

ORDINANCE NO. 18 - 11093

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA CREATING SECTION 90-100 "REASONABLE ACCOMMODATION PROCEDURES" OF "CHAPTER 90 ZONING" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO PROVIDE REASONABLE ACCOMMODATION PROCEDURES FOR DISABLED PERSONS UNDER THE FAIR HOUSING ACT AND AMERICANS WITH DISABILITIES ACT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, the Town Commission of the Town of Surfside, Florida, recognizes that
2 changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the
3 Town's regulations are current and consistent with the Town's needs and legal standards; and

4 **WHEREAS**, the Town Commission desires to assure that it provides a reasonable
5 accommodation application procedure in order to provide full protection and due process to
6 disabled individuals and provide for the preservation of the integrity of the Town of Surfside's
7 Code of Ordinances and zoning districts, including the protection of the residential character of
8 its residential neighborhoods; and

9 **WHEREAS**, the Town Commission held its first public hearing on these regulations on
10 November 13, 2018; and

11 **WHEREAS**, the Planning and Zoning Board, sitting as the Local Planning Agency, has
12 reviewed the revisions to the Code for consistency with the Town's Comprehensive Plan at a
13 duly noticed hearing on November 29, 2018; and

14 **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing
15 on these regulations as required by law on December 11, 2018; and

16
17 **WHEREAS**, the Town Commission hereby finds and declares that adoption of this
18 Ordinance is necessary, appropriate, and advances the public interest.
19

20 **NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
21 **THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

22 **Section 1. Recitals.** Each of the above stated recitals is true and correct and the recitals are
23 incorporated herein by this reference.

24 **Section 2. Code Amendment.** The Code of Ordinances of the Town of Surfside,
25 Section 90-100 “Reasonable accommodation procedures” of Chapter 90 “Zoning” is hereby
26 created as follows¹:

27 **ARTICLE IX. – REASONABLE ACCOMMODATION AND RELIGIOUS LAND USE RELIEF**
28 **PROCEDURES**

29 * * *

30 99-100. – Reasonable accommodation procedures.

31 (a) Implementation of policy. This section implements the policy of the town for processing of
32 requests for reasonable accommodation to its ordinances, rules, policies, and procedures for
33 persons with disabilities as provided by the Federal Fair Housing Amendments Act (42
34 U.S.C. 3601 et seq.)("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C.
35 Section 12131 et seq.)("ADA"). For purposes of this section, a "disabled" individual or
36 person is an individual that qualifies as disabled and/or handicapped under the FHA and/or
37 ADA. Any person who is disabled (or qualifying entities) may request a reasonable
38 accommodation with respect to the town's ordinances, rules, policies, practices and/or
39 procedures (hereinafter, for the purposes of this Section, the “Town Regulations”) as
40 provided by the FHA and the ADA pursuant to the procedures set out in this section. The
41 town commission shall appoint a special master who shall make final determinations on
42 applications for reasonable accommodations related to relief from Town Regulations.

43 (b) Request to be in writing. A request by an applicant for reasonable accommodation under
44 this section shall be made in writing by completion of a reasonable accommodation request
45 form, which form is maintained by (and shall be submitted to) the town manager. The
46 reasonable accommodation form shall contain such questions and requests for information
47 as are necessary for processing the reasonable accommodation request. For a reasonable
48 accommodation to any of the Town Regulations pertaining to housing or zoning, the
49 application, shall, at a minimum, require the following information:

50 (1) Name and contact information for applicant or applicant's authorized representative;

51 (2) Address of housing or other location at which accommodation is requested;

52 (3) Description of reasonable accommodation required;

53 (4) A description of the accommodation and the specific regulation(s) and/or
54 procedure(s) from which accommodation is sought;

¹ Additions to text are shown in underline. Deletions to text are shown in ~~strikethrough~~.

- 55 (5) Reason(s) the reasonable accommodation may be necessary for the individual(s) with
56 disabilities to use and enjoy the housing or other service;
- 57 (6) A statement as to whether the applicant is seeking the accommodation in order to
58 make housing and/or provision of housing financially viable, with supporting
59 documentation;
- 60 (7) A statement as to whether the applicant is seeking the accommodation is
61 therapeutically necessary, with supporting documentation; and
- 62 (8) Proof of satisfactory fire, safety, and health inspections required by Section 397.487,
63 Florida Statutes, as amended, and other applicable law.
- 64 (c) *Medical information; confidentiality.* Should the information provided by the disabled
65 individual to the town include medical information or records, including records indicating
66 the medical condition, diagnosis or medical history of the disabled individual(s), such
67 individual(s) may, at the time of submitting such medical information, request that the
68 town, to the extent allowed by law, treat such medical information as confidential
69 information of the disabled individual(s). The town shall thereafter endeavor to provide
70 written notice to the disabled individual(s), and/or their representative, of any request
71 received by the town for disclosure of the medical information or documentation which the
72 disabled individual(s) has previously requested be treated as confidential by the town. The
73 town will cooperate with the disabled individual(s), to the extent allowed by law, in actions
74 initiated by such individual(s) to oppose the disclosure of such medical information or
75 documentation, but the town shall have no obligation to initiate, prosecute or pursue any
76 such action, or to incur any legal or other expenses (whether by retention of outside counsel
77 or allocation of internal resources) in connection therewith, and may comply with any
78 judicial order without prior notice to the disabled individual(s).
- 79 (d) *Determination process.*
- 80 (1) The special master shall issue a written determination within sixty (60) days of the
81 date of receipt of a completed application or a date mutually agreeable to both the
82 town and the applicant, except as provided in paragraph 3, below, and may, in
83 accordance with federal law:
- 84 a. grant the accommodation request,
- 85 b. grant a portion of the request and deny a portion of the request and/or impose
86 conditions upon the grant of the request, or
- 87 c. deny the request in accordance with federal law. If the request is denied, the
88 order shall state the grounds therefore. All written determinations shall give
89 notice of the right to appeal.
- 90 (2) The notice of determination shall be sent to the applicant (i.e., the disabled
91 individuals or representative) by certified mail, return receipt requested.

92 (3) If reasonably necessary to reach a determination on the request for reasonable
93 accommodation, the special master or town manager or designee, prior to the end of
94 said sixty (60) day period, may request additional information from the applicant,
95 specifying in sufficient detail what additional information is required. The applicant
96 shall have fifteen (15) days after the date of the request for additional information to
97 provide the requested information. In the event a request for additional information is
98 made, the sixty (60) day period to issue a written determination shall no longer be
99 applicable, and the special master shall issue a written determination within thirty
100 (30) days after receipt of the additional information or 90 days after the initial receipt
101 of the application, whichever is later. If the applicant fails to provide all of the
102 requested additional information within said fifteen-day period, the town manager or
103 designee shall issue a written notice advising that the applicant has failed to timely
104 submit the additional information and therefore the request for reasonable
105 accommodation shall be deemed abandoned and/or withdrawn and no further action
106 by the town with regard to said reasonable accommodation request shall be required.
107 Such time frames may be extended by mutual agreement of the town and the
108 applicant.

109 (e) *Criteria for determination.* In determining whether the reasonable accommodation request
110 shall be granted or denied, the applicant shall be required to establish that they are
111 protected under the FHA and/or ADA by demonstrating that they are handicapped, disabled
112 or qualifying entities, as defined in the FHA and/or ADA. Further, the applicant must
113 demonstrate that:

114 (1) A physical or mental impairment which substantially limits one or major life
115 activities; a record of having such impairment; or that they are regarded as having
116 such impairment.

117 (2) That the proposed accommodations being sought are reasonable and necessary. The
118 foregoing (as interpreted by the courts in evaluating reasonable accommodation
119 requests under the FHA or ADA) shall be the basis for a decision upon a reasonable
120 accommodation request made by the special master, or by the town commission in the
121 event of an appeal.

122 (3) The requested accommodation would not fundamentally alter the town's zoning
123 scheme.

124 The special master may impose conditions or modifications he/she deems necessary to
125 mitigate any factors which would fundamentally alter the town's zoning scheme or to
126 protect the public health and safety or are reasonably necessary to assure compliance with
127 his/her order.

128 (f) *Appeal of determination.* Within thirty (30) days after the special master's determination on
129 a reasonable accommodation request, or any order or action of the special master with
130 respect to the application of this section, is mailed to the applicant, such applicant may
131 appeal the decision to the town commission. All appeals shall contain a statement
132 containing sufficient detail of the grounds for the appeal. Appeals shall be to the town
133 commission who shall, after public notice and a public hearing, render a determination as

134 soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has
135 been filed. Where the appeal is based upon a provision of the town regulations, the
136 planning and zoning board shall first hold a hearing to make a recommendation on the
137 appeal to the town commission.

138 (g) Fees. There shall be no fee imposed by the town in connection with a request for
139 reasonable accommodation under this section or an appeal of a determination on such
140 request to the town commission, and the town shall have no obligation to pay an
141 applicant's (or an appealing party's, as applicable) attorneys' fees or costs in connection
142 with the request, or an appeal.

143 (h) Stay of enforcement. While an application for reasonable accommodation, or appeal or a
144 determination of same, is pending before the town, the town will not enforce the subject
145 zoning ordinance, rules, policies, and procedures against the applicant.

146 (i) Miscellaneous provisions. The following general provisions shall be applicable:

147 (1) The town shall display a notice in the town's public notice bulletin board (and shall
148 maintain copies available for review in the building/permitting division, and the town
149 clerk's office), advising the public that disabled individuals (and qualifying entities)
150 may request reasonable accommodation as provided herein.

151 (2) A disabled individual may apply for a reasonable accommodation on his/her own
152 behalf or may be represented at all stages of the reasonable accommodation process
153 by a person designated by the disabled individual.

154 (3) The town shall provide such assistance and accommodation as is required pursuant to
155 FHA and ADA in connection with a disabled person's request for reasonable
156 accommodation, including, without limitation, assistance with reading application
157 questions, responding to questions, completing the form, filing an appeal; and
158 appearing at a hearing, etc., to ensure the process is accessible.

159 (j) Revocation of reasonable accommodation. Any reasonable accommodation received shall
160 be deemed revoked if the applicant or the property upon which the accommodation is
161 granted is found in violation of any provision of the order granting the reasonable
162 accommodation by a court of law or by the special master hearing code enforcement cases.

163 (k) Recertification. All reasonable accommodation requests approved by the town are valid for
164 no more than two years. Recertification requests must be filed at least 90 days before the
165 conclusion of the end of the two year period of effectiveness of the reasonable
166 accommodation order. The process for recertification shall follow the same requirements
167 as set forth above for "Requests for Accommodation", and review of recertification
168 requests shall follow the same procedures as outlined above for new applications. The
169 failure of the applicant to timely apply for annual recertification, or the denial of an
170 application to recertify annually, shall result in the revocation of the approved reasonable
171 accommodation. Recertification requests shall follow the same requirements as set forth
172 above.

173 * * *

174 **Section 3. Severability.** If any section, subsection, clause or provision of this Ordinance is
175 declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be
176 affected by such invalidity.

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

179 **Section 5. Inclusion in the Code of Ordinances.** It is the intention of the Town
180 Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made
181 a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be
182 renumbered or re-lettered to accomplish such intentions; and the word "Ordinance" may be changed
183 to "Section" or other appropriate word.

184 **Section 6. Effective Date.** This Ordinance shall be effective upon final adoption on
185 second reading.

186

187 **PASSED** on first reading this 13th day of November, 2018.

188 **PASSED** and **ADOPTED** on second reading this 11th day of December, 2018.

189

190 On Final Reading Moved by: Commissioner Karukin

191 On Final Reading Second by: Commissioner Paul

192 **FINAL VOTE ON ADOPTION**

193 Commissioner Barry Cohen	<u>yes</u>
194 Commissioner Michael Karukin	<u>yes</u>
195 Commissioner Tina Paul	<u>yes</u>
196 Vice Mayor Daniel Gielchinsky	<u>yes</u>
197 Mayor Daniel Dietch	<u>yes</u>

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Daniel Dietch, Mayor

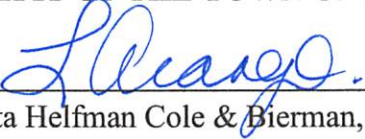
ATTEST:


Sandra Novoa, MMC, Town Clerk

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

209

210

211 
Weiss Serota Helfman Cole & Bierman, P.L.,

212 Town Attorney

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