

ORDINANCE NO. 22 - 1722

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-2. - "DEFINITIONS" TO CREATE A DEFINITION OF "NONHABITABLE UNDERSTORY;" CREATING A NEW SECTION 90-49.5. - "NONHABITABLE UNDERSTORY" TO REGULATE NONHABITABLE UNDERSTORIES IN LOW-RISE RESIDENTIAL DISTRICTS; 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, to implement
7 municipal goals and objectives, to clarify regulations and address specific issues and needs that
8 may arise; and

9 **WHEREAS**, consistent with National Flood Insurance Program ("NFIP") requirements
10 promulgated by the Federal Emergency Management Agency ("FEMA"), Section 42-11(c)(1) of
11 the Code requires a minimum floor elevation for single family buildings and Section 42-11(c)(3)
12 of the Code regulates enclosures beneath the minimum habitable floor elevation; and

13 **WHEREAS**, utility, parking, and storage uses of areas beneath the minimum habitable floor
14 elevation regulated under Section 42-11(c)(3) are consistent with the Florida Building Code; and

15 **WHEREAS**, Section 90-2 of the Code, Definitions, defines "story" as "That portion of a
16 building other than a basement, included between the surface of any *floor* and the surface of the
17 floor next above it; or, if there be no floor next above it, then the space between such floor and
18 ceiling next above it" (emphasis supplied); and

19 **WHEREAS**, "floor" was originally defined in the Flood Damage Prevention Ordinance
20 adopted by Ordinance No. 1300 on October 13, 1992 (and part of the code in effect in 2004), as

21 “the top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete
22 slab construction or top of wood flooring in wood frame construction. The term does not include
23 the floor of a garage used solely for parking vehicles,” and

24 **WHEREAS**, Article V, Section B(1) of Ordinance No. 1300 required single family
25 construction to be elevated to have the “lowest floor” at base flood elevation; and

26 **WHEREAS**, “elevated building” was defined in Ordinance No. 1300 as “a non-basement
27 building built to have *the lowest floor* elevated above the ground level by means of fill, solid
28 foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls”
29 (emphasis supplied); and

30 **WHEREAS**, elevated buildings under Ordinance No.1300 were permitted to enclose areas
31 below the base flood elevation provided finished living spaces were precluded, were designed to
32 allow the entry of flood waters, and uses were limited to parking of vehicles, limited storage of
33 maintenance equipment, or entry into the living area (stairway or elevator); and

34 **WHEREAS**, based on the above, the concept of uninhabitable enclosed and unenclosed spaces
35 below the “lowest floor” was set out in the 2004 code referenced in the Charter; and

36 **WHEREAS**, the concept of “lowest floor” was summarized in Chapter 42 – Floods, of the
37 Town Code adopted by Ordinance No. 1498 on September 9, 2008, to provide “lowest floor” means
38 ‘the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant
39 enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a
40 basement, is not considered a building’s lowest floor, provided that such enclosure is not built so
41 as to render the structure in violation of the nonelevation design standards of this article;” and

42 **WHEREAS**, Section 42-9 of the Code adopted by Ordinance No. 2019-1697 on June 11, 2019,
43 provides “The lowest floor of the lowest enclosed area of a building or structure, including
44 basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable
45 solely for vehicle parking, building access or limited storage provided that such enclosure is not
46 built so as to render the structure in violation of the non-elevation requirements of the Florida
47 Building Code or ASCE 24. (Also defined in FBC, B, § 202.);” and

48 **WHEREAS**, the space between grade and the elevation of the first habitable floor is not a
49 “story” because it does not meet the definition of “floor” and is located below the “lowest floor” as
50 defined in the Code; and

51 **WHEREAS**, the Town Commission finds that the space between grade and the elevation of
52 the first habitable floor may be addressed through different design options, filled with earth or with
53 a nonhabitable understory; and

54 **WHEREAS**, the resulting space between grade and the elevation of the first habitable floor is
55 typically filled with earth which results in adverse impacts to light and air, and discrepancies in the
56 yard elevations between neighboring properties, which itself requires retaining walls of increased
57 heights; and

58 **WHEREAS**, the construction of these earth-filled retaining walls dramatically increases the
59 solid mass of the building, otherwise referred to as building massing, and greatly reduces light and
60 air to neighboring properties and displaces floodwaters onto neighboring properties during times of
61 flood; and

62 **WHEREAS**, providing a viable home design option, commonly referred to as the understory,
63 to property owners to leave this space open greatly decreases building massing, increases apparent
64 light and air to neighboring properties, decreases floodwater displacement onto neighboring
65 properties during times of flood, and increases the usable space on small lots; and

66 **WHEREAS**, the Town Commission finds that nonhabitable understories are not “stories”
67 under the Code because they do not meet the definition of “floor” and are located below the “lowest
68 floor,” and are otherwise desirable in providing efficient site and storage space utilization while at
69 the same time allowing for greater pervious area, improved compatibility between existing and new
70 construction, and more openness, light, and air in the neighborhood; and

71 **WHEREAS**, the Town Commission further finds a new definition of nonhabitable understory
72 is warranted to address and regulate the use of the area between grade and the lowest floor and
73 minimum habitable floor elevation; and

74 **WHEREAS**, the Town Commission discussed this issue on April 12, 2022, and directed staff
75 to prepare an ordinance addressing nonhabitable understories; and

76 **WHEREAS**, the Town Commission desires to define, regulate, interpret and clarify that this
77 home design option for nonhabitable understories is an important measure in addressing the
78 potential impacts of climate change while increasing light and air; decreasing off site flooding and
79 better ensuring compatibility between existing construction and new construction; and

80 WHEREAS, the Town Commission held its first public hearing on May 10, 2022 and
81 approved the proposed amendments to the Code of Ordinances having complied with the notice
82 requirements in the Florida Statutes; and

83 WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, held
84 its hearing on the proposed amendment on May 26, 2022, with due public notice and input and by
85 a vote of 4-1 recommended the proposed amendment be approved with changes to limit enclosures
86 in H30A to 8% of the lot area, to limit enclosures in H30C to 50% of the footprint of the first
87 habitable floor, and to not allow understories in the H40 district; and

88 WHEREAS, the Town Commission has conducted a second duly noticed public hearing on
89 these regulations as required by law on June 14, 2022 and further finds the proposed changes to the
90 Code are necessary and in the best interest of the community.

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92 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE
93 TOWN OF SURFSIDE, FLORIDA:

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

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98 **Section 2. Town Code Amended.** Chapter 90 – “Zoning” of the Surfside Town Code of
99 Ordinances is hereby amended to amend Section 90-2. -- “Definitions” and to create Section 49.5.
100 -- “Nonhabitable Understory” which shall read as follows¹:

101 **Sec. 90-2. – Definitions.**

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108 *Nonhabitable Understory:* That unoccupied portion of a building located between grade
109 and the elevation of the lowest habitable floor, and entirely within the building’s footprint,
110 that conforms to Section 90-49.5 and that is not a basement.

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114 **Sec. 90-49.5. – Nonhabitable Understory.**

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116 A nonhabitable understory is only permitted in H30A, H30B, H30C and H40 districts
117 subject to the following restrictions:

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- 119 (a) Generally. A nonhabitable understory may consist of enclosed and unenclosed
120 spaces, but all enclosed elements must conform to Section 42-11(c)(3), the
121 Florida Building Code and this section. All enclosed space below design flood
122 elevation shall used solely for parking of vehicles, building access and storage
123 and shall be constructed and hydrostatically vented per Federal Emergency
124 Management Agency National Flood Insurance Program rules and regulations,
125 the Florida Building Code and the Town of Surfside Floodplain Management
126 Ordinance
- 127 (b) In the H30A and H30B Districts, the cumulative area of all enclosed space
128 shall not exceed 10% of the lot area. Pervious area equal to at least 20% of the
129 lot area shall be provided within the nonhabitable understory, although such
130 pervious area shall not be counted for the purpose of meeting pervious area
131 requirements.
- 132 (c) In the H30C and H40 districts, the cumulative area of all enclosed space shall
133 not exceed 90% of the footprint of the building’s first habitable floor. The
134 exterior design of enclosed portions of the nonhabitable understory shall be
135 compatible with, but also distinguishable from the stories above.

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

143 **Section 4. Inclusion in the Code.** It is the intention of the Town Commission, and it is
144 hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of
145 Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to
146 accomplish such intentions; and the word “Ordinance” may be changed to “Section” or other
147 appropriate word.

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

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152 **Section 6. Effective Date.** This ordinance shall become effective upon adoption on second
153 reading.

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155 **PASSED** on first reading this 10th day of May, 2022.

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157 **PASSED and ADOPTED** on second reading this 14th day of June, 2022.


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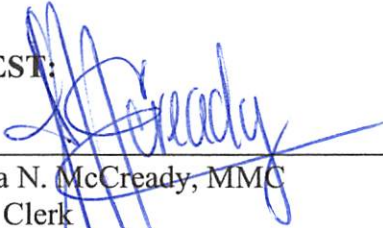
161 **First Reading:**
162 Motion by: Vice Mayor Rose
163 Second by: Commissioner Meischoid

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166 **Second and Final Reading:**
167 Motion by: Commissioner Meischoid
168 Second by: Vice Mayor Rose

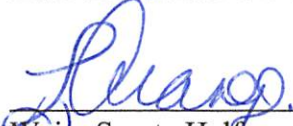
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170 **AL VOTE ON ADOPTION**

171	Commissioner Fred Landsman	<u>Yes</u>
172	Commissioner Marianne Meischoid	<u>Yes</u>
173	Commissioner Nelly Velazquez	<u>Absent</u>
174	Vice Mayor Jeffrey Rose	<u>Yes</u>
175	Mayor Shlomo Danzinger	<u>Yes</u>

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Shlomo Danzinger, Mayor

179 **ATTEST:** 
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181 _____
182 Sandra N. McCready, MMC
183 Town Clerk

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

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189 _____
190 Weiss Serota Hellman Cole & Bierman, P.L.
191 Town Attorney
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