

ORDINANCE NO. 11- 1581

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 34 "ENVIRONMENT" BY ADDING ARTICLE V "LITTER" AND SPECIFICALLY CREATING SECTIONS 34-78 "DEFINITIONS", SECTION 34-79 "UNFINISHED, VACANT, UNOCCUPIED OR CLOSED STRUCTURES, CONSTRUCTION SITES OR VACANT LOTS; MAINTENANCE PROCEDURES REQUIRED OF OWNERS"; AND SECTION 34-80 "PROHIBITIONS ON LITTER; CIVIL FINES FOR VIOLATIONS; ENFORCEMENT; APPEALS; LIENS" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; DELETING CHAPTER 2. "ADMINISTRATION" ARTICLE I. SECTION 54-2 ENTITLED "DISTRIBUTION OF HANDBILLS"; 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") declares that it is in the interest of the public health, safety, and welfare to reduce pollutants on the land and those that enter into the air and waters of the Town; and

WHEREAS, the Town wishes to address a variety of litter issues in a single section of the code, including but not limited to such issues as the uncontrolled feeding of feral cats, the uncontrolled distribution of handbills, the uncontrolled discharge of yard maintenance debris into the Town's storm drains and sewers which diminishes the effective functioning of the Town's sewer system and pollutes and damages the Town's waterways and ecosystems; and

WHEREAS, the spreading of debris, dust, fecal matter, pesticides, fungi, chemicals, fertilizers, and dirt onto adjoining properties and public rights-of-way causes litter, erodes and degrades soils, and is a health hazard; and

**WHEREAS**, The Town Commission has conducted a first reading on August 9<sup>th</sup> and a second duly noticed public hearing on these regulations as required by law on September 13, 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 by adding:

**Chapter 34. ENVIRONMENT**

**Article V. Litter.**

**Sec. 34-78. Definitions.**

Benefactor means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.

Business means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

Handbill means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.

Commercial handbill means any handbill that conveys any information about any goods or service provided by a business.

Litter means any animal food, paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, cigarette butts, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor

vehicle, or on any other type of private real or personal property other than in containers used for the collection of solid waste by the Town or approved collection firms. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

One day means a 24-hour period from noon to noon.

Person, benefactor, or owner include, within their respective meanings, either an individual or an entity.

**Sec. 34-79. Unfinished, vacant, unoccupied or closed structures, construction sites or vacant lots; maintenance procedures required of owners.**

- a. All owners of unfinished, vacant, unoccupied, closed or unfinished structures or buildings, construction sites or any other vacant lots shall comply with rules and regulations relating to such structures or buildings, construction sites or vacant lots as promulgated by the building official and in accordance with Sections 34-66 through 34-70 relating to lot clearing. These rules and regulations shall specify those actions and time limits within which owners shall beautify, secure and/or patrol their structures or buildings.
- b. Noncompliance with this section shall be punishable in a manner as provided in section 1-8. Noncompliance with this section may result in the Town's taking such action as it deems appropriate under the circumstances, and a lien shall be imposed against the structure or building for recovery of all costs involved.
- c. If the owners or occupants of such lands within the Town shall fail to comply with the requirements of this section, the Town Manager shall cause such work to be done and keep an account of the cost thereof, whereupon such cost shall be a charge and lien against the property so cleaned. Such existing liens or liens imposed hereafter shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts. Such liens shall be enforced by any of the methods provided in F.S. ch. 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state statutes, or may be foreclosed per F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner and/or operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this article.

**Sec. 34-80. Prohibitions on litter; civil fines for violations; enforcement; appeals; liens.**

- a. It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare,

beach, park, baywalk, beachwalk, cutwalk, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the Town. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

- b. It shall be unlawful for any person to carry onto any beach within the Town a glass container.
- c. The following civil fines shall be imposed for violations of this section except as provided in subsections (f) below:
  - 1. First offense: \$50.00 fine.
  - 2. Second offense: \$100.00 fine.
  - 3. Third or subsequent offense: \$250.00 fine.

In lieu of a fine, the special master may accept voluntary community service removing litter in the Town equivalent to one hour of community service for each-imposed fine. If the community service is not completed within three months of an adjudication of guilt, the fine shall be reinstated.

- d. If a violation of this section resulted from the throwing, discarding, placing or depositing, or causing to be thrown, discarded, placed, or deposited commercial handbills as litter, then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of \$50.00 provided in subsection (c)(1).
  - 1. If the offense is the first offense, \$100.00 fine;
  - 2. If the offense is the second offense within the preceding 12 months, \$250.00 fine;
  - 3. If the offense is the third or subsequent offense within the preceding 12 months, \$500.00 fine plus \$50.00 per handbill.
  - 4. Notwithstanding subsections (c) (1)-(3), no person or benefactor shall receive more than one offense within any one-day period.
- e. At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.
- f. If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.

- g. The Town may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.
- h. Enforcement by code compliance officers; notice of violation. If a code compliance officer finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in Chapter 15. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.
- i. Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.
  - 1. A violator who has been served with a notice of violation shall elect either to:
    - i. Pay the civil fine in the manner indicated on the notice; or
    - ii. Request an administrative hearing before a special master appointed by the Town Commission upon recommendation of the Town Manager to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation.
  - 2. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 15-12 and 15-15 of the Town Code.
  - 3. If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
  - 4. Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.
- j. Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.
  - 1. The Town may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
  - 2. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the Town may foreclose or otherwise execute upon the lien.
- k. Nothing in this article shall limit or restrict any condition or limitation imposed by the planning and zoning board.
- l. Injunctive relief. As an additional means of enforcement, the Town may seek injunctive

relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 70 of the Town Code when there are more than three offenses by the same violator within a calendar year.

The Code is also amended by deleting the following:

**Article I. General**

~~Sec. 54-2. Distribution of handbills.~~

~~No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle, nor hand out or distribute any commercial handbill on any sidewalk, street or other public place within the Town.~~

**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 9<sup>th</sup> day of August, 2011.

PASSED and ADOPTED on second reading this 13 day of September, 2011.

  
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Daniel Dietch, Mayor

Ordinance No. 11-1581

Attest:

*J. Di Censo*  
INTERIM Town Clerk  
*JOHN DI CENSO*

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

*Lynn M. Dannheisser*  
Lynn M. Dannheisser, Town Attorney

On First 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"/>