

ORDINANCE NO. 2023 - 1760

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING CHAPTER 72 "TELECOMMUNICATIONS", SECTION 72-28 "DEFINITIONS," SECTION 72-31 "PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY", AND SECTION 72-35 "EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY" TO REQUIRE UNDERGROUNDING OF ALL NEW COMMUNICATIONS LINES WITHIN THE TOWN'S BOUNDARIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR SEVERABILITY; 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 ("Code") in order to update
7 regulations and procedures to maintain consistency with state law, to implement municipal
8 goals and objectives, to clarify regulations and address specific issues and needs that may
9 arise; and

10 **WHEREAS**, the Town's Communications Rights-of-Way Ordinance (the
11 "Communications Ordinance") codified as Section 72-26 et. seq. regulates the placement
12 or maintenance of communications facilities in the public rights-of-way within the Town
13 consistent with state and federal law; and

14 **WHEREAS**, on November 3, 2020, the Town electorate approved a
15 ballot/referendum question in order to move forward with developing a plan to underground
16 utilities in the Town; and

17 **WHEREAS**, on March 15, 2022, the Town electorate approved a ballot/referendum
18 question to authorize the issuance of General Obligation Bonds for the Town's utility
19 undergrounding project; and

20 **WHEREAS**, as a coastal community susceptible to wind and storm events, the
21 Town Commission recognizes the importance and safety of undergrounding utilities and
22 the positive aesthetic impacts of such undergrounding; and

23 **WHEREAS**, Section 72-31. – “Placement or maintenance of a communications
24 facility in public rights-of-way” of the Town Code currently provides that the use of
25 trenchless technology (i.e., directional bore method) for the installation of facilities in the
26 public rights-of-way as well as joint trenching or the co-location of facilities in existing
27 conduit is strongly encouraged and shall be employed wherever feasible; and

28 **WHEREAS**, Section 337.401, Florida Statutes, limits certain municipal regulations
29 for small wireless facilities in the rights-of-way but does not limit regulations requiring
30 undergrounding of utilities lines, between, to or from small wireless facilities; and

31 **WHEREAS**, Section 72-35 requires compliance with the Communications
32 Ordinance within 60 days of its effective date; and

33 **WHEREAS**, the Town desires to amend Sections 72-28, 72-31, and 72-35 of the
34 Town Code to (i) define communication lines (i.e, cables, wires, conduits, ducts, and fiber
35 optics), (ii) require the use of underground trenchless technology for the installation of all
36 new communication lines in the public rights-of-way as well as joint trenching or the co-
37 location of such communication lines, and (iii) only require undergrounding of
38 communications lines for new or replaced communications facilities installed after the
39 effective date of this ordinance; and

40 **WHEREAS**, it is the intent of the Town to promote the public health, safety and
41 general welfare by: requiring undergrounding of all new communication lines (i.e, cables,
42 wires, conduits, ducts, and fiber optics); and adopting and administering reasonable rules
43 and regulations not inconsistent with state and federal law; and

44 **WHEREAS**, the Town Commission finds it in the best interest and welfare of the Town
45 to require undergrounding for the installation of all new communications lines; and

46 **WHEREAS**, the Town Commission held its first public hearing on October 10, 2023
47 and approved the proposed amendments to the Code having complied with the notice
48 requirements in the Florida Statutes; and

49 **WHEREAS**, the Town Commission has conducted a second duly noticed public
50 hearing on these Code amendments as required by law on November 14, 2023 and further

51 finds the proposed changes to the Code are necessary and in the best interest of the
52 Town.

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54 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
55 **TOWN OF SURFSIDE, FLORIDA¹:**
56

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

60 **Section 2. Town Code Amended.** Section 72-28. – “Definitions,” Section 72-31.
61 – “Placement or maintenance of a communications facility in public rights-of-way,” and
62 Section 72-35. – “Existing communications facilities in public rights-of-way,” are hereby
63 amended as follows:

64 Section 72-28. - Definitions.

65 * * *

66 *Communications facility or facility or system* shall mean any permanent or temporary plant,
67 equipment and property, including but not limited to Communications Lines ~~cables, wires,~~
68 ~~conduits, ducts, fiber optics,~~ poles, antennae, converters, splice boxes, cabinets, hand
69 holes, manholes, vaults, drains, surface location markers, appurtenances, and other
70 equipment or pathway placed or maintained or to be placed or maintained in the public
71 rights-of-way of the town and used or capable of being used to transmit, convey, route,
72 receive, distribute, provide or offer communications services.

73 * * *

74
75 Communications Lines shall mean cables, wires, conduits, ducts, and fiber optics located
76 between, to, and from any wireless facility.

77 * * *

78
79
80 Section 72-31. – Placement or maintenance of a communications facility in public rights-
81 of-way.
82

83 (e) All communications facilities shall be placed or maintained so as not
84 unreasonably to interfere with the use of the public rights-of-way by the public and
85 with the rights and convenience of property owners who adjoin any of the public
86 rights-of-way. The use of underground trenchless technology (i.e., directional bore
87 method) for the installation of ~~facilities~~ new Communications Lines in the public
88 rights-of-way as well as joint trenching or the co-location of facilities in existing
89 conduit ~~is strongly encouraged and shall be employed wherever feasible~~ shall be

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 highlighted double-strikethrough and double underline.

90 required. The town manager may promulgate reasonable rules and regulations
91 concerning the placement or maintenance of a communications facility in public
92 rights-of-way, consistent with this ordinance and other applicable law.
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94 * * *

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96 Section 72-35. - Existing communications facilities in public rights-of-way.
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98 A communications services provider with an existing communications facility in the public
99 rights-of-way of the town shall have 60 days from the effective date of this ordinance to
100 comply with the terms of this ordinance, including, but not limited to, registration.
101 Notwithstanding the foregoing, as of [INSERT EFFECTIVE DATE OF ORDINANCE], the
102 installation of all new Communications Lines shall be undergrounded to comply with the
103 Town's Comprehensive Plan.
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105 * * *

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107 **Section 4. Severability.** If any section, sentence, clause or phrase of this
108 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
109 then said holding shall in no way affect the validity of the remaining portions of this
110 Ordinance.

111 **Section 5. Inclusion in the Code.** It is the intention of the Town Commission, and
112 it is hereby ordained that the provisions of this Ordinance shall become and made a part of
113 the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be
114 renumbered or re-lettered to accomplish such intentions; and the word "Ordinance" may be
115 changed to "Section" or other appropriate word.
116

117 **Section 6. Conflicts.** Any and all ordinances and resolutions or parts of
118 ordinances or resolutions in conflict herewith are hereby repealed.
119

120 **Section 7. Effective Date.** This ordinance shall become effective upon adoption
121 on second reading.
122

123 **PASSED** on first reading on the 10th day of October, 2023.

124 **PASSED AND ADOPTED** on second reading on the 14th day of November, 2023.

125 **First Reading:**

126 Motion by: Vice Mayor Rose

127 Second by: Commissioner Landsman
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130 **Second Reading:**

131 Motion by: Vice Mayor Rose

132 Second by: Commissioner Landsman

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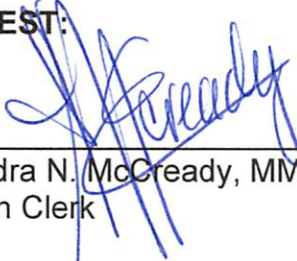
FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeff 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