

ORDINANCE NO. 2011 - 1571

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96<sup>TH</sup> AND 94<sup>TH</sup> STREET AND HARDING AVENUE, MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") is in the process of developing, studying and creating a Town Center vision and concept for the zoning district known as SD-B40 located between 96<sup>th</sup> and 94<sup>th</sup> Streets and Harding Avenue (hereinafter referred to as the "Downtown Business District") and a strategy needs to be developed for the revitalization of the District; and

WHEREAS, the Ad Hoc Downtown Vision Process Advisory Committee and the Town Commission are currently reviewing various regulations that may be adversely affecting the developing vision among other things of the Downtown Business District in the Town; and

WHEREAS, it has become apparent that an appropriate mix of retail, restaurant, and non-retail service uses is required in order to ensure the vitality and commercial character of the Downtown Business District in the Town; and

WHEREAS, it is in the best interests and welfare of the Town and its residents to require that the Town consider whether additional or revised regulations are necessary or

appropriate to preserve or enhance the mix and development of retail and non-retail uses in the Town's non-residential business district, including potentially the limitation on the location and/of frequency of location of allowable uses within the relevant District; and

**WHEREAS**, the establishment of new, non-retail uses in the Town during the pendency of any such consideration may irreversibly change the character of the Downtown Business District to the possible detriment of the Town's residents and the overall revitalization effort being developed and accordingly the Town needs to maintain the status quo; and

**WHEREAS**, it is incumbent on the Town to ensure that the redevelopment and/or revitalization of the Downtown Business District conforms to the Town's goals and wishes and as such the Town Manager advises that there is an urgent need to undertake a study of the Downtown Business District including consultation with FDOT, parking consultants, Town planners and engineers; and

**WHEREAS**, Town staff has already begun to meet with consultants concerning the Town's developing goals and objectives as it relates to the Downtown Business District; and

**WHEREAS**, the Planning & Zoning Board Resolution 11-01 enacted on February 24, 2011 recommended the Town Commission consider a temporary moratorium upon the issuance of certificates of use and certificates of occupancy for newly renovated or remodeled spaces in the Downtown Business District, subject to adequate protection of private property rights.

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

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby made a specific part of the Ordinance.

**Section 2. Temporary Moratorium Imposed.** There is hereby established a temporary moratorium on the processing of any and all site plans, building permits, certificates of occupancy pursuant to Section 90-21 of the Code of Surfside, and certificates of use pursuant to Section 90-27 of the Code of Surfside in the Downtown Business District delineated in Exhibit "A" attached hereto and subject to the provisions of Section 4 herein. Except as otherwise provided herein, no department of the Town shall issue any certificates of use or occupancy, development orders, or undertake the review and approval of any site plans, building permits or development plans with respect to such uses within such area, during the term of the moratorium established hereby.

**Section 3. Term:** the moratorium established hereby shall be for a period of not more than one hundred and eighty (180) days from the effective date hereof. Zoning in progress shall apply to this Ordinance.

**Section 4. Exemption:** the moratorium established hereby shall not apply to the following:

- a.) Building, plumbing, mechanical and electrical permits for the repair of existing building elements.
- b.) Certificates of use or occupancy for the re-establishment or continuation of a specific occupancy or use legally existing and previously licensed at the location to which a certificate of occupancy and certificate of use will be applicable.
- c.) The renewal of a previously existing building, plumbing, mechanical or electrical permits for new construction.
- d.) The approval of a plat or site plan, a bonafide application for which was made sixty (60) days prior to the effective date hereof.

e.) To the extent a lease for the proposed premises is executed and/or a Business Tax receipt has been issued prior to the effective date of this Ordinance, The Town Manager in his discretion may exempt an applicant.

**Section 5. Waivers.** That the Town Commission, after a public hearing, duly advertised and properly noticed, may grant a waiver to the temporary moratorium provided above and authorize the issuance of approvals for a specific building, where the Town Commission determines that based upon substantial competent evidence, the specific use or activity requested by the waiver application will not detrimentally affect the preparation and implementation of the developing vision of the Downtown Business District and/or zoning regulations, will be compatible with surrounding uses, and will not impair the public health, safety or welfare.

**Section 6. Study and Town Manager.** The Town Manager is hereby authorized and directed to coordinate with the Town's consultants and Ad Hoc Downtown Advisory Committee as well as such other departments of the Town and all other persons, entities or agencies, as the Town Manager shall deem appropriate to provide for a study to determine the most appropriate uses for the Downtown Business District (delineated in Exhibit "A") in light of the Town's future re-vitalization plans for the area. The Town Manager shall report back to the Mayor and Town Commission the results of the study.

**Section 7. Vested Rights.**

(A) That nothing in this ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

(1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and

(2) Upon which the property owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

(3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) That, except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section 7 must file an application with the Town Manager for a vested rights determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by a fee of \$1500 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the Town Manager and other documentary evidence supporting the claim, which fee may be waived administratively if a substantial inequity would result from charging such fee. The Town Manager shall review the application and based upon the evidence submitted shall make a determination as to whether the property owner has established vested rights. The Town Manager's decision shall be subject to appeal, by only the applicant for a vested rights determination, to the Town Commission by notice of appeal filed with the Town Manager within ten (10) days after the Town Manager's written decision. In the event of a timely appeal, the Town Commission shall hold a public hearing on the appeal pursuant to Town Code Section 90-58 et. seq., and based upon the evidence submitted shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the temporary moratorium shall not be applied.

(C) That any property owner claiming vested rights under this Section 7 by virtue of a Vested Rights Determination Agreement with the Town shall not be subject to this temporary moratorium and shall be authorized to apply for certificates of use and certificates of occupancy in accordance with the Vested Rights Determination Agreement, by filing a copy of the Vested Rights Determination Agreement with the Town Manager, accompanied by a letter which references this paragraph (C), within thirty (30) days after the effective date of this Ordinance.

**Section 8. Appeals.** That appeals from final decisions by the Commission under Section 5 or Section 9 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipal agencies.

**Section 9. Exhaustion of Administrative Remedies.** That no property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court unless he or she has first exhausted the administrative remedies provided in this Ordinance.

**Section 10. Severability.** If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

**Section 11. Conflict.** All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

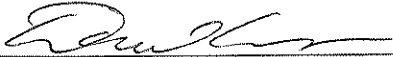
**Section 12. Inclusion in the Code of Ordinances.** It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be

renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

**Section 13. Effective Date.** This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 8<sup>th</sup> day of March, 2011.

PASSED and ADOPTED on second reading this 12 day of April 2011.

  
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Daniel Dietch, Mayor

**Attest:**

  
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Debra E. Eastman, M.M.C., Town Clerk

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

  
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Lynn M. Dannheisser, Town Attorney

On <sup>Second</sup> Reading Moved by: Commissioner Karukin

On Second Reading Seconded by: Commissioner Kupelmann

**Vote:**

Mayor Dietch	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Vice Mayor Graubart	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Karukin	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>

Commissioner Kopelman    yes     no \_\_\_\_\_  
Commissioner Olchyk        yes     no \_\_\_\_\_



