

ORDINANCE NO. 22 - 1731

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES BY AMENDING SECTION 90-67 – “EMERGENCY POWER GENERATORS” TO PERMIT THE INSTALLATION OF EMERGENCY POWER GENERATORS ON THE ROOFTOP OF RESIDENTIAL STRUCTURES IN THE H30A AND H30B ZONING 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
3 purposes, except where prohibited by law, and to adopt ordinances in furtherance of such
4 authority; and

5 **WHEREAS**, the Town Commission of the Town of Surfside (the “Town”) finds it
6 periodically necessary to amend its Code of Ordinances and Land Development Code
7 (“Code”) in order to update regulations and procedures to maintain consistency with state
8 law, to implement municipal goals and objectives, to clarify regulations and address
9 specific issues and needs that may arise; and

10 **WHEREAS**, at its July 12, 2022 meeting, the Town Commission considered and
11 adopted on first reading an ordinance to amend Section 90-47.3 of the Town Code to
12 revise ground-level mechanical equipment setbacks, visual screening, and sound
13 mitigation requirements and create Section 90-67.3 of the Code to regulate the location
14 and requirements for rooftop mechanical equipment; and

15 **WHEREAS**, Section 90-67 “Emergency Power Generators” of the Town Code
16 currently does not permit generators on the rooftop of residential structures, and provides
17 that for (i) new construction of residential structures, emergency power generators must
18 be placed in the rear of the property, and (ii) that for residential structures existing as of
19 September 1, 2006, permanent generators may be placed in the front of the house if
20 placement in the rear is not feasible; and

21 **WHEREAS**, due to innovations in mechanical equipment, it is now more feasible to
22 mitigate the negative visual and auditory consequences of mechanical equipment,
23 including those that may be installed on the roof; and

24 **WHEREAS**, the Town Commission desires to revise the Town Code by amending
25 Section 90-67 of the Town Code to permit the placement of generators on the rooftop in
26 residential structures located in the H30A and H30B zoning districts, in accordance with
27 screening mitigation requirements as set forth in Section 90-67.3 of the Code, as may be
28 amended; and

29 **WHEREAS**, at the July 12, 2022 Town Commission meeting, the Town
30 Commission discussed amending the Code to permit the installation of mechanical
31 equipment, including generators, on the rooftop of residential structures, thereby
32 necessitating an amendment to Section 90-67 of the Code to address placement of
33 emergency power generators on rooftops; and

34 **WHEREAS**, the Town Commission held its first public hearing on September 13,
35 2022, and approved the proposed amendment to Section 90-67 of the Town Code of
36 Ordinances on first reading; and

37 **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the
38 Town, held its hearing on the proposed amendment on September 29, 2022 with due
39 public notice and input, and recommended approval of this proposed amendment; and

40 **WHEREAS**, the Town Commission has conducted a second duly noticed public
41 hearing on these regulations as required by law on October 12, 2022 and further finds the
42 proposed changes to the Code are necessary and in the best interest of the community.

43 **WHEREAS**, the Town Commission finds that this Ordinance is in the best interests
44 of the Town and promotes the public health, safety, and welfare of the Town.

45 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
46 **TOWN OF SURFSIDE, FLORIDA:**¹

47 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated
48 herein by this reference.
49

¹ Coding: Strikethrough words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with grey highlight and double strikethrough or double underline.

50 **Section 2. Town Code Amended.** Chapter 90, "Zoning," of the Town Code of
51 Ordinances is hereby amended as follows:

52 **CHAPTER 90 – ZONING**

53 ***

54 **ARTICLE V. – DESIGN STANDARDS**

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56

57 **Section 90-67. – Emergency Power Generators.**

58 The following requirements apply to permanent and temporary emergency power
59 generators located in all zoning districts:

60 (1) Permit: The property owner must obtain a building permit for the installation
61 of an emergency power generator.

62 a. The town shall review all such permit applications to ensure such
63 installations minimize the visual and acoustic impact on adjacent
64 properties.

65 (2) Special attention shall be paid to the placement of the generator, the use of
66 sound attenuating materials, and the reasonable containment of sounds and
67 exhausts, which will be created by the operation of any emergency power
68 generator. The preferred placement shall be as follows: For all new
69 construction, permanent emergency generators ~~must~~ shall be placed in the
70 rear of the property or on the rooftop; for residential structures existing as of
71 September 1, 2006, permanent generators may be placed in the front of the
72 house if placement in the rear or on the rooftop is not feasible. In no instance
73 shall generators be placed in the setbacks.

74 a. *Screening*: Emergency power generators that are not located within, or
75 completely screened by a building, shall be screened from view when
76 adjacent to or visible from a public right-of-way or from adjacent parcels of
77 property. Screening may include the use of fences, walls, or hedges, or a
78 combination thereof and such screening shall meet all relevant Code
79 requirements. Notwithstanding the foregoing, screening of rooftop generators
80 in the H30A and H30B Districts shall be in compliance with the requirements
81 of Section 90-67.3, as may be amended.

82 b. *Placement of temporary generators*: Temporary emergency power
83 generators shall be placed outdoors at least ten feet from any opening or
84 window.

85 c. *Maintenance cycle:* The generator's maintenance cycle run shall be
86 permitted a maximum of once a week between the hours of 10:00 a.m. and
87 5:00 p.m., Monday through Friday only, and shall continue for no more than
88 the manufacturer's recommended duration, but not to exceed 30 minutes per
89 cycle.

90 d. *Allowed usage:* Emergency power generators may only be operated for
91 non-maintenance purposes whenever there is a power outage. Generators
92 may not be used as a substitute for electrical power.

93 e. *Code enforcement and removal:* Generators, which are in violation of the
94 provisions of this section, shall be subject to immediate removal and code
95 enforcement action.

96 f. *Compliance with Florida Building Code and Florida Electrical Code. All*
97 *installations of generators shall comply with the latest adopted versions of the*
98 *Florida Building Code and the National Electrical Code.*

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

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

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

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

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116 **PASSED** on first reading this 13th day of September 2022.

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118 **PASSED** and **ADOPTED** on second reading this 12th day of October, 2022.

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First Reading:

Motion by: Vice Mayor Rose
Second by: Commissioner Landsman

Second and Final Reading:

Motion by: Vice Mayor Rose
Second by: Commissioner Landsman

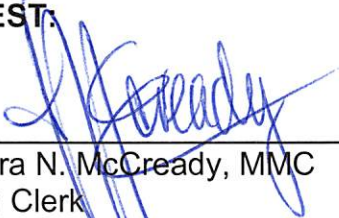
FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>




Shlomo Danzinger, Mayor

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