



**Town of Surfside
Zoning Code Workshop – Single Family Area
AGENDA**

February 4, 2021

6 p.m.

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

- 1. Opening**
 - A. Call to Order**
 - B. Roll Call of Members**
- 2. Introductory Statement and Background**
- 3. Proposed Process**
- 4. Overview of Code Layout**
- 5. Presentation of Draft Code's Regulations Affecting Single Family**
 - A. Lot Coverage**
 - B. Height**
 - C. Setbacks**
 - i. Average Setbacks**
 - ii. Encroachments**
 - D. Special Situations**
 - i. Corner Lots**
 - ii. Waterfront**
 - E. Accessory Structures**
 - F. Accessory Uses**
 - G. Fences**
 - H. Car Canopies**
 - I. Landscaping and Permeability**
 - J. Nonconformities**
 - K. Lot Splitting and Lot Aggregation**

L. Zoning Approval Procedures

- i. Design Review**
- ii. Variance**
- iii. Special Exception**
- iv. Conditional Use**

M. Architecturally Significant Buildings

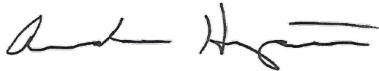
N. Temporary Signs

6. Public Comment

7. Question & Answer (based on public comment)

8. Adjournment

Respectfully submitted,



Andrew Hyatt
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.townofsurfsidefl.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.

MEMORANDUM

To: Mayor, Vice Mayor and Town Commission

From: Tony Recio, Esq., Assistant Town Attorney

cc: Andrew Hyatt, Jason Greene, Lilian Arango, Sandra McCready, and Walter Keller

Date: January 2, 2021

Re: Draft Zoning Code – Executive Summary

The draft zoning code (the “Revised Code”) is intended to replace Chapter 90 of the Town Code, the current zoning code (the “Current Code”). It uses the 2006 zoning code (the “2006 Code”) as a base with respect to code structure, most definitions, and particularly, district-specific regulations and allowable uses. Certain concepts from the Current Code were retained and inserted into the base 2006 Code, including the specific zoning district names and the presentation of allowable uses in each district in tabular form, which was a more user-friendly approach than the multiple district-specific lists of the 2006 Code. Unlike the Current Code, the Revised Code presents district-specific regulations such as setbacks, lot coverage, minimum lot area, etc. in tabular form consistent with the presentation of such regulations in the 2006 Code. As with the uses, the table of regulations is intended to provide relevant information in an easy-to-find and easy-to-read format. Other sections of the Current Code that were included in the Revised Code include the sign code, landscape code, and existing regulations regarding religious accommodations, reasonable accommodation procedures, curb cuts, vision clearance, aggregation of lots, materials and finishes, underground utilities, architecture, zoning in progress, beach sand quality, design standards for off-street parking and short-term rentals.

Because the Revised Code replaces the Current Code in its entirety, we have presented it in clean, non-redlined format. This version includes comments describing the derivation of many of the sections, and specific proposals for the Town Commission’s consideration.

The Revised Code is broken up into distinct articles as follows:

- Article I provides generally applicable definitions and guidance on measurement, enforcement, interpretation, future amendments to the code, cost-recovery, and impact on existing approvals and permits.
- Article II sets forth administrative and procedural matters with respect to permits, conduct of Planning and Zoning Board meetings, non-conforming uses, and zoning approvals (Special Exceptions, Conditional Uses, and Variances).
- Article III sets forth the zoning district scheme. The nomenclature of the current districts is retained so as to avoid the time and expense of re-zoning the entire Town.
- Article IV provides the allowable uses and regulations for each district. Tables are used to summarize information in an easily identifiable format. Specific conditions or circumstances are specified as notes after the tables. Additional prohibitions and use limitations addressing specific uses (such as medical marijuana dispensaries, short-term rentals, rooftop solar equipment, and structured parking garages) are provided in separate sections.
- Article V includes supplementary regulations separated into divisions. Division 1 includes general regulations for site design, accessory uses and structures, and site characteristics. Division 2 is the current sign code with minor modifications impacting temporary signage. Divisions 3 and 4 address off-street parking and off-street loading, respectively. Finally, Division 5 incorporates the current landscape code with minor tweaks to pervious area requirements.
- Article VI provides regulations governing specialized use considerations including provisions from the current code dealing with religious uses and reasonable accommodation procedures, both of which are impacted by federal law. A final specialized use consideration includes a new section for “Architecturally Significant Buildings” that is intended to give the Town Commission authority to ensure the protection of buildings with unique architectural character. Although related to Historic Preservation, this section is intended to expand on the concept to further preservation of the Town’s aesthetic imprint in the form of specific buildings and structures that may be identified by the Town Commission from time to time.

In reviewing the Revised Code, it may be helpful to consider it in terms of the following general topics:

1. Single family residential uses: The Revised Code retains the H30A and H30B districts from the Current Code. District regulations are set forth in the table in Section 90-155 and track the 2006 Code as modified by the August and November 2020 Zoning in Progress notices, including limitations on lot coverage exceptions (see Section 90-2 Definitions). The concept of average setbacks from the Current Code is included in a more simplified form in Section 90-178. Height limitations remain at 30 feet as measured from the crown of the abutting road. Additional limitations on projections and accessory structures are set forth in Sections 90-177 and 90-182, respectively. Consistent with the August and November Zoning in Progress notices, rooftop decks are prohibited in the single-family districts. Specific application requirements for the

Planning and Zoning Board's proper evaluation of new construction and additions are listed in Section 90-52.

2. Collins Avenue oceanfront multifamily and hotels: The existing H120 district has been retained from the Current Code although allowable uses and regulations set forth in Sections 90-145 and 90-155, respectively, are largely consistent with the 2006 Code. Most importantly, the calculation of lot area in Section 90-2 (Definitions) is specifically limited to private property west of the bulkhead line rather than the erosion control line (which lies further east). This decreases the lot area which in turn decreases calculations that depend on the lot area, resulting in decreasing the maximum number of units allowed and maximum lot coverage. Although not counted as lot area for the purposes of zoning calculations, areas between the bulkhead line and the erosion control line, remain private property and may be counted towards meeting minimum setbacks and open space. Height is limited to 120 feet, but the measurement of height has been modified in the definition section to relate to the average elevation of the crown of the abutting road(s). Under Section 90-176(c), accessory rooftop structures are limited to 30% of the total roof area and a maximum height of 20 feet. Enclosed elements designed for human habitation (such as the top of stair tower or roof access vestibule) that exceed the maximum 120-foot allowable height cannot exceed 15 square feet (basically the size of a small closet or corridor). Open-air rooftop decks are permitted in the H120 district subject to limitations in Section 90-204.
3. Harding Avenue retail: Allowable retail uses and accompanying conditions for the SD-B40 district (the Town's business district) are listed in Section 90-145. Their presentation retains the familiar tabular set-up of the Current Code, but curtails or prohibits several uses in a manner consistent with the 2006 Code. Regulations for development within the SD-B40 are set forth in Section 90-155 and include a general height limitation of 40 feet.
4. Smaller scale multifamily on Collins, Harding and parts of Abbot Avenues: H30C and H40 districts, which allow buildings of 30 feet and 40 feet, respectively, allow various forms of residential from single family to multifamily. These districts do not permit hotels or retail uses, but they do allow places of worship. The stand-alone parking structure use described in the Current Code has been deleted. Regulations governing development are set described in Section 90-155.
5. Accessory uses and structures: Most accessory uses for districts that allow multifamily, hotel, and retail/office districts are set out in Section 90-145. Additional accessory uses commonly associated with single family homes (such as outdoor lighting, boat parking, and emergency power generators) are set forth in Section 90-192 through 90-199. Regulations for accessory structures customary to single family homes (such as fences, docks, and car canopies) are provided in Sections 90-182 through 90-190. Additional accessory structures for more multifamily, hotel and retail/office uses are addressed in Sections 90-197 through 90-204. Parking requirements have been increased.
6. Procedures for zoning approvals: The Revised Code sets out procedures for permits, site plan review, and approval for conditional uses, variances, and special exceptions. Site

plan review for single family homes is addressed in Section 90-62, including provisions for hearing, notice, application requirements, and standards for consideration of applications by the Planning and Zoning Board. Site plan review for other types of development is described in Section 90-63. *Conditional uses* are enumerated in Section 90-90 and include religious uses, public buildings, bars, and other uses that merit additional public scrutiny to ensure their impacts are properly addressed. The listed uses require public hearings before the Planning and Zoning Board and the Town Commission, as well as an annual administrative permit to ensure compliance with conditions and requirements on a yearly basis. *Variance* procedures are set forth in Section 90-91 and require findings that specific criteria are met after public hearings before the Planning and Zoning Board and Town Commission. The Revised Code provides a three -tiered structure: (1) regular variances which require a majority vote of the town commission; (2) heightened variances which require unanimous approval and a specific finding over and above the regularly applicable standards that the project is in the best interest of the town; and (3) a practical difficulty variance of lot coverage that applies only to ground-floor additions to existing homes. Regular variances are not available to allow unpermitted uses (including additional residential density) or additional height. Because of its narrow applicability, the practical difficulty variance may be approved after only one public hearing before the Planning and Zoning Board without having to proceed to the Town Commission. Lastly, *special exceptions* are rare approvals for certain circumstances and may only be issued with four concurring votes of the Town Commission. They are generally limited to determining the existence of a non-conforming use, allowing a new use not expressly permitted (but not a use that is prohibited), and recognizing the aggregation of lots into a unified development site (lot aggregation to increase density and/or floor area requires a supermajority of the Planning and Zoning Board as well).

7. Nonconforming Lots and Uses: Nonconforming use and structure provisions are set forth in Sections 90-71 through 90-78. These provisions apply to uses and structures that were legally instituted or built under a previous code and are allowed to continue subject to certain limitations. Additionally, Sections 90-12 and 90-13 address the disposition of permits that are pending at the time the Revised Code, as may be modified by the Town Commission, is adopted. Finally, Section 90-17 provides for zoning in progress applicable to future amendments of the code.
8. Definitions: Definitions are provided in Section 90-2. They largely track the definitions from the 2006 Code with modifications based on the August and November Zoning in Progress notices or are clarified for internal consistency of the draft zoning code.

Prior to adoption, the Revised Code must proceed through two readings before the Town Commission and one public hearing before the Planning and Zoning Board.

ARTICLE I – GENERAL

- Sec. 90-1. General rules of construction.
- Sec. 90-2. Definitions.
- Sec. 90-3. Enforcement, interpretation, purpose and conflict.
- Sec. 90-4. Policy and objectives.
- Sec. 90-5. Interpretation, purpose, and conflict.
- Sec. 90-6. Compliance with regulations.
- Sec. 90-7. One building on a lot.
- Sec. 90-8. Minimum lot area.
- Sec. 90-9. Recorded restrictions.
- Sec. 90-10. Encroachment; reduction of lot area.
- Sec. 90-11. Accessory buildings, prior construction.
- Sec. 90-12. Buildings under construction.
- Sec. 90-13. Outstanding permits.
- Sec. 90-14. Relationship to the comprehensive plan.
- Sec. 90-15. Projections into required yard areas.
- Sec. 90-16. Provision for storm drainage.
- Sec. 90-17. Zoning in progress, applicability, temporary hold on permits and licenses.
- Sec. 90-18. - Charges for consulting services established.
- Sec. 90-19. - Escrow accounts.
- Secs. 90-20 — 90-36. Reserved.

ARTICLE II – ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

- Sec. 90-37. Permits, plats and filing fees.
- Sec. 90-38. Site plan.
- Sec. 90-39. Certificate of occupancy.
- Sec. 90-40. Changes and amendments.
- Secs. 90-41 — 90-50. Reserved.

DIVISION 2. PLANNING AND ZONING BOARD*

- Sec. 90-51. Created.
- Sec. 90-52. Membership; terms of officers; vacancies; meetings; quorum.
- Sec. 90-53. Officers.
- Sec. 90-54. Recommendations.
- Sec. 90-55. Powers and Duties
- Sec. 90-56. Expenditures; indebtedness.
- Sec. 90-57. Reserved.
- Sec. 90-58. Zoning Applications; rules of procedure.
- Sec. 90-59. Review of building permits.
- Sec. 90-60. Special meeting or special public hearing.

Sec. 90-61. Design Review.
Sec. 90-62. Single-family and duplex development review process.
Sec. 90-63. Development review requirements for submittal other than single-family and duplex.
Secs. 90-64 — 90-70. Reserved.

DIVISION 3. NONCONFORMING USES, LOTS AND STRUCTURES

Sec. 90-71. Nonconforming lots.
Sec. 90-72. Reserved
Sec. 90-73. Nonconforming use land and/or buildings.
Sec. 90-74. Discontinuance of nonconforming uses.
Sec. 90-74.1. Discontinuance of nonconforming structure.
Sec. 90-75. Destruction of a nonconforming use.
Sec. 90-76. Existence of nonconforming use or structure.
Sec. 90-77. Buildings nonconforming in height, area or bulk.
Sec. 90-78. Nonconforming uses not validated.
Secs. 90-79 — 90-89. Reserved.

DIVISION 4. SPECIAL EXCEPTIONS, CONDITIONAL USES AND VARIANCES

Sec. 90-90. Conditional uses.
Sec. 90-91. Variances.
Sec. 90-92. Special exceptions.
Sec. 90-93. Lapse of special exception, conditional use, or variance.
Sec. 90-94. Special exception and conditional use permits.
Secs. 90-95 — 90-99. Reserved.

DIVISION 5. – RESERVED

Secs. 90-100 — 90-120. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 90-121. Districts established.
Sec. 90-122. Identification of district maps.
Sec. 90-123. Interpretation of district boundaries.
Secs. 90-124 — 90-144. Reserved.

ARTICLE IV. DISTRICT REGULATIONS

Sec. 90-145. Regulated Uses.
Sec. 90-146. Prohibited Uses.
Sec. 90-147—90-148. Reserved
Sec. 90-149. Short term rental of single-family dwellings, duplex dwellings, multi-family dwellings and townhomes.

Sec. 90-150—90-154. Reserved.

Sec. 90-155. District regulations tables.
Sec. 90-156. Rooftop photovoltaic solar systems.
Secs. 90-157 — 90-175. Reserved.

ARTICLE V. SUPPLEMENTARY REGULATIONS

DIVISION 1. GENERALLY

Sec. 90-176. Modifications of height regulations.
Sec. 90-177. Yards generally, allowable projections.
Sec. 90-178. Average setbacks for H30A and H30B.
Sec. 90-179. Modification of side and rear yard regulations.
Sec. 90-180. Maximum frontage and depth of buildings.
Sec. 90-181. Vision clearance.
Sec. 90-182. Accessory buildings and structures.
Sec. 90-183. Fences, walls and hedges.
Sec. 90-184. Marine structures.
Sec. 90-185. Carports and car canopies.
Sec. 90-186. Outdoor receiving and broadcasting antennae.
Sec. 90-187. Construction adjacent to bulkhead lines.
Sec. 90-188. Paving front yards in single-family and duplex districts.
Sec. 90-189. Outdoor lighting.
Sec. 90-190. Miscellaneous elevations for seawalls, and groins.
Sec. 90-191. Combined lots.
Sec. 90-191.1. Aggregation of lots.
Sec. 90-191.2. Lot splitting in the H30A and H30B Districts Prohibited.
Sec. 90-192. Boat parking.
Sec. 90-193. Temporary storage of campers and house trailers.
Sec. 90-194. Pervious Area.
Sec. 90-195. Reserved
Sec. 90-196. Emergency power generators.
Sec. 90-197. Awnings and canopies.
Sec. 90-198. Materials and finishes.
Sec. 90-199. Portable storage units.
Sec. 90-200. Accessory buildings and structures in the H30C, H40, SD-B40, and H120 districts.
Sec. 90-201. Service areas and mechanical equipment.
Sec. 90-202. Underground and above-ground utilities.
Sec. 90-203. Architecture.
Sec. 90-204. Roof deck provisions.
Sec. 90-205. Reserved.

DIVISION 2. SIGNS

Sec. 90-206. - General and miscellaneous provisions.
Sec. 90-207. - Definitions.
Sec. 90-208. - Sign permits.
Sec. 90-209. - Sign design and appearance.
Sec. 90-210. - Sign removal.
Sec. 90-211. - Permanent signs by district.
Sec. 90-212. - Temporary signs.
Sec. 90-213. - Prohibited signs.
Sec. 90-214. - Prohibited sign locations.
Sec. 90-215. - Non-conforming signs.
Sec. 90-216. - Non-complying signs.
Secs. 90-217 — 90-225. Reserved.

DIVISION 3. OFF-STREET PARKING

Sec. 90-226. Off-street parking requirements.
Sec. 90-227. Interpretation of these requirements.
Sec. 90-228. Restricted and prohibited parking.
Sec. 90-229. Joint use and off-site facilities.
Sec. 90-230. Design standards for off-street parking.
Secs. 90-231 — 90-240. Reserved.

DIVISION 4. OFF-STREET LOADING

Sec. 90-241. Off-street loading requirements.
Sec. 90-242. Interpretation of the chart.
Sec. 90-243. Design standards for off-street loading.
Secs. 90-244 — 90-249. Reserved.

DIVISION 5. LANDSCAPE

Sec. 90-250. General.
Sec. 90-251. Landscape permit plans.
Sec. 90-252. Installation of landscaping and irrigation.
Sec. 90-253. Maintenance of landscaped areas.
Sec. 90-254. Plant material.
Sec. 90-255. Vegetative provisions.
Sec. 90-256. Landscape buffer areas between residential and non-residential properties and vehicular use areas.
Sec. 90-257. Reserved.
Sec. 90-258. Open space.
Sec. 90-259. Landscape buffers.
Sec. 90-260. Single-family H30A and H30B district landscape requirements.
Sec. 90-261. Preparer's certification of landscape compliance.
Sec. 90-261. Tree removal, tree relocation, tree preservation, and tree abuse.

Sec. 90-262. Landscape manual and materials.
Sec. 263-269 Reserved

ARTICLE VI. – SPECIALIZED USE CONSIDERATIONS

Sec. 90-270. Religious land use relief procedures.
Sec. 90-271. Reasonable accommodation procedures.
Sec. 90-272. Architecturally Significant Buildings.
Secs. 90-273 — 90-279. Reserved.

APPENDIX A – DESIGN GUIDELINES

DRAFT

ARTICLE I. IN GENERAL

Sec. 90-1. General rules of construction.

The following general rules of construction shall apply to the regulations contained in this chapter:

- (1) The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
- (2) Words used in the present tense include the past and future tenses, and the future the present.
- (3) The word "shall" is always mandatory. The word "may" is permissive.
- (4) The words "building" or "structure" are synonymous or interchangeable and include any part thereof.
- (5) The word "lot" includes the word "plot", "parcel", "tract", or "site."
- (6) The words "used" or "occupied" include the words "intended," "designed" or "arranged" to be used or occupied.
- (7) The words "required yards" or "minimum required yards" and "minimum yards" include the word "setback."
- (8) Words and terms not defined herein shall be interpreted in accordance with their normal dictionary meaning and customary usage.

[Code 1960 § 18-2]

Sec. 90-2. Definitions.

For the purpose of this chapter, certain terms and words are hereby defined. For convenience, all defined words and terms are set out in different type or capitalized throughout this ordinance.

- (1) *Accessory Building* means a detached subordinate building or a portion thereof, the use of which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use. Where there is no main building on the lot, an accessory building shall be considered as a main building for the purposes of the height, area and bulk regulations.
- (2) *Accessory Use* means a subordinate use which is incidental to and customary in connection with the main building or use and which is located on the

same lot with such main building use.

(3) **Acre:** An area consisting of 43,560 square feet. Notwithstanding anything to the contrary herein and for purposes of this entire zoning code, an acre shall never be defined as anything other than 43,560 square feet.

(3.1) **Aggregation:** The combining of lots through a unity of title or the platting process. Where used to combine density or floor area, aggregation shall only be permitted where approved as a Special Exception and only when a super majority of the Planning and Zoning Board, and the Surfside Commission has voted in the affirmative to approve any requested aggregation.

Commented [MOU1]: From current code

(4) **Alley** means a public or private thoroughfare which affords only a secondary means of access to abutting property.

a. **Established Alley.** One which remains under private ownership with the incidence and responsibility of maintenance, payment of ad valorem taxes, and liability for tort; but, without the right of improvements thereon other than paving.

b. **Dedicated Alley.** One which is used generally by the public and dedicated by deed or platting to such public use. It is not subject to ad valorem taxation; and, it is maintained by the town, Miami-Dade County, or by the state.

(5) **Apartment** means a room, or group of rooms, occupied or intended to be occupied as separate living quarters by one family and containing independent cooking and sleeping facilities. (This term shall include a condominium.) The existence of cooking facilities within a room or group of rooms shall be deemed sufficient to classify such room or group of rooms as an apartment.

(5.1) **Architecturally Significant Building:** A building constructed prior to 1970 that has been determined by the town to possess characteristics of a specific architectural style constructed in the town pursuant to section 90-272 of the Town Code. The exterior of the structure must be recognizable as an example of its style and/or period.

(6) **Reserved.**

(7) **Awning** means a detachable, roof-like cloth, canvas, vinyl, or other flexible material cover, supported from the walls of a building for protection from the sun or weather.

(8) **Bar** means a public establishment licensed by the state which is devoted to

the selling or the dispensing and drinking of alcoholic beverages on the premises.

(9) *Basement* means that portion of a building between floor and ceiling which has at least one-half of its height below the grade of the street on which it fronts. The height of a basement above grade shall not exceed one-half of the average height of a story in the building.

(10) *Breezeway* means a covered passageway or space between the main building and an accessory building, open on two sides and the roof of which is structurally integrated with the buildings it separates.

(11) *Building* means any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.

(12) *Building Area* means the area within the confines of the exterior walls of the main building, accessory buildings, covered porches and terraces.

(13) *Building, completely enclosed*, means a building having no outside openings, other than doors, windows, and ventilators.

(14) *Building, height of*, means the vertical distance from the crown of the road abutting the property to the roof, as more particularly set forth in the definition of Height.

(15) *Building, main*, means a building in which the principal use of the lot on which it is located is conducted, or is intended to be conducted.

(16) *Bulk* is a term used in these regulations to describe a composite characteristic of a given building or structure as located upon a given lot, not definable as a single quantity but involving all of these characteristics: 1) size and height of building or structure, 2) location of exterior walls at all levels in relation to lot lines, streets or to other buildings or structures, 3) all open spaces allocated to the building or structure, and 4) amount of lot area provided per dwelling unit, and 5) lot coverage.

Commented [MOU2]: Definition in current code is more specific

(16.1) *Business*:

Commented [MOU3]: From current code

- (a) Includes all vocations, occupations, professions, enterprises, establishments and all activities and matters, together with all devices, machines, vehicles and appurtenances used herein, and of which are conducted for private profit or benefit, either directly or indirectly, on or from any premise in the town.
- (b) Does not include the customary activities of religious, charitable, nonprofit service clubs and organizations or educational nonprofit institutions as those terms are defined in F.S. ch. 205, as may be amended

(17) *Cabana* means a permanent or portable bath cabin on the exterior of a residence, hotel or apartment house, together with only such accessories as wood slat walks or decks, terraces, rubbing rooms and toilet facilities, but not intended for sleeping or living quarters. Cabanas erected on the exterior may be of pipe frame and canvas, wood frame and masonite and be constructed in such a manner that they are portable and easily dismantled in the event of a hurricane. Cabanas of any other type shall be built of masonry. Cabanas shall be permitted only in conjunction with an outdoor swimming pool.

(18) *Canopy* means a detachable, roof-like cover, made of cloth, metal, plastic or other permanent material supported from the ground or deck or floor of a building, and from the walls of a building for protection from sun or weather.

(18.1) *Car Canopy* means a roofed and usually wall-less shed either freestanding or projecting from the side of a building, used as a shelter for automobiles. The roof of a Car Canopy may be made of vinyl, cloth, or other flexible material.

(19) *Carport* means a permanent structure with a rigid roof that may or may not contain walls that is either freestanding or projecting from the side of a building, used as a shelter for automobiles.

(19.1) *Certificate of occupancy, final*: A document issued by the town manager or designee certifying that he/she reasonably believes a building, , and its occupancy to be in compliance with the minimum standards of safety, as set forth in the Florida Building Code, prior to the building's occupancy and after its inspection and that said building is in conformity with all other applicable laws and regulations.

(19.2) *Certificate of use*: A document issued by the town manager or designee that the zoning use classification of any business, within any approved structure or building or unit therein, is allowed prior to its occupancy and after inspection of the premises and proof of compliance with all the requirements of the Town Code of Ordinances and all other applicable laws and regulations; provided, however, that no certificate of use shall be issued until it has been reviewed and approved by town manager or designee.

(20) *Clinic* means an establishment where patients are not lodged overnight, but are admitted for examination and treatment by a group of physicians or dentists practicing medicine together. The term does not include a place for the treatment of animals.

(21) *Club, private*, means a building and facilities or premises, owned and

operated by a corporation, association, person or persons for social, educational, or recreational purposes, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. A private club may include the normal accessory uses such as tennis courts, cabanas and parking spaces.

(22) *Conditional use* means any use listed in section 90-41 as a conditional use which would not be appropriate generally or without restriction throughout a particular zoning district, but would be appropriate if controlled as to number, area, location, or relation to the neighborhood.

(22.1) *Density*. The number of dwelling units per acre of land (43,560 square feet) of the Lot Area as herein defined. The density allowed on a site shall never exceed the limits set forth in the 2004 Comprehensive plan.

Commented [MOU4]: This definition is adapted from the current code

(22.2) *Design Guidelines* are guidelines adopted by the Town of Surfside Commission, intended to provide direction and options for all development, and to serve as criteria for design review of development within the Town. As set forth in section 90-61, such guidelines are adopted as an exhibit to this ordinance and may be amended from time to time by Resolution of the Town Commission.

Commented [MOU5]: Adapted from current code to explain their role in design review and how they can be amended.

(23) *District* means any section of the town within which the zoning regulations are uniform. (See district map.)

(24) *Dwelling* means a building or portion thereof, designed or used exclusively for residential occupancy.

(25) *Dwelling, single-family*, means a building designed for or occupied exclusively by one family.

(26) *Dwelling, two-family (duplex)*, means a building designed for or occupied exclusively by two families.

(27) *Dwelling, multiple-family*, means a building designed for or occupied by three or more families.

(28) *Dwelling unit* means a room, or group of rooms, occupied or intended to be occupied as separate living quarters by a single family.

(28.1) *Electric vehicle charging level*: The standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged which include the following specifications:

- (1) Level 1 requires a 15 or 20-amp breaker on a 120-volt AC circuit and standard outlet;
- (2) Level 2 requires 40 to 100-amp breaker on a 240-volt AC circuit; or
- (3) Level 3 requires a 60-amp or higher dedicated breaker on a 480-volt and higher three-phase circuit with special grounding equipment. A Level 3 charging shall use an off-board charger to provide the AC to DC conversion, delivering DC directly to the car battery.

(28.2) *Electric vehicle charging station*: A parking space that is served by electric vehicle charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy source device in an electric vehicle.

Commented [MOU6]: Added from current code – these uses did not exist at the time of the 2006 code

(29) *Family*, in the context of the number of units permitted on a lot of record, means an individual or two or more persons related by blood or marriage or a group of not more than three unrelated persons (excluding servants) living together as a single housekeeping unit in a dwelling.

(30) *Fence* means a structure forming a physical barrier which is so constructed that no less than 50 percent of the vertical surface is open to permit the transmission of light, air and vision through such surface in a horizontal plane.

Commented [MOU7]: Would not cover modern overlapping slat fences or horizontal slat fences

(31) *Filling station* means any building, structure, or land used for the sale at retail of motor vehicles fuels, oils, or accessories, or for the servicing or repairing of minor parts and accessories, but not including major repair work such as motor replacement, body and fender repair, or spray painting, and excluding public garages.

(32) *Floor Area* means the sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the centerline of walls separating two attached buildings.

- a. In particular, floor area includes:
 1. Basement space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
 2. Elevator shafts or stairwells at each floor.
 3. Floor space used for mechanical equipment.
 4. Floor space in penthouses.

5. Attic floor space (whether or not a floor has been laid) providing structural headroom of seven feet six inches or more.
6. Floor space in interior balconies or interior mezzanines.
7. Floor space in porches and pools enclosed with plastic, glass or permanent type of material.
8. Any floor space used for residential use, no matter where located within the building.

b. However, the floor area of a building shall not include:

1. Basement space when used for parking of vehicles.
2. Accessory water tanks or cooling towers.
3. Uncovered steps and exterior balconies.
4. Terraces, patios, breezeways, or open porches.

(33) *Floor Area Ratio* means the floor area of a building or buildings on any lot divided by the **Lot Area**.

(34) *Frontage, street*, means the distance along a street line from one intersecting street to another or from one intersecting street to the end of a dead-end street.

(35) *Frontage, lot*, means the distance for which the front lot line and street line are coincident.

(36) *Garage, parking*, means a building or portion thereof designed or used for the temporary storage of motor-driven vehicles.

(37) *Garage, private*, means an Accessory Building or attached portion of a Building, not exceeding 900 square feet in Floor Area, designed or used for the storage of not more than four automobiles.

(38) *Grade* means the average datum or elevation of the crown of the road serving the lot or building site.

(38.1) *Height* of buildings or structures shall be measured:

(a) *For flat roofs*: The vertical distance from the average datum or elevation of the crown of the road fronting the lot or building site, to the highest point of the roof.

(b) *For pitched roofs*: The vertical distance from the average datum or elevation of the crown of the road fronting the lot or building site, to the top of the tie beam. A pitched roof shall have a maximum pitch of 4/12. Any roof that is not meet the definition of a pitched roof shall be

Commented [EM8]: Clean up: This revision helps clarify that "lot area" referred to in "floor area ratio" is the defined term "lot area" defined below and used elsewhere in the code.

Commented [EM9]: This addresses the July 28 instruction regarding height and other references to "grade"—especially in the H120.

Commented [MOU10]: This is inserted from the current zoning code, only clarified to apply to all districts. In other words, height is measured the same way in all districts – from crown of road to the roof, unless the roof is pitched, in which case it is measured to the tie beam. Measuring to the tie beam acts against discouraging pitched roofs.

considered a flat roof.

(39) *Helistop* means an area of land, water or structure or portion thereof used or intended to be used for the landing and takeoff of helicopters provided no facilities for service or basing of such aircraft are permitted.

Commented [MOU11]: This definition was deleted in the current code

(40) *Hotel* means a building in which lodging is provided and offered, including all utilities and housekeeping services, to the general public for compensation, with or without meals, excluding accommodations for employees, and in which ingress and egress to and from all rooms is made through an inside lobby supervised by a person in charge at all times.

a. *Hotel room* includes ~~motel room and~~ means a room or group of rooms in a hotel intended for rental to transients and not intended for use or used as a permanent dwelling. Each hotel room shall have a private bath attached thereto, but no cooking facilities therein. The existence of separate utility meters serving any room or group of rooms shall be deemed sufficient to classify such room or group of rooms as an apartment.

(40.1) *Impervious Area*: An area covered by a material which does not permit infiltration or percolation of water directly into the ground

Commented [MOU12]: Added from current code

(41) *Indian Creek Bulkhead Line* means the bulkhead line as defined in section 14-101.

(42) *Loading Space* means a space within the main building or on the same lot providing for the standing, loading, or unloading of trucks.

(43) *Lot* means a parcel of land occupied or which may be hereafter occupied by a building and its accessory buildings, together with such open spaces and parking spaces or area as are required under this article and having its principal frontage upon an officially approved street or place.

(44) *Lot Area* means the total horizontal area within the lot lines of the lot. In determining usable lot area in the H-120 district, it shall be calculated from the west lot line to the bulkhead line on the east side and the north lot line shall be the north boundary and the south lot line shall be the south boundary. All calculations of density and/or intensity shall be based on the Lot Area as herein defined.

(45) *Lot, corner*, means a lot abutting upon two or more streets at their intersection.

(46) *Lot Coverage* means the percentage of the Lot Area that, when viewed from above, would be covered by all principal and accessory buildings and structures

(except swimming pools, fences, screen enclosures, and pergolas.), or portions thereof, up to a maximum forty percent (40%) of the lot; provided however that the following exemptions shall not be included in determining the lot coverage:

- a. Uncovered steps and exterior balconies; and
- b. Uncovered terraces, patios, breezeways, or porches which are open on two (2) or more sides; and
- c. Covered terraces, patios, breezeways, or porches which are open on two (2) or more sides; and

In no instance may the total area of all exemptions permitted by (a) through (c) listed above exceed 6% of the Lot Area.

(47) *Lot, depth of*, means the average horizontal distance between the front and rear lot lines, except where a lot rears upon the ocean, Indian Creek or other established waterway; then the depth of the lot shall be the average horizontal distance between the front lot line and the established bulkhead line along the waterway.

(48) *Lot, front*, shall be construed to be the portion nearest the street. For corner lots, the lot front shall be the narrowest portion abutting the street unless otherwise determined by the town manager.

(49) *Lot, interior*, means a lot other than a corner lot.

(50) *Lot of Record* means a lot which is part of a subdivision, the map of which has been recorded in the office of the clerk of the circuit court of the county; or a parcel of land which became legally established and defined by a deed or act of sale.

(51) *Lot, through (double-frontage)*, means a lot having a frontage on two parallel or approximately parallel streets or places.

(52) *Lot width* means the horizontal distance between the side lot lines measured at the required front yard line and parallel to the front street line, or measured at the street line if no front yard is required.

(52.1) *Marijuana*: Any strain of cannabis or marijuana, in any form, that is authorized by state law to be dispensed or sold in the State of Florida. Also referred to as "medical marijuana"

(52.2) *Massing*: The expression of interior volume as form.

Commented [MOU13]: Note that we have received input from design professionals and builders that the 6% limit is potentially too low to encourage quality second floor and functional rear patio design. Proposals range from 7.3% to 10%.

Commented [EM14]: These revisions were discussed at the July 1 Zoning Workshop and then further developed after the July 28 Commission meeting, and included in the Zoning in Progress Notices published August 2020 and November 2020.

Outstanding questions to address are:

a. Does the Commission want to limit the maximum area for each of the listed exemption. For example, you might put a cap on the total area for any patio or balcony.

b. The Commission should confirm that the 6% cap provided in the last sentence is acceptable.

Commented [MOU15]: The medical marijuana and medical marijuana dispensary definitions are proposed to be retained from the current code together with Section 90-41 which is the current use matrix showing allowable uses. State law allows a local government to prohibit medical marijuana uses entirely or to permit it subject to the same restrictions it places on pharmacies. In this current draft, medical marijuana dispensaries are prohibited outright.

(52.3) *Medical marijuana dispensary*: A retail establishment, licensed by the Florida Department of Health as a "medical marijuana treatment facility," "medical marijuana treatment center," "dispensing organization," "dispensing organization facility" or similar use, that sells and dispenses medical marijuana.

(53) *Nonconforming Lot* means a Lot of Record which was legally established as a separate building site prior to the enactment of these zoning regulations, or any amendment thereto, which requires a larger area, frontage, width or depth than that which existed prior to such enactment. A Nonconforming Lot may only be improved if it meets the conditions and requirements of Section 90-71.

Commented [MOU16]: Added for clarity

Commented [MOU17]: Added to clarify that meeting the definition is not the end of the inquiry with respect to a nonconforming lot.

(54) *Nonconforming Structure* means a structure which lawfully existed prior to the enactment of these regulations or any amendment thereto, which does not comply with the restrictions as to size, nature of construction, location of the structure on the land, or location of the structure in proximity to other buildings required by the regulations adopted subsequent to its construction, and which is continuously maintained after the effective date of such regulations or amendment thereto.

(55) *Nonconforming Use* means a use of land and/or buildings which lawfully existed prior to the enactment of these regulations or any amendment thereto, which does not comply with the use restrictions applicable to the district in which it is situated, and which is continuously maintained after the effective date of such regulations or amendment thereto.

(56) *Ocean Bulkhead Line* means that bulkhead line as defined in section 14-86.

(57) *Parking lot* means an open, unoccupied area of land used or required for use for parking automobiles exclusively and in which no gasoline, oil, services, wash racks or accessories are sold or no other business conducted.

(58) *Parking space, off-street*, means a paved area not in the street, alley, or any other public property, and having an area of not less than nine feet by 20 feet, exclusive of driveways, permanently reserved for the temporary storage of one vehicle and connected with a street or alley by a paved driveway which affords ingress and egress for an automobile without requiring another automobile to be moved.

(58.1) *Person* means any individual, firm, partnership, joint venture, syndicate or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver or other fiduciary.

Commented [MOU18]: From current code

(58.2) *Pervious area* means an area maintained as landscaping (as that term is defined in Division 5 of Article V of this code, or covered by a Town approved material that permits infiltration or percolation of water directly into the ground. Pavers or pervious hard materials, including pervious concrete, shall not be utilized for the calculation of pervious area.

Commented [MOU19]: From the current code

(58.3) *Place of business*: Any structure used for the purpose of exercising the privilege of engaging in business within the town limits.

Commented [MOU20]: Added from the current code

(58.4) *Place of public assembly*: Any area where individuals assemble, whether publicly or privately owned and maintained. Includes, but is not limited to, public assembly buildings, such as auditoriums, private clubs and lodges, community centers, clubhouses and theaters; and places of worship or other facilities that are used for prayer and assembly by persons of similar beliefs.

Commented [MOU21]: Added from the current code

(58.5) *Public School*: A school operated by a governmental agency or jurisdiction.

(59) *Regulations* means the whole body of regulations, text, charts, tables, diagrams, maps, notations, references and symbols, contained or referred to in this chapter.

(60) *Restaurant* means an establishment maintained and operated as a place where food is regularly prepared, served or sold for immediate consumption on or about the premises and every establishment preparing food to be called for, delivered to or taken out by customers.

(60.1) *Roof deck*: An open, unroofed floor structure used in conjunction with a principal building and installed on the roof of a building.

Commented [MOU22]: Added from current code in order to regulate it. The Commission may wish to keep it out of this new code

(60.2) *Rooftop photovoltaic solar system*: A system which uses one (1) or more photovoltaic panels installed on the surface of a roof, parallel to a sloped roof or surface- or rack-mounted on a flat roof, to convert sunlight into electricity.

Commented [MOU23]: Added from current code

(60.3) *Secondary Frontage*: When referring to a corner lot, the secondary frontage shall be the widest portion of the lot abutting the street.

Commented [MOU24]: Added from current code

(61) *Servant's quarters* means living quarters within a portion of a main building or in an accessory building located on the same lot with the main building, used for servants employed on the premises and not rented as a separate dwelling.

(62) *Setback* means the minimum distance required by section 90-155 that all structures shall be from front, side and rear lot lines. Setback may also refer to the yard area adjacent to the particular lot line indicated, consistent with the definitions for front yard setback, rear yard setback, and side yard setback below. In this context, the words "in," "inside," and "within" refer to the area that is less than the minimum distance from the front, side, or rear lot line. "Outside" refers to the area

that is located at a greater distance than the minimum distance from the front, side, or rear lot line.

(62.1) *Setback, front yard* means the portion of a yard across the full width of the lot extending from the front property line to the front setback.

(62.2) *Setback, rear yard* means the portion of a yard across the full width of the lot extending from the rear property line to the rear setback.

(62.3) *Setback, side yard* means the portion of a yard between the side property line and the side setback, located between the front and rear setbacks.

(63) *Site plan* means a drawing illustrating a proposed development of a lot or tract, in accordance with the specifications and requirements set forth in section 90-38.

(64) *Story* means that portion of a building other than a basement, included between the surface of any floor and the surface of the floor next above it; or, if there be no floor next above it, then the space between such floor and ceiling next above it.

(65) *Street* means a public thoroughfare which affords the principal means of access to abutting property.

(66) *Streetline* means a dividing line between a lot and the adjacent street.

(67) *Structure* means anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground; including, but without limiting the generality of the foregoing, signs, backstop for tennis courts, swimming pools, fences, screen enclosures, and pergolas.

(68) *Structural alterations* means any change that would change the shape or size of any portion of the exterior of the building or structure, or any work affecting the supporting members of a building or structure, such as bearing walls, columns, beams, arches, floor or roof joists, or girders.

(68.1) *Substantial improvement*: Any combination of repairs, reconstruction, alteration or improvements to a building, taking place during a five-year period, in which the cumulative cost equals or exceeds 50 percent of the market value of the building. The market value of the building should be:

Commented [MOU25]: From current code

(1) The appraised value of the building prior to the start of the initial repair or improvement;

- (2) Such other value as approved by the federal government or the state; or
- (3) In the case of damage, the value of the building prior to the damage occurring.

This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary or safety code specifications which have been identified by the code enforcement official and which are solely necessary to assure safe living conditions.

(69) *Suite-hotel* means a hotel containing one or more suite-hotel rooms as defined below. A minimum of fifteen percent of total gross building area shall be maintained as common or recreational areas. The building shall have central air conditioning; provided, however, no air conditioning equipment may face any street or body of water. The building shall not have open exterior walkways providing access to units. Provided that all conditions of this Code are met, a suite-hotel may be a timeshare property as defined in F.S. ch. 721.

a. *Suite-hotel room* means a hotel room in a suite-hotel and containing not less than 525 square feet of net useable interior space. A suite-hotel room may contain cooking facilities only if said units are larger than: 800 square feet for units with one bedroom or less, 1,000 square feet for two-bedroom units, and 1,200 square feet for three-bedroom units. For every bedroom over three bedrooms in a unit, the minimum size shall increase by 200 square feet.

None of the above provisions shall be subject to waiver, variance or exception in any circumstances.

(70) *Swimming pool* means any permanent structure containing a body of water intended for recreational purposes, including a wading pool.

(71) *Transient* means any person who exercises occupancy or is entitled to exercise occupancy of any structure or part thereof by reason of renting, leasing, letting or granting a license for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

(71.1) *Unity of Title*: An agreement executed by and between one or more property owners of more than one lot, which shall not be conveyed, sold,

Commented [MOU26]: As per discussion with Mayor on 9-28-20, in connection with hotels potentially converting to multifamily in future

Commented [MOU27]: Added from current code

mortgaged, etc. apart from each other and shall be held together as one tract. Such unity of title shall be recorded in the public records of Miami-Dade County, Florida and shall run with the land and shall be binding upon the property owner(s), successors and assigns.

(72) *Use* means any purpose for which buildings or other structures or land may be arranged, designed, intended, maintained, or occupied; or any occupation, business, activity or operation carried on or intended to be carried on in a building or other structure or on land.

(73) *Wall*. A wall, when used as a site feature, shall be so constructed that no less than 50 percent of the vertical surface is open to permit the transmission of light, air and vision through such surface in a horizontal plane.

(74) *Yard* means an open area which is on the same lot as a building and which is unoccupied and unobstructed from the ground upward, except as otherwise provided in these regulations.

(75) *Yard, front*, means a yard across the full width of the lot extending from the front line of the building to the front street line of the lot.

(76) *Yard, rear*, means a yard extending the full width of the lot between the main building and the rear lot line, or the bulkhead line for waterfront properties, or the bulkhead line for oceanfront properties.

(77) *Yard, side*, means a yard on the same lot with the building between the main building and the adjacent side of the lot, and extending from the front yard to the rear yard thereof.

[Code 1960, § 18-3; Ord. No. 1400, § 2, 3, 5-11-99; Ord. No. 1402, § 1, 5-11-99; Ord. No. 1404, § 1, 6-8-99; Ord. No. 1446, §2, 12-9-03]

[Cross references: Definitions generally, § 1-2.]

Sec. 90-3. Enforcement, interpretation, purpose and conflict.

(1) The town manager or designee shall designate personnel who shall have the authority to enforce the provisions of this Code.

(2) Where it is found that any of the provisions of this Code are being violated, enforcement proceedings may be initiated against the real property owner, the tenant if applicable and any other person violating the provisions of this Code. Any enforcement procedure authorized by the Town of Surfside Code of Ordinances or state law may be used to enforce the provisions of this Code. It shall be at the discretion of the town manager or designee to determine which

Commented [MOU28]: The current code contains extensive regulations for fences and walls. See Section 90-56 of the current Code. In connection with walls, it requires 50% openings in the portion of the wall above two feet in height except on side yards on corner lots. It also requires design review approval of certain fence/wall configurations. By contrast, Section 90-183 of the 2006 code is very simple. It is up to the Commission, but we would propose keeping the extensive regulations in the current code. We have included those regulations as Section 90-183 of this current draft.

Commented [EM29]: This section is taken from the current code.

This language is important because it clearly authorizes enforcement of the zoning code and gives the Town Commission direct authority to commence legal action.

The 2006 code's language (which dates back to 1960) actually limits potential penalties because Sections 1-8 and 15-18 of the Town Code allow for greater penalties. Sections 1-8 ("General Provision") and 15-18 ("Code Enforcement") apply to the entire code.

The 2006 code language we are striking limits fines for a violation to \$1,000 (per day per violation).

method of enforcement is appropriate and whether more than one method of enforcement should be brought.

(3) In addition to enforcement by the town manager or designee, the provisions of this Code may be enforced by the Surfside Police Department if appropriate.

(4) Further, the town commission may direct the town attorney to bring an action for injunctive relief in appropriate circumstances.

(5) Where this Code includes regulations on the same point as contained in any other law or ordinance, the provisions of this Code shall govern; except that where the regulations of the other law or ordinance are more restrictive than those of this Code, the other shall govern.

(6) In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by these regulations to interfere with or abrogate or annul any easements, covenants, or other agreement, provided however, that where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces or yards or lot areas than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of these regulations shall govern.

Sec. 90-4. Policy and objectives.

The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, morals, health, order, convenience, prosperity, and general welfare of the citizens of the town and of the citizens of Miami-Dade County, Florida, and to provide for efficiency and economy in the process of development, for the appropriate and best use of land, for convenience of traffic and circulation of people and goods, for the use and occupancy of buildings, for healthful and convenient distribution of population, for adequate public utilities and facilities, for promotion of the civic amenities of beauty and visual interest, and for development in accord with the comprehensive plan by establishing zoning districts and by regulating the location and use of buildings, structures, and land for trade and residence, by regulating and limiting or determining the height, bulk and access to light and air of buildings and structures, the area of yards and other open spaces and the density of same. To accomplish these objectives, the regulations and districts and accompanying map have been designed with reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses.

[Code 1960, § 18-1]

Sec. 90-5. Interpretation, purpose, and conflict.

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by these regulations to interfere with or abrogate or annul any easements, covenants, or other agreement, provided however, that where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces or yards or lot areas than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of these regulations shall govern.

[Code 1960, § 18-80]

Sec. 90-6. Compliance with regulations.

Except as hereinafter provided:

- (1) No land or water area may be used except for a purpose permitted in the district in which it is located. Such permitted uses shall include those specifically listed as an accessory use, conditional use or use permitted subject to the approval of a special use permit within the district in which the building or land is located. Permitted uses require final site plan review and/or design review approval, as set forth in these regulations and approval for compliance with the standards applicable to a particular permitted use as provided in this Zoning Code. Except as explicitly provided herein, no use designated as a permitted use in this chapter shall be established until after the person proposing such use has applied for and received all required development permits. Any use not specifically listed as provided herein shall be prohibited.
- (2) No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or part thereof be used except for a use permitted in the district in which the building is located.
- (3) No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered to exceed the height limit herein established for the district in which the building is located.
- (4) No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the area regulations of the district in which the building is located.
- (5) No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the off-street parking and loading regulations of the district in which the building is located.

Commented [MOU30]: For single-family

Commented [EM31]: This language is taken from Section 90-5(1) of the current code. It is important because it makes clear that all uses require express approval, including development approvals by the Town's development board(s), not just statutory building permits approved by the building official.

Keep in mind that the building official has a statutory duty to enforce the building code and enforces the local code only to the extent required by the local code.

(6) No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the floor area regulations of the district in which it is located.

(7) No building shall be erected or moved except in conformity with the established flood criteria, as indicated on the most current edition of the federal flood insurance rate maps and in chapter 42, article II, applicable to the lot on which the building is located.

(8) No building shall be erected or enlarged after the effective date of these regulations, which reduces any level of service standard established in the town's adopted comprehensive plan.

(9) All improved properties shall have their street number displayed and clearly visible from the street on which the front entrance of the building faces. In the SD-B40 and the H120 districts, all properties additionally shall have their street numbers displayed and clearly visible from the rear of the property.

(10) No building that requires a permit to place excavated sand seaward of the coastal construction control line shall be erected or moved unless applicant has complied with sections 34-2 to 34-8 and section 14-28 of the Town Code of Ordinances.

Commented [EM32]: This change does two things:

- 1.Replaces "B-1" district with its current equivalent, "SD-B40."
- 2.Adds the street number requirement to the H120 district. This was not required under the old code but is required under the current code. (See current code Section 90-5(10)).

Commented [EM33]: This addition is necessary to make sure that such permits comply with beach sand quality requirements (Current code Sections 34-2, et seq) and Section 14-28 and especially 14-28(d) which ties the issuance of building permits to compliance with sand quality requirements.

This underlined language is taken from the current code.

[Code 1960, § 18-7; Ord. No. 1280, § 1, 5-12-92]

Sec. 90-7. One building on a Lot.

Only one main building and the accessory buildings and uses customarily incident thereto shall be located on any single lot. In the case of single-family dwellings, no individual room shall be completely separated from the remainder of the main building and only one kitchen shall be provided on each lot.

[Code 1960, § 18-8]

Sec. 90-8. Minimum Lot Area.

No lot area shall be reduced or diminished so as to violate the setback or lot coverage requirements as herein prescribed, nor shall the minimum lot area per dwelling unit as established in section 90-155, table I, be decreased in any manner except in conformity with the regulations established herein.

[Code 1960, § 18-9]

Sec. 90-9. Recorded restrictions.

[22 of 191]

Any existing recorded restrictions regarding any lot shall be considered a part of this chapter, except where such restrictions are in actual conflict with the provisions of this chapter, in which case this chapter shall control.

[Code 1960, § 18-10]

Sec. 90-10. Encroachment; reduction of Lot Area.

The minimum yard, parking space, open space and minimum lot area per dwelling unit requirements of these regulations for each and every building existing at the time of passage of the ordinance from which these regulations were derived, or for any building hereafter erected, shall not be encroached upon or considered as required yard, parking space or open space for any other building, except as hereinafter provided, nor shall any Lot Area be reduced below the requirements of these regulations.

[Code 1960, § 18-11]

Sec. 90-11. Accessory Buildings, prior construction.

No accessory building shall be constructed upon a Lot until the construction of a main building has been actually completed, except where construction of main and accessory buildings is concurrent. No accessory building shall be used unless the main building on the lot is also being used.

[Code 1960, § 18-12]

Sec. 90-12. Buildings under construction.

Any building or structure for which a lawful building permit has been issued, and the construction of which has been started prior to the effective date of the ordinance from which this chapter was derived may be completed and used in accordance with the plans and specifications upon which such building permit was granted, provided such construction is completed within one year after the effective date of the ordinance from which this chapter was derived.

[Code 1960, § 18-13]

Sec. 90-13. Outstanding permits.

(a) Where, on the effective date of the ordinance from which this chapter was derived, there are outstanding valid building permits, authorizing the construction of buildings, structures, additions or alterations, the use or construction of which do not conform to the requirements of this chapter, such permits shall be void unless actual construction work, excluding grading or excavating, is substantially underway on that date, and the underlying rights to construction are vested.

Commented [EM34]: Note: this same provision is in the current code at Section 90-7.

Commented [EM35]: This addition affirms existing Florida law.

It's worth including because, otherwise, a clever attorney might argue that the foregoing terms (permits issued, work commented) is sufficient to vest rights under this code.

Florida law requires a little bit more than that – it requires valid issuance of permits, *reasonable* reliance, etc.

The current code has similar language (see current code Section 90-8) but goes further laying out a definition for "vested rights" in Section 90-5(11).

The Town Commission may want to consider including a definition of "vested rights" like the one currently in Section 90-5(11).

(b) Where, on the effective date of the ordinance from which this chapter was derived, there are outstanding valid permits, authorizing the use of land or buildings without construction work, and where such use is not permissible under the terms of this chapter, such permit shall be void unless the use is actually in operation on that date and the underlying rights to the use are vested.

Commented [EM36]: Same as above.

[Code 1960, § 18-14]

Sec. 90-14. Relationship to the comprehensive plan.

All regulations contained in this chapter and the maps attached thereto shall be amended, supplemented or changed only in compliance with F.S. ch. 163 as pertains to comprehensive planning activities.

Commented [EM37]: Note: Substantially similar to existing section 90-9

[Code 1960, § 18-15]

Sec. 90-15. Projections into required Yard areas.

In determining compliance with the minimum Setback requirements established within these regulations, the controlling distance on each Lot shall be measured between the applicable lot line and the closest point thereto on any Building or Structure erected on the Lot, and no portion of any roof overhang, chimney, cornice, or other similar architectural feature shall project into any required front, side or rear Yard, except as provided in section 90-177.

[Code 1960, § 18-16]

Sec. 90-16. Provision for storm drainage.

No Structure shall be constructed or enlarged unless it meets all requirements of chapter 34 of the Town Code regarding storm drainage management. Such requirements shall apply to all Accessory Buildings or Structures or uses serving such Structures.

Commented [EM38]: Note: Same as current Section 90-10

[Code 1960, § 18-17]

Sec. 90-17. Zoning in progress, applicability, temporary hold on permits and licenses

Commented [EM39]: The old code did not provide for zoning in progress.

(1) *Purpose.* The zoning in progress doctrine (“zoning in progress”) allows the town to apply, on a retroactive basis, if necessary, changes to zoning regulations or to the zoning district status of property, to previously approved or currently in process development applications. Additionally, the zoning in progress allows a temporary hold on permits and licenses if there is a change in zoning, which is already in progress that would affect the permit of license.

This entire section is taken from the section 90-6 of the current code. It has been modified slightly for the sake of clarity.

(2) *Initial adoption of zoning regulations.* Zoning in progress shall be applied to the initial adoption of this section in the following manner:

a. Zoning in progress shall not apply to the extent that vested rights are established.

b. Zoning in progress shall apply to applications for development approvals, which were filed with the town after the cut-off date established in paragraph (3) below. Upon the adoption of any impact fees, all applicants will be responsible for the remittance of same to the town, irrespective of time of filing of the application, up to and including to the time of issuance of a building permit.

c. Zoning in progress shall not apply to the grant of any moratorium waiver specifically granted by the town commission.

(3) *Future amendments to zoning regulations.* When the Town is considering an amendment to the zoning regulations or the zoning map, the town may impose a temporary hold on any development applications pending before the town with respect to the subject of the amendment. The hold shall commence upon the date that the notice of zoning in progress is published in a newspaper of general circulation in the town (the “cut-off date”) and shall continue in effect for a period from the date of notice until the subject change, with or without amendments, shall have been approved or disapproved by the town commission or for a period of three months, whichever is sooner. The temporary hold shall not apply to development applications that conform with the more restrictive of the existing zoning text or map designation or the proposed zoning text or map designation. An affected person may appeal the town staff’s application of this provision to the town commission for review by the town commission by filing a notice with the town manager.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Sec. 90-18. - Charges for consulting services established.

(1) Except for applications by a single-family homeowner in the H30A and H30B districts, the town manager or designee, in the review of any application, may refer any such application presented to it to such engineering, planning, legal, technical, or environmental consultant or professional(s) employed by the town as the manager shall deem reasonably necessary to enable him/her to review such application as required by law. Charges made by such consultant shall be in accord with the charges customarily made for such services in Miami-Dade County, and pursuant to an existing contractual agreement by and between the town and such consultant. Charges made by the town shall be in accord with the hourly rates charged by such consultants or hourly rates of employed professionals and shall be paid on submission of a town invoice.

(2) Unless prohibited by law, the applicant shall reimburse the town for the

Commented [EM40]: This section is added from section 90-11 of the current code. It allows the Town to hire consultants at the applicant’s expense for zoning applications on properties outside of the single family districts (H30A and H30B).

cost of such consultant or employed professional services upon submission of a copy of the invoice, within 30 days of submission of a copy of the invoice. These fees are in addition to any and all other fees required by other law, rule or regulation of the Town Code.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Sec. 90-19. - Escrow accounts.

At the time of submission of any application or thereafter, it is required that an escrow account be established, from which withdrawals shall be made to reimburse the town for the cost of professional review services. The applicant shall then provide funds to the town for deposit into such account in an amount to be determined by the town manager, based on evaluation of the nature and complexity of the application. The applicant shall be provided with copies of any town invoice for such services as they are submitted to the town. When the balance in such escrow is reduced to one-third of its initial amount, the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such account is not replenished within 30 days after the applicant is notified, in writing, of the requirement for such additional deposit, the town may suspend its review of the application. An application shall be deemed incomplete if any amount shall be outstanding. A building permit, certificate of use and occupancy or other action shall not be issued unless all professional review fees charged in connection with the application have been reimbursed to the town. Once all pertinent charges have been paid, the town shall refund to the applicant any funds remaining on deposit.

Commented [EM41]: This section is from section 90-12 of the current code. It allows the Town to require the creation of escrow accounts funded by applicants outside the H30A and H30B district. Fees for professional services (see section above) are taken from that escrow account.

Secs. 90-20 — 90-36. Reserved.

Commented [MOU42]: Commission may wish to add a formal process for evaluating claims of vested rights described in 90-6(11) of this code

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 90-36. Comprehensive plan.

All development undertaken by and all actions taken in regard to development orders concerning land covered by the comprehensive plan shall be consistent with such plan. All land development regulations enacted or amended shall be consistent with the comprehensive plan.

[Code 1960, § 18-92]

[State law references: Adoption and amendment of comprehensive plan, F.S. § 163.3184 et seq.; adoption of zoning or land development regulations, F.S. §§ 163.3194, 166.041.]

Sec. 90-37. Permits, plats and filing fees.

(a) *Permits.* No building shall be erected, constructed, altered, moved, converted, extended or enlarged without the owner or owners first having obtained a permit therefor from the town manager. Such permit shall require conformity with the provisions of these regulations. When issued, such permit shall be valid for a period of 180 days.

(b) *Preliminary drawings, plot plans, etc.*

(1) All applications for building permits shall be accompanied by drawings and plot plan, in triplicate, showing all dimensions of lot lines, location of all proposed buildings, all yard dimensions, existing and proposed yard grades and first floor elevations.

(2) A survey prepared, signed, and sealed by a licensed surveyor, showing all dimensions of the plot and dimensions of all existing structures and easements thereon and all existing grades on plot and crown of the road shall be submitted with all applications.

(3) The drawings shall contain suitable notations indicating the use of all land and buildings. A careful record of the original copy of such drawings, plats, survey and applications shall be kept in the offices of the town manager and a duplicate copy shall be kept at the building site at all times during construction.

(4) Submission of preliminary plans and survey, to the building official and the planning and zoning board, for compliance with this chapter shall be

Commented [MOU43]: Added based on Planning and Zoning Board comments

required. Applicant shall, with the filing of such request, pay all applicable fees as provided in the town's schedule of fees.

Commented [EM44]: The 2006 Code (first drafted in 1960) contemplates a \$200 fee. We've revised this to refer to the Town's schedule of fees instead of a flat \$200.

(5) A plot plan showing provisions for adequate drainage where required.

(6) A rendering showing details of materials to be used on the exterior of the building.

(7) A detailed landscaping plan, prepared by a registered landscape architect, including scale demonstrating actual size of plants to be used.

[Code 1960, § 18-77]

Sec. 90-38. Site plan.

(a) *Requirement for a site plan.* Where required by these regulations, a site plan shall be submitted to the town manager for transmittal to the appropriate town board and commission. Such site plan shall contain all information required by the town to determine compliance with the provisions of these regulations. Where required by other applicable laws, such site plan shall be prepared, signed and sealed by an engineer or architect licensed to practice in the state.

Commented [MOU45]: Added based on Planning and Zoning Board comments

(b) *Content of a site plan.* A site plan drawn at a scale of one inch equals 40 feet or such other scale as may be approved by the town manager shall be prepared that will include and show, where applicable, the following information:

(1) All of the land in the lot, together with any adjacent or contiguous parcels in the same ownership, with such detail of adjacent properties and public ways as will relate the subject premises to the neighborhood and to the street pattern within 1,000 feet from the perimeter of the subject property. (Such information may be shown on a key map at a scale of one inch equals 1,000 feet.)

(2) The location size and shape of all existing and proposed buildings and uses on the subject site and the approximate locations and size of all existing buildings and structures on the abutting properties which are within 100 feet of the common lot line.

(3) In addition to the information required in subsections (a) and (b) of this section, the site plan shall also include the following information:

a. Location and size of all parking spaces, loading and unloading spaces, and of all existing and proposed driveway entrances and exits.

- b. Existing and proposed grades if such are significantly altered.
- c. Existing and proposed fences, walls, signs, architectural accents, street furniture and the locations and sizes of all advertising or graphic features.
- d. Location of all utility poles, fire hydrants, parking meters on adjacent streets and the location, type and size of all outdoor lighting.
- e. Existing and proposed landscaping, including any existing self-supporting perennial plant which has a trunk diameter of at least three inches, measured three feet above grade (at the base of the tree), and which normally grows to a minimum overall height of 15 feet. Proposed methods of irrigation shall also be shown.
- f. Schematic building plans, including plans, elevations and sections of all major structures.
- g. Tabulations of total gross square footage in the project and the percentages thereof proposed to be devoted to (i) the various permitted uses; and (ii) lot coverage by structures.
- h. Tabulation showing (i) the derivation of numbers of off-street parking and off- street loading spaces shown in subsection a. of this subsection; and (ii) total project density in dwelling units per acre.
- i. If common facilities (such as recreation areas or structures, common open space, etc.) are to be provided for the project, statements as to how such common facilities are to be provided and permanently maintained.
- j. Water, storm drainage and sanitary sewerage plans including information showing the projected volume of usage or discharge proposed.
- k. Plans indicating size and location of all proposed signs.
- l. Plans for recreation facilities, if any, including location, size and shape of all buildings proposed for such use.
- m. Location of facilities being provided for trash and garbage, location of any outdoor fixed seating, and the location of all other accessory structures.
- n. Such additional data, maps, plans, or statements as the town may require to fully describe and evaluate the particular use or

activity proposed.

The town manager shall have the right to waive submission of any of the items required herein if, in the town manager's opinion, such information is not required in order to render a decision on the site plan application as submitted.

[Code 1960, § 18-76]

Sec. 90-39. Certificate of occupancy.

- (a) No vacant land shall be occupied or used until a Certificate of Occupancy shall have been issued by the town building official.
- (b) No premises shall be used and no buildings hereafter erected or structurally altered shall be used, occupied, or changed use until a Certificate of Occupancy and compliance shall have been issued by the town building official, stating that the building or proposed use of a building or premises complies with the building laws and the provisions of these regulations.
- (c) Certificates of Occupancy and compliance shall be applied for within ten days after the erection or structural alteration of such have been completed in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the town manager.

[Code 1960, § 18-78]

Sec. 90-40. Changes and amendments.

- (a) *Changes and amendments.* The town commission may, from time-to-time, amend, supplement, or change by ordinance, the boundaries of the districts or the regulations herein established.
- (b) *Reconsideration of district boundary changes.* When a proposed change in district boundaries has been acted upon by the town commission and disapproved or failed of passage, such proposed change, in the same or substantial similar form, shall not be reconsidered by the town for a period of at least one year following the date of such action.
- (c) *Withdrawal of a petition.* Any petition for amendment, supplement, or change may be withdrawn by a request in writing from the petitioner at any time before a decision of the town commission, but if withdrawn after advertisement for a public hearing or posting of the property, the same or a substantially similar petition covering the same property shall not be resubmitted, except by the town manager or a member of the town commission, sooner than one year after date established for the prior hearing. Filing fees shall not be refunded upon withdrawal.

(d) *Adoption method for land use and zoning map changes.* Applications for amendments to the land use map and rezonings shall be adjudicated through the same procedures as required for ordinance adoption as required by law.

Commented [MOU46]: Subsections (d) and (e) added from current code

(e) *Zoning change criteria.* Application for zoning change review criteria. In order to approve an application for zoning change the town commission must find that the application complies with each of the following criteria. The applicant is required to provide a report at the time the application is filed which includes documentation that the application complies with each of the below criteria:

- a. The zoning change is consistent with the comprehensive plan;
- b. The proposed change will result in development that is consistent in scale and character with those within 300 feet of the site;
- c. The resulting boundaries of the zoning district are logically drawn;
- d. The proposed change will not reduce property values in the town;
- e. The proposed change will enhance the quality of life in the town; and
- f. There are substantial and compelling reasons why the proposed change is in the best interests of the town.

[Code 1960, § 18-79]

[State law references: Zoning amendments, F.S. §§ 163.3194, 166.041.]

Commented [MOU47]: Former Section 90-41 re Conditional Uses moved to New Section 90-90 with other zoning relief applications

Secs. 90-41-90-50. Reserved.

DIVISION 2.PLANNING AND ZONING BOARD

Sec. 90-51. Created.

There is created a town planning and zoning board.

[Code 1960, § 18-32]

Sec. 90-52. Membership; terms of officers; vacancies; meetings; quorum.

(a) The planning and zoning board shall consist of five members and a first alternate member and a second alternate member. The term of each appointment shall be for a period of two years. Each member of the commission shall be entitled to one appointment to the board, subject to the approval of a majority of the commission; any member of the commission shall have the right to replace his or her appointment for the unexpired term in the case of removal or vacancy, subject to the approval of a majority of the commission. Any member may be removed and replaced, with or without cause, by a majority vote of the town commission. Terms shall expire on the last Tuesday of March of the applicable year, except that applications for hearings filed before March 10th of the applicable year shall be heard by the then existing board.

(b) A vacancy shall exist on the date that any member ceases to possess any of the qualifications for membership established herein and a vacancy shall exist when a member has been absent from three consecutive regularly convened meetings of the board, or has been absent from five regularly convened meetings of the board within a board year.

(c) The board year shall commence on the last Tuesday of April in each year. Regular meetings of the board shall be held on the last Tuesday of each month and three members present shall constitute a quorum; however, three affirmative votes shall be required to approve a request for a variance.

(d) One commissioner, appointed by the town commission, shall be a liaison, nonvoting representative; and, the town manager shall be an *ex officio* member without vote. Neither the commission representative nor the town manager may be counted in determining that a quorum is present.

(e) Meetings of the board may be held in the town hall or community center, or virtually when otherwise permitted by law or emergency order. Special meetings must be called by the chairman upon approval of a quorum. Records shall be kept of all proceedings.

(f) Alternate participation: Alternates shall be subject to the same attendance and participation requirements as members. Alternates may participate in all board discussions but may not vote unless sitting as a substitute for a member. In the

Commented [EM48]: Note: The 2006 Code did not include alternate members.

It also did not address member qualifications.

We need direction from the Commission as to whether to include qualification requirements. For reference, the current code's qualification requirements are:

At least three of the members or alternates must be one of the following:

1. Florida-licensed general contractor or a construction management professional with at least three years of professional experience as a construction project manager, construction superintendent or construction estimator;
2. Florida licensed PE or a civil, mechanical, electrical, chemical or environmental engineer with a baccalaureate degree in engineering and three years of professional experience;
3. Certified planner (AICP) or a planning professional with a graduate degree in planning from a program accredited by the Planning Accreditation Board with at least three years of professional planning experience or a bachelor's degree in planning from a program, accredited by the Planning Accreditation Board (PAB) with at least three years of professional planning experience;
4. Florida-licensed landscape architect with at least three years of professional experience;
5. Registered interior designer with at least three years of professional experience;
6. Florida-licensed attorney with at least three years of professional experience;
7. Florida-licensed architect; or
8. Real estate developer with three years of professional experience, either as the principal or executive.

Commented [EM49]: This addition is necessary because the 2006 Code doesn't contemplate Alternate board members. We've imported the wording from the current code.

The 2006 Code language predates the consolidation of the Planning Board and Design Review Board. Prior to consolidation of boards, both boards had difficulty satisfying quorum. Consolidation and the creation of alternate seats made it easier to empanel the boards and to ensure a quorum.

event a member is absent or unable to participate in an item before the board, the first alternate or if the first alternate is unavailable, the second alternate, shall fill the absent or recused member's position for the duration of that member's absence.

(g) **Vacancies** on the planning and zoning board shall be filled by appointment for the unexpired term in the same manner as original appointments are made. Appointed members of the board shall not, during their term, hold any other public office, paid position, or serve on any other board under the town government, except as a member of a temporary board, or that of a voluntary fireman. Membership on this board shall cease concurrently with the filing of a nominating petition for town commission.

Commented [MOU50]: This was added from Section 90-57 to consolidate all membership guidelines into the same section.

(h) **Removal:** At any time that the Town Commission determines that one or more board members are not acting in the best interests of the Town's residents, it may vote to remove said board member (s) and replace in the manner set forth for filling vacancies in subsection (h) above.

Commented [MOU51]: This is new language to govern removal of members by the Commission when necessary

[Code 1960, § 18-83]

Sec. 90-53. Officers.

One member shall be elected by the planning and zoning board as chairman, at its first regular meeting in April of each year. In addition, the board shall, at the same time, elect one of its members as vice-chairman. In the event of the resignation, removal, or inability of the chairman to serve, the vice-chairman shall succeed to the position of chairman for the unexpired term; and the board shall, thereupon, elect one of its members as vice-chairman for the unexpired term. The chairman shall preside at all meetings. In his absence, the vice-chairman shall preside. The chairman shall submit to the town commission all reports and recommendations of the planning and zoning board. The town shall provide a secretary for the board and the town clerk shall be custodian of all records, books, and journals of the board.

[Code 1960, § 18-84; Ord. No. 1364, § 1, 6-11-96]

Sec. 90-54. Recommendations.

The planning and zoning board will submit its recommendations to the town commission, by and through the chairman or vice-chairman.

[Code 1960, § 18-85]

Sec. 90-55. Power and duties

Commented [MOU52]: This section includes provisions from the current code as modified slightly based on Town practice.

(1) *Zoning matters:* The planning and zoning board shall act as an advisory board to the town commission on zoning matters and design review matters. The boards' powers and duties are as follows:

(a) To perform its responsibilities as the local planning agency pursuant to local and state government comprehensive planning and land development regulations (F.S. Ch. 163);

(b) To review and make recommendations to the town manager and the town commission regarding the adopting and amendment of the official zoning map; the land development regulations amendments; zoning district boundary changes; and comprehensive plan amendments. Such recommendation shall be undertaken in accordance with the provisions of F.S. chs. 163 and 166. In all cases where a recommendation is not made within 60 days after referral, the town commission may act upon adoption without such recommendation;

(c) To review and make recommendations to the town commission, on applications pertaining to site plans (if applicable) zoning changes, special exceptions, conditional uses, variances, and any other zoning applications;

(d) To conduct such studies and investigations required under the Town Code and/or requested by the town commission and as needed from time to time to sit in a joint session with the town commission as requested by the town commission; and

(e) The planning and zoning board shall have such other duties pertaining to zoning matters as prescribed by law, this section and the Town Code.

(2) *Design review:* The Planning and Zoning Board shall conduct a design review for all structures to be constructed and renovated within town limits on the terms outlined below.

(3) *FEMA review:* The Planning and Zoning Board shall act as the variance and appeals board pursuant Chapter 42, "Floods

[(Ord. No. 1524, § 2, 6-09-09; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1598, § 2, 1-15-13; Ord. No. 1618, § 2, 3-11-14; Ord. No. 18-1689, § 2, 9-12-18)]

Sec. 90-56. Expenditures; indebtedness.

The Town Commission may authorize the expenditure by the planning and zoning board of such funds as the commission may deem necessary to the performance of the requirements of this chapter. The Town Commission may appropriate from the general fund as set up in the annual budget and such sums as it may from time to time authorize

Commented [EM53]: This sentence carried over from the 2006 Code Section 90-36 above.

the board to expend. The Board may not incur indebtedness without prior commission approval.

[Code 1960, § 18-87]

Sec. 90-57. Reserved

Commented [MOU54]: Consolidated into Section 90-52(g) of this draft.

[Code 1960, § 18-88]

Sec. 90-58. Zoning Applications; rules of procedure.

The following rules shall govern procedure on all applications for zoning changes, special exceptions, conditional uses, and/or variances:

(1) All applications shall be submitted to the planning and zoning board on the prescribed form and accompanied with the prescribed fee(s) as listed in the Town's adopted schedule of fees. The planning and zoning board shall be required to meet and hold a public hearing not later than 30 days after receipt of such zoning, special exception, conditional use, or variance request. The board shall make its views and recommendations known to the town commission for the town commission's determination. If the board fails to take action within the prescribed time, the commission shall assume its duties.

Commented [EM55]:
This section has been modified to retain existing fee schedule and to ensure appropriate notice consistent with state law.

Note: Using adopted fee schedule facilitates occasional fee changes to reflect costs, inflation, etc.

Commented [MOU56]: Current 30-day time-frame results in a staff rush to schedule applications in time to enable sufficient time for agenda prep, staff analysis, and required notice. A 60-day

(2) A public hearing shall be advertised at least once in a local newspaper of general circulation and publicly posted in the town hall as required by Florida Statute. Written courtesy notices shall be sent by first class mail, return receipt requested, to affected property owners within a radius of 375 feet. Where practicable, such advertising shall contain, in addition to a legal description, a street address, together with the specific intended use in layman's language, *i.e.*, "apartment house" rather than "multiple dwelling," "meat market" rather than "SDB40" or "business zoning." Such notice shall be approved by the town planner prior to mailing and proof of such mailing shall be submitted to the Town prior to the hearing.

Commented [EM57]: State law requires newspaper notice.

See Fla. Stat. Section 166.041.

Commented [EM58]: NOTE: Current code requires notice within a 300 foot radius

(3) A notice, 18 inches by 24 inches, shall be placed in a prominent place on the property by the applicant at his own expense denoting the following:

ZONING CHANGE REQUESTED

for use as
(here insert use)
Public Hearing at Town Hall

[35 of 191]

(here insert date and time)
(Yellow background/black letters)

Such notice to be posted not less than ten days prior to such hearing and shall remove the notice three days after the appropriate board takes final action regarding the application.

Commented [EM59]: NOTE: Current code requires posting "one week" prior.

(4) A posted notice shall contain the requested use change in laymen's language as in subsection (3) of this section. Posted notice shall be of standard size in standard colors, approved by town manager before erection.

Commented [EM60]: Current code requires that applicant remove posted notice three days "after the conclusion of the planning and zoning board meeting." Our proposed revision

(5) All applications for rezoning must be made and presented by the fee title owner or owners of the property sought to be rezoned or by a tenant or attorney for the owner with the owner's written approval.

(6) Applications for variances, conditional uses and special exceptions shall follow, substantially, the same procedure as applications for zoning changes.

(7) A copy of each variance, special exceptions, conditional use or zoning change and ordinance affecting change in this chapter shall be sent to each member of the planning and zoning board by the town manager after the commission grants it. All variances granted by the town commission shall be kept in a journal kept for such purpose.

Commented [MOU61]: All resolutions and ordinances are public record. This may not be necessary.

[Code 1960, § 18-89; Ord. No. 1252. §§ 1, 2, 5-14-91]

Sec. 90-59. Review of building permits.

(a) Prior to the issuance of building permits, all applications for new Structures, additions or exterior changes which affect the exterior dimensions of any Structure, together with any applicable detailed plans, specifications and plot plans, shall be submitted to the planning and zoning board for its review and recommendations as provided in section 90-61.

(b) To assure that the architectural design shall be in harmony with the architecture of the neighborhood, the planning and zoning board shall suggest such changes in the design of the structure to preserve the traditional aesthetic treatment and excellence of design of the community. In considering the design of the building, the board shall consider and render a recommendation as to any element or facet of the design and location of the building.

[Code 1960, § 18-90]

Sec. 90-60. Special meeting or special public hearing.

In the event, upon the request of any applicant, the planning and zoning board should call a special meeting or special public hearing other than specifically required by this chapter, the applicant shall thereupon pay the appropriate fee for such meeting set forth in the town's adopted fee schedule to help defray the costs and expenses of calling the special meeting or special public hearing. The applicant shall also pay any other applicable fees as listed in the town's adopted fee schedule. Nothing contained in this section shall obligate or require the planning and zoning board to call a special meeting or special public hearing except as may be provided in this chapter.

Commented [EM62]: This addition clarifies that an applicant who, for example seeks site plan approval (\$12,000) plus a special exception (\$300), must also pay both fees.

[Code 1960, § 18-91]

Sec. 90-61. Design Review

Commented [EM63]: This section imported from the current code.

The design review process is set forth as follows:

(a) Design review process.

(1) Purpose. This section is intended to promote excellence in architectural and urban design; preservation of the town's historic and architectural and neighborhood character; and desirable urban growth and development. To implement this goal, the planning and zoning board shall review and evaluate applications as to whether the design of new developments and/or improvements within the town are consistent with and in conformance with the design guidelines set forth in the Town Code. The design guidelines are attached hereto as Exhibit A [at the end of this chapter] provided that the town commission may amend said guidelines from time to time via resolution. The guidelines as amended, shall govern and be applied as fully set forth herein.

(2) Design review procedure.

i. All applications for new developments or improvements that are subject to the Town's Adopted design guidelines shall be referred to the planning and zoning board for review and consideration.

ii. The board shall review each application whether for development of single-family, multifamily, commercial or other districts for conformity with the town's adopted design guidelines and approve, approve with conditions, or disapprove the design review application. With regard to the design review process, no applicant shall be required to appear before the board more than twice per application.

iii. Meetings held by the board for review and recommendations of applications shall be arranged to permit participation by the person or

group making the application or request and representatives of such person or group, if desired. Architectural plans and drawings of the building facades, lists of finish materials and other information necessary to provide adequate insight into the proposed development/improvement shall be provided to the board by the person or group making the proposal or request.

(3) Design review application fees are set forth in the town designated fee schedule.

(4) Design review applications which are made in conjunction with other development approval applications may be reviewed and considered concurrently with related development approval applications.

Sec. 90-62. Single-family and duplex development review process.

Commented [MOU64]: Added from current code

90-62.1 Permits. No single-family or duplex building shall be erected, constructed, altered, moved, converted, extended or enlarged without the owner or owners first having obtained a building permit from the building official. Such permit shall require conformity with the provisions of these regulations. When issued, such permit shall be valid for a period of 180 days. However, the town manager or designee may grant an extension to the permit due to an uncontrollable act of nature of up to 180 days.

90-62.2. The building official reviews all applications for building permits or certificates of occupancy for compliance with the provisions of the zoning code and all other applicable codes. The building official shall issue a building permit if the applicant demonstrates that the proposed development is in compliance with all applicable codes and in compliance with any and all development orders issued in connection with the project, and that all fees have been paid.

90-62.3 Permit card. Upon approval of plan specifications and application for permit and payment of required fees, the building official shall issue a permit. The building official shall issue a permit card for each permit which shall bear the description of the property, identify the work being done, identify the owner and contactor and other pertinent information, and such card shall be maintained in a conspicuous place on the premises effected there by the hours of work and available on demand for examination.

90-62.4 Permit requirements. The Florida Building Code as amended is hereby adopted as the regulation governing the construction of buildings and structures in the town. All qualified applicants desiring a permit to be issued by the building official as required shall file an application in writing on a form provided by the town. No development shall occur until and unless the building official has issued a building permit.

90-62.5 Design guidelines. The town has adopted design guidelines intended to provide direction and suggestions for all development. The purpose of the planning and zoning board when conducting design review is to interpret those guidelines

and provide guidance to the applicants as to how the design should be revised to more closely approximate or reflect the town's adopted guidelines. The applicant shall then incorporate those suggestions prior to proceeding to building permit.

90-62.6 Single-family and duplex development shall be subject to design review by the planning and zoning board. The following types of applications shall require noticing as described below:

- (1) Construction of new single-family homes.
- (2) Partial demolition and rebuilding of at least 50 percent of the square footage of a single-family home where the exterior facade of the structure is affected.
- (3) An addition of at least 50 percent of the square footage of the existing single-family home.

The applicant shall notify the public of the planning and zoning board hearing date and location, on the proposed application as follows:

- a. The applicant shall post a notice on the property one week prior to the planning and zoning board meeting and remove the notice three days after the conclusion of the planning and zoning board meeting. A notice, 18 inches by 24 inches, shall be placed in a prominent place on the property by the applicant, denoting the following:

REQUEST FOR:
PLANNING AND ZONING BOARD MEETING:
DATE AND TIME
TOWN HALL
9293 Harding Avenue
Surfside, FL 33154

COMPLETE INFORMATION REGARDING THE APPLICATION IS AVAILABLE
BY CONTACTING THE TOWN HALL.

- b. The applicant shall mail written courtesy notices via certified mail, to the abutting single-family property owners and single-family property owners parallel to the subject property line across any right-of-way, of the planning and zoning board meeting date and location ten days prior to the meeting.
- c. The applicant shall provide the town the corresponding certified mail receipts, indicating the notices have been mailed and provide evidence that the sign has been posted three days prior to the planning and zoning board meeting.

90-62.7 The following shall be exempt from planning and zoning board and design review; however, the design guidelines shall be followed:

- (1) Interior or rear yard fences.
- (2) Interior renovations.
- (3) Single-family and duplex awnings.
- (4) Screens.

- (5) Driveways.
- (6) Re-roofs.
- (7) Trellis.
- (8) Storage sheds.

90-62.8 The following are required for submittal to the planning and zoning board for design review applications:

- a. Survey with site elevation information in NGVD29 (plans must follow same standard)
- b. Location sketch
- c. Site Plan with zoning data table and clear dimensions
- d. Elevations
- e. Floor plans
- f. Landscape drawings
- g. Photos of property and neighboring properties with clear descriptions
- h. Renderings
- i. Diagrams depicting identification and calculation of:
 - i. Lot coverage
 - ii. Landscape/pervious areas
 - iii. Setbacks
- j. For applications adding second floor to existing first floor, must show building appraisal to determine 50% trigger for additional requirements/improvements (to be reviewed by Building Department)
- k. Identification of colors and materials

Commented [MOU65]: Submittal requirements based on Planning and Zoning Board input

90-62.9 Effective period of planning and zoning board design review approval. A design review approval from the planning and zoning board shall be effective until the development is completed except that if, after 24 months from the date of the approval by the planning and zoning board a building permit for a principal building has not been issued and remains in effect, the approval shall be null and void.

(1) Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the town commission, at its sole discretion, provided the applicant submits a request in writing to the town manager or designee in advance of the expiration of the original approval, setting forth good cause for such an extension. For the purpose of this section, a building permit for a principal building shall cease to be in effect once required inspections have lapsed or once a certificate of completion or certificate of occupancy is issued.

(2) All approvals which have been granted prior to the effective date of this chapter, shall be null and void and of no further force or effect if not utilized within two years after the effective date of this chapter. The foregoing provision of this paragraph shall not apply if the governmental approval expressly established a specific time limitation for utilizing the approval. In such instances, the time limitation established by such resolution shall prevail.

(Ord. No. 1514, § 2, 4-14-09; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1598, § 2, 1-15-13; Ord. No. 1604, § 2, 8-13-13; Ord. No. 1618, § 2, 3-11-14; Ord. No. 1623, § 2, 7-8-14; Ord. No. 1650, § 2, 8-10-16 ; Ord. No. 17-661 , § 3, 5-9-17; Ord. No. 18-1689 , § 2,

9-12-18)

Sec. 90-63, - Development review requirements for submittals other than single-family and duplex.

Commented [MOU66]: Added from current code

- (1) Generally. Review and approval of a site plan by staff reviewing agencies and the planning and zoning board, and the town commission is required prior to any development of land in the town.
- (2) Process. Submit plans (sets to be determined by town staff as appropriately needed), which are distributed to the staff members of the development review group (DRG).

(a)The DRG member shall review the site plan and prepare comments. The comments shall be forwarded to the town manager or designee. The comments shall be addressed by the applicant, if applicable. The town manager or designee shall hold a development review group meeting with appropriate town staff and the applicant to discuss the comments. In reviewing an application each reviewer shall consider, and comment as appropriate, on applicable issues relevant to their particular area of expertise, the extent to which:

- i.The development, as proposed, conforms to the comprehensive plan and the zoning code;
 - ii.The development, as proposed, will have a favorable or unfavorable impact on the environment and natural resources, including a consideration of the means and estimated cost necessary to minimize the adverse impacts, if any;
 - iii.The development, as proposed, will have a favorable or unfavorable impact on the economy of the Town of Surfside;
 - iv.The development, as proposed, will efficiently use or unduly burden water, sewer, solid waste disposal, education, recreation or other necessary public facilities which have been constructed or planned and budgeted for construction in the area;
 - v.The development, as proposed, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, public streets, and roads, which have been planned and budgeted for construction in the area, and if the development is or will be accessible by private or public roads or streets.
 - vi.The development, as proposed, is consistent with the community character of the immediate neighborhood. In addition to consistency there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.
 - vii.In the event of redevelopment, the applicant shall also submit a detailed plan for demolition.
- (b)After the revisions and upon review of the final site plan by the DRG

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members, the site plan will be scheduled for the next available planning and zoning board meetings. The Town Manager or designee shall prepare a report to the planning and zoning board and town commission, addressing the applicable criteria.

- (3) Submittal requirements for DRG and planning and zoning board are provided below.
- a. Survey with site elevation information in NGVD29 (plans must follow same standard)
 - b. Location sketch
 - c. Site Plan with zoning data table and clear dimensions
 - d. Elevations
 - e. Floor plans
 - f. Landscape drawings
 - g. Photos with clear descriptions
 - i. Of property and neighboring properties
 - h. Renderings
 - i. Context diagrams – showing proposed in context of neighboring structures
 - j. Streetscape diagrams for all frontages
 - k. Diagrams depicting identification and calculation of:
 - i. Lot coverage
 - ii. Landscape/pervious areas
 - iii. Setbacks
 - l. Elevations
 - m. Floor plans for all levels
 - n. Landscape drawings
 - o. Parking calculations
 - p. Shade study diagram
 - q. Sections
 - r. Identification of colors and materials

Commented [MOU67]: Submittal requirements based on Planning and Zoning Board input

90-63.2 Exempt development. Notwithstanding any other provision of this chapter, the following activities shall not require site plan approval, however, may require design review approval by the planning and zoning board:

- (1) The deposit and contouring of fill on land.
- (2) Construction of a single-family home on an existing single-family lot.
- (3) Construction of a single duplex on an existing single lot.

90-63.3 Effective period of final site plan approval. An approved final site plan shall be effective until the development is completed except that if, after 24 months from the date the final site plan is approved a building permit for a principal building has not been issued and remains in effect, the site plan shall be null and void.

- (1) Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the town commission, at its sole discretion, provided the applicant submits a request in writing to the town manager or designee in advance of the expiration of the original approval, setting forth good cause for such an extension. For the purpose of this section, a building permit for a principal building shall cease to be in effect once required inspections have lapsed or once a

certificate of completion or certificate of occupancy is issued. In those cases where a development includes more than one principal building and it is contemplated that the development shown on a site plan will not be completed with a building permit for a principal building continuously in effect, approval by the planning and zoning board of a phasing schedule must be obtained as part of the overall site plan approval. Amendments to the original site plan shall not extend this time frame unless an extension is expressly granted by the planning and zoning board as a part of the approval of the amendment.

(2) All approvals which have been granted prior to the effective date of this chapter, shall be null and void and of no further force or effect if not utilized within two years after the effective date of this chapter. The foregoing provision of this paragraph shall not apply if the governmental approval expressly established a specific time limitation for utilizing the approval. In such instances, the time limitation established by such resolution shall prevail.

(Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1572, § 2, 4-12-11; Ord. No. 1598, § 2, 1-15-13; Ord. No. 1618, § 2, 3-11-14; Ord. No. 18-1689, § 2, 9-12-18)

Secs. 90-64-90-70. Reserved.

DIVISION 3. NONCONFORMING USES, LOTS AND STRUCTURES

Sec. 90-71. Nonconforming Lots.

If the owner of a lot in any district does not own a parcel or tract of land immediately adjacent to such lot, and if the deed or instrument under which such owner acquired title to such lot was of record prior to the adoption of the ordinance from which this division was derived, or any amendment thereto which requires a larger minimum lot size than currently exists, the owner may use such lot for improvements that conform in all other respects to applicable zoning regulations. Any existing building which may be located on such a nonconforming lot may be altered or enlarged: provided such alteration or enlargement meets all other applicable requirements of these zoning regulations.

[Code 1960, § 18-61]

Sec. 90-72. Nonconforming use of land.

In a residential or tourist district where vacant land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two years from the date of passage of the ordinance from which this division was derived. During the two-year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property.

Sec. 90-73. Nonconforming use of land and/or buildings.

Except as otherwise provided herein, the lawful use of a building or lawful accessory use of land existing at the effective date of the ordinance from which this division was derived may be continued, although such use does not conform to the provisions hereof. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use. The nonconforming use of a building may be hereafter extended throughout those parts of a building which were lawfully and manifestly arranged or designed for such use at the time of passage of the ordinance from which this division was derived.

[Code 1960, § 18-63]

Sec. 90-74. Discontinuance of nonconforming uses.

No building or land, or portion thereof, used in whole or in part as a nonconforming use in any zoning district, which remains idle or unused for a continual period of six months, or for 18 months during any three-year period, irrespective of whether or not existing equipment or fixtures which contribute to the nonconformity are removed, shall

again be used except in conformity with the regulations of the district in which such building or land is located.

[Code 1960, § 18-64]

Sec. 90-74.1. Discontinuance of nonconforming structure.

(a) If, for any reason, the use of a nonconforming structure remains idle or unused for a continual period of six months or for 18 months during any three-year period, the nonconforming structure may not be used again for any use until it is made to conform with the regulations of the district in which such structure is located and with all of the provisions of the Town Code, including this chapter 90.

(b) This section 90-74.1 shall apply to all nonconforming structures, including those which became idle or in an unused condition prior to the adoption of this section 90-74.1.

[Ord. No. 1449, § 2, 1-13-04]

Sec. 90-75. Destruction of a nonconforming use.

No building which has been damaged by any cause whatever to the extent of more than 50 percent of the fair market value of the building immediately prior to damage shall be restored except in conformity with these regulations and all rights as a nonconforming use shall be terminated. If a building is damaged by less than 50 percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within 12 months of the date of such damage.

[Code 1960, § 18-65]

Sec. 90-76. Reserved

Sec. 90-77. Buildings nonconforming in height, area or bulk.

A building nonconforming only as to height, area or floor area requirements may not be altered or extended.

[Code 1960, § 18-67]

Sec. 90-78. Nonconforming uses not validated.

A nonconforming use in violation of a provision of these regulations, or any

provision which these regulations amend or replace shall not be validated by the adoption of these regulations.

[Code 1960, § 18-68]

Secs. 90-79--90-89. Reserved.

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DIVISION 4. SPECIAL EXCEPTIONS, CONDITIONAL USE PERMITS AND VARIANCES

Sec. 90-90. Conditional uses.

(a) *Purpose.* The purpose of this section is to provide a process which is designed to determine if certain uses, hereafter referred to as conditional uses, should be permitted. Special review of conditional uses is required because such uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare of the community; but because of the nature of the use and possible impact on neighboring properties, require the exercise of planning judgment on location and site plan.

(b) *Conditional uses enumerated.* The following buildings, structures, and uses may be approved by the town commission as conditional uses in any district in which they are specifically allowed, as indicated within the provisions for individual zoning districts. Approval of such conditional use(s) in accordance with the procedures and standards of this section shall only be granted where it has been clearly shown that the public health, safety, morals, and general welfare will not be adversely affected; that adequate off-street parking facilities, in accordance with this chapter, will be provided; and that necessary safeguards will be provided for the protection of surrounding property:

- (1) Religious institutions
- (2) Institutions educational or philanthropic, including museums, but not including nursing homes or hospitals.
- (3) Off-street parking lots.
- (4) Public and governmental buildings.
- (5) Public utilities or public service uses, buildings, structures and appurtenances thereto.
- (6) A bar accessible from the pool or pool deck for use solely by guests of hotels in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.
- (7) Bars
- (8) Hotel swimming pools in the H30, H40, and H120 districts

Commented [MOU68]: The additional uses in (7) through (14) come from the current code. (15) is a catch-all.

- (9) Veterinary office
- (10) Pump stations in MU and CF districts
- (11) Electric Vehicle Charging Stations in the MU and CF districts.
- (12) Outdoor dining facilities in the H40 and H120 district
- (13) Rooftop photovoltaic solar system
- (14) Car canopies, constructed of canvas and pipe in accordance with section 90-185 in a front, side or rear yard setback in the H30A, H30B and H30C districts
- (15) Helistop / Heliport
- (16) Any other use set forth as a conditional use elsewhere in this code

(c) *Site plan required.* Each application for approval for a conditional use shall be accompanied by a site plan. Such site plan shall be prepared in accordance with the provisions of section 90-38. In addition, each application shall be accompanied by a letter and sign and sealed survey indicating compliance with all of the provisions of section 90-38, and any additional information as may be required to permit a determination of the exact nature of the proposed use and its effect on surrounding properties, the adjacent neighborhood, and its consistency with the town's adopted comprehensive plan.

(d) *Procedures; conditional uses.* Applications for approval of a conditional use shall conform with the procedural requirements of section 90-94. The planning and zoning board's report to the town commission may contain recommendations regarding conditions which should be imposed by the town commission in approving the conditional use. The town commission may establish these and/or additional conditions for an approval by a simple majority vote.

(e) *Annual Permit Requirements.* After approval by the Town Commission, a Conditional Use shall be required to obtain an annual permit. The Town Manager or designee shall review the annual permit application to determine if the Conditional Use continues to comply with requirements of this Code and any additional conditions approved by the Town Commission. This permit shall include a fee as established by the Town Commission. The permit shall be submitted for and proceed concurrently with the annual business tax receipt.

(f) *Revocation.* If the Conditional Use fails to meet requirements of this Code

Commented [EM69]:
This addition establishes a means by which the Town can continuously monitor compliance with the conditions of an approval.

The text is adapted from Section 90-23.6 of the current code.

Commented [EM70]: This addition allows for revocation of a conditional use permit if it fails to satisfy conditions.

The text is adapted from Section 90-23.7 of the current code.

or the conditions approved by the Town Commission, a Conditional Use permit may be revoked after the Conditional Use permit holder has been notified of these deficiencies. The administrative decision to revoke the Conditional Use may be appealed to the Town Manager within thirty (30) days of the revocation. The Town Manager shall schedule an informal hearing with the applicant and his decision shall be rendered within ten days of the meeting in writing. That decision will be considered final. Any decision made by the Town Manager regarding Conditional Use permits may be appealed to the Town Commission.

(g) Approval of a conditional use under this section shall lapse and/or be extended under the provisions of section 90-93.

[Code 1960, § 18-69; Ord. No. 1407, § 1, 1-11-00]

Sec. 90-91. Variances.

(a) *Purpose, definition, scope and limitations.* A variance is a relaxation of the terms or provisions of the Code of the Town of Surfside (Town Code) where such action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the Town Code would result in unnecessary and undue hardship on the property. As used in this section, a regular variance is authorized only for lot coverage, dimensions of yards, setbacks, other open spaces, building spacing, parking, or loading requirements. A heightened variance may be granted for any other restriction in this code provided the entire town commission approves it unanimously upon a finding that all variance standards have been met and that the variance(s) and project are in the best interest of the town.

(b) *Uses and height of structures not subject to regular variance.* A variance is authorized only as set out in subsection (a).

(1) Under no circumstances shall the town commission grant a regular variance that would allow a use of property that is not allowed within the zoning district under the Town of Surfside Comprehensive Plan and the Town Code.

(2) Under no circumstances shall the town commission grant a regular variance that would allow height of development and structures within the Town of Surfside that exceeds the maximum building heights that are set out in the Town of Surfside Comprehensive Plan or the Town Code, whichever provisions are more restrictive.

(c) *Nonconforming uses and structures not grounds for granting variance.* Nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and permitted use of lands, structures or buildings in any other

Commented [MOU71]: The additions to this section were discussed with the Mayor on 9-28-2020 in order to provide some mechanism whereby a project that is in the best interest of the town can be approved without changing the code. An alternative would be to delete these changes and require a code change to accommodate such a project.

district, shall not be considered grounds for granting a variance.

(d) *Town manager not authorized to vary terms of section.* The town manager has no authority to relax the terms of this section. Authority to grant variances is lodged solely with the town commission.

(e) *Application requirements.* An application for a variance shall be filed by the owner of the property upon which the variance is requested or the owners designated representative. The following shall, at minimum, be required to support a variance application: Statements of ownership and control of the property, executed and sworn to by the owner or owners of 100 percent of the property described in the application, or by tenant or tenants with the owners' written, sworn consent, or by duly authorized agents evidenced by a written power of attorney if the agent is not a member of the Florida Bar. Only applications which the town commission is authorized to consider and act upon shall be accepted for filing. The application shall be on a form provided by the town manager, and shall include any required application fee.

(f) *Staff review.* The town manager shall review the application to determine whether the proposed variance complies with the general purpose and standards set forth herein. The town manager shall compile a written staff report summarizing the facts regarding the application, including all relevant documents. The complete staff report shall be transmitted to the planning and zoning board and to the town commission.

(g) *Review by planning and zoning board and by the town commission.* The town manager shall schedule the variance application for a meeting of the planning and zoning board. The planning and zoning board shall conduct one public hearing on the variance application, review the application, and make recommendations to the town commission for final action. The town manager shall then schedule the variance application, including the recommendation of the planning and zoning board, for a meeting of the town commission.

(1) *Public hearing.* The town commission shall hold one public hearing on the variance application.

(2) *Action by the Town Commission.* In considering whether to approve or deny the application, the town commission shall review the application, the purposes and standards set forth in this section, the staff report, the recommendation of the planning and zoning board, and relevant evidence, including oral and written comments received at the public hearing. No regular variance shall be granted except upon the affirmative vote of at least four members of the town commission. No heightened variance shall be granted except upon the affirmative vote of all five members of the commission.

(h) *Standards of review.* The town commission shall approve a variance only if the variance applicant demonstrates by clear and convincing evidence that all of the following are met and satisfied:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- (2) The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;
- (3) Literal interpretation of the provisions of the Town Code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Town Code and results in unnecessary and undue hardship on the applicant;
- (4) The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the Town of Surfside Comprehensive Plan or the Town Code;
- (5) An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;
- (6) Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;
- (7) The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and
- (8) The requested variance is in harmony with the general intent and purpose of the Town of Surfside Comprehensive Plan and the Town Code, is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.
- (9) For a heightened variance, the requested variance(s) and the project they are a part of are all in the best interest of the town.

(i) *Conditions and restrictions.* The town commission may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the standards set out in this section, and to prevent or minimize adverse effects on other property in the neighborhood. Violation of such conditions and restrictions, when made a part of the terms under which a variance is granted, shall be deemed a violation of the Town Code, and shall constitute grounds for revocation of the variance.

(j) *Expiration of approval.* The approval of a variance shall be void if the applicant does not obtain a building permit or other development order to implement the variance within 12 months after the granting of the variance. An applicant who has obtained approval of a variance may request an extension of this time period within the original approval period. The town commission, in its discretion, may grant one or more extensions for a period of up to a total of one year for good cause shown by the applicant, provided the request for extension is made prior to the lapse of the variance.

(k) *Amendments and alterations to approved variances.* Any expansion to an approved variance and any addition to or expansion of an existing variance shall require the same application, review, and approval as required under this section for the original variance.

[Code 1960, §§ 18-72, 18-73; Ord. No. 1299, § 1, 10-13-92; Ord. No. 1450, § 2, 4-13-04]

Section 90-91.1. Practical difficulty variance.

In order to provide homeowners with the ability to implement ground-floor additions for existing homes, in the H30B district, where existing lot coverage is at or within 20% of the allowable lot coverage, the Planning and Zoning Board may grant a practical difficulty variance to allow an addition that increases the total lot coverage to no more than 50% of the lot area. The addition shall be limited to the ground floor only, and no subsequent alteration of the building may increase second floor area unless the lot coverage is reduced to the regularly applicable maximum 40% of the lot area. The addition shall comply with all other provisions of this code, and shall not result in a new configuration of the roofline other than that necessary to integrate the addition.

Commented [MOU72]: Changed to one year to be consistent with Section 90-93 of this code. This corresponds to another provision in 90-94(g). If the Commission prefers six months, or some other time period, then all three sections should be changed to be consistent.

Commented [MOU73]: A version of this is in the current code, however according to Mr. Kousoulas the original intent was watered down during the legislative process. This provision attempts to recapture the original intent of the provision.

Sec. 90-92. Special exceptions.

The following are special exceptions which may be granted by resolution requiring at least four affirmative votes of the town commission:

- (1) Nonconforming uses as follows:
 - a. To determine the existence of a nonconforming use as required under division 3 of this article.
- (2) Other special use exceptions as follows:
 - a. To determine, in cases of uncertainty, the classification of any use not specifically named in these regulations; provided, however, such use shall be in keeping with uses specifically listed in the district.
 - b. Aggregation of lots for a unified development site that increases density and/or floor area, provided same has also been approved by a super-majority of the Planning and Zoning Board.
- (3) Any other use or development activity specified elsewhere in this code as requiring a special exception.

[Code 1960, §§ 18-70, 18-71]

Sec. 90-93. Lapse of special exception, conditional use or variance.

After the town commission has approved a special exception, conditional use, or variance, the special exception, conditional use, or variance so approved or granted shall lapse after the expiration of one year from its effective date if a building permit has not been issued, or if no substantial construction or change of use has taken place in accordance with the plans for which such special exception, conditional use, or variance was granted. However, for good cause shown, the town commission may grant an extension of up to one year provided the owner requests the extension prior to the expiration of the original approval.

[Code 1960, § 18-74]

Sec. 90-94. Special exception and conditional use.

- (a) *Purpose and intent.* The development and execution of a comprehensive zoning ordinance is based upon the division of the community into zoning districts in which the use of land and buildings and the bulk and location of buildings in relation to the land are substantially uniform. However, it is recognized that within

Commented [EM74]: Note: the current code allows two years.

Commented [MOU75]: See also 90-91(j) and 90-94(g) of this code which have been changed to one year for consistency with this section 90-93. If the commission prefers a lesser time period, then all three sections should be changed.

the town generally, or within certain zoning districts in particular. certain structures, uses, and/or occupancies specified in this chapter are of a nature requiring special and intensive review to determine whether or not they should be permitted in specific locations, and if so, the special limitations, conditions, and safeguards which should be applied as reasonably necessary to promote the general purpose of this chapter, and in particular, to protect adjoining properties and the neighborhood from avoidable potentially adverse effects. It is further intended that the expertise and judgment of the town commission be exercised in making such determinations, in accordance with the rules, considerations, and limitations relating to special use permits as established herein.

(b) *Applications for special exceptions or conditional uses.* All applications for special use permits shall be filed with the town manager, and the town manager is hereby charged with the responsibility for their receipt, fee collection, processing, and/or distribution.

(1) Applications for special exceptions or conditional uses shall be made by the owner of the subject property, on forms provided for the purpose, and shall be accompanied by such plans, reports, or other information, exhibits, or documents as may be reasonably required to make the necessary findings in the case.

(2) The applicant shall, upon filing an application for special exception or conditional use, pay to the town the applicable fee set forth in the town's adopted fee schedule, which fee shall be nonrefundable. The applicant shall also pay any other applicable fees as listed in the town's adopted fee schedule.

(3) For the purposes of establishing time limitations on processing, no application shall be deemed to have been filed unless and until such applications shall have been completed; all plans, reports or other information, exhibits, or documents required by this chapter or any administrative rules adopted pursuant hereto shall have been fully complied with; and all fees due at the time of filing shall have been paid.

(4) If during the processing of any application, it is determined by the designated agent, agency, or body of the town, that in the particular circumstances of such case, additional information is required to make necessary findings bearing on its approval, denial, or conditions and safeguards to be attached, such information may be requested. Failure to supply such supplementary information may be used as grounds for denial of the permit.

(c) *Content of application.* Where applicable to the activity or development for which a special exception or conditional use is required and where necessary to formulate a decision on an application for special exception or conditional use, all

Commented [EM76]: This addition clarifies that an applicant who, for example seeks site plan approval (\$12,000) plus a special exception (\$300), must also pay both fees.

of the following elements shall be required:

(1) Names of the owners of the proposed development or activity and a statement describing in detail the character and intended use of the proposed development or activity.

(2) General location map, showing relation of the site or activity for which the special exception or conditional use is sought to major streets, existing utilities, shopping areas, important physical features in and adjoining the project or activity and the like.

(3) A survey of the subject property dated within six months of the date of the application, showing all existing structures, easements, *etc.* Such survey shall be sealed by a surveyor licensed to practice in the state.

(4) A site plan in accordance with the requirements of section 90-38.

(d) *Findings which shall govern issuance of special exception or conditional use approvals.* Approval shall not be granted until the town commission has determined that all of the following conditions have been satisfied:

(1) *Compliance with the comprehensive plan and this chapter.* The proposed use of the subject property is consistent with the purpose and intent of the town's comprehensive plan, and the proposed use is one which is permitted to be established within the district in which the subject property is located, subject to the approval of the application.

(2) *Orderly development.* The location, type, character and size of the use and of any building or other structure in connection therewith shall be in harmony with the appropriate and orderly development of the town and the neighborhood and will not hinder or discourage the appropriate development and use of adjacent property.

(3) *Property values and character.* The proposed use will not depreciate adjacent property values and the size and height of all proposed buildings and the extent of all proposed site improvements shall both be such as to harmonize with the existing character of the neighborhood in which such use is to be established.

(4) *Public safety.* The nature and location of the proposed use and of any building or other structure therewith shall be such that there is adequate access to it for the purpose of fire protection, police protection, and other emergency equipment.

(5) *Traffic considerations.* The streets serving the proposed use are adequate to carry all prospective traffic; adequate provision is made for

entering and leaving the subject site in such a manner that no undue hazard to traffic or undue traffic congestion shall be created; adequate off-street parking and loading facilities are provided as required by article V of these regulations; and the development of the subject site provides for the continuation and appropriate improvement of adjacent streets and alleys.

(6) *Landscaping and buffers.* The site on which the proposed use is to be located will be suitably landscaped to protect the neighborhood and adjacent property and the proposed use of the subject property will not result in the loss of any existing buffering between the subject site and adjacent single-family residentially zoned properties. When adequate buffering is not found to exist, sufficient buffers between the proposed use and adjacent properties shall be provided.

(7) *Relationship to utility systems, drainage systems and impact on community facilities.* The subject site has adequate water and sewerage systems to service the proposed use. Adequate provision for stormwater drainage can be provided without adversely affecting neighboring properties or adjacent public drainage systems, adequate provision has been provided for enclosed onsite storage of all trash and garbage and the proposed use will not adversely impact existing community facilities.

(8) *Compliance with zoning regulations.* In addition to meeting the other conditions described herein, the proposed use and the arrangement of all proposed buildings, structures, facilities and other site improvements shall comply with all applicable provisions of these zoning regulations.

(e) *Procedures regarding special exceptions or conditional uses.*

(1) The town commission shall be solely responsible for determinations on applications for special exception or conditional use.

(2) The town commission shall refer all applications to the planning and zoning board for recommendations after holding a public hearing, and may make referrals to other agencies, bodies, or officers for review, analysis, and/or technical findings and determinations and reports thereon.

(3) Three affirmative votes of the commission shall be required to approve an application. The Town Commission may approve, approve with conditions, or deny an application.

(4) An application may be withdrawn at any time, but if withdrawn after the public hearing has been convened at which it was to be considered, substantially the same application shall not be considered again until 12 months after the date of withdrawal.

(f) *Conditions and safeguards.* The town commission, in approving a special exception or conditional use, may impose such restrictions as appear to the commission to be reasonable to protect or promote the rights of individuals, property values and the environment in the area as a whole, the public health, safety or welfare, sound planning and zoning principles, improved land use, site planning and land development, or better overall neighborhood compatibility. Such restrictions may concern, without limitation, the components of the site plan; building location, size and layout; distribution of and relationship between uses and structures; vehicular and pedestrian circulation; parking; open space; landscaping and screening; signs and lighting; and the design and architectural treatment of all structures.

(g) *Substantial construction within one year.* If substantial construction has not begun on a building or structure, or no use has been established on a lot for which a special exception or conditional use was approved by the town commission, within one year from the date of issuance of such special permit for such building, structure or use, such special permit shall become null and void. Substantial construction shall include the erection of all foundation structures and at-grade slabs.

Commented [EM77]: Note: The current code allows two years.

However, in its discretion, and for good cause, the town commission, upon request of the applicant prior to the lapse of the approval, may extend for an additional one year the period for the beginning of substantial construction or establishment of a use, provided such extension shall be granted only once for any particular special exception or conditional use.

Commented [MOU78]: See also sections 90-91 (j) and 90-93 of this code. Whatever time period the commission chooses for the maximum extension should be consistent across all three sections.

(h) *Mandatory inspections.* Each applicant, successor or assign shall make the premises available to the designated agent, agency or body of the town authorized to make the following inspections. Such agents of the town responsible for the enforcement of the terms of approval of the special exception or conditional use, and attached safeguards and/or conditions shall make regular inspections of the subject property to assure compliance with all provisions, conditions and safeguards of such special use permit.

(i) *Building permits and certificates of use or occupancy.* Where building permits or certificates of use or occupancy are required by this chapter or other codes or ordinances of the town, no such building permit or certificate of use or occupancy shall be issued where this chapter requires special exception or conditional use unless and until any and all required special exception or conditional use approvals have been obtained. Where uses or occupancies do not require building permits or certificates of use or occupancy, but are otherwise subject to requirements of this chapter, no such use or occupancy shall be initiated or maintained unless and until any and all special exception or conditional use approvals herein in relation thereto have been obtained.

[Code 1960, § 18-75]

Secs. 90-95--90-99. Reserved.

DIVISION 5. – Reserved

Secs. 90-100- 90-120. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 90-121. Districts established.

In order to regulate and restrict the location of trades and residences, and the location of buildings erected or altered for specific uses, to regulate or limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and limit population density of same and the intensity of the use of lot areas, and to regulate and determine the areas of yards, and other open spaces within and surrounding such buildings, the following zoning districts are hereby established:

- (1) H30A and H30B. Districts wherein building masses are restricted to a maximum building height of 30 feet.
- (2) H30C. A district wherein building masses are restricted to a maximum building height of 30 feet.
- (3) H40. A district wherein building masses are restricted to a maximum building height of 40 feet.
- (4) H120. A district wherein building masses are restricted to a maximum building height of 120 feet.
- (5) SD-B40: A special district wherein building masses are restricted to a maximum building height of 40 feet.
- (6) Municipal (MU). Town-owned properties and park. Municipal zoning districts are designated as town-owned lands are acquired.
- (7) Community Facilities (CF). Town-owned community facilities.

Sec. 90-122. Identification of district maps.

Such land and the zoning district classification thereof shall be shown on a map designated as the Zoning District Map of Surfside, Florida originally adopted on August

Commented [MOU79]: This division (Proposed Amendments) from the 2006 Code was deleted because it conflicts with the Zoning in Progress provision we have carried over (with tweaks) from the current code.

The stricken language is complicated and purports to confirm estoppel based on an examination of all relevant facts. Estoppel is a fact-intensive legal determination.

If the Commission wishes to retain a similar provision, I recommend that it instead provide something like the current code's language regarding vested rights determinations.

Commented [EM80]: Revised to reflect strike out of section 90-100 above.

Commented [EM81]: This section imports the zoning districts from the current code so as to avoid conflicts requiring a zoning map change. It has been modified for consistency with this draft.

Commented [EM82]: This description is new.

When the CF district was created by Ordinance 2008-1504, it added the district to parts of Chapter 90 but not Section 90-39 (where each zoning district is listed and described).

8, 2010, as part of Ordinance No. 1558 and re-adopted along with this ordinance. This zoning district map and all notations, dimensions, references, and symbols shown thereon pertaining to such districts shall be as much a part of these regulations as if fully described herein, and shall be filed as part of these regulations by the clerk of the town. Such map shall be available for public inspection in the offices of the town clerk and the town manager and any later alterations to this map, adopted by amendment as provided in these regulations. shall be similarly dated, filed, and made available for public reference.

[Code 1960, § 18-5; Ord. No. 1430, § 2, 8-13-02]

Sec. 90-123. Interpretation of district boundaries.

(a) *Map symbols.* A district name or letter-number combination shown on the district maps indicates that the regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole area in the municipality bounded by the district boundary lines which such name or letter-number combination is shown or indicated, except as otherwise provided by this section.

(b) *Interpretation.* Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of these regulations, the following rules shall apply:

(1) In cases where a boundary line is given a position adjacent to or within a street or alley, easement, or canal, it shall be deemed to be in the center of the street, alley, easement, or canal and if the actual location of such street, alley, easement or canal varies slightly from the location as shown on the district map, then the actual location shall control.

(2) In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.

(3) Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be re-subdivided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the map accompanying and made a part of these regulations are bounded approximately by lot lines, such lot lines shall be construed to be the boundary of such districts unless such boundaries are otherwise indicated in the map or by ordinance.

(4) All water areas within the zoning jurisdiction are considered to be within a zoning district and controlled by applicable district regulations. Straight line district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other or with the town

limit line.

[Code 1960, § 18-6]

Secs. 90-124--90-144. Reserved.

ARTICLE IV. DISTRICT REGULATIONS

Section 90-145. Regulated Uses.

Applicability and validity of tables. Nothing shall be used to misconstrue or reinterpret the provisions, limitations and allowances made here in.

- (a) *Purpose.* Permitted uses are considered to be fundamentally appropriate within the district in which they are located and are deemed to be consistent with the comprehensive plan. These uses are permitted as of right, subject to the required permits and procedures described in this section. Permitted uses require final site plan review and approval for compliance with the standards applicable to a particular permitted use as provided in this zoning code.
- (b) *Permits required.* Except as explicitly provided herein, no use designated as a permitted use in this chapter shall be established until after the person proposing such use has applied for and received all required development permits.
- (c) *Table—Regulated uses.*

Commented [MOU83]: Going back to the 2006 Code may have unintended consequences of rolling back protections and new uses incorporated over the last 10-14 years. We have added the use table from the current code, which would replace sections 90-146 through 90-148 and 90-151 through 90-154 of the 2006 Code. The table has been revised to address certain uses that have been raised as potentially desirable (e.g. dog grooming as accessory to pet supplies) or potentially undesirable (e.g. medical marijuana dispensary)

Commented [MOU84R83]:

	H30A	H30B	H30C	H40	H120	SD-B40
Residential Uses						
Detached single-family	P(1)	P(1)	P(1)	P(1)	P(1)	-
Duplex	-	-	P	P	P	-
Multi-dwelling structure	-	-	P	P	P	-
Townhouse	-	-	P	P	P	-
Lodging uses						
Hotel	-	-			P(7)	-
Suite-Hotel	-	-			P(7)	-
Office Uses and Professional Services						
Banks	-	-	-	-	-	P
Business and professional offices	-	-	-	-	-	P
Currency exchange	-	-	-	-	-	P
Delivery service	-	-	-	-	-	P(9)

Employment agencies	-	-	-	-	-	P(9, 17)
General ticket agencies			-	-		P
Interior decorator	-	-	-	-	-	P
Loan or mortgage office	-	-	-	-	-	P(9)
Medical or dental clinic	-	-	-	-	-	P(9)
Medical marijuana dispensary	-	-	-	-	-	-
Psychic reading, advising, and consulting, palmistry, clairvoyance, astrological interpretation, tarot card reading, spiritual consultation, or fortune telling	-	-	-	-	-	P(9)
Radio or television station or studio	-	-	-	-	-	P(9)
Savings and loan associates	-	-	-	-	-	P
Secretarial service, mailing, bookkeeping, court reporter	-	-	-	-	-	P(9)
Stocks and bond brokers	-	-	-	-	-	P
Taxi agency	-	-	-	-	-	P(9)
Telegraph station	-	-	-	-	-	P
Telephone exchange	-	-	-	-	-	P
Title company	-	-	-	-	-	P(9)
Travel agency	-	-	-	-	-	P
Veterinary office	-	-	-	-	-	CU(25)
Retail and General Commercial Uses						
Antique shops	-	-	-	-	-	P
Appliances	-	-	-	-	-	P
Art and photograph galleries	-	-	-	-	-	P
Art dealers	-	-	-	-	-	P
Art supplies	-	-	-	-	-	P
Beauty/personal services	-	-	-	-	-	P(19)
Health club or studio	-	-	-	-	-	P(16,19)
Books and newspaper	-	-	-	-	-	P
Cigars and tobacco	-	-	-	-	-	P
Coin-operated machines			-	-		P(15)
Department stores	-	-	-	-	-	P
Drug stores	-	-	-	-	-	P(30)
Dry cleaning and laundry agency	-	-	-	-	-	P(10)

Dry goods			-	-		P
Flowers and plants	-	-	-	-	-	P
Furniture	-	-	-	-	-	P(14)
Furrier	-	-	-	-	-	P
Gift shops			-	-		P
Hardware, paint and wallpaper	-	-	-	-	-	P
Jewelry	-	-	-	-	-	P
Locksmith	-	-	-	-	-	P(11)
Luggage			-	-		P
Men's, women's, children's clothing	-	-	-	-	-	P
Millinery	-	-	-	-	-	P
Office machines and supplies	-	-	-	-	-	P
Pet supplies			-	-		P (31)
Photographers and camera stores	-	-	-	-	-	P
Pottery	-	-	-	-	-	P
Sale of televisions, radios, phonograph and recording equipment	-	-	-	-	-	P
Sheet music and musical instruments			-	-		P
Shoe repair	-	-	-	-	-	P(20)
Shoes	-	-	-	-	-	P
Sporting goods			-	-		P
Stationery and greeting cards	-	-	-	-	-	P
Sundries	-	-	-	-	-	P
Tailor	-	-	-	-	-	P
Toys	-	-	-	-	-	P
Video tapes sales and rentals	-	-	-	-	-	P(12)
Food Services						
Bakeries						
Candy and nut shops			-	-		P(13)
Caterers	-	-	-	-	-	P
Confectionary and ice cream stores	-	-	-	-	-	P(13)
Delicatessens	-	-	-	-	-	P(13)
Fruit shops			-	-		P(13)

Grocery and meat stores or supermarkets	-	-	-	-	-	P(13)
Liquor stores	-	-	-	-	-	P(13)
Restaurants	-	-	-	-	-	P(13)
Outdoor dining facilities						P(24)
Educational Services						
Dance or music instruction studios						
Institutions, educational or philanthropic, including museums						CU
Driving school offices			-	-		P(9, 21)
Modeling school, language school, or athletic instruction	-	-	-	-	-	P(9)
Public schools	-	-	P	P	-	-
Places of Assembly						
See RLUIPA Map and Ordinance 07-1479						
Civic Uses						
Parks and open space						
Playgrounds			P	P	P	P

Key: P: Permitted Blank: Not Permitted (#): Refer to Notes CU: Conditional Use

Uses	Municipal	Community Facilities
Library	P	P
Parks & Open Space	P	P
Playgrounds	P	P
Community Center	P	P
Gymnasiums	P	P
Town Offices	P	P
Police Facilities	P	P
Pump Stations	CU(23)	CU(23)
Parking	P	-
Electric Vehicle Charging Station	P(29)	P(29)

Key: P: Permitted Blank: Not Permitted (#): Refer to Notes CU: Conditional Use

Accessory uses	H30A	H30B	H30C	H40	H120	SD-B40
Boat docks + moorings	P(2)	-		-	-	-
Game courts	P(2)	P(2)	P(2)	P(2)	P(2)	-
Home Bar-B-Q grills	P(2)	P(2)	P(2)	P(2)	P(2)	-
Laundry/service rooms	-	-	P(5)	P(5)	P(5)	-
Office spaces	-	-		P(3)	P(3)	-
Recreational rooms	-	-	P(4)	P(4)	P(4)	-
Swimming pools	P(2)	P(2)	P(2)	P(2)	P(2)	-
Hotel Swimming pools	-	-	CU(2)	CU(2)	CU(2)	-
Vending machines	-	-	P(6)	P(6)	P(6)	-
Bar	-	-	-	-	CU(2)	P
Outdoor dining facilities	-	-	-	CU	CU	-
Electric Vehicle Charging Station	P(27)	P(27)	P(28)	P(28)	P(28)	P(29)
Pet Grooming						P(31)
Heliport/helipad				CU	CU	CU

Key: P: Permitted Blank: Not Permitted (#): Refer to Notes CU: Conditional Use

(d) *Uses table notes.*

- (1) Detached single-family dwellings, subject to the following restrictions and limitations, as follows:
 - a. No structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed, structurally altered or maintained for any purpose which is designed, arranged or intended to be used or occupied for any purpose other than as a one-family residence, including every customary use not inconsistent therewith.

- b. Every use not specifically authorized and permitted is prohibited and nothing herein shall authorize or be construed to permit the renting of a room or a portion of the property or improvement; or, to permit the use of any part of the premises as a business, office or establishment for the purpose of carrying on any business or the practice of rendering personal, trade or professional services, except as provided under the "Home Office" provision of this Code.
 - c. An accessory or subordinate building, attached or detached from the main premises in a single-family district, shall be construed to permit the use of such building for the purposes of garages, cabanas, storage and home workshops (non-commercial). However, nothing herein shall authorize or be construed to permit the occupancy or the use of any accessory building or structure, as a place of abode or dwelling, and no cooking or kitchen facilities shall be permitted.
- (2) Shall be for private-use only limited to residents and guests only and not public access.
 - (3) Shall be limited to an area of not more than two percent of the gross floor area of the building for administration of rental units in a building containing ten or more living units.
 - (4) Shall be limited to lounges, card rooms and auxiliary kitchens which are solely for the use of residents and guests.
 - (5) Shall be for the use of residents and guests of a multiple-family dwelling and shall not be for public access. Coin-operated laundry machines may be utilized.
 - (6) Shall be allowable only inside buildings containing ten or more living units or guest rooms.
 - (7) May provide a beauty/personal services, dining room, and coffee shop, bar or cocktail lounge, telegraph office, tobacco, candy, and newsstand, automobile rentals where rental vehicles are not kept on premises, ready to wear shops, travel agencies, gift and sundry shops, coin operated machines, washing machines, and marble, coin or amusement machines (other than gambling devices), and diet and health spas providing services solely to guests; provided, however, that such facilities may be entered only from the inside of the structure and there shall be no window or evidence of such facilities from outside the hotel or motel.
 - (8) Shall conform to the following restrictions and conditions:
 - a. That no baking shall be done on the premises for other retail or wholesale outlets.
 - b. That ovens or oven capacity is limited in total usable baking space, not to exceed in volume 18 standard pans of 18 by 26 inches in width and length.

- c. That adjoining properties shall be safeguarded and protected from exhaust fan or other obnoxious noises and odors at all times.
 - d. That all baking will be done by the use of electric or natural gas (not bottled gas) ovens only.
 - e. All machinery and equipment shall be entirely confined within the main building.
 - f. That the hours of baking operation shall be limited to those hours between 6:00 a.m. and 9:00 p.m.
 - g. That the entire store area shall be fully air-conditioned as required for comfort.
 - h. That baking shall not be permitted within 20 feet of the store front, and shall be separated from the sales area by a partition or counter.
- (9) Shall only be allowed above the first floor. This shall apply to all service agency categories.
- (10) Provided all machinery which provides cleaning or laundry services shall be separated from customer areas by a partition or counter and no customers shall be permitted to use such machinery. In addition, all dry cleaning machinery shall be non-ventilated, sealed system type machinery in which "Fluorocarbon R-113" type solvents are used.
- (11) Shall not be visible from sidewalk or street and shall not be permitted fronting Harding Avenue.
- (12) Provided all tapes sold are prerecorded, and all tapes are rated either G, PG, PG-13, or R.
- (13) Provided that no sales shall be made through an open window to any street, alley, driveway or sidewalk.
- (14) Provided no repairing or servicing of furniture is permitted on the premises.
- (15) Coin-operated machines for dispensing goods or services are permitted, except that washing machines, dryers and other laundry-related equipment are prohibited. No coin-operated games of chance are permitted, but coin-operated games of skill are permitted within establishments solely dispensing liquor, for consumption on the premises only; provided, however, that not more than three such games of skill are permitted in any such establishment, and that such games shall not be used for wagering nor for the awarding of prizes of any value.
- (16) Shall only be allowed above the first floor and such studios meet all of the following restrictions and conditions:
- a. That the premises be air conditioned and soundproofed.
 - b. That no dance instruction or dancing shall be visible from any sidewalk, street or alley.

- c. That the opening and closing hours for such studios may be established by the town commission at its discretion at any time.
- (17) Shall only be allowed above the first floor and such use shall maintain at all times sufficient office space to accommodate all applicants for employment using their services and obviate the congregating or loitering of such applicants in any hallway or on any sidewalk.
- (18) Reserved.
- (19) Services including tanning, hair removal (except for shaving normally associated with barbershops) and licensed therapeutic massage shall not be visible from the public right-of-way.
- (20) Provided no machinery for providing repairs shall be visible from the sidewalk or street and no shoe repair shop shall be permitted on Harding Avenue.
- (21) Provided such use shall be limited to offices only, and shall not be interpreted in any manner as permitting the conduct of any such school's or schools' business, activities or functions upon the public streets of the town.
- (22) A bar accessible from the pool or pool deck for use solely by guests of hotels and their guests in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.
- (23) Reserved.
- (24) Outdoor dining facilities on private property shall be permitted subject to all applicable zoning code requirements. Outdoor dining facilities that are on public right-of-way shall be solely subject to the open air cafe requirements provided in chapter 18 of this Code of Ordinances.
- (25) Veterinary office is a facility for the diagnosis and treatment of pet animals.

Pet animals are defined as dogs, cats, rabbits, guinea pigs, hamsters, mice, ferrets, birds and fish retained for the purposes of being kept as a household pet.

Veterinary offices approved by conditional use are subject to the following:

- a. Animals shall be walked on the premises in an enclosed area and all waste shall be disposed of immediately.
- b. No overnight boarding shall be permitted.
- c. Soundproofing shall be required and the noise outside the building shall not exceed that of average daily traffic measured at the lot line.
- d. No malodor shall be perceptible at the boundary of the premises.

- e. All waiting rooms and patient areas shall not be visible from the public right-of-way.
 - f. A minimum of ten percent of the floor area of the establishment shall provide retail sales located at the front of the establishment.
 - g. Grooming shall be permitted as an ancillary use to a veterinary service.
 - h. There shall be a minimum distance separation of 400 feet between veterinary offices.
 - i. A violation of any of the conditions described in subsection 90-41(d)(25)a.— h., or a violation of the standards of review in section 90-23.2 or a violation of additional conditions required by the town commission, shall result in the rescinding of the conditional use permit after the conditional use permit holder has been notified of these deficiencies. An administrative decision to revoke the conditional use permit may be appealed to the town manager within 30 days of the date of the revocation. The town manager shall schedule an informal hearing with the applicant and the town manager's decision shall be rendered in writing within ten days of the meeting. Any decision made by the town manager regarding conditional use permits may be appealed to the town commission.
- (26) Provided that no animals including without limitation dogs, cats, ferrets, rabbits, turtles, gerbils, hamsters, cows, horses, sheep, and other domestic animals or livestock shall be sold on the premises.
- (27) Electric vehicle charging stations shall be limited to personal use and shall not be used for purposes of wholesale or retail sales. All components of the electric vehicle charging station shall be wall mounted and completely concealed from view. The station shall be elevated or designed so that all electrical components are 12 inches above the 100-year floodplain.
- (28) Electric vehicle charging stations shall contain a retraction device, coiled cord, or a place to hang cords and connectors above the ground surface. The station shall be elevated or designed so that all electrical components are 12 inches above the 100-year floodplain.
- (29) Electric vehicle charging stations shall be limited to electric vehicle charging level 2 or level 3 electric vehicle charging stations only and contain a retraction device, coiled cord, or a place to hang cords and connectors above the ground surface. The station shall include the following: (a) voltage and amperage levels; (b) usage fees, if any; (c) safety information; and (d) contact information to report issues relating to the operation of the equipment. The station shall be elevated or designed so that all electrical components are 12 inches above the 100-year floodplain.
- (30) The following uses shall be separated from similar existing uses, or similar approved but unbuilt uses, within the town limits, by the minimum distances specified below, measured from front door to front door:

- a. For purposes of this calculation, front door shall mean the primary public access to the business which shall not include any alley, rear or secondary access point.
 - b. Drug stores: eight hundred fifty (850) feet.
- (31) Pet grooming may be permitted as accessory to pet supplies provided:
- a. Animals shall be walked on the premises in an enclosed area and all waste shall be disposed of immediately.
 - b. No overnight boarding shall be permitted.
 - c. Soundproofing shall be required and the noise outside the building shall not exceed that of average daily traffic measured at the lot line.
 - d. No malodor shall be perceptible at the boundary of the premises.
 - e. Pet sales or pet adoption services are prohibited.
 - f. There shall be a minimum distance separation of 850 feet between pet supplies stores offering pet grooming and 400 feet between a pet supplies store offering pet grooming services and a veterinary office offering pet grooming services.

(Ord. No. 1504, § 2(Exh. A), 5-13-08; Ord. No. 1514, § 2, 4-14-09; Ord. No. 1551, § 2, 3-13-10; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1561, § 2, 10-12-10; Ord. No. 1563, § 2, 11-9-10; Ord. No. 1566, § 2, 1-18-11; Ord. No. 1572, § 2, 4-12-11; Ord. No. 1601, § 2, 4-9-13; Ord. No. 1608, § 2, 10-8-13; Ord. No. 1611, § 1, 2-11-14; Ord. No. 1617, § 2, 3-11-14; Ord. No. 17-1666, § 3, 12-12-17; Ord. No. 19-1705, § 2, 11-12-19)

Section 90-146. Prohibited uses.

Medical marijuana dispensaries shall not be permitted within the town boundaries pursuant to Section 381.986(11)(b)1, Florida Statutes (2019).

Section 90-147 through 90-148. Reserved.

Sec. 90-149. - Short term rental of single-family dwellings, duplex dwellings, multi-family dwellings and townhomes.

(a) *Definitions and registration:*

(1) *Intent.* The Town of Surfside recognizes that the unregulated rental of single family, duplex, multi-family, and townhome dwelling units by seasonal residents uniquely impacts certain neighborhoods within the town. Therefore, it is necessary and in the interest of the public health, safety, and welfare to the monitor and provide reasonable means for citizens of the Town to mitigate impacts created by such rental of such dwelling units within the Town as set forth in this article.

Commented [MOU85]: Sections 90-145 through 90-148 and 90-150 through 90-154 have been deleted because they have been consolidated in Sections 90-145 (Regulated Uses) of this current draft.

Commented [EM86]: This section is taken from the existing code's section 90-41.1 regarding Short term rentals.

The only modifications made were for consistency with this current draft, except as otherwise noted.

(2) *Definitions.* For the purpose of this section, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

a. *Owner* shall mean the person whom is vested ownership, dominion, or title of property.

b. *Responsible party* shall mean the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of the property and the conduct and acts of seasonal residents of single family, duplex, multi-family, and/or townhome dwelling units.

c. *Seasonal resident* shall mean guests, tourists, lessees, vacationers, or others who lease a single family, duplex, multi-family, and townhouse dwelling unit for valuable consideration for a period of time between one day to no more than six months.

d. *Short-term rental* shall mean any occupancy of a single family, duplex, multi-family, and townhouse dwelling unit for a period of time between one day to no more than six months provided however the terms of this short term rental ordinance shall not apply to film and print productions and use of the aforementioned premises for those purposes.

(3) *Registration required.* It shall be unlawful for any person to allow another person to occupy any single family, duplex, multi-family, and townhouse dwelling unit as a seasonal resident within the Town of Surfside, or offer such rental services within the town, unless the person has been registered with the town in accordance with provisions of this section. A registration is required for each rental period for which the single family, duplex, multi-family, and/or townhouse dwelling unit is rented. No more than three (3) registrations shall be issued within a 12-month period. Every person required to procure a registration under this Section shall submit a formal application to the town manager or designee.

(4) *Application for registration.* Applications for registration shall set forth and/or include at a minimum:

a. Address, lot, block and subdivision name of single family, duplex, multi-family, and townhouse dwelling unit offered for rental;

b. Name, address, and phone number of owner of said single family, duplex, multi-family, and/or townhouse dwelling unit;

c. Name, address, and emergency contact phone number of responsible party for said single family, duplex, multi-family, and townhouse dwelling unit, which shall be a 24-hour, seven days a week contact number;

d. That the phone number for the responsible party will be answered 24 hours a day, seven days a week by a party with authority to address or coordinate problems associated with the single family, duplex, multi-family, and townhouse dwelling unit;

e. Acknowledgements by owner of the following:

i. That all vehicles must be parked in the driveway of the single family, duplex, multi-family, and townhouse dwelling unit and clear of all grassy areas and sidewalk sections pursuant to Town of Surfside Code of Ordinances;

ii. That it shall be unlawful to allow or make any noise or sound which exceed the limits set forth in the Town's Noise Ordinance;

iii. That no garbage container shall be located at the curb for pickup before 12:00 pm of the day prior to pickup, and garbage container shall be removed before midnight of the day of pickup;

iv. That whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance of a single family, duplex, multi-family, and townhouse dwelling unit, or, having been authorized, licensed, or invited is warned by the owner or lessee, to depart the unit and refuses to do so, commits the offense of trespass in a structure or conveyance;

f. Proof of owner's current ownership of the single family, duplex, multi-family, and townhouse dwelling unit.

g. Issuance or refusal of registration. The town manager or his designee shall issue a registration to the applicant upon proof of the following:

i. The owner and/or responsible party completes the Town of Surfside registration application form; and

ii. The registration fee has been paid to the town; and

iii. Incomplete registration applications are unacceptable and requested registration shall not issue.

h. Registration not transferable. No registration issued under this article shall be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

i. Expiration of registration. All registration issued under the provisions of this article shall be valid for the rental period requested in the application.

j. Complaints. Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the town manager or his designee.

(b) *Fees for registration.* The Town is authorized and shall charge a fee for registration to compensate for administrative expenses. The fees for registration shall be set forth in a resolution adopted by the commission of the Town of Surfside, and may be amended from time to time.

(c) *Resort tax and enforcement.*

(1) *Payment of resort tax required.* Owners are subject to payment of the resort taxes as establish by the laws of the Town of Surfside.

(2) *Violations of this section:*

a. Are subject to the fines as set forth in the schedule of fines adopted by resolution.

b. In addition to or in lieu of the foregoing, the town may seek injunctive relief.

c. Any code compliance officer may issue notices for violations of this ordinance, with enforcement of section ~~90-44-4~~ 90-149 and alternative enforcement of section 1-8 as provided in Chapter 1 of this Code. Violations shall be issued to the owner, manager, real estate broker or agent, or authorized agent, or any other individual or entity that participates in or facilitates the violation of this section. In the event the record owner of the property is not present when the violation occurred or notice of violation issued, a copy of the violation shall be served by certified mail on the owner at its mailing address in the property appraiser's records, in the event the notice

Commented [EM87]: Change of reference

is returned as unclaimed or refused, notice may be provided by posting on the property, and a courtesy notice by first class mail to the contact person identified in subsection (4)c. above.

(d) Previously existing short term rentals.

(1) Only those properties that were previously recognized as eligible for short term rental under the terms of Ordinance Nos. 1573, 1600, or 1620 may be made available for short term rental, subject to accounting for and payment of all sums due in connection with resort taxes and occupational licenses, maintaining all certificates of occupancy and/or inspections current, and maintaining appropriate registration with the State of Florida as a Transient Apartment, Resort Dwelling, or Resort Condominium pursuant to Chapter 509, Florida Statutes, as of November 10, 2011.

Commented [MOU88]: This section from the current code formerly provided for then-existing short terms rentals to become legal conforming uses. That occurred in 2014, so this section has been revised to provide for those uses to continue while not permitting any new claimants thereunder.

[Ord. No. 1573, § 2, 5-10-11; Ord. No. 1600, § 2, 2-12-13; Ord. No. 1620, § 2, 6-10-14]

Sec. 90-150 through 90-154. Reserved.

Sec. 90-155. District regulations tables.

Height, area and bulk requirements for the various districts shall be as indicated in the chart below together with the use, height and bulk regulations contained elsewhere in this chapter.

Table I

District	Minimum Lot Requirements		Minimum Yard Requirements ⁶					Minimum Floor Area	Maximum Lot Coverage
	Lot Area per Dwelling Unit in Square Feet	Lot Width in Feet	Height	Depth Front Yard in Feet	Interior in Feet	Corn in Feet	Depth Rear Yard in Feet		
H30A - Single family residential	8,000	50	30	20 ¹⁰	5 ¹¹	10 ¹¹	20 ¹⁰	2,500	First Flr. – 40% Second Flr – 32%
H30B - Single family residential	5,600	50	30	20 ¹⁰	5 ¹¹	10 ¹¹	20 ¹⁰	1,800	First Flr. – 40% Second Flr

District	Minimum Lot Requirements		Minimum Yard Requirements ⁶				Depth Rear Yard in Feet	Minimum Floor Area	Maximum Lot Coverage
	Lot Area per Dwelling Unit in Square Feet	Lot Width in Feet	Height	Depth Front Yard in Feet	Interior in Feet	Corner in Feet			
H30C - Residential									-32%
Single-Family	5,000	50	30	20	5 ¹¹	10 ^{9,11}	20	1,800	--
Duplex	2,500	50	30	20	5 ¹¹	10 ^{9,11}	20	950	--
Multifamily	2,000	75	30	20	7 ¹¹	10 ^{9,11}	10 ⁸	950 ⁷	--
H40 District									
Single-family	5,000	50	30	20 ¹²	5 ¹¹	10 ¹¹	10 ⁸	1,800	--
Duplex	2,500	50	30	20 ¹²	5 ¹¹	10 ¹¹	10 ⁸	950	--
Multifamily ⁹	750	75	40	20 ¹²	7 ¹¹	10 ¹¹	10 ⁸	See Table II ⁷	--
Hotel	400	100 ²	40	20 ¹²	7 ¹¹	10 ¹¹	20	See Table II ⁷	--
Townhouse (more than 2 units)	550	150 ²	30	20 ¹²	5 ¹¹	10 ¹¹	10 ⁸	First Story 60%	--
								Second story 55%	--
								Third story 40%	--
H120 District³									
Multifamily	400	100	120 ₁₃	40 ⁵	10	20	30	See Table II ⁷	--
Hotel	--	150	120 ₁₃	40 ⁵	10	20	30	See Table II ⁷	--
SDB40 District	No dwelling units permitted	No minimum	40	None required	None required	None required	None required	--	--

Commented [EM89]: Today's H40 district was formerly the RM-1 and the RMO-1 districts.

The RM-1 district required larger minimum lot size per unit, but smaller minimum lot width and smaller yards above the second story.

The RMO-1 district

Commented [EM90]: Revisions made for clarity. The code already provides regulations for "two-family" developments (see above).

The 2006 Code's RMO-1 "single family townhouse" appears to have referred to townhome designs with more than two units. This interpretation resolves the apparent conflict with the two-family designation (above) and it avoids the absurd result of allowing at two family townhome on a 1,100 square foot lot with 150 feet of lot width.

Commented [EM91]: The 2006 Code's Table 1 was silent with respect to these townhomes. It appears to have applied the same setback requirements applicable to single-family and two-family homes in the RM-1 district.

To avoid potential confusion, we have inserted the same setback requirements applicable to single and two-family homes under the 2006 code.

Commented [EM92]: Reflects name change

1. A dash (-) indicates no applicable regulation.

2. However, the minimum lot width on through lots running from Collins Avenue to Harding Avenue shall be 100 feet provided such minimum width is continuous from Collins to Harding Avenue.

3. On those lots and parcels within this district where construction is regulated by the State of Florida Coastal Construction Code, swimming pools and their associated decks may be constructed at any lot or parcel west of the ocean bulkhead line, provided such structures and their adjacent decks do not project more than eight feet above grade. Lot area in this district shall be measured from the front property line to the ocean bulkhead line.

4. Whenever a lot abuts upon a public alley, one-half of the alley width may be considered as a portion of the required yard; however, a required yard of ten feet shall be provided exclusive of the alley width, and no portion of any building, including allowable encroachments, shall be permitted within ten feet of any alley.

5. Any building on which a foundation was commenced prior to June 1, 1992, is subject to a minimum front yard depth of 25 feet.

6. As modified by sections ~~90-177~~, 90-178, 90-179.

Commented [EM93]: Section 90-177 provides for setback encroachments.

We have added reference to this section here for the sake of clarity.

7. The number of efficiencies in any building shall not exceed five percent of the total number of dwelling units in said building. An efficiency is a dwelling unit of not less than 600 square feet, consisting of a combination living room/bedroom, with small or auxiliary rooms such as kitchenette, breakfast nook and bath, arranged so as to consist of only one habitable room. See Table II.

8. On lots or parcels within this district, the minimum depth of a rear yard abutting Collins Avenue, Harding Avenue or Abbott Avenue shall be 20 feet.

9. In the H40 district, lots with less than 75 feet of frontage may be used for multifamily development as provided in this code with the following interdependent limitations and requirements:

(1) A height limit of three residential floors plus one floor of parking (either at grade or below grade) with a maximum building height of 40 feet measured from the crown of the road abutting the property.

(2) Front setback shall be 25 feet, with other setbacks as stated in section 90-155, Table I, under H40, multifamily.

(3) At least 60 percent of the front setback shall be landscaped, except as may be otherwise approved by the town commission.

Commented [MOU94]: Lighting and landscaping addressed in other parts of the code

(4) Parking is absolutely prohibited in any portion of the front yard area, but is permitted in side and rear yards.

(5) Unit size minimum floor area shall be:

Efficiency	None permitted
One bedroom	1,000 square feet
Two bedrooms	1,150 square feet
Three bedrooms	1,350 square feet

In order to qualify for these supplementary regulations all of the above requirements and limitations must be met without exception.

10. In H30A and H30B districts, lots in excess of 112.5 feet in depth, the combined depth of front and rear yards shall be a minimum of thirty-six (36) percent of lot's total depth. In no event shall front or rear yards be less than the minimum depth specified above.

Commented [EM95]: This provision ensures that especially deep lots will be provide additional yard space. It was included in the Zoning in Progress notice of August 9, 2020

11. In the H30A, H30B, H30C and H40 districts each side yard, for lots or parcels in excess of 50 feet in width, shall be a minimum of ten percent of the total width of such lot or parcel.

The 112.5' threshold and the 36% requirement are based on the typical lot depth of 100 feet (for a 5,000 square foot lot).

TABLE II. MINIMUM FLOOR AREA FOR APARTMENTS, AND HOTEL/SUITE-HOTEL ROOMS

Residential apartments		
	Efficiency	600 square feet
	One-bedroom apartment	800 square feet
	Two-bedroom apartment	950 square feet
	Three-bedroom or more apartment	1,150 square feet
	Minimum average unit size per building	1,000 square feet
Hotels, each room		350 square feet
Suite-hotels, for each room		525 square feet

Commented [EM96]: This same language appears in Section 90-179(f) of the 2006 Code. For organizational purposes, it is better listed here than buried there.

12. Except as otherwise provided in these regulations on through lots, the required front yards shall be provided on each street. In lieu of that stated in section 90-155, table I, the required front yard setback applicable to Lots 10 through 18, Block 2, and Lots 11 through 20, Block 3, Normandy Beach Subdivision, Second Amended, shall be ten feet from Collins Avenue
13. Notwithstanding anything to the contrary within this entire zoning code, height for any building shall always be measured from the crown of the road abutting the property to the highest part of the roof. Only those allowances specifically described in Section 90-176 and 90-204 shall be permitted above the maximum

height.

[Code 1960, ch. 18, art. Va; Ord. No. 1279, § 1, 5-12-92; Ord. No. 1391, § 1, 10-13-98; Ord. No. 1429, §§ 1, 2, 8-13-02; Ord. No. 1430, §4, 8-13-02; Ord. No.1436, § 2, 1-14-03]

Sec. 90-156. - Rooftop photovoltaic solar systems.

Commented [MOU97]: From current code. Not addressed in 2006 Code

- (1) *Intent.* The provisions contained herein are intended to promote the health, safety, and general welfare of the citizens by permitting the installation of alternative energy systems while maintaining and adapting to the existing character of the district, subject to conditional use approval.
- (2) *Conditional accessory equipment.* Rooftop photovoltaic solar systems shall be conditional accessory equipment to conforming and nonconforming buildings and structures in all zoning categories. Nothing contained in this chapter shall be deemed to prohibit the installation of rooftop photovoltaic solar systems as accessory equipment to conforming and nonconforming buildings, including buildings containing nonconforming uses, provided conditional use approval is first obtained. Rooftop photovoltaic systems shall be evaluated for conditional use on the basis of the overall compatibility with neighboring structures, in terms of aesthetics, location, visibility, and integration with new and existing structures on the property. A conditional use shall not be denied on the basis of the appearance of the equipment used or limited in any manner that would unreasonably reduce the efficacy of the system. Said systems must meet or exceed all applicable Florida Building Code requirements for high velocity wind zones.
- (3) *Height.* The height of rooftop photovoltaic solar systems shall not be greater than five feet above the roof and shall not exceed the town's maximum height limitation described in section 90-44.1.
- (4) *Tree removal.* Any removal of trees shall require a tree removal permit from Miami-Dade County.
- (5) *Maintenance.* The rooftop photovoltaic solar system shall be properly maintained and be kept free from hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare.

(Ord. No. 1623, § 2, 7-8-14)

Secs. 90-157 - 90-175. Reserved.

ARTICLE V. SUPPLEMENTARY REGULATIONS

DIVISION 1. GENERALLY

Sec. 90-176. Modifications of height regulations.

(a) In the H30A, H30B, and H30C districts, cupolas, chimneys, flagpoles, and similar architectural features occupying in the aggregate not more than one percent of the total roof area, may be erected to a reasonable and necessary height, not to exceed an additional three feet above the maximum building height established herein.

(b) In the SBD40, and H40 districts, spires, steeples, stair access ways, antennas, cupolas, chimneys, flagpoles, ventilators, tanks, elevator equipment rooms and similar architectural features and/or mechanical spaces, occupying in the aggregate not more than ten percent of the total roof area, and not used for human habitation, may be erected to a reasonable and necessary height, not to exceed an additional 12 feet above the maximum building height established herein.

(c) In the H120 district spires, steeples, stair access ways, antennas, cupolas, chimneys, flagpoles, ventilators, tanks, elevator equipment rooms and similar architectural features and/or mechanical spaces, occupying in the aggregate not more than 30 percent of the total roof area, and not used for human habitation, may be erected to a reasonable and necessary height, not to exceed an additional 20 feet above the maximum building height established herein. Notwithstanding anything to the contrary in this section, any enclosure above the maximum height for any enclosed elements of the building shall be less than 15 square feet. All rooftops and elements shall be designed in such a way that said elements meet the spirit and intent of the Design Guidelines, do not present a cluttered or drab appearance, and are consistent with the overall aesthetics of the property, as determined by the Planning and Zoning Board as part of Design Review.

Commented [MOU98]: This sentence was re-worded to more accurately reflect what appears to have been the original intent

(d) Regulations regarding stories, extensions in certain districts are as follows:

(1) An area in an H40 or H120 district, at least 42 inches below grade, that is used primarily for off-street parking spaces shall not be considered a story for the purpose of determining the number of stories allowed in section 90-155, however notwithstanding same, any height restriction herein shall not be exceeded.

(2) Underground facilities in an H120 district used primarily for off-street parking spaces may extend into the side and rear yards to the property lines, provided the top surface of such extensions is not more than five feet above grade. However, where such extensions are used for driveways leading to building entrances, the top surface of such extensions shall not

be more than eight feet above grade. In all cases, the front yard setback shall be landscaped in accordance with section 90-194.

[Code 1960, § 18-27; Ord. No. 1318, § 1, 8-10-93; Ord. No. 1437, § 2, 1-14-03]

DRAFT

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Sec. 90-177. Yards generally, allowable projections.

(a) Except as otherwise specified in this section, every part of a required yard shall be open to the sky.

(b) Sills, cornices, roof eaves, and ornamental features may project up to 24 inches into any required yard in all districts except the H30A and H30B districts, and in H30C districts west of Harding Avenue. In the H30A and H30B districts and in H30C districts west of Harding Avenue, eaves of sloped roofs may project up to 24 inches into the side yard setback. All other ornamental or screening features in the H30A and H30B districts, including cornices, sills, frames, and fins, may project no more than 8 inches into any required yard.

Commented [MOU99]: G. Kousoulas suggests same 24" encroachment be allowed for eaves of flat roofs provided they are no more than 6" vertical thickness

(c) Moveable awnings may be placed over doors or windows and may project not more than three feet into any required yard.

Commented [EM100]: Consistent with commission guidance from July 1 and after July 28, this revision is intended to reduce permitted setback encroachments. The Zoning in Progress of August 9, 2020 limited roof eaves for sloped roofs to 8 inches, however the Planning and Zoning Board has noted problems with this limitation in terms of maintaining appropriate scale.

(d) In connection with a single-family or duplex residence, air conditioning equipment, a pool pump or other mechanical equipment may be located in a required side or rear yard, provided such equipment is at least 15 feet from any other single-family or duplex residence and is not visible from any street or waterway.

Additionally, it is careful not to make it more difficult to build sloped roofs that can appear less massive than flat roofs. The eaves of sloped roofs often require some leeway.

(e) In the H40 district on lots with less than 75 feet of frontage developed in accordance with the supplementary regulations provided in footnote 9 to the District Regulations table in section 90-155, unenclosed balconies may extend into a required front yard not more than 2 1/2 feet.

Commented [MOU101]: G. Kousoulas suggests side steps be allowed to project no more than 3 FT into a setback and no more than 18" above grade. Any additional height needed must be accommodated outside of the setback

(f) In all districts except the H120 district, open, unenclosed building entrance porches, platforms or paved terraces, not covered by a roof or canopy, and which do not extend above the level of the grade or entrance floor of the building, may extend or project into the required front or side yard not more than six feet.

Commented [EM102]:
This equipment is not exempt from lot coverage requirements.

(g) In the H120 district, open unenclosed balconies may extend into a required front, side or rear-yard not more than five feet. However, provided a special exception is obtained in accordance with section 90-94, for the purpose of encouraging architectural creativity and break-up of building mass: for any "unbuilt" building area buildable as-of-right under the Code, 60 percent of such "unbuilt" area may be built, as open balconies, beyond the established five feet balcony setback. Further provided:

(1) The total area of all balconies built shall not exceed 65 percent of the total area of all balconies buildable as-of-right under the code; and

(2) Maximum extension of balconies shall not exceed three feet beyond the established five feet.

- (h) Provided a special exception is obtained in accordance with section 90-94, in the H120 district, for the purpose of creating architectural landmarks and icons and for the protection of pedestrian and vehicular traffic, a cantilevered canopy will be permitted in the required front yard, subject to the following:
- (3) The structure must be completely supported (cantilevered) from the main structure;
 - (4) The structure must be transparent in nature with a solid to transparent material ratio of no more than 35 percent solid to 65 percent transparent;
 - (5) The structure must not exceed 30 feet in width; and
 - (6) The structure must not extend more than 20 feet in the required front yard.

[Code 1960, § 18-28; Ord. No. 1319, § 1, 8-10-93; Ord. No. 1370, § 1, 7-8-97; Ord. No. 1417, § 2, 7-10-01]

Sec. 90-178. Average Setbacks for H30A and H30B.

Commented [MOU103]: The current code employs average setbacks to encourage building articulation. If the Commission would like to retain that concept, it could be explained here. For initial review, we followed the numbers from the current code

(a) Average front and side yard setbacks shall be determined in the following manner:

- Multiply the required average setback by the total length of all second-floor walls on the elevation facing the applicable yard
- The total area of the applicable yard at the second floor exclusive of any other yard shall equal or exceed the resulting area.

(b) H30A and H30B properties shall provide an average front setback (measured against the entire width of the wall parallel to and within 30 feet of the front lot line) as follows:

- Minimum: As per Section 90-155 and
 - Average front setback of 22.5 feet for the second floor where second floor lot coverage is less than 50% of the first floor
 - Average front setback of 25 feet for the second floor where second floor lot coverage is between 50% and 64% of the first floor
 - Average front setback of 30 feet for the second floor where second floor lot

coverage is between 65% and 80% of the first floor

(c) H30A and H30B properties shall provide minimum and average side setbacks (measured against the entire width of the wall parallel to and within 20 feet of the applicable side lot line) as follows:

- Minimum: As per Section 90-155 or 10% of the lot width, whichever is greater, and
 - Average side setback of 15% of lot width at frontage line, where second floor wall length is greater than 20% of the lot depth and second floor lot coverage is between 50% and 64% of the first floor
 - Average side setback of 20% of lot width at frontage line, where second floor wall length is greater than 20% of the lot depth and second floor lot coverage is between 65% and 80% of the first floor

[Code 1960, § 18-28; Ord. No. 1373, § 1, 7-8-97]

Sec. 90-179. Modification of side and rear yard regulations.

(a) The minimum width of side yards for libraries, churches and synagogues, recreational centers and other public and semipublic buildings located within a residential district shall be 15 feet.

(b) In all districts other than the H120, SDB40, and H40 districts, the required side yard setbacks for corner lots adjoining a street, or north or south canals, shall be a minimum of ten feet from the adjacent street or canal.

(c) In the H30A district, no building shall be erected within 25 feet of the seawall on Point Lake, north canal, or south canal, nor within 50 feet of the sea wall on any other body of water.

(d) In the H120 district, when a building exceeds a height of 30 feet, the width of each side yard shall be increased by one foot for every three feet of building height above 30 feet, provided, however, on a corner lot the minimum width of the side yard adjoining a street need not exceed 20 feet.

(e) Where a lot abuts an established alley, the depth of the rear yard shall be seven feet.

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(f) When the first floor of a building in a H40 district is used primarily for off-street parking purposes, a side yard setback of ten feet and a rear yard setback of five feet shall be permitted in lieu of that stated in section 90-155, table I, provided such setback area is well landscaped and visual separation is provided between the parking areas and the adjacent properties. In addition, a single-stair tower may project into the Harding Avenue setback not more than 20 feet, provided that the total encroachment per floor does not exceed 500 square feet.

[Code 1960, § 18-30]

Sec. 90-180. Maximum frontage and depth of buildings.

The intent of the maximum frontage and depth of buildings regulations is to preserve the existing and historical scale and character of these zoning districts with typical 50-foot and 75-foot frontage in the H30C and H40 districts and 100-foot to 150-foot frontage in the H120 district, accented with front courtyards, landscaped terraces and through view corridors, and to foster compatible scale relationships with abutting districts, so as to assure adequate light, air and open space within and adjacent to these zoning districts.

(1) In the H30C districts, building walls facing a public right-of-way shall not exceed 50 feet in length measured parallel to the public right-of-way. Maximum total building width or depth shall not exceed 100 feet. Adjacent segments of the building wall facing the public right-of-way shall vary in their setback by not less than 25 feet. Spaces (with building walls on three sides) formed by such setbacks or recesses in the building wall shall have a minimum width of 25 feet measured parallel to the public street right-of-way. The open areas created by such setback variations shall be substantially landscaped with over-story and under-story plant material further to reinforce the visual separation of building wall segments and reduce the scale of the overall structure.

(2) In the H40 district, building walls facing a public right-of-way shall not exceed 75 feet in length measured parallel to the public right-of-way. Maximum total building width or depth shall not exceed 150 feet. Adjacent segments of the building wall facing the public right-of-way shall vary in their setback by not less than 25 feet. Spaces (with building walls on three sides) formed by such setbacks or recesses in the building wall shall have a minimum width of 35 feet measured parallel to the public right-of-way. The open areas created by such setback variations shall be substantially landscaped with over-story and under-story plant material further to reinforce the visual separation of building wall segments and reduce the scale of the overall structure.

Commented [EM104]: Name Change

Commented [EM105]: NOTE: The current code provides that "continuous wall frontages shall not exceed 90 feet in length" and must provide a 12 foot separation between building on the same property", facades facing each side of the separation must have 10% wall openings, and a minimum 2-foot area for plantings along each façade.

The 2006 code, allows a 50 foot wall, a short break, and then another 50 foot wall. The net result is a building / wall that looks and in fact is 100 feet wide. In contrast, the current code allows at most a building /wall that looks and in fact is 90 feet wide.

The Commission may want to consider a combined version for the two codes. Perhaps one that allow 90 feet and also requires a better defined break in the building/wall. For example, the code might provide that there must be a break in the wall that's setback by a certain amount and/or has a width equal to the some percentage of the lot width.

Commented [EM106]: NOTE: Current code imposes a 17-foot building separation requirement. The facades of the separated buildings must include 10% openings and 2-feet of landscaping.

(3) The maximum frontage of any building on Collins Avenue (north to south) located in the H120 district shall not exceed 150 feet. No building in the H120 district may be erected, constructed or reconstructed with a depth in excess of 200 feet.

(4) All buildings so constructed shall meet all other requirements set forth for the district in which they are located.

(5) Notwithstanding the criteria normally applicable to regular variances, the Town Commission may approve variances from the requirements of this section for structures officially designated as Historic or as an Architecturally Significant Building based on findings that the variances are the minimal necessary to reasonably redevelop, modify, or renovate the property while preserving the historic or significant character of the structure and maintain the scale and character of the district.

[Code 1960, § 18-31; Ord. No. 1418, § 2, 7-10-01]

Sec. 90-181. Vision clearance.

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, for proposed construction hereafter, 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

Commented [MOU107]: This allows greater flexibility for certain designated properties. The process for designation and regulation is set forth in Section 90-272 of this draft.

Commented [MOU108]: These provisions taken from current code to minimize conflict with Landscape Code

- (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.
- (h) 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 the violation creates an immediate threat to the operation of any utilities or the life safety and welfare, the town may take action and assess costs pursuant to article III, property maintenance standards of chapter 14.

[Code 1960, § 18-32; Ord. No. 1317, § 1, 6-8-93]

Sec. 90-182. Accessory buildings and structures.

(a) Accessory buildings which are not a part of the main building, although connected by an open breezeway, may be constructed in a rear yard provided such accessory building does not exceed 12 feet in height and occupies no more than thirty percent (30%) in H30A or twenty percent (20%) in H30B of the area of the required rear yard setback and provided it is located at least five feet from adjacent rear or interior side lot lines and ten feet from any street lot line. A screen enclosure shall be included in the computation of area occupied in a required rear yard but an open, uncovered pool, porch, patio or terrace shall not be included, provided such structures are located at least five feet from adjacent rear or interior side lot lines and ten feet from any street lot line.

Commented [MOU109]: G. Kousoulas suggests in H30B:
 - limit accessory bldg. to 200 SF
 - limit breezeway height to same 12 FT
 - prohibit use of roof of accessory bldg or breezeway as rooftop deck

Commented [EM110]: Note: This requirement is in addition to the lot coverage, landscaping and permeable area requirements.

(b) Accessory swimming pools, open and unenclosed, or covered by a screen enclosure, may occupy a required rear or side yard setback, provided they are not located closer than five feet to a rear or interior side lot line and not closer than ten feet from any street lot line.

(c) Tents and canvas cabanas for temporary shelter and not used for overnight sleeping or containing cooking facilities shall be considered as accessory buildings and subject to the same regulations as other accessory buildings.

(d) A detached garage shall not be remodeled and used as a part of the main building and an attached garage may not be remodeled and used as a part of the main building unless all required off-street parking spaces are provided elsewhere on the lot.

Commented [EM111]: Revised to expand definition to include shed other than those with tools in them.

(e) A storage shed, the length and width of which does not exceed six feet by eight feet shall be permitted in a rear yard, provided, that it is located at least five feet from adjacent rear or interior side lot lines and ten feet from any street lot line. Such shed shall be anchored to a four-inch concrete slab; meet all requirements of the Florida Building Code for hurricane force wind resistance; and otherwise meet all applicable requirements of the Florida Building Code.

Commented [EM112]: The South Florida Building Code no longer exists. We now have only the "Florida Building Code."

Commented [EM113]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

[Code 1960, § 18-33; Ord. No. 1371, § 1, 7-8-97]

Sec. 90-183. Fences, walls and hedges.

Commented [MOU114]: Section 90-56 of the current code includes extensive regulations for fences, walls, and hedges. We propose to include it here in place of the limited regulations in the 2006 code

90-183.1.A. A fence or ornamental wall not more than six feet in height, as measured from grade, may project into or enclose an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall. Any portion of the fence or ornamental wall that exceeds six feet in height as measured from the crown of road shall not exceed 50% opacity.

90-183.1.B. Construction fencing. Temporary construction fences are required by this ordinance unless otherwise determined by the Building Official. A construction fence permit shall be obtained from the Building Department prior to the fence being erected. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.

- (a) *Permit required.* A permit application and a current survey of the site.
- (b) *Permitted fence.* Construction fences shall be designed in such a manner as to have all exposed materials finished, coated, covered or cladded in or with materials such as paint, windscreens, canvases or similar materials, subject to the approval of the town manager or designee.
 - (1) The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel remain without a protective barrier.
- (c) Any person or entity found to be in violation of this subsection shall be subject to fines as set forth in the schedule of fines adopted by resolution.
- (d) A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.
- (e) *Permitted height.* All construction fences shall be at least six feet high and no higher than eight feet.
- (f) *Locked.* The fence shall be kept locked when the property is unoccupied.
- (g) *Prohibited fences.*
 - (1) The following fences are not permitted, except as otherwise provided in the Code herein below:
 - a. Chain-link fences, unless:
 - 1. Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are

neatly designed and maintained as approved by the building and zoning departments.

- b. Barbed-wire fences.
 - c. Fences made of canvas material.
 - d. Any fences that fail to meet the requirement of the Florida Building Code.
- (h) *Setbacks from property line on Harding Ave and Collins Ave.* A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the town manager. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No temporary construction permit shall be issued unless a landscape plan is approved by the town for the buffer. Failure to maintain the landscaping will result in the town taking action to replace same and lien the property for the costs of landscaping.
- (i) *Expiration of permit.* A temporary construction fence permit issued under this chapter shall expire at the completion of construction at which time the temporary fence shall be removed in accordance with the terms of the Florida Building Code.
- (j) *Murals and graphics.* Graphics and murals on temporary construction fencing are prohibited unless approved by the town manager for aesthetic enhancement of the fence and advertisement of the project to be constructed.
- (k) *Fees.* The town manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the building official.
- (l) *Access gates.* All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.
- (m) *Temporary construction signs.* Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.
- (n) *Appeals.* Any decision made by the town manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the town commission.
- (o) *Enforcement and penalties.* The code compliance division and building departments shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to fines as set forth in the schedule of fines adopted by resolution.

90-183.2 A fence or ornamental wall may be placed within either the front or secondary frontage yard only on corner lots if granted design review approval by the planning and zoning board.

Commented [MOU115]: Elevating this review to a variance or special exception was discussed at the 9/24 Planning and Zoning Board meeting

90-183.3 Fences or ornamental walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in this section.

90-183.4 Front yard and corner yard fences and ornamental walls—Table.

Lot Frontage	Maximum Height (Feet)	Maximum Opacity (Percent)
Less than or equal to 50 ft in width	4 ft	All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent
Wider than 50 ft and less than 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 5 ft	
Wider than or equal to 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 6 ft	
Secondary frontage (corner only)	Shall adhere to the height and opacity limitations for corresponding lot frontage	

90-183.5 Modification of secondary frontage fence and ornamental wall regulations.

- (1) A fence or ornamental wall that has a maximum opacity of 100 percent and a maximum height of six feet, as measured from grade, may project into or enclose the street side yard of a corner lot, provided:
 - a. The fence or wall is not placed in front of the front facade of the primary residential structure and extends beyond the plane of the front facade on only one side of the primary residential structure;
 - b. The fence or wall is setback three feet from any property line;
 - c. Shrubs shall be installed at the time the fence or wall is installed; and
 - d. The shrubs shall be planted a minimum of 36 inches in height, shall be placed a maximum of 24 inches on center and shall cover the exterior of the fence or wall within one year after the final inspection of the fence.

Commented [MOU116]: Planning and Zoning Board members discussed these provisions at the 9/24/20 Planning and Zoning Board meeting. Some members expressed a preference for the 2006 Code section 90-183 which provides:

An ornamental fence, wall or hedge, not more than five feet in height, may project into or enclose any side or rear yard, except as otherwise provided herein. The height of such ornamental fence, wall or hedge shall be measured from the ground upon which it is located. No fence, wall or structure of any kind shall be constructed in a front yard, nor on a corner lot in a side yard, where such side yard abuts a public right-of-way. An ornamental hedge with a height of not more than three feet shall be permitted. Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 190-181 (vision clearance).

90-183.6 When being installed as a safety feature for a swimming pool in a front or primary corner yard, a fence or ornamental wall shall be permitted at a maximum of four feet in height. The applicant shall demonstrate evidence relative to this hardship.

90-183.7 Reserved.

90-183.8 In order to prevent water ponding at the base of ornamental walls, the installation of weep holes or other similar drainage features shall be required. The number and spacing shall be determined per lot per review.

90-183.9 Hedges shall be no more than four feet in height in the front yard and side corner yards and ten feet in height in the rear and interior side yards, except as required by section 90-183.5(1). Hedges may be higher if granted approval by the design review board, on a case-by-case basis.

90-183.10 Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with visibility triangles, vision clearances, or fire codes, including concealment of fire hydrants.

90-183.11 No fence, wall or hedge maybe placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than 115 feet in width shall be permitted, provided that it is understood by the property owner that the town does not waive its right to demand removal without notice as deemed necessary within the town's discretion and the town shall not be liable for any damages arising from such removal. Property owner shall install or plant such materials at own risk. All improvements, other than groundcovers, as defined in the landscape section, shall be placed on private property.

90-183.12 Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property, such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside of the fence provided that the horizontal rails are at least 50 percent covered by boards on the side facing away from the property on which the fence is constructed.

90-183.13 It shall be a violation under this article for any person to erect or maintain a structure to serve as a fence in manner that endangers the health, safety, and welfare of the public as described in this section and as determined by the town manager or designee.

90-183.14 The following fencing material shall be prohibited:

- (1) Chain-link and other wire fencing, except as permitted herein.
- (2) Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.

90-183.15 No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.

90-183.16 In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property line or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the town manager or designee.

(Ord. No. 1520, § 1, 4-14-09; Ord. No. 1529, § 2, 7-15-09; Ord. No. 1549, § 2, 3-9-10; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1590, § 2, 8-15-12; Ord. No. 1593, § 2, 10-9-12; Ord. No. 1610, § 2, 12-10-13; Ord. No. 1620, § 2, 6-10-14; Ord. No. 18-1689, § 2, 9-12-18; Ord. No. 18-1691, § 2, 12-11-18)

(Code 1960, § 18-34; Ord. No. 1401, § 1, 5-11-99)

Sec. 90-184. Marine structures.

The following regulations shall apply to boat docks, piers, and mooring piles, in any district:

(1) Projection of docks and piers into waterways beyond the waterway line, lot line, or established bulkhead lines shall be limited as follows, subject to final approval of the U.S. Army Corps of Engineers, the Department of Environmental Protection, and/or the Department of Environmental Resource Management, which has jurisdiction:

- a. Biscayne Bay: 20 feet.
- b. Indian Creek: 10 feet.
- c. Point Lake: 15 feet.

(2) Under no circumstances shall any dock or pier be constructed so as to project into any waterway for a distance equal to more than ten percent of the width of such waterway.

(3) For all properties requesting a marine structure permit as described in this

Commented [MOU117]: Current code allows 35-foot docks

Commented [MOU118]: From current code

section, the town manager or designee shall send a mailed courtesy notification to all property owners within 300 feet of the property requesting the permit submitted to the building department.

(Code 1960, § 18-35)

Sec. 90-185. Carports and Car Canopies.

A Carport shall be treated as an accessory structure subject to all applicable rules and regulations. A Car Canopy may be constructed, if approved as a conditional use under the provisions of section 90-90, in a front, side or rear yard setback in the H30A, H30B, H30C, and H40 districts. Such Car Canopy may not exceed 20 feet in length, nor ten feet in width, in front yards of lots of less than 100-foot frontage. On lots of 100-foot frontage or more, or on corner lots where such Car Canopy is to be outside the front yard setback, 20 feet by 20 feet may be allowed. A Car Canopy 20 feet by 20 feet also may be allowed in the front yard setback of lots with 75-foot frontage or more, where such Car Canopy is directly in front of the entrance to a two-car garage or, alternatively, over a two-car driveway, perpendicular to the street and located no less than five feet and no more than 30 feet from an interior side lot line. No Car Canopy shall extend beyond a property line or shall be closer than five feet to the rear of the street curb, and supporting pipes shall be no closer than seven feet. The height of such Car Canopy shall not exceed ten feet, measured from the ground level to the uppermost point of the cover. A front yard Car Canopy shall be at least five feet from the side property line. A Car Canopy shall at all times remain open on all four sides, if free standing, and open on three sides if attached to the main building. The area under a Car Canopy must be entirely concreted or asphalted. Side openings shall be at least six feet, three inches, in height.

(1) Each applicant for a conditional use shall submit with his application samples of the actual materials which will cover the Car Canopy and a plot plan showing the location and dimensions of the Car Canopy in relation to the lot lines and existing structures.

(2) The planning and zoning board may adopt such aesthetic standards as to color and patterns of canopy materials as it may choose, and such standards shall be given to each applicant with the application for a conditional use.

(3) Any conditional use granted shall be for a period of three years only, but shall be automatically renewable at the beginning of each three-year period upon certification by the town manager that the Car Canopy is structurally sound, and that the materials are in good condition (*i.e.*, free from tears, holes, fading, rust, corrosion or mechanical damage).

(4) In addition to all provisions of the Florida Building Code, the following construction standards for canvas-covered Car Canopy are required and shall be complied with:

Commented [EM119]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

a. No Car Canopy shall be constructed except of canvas (or similar material) covered pipe. Framework shall be galvanized Schedule 40 pipe assembled either with Schedule 40 galvanized fittings or welded and joints painted with a liquid zinc compound. For a ten-foot by 20-foot canopy, uprights shall be of not less than 1 1/4-inch pipe; the perimeter shall be of not less than one-inch-pipe and the rafters of not less than three-fourths-inch pipe. For a 20-foot by 20-foot canopy, the pipe sizes shall each be increased by one-fourth inch. All uprights shall be either lag-bolted into a concrete base or, if mounted in dirt, concreted at least one-foot deep with a safety tee at the bottom of the pipe. The design and the minimum size of structural members shall not be less than required to resist a 75-mile-per-hour wind with applicable shape factors. All fabric shall be designed for quick removal, which shall be required at a wind velocity in excess of 75 miles per hour.

b. The framework height shall be a maximum of ten feet and a minimum of seven feet above grade. No uprights shall be installed closer than two feet from the front lot line.

c. Covering material shall carry the California Fire Marshal's certificate of non-flammability. The material shall be attached to the framework by lacings only. The canvas side openings shall be not less than six feet three inches in height from grade.

(Code 1960, § 18-36; Ord. No. 1367, § 1, 12-10-96)

Sec. 90-186. Outdoor receiving and broadcasting antennae.

No outdoor receiving or broadcasting antenna, whether tower, pole, mast, disk, bowl, planar or similar structure, weighing more than 20 pounds shall be placed or erected in the town without a permit from the town. Only one such permit shall be issued for each main building on a lot.

(1) *Permit application.* The application for a permit shall be made to the town manager, accompanied by a site sketch, showing dimension and location of the antenna in relation to the site boundaries, setback lines and the existing structures on the site; and drawings by a licensed structural engineer, showing the method of permanently anchoring the antenna and listing the materials to be used in such anchoring. A landscaping or covering plan may be required when appropriate.

(2) *Fee.* A permit fee shall be required.

(3) *Construction provisions; yard placement.* All such antennae shall be constructed to withstand the minimum wind load required by and in accordance with all applicable provisions of the Florida Building Code and these regulations;

Commented [MOU120]: May need substantial revision if intended to apply to wireless communications facilities.

Commented [EM121]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

and in no case shall they be placed within, or intruding into, the front or side yards of any property. In the H120 zoning district, Collins Avenue shall be deemed to be the front of the property.

(4) *Roof placement.* No antenna requiring a town permit shall be placed upon the roof of any structure except in the H120 zoning district.

(5) *Height limits--Tower, pole, mast.* For aesthetic reasons, tower, pole or mast antennae, except in the H120 zoning district, shall not be more than eight feet, at their highest point, above the highest point of the main structure's roof. However, such antennae for amateur broadcasting purposes (ham radio) may have antennae 35 feet in height from the average grade of the lot, or 50 feet in height, if the antennae is of a retractable type that can readily be lowered to 25 feet or less when not in use.

(6) *Height limits--Disk, bowl, planar.* Disk, bowl, planar or similar-shaped antennae in any zoning district, except H120, shall not exceed a total of 12 feet in height above the ground, including supporting structures; and the diameter shall not exceed ten feet on lots up to and including 75 feet in width. On lots more than 75 feet in width, such antennae shall not exceed a total of 14 feet in height, including supporting structures, above the ground; and the diameter shall not exceed 12 feet. All such disk, bowl, planar or similar-shaped antennae shall be sufficiently landscaped or covered so as to obscure the antennae from view from surrounding and adjacent properties.

(Code 1960, § 18-37)

Sec. 90-187. Construction adjacent to bulkhead lines.

(a) Ocean bulkhead lines are established in section 14-86 and the following regulations shall control construction adjacent thereto:

(1) No permit shall be issued for the construction of any building or other structure of any nature whatsoever which shall be closer than 20 feet to the ocean bulkhead line.

(2) No permit shall be issued for the repair, extension, alteration or replacement of any structure lying within 20 feet of the ocean bulkhead line.

(b) Indian Creek bulkhead lines are established in section 14-101 and the following regulations shall control construction adjacent thereto:

(1) *Permits required.* It is hereby declared to be unlawful for any person to construct or erect any bulkhead, sea wall or other shore protection work along the shore line of Indian Creek in the town without first obtaining a

Commented [MOU122]: This should be reviewed by Building Official in regards to impact on existing buildings

permit therefor from the town manager.

(2) *General limitations.* No permit shall be issued for construction, repair, alteration, extension or replacement of any structure of any nature whatsoever other than a bulkhead, seawall or shore protection work as mentioned in the preceding section, or marine structure as mentioned in subsection 90-184(1), which shall be closer than 20 feet to the Indian Creek bulkhead line. Provided however, that a swimming pool may be constructed no closer than 15 feet to the Indian Creek bulkhead line.

Commented [MOU123]: Cross reference with 90-179(c) of this code

A swimming pool construction landward of less than 20 feet of the Indian Creek bulkhead line shall be thoroughly investigated by a registered structural engineer known to the building official to be qualified to evaluate retaining walls, seawalls, bulkhead or other shore protective structures. The structural engineer shall certify that said construction will not compromise the structural capacity of the adjacent retaining wall, seawall, bulkheads or other shore protective structure, and such construction will allow continued maintenance of said retaining wall, seawall or bulkhead, including anchors and soil supports. A certification shall be included on the drawings that the proposed construction has been designed in accordance with the Florida Building code and all applicable laws. Upon project completion the registered engineer shall submit to the building official a letter attesting that the construction of the improvements has been observed and is in accordance with Section 307.2 of the Florida Building Code and all applicable local ordinances. The letter shall be signed and have the impressed seal of the registered structural engineer, as applicable.

Commented [EM124]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

Commented [EM125]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

No permit shall be issued for the construction of a bulkhead, seawall or other shore protection work, unless the plans and specifications of the bulkhead, seawall or other shore protection work show that the bulkhead, seawall or other shore protection work is so located as not to extend outward beyond the Indian Creek bulkhead line as heretofore established, and shall show that the bulkhead, seawall or other shore protection work will be constructed of precast concrete slab or reinforced concrete and shall have an elevation of not less than plus five feet above mean low water, U.S. Engineering Department Biscayne Bay Datum, and shall be of sufficient depth below mean low water to ensure the retention of all fill or soil on the landward side thereof, and of sufficient weight and strength to withstand hurricanes, windstorms and high tide waters and waves incident thereto.

(c) All structures on Biscayne Bay and Point Lake shall be required to obtain a permit and meet the setbacks and general limitations established in subsection (b) of this section (Indian Creek bulkhead lines).

(d) All applications for building permits in the H30A and H120 districts shall include a certified survey showing the point of intersection of the Indian Creek or

Commented [EM126]: Name change

ocean bulkhead line or other regulated seawall line with the adjacent side lot lines and/or street lot lines of the property on which construction is proposed, together with a certificate of a registered engineer or surveyor indicating that all of the work proposed to be done under the permit complies with all provisions of this section. All applications seeking zoning or building approval of any kind from the Town that involve new construction or addition(s) that exceed(s) 50% of the replacement value of existing structures shall be required to improve the seawall on the property up to all current code requirements.

(e) The owner of the property on which or adjacent to which any such seawall, bulkhead or other shore protection work shall be constructed, in accordance with a permit issued in accordance with the provisions of this section shall furnish to the town manager a certificate signed by the owner and the contractor doing the work, that such seawall or bulkhead has been erected or constructed in strict accordance with the terms of such permit and the plans and specifications submitted for such work.

(Code 1960, § 18-38; Ord. No. 1273, § 1, 11-12-91; Ord. No. 1376, § 1, 9-9-97)

Sec. 90-188. Paving front yards in single-family and duplex districts.

Front yards in the H30A, H30B, H30C, and H40 (where developed as single family or duplex) districts shall not be more than 50 percent paved over with any type of material that is not readily permeable by rainwater and groundwater. Not less than 50 percent of the front yard shall be landscaped. No front yard shall be accessible by vehicles from a public street by more than two curb cuts. No curb cut shall be located within five feet of a side lot line.

Commented [MOU127]: Consistent with Zoning in Progress of August 9, 2020

(1) Where there is a single curb cut for any one property, the curb cut shall not be more than 18 feet in width.

(2) Where there are two curb cuts for any one property, the curb cuts shall not be more than 12 feet in width, and there shall be at least 12 feet between curb cuts. Where a driveway is installed with two curb cuts, a landscaped island containing at least 60 square feet shall be provided between the curb cuts in the front yard area, extending from the front property line to the paved area.

(3) On corner lots where vehicular access and off-street parking are provided in a side yard, these same regulations shall apply also to the side yard. Such side yards shall not be more than 50 percent paved over with any type of material that is not readily permeable by rainwater and groundwater and not less than 50 percent of the side yard shall be landscaped.

(Code 1960, § 18-39)

Sec. 90-189. Outdoor lighting.

To assure that outdoor lighting is in harmony with the site architecture design, the adjacent area and the neighborhood; and to prevent a nuisance to adjacent properties or creation of traffic hazards on adjacent streets by reason of glare, reflection or the like; outdoor lighting for areas such as but not limited to, off-street parking, security or any other purposes, shall be permitted under the following conditions:

(1) Plans indicating the location of the lighting fixtures; type of lights, height of lights and levels of illumination; shade, type and height of lighting poles; and bases, deflectors and beam directions shall be submitted to the town manager for approval.

(2) Lighting fixtures and lighting poles, including mounting bases, shall not exceed 18 feet in height from grade, shall be of decorative nature and shall be in harmony with the site architecture design, the adjacent area and the neighborhood. Decorative lighting poles and bases shall be constructed of anodized aluminum, pigmented concrete, fiberglass or other materials of similar characteristics as approved by the town manager.

(3) Outdoor lighting shall be designed so that any overspill of lighting onto adjacent properties shall not exceed one-half foot-candle (vertical) and one-half foot-candle (horizontal) illumination on adjacent properties. An outdoor lighting installation shall not be placed in permanent use until a letter of compliance from a registered architect or engineer is provided to the town manager, certifying that the installation has been field- checked and meets the requirements set forth above.

(4) The town manager may issue a permit for such proposed outdoor lighting, if, after review of the plans and after consideration of the design characteristics of the lighting fixtures and lighting poles and bases, they are found to be in harmony with the site architecture design, the adjacent area and the neighborhood, will be deflected, shaded and focused away from adjacent properties; and will not be a nuisance to adjacent properties and traffic.

(5) All of the foregoing installations shall conform to the ~~South~~ Florida Building Code.

Commented [EM128]: All local building codes have been eliminated by state statute, the state now has only one building code, the Florida Building Code.

(6) **Lighting** on properties designated H120 shall provide fixtures and shields to maintain light shed cut offs in accordance with regulations of the Department of Environmental Protection, specifically as it relates to properties fronting or adjacent to turtle nesting habitats.

Commented [MOU129]: These two requirements added from current code

- (7) All lighting shall be controlled by photocell controls.

(Code 1960, § 18-40; Ord. No. 1381, § 1, 2-10-98)

Sec. 90-190. Miscellaneous elevations for seawalls, and groins.

(a) The elevation of all ocean bulkheads or sea walls shall be plus 12 feet above the mean low water.

Commented [MOU130]: This provision does not exist in current code. The building official should be consulted to determine if it was deleted because of a building concern. We have left it in this version

(b) The elevation for the top of shore end of all groins or other shore protective work shall be plus five feet above mean low water.

(c) The elevation for the top of seaward end of all groins and other shore protective work shall be plus 2 1/2 feet above mean low water.

(d) The elevation of the top of all seawalls fronting on the waters of Biscayne Bay, Indian Creek and Point Lake shall be at least plus five feet above mean low water.

Commented [MOU131]: Standard should be checked with Building Official

(Code 1960, § 18-41)

Sec. 90-191. Combined lots.

Where two or more parallel adjoining and abutting lots under a single ownership are used, the exterior property lines so grouped shall be used in determining setback requirements. Provided, however, that no structure shall be constructed, altered or maintained on a single lot in any zoning district which does not conform with the setback requirements applicable to such lots, irrespective of the common ownership of abutting lots, unless and until a restrictive covenant running with the title to such lots, assuring obedience to setback requirements in a form acceptable to the town attorney, shall first have been recorded in the public records of Dade County, Florida. Joinder in such a restrictive covenant must be effected by all interested parties, including, but not limited to, dower, lienholders, mortgagees, and all others claiming any right, title or interest in and to such real property.

(Code 1960, § 18-42)

Sec. 90-191.1 Aggregation of lots.

(1) For all lots aggregated in the H30C, H40 and H120 zoning districts after April 12, 2011, (the effective date of Ordinance No. 1572), the maximum permitted density shall be limited to 85 percent of the total gross density permitted by the Comprehensive Plan when lots are aggregated.

Commented [MOU132]: Added from 90-45.1 of current code

(2) Two or more lots of record shall be considered one undivided parcel for the purpose of density and/or intensity if a special exception is first obtained, and there is a

recorded unity of title demonstrating single ownership of two or more parcels or have been platted as one lot. However, the underlying land use or zoning shall prevail as to the permitted use on each of the lots.

- (3) Aggregated lots shall be contiguous properties but may be separated by a public right-of-way.

(Ord. No. 1572, § 2, 4-12-11)

Sec. 90-191.2. Lot splitting in the H30A and H30B Districts Prohibited.

No platted lot within the H30A or H30B district shall be re-subdivided, split, or reduced in size, in any manner that would increase the number of developable lots depicted in the original plat. In other words, single-family residential building sites shall only be permitted to be enlarged and shall not be made smaller.

Sec. 90-192. Boat parking.

In the following section the term "boat" shall include every description of watercraft or airboat used or capable of being used as a means of transportation on water, including personal watercraft, but shall not include kayaks or canoes or similar non-motorized watercraft. No more than one boat, may be parked on any lot in the H30A or H30B districts subject to the following conditions:

- (a) Boats shall not be used for living or sleeping quarters, and shall be placed on and secured to a transporting trailer.
- (b) No boat, or boat trailer shall be parked within the required interior side setback and/or required rear setback, or project or encroach on any public right-of-way.
- (c) A boat trailer and personal watercraft may be parked in the front, side, or rear yards. If parked in the side or rear yard, the boat trailer and personal watercraft shall not be visible to the neighboring property. A fence, wall or hedge, consistent with the Code, shall be installed in order to limit visibility to the maximum extent possible.
- (d) When parked or stored in the front or secondary frontage yard the place of parking shall be parallel with and immediately adjacent to or on the driveway and shall be at least five feet from the interior side or rear property line.
- (e) The parking, storage or keeping of any boat or boat trailer shall not obstruct driveways or impede the ability of the abutting property owner to maintain the right-of-way clearance. The parking, storage or keeping of any boat or boat trailer shall not cause other vehicles to be parked in rights-of-way so as to create a

Commented [MOU133]: Boat parking regulations from current code are more extensive than in 2006 code. We recommend retaining them.

hazard. The parking or storage of a boat or boat trailer shall not be in conflict with the provisions of 90-52.

- (f) If covers are provided for the open part of all boats, the covers for any items must fit to the contours of the boat. The color of the cover should be complimentary to the exterior color of the boat. No tarps shall be used.
- (g) Boats, boat trailers, and places of parking shall be kept in a clean, neat and presentable condition. Boats and boat trailers shall not be inoperable, wrecked, junked, partially dismantled or abandoned.
- (h) No boat which does not have a valid registration and a valid license plate decal properly displayed, as required by state law, shall be kept on any lot for more than 30 days, unless they are stored inside a totally enclosed building.
- (i) It shall be unlawful to park a boat or boat trailer on any lot, unless such lot contains a residential dwelling and the boat belongs to the occupant of such dwelling, a member of his immediate family, a resident of the household residing on the property, or a bona fide guest or visitor thereof.
- (j) No major repairs or overhaul work shall be made or performed on the premises.
- (k) Boats and boat trailers stored on any lot in the H30A or H30B districts shall be secured or removed immediately upon the issuance of a hurricane warning by a recognized governmental agency.

(Ord. No. 1532, § 2, 9-8-09; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1569, § 2, 3-8-11)

Sec. 90-193. Temporary storage of campers and house trailers.

The house car, camp car, camper or house trailer, nor any vehicle or part of a vehicle designed or adapted for human habitation by whatever name known, whether such vehicle moves by its own power or by power supplied by a separate unit, which exceeds 20 feet in length or eight feet in height, shall be kept or parked on public streets or public property anywhere within the town, nor on private property in the H30A or H30B district, for more than 24 hours within a calendar week beginning at 12:01 a.m. Sunday and ending at 12:00 midnight on Saturday. No house car, camp car, camper, house trailer, or any similar vehicle shall be attached to any public or private external source of electricity, water, gas or sanitary sewer at any time, except that an electrical connection may be made for the sole purpose of recharging a vehicle's storage batteries.

(Code 1960, § 18-44)

Sec. 90-194. Pervious Area.

At least 35% of the Lot Area of any lot in a H30A or H30B district shall be pervious area and remain unbuilt open space.

Sec. ~~90-195~~. Reserved.

Commented [MOU134]: Consolidated into Division 6, "Landscaping" in this draft

Sec. 90-196. Emergency power generators.

The following requirements apply to permanent and temporary emergency power generators located in residential zoning:

- (1) *Permit:* The property owner must obtain a building permit for the installation of an emergency power generator.
 - a. The town shall review all such permit applications to ensure such installations minimize the visual and acoustic impact on adjacent properties.
 - b. Special attention shall be paid to the placement of the generator, the use of sound attenuating materials, and the reasonable containment of sounds and exhausts, which will be created by the operation of any emergency power generator. The preferred placement shall be as follows: For all new construction, permanent emergency generators must be placed in the rear of the property; for residential structures existing as of September 1, 2006, permanent generators may be placed in the front of the house if placement in the rear is not feasible. In no instance shall generators be placed in the setbacks.
- (2) *Screening:* Emergency power generators that are not located within, or completely screened by a building, shall be screened from view when adjacent to or visible from a public right-of-way or from adjacent parcels of property. Screening may include the use of fences, walls, or hedges, or a combination thereof and such screening shall meet all relevant code requirements.
- (3) *Placement of temporary generators:* Temporary emergency power generators shall be placed outdoors at least ten feet from any opening or window.
- (4) *Maintenance cycle:* The generator's maintenance cycle run shall be permitted a maximum of once a week between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday only, and shall continue for no more than the manufacturer's recommended duration, but not to exceed 30 minutes per cycle.
- (5) *Allowed usage:* Emergency power generators may only be operated for non-maintenance purposes whenever there is a power outage. Generators may not be used as a substitute for electrical power.
- (6) *Code enforcement and removal:* Generators, which are in violation of the provisions of this section, shall be subject to immediate removal and code enforcement action.

(Ord. No. 1462, § 1, 9-12-06)

Sec. 90-197. Awnings and canopies.

Commented [MOU135]: From current code. Not addressed in 2006 Code

The following Design Criteria are applicable to all multi-dwelling and non-residential properties. All new and replacement awnings and canopies shall meet these requirements.

a. *Location/placement.*

1. Awnings and canopies shall have consistent height and depth subject to the size of the wall opening which, the awning or canopy is affixed.
2. Awnings and canopies shall remain consistent with architectural details and proportions harmonious with the overall building design and historic context.
3. Awnings and canopies shall be consistent on multiple storefronts within a larger building.
4. After 25 feet in length, an awning or canopy shall have either a break of a minimum of six inches or articulation of the awning or canopy, except where otherwise authorized by the Planning and Zoning Board to achieve a more integrated design.
5. Awnings shall be attached to the building facades and shall not be supported by vertical elements within the right-of-way.
6. Awnings shall have a pedestrian scale and be placed so as to provide weather protection.
7. Awnings shall be an enhancement to the building facade and shall be proportional with and complimentary to nearby buildings and awnings.
8. Awnings shall be mounted in locations that respect the design of the building and do not obscure ornamental features over storefronts (i.e. rooflines, arches, materials, banding).
9. Awnings shall project a minimum of three feet and a maximum six feet over the sidewalk, not to exceed the width of the sidewalk.

Commented [MOU136]: This was a recommendation of the P&Z Board

b. *Appearance.*

1. Awnings shall be fabric or metal. Plastic and vinyl awnings are prohibited, except for First Grade vinyl awnings, subject to design review approval by the planning and zoning board.
2. Awnings shall be solid colors rather than patterned.
3. If an awning valance is proposed, it shall be straight rather than curved, except for special architectural elements to be compatible with historic building styles.

4. Awning colors shall enhance and complement the building and adjacent awnings, rather than overwhelm the building scheme. Colors shall not call more attention to the awning than the building.
 5. Lighting associated with awnings and canopies shall be prohibited, except lighting approved by the planning and zoning board which is attached underneath the awning and intended to provide pedestrian lighting.
 6. Signage, graphics and lettering shall be prohibited on canopies and awnings.
- c. *Construction and maintenance.*
1. Awnings shall be mold and UV-resistant.
 2. The awning frame structure shall be finished to match the metal storefront system color or the awning fabric color. The structure shall also be compatible with the window system of the building in terms of placement and materials.
 3. Awnings shall have between a 30 and 50 degree angle, taking into consideration the height of the storefront and wind load requirements.
 4. Awnings shall not be torn, frayed, ripped, faded, or stained, soiled or dirty. When not specifically addressed by this ordinance, provisions of the town's property maintenance code shall apply.
 5. Maintenance, repair, replacement, and/or removal. All awnings and canopies shall be maintained and kept in good order and repair. Awnings and canopies which are found, upon inspection, to be in disrepair shall be subject to removal and/or replacement in accordance with the commercial standards established in section 14-52 of the Code of Ordinances.
- d. *Enforcement.*
1. Code enforcement and/or the building department shall be responsible for the enforcement of these provisions. Any person or entity violating these provisions shall be subject to fines as set forth in the schedule of fines adopted by resolution and punishable as provided in section 1-8 and all other applicable sections of the Code of the Town of Surfside.

(Ord. No. 1572, § 2, 4-12-11; Ord. No. 1584, § 2, 1-17-12; Ord. No. 1620, § 2, 6-10-14; Ord. No. 18-1689, § 2, 9-12-18)

Sec. 90-198. Materials and finishes.

Commented [MOU137]: From current code. Not addressed in 2006 Code

The following Design Criteria are applicable to all multi-dwelling and non-residential properties.

- a. The surface shall be stucco, stone, metal, glass block and accent wood. Materials vernacular or characteristic to other regions including but not limited to flagstone and adobe shall be prohibited.

- b. Materials shall be true and genuine, rather than simulated. Multiple storefronts within a larger building shall have consistent material qualities and articulation.

(Ord. No. 1572, § 2, 4-12-11)

Sec. 90-199. - Portable storage units.

Commented [MOU138]: From current code. Not addressed in 2006 Code

90-199.1 There shall be no more than one portable storage unit allowed per site.

90-199.2 The portable storage unit shall be no larger than 130 square feet in area and no higher than nine feet in height.

90-199.3 Placement: Portable storage units shall be permitted in all zoning districts and are subject to the following restrictions:

- (1) *In H30A and H30B districts:* Portable storage units shall generally be placed only in a driveway.
- (2) *In H40 and H120 districts:* Portable storage units shall be placed only in the rear or side portion of a site. Portable storage units shall not be placed in an area fronting Collins Avenue or Harding Avenue or in the front of an establishment. The placement of portable storage units in fire lanes, passenger loading zones, commercial loading zones or public rights-of-way shall be strictly prohibited.

90-199.4 Duration of portable storage units shall be limited to the following:

- (1) In H30A, H30B, and H30C districts: Portable storage units shall not remain at a site in excess of 30 consecutive days and portable storage units shall not be placed at any one site in excess of 60 days in any calendar year.
- (2) In H40 and H120 districts: Portable storage units shall not remain at a site in excess of 14 consecutive days, and portable storage units shall not be placed at any one site in excess of 60 days in any calendar year.

90-199.5 A portable storage unit shall have no signage other than the name, address and telephone number of the person or firm engaged in the business of renting or otherwise placing the portable storage unit.

90-199.6 The owner and operator of any site on which a portable storage unit is placed shall be responsible to ensure that the portable storage unit is in good condition, free from evidence of deteriorating, weathering, discoloration, rust, ripping, tearing or other holes or breaks.

90-199.7 Notwithstanding the time limitations set forth herein, all portable storage units shall be removed immediately upon the issuance of a hurricane warning by a recognized government agency. If the town manager or designee determines that an emergency, other than a hurricane warning by a recognized government agency,

provides sufficient cause to exceed the time limitations which would otherwise apply, the town manager or designee may permit a portable storage unit to remain at a site for a period in excess of such time limitations.

90-199.8 An application is required prior to the placement of a portable storage unit at any site. The application shall be filed with the town manager or designee and shall include the following where applicable; the address and the use or occupancy of the site; the estimated delivery date and duration of placement; the name and contact information of the portable storage unit owner; additional information as may reasonably required by the town manager or designee.

(Ord. No. 1528, § 2, 7-15-09; Ord. No. 1558, § 2(Exh. A), 8-10-10)

Sec. 90-200. Accessory buildings and structures in the H30C, H40, SD-B40 and H120 districts.

Non-habitable structures, including but not limited to cabanas, pergolas, gazebos and trellises shall have a maximum height of 12 feet.

Commented [MOU139]: From current code. Not addressed in 2006 Code

Sec. 90-201. Service areas and mechanical equipment.

The following are applicable to all multi-dwelling and non-residential properties.

- a. Service bays, mechanical equipment, garbage and delivery areas, shall be fully enclosed, screened or located within the interior of the building. These areas shall not be visible from the right-of-way and shall not be visible from properties with adjacent residential or hotel uses.
- b. Central air conditioning shall be required for trash rooms.
- c. All mechanical equipment shall be architecturally screened.

(Ord. No. 1572, § 2, 4-12-11)

Sec. 90-202. - Underground and above-ground utilities.

The following are applicable to all multi-dwelling and non-residential properties.

- a. All utilities including telephone, cable, and electrical systems shall be installed underground.
- b. All exterior facilities, including but not limited to electrical raceways and transformers, permitted above ground shall be fully concealed and screened.

Commented [MOU140]: From current code. Not addressed in 2006 code

Commented [MOU141]: From current code. Not addressed in 2006 Code

Sec. 90-203. Architecture.

Commented [MOU142]: From current code. Not addressed in 2006 Code

- (1) Elevation and facade articulation variations.
 - a. The architectural design of proposed main buildings shall create a unique elevation compared to the main buildings of the adjacent two buildings on each side of the subject property on the same side of street. If the adjacent lot is vacant then the next adjacent lot shall be utilized. A unique elevation shall be created through the modulation of at least three of the following architectural features:
 1. Length, width and massing of the structure;
 2. Number of stories;
 3. Facade materials;
 4. Porches and other similar articulation of the front facade;
 5. Number and location of doors and windows; and
 6. Roof style and pitch.
- (2) In the H30C, H40 and H120 districts: when more than one building is provided, buildings shall be designed in such a way that they are not monotonous.
- (3) All elevations for new structures and multi-story additions (additions greater than 15 feet in height) shall provide for a minimum of ten-percent wall openings including windows, doors or transitional spaces defined by porches, porticoes or colonnades per story.
- (4) All elevations for single story additions to existing structures shall result in a zero percent net loss of wall openings including windows, doors or transitional spaces defined by porches, porticoes or colonnades.
- (5) Roof materials are limited as follows:
 - a. Clay tile; or
 - b. White concrete tile; or
 - c. Solid color cement tile which color is impregnated with the same color intensity throughout, provided said color is granted design review approval by the planning and zoning board;
 - d. Architecturally embellished metal; or
 - e. Other Florida Building Code approved roof material(s) if granted design review approval by the planning and zoning board.
- (6) Garage facades. Attached garages located at the front of a single family home shall not exceed 50 percent of the overall length of the facade.
- (7) Converting single-family attached garages. When an attached garage is converted for any other use, the garage door or doors may be replaced by a solid exterior wall and access to the former garage area must be provided from the main premises, in addition to any other permitted access. At least one window shall be provided. If the garage entrance is located at the front or primary corner of the property, landscaping shall be provided along the base of the new exterior

wall. When the installation of landscaping results in insufficient off-street parking, a landscaped planter shall be permitted in lieu of the required landscaping. It is intended hereby to prohibit and prevent any violation of the single-family classification and to minimize the burden upon the administrative forces of the town in policing and enforcing the provisions hereof. Changes to the appearance of the residence shall not constitute a change prohibited by the "home office" provision of this Code. If the exterior door of the garage conversion is no longer level with grade, stairs may be installed and the exterior door must be accordingly corrected to comply with the Florida Building Code. The stairs shall be permitted to encroach no more than 24 inches into the side or rear setbacks.

(8) Notwithstanding the foregoing, some of the architecture provisions in this section, while specific to zoning districts H30A and H30B, may also be applicable to single family homes in other zoning districts.

(9) Paint colors. Structures in the H30A and H30B zoning districts shall be permitted to be painted the four lightest colors for the structure's primary color on the color swatch on file in the building department. All other colors may be accent colors. A paint swatch shall be submitted to the building department for approval by the town manager or designee. The planning and zoning board shall make a design determination in cases of uncertainty.

Sec. 90-204. Roof deck provisions.

- (1) Roof decks shall be permitted only in H40, H120, SD-B40 and MU zoning districts, where not improved with or adjacent to single-family residential, and limited to:
- a. A maximum of seventy (70) percent of the aggregate roof area;
 - b. Shall not exceed the maximum roof height required by any abutting property's zoning designation;
 - c. Shall be setback from the roofline at least ten feet on all sides to provide for minimal visibility of roof decks from any public way, except on properties designated SD-B40; and
- (2) All roof decks added to existing buildings shall be inspected by a registered structural engineer and registered architect, who shall address in writing to the building official the following issues:
- a. How will the existing roofing system be protected or replaced to allow for the new use;
 - b. Structural support strategies for any increase in live loads and dead loads;
 - c. Compliance with applicable ADA requirements;
 - d. Location of plumbing and mechanical vent stacks, fans and other appurtenances;

Commented [MOU143]: Modified from current code to allow only in non-single family districts or adjacent to single family

Commented [MOU144]: Discussion around the latest ZIP notice included consideration of potential allowance for roof decks in H30A limited to:

- 30% of roof area
- Setback at least 10 feet from edge of roof
- Set back 20 feet from any wall facing front property line
- No element or feature can exceed maximum 34 feet from grade
- Limitations shall not apply to terraces, balconies, or similar exterior areas that are located at or below 20 feet from grade

- e. Egress design compliance per the Florida Building Code and the Florida Fire Prevention Code;
 - f. Added occupancy and servicing restroom facilities; and
 - g. All other issues applicable in the Florida Building Code.
- (3) All work performed on an existing roof deck to allow for occupancy shall be considered a change of use and shall require both a permit and a certificate of occupancy.

Sec. 90-205-90-205. Reserved.

Division 2. Signs.

Sec. 90-206. - General and miscellaneous provisions.

(a) *Scope:* The provisions of this article shall govern the number, size, location, and character of all signs which may be permitted either as a main or accessory use under the terms of this article. No signs shall be permitted on a plot or parcel either as a main or accessory use except in accordance with the provisions of this article.

(b) *Purpose:* This article shall be known as the "Town of Surfside Sign Code." The purpose of the code is to improve and advance the governmental purpose of aesthetics, quality of life, and safety of the Town and its residents, while meeting the need for signage that clearly identifies locations, advertises businesses, and otherwise communicates commercial and noncommercial messages.

(c) *Substitution of non-commercial speech for commercial speech:* Notwithstanding any provisions of this article to the contrary, to the extent that this article permits a sign containing commercial copy, it shall permit a non-commercial sign to the same extent. The non-commercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to non-commercial, or from one non-commercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this article.

(d) *Severability:*

(1) *Generally:* If any part, division, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or

Commented [MOU145]: From the current code with modifications for internal consistency and to address concerns regarding visual clutter of temporary signs.

invalidity shall not affect any other part, division, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article.

(2) *Severability where less speech results:* This article shall not be interpreted to limit the effect of subsection 90-206(d)(1), or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance. The town commission specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

(3) *Severability of provisions pertaining to prohibited signs:* This division shall not be interpreted to limit the effect of subsection 90-206(d)(1) above, or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance. The town commission specifically intends that severability shall be applied to 90-213, "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(4) *Severability of prohibition on off-premises signs:* This division shall not be interpreted to limit the effect of subsection 90-206(d)(1) above, or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-207. - Definitions.

Words and terms not defined shall be interpreted in accord with the normal dictionary meaning and the customary usage of the word shall apply.

Area: The entire perimeter of a sign which encloses visually communicative copy such as letters, symbols, or logos, including the advertising surface and any framing, trim, or molding including the supporting structure.

Area of a ground-affixed letter or number sign: The square footage of a ground-affixed letter or number sign shall be the aggregate surface area of all letters and numbers comprising the sign, based only on the principal surface of the sign and excluding any supporting structure. No fictional border or frame shall be imputed to the area size.

Awning sign: a sign that is a part of or attached to an awning, canopy, or other material or structural protective cover mounted over a door, entrance, window, or outdoor service area.

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Bandit sign: A sign made of corrugated cardboard or similar material placed on wire support poles typically placed within right-of-ways or on private property.

Balloon sign: An inflatable sign which may be tethered.

Banner sign: A sign composed of lightweight, flexible material suspended between two points.

Billboard sign: A significantly large sign designed to dramatically attract the attention of the travelling public. Such signs are used to advertise or communicate goods or services typically not sold, generated, or provided on the site where the sign is located.

Business hours sign: A small sign indicating the hours during the day in which business is commonly conducted.

Cabinet sign: Any sign, the face of which is enclosed, bordered, or contained within a hinged box-like structure, frame, or other device.

Changeable copy: A sign or portion thereof on which letters, illustrations or symbols are replaced automatically or manually.

Commercial sign: A sign that identifies, advertises or otherwise attracts attention to a product or business.

Conforming sign: A sign that is legally installed in accordance with local ordinances.

Copy: The content of a sign including words, letters, numbers, figures, designs, logos, graphics, colors, or other symbolic representation incorporated into a sign for the purpose of attracting attention.

Entry feature: An architectural feature that identifies a residential or hotel building. Such architectural features may include columns, trellises, ornaments, metalwork, light fixtures and similar decorative elements to enhance the attractiveness of the structure and shall be consistent with the architecture of the primary structure. A sign shall be permitted and the size of that sign is limited to the area within a continuous perimeter enclosing the letters, symbols or logos.

Flag: A piece of fabric or bunting with a color or pattern that represents a government, or other non-commercial organization or idea.

Freestanding sign: A sign mounted on one or more supports including uprights, braces, columns, poles, posts, or other similar structural components which are placed on or into the ground, and not attached to a building.

Frontage, building: The length of the exterior building wall of a single premise oriented towards the public way or other properties it faces.

Frontage, street: The distance along which the lot line of a property adjoins a public street.

Fumigation warning sign: A sign indicating a lethal gas to exterminate pests is in use in a building, residence or premise. Warning signs are posted in plainly visible locations or the immediate vicinity of all entrances. Absolutely no people or pets may enter a structure with a posted warning sign.

Ground-affixed letter or number sign: A sign using letters and/or numbers in which each letter or number is affixed to the ground and which has no frame or border surrounding the letters or numbers.

Home business sign: A sign indicating a small business operating from the owner's home office or residence.

Individually-mounted letter sign: A wall sign using letter forms which are singularly affixed to the sign surface.

Illuminated: A sign which is lighted by either an internal electrical source, an external source separate from the sign itself, or back-lit.

Marquee: A roof-like sign structure commonly placed over the entrance to a hotel or theater often identifiable by a surrounding cache of intermittent or chasing lights.

Menu sign: A sign indicating food items or products served on the premises.

Monument sign: A free-standing sign generally having a low profile where the base of the sign structure is on the ground independent of the building, wall or fence, but does not include a pole sign.

Non-commercial sign: A sign that does not contain copy that advertises or promotes the availability of any merchandise, service, institution, residential area, entertainment, or activity. Such sign typically conveys an opinion, idea, or concept; or displays a civic, political, religious, seasonal or personal message.

Non-complying sign: Any unlawful sign that has not been erected in accordance with one or more standards or regulations of the Code.

Non-conforming sign: A sign or advertising structure which was lawfully erected and maintained prior to the enactment or amendment of the Code, which by its height, type, square foot area, location, use or structural support does not conform to the current standards or regulations in effect.

Off-premise sign: Any sign advertising a commercial establishment, activity, product, service or entertainment, which is sold, produced, manufactured, available or furnished at a place other than on the property on which the sign is located.

Open/closed sign: a small sign usually hung in a storefront window announcing a place of business is open or closed for business.

Permanent sign: A sign attached to a building, structure, or the ground that is entirely constructed out of durable materials designed to resist environmental loads, such as wind, and is fixed in place in such a manner as to inhibit easy removal or movement of the sign.

Pole-mounted sign: A free-standing sign mounted on a pole, post, or other vertical support.

Portable sign: Any sign mounted on or supported by a moveable frame or object of any kind including A-frame, sandwich board, signs attached to mannequins, signs mounted on tables or chairs or any other similar type of signage primarily designed to attract the attention of sidewalk traffic.

Projecting sign: Small pedestrian sign typically supported by a decorative chain or bracket that projects perpendicular from the face of the building, located above the storefront entry and oriented to the pedestrian

Primary business sign: An establishment's principal sign which identifies the business to a passerby, communicating the most pertinent information.

Push-through sign: lettering or logo image cut through the sign face and backing material which is mounted or inlaid in such a way that the sign looks as if the lettering or image has been pushed through, up, and out of the sign.

Raceway: a horizontal or vertical structural element on which sign letters are mounted that houses electrical conduit for illumination.

Real estate sign: A temporary sign erected by the owner or agent indicating property which is for rent, sale or lease, including signs pointing to a property which is open for inspection by a potential purchaser (open house sign) or a sign indicating "shown by appointment only" or "sold."

Reverse channel sign: A sign comprised of individual letters or images that are independently mounted to a wall or other surface, with lights mounted behind the letters. The lights face the wall behind the letters illuminating the space around the letters rather than the letters themselves, creating a "reverse" lighting effect or "halo" effect.

Roof sign: A sign erected over, across or on the roof of any building, which is dependent on the roof, parapet or upper walls of a building for support.

Secondary business sign: A sign which communicates or identifies accessory information or uses other than the primary business or use.

Sign: Any structure and all parts composing the same, together with the frame, background or support, or any other object used for display or advertising purpose designed to attract the attention of the public.

Sign face: The portion of a sign on which copy is intended to be placed, exclusive of any supporting structures.

Snipe sign: A sign which is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, walls, trash receptacles or fences, or to other objects, and the advertising matter appearing thereon is not applicable to the present use of the premises upon which such sign is located. Legal notices required by law are exempt.

Temporary sign: A sign which pertains to a particular event or occurrence, or which is not designed or intended to be placed permanently.

Umbrella sign: A sign located on an umbrella commonly used as shelter for sidewalk tables.

Wall sign: A sign attached directly to an exterior wall of a building or dependent upon a building for support with the exposed face of the sign located in such a way as to be substantially parallel to such exterior building wall to which it is attached or supported by.

Window sign: Any sign that is visible from the exterior of a building through an open or closed window or door including signs attached to, suspended behind, placed on or near, or painted upon such window or door.

[Ord. No. 1624, § 2, 8-12-14; Ord. No. 1653, § 2, 10-13-16 ; Ord. No. 18-1668 , § 2, 1-9-18; Ord. No. 18-1675 , § 2, 2-13-18)]

Sec. 90-208. - Sign permits.

(a) *Sign permit required.* Except as otherwise provided in this Code, no permanent shall be erected, constructed, posted, painted, altered, maintained, or relocated until a sign permit has been issued by the town.

(b) *Exempt signs.* The following signs are allowed and exempt from permit requirements:

(1) National flag. A flag displayed in a window shall not exceed 20 percent of the window glass area.

- (2) Banners erected by the town including street pole banners.
- (3) Non-illuminated numerical address.
- (4) Open/closed sign suspended behind a glass window or door provided the sign does not exceed one (1) square foot. The sign may be illuminated by white internal illumination. Illuminated signs shall not be allowed to blink intermittently.
- (5) Non-illuminated business hours sign suspended behind a glass window or door provided the sign does not exceed one square foot.
- (6) All temporary signs as provided in section 90-212.
- (7) Menu sign not exceeding two square feet displayed on the wall, window, or front door of a sit-down restaurant within the SD-B40 district only.
- (8) Plastic or metal wall sign not larger than 16 inches in width and five inches in height stating "Managed by _____" with the name of the individual, partnership or corporation that manages a building.
- (9) Fumigation warning sign as required by the Department of Agriculture and Consumer Services.

(c) *Application.* Before any permit is issued, a written application, in the form provided by the town, shall be filed, together with such drawings and specifications as may be necessary to fully advise the town with the location, construction, materials, manner of illuminating, method of securing or fastening, the number of signs applied for, the consent of the property owner, and the wording of the sign. Upon the submission of an application, staff shall have ten working days to determine whether it is complete. If staff finds that the application is not complete, they shall provide the applicant with written notice of the deficiencies within the ten working days period. Upon resubmission of the application, staff shall have five additional working days to determine whether the applicant's revisions are sufficient to complete the application. If they are not, staff will again inform the applicant of any remaining deficiencies in writing. This process shall continue until the applicant has submitted a complete application, or demands that the application be reviewed "as is."

(d) *Building code requirements.* Structural and safety features and electrical systems shall be in accordance with the requirements of the town's adopted building code. No sign shall be approved for use unless it has been inspected and found to be in compliance with all the requirements of this chapter and applicable codes.

(e) *Electrical permit requirements.* All signs that are electrically illuminated shall require a separate electrical permit and inspection.

(f) *Local business tax receipt requirements.* No local business tax receipt shall be issued for a new business until all signs associated with the former business have been removed.

(g) *Permit review.* All signs, unless otherwise exempt, shall be subject to review by the Planning and Zoning Board. In evaluating an application for a sign permit the board shall consider the following:

- (1) Whether or not the sign complies with the requirements of the code.
- (2) The quality of materials used and their relationship to the architecture of the structure and streetscape.
- (3) The overall concept associated with the proposed sign.
- (4) The detail of the design including text and graphics proposed.
- (5) The illumination, surface colors, finish, width, depth, and dimensions of the proposed sign.
- (6) The appropriateness of the sign to the spirit and intent of the Code.

(h) *Failure to commence.* Every sign permit issued by the town shall become null and void if installation is not commenced within two years from the issue date of such permit. If work authorized by such permit is suspended or abandoned for 180 calendar days any time after the work is commenced, a new permit must be obtained and approved by the Planning and Zoning Board. The fee will be the full amount required for a new permit for such work.

(i) *Revocation.* The town may suspend or revoke, in writing, a permit issued under provisions of this Code, whenever the permit is issued on the basis of a misstatement of fact or fraud. The written revocation shall describe the appeal process. The town shall send the revocation by certified mail, return receipt requested, to the sign owner. Any person having an interest in the sign or property may appeal the revocation, by filing a written notice of appeal with the town commission within 15 calendar days after receipt of the written notice of revocation. The Town commission shall hear the appeal within 30 calendar days after the date of receiving the written notice of appeal.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-209. - Sign design and appearance.

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Commented [EM146]: Correcting board's name

The Planning and Zoning Board has assumed the Design Review Board's power

- (a) Signs shall be professional in appearance.
- (b) Signs shall not be the dominant feature of a location and shall be scaled in accordance with the size of conforming signs on adjacent and nearby properties.
- (c) Signs shall be well designed, unique, and integrated into the building façade so as not to detract from the architectural character of the building or the context of the surrounding streetscape.
- (d) Sign colors shall be complementary to or enhance the main color of the building façade. The use of established business colors or company logos or trademarks shall not be prohibited by this requirement.
- (e) Signs shall have a proportional and dimensional relationship between the building, text, graphics, and spacing.
- (f) Sign copy shall be simple and concise without excessive description of goods, services, products. Unless otherwise provided in this Code commercial copy shall be limited to the trade name or franchise name of the business or the primary product or service.
- (g) Signs shall be weather resistant and professionally constructed of high-quality, durable material in accordance with the Florida Building Code unless otherwise exempt.
- (h) All exterior electrical outlets for signs shall terminate in a galvanized or plastic box with a blank cover, which shall be flush with and not protrude beyond the finished surface of the exterior wall. Transformer boxes and other accessory equipment for any sign shall be placed so as not to be visible from the street level.
- (i) Signs shall be properly maintained and kept in proper working order. Any damaged or defective conforming signs shall be removed and repaired within 90 calendar days. Damaged or defective non-conforming signs shall be replaced with a conforming sign that meets the requirements of this Code.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-210. - Sign removal.

- (a) *Permanent signs.* Upon the vacation of a premise, any sign associated with the previous owner or lessee including letters, numbers, logos, or any other visual communication associated with the vacated premise, shall be removed by the current owner or lessee within 30 days of the transfer of ownership or cessation of the previous business activity. Any visible holes shall be painted and filled. Sign structure may remain in place provided no identifying features of the previous business activity are visible and the sign structure is conforming per the

requirements of the code.

(b) *Temporary signs.* Notwithstanding the time limitations set forth in Section 90-212, all outdoor temporary signs shall be removed immediately upon the issuance of a hurricane warning by a recognized government agency.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-211. - Permanent signs by district.

(a) *SD-B40 Zoning District.*

(1) *Content.* Commercial signs may only include the trade name, logo of the establishment, the nature of business or services rendered, or products sold on the premises. Signs may not include phone numbers or any reference to price.

(2) *Signage for upper floor tenants.* Each upper floor tenant shall be entitled to erect permanent signage. The total square footage of all second floor signage shall not exceed 80 percent of the allowable signage square footage for the first floor signage, provided such sign meets all of the requirements of this subsection. In addition, each upper floor tenant shall be entitled to erect a single sign, not over one-hundred and 108 square inches in size, at the entrance or lobby of the building which provides egress to the upper floor.

(3) *Permitted signs.*

a. *Projecting sign.* Projecting signs on either the ground level or upper floors shall not be permitted for upper floor tenants. The maximum sign area for projecting signs shall be eight square feet. The maximum lettering height shall be six inches unless otherwise integrated into a creative graphic design as approved by the Planning and Zoning Board. Signs shall not project more than five feet from any main building wall nor shall they be mounted above ground level tenant space. Encroachment into the right-of-way including sidewalks shall only be permitted where it can be demonstrated that there is a minimum vertical clearance of eight feet. Decorative bracket treatments are encouraged. Projecting signs shall not have electric lights, attached electric fixtures, or any manner of illumination.

b. *Individually-mounted letter sign.* The total area of all individually-mounted letter signs shall be one square foot for each lineal foot of frontage of the lot or portion of the lot upon which the operating enterprise is located. For frontages less than 25 feet, a total sign area up to 25 square feet maximum shall be permitted. In no case shall the total sign area on any

single operating enterprise exceed 150 square feet and no single sign shall exceed 45 square feet.

1. *Types.* The following types of individually-mounted letter signs shall be permitted. No open face channel letters shall be permitted.

- i. Reverse channel letter.
- ii. Push-through letter.
- iii. Pan channel letter.
- iv. Raceway mounted letter. All exposed raceways must be painted to match finish of wall face of the building.

2. *Offset.* Signs shall be off-set from the wall a minimum of one quarter inch to a maximum of two inches to permit rain water to flow down the wall face. This is not applicable to push-through or raceway mounted lettering.

3. *Illumination.* All signage, lettering, logos or trademarks shall be required to be lit with white illumination from dusk to dawn. The illumination may be either internal illumination or external illumination, however, all walls below the sign shall be illuminated with white wall wash LED lighting. It shall be located and directed solely at the sign. The light source shall not be visible from or cast into the right-of-way, or cause glare hazards to pedestrians, motorists, or adjacent properties. Lighting shall meet all applicable electrical codes. Intensities of illumination shall be approved by the building official of the town before issuance of a sign permit. A maximum of ten foot candles is permitted on any portion of a sign to be measured at the centerline of the adjacent sidewalk. A foot candle is defined as a unit of illuminance or light falling onto a surface. It stands for the light level on a surface one foot from a standard candle. One foot candle is equal to one lumen per square foot. A lumen is the basic measure of the quantity of light emitted by a source.

c. *Permanent window sign.* One primary sign may be applied to the inside or outside surface of any one glass window or door or displayed within 12 inches of a glass window or door. Such signs shall only be permitted on primary and side street level frontages. Sign area inclusive of logos or trademarks shall not exceed 20 percent of the area of the glass window or door in which the sign is displayed. Lettering shall not exceed eight inches in height. Acceptable materials include painted gold leaf or

silver leaf, silk-screened, cut or polished metal, cut or frosted vinyl, and etched glass.

d. *Television screen or similar.* Television screens or similar electronic features may be located inside the storefront and project out to the sidewalk. These features shall be oriented towards the pedestrian and angled to be parallel to the sidewalk. Television screens or similar electronic features shall not exceed 20 percent of the area of the glass window if the feature is within 36 inches of the window. Television screens or similar electronic features located greater than 36 inches away from a window shall be permitted to exceed 20 percent of the area of the glass window. A maximum of ten foot candles of illumination shall be permitted from any television screens or similar electronic features to be measured at the centerline of the adjacent sidewalk.

e. *Emergency address sign.* Commercial buildings in Blocks number 3, 4, 5, and 6 of Altos Del Mar Subdivision Number 6 shall be required to provide an emergency address sign on the alley side of the building clearly identifying the address of the establishment. Signage may be wall mounted or posted on a rear door. Sign material shall consist of weatherproof reflective 3-inch or 4-inch address panels.

(b) *H30C, H40, MU and H120 zoning districts.*

(1) Signage on the outside of a hotel, multifamily building, or other similar structure which identifies a secondary business within the same structure is prohibited. Supplemental signs as permitted in this subsection shall be exempt from this requirement.

(2) *Content.* Commercial signs may only include the trade name, logo of the establishment, the nature of business or services rendered, or the products sold on the premises, except as otherwise provided in this Code. Signs may not include any reference to rates.

(3) *Permitted signs.*

a. *Individually-mounted letter sign.* Permitted as under the requirements of section 90-73211(a)(3)b., except total sign area for multifamily dwellings within the H30C and H40 districts shall not exceed 75 square feet.

b. *Monument sign.* One monument sign shall be permitted per street frontage. The maximum sign area shall not exceed 25 square feet. The maximum height shall not exceed five feet from the ground. Signs shall maintain a five-foot setback from all property lines and no portion shall be

permitted to project within this five-foot setback area. Signs are required to be landscaped at the base. Signs may be internally or externally illuminated.

c. *Supplemental sign.* A sign for any establishment reading "Office," "Vacancy," "Private Beach," "Swimming Pool," "Cabanas," "Coffee Shop," "Restaurant," or other such wording shall be considered a supplemental sign. Such signs shall be limited to three square feet in size; except in the H120 district, a hotel with a restaurant may display an individual sign not to exceed five square feet in size containing the name of the restaurant. The total combined square footage of individual supplemental signs shall not exceed eight square feet per main building. Such signs shall not be included in calculating the total maximum sign area for the lot. Signs shall be dignified in character and shall be restricted to the wording described above.

d. *Parking sign.* Parking signs not over four square feet in size may be erected at each exit or entrance of parking lots serving buildings in these zoning districts. Such signs may be illuminated by indirect lighting only. Lettering on these signs shall be limited to the name and address of the primary business, multifamily building or hotel, and the words "Entrance" or "Entrance Only," "Exit" or "Exit Only," "Parking," "Resident Parking," "Guest Parking," "Visitor Parking," "Private Parking," "Valet Parking," or "Customer Parking."

e. *Emergency address sign.* Buildings on the east side of Collins Avenue abutting the beach walking path shall be required to provide an emergency address sign identifying the name and address of the building. Sign shall be mounted on a free-standing post not to exceed 18 inches in height and 24 inches in width. Address letters and numbers shall not exceed two inches in height and name shall not exceed one inch in height. Sign material shall be weatherproof and reflective so as to be clearly visible at night.

f. *Electric vehicle charging station sign.* A sign shall be posted at the electric vehicle charging station stating "Electric Vehicle Charging Station." Signs shall be no greater than 24 inches wide by 18 inches high. Color and letter size specifications shall meet the Manual on Uniform Traffic Control Devices (MUTCD) requirements for sign designation (electric vehicle charging).

g. *Ground-affixed letter or number sign.* The total area of each ground-affixed letter or number sign shall not exceed 20 square feet. The height of each sign shall not exceed five feet from the ground. The depth of each sign shall not exceed one foot. The total length of all such signs for each property shall not exceed 25 percent of the frontage of a lot. All

ground-affixed letter or number signs shall be set back two and one-half feet from the right-of-way.

(c) *H30A and H30B Zoning Districts.*

(1) *Wall sign.* Sign shall be attached to the main façade of the building and shall not exceed four square feet. Sign shall be installed and secured tightly to the building. No loose, non-secure attachments shall be allowed. Sign shall be rigid and weatherproof. Sign shall not be illuminated in any manner.

[Ord. No. 1624, § 2, 8-12-14; Ord. No. 1617, § 2, 3-11-14 ; Ord. No. 18-1668 , § 2, 1-9-18]

Sec. 90-212. - Temporary signs.

(a) *Real estate sign.*

(1) *SD-B40 district.* One professionally lettered real estate sign shall be permitted per building frontage. The maximum sign area shall be three square feet. The sign shall be mounted flat against the building wall or a minimum of 12 inches from a window, and shall not project above the eave line of the building.

(2) *All other zoning districts.* One professionally lettered real estate sign shall be permitted per street frontage. The sign shall be wall mounted flat against the building wall or securely fastened to a wood or metal freestanding stake or post of sufficient strength. The maximum sign panel area shall be 18 inches by 24 inches. A maximum of two riders shall be permitted to attach above or below the main sign panel not to exceed six inches by 24 inches per rider for in-ground signs. The maximum sign height for in-ground signs including support frame shall not exceed 42 inches from the ground to the top of the sign. Such sign shall be located outside of any sight visibility triangle. No portion of the sign shall extend across the property line.

(3) All real estate signs shall be black and white and may include a trademarked logo or symbol.

(4) Sign shall be constructed of rigid, weather proof materials.

(5) Sign shall not be lighted or illuminated in any manner.

(6) Sign shall be removed within seven days of a lot, building, residence or tenant space being leased, rented or sold.

(b) *SD-B40 district.* Three professionally lettered temporary signs, excluding banners, shall be permitted per building frontage. The maximum sign area shall be three square feet per sign. The sign shall be mounted flat against the building wall or window, and shall not project above the eave line of the building.

(c) *All other zoning districts.* Three professionally lettered temporary signs shall be permitted per street frontage. The sign shall be wall mounted flat against the building wall or securely fastened to a wood or metal freestanding stake or post of sufficient strength. The maximum sign area shall be three square feet per sign. Sign face shall be constructed of metal, plastic, wood, pressed wood or cardboard. The maximum sign height for in-ground signs including support frame shall not exceed 42 inches from the ground to the top of the sign. Such sign shall be located outside of any sight visibility triangle. No portion of the sign shall extend across the property line.

(d) *[Erected signs; duration.]* Signs shall not be erected more than 90 days prior to the event or occurrence and shall be removed no later than seven days after the event or occurrence.

(e) *[Illumination; prohibited]* Signs shall not be lighted or illuminated in any manner.

(f) *[Affixing sign to public rights-of-way or property; prohibited.]* It shall be unlawful for any person to paste, glue, print, paint, affix, or attach by any means whatsoever to the surface of any public street, right-of-way, easement, sidewalk, curb, or to any property of any governmental body or public utility, any temporary sign.

(g) *Temporary signs placed on construction sites.*

(1) One professionally-lettered sign shall be permitted per construction site or development subject to the issuance of a building permit for the project. Such sign can be located on a wall or fence, or may be freestanding. The purpose of the sign is identification, and it may only identify the property, owner or agent, contract, or professional affiliations, property address and telephone numbers that are involved in the construction of improvements on the property. It may be constructed of metal, plastic, wood, or pressed wood and shall be kept in good repair. It may not be illuminated, or constructed of, painted, or treated with reflective material, and shall not contain flags, streamers, moveable items or like devices.

(2) In the H30A, H30B, H30C, and H40 zones, the maximum area of the sign face shall be 40 square inches. The maximum height of the top of any element of the sign shall be six feet from grade, except where the sign is freestanding, in which case the maximum height shall be four feet from grade. A freestanding sign must be located at least five feet from any

property line. Where a sign is extended from an arm of support, such arm shall not exceed 16 inches.

(3) In the SD-B40 and H120 districts, the maximum area of the sign face shall be 16 square feet. The maximum height of the top of any element of the sign height shall be eight feet from grade. A freestanding sign must be located at least ten feet from any property line.

(4) Any such sign in any district shall be located outside of any sight visibility triangle. No portion of the sign shall extend across the property line.

(5) Such sign shall be removed immediately if the building permit for the project expires and construction has not commenced, and/or the permit is not renewed, and in all cases, no later than 72 hours after approval of the final inspection.

(h) *Temporary window sign.*

(1) Temporary window signs of any nature may be attached to glass window or doors, or mounted within 12 inches of a glass window or door.

(2) One temporary sign shall be permitted per window.

(3) Sign may not be displayed more than 60 calendar days.

(4) The total area for temporary signs shall not exceed 20 percent of the glass window they are facing unless otherwise provided in this subsection.

(5) Signs not in excess of six square inches may be attached to items displayed in display windows.

(i) *Temporary banner sign.*

(1) One professionally lettered temporary banner per building frontage or window in SD-B40 district is permitted.

(2) No banner shall exceed 32 square feet or five percent of the building façade that faces a public street, whichever is less.

(3) No banner shall be displayed for more than 30 consecutive calendar days within a six-month period.

(4) Banner shall not include changeable copy.

(5) Banner shall be made of durable materials such as canvas or vinyl. Non-durable material such as butcher-type paper is not permitted.

(6) Banner shall be securely attached to a supporting structure such as a street frontage wall and capable of withstanding continuous wind without deflections or rotations that would cause deformation or damage.

(7) No banner shall be attached to a roof structure or above the eave line of the building.

[Ord. No. 1624, § 2, 8-12-14; Ord. No. 18-1675 , § 3, 2-13-18]

Sec. 90-213. - Prohibited signs.

No sign shall be erected, constructed, or affixed in violation of the provisions of these regulations, and any sign not specifically provided for and permitted by these regulations shall be prohibited. None of the following signs shall be erected, constructed, or affixed in the town except as otherwise permitted by Code:

- (a) Awning signs or any sign printed on or attached to an awning or canopy.
- (b) Balloon signs or other inflatable signs. Balloons may be permitted for a period not to exceed 24 hours for a temporary, non-commercial event such as a special occasion at a residence.
- (c) Banner signs except as otherwise permitted by Code.
- (d) Billboards.
- (e) Cabinet signs.
- (f) Changeable copy signs or marquees.
- (g) Home business signs.
- (h) Flags except as otherwise permitted by Code.
- (i) Lighted signs including strings of lights or lights framing a window
- (j) Mirror devices used as part of a sign.
- (k) Off-premise signs including persons wearing costumes and/or holding temporary signs with commercial copy.
- (l) Pole-mounted signs.

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(m) Portable signs including A-frame, sandwich board, and moveable make-shift signs such as signs attached to a mannequin or mounted on a table or chair, or any other similar type of portable sign or moveable object primarily designed for display purposes or to attract the attention of sidewalk traffic.

(n) Roof signs.

(o) Signs whose face is designed or constructed to be placed or transported on wheels.

(p) Snipe or bandit signs except political signs and real estate signs.

(q) Temporary signs including posters and handbills except as otherwise permitted by Code.

(r) Umbrella signs.

(s) Signs containing wording which constitutes fraudulent or misleading advertising.

(t) Signs containing obscene matter or wording which violates any federal, state or county statute, ordinance or rule.

(u) Signs which have spinning devices, or strings of spinning devices, streamers, fluttering or other similar advertising devices.

(v) Signs which emit smoke, visible vapors, particles, sound, or odors.

(w) Signs not erected by a public authority which simulate, copy, or imply any official traffic sign, signal or police caution device.

(x) Signs that display lights which are intermittent, blinking, moving, revolving, flashing or similar, except decorative or flashing illumination may be used between December 10 and January 5.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-214. - Prohibited sign locations.

Except as otherwise permitted by Code no temporary, permanent, or exempt sign shall be permissible in the following locations:

(a) Signs which prevent free ingress or egress from any door, window, or fire escape shall be prohibited.

(b) Signs shall not be placed in any location which obstructs a motorist's vision of an intersection, traffic control signal, other vehicular traffic, or view of pedestrian or bicycle traffic.

(c) Signs shall not be placed on or near the rear of a lot or building so as to face a designated zoning district other than the one in which the sign is located except as otherwise permitted by Code. Provided however, that signs may be installed on the rear walls of commercial buildings in Blocks number 3, 4, 5, and 6 of Altos Del Mar Subdivision Number 6, in accordance with section 90-211(a) and section 90-211. Such signs shall be limited to a maximum area of 25 square feet. These signs shall not be included in computing total sign area for a given operating enterprise.

(d) No sign of any type shall be suspended across any vacant lot, unoccupied building or temporary structure nor shall any sign of any description be stenciled, written, painted, posted, printed, nailed or otherwise affixed to any vacant lot, unoccupied building or to any temporary structure within the town except as otherwise permitted by Code.

(e) Except as otherwise authorized by the town manager or designee, no sign of any type shall be suspended across any public street, right-of-way, sidewalk, easement, alley or waterway; nor shall any sign of any description be stenciled, written, painted, posted, printed, nailed or otherwise affixed to any curb, sidewalk, tree, light standard, utility pole, hydrant, traffic signal device, street sign and its pole, bridge, wall, or any other structure, which is within the property lines of any street, right-of-way, easement, alley, waterway or other public property within the town.

(f) Signs placed without the express permission of the property owner or agent.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-215. - Non-conforming signs.

(a) *Sign amortization.* All legally permitted signs which become non-conforming by the provisions of this Code shall be replaced with a conforming sign within three years of the effective date of the ordinance from which this article derives.

(b) Non-conforming signs shall be immediately replaced if any of the following conditions exist during the amortization period.

- (1) There is additional development of a site.
- (2) There is a change in use, occupancy, or tenant.

Commented [MOU147]: This should have occurred in August of 2017 (three years from the effective date in 2014). The Commission may consider deleting it. Any remaining signs would be "non-complying signs" under 90-216 below

- (3) There is a change in sign copy (with the exception of window signs).
- (4) There is a structural sign alteration or repair.
- (5) There is sign damage by any cause which exceeds 50 percent of the sign as determined by the building official.
- (6) There is removal of a sign.

(c) *Sign relocation.* Non-conforming signs shall not be permitted to be relocated.

[Ord. No. 1624, § 2, 8-12-14]

Sec. 90-216. - Non-complying signs.

Signs not in compliance with the code or those installed without a permit shall be considered non-complying. Such signs shall be removed or replaced immediately or shall otherwise be subject to code enforcement action, forfeiture to the public, confiscation or removal by the town at the cost of the owner.

[Ord. No. 1624, § 2, 8-12-14]

Secs. 90-217 - 90-225. Reserved.

DIVISION 3. OFF-STREET PARKING

Sec. 90-226. Off-street parking requirements.

(a) Except as otherwise provided herein, when any building or structure is hereafter constructed; or structurally altered so as to increase the number of dwelling units or hotel/motel rooms; to increase its total commercial floor area; or when any building or structure is hereafter converted to any of the uses listed in subsection (b) of this section, off-street parking spaces shall be provided in accordance with the requirements of subsection (b) of this section, or as required in subsequent sections of this article.

(b) The number of off-street parking spaces that shall be required to serve each building or structure and use shall be determined in accordance with the following table:

- (1) Single-family dwelling in the H30A or H30B district: Two spaces.
- (2) Single-family dwelling in all other districts: Two spaces.
- (3) Duplex dwelling: One and a half space for each dwelling unit.
- (4) Multiple-family dwelling, for each dwelling unit:

TABLE INSET:

Efficiency and one-bedroom unit:	1.5 spaces
Two and three bedroom unit:	2.0 spaces
Four-bedroom or more unit:	2.75 spaces

One visitor parking space for each 5 dwelling units shall also be provided.

- (5) Hotel: One space for each room.
- (6) Suite-hotel and suite-motel: One space for each room.
- (7) Church, synagogue, temple or other place of assembly: One space for every three persons, as calculated by said building's occupant load, as determined by the fire department and building official.
- (8) Grocery, fresh fruit or meat market: One space for each 250 square feet of gross floor area.

Commented [MOU148]: Section 90-77 et seq of the current code contains different terms, including provisions for the parking trust fund and different parking ratios. We did not incorporate it here, but it could replace portions of this section if that is the will of the Commission.

For example, single family or duplex in H30C under the current code requires 2 spaces per unit. Only 1 space per unit is required under the current code.

(9) Retail store or personal service establishment: One space for each 300 square feet of gross floor area.

(10) Office or office building: One space per 400 square feet of gross floor area; however, medical offices, dental offices and clinics shall provide one space per 300 square feet of gross floor area.

(11) Restaurants or other establishments for the consumption of food and beverages on the premises: One space per four seats.

(12) Place of assembly without fixed seats: One space for each 50 square feet of floor area available for seats.

(13) Banks, savings and loans or other financial institutions: One space per 300 square feet of gross floor area.

(Code 1960, § 18-53; Ord. No. 1437, § 3, 1-14-03)

Sec. 90-227. Interpretation of these requirements.

(a) The parking required herein is in addition to space required for the loading and unloading of trucks or other vehicles used in connection with a business, commercial, or industrial use.

(b) Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.

(c) The parking space requirements for a use not specifically listed in this section shall be the same as for a listed use of similar characteristics of parking demand generation.

(d) In the case of mixed uses, uses with different parking requirements occupying the same building or premises, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.

(e) Whenever a building or use, constructed or established after the effective date of this article, is changed or enlarged in floor area, number of dwellings or sleeping units, seating capacity or otherwise, said building or use shall comply with the all of the parking requirements herein.

(Code 1960, § 18-54)

Sec. 90-228. Restricted and prohibited parking.

(a) Off-street parking spaces in H30A, H30B, and H30C_districts shall not be located in a required front yard except as follows:

(1) Driveway space for access to parking areas or garages located in a required front yard.

(2) It shall be unlawful to park vehicles of any type in private driveways or front yards in said districts unless they belong to the occupant of such residence, a member of his immediate family, a resident of the household residing on the property, or a bona fide guest or visitor thereof.

(3) When an automobile vehicle or motorcycle has been parked in violation of this section intermittently or continuously during a period of three weeks and such vehicle is registered in the name of a person other than to the occupant of the property, a member of his or her immediate family or a resident of the household residing on the property, it shall constitute in evidence a presumption that such vehicle is unlawfully parked in violation of this section.

(4) No trailer of any type may be kept in any required yard continuously for more than 72 hours, except as may be provided in sections 90-192 and 90-193. All trailers must display a valid license plate and registration decal as required by state law, be in operating condition and be supported by fully inflated tires on functioning wheels.

(b) Where off-street parking spaces serve an existing permitted structure located in the H30C, H40, and H120 districts and occupy all or portions of the required front yard, such use may be continued until the existing structure is removed.

(c) No motor vehicle, as defined by state law, may be kept in any unpaved area of any lot or parcel in the town.

(d) No motor vehicle, as defined by state law, which is not in operating condition or which does not have a valid registration and a valid license plate decal properly displayed, as required by state law, may be kept in any paved area of any lot for more than 30 days.

(e) The off-street parking of trucks and other commercial vehicles, in excess of what is commonly known as a three-fourth-ton truck or vehicle, or any other equipment used for commercial purposes, is prohibited in any district. This prohibition shall not apply to any such vehicle which is in process of making an expeditious delivery, rendering services to the premises (such as electrical, plumbing or yard work) or continuously and completely enclosed within the confines of a permitted garage.

[Code 1960, § 18-55; Ord. No. 1250, § 1, 2-12-91; Ord. No. 1282, § 1, 6-9-92; Ord. No. 1374, § 1, 7-8-97]

Sec. 90-229. Joint use and off-site facilities prohibited.

All parking spaces required herein shall be located on the same lot with the building or use served.

[Code 1960, § 18-56]

Sec. 90-230. Design standards for off-street parking.

(a) *Minimum area.*

- For the purpose of these regulations, except as provided below, off-street parking spaces shall not be less than nine feet by 18 feet, exclusive of driveways, for the temporary storage of one automobile. Aisles shall have dimensions as set forth in the Zoning Code of Miami-Dade County entitled "Minimum Parking Stall Dimensions," except as may be set forth below. Such parking spaces shall be connected with a street or alley by a driveway which affords ingress and egress without requiring another automobile to be moved. Handicapped parking spaces shall be consistent with Florida Accessibility Code requirements.
- There shall be no tandem parking allowed.
- In all instances, adequate interior driveways and ingress and egress driveways shall be provided to connect all parking spaces with a public street or alley. Where a parking space heads into and abuts a sidewalk, the paved length shall be curbed in order to prevent extension of the vehicle over the sidewalk. Required parking shall comply with these provisions and such parking cannot be placed in dedicated or official rights-of-way. Private, noncommercial off-street parking shall be reserved exclusively for the tenant or owner and their customers and employees, unless otherwise approved as a result of a public hearing.

(b) *Drainage and maintenance.* Off-street parking facilities shall be drained to prevent damage to abutting property and/or public streets and alleys and surfaced with a minimum of at least one inch of asphaltic concrete or a wearing surface on a six-inch compacted lime rock base. Off-street parking areas shall be maintained in a clean, orderly, and dust free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles, equipment, materials or supplies.

Commented [MOU149]: Changes to this section include additional language from section 90-81 of the current code and to delete provisions relating to compact cars

Commented [EM150]: Addition to avoid confusion with other sections titled "Design Standards"

(c) *Separation from walkways and streets.*

- For properties designated H30A and H30B and for properties designated H40 east of Harding Avenue, off-street parking spaces shall be separated from walkways, sidewalks, streets or alleys by a minimum five foot planted strip.
- For properties designated H40, H30C, and H120, off-street parking spaces shall be separated from walkways, sidewalks, streets or alleys by a wall, fence or curbing or other approved protective device.

(d) *Entrances and exits.* Location and design of entrances and exits shall be in accord with the requirements of the town manager, but not more than one entrance or exit, not exceeding 12 feet in width, shall be permitted for every 50 feet of width of the parking lot.

(e) *Marking.* Parking spaces in lots of more than ten spaces shall be marked by a painted line or other means to indicate individual spaces; a curb or stop shall be provided at each parking space. Signs or markers shall be used as necessary to ensure efficient operation of the lot.

(f) *Lighting.* Adequate lighting shall be provided if off-street parking spaces are to be used at night. As provided in section 90-189, the lighting shall be installed, maintained and regulated so as to reflect the light away from adjoining property and avoid annoyance to such premises.

(g) *Screening.* Off-street parking lots with capacity for six or more vehicles shall provide along the lot lines, except for ingress and egress, a visual screen with a height of not less than two feet or more than three feet. Such screen shall consist of a compact evergreen hedge.

(h) Extensions in certain districts. Underground facilities in all districts except H30A and H30B district used primarily for off-street parking spaces may extend into the side and rear yards to the property lines, provided the top surface of such extensions is not more than five feet above grade. However, where such extensions are used for driveways leading to building entrances, the top surface of such extensions shall not be more than eight feet above grade. In all cases the front yard setback shall be landscaped in accordance with the landscape requirements of this Code.

(i) *Vehicular queuing.* Offsite vehicular queuing shall not be permitted. Vehicular queuing, sufficient to accommodate surge traffic for arrival and departure of reasonably expected crowd sizes for the uses on a

property, shall be required and accommodated on private property only. Adequacy of design for vehicular queuing shall be demonstrated by a traffic study subject to review and approval by Town staff. The town manager or his designee reserves the right to increase vehicular queuing requirements if deemed necessary based on individual circumstances and so as to cause the least practical interference with the use of adjacent property and with the movement of pedestrian or vehicular traffic.

- (j) *Access to state roadways.* Projects that have direct or immediate access or is within one-half block of Collins Avenue, Harding Avenue or 96th Street shall be subject to the review and approval by FDOT for compliance with FDOT standards. Site plan applications subject to this provision shall include a letter from FDOT as part of the site plan submittal.
- (k) *On-site circulation.* There shall be safe, adequate, logical and convenient arrangement of pedestrian walkways, bikeways, roadways, driveways, driving aisles and off street parking and loading spaces on-site. The town manager or his designee reserves the right to modify on-site circulation if deemed necessary based on individual circumstances and so as to cause the least practical interference with the use of adjacent property and with the movement of pedestrian or vehicular traffic.
- (l) *Compact and handicapped spaces.* Parking stall and aisle dimensions shall conform to the Zoning Code of Miami-Dade County entitled "Minimum Parking Stall Dimensions," except as may otherwise be provided in this Code. Handicapped spaces shall be clearly designated for "Handicapped Only." In all instances, adequate interior driveways and ingress and egress driveways shall be provided to connect all parking spaces with a public street or alley. Where a parking space heads into and abuts a sidewalk, the paved length shall be curbed in order to prevent extension of the vehicle over the sidewalk. Required parking shall comply with these provisions and such parking cannot be placed in dedicated or official rights-of-way. Private, noncommercial off-street parking shall be reserved exclusively for the tenant or owner and their customers and employees, unless otherwise approved as a result of a public hearing.

(Code 1960, § 18-57; Ord. No. 1382, § 1, 2-10-98)

Secs. 90-231-90-240. Reserved.

DIVISION 4.OFF-STREET LOADING

Sec. 90-241. Off-street loading requirements.

Except as otherwise provided in this chapter, when any building or structure is hereafter erected or structurally altered to the extent of increasing the floor area by 25 percent or more, or any building is hereafter converted for the uses listed in Column 1 of the chart below, when such buildings contain the floor areas specified in Column 2, accessory off-street loading spaces shall be provided as required in Column 3 and subsequent sections of this article.

Commented [MOU151]: Requirements herein largely match or are more restrictive than the current code

Column 1	Column 2	Column 3
Use or Use Category	Floor area as Defined in Definitions, in Square Feet	Loading Spaces Required in All Districts
Business, commercial	10,000-60,000	One
Office building	60,000 and over	Two
Multiple-family building	20,000--100,000	One
Hotel or motel	100,000 and over	Two

(Code 1960, § 18-58)

Sec. 90-242 .Interpretation of the chart.

The loading space requirements apply to all districts but do not limit the special requirements which may be imposed in connection with other articles of this chapter.

[Code 1960, § 18-59]

Sec. 90-243. Design standards for off-street loading.

Commented [EM152]: Added to avoid confusion with other design standards.

(a) *Minimum size.* For the purpose of these regulations, a loading space is a space within the main building or on the same lot, providing for the standing, loading or unloading of trucks, having a minimum width of 12 feet, a minimum depth of 30 feet, and a vertical clearance of at least 14 1/2 feet.

(b) *Drainage and maintenance.* Off-street loading facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public

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streets and alleys and surfaced with at least one inch of asphaltic concrete as a wearing surface on a six-inch compacted lime rock base.

(c) *Entrances and exits.* Location and design of entrances and exits shall be in accordance with applicable requirements of the town manager.

[Code 1960, § 18-60]

Secs. 90-244 — 90-249. Reserved.

Division 5. LANDSCAPE REQUIREMENTS

Commented [MOU153]: This comes directly from current code

Sec 90-250. - General.

90-250.1 Purpose and intent. The general purposes of this section are as follows:

- (1) To encourage the establishment of a functional landscape and improve the aesthetic quality, thereby promoting the health and general welfare of its citizenry in the Town of Surfside;
- (2) To create and enhance the aesthetic subtropical character and identity distinctiveness of the Town of Surfside;
- (3) To design landscaping to enhance architectural features, relate structure design to the site, visually screen sites and unsightly views, reduce noise impacts from major roadways and incompatible uses, strengthen important vistas and reinforce neighboring site design and architecture,
- (4) To prevent the expansion of the listed pest plant species by prohibiting the use of noxious exotic plants which invade native plant communities;
- (5) To promote the use of more wind tolerant trees and proper horticultural planting methods in order to maintain a more sustainable landscape;
- (6) To promote Florida Friendly principles through the use of drought-tolerant landscape species, grouping of plant material by water requirements, right plant in the right place, appropriate fertilization, the use of irrigation systems that conserve the use of potable and non-potable water supplies, mulching and restrictions on the amount of lawn areas;

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- (7) To utilize landscape material, specifically street trees, to visually define the hierarchy of roadways, and to provide shade and a visual edge along roadways;
- (8) To prevent the destruction of the Town's existing tree canopy and promote its expansion to be valued and preserved for present and future generations;
- (9) To provide for the preservation of existing natural plant communities and re-establish native habitat where appropriate, and encourage the appropriate use of native plant and salt tolerant plant material in the landscape and where applicable, encourage appropriate wildlife habitat areas;
- (10) To promote the use of trees and shrubs for energy conservation by encouraging cooling through the provision of shade and the channeling of breezes, thereby helping to offset global warming and local heat island effects through the added absorption of carbon dioxide and reduction of heat islands;
- (11) To contribute to the processes of air movement, air purification, oxygen generation, ground water recharge, and stormwater runoff retention, while aiding in the abatement of noise, glare, heat, air pollution and dust generated by major roadways and intense use areas;
- (12) To improve the aesthetic appearance of the Town through the use of plant material, thereby protecting and increasing property values within the community;
- (13) To promote the concept of planting the right tree or plant in the right place to avoid problems such as clogged sewers, cracked sidewalk and power services interruptions;
- (14) To provide the physical benefits of using plant material as a function and integral part of the Town of Surfside's development;
- (15) To provide minimum standards for landscaping new developments or for redevelopment;

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(16) To promote water conservation and vegetation protection objectives by providing for:

- (a) The preservation of existing plant communities pursuant to the requirements of the Miami-Dade's Tree Preservation and Protection Ordinance;
- (b) The reestablishment of native plant communities;
- (c) The use of site-specific plant materials; and
- (d) The implementation of Florida Friendly principles as identified in Florida-Friendly Landscaping-Guide to Plant Selection & Landscape Design as amended, and as provided by law.

90-250.2 Definitions.

Accessway means private vehicular roadway intersecting a public right-of-way.

Applicant means the owner or the authorized agent of the subject property.

Application or *apply* means the actual physical deposition of fertilizer to turf or landscape plants.

Applicator means any person who applies fertilizer on turf and/or landscape plants.

Approved test means a soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.

Automatic controller means a mechanical or electronic device, capable of automated operation of valve stations to set the time, duration and frequency of a water application.

Berm means a linear earthen mound measured from the crown of the road or abutting finish floor elevation and has a maximum slope of three to one. The berm shall consist of clean fill composed of planting soil.

Best management practices (BMP's) means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practical site-specific means, including economic and

technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

Buffer, perimeter landscape means an area of flat a grade or bermed land which is set aside along the perimeters of a parcel of land in which landscaping is required to provide an aesthetic transition between adjacent plots to eliminate or reduce the adverse environmental impact, and incompatible land use impacts.

Canopy means the upper portion of a tree consisting of limbs, branches and leaves.

Clear trunk means the distance between the top of the root ball along the vertical trunk or trunks of a tree to the point at which lateral branching or fronds begin.

Clear wood ("gray wood") means the portion of the palm trunk which is mature hardwood measured from the top of the root ball to the base of green terminal growth or fronds.

Code enforcement officer, official, or inspector means any designated employee or agent of the Town of Surfside whose duty is to enforce codes and ordinances enacted by the Town.

Commercial applicator except as provided in F.S. § 482.1562(9), means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicators.

CPTED means the acronym crime prevention through environmental design; design approach to reduce crime and fear of crime by creating a safe climate within a building environment.

Diameter breast height (DBH) means the diameter of the tree trunk(s) measured at 4½ feet above grade.

Disturbed land/ground means any land where the original natural vegetation has been removed, displaced, overtaken or raked.

Emitter primarily refers to devices used in micro irrigation systems.

Fertilizing or fertilization means the act of applying fertilizer to turf, specialized turf or landscape plants.

Fertilizer means any substance or mixture of substances that contains one or more recognized plant nutrients and which promotes plant growth, controls soil acidity or alkalinity, provides other soil enrichment, or provides other corrective measures to the soil.

Florida-friendly landscape means the principles of Florida-friendly landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protections. Additional components of Florida-friendly landscape include planning and design, soil analysis, the uses of solid waste compost, practical use of turf, and proper maintenance.

Functional landscaping means the combination of living and nonliving materials that, when installed or planted, creates an ongoing system providing aesthetic and environmental enhancement to a particular site and surrounding area.

Groundcover means a dense, low-growing plant, other than turf, that, by the nature of its growth characteristics completely covers the ground and does not usually exceed two feet in height.

Guaranteed analysis means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

Hedge means a dense row of evenly spaced shrubs planted to form a continuous, unbroken visual screen.

Hydrozone means a distinct grouping of plants with similar water needs and climatic requirements.

Impervious area means an area covered by a material which does not permit infiltration or percolation of water directly into the ground.

Infiltration rate means the rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour).

Irrigated landscape area means all outdoor areas that require a permanent irrigation system.

Irrigation zone means a grouping of sprinkler heads, soakers, bubblers, or micro irrigation emitters operated simultaneously by the control of one valve.

Institutional applicator means any person, other than a private person applying fertilizer on their own residential property or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners, managers, or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites, and any residential properties maintained in condominium and/or common ownership.

Irrigation means the method of supplying plant materials with water other than by natural rainfall.

Landscape/landscaping means:

(1) When used as a noun, this term shall mean living plant materials such as grasses, groundcover, shrubs, vines, trees or palms and nonliving durable materials commonly used in environmental design such as, but not limited to, walls or fences, aesthetic grading or mounding, but excluding pavers, paving, artificial turf, turf block, rocks and structures.

(2) When used as a verb, this term shall mean the process of installing or planting materials commonly used in landscaping or environmental design.

Mulch means organic, arsenic free, material such as wood chips, pine straw or bark placed on the soil to reduce evaporation, prevent soil erosion, control weeds and enrich the soil.

Multi-trunk trees means a tree that has a minimum of three trunks with no more than five trunks of equal diameters originating from the ground and with angles no greater than forty-five (45) degrees. ;b1; NOTE: The Town can require either multi-trunk or single trunk on certain trees.

Microclimate means the climate of a specific area in the landscape that has substantially differing sun exposure, temperature, or wind, than surrounding areas or the area as a whole.

Micro irrigation (low volume) means the application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Micro irrigation encompasses a number of methods or concepts including drip, subsurface, bubbler, and spray irrigation, previously referred to as trickle irrigation, low volume, or low flow irrigation that deliver water directly to plant root zones with a high degree of efficiency, no runoff, and little to no evaporation.

Moisture sensing device or soil moisture sensor means a device to indicate soil moisture in the root zone for the purpose of controlling an irrigation system based on the actual needs of the plant.

Native habitat means an area enhanced or landscaped with an appropriate mix of native tree, shrub and groundcover species that resembles a native plant community in structure and composition or is naturally occurring.

Native plant community means a natural association of plants dominated by one or more prominent native plant species, or a characteristic physical attribute as indicated by the Town of Surfside.

Native plant species means native plant species shall be those plant species indigenous to the ecological communities of South Florida, as indicated on lists provided by Town of Surfside, or that can be scientifically documented to be native to South Florida.

Open space means all pervious areas of the site.

Overall height means The height measured from the ground to the bend of the top most branch of the tree. Overall height on palms: the measurement from the ground to the bend of the topmost frond.

Pervious areas means any portion of the ground unobstructed by a non landscape planting surface or synthetic turf which prevents or slows down the natural seepage of water into the ground.

Planting soil/topsoil means a medium composed of 50 percent sand and 50 percent muck. Palm planting soils shall compose of no more than 80 percent sand and remainder soil consisting of muck. It must be clear and free of construction debris, weeds and rocks, with a pH between 6.5 and 7.

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization and/or any group of people acting as an organized entity.

Point of connection (POC) means the location where an irrigation system is connected to a water supply.

Pop-up sprays means spray heads that pop up with water pressure and provide a continuous spray pattern throughout a given arc of operation.

Pressure tank means a pressurized holding tank for irrigation water coming from wells to minimize cycling of the water pump.

Pump cycling means irrigation pump coming on and shutting off frequently during operation of irrigation systems.

Prohibited application period means the time period during which application of fertilizer is prohibited due to the potential of run-off to negatively impact the environment, including tropical storms and hurricane warnings, or for any portion of the Town where heavy rain has been forecasted.

Rain sensor device means a low voltage electrical or mechanical component placed in the circuitry of an automatic irrigation system that is designed to turn off a sprinkler controller when precipitation has reached a pre-set quantity.

Runoff means water that is not absorbed by the soil or landscape and flows from the area.

Redevelopment means any proposed expansion, addition, or facade change to an existing building, structure, or parking facility. Redevelopment may also mean any rebuilding activity which has no net increase in built-upon area or which provides equal or greater stormwater control than the previous development. Exception to this definition, single-family dwelling redevelopment would be considered when 75 percent or greater of the existing structure is knocked down.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

Slow-release means nitrogen in a form which delays its availability for vegetative uptake and use after application, or which extends its availability to the vegetation longer than a reference rapid or quick release product. It includes the terms “controlled release”, “timed release”, “slowly available”, and “water insoluble nitrogen.”

Shrub means a self-supporting, woody plant full to the ground with three or more branches produced from the ground which could be maintained in a healthy state to the height indicated on the landscape plans.

Soil moisture sensor. See “Moisture sensing device”.

Soil texture means the classification of soil based on the percentage of sand, silt, and clay in the soil.

Site-specific plant materials means the use of plant species selected to minimize supplemental irrigation, fertilization and pest control.

Synthetic turf means a dense and continuous surface of synthetic fibers mounted on a permeable backing and of sufficient density and green color to replicate the appearance of healthy, natural grass.

Town means the department or division of the Town of Surfside government that the Town manager has designated to enforce the landscaping requirements of this section.

Tree means a self-supporting, woody perennial plant, usually with one vertical stem or main trunk, which naturally develops a distinct, elevated crown and provides, at maturity, natural characteristics of the species.

(1) Tree, Dicotyledonous (Dicot) is a tree having a woody stem and branches and leaves with net venation and having a separate, distinct outer bark which can be peeled from the tree.

(2) Tree, Monocotyledonous (Monocot) is a palm or a tree having fronds with parallel venation and no true woody bark with a minimum overall natural height often feet at maturity.

Tree abuse means:

- (1) Hat racking, flat-cutting the top of a tree, severing leader or leaders of a tree.
- (2) Pruning that reduces the total height or spread of a tree canopy by more than 30 percent in one year.
- (3) Cutting upon a tree which destroys its natural habit of growth.
- (4) Pruning that leaves stubs or results in a flush cut or splitting of limb ends.
- (5) Peeling or stripping of bark or the removal of bark to the extent that if a line is drawn at any height around the circumference of the tree, over one-third of the length of the line falls on portions of the tree where the bark remains.
- (6) The use of climbing spikes, nails or hooks with the exception for the purposed of total tree removal.
- (7) Pruning that does not conform to the standards set by the American National Standards Institute (ANSI A300), as amended, with the exception of palm pruning which shall allow no pruning of fronds above the horizontal plane.
- (8) Using nails or other piercing devices for the purpose of attaching signage or any objects to a tree.
- (9) Girdling of trees by guying, staking, support, string trimmers, or non-removal of planting materials from the root balls.
- (10) Lawn mower string trimmer or deck damage inflicted on any portion of a tree.
- (11) Vehicular damage inflicted causing bark removal, tree leaning and/or destruction. Also, any damage and/or compaction of the roots by vehicular usage.
- (12) Structures being placed or constructed within a tree.
- (13) Utilizing any portion of a tree as a fence or similar structural support.
- (14) The use of oils, chemicals or other materials poured on the roots and/or trees. Also, the painting of trees with paint and/or other similar material.

Turf means a mat layer of living monocotyledonous grass plants such as, but not limited to, Bahia, Bermuda, Centipede, Seaside Paspalum, St Augustine, and Zoysia and their cultivars. However, this definition does not include any type of synthetic/artificial turf.

Urban landscape means pervious areas on residential, commercial, industrial, institutional, road rights-of-way or other nonagricultural lands that are planted with turf or landscape plants.

Vegetation means angiosperms, gymnosperms, ferns and mosses.

Vehicular encroachment means any protrusion of a motor vehicle outside of the boundaries of a vehicular use area into a landscape area.

Vehicular use area (VUA) means an area used for loading, circulation, access, storage, parking, or display of any type of vehicle, boat, or construction equipment whether self-propelled or not.

Vine means Any plant with a long, slender stem that trails or creeps on the ground or climbs by winding itself on a support.

[Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 19-1696 , § 2, 6-11-19; Ord. No. 20-1709 , § 2, 1-14-20]

Sec. 90-251. - Landscape permit plans.

90-251.1 All buildings, structures, new developments, redevelopment and changes of use requiring a permit shall require submittal of a landscape and irrigation plan. Landscape and irrigation plans shall be prepared by a State of Florida registered Landscape architect. Landscape plans for H30A and H30B may be prepared by the owner of the property or a representative thereof, provided it meets the requirements per this Code. The use of a landscape architect is encouraged.

90-251.2 All landscape plans shall meet the following requirements:

- (1) Shall be of the same scale as the site plan, but no smaller than one inch equals 50 feet. Recommended scale to be one inch equals 20 feet.
- (2) Location, condition, number, names, sizes, DBH and disposition of all existing trees and vegetation, to be preserved, relocated or removed. Also, provide all existing native plant communities to be preserved, relocated or removed.
- (3) Location and outline of existing buildings and site improvements to remain.
- (4) Location, condition, names, sizes, DBH, and disposition of existing trees, hedge, and site improvements along any abutting properties within 25 feet of the property lines.

(5) Location of all proposed or existing buildings and site improvements including but not limited to; parking spaces, access isles, drive ways, sidewalks and other vehicular use areas to remain or be removed.

(6) A proposed plant list by symbol, quantity, required specifications, native or non-native, drought tolerance, salt tolerance, and botanical and common names. Also, the plant list must be indicated on all planting plan sheets.

(7) A landscape calculation table indicating the minimum required and provided comparisons of the proposed plant material. Also, providing the gross and net acreages, buffer lengths, percentages of landscaping in the VUA, pervious area, street lengths, percentages of sod, native/drought tolerant percentages and landscape material size requirements.

(8) Location and labeling of existing and proposed site lighting. Additionally, provide a minimum of 15 feet separation from the required or existing shade trees and 7½ feet from palms and small trees.

(9) Location of existing and proposed fire hydrants and fire department check valves. Additionally, provide the minimum required 7½ feet clearance from all landscape material to the front and sides with four feet clearance from the rear.

(10) Location of existing and proposed easements, right of ways, drainage structures, overhead utility wires, underground utilities, above ground electrical elements, and transformers.

(11) Location and details including type, height, color, and additional embellishments of walls, fences, gates, and signs.

(12) All planting details and staking details, including but not limited to planting/staking specifications, general notes and tree protection barricade detail.

(13) Existing or proposed water bodies and retention areas indicating the required four to one slopes.

(14) Such other information that may be required to give a complete understanding of the proposed plan.

90-251.3 The irrigation plan shall meet the following requirements:

(1) The same scale of the site plan, but no smaller than one inch equals 50 feet.

(2) Location of existing trees, vegetation and native plant communities to remain, if applicable.

- (3) Location of existing buildings, paving, and site improvements to remain.
- (4) Location of proposed buildings, paving, site improvements, and water bodies.
- (5) Main location with sleeves, size and specifications.
- (6) Valve location, size and specifications.
- (7) Pump location, size and specifications or water source.
- (8) Backflow prevention device type and specifications.
- (9) Controller locations and specifications.
- (10) Zone layout plan (minimum scale 1" = 20"):
- (11) Provide 100 percent coverage and 100 percent overlap.
- (12) Indicating head-type, specifications and spacing.
- (13) Indicate location and details of rain sensor, second water meter, and rainwater citrons; and
- (14) Indicating methods used to achieve compliance with Florida Friendly principles as required by F.S. § 373.228.
- (15) Efficient Irrigation Design. All new irrigation installations shall meet the irrigation standards identified per F.S. § 373.228. These include:
 - (a) Irrigation systems, including the use of micro irrigation as appropriate, shall be designed to meet the needs of the plants in the landscape.
 - (b) When feasible, irrigation systems shall be designed to separately serve turf and non-turf areas.
 - (c) The irrigation system plans, and specifications shall identify the material to be used and the construction methods.
 - (d) The design shall consider soil, slope and other site characteristics in order to minimize water waste, including overspray, the watering of all impervious surfaces and other non-vegetated areas, and off-site runoff.

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(e) The system shall be designed to minimize free flow conditions in case of damage or other mechanical failure.

(f) The system shall be designed to use the lowest quality water feasible.

(g) Rain switches or other approved devices, such as soil moisture sensors to prevent unnecessary irrigation, shall be incorporated. (F.S. § 373.62)

(h) A recommended seasonal operating schedule and average precipitation rate for each irrigation zone for both establishment and maintenance conditions shall be provided.

(i) Control systems shall provide the following minimum capabilities:

- i. Ability to be programmed in minutes, by day of week, season, time of day,
- ii. Ability to accommodate multiple start times and programs,
- iii. Automatic shut off after adequate rainfall,
- iv. Ability to maintain time during power outages for a minimum of three (3) days, and
- v. Operational flexibility to meet applicable year-round water conservation requirements and temporary water shortage restrictions.

(j) Recommended maintenance activities and schedules shall be included.

(k) Precipitation rates for sprinklers and all other emitters in the same zone shall be matched, except that micro irrigation emitters may be specified to meet the requirements of individual plants.

(l) Irrigation systems shall be designed to maximize uniformity, considering factors such as:

- i. Emitter types.
- ii. Head spacing.
- iii. Sprinkler pattern.

iv. Water pressure at the emitter.

(m) Irrigation systems with main lines larger than two (2) inches or designed to supply more than seventy (70) gallons per minute shall incorporate a means to measure irrigation water use, at a minimum of ninety-five (95) percent accuracy across the flow range.

(n) Irrigation system plans and specifications shall require the system installer to conduct final testing and adjustments to achieve design specifications prior to completion of the system and acceptance by the owner or owner's representative.

(o) The irrigation system shall be designed to correlate to the organization plants into zones as described in section 12-102 above. The water use zones shall be shown in the irrigation plan. All plants (including turf) require watering during establishment. Temporary facilities may be installed to facilitate establishment.

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(p) Rain shut-off switch equipment shall be required on automatic irrigation systems to avoid irrigation during periods of sufficient soil moisture, in accordance with Florida Law (F.S. § 373.62). Said equipment shall consist of an automatic mechanical or electronic sensing device or switch that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

(q) The installation of tracer wire along main lines and laterals shall be required to permit easy location and prevent inadvertent cutting of pipes.

(r) If the water supply for the irrigation system is from a well, a constant pressure flow control device or pressure tank with adequate capacity shall be required to minimum pump "cycling".

(s) Check valves must be installed at irrigation heads as needed to prevent low head drainage and puddling.

(t) Nozzle precipitation rates for all heads within each valve circuit must be matched to within twenty (20) percent of one another.

(u) A pressure-regulating valve shall be installed and maintained if static service pressure exceeds eighty (80) pounds per square inch. The pressure regulating valve shall be located between the meter and the first point of division in the pipe and set at a not more than fifty (50) pounds per square inch when measured at the most elevated fixture in the structure served. This requirement may be waived if satisfactory evidence is provided that

high pressure is necessary in the design and that no water will be wasted as a result of high-pressure operation.

(v) To assist the end user to operate the system property, in addition to the minimum requirements of [Section] 373.228, F.S., the following are encouraged to be provided to the owner at the time of installation. The map shall be attached inside each irrigation controller or be kept in another readily available location if it is not practical to insert into a small container.

- i. Irrigation schedule information, with instructions for seasonal timer and sensor changes;
- ii. Irrigation system plans and specifications including as-constructed drawings, recommended maintenance activities and schedules;
- iii. Operations schedules, design precipitation rates, and instructions on adjusting the systems to apply less water after the landscape is established;
- iv. Maintenance schedule, water source, water shut-off method, and the manufacturing operational guide for their irrigation controller;
- v. To the extent feasible, similar information should be made available for subsequent property transfers.

(w) Reduced-pressure-principle backflow preventers shall be recertified yearly.

[Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 19-1696 , § 2, 6-11-19]]

Sec. 90-252. - 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. 90-251 (3).

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(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.

(4) *Reserved.*

(5) All proposed multi-trunk trees shall have a minimum of three trunks with no more than five trunks of equal diameters originating from the base of the tree and with angles no greater than forty-five (45) degrees.

NOTE: The Town can require either multi-trunk or single trunk on certain trees.

(6) All proposed trees and palms shall not be planted under roof over hangs or balconies.

(7) All proposed trees and palms within or overhanging pedestrian areas shall have a clear trunk high enough to allow unobstructed pedestrian movement under or around.

(8) Reserved.

(9) All proposed tot lots or pools shall be required to have a minimum shade requirement to allow persons to seek refuge from the sun.

(10) Salt tolerant plant species are encouraged in all areas of the Town.

(11) The concepts of Green Building Design and LEED are encouraged to help reduce water consumption, decrease fossil fuel burning, channel breezes, assist in cooling, create more pervious areas for drainage and promote more environmentally conscious.

(12) All plant root ball sizes shall conform or exceeded the minimum standards in the current edition of Florida Grades and Standards.

(13) All landscape areas with the exception of H30A, H30B and H30C (for single family and duplex only) shall be provided with an automatically operating, underground, and rust free irrigation system designed to have 100 percent coverage with 100 percent overlap. Drip, trickle or other low-volume irrigations systems shall be permitted if designated on approved landscape plans and approved by the Town. Irrigation systems shall be designed to minimize application of water to impervious areas. All PVC risers shall be painted flat black.

(a) Pursuant to F.S. § 373.62, any irrigation system installed after May 1, 1991, shall install a rain sensor device or switch which will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

(b) Use of non-potable water, including, but not limited to, water from a canal, lake or a treated water source, in the irrigation of landscaped areas is required when determined to be available and safe.

(c) Automatic controlling devices shall be used on all irrigation systems.

i. Preserved native habitats or native plant communities shall not be irrigated unless required by the Town.

ii. Recommend the use of a second water meter for irrigation to help reduce the cost of the watering the landscape.

NOTE: The sewer usage cost is eliminated with this added meter.

iii. Encourage the use of rainwater cisterns to help save water, one of our greatest natural resources. Also, rainwater cisterns will help on reducing watering costs and the impacts of water restrictions on the landscaping. Cisterns shall be provided below grade and are permitted in all zoning districts.

(14) Inspections of sites for landscape and irrigation installation:

(a) A pre-inspection of the site with the landscape and irrigation contractor will be required to discuss all the Town requirements, answer any questions and determine site conditions for appropriate use and selection of landscape material prior to installation.

(b) A final landscape and irrigation inspection will be required upon completion.

(15) Synthetic turf.

(a) Synthetic turf may be permitted on all properties subject to the requirements and procedures set forth in this section.

(b) Synthetic turf shall not be counted towards the minimum required landscaped areas, buffers, foundation plantings or landscape islands.

(c) Synthetic turf shall comply with all of the following design standards and shall:

i. Simulate the appearance of live turf, organic turf, grass, sod or lawn, and shall have a minimum eight-year “no fade” warranty.

ii. Be of a type known as cut pile infill with pile fibers of a minimum height of 1.75 inches and a maximum height of 2.5 inches.

iii. Have a minimum face weight of 75 ounces per square yard.

iv. Be manufactured from polyethylene monofilament, dual yarn system, and manufactured in the United States.

v. Have backing that is permeable.

vi. Be lead free and flame retardant.

(d) Synthetic turf shall comply with all of the following installation standards and shall:

i. Be installed by a state-licensed general contractor in a manner prescribed by the manufacturer.

ii. Be installed over a subgrade prepared to provide positive drainage and an evenly graded, porous crushed rock aggregate material that is a minimum of three inches in depth.

iii. Be anchored at all edges and seams consistent with the manufacturer’s specifications.

iv. Not have visible seams between multiple panels.

v. Have seams that are joined in a tight and secure manner.

vi. Have an infill medium consisting of clean silica sand or other mixture, pursuant to the manufacturer’s specifications that shall:

1. Be brushed into the fibers to ensure that the fibers remain in an upright position;
2. Provide ballast that will help hold the turf in place: and
3. Provide a cushioning effect.

(e) Synthetic turf shall comply with all of the following additional standards:

- i. Areas of living plant material shall be installed and/or maintained in conjunction with the installation of synthetic turf. Living plant material shall be provided per the minimum code requirements.
- ii. Synthetic turf shall be separated from planter areas and tree wells by a concrete mow strip, bender board or other barrier with a minimum four-inch thickness to prevent the intrusion of living plant material into the synthetic turf.
- iii. Irrigation systems proximate to the synthetic turf shall be directed so that no irrigation affects the synthetic turf.

(f) Synthetic turf shall comply with all of the following maintenance standards and shall:

- i. Be maintained in an attractive and clean condition, and shall not contain holes, tears, stains, discoloration, seam separations, uplifted surfaces or edges, heat degradation or excessive wear.
- ii. Be maintained in a green fadeless condition and free of weeds, debris, and impressions.

(g) The following uses are prohibited:

- i. Synthetic turf in the public rights-of-way or swales.

- ii. Synthetic turf shall not be used as a screening material where screening is required by the Code.
- (h) All uses of synthetic turf shall require a building permit. The building permit application shall include, at a minimum, all of the following information:
- i. A complete landscape plan showing the area of synthetic turf, area of living plant material, and area and method of separation between these areas. Minimum landscape requirements shall be required.
 - ii. Details regarding existing or proposed irrigation proximate to the synthetic turf.
 - iii. Brand and type of synthetic turf, including all manufacturer specifications and warranties.
 - iv. A scaled cross section and details of the proposed materials and installation, including but not limited to subgrade, drainage, base or leveling layer, and infill.
 - v. A survey of the property with a signed affidavit from the property owner that no changes have occurred since the date of the survey.
- (i) Previously installed synthetic turf. Within one year of the effective date of the ordinance from which this section derived, all owners of property where synthetic turf has previously been installed shall submit proof satisfactory to the Town that the property is in compliance with this section. If the Town determines such proof of compliance satisfactory, the synthetic turf may continue to remain on the property. Failure to provide satisfactory proof of compliance with this section within one year of the effective date of the ordinance from which this section derived shall constitute a violation of the Code and the property owner shall be required to immediately remove the synthetic turf.

[Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 1572, § 2, 4-12-11; Ord. No. 18-1680 , § 3, 4-10-18; Ord. No. 19-1696 , § 2, 6-11-19; Ord. No. 20-1709 , § 3, 1-14-20]

Sec. 90-253. - 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.

(2) Florida Friendly Fertilizer Use To regulate the proper use of fertilizers by any person who applies fertilizer on turf and/or landscape or plants; requires proper training of commercial and institutional fertilizer applicators; establishes training and licensing requirements; establishes a prohibited application period; specifies allowable application fertilizer application rates and methods, fertilizer-free and low maintenance zones, and exceptions. It requires the use of Best Management Practices for the application of fertilizer to minimize negative environmental effects associated with excessive nutrients in water bodies. These environmental effects have been observed in Dade County's natural and constructed stormwater conveyances, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an important asset to the environmental, recreational, cultural and economic well-being of Town of Surfside residents and their public health. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

(a) Timing of fertilizer applications.

i. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the time period in which a flood watch or warning, a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of Town of Surfside, issued by the National Weather Service.

ii. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants if heavy rain two inches or more within a 24-hour period is likely.

iii. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to saturated soils.

iv. Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevent plan for the site.

v. Fertilizer free zones. Fertilizer shall not be applied within ten feet of any water body or canal as defined by the Florida Department of Environmental Protection in Chapter 62-340, Florida Administrative Code, or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a 60-day period beginning no sooner than 30 days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

(b) Fertilizer content and application rates.

i. Fertilizers applied to turf shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements for Urban Turf Fertilizers. Under Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.

ii. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in subsection (1) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

iii. Fertilizer used for sports turf at golf courses shall be applied in accordance with the recommendations in “Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses,” published by the Florida Department of Environmental Protection, dated January 2007, as may be amended. Fertilizer used at park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

(c) Fertilizer application practices.

i. Spreader deflector shields shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.

ii. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site or returned to the original or other appropriate container.

iii. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

iv. Property owners and managers are encouraged to use an Integrated Pest Management (IPM) strategy as currently recommended by the University of Florida Cooperative Extension Service publications.

(d) Training.

i. All commercial and institutional applicators of fertilizer shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida/Broward County

Cooperative Extension Service “Florida-Friendly Landscapes” program or an approved equivalent program. A trained applicator shall have identification or other evidence of successful completion of the training program on their person at all times while applying fertilizer.

ii. Non-commercial and non-institutional applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida/IFAS “Florida-Friendly Landscape Program” and label instructions when applying fertilizers.

(e) Licensing of commercial applicators.

i. All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, multi-family and condominium properties) must ensure that the business owner or his/her designee and at least (1) employee holds the appropriate “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Town business tax receipt. Standard business tax receipt (BTR) and transaction fees shall apply. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the Town of Surfside. It is the responsibility of the business owner to maintain the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” certificate to receive their business tax receipt annually.

ii. After adoption of this ordinance, all commercial applicators of fertilizer within the Town of Surfside, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.

(3) Pesticide Management.

(a) All landscape applications of pesticides, including “Weed and Feed” products, for hire shall be made in accordance with State and Federal Law and with the most current version of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, as amended.

(b) When using pesticides, all label instructions of State and Federal law shall be adhered to. The Florida Department of Agriculture and Consumer Services is responsible for enforcement of pesticide laws.

(4) Management of grass clippings and vegetative matter. In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept or blown on to or into storm-water drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

(5) 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.

NOTE: If weeds, noxious grasses or underbrush are in excess of the eight inches; it too will need to be cut and the weeds, noxious grasses and underbrush removed and re-sodded if necessary.

(6) Irrigation systems shall be maintained to eliminate water loss due to damaged, missing or improperly operating sprinkler heads, emitters, pipes and all other portions of the irrigation system.

(7) Preserved and created native plant communities shall be maintained in a natural state without the use of mechanical equipment.

(8) An owner is responsible to ensure that landscaping that has been required to be planted pursuant to this Code, or installed in compliance with the landscape requirements previously in effect, be maintained in Florida Grade One condition, including but not limited to single-family residences, multifamily, or business sites. If landscaping is found to be in a state of decline, dead, damaged, or missing, it must be replaced with equivalent landscape material. If total replacement is

required, species conforming to this Code shall be used. If any preserved vegetation dies which is being used to satisfy current landscape code requirements, such vegetation shall be replaced with the same landscape material selected from nursery-grown native stock only.

(9) All trees shall be trimmed in accordance to Miami-Dade County tree preservation code. Any type of tree abuse/hatracking is prohibited with in the Town.

(10) Any trees and/or palms that are diseased (including dead palms with lethal yellowing) or trees and/or palms causing a possible safety hazard as determined by the Town are considered to be a public nuisance. The Town shall enforce the provisions of this section. Any property owner of any lot or parcel of land in the Town shall promptly remove any such tree and/or palm after being notified by the Town. The Town is authorized and empowered to enter on any lot or parcel of land in the Town at any reasonable hour for the purpose of inspecting such trees and/or palms.

(11) Shrubs and hedges shall be maintained that such plant materials do not obstruct clear sight triangles and promote vehicular and pedestrian visibility. Also, hedges planted along property lines shall be maintained and trimmed to prevent branches from extending over and/or touching structures on adjacent properties.

(12) Any plastic or similar artificial landscape materials shall be prohibited with the exception of seasonal holiday decorative displays of less than 60 days duration and synthetic turf as provided for in this article. Synthetic turf shall be permitted with the exception that it shall not be counted towards the minimum landscaped area, buffers, foundation planting or landscape islands.

(13) All property owners shall keep such property and the adjoining unpaved portions of the public rights-of-way, swales and bulkheads clean and free from any accumulation of garbage, trash, liter, or debris.

(14) All property owners with in the Town shall not permit unattended vegetation upon the property, adjoining portions of the rights-of-ways, swales, and canal banks.

(15) The provisions of this Article shall be enforced pursuant to Chapter 15, Article I, of this Code, and by any other means permitted by law.

[Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 18-1680 , § 3, 4-10-18; Ord. No. 19-1696 , § 2, 6-11-19; Ord. No. 20-1709 , § 4, 1-14-20)]

Sec. 90-254. - Plant material.

90-254.1 Quality:

Plant materials used in accordance with this Code shall conform to the standards for Florida Grade One, or better, (NOTE: Some proposed landscaping can be required to be Florida Fancy) as provided for in the most current edition of Grades and Standards for Nursery Plants, 2nd edition, Feb. 1998, State of Florida Department of Agriculture and Consumer Services, as amended. Additional information not addressed in the Florida Grades and Standards for Nursery Plants shall refer to ANZI Standards Z60.1. Sod shall be green, healthy, clean and visibly free of weeds, noxious pests and diseases. It shall be solid St. Augustine "Floritam", "Palmetto", or Bermuda, laid on a smooth planting base with tight joints, at 100 percent coverage at time of planting and cut to fit all landscape planters and curb areas.

90-254.2 Native vegetation.

50 percent of all vegetation, excluding all turf grass, required to be planted by this Code shall be indigenous to South Florida.

90-254.3 Preserved/created native plant communities.

Native Plant communities shall be preserved or created. Sites which consist of five acres or more, where there is no viable native plant community, the applicant shall show on the landscape plan an area or areas equivalent to 2½ percent of the site to be planted and preserved as an native plant community. Sites which consist of two to five acres may incorporate a native plant community into the landscape buffer or interior landscaping requirements.

90-254.4 Trees:

(1) *Shade/canopy tree:* Shade/canopy tree shall be a minimum overall height of 14 feet, six feet spread, 2½ inches DBH and five feet clear trunk. This category shall constitute 20 percent of the minimum required trees.

(2) *Intermediate trees:* Intermediate trees shall be a minimum overall height of 12 feet, five feet spread, two inches DBH and 4½ feet clear trunk. This category shall constitute 20 percent maximum of the required trees.

(3) *Small trees*: Small trees shall be a minimum overall height of ten feet, 4½ feet spread, one and ½ inches DBH and four feet clear trunk. This category shall constitute no more than 20 percent of the required trees.

(4) *Palms*: Palms shall have a minimum of six feet grey wood and shall constitute no more than 40 percent of the required trees. All palms with the exception of *Roystonea elata/regia*, *Phoenix canariensis*, *Phoenix dactylifera*, *Phoenix sylvestris*, *Phoenix reclinata*, *Wodyetia bifurcata*, and *Bismarckia nobilis*, shall be counted at three for one and planted with staggered heights.

NOTE: All proposed coconut palms shall be certified to be resistant to Lethal yellowing.

(5) All landscaping including shrubs and groundcover shall be guaranteed for one year after final landscape inspection.

(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 rights-of-way 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 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. 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, the Town shall provide a written warning with 45 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 to the health, safety and welfare of residents or is extremely likely to cause imminent 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.

(7) It shall be a violation of this Code of any person to plant, replant, permit to be planted or permit to be replanted any of the plants, trees, weeds, shrubs and vegetation listed below. In addition, these species shall be removed from the construction sites with the exception of existing ficus hedges that have been damaged during a strong storm or hurricane. If 50 percent or more viable ficus hedge material is left than the additional missing 50 percent or less can be replaced:

Botanical Name	Common Name
<i>Acacia auriculiformis</i>	Earleaf Acacia
<i>Adenanthera pavonina</i>	Red sandalwood
<i>Aeginetia</i> spp. (all)	Aeginetia
<i>Ageratina adenophora</i>	Crofton weed
<i>Albizia julibrissin</i>	Mimosa
<i>Albizia lebbbeck</i>	Woman's Tongue
<i>Alectra</i> spp. (all)	Yerba de hierro
<i>Alternanthera philoxeroides</i>	Alligator weed
<i>Alternanthera sessilis</i>	Sessile joyweed
<i>Araucaria heterophylla</i>	Norfolk Island Pine
<i>Ardisia crenata</i>	Coral ardisia
<i>Ardisia solanacea</i>	Shoebuttan Ardisia
<i>Asphodelus fistulosus</i>	Onionweed
<i>Avena sterilis</i>	Animated oat
<i>Azolla pinnata</i>	Asian mosquito fern
<i>Bischofia javanica</i>	Bischofia, Toog

Botanical Name	Common Name
<i>Borreria alata</i>	Broadleaf buttonweed
<i>Brassaia actinophylla</i>	Schefflera
<i>Broussonetia papyrifera</i>	Paper mulberry
<i>Carthamus oxycantha</i>	Wild safflower
<i>Casuarina spp.</i>	Australian Pine
<i>Cestrum diurnum</i>	Day blooming jasmine
<i>Chrysopogon aciculatus</i>	Pilipiliula
<i>Cinnamomum camphora</i> <i>Colocasia esculenta</i>	Camphor tree Taro
<i>Colubrina asiatica</i>	Latherleaf
<i>Commelina benghalensis</i>	Benghal dayflower
<i>Crassula helmsii</i>	Swamp stonecrop
<i>Crupina vulgaris</i>	Common crupina
<i>Cupianopsis spp.</i>	Carrotwood
<i>Cuscuta japonica</i>	Japanese dodder
<i>Cuscuta megalocarpa</i>	Bigfruit dodder
<i>Cuscuta potosina</i>	Globe dodder
<i>Cuscuta</i> spp. (except natives)	Exotic dodder vines
<i>Dalbergia sissoo</i>	Indian Rosewood
<i>Digitaria abyssinica</i>	Couch grass
<i>Digitaria velutina</i>	Velvet finger grass
<i>Dioscorea alata</i>	White yam
<i>Dioscorea bulbifera</i>	Air potato
<i>Drymaria arenarioides</i>	Alfombrilla
<i>Eichhornia azurea</i>	Anchored waterhyacinth
<i>Eichhornia spp. (all)</i>	Water hyacinths
<i>Emex australis</i>	Three-cornered jack
<i>Emex spinosa</i>	Devil's thorn
<i>Enterolobium contortisliquum</i>	Ear-pod tree
<i>Eucalyptus spp. (1 or more)</i>	Eucalyptus trees
<i>Euphorbia prunifolia</i>	Painted euphorbia

Botanical Name	Common Name
<i>Fatoua spp. all</i>	Fescue
<i>Ficus altissima</i>	False banyan
<i>Ficus benghalensis</i>	Banyan tree
<i>Ficus benjamina</i>	Weeping fig
<i>Ficus carica</i>	Edible fig
<i>Ficus decora</i>	Rubber tree
<i>Ficus nitida/Ficus microcarpa</i>	Cuban laurel
<i>Ficus religiosa</i>	Bo tree
<i>Ficus spp. (all non-natives)</i>	Ficus
<i>Flacourtia indica</i>	Governor's plum
<i>Flueggea virosa</i>	Flueggea
<i>Foeniculum vulgare</i>	Fennel
<i>Fragaria chiloensis var. Ananassa</i>	Strawberry
<i>Fraxinus uhdei</i>	Shamel ash
<i>Galega officinalis</i>	Goatsrue
<i>Grevillea robusta</i>	Silk Oak
<i>Heracleum mantegazzianum</i>	Giant hogweed
<i>Hibiscus tiliaceus</i>	Mahoe
<i>Hydrilla verticillata</i>	hydrilla
<i>Hygrophila polysperma</i>	Miramar weed
<i>Imperata brasiliensis</i>	Brazilian satintail
<i>Imperata spp.</i>	Cogon grass
<i>Ipomoea aquatica Ipomoea fistulosa</i>	Chinese waterspinach Shrub morning glory
<i>Ipomoea triloba</i>	Little bell morning glory
<i>Jacaranda acutifolia</i>	Jacaranda
<i>Jasminum dichotomum</i>	Gold Coast jasmine
<i>Jasminum fluminense</i>	Brazilian jasmine
<i>Lagarosiphon major</i>	Oxygen weed
<i>Lagarosiphon spp. (all)</i>	African elodeas
<i>Lantana camara</i>	Shrub verbena

Botanical Name	Common Name
<i>Leptochloa chinensis</i>	Asian sprangletop
<i>Leucaena leucocephala</i>	Lead Tree, Jumbie Bean
<i>Ligustrum sinense</i>	Chinese privet
<i>Limnocharis flava</i>	Sawa flowering-rush
<i>Limnophila sessiliflora</i>	Ambulia
<i>Lonicera japonica</i>	Japanese honeysuckle
<i>Lycium ferocissimum</i>	African boxthorn
<i>Lygodium japonicum</i>	Japanese climbing fern
<i>Lygodium microphyllum</i>	Old World climbing fern
<i>Lythrum salicaria</i>	Purple loosestrife
<i>Manilkara zapota</i>	Sapodilla
<i>Melaleuca quinquenervia</i>	Melaleuca or Paperbark
<i>Melastoma malabathricum</i>	Indian rhododendron
<i>Melia azederach</i>	Chinaberry tree
<i>Merremia tuberosa</i>	Woodrose
<i>Mikania cordata</i>	Mile-a-minute vine
<i>Mikania micrantha</i>	Mile-a-minute vine
<i>Mimosa invisa</i>	Giant sensitive plant
<i>Mimosa pigra</i>	Cat-claw mimosa
<i>Monochoria hastata</i>	Monochoria
<i>Monochoria vaginalis</i>	Asian pickerel weed
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil
<i>Nassella trichotoma</i>	Serrated tussock
<i>Nechamandra alternifolia</i>	Indian elodea
<i>Neyraudia reynaudiana</i>	Burma reed
<i>Orobanchesp. except (O. uniflora)</i>	Broomrape
<i>Oryza longistaminata</i>	Red rice
<i>Oryza punctata</i>	Red rice
<i>Oryza rufipogon</i>	Wild red rice
<i>Ottelia alismoides</i>	Duck-lettuce
<i>Paederia cruddasiana</i>	Sewer vine

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Botanical Name	Common Name
<i>Paederia foetida</i>	Skunk vine
<i>Paspalum scrobiculatum</i>	Kodo-millet
<i>Pennisetum clandestinum</i>	Kikuyu grass or Napier grass
<i>Pennisetum macrourum</i>	African feather grass
<i>Pennisetum pedicellatum</i>	Kyasuma grass
<i>Pennisetum polystachyon</i>	Mission grass
<i>Pistia stratiotes</i>	Water-lettuce
<i>Pongamia pinnata</i>	Pongam
<i>Pontederia rotundifolia</i>	Tropical pickerelweed
<i>Prosopis</i> spp. (Except natives)	Mesquite
<i>Pueraria Montana</i>	Kudzu
<i>Rhodomyrtus tomentosa</i>	Downy Rose Myrtle
<i>Ricinus communis</i>	Castor bean
<i>Rottboellia cochinchinensis</i>	Itch grass
<i>Rubus fruticosus</i>	European bramble blackberry
<i>Rubus moluccanus</i>	Asian wild raspberry
<i>Saccharum spontaneum</i>	Wild sugarcane
<i>Sagittaria sagittifolia</i>	Eurasian arrowhead
<i>Salsola vermiculata</i>	Wormleaf salsola
<i>Salvinia</i> spp.	Salvinia
<i>Sapium sebiferum</i>	Chinese tallow tree
<i>Scaevola taccada</i>	Beach naupaka
<i>Schefflera actinophylla</i>	Queen's Island umbrella
<i>Schinus terebinthifolius</i>	Brazilian Pepper, Florida Holly
<i>Setaria pallidifusca</i>	Cattail grass
<i>Solanum tampicense</i>	Wetland nightshade
<i>Solanum torvum</i>	Turkeyberry
<i>Solanum viarum</i>	Tropical soda apple
<i>Sparganium erectum</i>	Exotic bur-reed
<i>Stratiotes aloides</i>	Water-aloë
<i>Striga asiatica</i>	Asiatic witchweed

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Botanical Name	Common Name
<i>Striga densiflora</i>	Denseflower witchweed
<i>Striga gesnerioides</i>	Cowpea witchweed
<i>Striga hermonthica</i>	Purple witchweed
<i>Syzygium cumini</i>	Java plum or Jambolan
<i>Syzygium jambos</i>	Rose-apple
<i>Terminalia cattapa</i>	Tropical Almond
<i>Thespesia populnea</i>	Seaside Mahoe
<i>Trapaspp. (all)</i>	Water chestnuts
<i>Tribulua cistoides</i>	Puncture vine
<i>Tridax procumbens</i>	Coat buttons
<i>Urochloa panicoides</i>	Liverseed grass
<i>Vossia cuspidate</i>	Hippo grass
<i>Wedelia trilobata</i>	Wedelia

(8) The use of wind tolerant trees and palms are encouraged due to the high risk of hurricanes in South Florida. Every effort should be utilized to reduce the risk of damage and liability by utilizing more wind tolerant landscaping. Also, the use of landscaping that is very poisonous, has a major pest or insect problem, thorny spines, drops messy fruit or has an aggressive root system will be reviewed case by case.

(9) The use of plant materials that reinforce the ambience of the Town's distinctive, lush, subtropical character is encouraged.

(10) The following plant list species shall not be considered as a required tree or palm. However, these species may be utilized as an accent:

Botanical Name	Common Name
Arborvitae spp.	Thuja
<i>Dypsis lutescens</i>	Areca Palm
<i>Veitchia merrillii</i>	Christmas Palm
<i>Cupressus sempervirens</i>	Italian Cypress
<i>Caryota mitis</i>	Fishtail Palm

Citrus spp.	Citrus
Nerium oleander	Oleander
Ravenala madagascariensis	Travelers Tree
Phoenix roebelenii	Pygmy Date Palm
Sterlizia nicolai	White Bird of Paradise

(11) All trees and palms must be a minimum of four feet from all underground utility lines. Also, refer to the site lighting and fire hydrant requirements for tree and palms.

(12) All invasive exotic pest plants shall be removed from the site prior to final inspection.

(13) All landscape substitutions including shrubs and groundcover shall require Town approval prior to installation.

(14) No more than 30 percent (of required trees shall be of the same species. The tree diversity mix shall be as follows:

Number of Trees	Number of Species Required
1—4	4
5—25	5
26—50	6
51—75	7
75—100	8
100+	9

90-254.8 Shrubs and hedges.

(1) Shrubs shall be a minimum of two feet high, full to base, two feet spreads and planted two feet on center when measured immediately after planting. If the spreads can not be met with the two feet requirement then 18 inches spreads and 18 inches on centers can be utilized. When shrubs are used as a screen around vehicular open space areas, said shrubs shall be a minimum of two feet in height

above the vehicular open space pavement surface that directly abuts the shrubs at time of planting and branch touching branch.

(2) Required buffer hedges shall be planted two feet high, full to the base, two-foot spreads and two feet on center spacing (branch touching branch) and maintained so as to form a continuous, unbroken solid, visual screen, with a maximum height of three feet, to be attained within one year after planting. If the spreads can not be met with the two-foot requirement then 18-inches spreads and 18 inches on centers can be utilized.

(3) Shrubs shall be planted so the branches do not touch the building walls or walkways at time of planting.

(4) *Ficus* spp., when planted as a hedge, may be used to meet the requirements of dumpster enclosure, mechanical equipment and electrical transformer screening only.

90-254.6 Vines.

Vines shall be full and a minimum of 30 inches in supported height immediately after planting. The method of attachment shall be indicated on the landscape plans.

90-254.7 Groundcover.

Groundcovers shall be full and planted with a minimum of 75 percent coverage with 100 percent coverage occurring within three months of installation. All ground cover shall be planted so not to touch the building walls or walkways at time of planting.

90-254.8 Turf:

(1) All turf areas including but not limited to swales, lake maintenance easements, and retention areas shall be sodded using St. Augustine Floratam, Palmetto or Bermuda sod to the water line.

(2) Turf shall not be treated as a fill-in material, but rather as a major planned element of the landscape and shall be placed so that it can be irrigated separately from planting beds.

(3) Turf areas shall be consolidated and limited to those areas on the site that require pedestrian traffic, provide for recreation use or provide soil erosion control such as on slopes or in swales, or surface water management areas, and where turf is used as a design unifier, or other similar practice use. Turf areas shall be identified and labeled on the landscape plan.

(4) The following percentages shall apply to turf areas:

(a) No more than 80 percent of the landscape area for single-family and duplex dwellings may be in turf grass.

(b) No more than 60 percent of the landscape area for multifamily dwellings may be in turf grass.

(c) No more than 50 percent of the landscape area for other development uses may be in turf grass, notwithstanding the use of artificial turf for the purpose of municipal athletic fields.

~~90-254.9~~ *90-254.9 Planting soil and topsoil.*

Topsoil and/or planting soil shall be clear and free of construction debris, weeds and rocks. The topsoil and/or planting soil for all planting areas shall be composed of a minimum of 50 percent muck and 50 percent sand or 80 percent sand and 20 percent muck.

[(Ord. No. 1558, § 2(Exh. A), 6-8-10; Ord. No. 18-1680, § 3, 4-10-18)]

Sec. 90-255. - Vegetative provisions.

90-255.1 Florida Friendly.

(1) A minimum of 20 percent of the pervious area on single family and duplex dwellings must be in Florida Friendly landscape.

(2) A minimum of 40 percent of the pervious area of multifamily dwellings must be Florida Friendly landscape.

(3) A minimum of 50 percent of the pervious area of all other development uses must be in Florida Friendly landscape.

~~90-99255.2~~ *Use of site specific plant material.*

Plants used in the landscape design shall be to the greatest extent, appropriate to the soil and other environmental conditions in which they are planted.

~~90-99255.3~~ *Invasive exotic plant material.*

As a condition of approval, the property owner shall remove all invasive exotic species from the property prior to final.

[Ord. No. 1558, § 2(Exh. A), 6-8-10; Ord. No. 19-1696, § 2, 6-11-19]

Sec. 90-256. - Landscape buffer areas between residential and non-residential properties and vehicular use areas.

90-256.1 Applicability:

All proposed development or redevelopment sites and vehicular use areas serving H30C, H40, H120, or municipal uses shall conform to the minimum landscaping requirements hereinafter provided. Interior parking landscape requirements under or within buildings and parking areas serving H30A and H30B districts are exempt. Additionally, SD-B40 shall be exempt. Expansive concrete or paver areas shall require landscaping to soften and scale the buildings.

90-256.2 Required buffer landscaping adjacent to streets and abutting properties:

On any proposed, redeveloped site, or open lot providing a vehicular use area for H30C, H40, H120, adjacent or contiguous to H40, or municipal plots where such area is abutting street(s) and/or property lines, including dedicated alleys, landscaping shall be provided between such area and such perimeters as follows:

- (1) A flat ground level or bermed strip of land at least ten feet in depth, located along all the property lines of abutting street(s) and abutting property line(s) shall be landscaped, except that the landscape buffer abutting Collins Avenue in the H120 district shall begin 2.5 feet east of the east edge of public sidewalk and shall be 7.5 feet wide. The 2.5-foot area between the public sidewalk and landscaping shall be improved with the same surface treatment as the public sidewalk to result in a wider pedestrian path along Collins Avenue. All landscape buffers shall include three trees for each 50 linear feet or fraction thereof. The first tree shall be set back from the intersection of the ingress/egress and the street. The setback area shall be limited to groundcover only. In addition, a hedge, berm, wall or other durable landscape barrier shall not create a sight hazard by being placed along the inside perimeter of such landscape strip and shall be maintained at a maximum height of three feet, if contiguous to a pedestrian walkway, to meet crime

prevention through environmental design (CPTED) principles. If such durable barriers including walls or fences are of nonliving material, it shall be screened to the height of the durable barrier with a hedge along the street side of such barrier. If a fence or wall is utilized along an abutting property line it must be installed at the property line and screened to the height of the durable barrier with a hedge from the inside. The remainder of the required landscape area shall be landscaped with turf grass, groundcover or other landscape treatment, excluding paving, turf grass not to exceed the maximum amount allowable in the Florida Friendly requirements. This buffer may not be counted toward meeting the interior landscape requirements.

(2) All property other than the required landscaped strip lying between the streets and abutting property lines shall be landscaped with turf grass or other groundcover; if turf grass is used, it shall not exceed the Florida Friendly requirements.

(3) All Town-approved necessary accessways from the public street through all such landscaping shall be permitted to service the site.

(4) Parking area interior landscaping. An area, or a combination of areas, equal to 20 percent of the total vehicular use area exclusive of perimeter landscape buffers required under this subsection shall be devoted to interior landscaping. Any perimeter landscaping provided in excess of that required by this section shall be counted as part of the interior landscaping requirements, as long as such landscaping is contiguous to the vehicular use area and fulfills the objective of this subsection.

(5) All parking areas shall be so arranged so that if there are ten or less contiguous parking stalls along the same parking aisle, the eleventh space shall be a landscaped peninsula a minimum of 11 feet in width with a minimum of ten feet wide landscape area. Also, all rows of parking shall be terminated with 11 feet in width landscape islands with ten feet wide landscape area. In addition, there shall be a minimum requirement of one shade tree and 25 shrubs planted for every landscaped island. If landscaped divider medians are utilized, they must be a minimum of six feet wide. The minimum dimensions of all proposed landscaped areas not mentioned in this chapter shall be six feet wide. In addition, any Town-approved grass parking areas will meet the same requirements as paved parking, and will not be calculated in the pervious space requirements.

(6) Landscaped areas, walls, structures and walks shall require protection from vehicular encroachment through appropriate wheel stops or curbs located a minimum of 2½feet from any landscaped area

NOTE: The Town encourages the use of Type “D” curbing in parking area that abut landscape areas to provide more green area and lessen the chance of tripping hazards. This can not be utilized to count for buffer or divider median requirements, but can be utilized for pervious and landscaping in the VUA percentages.

(7) Where any plot zoned or used for H120 is contiguous to the bulkhead line, a landscape area consisting of the bulkhead line, the erosion control line, and the property lines shall be provided or restored. The proposed landscape material for the required landscape area shall be 100 percent landscape material used on the barrier island dune system and shall be composed of native plants adapted to the soil and climatic conditions occurring on-site. Additionally, all plant species, amount of plant material, plant spacing and design shall be approved by the Town.

[Ord. No. 1554, § 2, 6-8-10; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 19-1696 , § 2, 6-11-19]

Sec. 90-257. - Reserved.

Editor’s note— Ord. No. 1626, § 3, adopted Nov. 18, 2014, repealed former § 90-92 in its entirety which pertained to sight triangles and clearance and derived from Ord. No. 1558, § 2(Exh. A), adopted Aug. 10, 2010.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Sec. 90-258. - Open space.

All open space on any site shall conform to the following requirements:

(1) *General landscape treatment:*

(a) Groundcover, shrubs, and other landscape materials (not including rocks, gravel, pavers, turf blocks, artificial turf, or other items) shall be installed to cover all open space areas not covered by paving or structures, using the required percentages specified in the plant material section. No substance including rocks, gravel, pavers, turf blocks, artificial turf or other materials which prevents water percolation shall be used in areas not

approved for paving or structures. Proper horticultural planting practices shall comply with Florida Friendly requirements.

(b) Along all buildings and structures, mature landscaping at installation shall be installed at one-half the height of the building or structure at one tree per 25 linear feet of each building's facade on all sides for scaling and softening. On buildings over 75 feet in height the proposed trees/palms shall be at least 35 to 38 feet tall at time of installation.

NOTE: If the landscape buffer is contiguous to the building then the landscape buffer requirement will supersede, with the exception of one tree per 25 feet being one-half the height of the building at installation. Additionally, shrubs and groundcovers shall be added to enhance the building. In all districts except the SD-B40 district, a minimum six-foot-wide landscape strip shall be provided not including overhands or awnings around all the buildings.

(2) *Shrub and tree requirements:* Shrubs and trees shall be planted in the open spaces to meet the following requirements:

Percent of Site in Open Space (Amount of Pervious Landscape Planting Area)	Tree and Shrub Requirements
Less than 30%	1 tree and 10 shrubs per 1,000 sf
30—39%	1 tree and 8 shrubs per 1,500 sf
40—49%	1 tree and 6 shrubs per 2,000 sf
50% or more	1 tree and 6 shrubs per 2,500 sf

(3) *Screening of equipment:* Dumpsters, mechanical equipment, A/C units, electrical transformers, generators and all above ground equipment shall be screened on at least three sides by landscape material that equal to the height of the element at installation. Such screening shall not interfere with normal operation of equipment and shall be maintained at the height of the element or no more than one foot above. In addition, bus shelters which are located within property lines shall be screened with plant material a minimum of two feet in height on three sides, and one canopy tree, 14 feet in height or three palms.

(4) *Signs:* All freestanding sign installations require the installation and establishment of plant material to enhance the structure, at a minimum of one shrub for every two feet of lineal width of the sign structure on each side; and groundcover, a minimum of five feet around the perimeter of the sign base, designed in such a manner so as to not block the message on the sign. Trees or palms shall be required to enhance the sign with blocking it.

(5) *Minimum landscape credits and adjustments:* An owner shall receive credit against the minimum landscape code requirements of this Code for preservation, replacement or relocation of existing trees as determined by the Town.

[Ord. No. 1554, § 2, 6-8-10; Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 19-1696, § 2, 6-11-19]

Sec. 90-259. - Landscape buffers.

(1) Where any plot zoned or used for H30C, H40 or H120 is separated by a street, alley, canal or public open space from a plot zoned or used for H30A or H30B, said plot shall provide a landscape buffer of at least ten feet in depth.

(2) Where any plot zoned or used for H40 or H120 or H30C is contiguous to any plot zoned or used for H30A or H30B, said plot shall provide a landscape buffer of at least 15 feet in depth.

(3) Where any plot zoned or used SD-B40 or municipal plot is separated by a street, alley, canal or public open space from a plot zoned or used for H30A or H30B, said plot shall provide a landscape buffer of at least 15 feet in depth.

(4) Where any plot zoned or used for SD-B40 or municipal plot is contiguous to a zoned or used plot of H30A or H30B, said plot shall be provide a landscape buffer of at least 20 feet in depth.

(5) Refer to landscape requirements for landscape buffer and vehicular use areas adjacent to streets and abutting properties section for landscape requirements. The only additional requirement is a 2½ foot tall undulating and meandering landscape berm at three to one slope with layered landscaping along the perimeter adjacent or contiguous to any zoned or used plots of H30A or H30B.

(6) In cases where nonresidential property abuts residential property, the Town can require such additional landscaping as is necessary to protect the aesthetics and minimize the impacts of the surrounding area.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Sec. 90-260. - Single-family H30A and H30B district landscape requirements.

All new H30A and H30B dwellings shall conform to the following minimum landscaping requirements:

(1) *Landscape plans:* H30A and H30B dwellings may submit landscape plans in the form of a H30A and H30B landscape data table, on a form provided by the Town at time of permit application for review. This form shall include the required minimum landscape requirements, specifications and acceptable plant material choices to be chosen by the applicant. After the applicant has submitted a completed and signed form, a review of the form will be done to verify that all the requirements have been met. Landscape drawings are not required for H30A and H30B dwellings, however, plans are recommended.

(2) *General landscape treatment:* Trees, turf grass, groundcover, shrubs and other decorative landscape material shall be used to cover all disturbed ground not covered by building and paving; with Florida Friendly to be a minimum of 20 percent of the open space of the site.

(3) *Shrub and tree requirements:*

(a) A minimum of five trees of two different species and 25 shrubs shall be planted per lot. On corner lots an additional one tree and 10 shrubs shall be required. For all lots larger than 8,000 square feet in area, additional shrubs and trees shall be provided at the rate of one tree and ten shrubs per 2,000 square feet of lot area; however, there shall be no more than 15 trees and 100 shrubs required per acre.

(b) Where possible, a minimum of two trees shall be required in the front of the lot. Shrubs shall be incorporated in a manner on the site so as to be a visual screen for mechanical equipment or other accessories to the residence.

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(c) The required shade tree in this subsection shall be a minimum of 30 percent at an overall height of 12 feet to 14 feet with a minimum canopy spread of five feet and a DBH of 2½ inches. The small trees can be a maximum of 30 percent at 12 to 14 feet and minimum canopy spread of six feet and DBH of 2½ inches. Palm trees shall have a minimum of six feet of grey wood or clear wood and are counted as three for one (unless from the one for one list) and total palms can not make up more than 40 percent of the total trees.

(d) Street trees are required and additional to this subsection. Refer to plant material section for street tree requirements.

[Ord. No. 1558, § 2(Exh. A), 8-10-10; Ord. No. 19-1696 , § 2, 6-11-19]

Sec. 90-261. - Preparer's certification of landscape compliance.

(1) All zone or use districts, except H30A and H30B, shall require a preparer's certification of landscape compliance bearing the original letterhead of the designing firm and licensing number shall be submitted to and approved by the Town of Surfside prior to issuance of any final certificate of use, certificate of occupancy, or certificate of completion. The preparer's certification of landscape compliance shall contain a statement, signed and sealed by the landscape architect of record who prepared the approved plans, that the landscape and irrigation plans have been implemented and that all requirements of this chapter have been met. The original designing firm and the Town prior to the implementation of any changes and substitutions shall approve said changes or substitutions to the approved plan.

(2) For a new H30A and H30B residence, the owner or owner's agent may certify in writing that landscape and irrigation have been installed according to approved plan(s). All changes or substitutions must be approved by the Town of Surfside prior to installation.

(3) The Town shall inspect all projects for compliance prior to issuance of a certificate of use, certificate of occupancy, or certificate of completion.

[Ord. No. 1558, § 2(Exh. A), 8-10-10)]

Sec. 90-261. - Tree removal, tree relocation, tree preservation, and tree abuse.

Tree removal/relocation permits and native plant community vegetation removal permits are required prior to the removal/relocation of trees, specimen trees, or any vegetation, pursuant to section 24-60 of the Code of Miami-Dade County. Also, tree abuse including hack racking is prohibited within the Town. Tree protection barriers are required during site development to preserve existing and relocated trees. The Miami-Dade County Department of Environmental Resources Management is responsible for administering and enforcing these provisions.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Sec. 90-262. - Landscape manual and materials.

The Town of Surfside shall prepare and from time to time revise the landscape manual and any functional landscape materials regarding these requirements. Said manual and materials shall be made available to the public.

[Ord. No. 1558, § 2(Exh. A), 8-10-10]

Secs. 90-263-269. Reserved.

ARTICLE VI. - REASONABLE ACCOMMODATION AND RELIGIOUS LAND USE RELIEF PROCEDURES

Sec. 90-270. - Religious land use relief procedures.

This section implements the policy of the town for addressing possible unintended violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. Sec. 2000cc et seq. ("RLUIPA") and the Florida Religious Freedom Restoration Act of 1998 ("RFRA") identified during implementation of this Code, and related rules, policies, and procedures.

(1) A person, including a religious assembly or institution, may request relief under this section in writing by completing a religious land use relief request form, which is available from the town's planner. The form shall contain such questions and requests for information as are necessary for evaluating the relief requested.

(2) The town commission shall have the authority to consider and act on requests for reasonable relief submitted to the town planner, after notice as provided in subsection (7). The purpose of the public hearing is to receive comments, input and information from the public, which shall be taken under advisement by the commission. The commission may: (1) grant the relief requested, (2) grant a portion of the request and deny a portion of the request,

Commented [EM156]: This Section has been imported from the current code.

This section exists to address Federal law after *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004)

and/or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. Any denial shall be in writing and shall state the reasons the relief was denied. The commission may request additional information from the requesting party, specifying in sufficient detail what information is required and may defer a decision until the following regularly scheduled commission meeting. The requesting party shall have 15 days after the date the information is requested to provide the needed information.

(3) If the requesting party fails to provide the requested additional information within the 15 day period, the town attorney shall issue a written notice advising that the requesting party had failed to timely submit the additional information and that the request for relief shall be deemed abandoned and/or withdrawn and no further action by the town with regard to said reasonable relief request shall be required.

(4) In determining whether the reasonable relief request shall be granted or denied, the applicant shall be required to establish all of the following:

- (a) The applicant is a claimant under RLUIPA or RFRA; and
- (b) The town has imposed a substantial burden on the religious exercise of the applicant, whether a person, religious assembly or institution, and the burden is not a result of the town furthering a compelling governmental interest and is not the least restrictive means of furthering that compelling governmental interest; or
- (c) The town has imposed or implemented a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, discriminates on the basis of religion or religious denomination, excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions or structures within a jurisdiction.
- (d) No fee shall be imposed by the town in connection with a request for reasonable relief under this section. The town shall have no obligation to pay a requesting party's or an appealing party's attorney fees or costs in connection with the request for an appeal.
- (e) While an application for reasonable relief is pending before the town, the town will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.
- (f) The town shall display a notice in the town's public notice bulletin board and shall maintain copies available for review in the town clerk's office, advising the public that a request for relief under RLUIPA or RFRA has been filed with the town commission.

[Ord. No. 1510, § 2, 1-13-09]

Sec. 90-271. - Reasonable accommodation procedures.

Commented [MOU157]: From current code

(a) *Implementation of policy.* This section implements the policy of the town for processing of requests for reasonable accommodation to its ordinances, rules, policies, and procedures for persons with disabilities as provided by the Federal Fair Housing Amendments Act (42 U.S.C. 3601 *et seq.*) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 *et seq.*) ("ADA"). For purposes of this section, a "disabled" individual or person is an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the town's ordinances, rules, policies, practices and/or procedures (hereinafter, for the purposes of this section, the "Town Regulations") as provided by the FHA and the ADA pursuant to the procedures set out in this section. The town commission shall appoint a special master who shall make final determinations on applications for reasonable accommodations related to relief from Town Regulations.

(b) *Request to be in writing.* A request by an applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the town manager. The reasonable accommodation form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. For a reasonable accommodation to any of the town regulations pertaining to housing or zoning, the application, shall, at a minimum, require the following information:

- (1) Name and contact information for applicant or applicant's authorized representative;
- (2) Address of housing or other location at which accommodation is requested;
- (3) Description of reasonable accommodation required;
- (4) A description of the accommodation and the specific regulation(s) and/or procedure(s) from which accommodation is sought;
- (5) Reason(s) the reasonable accommodation may be necessary for the individual(s) with disabilities to use and enjoy the housing or other service;
- (6) A statement as to whether the applicant is seeking the accommodation in order to make housing and/or provision of housing financially viable, with supporting documentation;

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(7) A statement as to whether the applicant is seeking the accommodation is therapeutically necessary, with supporting documentation; and

(8) Proof of satisfactory fire, safety, and health inspections required by F.S. § 397.487, as amended, and other applicable law.

(c) *Medical information; confidentiality.* Should the information provided by the disabled individual to the town include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled individual(s), such individual(s) may, at the time of submitting such medical information, request that the town, to the extent allowed by law, treat such medical information as confidential information of the disabled individual(s). The town shall thereafter endeavor to provide written notice to the disabled individual(s), and/or their representative, of any request received by the town for disclosure of the medical information or documentation which the disabled individual(s) has previously requested be treated as confidential by the town. The town will cooperate with the disabled individual(s), to the extent allowed by law, in actions initiated by such individual(s) to oppose the disclosure of such medical information or documentation, but the town shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled individual(s).

(d) *Determination process.*

(1) The special master shall issue a written determination within 60 days of the date of receipt of a completed application or a date mutually agreeable to both the town and the applicant, except as provided in paragraph 3, below, and may, in accordance with federal law:

a. Grant the accommodation request,

b. Grant a portion of the request and deny a portion of the request and/or impose conditions upon the grant of the request, or

c. Deny the request in accordance with federal law. If the request is denied, the order shall state the grounds therefore. All written determinations shall give notice of the right to appeal.

(2) The notice of determination shall be sent to the applicant (i.e., the disabled individuals or representative) by certified mail, return receipt requested.

(3) If reasonably necessary to reach a determination on the request for reasonable accommodation, the special master or town manager or designee, prior to the end of said 60-day period, may request additional information from the applicant, specifying in sufficient detail what additional information is required. The applicant shall have 15 days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the 60-day period to issue a written determination shall no longer be applicable, and the special master shall issue a written determination within 30 days after receipt of the additional information or 90 days after the initial receipt of the application, whichever is later. If the applicant fails to provide all of the requested additional information within said 15-day period, the town manager or designee shall issue a written notice advising that the applicant has failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the town with regard to said reasonable accommodation request shall be required. Such time frames may be extended by mutual agreement of the town and the applicant.

(e) *Criteria for determination.* In determining whether the reasonable accommodation request shall be granted or denied, the applicant shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped, disabled or qualifying entities, as defined in the FHA and/or ADA. Further, the applicant must demonstrate that:

(1) A physical or mental impairment which substantially limits one or major life activities; a record of having such impairment; or that they are regarded as having such impairment.

(2) That the proposed accommodations being sought are reasonable and necessary. The foregoing (as interpreted by the courts in evaluating reasonable accommodation requests under the FHA or ADA) shall be the basis for a decision upon a reasonable accommodation request made by the special master, or by the town commission in the event of an appeal.

(3) The requested accommodation would not fundamentally alter the town's zoning scheme.

The special master may impose conditions or modifications he/she deems necessary to mitigate any factors which would fundamentally alter the town's zoning scheme or to protect the public health and safety or are reasonably necessary to assure compliance with his/her order.

(f) *Appeal of determination.* Within 30 days after the special master's determination on a reasonable accommodation request, or any order or action of the special master with respect to the application of this section, is mailed to the

applicant, such applicant may appeal the decision to the town commission. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the town commission who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed. Where the appeal is based upon a provision of the town regulations, the planning and zoning board shall first hold a hearing to make a recommendation on the appeal to the town commission.

(g) *Fees.* There shall be no fee imposed by the town in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the town commission, and the town shall have no obligation to pay an applicant's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

(h) *Stay of enforcement.* While an application for reasonable accommodation, or appeal or a determination of same, is pending before the town, the town will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

(i) *Miscellaneous provisions.* The following general provisions shall be applicable:

(1) The town shall display a notice in the town's public notice bulletin board (and shall maintain copies available for review in the building/permitting division, and the town clerk's office), advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.

(2) A disabled individual may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated by the disabled individual.

(3) The town shall provide such assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the form, filing an appeal; and appearing at a hearing, etc., to ensure the process is accessible.

(j) *Revocation of reasonable accommodation.* Any reasonable accommodation received shall be deemed revoked if the applicant or the property upon which the accommodation is granted is found in violation of any provision of the order granting the reasonable accommodation by a court of law or by the special master hearing code enforcement cases.

(k) *Recertification.* All reasonable accommodation requests approved by the town are valid for no more than two years. Recertification requests must be filed at least 90 days before the conclusion of the end of the two-year period of effectiveness of the reasonable accommodation order. The process for recertification shall follow the same requirements as set forth above for “Requests for Accommodation”, and review of recertification requests shall follow the same procedures as outlined above for new applications. The failure of the applicant to timely apply for annual recertification, or the denial of an application to recertify annually, shall result in the revocation of the approved reasonable accommodation. Recertification requests shall follow the same requirements as set forth above.

[Ord. No. 18-1693 , § 2, 12-11-18]

Sec. 90-272. Architecturally Significant Buildings.

Sec. 90-272.1. Applicability. This section shall apply to any structure designated as historic by the Miami-Dade County Historic Preservation Board and any other building designated an Architecturally Significant Building by the town commission under the process described herein.

Sec. 90-272.2. Designation of Architecturally Significant Building.

- (a) Requests for designation of an Architecturally Significant Building may be made to the town commission by the city manager, by resolution of the planning and zoning board or by motion of the city commission, by any property owner in respect to his own property, by resolution of the county historic preservation board, or by resolution of any organization whose purpose is to promote the preservation of architecturally significant sites. Any non-governmental applicant shall pay the appropriate fee for review set forth in the town’s schedule of fees.
- (b) *Review.* Upon receipt of a completed application and fees, if applicable, the town planner shall prepare an evaluation and recommendation for consideration by the planning and zoning board. After considering the department’s recommendation, a majority vote of the planning and zoning board shall be necessary to have the determination on designation reviewed for final approval by the town commission, which shall have full power to approve or deny the designation.
- (c) *Criteria for designation.* The town planner, planning and zoning board, and the town commission shall consider and evaluate the propriety of designating a building or structure as an Architecturally Significant Building, considering specifically the extent to which the building or structure(s):
 - a. Embodies the distinctive characteristics of a historical period, architectural or design style or method of construction.
 - b. Possesses high artistic values.

Commented [MOU158]: This new section is intended to address a concern expressed by the Mayor designation, regulation, and maintenance of architecturally significant buildings. It is modeled on Miami Beach’s historic preservation ordinance.

- c. Represents the work of a master, serve as an outstanding or representative work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage.
 - d. Any other consideration relevant to the design, architecture, or function of a building.
- (d) *Notice, Requests for Deferral, Permit Hold.* All hearings before the planning and zoning board or the Town Commission shall be noticed in the same manner as a special exception with additional notice mailed to the property owner of the site under consideration for designation by certified mail, return receipt requested postmarked at least 15 days before the hearing. The property owner of the property under consideration for designation shall be entitled to one deferral without cause. Any subsequent request for deferral by the property owner shall be for cause in the sole discretion of the appropriate board.
- (e) *Permit hold.* Building permits of any kind, including demolition permits, shall not be issued for a property under consideration after the postmark date of the notice to the property owner prior to the planning and zoning board, until the matter reaches final disposition. In the event that final disposition of the matter is to approve the designation, permits may thereafter only be issued for work in compliance with this section.
- (f) *Quasi-judicial hearings.* All public hearings on designation shall be quasi-judicial and shall be conducted subject to the town's procedures for quasi-judicial hearings.
- (g) *Appeal.* A decision of the town commission on designation may be appealed to a court of competent jurisdiction subject to the appropriate rules of procedure for that court. The hold on the building permit shall not dissolve until such time as a final decision is made, including any subsequent appeals available under general law.

Sec. 90-272.3. Certificate of Appropriateness. A certificate of appropriateness (COA) shall be required prior to the issuance of any permit for new construction, demolition, alteration, rehabilitation, renovation, restoration, signage or any other physical modification affecting any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with this section. In granting a certificate of appropriateness, the planning department may prescribe appropriate conditions and safeguards, either as part of a written order or on approved plans. Violation of such conditions and safeguards, when made a part of the terms under which the certificate of appropriateness is granted, shall be deemed a violation of these land development regulations.

- (a) An application for a certificate of appropriateness may be filed with the town planner at the same time or in advance of the submission of an application for a building permit. Copies of all filed applications shall be made available for inspection by the general public.
- (b) Applications shall, at a minimum, provide the information required for design review of commercial structures as set forth in this code, and shall include any additional, relevant information supporting the request.
- (c) The town planner shall review the application and shall refer the application to any consultant whose review and opinion is considered advisable. In addition,

where appropriate, the town planner may refer the application to the Miami-Dade County Office of Historic Preservation for their input. The town planner shall prepare a recommendation based on all relevant information and shall place the application on agenda of the planning and zoning board within 60 days of the application submittal.

- (d) Upon notice as required for design review of commercial buildings, the planning and zoning board shall consider the application at a quasi-judicial public hearing, and may approve, approve with conditions, or deny the application after considering the following:
 - a. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time, and any other guidelines/policies/plans adopted or approved by resolution or ordinance by the town commission.
 - b. Compatibility with surrounding properties as determined by exterior architectural features, general design, scale, massing and arrangement, texture and material and color, relationship to other structures and features in the vicinity, and the original architectural design or any subsequent modifications that have acquired significance
- (e) A decision of the planning and zoning board may be appealed by the town manager or the applicant within 15 days of the decision. If no appeal is filed within 15 days of the planning and zoning board decision, the decision shall be final. In the event of an appeal, the city commission shall hold a quasi-judicial public hearing to consider the matter de novo under the applicable criteria and may approve, approve with conditions, or deny the application. A decision of the town commission on designation may be appealed to a court of competent jurisdiction subject to the appropriate rules of procedure for that court.

Sec. 90-272.4. Maintenance and Demolition by Neglect. The owner of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with this section, whether vacant or inhabited, shall be required to properly maintain and preserve such building or structure in accordance with standards set forth in the applicable Florida Building Code, this article and this Code. For purposes of this section, demolition by neglect is defined as any failure to comply with the minimum required maintenance standards of this section, whether deliberate or inadvertent.

- (a) Any building or structure designated as an Architecturally Significant Building shall be maintained according to minimum maintenance standards, preserved against decay, deterioration and demolition and shall be free from structural defects through prompt and corrective action to any physical defect which jeopardizes the building's historic, architectural and structural integrity; such defects shall include, but not be limited to, the following:
 - a. Deteriorated or decayed facades or facade elements, including, but not limited to, facades which may structurally fail and collapse entirely or partially;

- b. Deteriorated or inadequate foundations;
 - c. Defective or deteriorated flooring or floor supports or any structural members of insufficient size or strength to carry imposed loads with safety
 - d. Deteriorated walls or other vertical structural supports, or members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration;
 - e. Structural members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration;
 - f. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or missing windows or doors;
 - g. Defective or insufficient weather protection which jeopardizes the integrity of exterior or interior walls, roofs or foundation, including lack of paint or weathering due to lack of paint or other protective covering;
 - h. Any structure which is not properly secured and is accessible to the general public;
 - i. Any fault or defect in the property that renders it structurally unsafe or not properly watertight; or
 - j. The spalling of the concrete of any portion of the interior or exterior of the building.
- (b) *Notice, administrative enforcement and remedial action.* If any designated building or structure, in the opinion of the town commission, planning and zoning board, town manager, or the town's building official, falls into a state of disrepair so as to potentially jeopardize its structural stability and/or architectural integrity, and/or the safety of the public and surrounding structures, or fails to satisfy any of the required minimum maintenance standards above, the building official shall have right of entry onto the subject property and may inspect the subject property after 48 hours' notice to the owner of intent to inspect. In the event the property owner refuses entry of any town official onto the subject property, the town may file an appropriate action compelling the property owner to allow such officials access to the subject property for an inspection. Upon completion of the inspection of the subject property, a report delineating the findings of such inspection, as well as any remedial action required to address any violation of the required minimum maintenance standards, shall be transmitted to the property owner. The town may require that the property owner retain a professional structural engineer, registered in the state, to complete a structural evaluation report to be submitted to the town. Upon receipt of such report, the property owner shall immediately take steps to effect all necessary remedial and corrective actions to restore the structure's or building's compliance with the required minimum maintenance standards herein; remedial action in this regard shall include, but not be limited to, the structural shoring, stabilization and/or restoration of any or all exterior walls, including their original architectural details, interior loadbearing walls, columns and beams, roof trusses and framing, the blocking of openings and securing of existing windows and door openings, as well as

sealing of the roof surface against leaks, including from holes, punctures, open stairwells, elevator shafts and mechanical systems roof penetrations as necessary to preserve the building or structure in good condition. The owner shall substantially complete such remedial and corrective action within 30 days of receipt of the report, or within such time as deemed appropriate by the building official, in consultation with the town manager. Such time may be extended at the discretion of the building official, in consultation with the town manager.

- (c) *Injunction and remedial relief.* If the owner of the subject property, in the opinion of the building official, fails to undertake and substantially complete the required remedial and corrective action within the specified time frame, the town may, at the expense of the property owner, file an action seeking an injunction ordering the property owner to take the remedial and corrective action to restore the structure's or building's compliance with the required minimum maintenance standards herein and seeking civil penalties as herein provided; Such civil action may only be initiated at the discretion of the town manager or town commission. The court shall order an injunction providing such remedies if the town proves that the property owner has violated the required minimum maintenance standards or any portion of this section.
- (d) *Civil penalties.* Violation of this section, or of the terms of any certificate of appropriateness, shall be punishable by a civil penalty of up to \$5,000.00 per day, for each day that the remedial and corrective action is not taken.
- (e) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any designated building or structure which does not involve a change of design, appearance or material, and which does not require a building permit or certificate of appropriateness. Any designated building or structure that is the subject of an application for a certificate of appropriateness for demolition shall not have its architectural features removed, destroyed or modified until and only if the certificate of appropriateness is granted. Owners of such property shall be required to maintain such properties in accordance with all applicable codes up to the time the structure is demolished.
- (f) *Vacant buildings and structures.* The owner of any designated building or structure which is proposed to be vacated and closed, or is vacated and closed for a period of four weeks or more, shall make application for certificate of appropriateness approval and a building permit to secure and seal such building or structure. The owner or the owner's designated representative, shall notify the town's building official and town manager, in writing of the proposed date of vacating such building or structure.
- (g) *Liens based on civil penalties.* Any and all liens referenced or imposed hereafter, based on the foregoing provisions, 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 Fla.

Stat. 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 Florida Statutes, or may be foreclosed per Fla. Stat. 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 section.

Secs. 90-273 — 90-280. Reserved.

Appendix A – previously approved design guidelines

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