and shall be capable of performing the function for which such structure or part or any feature thereof was designed or intended to be used.

(b) All exterior walls of every structure shall be maintained weathertight and otherwise maintained so as to resist decay or deterioration from any cause. All exterior surfaces subject to deterioration shall be properly maintained and protected from the elements by paint or other approved coating, applied in a workmanlike fashion. All exterior surfaces including walls, trim, doors and signs shall be properly maintained in a clean and sanitary condition, free of dirt, mold, mildew and faded or chipped paint, and must be repainted, recovered or cleaned when 25% or more of any exposed surface becomes discolored or is peeling in the approved color.

(c) Exterior property areas of all premises shall be kept free of any debris, object, material or condition which may create a health, accident or fire hazard, or which constitutes a blighting or deteriorating influence on the neighborhood. Lawns, landscaping and driveways shall also be maintained so as not to constitute a blighting or deteriorating effect in the neighborhood.

(d) Whenever there is an unpaved area between the sidewalk and the curb, or between the sidewalk and the property line, or between the paved roadway and the property line, it shall be the responsibility of the owner and/or occupant of the property to make sure that there are no holes or hidden dangers in the unpaved areas, and to maintain any plants, including trees and sod, and irrigation located in said area. Such areas shall be maintained free of mulch.

(e) Each property owner is responsible for hiring a qualified, licensed and insured contractor as necessary to maintain all trees on their property or within the right-of-way adjacent to their property, free and clear of power lines so as to prevent or alleviate the danger of the tree damaging power lines, consulting with American Natural Standards Institute ("ANSI") A300 (Part I)—2001 Pruning Standards, as amended, and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush Safety Requirements, as amended, and in a manner which does not interfere with or cause damage to above or below ground utilities.

(f) The town manager is hereby authorized and directed to employ necessary personnel and equipment to enter upon any property whose owner or occupant fails to maintain lawns, landscaping, ~~and driveways, and adjacent right-of-ways~~ in accordance with this article and to maintain same.

(g) In order to defray the cost to the town of maintaining such property there is hereby levied and assessed against each owner or occupant who fails to maintain such lawns, landscaping and driveways in accordance with this article, an administrative fee as set forth in the schedule of fines adopted by resolution per time the town provides such maintenance, in

addition to the actual costs incurred for said maintenance. The fee for tree trimming shall be the actual costs incurred by the Town from the service provider plus \$100.00 for processing and administration. All charges becoming due and payable under this subsection constitute, and are hereby imposed as liens against the real property, and, upon becoming delinquent April 1 of the following year, until fully paid and discharged, shall remain liens, equal in rank and dignity with the ad valorem taxes of the town, and may be satisfied by the sale of certificates in the same manner as is provided for the sale of certificates on delinquent ad valorem taxes. Such lien shall be superior in rank and dignity to other liens, encumbrances, titles and claims in, to or against the real property involved.

* * *

Section 3. Town Code Amended. Chapter 90, Zoning of the Town of Surfside Code of Ordinances is hereby amended to read as follows:

Chapter 90 - ZONING

* * *

ARTICLE V. – Design Standards

* * *

Sec. 90-52. - Required clearances.

As an aid to free and safe movement of vehicles at and near street intersections and in order to promote more adequate protection for the safety of children, pedestrians, operators of vehicles and for property, there shall be limitations on the height of fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures, construction, and planting on corner lots in all districts where front yards are required as follows:

- (a) All corner properties shall provide and maintain unobstructed corner clearance areas along both the front and side lot lines; and
- (b) All objects, fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures, construction, and planting within any corner clearance areas shall provide unobstructed cross-visibility at a level between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard; and
- (c) The property owner shall be responsible for maintaining all landscaping within the corner clearance areas; and
- (d) It shall be unlawful for any person to plant or cause to be planted any tree or shrubs or to place any structure in the public right-of-way without a permit from the town manager or designee. The elevation grades of the public right-of-way adjacent to private property shall not be altered; and

- (e) Only turf as defined in section 90-85.2 of the Code shall be located within the public-right-of-way between the edge of any roadway or curb and the private property line; and
- (f) The placement of mulch within the public right-of-way is prohibited; and
- (g) The town manager or designee shall make the final determination regarding unobstructed corner clearance areas.
- (i) If any property owner fails to maintain clearances and conditions required by this section, the Town shall take action pursuant to Chapter 15, Article I, Code Enforcement provided that should a property owner fail to remedy the violation within the timeframe provided by the Notice of Violation or—should the violation creates an immediate threat hazardous condition for to the operation of any utilities or endanger the life safety and welfare, the Town may take action and assess costs pursuant to Article III, Property Maintenance Standards of Chapter 14.

* * *

ARTICLE VIII. – Landscape Requirements

* * *

Sec. 90-87. - Installation of landscaping and irrigation.

All landscaping and irrigation shall be installed according to accepted horticultural planting procedures with the quality of plant materials as hereinafter described, including:

- (1) Planting soil/topsoil shall be of the minimum quality as specified in the plant materials section of this Code. All trees, palms, shrubs, and ground covers shall be planted with a minimum of 12 inches or two times the root ball of planting soil around root ball. A minimum of three inches of shredded, approved arsenic free, organic mulch or groundcover shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in all directions, including palms, and throughout all hedge, shrub, and groundcover planting. The use of mulch obtained from Melaleuca, Eucalyptus, or other invasive plant species is encouraged in order to reduce their impact on the environment and to preserve the remaining native plant communities.
- (2) All trees/palms shall be properly guyed and staked at the time of planting until one year from landscape final or establishment. The use of nails, wire or rope, or any other method which damages the trees or palm, is prohibited. All plants shall be installed so that the top of the root ball remains even with the soil grade or ten percent or the root flare is visible above the surrounding grade. All synthetic string, synthetic burlap, cords, or wire baskets shall be removed before planting.

- (3) All parking islands, medians, and other landscape areas shall be installed with continuous Type "D" curbing to prevent damage to the plant material and the displacement of topsoil and mulch. Also, all landscape islands, divider medians, and planters shall be excavated of limerock and/or compacted soil to a depth of 30 inches and backfilled with specified planting mix to the top of curb. Additionally, all areas along buildings shall be excavated to a depth of 12 inches and backfilled with specified planting mix. No mulch shall be permitted in adjacent swales or right-of-way.

* * *

Sec. 90-88. - Maintenance of landscaped areas.

- (1) An owner of land subject to this Code shall be responsible for the maintenance of said land and landscaping so as to present a healthy, vigorous and neat appearance free from refuse and debris. All landscaped areas shall be sufficiently fertilized and irrigated to maintain the plant material in a healthy and viable condition.

NOTE: All fertilizer shall be safe and environmentally friendly. Also, the applications shall conform to the manufacturer's specifications.

- (2) Three inches of clean, weed-free, arsenic free, organic mulch shall be maintained over all areas originally mulched at all times. Turfgrass shall be kept trimmed and/or mowed regularly to a height not exceeding eight inches above the ground. The use of mulch in swales or right-of-way is prohibited.

* * *

Sec. 90-89. - Plant material

* * *

90-89.4 Trees:

* * *

(6) Street tree requirements:

- a. Street trees shall be required at one shade tree/palm tree per 20 linear feet of street frontage thereof along all public or private street right-of-ways in all zoning districts.
- b. Street trees shall be of a species typically grown in South Florida that normally matures to a height of at least 20 feet. Street trees shall have a clear trunk of over seven feet, an overall height of fourteen (14—16) feet and a minimum of 2½ inches DBH at time of planting. Palm trees utilized as street trees shall have eight foot clear wood.

- c. The average spacing requirement for H40 districts shall be based on the total lineal footage of roadway for the entire project and not based on individual lot widths.
- d. Street tree species shall be approved by the town during plan review. Street trees shall visually define the hierarchy of roadways, provide shade along roadways, and provide a visual edge along roadways. Consideration shall be given to the selection of trees, plants and planting site to avoid serious problems such as clogged sewers, cracked sidewalks, and power service interruptions.
- e. Street trees shall be placed within the swale area or shall be placed on private property where demonstrated to be necessary due to right-of-way obstructions as determined by the town. A Public Works permit shall be obtained prior to planting any tree in the right-of-way. Trees shall be planted in conformance with the Right Tree, Right Place Guidelines for planting trees near power lines published within Florida Power & Light's "Right Tree, Right Place" brochure, as amended.
- f. Street trees planted along roadways and/or sidewalks shall be placed a minimum of four feet off the interior pavement edge.
- g. Street trees planted within sidewalk or curbed planting area along parallel parking shall have a minimum planting area of six feet by six feet. If the street tree is planted within the sidewalk, root barrier(s) of minimum depth of 12 inches shall be installed per manufacturer's recommendations. These trees shall require adjustable tree grates or groundcover to full coverage inside planting area.
- h. When trees are planted within the right-of-way, the owners of land adjacent to the areas where street trees are planted must maintain those areas including the trees, plants, irrigation and sod. Trees must be maintained free and clear of powerlines and all trees and plantings shall be maintained in a manner to which prevents and alleviates the danger of the trees damaging power lines, consulting with American Natural Standards Institute ("ANSI") A300 (Part I)—2001 Pruning Standards, as amended, and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush Safety Requirements, as amended. ~~interference with above or below ground utilities.~~ Where the state, county or town determines that the planting of trees and other landscape material is not appropriate in the public right-of-way, they may require that said trees and landscape material be placed on private property.
- i. If any property owner fails to maintain trees and other landscaping in right-of-way or on private property, as required by this code free and clear of power lines and in a manner which does not interfere with or cause damage to above or below ground utilities, the Town shall provide a written warning with 45 30 days to remedy, after which, the Town may take action and assess costs pursuant to Article III, Property Maintenance Standards of Chapter 14.
- j. Where the Town determines a tree or landscaping in the right-of-way poses an immediate threat is detrimental to the health, safety and welfare of residents or is extremely likely to cause imminent has a significant likelihood of causing damage to utilities or powerlines, said tree or landscaping may be removed by the Town, at the

owner's expense. Such costs shall be assessed against a property owner and property pursuant to Article III, Property Maintenance Standards of Chapter 14.

* * *

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 5. Inclusion in the Code. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other appropriate word.

Section 6. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 7. Effective Date. This ordinance shall become effective upon adoption.

PASSED and ADOPTED on first reading this 13th day of February, 2018.

PASSED and ADOPTED on second reading this 10th day of April, 2018.

On Final Reading Moved by: _____

On Final Reading Second by: _____

FINAL VOTE ON ADOPTION:

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

268 **ATTEST:**

269

270

271 _____
Sandra Novoa, MMC, Town Clerk

272

273 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**

274 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

275

276

277 _____
Weiss Serota Helfman Cole and Bierman, P.L.

278 Town Attorney



Town of Surfside
9293 Harding Ave, 2nd Floor
Surfside, FL 33154

COMMISSION COMMUNICATION

Agenda Item # - 4B1

Date - April 10, 2018

Subject - Lighting Regulations for Marine Turtle Protection

Background - At the March 13, 2018 Town Commission meeting, the Town Commission directed the preparation of an ordinance providing for the protection of marine turtles, including regulations on artificial lighting ("Ordinance").

Analysis - The Florida Department of Environmental Protection ("DEP") and the Fish and Wildlife Conservation Commission ("FWC") consider the proposed Ordinance to be minimum guidelines for the protection of nesting habitat, nesting females, and hatchling marine turtles from the negative effects of artificial lighting. The proposed Ordinance is consistent with recommended minimum guidelines established by DEP and FWC and consistent with Section 161.163, Florida Statutes. The responsibility for protecting nesting female and hatchling marine turtles is a joint responsibility of local government and the DEP. Local governments are encouraged by DEP to adopt, implement, and enforce the guidelines directed at protecting marine turtles along the local government's beaches.

The proposed Ordinance establishes prohibited activities disruptive to marine turtles. The Ordinance also establishes lighting standards for new development within the line-of-sight of the beach. The Ordinance further addresses and establishes lighting standards for existing development within the line-of-sight of the beach and interfering with turtle nesting, and provides for a 48-month compliance period from the effective date of the ordinance or when existing development begins renovations exceeding 50% of the assessed value of the structure, as determined by the Building Official.

DEP has stated the importance of considering several issues when adopting such protections, including the following:

(a) Public Awareness. Any person submitting an application for coastal construction activities within the Town beaches or near the beaches should be informed of the existence of and requirements of the Ordinance upon its adoption to help raise awareness and ensure compliance.

(b) Local Government. Upon adoption of the Ordinance, a system of communication between the Town and DEP should be developed, if it does not already exist. Protection of marine turtle nesting habitat, nesting females, and hatchlings is greatly enhanced when local governments

manage their beaches and coastal activities in a manner consistent with prudent marine turtle conservation strategies. DEP can assist local governments by providing conservation information and other technical assistance.

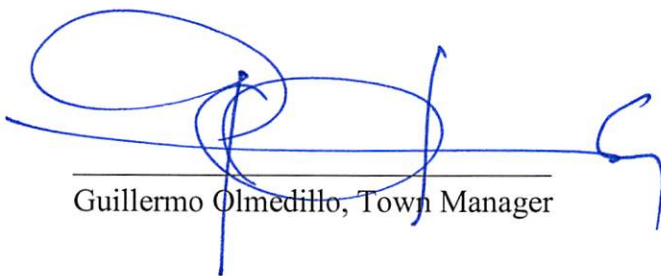
(c) Inter-Governmental Cooperation. Upon adoption of the Ordinance, the Town should develop a system for receiving copies of permits issued by FWC, the DEP, or the United States Army Corps of Engineers, for any coastal construction within the local government's jurisdiction. Activities permitted by these agencies should be assessed for compliance with the Town's Ordinance.

(d) Enforcement. Local governments should develop a process for the consistent and effective enforcement of adopted regulations. As written, the Ordinance proposes using Code Enforcement staff and procedures, as contained within Chapter 15 of the Town's Code.

Budget Impact - The Town will need to implement, monitor and enforce compliance with the Ordinance, thereby necessitating staff time and resources including Planning, Building, Code Enforcement and Police. Additionally, public or Town-facilities, which include publicly-owned lighting, may need to be retrofitted or modified for compliance with the lighting standards of the Ordinance. Public awareness and an education campaign is also needed and will require expenditure of funds for such purposes.

Staff Impact - Use of Planning, Building, Code Enforcement and Police personnel. Additionally, staff resources will be needed for a public education campaign.

Recommendation - It is recommended that the Town Commission adopt the Ordinance on first reading amending the Code to implement lighting regulations for marine turtle protection as recommended by DEP and FWC.



Guillermo Olmedillo, Town Manager

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN CODE BY CREATING ARTICLE VI, "LIGHTING REGULATIONS FOR MARINE TURTLE PROTECTION" OF CHAPTER 34 "ENVIRONMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) is committed to environmental conscientiousness and leadership, and towards that end has previously adopted ordinances prohibiting the sale or use of polystyrene food service articles, as well as the banning of plastic straws that threaten wildlife and marine life; and

WHEREAS, marine turtle nesting in the State of Florida has been negatively affected due to the artificial lights from residential and commercial properties near the beaches; and

WHEREAS, the Town finds that it is in the public interest, safety, and welfare to adopt the proposed regulations and rules recommended by the Florida Department of Environmental Protection (“DEP”) and Florida Fish and Wildlife Conservation Commission (“FWC”); and

WHEREAS, the further purpose and intent of these regulations is to implement Section 161.163, Florida Statutes, and

WHEREAS, the regulations intended effect is to protect hatchling marine turtles from the adverse effects of artificial lighting and provide overall improvement in nesting habitats that have been degraded by light pollution in order to increase the successful nesting activity and production of hatchlings; and

WHEREAS, Chapter 34 of the Town’s Code of Ordinances (“Code”) pertains to the environment, and the Town Commission wishes to amend Chapter 34 of the Town’s Code to create Article VI regulating artificial lighting along the beaches; and

WHEREAS, the Town Commission finds that this Ordinance is necessary for the preservation and improvement of the environment and marine wildlife, public health, safety and welfare of the Town's residents and visitors.

**NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE
HEREBY ORDAINS:**

Section 1. **Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Town Code Amended. The Code of the Town of Surfside, Florida is hereby amended by adding Article VI “Lighting Regulations for Marine Turtle Protection” of Chapter 34 “Environment” to read as follows:

Chapter 34 – Environment

Article VI –Lighting Regulations for Marine Turtle Protection.

Section 34-81. Purpose and Intent.

The purpose of this article is to reduce the impacts of artificial coastal lighting on threatened and endangered sea turtles that nest on the beaches of Surfside by restricting artificial lighting and other activities that disorient turtle hatchlings, causing them to crawl toward land rather than toward the ocean. This article is intended to provide overall improvements in nesting habitat degraded by light pollution, and increase successful nesting activity and production of hatchlings. The restrictions and constraints of this article shall be effective within the incorporated areas of Surfside and apply to any artificial lighting that has potential to adversely impact sea turtles within Town limits.

Sec. 34-82. Definitions.

Definitions provided in this article are intended for use in this article only and shall not be construed to amend any existing definition in the Land Development Regulations. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative lighting source means any amber or red LED bulbs with long wavelength bulbs greater than 580 nanometers; low pressure sodium bulbs, Turtle Safe Lighting coated compact fluorescent bulb; fiber optic lighting and true red neon or any other lighting device that meets the intent of this article.

Artificial light means any point source of light emanating from a device made by humans, including but not limited to incandescent mercury vapor, metal halide, sodium lamps, fluorescent, flashlights, spotlights, streetlights, vehicular lights, construction lights, security lights, bonfires, or any light emanating from any reflective surface of the device.

Beach means that area of unconsolidated material that extends landward from the mean low-water line of the Atlantic Ocean, to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation.

Bug type bulb means any yellow or other colored light bulb that is marketed as being specifically treated in such a way so as to reduce the attraction of bugs to the light.

Coastal construction activities means any work or activity that is likely to have a material physical effect on existing coastal conditions or natural shore and inlet process.

79 *County* means Miami-Dade County.

80
81 *Cumulatively illuminated* means illuminated by numerous artificial light sources that as a
82 group illuminate any portion of the beach.

83
84 *Directly illuminated* means illuminated as a result of glowing elements, lamps, globes, or
85 reflectors of an artificial light source that is visible to an observer standing anywhere on the beach.

86
87 *Dune* means a mound or ridge of loose sediments, usually sand-sized, lying landward of
88 the beach and deposited by any natural or artificial mechanism.

89
90 *Existing development* means any development for which a certificate of use or occupancy
91 has been issued or for development activity for which a building permit has been issued and work
92 has been substantially completed at the time of the effective date of this article.

93
94 *Filmed glass* means window glass that has been covered with a film such that the material
95 has a shading coefficient of 45 percent or less, adhesive as an integral part, and has performance
96 claims that are supported by approved testing procedures and documentation.

97
98 *Frontal dune* means the first natural or artificial mound or bluff of sand that is located
99 landward of the beach and that has sufficient vegetation, height, continuity and configuration to
100 offer protective value.

101
102 *Ground-level barrier* means any vegetation, natural feature or artificial structure rising
103 from the ground that prevents beachfront lighting from shining directly onto the beach-dune
104 system.

105
106 *Hatchling* means any species of marine turtle, within or outside of a nest, which has
107 recently hatched from an egg.

108
109 *Indirectly illuminated* means illuminated as a result of glowing elements, lamps, globes, or
110 reflectors of an artificial light source that is not visible to an observer standing anywhere on the
111 beach.

112
113 *Marine turtle* means any marine-dwelling reptile of the families Cheloniidae or
114 Dermochelyidae found in Florida waters or using the beach as a nesting habitat, including the
115 species: *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea*
116 (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kempi* (Kemp's ridley). For
117 purposes of this section, marine turtle is synonymous with sea turtle.

118
119 *Nest* means an area where marine turtle eggs have been naturally deposited or subsequently
120 relocated.

121
122 *Nesting season* means the period from May 1 through October 31 of each year.

124 *New development* means new construction which has not been permitted or for
125 development activity for which a building permit as been issued and work has not been
126 substantially completed at the time of the effective date of this article.

127
128 *Nighttime* means the time period between 10:00 pm and 5:00 am within the Town limits of
129 Surfside.

130
131 *Person* means individuals, firms, associations, joint ventures, partnerships, estates, trusts,
132 syndicates, fiduciaries, corporations, and all other groups or combinations.

133
134 *Tinted glass* means any glass treated to achieve an industry-approved inside-to-outside
135 light transmittal value of 45 percent or less. Such transmittance is limited to the visible spectrum
136 (400 to 700 nanometers) and is measured as the percentage of light that is transmitted through the
137 glass.

138
139 **Sec. 34-83. Prohibited Activities Disruptive to Marine Turtles.**

140
141 *Prohibited activities.* The following activities involving direct illumination of portions of the
142 beach are prohibited on the beach at nighttime during the nesting season for the protection of
143 nesting marine turtle females, nests and hatchlings:

144
145 (1) The operation of all motorized vehicles, except emergency and law
146 enforcement, or beach maintenance vehicles or those permitted on the beach for
147 marine turtle's conservation and/or research.

148
149 (2) The building of campfires or bonfires.

150
151 (3) Fireworks displays, except those that have Town special event permits and, if
152 applicable, a Florida Department of Environmental Protection ("DEP") permit;
153 however, nothing in this article shall prohibit the Town's July 4th fireworks display.

154
155 (4) Special events pursuant to Chapter 35, Article 1, of the Town Code, unless
156 allowed first by permit issued by the Florida Department of Environmental
157 Protection.

158
159 **Sec. 34-84. Lighting Standards for Coastal Construction Activities.**

160
161 (a) *Lighting standards for new development.* It is the policy of the Town of Surfside that no
162 artificial light shall illuminate within direct line-of-sight of the beach that has potential to interfere
163 with turtle nesting. To meet this intent, new development construction within line-of-sight of the
164 beach shall comply with the following:

165
166 (1) Exterior artificial light fixtures shall be designed and positioned so that:

167
168 (a) The point source of light or any reflective surface of the light fixture is
169 not directly visible from the beach;

(b) Areas seaward of the frontal dune are not directly or indirectly illuminated; and

(c) Areas seaward of the frontal dune are not cumulatively illuminated.

(2) Exterior artificial light fixtures within direct line-of-sight of the beach are considered appropriately designed if:

(a) Completely shielded downlight only fixtures or recessed fixtures having low wattage (i.e., 50 watts or less) bug type bulbs and non-reflective interior surfaces are used. Other fixtures that have appropriate shields, louvers, or cut-off features may also be used if they are in compliance with subsection (1)(a), (b), and (c) above; and

(b) All fixtures are mounted as low in elevation as possible through use of low-mounted wall fixtures, low bollards, and ground-level fixtures.

(3) Floodlights, uplights or spotlights for decorative and accent purposes that are directly visible from the beach, or which indirectly or cumulatively illuminate the beach, shall not be used.

(4) Exterior lights used expressly for safety or security purposes shall be limited to the minimum number and configuration required to achieve their functional role(s). The use of motion detector switches that keep lights off except when approached and that switch lights on for the minimum duration possible are preferred.

(5) Only low intensity lighting shall be used in parking areas within line-of-sight of the beach. Such lighting shall be:

(a) Set on a base which raises the source of light no higher than 48 inches off the ground or higher if necessary to conform with life safety codes; and

(b) Positioned or shielded so that the light is cast downward and the source of light or any reflective surface of the light fixture is not visible from the beach and does not directly or indirectly illuminate the beach.

(6) Parking areas and roadways, including any paved or unpaved areas upon which motorized vehicles will park or operated, shall be designed and located to prevent vehicular headlights from directly or indirectly illuminating the beach.

(7) Vehicular lighting, parking area lighting, and roadways lighting shall be shielded from the beach through the use of ground-level barriers. Ground-level barriers must not interfere with marine turtle nesting or hatchling emergence, or cause short-or long-term damage to the beach/dune system.

(8) Tinted glass shall be installed on all windows and glass doors of single and multi-story structures within line-of-sight of the beach.

(9) Use of appropriately shielded low pressure sodium vapor lamps and fixtures shall be preferred for high-intensity lighting applications such as lighting parking areas and roadways, providing security, and similar applications.

(10) Temporary lighting of construction sites during the marine turtle nesting season shall be restricted to the minimal amount necessary and shall incorporate all of the standards of this section.

(11) Properties that abut the beach which have signage facing the beach or in the line-of-sight of the beach, including building identification signs, shall not be illuminated during the nighttime hours of the nesting season. Properties that face the beach but do not abut the beach which have signage visible from the beach shall be properly shielded with downward facing fixtures where the chosen background does not reflect the light source and signs that are lit internally must illuminate only the text and have the appropriate shielding, and not reflect the light source.

(b) *Lighting standards for existing development.* It is the policy of the Town of Surfside that no artificial light shall illuminate any area within direct line-of-sight of the beach that has the potential to interfere with turtle nesting. To meet this intent, within forty eight (48) months of the effective date of this article or when an existing development has begun renovations exceeding fifty percent (50%) of the tax assessed value of the structure as determined by the building official, an existing development shall be in compliance with the following:

(1) Existing artificial light fixtures shall be repositioned, modified, or removed so that:

(a) The point source of light or any reflective surface of the light fixture is not directly visible from the beach;

(b) Areas seaward of the frontal dune are not directly or indirectly illuminated; and

(c) Areas seaward of the frontal dune are not cumulatively illuminated.

(2) The following measures shall be taken to reduce or eliminate the negative effects of existing exterior artificial lighting:

(a) Reposition fixtures so that the point source of light or any reflective surface of the light fixture is no longer visible from the beach;

(b) Replace fixtures having an exposed light source with fixtures containing recessed light sources or shields;

(c) Replace traditional light bulbs with bug type bulbs not exceeding 50 watts or any alternative lighting source as defined herein;

(d) Replace nondirectional fixtures with directional fixtures that point down and away from the beach;

(e) Replace fixtures having transparent or translucent coverings with fixtures having opaque shields covering an arc of at least 180 degrees and extending an appropriate distance below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;

(f) Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;

(g) Replace incandescent, fluorescent, and high intensity lighting with the lowest wattage low pressure sodium vapor lighting possible for the specific application or an alternative lighting source;

(h) Plan or improve vegetation buffers between the light source and the beach to screen light from the beach;

(i) Construct a ground level barrier to shield light sources from the beach. Ground-level barriers must not interfere with marine turtle nesting or hatchling emergence, or cause short- or long-term damage to the beach-dune system;

(j) Permanently remove or permanently disable any fixture that cannot be brought into compliance with the provisions of these standards.

(3) Properties that abut the beach which have signage facing the beach or in the line-of-sight of the beach, including building identification signs, shall not be illuminated during the nighttime hours of the nesting season. Properties that face the beach but do not abut the beach which have signage visible from the beach shall be properly shielded with downward facing fixtures where the chosen background does not reflect the light source and signs that are lit internally must illuminate only the text and have the appropriate shielding, and not reflect the light source.

(4) One or more of the following measures shall be taken to reduce or eliminate the negative effects of interior light emanating from doors and windows within line-of-sight of the beach:

(a) Apply window tint or film that meets the standards in the definition of "Tinted or Filmed glass";

(b) Rearrange lamps and other moveable fixtures away from windows;

(c) Use window treatments (e.g., blinds, curtains) to shield interior lights from the Beach; and/or

(d) Turn off unnecessary lights.

Sec. 34--85. Other Codes and Provisions.

(a) To the extent these standards conflict with life safety codes or other codes having life safety provisions, the provisions of this Article shall not supersede those specific life safety provisions.

(b) New or existing development which has secured a Coastal Construction Line Permit or Joint Coastal Permit from the Department of Environmental Protection which includes a lighting review for marine turtle protection will be deemed to have complied with the provisions of this Article.

(c) Publicly-owned lighting which includes, but is not limited to, street lights, park lights, publicly-owned facility lights and walkway lights shall be shielded or shaded to the extent the lights are determined by the Town not to be necessary for public safety purposes.

Sec. 34-86. Enforcement and Penalties.

The provisions of this article shall be enforced pursuant to Article 1, Chapter 15, of this Code and by any other means permitted by law. In addition, the enforcing agency may notify the property owner or other person responsible for lighting or management of the property, in writing, that an external lighting source causing a violation may be removed by the Town. The Town shall recover from the property owner the costs of removal of external lighting sources causing violations, which shall constitute a lien against the property and shall be reimbursed to the Town at time of sale of the property or upon any lien foreclosure action. Said lien shall have the same priority as a lien for real estate taxes.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Codification. It is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 3. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 5. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

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PASSED on first reading on the 10^h day of April, 2018.

PASSED AND ADOPTED on second reading on ____ day of _____, 2018.

On Final Reading Moved By: _____

On Final Reading Second By: _____

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen _____

Commissioner Michael Karukin _____

Commissioner Tina Paul _____

Vice Mayor Daniel Gielchinsky _____

Mayor Daniel Dietch _____

Daniel Dietch
Mayor

ATTEST:

Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



Town of Surfside
9293 Harding Ave, 2nd Floor
Surfside, FL 33154

COMMISSION COMMUNICATION

Agenda Item # 9A

Agenda Date: April 10, 2018

Subject: Resiliency Fund Requirement

Background: The Town of Surfside has experienced an unprecedented volume of construction which creates significant impacts on the community and the existing infrastructure. The need for a formal mechanism to address community resilience and its funding has been identified as a priority moving forward.


Analysis: Based on the impact created by new development and substantial improvement of properties throughout the community, the creation of a Resiliency Fund is recommended. The fees should be calculated based on one of the following:

1. The total square footage of construction.
2. The net square foot increase over the previous structure.
3. The value of new construction or substantial improvement.

Budget Impact: The review of submitted documents, research of resiliency projects, administration and implementation costs including design, permitting, supervision, labor, and materials for resiliency projects should be recovered from the fees charged for the Resiliency Fund program.

Staff Impact: The staff impact is estimated as a net increase in administrative, review, supervisory and implementation duties which are similar in nature to the present work categories and depending on the scope of the program would, conceivably necessitate bolstering the present work staff in order to adequately cover all expected duties and operations.

Recommendation: Study of the rational nexus of impacts to the correlating factors of construction square footage or construction value in order to fully fund the expected resiliency projects and meet all Town goals therein



Guillermo Olmedillo, Town Manager

RP





Richard Kuper, Esq. TOWN OF SURFSIDE
 Executive Director FEB21 11:01AM

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 Hon. Keon Hardemon
 Chairman, Miami

February 15, 2018

The Honorable Daniel Dietch
 Mayor, Town of Surfside
 9293 Harding Ave
 Surfside, Fl 33154

Immediate Past President

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 Mayor, Miami

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 Commissioner, City of Miami

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 Hon. Isaac Aelion
 Commissioner, Sunny Isles Beach
 Hon. Michael Karukin
 Commissioner, Surfside
 Hon. Orlando Lopez
 Mayor, Sweetwater
 Hon. Richard Block
 Councilman, Virginia Gardens
 Hon. Eduardo Muñia
 Mayor, West Miami

Dear Mayor Dietch:

Allow me this opportunity to first thank you for your continued participation in and support of the Miami-Dade County League of Cities (MDCLC). President Oliver Gilbert, III, and myself are well aware that MDCLC's success is a direct result of the hard work and dedication of its members. For this reason, we need your cooperation in making appointments to the Board.

Each member municipality designates one of its elected officials to serve as a **Director** and one as an **alternate Director** of the League for a period of one year. The term commences at the date of the Annual Meeting in the month of May, and runs until the following May.

Allow this letter to serve as a kind reminder that you are required to designate a Director and an alternate to represent your municipality on the MDCLC's Board preferably before the **April 5th, 2018 Board Meeting**. Please send us a note to the League office naming your appointments.

Thank you for your continued cooperation and support.

Sincerely,

Richard Kuper, Esq.
 Executive Director

RK/mr



Town of Surfside
9293 Harding Ave, 2nd Floor
Surfside, FL 33154

COMMISSION COMMUNICATION

Agenda Item: 9C

Date: April 10, 2018

Subject: One-Way Streets Trial Report

Background: Following the direction of the Town Commission, staff held a Town Hall meeting on March 28, 2018.

Approximately 50 residents attended the meeting that consisted of a presentation by staff and participation of 30 residents.

Staff made a presentation that illustrated the process that we followed from the beginning and the number of public hearings/meetings that were held for the last year and a half. The entire presentation is available on the Town's website.

Some of the recurring issues that have been presented to the elected officials and the administration throughout the various meetings, and other means of communication, have been traffic intrusion, pedestrian safety, walkability/connectivity and underutilization of Town assets.

In an effort to present solutions to address all these issues, staff presented plans to use the entire width of the public right-of-way (ROW). However, given the existing conditions where the ROW is encumbered by landscaping and driveways, only the existing paved road is left as the area that can be used to create a safe walking environment that separates vehicular from pedestrian traffic.

The standards for public streets are under the jurisdiction of Miami-Dade County. The traveling lane standard is 14 feet and the parking lane is 10 feet. Presently, the paved road width fluctuates between 26 to 32 feet, depending on the location. Consequently, having a street cross section with two traveling lanes, parking and safe pedestrian paths is not possible. The only way to provide for the separation of pedestrian and vehicular traffic is to eliminate one driving lane and, in some locations, one side of parking. One option is the one-way proposal seen in the present trial.

Analysis: Issues against the concept presented by residents at the Town Hall meeting can be summarized as follows:

1. Reduction of parking space
2. Limitations for emergency and service vehicles
3. Potential impact on possible future undergrounding of utilities
4. Elimination of on-street play area for children
5. Added travel time

6. Lack of “scientific” analysis
7. No need to change
8. Implementation cost
9. Added flooding
10. Affect home value
11. Increased danger backing out into the street
12. Insufficient public engagement

There were six residents who expressed support for the concept because they did experience a reduction in traffic and considered it safer for pedestrians.

At the request of the Town Commission to quantify the effect of the One-Way Trial, staff conducted traffic counts for the before and after conditions that indicate a reduction of 153 eastbound trips and 333 westbound trips. Additionally, the Police Department presented a report on crashes, showing no change in the before and after conditions.


Recommendation: As there are outstanding issues to be addressed for this or a similar concept creating safe pedestrian spaces throughout the Town, it is the recommendation of the staff to restore 89th and 90th Streets to two-way vehicular traffic. The exception would be the 200 block of 90th Street (between Harding and Collins Avenues). This block will remain one way heading west due to the dangerous curve south on Harding Avenue.

Consensus building is essential for the implementation of any project with Town-wide impacts and the full participation of all affected parties is fundamental to reach the “silver bullet” solution.

Charrettes have been used by different entities to understand the common goals and provide concepts to address urban design issues.

Should the Town Commission decide to pursue this method, I recommend a two-session charrette, four hours each, where consultants will guide the participants to select concepts that will achieve the common good.

Budget Impact: \$20,000 for a charrette. The Town will seek funding from the Citizens’ Independent Transportation Trust.



Guillermo Olmedillo, Town Manager



MG / DT



DISCUSSION ITEM MEMORANDUM

Agenda # 9E

Date: April 10, 2018

From: Guillermo Olmedillo, Town Manager
Lillian M. Arango, Town Attorney

Subject: Cone of Silence Procurement Procedures

Background: Section 3-17 (Opt Out Invoked) of the Town's Purchasing Code, provides that the Town has opted out of Section 2.11.1(t), "Cone of Silence," of the Miami-Dade County Code, and that such cone of silence requirements for competitive procurements and bidding are not applicable to the Town. In sum, the Cone of Silence prohibits or limits communications after the advertisement of a solicitation between potential vendors, bidders and proposers, and Town commissioners and Town staff, including professional staff, town manager, and members of the Town's selection or evaluation committee, during the pendency of a particular solicitation, bid, request for proposal or request for qualifications. The Cone of Silence restrictions would terminate at the beginning of the Town Commission meeting at which time a recommendation is made for award to the Town Commission.

Analysis: Staff and legal are seeking direction on whether to opt back in or impose the Cone of Silence provisions as applicable to all Town solicitations. This would require an Ordinance amending Chapter 3 of the Town's Purchasing Code to impose or require the Cone of Silence by either opting back into the County Cone of Silence or adopting similar provisions specifically applicable to the Town. Staff and legal recommend that the Town adopt in substantial form the County Cone of Silence provisions, as set forth in Section 2.11.1(t) of the County Code.

Budget Impact: Cost of advertising an ordinance.

Staff Impact: Preparation of an ordinance.

Recommendation: Approval of an Ordinance amending Chapter 3 of the Town's Purchasing Code to require a cone of silence for all solicitations.



Town of Surfside

DISCUSSION ITEM MEMORANDUM

Agenda # 9F

Date: April 10, 2018

From: Daniel Dietch, Mayor
Lillian M. Arango, Town Attorney

Subject: Firearm Preemption Lawsuit

Background: Over the past several years, there have been an unprecedented number of mass shootings in American communities including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida. In Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations “relating to firearms,” and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any “measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced.” The purported preemption, by using the terms “relating to firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is broad and vague, and could apply to a panoply of measures that the Town would like to consider enacting, including the restricting of guns in Town-facilities and parks, the placing of signs relating to guns in Town-facilities and parks, the regulation of gun accessories (such as holsters or bump stocks) or the creating of “gun free zones” or “gun safe zones.” The potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including but not limited to, damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”).

As a result of the Onerous Preemption Penalties, the Town Commission and its members are effectively prohibited from taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon Town action and preventing the Town Commission from responding to the petitions and requests of the Town's residents to do something to protect against the dangers of firearms. The Town Commission may desire to consider various reasonable measures related to firearms, including the restriction of guns in Town-facilities and parks, the placing of signs related to guns in Town-facilities and parks, the regulation of gun accessories (such as holsters or bump stocks), the creation of "gun free zones" or "gun safe zones," or other measures related to guns, but refrain from doing so because any action could possibly be viewed as falling under the preemption and subject to the Onerous Preemption Penalties.

On February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing the City Attorney to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition are invalid ("Lawsuit"), and invited other local governments to join the Lawsuit. Since the initial resolution adopted by the City of Weston, over ten local municipalities have passed similar resolutions and have elected to join in the Lawsuit. A copy of the sample Resolution to be adopted by the Town Commission should it elect to join the Lawsuit is attached as Exhibit "A" to this Memorandum, and the filed Complaint for Declaratory Relief is attached as Exhibit "B" to this Resolution.

Analysis: The Mayor and Town Attorney are seeking direction on whether the Commission desires to join the Lawsuit and authorize the Town Attorney to file a lawsuit naming the Town, and those, if any, individual members of the Commission (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon appropriate legal theories. The Town Attorney will charge the Town a flat fee of \$10,000 to represent the Town and the individual members of the Commission (in their official capacity) who choose to participate as plaintiffs, for the litigation and all appeals. If more than 15 cities choose to have the Town Attorney's law firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Town Attorney's law firm represent them), and refund any amounts paid in excess of the reduced flat fee. The Town also acknowledges that the Town Attorney's law firm will be representing other local governments and officials in this Lawsuit and waives any conflicts related to such representation.

Budget Impact: A flat fee of \$10,000 to represent the Town and the individual members of the Commission (in their official capacity) who choose to participate as plaintiffs, in the litigation and all appeals. The flat fee may be reduced depending on the number of cities that join the Lawsuit.

Staff Impact: Minimal staff time is anticipated for the oversight and monitoring of the Lawsuit.

Recommendation: The Mayor and Town Attorney are seeking direction on whether the Town, and individual commissioners electing to be named as plaintiffs in their official capacity, elect to join the Lawsuit and challenge the Onerous Preemption Penalties.



Daniel Dietch, Mayor



Lillian M. Arango,
Weiss Serota Helfman Cole & Bierman, P.L.,
Town Attorney

TOWN OF SURFSIDE, FLORIDA

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING AND DIRECTING THE TOWN ATTORNEY TO FILE A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID, AND INVITING OTHER LOCAL GOVERNMENTS TO JOIN THE LAWSUIT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, over the past several years there have been an unprecedented number of mass shootings in American communities including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida; and

WHEREAS, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

WHEREAS, in Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or Town ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations “relating to firearms,” and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any “measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced”; and

WHEREAS, the purported preemption, by using the terms “relating to firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is extremely broad and vague, and could apply to a panoply of measures that the Town would like to consider enacting, including the restricting of guns in Town facilities and parks, the placing

of signs relating to guns in Town facilities and parks, the regulation of gun accessories (such as holsters or bump stocks) or the creating of “gun free zones” or “gun safe zones”; and

WHEREAS, the potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including but not limited to damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”); and

WHEREAS, as a result of the Onerous Preemption Penalties, the Town Commission and its members fear taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon Town action and preventing the Town Commission from responding to the petitions and requests of the Town’s residents to do something to protect against the dangers of firearms; and

WHEREAS, the Town Commission and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in Town facilities and parks, the placing of signs related to guns in Town facilities and parks, the regulation of gun accessories (such as holsters or bump stocks), the creation of “gun free zones” or “gun safe zones,” or other measures related to guns, but have refrained from doing so because they could possibly be viewed as falling under the preemption and be subjected to the Onerous Preemption Penalties; and

WHEREAS, the Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials; and

WHEREAS, the Onerous Preemption Penalties infringe on the free speech rights of the Town Commission and its members, and interfere with their ability to perform their official duties; and

WHEREAS, the Onerous Preemption Penalties infringe upon the legislative immunity the members of the Town Commission enjoy under law when casting votes in their official capacities; and

WHEREAS, the portion of the Onerous Preemption Penalties related to the removal from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by allowing the Governor to remove a municipal official who has not been indicted for any crime, and violates due process; and

WHEREAS, on February 26, 2018, the Town of Weston passed Resolution 2018-30, authorizing and directing the Town Attorney to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth in Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition are invalid (“Lawsuit”), and invited other local governments to join the Lawsuit; and

WHEREAS, the Town desires to join the Lawsuit and invite other local governments to join also; and

WHEREAS, the Town Commission believes it is in the best interest of the citizens and residents of the Town of Surfside to file a lawsuit seeking a declaration that the

Onerous Preemption Penalties are invalid and urging other local governments to join the lawsuit as plaintiffs with the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1: That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2: The Town Commission hereby authorizes and directs the Town Attorney to file a lawsuit naming the Town and those any individual Members of the Commission (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any appropriate legal theories, including those set forth above.

Section 3: The Town Attorney will charge the Town a flat fee of \$10,000 to represent the Town and the individual Members of the Commission (in their official capacity) who choose to participate as plaintiffs, for the litigation and all appeals. If more than 15 cities choose to have the Town Attorney’s law firm represent them, the flat fee will be reduced by 1% for each Town over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Town Attorney’s law firm represent them), and refund any amounts paid in excess of the flat fee. The Town also acknowledges that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation.

Section 4: The Town Commission invites and urges other local governments and elected officials to join the Town as plaintiffs in the lawsuit and to coordinate their efforts with the Town.

Section 5: The Town Clerk is directed to distribute this Resolution to all local governments in Miami-Dade and Broward County.

Section 6: That the appropriate Town Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 7: That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 10th day of April, 2018.

Motion by: _____,

Second by: _____.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	_____
Commissioner Michael Karukin	_____
Commissioner Tina Paul	_____
Vice Mayor Daniel Gielchinsky	_____
Mayor Daniel Dietch	_____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

CASE NO.

CITY OF WESTON, FLORIDA;
MAYOR DANIEL J. STERMER,
COMMISSIONER MARGARET BROWN,
and COMMISSIONER BYRON L. JAFFE,
each as elected officials of the City of Weston,
Florida;

CITY OF MIRAMAR, FLORIDA;
MAYOR WAYNE M. MESSAM,
COMMISSIONER YVETTE COLBOURNE,
COMMISSIONER WINSTON F. BARNES,
and COMMISSIONER DARLINE B. RIGGS,
each as elected officials of the City of Miramar,
Florida;

CITY OF POMPANO BEACH, FLORIDA;
and MAYOR LAMAR FISHER,
as an elected official of the City of Pompano
Beach, Florida;

VILLAGE OF PINECREST, FLORIDA;
MAYOR JOSEPH M. CORRADINO,
VICE-MAYOR CHERI BALL,
COUNCILMEMBER ANNA
HOCHKAMMER, COUNCILMEMBER
DOUG KRAFT, and COUNCILMEMBER
JAMES E. MCDONALD, each as elected
officials of the Village of Pinecrest, Florida;

CITY OF SOUTH MIAMI, FLORIDA;

CITY OF MIAMI GARDENS, FLORIDA;
MAYOR OLIVER G. GILBERT, III, VICE-
MAYOR ERHABOR IGHODARO, PH. D.,
COUNCILMEMBER LISA C. DAVIS,
COUNCILMEMBER RODNEY HARRIS,
COUNCILMEMBER LILLIE Q. ODOM,
COUNCILMEMBER FELICIA ROBINSON,
and COUNCILMEMBER DAVID
WILLIAMS, JR., each as elected officials of the

City of Miami Gardens, Florida;
CITY OF MIAMI BEACH, FLORIDA;
MAYOR DANIEL GELBER,
COMMISSIONER MICKY STEINBERG,
COMMISSIONER MARK SAMUELIAN,
COMMISSIONER MICHAEL GÓNGORA,
COMMISSIONER KRISTEN GONZALEZ,
COMMISSIONER RICKY ARRIOLA, and
COMMISSIONER JOHN ALEMÁN
each as elected officials of the City of Miami
Beach, Florida;

CITY OF CORAL GABLES, FLORIDA; and
MAYOR RAUL VALDES-FAULI,
as an elected official of the City of Coral
Gables, Florida;

TOWN OF CUTLER BAY, FLORIDA;
MAYOR PEGGY R. BELL, and
COUNCILMEMBER ROGER CORIAT,
each as elected officials of the Town of Cutler
Bay, Florida; and

CITY OF LAUDERHILL, FLORIDA; and
MAYOR RICHARD J. KAPLAN, as an elected
official of the City of Lauderhill, Florida,

Plaintiffs,

vs.

THE HONORABLE RICHARD “RICK”
SCOTT, in his official capacity as Governor of
the State of Florida, and in his official capacity
as head of the Department of Revenue;

THE HONORABLE PAMELA JO BONDI, in
her official capacity as Attorney General of the
State of Florida;

THE HONORABLE ADAM H. PUTNAM,
in his official capacity as Commissioner,
Florida Department of Agriculture and
Consumer Services;

THE HONORABLE RICK SWEARINGEN,

in his official capacity as Commissioner,
Florida Department of Law Enforcement;

THE HONORABLE SHERRILL F. NORMAN,
in her official capacity as Auditor General of
the State of Florida; and

THE HONORABLE JIMMY PATRONIS, in
his official capacity as Chief Financial Officer
of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs bring this action against Defendants for declaratory relief, and state as follows:

Overview

1. This is an action by numerous Florida municipalities and elected officials challenging the onerous, unconstitutional, and unprecedented penalties contained in section 790.33, Florida Statutes. The penalties are imposed whenever a municipality or its officials are found to have violated or impinged upon the State Legislature's purportedly exclusive occupation of the field of regulation of firearms and ammunition.

2. Normally, the enactment of a law in violation of express preemption will, at most, result in a declaration that the law is null and void. The penalty provisions of section 790.33 go much further, threatening an official who violates section 790.33(1) with removal from office with no hearing and a civil fine of up to \$5,000 that must be paid personally by the official. Additionally, public funds may not be used to defend the official. Further, the violation of section 790.33(1) can lead to unlimited lawsuits by any persons or organizations that claim to be "adversely affected" by the law, exposing the municipality to substantial damages and attorneys'

fees. Finally, section 790.33(3)(b) specifically precludes the municipality from claiming good faith or reliance upon advice of counsel as a defense.

3. These onerous penalties are vindictive and expressly intended to be punitive in nature. *See* § 790.33(2), Fla. Stat. As a result, the penalties deter and chill officials from taking *any* actions in the area of firearms and ammunition, even in those areas where such actions are (or may be) allowed. *See, e.g.*, § 790.33(4), Fla. Stat.

4. The penalties are improper and must be declared null and void because they: (1) violate constitutional limitations on gubernatorial authority with respect to municipal officers; (2) conflict with the constitutional right of elected officials to legislative immunity in connection with their performance of legislative activities; (3) conflict with the constitutional right of municipalities to be immune from suit for discretionary functions; (4) are overbroad, in violation of local officials' free speech rights; (5) are unconstitutionally vague; (6) are irrational, arbitrary, and capricious; and (7) violate the right to petition and instruct local elected officials.

Jurisdiction and Venue

5. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes, seeking to declare that the penalty provisions contained in section 790.33(3), Florida Statutes, are unconstitutional and invalid. The Court has jurisdiction to grant declaratory relief. *See* §§ 86.011, 86.021, 86.101, Fla. Stat.; *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991).

6. Venue is proper in Leon County because the Defendants are all located in, or have their principal headquarters in, Leon County, Florida.

7. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

The Parties

8. The Plaintiffs are all incorporated municipalities existing under the laws of the State of Florida (the “Municipal Plaintiffs”) and elected officials in those municipalities (the “Elected Official Plaintiffs”) (together, the “Plaintiffs”). The Plaintiffs consist of:

- a. The Weston Plaintiffs. The CITY OF WESTON (“Weston”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. DANIEL J. STERMER is the duly elected Mayor of Weston. COMMISSIONERS MARGARET BROWN and BYRON L. JAFFE are duly elected Commissioners of Weston.
- b. The Miramar Plaintiffs. The CITY OF MIRAMAR (“Miramar”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. WAYNE M. MESSAM is the duly elected Mayor of Miramar. COMMISSIONERS YVETTE COLBOURNE, WINSTON F. BARNES and DARLINE B. RIGGS are duly elected Commissioners of Miramar.
- c. The Pompano Beach Plaintiffs. The CITY OF POMPANO BEACH (“Pompano Beach”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. LAMAR FISHER is the duly elected Mayor of Pompano Beach.
- d. The Pinecrest Plaintiffs. The VILLAGE OF PINECREST (“Pinecrest”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. JOSEPH M. CORRADINO is the duly elected Mayor of Pinecrest. CHERI BALL is the duly elected Vice-Mayor of Pinecrest.

COUNCILMEMBERS ANNA HOCHKAMMER, DOUG KRAFT, and JAMES E. MCDONALD are duly elected Councilmembers of Pinecrest.

- e. The South Miami Plaintiff. The CITY OF SOUTH MIAMI (“South Miami”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida.
- f. The Miami Gardens Plaintiffs. The CITY OF MIAMI GARDENS (“Miami Gardens”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. OLIVER G. GILBERT, III, is the duly elected Mayor of Miami Gardens. ERHABOR IGHODARO, PH. is the duly elected Vice-Mayor of Miami Gardens. COUNCILMEMBERS LISA C. DAVIS, RODNEY HARRIS, LILLIE Q. ODOM, FELICIA ROBINSON and DAVID WILLIAMS, JR are duly elected Councilmembers of Miami Gardens.
- g. The Miami Beach Plaintiffs. The CITY OF MIAMI BEACH (“Miami Beach”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. DANIEL GELBER is the duly elected Mayor of Miami Beach. COMMISSIONERS MICKY STEINBERG, MARK SAMUELIAN, MICHAEL GÓNGORA, KRISTEN GONZALEZ, RICKY ARRIOLA, and JOHN ALEMÁN are duly elected Commissioners of Miami Beach.
- h. The Coral Gables Plaintiffs. The CITY OF CORAL GABLES (“Coral Gables”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. RAUL VALDES-FAULI is the duly elected Mayor of Coral Gables.

- i. The Cutler Bay Plaintiffs. The TOWN OF CUTLER BAY (“Cutler Bay”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. PEGGY R. BELL is the duly elected Mayor of Cutler Bay. COUNCILMEMBER ROGER CORIAT is a duly elected Councilmember of Cutler Bay.
 - j. The Lauderhill Plaintiffs. The CITY OF LAUDERHILL (“Lauderhill”) is a municipality existing under the laws of the State of Florida and is located in Broward County, Florida. MAYOR RICHARD J. KAPLAN is the duly elected Mayor of Lauderhill.
9. Each of the Elected Official Plaintiffs performs legislative functions as part of his or her responsibilities as an elected representative, including, but not limited to, participating in public deliberations and voting on the adoption of ordinances and resolutions relating to the health, safety, and general welfare of the citizens of his or her respective municipality. Nearly all of the Elected Official Plaintiffs receive a salary from his or her respective municipality in compensation for his or her performance and services. Each Elected Official Plaintiff has taken an oath to uphold the Florida Constitution.
10. Each of the Municipal Plaintiffs is a municipality established pursuant to Article VIII, Section 2(a) of the Florida Constitution and is authorized to exercise home rule powers pursuant to Article VIII, Section 2(b) of the Florida Constitution.
11. The governing body for each of the Municipal Plaintiffs has affirmatively passed, by majority vote, resolutions indicating that the Municipal Plaintiffs would consider firearms-related measures if not for the preemption statute and its penalties, and each of the Elected Official Plaintiffs voted for those resolutions.

12. THE HONORABLE RICHARD “RICK” SCOTT (“Scott”) is the Governor of the State of Florida and is sued in his official capacity. Scott is a proper defendant in this action because the Governor is expressly designated as the official to enforce section 790.33(3)(e), Florida Statutes, regarding the removal from office of an official for violation of section 790.33(1), Florida Statutes. The Governor is also expressly designated in the Florida Constitution as the person who can initiate judicial proceedings against any county or municipal officer to enforce compliance with any duty or to restrain any unauthorized act, including any alleged violations of section 790.33(1), Florida Statutes. *See* Art. 4, § 1(b), Fla. Const. The Governor’s antagonistic position is further established by the fact that he signed into law the legislation that is now section 790.33, Florida Statutes, and challenged herein.

13. THE HONORABLE PAMELA JO BONDI (“Bondi”) is the Attorney General of the State Florida and is sued in her official capacity. Bondi is a proper defendant in this action because the Attorney General is the chief law enforcement officer of the State and is expressly designated to enforce a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, the Attorney General is designated to enforce the provisions that prohibit the registries and listing of gun owners, § 790.335(5)(c), Fla. Stat., and the provisions that relate to the right to bear arms in motor vehicles, § 790.251(6), Fla. Stat. The Attorney General also has the general right and authority to defend the constitutionality of state laws and, in fact, has intervened in at least one prior legal proceeding seeking to defend the validity of the preemption penalties found in section 790.33.

14. THE HONORABLE ADAM H. PUTNAM (“Putnam”) is the Commissioner of the Florida Department of Agriculture and Consumer Services (“FDOACS”) and is sued in his official capacity. Putnam is a proper defendant in this action because FDOACS is expressly

designated to enforce and administer a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, FDOACS is designated to enforce and administer the concealed weapons license regulations and program pursuant to section 790.06, Florida Statutes.

15. THE HONORABLE RICK SWEARINGEN (“Swearingen”) is the Commissioner of the Florida Department of Law Enforcement (“FDLE”) and is sued in his official capacity. Swearingen is a proper defendant in this action because FDLE is expressly designated to enforce and administer a portion of Chapter 790 for which the preemption and penalties in section 790.33 apply. Specifically, FDLE is designated to enforce and administer the provisions related to the sale of firearms pursuant to section 790.65(1)(a), Florida Statutes.

16. THE HONORABLE SHERRILL F. NORMAN (“Norman”) is the Auditor General of the State of Florida and is sued in her official capacity. Norman is a proper defendant in this action because, through her audit and review functions under section 11.45, Florida Statutes, the Auditor General is the official responsible for ensuring that municipalities do not use public funds for improper purposes. Thus, the Auditor General would be the responsible official to enforce the provision in section 790.33(3)(d), Florida Statutes, that prohibits the use of public funds to defend against or reimburse expenses incurred in defending an alleged violation of section 790.33(1), Florida Statutes.

17. THE HONORABLE JIMMY PATRONIS (“Patronis”) is the Chief Financial Officer (“CFO”) of the State of Florida and is sued in his official capacity. Patronis is a proper defendant in this action because the CFO is the official responsible for depositing and accounting for the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

18. Defendants Scott, Bondi, Putnam, and Patronis, collectively, also constitute the head of the Florida Department of Revenue and are being sued in that official capacity as well. The Florida Department of Revenue is the official State agency responsible for receiving the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

19. Defendants Scott, Bondi, Putnam, Swearingen, Norman, and Patronis each have an actual, cognizable interest in this action for, among other things, the reasons stated above.

BACKGROUND

Home Rule Powers And Preemption Generally

20. Prior to 1968, Florida operated under “Dillon’s Rule,” which provided that municipalities only had those powers that were expressly given to them by the State.

21. This changed with the approval by the voters of the 1968 Florida Constitution, which gave broad home rule powers to municipalities in Article VIII, Section 2(b):

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

22. Consistent with the new home rule powers given to municipalities by Florida’s electors, the Florida Legislature adopted the Home Rule Powers Act, which provided that “[t]he legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except . . . any subject expressly preempted to state or county government by the constitution or by general law.” § 166.021(3), Fla. Stat.

23. The Plaintiffs do not dispute in this action the power of the State, generally, to preempt certain subject matters from regulation by municipalities. In fact, the State has preempted several subject areas, including, *inter alia*, signs for gas stations and franchises, the

activities and operations of pest control services, the operation of the state lottery, the use of electronic communication devices in motor vehicles, inter-district transfers of groundwater, mobile home lot rents, minimum wage, short-term rentals, plastic bags, and managed honeybee colonies. However, other than in connection with the firearm preemption that is the subject of this action, the State has never created legislation that would impose penalties on local officials and local governments for the violation of a preemption statute. In every other circumstance, the only consequence of a determination that local action violates express preemption would be a finding that such local action is null and void.

The Firearm Preemption

24. In 1987, the Legislature enacted the Joe Carlucci Uniform Firearms Act, which is codified in section 790.33, Florida Statutes. The statute was amended to its current version in 2011.

25. The general preemption of regulations of firearms and ammunition is set forth in section 790.33(1), Florida Statutes, and will be referred to hereafter as the “Firearm Preemption”:

PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

26. Notwithstanding the broad language of the Firearm Preemption, the Municipal Plaintiffs retain some authority to regulate and operate in the area of firearms and ammunition, as well as in areas unrelated to firearm regulation that may affect the use and possession of

firearms. Not only does this Firearm Preemption language not apply to regulations that are related to, but not necessarily encapsulated within, the field of firearms and ammunition itself, section 790.33 expressly incorporates exceptions to the Firearm Preemption. For example, section 790.33(1) does not prohibit: zoning ordinances that encompass firearms businesses; law enforcement agencies from enacting or enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties; or any entity from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties. § 790.33(4)(a)–(c), Fla. Stat. Additionally, there is a provision requiring local jurisdictions to enforce state firearm laws. § 790.33(2)(a), Fla. Stat.

27. Although the Municipal Plaintiffs and the Elected Official Plaintiffs are allowed (and in one case required) to act in the area of firearms and ammunition, the permissible actions are vague and ambiguous. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(3)(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat. Indeed, many of the terms in section 790.33 are not defined, leading to further uncertainty.

28. As a result of the conflicting and undefined terms, as well as the lack of clarity in section 790.33, municipal attorneys are unable to give assurances to municipalities and elected officials that any particular desired act relating to or impacting firearms is free of risk of being

found to be preempted, even acts that the attorney’s legal analysis would suggest are likely not preempted.

The Onerous Consequences For Impinging Upon Or Violating the Firearm Preemption

29. Normally, ambiguity in a preemption statute would not prevent a municipality or its elected officials from acting in accordance with the wishes of their constituents. They would, instead, in good faith and upon reliance of advice of counsel, engage in reasonable regulation despite the lack of certainty, knowing that the consequence of a legal determination of preemption would be limited to a finding that the regulation is null and void.

30. However, in 2011, penalties were specifically added to section 790.33 that apply to both individual elected officials and local governments. The Legislature’s stated intent in imposing these penalties was to chill and deter local governments from taking *any* action at all that might affect firearms, even when such action might not be preempted. Section 790.33(2)(b) states:

It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

31. In order to ensure that there would be no “abuse of official authority,” onerous (and unprecedented) consequences were enacted for the violation or impingement of the Firearm Preemption (collectively, the “Onerous Preemption Penalties”), which also requires members of the judicial branch of government to inquire into the hearts and minds of members of the legislative branch to determine whether the alleged violation was “knowing and willful”:

- a. Potential removal from office. Section 790.33(3)(e) provides that “[a] knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or *removal from office by the Governor.*”
- b. Potential civil fine. Section 790.33(3)(c) provides that “[i]f the court determines that a violation was knowing and willful, the court shall assess a *civil fine of up to \$5,000* against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.”
- c. Prohibition on use of public funds for legal defense. Section 790.33(3)(d) provides that “[e]xcept as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.”
- d. Potential civil liability for damages up to \$100,000 and attorneys’ fees. Section 790.33(3)(f) provides that “[a] person or an organization whose membership is *adversely affected* by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for *actual damages*, as limited herein, caused by the violation.” It further provides that “[a] court shall award the prevailing plaintiff in any such suit: 1. Reasonable attorney’s fees and costs in

accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and 2. The actual damages incurred, but not more than \$100,000.” In addition, pursuant to section 790.33(3)(b), “[i]t is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.” Thus, even a good faith, unintentional violation of the preemption statute, done upon advice of counsel, could still result in an unlimited number of lawsuits against a Plaintiff Municipality for damages and attorneys’ fees.

The Desire, But Inability, Of Plaintiffs To Act In The Area Of Firearms

32. Over the past several years, there have been an unprecedented number of mass shootings in American communities, including at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018. As a result, many students throughout the country, as well as many adults, have petitioned and instructed their elected officials, including the Elected Official Plaintiffs, to take some action regarding firearms and ammunition to increase public safety.

33. Consistent with their constitutional authority, the Elected Official Plaintiffs and Municipal Plaintiffs desire to take reasonable, constitutional actions relating to firearms and have considered a panoply of possible measures, including, but not limited to, the restricting of guns in municipal-owned facilities and parks, the placing of signs relating to guns in municipal-owned facilities and parks, the regulation of gun accessories (such as holsters or high capacity magazines), or the creation of “gun free zones” or “gun safe zones.” These and other possible measures have been discussed by the Plaintiffs, but the attorneys for the Plaintiffs have warned them about the risk of the Onerous Preemption Penalties, even as to measures that are likely not

preempted by the Firearm Preemption, but could nonetheless result in costly litigation, the cost of which would be largely borne by the elected officials personally.

34. The Plaintiffs have also been threatened with the Onerous Preemption Penalties to the extent they seek to enact, promulgate, or enforce any regulation relating to firearms or ammunition. Most recently, a gun rights organization, which has sued a number of local governments under section 790.33 in the past, threatened litigation when the Coral Gables Plaintiffs considered enacting certain firearm-related measures and took a preliminary vote in February 2018 in favor of passing one such a measure. Through an email from its general counsel to the Coral Gables City Attorney, the entity reminded the City Attorney about a recent lawsuit in which it had sued a different South Florida city (and several of the city's employees) over a zoning measure that related to firearms. Additionally, a member of the public told the Coral Gables Plaintiffs that he and that same gun rights organization "will in fact sue" if the city so much as passed the proposed gun-related measures on first reading, and he also told the Coral Gables Mayor that he will "urge Governor Scott to remove you from office and fine you individually as permitted under Florida statutes."

35. Because of the actual and imminent threat of the imposition of the Onerous Preemption Penalties, the Elected Official Plaintiffs and Municipal Plaintiffs are uncertain as to their rights and responsibilities and fear taking any action that could even remotely be viewed as a violation of the Firearm Preemption.

36. Accordingly, the Plaintiffs have suspended or refrained from consideration of reasonable firearms measures that express the political views of the Municipal Plaintiffs and their citizens, and which may be appropriate for the specific circumstances of that municipality (as opposed to the "one size fits all" approach of the State), thus making the constitutionality of

the penalties an issue that is capable of repetition, yet evading review. In short, the Onerous Preemption Penalties have created the intended chilling effect upon taking any action and preventing the Plaintiffs from responding to the petitions and requests of their constituents relating to firearms.

Expedited Consideration

37. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and the Municipal Plaintiffs and the Elected Official Plaintiffs hereby request such consideration.

COUNT I

VIOLATION OF CONSTITUTIONAL LIMITATIONS ON GUBERNATORIAL AUTHORITY WITH RESPECT TO MUNICIPAL OFFICERS **(Elected Official Plaintiffs Against Defendant Scott)**

38. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

39. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the removal penalty provided for in section 790.33(3)(e), Florida Statutes, violates the constitutional limitations on the Governor's authority to remove municipal elected officials from office.

40. The authority of the Governor vis-à-vis duly elected municipal officials is circumscribed by the Florida Constitution, and the Legislature lacks the authority to expand the Governor's authority through section 790.33(3)(e), which purports to allow the Governor to remove from office "any person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a)," if that official violated the Firearm Preemption in a "knowing and willful" manner.

41. Article IV, Section 7(c) of the Florida Constitution provides that “[b]y order of the governor, any elected municipal officer *indicted for crime* may be *suspended* from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.” (emphasis added).

42. There is, however, no constitutional authority for the Governor to remove from office any municipal elected official simply because that individual knowingly and willfully violated the Firearm Preemption. Even a knowing and willful violation of the Firearm Preemption is not tantamount to an indictment for committing a crime. Moreover, the constitutional authority conferred by Article IV, Section 7(c) merely provides for the *suspension* of the indicted municipal official, not his or her automatic and permanent removal.

43. In fact, the Governor’s authority to remove a county official pursuant to section 790.33(3)(e), Florida Statutes, has already been stricken as unconstitutional because the purported statutory authority exceeded the Governor’s constitutional authority to suspend county officials pursuant to Article IV, Section 7 of the Florida Constitution. *Marcus v. Scott*, 2014 WL 3797314 (Fla. 2d Jud. Cir. June 2, 2014).

44. The court’s reasoning in *Marcus* is instructive here:

This Court further finds that [section 790.33] may not constitutionally authorize the Governor to remove Plaintiffs from office in the event that they are found to have committed a knowing and willful violation of the State’s preemption of firearms regulation. Article IV, section 7, Florida Constitution, authorizes the Governor only to suspend county commissioners and recommend their removal by the Florida Senate; *the Legislature has no power to expand* the Governor’s suspension power into a removal power. *See In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520, 523 (Fla. 1975) (holding that a constitutional prescription of the manner in which an action should be taken is a prohibition against a different manner of taking the action); *Bruner v. State Commission on Ethics*, 384 So. 2d 1339, 1340-41 (Fla. 1st DCA 1980) (holding that the Florida

Legislature may not vary from the constitutional allocation of power in the gubernatorial suspension of public officials). *In re Advisory Opinion of Governor Civil Rights*, at p. 523 stated: “The principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it.” (citations omitted) “Therefore, *when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.*” (Emphasis Supplied).

45. As such, the Court should declare that section 790.33(3)(e), as applied to the Elected Official Plaintiffs, is invalid and unconstitutional.

46. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(e), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(e), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT II

VIOLATION OF LEGISLATIVE IMMUNITY AND SEPARATION OF POWERS **(Elected Official Plaintiffs Against All Defendants)**

47. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

48. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate the Elected Official Plaintiffs' well-settled right to legislative immunity in the enactment of legislation.

49. Among the Onerous Preemption Penalties are two punitive provisions that specifically target individual elected officials for actions taken in their purely legislative capacities: (1) the possibility of a \$5,000 fine; and (2) removal from office by the Governor upon a finding that the elected official violated the Firearm Preemption in a "knowing and willful" manner.

50. Additionally, section 790.33(d) precludes the expenditure of any public funds to defend the elected official or reimburse the elected official if that official's conduct is found to

be “knowing and willful,” thereby requiring the elected official to use personal funds to pay attorneys for his or her defense.

51. The “knowing and willful” components of section 790.33(3) necessarily require an inquiry into the motives and intent of the elected official in voting as he or she did, in order to potentially punish that local legislator for such a vote.

52. Such an inquiry is an invasion of the legislative immunity afforded to elected officials when acting within the sphere of legitimate legislative activity.

53. The concept of legislative immunity is a fundamental component of American democracy. As the United States Supreme Court has observed:

The principle that legislators are absolutely immune from liability for their legislative activities has long been recognized in Anglo–American law. This privilege has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries and was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation.

* * *

Because the common law accorded local legislators the same absolute immunity it accorded legislators at other levels of government, and because the rationales for such immunity are fully applicable to local legislators, we now hold that local legislators are likewise absolutely immune from suit ... for their legislative activities.

Bogan v. Scott-Harris, 523 U.S. 44 (1998) (internal quotation marks and citations omitted). As the *Bogan* Court further explained, “Absolute immunity for local legislators ... finds support not only in history, but also in reason.... ‘[A]ny restriction on a legislator’s freedom undermines the “public good” by interfering with the rights of the people to representation in the democratic process.’” *Id.* at 52 (quoting *Spallone v. United States*, 493 U.S. 265, 279 (1990)).

54. “Furthermore, the time and energy required to defend against a lawsuit are of particular concern at the local level, where the part-time citizen-legislator remains commonplace.

. . . And the threat of liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability.” *Id.* (citing *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951), and *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982)).

55. “Absolute legislative immunity attaches to all actions taken ‘in the sphere of legitimate legislative activity.’” *Id.* at 54 (citing *Tenney, supra*, at 376). Any inquiry into the motivations or intent of local legislators, therefore, is prohibited. *Id.* at 55 (“Furthermore, it simply is ‘not consonant with our scheme of government for a court to inquire into the motives of legislators.’” (quoting *Tenney*, 341 U.S. at 377)). The threat of proceedings against the Elected Official Plaintiffs, whether for monetary or injunctive relief, “creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation.” *Supreme Court of Va. V. Consumers Union of U.S., Inc.*, 445 U.S. 719, 733 (1980) (quoting *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503 (1975)).

56. The Florida Supreme Court has echoed the importance of legislative immunity in its own jurisprudence. In *McNayr v. Kelly*, 184 So. 2d 428 (Fla. 1966), the Florida Supreme Court, citing federal precedents, first expressly acknowledged the absolute privilege from liability that elected officials enjoy for conduct in their official capacities, and stressed its critical role:

The justification for [the immunity] is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.

* * *

In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.

Id. at 431 n. 12. Since *McNayr*, other Florida courts, citing *McNayr* and U.S. Supreme Court precedents like *Tenney*, have reaffirmed the application of legislative immunity to local legislators and concluded that the scope of the immunity must be broadly construed. *See, e.g., Prins v. Farley*, 208 So. 3d 1215 (Fla. 1st DCA 2017); *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So. 2d 455 (Fla. 4th DCA 2006); *P.C.B. P'ship v. City of Largo*, 549 So. 2d 738 (Fla. 2d DCA 1989).

57. Florida courts have also concluded that legislative immunity has independent roots in the Florida Constitution's separation of powers doctrine. *See Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 524 (Fla. 1st DCA 2012) (recognizing that legislative privilege, which derives from legislative immunity, "exists by virtue of the separation of powers provision of the Florida Constitution"); *see also Wallace v. Dean*, 3 So. 3d 1035, 1045 (Fla. 2009) ("[W]e take this occasion to reaffirm that, in Florida, governmental immunity derives entirely from the doctrine of separation of powers, not from . . . any statutory basis." (citations and quotations marks omitted)). Florida's separation of powers doctrine is set forth in Article II, section 3 of the Florida Constitution: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The doctrine in Florida has been applied to maintain a *strict* separation of powers. *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004).

58. The First District explained:

The importance of this provision cannot be overstated. Our supreme court described the separation of powers as "the cornerstone of American democracy." ... The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering

information on a bill. Our state government could not maintain the proper “separation” required by Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

Expedia, 85 So. 3d at 525.

59. The Onerous Preemption Penalties, as applied to the Elected Official Plaintiffs, breach the strict separation of powers doctrine by specifically authorizing the judiciary to inquire into the motivations and intent of local legislators to determine whether they knowingly and willfully violated the Firearm Preemption. This is precluded by binding precedent and threatens “the cornerstone of American democracy.”

60. The Legislature was well aware that its enactment of the Onerous Preemption Penalties targeting local elected officials would potentially eviscerate legislative immunity and undermine the principles of democratic representation. *See* Staff Final Bill Analysis, Bill #: CS/CS/CS/HB 45 (“Bill Analysis”). The Bill Analysis expressly states:

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts. Absolute immunity for legislators has historically been recognized as a “venerable tradition” which has withstood the development of the law since pre-colonial days. Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels. The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers. Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.

Id. at 4 (footnotes omitted). The Bill Analysis further recognized that notwithstanding legislative immunity, citizens retain the legal remedy of challenging preempted ordinances and obtaining declaratory and injunctive relief to prevent enforcement of preempted local laws. *Id.*

61. And yet, despite the Bill Analysis’ recognition of the critical significance of legislative immunity, the Legislature imposed the Onerous Preemption Penalties on individual

elected officials, based entirely on an inquiry into the elected officials' motivation in enacting local legislation.

62. The Bill Analysis' only basis for attempting to penalize the Elected Official Plaintiffs despite an immunity that the Bill Analysis recognizes as "a 'venerable tradition,' which has withstood the development of the law since pre-colonial days," is that "[a]rguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field." Bill Analysis at 4. The reasoning underlying this approach is that the Legislature's preemption would make the enactment of local legislation and the voting of elected officials into "ministerial" acts. *Id.*

63. The adoption of ordinances and resolutions are not, however, ministerial acts. Lawmaking, such as the adoption of ordinances and resolutions, requires the exercise of discretion in balancing the costs of the proposed legislation against the legislation's relative benefits. "Voting for an ordinance" is "quintessentially legislative" conduct. *Bogan, supra*, at 55.

64. Furthermore, the question of whether a particular legislative act runs afoul of the Firearm Preemption can be determined only after review by a court, considering the express language of the preemption itself and any other general laws relating to gun regulation.

65. Given the variety of statutory and constitutional provisions affecting local firearms and ammunition regulation, the sphere of legitimate local activity in this field is not clearly defined. Rather, the development of some policies in the field of regulation of firearms and ammunition is clearly within the province of local governments, who serve closest to the people who are actually affected by gun violence. If states are the laboratories of our democracy, municipalities are the scientists. Local governments are where democracy flourishes in its truest

and most accessible sense. As issues relating to gun activity develop and evolve in particular jurisdictions, the Elected Official Plaintiffs can, should, and desire to react accordingly and in the best interest of the local community.

66. The electoral process, which allows for removal of elected officials, and the ability and duty of the judiciary to declare preempted legislation null and void, are fully adequate “checks” on the Elected Official Plaintiffs. The punitive provisions of section 790.33 are unnecessary and unconstitutional.

67. As such, the Court should declare section 790.33(3), Florida Statutes, invalid and unconstitutional.

68. Based on the foregoing, all elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Elected Official Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that sections 790.33(3)(a)–(e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT III

VIOLATION OF GOVERNMENTAL FUNCTION IMMUNITY **(Municipal Plaintiffs Against All Defendants)**

69. The Municipal Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

70. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida Statutes, is invalid because it violates the discretionary governmental immunity of the Municipal Plaintiffs by creating a strict liability cause of action for damages (up to \$100,000), not inclusive of attorneys' fees and costs, against municipalities for performing the discretionary governmental act of enacting or enforcing ordinances or regulations. The Municipal Plaintiffs face liability even if their officials acted in good faith and in reliance on counsel.

71. Under Florida law, there are certain policy-making, planning, or judgmental governmental functions that are inherent in the act of governing and therefore ought not to be subjected to scrutiny by judge or jury because it would inappropriately entangle the courts in fundamental questions of planning and policy. *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979).

72. Notwithstanding the Legislature's enactment in section 768.28, Florida Statutes, of a limited waiver of sovereign immunity for tort actions against local governments (up to specified monetary caps), the Florida Supreme Court has held that "even absent an express exception in section 768.28 for discretionary functions, certain policy-making, planning or judgmental governmental functions cannot be the subject of traditional tort liability." *Id.* at 1020.

73. "Accordingly, where governmental actions are deemed discretionary, as opposed to operational, the government has absolute immunity from suit." *City of Freeport v. Beach Community Bank*, 108 So. 3d 684 (Fla. 1st DCA 2013).

74. The decision of a municipality's governing body to enact an ordinance or regulation is quintessential discretionary conduct. It involves the determination of governmental policy and objective; is an essential step in the accomplishment of the policy or objective; requires the exercise of basic policy evaluation and judgment on the part of the government; and is within the lawful authority and duty of the governing body. *Trianon Park Condo. Ass'n v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985).

75. Even if a Court were to ultimately determine that a local government and its municipal attorney were incorrect and enacted an ordinance that violated the Firearm Preemption, the decision to enact the ordinance was still a discretionary function that is protected by absolute immunity.

76. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

77. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT IV

VIOLATION OF RIGHT TO FREE SPEECH DUE TO OVERBREADTH **(Municipal And Elected Official Plaintiffs Against All Defendants)**

78. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

79. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida

Statutes, is unconstitutional on grounds of overbreadth. Such overbreadth results in an infringement of the Elected Official Plaintiffs' free speech rights secured by Article I, Section 4 of the Florida Constitution.

80. Section 790.33(3)(f) states, in pertinent part, "A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy *promulgated* or caused to be enforced in violation of this section may file suit against any ... municipality[.]"

81. The term "promulgate" is defined in various ways:

1. to make (something, such as a doctrine) known by open declaration; proclaim
2. to make known or public the terms of (a proposed law)
3. to put (a law) into action or force

See <https://www.merriam-webster.com/dictionary/promulgate>; see also *Black's Law Dictionary* (10th ed. 2014). The statute does not specify which of these potential definitions governs the potential liability of a municipality under section 790.33(3)(f). However, the first two definitions immediately demonstrate the vagueness and over-breadth problems with the statute.

82. While case law suggests that elected officials do not typically enjoy constitutional free speech protection when merely *casting a vote* in their elected, representative capacities, they do, however, enjoy free speech rights when advocating on behalf of particular public policies. The Elected Official Plaintiffs frequently address their colleagues and members of the public from the dais on issues of great public significance, including potential firearm regulation. In doing so, they certainly "make (something, such as a doctrine) known by open declaration" or "proclamation." They just as frequently "make known or public the terms of a *proposed* law," even if that law is never ultimately enacted.

83. Because the Legislature's use of the term "promulgate" is overbroad, it is virtually impossible for any elected official to know when his or her protected free speech crosses the line into "promulgation" that might give rise to significant municipal and personal liability. This uncertainty infringes upon the free speech rights of the Elected Official Plaintiffs and works to deter them from engaging even in simple, constitutionally protected advocacy of a political position. Furthermore, the overbreadth of the term "promulgate" purports to make speech that is unquestionably protected by the Florida Constitution subject to state-sanctioned strict liability.

84. The Municipal Plaintiffs similarly are deterred from encouraging public discourse at public meetings for fear that such discourse might lead their elected officials to "promulgate" views that contravene the preemption endorsed by the Legislature. In fact, the Bill Analysis expressly acknowledged that the penalty provision found in section 790.33(f) will have a negative fiscal impact on municipalities and that any damages awarded could even be satisfied "by seizure of municipal property." Bill Analysis at 4, 7.

85. Additionally, the statute is overbroad in that it restricts the protected speech and conduct of the electorate who desire to promote positive change in their own communities. Indeed, the very existence of the Onerous Preemption Penalties causes constituents to refrain from constitutionally protected speech or expression with their elected officials out of fear that their public comments could lead to severe sanctions against the very municipality they seek to improve, not to mention the local leaders who serve them. As a result, a substantial amount of protected speech concerning the regulation of firearms and ammunition is effectively prohibited or chilled in the process.

86. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

87. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT V

VIOLATION OF RIGHT TO DUE PROCESS DUE TO VAGUENESS **(Elected Official Plaintiffs Against All Defendants)**

88. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

89. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties in section 790.33, Florida Statutes, are void for vagueness.

90. In a penal statute, the Due Process Clause of the Florida Constitution, Article I, Section 9, requires the use of language that is sufficiently definite to provide fair notice to individuals who may be affected of what conduct is prohibited.

91. Section 790.33 fails to give adequate notice of what conduct is prohibited. It appears to proscribe municipalities and their elected officials from enacting or causing to be enforced any local ordinance or administrative rule or regulation “impinging” upon the Legislature’s “exclusive occupation of the field of regulation of firearms and ammunition.” However, this section is riddled with ambiguity. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat.

92. This language of section 790.33 is so vague and so broad that a person of common intelligence must speculate about its meaning and be subjected to punishment if the

guess is wrong. Further, because of its imprecision, section 790.33 necessarily invites arbitrary and discriminatory enforcement.

93. Section 790.33 is a penal statute in that it imposes effectively criminal punishment against the Elected Official Plaintiffs. It has a “knowing and willful” scienter or *mens rea* requirement. When the scienter requirement is met, the Elected Official Plaintiffs may be fined up to \$5,000 and removed from office, and the Elected Official Plaintiffs may not use public funds in their defense.

94. The Elected Official Plaintiffs have property rights in continued employment as elected officials. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538–39 (1985); *McRae v. Douglas*, 644 So. 2d 1368, 1372–73 (Fla. 5th DCA 1994). The Elected Officials also have property rights in the use of their private funds.

95. The purpose and intent of the Onerous Preemption Penalties are punishment, retribution, and deterrence.

96. As such, the Court should declare section 790.33, Florida Statutes, invalid and unconstitutional.

97. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33, Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33, Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT VI

VIOLATION OF THE PROHIBITION ON ARBITRARY AND CAPRICIOUS LAWS AND LAWS THAT LACK A RATIONAL BASIS (Municipal And Elected Official Plaintiffs Against All Defendants)

98. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

99. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3), Florida Statutes, is invalid because it treats the violation of the preemption of local government regulation of firearms differently than violations of other preempted subject areas and gives more protection to the newly created right against local regulation of firearms than to any other rights (even those set forth in the Florida Constitution), all with no rational basis. This Count also seeks a declaratory judgment that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of

firearms by a municipality on municipal-owned property, are invalid because they arbitrarily and capriciously treat municipal-owned property differently than privately owned property, with no rational or reasonable basis to distinguish between the two.

100. Under Florida law, all statutes must, at a minimum, have a rational basis and must not be arbitrary and capricious. *See Dept. of Corrections v. Fla. Nurses Ass'n.*, 508 So. 2d 317, 319 (Fla. 1987). This requirement is rooted in doctrines of equal protection and due process, as well as Article III, Section 11(b) of the Florida Constitution (“In the enactment of general laws on other subject, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.”); *see also Goodman v. Martin County Health Dept.*, 786 So. 2d 661, 664 (Fla. 4th DCA 2001) (“A statute that is vague, arbitrary, or capricious and bears no reasonable relationship to a legitimate legislative intent is unconstitutional.”).

101. Under Section 790.33(3), individual elected officials who vote for an ordinance in violation of the Firearm Preemption are subject to severe consequences (removal from office and civil fines), while individual elected officials who vote for an ordinance in violation of other state preemptions (or even in violation of other state constitutional rights) are not. Similarly, municipalities that enact ordinances in violation of the Firearm Preemption are subjected to lawsuits from all adversely affected persons and organizations and to damages up to \$100,000, plus attorneys’ fees, while municipalities that enact ordinances in violation of other state preemptions (or even in violation of state constitutional rights) are not.

102. There is no rational basis for such disparate treatment. The concept of preemption is of equal importance regardless of the subject matter of the preemption, and the consequences for violation should be the same. The consequence of a violation of the Firearm Preemption was, until the enactment of the Onerous Preemption Penalties in 2011, always the same as a violation

of any other preemption statute—a declaration that the preempted ordinance is invalid. The creation of different consequences for a preemption violation is arbitrary and capricious and has no rational basis.

103. In essence, the Onerous Preemption Penalties create a private right to be free from local governmental regulation of firearms, and then makes that right sacrosanct and elevates and protects it more than even the core constitutional rights declared in Article 1 of the Florida Constitution (including the right of equal protection, religious freedom, freedom of speech, freedom of the press, due process, etc.), by creating severe penalties for the violation of only that right.

104. In addition, under Florida law, private property owners are permitted to pass and enforce “rules” relating to firearms and ammunitions on their property. However, pursuant to section 790.33(1), Florida Statutes, local government property owners may not do so.

105. The Plaintiffs have the same interest as private property owners in keeping their government-owned premises, visitors, and employees safe. Elsewhere in Chapter 790, the State recognized this important interest by exempting the possession of a concealed firearm at any meeting of the governing body of a municipality by an individual who is otherwise licensed to carry a concealed firearm. § 790.06(12)(a)(7), Fla. Stat. However, prior to the meeting, as soon as the meeting is over, and every other day of the week, the employees of a municipality who are clearly deserving of protection are again subject to the potential danger posed by firearms.

106. The Plaintiffs, like many private property owners throughout the State, desire to enact and enforce rules related to firearms and ammunition on their property that do not conflict with the fundamental right to bear arms, but that provide for more uniform protection and safety of property, visitors, and employees.

107. Section 790.33(1), taken together with other Florida Statutes, creates a classification scheme treating local government property owners differently than private property owners with no reasonable relationship to the purpose of the law. There is no rational basis for treating local governments who seek to impose limitations on the use of firearms and ammunition on their property differently from private entities who seek to do so on their privately owned property.

108. As such, the Court should declare section 790.33(3), Florida Statutes, and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, invalid and unconstitutional.

109. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties contained in section 790.33(3), Florida Statutes, are invalid, and unconstitutional, and that the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation by the Plaintiffs of firearms on municipally owned property, and the imposition of the Onerous Preemption Penalties for the enactment of such regulation, are also invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- a. Declaring that section 790.33(3), Florida Statutes, is unconstitutional;
- b. Declaring that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, are unconstitutional; and
- c. Granting such other relief as this Court deems just and proper.

COUNT VII

VIOLATION OF RIGHT TO PETITION AND INSTRUCT (Municipal And Elected Official Plaintiffs Against All Defendants)

110. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

111. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate Article I, Section 5 of the Florida Constitution by

rendering illusory the rights of residents living in the Municipal Plaintiffs to petition and instruct their elected representatives.

112. Article I, Section 5 of the Florida Constitution reads as follows: “**Right to assemble.** – The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.” The Florida Supreme Court has characterized the right to petition as “inherent and absolute.” *Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840, 843 (Fla. 1993). Underlying the constitutional right to petition is the concept of government accountability, as noted in *Reynolds v. State*, 576 So. 2d 1300 (Fla. 1991).

113. The U.S. Supreme Court described the right just as eloquently:

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. ... For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions – principles which the Fourteenth Amendment embodies in the general terms of its due process clause.

De Jonge v. State of Oregon, 299 U.S. 353, 364 (1937).

114. Florida is one of only sixteen states with a constitutional provision that authorizes the people to “instruct their representatives.”¹ These rights were typically included in state constitutions because “the drafters of the earliest state constitutions labored under the recent memory of British attempts to suppress town meetings and assert control over representative governments[.]” and “those actions figured prominently in colonists’ decisions to safeguard the

¹ See Cal. Const. art. I, § 3; Idaho Const. art. I, § 10; Ind. Const. art. I, § 31; Kan. Const. Bill of Rights, § 3; Me. Const. art. I, § 15; Mass. Const. Declaration of Rights, art. 19; Mich. Const. art. I, § 3; Nev. Const. art. I, § 10; N.H. Const. art. I, § 32; N.C. Const. art. I, § 12; Ohio Const. art. I, § 3; Or. Const. art. I, § 26; Tenn. Const. art. I, § 23; Vt. Const. Declaration of Rights, art. XX; W. Va. Const. art. III, § 16.

right to assemble, and to fuse it to guarantees of the right of instruction and the right to petition the legislature for assistance in redressing wrongs.” *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 121 P. 3d 671, 681 (Or. 2005) (emphasis added).

115. The Elected Official Plaintiffs all take an oath of office to uphold the Florida Constitution in their roles as representatives of their constituents. The Onerous Preemption Penalties preclude the Elected Official Plaintiffs from fulfilling their oath of office.

116. The Onerous Preemption Penalties do irreparable damage to the rights of petition and instruction enshrined in the Florida Constitution. These rights have no value if the constituents invoking them are faced with the certainty that, as to particular topics solely of the Legislature’s choosing, their concerns *must* be ignored by their elected officials at the risk of facing significant fines and removal from office.

117. The Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials. The right to petition and instruct elected officials, which is guaranteed to Florida citizens by the Florida Constitution, is effectively suppressed by the Onerous Preemption Penalties, as the collective will of the local citizenry on the subject of firearm regulation, most clearly manifested through the legislative or quasi-legislative actions of their democratically elected local representatives, is silenced.

118. The Elected Official Plaintiffs are, through the threat of sanction, precluded from giving voice to the political interests of their constituents, whether by enactment of resolutions and ordinances or arguably even by public expressions of disapproval, on the subject of reasonable gun regulation within their community. Even if limited to symbolic, non-enforceable gestures, the will of the Municipal Plaintiffs’ residents is suppressed by the Onerous Preemption

Penalties, which threaten to punish the Elected Official Plaintiffs and subject the Municipal Plaintiffs to potentially exorbitant liabilities, if they enact, attempt to enforce, or even “promulgate” any “ordinance, regulation, measure, directive, rule, enactment, order, or policy” relating to gun regulation.² *See* § 790.33(3)(f), Fla. Stat.

119. To be clear, Plaintiffs are not alleging that local residents are entitled to have laws enforced that are inconsistent with or preempted by state statute. However, it *is* the Plaintiffs’ contention that local constituencies have a constitutional right to petition their democratically elected local officials and invoke their assistance in enacting local legislation, even if that legislation is ultimately determined to be unenforceable and merely symbolic. It is the role of the judiciary, not the Legislature, to determine whether particular local legislation is enforceable in light of controlling (and even preemptive) state law. Ironically, the Legislature was well aware of this legal remedy available to adversely affected individuals, but intended to threaten into submission (and eventually punish) local governments that do not “bend the knee.”

120. The idea that the Governor may summarily remove from office any elected local representative merely for *voting* in accordance with the petitions and instructions of his or her constituents, but who is later found to have knowingly and willfully voted in a manner inconsistent with the will of the Legislature, erodes the foundation of American democracy.

121. Accordingly, the Court should declare that the Onerous Preemption Penalties violate the constitutional rights to petition and instruct under Article I, Section 5 of the Florida Constitution.

² The inclusion of the term “promulgate,” with its inherent ambiguities and potentially broad interpretation, enhances the chilling effect of the Onerous Preemption Penalties on the democratic process.

122. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that the penalty provisions set forth in sections 790.33(3)(a), (c), (d) and (e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

Dated this 2nd day of April, 2018.

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COMMISSION COMMUNICATION

Agenda Item # 9G

Agenda Date: April 10, 2018

Subject: Residential Construction Regulation

Background: Construction sites having a valid Planning and Zoning approval and/or a Building Permit for construction in some cases have become unkempt and are creating conditions ranging from nuisance to hazard for neighboring properties. Management of said conditions has become a priority for the Town in maintaining a consistent and peaceful quality of life.

Analysis: Sections of the Town of Surfside Code of Ordinances address this condition as follows:

Section 34-70 - Vegetation. (enclosed)

Section 34-71. - Vacant lots. (enclosed)

Section 34-79. - Unfinished, vacant, unoccupied or closed structures, construction sites or vacant lots; maintenance procedures required of owners. (enclosed)

Section 14-55. - Vacant lots or buildings. (enclosed)

Courtesy inspections and notices are routinely performed and sent to owners of properties that exhibit this condition. To date only one property owner was issued a violation and the case was presented before the Surfside Special Master for adjudication. All other property owners have complied promptly to requests for corrections.

Budget Impact: There is no budget impact for this existing, on-going activity

Staff Impact: There is no staff impact for this existing, on-going activity.

Recommendation: Continued support of staff to enforce the Town Code related to construction sites.

Guillermo Olmedillo, Town Manager

AG/RP

Residential Construction Regulation

Code References:

Sec. 14-55. - Vacant lots or buildings.

The owner of a vacant lot or building will take such steps and perform such acts as may be required of him or her from time to time to ensure that the lot or building and its adjoining yard remain safe and secure and do not present a hazard to the adjoining property or the public. Owners will be responsible for maintaining their lots and buildings so that they do not become an unoccupied hazard and so that they do not become a real or aesthetic nuisance to their adjoining property owners.

(a) Vacant lot. The owner protects and maintains the lot as follows:

- (1) The owner will not permit garbage and solid waste to accumulate on the property.
- (2) Unsafe buildings and structures shall be demolished.
- (3) Junked materials, construction equipment, or construction materials will not be stored on the lot.
- (4) The owner shall maintain the lot in a park-like setting in accordance with a landscape plan approved by the city manager or his/her designee. At a minimum, the park-like setting must be grass or appropriate ground-cover encompassing the entire lot.
- (5) The owner will maintain plants and landscaping on the lot in accordance with this chapter. The lots shall be trimmed and mowed, with the height of grass and weeds being no more than eight inches.
- (6) Vacant lots shall be fenced with a four-foot fence. The fence shall maintain a maximum of 50 percent opacity. Chain-link fencing shall not be permitted. Fences under this section do not require approval by the design review board.

The foregoing shall not apply to active construction sites defined as those sites with active building permits on which work is being continuously pursued within the discretion of the building official.

(b) Failure to comply with any provisions set forth in this ordinance shall subject an owner, his successors or assigns, to the civil penalties set forth in the schedule of fines adopted by resolution.

(c) The town manager is hereby authorized and directed to employ necessary personnel and equipment to enter upon vacant lots whose owner or occupant fails to maintain the property in accordance with this section and to maintain same.

(1) In order to defray the cost to the town of maintaining such property, there is hereby levied and assessed against each owner or occupant who fails to maintain same, the costs resulting from gaining compliance with this section including the placement of fencing, landscaping, and continuous maintenance.

(2) All charges becoming due and payable under this subsection constitute, and are hereby imposed as liens against the real property, and, upon becoming delinquent April 1 of the following year, until fully paid and discharged, shall remain liens, equal in rank and dignity with the ad valorem taxes of the town, and may be satisfied by the sale of certificates in the same manner as is provided for the sale of certificates on delinquent ad valorem taxes. Such lien shall

be superior in rank and dignity to other liens, encumbrances, titles and claims in, to or against the real property involved.

(Ord. No. 1521, § 2, 4-14-09; Ord. No. 1621, § 2, 6-10-14; [Ord. No. 16-1646, § 2, 2-9-16](#))

Sec. 34-70. - Vegetation.

- (a) It is hereby declared and determined to be contrary to the public welfare, safety and property of the people of the town and, therefore, unlawful and in violation of the provisions of this Code, for any person to permit property owned or occupied by him to be so neglected and uncared for that there is a resulting excessive growth of grass, weeds, shrubs or other vegetation.
- (b) Following a determination by the town manager that any property in the town is so neglected or uncared for as to constitute prima facie evidence of a violation of the provisions of subsection (a) of this section, the town manager is authorized and directed to serve notice in writing upon the property owner or owners, or by posting such a notice upon the property itself in the event that the names and addresses of such owners are unknown to him, that a violation of such section exists and requiring such property owner to correct the condition constituting a violation within five days from the date of such a notice.
- (c) If the owner of such property shall, following the service of notice as provided in subsection (b) of this section, fail or refuse to correct the condition complained of, then and in such an event the town manager is empowered and authorized to cause such condition to be corrected. For such purpose, the town manager or such persons as he may employ may enter upon such property and cut, clean and remove from such property any accumulation or heavy growth of grass, weeds, shrubs or other vegetation.

(Code 1960, §§ 9-15—9-17)

Cross reference— Vegetation, ch. 82.

Sec. 34-71. - Vacant lots.

(a) It is hereby determined that vacant lots per se generate excessive growth of grass, weeds, shrubs and other vegetation, contrary to the public welfare, safety and property of the people of the town and, therefore, are unlawful, and in violation of the provisions of this Code. It is, therefore, declared that the town manager, in the enforcement of the provisions of this article and in discharging such duties, is hereby authorized and directed to employ necessary personnel and equipment and to enter upon such property and cut, clean and remove from such property any accumulation or heavy growth of grass, weeds, shrubs, or other vegetation.

(b) In order to defray the cost of clearing such vacant property, there is hereby levied and assessed against each and every vacant lot in the town, upon which the owner thereof may allow to accumulate excessive or heavy growth of grass, weeds, shrubs or other vegetation, an administrative fee, as provided for in the schedule of fines adopted by resolution, per cutting, cleaning or removal, as set forth in subsection (a) of this section, per time the town provides such maintenance, in addition to the actual costs incurred for said maintenance.

(Code 1960, § 9-19; Ord. No. 1621, § 2, 6-10-14)

Sec. 34-79. - Unfinished, vacant unoccupied or closed structures, construction sites or vacant lots; maintenance procedures required of owners.

(a) All owners of unfinished, vacant, unoccupied, closed or unfinished structures or buildings, construction sites or any other vacant lots shall comply with rules and regulations relating to such structures or buildings, construction sites or vacant lots as promulgated by the building official and in accordance with sections 34-66 through 34-70 relating to lot clearing. These rules and regulations shall specify those actions and time limits within which owners shall beautify, secure and/or patrol their structures or buildings.

(b) Noncompliance with this section shall be punishable in a manner as provided in section 1-8. Noncompliance with this section may result in the Town's taking such action as it deems appropriate under the circumstances, and a lien shall be imposed against the structure or building for recovery of all costs involved.

(c) If the owners or occupants of such lands within the town shall fail to comply with the requirements of this section, the town manager shall cause such work to be done and keep an account of the cost thereof, whereupon such cost shall be a charge and lien against the property so cleaned. Such existing liens or liens imposed hereafter shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts. Such liens shall be enforced by any of the methods provided in F.S. ch. 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state statutes, or may be foreclosed per F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner and/or operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this article.

(Ord. No. 1581, § 2, 9-13-11)



**Town of Surfside
Town Commission Meeting
April 10, 2018
7:00 pm**

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

DISCUSSION ITEM MEMORANDUM

Agenda #: 9I
Date: April 10, 2018
From: Vice-Mayor Daniel Gielchinsky
Subject: To address certain issues with the Town Manager's health and life insurance policies

Consideration: The Town Manager presently receives health insurance coverage through the Town's group policy. Certain medical providers that the Manager uses, however, do not accept the Town's policy. In addition, there is a gap of \$7,244 between what the Manager is entitled to receive under his contract with the Town in life insurance and the benefits that he is actually receiving.

Recommendation: As far as the health insurance component, I recommend that we permit the Manager to obtain his own health insurance coverage and that the Town reimburse him directly for that coverage. Since the Manager is eligible for Medicare and Medicare supplemental coverage, the cost of the Manager's coverage will be approximately the same or perhaps even less expensive than what the Town is presently paying for his health insurance coverage.

As far as the life insurance benefit, I am advised that the Town can obtain a new life insurance policy with a higher amount or the Town could agree to self-fund the gap. Obtaining the new life insurance would cost the Town additional money, and the Manager has advised me that he is amenable to having the Town self-fund the gap. Thus, I suggest that we make up the difference in coverage and what the Manager is entitled to receive by contract by self-funding this gap in coverage.