

ORDINANCE NO. 2016 - 1649

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA; AMENDING CHAPTER 35 ARTICLE I "SPECIAL EVENTS"; CREATING SECTION 35-5. "SPECIAL EVENTS INVOLVING THE COMMERCIAL USE OF SINGLE-FAMILY RESIDENTIAL PROPERTIES PROHIBITED"; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, residents in the Town of Surfside single family residential properties expect a peaceful neighborhood without disruptions from commercial activities and events; and

WHEREAS, Section 90-41(d)(1)(b) of the Town of Surfside Code requires that every use not specifically authorized and permitted for detached single-family dwellings is prohibited and nothing herein shall authorize or be construed to permit the renting of a room or a portion of the property or improvement; or, to permit the use of any part of the premises as a business, office or establishment for the purpose of carrying on any business or the practice of rendering personal, trade or professional services, except as provided in Section 90-25. "Home based and common-area assembly uses" and Section 90-26. "Home offices"; and

WHEREAS, creating Section 35-5. will clarify that special events involving the commercial use of single-family residential properties are prohibited in the Town of Surfside, and establish penalties to enforce violations to deter disruptions in single family residential properties; and

WHEREAS, the Town Commission held its first public reading on June 14, 2016 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 July 12, 2016 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COMMISSION OF SURFSIDE TOWN, FLORIDA; AS FOLLOWS:

Section 1. Recitals. That the above stated recitals are hereby adopted and confirmed.

Section 2. Town Code Amended. Surfside Town Code of Ordinances Section 35-5. "Special events involving the commercial use of single-family residential properties prohibited." is hereby created and shall read as follows:

Sec. 35-5. Special events involving the commercial use of single-family residential properties prohibited.

(a) Intent and purpose. Section 90-41(d)(1)(b) restricts residential properties to residential and compatible accessory uses.

(b) Definitions.

(1) Use of residential property or use of the property in this section shall mean occupancy of residential property for the purpose of holding commercial parties, events, assemblies or gatherings on the premises.

(2) Advertising or advertisement shall mean any form of communication for marketing or used to encourage, persuade, or manipulate viewers, readers or listeners for the purpose of promoting occupancy of a residential property for the purpose of holding commercial parties, events, assemblies, and gatherings as provided herein, upon the premises, as may be viewed through various traditional media, including, but not limited to, newspaper, magazines, flyers, handbills, television commercial, radio advertisement, outdoor advertising, direct mail, blogs, websites or text messages.

(c) Regulations: Determination of commercial use.

(1) Accessory use of residential property shall be deemed commercial and not permitted, except as otherwise provided for in the Code, if owner, lessee or resident receives payment or other consideration, e.g., goods, property or services, in excess of \$100.00 per party or event for the commercial use of the property, including payment by any means, direct or indirect, including security deposits.

(2) Real estate open houses. The following events are not deemed commercial and are permitted: Open houses (open to the public) organized for the purpose of promoting the sale or lease of the residence where the open house is located, to potential buyers or renters, or events organized by the listing agent limited to licensed real estate brokers and/or agents, subject to the following:

a. **No sale or display of goods, property or services by sponsoring businesses unrelated to the property; and**

b. **No charging admittance fees.**

c. **Events described in this subsection must end by 8:00 p.m.**

(d) Enforcement and penalties for violations.

(1) Violations of this section shall be subject to the following fines. The special master shall not waive or reduce fines set by this section.

a. **If the violation is the first violation\$1,000.00**

b. **If the violation is the second violation within the preceding 12 months\$5,000.00**

c. **Any subsequent violation after the second violation within the preceding**

12 months.....\$10,000.00. After the third violation, violator shall be suspended from obtaining a permit for future special events for a period of one year from the date of violation.

- (2) The advertising or advertisement for the commercial use of a residential property for the purpose of holding commercial parties, event, assemblies or gatherings on the residential premises is direct evidence that there is a violation of Section 35-5. which is admissible in any proceeding to enforce Section 35-5. The advertising or advertisement evidence raises a rebuttable presumption that the residential property named in the Notice of Violation or any other report or as identified in the advertising or advertisement is direct evidence that the residential property was used in violation of Section 35-5.
- (3) In addition to or in lieu of the foregoing, the Town may close down the commercial use of the property or may seek an injunction against activities or uses prohibited under this section.
- (4) Any Town police officer or code compliance officer may issue notices for violations of this section. The Notice of Violation shall be issued to the property owner, tenant, event planner, promoter, caterer, or any other individual or entity that facilitates or organizes the prohibited activities. In the event the record owner of the property is not present when the violation occurs, a copy of the Notice of Violation shall be provided to such property owner.
- (5) The Town recognizes peoples' rights of assembly, free expression, religious freedom, and other rights provided by the State of Florida and the United States Constitution. It is the intent of the Town Commission that no decision under this section shall constitute an illegal violation of such rights, and this section shall not be construed as such a violation.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. Inclusion in the Code. 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 5. Conflict. That all sections or parts of sections of the Town Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 14th day of June, 2016.

PASSED AND ADOPTED on second reading this 12th day of July, 2016.

On Final Reading Moved by: Vice Mayor Cohen

On Final Reading Second by: Commissioner Paul

FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Barry Cohen
Mayor Daniel Dietch

Absent
Absent
yes
yes
yes



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

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



Linda Miller, Town Attorney