

ORDINANCE NO. 21 - 1716

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-47, "YARDS GENERALLY, ALLOWABLE PROJECTIONS" AND SECTION 90-48 "MODIFICATION OF SIDE AND REAR YARD REGULATIONS" TO PROVIDE ALTERNATIVE SIDE SETBACK REQUIREMENTS IN THE H120 DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida
2 Statutes, provide municipalities with the authority to exercise any power for municipal purposes,
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4 **WHEREAS**, the Town Commission of the Town of Surfside ("Town Commission") finds it
5 periodically necessary to amend its Code of Ordinances and Land Development Code ("Code") in
6 order to update regulations and procedures to maintain consistency with state law and to implement
7 municipal goals and objectives; and

8 **WHEREAS**, the H120 zoning district is the Town's most intense district and consists of a
9 strip of buildings on properties located on the east side of Collins Avenue; and

10 **WHEREAS**, Section 90-48.5 of the Town Code currently requires buildings in the H120
11 district that are greater than 30 feet in height to increase their setbacks at a ratio of one foot of
12 additional setback per three feet of height, resulting in an inclined plane where setbacks are greater
13 at higher floors than on lower floors, commonly known as the "wedding cake" or "daylight plane"
14 (the "Existing Inclined Setback");

15 **WHEREAS**, the Existing Inclined Setback has resulted in a stepped back design pattern where
16 upper floors have less floor area than lower floors, with such design pattern repeated among
17 different buildings along the H120 district; and

18 **WHEREAS**, the Town Commission wishes to amend the Town Code to provide for alternative
19 side setback requirements to the Existing Inclined Setback and encourage variation of design while
20 providing for increased spacing, light and air between buildings on large properties at the ground
21 level and similar volumetric light and air as provided by the Existing Inclined Setback; and

22 **WHEREAS**, the Town Commission finds that offering a design option to owners in the H120
23 District to employ an average setback in lieu of the Existing Inclined Setback will encourage
24 variation; and

25 **WHEREAS**, the Town Commission finds that average setbacks must be coupled with an
26 increased ground floor setback to increase spacing between buildings on larger properties at the
27 ground level and ensure that volumetric light and air similar to what is provided by the Existing
28 Inclined Setback; and

29 **WHEREAS**, on September 14, 2021 at its regular monthly meeting, the Town Commission
30 directed staff to evaluate and prepare an ordinance providing for an average side setback option in
31 the H120 District, as further detailed in the discussion Commission Communication Memorandum
32 included with the agenda item; and

33 **WHEREAS**, the Town Commission held a public hearing on October 12, 2021 for first
34 reading of the Ordinance and recommended approval of the proposed amendments to the Code of
35 Ordinances, together with the changes as proposed at first reading of the Ordinance, having
36 complied with the notice requirements in the Florida Statutes; and

37 **WHEREAS**, the Planning and Zoning Board, as the Local Planning Agency for the Town,
38 held its hearing on the proposed Ordinance on October 28, 2021 with due public notice and input,
39 and recommended approval of the proposed amendments with a modification to Section 90-47.6(2)
40 to allow open and unenclosed balconies to extend into required setbacks for secondary street
41 (corner) and interior side yards by (1) up to 50% of the setback or 10 feet, whichever is less, for
42 50% of the balcony length on any floor; and (2) up to 5 feet for the remaining 50% of the balcony
43 length on such floor; and

44 **WHEREAS**, the Town Commission wishes to adopt the proposed Ordinance as originally
45 approved at first reading OR with the changes recommended by the Planning and Zoning Board;
46 and

47 **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing on
48 these regulations as required by law on November 9, 2021 and further finds the proposed changes
49 to the Code are necessary and in the best interest of the community.

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51 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
52 **TOWN OF SURFSIDE, FLORIDA¹:**

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54 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by
55 this reference:

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57 **Section 2. Town Code Amended.** Section 90-47 – “Yards generally, allowable
58 projections” and Section 90-48 – “Modification of side and rear yard regulations” of the Surfside
59 Town Code of Ordinances are hereby amended and shall read as follows¹:

60 **Sec. 90-47. - Yards generally, allowable projections.**

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63 ~~90-47.6 In the H120 district, open unenclosed balconies may extend into a required~~
64 ~~primary (front), secondary (corner), or rear setback not more than eight feet, and may extend~~
65 ~~into a required interior side setback not more than five feet. In the H120 district, the following~~
66 ~~projections are permitted:~~

67 (1) When setbacks provide a minimum interior side setback of 10 feet for the first 30 feet
68 in height, with the width of each required interior side yard increased by one foot for every
69 three feet of building height above 30 feet in the H120 district, open unenclosed balconies
70 may extend into a required primary front or secondary (corner) not more than eight feet,
71 and may extend into a required interior side setback not more than five feet. Open
72 unenclosed balconies may extend from the rear of the building to a point 12 feet west of the
73 bulkhead line.

74 (2) When average setbacks provide a 25% average side setback in the H120 district, open
75 unenclosed balconies may extend into a required primary (front) setback not more than eight
76 feet. Open unenclosed balconies may extend from the rear of the building to a point 12 feet
77 west of the bulkhead line. Open unenclosed balconies may extend into a required secondary
78 street (corner) or interior side setback as follows: by no more than six feet.

79 (a) 50% of balcony length on any floor can project no more than 50% of setback or 10
80 feet, whichever is less; and

81 (b) the remaining 50% of balcony length on any floor can project no more than 5 feet.

82 Notwithstanding the above, 75% of all balconies on any floor shall be located at least 15
83 feet from any secondary street (corner) or interior side property line.

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85 * * *

89 **Sec. 90-48. - Modification of side and rear yard regulations.**

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93 90-48.5. In the H120 district, when a building exceeds a height of 30 feet, the width of each
94 side yard shall be increased by one foot for every three feet of building height above
95 30 feet, provided however, on a corner lot the minimum width of the side yard
96 adjoining a street need not exceed 20 feet. ~~one of the following two options for~~
97 enhanced side setbacks must be met:
98

99 (1) Average Side Setback. Except for legal nonconforming sides of buildings
100 deemed architecturally significant pursuant to Section 90-33(3), the required
101 side setback in the H120 district for lots 100 feet or more in width is 20% of
102 the lot width or 10 feet minimum. In addition, and in order to encourage
103 variety and innovation in design, buildings shall be subject to an average side
104 setback of an additional 5% applied to side setbacks (25% overall). The
105 required average setback for each side shall be calculated and applied to each
106 side elevation overall, as follows:

107 a) Multiply the lot width by 5%;

108 b) Multiply the resulting figure by the height in feet from crown of road
109 to the top of the structural roof;

110 c) Multiply the resulting figure by the depth of the allowable building
111 on that side (lineal feet between front setback and bulkhead line) to
112 arrive at the aggregate volume of average setback;

113 d) The aggregate volume of average setback must be applied in any one
114 or multiple areas throughout the height and depth of the building
115 (further reducing the building envelope created by the 20% required
116 setbacks) to reduce the floor width (i.e. parallel to the lot width) and/or
117 depth (i.e. perpendicular to the lot width), at the discretion of the design
118 professional. Average setback may be applied at any point along a
119 floor, mixed and matched among floors, and/or joined with setbacks
120 taken from the opposite side elevation.

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122 (2) Inclined Side Setback. In lieu of providing the above average side setback in
123 90-48.5(1), the property owner may, at its election, alternatively provide a
124 minimum interior side setback of 10 feet for the first 30 feet in height, with the
125 width of each required interior side yard increased by one foot for every three
126 feet of building height above 30 feet. For corner properties, a building shall
127 be set back a minimum of 20 feet from a side or secondary street for its entire
128 height.

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

132 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is hereby
133 ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside
134 Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to
135 accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other
136 appropriate word.

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138 **Section 5. Conflicts.** Any and all ordinances and resolutions or parts of ordinances or
139 resolutions in conflict herewith are hereby repealed.

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141 **Section 6. Effective Date.** This ordinance shall become effective upon adoption.

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143 **PASSED and ADOPTED** on first reading this 12th day of October, 2021.

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145 **PASSED and ADOPTED** on second reading this 9th day of November, 2021.

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148 On Final Reading Moved by: Commissioner Velasquez

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150 On Final Reading Second by: Vice Mayor Paul

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152 **First Reading:**

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154 Motion by: Vice Mayor Paul

155 Second by: Commissioner Velasquez

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157 **Second Reading:**

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159 Motion by: Commissioner Velasquez

160 Second by: Vice Mayor Paul

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163 **FINAL VOTE ON ADOPTION**

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165 Commissioner Charles Kesl No

166 Commissioner Eliana R. Salzhauer No

167 Commissioner Nelly Velasquez Yes

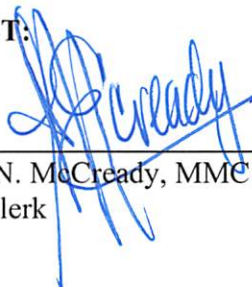
168 Vice Mayor Tina Paul Yes

169 Mayor Charles W. Burkett Yes

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172  _____
173 Charles W. Burkett
174 Mayor

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ATTEST:



Sandra N. McCready, 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