

ORDINANCE NO. 2024-1788

1 AN ORDINANCE OF THE TOWN COMMISSION OF THE
2 TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN
3 OF SURFSIDE CODE OF ORDINANCES BY AMENDING
4 ARTICLE V – “DESIGN STANDARDS” TO CREATE
5 SECTION 90-50.1 “SUSTAINABILITY AND RESILIENCY;”
6 PROVIDING FOR ESTABLISHING REQUIREMENTS FOR
7 GREEN BUILDING CERTIFICATION AS A REQUIREMENT
8 DURING ZONING REVIEW OF NEW PROJECTS
9 (“ELIGIBLE PROJECT(S)”); ESTABLISHING A
10 SUSTAINABILITY FEE PROGRAM FOR PROJECTS THAT
11 DO NOT ACHIEVE THE REQUIRED GREEN BUILDING
12 CERTIFICATION LEVEL; AUTHORIZING PROPERTY
13 OWNERS AND DEVELOPERS TO PAY A SUSTAINABILITY
14 FEE, OR, IN THE ALTERNATIVE, POST A BOND, IN THE
15 AMOUNT OF FIVE PERCENT (5%) OF THE TOTAL
16 CONSTRUCTION COST FOR THE ELIGIBLE PROJECT(S),
17 INTO THE TOWN'S SUSTAINABILITY FUND, WHICH BOND
18 OR FUNDS ARE REIMBURSABLE TO THE PROPERTY
19 OWNER OR DEVELOPER PURSUANT TO THE LEVEL OF
20 GREEN BUILDING COMPLIANCE ACHIEVED BY THE
21 “ELIGIBLE PROJECT”; ESTABLISHING A
22 SUSTAINABILITY AND RESILIENCY FUND FOR THE
23 DEPOSIT OF THE SUSTAINABILITY FEES GENERATED
24 THROUGH THE SUSTAINABILITY FEE PROGRAM, AND
25 PROVIDING THE USES FOR SAID FEES DEPOSITED IN
26 THE SUSTAINABILITY AND RESILIENCY FUND;
27 PROVIDING FOR INCLUSION IN THE CODE; PROVIDING
28 FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE
29 DATE.
30

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

35 **WHEREAS**, the Town Commission of the Town of Surfside (“Town Commission”)
36 finds it periodically necessary to amend its Code of Ordinances and Land Development

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37 Code ("Code") in order to update regulations and procedures to maintain consistency with
38 state law, to implement municipal goals and objectives, to clarify regulations and address
39 specific issues and needs that may arise; and

40 **WHEREAS**, Town of Surfside has the authority to enact laws which promote the
41 public health, safety and general welfare of its residents; and

42 **WHEREAS**, the Town's Code does not currently provide for property owners and
43 developers to pay a Sustainability Fee or post a bond, in the amount of five percent (5%)
44 of the total construction cost into the Town's Sustainability Fund, which is reimbursable
45 pursuant to the level of Green Building compliance achieved; establishing a Sustainability
46 and Resiliency Fund for the deposit of the sustainability fees; and

47 **WHEREAS**, the Town of Surfside has the authority to enact laws which promote the
48 public health, safety and general welfare of its citizens; and

49 **WHEREAS**, greenhouse gas emissions are a contributor to sea level rise, which is a
50 threat to public health, safety, and general welfare of the citizens of the Town; and

51 **WHEREAS**, it is in the best interest of the Town to promote the economic and
52 environmental health in the Town through sustainable and environmentally friendly design
53 and construction which reduces demand for energy and reduces greenhouse gas
54 emissions; and

55 **WHEREAS**, the United States Green Buildings Council (USGBC) has developed the
56 Leadership in Energy and Environmental Design (LEED) rating system that is a
57 consensus-based certification program for design of sustainable buildings; and

58

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59 **WHEREAS**, the LEED green building certification program recognizes best-in-class
60 building strategies and practices; and

61 **WHEREAS**, the International Living Future Institute developed an international
62 sustainable building certification program called the Living Building Challenge,
63 encouraging the creation of Living Buildings, Landscapes and Communities in countries
64 around the world while inspiring, educating and motivating a global audience about the
65 need for fundamental and transformative change; and

66 **WHEREAS**, the Living Building Challenge is the built environment's most rigorous
67 performance standard, which calls for the creation of building projects at all scales that
68 operate as cleanly, beautifully and efficiently as nature's architecture; and

69 **WHEREAS**, LEED and Living Building Challenge certified buildings, and related
70 guidelines, including those of the Green Building Initiative Green Globes Certification
71 ("GBIGGC"), conserve materials, energy, water and other natural resources as well as
72 provide occupants with healthier and more productive interior environments; and

73 **WHEREAS**, high performance sustainable building and development is a means of
74 balancing economic development with the preservation of quality of life; and

75 **WHEREAS**, high performance buildings provide occupants and visitors with a
76 healthier and more productive environment due to the use of more natural materials and
77 this increase in worker productivity can produce enormous economic benefits, as worker
78 salaries are historically an organization's largest expense; and

79 **WHEREAS**, the Town's Comprehensive Plan requires the encouragement of infill
80 and redevelopment that is supportive of mobility alternatives, such as walking, bicycling,

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81 and the use of transit, which is further encouraged through the use of green building
82 standards, which provide credit for features such as proximity to transit, bicycle parking
83 and shower facilities, proximity to diverse uses, and location of building entrances; and

84 **WHEREAS**, the Town's Comprehensive Plan requires open space in conjunction with
85 every new public and private sector development project, which is further encouraged
86 through the use of green building standards which provide credit for the inclusion of open
87 space; and

88 **WHEREAS**, studies have indicated that green buildings have lower maintenance
89 costs associated with lower energy consumption, which will improve the Town's long-term
90 economic well-being; and

91 **WHEREAS**, the Town of Surfside has endorsed the Compact of Mayors pledge to
92 reduce Town-level greenhouse gas (GHG) emissions, to track progress, and to enhance
93 resilience to climate change, in a consistent and complimentary manner to national level
94 climate protection efforts; and

95 **WHEREAS**, green building certifications recognize that built environments provide a
96 wide-range of GHG emissions reduction opportunities, including strategies related to
97 building systems, transportation, water use, construction, materials, waste management,
98 and land cover; and

99 **WHEREAS**, green building certifications strive to transform the way buildings and
100 communities are designed, built, and operated, in order to create buildings and
101 communities that are environmentally and socially responsible, healthy, and prosperous;
102 and

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103 **WHEREAS**, it is in the interest of the health, safety and welfare of the residents of
104 the Town to ensure sustainable construction and to ensure that the Town safeguard
105 natural resources, and ensure that efficient buildings are constructed; and

106 **WHEREAS**, Chapter 163.04, Florida Statutes is intended to encourage the
107 development and use of renewable resources to conserve and protect the value of land,
108 buildings, and resources, which is further encouraged using green building standards;
109 and

110 **WHEREAS**, the Town desires to require Gold LEED standards or Living Building
111 Challenge or GBIGGC certification standards on construction within the Town, or require
112 the payment of a Sustainability Fee, for failing to meet those minimum standards of
113 sustainability; and

114 **WHEREAS**, the value of the Sustainability Fee is based on the mid-range of
115 estimated costs of achieving LEED Gold standards or its equivalent for a construction
116 project; and

117 **WHEREAS**, the Sustainability Fee is not an impact fee, but rather a mechanism to
118 ensure compliance with the green building standards; and

119 **WHEREAS**, it is the Town's expectation that development will comply with the green
120 building standards and that the Sustainability Fee be refunded to the participants; and

121 **WHEREAS**, should a development not comply with the green building standards the
122 Town will utilize the Sustainability Fee revenue to provide public improvements that
123 increase the sustainability and resiliency of the Town; and

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124 **WHEREAS**, the adoption of the provisions set forth below are necessary to
125 accomplish the above objectives; and

126 **WHEREAS**, the Town Commission held its first public hearing on November 12, 2024
127 and approved the proposed amendment to the Code of Ordinances having complied with
128 the notice requirements in the Florida Statutes; and

129 ~~**WHEREAS**, the Planning and Zoning Board, as the local planning agency for the~~
130 ~~Town, hold its hearing on the proposed amendment on November 20, 2024, with due~~
131 ~~public notice and input, and recommended approval/denial of the proposed amendment~~
132 ~~to the Code; and~~

133 **WHEREAS**, the Town Commission has conducted a second duly noticed public
134 hearing on this regulation, as required by law, on December 10, 2024, and further finds
135 the proposed change to the Code is necessary and in the best interest of the community.

136 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
137 **TOWN OF SURFSIDE, FLORIDA:**

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

140 **Section 2. Town Code Amended.** Amending Chapter 90, Article V – “Design
141 Standards” to Create Section 90-50.1; “Sustainability and Resiliency;” providing for
142 establishing requirements for green building certification as a requirement during zoning
143 review of new projects (“eligible project(s)"); establishing a sustainability fee program for
144 a project that does not achieve the required green building certification level; authorizing
145 property owners and developers to pay a sustainability fee, or, in the alternative, post a
146 bond, in the amount of five percent (5%) of the total construction cost for the eligible

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148 project(s), into the Town's Sustainability Fund, which bond or funds are reimbursable to
149 the property owner or developer pursuant to the level of green building compliance
150 achieved by the "eligible project"; establishing a sustainability and resiliency fund for the
151 deposit of the sustainability fees generated through the sustainability fee program, and
152 providing the uses for which the fees deposited in the Sustainability and Resiliency Fund”
153 to read as follows:

154 * * *

157 **Chapter 90 - ZONING**

158 **ARTICLE V. – Design Standards.**

159 **Sec. 90-50.1 – Sustainability and Resiliency.**

160 **(a) Definitions.**

- 161 1. The following words, terms and phrases, when used in this Chapter, shall have the
162 meaning ascribed to them in this section, except where the context clearly
163 indicates a different meaning, or as may be amended from time to time.
- 164 2. Construction means any project associated with the creation. Development, or
165 erection of any structure required to comply with this Chapter.
- 166 3. Enhanced storm water quality and quantity improvements means projects that
167 augment water quality and quantity by: reducing polluted runoff; advancing
168 groundwater recharge, soil infiltration and erosion control; and restoring habitat.
- 169 4. Environmental monitoring means periodic or continuous surveillance or testing to
170 determine the level of compliance required by the Environmental Protection
171 Agency (EPA), Florida Department of Environmental Protection (DEP), or Miami-

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173 between first and second reading are indicated with highlighted double-strikethrough and double underline.

176 Dade County Department of Regulatory and Environmental Resources (RER)
177 and/or pollutant levels in various media (air, soil, water) or biota, as well as to
178 derive knowledge from this process. Examples of environmental monitoring
179 include but are not limited to: water quality sampling and monitoring; groundwater
180 testing and monitoring; and habitat monitoring.

181 5. Environmental remediation means clean-up of, or mitigation for, air, soil or water
182 contamination for which the Town is legally responsible for environmental clean-
183 up or mitigation.

184 6. Environmental restoration means the return of an ecosystem to a close
185 approximation of its condition prior to disturbance.

186 7. Green infrastructure means both the natural environment and engineered systems
187 to provide clean water, conserve ecosystem values and functions, and provide a
188 wide array of benefits to people and wildlife. Green infrastructure uses vegetation,
189 soils, and natural processes to manage natural resources and create healthier
190 urban environments. Examples of green infrastructure practices include, but are
191 not limited to: right-of-way bio-swales, green roofs, blue roofs, rain gardens,
192 permeable pavements, infiltration planters, trees and tree boxes, rainwater
193 harvesting systems.

194 8. Green building means generally the resource efficient design, construction, and
195 operation of buildings by employing environmentally sensible construction
196 practices, systems and materials.

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- 197 9. Green building certification agency means the United States Green Building Code
198 (USGBC) or the International Living Future Institute. as may be selected by the
199 eligible participants.
- 200 10. International Living Future Institute means a non-profit organization that created
201 an international sustainable building certification program called The Living
202 Building Challenge. Certification types include Living Building Certification. Petals
203 Certification and Net Zero Energy Building Certification.
- 204 11. LEED means the most recent an effective edition of the Leadership in Energy and
205 Environmental Design (LEED) Green Building Rating System for Building Design
206 and Construction or Homes, as applicable, of the United States Green Building
207 Council (USGBC).
- 208 12. Green Building Initiative Green Globes Certification (“GBIGGC”) is a science-
209 based, three-in-one whole building certification system that evaluates the
210 environmental sustainability, health and wellness, as well as resilience of all types
211 of commercial real estate.
- 212 13. Project means any construction associated with the creation, development or
213 erection of any building required to comply with this chapter.
- 214 14. Scorecard means a guide provided by the green building certification agency to
215 assist in determining the total project score and achievable credits and level of
216 certification at the inception of a green building, as provided under this chapter.
- 217 15. USGBC means the United States Green Building Council.
- 218 **(b) Intent and Purpose.**

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219 The purpose of this section shall be to promote sustainable development within
220 the Town by supporting resilient design and construction practices. The Town's intent is
221 to establish a certification compliance schedule that incentivizes all qualifying projects to
222 attain at a minimum LEED Gold certification, or similar green building program recognized
223 herein. Sustainable building practices will promote the economic and environmental
224 health of the Town and ensure that the Town continues to become environmentally
225 resilient to combat sea level rise and help curb climate change.

226 This section is designed to achieve the following objectives: increase energy
227 efficiency in buildings; encourage water and resource conservation; reduce waste
228 generated by construction projects; reduce long-term building operating and maintenance
229 costs; improve indoor air quality and occupant health; contribute to meeting state and
230 local commitments to reduce greenhouse gas production and emissions: and encourage
231 sound urban planning principles.

232 **(c) Green Building Requirements**

233
234 Mandatory compliance with these requirements shall be required for all applicants
235 with building permit applications that meet the following criteria (hereinafter "eligible
236 participants"): All new construction; or Additions/~~Alterations~~ (whether attached or
237 detached) to existing structures that encompass over 2,000 square feet of additional floor
238 area, shall build at a minimum to a LEED or equivalent standard.

239 **(d) Standards.**

240
241 This section shall be administered using standards developed for and standards
242 developed by the United States Green Building Council (USGBC) or the International

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243 Living Future Institute or GBIGGC. All eligible participants who are certified as having
 244 satisfied all of the requirements of the green building certification agency, including but
 245 not limited to any monetary or certification requirements. are eligible for a partial or full
 246 refund of the sustainability fee identified herein - Sustainability Fee Calculation (following
 247 this subsection) based upon the level of compliance with these regulations.

248 **(e) Sustainability Fee Program**

249 A Sustainability Fee shall be assessed for all eligible participants. The calculation
 250 of the fee, provisions for refunding all or portions of the fee, its purpose, and eligible uses
 251 are detailed below.

252 **(f) Sustainability Fee Calculation.**

253 In order to obtain a building permit Temporary Certificate of Occupancy (TCO),
 254 Certificate of Occupancy (CO), or Certificate of Completion (CC), whichever comes first,
 255 the eligible participant must first post a Sustainability Fee payment bond or issue full
 256 payment of the Sustainability Fee to the Town. The Sustainability Fee shall be valued at
 257 five percent (5%) of the total construction valuation of the building permit. However, the
 258 eligible participant may be entitled to a refund or partial refund, of the bond, or payment
 259 of the Sustainability Fee, based upon achieving the program certification levels in the
 260 compliance schedule below:

261 **Certification Compliance Schedule**

<u>Level of Certification Achieved</u>	<u>Sustainability Fee Reimbursement to Participant for meeting certain Green Building certification levels</u>
<u>Failure to obtain Certification</u>	<u>0% refund of bond or payment of Sustainability Fee</u>
<u>LEED Certified or Two Green Globes Certified</u>	<u>50% refund of bond or payment of Sustainability Fee</u>

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<u>LEED Silver Certified or Three Green Globes Certified</u>	<u>66% refund of bond or payment of Sustainability Fee</u>
<u>LEED Gold Certified or International Living Future Institute Petals or Net Zero Energy Certified or Four Green Globes Certified</u>	<u>100% refund of bond or payment of Sustainability Fee</u>
<u>LEED Platinum Certified or International Living Future Institute Petals or Net Zero Energy Certified or Four Green Globes Certified</u>	<u>100% refund of bond or payment of Sustainability Fee</u>

262 If the proof of green building certification is provided prior to the obtaining a TCO,
263 CO, or CC, the "Sustainability Fee" shall be in the full amount identified above, minus the
264 refund for the level of green building certification achieved identified in the **Certification**
265 **Compliance Schedule.**

266 The Sustainability Fee shall be valuated upon the eligible participant's submittal at
267 time of application for building permit Temporary Certificate of Occupancy (TCO),
268 Certificate of Occupancy (CO), or Certificate of Completion (CC), whichever comes first,
269 upon review by the Planning Department during zoning review of the permit certificate.
270 The Sustainability Fee bond or full payment shall be provided by participant prior to
271 obtaining a Temporary Certificate of Occupancy (TCO), Certificate of Occupancy (CO),
272 or Certificate of Completion (CC), whichever comes first.

273 Refund of the Sustainability Fee or bond to the eligible participant may occur as
274 provided for above, provided the eligible participant complies with the certification
275 compliance schedule within the timeframe identified herein.

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276 The entirety of the Sustainability Fee shall be forfeited to the Town based upon
277 Participant's failure to achieve the applicable green building certification levels identified
278 above and within the timeframe identified herein.

279 **(g) Review Procedures.**

- 280 1. Prior to obtaining a building permit, the qualifying projects shall post a bond with
281 the Town, or in the alternative, provide a payment to the Town, in the amount of
282 the "Sustainability Fee" identified above.
- 283 2. Within one year from the receipt of a TCO, CO or CC, whichever occurs first, the
284 owner shall submit proof of green building certification for the development from
285 the green building certification agency.
- 286 3. The bond or payment provided, or percentage thereof, shall be refunded to
287 program participants that have achieved a level of green building certification
288 identified in the Certification Compliance Schedule above.
- 289 4. The Town Manager may approve, upon the request of the eligible participant, a
290 one-time, six (6) month to one (1) year extension, provided proof that the green
291 building certification agency's review remains pending to determine final
292 certification.
- 293 5. All building inspections requested for green building projects shall be given priority
294 over projects that are not green building projects.

295 **(h) Deposit of Funds; Account.**

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296 The Town hereby establishes a Sustainability and Resiliency Fund. The revenue
297 generated through the Sustainability Fee Program shall be deposited in the Sustainability
298 and Resiliency Fund.

299 1) Interest earned under the account shall be used solely for the purposes specified
300 for funds of such account.

301 2) Sustainability fees deposited and credited to the Sustainability and Resiliency
302 Fund account, and credited to the eligible participant shall be identified within the
303 Town's Sustainability and Resiliency Fund.

304 3) Appropriation of deposited funds in the Sustainability and Resiliency Fund shall
305 not be permitted until the applicable refund period established herein for those
306 funds has lapsed.

307 4) Should the eligible participant provide a bond, rather than pay the sustainability
308 fee, then the Town shall safeguard the bond to ensure compliance with this
309 regulation. The Town shall return the bond or make a claim for a portion of the
310 bond, depending on the eligible participant's compliance with this Section.

311 Earned fees in the Sustainability and Resiliency Fund shall be utilized to provide public
312 improvements that increase the sustainability and resiliency of the Town. Expenditures
313 from these funds shall require prior Town Commission approval. Prior to any expenditure,
314 the Town Manager shall provide a recommendation to the Town Commission.

315 Such improvements that increase the resiliency of the Town, including Environmental
316 restoration projects; Environmental remediation projects; Environmental monitoring;

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317 Green infrastructure; Enhanced storm water quality and quantity improvements; and/or
318 Sustainability planning efforts.

319 **(i) Review.**

320 A progress report shall be presented to the Town Commission within fifteen (15) months
321 of the effective date of this Ordinance to review the success of the regulations contained
322 within. The review shall at a minimum address the following:

- 323 1) The effectiveness of the sustainability requirements to reduce demand for energy
324 and greenhouse gas emissions in the Town.
- 325 2) The effectiveness of the Sustainability Fee at encouraging sustainable
326 development.
- 327 3) The effectiveness of review procedures.

328

329 **(j) Applicability.**

330

331 This Ordinance shall not apply to developments with a building permit issued by
332 the Town, after the payment of applicable fees due to the Town, prior to the effective date
333 of this Ordinance. This Ordinance shall supersede Town Resolutions 2020-2684 and any
334 Resiliency Reserve resulting from same shall be applied to the Sustainability and
335 Resiliency Fund created by this Ordinance.

336

* * *

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

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

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

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

349 **PASSED AND ADOPTED** on first reading this 12th day of November, 2024.

350
351 **PASSED AND ADOPTED** on second reading this 10th day of December, 2024.

352
353 **First Reading:**

Second Reading:

354 Motion by: Vice Mayor Paul

Motion by: Vice Mayor Paul

355
356 Second by: Commissioner Velasquez

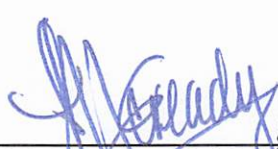
Second by: Commissioner Velasquez

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358
359 **FINAL VOTE ON ADOPTION**

360 Commissioner Ruben A. Coto Yes
361 Commissioner Nelly Velasquez Yes
362 Commissioner Gerardo Vildostegui Yes
363 Vice Mayor Tina Paul Yes
364 Mayor Charles W. Burkett Yes

365
366
367 _____ Charles W. Burkett, Mayor

368 **Attest:**

369
370 
371 _____ Sandra N. McCready, MMC, Town Clerk

372
373 **Approved as to Form and Legal Sufficiency:**

374
375 
376 _____ Mark Blumstein, Town Attorney



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