

ORDINANCE NO. 11- 1574

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 AND SPECIFICALLY ARTICLE IV "RESORT TAX" DIVISION 1 "RESORT TAX" AND DIVISION 2 "RESORT TAX BOARD" SPECIFICALLY AMENDING SECTIONS 70-106 THROUGH 70-111; AND CREATING SECTIONS 70-112 THROUGH 70-127, OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Surfside ("Town") proposes to amend its Code of Ordinances to amend guidelines for imposition and collection of the resort tax and to create a Resort Tax committee.

WHEREAS, The Town Commission held its first public reading on April 12, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on May 10, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA as follows:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

ARTICLE IV. RESORT TAX*

*Charter references: Resort tax, § 69-A.

DIVISION 1. Resort Tax.

Sec. 70-106. Tax imposed. Short title of article.

~~In addition to all other taxes of every kind imposed by law there is hereby imposed and levied a resort tax of four percent upon the rent of rooms in any hotel, motel or apartment house, as same are defined in F.S. ch. 212, and two percent upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises of any place of business required by law to be licensed by the state division of hotels and restaurants or by the state division of alcoholic beverages and tobacco, provided that the tax shall not apply to sales which are less than \$0.50. Nothing contained in this section shall be construed to impose a tax upon, or be applicable to, the unexpired term of any bona fide written lease in effect prior to the effective date of the ordinance from which this article was derived, or any renewal thereof within the same hotel, motel or apartment house, which is otherwise exempt pursuant to subsection 70-110(5). This article shall be known as the Surfside Resort Tax Ordinance.~~

Sec. 70-107. Payment and collection. Definitions.

~~The resort tax imposed under this article shall be collected from the person paying the rent and the person purchasing food, beverages and alcoholic beverages for consumption on the premises. It shall be the duty of every person renting a room or rooms, and every person selling at retail for consumption on the premises, food, beverages and alcoholic beverages, other than beer or malt beverages, in acting as the tax collection medium or agency of the town, to collect from the person paying the rent or the retail sales price, for the use of the town, the tax imposed and levied under section 70-106.~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment House means any building or part thereof where separate accommodations for two or more families living independently of each other are supplied to transient or permanent Guests or tenants either owned or operated by an individual, trust, or corporate entity. The term "apartment house" shall include houses, condominium, bungalow courts, timeshare rentals, and all other dwellings or similar character.

Appeal is the process for requesting a formal change to an official decision.

Audit means an examination and verification of accounting records and supporting documents.

False or Fraudulent Return means a return that is filed with incorrect and/or incomplete information.

Guest means any person making a retail purchase of (a) food or beverages; or (b) alcoholic beverages sold at retail for consumption on the premises, at any Restaurant or other business premises required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department.

Hotel and Motel mean every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent Guests or tenants, whether or not there is, in connection with any of the

building, any dining room, cafe or other place where meals or lunches are sold or served to Guests.

Lawful means obeying or conforming to the law.

Occupancy means the use or possession or the right to the use or possession of any Room in a Hotel, Motel or Apartment House, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of such Room.

Occupant means a person who, for a consideration, uses, possesses or has the right to use or possess any Room in a Hotel, Motel or Apartment House under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a Hotel, Motel, Apartment House or any person operating a Restaurant or other premises serving or selling at retail food or beverages, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department in the Town, including but not limited to the Owner or Proprietor of such premises, the lessee, sublessee or mortgagee in possession, the licensee, or any other person otherwise operating such Hotel, Motel, Apartment House, Restaurant or other premises.

Person means an individual, partnership, society, association, joint stock company, corporation, estate receiver, trustee, assignee, referee or any other Person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Rent means the consideration received for Occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and Property or services of any kind or nature, and also any amount for which credit is allowed by the Operator to the Occupant, without any deduction therefrom whatsoever.

Restaurant means any business or place for the serving of food or beverages required by law to be licensed by the Hotel and Restaurant Commission of the State, or any premises required by law to be licensed by the State Beverage Department for the sale of alcoholic beverages.

Return means any return filed or required to be filed as provided in this article.

Room means any room of any kind in any part or portion of a Hotel, Motel or Apartment House, which is available for or let out for use or possession for any purpose other than as a place of public assembly.

Sales Price means the retail sales price charged by the Operator to a Guest, consumer or any other Person for each sale of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises.

Special master or special magistrate means a person appointed pursuant to this chapter.

Take Out means consumption away from and/or within the environs of the business.

Town Manager means the Town Manager of the Town or designee.

Unlawful means not obeying and not conforming to the law.

Sec. 70-108. Tax returns; due date; forms, etc. Violations of article generally

~~It shall be the duty of each person acting as the tax collection medium or agency of the town, as described in section 70-106, to make a return to the town manager on or before the last day of the month following the close of each calendar month, on forms provided by the town manager, of the total nonexempt rents or sales prices charged and received together with the amount of tax collected. Payment of the amount collected must accompany each report. All taxes collected by a~~

~~tax collection medium or agency shall be held in trust for the account of the town until actual payment thereof has been made to and receipted for by the town manager.~~

~~(a) Any Operator or other Person who fails or refuses to register as required in this article or to furnish any Return required to be made, or who fails or refuses to furnish a supplemental Return or other data required by the Town Manager, or who renders a false or fraudulent Return or claim shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(b) Any Person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be guilty of a violation of this article and shall be punishable as provided in section 1-8.~~

~~(c) In addition to the foregoing the Town, in its sole discretion, may revoke all other licenses including, but not limited to, Certificate of Occupancy, Certificate of Use, and such other licenses as permitted by law.~~

Sec. 70-109. Use of tax revenue. Imposition; amount.

~~(a) Any and all funds received under and by virtue of the resort tax imposed by this article shall be used for no other purpose than as follows:~~

~~(1) Tax collection expense. Payment of necessary expenses of collecting, handling and processing of such tax.~~

~~(2) Promotion of town. For publicity, advertising, promotional events and tourist and convention bureau activities, including at least one annual publication listing all hotels, motels, apartment houses, business and community facilities with an outline of their accommodations, the information of which will be beneficial and necessary for the promotion of tourism.~~

~~(3) Town facilities. Any monies not expended for the items set forth above in subsections (1) and (2) of this subsection (a) shall be used for capital improvements and maintenance of the town's facilities, limited only to the community center, prevention of beach erosion and the enlarging, care, maintenance and beautification of the town's public beaches, all of the foregoing being necessary adjuncts to the promotion of tourism in the town.~~

~~(4) Allocation. In order to facilitate budget procedures and enunciate commission policy, the funds received shall be allocated and used in the following percentages:-~~

~~a. Five percent of total resort tax for tax collection expense.~~

~~b. Forty five percent of resort tax attributable to retail sales and two percent on room rentals for promotion of town.~~

~~c. Fifty percent of resort tax attributable to retail sales and two percent on room rentals for town facilities.~~

~~d. One hundred percent of resort tax attributable to two percent on room rentals for community center and tourism related facilities.~~

~~(b) Anything in this section to the contrary notwithstanding, ultimate and final decision for appropriation of funds in the resort tax budget shall remain with the town commission for implementation upon adoption of the town budget.~~

~~(c) If the resort tax proceeds in any fiscal year exceed or are less than the budgeted amount, expenditures in the above three categories shall be adjusted proportionately in that fiscal year.~~

(a) There is hereby levied and there shall be paid a tax of four percent (4%) on the Rent of every Occupancy of a Room in any Hotel, Motel or Apartment House in the Town, and also two percent (2%) upon the total Sales Price of all items of food or beverages sold at retail and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or business selling such items.

(b) As provided by Ordinance No. 1286, enacted on August 11, 1992, in lieu of the tax imposed and levied pursuant to section 70-109(a) above, there is hereby imposed and levied a municipal resort tax:

(1) Upon the Rent of every Occupancy of a Room or Rooms in any Hotel, Motel, Apartment House, as the same are defined in Part I, Chapter 212, Florida Statutes, in the Town, at the rate of four percent (4%) of the Rent received by the Person renting such Room or Rooms from the person paying such Rent; and

(2) Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises or consumption away from and/or within the environs of the business (take out) of any Restaurant or at any place of business selling such items in the Town required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department, at the rate of two percent (2%) of such retail sales price.

(c) The tax shall constitute a debt owed by the Occupant or Guest to the Town which shall be extinguished only by payment to the Operator or to the Town. The Occupant or Guest shall pay the tax to the Operator of the Hotel, Motel, Apartment House or Restaurant at the time the Rent or the Sales Price is paid. If the Rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the Occupant's ceasing to occupy space in the Hotel, Motel or Apartment House. The Operator is solely responsible for payment to the Town regardless of the Operator's collection deficiencies and/or inability to collect from the Occupant or Guest.

Sec. 70-110. Exemptions, applicability.

The resort tax authorized in this article shall not be imposed or levied upon or collected from:

~~(1) Any person who shall reside continuously longer than six months at any one hotel, apartment house or roominghouse, and shall have paid the tax levied by this section for six months of residence in any one hotel, roominghouse or apartment house.~~

~~(2) Any federal, state, county or municipal government or agency thereof.~~

~~(3) Nonprofit religious, educational or charitable corporations or institutions when engaged in religious, educational or charitable activities within the purview of their nonprofit or charitable purposes.~~

~~(4) Transactions involving less than \$0.50.~~

~~(5) Any person who is or becomes an occupant under a written lease for a period of 12 consecutive months or more in any apartment, motel or hotel in the town.~~

(a) No municipal resort tax shall be imposed pursuant to this article upon:

(1) Federal, State or Town governments, or any agency thereof.

(2) Any nonprofit religious, nonprofit educational or nonprofit charitable institution when engaged in carrying on the customary nonprofit religious, nonprofit educational or nonprofit charitable activities.

(3) Persons and transactions exempted as provided by section 4, chapter 67-930, Laws of Florida, 1967.

(b) No municipal resort tax shall be paid on any transaction involving Rent or a Sales Price of less than fifty cents (\$.50). No municipal resort tax shall be imposed or paid on any Rents collected under a written lease for a period longer than six consecutive months.

Sec. 70-111. Penalties and interest. Registration required; registration certificate.

~~In addition to any other penalties, the following are hereby levied and imposed upon each person acting as the tax collection medium or agency of the town, as described in section 70-106, for failure to follow and comply with this article:~~

~~(1) *Original delinquency.* Any person who fails to remit the resort tax imposed by this article within the time provided shall pay a penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax.~~

~~(2) *Continued delinquency.* Any person who fails to remit the resort tax imposed by this article on or before the 30th day following the date upon which such tax has become delinquent shall pay a second penalty equal to ten percent of the amount of such tax, in addition to the full amount of such tax and the first ten percent penalty.~~

~~(3) *Fraud.* If the town manager determines that the nonpayment of any resort tax imposed by this article is due to fraud, a penalty equal to 25 percent of the amount of such tax shall be paid in addition to the penalties imposed by this section.~~

~~(4) *Interest.* Any person who fails to remit the resort tax imposed by this article within the time provided shall pay interest at the rate of one half of one percent per month, or portion thereof, on the full amount of such tax, exclusive of penalties from the date upon which such tax first became delinquent until fully paid.~~

(a) Within 30 days after the effective date of the ordinance from which this article is derived, or within 30 days after commencing business, whichever is later, each Operator of any Hotel, Motel, Apartment House or Restaurant shall register the Hotel, Motel, Apartment House or Restaurant with the Town Manager and obtain a resort tax registration certificate, to be posted in a conspicuous place on the premises at all times. The certificate shall, among other things, state the following:

(1) The name of the Operator, mailing address and names of the corporate officials if applicable.

(2) The address of the Hotel, Motel, Apartment House or Restaurant.

(3) The date upon which the certificate was issued.

(b) Such certificate shall contain the following statement:

"This Resort Tax Registration Certificate signifies that the Person named on the face hereof has fulfilled the requirements of the Resort Tax Ordinance by registering with the Town Manager for the purpose of collecting from Occupants or Guests the Resort Tax and remitting said tax to the Town Manager. This certificate does not authorize any Person to conduct any unlawful business in an unlawful manner, nor to operate a Hotel, Motel, Apartment House or Restaurant without strictly complying with all local applicable laws, including but not limited to those requiring a

permit from any board, commission, department or office of this Town. This certificate does not constitute a permit."

(c) Such registration certificate shall not be assignable or transferable, and each new Operator shall be required to obtain a new registration certificate.

(d) All businesses must secure an annual Business Tax Receipt, an annual Occupational License, Certificate of Occupancy and Certificate of Use. As permitted by law the issuing of these licenses is conditional upon payment of all outstanding Resort Tax Returns.

Sec. 70-112. Collection by Operator.

Each Operator shall collect the tax imposed by this article to the same extent and at the same time as the Rent or Sales Price is collected from every Occupant or Guest. No Operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator; that it will not be added to the Rent or Sales Price; or that, if added, any part will be refunded except in the manner provided in this article.

Sec. 70-113. Records to be maintained by Operator.

It shall be the duty of every Operator to keep all records as may be necessary to determine the amount of tax due pursuant to this article and to preserve such records for a period of three years. The Town Manager, or his/her designee including independent auditors, shall have the right to inspect such records at all reasonable times and to conduct an audit as deemed necessary. The following records shall be kept available for inspection/audit: invoices of product purchases, sales receipts, tax receipts submitted to the State of Florida, tax returns, and all other relevant documents.

Sec. 70-114. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in Writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Town Manager within one year of the date of payment. The claim shall be on forms furnished by the Town Manager.

(b) An Operator may claim as a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, or when it is established in a manner prescribed by the Town Manager that the Person from whom the tax has been collected was not an Occupant or Guest lawfully subject to the tax collected pursuant to this article; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Occupant or Guest or credited to Rent subsequently payable by the Occupant or Guest to the Operator.

(c) An Occupant or Guest may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the Town, by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the Occupant or Guest directly to the Town Manager or when the Occupant or Guest, having paid the tax to the Operator, establishes to the satisfaction of the Town Manager that the Occupant or Guest has been unable to obtain a refund from the Operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto with supporting documents as

outlined in section 70-113. No refund or credit shall be allowed unless a signed affidavit and claim in writing is timely filed with the Town Manager as described in subsection (a) above.

Sec. 70-115. Operator's credit for collecting tax.

For the purpose of compensating the Operator for the keeping of prescribed records and the proper accounting and remitting of taxes by him, such Operator shall be allowed two percent of the amount due and accounted for and remitted to the Town, in the form of a deduction, in submitting his report and paying the amount due by him, and the Town Manager shall allow such deduction of two percent of the amount of the tax to the Person paying the tax for remitting the tax in the manner provided in this article and for paying the amount due to be paid by him. The amount of compensation is not to exceed \$50.00 per monthly remittance per registered business. The two percent allowance shall not be granted, nor shall any deduction be permitted, where the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports.

Sec. 70-116. Filing of Return; Remittance of tax.

Each Operator shall, on or before the 30th day of the month following the close of each calendar month, or at the close of any longer reporting period which may be established by the Town Manager, make a Return on forms provided by the Town Manager, of the total Rent or Sales Prices charged and received and the amount of tax collected. Operators shall file a Zero return if applicable. At the time the Return is due and filed, the full amount of the tax collected, less the applicable Operator's credit for collecting tax shall be remitted to the Town Manager. Applicable penalties will be applied for any late submittal of Returns and the Operator's credit will not qualify. The Town Manager may, establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information on the Return. Returns and payments are due immediately upon cessation of business for any reason. All Returns shall be accompanied with copies of tax receipts filed with the County/State. The Town reserves the right to conduct a Resort Tax Audit of the participating businesses. All taxes collected by Operators pursuant to this article shall be held in trust for the account of the Town until payment thereof is made to the Town. The filing of Returns electronically is mandatory upon notification from the Town Manager.

Sec. 70-117. Delinquency penalties; interest.

(a) *Original delinquency.* Any Operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

(b) *Continued delinquency.* Any Operator who fails to remit such tax on or before the 30th day following the date on which the tax first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax, plus the ten percent penalty first imposed.

(c) *Fraud.* If the Town Manager determines that the nonpayment of any tax due under this article is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) *Interest.* In addition to the penalties imposed, any Operator who fails to remit any tax imposed by this article shall pay interest, at the rate of one percent per month or fraction thereof,

on the amount of the tax, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) Penalties and interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid under this article.

Sec. 70-118. Failure to collect and report tax; determination of tax by Town Manager.

(a) If any Operator shall fail or refuse to collect the tax imposed by this article and to make, within the time provided in this article, any report and payment of the tax or any portion thereof required by this article, the Town Manager shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Town Manager shall procure such facts and information as he is able to obtain, upon which to base the assessment of any tax imposed by this article and payable by any Operator who has failed or refused to collect the tax and to make such report and payment, the Town Manager shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this article.

(b) If any operator charged in this section fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such operator or person, fails or refuses to register as an operator, or fails to make a report and pay the tax as provided by this division, or makes a grossly incorrect report, or makes a report that is false or fraudulent, it shall be the duty of the Town to make an assessment from an estimate based upon the best information then available to it for the taxable period of sales or rentals, together with interest, plus penalty, if such have accrued, as the case may be. Then the Town shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest with the operator.

(c) The Town Manager may charge a reasonable fee for obtaining information which requires the ascertainment of the amount of any tax collected by the Operator or any prorations and any expenses entailed by the Town in determining the prorations of any amount collected or due upon any transfer.

(d) In case such determination is made, the Town Manager shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed, at his last known address. Such Operator may, within five business days after the serving or mailing of such notice;

- (1) pay the amount due and any additional assessed fees in the manner and within the time indicated on the notice; or
- (2) Request an administrative hearing before a special master to appeal the decision of the Town Manager which resulted in the assessed tax, interest, and penalties.

(e) An appeal of the determination of the tax notice shall be accomplished by filing a request in writing setting forth the specific grounds of fact and in law for the appeal, at the address indicated on the tax determination notice, not later than five business days after the service of the tax determination notice. Failure of the named violator to appeal the decision of the Town Manager within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before a special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and the penalties shall be assessed accordingly.

(f) If the named violator, after service of the tax determination notice, fails to pay the tax assessed, interest, and penalties, or timely request an administrative hearing before a special master, the Town Manager shall prepare an affidavit of default. The affidavit must so reflect and must set forth a request that the special master issue an order finding the violator guilty of a continuing violation, imposing continuing delinquency penalties to be effective beginning on the date of the tax determination notice, and ending at the date the taxes, fees, and penalties are paid. The Town manager in consultation with a special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

Sec. 70-119. Hearing procedures; enforcement of orders.

(a) Upon receipt of a named violator's timely request for an administrative hearing for any tax determination notice, or upon receipt of affidavit(s) of noncompliance from the Town Manager, the special master shall set the matter down for hearing on the next scheduled hearing date or as soon thereafter as possible.

(b) The manager shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:

(1) The name of the Town Manager or designee who issued the tax determination notice.

(2) The factual description of the alleged violation constituting reasonable cause.

(3) The date of alleged violation.

(4) The section of the Code allegedly violated.

(5) The place, date and time of the hearing.

(6) The right of a violator to be represented by an attorney.

(7) The right of violator to present evidence, witnesses and cross-examine witnesses, if not waived pursuant to section 70-118(e).

(8) Notice that failure of the violator to attend the hearing may result in a civil penalty and administrative hearing costs being assessed.

(9) Notice that requests for continuances will not be considered unless received by the special master at least five calendar days prior to the date set for the hearing, and absent a showing of good cause.

(c) If there are cases to be heard, the special master shall call hearings on a monthly basis or upon the request of the manager, no hearing shall be set sooner than ten calendar days from the date of service of the civil violation notice, excluding Saturdays, Sundays and holidays.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by a special master and the manager at least five calendar days prior to the date set for the hearing.

(e) All hearings of a special master shall be open to the public. All testimony shall be under oath. Upon proper prior notice, a hearing shall proceed in the absence of the named violator or the special master may enter a default order.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The town clerk shall provide clerical services and the manager shall provide administrative personnel as may be reasonably required by special masters for the proper performance of their duties.

(h) Each case before a special master shall be presented by the manager, his or her designee or the town attorney. The manager shall have the authority to retain legal counsel for the special

master upon request.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) A special master shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the town manager's decision, a special master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the Code.

(l) The fact-finding determination of the special master shall be limited to whether or not the violation alleged occurred, and, if so, whether the person named in the notice of violation may be held responsible for that violation. Based upon this fact-finding determination, a special master shall either affirm or reverse the decision of the town manager as to the responsibility of the named violator of the code violation. If a special master reverses the decision of the Town Manager and finds the named violator not responsible for the code violation in the alleged civil violation notice because the town did not present a preponderance of evidence to indicate that such violator is responsible for the violation, then, and in that case, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special master's findings pursuant to section 70-120 hereof.

(n) If the decision of the special master is to affirm the decision of the town manager, the following elements shall be included:

(1) The amount of tax, fees, and penalties in the tax determination notice and as otherwise provided for herein.

(2) Administrative costs of hearing in the amount of not less than \$200.00.

(3) The date by which the violation must be corrected to prevent resumption of continuing violation penalties, if any.

(o) If correction is not made within the period set by the special master, continuing violation penalties shall begin to accrue again after the time for correction has run and the Town Manager has filed an affidavit of noncompliance and a notice of continuing violation. The Town Manager shall serve on the violator a copy of the affidavit of noncompliance and a notice of continuing violation which shall include the following:

(1) Date of issuance.

(2) A reference to the order of the special master that continues to be violated.

(3) Notice of the right to request an administrative hearing before the special master and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 5 business days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the special master.

(6) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing. At reasonable intervals, a violator may request an inspection to determine compliance with an order of the special master. After his inspection, the town manager shall issue an affidavit of noncompliance and notice of continuing violation or an affidavit of compliance, in recordable form, as appropriate.

Sec. 70-120. Appeals.

(a) An aggrieved party, including the town, may appeal a final order of a special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the special master conclusive, binding and final.

(b) Unless the findings of a special master are overturned in a proceeding held pursuant to this section, the findings of the special master shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the town may apply to the court for relief unless such party has first exhausted all remedies provided for in this chapter and has taken all available steps provided in this chapter. It is the intention of the town that all steps provided by this chapter shall be taken before any application is made to the court for relief, and no application shall be made by any aggrieved party other than the town to a court for relief except from an order issued by a special master pursuant to this chapter. It is the intention of the town that, notwithstanding anything to this chapter to the contrary, the town shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the Code. For purposes of an appeal, the clerk shall make available, for public inspection and copying, the record upon which each final order of a special master is based. The clerk shall make a reasonable charge, commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court, for making certified copies of any record or portion thereof.

Sec. 70-121. Actions to collect, enforcement.

(a) Any tax required to be paid by any Occupant or Guest under the provisions of this article shall be deemed a debt owed by the Occupant or Guest to the Town. Any such tax collected by an Operator which has not been paid to the Town shall be deemed a debt owed by the Operator to the Town. Any Person owing money to the Town under the provisions of this article shall be liable to an action brought in the name of the Town for the recovery of such amount and all reasonable and applicable administrative and legal fees.

(b) The Town shall have the same duties and privileges as the Department of Revenue under F.S. Chapter 212, Part I, and may use any power therein granted to the Department of Revenue, including enforcement and collection procedures and penalties.

Sec. 70-122. Taxes to constitute special fund.

(a) The total receipts of the Resort Tax portion from the tax imposed and levied pursuant to this article shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. The use of this fund is subject to the budgetary process of the Town on a fiscal year basis. A budget for the utilization of this fund must be submitted for the Town Commission approval as a part of the budget adoption process. A minimum of thirty-four (34) percent of the fund shall be used for the promotion of the tourist industry under the annual Tourist Bureau budget, which shall include but not be restricted to the following: publicity, advertising, promotional events, tourist bureau activities.

Division 2. Resort Tax Board.

Sec. 70-123. Created.

There is hereby established a Resort Tax Board as a governmental agency of the Town ("the Board").

Sec. 70-124. Composition; appointment; vacancies; compensation; removal from office, etc.

a) *Number, Term and Qualification of Members.* The Board shall consist of five members. Each Commissioner shall appoint one Board Member. All appointed Board members must be ratified by a vote of the Town Commission. Any newly elected Commissioner has the right to appoint a Resort Tax Board member unless the corresponding appointment has yet to reach the end of their two year term. Each of the five members shall be persons who either work or reside in Surfside and at least three of the five members shall be persons who have experience in tourism and/or tourism related activities. One Town Commissioner shall serve as a non-voting ex-officio member of the Board.

(c) *Vacancies.* Any vacancies occurring on the Board shall be filled at the earliest possible date by the Town Commission for the remainder of the unexpired term.

(d) *Reappointment.* Board members shall be eligible for reappointment and shall hold office until their successors have been duly appointed and qualified.

(e) *Compensation of Members.* Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses occurred in the performance of the official duties, as shall be determined and pre-approved by the Town Commission.

(f) *Acceptance of Appointment;* Before entering upon the duties of office, each Board member shall file a written acceptance of appointment and take and subscribe to-- the oath of office prescribed by law, which shall be filed in the office of the Town clerk. Each appointed member is required to provide the Town Clerk with a Form 1-Statement of Financial Interests, within three business days of being appointed to the Board.

(g) *Removal of Members From Office; Attendance.* A Board Member may be removed from office only by a majority vote of the entire membership of the Town Commission; however, whenever a Board member shall fail to attend three consecutive meetings without prior notification to the Director or Town Manager, the chairman shall certify such non-attendance to the Town Commission, and, upon such certification, the Board member shall be deemed to have been removed and the Town Commission shall fill the vacancy pursuant to paragraph (c) above.

Sec. 70-125. Organization.

(a) [*Generally.*] The members of the Board shall select a chairman from among the members who shall serve at the pleasure of the Board, and such other officers as deemed necessary or desirable. A member of the Town Commission shall serve as a non-voting ex-officio member of the Board.

(b) Staff. A Director, or other Town Manager designee, shall oversee the daily operation and administering of the Resort Tax Board and will work with the Board to achieve budgetary objectives. The Town manager shall provide adequate clerical and other administrative backup for the Board.

(c) Minutes. Minutes of each Board meeting shall be kept and prepared under supervision and direction of the Board. Copies of the minutes shall be filed with the Town clerk.

(d) Rules and Regulations. The Board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the Board's activities.

Sec. 70-126. Power and Duties.

The Board shall have the following enumerated powers and duties.

(1) To adopt and/or amend procedures as it related to publicity, advertising, promotional events, Tourist Board activities.

(2) To expend resort tax funds collected pursuant to Chapter 70 of the Town Code. Specifically, those amounts allocated by the Commission during their annual budgetary process, the minimum being thirty-four (34) percent of the Resort Tax collected, to advertising promotion and special events as part of the Tourist Bureau budget.

(3) To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific Tourist Board activities. The Tourist Board shall designate a member to assist the Town Manager, upon request, in the process of selecting a Director for the department.

(4) To authorize placement of advertising in various media.

(5) To organize special events for the promotion of Surfside as a tourist destination.

(6) To submit an Annual Report to the Town Commission every May as part of the budgetary process.

Sec. 70-127. Compliance with applicable law.

The Board shall comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and those with respect to competitive bidding requirements for purchase of goods and services.

Section 3. 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 4. 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 5. 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 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 10 day of May, 2011.

PASSED and ADOPTED on second reading this 14 day of June, 2011.



Daniel Dietch, Mayor

Attest:



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

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

Ordinance No. 11-1574


Lynn M. Dannheisser, Town Attorney

On ^{Second} Reading Moved by: Commissioner Kopelman

On Second Reading Seconded by: Commissioner Karukin

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 <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| Commissioner Olchyk | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |

Ordinance No. 11-1574