

ORDINANCE NO. 12- 1587

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 18 AND SPECIFICALLY DIVISION 3 "SIDEWALK BUSINESSES" AND SPECIFICALLY AMENDING SECTIONS 18-80, 18-81; AND CREATING SECTIONS 18-82, 18-83, 18-84, 18-85, 18-86, 18-87, 18-88, 18-89, 18-90, 18-91, 18-92, AND 18-93 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 establish guidelines and regulations for sidewalk businesses.

**WHEREAS**, The Town Commission held its first public reading on February 14, 2012 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 Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments to the sidewalk business regulations on February 23, 2012 with due public notice and input; and

**WHEREAS**, The Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on May 8, 2012 and further finds the proposed change to the Code necessary and in the best interest of the community.

Ordinance No. 12-1587

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:

### DIVISION 3. SIDEWALK BUSINESSES

#### **Sec. 18-80. Open-air cafes, Definitions.**

~~As an exception to sections 18-26, 54-62, 54-63 and 54-64 of this Code, a restaurant holding a valid local business tax receipt may serve customers at tables placed on the sidewalks adjacent to the restaurant. The tables may not unnecessarily impede traffic, including pedestrian traffic, or they shall be considered a nuisance and shall be removed. These tables shall be referred to as open air cafes in conjunction with a restaurant or food establishment and shall be considered an accessory use in this district.~~

Town manager means the town manager or the town manager's designee.

Code compliance officer means the code compliance officers, fire inspectors, or any other authorized agent or employee of the Town whose duty it is to assure code compliance.

Menu holder means a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification. The location, size, design, materials and color of the menu board shall be approved by the town manager and shown on the sidewalk cafe site plan (as hereinafter defined). Menu boards shall be no larger than one and one half (1 ½) square feet and in conformance with requirements set forth in Article IV Signs of the Code. The menu board shall not be a sandwich or "A" frame sign (as defined herein) provided that for limited special events, the Town may utilize a temporary menu holder.

Permittee means the recipient of a sidewalk cafe permit under the terms and provisions of this division.

Restaurant for purposes of this division only, means a duly licensed food service establishment that is maintained and operated as a place where food and/or beverages are prepared and/or served and sold for consumption within the premises, or a business establishment which has, as an ancillary or secondary use, a part thereof where food and/or beverages are prepared and/or served and sold for consumption within the premises. Sidewalk cafe permits shall be issued to a restaurant whose local business tax receipt or certificate of use licensed for take-out only for certain items and. Such restaurant may have a bench, or similar furniture, only subject to application approval.

Right-of-way means land in which the state, the state department of transportation, the county or

Ordinance No. 12-1587

the town owns the fee or has an easement devoted to or required for use as a transportation facility or street.

Sandwich or "A" frame sign means a freestanding, A-frame structure located on a sidewalk or street which may be placed in position or is collapsible and which contains a sign (as defined in section 90-68).

Sidewalk means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line and which is intended for use by pedestrians.

Sidewalk cafe means a use located on the sidewalk portion of the right-of-way which is associated with a restaurant and is primarily characterized by tables and chairs; may be shaded by awnings, canopies or umbrellas; and may include such other sidewalk cafe furniture (as hereinafter defined) as permitted and/or approved pursuant to this division.

Sidewalk cafe furniture means those nonpermanent items, furnishings and equipment associated with the operation of a sidewalk cafe and approved pursuant to this division including, without limitation, tables, chairs, umbrellas, planters, heaters, fans and menus and/or specials boards.

Sidewalk café signage means a sign located on an umbrella that is used as shelter for sidewalk tables.

Sidewalk cafe site map means a town-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe.

Sign shall have the same meaning as provided for in section 90-68.

Specials board means a board allowing for the posting of a restaurant's daily specials and fabricated in such a manner so as to not constitute a form of advertising or establishment identification. The location, size, design, materials and color of the specials board shall be approved by the town manager and shall be shown on the sidewalk cafe site plan. specials boards shall be no larger than one and one half (1 ½) square feet; and in conformance with requirements set forth in Article IV Signs of the Code. The menu board shall not be a sandwich or "A" frame sign (as defined herein).

Street means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic and/or parking.

**Sec. 18-81. Conditions and restrictions-Declaration of necessity and intent.**

~~(a) A site plan, drawn to scale, which shall have been approved by building and planning department staff, shall be submitted and approved by the town manager and his/her designee, as appropriate. Such plan shall include the floor plan of the existing restaurant, including tables, chairs and restrooms, and the proposed open air cafe. The plan shall also show the existing parking, any proposed landscaping, location of refuse containers, proposed lighting, layout of all tables, chairs, benches, and other furniture, and pedestrian ingress and egress. An open air cafe~~

located on sidewalks must remain at the elevation of the existing sidewalk. All provisions of the South Florida Building Code with respect to handicapped accessibility and restroom fixtures shall apply.

~~(b) The operation of such open air cafe shall not be conducted in such a way as to become a public nuisance and that the operation of such business shall not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets, alleys or sidewalks. A minimum space of 44 inches shall be allowed for pedestrian circulation.~~

~~(c) The service of patrons of the open air cafe shall be at tables only and no counter service, self service or pass through window shall be permitted.~~

~~(d) The open air cafe shall not occupy an area of more than 30 percent of the total area of the primary restaurant operation in the B-1 district.~~

~~(e) The open air cafe shall be unenclosed and shall be open except that it may be covered with a canvas cover or structural canopy of a building's arcade, loggia or overhang as may be permitted by the Code. In the event such covering or canopy is utilized, the permitting requirements of Section 301.1, South Florida Building Code, shall apply.~~

~~(f) All kitchen equipment used to service the open air cafe shall be located within the kitchen of the primary restaurant.~~

~~(g) The open air cafe shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. After the close of business, all tables and chairs shall be removed from the premises unless they are properly secured.~~

~~(h) No additional signage shall be permitted in the open air cafe area.~~

~~(i) No outdoor speaker, stereo system, live bands, or outdoor entertainment shall be allowed except on occasion when a special permit for an event is issued by the town.~~

~~(j) In reviewing any site plan open air cafe, the department may prescribe appropriate conditions and safeguards in conformity with the provisions of the Code. Violations of such conditions and safeguards, when made a part of the terms under which the open air cafe is approved, shall be deemed grounds for revocation of the accessory use and punishable as a violation of the Town Code~~

~~(k) Seating and tables employed for an open air cafe shall comply with accessibility standards of F.S. §§ 553.501 through 553.513.~~

It is hereby found and declared that:

(1)

There exists the need for outdoor eating establishments (sidewalk cafes) in certain areas of the town to provide a unique environment for relaxation and food and/or beverage consumption.

(2)

The existence of sidewalk cafes encourages additional pedestrian traffic to these areas.

(3)

The presence of sidewalk cafes may however impede the free and safe flow of pedestrian traffic and thus there is a need for regulations and standards for the existence and operation of sidewalk cafes to facilitate and ensure a safe environment in these areas.

(4)

The establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote the general health, safety and

welfare of the residents of the town and is granted only to the extent the Town enjoys a possessory interest in the sidewalks pursuant to a lease agreement for that purpose by and between the Town and the State of Florida Department of Transportation.

**Sec. 18-82. Removal and storage fees; disposition of property.**

If, pursuant to this Section 18, the town removes, relocates, and/or stores any sidewalk cafe furniture, the permittee shall be responsible for the reasonable expenses incurred by the town for the removal, relocation, and/or storage of all such sidewalk cafe furniture. The town manager shall promulgate and review, as needed, regulations regarding the storage and disposition of sidewalk cafe furniture under this division. The town and its officers and employees after due notice for non-compliance shall not be responsible for any damage to or loss of any sidewalk cafe furniture, removed, relocated and/or stored pursuant to this division.

**Sec. 18-83. Appeals from the decision of the town manager.**

Appeals from decisions of the town manager made pursuant to this division shall be to the special master in accordance with the procedures set forth in sections 15-12 and 15-13 hereof. Appeals from the decisions of the special master shall be to a court of competent jurisdiction by petition for writ of certiorari.

**Sec. 18-84. Notice of Violation.**

1. Code compliance officers shall issue 24-hour warning notices for all non-life safety violations of this division.
2. No warning notices shall be required prior to the issuance of life safety violations and/or sidewalk cafe site plan violations, and such violations shall be corrected immediately. Life safety violations are defined as those conditions which, in the reasonable determination and judgment of the town manager, involve serious danger and/or risk to the public health, safety or welfare (including, without limitation, blocking pedestrian pathways and violations of the state handicapped accessibility code for building construction). Site plan violations are defined to include those instances where the permittee is operating outside of the permitted sidewalk cafe area (as approved herein) and shall include a table or tables set up outside the approved boundaries of the sidewalk cafe site plan, and/or umbrellas, heaters, fans and other sidewalk cafe furniture found to be outside the approved site plan; but shall not be deemed to include instances where a chair or chairs are moved outside the approved boundaries of site plan by a sidewalk cafe patron(s).
3. If a code compliance officer finds a violation of this division, such code compliance officer shall issue a notice of violation to the violator, as follows:
  - a. For non-life-safety violations of this division (where a 24-hour notice has been previously issued within the preceding 60 days for the same violation), a violation will be issued.
  - b. For life safety violations of this division and for site plan violations, no 24-hour

warning notice is required, and a violation may be issued at any time.

**Sec. 18-85. Civil fines and penalties; denial of future permits to repeat violators.**

1. The following civil fines and penalties shall be imposed for violations of this division:
  - a. First violation \$100.00
  - b. Second violation within the preceding 12 months \$250.00
  - c. Third violation within the preceding 12 months \$500.00
  - d. Fourth within the preceding 12 months \$750.00
  - e. Fifth violation within the preceding 12 months, suspension of the sidewalk cafe permit for one weekend (Saturday and Sunday) and \$1,000.00
  - f. Sixth violation within the preceding 12 months, revocation of the sidewalk cafe permit for the remaining portion of the permit year and \$1,000.00
  - g. Failure to apply for permit—termination of sidewalk cafe operations.
  - h. Failure to renew permit—suspension of sidewalk cafe operations.
  
2. A permittee who has been issued more than six violations pursuant to this division within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two permit years, following the permit year in which the applicant/permittee incurred the aforestated violations.

**Sec. 18-86. Rights; 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:
  - a. Pay the civil fine in the manner indicated on the notice; or
  - b. Request an administrative hearing before a special master, to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation. Warnings may not be appealed.
  
2. The procedures for appeal shall be as set forth in sections 15-12 and 15-13 hereof.
  
3. Failure of the named violator to appeal the decision of the code compliance officer within twenty (20) days after the date printed on the notice of violation shall constitute a waiver of the violator's right to administrative hearing. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties shall be assessed accordingly.
  
4. Any party aggrieved by the decision of a special master may appeal that decision to the circuit court pursuant to section 15-15.

**Sec. 18-87. 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 pursuant to section 15-14.
  
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 on the lien.

**Sec. 18-88. Permitted areas; conditional permit; town manager's right to remove sidewalk cafes.**

1. Sidewalk cafes shall only be located where permitted by the town's zoning ordinance and land development regulations, as same may be amended from time to time.
2. The approval and issuance of a sidewalk cafe permit is conditional at all times and shall serve as an exception to sections 18-26, 54-62, 54-63, and 54-64.
3. It shall be unlawful for any person to operate a sidewalk cafe without a valid permit as required by this division. No permit shall issue without a Landlord's prior written approval
4. The town manager shall have the right to immediately remove, after 24-hours written and/or verbal notice to the permittee, any sidewalk cafe furniture used in connection with a sidewalk cafe which is operating without a valid permit.
5. The town manager may cause the immediate removal, relocation, and/or storage of all or part of a sidewalk cafe in emergency situations or for public safety considerations.
6. The town manager may require the temporary removal and/or relocation of all or part of a sidewalk cafe when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds 15 days, the town manager shall pro-rate the remaining permit fee for each additional day the sidewalk cafe (or portion thereof) is removed and apply a credit toward the following year's permit fee or, upon written request by the permittee, refund the remaining fee to the permittee.
7. Upon written and/or verbal notification by the town manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the permittee shall, within no more than four hours of same, remove and place indoors all tables, chairs and any other sidewalk cafe furniture located on the right-of-way. The notification by the town manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The town manager may remove, relocate, and/or store any sidewalk cafe furniture found on the right-of-way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the town for removal, relocation and/or storage of sidewalk cafe furniture shall be the responsibility of the permittee. Sidewalk cafes will not re-open for business following a

hurricane or other major weather event until notified by the town manager. Violation of this subsection (g) shall result in the issuance of an immediate \$1,000.00 fine, and/or suspension, for up to 30 days, of the sidewalk cafe permit.

**Sec. 18-89. Application.**

1. A sidewalk cafe permit shall be effective for one year, from October 1 until September 30 of the following year. During the first year of implementation of this ordinance and/or permit application, the permit fee shall be pro-rated.
2. Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:
  - a. The name, address and telephone number of the applicant/permittee.
  - b. The name and address of the business establishment seeking a permit to operate the sidewalk cafe ( including the name and address of the restaurant).
  - c. A copy of a valid town local business tax receipt to operate the restaurant in front of which the proposed sidewalk cafe will be operating. The total count of chairs to be utilized for the restaurant must include the number of chairs used in conjunction with the sidewalk cafe and the number of chairs inside the restaurant, as authorized by the license.
  - d. A copy of a valid certificate of use for the restaurant in front of which the proposed sidewalk cafe will be operating.
  - e. Copies of current certificates of insurance in the amounts and categories required by section 18-93.
  - f. At the time of the first request for approval, a site plan drafted by the Town Building Official or designee and paid for by the Applicant must be submitted and it shall accurately depict the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, umbrellas, and any other sidewalk cafe furniture; and location of doorways, steps, trees and/or landscaped areas, fountains, parking meters, fire hydrants, bus shelters, directory/kiosks, public benches, trash receptacles, and any other existing public fixtures, furnishings and/or other obstruction(s), within the proposed sidewalk cafe area. The sidewalk cafe site plan must be approved by the town manager prior to the issuance of a sidewalk cafe permit and the permit shall be specifically limited to the subject area shown on the approved site plan. This requirement shall be waived each year thereafter provided there are no modifications to the originally approved site plan. Any changes will require the filing of a new site plan and associated fee.
  - g. Photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk cafe furniture related to the operation of the sidewalk cafe. Tables, chairs, umbrellas, and any and all other sidewalk cafe furniture shall be approved by the town manager prior to the issuance of a sidewalk cafe permit.
  - h. A copy of the approved sidewalk cafe site plan, shall be maintained on the permittee's premises and shall be available for inspection by town personnel at all times.
  - i. The annual leasing permit and initial fees are set forth in Appendix A.
  - j. Applications shall be reviewed for compliance with applicable local, state and



federal laws, and must be reviewed and approved by the town's public works department; fire department; office of risk management; finance department; planning and zoning department; and building department.

- k. Prior to issuance of a sidewalk cafe permit, the town's Finance Director shall certify that there are no outstanding fines, monies, fees, taxes or other charges owed to the town by the applicant/permittee and/or the business establishment/restaurant. A sidewalk cafe permit will not be issued until all outstanding debts to the Town are paid in full.
  - l. A sidewalk cafe permit may not be transferred and/or otherwise assigned. A new owner and/or operator of a restaurant and/or business establishment with a sidewalk cafe permit will be required to apply for and obtain a new permit.
  - m. The permit covers only the public right-of-way. Tables and chairs on private property will be governed by other applicable regulations. No outdoor seating authorized pursuant to this division shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of, a liquor license; nor shall the outdoor seating be used as the basis for computing required seating for restaurants, or as grounds for claiming exemption from such requirements under the provisions of any applicable town, county, and/or state law.
  - n. Sidewalk cafes shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA), and state code provisions addressing accessibility for building construction, as same may be amended from time to time. Any café that would violate the terms of the lease agreement between the Town and Florida Department of Transportation shall be deemed in violation of this ordinance.
3. Renewals. As provided in subsection 82-371(b), a permittee who has been issued more than six violations pursuant to this division within a permit year, shall be prohibited from applying for and obtaining a sidewalk cafe permit for the following two consecutive permit years. Renewals shall be applied for and accompanied by the business tax receipt and certificates of use applications.

**Sec. 18-90. Permit fee; penalties for late payments; review of fee.**

1. The annual permitting fee for operation of a sidewalk cafe shall be as set forth in Appendix A, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs).
2. The town manager, in his reasonable discretion and judgment, may suspend or prorate the annual permitting fee in cases of public construction or public emergency situations.
3. The permitting fee shall be paid on or before October 1, and shall cover the time period from October 1 through September 30 of the following calendar year (license year). If the fee exceeds \$2,000.00, the fee may be paid in two semiannual installments, with the first installment due on October 1, and the second due on April 1. No permit shall be issued for any portion of a year, but any person/entity operating a sidewalk cafe for a period beginning after the commencement date of the full permit year (October 1) may obtain a permit for the remaining portion of that permit year upon payment of a pro-rated portion of the permit fee calculated from the first day of the month of issuance of the permit to

the end of the permit year. Except as expressly provided in this division, no refund of the permitfee shall be granted.

4. Late payments for fees shall accrue at the rate of ten percent per annum for the first 30 days. If the permit fee is not paid within 60 days after it is due, the permit shall terminate automatically. Any continued operation of a sidewalk cafe after termination of a permit shall be construed as operating a sidewalk cafe without a valid license, and the town manager shall have the right to remove, upon 24 hours' written and/or verbal notice to the permittee, any and all sidewalk cafe furniture used in connection with the sidewalk cafe.

#### **Sec. 18-91. Permitted sidewalk café frontage; requests for expansions.**

1. Sidewalk cafes are restricted to the sidewalk frontage of the restaurant to which the permit is issued or, if the restaurant is an ancillary and/or secondary use to another type of business establishment, the sidewalk cafe shall be restricted to the sidewalk frontage of the building (or portion thereof) of the "primary" business establishment (within which the restaurant is located).
2. An applicant for a sidewalk cafe permit may be permitted, upon prior written request by the permittee to the town manager, to extend by a maximum total of 50 feet in the right-of-way on one side and/or the other side of the restaurant to which the permit is issued (of the business establishment where the restaurant is located); the permittee shall make written application to the town manager setting forth the reason(s) for the proposed expansion and provide a site plan showing the proposed expansion. All requests for expansions pursuant to this subsection (b) shall be reviewed by the town manager on a case by case basis. In reviewing such requests, the town manager, in making his determination to approve or deny, shall consider the following:
  - a. Pedestrian access.
  - b. Visibility of the front of the adjacent owner's business.
  - c. Obstructions.
  - d. Accessibility to the adjacent owner's business by patrons.
  - e. The town manager, shall solicit input from businesses and property owners on the same block including, without limitation, the immediately adjacent (i.e., next door) business and property owners.
  - f. The property owner of record for the applying shall provide written notice via certified mail to the adjacent business establishment (tenant) and property owner of record on to whose frontage the sidewalk cafe proposes to expand. The notification shall include the following information: the name and address of the permittee/business establishment requesting the expansion; the approximate location and size of the area requested; and the name and address of the town

official and/or employee to forward comments to, and the time period within which to forward said comments (which time period shall be no less than fourteen (14) days). Said notice shall be sent, as to the adjacent business establishment (tenant), to the name and address on file with the town for the establishment's local business tax receipt and, for the property owner, to the name and address identified in the records of the Miami-Dade County Property Tax Appraiser's Officer. Any objections not submitted and received by the town within the date provided in the notice shall be deemed waived.

- g. The town manager may also consider any history of violations and/or warnings.
3. In the event of approval by the town manager to expand a sidewalk cafe pursuant to this subsection (b), the additional square footage will be computed into the new permit fee.
  4. Notwithstanding the town manager's approval of a sidewalk cafe expansion pursuant to this subsection (b), in the event that the adjacent business establishment and/or property owner (on to which a sidewalk cafe has expanded) subsequently elects to apply for a sidewalk cafe permit to operate a cafe in front of its premises, that new applicant/permittee shall provide the town manager with notice of such intent stating the applicant's name; the property address; the name of the business establishment and/or the restaurant (of which the cafe is a part of); and the anticipated opening date. The town will provide the business establishment (tenant) and property owner which is currently expanding into the proposed new applicant/permittee's frontage with a courtesy copy of the notice. Following receipt of said written notice by the town, and provided that the new applicant/permittee obtains a sidewalk cafe permit, as well as any other required permits and/or licenses for operation of the business establishment and/or restaurant associated with the proposed new sidewalk cafe, then the town manager's prior consent for expansion shall terminate, and the town shall provide written notice to the adjacent sidewalk cafe permittee advising it of such termination, and providing a termination date therefore. The town's notice shall provide the adjacent property owner with at least seven calendar days' notice prior to the effective date of termination of the expansion. Upon the termination date of the town's consent to expansion, the sidewalk cafe permit and the permit fee will be adjusted accordingly.

**Sec. 18-92. Minimum standards, criteria, and conditions for operation of sidewalk cafes.**

1. The permittee shall take any and all actions to assure that its use of the public right-of-way in no way interferes with patrons of other sidewalk cafes, or limits their free, unobstructed passage thereto, or the use of the public right-of way (including sidewalks) by the general public.
2. Sidewalk cafes shall be located in such a manner that a distance of not less than five feet is maintained at all times as a clear and unobstructed five-foot pedestrian path around public amenities and areas such as, by way of example, fountains, landscaped areas (excluding town planters), and seating/shade structures. Notwithstanding the preceding, the town manager, in his reasonable judgment and discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five feet where an applicant/permittee's sidewalk cafe operation would be significantly impacted. In

considering such cases, and in determining whether an applicant/permittee is "significantly impacted," the town manager may apply the criteria set forth in subsections 82-384 (c)(1)—(4). A five-foot pedestrian path shall also be required and established where the town manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk cafe inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.

3. No tables, chairs, umbrellas, or other sidewalk cafe furniture shall be permitted within ten feet of a bus bench and/or bus shelter. A distance of five feet shall be maintained from taxi stands, fire hydrants, bike racks, directory signage/kiosks, and/or other similar public street furniture and/or fixtures.
4. No tables, chairs, umbrellas or other sidewalk cafe furniture shall be permitted within five feet of an alley, pedestrian crosswalk, or corner curb cut.
5. No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the public, or which would have the effect of obstructing the pedestrian path or public access.
6. The area covered by a sidewalk cafe permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the town manager. The permittee shall be responsible for pressure cleaning the floor surface on which the sidewalk cafe is located at the close of each business day. The town shall pressure wash the right-of-way from time to time in accordance with such schedule as shall be established in the reasonable judgment and discretion of the town manager. In establishing said schedule, the town manager shall use reasonable efforts to assure that the town's pressure cleaning of the public right-of-way occurs at such times as will cause the least disruption to sidewalk cafe operations.
7. Tables, chairs, umbrellas and any other sidewalk cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times.
8. All sidewalk cafe furniture shall be of high quality, design, materials, and workmanship and shall be maintained in such condition so as to ensure the safety and convenience of the public.
9. Only the sidewalk cafe furniture specifically shown on the approved sidewalk cafe site plan shall be allowed in the permit area.
10. All tables, chairs, umbrellas, and any other sidewalk cafe furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed

to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way.

11. The stacking or piling up of chairs shall be prohibited on the right-of-way. Any and all other sidewalk cafe furniture may only be maintained in the permit area during hours of operation provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions hereof. Notwithstanding anything contained in this subsection, the town manager may require a permittee to store its tables, chairs and/or umbrellas off of the right-of-way if, in his reasonable judgment and discretion, the town manager determines that the sidewalk cafe permit area and immediately adjacent public right-of-way are not being adequately maintained in accordance with this division.
12. No storage of dishes, silverware or other similar sidewalk cafe equipment shall be allowed in the permit area, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located.
13. There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event. Conditions such as hours and days of operation and audio levels will be regulated by the town's special events office, and these may vary during the year.
14. With the prior written approval of the Town Manager or his designee, one menu board and one specials board shall be permitted, per sidewalk cafe, for every 50 feet of frontage.
15. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. The use of garbage receptacles is also prohibited.
16. No food displays shall be permitted on the public right-of-way. No advertising signs or business identification signs shall be permitted on the public right-of-way except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height.
17. Umbrellas shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six feet eight inches above the right-of-way. Two or more umbrellas may not be clipped, zipped or otherwise fastened together in order to form a tent like structure. Clear plastics or other materials may not be fastened, rolled or otherwise be attached to umbrella edges in order to create an enclosure. No additional signage shall be permitted on the umbrellas.
18. Permittees may make written request to the town manager to use town electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1, and ending on September 30. The town manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and

may be adjusted from time to time, in the reasonable judgment and discretion of the town manager, for each of the calendar days during the summer months. Town electrical outlets will be restricted to powering floor fans only. Using the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Any outside lighting must comply with existing building codes and is subject to approval. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use. Fans must be UL approved for outdoor use and fan blades must be fully encased for the safety of patrons and passersby. Extension cords are not allowed.

19. No permit shall be granted in an area designated in the sidewalk cafe site map as restricted for special and cultural events; provided however, that the town manager may approve temporary use of such area(s), on a case by case basis, and only for a defined, limited time.

#### **Sec. 18-93. Indemnification and insurance.**

1. The permittee agrees to indemnify, defend, save and hold harmless the town, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity on the public right-of-way.
2. The permittee agrees to meet and maintain for the entire permit period, at its own expense, the following requirements:
  - a. Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The town must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
  - b. For sidewalk cafes which serve alcoholic beverages, liquor liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The town must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
  - c. Workers' compensation and employers' liability as required by the state.
3. All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.
4. The town must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.
5. The permittee must provide and have approved by the town an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.
6. Failure to comply with these requirements shall be deemed to be operating without a

valid permit and shall cause an immediate suspension or revocation of the permit.

**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.

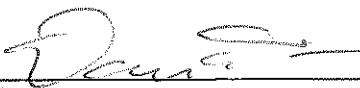
**Section 4. Conflict.** All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

**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 14<sup>th</sup> day of February, 2012.

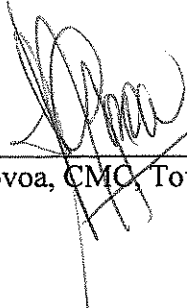
PASSED and ADOPTED on second reading this 8<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
Daniel Dietch, Mayor

Attest:


Ordinance No. D-1587

Attest:



\_\_\_\_\_  
Sandra Novoa, CMC, Town Clerk

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

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: Comm. Kopelman

On Second Reading Seconded by: Lisbon

**VOTE ON ADOPTION:**

Commissioner Michelle Klugman	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Sheldon Lisbon	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Marty Olchyk	yes <u>Absent</u>	no <u>Absent</u>
Vice Mayor Michael Karukin	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Mayor Daniel Dietch	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>

Ordinance No. 12-1587



APPENDIX A

Fee Schedule

Initial Sidewalk Café Permit Application (Subsequent annual renewals are part of the Certificate of Use process)	\$80 onetime charge
Initial Town Issued Sidewalk Café Site Plan (Not required as part of an annual renewal if unchanged)	\$250 per plan
Annual Sidewalk Café Permit For Use Of Public Space (Percentage due Florida Department of Transportation per annual agreement)	\$15 per square foot