

ORDINANCE NO. 14 - 1621

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTIONS OF THE CODE RELATING TO FINES AND PENALTIES FOR VIOLATIONS OF CERTAIN PROVISIONS; SPECIFICALLY AMENDING; CHAPTER 1 "GENERAL PROVISIONS" SECTION 1-8 "PENALTY FOR VIOLATIONS"; CHAPTER 10 "ANIMALS" SECTION 10-27 "PENALTY"; CHAPTER 14 "BUILDINGS AND BUILDING REGULATIONS" SECTIONS 14-31 "REQUIRED ROOFING MATERIALS," 14-51 "ESTABLISHED," AND 14-55 "VACANT LOTS OR BUILDINGS"; CHAPTER 15 "CODE ENFORCEMENT" SECTIONS 15-6 "CIVIL INFRACTIONS AND PENALTIES," 15-11 "CIVIL PENALTIES AND RELATED TERMS CONSTRUED," AND 15-18 "VIOLATIONS; SCHEDULE OF CIVIL PENALTIES"; CHAPTER 18 "BUSINESSES" SECTIONS 18-85 "CIVIL FINES AND PENALTIES; DENIAL OF FUTURE PERMITS TO REPEAT VIOLATORS," AND 18-88 "PERMITTED AREAS; CONDITIONAL PERMIT; TOWN MANAGER'S RIGHT TO REMOVE SIDEWALK CAFÉS"; CHAPTER 34 "ENVIRONMENT" SECTIONS 34-71 "VACANT LOTS," AND 34-80 "PROHIBITIONS ON LITTER; CIVIL FINES FOR VIOLATIONS; ENFORCEMENT; APPEALS; LIENS"; CHAPTER 42 "FLOODS" SECTION 42-64 "PENALTIES [S/C] FOR VIOLATION"; AND CHAPTER 70 "TAXATION" SECTIONS 70-32 "DELINQUENCIES; ADDITIONAL PENALTIES" AND 70-36 "HEARING WHEN THE RECEIPT HOLDER FAILS TO COMPLY WITH NOTICE OR WHEN REQUESTED BY AGGRIEVED APPLICANT/RECEIPT HOLDER"; 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 Commission has had numerous discussions of Code Compliance and of the Town's fine and penalties structure; and

WHEREAS, the Town Commission approved a list of enforcement priorities for the Code Compliance division; and

WHEREAS, the Town Commission desires to revise the Town's fine and penalty structure and determined this was a priority; and

WHEREAS, in an effort to ensure consistency between the Florida Statutes, the Town Code of Ordinances, and Code Compliance procedures, references to fine amounts will be removed from the Code of Ordinances and the reference will be to the schedule of fines to be adopted by the Town Commission in a Resolution; and

WHEREAS, the Town Commission held its first public reading on May 13, 2014 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 June 10, 2014 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:

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:

Chapter 1. General Provisions.

Sec. 1-8. Penalty for violations.

- (c) Except as otherwise provided, whenever in town ordinances, codes, resolutions, rules and regulations; provisions, rules and regulations of the South Florida Building Code; applicable sections of the Code of Miami-Dade County; applicable rules and regulations of the state board of health and of the state hotel and restaurant division; or such other land development regulations or ordinances as may be adopted by the town, any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of same shall be ~~punished~~ by a fine not to exceed \$500.00 ~~or by imprisonment for a term not to exceed 60 days, or by both such fine and imprisonment.~~ the maximum allowable fines established by Florida Statute. The Town Commission shall adopt by resolution, a schedule of fines for violations of this Code. Unless otherwise stated, each day that a violation continues shall constitute a separate punishable offense

Chapter 10. Animals.

Sec. 10-27. Penalty.

Violation of any provision of this article is a civil infraction. A maximum penalty of \$500.00, as determined by Florida Statute, may be imposed by a county judge. A citation for civil infraction may be issued by any police officer or code enforcement officer of the town who has probable cause to believe that a person has committed an act in violation of this article. If the person cited does not wish to contest the citation in the county court, he may pay a the penalty of \$100.00 as set forth in the citation, to the clerk of the court within 20 days of receipt of the citation. Upon failure to pay the civil penalty, failure to appear in court to contest the citation, or failure to appear in court for an offense for which a mandatory court appearance is required, the court may issue an order to show cause upon the request of the town commission. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

Chapter 14. Buildings and Building Regulations.

Sec. 14-31. Required roofing materials.

(d) Unless otherwise provided by Resolution, Any person, persons, firm or corporation violating any of the provisions of this section, shall, upon conviction thereof, be punished by a fine not to exceed \$1,000.00 not to exceed the maximum penalty as determined by Florida Statute. or by imprisonment not to exceed 90 days or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Sec. 14-51. Established.

(f) In order to defray the cost to the town of maintaining such property there is hereby levied and assessed against each owner or occupant who fails to maintain such lawns, landscaping and driveways in accordance with this article, an administrative fee as set forth in the schedule of fines adopted by resolution the sum of \$125.00 per time the town provides such maintenance, in addition to the actual costs incurred for said maintenance. All charges becoming due and payable under this subsection constitute, and are hereby imposed as liens against the real property, and, upon becoming delinquent April 1 of the following year, until fully paid and discharged, shall remain liens, equal in rank and dignity with the ad valorem taxes of the town, and may be satisfied by the sale of certificates in the same manner as is provided for the sale of certificates on delinquent ad

valorem taxes. Such lien shall be superior in rank and dignity to other liens, encumbrances, titles and claims in, to or against the real property involved.

Sec. 14-55. Vacant lots or buildings.

- b) Failure to comply with any provisions set forth in this ordinance shall subject an owner, his successors or assigns, to the civil penalties set forth in ~~Chapter 15, Code Enforcement (Section 15-11) of the Code of the Town of Surfside~~ the schedule of fines adopted by resolution.

Chapter 15. Code Enforcement.

Sec. 15-6. Civil infractions and penalties.

A violation of the Code shall constitute a civil offense punishable by civil penalty as prescribed in sections 1-8 of the Code, ~~and section 15-18 hereof,~~ and as set forth in the schedule of fines adopted by resolution.

Sec. 15-11. Civil penalties and related terms construed.

- (a) Penalties for violations of the provisions to be enforced through this chapter shall be in the amounts prescribed in the schedule of civil penalties adopted by resolution contained in section 15-18 hereof; provided, however, that the maximum civil penalty shall be ~~\$250.00~~ not exceed the maximum fine amount as determined by Florida Statute for a first time single violation. If the violation is continuing or repetitive, a separate violation will occur each day beyond the date of the civil violation notice.
- (b) For each day of a continued violation, an additional penalty in the same amount as that prescribed for in the original violation shall be added.
- (c) Uncorrectable violations as defined in section 15-1(1) above may be assessed a fine not to exceed ~~\$5,000.00~~ the maximum fine amount as determined by Florida Statute per violation.
- (d) Civil penalties assessed pursuant to this section are due and payable to the Town of Surfside on the first day after a violator has not timely requested an administrative hearing pursuant to section 15-12(a)(3), or if such request was timely filed, when the order of the special master imposing a fine is final.
- (e) For the first repeat violation, the amount of the civil penalty shall be double the amount of the penalty prescribed for the original violation ~~by section 15-18 hereof~~ as set forth in the schedule of fines adopted by resolution. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediately preceding violation, provided that the maximum penalty as set forth in the schedule of fines adopted by resolution

~~shall not be exceeded payable for the first day of any one repeat violation shall be \$500.00, and in addition, shall include all costs incurred by the town to bring the property into compliance.~~

Sec. 15-18. Violations; schedule of civil penalties.

- (d) ~~For violations of any section of this Code for which a specific penalty is not prescribed herein, a penalty shall be imposed which shall not be less than \$25.00 or more than \$250.00 per day for a first violation and shall not be less than \$50.00 or more than \$500.00 per day for a repeat violation. For the purposes of continuing violations, each day shall constitute a separate violation.~~

Chapter 18. Businesses.

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

(a) ~~Violations of this section are subject to fines that increase based upon the number of violations within the preceding 12 month period, the fine amounts are set forth in the schedule of fines adopted by resolution. In addition to the fines imposed pursuant to the schedule of fines, the below listed penalties shall result based upon the number of violations per preceding 12 month period: The following civil fines and penalties shall be imposed for violations of this division:~~

- ~~(1) — First violation\$100.00~~
 - ~~(2) — Second violation within the preceding 12 months250.00~~
 - ~~(3) — Third violation within the preceding 12 months500.00~~
 - ~~(4) — Fourth within the preceding 12 months750.00~~
 - ~~(5)(1) Fifth violation within the preceding 12 months, suspension of the sidewalk café permit for one weekend (Saturday and Sunday) and \$1,000.00.~~
 - ~~(6)(2) Sixth violation within the preceding 12 months, revocation of the sidewalk café permit for the remaining portion of the permit year and \$1,000.00.~~
 - ~~(7)(3) Failure to apply for permit—Termination of sidewalk café operations.~~
 - ~~(8)(4) Failure to renew permit—Suspension of sidewalk café operations.~~
- (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 café permit for a period of two permit years, following the permit year in which the applicant/permittee incurred the aforesated violations.

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

- (g) 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 café 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 café 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 café furniture shall be the responsibility of the permittee. Sidewalk cafés 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 pursuant to the schedule of fines adopted by resolution, and/or suspension, for up to 30 days, of the sidewalk café permit.

Chapter 34. Environment.

Sec. 34-71. Vacant lots.

- (b) In order to defray the cost of clearing such vacant property, there is hereby levied and assessed against each and every vacant lot in the town, upon which the owner thereof may allow to accumulate excessive or heavy growth of grass, weeds, shrubs or other vegetation, an administrative fee, as provided for in the schedule of fines adopted by resolution, the sum of \$125.00 per cutting, cleaning or removal, as set forth in subsection (a) of this section-, per time the Town provides such maintenance, in addition to the actual costs incurred for said maintenance.

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, cut walk, 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 as set forth in the schedule of fines adopted by resolution. 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~~ schedule of fines adopted by resolution shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine provided for therein.~~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), N~~no person or benefactor shall receive more than one offense within any one-day period.

Chapter 42. Floods.

Sec. 42-64. Penalties Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a noncriminal violation. Any person who violates this article or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than ~~\$500.00~~ the maximum allowable fines established by Florida Statute, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the floodplain

administrator from taking such other lawful actions as is necessary to prevent or remedy any violation

Chapter 70. Taxation.

Sec. 70-32. Delinquencies; additional penalties.

- (a) Those receipts not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of ten percent for the first whole or partial month of delinquency, plus an additional five percent penalty for each subsequent whole or partial month of delinquency, until fully paid. However, the total delinquency penalty shall not exceed 25 percent of the local business tax receipt for the delinquent receipt.
- (b) Any person engaging in or managing any business, occupation or profession without first obtaining a town local business tax receipt, if required hereunder, shall be subject to a penalty of 25 percent of the receipt determined to be due, in addition to a ~~\$250.00~~ the penalty-fines provided for in the schedule of fines adopted by resolution if the local business tax receipt is not applied for within 60 days of notice.
- (c) Any person who engages in any business, occupation, or profession covered hereby who does not pay the required local business tax receipt within 150 days after the initial notice of tax due, and who does not obtain the required local business tax receipt, is subject to civil actions and penalties including court costs, reasonable trial and appellate attorneys' fees, additional administrative costs incurred as a result of collection efforts and an additional penalty ~~of up to \$250.00~~ as provided for in the schedule of fines adopted by resolution.
- (d) Any person who shall carry on or conduct any business, profession or occupation for which a receipt is required hereby without first obtaining such receipt; and any person who shall make a false statement, application or oath, in connection with any application for a receipt hereunder, shall, upon conviction, be punished as provided in section 1-8. Each day that a business, occupation or profession is conducted or allowed to be conducted without first having procured a receipt therefor, shall constitute a separate and individual offense.

Sec. 70-36. Hearing when the receipt holder fails to comply with notice or when requested by aggrieved applicant/receipt holder.

If a receipt holder fails to comply with any notice issued as provided above, the town manager may issue an order in writing to the receipt holder, by certified mail or hand delivery, notifying him to appear at an administrative hearing before the town manager or his designee to be held at a time to be fixed in such order, which date shall be not less than five days after service thereof. An administrative hearing may also be requested by an applicant/receipt holder aggrieved by a decision of a code inspector regarding denial of a receipt, determination of fees/penalties due and/or warning of potential suspension/revocation for violation of a provision of this article. The request must be in writing and filed in the town manager's office within ten days of receipt of the decision of

the inspector. The request must specify the decision complained of and the nature of the applicant/receipt holder's grievance and must be accompanied by a fee of \$75.00 fifty percent (50%) of the cost of the administrative fee as provided for in the schedule of fines adopted by resolution, to partially defray expenses of the hearing. The fee will be refunded if the applicant/receipt holder prevails in the appeal.

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 become effective in ten (10) days after second reading.

PASSED and ADOPTED on First Reading the 13th day of May, 2014.


PASSED and ADOPTED on Second Reading this 10th day of June, 2014.


Daniel Dietch, Mayor

ATTEST:


Sandra Novoa, Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:


Linda Miller
Town Attorney

On Final Reading Moved by: Vice Mayor Tourgeman
On Final Reading Seconded by: Commissioner Otchyk

VOTE ON ADOPTION:

Commissioner Michael Karukin	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Marta Olchyk	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Barry R. Cohen	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Vice Mayor Eli Tourgeman	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Mayor Daniel Dietch	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>