

RESOLUTION NO. 2012 - 2087

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN CHARTER TO PROVIDE REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS; PROVIDING FOR COPIES OF THE CHARTER AMENDMENT TO BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE TOWN CLERK TO UTILIZE THE SERVICES OF MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS; PROVIDING FOR INCLUSION IN THE CHARTER; TO ACCEPT THOSE CHARTER PROVISIONS SET FORTH IN SAID CHAPTER AND ONLY THOSE APPROVED BY A MAJORITY OF THE VOTERS ON NOVEMBER 6, 2012 ACCORDING TO OFFICIAL RESULTS; TO AMEND THE TOWN CHARTER TO ADD A PREAMBLE AND CITIZEN'S BILL OF RIGHTS; AMENDING ARTICLE VI. SECTION 105 GENERAL AND SPECIAL ELECTIONS OF COMMISSION MEMBERS; ARTICLE IX. SECTION 128 MANDATORY CHARTER REVIEW; ARTICLE I. SECTION 4 GENERAL POWERS OF TOWN; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; DIRECTING THE TOWN CLERK TO AMEND THE TOWN CHARTER IN ACCORDANCE WITH THE ELECTION RESULTS AND THIS RESOLUTION; PROVIDING FOR INCLUSION INTO THE TOWN CHARTER AND CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 97.1 of the Town Charter of the Town of Surfside ("Town") referencing Section 5.03 of Article 5 of the Home Rule Charter for Miami-Dade County provides the manner in which charter amendments shall be proposed; and

WHEREAS, the Town Commission wishes to submit these proposed charter amendments for approval or rejection by the electors; and

WHEREAS, pursuant to law, the electors of the Town shall have the power to approve or reject at the polls any ordinance submitted by the Town Commission to a vote of the electors.

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

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Proposed Amendments:¹

The Charter of the Town of Surfside subject to a vote of the electorate is hereby amended as follows:

- A. To add a Preamble and Citizen’s Bill of Rights which shall read as follows:

“PREAMBLE

We, the people of the Town of Surfside (hereinafter, “Town”), under the Constitution and laws of the State of Florida, in order to secure the benefits of local self-government and to provide for an honest and accountable Commissioners-Manager government, do hereby adopt this Charter and confer upon the Town the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation and regional cooperation.

CITIZEN'S BILL OF RIGHTS

- A. This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administration, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:
1. Convenient Access. Every person has the right to transact Town business with a minimum of personal inconvenience. It shall be the duty of the Town Manager and the Commission to provide, within the Town's budget limitations, reasonably convenient times and places for required inspections of Town records, access to notice of public meetings, and for transacting business with the Town.
 2. Truth in Government. No Town official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
 3. Public Records. All audits, reports, minutes, documents and other public records of the Town and its boards, agencies, committees, departments, and authorities shall be open for inspection at reasonable times and places convenient to the public.
 4. Minutes and Ordinance Register. The Town Clerk shall maintain and make available for public inspection an ordinance register separate from minutes showing the votes of each member of the Commission on all ordinances and resolutions listed by descriptive

¹ The words that are stricken through are intended to be deleted from this section of the Town Charter once it is approved. The words that are underscored constitute the proposed amendments to the section once it is approved.

title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than thirty (30) days after the conclusion of the meetings.

5. Right to be Heard. So far as the orderly conduct of public business permits, any interested person has the right to appear before the Town Commission or any Town agency, board, or committee for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the Town. Matters shall be scheduled for the convenience of the public. The Town Commission shall adopt agenda procedure and schedule hearings in a manner that will enhance the opportunity for public participation. Nothing herein shall prohibit any Town entity or agency from imposing reasonable time limits and procedures for the presentation of a matter.

6. Right to Notice. Persons entitled to notice of a Town hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

7. No Unreasonable Postponements. No matter, once having been placed on a formal agenda by the Town, shall be postponed to another day except for good cause shown in the opinion of the Mayor, Town Commission, Board or agency conducting such meeting, and then only on condition that the affected person shall, upon written request, receive mailed notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.

8. Right to Public Hearing. Upon a timely written request from any interested party, and after presentation of the facts to and approved by the Commission, a public hearing shall be held by any Town agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Office of the Town Attorney or to any body whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his or her counsel shall be entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

9. Notice of Action and Reasons. To the extent the Town is required to do same by law, notice shall be given of the denial of any decision of any Town proceeding at the

conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.

10. Manager's and Attorney's Reports. The Town Manager and Town Attorney shall periodically make public status report on all material matters pending or concluded within their respective areas of concern.

11. Budgeting. In addition to any budget required by state statute, the Town Manager at the direction of the Town Commission shall prepare a budget showing the projected revenues and expenses of each department for each budget year. Prior to the Town Commission's first public meeting on the proposed budget required by state law, the Town Manager shall make public a budget summary setting forth the projected revenues and expenses of the various departments and reflecting the personnel and their title in each department, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.

12. Quarterly Budget Comparisons. The Town Manager shall make public not less than quarterly a report showing the actual revenues and expenses during the quarter just ended against one quarter of the proposed annual revenues and expenses set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

13. Representation of Public. The Town Commission shall endeavor, when deemed appropriate, to designate one or more individuals to represent the Town at all proceedings before county, state and federal regulatory bodies, significantly affecting the Town and its residents.

B. The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the Town. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the Town. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

C. Remedies for Violations. In any suit by a citizen alleging a violation of this Article filed in the Miami-Dade County Circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover reasonable reasonable costs and attorneys' fees as fixed by the court. ~~Any public official or employee who is found by the court to have willfully violated this Article shall forthwith forfeit his or her office or employment.~~ *to be removed*

D. Construction. All provisions of this Bill of Rights shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Bill of Rights shall be declared invalid, it shall not affect the validity of the remaining provisions."

[See Ballot Question 1 in Paragraph 3 below.]

- B. To amend Subsection (8), Sec. 105. "General and special elections of commission members", Article VI. **Nominations and Elections** as follows:

Section 105. General and Special Elections of Commission Members

(8) " ~~If more than five (5)~~ ^{changed} less than five (5) candidates qualify for the general Commission election, and or if five (5) or more candidates qualify and if after the last date for qualifying and before the date of the election the number of candidates is reduced for any lawful reason to ~~five (5) or less than five (5)~~, the election shall be postponed by the Commission to a date not less than twenty-eight (28) days nor more than thirty-five (35) days from the scheduled date. Qualifying of candidates shall be reopened until fourteen (14) days before the new election date. In the event that no qualified elector of the Town timely qualifies to run for the Commission office under the terms of this provision, and only after advertised notice has been published of its intent to do so, the duly elected Commission shall appoint by a majority at the next regularly scheduled Town Commission meeting, a qualified elector of the Town to serve in the office of Commissioner for the two (2) year Commission term for the unexpired portion of the term. The terms of all incumbent Commissioners shall be extended until their successors are duly elected.

[See Ballot Question # 2 in Paragraph 3 below]

- C. To add Section 128 of **ARTICLE IX. - MISCELLANEOUS PROVISIONS.**

Section 128. Mandatory Charter Review. Within the first twelve (12) months after the adoption of this provision, the Town Commission shall commence Charter Review. Thereafter every 10th year commencing December 2022, the Commission shall appoint a Charter review board ("Charter Board") consisting of five persons. Each Commissioner shall be entitled to appoint one Charter Review Board member but that appointee shall be ratified by a majority of the Commission. The review Board shall commence its proceedings within forty-five (45) days after appointment by Commission and upon completion of their work and written recommendations to the Commission, the Town Commission shall consider said recommendations at the next regularly scheduled Commission meeting. This provision does not inhibit the Town Commission or the electorate at any time from initiating a charter amendment in accordance with Article VIII ("Initiative and Referendum") hereinabove.

[See Ballot Question # 3 in Paragraph 3 below]

D. To amend Section 4. General powers of town; powers not deemed exclusive of Article I. Incorporation; Form of Government; Powers as follows:

“The density, intensity, and height of development and structures within the Town of Surfside shall not exceed the maximum allowable units per acre floor areas, ~~maximum allowable~~ floor area ratios or the maximum allowable building heights in stories and feet that are set out in the Town of Surfside Comprehensive Plan or the Code of the Town of Surfside, whichever provisions are most restrictive, which ~~are~~ were in effect in 2004 ~~on the date that this amendment is approved by a vote of the electors of the Town of Surfside.~~ Upon becoming effective, ~~t~~ This amendment to the Town of Surfside Charter shall not be repealed, revised, amended, or superseded unless repeal, revision, amendment, or superseding provisions are placed on the ballot at a regularly scheduled election of the Town of Surfside and approved by a vote of the electors of the Town of Surfside.

E. Section 3. Form of Ballot:

A. The form of ballot of the charter amendments provided for in Section 2 shall be substantially, as follows:

1. PREAMBLE AND CITIZENS' BILL OF RIGHTS

Shall the Town Charter be amended to add a Preamble and “Citizen’s Bill of Rights” that creates certain individual rights and guaranteeing those rights to citizens of Surfside be added to the Town Charter?

Yes []
No []

2. VACANCY IN CANDIDACY

The Town Charter currently provides an election process which includes deferral of the election if more than five (5) candidates qualify for elections and the number becomes reduced for any lawful reason. It is being proposed that the same process apply and in the circumstance where less than five (5) candidates initially qualify for election.

Shall the above-described amendment be adopted?

Yes []
No []

3. MANDATORY CHARTER REVIEW

It is being proposed that within the first (12) twelve months after adoption of this provision, the Town shall commence charter review and thereafter every tenth (10th) year commencing in December 2022, a charter review board shall be appointed by the Town Commission for purposes of charter review.

Shall the above-described amendment be adopted?

Yes []

No []

4. GENERAL POWERS; RESTRICTION ON DEVELOPMENT

On March 16, 2004 the electorate adopted a limitation on height, density and intensity of development allowable as of that date. It is being proposed that the restriction be maintained but the language be clarified and reinforced to reflect that density means number of units per acre, that maximum floor area ratios be properly referenced as floor area ratio, and heights be defined in both stories and feet.

Shall the above-described amendment be adopted?

Yes []

No []

B. That the form of ballot set forth above may be revised by a Resolution of the Town Commission.

Section 4. Available for Public Inspection. Charter Amendment to be Available for Public Inspection, and for the Town Clerk to Utilize the Services of Miami-Dade County Supervisor of Elections: The place, information and the full text of the proposed charter amendments are available at the Office of the Town Clerk located at 9293 Harding Avenue, Surfside, Florida. Copies of this Resolution providing for this charter amendment subject to this referendum approval is on file in the Office of the Town Clerk and available for public inspection during regular business hours. The Town Clerk is authorized to utilize the services of Miami-Dade County Supervisor of Elections for any assistance required in the administration of the election.

Section 5. Providing for Inclusion in the Town Charter: It is the intention of the Mayor and Town Commission and its is hereby ordained that the provisions of this Resolution shall

become and made a part of the Charter of the Town of Surfside, Florida, as to each charter amendment measure approved by a majority of voters on such measure in such election; that the sections of this Resolution may be renumbered or relettered to accomplish such intentions; and the word "Resolution shall be changed to "section" or other appropriate word.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Town at least 30 days prior to said election, the first publication to be in the fifth week prior to the election, and the second publication to be in the third week prior to the election, and shall be in substantially the following form:

"NOTICE OF ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT
PURSUANT TO RESOLUTION NO. _____
ADOPTED BY THE TOWN OF SURFSIDE,
FLORIDA, AN ELECTION HAS BEEN CALLED
AND ORDERED TO BE HELD WITHIN THE
TOWN ON **TUESDAY, THE 6TH DAY OF
NOVEMBER, 2012** BETWEEN THE HOURS OF
7:00 A.M. AND 7:00 P.M., AT WHICH TIME
THE FOLLOWING CHARTER AMENDMENT
PROPOSALS SHALL BE SUBMITTED TO THE
QUALIFIED ELECTORS OF THE TOWN.

**The full text of the proposed Town Charter Amendments is available at the
office of the Town Clerk located at 9293 Harding Avenue, Surfside, Florida.**

Town Clerk

Section 7. Authorization of Town Officials. The Town Manager and Town Attorney are hereby authorized to take all steps necessary to complete the execution of the terms of this Resolution.

Section 8. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 17 day of June, 2012.

Motion by Commissioner ^{Vice-mayor} Karukin Second by Commissioner Kligman.

FINAL VOTE ON ADOPTION

Commissioner Michelle Kligman

Yes

Commissioner Sheldon Lisbon

Yes

Commissioner Marta Olchyk

Yes

Vice Mayor Michael Karukin

Yes

Mayor Daniel Dietch

Yes



Daniel Dietch, Mayor

Attest:



Sandra Novoa, Town Clerk

**Approved as to form and legal sufficiency
For the Town of Surfside only:**



Lynn M. Dannheisser
Town Attorney