

ORDINANCE NO. 10-1548

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 2 "ADMINISTRATION" BY ADDING ARTICLE VIII. "EMERGENCY MANAGEMENT PROCEDURES;" PROVIDING FOR PURPOSE, PROVIDING FOR DEFINITIONS, AND EMERGENCY MANAGEMENT STRUCTURE; PROVIDING DECLARATION OF A STATE OF EMERGENCY, TERMINATION OF A STATE OF EMERGENCY, THE SUSPENSION OF LOCAL BUILDING REGULATIONS, AND THE CERTIFICATION OF EMERGENCY CONDITIONS; PROVIDING FOR COORDINATION WITH MIAMI-DADE COUNTY; PROVIDING FOR PENALTY; PROVIDING FOR REPEAL, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE.

**WHEREAS**, it is the intent of the Town Commission of the Town of Surfside, Florida, by enacting this legislation, to provide the necessary organization, powers and authority to enable the timely and effective use of all available Town resources to prepare for, respond to, and recover from emergencies, natural and man-made, which may effect the security, safety, general welfare or health of the Town of Surfside and its residents; and

**WHEREAS**, it is the intent of the Town Commission that nothing contained within this ordinance shall relieve Town Departments of their normally assigned duties, responsibility and functions; and

**WHEREAS**, it is the intention of the Town Commission to address all types of emergencies including, but not limited to, the preservation of the public peace as defined in Florida Statutes Section 870.041 et seq; and

**WHEREAS**, the Town Commission is authorized to create emergency management plans, pursuant to Chapter 252, Florida Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, THAT:**

**Section 1.**     **Purpose.** It is the purpose of this ordinance to provide a framework for the operation of the Town during natural or man-made disasters.

**Section 2.**     **General.**

A. Pursuant to Chapter 252, Florida Statutes, which authorizes the waiver of procedures and formalities otherwise required of a political subdivision in the event of a state of emergency and allows whatever action is necessary to ensure the health, safety and welfare of a community when a quorum of the Town Commission is unable to meet, the mayor, or in the mayor's absence, the vice-mayor is empowered to declare a local state of emergency whenever he shall determine that a natural or manmade disaster or emergency has occurred, or that the occurrence or threat of one is imminent and requires immediate and expeditious action.

(1) "Emergency" shall mean any occurrence, or threat thereof, whether natural, technological or manmade, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(2) A state of emergency shall be declared by resolution. The state of emergency shall continue until the mayor and the Town Manager finds that the threat or danger no longer exists or until an emergency meeting of a quorum of the Town Commission can take place and terminate the state of emergency by resolution.

(3) The resolution declaring a state of emergency shall activate the Town of Surfside Emergency Operations Plan shall be the authority for use or distribution of any supplies,

equipment, materials, or facilities assembled or arranged to be made available pursuant to such plans and/or procedures.

(4) The resolution declaring a state of emergency shall empower the mayor and the Town Manager to act on behalf of the Town in requesting the National Guard of the Army, Coast Guard, or other law enforcement agencies as necessary, to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

(5) Nothing in this section shall be construed to limit the authority of the Town Commission to declare or terminate a state of emergency and take any action authorized by law when sitting in regular or special session.

(6) The declaration of a state of emergency shall suspend all procurement procedures and requirements contained in state law or in the Code of Ordinances and the following procedures shall apply during the state of emergency:

(a) Town Manager: The Town manager is empowered to authorize the purchasing agent to secure any needed emergency supplies, materials, equipment or services, using the most efficient and effective procurement methods in each procurement as determined by the purchasing agent. The Town manager is authorized to exceed the current formal bid threshold of the procurement code making such purchases. The Town manager shall provide a full report of all such purchases to the town council at the next earliest available council meeting.

(b) Department head: With the prior approval of the Town manager or the purchasing agent, if so designated by the Town manager, the head of any department may purchase any needed emergency supplies, materials, equipment or services using the most effective procurement methods in each procurement as determined by the department head and the purchasing agent.

(c) Other municipalities: The Town manager or purchasing agent, if so designated by the Town manager, may request another municipality to purchase for the town any needed emergency supplies, materials or equipment, or the Town may purchase from another municipality any needed emergency

supplies, materials or equipment that such municipality has available. The Town manager is authorized to exceed the current formal bid threshold in making such purchases from or through another municipality. The Town manager shall provide a full report of such purchases to the Town Commission at the next earliest available commission meeting.

7. The declaration of state of emergency shall waive all procedures and formalities required by law or by the Code of Ordinances relating to:

(a) The performance of Public Works and taking whatever action is necessary to insure the health, safety and welfare of the community.

(b) Entering into contracts.

(c) Incurring obligations.

(d) Employing permanent or temporary workers.

(e) Utilization of volunteer workers.

(f) Rental of equipment.

(g) Acquisition and distribution with or without compensation of supplies, materials and facilities.

(h) Appropriation and expenditure of public funds.

8. The declaration of a state of emergency may establish a curfew throughout the Town of Surfside between the hours of 7:00 p.m. and 7:00 a.m. If the imposition of a curfew is deemed necessary, the curfew may be established by resolution declaring the state of emergency.

9. The declaration of a state of emergency shall empower the town manager to authorize employees of the town and other agencies, including the United States Army Corps of Engineers, to enter onto private property for the purpose of debris removal and clearing necessary to protect the health, safety and welfare of the community.

**Section 3. Termination of a State of Emergency.** A state of emergency shall be terminated by a vote of the Town Commission if practicable or upon the certification of the Town Manager that the conditions leading to a state of emergency established under Sections 870.041 – 870.046, Florida Statutes shall terminate at the end of a period of seventy –two (72) consecutive hours after the declaration of the emergency, and must be confirmed by the Town Commission by resolution at the next regular meeting, unless the nature of the emergency renders a meeting of the Town Commission impossible. Notice of termination of the emergency declaration shall be made to the public by the Town Manager by the same means as the declaration of the state of emergency.

**Section 4. Police Emergencies.**

(A) An emergency may be declared because of civil unrest or imminent threat to public peace or order when the Chief of Police, or if unavailable, the next highest ranking officer in the Police Department chain of command certifies to the Town Manager that an emergency condition arising from hostile actions of others, armed or unarmed or other imminent threat to public peace or order, requires extraordinary measures for control, including, but not limited to curfew; blockade; proscription of the sale of firearms, other weapons or alcohol beverages; explosives and combustibles; evacuation; and other similar actions. The Town Mayor/Vice-Mayor may issue a declaration of a state of emergency in accordance with Section 2.

(B) The declaration of state of emergency because of civil unrest or imminent threat to public peace or order, shall authorize the issuance of emergency resolutions or orders and other appropriate resolutions or orders, as may be required and may, if applicable, require automatic emergency measures pursuant to Section 870.044, Florida Statutes. In addition,

additional discretionary emergency measures pursuant to Section 870.045, Florida Statutes may be issued.

(C) A state of emergency may be declared because of fire and hazardous materials emergencies, utility emergencies, and weather emergencies when the Chief of Police, or if unavailable, the next highest ranking officer in the Police Department chain of command certifies to the Town Manager that an emergency condition exists. The Town Mayor/Vice-Mayor may issue a declaration of a state of emergency pursuant to Section 2 because of fire or hazardous materials emergencies, utility emergencies, and weather emergencies shall authorize, respectively, the issuance of emergency resolutions or orders.

**Section 5. Fire and Hazardous Materials Emergencies.**

(A) An emergency may be declared because of fire or hazardous materials incident emergency when the Miami-Dade County Fire Chief, or the designee of the Miami-Dade Fire Chief certifies to the Town Manager that an actual or potential condition arising from fire, explosion, chemical spill or release, building or bridge collapse, or plane, or other vehicle accident, requires extraordinary measures for control, including, but not limited to calling out of off-duty and reserve personnel; assistance by outside agencies; evacuation ; and other similar actions. The Town Mayor/Vice-Mayor may issue a declaration of a state of emergency in accordance with Section 2.

(B) The declaration of state of emergency because of fire and hazardous material emergency shall authorize the issuance of emergency resolutions or orders and other appropriate resolutions or orders, as may be required.

**Section 6. Suspension of Local Building Regulations.** The Town Manager may authorize a suspension of local building regulations during and following a declared state of emergency

when the Chief Building Official certifies to the Town Manager that action is necessary for the expeditious restoration of property damaged by the emergency event, unless terminated by the Town Commission. Such suspension of building regulations may be applied on a case-by case basis as required to remedy specific conditions and to facilitate the provision of emergency housing for disaster victims. The Chief Building Official shall specify the provisions of the building code to be suspended and the reasons therefore, when certifying the necessity of such suspension to Town Manager.

**Section 7.**     **Coordination with Miami-Dade County.** The Town Manager shall coordinate the Town's emergency operations plan with emergency management programs established by Miami-Dade County.

**Section 8.**     **Prohibition on Price Gouging.**

(A) Upon declaration of an emergency and during the duration of such emergency, it shall be prima facie evidence that an unlawful method of competition and an unfair and deceptive trade act or practice has occurred if any individual or business entity doing business in the Town charges more than the average retail price for any consumer good and such price exceeds the average price at which the same or similar consumer good was readily obtainable in the Town during the thirty (30) days immediately prior to a declaration of a state of emergency; or the charges represent a gross disparity between the price of the consumer good or dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty (30) days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease

of any dwelling unit or self-storage facility, or national or international market trends; or for a person or his agent or business entity or its employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any consumer good including, but not limited to, supplies, services, provisions or equipment that is necessary for consumption or use as a direct result of the emergency.

(B) This Section does not prevent the seller of consumer goods from charging an amount in excess of the average retail price if such higher price is the direct result of, and limited to, any increased costs due to the transportation of the consumer good during the state of emergency or any increased cost for the consumer goods from the manufacturer, distributor or wholesaler to the seller. In such instances, only the actual cost increase per item from the manufacturer, distributor or wholesaler can be added to the average retail price.

(C) A price increase approved by an appropriate government agency shall not be in violation of this ordinance.

(D) This Section shall not apply to sales by growers, producers or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

**Section 9. Portable Generators.**

(A) The use and operation of a portable auxiliary electrical generator is prohibited within or on the following areas:

(1) If the exhaust system is within ten (10) feet of any opening (includes, but is not limited to, doors and windows) into the building structure;



(2) Within garages, enclosed or partially enclosed areas, or under eaves or other overhangs;

(3) On roofs or roof areas, balconies, ingress/egress areas and discharge ways, including but not limited to walkways, stairways and stairwells.

(B) The generator shall be operated in a safe manner and in accordance with the National Electric Code and all other applicable laws, regulations and Town ordinances.

**Section 10.** **Penalty.** Any person, firm or corporation who violates any provision of this Article, for which another penalty is not specifically provided herein or required by law shall, upon conviction, be subject to such fine or imprisonment or both as provided by the Town Code. Each day that a violation shall continue to exist shall constitute a separate offense.

**Section 11.** **Repeal.** All Ordinances or parts of Ordinances in conflict or inconsistent with this ordinance are repealed.

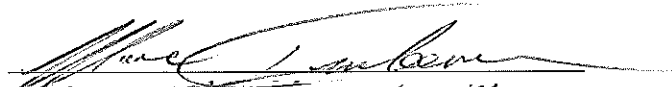
**Section 12.** **Severability.** If any word, clause, phrase, sentence, paragraph or section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this Ordinance.

**Section 13.** **Inclusion in the Code.** It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Town of Surfside; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

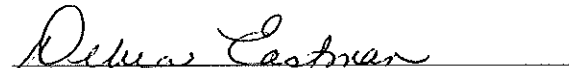
**Section 14. Effective Date.** Because of the emergency nature of this Ordinance, it shall become effective immediately upon acceptance at first hearing, notwithstanding adoption at second reading.

**PASSED and ADOPTED** on First Reading the 12th day of January, 2010.


**PASSED and ADOPTED** on Second Reading this 9<sup>th</sup> day of February, 2010.

  
Marc Imberman, Vice Mayor

Attest:

  
Debra E. Eastman, MMC  
Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

  
Lynn M. Dannheisser  
Town Attorney

Moved by: Howard Weinberg

Second by: Steve Lenni

**Vote:**

Mayor Burkett	yes	<input checked="" type="checkbox"/>	no	_____
Vice Mayor Imberman	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Calderon	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Levine	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Weinberg	yes	<input checked="" type="checkbox"/>	no	_____