

ORDINANCE NO. 2018 1687

AN ORDINANCE OF TOWN OF SURFSIDE, FLORIDA, RELATING TO SOLID WASTE MANAGEMENT SERVICES, INCLUDING COLLECTION, DISPOSAL AND RECYCLING OF RESIDENTIAL SOLID WASTE IN THE TOWN OF SURFSIDE, FLORIDA; AUTHORIZING THE IMPOSITION AND COLLECTION OF ANNUAL SOLID WASTE SERVICE ASSESSMENTS AGAINST RESIDENTIAL PROPERTY THROUGHOUT TOWN OF SURFSIDE, FLORIDA; PROVIDING FOR DEFINITIONS; ESTABLISHING THE PROCEDURES FOR IMPOSING SOLID WASTE SERVICE ASSESSMENTS; PROVIDING THAT SOLID WASTE SERVICE ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF ASSESSMENT ROLL; PROVIDING THAT THE LIEN FOR A SOLID WASTE SERVICE ASSESSMENT COLLECTED PURSUANT TO SECTIONS 197.3632 AND 197.3635, FLORIDA STATUTES, UPON PERFECTION SHALL ATTACH TO THE PROPERTY ON THE PRIOR JANUARY 1, THE LIEN DATE FOR AD VALOREM TAXES; PROVIDING THAT A PERFECTED LIEN SHALL BE EQUAL IN RANK AND DIGNITY WITH THE LIENS OF ALL STATE, COUNTY, DISTRICT, OR MUNICIPAL TAXES AND ASSESSMENTS AND SUPERIOR IN DIGNITY TO ALL OTHER PRIOR LIENS, MORTGAGES, TITLES, AND CLAIMS; AUTHORIZING THE IMPOSITION OF INTERIM ASSESSMENTS; PROVIDING PROCEDURES FOR COLLECTION OF SOLID WASTE SERVICE ASSESSMENTS; PROVIDING THAT ALL ORDINANCES AND PARTS OF ORDINANCES AND ALL RESOLUTIONS AND PARTS OF RESOLUTIONS IN CONFLICT HEREWITH BE REPEALED TO THE EXTENT OF SUCH CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

**BE IT ORDAINED BY THE TOWN COMMISSION OF TOWN OF SURFSIDE,
FLORIDA:**

ARTICLE I

INTRODUCTION

SECTION 1.01. DEFINITIONS. As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

"Annual Rate Resolution" means the resolution described in Section 2.08 hereof, establishing the rate at which a Solid Waste Service Assessment for a specific Fiscal Year will be computed. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which a Solid Waste Residential Service Assessment is imposed or reimposed.

"Apartment" means a rental Dwelling Unit located within the same Building as other Dwelling Units.

"Assessed Property" means all parcels of Residential Property included on the Assessment Roll that receive a special benefit from the delivery of the Solid Waste collection, disposal and recycling services, programs or facilities identified in the Initial Assessment Resolution or a subsequent Preliminary Rate Resolution.

"Assessment Roll" means the special assessment roll relating to a Solid Waste Service Assessment approved by a Final Assessment Resolution pursuant to Section 2.06 hereof or an Annual Rate Resolution pursuant to Section 2.08 hereof.

"Biohazardous Waste" means any Solid Waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts, laboratory and veterinary waste which contains human disease-causing agents, used disposable sharps, human blood, and human blood products and body fluids, and

other materials which represent a significant risk of infection to persons outside of the generating facility.

"Building" means any structure, whether temporary or permanent, built for support, shelter or enclosure of persons, chattel, or property of any kind. This term shall include mobile homes or any vehicles serving in any way the function of a Building.

"Bulk Trash" means any vegetative large items of various types which cannot be cut for placement in a garbage container. Bulk Trash shall not include White Goods, automobiles and automotive components, internal combustion engines or Construction Debris. Bulk Trash shall include carpeting of any diameter if folded, tied and rolled or bundled and cut in lengths of six (6) feet or less.

"Certificate of Occupancy" means the written certification issued by the Town that a Building is ready for occupancy for its intended use. For the purposes of this Ordinance, a set up or tie down permit or its equivalent issued for a mobile home shall be considered a Certificate of Occupancy.

"Commercial Collection Service" means the collection and transportation of Solid Waste from Commercial Property by the Town or its Franchisee to a Solid Waste disposal facility.

"Commercial Property" means all Improved Property other than Residential Property.

"Construction Debris" means materials generally not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, or roofing material, pipe, gypsum wallboard, and lumber. Construction Debris shall include materials from the construction or destruction of a structure as part of a construction or demolition

project, and including rocks, soils, stumps, and other vegetative matter which normally results from land clearing or land development operations for a construction or home improvement project.

"Dwelling Unit" means a Building, or a portion thereof, which is located upon Residential Property and lawfully used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family only.

"Final Assessment Resolution" means the resolution described in Section 2.06 hereof which shall confirm, modify, or repeal the Initial Assessment Resolution and which shall be the final proceeding for the initial imposition of Solid Waste Service Assessments.

"Fiscal Year" means that period commencing October 1st of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law as the fiscal year for the Town.

"Franchisee" means an entity granted a franchise by the Town to collect, transport and dispose of Solid Waste within the Town.

"Garbage" means every refuse accumulation of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking and dealing in, or storage of, meats, fish, fowl, fruit or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.

"Government Property" means Residential Property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district or a municipal corporation.

"Hazardous Waste" means Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

"Improved Property" means all property within the incorporated area of the Town on which a Building or other improvements have been placed or constructed, which improvements result in such property generating Solid Waste or being capable of generating Solid Waste.

"Initial Assessment Resolution" means the resolution described in Section 2.02 hereof which shall be the initial proceeding for the identification of the Solid Waste Cost for which an assessment is to be made and for the imposition of a Solid Waste Service Assessment.

"Ordinance" means this Solid Waste Service Assessment Ordinance.

"Owner" shall mean the Person reflected as the owner of Assessed Property on the Tax Roll.

"Person" means any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

"Preliminary Rate Resolution" means the resolution described in Section 2.08 hereof initiating the annual process for updating the Assessment Roll and directing the reimposition of Solid Waste Service Assessments pursuant to an Annual Rate Resolution.

"Property Appraiser" means the Miami-Dade County Property Appraiser.

"Prohibited Waste" means any Hazardous Waste, Biohazardous Waste, or Special Waste.

"Recyclable Materials" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste such as:

(a) newspapers, including the normal percentage of rotogravure and colored sections, but not including phone books, magazines, and any paper other than newspaper;

(b) aluminum beverage cans, commingled with ferrous food containers;

(c) high density polyethylene plastics ("HDPE") commingled with polyethylene terephthalate plastics ("PET");

(d) clear glass;

(e) brown glass; and

(f) green glass.

Recyclable Materials shall not include Prohibited Waste, white office paper, aerosol cans, pharmaceutical glass containers, medical waste containers, pesticide containers or containers originally containing Prohibited Waste.

"Residential Property" means all Improved Property used as single-family Dwelling Units, Apartments or condominiums, except for Improved Property provided with commercial container service by an authorized commercial collection service provider at the time the Annual Assessment Resolution is adopted.

"Solid Waste" includes Garbage, Yard Trash, Bulk Trash, White Goods, or other discarded material resulting from normal housekeeping activities, and shall exclude Prohibited Waste.

"Solid Waste Service Assessment" means a special assessment lawfully imposed by the Town against Assessed Property to fund all or any portion of the cost of the provision of Solid Waste management services, including collection, disposal and recycling services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the Assessed Property.

"Solid Waste Cost" means the amount necessary to fund the Solid Waste management services, including collection, disposal and recycling activities of the Town allocable to Assessed Property during a Fiscal Year and shall include, but not be limited to:

- (A) the cost, whether direct or indirect, of all services, programs or facilities provided by the Town, or through contractual arrangements with the Town relating to Solid Waste management and disposal activities;
- (B) the cost of any indemnity or surety bonds and premiums for insurance;
- (C) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits;
- (D) the cost of computer services, data processing, and communications;
- (E) the cost of training, travel and per diem;
- (F) the recovery of unpaid or delinquent fees or charges advanced by the Town and due for Solid Waste management and disposal services, programs or facilities allocable to specific parcels;
- (G) the cost of engineering, financial, legal or other professional services;
- (H) all costs associated with the structure, implementation, collection, and enforcement of the Solid Waste Service Assessments or a prior year's assessment for a comparable service,

facility or program, including any service charges of the Tax Collector or Property Appraiser; (I) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the Solid Waste Service Assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the Town Commission; (J) a reasonable amount for contingency and anticipated delinquencies and uncollectible Solid Waste Service Assessments; and (K) reimbursement to the Town or any other Person for any monies advanced for any costs incurred by the Town or such Person in connection with any of the foregoing items of Solid Waste Cost.

"Special Waste" means Solid Waste that requires special handling and management, including, but not limited to, asbestos, whole tires, used tires, used oil, lead-acid batteries, and Biohazardous Wastes and shall include items that exceed any size limitations for Yard Trash and Bulk Trash.

"Tax Collector" means the Miami-Dade County Tax Collector.

"Tax Roll" means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

"Town" means Town of Surfside, Florida.

"Town Commission" means the governing body of Town of Surfside, Florida.

"Town Manager" means the chief administrative officer of the Town, designated by the Town Commission to be responsible for coordinating Solid Waste Service Assessments, or such person's designee.

"Uniform Assessment Collection Act" means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem

assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

"White Goods" means discarded refrigerators, washing machines, dryers, ranges, water heaters, freezers, air conditioning units, and other similar large appliances.

"Yard Trash" means vegetative matter resulting from normal yard and landscaping maintenance and shall include materials such as tree and shrub trimmings, grass clippings, palm fronds or small tree branches that shall not exceed four feet in length and four inches in diameter.

SECTION 1.02. INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.03. FINDINGS. The Town Commission hereby declares:

(A) Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the Town Commission has all powers of local self-government to perform municipal functions and to render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of Town ordinances.

(B) The Town Commission may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Commission may legislate on any subject matter on which the Florida Legislature

may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Solid Waste collection, disposal and recycling services, facilities or programs of the Town.

(C) The purpose of this Ordinance is to (1) provide procedures and standards for the imposition of annual Solid Waste Service Assessments under the general home rule powers of a municipality to impose special assessments; (2) authorize a procedure for the funding of Solid Waste management services, including collection, disposal and recycling services, facilities, or programs providing special benefits to property within the Town; and (3) legislatively determine the special benefit provided to Assessed Property from the provision of Solid Waste collection, disposal and recycling services by the Town.

(D) Pursuant to section 403.706(1), Florida Statutes, the Town has the general responsibility and authority to provide for the collection, transport and recycling of Solid Waste generated within its incorporated area to appropriate Solid Waste disposal facilities.

(E) In fulfilling its responsibilities, the Town currently provides the Solid Waste collection, disposal and recycling services in-house or provides the services itself, up to and including multi-family properties within the Town. The Town bills and collects the cost of such solid waste collection, disposal and recycling services and programs from owners of such Residential Property. The Town may elect at any time in the future to enter into an agreement with a Franchisee for the furnishing of Solid Waste collection, disposal and recycling services and programs within the Town. Pursuant to such agreement, the Town would pay the Franchisee for such services provided to Residential Property and, in turn, separately bill the respective Owners of such Residential Property. Due to widely varied

production of Solid Waste among the many and varied types of Commercial Property, the Franchisee bills and collects directly from Owners of Commercial Property.

(F) The existence of any Building or other improvement on Improved Property results in such property generating Solid Waste or being capable of generating Solid Waste.

(G) Whether imposed throughout the entire Town or a portion thereof, the imposition of a recurring annual Solid Waste Service Assessment is an alternative, equitable and efficient method to fairly and reasonably apportion and recover the Solid Waste management and disposal costs experienced by the Town among the parcels of Residential Property within the area assessed.

(H) The use of the uniform method of collection authorized by the Uniform Assessment Collection Act provides a mechanism to equitably and efficiently collect Solid Waste Service Assessments, as well as address payment delinquencies and recover unpaid fees, charges, or assessments advanced for Solid Waste management and disposal services, programs, and facilities allocable to specific parcels of Assessed Property.

(I) The annual Solid Waste Service Assessments to be imposed pursuant to this Ordinance shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.

(J) The Solid Waste Service Assessment imposed pursuant to this Ordinance is imposed by the Town Commission, not the Miami-Dade County Board of County Commissioners, Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Ordinance shall be construed as ministerial.

SECTION 1.04. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT.

The Town Commission hereby declares that the Solid Waste services, facilities, and programs of the Town provide a special benefit to property within the Town that is improved by the existence of a Dwelling Unit or Building based upon the following legislative determinations:(A) Solid Waste collection, disposal and recycling services, facilities, and programs furnished by the Town possess a logical relationship to the use and enjoyment of Residential Property by providing: (1) the required use of Solid Waste collection, disposal and recycling services, facilities, and programs by the Owners and occupants of Residential Property to properly, safely, and cost effectively dispose of Solid Waste generated on such property, (2) better service to Owners and tenants, (3) the enhancement of environmentally responsible use and enjoyment of Residential Property, and (4) the protection of property values and the health and safety of the Owners and occupants of Residential Property resulting from the uniform delivery and availability of such services, facilities, and programs.

(B) The provision of comprehensive and mandatory Solid Waste collection, recycling and disposal services and programs furnished by or through the Town to Residential Property enhances and strengthens the relationship of such services and programs to the use and enjoyment of Residential Property within the Town.

ARTICLE II

ANNUAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING ASSESSMENTS

SECTION 2.01. GENERAL AUTHORITY.

(A) The Town Commission is hereby authorized to impose an annual Solid Waste Service Assessment to fund all or any portion of the Solid Waste Cost upon benefitted property at a rate of assessment based on the special benefit accruing to such property from the Town's provision of Solid Waste collection, disposal and recycling services, facilities, or programs. All Solid Waste Service Assessments shall be imposed in conformity with the procedures set forth in this Article II.

(B) The amount of the Solid Waste Service Assessment imposed in a Fiscal Year against a parcel of Assessed Property shall be determined pursuant to an apportionment methodology based upon a classification of property designed to provide a fair and reasonable apportionment of the Solid Waste Cost among properties on a basis reasonably related to the special benefit provided by Solid Waste collection and disposal services, facilities, or programs funded with assessment proceeds.

(C) Any unpaid or delinquent fees, charges, or assessments due the Town for Solid Waste management and disposal services or facilities which are allocable to specific parcels of Assessed Property may be included in the annual Solid Waste Service Assessment for such parcels. In such an event, any existing lien on each affected parcel for unpaid or delinquent fees, charges, or assessments shall be supplanted by the lien resulting from the inclusion of such unpaid or delinquent fees, charges, or assessments in the amount of the Solid Waste Service Assessment.

SECTION 2.02. INITIAL PROCEEDINGS. The initial proceeding for the imposition of a Solid Waste Service Assessment shall be the adoption of an Initial Assessment Resolution by the Town Commission (A) containing a brief and general description of the Solid Waste collection, disposal and recycling services, facilities, or programs to be provided; (B) determining the Solid Waste Cost to be assessed; (C) describing the method of apportioning the Solid Waste Cost and the computation of the Solid Waste Service Assessment for specific properties; (D) providing a summary description of the parcels of property (conforming to the description contained on the Tax Roll) located within the Town that receive a special benefit from the provision of Solid Waste collection, disposal and recycling services, facilities, or programs or describing a specific geographic area in which such service, facility, or program will be provided; (E) establishing an estimated assessment rate for the upcoming Fiscal Year; and (F) directing the Town Manager to (1) prepare the initial Assessment Roll, as required by Section 2.03 hereof, (2) publish the notice required by Section 2.04 hereof, and (3) mail the notice required by Section 2.05 hereof using information then available from the Tax Roll.

SECTION 2.03. INITIAL ASSESSMENT ROLL.

(A) The Town Manager shall prepare, or direct the preparation of, the initial Assessment Roll, which shall contain the following:

(1) A summary description of all Assessed Property conforming to the description contained on the Tax Roll.

(2) The name of the Owner of the Assessed Property.

(3) The amount of the Solid Waste Service Assessment to be imposed against each such parcel of Assessed Property.

(B) The initial Assessment Roll shall be retained by the Town Manager and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Solid Waste Service Assessment for each parcel of property can be determined by use of a computer terminal available to the public.

SECTION 2.04. NOTICE BY PUBLICATION. Upon completion of the initial Assessment Roll, the Town Manager shall publish, or direct the publication of, once in a newspaper of general circulation within the Town a notice stating that at a meeting of the Town Commission on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the Town Commission will hear objections of all interested persons to the Final Assessment Resolution which shall establish the rate of assessment and approve the aforementioned initial Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such notice shall include (A) a geographic depiction of the property subject to the Solid Waste Residential Service Assessment; (B) a brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (C) the rate of assessment; (D) notification that unpaid or delinquent fees, charges, or assessments due the Town for Solid Waste collection, disposal and recycling services allocable to specific parcels will be additionally included in the annual Solid Waste Service Assessment; (E) the procedure for objecting provided in Section 2.06 hereof; (F) the method by which the Solid Waste Service Assessment will be collected; and (G) a statement that the initial Assessment Roll is available for inspection at

the office of the Town Manager and all interested persons may ascertain the amount to be assessed against a parcel of Assessed Property at the office of the Town Manager.

SECTION 2.05. NOTICE BY MAIL. In addition to the published notice required by Section 2.04, the Town Manager shall provide notice, or direct the provision of notice, of the proposed Solid Waste Service Assessment by first class mail to the Owner of each parcel of property subject to the Solid Waste Service Assessment. Such notice shall include (A) the purpose of the Solid Waste Service Assessment; (B) the rate of assessment to be levied against each parcel of property; (C) the unit of measurement applied to determine the Solid Waste Service Assessment; (D) the number of such units contained in each parcel of property; (E) the total revenue to be collected by the Town from the Solid Waste Service Assessment; (F) a statement that failure to pay the Solid Waste Service Assessment will cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property; (G) notification that unpaid or delinquent fees, charges, or assessments due the Town for Solid Waste management and disposal services allocable to specific parcels will be additionally included in the Solid Waste Service Assessment; (H) a statement that all affected Owners have a right to appear at the hearing and to file written objections with the Town Commission within 20 days of the notice; and (I) the date, time, and place of the hearing. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each Owner at such address as is shown on the Tax Roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The Town Manager may provide proof of such notice by affidavit. Failure of the

Owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the Town Commission pursuant to this Ordinance.

SECTION 2.06. ADOPTION OF FINAL ASSESSMENT RESOLUTION. At the time named in such notice, or to which an adjournment or continuance may be taken by the Town Commission, the Town Commission shall receive any written objections of interested persons and may then, or at any subsequent meeting of the Town Commission adopt the Final Assessment Resolution which shall (A) confirm, modify, or repeal the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the Town Commission; (B) establish the rate of assessment to be imposed in the upcoming Fiscal Year; (C) approve the inclusion of any unpaid or delinquent fees, charges, or assessments due the Town for Solid Waste management and disposal services; (D) approve the initial Assessment Roll, with such amendments as it deems just and right; and (E) determine the method of collection. The adoption of the Final Assessment Resolution by the Town Commission shall constitute a legislative determination that all parcels assessed derive a special benefit from the Solid Waste collection, disposal and recycling services, facilities, or programs to be provided and a legislative determination that the Solid Waste Service Assessments are fairly and reasonably apportioned among the properties that receive the special benefit. All objections to the Final Assessment Resolution shall be made in writing, and filed with the Town Manager at or before the time or adjourned time of such hearing. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which Solid Waste Residential Service Assessments are imposed or reimposed hereunder.

SECTION 2.07. EFFECT OF FINAL ASSESSMENT RESOLUTION. The Solid Waste Service Assessments for the initial Fiscal Year shall be established upon adoption of the Final Assessment Resolution. The adoption of the Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the initial rate of assessment, the initial Assessment Roll, and the levy and lien of the Solid Waste Service Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the Town Commission action on the Final Assessment Resolution. The initial Assessment Roll, as approved by the Final Assessment Resolution, shall be delivered to the Tax Collector, as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 3.02 hereof is used to collect the Solid Waste Service Assessments, such other official as the Town Commission by resolution shall designate.

SECTION 2.08. ADOPTION OF ANNUAL RATE RESOLUTION.

(A) The Town Commission shall adopt an Annual Rate Resolution during its budget adoption process for each Fiscal Year following the initial Fiscal Year for which a Solid Waste Service Assessment is imposed hereunder.

(B) The initial proceedings for the adoption of an Annual Rate Resolution shall be the adoption of a Preliminary Rate Resolution by the Town Commission (1) containing a brief and general description of the Solid Waste collection, disposal and recycling services, facilities, or programs to be provided; (2) determining the Solid Waste Cost to be assessed for the upcoming Fiscal Year; (3) establishing the estimated assessment rate for the

upcoming Fiscal Year; (4) authorizing the date, time, and place of a public hearing to receive and consider comments from the public and consider the adoption of the Annual Rate Resolution for the upcoming Fiscal Year; and (5) directing the Town Manager to (a) update the Assessment Roll, (b) provide notice by publication and first class mail to affected Owners in the event circumstances described in subsection (F) of this Section so require, and (c) direct and authorize any supplemental or additional notice deemed proper, necessary or convenient by the Town.

(C) The Annual Rate Resolution shall (1) establish the rate of assessment to be imposed in the upcoming Fiscal Year and (2) approve the Assessment Roll for the upcoming Fiscal Year with such adjustments as the Town Commission deems just and right. The Assessment Roll shall be prepared in accordance with the method of apportionment set forth in the Initial Assessment Resolution, or any subsequent Preliminary Rate Resolution, together with modifications, if any, that are provided and confirmed in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(D) Nothing herein shall preclude the Town Commission from providing annual notification to all Owners of Assessed Property in the manner provided in either or both Sections 2.04 or 2.05 hereof.

(E) Nothing herein shall preclude the Town Commission from establishing by resolution a maximum rate of assessment provided that notice of such maximum assessment rate is provided pursuant to Sections 2.04 and 2.05 hereof.

(F) In the event (1) the proposed Solid Waste Residential Service Assessment for any Fiscal Year exceeds the maximum rate of assessment adopted by the Town Commission and included in the notice previously provided to the Owners of Assessed

Property pursuant to Sections 2.04 and 2.05 hereof, (2) the purpose for which the Solid Waste Service Assessment is imposed or the use of the revenue from the Solid Waste Service Assessment is substantially changed from that represented by the notice previously provided to the Owners of Assessed Property pursuant to Sections 2.04 and 2.05 hereof, (3) Assessed Property is reclassified or the method of apportionment is revised or altered resulting in an increased Solid Waste Service Assessment from that represented by the notice previously provided to the Owners of Assessed Property pursuant to Sections 2.04 and 2.05 hereof, or (4) an Assessment Roll contains Assessed Property that was not included on the Assessment Roll approved for the prior Fiscal Year, notice shall be provided by publication and first class mail to the Owners of such Assessed Property. Such notice shall substantially conform with the notice requirements set forth in Sections 2.04 and 2.05 hereof and inform the Owner of the date, time, and place for the adoption of the Annual Rate Resolution. The failure of the Owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the Town Commission pursuant to this Ordinance.

(G) As to any Assessed Property not included on an Assessment Roll approved by the adoption of the Final Assessment Resolution or a prior year's Annual Rate Resolution, the adoption of the succeeding Annual Rate Resolution shall be the final adjudication of the issues presented as to such Assessed Property (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll, and the levy and lien of the Solid Waste Service Assessments), unless

proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the Town Commission action on the Annual Rate Resolution. Nothing contained herein shall be construed or interpreted to affect the finality of any prior fee, charge, or assessment imposed by the Town or any Solid Waste Service Assessment not challenged within the required 20-day period for those Solid Waste Service Assessments previously imposed against Assessed Property by the inclusion of the Assessed Property on an Assessment Roll approved in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(H) The Assessment Roll, as approved by the Annual Rate Resolution, shall be delivered to the Tax Collector as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 3.02 hereof is used to collect the Solid Waste Service Assessments, such other official as the Town Commission by resolution shall designate. If the Solid Waste Service Assessment against any property shall be sustained, reduced, or abated by any court, an adjustment shall be made on the Assessment Roll.

SECTION 2.09. LIEN OF SOLID WASTE SERVICE ASSESSMENTS. Upon the adoption of the Assessment Roll, all Solid Waste Service Assessments shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid. The lien for a Solid Waste Service Assessment shall be deemed perfected upon adoption by the Town Commission of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable. The lien for a Solid Waste Service Assessment collected under the Uniform Assessment Collection Method shall attach to the property

included on the Assessment Roll as of the prior January 1, the lien date for ad valorem taxes imposed under the Tax Roll. The lien for a Solid Waste Service Assessment collected under the alternative method of collection provided in Section 3.02 shall be deemed perfected upon adoption by the Town Commission of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable, and shall attach to the property on such date of adoption.

SECTION 2.10. REVISIONS TO SOLID WASTE SERVICE ASSESSMENTS. If any Solid Waste Service Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the Town Commission is satisfied that any such Solid Waste Service Assessment is so irregular or defective that the same cannot be enforced or collected, or if the Town Commission has omitted any property on the Assessment Roll which property should have been so included, the Town Commission may take all necessary steps to impose a new Solid Waste Service Assessment against any property benefited by the Solid Waste Costs, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Solid Waste Service Assessment is annulled, vacated, or set aside, the Town Commission may obtain and impose other Solid Waste Service Assessments until a valid Solid Waste Service Assessment is imposed.

SECTION 2.11. PROCEDURAL IRREGULARITIES. Any informality or irregularity in the proceedings in connection with the levy of any Solid Waste Service Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Solid Waste Service Assessment as finally approved shall be competent and sufficient evidence that such Solid Waste Service Assessment was

duly levied, that the Solid Waste Service Assessment was duly made and adopted, and that all other proceedings adequate to such Solid Waste Service Assessment were duly had, taken, and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this section, any party objecting to a Solid Waste Service Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

SECTION 2.12. CORRECTION OF ERRORS AND OMISSIONS.

(A) No act of error or omission on the part of the Property Appraiser, Tax Collector, Town Manager, Town Commission, or their deputies or employees, shall operate to release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the Town Commission under the provision of this Ordinance.

(B) When it shall appear that any Solid Waste Service Assessment should have been imposed under this Ordinance against a parcel of property specially benefited by the provision of Solid Waste collection, disposal and recycling services, facilities, or programs, but that such property was omitted from the Assessment Roll or was not listed on the Tax Roll as an individual parcel of property as of the effective date of the Assessment Roll approved by the Annual Rate Resolution for any upcoming Fiscal Year, the Town Commission may, upon provision of a notice by mail provided to the Owner of the omitted parcel in the manner and form provided in Section 2.05, impose the applicable Solid Waste Service Assessment for the Fiscal Year in which such error is discovered, in addition to the applicable Solid Waste Service Assessment due for the prior two Fiscal Years. Such Solid

Waste Service Assessment shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles, and claims in and to or against the real property involved, shall be collected as provided in Article III hereof, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent assessments.

(C) Prior to the delivery of the Assessment Roll to the Tax Collector in accordance with the Uniform Assessment Collection Act, the Town Manager shall have the authority at any time, upon his or her own initiative or in response to a timely filed petition from the Owner of any property subject to a Solid Waste Service Assessment, to reclassify property based upon presentation of competent and substantial evidence, and correct any error in applying the Solid Waste Service Assessment apportionment method to any particular parcel of property not otherwise requiring the provision of notice pursuant to the Uniform Assessment Collection Act. Any such correction shall be considered valid ab initio and shall in no way affect the enforcement of the Solid Waste Service Assessment imposed under the provisions of this Ordinance. All requests from affected property owners for any such changes, modifications or corrections shall be referred to, and processed by, the Town Manager and not the Property Appraiser or Tax Collector.

(D) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the Tax Roll upon timely written request and direction of the Town Manager.

SECTION 2.13. INTERIM ASSESSMENTS. An interim Solid Waste Service Assessment shall be imposed against all property for which a Certificate of Occupancy is issued after adoption of the Annual Rate Resolution. The amount of the interim Solid Waste Service Assessment shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the Annual Rate Resolution for the Fiscal Year in which the Certificate of Occupancy is issued. Such monthly rate shall be imposed for each full calendar month remaining in the Fiscal Year. In addition to the monthly rate, the interim Solid Waste Service Assessment shall also include an estimate of the subsequent Fiscal Years Solid Waste Service Assessment. No Certificate of Occupancy shall be issued until full payment of the interim Solid Waste Service Assessment is received by the Town. Issuance of the Certificate of Occupancy by mistake or inadvertence, and without the payment in full of the interim Solid Waste Service Assessment, shall not relieve the Owner of such property of the obligation of full payment. For the purpose of this provision, such interim Solid Waste Service Assessment shall be deemed due and payable on the date the Certificate of Occupancy was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved and shall be deemed perfected upon the issuance of the Certificate of Occupancy.

ARTICLE III
COLLECTION AND USE OF SOLID WASTE
SERVICE ASSESSMENTS

SECTION 3.01. METHOD OF COLLECTION.

(A) Unless otherwise directed by the Town Commission, the Solid Waste Service Assessments shall be collected pursuant to the uniform method provided in the Uniform Assessment Collection Act, and the Town shall comply with all applicable provisions of the Uniform Assessment Collection Act. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

(B) The amount of a Solid Waste Service Assessment to be collected using the uniform method pursuant to the Uniform Assessment Collection Act for any specific parcel of benefitted property may include an amount equivalent to the payment delinquency, delinquency fees and recording costs for a prior year's assessment for a comparable service, facility, or program provided, (1) the collection method used in connection with the prior year's assessment did not employ the use of the uniform method of collection authorized by the Uniform Assessment Collection Act, (2) notice is provided to the Owner as required under the Uniform Assessment Collection Act, and (3) any lien on the affected parcel for the prior year's assessment is supplanted and transferred to such Solid Waste Service Assessment upon certification of a non-ad valorem roll to the Tax Collector by the Town.

SECTION 3.02. ALTERNATIVE METHOD OF COLLECTION. In lieu of utilizing the Uniform Assessment Collection Act, the Town may elect to collect the Solid Waste

Service Assessments by any other method which is authorized by law or under the alternative collection method provided by this Section:

(A) The Town shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the amount of the Solid Waste Service Assessment, (3) the number of units contained within the parcel, (4) the total amount of the Solid Waste Service Assessment imposed against the parcel for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Solid Waste Service Assessment is due, and (7) a statement that the Solid Waste Service Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) The Town may provide for early payment and discount of the Solid Waste Service Assessment.

(C) A general notice of the lien resulting from imposition of the Solid Waste Service Assessments shall be recorded in the Official Records of the County. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(D) The Town shall have the right to foreclose and collect all delinquent Solid Waste Service Assessments in the manner provided by law for the foreclosure of mortgages on real property or appoint or retain an agent to institute such foreclosure and collection proceedings. A Solid Waste Service Assessment shall become delinquent if it is

not paid within 30 days from the date any installment is due. The Town or its agent shall notify any property owner who is delinquent in payment of his or her Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the Town or its agent will either (1) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent Solid Waste Service Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real property, or (2) cause an amount equivalent to the delinquent Solid Waste Service Assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

(E) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the Town may be the purchaser to the same extent as any Person. The Town or its agent may join in one foreclosure action the collection of Solid Waste Service Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent Owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town and its agents, including reasonable attorney fees and title search expenses, in collection of such delinquent Solid Waste Service Assessments and any other costs incurred by the Town as a result of such delinquent Solid Waste Service Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(F) In lieu of foreclosure, any delinquent Solid Waste Service Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the Owner in the manner required by the Uniform Assessment Collection Act and this Ordinance, and (2) any existing lien of record on the affected parcel for the delinquent Solid Waste Service Assessment is supplanted by the lien resulting from certification of the Assessment Roll, as applicable, to the Tax Collector.

(G) Notwithstanding the Town's use of an alternative method of collection, the Town Manager shall have the same power and authority to correct errors and omissions as provided to him or her or other county officials in Section 2.12 hereof.

(H) Any Town Commission action required in the collection of Solid Waste Service Assessments may be by resolution.

SECTION 3.03. GOVERNMENT PROPERTY.

(A) If Solid Waste Service Assessments are imposed against Government Property, the Town shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the amount of the Solid Waste Service Assessment, (3) the number of units contained within the parcel, (4) the total amount of the parcel's Solid Waste Service Assessment for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Solid Waste Service Assessment is due.

(B) Solid Waste Service Assessments imposed against Government Property shall be due on the same date as all other Solid Waste Service Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) A Solid Waste Service Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The Town shall notify the Owner of any Government Property that is delinquent in payment of its Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state that the Town will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent Owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town, including reasonable attorney fees and title search expenses, in collection of such delinquent Solid Waste Service Assessments and any other costs incurred by the Town as a result of such delinquent Solid Waste Service Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, a Solid Waste Service Assessment imposed against Government Property may be collected as a surcharge on a utility bill provided to such Government Property in installments with a remedy of a mandamus action in the event of non-payment. The Town Commission may contract for such billing services with any utility, whether or not such utility is owned by the Town.

ARTICLE IV

GENERAL PROVISIONS

SECTION 4.01. APPLICABILITY. This Ordinance and the Town's authority to impose assessments pursuant hereto shall be applicable throughout the Town.

SECTION 4.02. ALTERNATIVE METHOD.

(A) This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the Town, shall be liberally construed to effect the purposes hereof.

(B) Nothing herein shall preclude the Town Commission from directing and authorizing, by resolution, the combination with each other of (1) any supplemental or additional notice deemed proper, necessary, or convenient by the Town, (2) any notice required by this Ordinance, or (3) any notice required by law, including the Uniform Assessment Collection Act.

SECTION 4.03. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 4.04. CONFLICTS. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4.05. INCLUSION IN 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 Code of Town of Surfside, Florida, that the Sections of the Ordinance may be renumbered or relettered to accomplish such intentions, and that the word "Ordinance" may be changes to "Section" or other appropriate word.

SECTION 4.06. EFFECTIVE DATE. This Ordinance shall be effective immediately upon adoption on the second reading.

PASSED AND ADOPTED on First Reading on this 12th day of June, 2018.

PASSED AND ADOPTED on Second and Final Reading on this 10th day of July, 2018.

On Final Reading Moved by: Commissioner Karukin

On Final Reading Second by: Vice Mayor Gielchinsky


FINAL VOTE ON ADOPTION

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

Absent
YES
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:



Weiss Serota Helfman Cole & Bierman, P.L.,
Town Attorney