

**ORDINANCE NO. 2023 - 1753**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING SECTION 90-41, "REGULATED USES", TO CHANGE THE LIST OF RETAIL AND GENERAL COMMERCIAL USES TO ALLOW SMOKE SHOPS AS A CONDITIONAL USE IN THE SD-B40 ZONING DISTRICT, DIFFERENTIATING SUCH USES FROM CIGARS AND TOBACCO LOUNGES, AND PROVIDING FOR RELATED REGULATIONS; 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 ("Town Commission")  
6 finds it periodically necessary to amend its Code of Ordinances and Land Development  
7 Code ("Code") in order to update regulations and procedures to maintain consistency with  
8 state law, to implement municipal goals and objectives, to clarify regulations and address  
9 specific issues and needs that may arise; and

10       **WHEREAS**, Section 90-41 of the Code regulates permitted uses within the Town's  
11 zoning districts; and

12       **WHEREAS**, Section 90-41(c) of the Code allows cigars and tobacco uses in the SD-  
13 B40 district, but the Code does not specifically regulate smoke shops that sell vape and/or  
14 tobacco and nicotine products ("Smoke Shops"); and

15       **WHEREAS**, the Town currently allows three (3) tobacco-related establishments in the  
16 SD-B40 district; and

17       **WHEREAS**, the Town wishes to differentiate cigars and tobacco lounge uses from  
18 Smoke Shops; and

19       **WHEREAS**, the SD-B40 district provides residents and visitors with a unique cultural,  
20 retail, and dining experience, with a variety of uses that are vital to the Town's residents,  
21 economy and tourism industry; and

22       **WHEREAS**, Smoke Shops sell a number of different products, some of which mimic  
23 or address a similar range of effects in the end-consumer as controlled substances, and  
24 Smoke Shops that are not professionally run are incompatible with the character of the  
25 Town's commercial area; and

26       **WHEREAS**, a concentration of Smoke Shops in the SD-B40 district negatively  
27 impacts the variety of uses that establish the diverse character of the Town's commercial  
28 area, and has the potential to result in adverse impacts to residents and businesses, and  
29 could negatively affect tourism; and

30       **WHEREAS**, in order to ensure the integrity of the SD-B40 district, the Town  
31 Commission finds that Smoke Shops should be further regulated, with permission for the  
32 use in the SD-B40 district made subject to the approval of the Town Commission; and

33       **WHEREAS**, the Town Commission further finds that, because of their unique  
34 characteristics and potential impacts on the surrounding neighborhood and the Town as a  
35 whole, Smoke Shops require individual review as to their location, design, configuration,  
36 and/or operation for the particular use at the particular location proposed, as well as the  
37 imposition of individualized conditions in order to ensure that the use is compatible with  
38 the SD-B40 district, and the review and approval of Smoke Shops is most efficiently  
39 accomplished through the conditional use procedures set forth in Section 90-23 of the  
40 Code; and

41       **WHEREAS**, at a regular meeting of the Town Commission held on July 11, 2023, the  
42 Town Commission directed the Town Manager to present an ordinance addressing Smoke  
43 Shops and differentiating such uses from cigars and tobacco lounge uses; and

44       **WHEREAS**, the Town Commission held its first public hearing on August 8, 2023 and,  
45 having complied with the notice requirements in the Florida Statutes, approved the  
46 proposed amendments to the Code, and directed the Town Manager to publish a notice  
47 of zoning in progress regarding the provisions of this Ordinance; and

48       **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the  
49 Town, held its hearing on the proposed amendment to the Code on August 31, 2023 with  
50 due public notice and input, and recommended approval of the proposed amendments to  
51 the Code; and

52 **WHEREAS**, the Town Commission has conducted a second duly noticed public  
 53 hearing on these Code amendments as required by law on September 12, 2023 and  
 54 further finds the proposed changes to the Code are necessary and in the best interest of  
 55 the Town.

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 57 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
 58 **TOWN OF SURFSIDE, FLORIDA:**

59 **Section 1. Recitals.** The above Recitals are true and correct and are  
 60 incorporated herein by this reference:  
 61

62  
 63 **Section 2. Town Code Amended.** Section 90-41. - "Regulated Uses" of the  
 64 Code, is hereby amended as follows<sup>1</sup>:

65 **Sec. 90-41. Regulated Uses.**

66 \* \* \*

67 (c) *Table—Regulated uses.*

68 \* \* \*

	H30A	H30B	H30C	H40	H120	SD-B40
<b>Retail and General Commercial Uses</b>						
Antique shops	-	-	-	-	-	P
Appliances	-	-	-	-	-	P
Art and photograph galleries	-	-	-	-	-	P
Art dealers	-	-	-	-	-	P
Art supplies	-	-	-	-	-	P
Beauty/personal services	-	-	-	-	-	P(19)
Health club or studio	-	-	-	-	-	P(16,19)
Books and newspaper	-	-	-	-	-	P
Cigars and tobacco lounge	-	-	-	-	-	P
<u>Smoke shops</u>						<u>CU (36)</u>
Coin-operated machines			-	-		P(15)
Department stores	-	-	-	-	-	P
Drug stores	-	-	-	-	-	P(30)
Dry cleaning and laundry agency	-	-	-	-	-	P(10)
Dry goods			-	-		P
Flowers and plants	-	-	-	-	-	P
Furniture	-	-	-	-	-	P(14)

<sup>1</sup> 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 ~~highlighted double-strikethrough~~ and double underline.

Furrier	-	-	-	-	-	P
Gift shops			-	-		P
Hardware, paint and wallpaper	-	-	-	-	-	P
Jewelry	-	-	-	-	-	P
Locksmith	-	-	-	-	-	P(11)
Luggage			-	-		P
Men's, women's, children's clothing	-	-	-	-	-	P
Millinery	-	-	-	-	-	P
Office machines and supplies	-	-	-	-	-	P
Pet supplies			-	-		P
Photographers and camera stores	-	-	-	-	-	P
Pottery	-	-	-	-	-	P
Sale of televisions, radios, phonograph and recording equipment	-	-	-	-	-	P
Sheet music and musical instruments			-	-		P
Shoe repair	-	-	-	-	-	P(20)
Shoes	-	-	-	-	-	P
Sporting goods			-	-		P
Stationery and greeting cards	-	-	-	-	-	P
Structured parking facility	-	-	CU(23)	-	CU(23)	-
Sundries	-	-	-	-	-	P
Tailor	-	-	-	-	-	P
Toys	-	-	-	-	-	P
Video tapes sales and rentals	-	-	-	-	-	P(12)

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Key: P: Permitted    Blank: Not Permitted    (#): Refer to Notes    CU: Conditional Use

(d) Uses table notes.

\* \* \*

(36) Smoke shop is a commercial establishment that sells nicotine, tobacco, and/or vape products or devices as a:

- i. retail nicotine products dealer, as defined in s. 569.31(6), F.S.;
- ii. retail tobacco products dealer, as defined in s. 569.002(4), F.S.; and/or
- iii. vapor-generating electronic device retailer, as defined in s. 386.203(15), F.S., that does not sell products that produce vapor or aerosol from marijuana or marijuana derivatives;

or any combination thereof. The term shall exclude a cigar and tobacco lounge.

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90 In evaluating a request for conditional use approval for a smoke shop, the Town  
91 Commission shall consider whether the proposed use:

- 92  
93 a. May have an unfavorable effect on the economy of the SD-B40 district, other  
94 businesses, and tourism in the Town;  
95 b. Adversely impacts the variety of uses that establish the diverse character of the  
96 Town's commercial area;  
97 c. Is incompatible with and impacts on the commercial area and surrounding  
98 neighborhoods; and  
99 d. Otherwise adversely impacts the health, safety, convenience and the general  
100 welfare of the community.

101  
102 In evaluating a request for conditional use approval for a smoke shop, the Town  
103 Commission may impose individualized conditions in order to ensure that the use  
104 is compatible with the SD-B40 district and surrounding neighborhoods.

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

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

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

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

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121 **PASSED** on first reading on the 8<sup>th</sup> day of August, 2023.

122 **PASSED AND ADOPTED** on second reading on the 12<sup>th</sup> day of September, 2023.

123 **First Reading:**

124 Motion by: Commissioner Landsman

125 Second by: Commissioner Meischeid

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128 **Second Reading:**

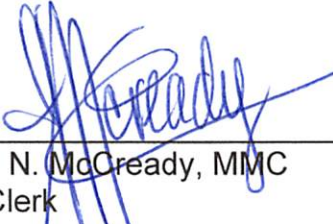
129 Motion by: Commissioner Landsman

130 Second by: Vice Mayor Rose

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**FINAL VOTE ON ADOPTION**

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischoid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>No</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

  
\_\_\_\_\_  
Sandra N. McCready, MMC  
Town Clerk



  
\_\_\_\_\_  
Shlomo Danzinger, Mayor

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

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