

ORDINANCE NO. 15 – 1631

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE I OF CHAPTER 34 “ENVIRONMENT” AND SPECIFICALLY CREATING SECTIONS 34-2 to 34-8 “BEACH SAND QUALITY” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; AMENDING CHAPTER 14 “BUILDING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES AND SPECIFICALLY AMENDING SECTION 14-28 “ISSUANCE OF BUILDING PERMITS”; AMENDING CHAPTER 90 “ZONING” AND SPECIFICALLY SECTION 90.5 “COMPLIANCE WITH REGULATIONS”; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection (FDEP) issues permits which authorize excavation and placement of sand seaward of the Coastal Construction Control Line (CCCL), pursuant to 161.053, *Florida Statutes*; and

WHEREAS, the FDEP cannot contravene zoning or building codes established by a municipality which are equal to, or more strict than, those requirements provided in Section 161.053(4)(b), *Florida Statutes*; and

WHEREAS, FDEP requires that sandy material excavated seaward of the CCCL or 50-foot setback shall be maintained on site seaward of the CCCL or 50-foot setback and shall be placed in the immediate area of construction unless otherwise specifically authorized by the Department, as provided by Rule 62B-33.005(6), F.A.C.; and

WHEREAS, FDEP guidelines state that only beach compatible sand shall be placed on the beach; and

WHEREAS, FDEP defines beach quality sand as sand which is similar to the native beach sand in both coloration and grain size and is free of construction debris, rocks, clay or other foreign matter, pursuant to Rule 62B-33.002(8), F.A.C.; and

WHEREAS, the Town Commission of the Town of Surfside established the Sand Project Community Monitoring Committee (Committee) in June 2014 to serve as a resource to the Town Administration as it addressed issues and concerns related to a recently completed sand transfer project, and to provide an opportunity for the community to be involved in an educational initiative pertaining to beach management and beach opportunities going forward; and

WHEREAS, to address health risk concerns raised by residents of the Town, the Town Commission retained the services of subject matter experts, including expert independent toxicologists to provide analysis and protocols for chemical testing of excavated sand, and to recommend sand criteria related to physical characteristics of excavated sand to be placed east of the CCCL; and

WHEREAS, the subject matter experts recommended a testing protocol that is more comprehensive than the FDEP's criteria for placement of excavated sand east of the CCCL; and

WHEREAS, the Town affirms its desire to protect the health of its residents and visitors by promulgating regulations that are more comprehensive than the requirements of FDEP for sand placed on the beach as a result of coastal construction, pursuant to Rule 62-41.007, F.A.C.; and

WHEREAS, through these regulations, the Town will require that sand excavated seaward of the CCCL is tested via a protocol developed by the subject matter experts, and that sand excavated and placed seaward of the CCCL meets certain physical characteristics prior to placement above mean high water; and

WHEREAS, sand to be excavated and placed seaward of the CCCL shall be in compliance with the Beach Sand Quality regulations prior to issuance of a building permit; and

WHEREAS, the Town will supervise an independent soil technician or inspector with knowledge of soil mechanics and earthwork operations under the direction of the Town's Building Department to collect the sand samples obtained from an applicant's site during the sifting and placement of excavated sand, who will also observe and report to the Town that the sand is clean and free of construction debris and other physical contamination; and

WHEREAS, the cost for compliance with the new beach sand quality requirements for applicants shall be incurred by the applicants. Applicants shall pay for the cost of the Town's collection of the sand samples from the Applicant, and Town's submission of the samples to a qualified, licensed and regulated lab that meets industry standards to test the excavated sand; as well as pay money through cost recovery to reimburse the Town's independent consultants and professionals to evaluate the sand quality testing results, with applicants charged for such services as established in Sec. 90-11 of the Town Code; and

WHEREAS, the Town Commission held its first public hearing regarding this Ordinance on February 12, 2015; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments on February 26, 2015 with due public notice and input; and

WHEREAS, the Town Commission shall have conducted a second duly noticed public hearing on this Ordinance as required by law on March 10, 2015.

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 Ordinances of the Town of Surfside, Florida is hereby amended to create Sections 34-2 through 34-8 to read as follows:

Section-34-2. Beach Sand Quality.

It is hereby declared and determined that preserving and enhancing the quality of the Town of Surfside’s beaches is essential to serve and benefit the Town’s residents and visitors. The chemical and physical composition of beach sand must not interfere with the health, safety or welfare of the public.

Section 34-3. Definitions.

Applicant: An individual, corporation or other authorized legal entity filing an application to FDEP for a permit that requires excavation of sand seaward of the Coastal Construction Control Line.

Beach nourishment: The maintenance of a restored beach by the replacement of sand to mitigate erosion, often referred to as “beach renourishment.”

Beach restoration: The placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties.

Coastal Construction Control Line: A line established by the Florida Department of Environmental Protection that defines that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions, as established pursuant to the provisions of Section 161.053, *Florida Statutes*.

Construction Debris: The material resulting from the demolition of a structure. Construction debris shall not include such material which has been sorted, cleaned and otherwise processed such that it meets the suitability criteria for armoring materials set forth under FDEP rules.

Contaminants: Any substance or matter that does not meet the criteria as enumerated in the testing protocols pursuant to Sec. 34-4 of the Code of Ordinances.

Dune: A mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation and is subject to fluctuations in configuration and location.

Erosion Control Line: The line which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized by Florida law.

Excavated Sand: Naturally occurring material that is to be removed and placed pursuant to the Coastal Construction Control Line permit through the mechanical or manual removal or alteration of consolidated or unconsolidated soil or rock material from or within the beach and dune system, pursuant to Section 161.053, *Florida Statutes* and Rule 62B-33, F.A.C.

Hardpack: The sand road west of the Erosion Control Line used by public safety and other authorized vehicles, pursuant to Sec. 90-60.1(5) of the Town Code of Ordinances.

Mean High Water: The average height of the high waters over a 19-year period. For shorter periods of observation, “mean high water” means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value. The mean high water line is the intersection of the tidal plane of mean high water with the shore.

Renourishment Sand: Replacement sand used for beach nourishment or beach restoration.

Sand: Material that maintains the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system.

Seasonal High-Water Line: The line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water.

Section 34-4. Testing protocols for the chemical composition of excavated sand seaward of the Coastal Construction Control Line.

Prior to placing excavated sand seaward of the Coastal Construction Control Line, the applicant must comply with testing pursuant to the “Testing Protocols for the chemical composition of excavated sand seaward of the Coastal Construction Control Line,” as listed in Appendix A, and made a part of this Ordinance. These tests may be reassessed for periodic updates and review.

Appendix A

Testing Protocols for the Chemical Composition of Excavated Sand Seaward of the Coastal Construction Control Line

Pursuant to Section 34-4 of the Town Code of Ordinances, prior to placing excavated sand seaward of the Coastal Construction Control Line, the applicant must comply with the following protocols on the chemical composition of the excavated sand:

- A. Provide to the Town proof of a Phase 1 Environmental Site Assessment on applicant’s property and where practicable, applicant’s adjacent property. This must be completed within one year prior to the application, and must be in compliance with applicable American Society of Testing and Materials standards. Applicant may also be required to conduct a Phase 2 Environmental Site Assessment based on results from the applicant’s Phase 1 Environmental Site Assessment. Applicant must conduct lead and asbestos testing through a firm or an individual that is certified for lead inspection and/or abatement in Florida.

- B. Applicant must comply with the following tests in (B)(1-5). Data to be expressed in mg/kg or in the relevant unit of measure.
1. Resource Conservation and Recovery Act ("RCRA") 8 metals with extraction by United States Environmental Protection Agency ("USEPA") Method 3050 and analysis by USEPA Method 6010 or 200.7 (i.e., arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver).
 2. Total Recoverable Petroleum Hydrocarbons (TRPH) by Florida Department of Environmental Protection (FDEP) FL-PRO method.
 3. Chlorinated hydrocarbon pesticides by USEPA Method 8081, specifically aldrin, chlordane, dieldrin, endrin, heptachlor, and the DDT (dichlorodiphenyltrichloroethane)/DDD (dichlorodiphenyldichloroethane) /DDE (dichlorodiphenyldichloroethylene) group.
 4. Polychlorinated biphenyls (PCBs by USEPA Method 8082 (i.e. Aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260).

Alternatively, USEPA Method 8270 may be used to capture the analysis in the tests in the #3 and #4 categories. Data to be expressed in mg/kg. However, use of USEPA Method 8270 will involve reporting many more substances than the individual methods specified.

5. The applicant must apply the Synthetic Precipitation Leaching Procedure (SPLP; USEPA Method 1312).
- C. Location and Quantity of Samples: The applicant shall propose a sampling plan for excavated sand to be placed seaward of the Coastal Construction Control Line to comply with tests within (B). The applicant must provide adequate documentation to demonstrate that the location and quantity of samples is a fair and reasonable representation of the site. Post placement testing shall include no fewer than five samples consistent with the sampling plan approved by the Town. The Town's independent expert or designee must review and approve the sampling plan and find it to be a fair and reasonable representation of the site.
- D. Submission of Results: The Town's independent expert will approve the collection methodology and attest the samples were submitted to a certified analytical laboratory for analysis, with appropriate chain of custody documentation.
- E. Evaluation of Results: The samples collected from the sampling plan will be compared to the Miami-Dade County DERM Residential Soil Cleanup Target Levels and to the Minimum Variance Unbiased Estimator (MVUE) value, if available, from the November 7, 2004 document entitled "Natural Background Soil Concentrations for the Barrier Islands of Miami-Dade County. The acceptable concentration will be the more restrictive of the two comparisons, except when derived limits are more restrictive than the natural background, and with the exception of Arsenic. Arsenic levels shall be consistent with naturally occurring arsenic levels on the barrier island beaches in Miami-Dade County, based on a Minimum Variance Unbiased Estimate (MVUE) of 5.2 mg/kg and the upper tolerance level (95% limit) of 11.3 mg/kg. Any values above these limits are unacceptable unless reviewed and concurred by the Town's independent toxicologist for acceptability.

Appropriate Quality Assurance/Quality Control (QA/QC) procedures must be followed by the firm selected for the sampling, per the applicable FDEP standard protocols FDEP SOP FS 3000 Soil and FDEP SOP FQ 1000 Field Quality Control Requirements.

Section 34-5. Testing protocols for the physical composition of excavated sand seaward of the Coastal Construction Control Line.

Prior to placing excavated sand seaward of the Coastal Construction Control Line, the applicant must satisfy the requirements of “Criteria for Physical Composition of Sand excavated sand seaward of the Coastal Construction Control Line” as listed in Appendix B, and made a part of this Ordinance. These requirements may be reassessed for periodic updates and review.

Appendix B

Criteria for Physical Composition of Sand excavated sand seaward of the Coastal Construction Control Line

- A. The following physical sand characteristic standards are required for excavated sand landward of the Seasonal High Water Line and seaward of the Erosion Control Line.
1. Munsell value of 7 or greater with a chroma of 3 or lower when wet.
 2. Mean grain size between 0.30 mm and 0.55 mm.
 3. Silt content less than 2% (passing a #230 sieve).
 4. No material greater than 5% retained on #10 sieve.
 5. Sand shall be free of construction debris, toxic material as determined by tests in Section 34-4, and other foreign matter.
- B. The following protocols for sampling and analysis shall be employed:
1. One core boring shall be analyzed for every 3,000 cubic yards of sand to be excavated, as reasonably available to implement on site.
 2. Sediment samples will be extracted from the core borings at irregular intervals based on distinct stratigraphic layers in the sediment sequence. Samples that are representative of the material defined within the area will be extracted and analyzed.
 3. Composite data will represent the average physical characteristics of the material to be placed.
 4. An average of the representative layer, weighted by effective length, will be calculated for each core, producing the core composite. The composites will then be averaged and weighted by effective length to calculate the composite of the entire sand source.
- C. The composite of the source as a whole shall satisfy the aforementioned criteria for material to be deemed eligible for placement along the Town’s beach.

Section 34-6. Charges for consulting services for beach sand quality testing

The cost for compliance with the Town’s beach sand quality requirements shall be incurred by the applicant. Applicant shall pay the cost of the collection of the sand from the Applicant’s site and the submission of the samples for tests to a qualified, licensed, and regulated lab that meets industry standards to test the sand; as well as pay money through cost recovery to pay for the

Town's independent consultants and professionals to evaluate the sand quality testing results from the lab. Charges for consulting services for applicants are established in Section 90-11 of the Town Code of Ordinances, and shall apply to the beach sand quality testing required by Sections 34-4 and 34-5.

Section 34-7. Lack of compliance.

In the event that sand to be excavated seaward of the Coastal Construction Control Line does not meet the Town's standards as described herein, then the applicant may request from FDEP removal and relocation of the non-compliant sand in an approved upland area and must replace it with an equal or greater volume of sand from an FDEP approved sand source, which will be subject to the same testing protocols as set forth herein.

Section 34-8. Exclusions.

Sections 34-2 to 34-7 do not apply to sand for beach nourishment or beach restoration projects authorized, undertaken and paid for by Miami-Dade County, the State of Florida, or federal authorities. In no event shall the exclusions authorized by this Section apply to activities of the applicant.

Section 3. Code Amendment. The Code of Ordinances of the Town of Surfside, Florida Section 14-28 "Issuance of building permits" is amended to add paragraph (d) to read as follows:

Section 14-28. Issuance of building permits.

* * *

(d) Applications for building permits that require excavation of sand seaward of the Coastal Construction Control Line must comply with the Beach Sand Quality regulations as described in Sec. 34-2 to 34-8 of the Town Code of Ordinances.

* * *

Section 4. Code Amendment. The Code of Ordinances of the Town of Surfside, Florida Section 90-5 "Compliance with Regulations" is amended to add paragraph (12) to read as follows:

Section 90-5. Compliance with regulations.

* * *

(12) No building that requires a permit to place excavated sand seaward of the Coastal Construction Control Line shall be erected or moved unless applicant has complied with Sections 34-2 to 34-8 and Section 14-28 of the Town Code of Ordinances.

* * *

Section 5. 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 6. 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 7. 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 8. Effective Date. This Ordinance shall be effective upon final adoption on second reading.

PASSED and ADOPTED on first reading this 12th day of February, 2015.

PASSED and ADOPTED on second reading this 10th day of March, 2015.



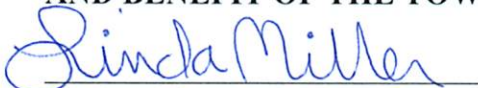
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, CMC, 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 Olchyk

VOTE ON ADOPTION:

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