



**Town of Surfside
Special Town Commission Meeting
March 23, 2011**

5:01 p.m.

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**
- D. Mayor and Commission Remarks – Mayor Daniel Dietch**
- E. Agenda and Order of Business Additions, deletions and linkages**

2. Ordinances

A. First Readings Ordinances

- 1. Ordinance Calling for a Temporary Moratorium, Memo of Law and Report by Town Attorney – Lynn M. Dannheisser, Town Attorney**
AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE, MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT “A’ ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

[This ordinance imposes a temporary moratorium on the issuance of Certificates of Use and Certificates of Occupancy for non-retail, non-restaurant uses]

2. Ordinance – Joint Meeting Recommendations Ordinance – Roger M. Carlton, Town Manager, Lynn M. Dannheisser, Town Attorney, Sarah Sinatra Gould, Town Planner

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-2 “DEFINITIONS”, AMENDING SECTION 90-20. “DEVELOPMENT REVIEW REQUIREMENTS” TO ESTABLISH A DEVELOPMENTAL IMPACT COMMITTEE; AMENDING SECTION 90-23 “CONDITIONAL USES”; 90-41 “REGULATED USES”; 90-45. “SETBACKS.”; 90-45.1 “AGGREGATION OF LOTS”; SECTION 90-44 THROUGH SECTION 90-67 RELATING TO DESIGN REVIEW GUIDELINES; SECTION 90-73 “PROHIBITED SIGNS.”; SECTION 90-87 INSTALLATION OF LANDSCAPING AND IRRIGATION; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

4. Adjournment

Respectfully submitted,



Roger M. Carlton
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY CONTACT THE TDD LINE AT 305-893-7936.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsurfsidefl.gov

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



TOWN OF SURFSIDE
Office of the Town Attorney


MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009

Lynn M. Dannheisser
Town Attorney

Telephone: 305 993-1065

MEMORANDUM

TO: Town Commission

FROM: Lynn M. Dannheisser, Town Attorney 

CC: Roger M. Carlton, Town Manager
Debra E. Eastman, M.M.C., Town Clerk

DATE: March 23, 2010

SUBJECT: Imposition of a Temporary Moratorium on Non-Retail and Non-Restaurant Uses in Downtown Business District

Recommendation: It is recommended that the Commission adopt this Ordinance.

Reasons: After years of discussion on the topic among the Planning and Zoning Board, the Town Commission, stakeholders in the Downtown Business District (“DBD”), and Town staff, the Town Manager has convened a Downtown Vision Process Advisory Committee which has begun to develop, study and create a Town Center vision and concept for the zoning district known as SD-B40 located between 96th and 94th Streets and Harding Avenue (“Downtown Business District”) and a strategy needs to be developed for the revitalization of the District. Clearly there is a developing need to engage various persons, professionals (planning, engineering, legal) and agencies such as the County and FDOT to study and address how to achieve the developing vision for the DBD.

In reviewing various regulations, however, it may be that they are adversely affecting the developing vision including an appropriate mix of retail, restaurant, and non-retail service uses required in order to ensure the vitality and commercial character of the Downtown Business District in the Town. In other words, after we study the issue, it may become clear that we need to preserve or enhance the mix and development of retail and non-retail uses, including potentially the limitation on the location and

frequency of location of allowable uses within the frequency of location of allowable uses within the relevant district, Accordingly, there is a need maintain the status quo while we study these issues and develop recommendations for the Commission. The P & Z Board recognized these issues and by Resolution 11-01 enacted on February 24, 2011, it recommended that the Town Commission consider a temporary moratorium upon the issuance of certificates of use and certificates of occupancy for newly renovated or remodeled spaces in the Downtown Business District, subject to adequate protection of private property rights.

This Ordinance is designed to do this. It must be recognized that a moratorium is a means for maintaining the status quo while problems are studied and remedial measures are developed and implemented. A moratorium is not an end result. It is simply a planning tool intended to serve as a means to facilitate the achieving of a desired end result. Because the Town is careful when and if affecting anyone's property rights, I believe it is important for you to understand the state of the law on moratoria. The balance of this memorandum therefore is devoted to providing you with information on the state of the law on the feasibility of enacting and the circumstances which justify the enactment (via ordinance) of a temporary moratorium upon the issuance of certificates of use and certificates of occupancy and other zoning approvals within the Town and applicable legal issues.

Background of Moratorium Concept

In 2002, the United States Supreme Court endorsed the use of temporary moratoria as a growth management tool of local government. In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 122 S. Ct. 1465, 152 L.Ed 2d 517 (2002), the United States Supreme Court found that a temporary moratorium imposed by a regional planning agency to maintain the status quo while studying the impact of development on Lake Tahoe and formulating a strategy for assuring environmentally sound growth, was not itself a taking of private property rights.

Although moratoria have been used as a tool of growth management by local governments for many years, there was a substantial time period during which several attempted moratoria in Florida were stricken down by the Courts for defects in procedure or process. See *Town of Sanibel v. Buntrock*, 409 So.2d 1073 (Fla. 2d DCA 1981), *review denied*, 417 So.2d 328; *Town of Gainesville v. GNV Investments*, 413 So.2d 770 (Fla. 1st DCA 1982); *Franklin County v. Leisure Properties, Ltd.*, 430 So.2d 475 (Fla. 1st DCA 1983), *review denied*, 440 So.2d 352 (Fla. 1983).¹ The Court noted in *Tahoe-Sierra* that the Court shall apply the *Penn Central* test to determine whether the regulation is a taking. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 125, 98 S.Ct. 2646 (1978). Thus, the court should address: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government invasion. *Id.* at 124.²

However, an example of a recent Florida appellate court opinion in which a local government moratorium was upheld is the case of *WCI Communities, Inc. v. Town of Coral Springs*, 885 So.2d 912 (4th DCA

¹ See *City of Sanibel v. Buntrock*, 409 So. 2d 1073 (Fla. Dist. Ct. App. 2d Dist. 1981) (per curiam) (holding building moratorium invalid for failure to comply with ordinance formalities of notice and hearing).

² See *Int'l Sales & Serv., Inc. v. Austral Insulated Prod., Inc.*, 262 F.3d 1152, 1158 (11th Cir. 2001) (applying Florida law regarding tortious interference with business relationship) ("when courts talk about a party's act as "unjustified" or "unlawful", they essentially are talking about the same thing.); *Weight-Rite Golf Corp v. U.S. Golf Ass'n*, 766 F. Supp. 1104, 1112 (M.D. Fla. 1991); *Jay v. Mobley*, 783 So. 2d 297 (Fla. 4th DCA 2001).

2004), in which the Court upheld a nine month moratorium during which the Town studied and adopted new multi-family zoning regulations governing setbacks, building shape, parking, sidewalks and landscaping.³ However, even before the *Lake Tahoe or Coral Springs* cases, many courts throughout the nation had upheld temporary moratorium ordinances.⁴

Prior to the *Lake Tahoe* case, the landmark case which had been frequently cited as setting forth the prerequisites to the valid exercise of the moratorium power, is the case of *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976). In a scholarly opinion upholding a moratorium, the Minnesota Supreme Court in *Almquist* identified the five prerequisites to valid moratoria, including:

1. The moratorium ordinance must be adopted in good faith;
2. The moratorium ordinance must not be discriminatory;
3. The moratorium ordinance must be of limited duration;
4. The moratorium ordinance must be appropriate to the development of a comprehensive zoning plan; and
5. The Town council must act promptly to adopt the plan.⁵

See Paul R. Gougelman, *Moratoria and Interim Growth Management*, Florida Environmental and Land Use Law, Section 5 (January, 1994).⁶

The Courts recognize that the purpose of a moratorium is to enable a local government to maintain the status quo while regulations are being developed and implemented to address and remedy a problem which poses a threat to the public health, safety and welfare.⁷ The justification for creating a moratorium

³ See generally *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066 (11th Cir. 1996) (stating when moratoria are not of limited duration, and not tied to a reasonable plan to permit and facilitate growth, they are subject to invalidation).

⁴ More importantly, the Town of Aventura has a history of successfully imposing moratorium ordinances for appropriate durations and purposes and has done so on three (3) occasions, including Ordinance No. 96-12 (providing for initial six month moratorium on billboards pending completion of the Town's billboard regulations); Ordinance No. 97-22 (providing for initial six month moratorium in marina area and hospital area pending completion of the Town's first Comprehensive Plan) and Ordinance No. 98-20 (providing six month initial moratorium on residential buildings over a specified height).

⁵ Similarly, New York has held that land use moratorium should include the following: (1) have a reasonable time frame as measured by the action to be accomplished during the term; (2) have a valid public purpose justifying the moratoria or other interim enactment; (3) address a situation where the burden imposed by a moratorium is being shared substantially by the public at large; (4) strictly adhere to the procedure for adoption laid down by the enabling acts; and (5) have a time certain when the moratorium will expire. See generally *Belle Harbor Realty Corp. v. Kerr*, 35 N.Y.2d 507, 364 N.Y.S.2d 160 (N.Y. 1974)

⁶ In *Almquist*, the town of Marshan, an agricultural community, imposed a six month development moratorium when faced with several proposals for the widespread conversion of farm acreage into single family development. Faced with the specter of a drastic change in the nature of the community, and the inability of the community to provide infrastructure and services which would be demanded by a conversion from the low impact agricultural use to the high impact and demand of extensive residential development, which would change the very nature of the rural community, the town of Marshan implemented a six month moratorium on development pending the adoption of a comprehensive zoning plan.

⁷ When enacting a moratorium The following precepts should be followed:

- (a) Adopt the moratorium in the form of a *local law*, the simplest and strongest form of municipal enactment, even if the existing zoning regulations are in the form of an ordinance. Although it is possible to amend an existing ordinance via a new ordinance in cities and towns, the use of a local law will avoid any uncertainty surrounding basic legal authority.
- (b) In a municipality with an existing zoning ordinance or local law, the moratorium should be treated as an amendment to that ordinance or local law. The applicable procedural requirements--e.g., notice, hearing and possible county referral--must be strictly followed.
- (c) The moratorium should clearly define the activity affected, and the manner in which it is affected. Does the moratorium affect construction itself? Does it affect the issuance of permits? (The permitting official will want to know this.) Does it

is to assure the effectiveness of new regulations which are to be developed. The legal concept is that if uses which are contrary to new regulations are allowed to be commenced during the period in which such new regulations are actively being developed and implemented, the purpose of the new regulations may be defeated. In short, lawful moratoriums are intended to address and prevent the problem of "locking the stable after the horse is stolen". See *Downham v. Town Council of Alexandria*, 58 F.2d 784, 788 (E.D.Wa.1932). The California Supreme Court in a landmark moratorium case (*Miller v. Board of Public Works of L.A.* 234 P. 381(Cal App. 1925) said it best "It is a matter of common knowledge that a zoning plan to the extent contemplated...cannot be made in a day;...it will take much time to work out the details of such a plan and it would be obviously destructive to the plan if during the period of incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction...[which would] defeat...the plan."

Once a significant problem is identified and a study of the remedy for the problem is in progress, there is ample justification for a moratorium as being necessary to preserve the status quo. One of the key requirements for adoption of a moratorium is that there be an identification of an existing problem which is within the authority of local government to solve or attempt to solve and of the necessity and means to develop remedial measures to address such problem. As noted in "Moratoria and Interim Growth Management":

Before drafting a moratorium ordinance, the practitioner should determine exactly what the Town or County is trying to accomplish. A simple reaction to the problem is to institute a moratorium on the issuance of building permits. A better approach is to examine what the Town or County is trying to encourage, discourage, and achieve and to determine precisely what type of moratorium is needed. (Page 5-4).

It is further observed that:

A proper relationship between a moratorium and a growth management problem can exist if the moratorium is put into effect to study the growth management problem and a good faith effort is made to find solutions and

affect actions by boards or commissions within the municipality? May project review continue, or must it, too, be stopped? (d) If the moratorium supersedes any provision of either the Town Law or the Village Law, then the moratorium must be adopted by local law, using Municipal Home Rule Law procedures. It must also state, with specificity, the section of the Town or Village Law being superseded. In particular, where the moratorium suspends subdivision approvals, it must be made clear in the moratorium law that the "default approval" provisions of the subdivision statutes of the Town or Village Law (as the case may be) are superseded. (e) Establish a valid public purpose for the moratorium with a preamble that recites the nature of the particular land use issue, as well as the need for further development of the issue in the community's comprehensive plan and/or in its current land use regulations. Refer to the fact that time is needed for community officials to comprehensively address the issue without having to allow further development during that time. Such a statement will help make it clear that the benefits to the community outweigh the potential burden to the landowners. (f) Be sure the moratorium states that it is to be in effect for a defined period of time. The moratorium should be for a time no longer than absolutely necessary for the municipality to place permanent regulations in effect. (g) The moratorium should include a mechanism allowing affected landowners to apply to a local board for relief from its restrictions, or it should contain a clear reference to the fact that an owner may make use of the existing variance procedures under the current zoning regulations. If a board other than a zoning board of appeals will execute this authority, the moratorium should be enacted using the supersession authority (see "(d)" above).

See generally *Oakwood Island Yacht Club, Inc. v. City of New Rochelle*, 59 Misc.2d 355, 298 N.Y.S.2d 807 (N.Y. Sup. 1969), *affirmed* 36 A.D.2d 796 (2nd Dept. 1971), *affirmed* 29 N.Y.2d 704 (1971).

enact remedial ordinances. Virtually every case of a development permit moratorium involves a local government enacting a moratorium to stop conditions from getting out of control while a study committee examines a growth management problem and proposes remedial ordinances.

Staff also recommends that the moratorium should **not** apply to:

- a.) Building, plumbing, mechanical and electrical permits for the repair of existing building elements.
- b.) Certificates of use or occupancy for the re-establishment or continuation of a specific occupancy or use legally existing and previously licensed at the location to which a certificate of occupancy and certificate of use will be applicable.
- c.) The renewal of a previously existing building, plumbing, mechanical or electrical permits for new construction.
- d.) The approval of a plat or site plan, a bonafide application for which was made sixty (60) days prior to the effective date hereof.
- e.) The approval of a plat or site plan, a bonafide application for which was made sixty (60) days prior to the effective date hereof.

While the use and development of private property is generally subject to compliance with the body of government regulations, as those regulations change from time to time, the Courts have long recognized an exception to the strict application of changed laws, under the doctrine of equitable estoppel or vested rights. The doctrine of vested rights operates to limit a local government's exercise of its zoning powers and immunizes a development from subsequently enacted zoning laws, when applicable. In order for this legal doctrine to apply and for vested rights to be established, a property owner must demonstrate that:

- a. relying in good faith;
- b. upon some act or omission of the local government;
- c. the property owner has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and manifestly unjust to permit the government to destroy the rights of the property owner by applying a subsequent regulation.

See, Town of Largo v. Imperial Homes Corporation, 309 So.2d 571 (Fla. 2d DCA 1975); *Monroe County v. Ambrose*, 866 So.2d 707 (Fla. 3d DCA 2004). When equitable estoppel applies, rights are treated as vested and protected.

Other Essential Ingredients of Moratorium Ordinance

Any moratorium ordinance should contain two provisions which are essential to assuring that the ordinance does not operate in an unlawful manner. Those two provisions are:

1. a vested rights provision; and
2. a waiver provision.

The purpose of a vested rights provision is to make sure that a proposed moratorium does not unlawfully cut off or impair vested rights or rights protected by equitable estoppel. The destruction of vested rights may subject the municipality to monetary liability under Florida law as well as under federal law.

The purpose of a waiver provision is to assure that, during the course of any moratorium, waivers for development permits may be given, subject to appropriate procedures, for those projects which are not inconsistent with the proposed regulations to be developed. In short, if a proposed use is not inconsistent with the regulations which are being developed or does not create the type of problem which the proposed regulations are intended to address, then there is no valid reason to subject such property to a moratorium. A waiver enables a harmless project to proceed. A waiver provision is created in recognition that the imposition of a moratorium which is done with a net so broad that it captures items which do not pose the risk intended to be addressed by the new regulations, may be challenged as an unlawful moratorium which does not serve the public health, safety or welfare.

Other Issues.

In preparing this Memorandum, we have examined whether the 1995 enactment by the Florida legislature of the Private Property Rights Protection Act (the "Bert Harris Act") creates any impediment to any proposed moratorium. The Bert Harris Act protects private property from an interference which is short of a "taking" but constitutes an "inordinate burden".⁸ In an article published in the Florida Bar Journal, shortly after creation of the Bert Harris Act, Jane Hayman, then serving as Deputy General Counsel for the Florida League of Cities, astutely cautioned that:

Cities and counties in Florida must take a second look at how they regulate and impact land. Some local governments will engage in extensive fiscal impact analysis prior to promulgating any new land development regulations to avoid litigation under the Harris Act. Other local governments will make adjustments to the impact of newly promulgated regulations as claims are filed by land owners. And other local governments may simply refuse to make land use changes or may litigate. It is also expected Ch. 95-181 will increase public confusion concerning preservation of private property rights, require cities and counties to adjust existing local zoning and development approval and appeal processes, and incur additional administrative expense, promote costly litigation, and further encumber our already overburdened system. See 70 Fla. Bar J. (January, 1996).

Those early warnings have proven to generally be correct and the Bert Harris Act has impacted certain municipal decisions. See, *Royal World Metropolitan, Inc. v. Town of Miami*

⁸ The terms "inordinate burden" or "inordinately burdened" mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The terms "inordinate burden" or "inordinately burdened" do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.

Beach, 863 So.2d 320 (Fla.3d DCA 2004); *rev. denied* (Fla. Feb. 08, 2005) (holding that sovereign immunity does not bar a Bert Harris Act claim).

However, the Bert Harris Act defines an "inordinate burden" as one that is permanent and not merely a temporary impact. A moratorium, by its very nature, is a temporary measure. In assessing the feasibility and scope of any potential moratorium, we have been guided by the recognition that any moratorium must be confined to serving a purpose which is within the scope of the Town's authority and serves to facilitate the remediation of a growth management problem, while respecting private property rights. Accordingly, any impact of the Bert Harris Act would be further examined at the time that any new permanent growth management regulations are formulated.

Conclusion

Accordingly, for the reasons indicated above, the Town Commission may lawfully adopt and we recommend you do enact the proposed temporary moratorium ordinance.

**TOWN OF SURFSIDE PLANNING AND ZONING BOARD
RESOLUTION NO. 11- 01**

**A RESOLUTION OF THE TOWN OF SURFSIDE
PLANNING & ZONING BOARD RECOMMENDING
THE TOWN COMMISSION TO CONSIDER THE
NEED FOR, AND TERMS OF, A MORATORIUM ON
CERTAIN NON-RETAIL OR RESTAURANT USES IN
THE SD-B40-BUSINESS DISTRICT; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Surfside ("Town") is in the process of developing, studying and creating a vision for the zoning district known as SD-B40 located between 96th and 94th Streets and Harding Avenue (hereinafter referred to as the "Downtown Business District") and a strategy needs to be developed for the revitalization of the District; and

WHEREAS, the Ad Hoc Downtown Visioning Committee and the Town Commission are currently reviewing various regulations that may be adversely affecting the developing vision of the Downtown Business District in the Town; and

WHEREAS, it has become apparent that an appropriate mix of retail, restaurant, and non-retail service uses is required in order to ensure the vitality and commercial character of the Downtown Business District in the Town; and

WHEREAS, it is in the best interests and welfare of the Town and its residents to require that the Town consider whether additional or revised regulations are necessary or appropriate to preserve or enhance the mix and development of retail and non-retail uses in the Town's non-residential business district including potentially the limitation on the location and/of frequency of location of allowable uses within the relevant District; and

WHEREAS, the establishment of new, non-retail uses in the Town during the pendency of any such consideration may irreversibly change the character of the Town's Downtown Business District to the possible detriment of the Town's residents and the overall revitalization effort being developed; and

WHEREAS, in order to prevent such an irreversible change in the character of the Downtown Business District, the Planning and Zoning Board has determined that it may be necessary for the Town to impose a moratorium on the issuance of new Certificates of Use and occupancy permits for newly renovated, or remodeled spaces in the Town's business district as hereinafter set forth; and

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF SURFSIDE PLANNING AND ZONING BOARD OF THE TOWN OF SURFSIDE, FLORIDA TO RECOMMEND AS FOLLOWS:

Section 1. Recitals Incorporated. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution upon adoption hereof.

Section 2. Call for Moratorium. The Planning and Zoning Board hereby recommends that the Town Commission consider the need for a moratorium upon the issuance of certificates of use and certificates of occupancy for newly renovated, or remodeled spaces in the Downtown Business District intended for non-retail uses only, except for those existing uses currently and already in such Downtown Business District as of the date of this Resolution.

Section 3. Effective Date. This Resolution becomes effective upon adoption.

PASSED AND ADOPTED this 24th day of February, 2011.

Motion by Planning and Zoning Board Member Peter Glynn,
Second by Planning and Zoning Board Member Armando Casellanos

FINAL VOTE ON ADOPTION

Armando Casellanos	<u>yes</u>
Sheldon Lisbon	<u>yes</u>
Peter Glynn	<u>yes</u>
Galen Bakken	<u>yes</u>
Scarlet Hammons	<u>yes</u>

Scarlet Hammons
Scarlet Hammons, Chair

ATTEST:

Duane Meacham
Clerk of Board

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR
THE TOWN OF SURFSIDE ONLY:

Lynn M. Dannheisser
Lynn M. Dannheisser, Town Attorney

ORDINANCE NO. 2011 _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE PROCESSING OF SITE PLANS, BUILDING PERMITS, AND THE ISSUANCE OF CERTIFICATES OF USE OR OCCUPANCY FOR NON-RETAIL, NON-RESTAURANT USES FOR THE PROPERTIES GENERALLY LOCATED BETWEEN 96TH AND 94TH STREET AND HARDING AVENUE, MORE PARTICULARLY DEPICTED ON THE DOWNTOWN BUSINESS DISTRICT AREA ZONING MAP ON EXHIBIT ‘A’ ATTACHED HERETO; PROVIDING FOR A STUDY; PROVIDING FOR A WAIVER; VESTED RIGHTS, APPEAL; EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TERM; PROVIDING FOR DIRECTIONS TO THE TOWN MANAGER; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ADOPTION OF PRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) is in the process of developing, studying and creating a Town Center vision and concept for the zoning district known as SD-B40 located between 96th and 94th Streets and Harding Avenue (hereinafter referred to as the “Downtown Business District”) and a strategy needs to be developed for the revitalization of the District; and

WHEREAS, the Ad Hoc Downtown Vision Process Advisory Committee and the Town Commission are currently reviewing various regulations that may be adversely affecting the developing vision among other things of the Downtown Business District in the Town; and

WHEREAS, it has become apparent that an appropriate mix of retail, restaurant, and non-retail service uses is required in order to ensure the vitality and commercial character of the Downtown Business District in the Town; and

WHEREAS, it is in the best interests and welfare of the Town and its residents to require that the Town consider whether additional or revised regulations are necessary or

appropriate to preserve or enhance the mix and development of retail and non-retail uses in the Town's non-residential business district, including potentially the limitation on the location and/of frequency of location of allowable uses within the relevant District; and

WHEREAS, the establishment of new, non-retail uses in the Town during the pendency of any such consideration may irreversibly change the character of the Downtown Business District to the possible detriment of the Town's residents and the overall revitalization effort being developed and accordingly the Town needs to maintain the status quo; and

WHEREAS, it is incumbent on the Town to ensure that the redevelopment and/or revitalization of the Downtown Business District conforms to the Town's goals and wishes and as such the Town Manager advises that there is an urgent need to undertake a study of the Downtown Business District including consultation with FDOT, parking consultants, Town planners and engineers; and

WHEREAS, Town staff has already begun to meet with consultants concerning the Town's developing goals and objectives as it relates to the Downtown Business District; and

WHEREAS, the Planning & Zoning Board Resolution 11-01 enacted on February 24, 2011 recommended the Town Commission consider a temporary moratorium upon the issuance of certificates of use and certificates of occupancy for newly renovated or remodeled spaces in the Downtown Business District, subject to adequate protection of private property rights.

NOW THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS as follows:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby made a specific part of the Ordinance.

Section 2. Temporary Moratorium Imposed. There is hereby established a temporary moratorium on the processing of any and all site plans, building permits, certificates of occupancy pursuant to Section 90-21 of the Code of Surfside, and certificates of use pursuant to Section 90-27 of the Code of Surfside in the Downtown Business District delineated in Exhibit “A” attached hereto and subject to the provisions of Section 4 herein. Except as otherwise provided herein, no department of the Town shall issue any certificates of use or occupancy, development orders, or undertake the review and approval of any site plans, building permits or development plans with respect to such uses within such area, during the term of the moratorium established hereby.

Section 3. Term: the moratorium established hereby shall be for a period of not more than one hundred and eighty (180) days from the effective date hereof. Zoning in progress shall apply to this Ordinance.

Section 4. Exemption: the moratorium established hereby shall not apply to the following:

- a.) Building, plumbing, mechanical and electrical permits for the repair of existing building elements.
- b.) Certificates of use or occupancy for the re-establishment or continuation of a specific occupancy or use legally existing and previously licensed at the location to which a certificate of occupancy and certificate of use will be applicable.
- c.) The renewal of a previously existing building, plumbing, mechanical or electrical permits for new construction.
- d.) The approval of a plat or site plan, a bonafide application for which was made sixty (60) days prior to the effective date hereof.

e.) To the extent a lease for the proposed premises is executed and/or a Business Tax receipt has been issued prior to the effective date of this Ordinance, The Town Manager in his discretion may exempt an applicant.

Section 5. Waivers. That the Town Commission, after a public hearing, duly advertised and properly noticed, may grant a waiver to the temporary moratorium provided above and authorize the issuance of approvals for a specific building, where the Town Commission determines that based upon substantial competent evidence, the specific use or activity requested by the waiver application will not detrimentally affect the preparation and implementation of the developing vision of the Downtown Business District and/or zoning regulations, will be compatible with surrounding uses, and will not impair the public health, safety or welfare.

Section 6. Study and Town Manager. The Town Manager is hereby authorized and directed to coordinate with the Town's consultants and Ad Hoc Downtown Advisory Committee as well as such other departments of the Town and all other persons, entities or agencies, as the Town Manager shall deem appropriate to provide for a study to determine the most appropriate uses for the Downtown Business District (delineated in Exhibit "A") in light of the Town's future re-vitalization plans for the area. The Town Manager shall report back to the Mayor and Town Commission the results of the study.

Section 7. Vested Rights.

(A) That nothing in this ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

(1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and

(2) Upon which the property owner has detrimentally relied, in good faith, by making such a substantial change in position or incurring such extensive obligations and expenses; and

(3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) That, except as provided by paragraph (C) below, any property owner claiming to have vested rights under this Section 7 must file an application with the Town Manager for a vested rights determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by a fee of \$1500 and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the Town Manager and other documentary evidence supporting the claim, which fee may be waived administratively if a substantial inequity would result from charging such fee. The Town Manager shall review the application and based upon the evidence submitted shall make a determination as to whether the property owner has established vested rights. The Town Manager's decision shall be subject to appeal, by only the applicant for a vested rights determination, to the Town Commission by notice of appeal filed with the Town Manager within ten (10) days after the Town Manager's written decision. In the event of a timely appeal, the Town Commission shall hold a public hearing on the appeal pursuant to Town Code Section 90-58 et. seq., and based upon the evidence submitted shall make a determination as to whether or not the property owner has established vested rights. To the extent that a property owner demonstrates vested rights, the temporary moratorium shall not be applied.

(C) That any property owner claiming vested rights under this Section 7 by virtue of a Vested Rights Determination Agreement with the Town shall not be subject to this temporary moratorium and shall be authorized to apply for certificates of use and certificates of occupancy in accordance with the Vested Rights Determination Agreement, by filing a copy of the Vested Rights Determination Agreement with the Town Manager, accompanied by a letter which references this paragraph (C), within thirty (30) days after the effective date of this Ordinance.

Section 8. Appeals. That appeals from final decisions by the Commission under Section 5 or Section 9 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial rulings of municipal agencies.

Section 9. Exhaustion of Administrative Remedies. That no property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court unless he or she has first exhausted the administrative remedies provided in this Ordinance.

Section 10. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 11. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 12. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be

renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 13. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 8th day of March, 2011.

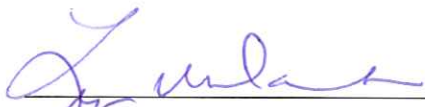
PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch yes _____ no _____
Vice Mayor Graubart yes _____ no _____
Commissioner Karukin yes _____ no _____

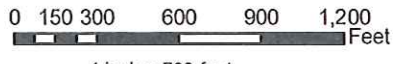
Commissioner Kopelman yes _____ no _____
Commissioner Olchyk yes _____ no _____



Exhibit A Town of Surfside Moratorium Area



Legend	
Zoning Designation	Height Restriction 40ft (H40)
Community Facilities (CF)	Height Restriction 120ft (H120)
Height Restriction 30ft (H30A)	Special District - Height Restriction 40ft (SD-B40)
Height Restriction 30ft (H30B)	Municipal Use (MU)
Height Restriction 30ft (H30C)	



GIS Produced and maintained by the CGA
Geographic Information Systems Services

Calvin, Giordano & Associates, Inc.
PROFESSIONAL ENGINEERS

Print Date : January 2011



Town of Surfside Commission Communication

Agenda Item #: 2A2

Agenda Date: March 23, 2011

Subject: Joint Meeting Recommendations Ordinance

From: Roger M. Carlton, Town Manager
Sarah Sinatra Gould, Town Planner
Lynn Dannheisser, Town Attorney

Background:

The Town Commission and Planning and Zoning Board held a Joint Meeting on November 4, 2010 to discuss potential changes to the Zoning Code. At the end of the four hour meeting, staff was directed to process the input and prepare recommended changes. Town staff analyzed the code and provided solutions to the challenges presented at the Joint Meeting by preparing recommendations, which were presented at the December 9, 2011 Joint Meeting. This is included as Attachment 1. Staff believes that the proposed changes add or expand layers of protection, increase focus on the major issues of concern to our citizens and will help to preserve the unique flavor and lifestyle of Surfside.

It was clear to staff that the desired outcome of both Joint Meetings was to create an expanded level of protection for the quality of life issues of concern to our community while encouraging the positive income generating aspects of certain commercial development. The recommendations in this report achieve those goals through the evolution of Design Guidelines to Zoning Code requirements; the creation of a staff driven required site plan review process which will subsequently be reviewed by the Development Impact Committee, the Planning and Zoning Board and Town Commission, all three of these in public meetings; and, the creation of a Conditional Use annual permitting process for certain outdoor facilities, which if not responsibly operated, could be viewed as intrusive by neighbors.

The ordinance addressing the recommendations was presented to the Planning and Zoning Board at their January 27, 2011 meeting. There was much discussion by the Board members and the public. The outcome of the meeting was to direct the meeting attendees to forward written questions to staff. Town staff was requested to respond to the questions in a report forwarded to the Planning and Zoning Board. There were approximately 35 questions, with many sub points in each question, submitted by attendees at the January Planning and Zoning Board meeting. Staff reviewed and responded in writing to the questions, which are included as Attachment 2, and made changes to the ordinance based on this input.

The revised ordinance was then presented to the Planning and Zoning Board at their February 24, 2011 meeting. Town Staff, the Planning and Zoning Board and the Town Commission have struggled for a number of years with balancing the clear goal of maintaining quality of life, good design principles, environmental sensitivity and the rights of property owners. A recent analysis by the Town Manager titled, the *Five Year Financial Forecast*, demonstrates the clear impact on the Town that various development strategies have on property taxes borne by our residents. The proposed amendments to the Town Code balance these seemingly conflicting, but clearly related goals. It is clear from recent activity in ownership change in major parcels that we must be prepared to guide the development process in a way which is open, professional and based on a modern code. The amendments proposed take the Town of Surfside into a better prepared status to guide the clearly impending development which includes the Beach House site, 9501 Collins Avenue, the Best Western property, the boutique hotel at 9200 Collins Avenue and the Surf Club project. An article regarding the Beach House sale is included as Attachment 3.

The following are staff's recommendations that have been drafted in a zoning code text in the attached Ordinance:

1. Create parking garage standards to achieve the goal of concealing a parking garage with architectural features, facades and landscaping compatible to the surrounding buildings.
2. Modify the Zoning Code to provide for Developer's Agreements which address not only onsite issues, but offsite issues as well.
3. In exchange for the benefits of lot aggregation, which provides for greater flexibility in design, the maximum permitted density shall be limited to 85% of what is permitted by the land use category in the Comprehensive Plan. Existing properties with a unity of title, a covenant in lieu of unity of title, or have been aggregated through the platting process will be exempted from this requirement.
4. Amend the design guideline section of the Zoning Code to include the current Design Guidelines as mandatory requirements, except for single family homes.
5. The Planning and Zoning Board also requested staff to review the code to determine if changes are necessary to make hotel development more financially feasible. That process is underway.

Proposed Changes to the Code:

Based on the above recommendations, the Planning and Zoning Board are proposing modifications to the Zoning Code. The following are the proposed changes:

Section 90-20 Development review requirements for submittals other than single-family and two-family. The proposed ordinance establishes a Development Impact Committee (DIC). The DIC will consist of seven (7) department representatives with the goal of reviewing development proposals to ensure high quality structures and consideration for all impacts not only on the site, but also in the environs of the project. This process will be public with an opportunity for public participation. The DIC will prepare a Development Order report for review by the Planning and Zoning Board and Town Commission. The Development Order becomes a covenant running with the land to ensure its constant viability

Section 90-23 Conditional uses. Currently, the Conditional Use section provides for a list of uses that require conditional use approval, but did not provide clear criteria for the Town Commission to analyze the use. The existing uses requiring Conditional Use approval include the following:

- 1) Institutions, educational or philanthropic, including museums, but not including nursing homes or hospitals.
- (2) Off-street parking lots and garages.
- (3) Public and governmental buildings.
- (4) Public utilities or public service uses, buildings, structures and appurtenances thereto.
- (5) A bar accessible from the pool or pool deck for use solely by guests of hotels and their guests in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.

Staff is recommending including these uses in the use charts as Conditional Uses. This clarifies the code by providing all uses in one location. Also Staff is recommending removing "public and governmental buildings" as a Conditional Use since there is no clear justification for the inclusion of this use.

Lastly, Conditional Uses, unless exempted from this requirement, shall annually apply for a permit. The Town Manager shall review the application and determine if the Conditional Use continues to comply with the proposed Standards of Review. If the use fails to meet the Standards of Review, the permit may be rescinded. This item received quite a bit of discussion. The bottom line is that the language of the Conditional Use approval must be crafted to allow enforcement for violations, giving the Town the clout of rescinding the permit without restricting the ability of the owner from obtaining financing. Further, there will be an appeal process of the Conditional Use application is denied.

Section 90-41 Regulated uses. The Conditional Uses, except public and governmental buildings, are proposed to be included in the use charts as Conditional Uses.

Section 90-45 Setbacks. The setback tables provide setbacks for H40 based on width equal to or less than 50 feet and wider than 50 feet. However, the reference to Harding Avenue was found to be unnecessary, therefore Staff is recommending removing the reference, so that the setbacks clearly apply to both Harding and Collins Avenues.

Section 90-45.1 Aggregation of lots. The Planning and Zoning Board and the Town Commission expressed concerns over lot aggregation. Staff analyzed this issue and is proposing a density reduction of 85% of the total gross density permitted by the Comprehensive Plan when lots are aggregated. Existing properties with a unity of title, a covenant in lieu of unity of title, or have been aggregated through the platting process will be exempted from this requirement.

Section 90-44 – Section 90-67. The Ordinance includes Design Guidelines which consist of prohibited buildings with one continuous height and requiring at least 5 feet in height variation, permitting awnings to encroach into the public sidewalks not more than 6 feet, storefront and entrance requirements for windows, awning and canopy regulations, requirements for materials, finishes, outdoor lighting, utilities, service areas, mechanical equipment and structured parking garage specifications.

Section 90-73 Prohibited Signs. The Ordinance prohibits electronic signs.

Section 90-87 Installation of landscaping and irrigation. The Ordinance removes garage and rooftop landscaping from this section and utilizes the proposed requirements in Section 90-49.4, Structured Parking Garages.

Recommendation:

The combined Planning and Zoning Board and Town Commission meetings intent was to direct staff to present an ordinance based on these recommendations to the Planning and Zoning Board at the January 27, 2011 meeting. The Planning and Zoning Board requested an additional month to analyze the ordinance. The Board heard the item at their February 24, 2011 meeting and voted 3 to 2 to recommend approval of the ordinance with amendments to the Town Commission.

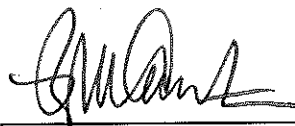
Budget Impact: Planning Staff's time was funded under the general services contract between the Town and CGA. Therefore the Town did not incur an additional budget impact for CGA's time.

Growth Impact: The proposed Ordinance does not encourage growth. It provides guidance to staff and project owners, while ensuring that major projects receive adequate review in multiple public forums.

Staff Impact: N/A



Sarah Sinatra Gould, Town Planner



Roger Carlton, Town Manager



Town of Surfside

Agenda Date: December 9, 2010

Subject: 2nd Joint Meeting Recommendations from Staff as Requested at the 1st Joint Meeting

From: Roger M. Carlton, Town Manager
Sarah Sinatra Gould, Town Planner
Lynn Dannheisser, Town Attorney

BACKGROUND:

The Town Commission and Planning and Zoning Board held a Joint Meeting on November 4, 2010 to discuss potential changes to the Zoning Code. At the end of the four hour meeting, staff was directed to process the input and prepare recommended changes. The staff recommendations in this Commission Communication provide solutions to the challenges presented at the Joint Meeting. We believe that the proposed changes add or expand layers of protection, increase focus on the major issues of concern to our citizens and will help to preserve the essence of Surfside.

It was clear to staff that the desired outcome of the first Joint Meeting was to create an expanded level of protection for the quality of life issues of concern to our community while encouraging the positive income generating aspects of certain commercial development. The recommendations in this report achieve those goals through the evolution of Design Guidelines to Zoning Code requirements, the creation of a staff driven required site plan review process which will subsequently be reviewed by the Planning and Zoning Board and Town Commission in public meetings and the creation of a Conditional Use annual permitting process for certain outdoor facilities, the use of which could be viewed as offensive by neighbors.

If the outcome of the second Joint Meeting is to direct staff to present an ordinance based on these recommendations including any modifications, then staff will prepare an ordinance to be heard by the Planning and Zoning Board at their January 27, 2011 meeting. The ordinance would tentatively be scheduled for the February 8, 2011 Commission meeting and adoption could be March 8, 2011.

RECOMMENDATIONS:

1. Create parking garage standards to achieve the goal of concealing a parking garage with architectural features, facades and landscaping compatible to the surrounding buildings.
2. Modify the Zoning Code to provide for Developer's Agreements which address not only onsite issues, but offsite issues as well.
3. In exchange for lot aggregation, which provides for greater flexibility in design, the maximum permitted density shall be limited to 85% of what is permitted by the land use category in the Comprehensive Plan.
4. Amend the design guideline section of the Zoning Code to include the current Design Guidelines as mandatory requirements, except for single family homes.
5. Although the proposed recommendations are to address the larger issues, staff is committed to working with Planning and Zoning Board members and Commissioners to address any other concerns with Zoning Code provisions.

ANALYSIS

Recommendation 1. Create parking garage standards to achieve the goal of concealing a parking garage with architectural features, facades and landscaping compatible to the surrounding buildings.

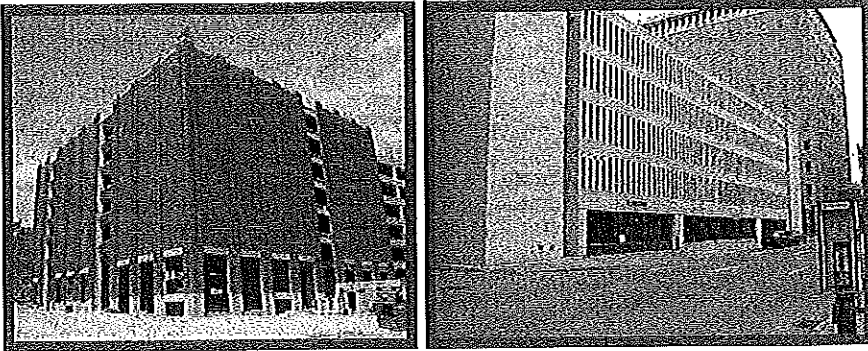
Overall Form

1. Facades shall provide a 3-foot minimum planar offset at a maximum distance of 50 feet in any direction.

Note: This will provide greater articulation along the façade treatments of the buildings to minimize the construction of large expanses of blank walls to avoid the look of the following garages:

These pictures are presented as examples of elements of facades to avoid or encourage. The reader should understand that the totality of a garage even in the "good" category may not be appropriate for a specific setting in Surfside. However, please examine the photos as good evidence of the design element being illustrated.

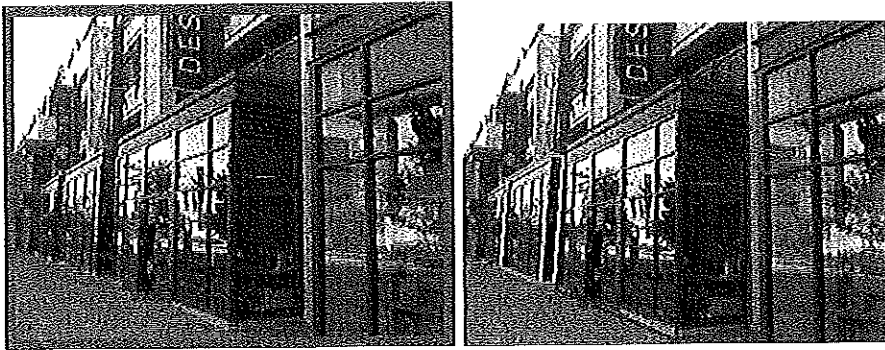
BAD



2. Buildings shall provide a minimum eight (8) foot wide break with a minimum 15 foot setback for a maximum of 100 linear feet of façade frontage onto a public ROW.

Note: This will break up the look of the massing of the parking garage building into smaller blocks such as the examples below:

GOOD



3. Façade treatments fronting a public ROW shall provide architectural treatments consistent with and compatible to those across the public ROW or abutting properties, consistent with immediate buildings.

Note: This will encourage that parking garages are consistent the surrounding context and do not “look” like parking garages. Examples of this disguising of the garage include having the ground floor be consistent with the architectural qualities of buildings across the street and

cladding the remainder of the façade so it does not look like a parking garage, such as the example below:

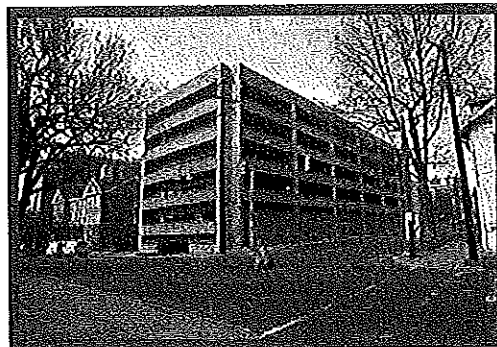
GOOD



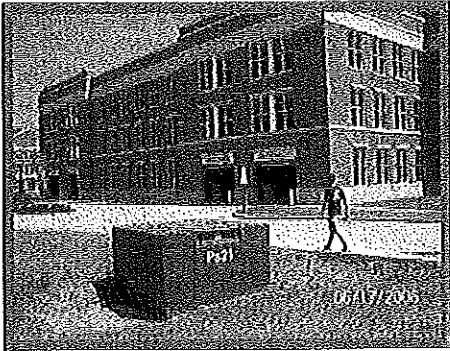
4. Facades shall not provide voids greater than 8-feet in any direction, and all voids shall be separated by a minimum 5-foot wide solid band.

Note: This will prevent the long ribbon window openings that give parking garages their unattractive appearance. See photographs below as examples of what to prevent and what to encourage:

BAD



GOOD



5. Facades shall provide a minimum of 80% landscaped coverage that will provide visual buffer to a height of 10-feet within 1 year of installation along all ground floors facing a public ROW.

Ground Floor Level Facade

Note: This will ensure that there are no blank, dead walls lining the street level to avoid the garages in the following pictures:

BAD

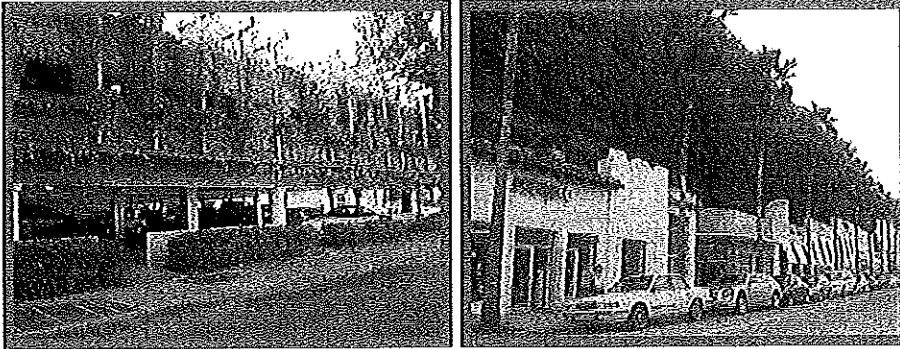


Mid-level Facades

6. Facades shall provide a minimum of 50% planted coverage facing a public ROW. Landscape coverage shall meet requirement within 2 years of obtaining the C.O.

Note: This will ensure that the massing of the building is softened with landscaping as shown in the following examples:

GOOD



7. All vegetative coverage shall be maintained and watered appropriately to sustain health and coverage indefinitely.

Note: This will ensure that adequate watering systems are put in place or that if landscaping is damaged as a result of a hurricane, that it is quickly replaced and repaired.

Recommendation 2: Modify the Zoning Code to provide for Developer's Agreements which address not only onsite issues, but offsite issues as well.

Developer's Agreements will be negotiated by a multi-disciplinary team lead by the Town Manager. A Developer's Agreement will go to the Planning and Zoning Board with a clear understanding by the developer that modifications may result from the Planning and Zoning process. Further, there is the potential for additional modifications once the project is heard by the Town Commission.

A Developer's Agreement would apply to all new or expanded non-residential development greater than 5,000 square feet and residential development greater than 10 units and hotels with more than 10 rooms. The Developer's Agreement would include all conditions and requirements associated with the new development.

The inclusion of a Developer's Agreement in the Zoning Code would help the Town address impacts of the development on the infrastructure, roadways, landscaping, pedestrian areas, etc.

Recommendation 3: In exchange for lot aggregation, which provides for greater flexibility in design, the maximum permitted density shall be limited to 85% of what is permitted by the land use category in the Comprehensive Plan.

During the first Joint Meeting density/intensity was discussed as it related to the aggregation of lots. Specifically, a question was raised to ask if by removing the Zoning Code provision in the 2010 Zoning Code that required buildings to be no more than 150 feet in length, was density/intensity increased. The concern brought up at the meeting was that by removing the provision for a maximum building length of 150 feet, lots would be aggregated resulting in an increase in density/intensity and the mass of the building could be very large and out of scale.

The total number of hotel units permitted on a particular lot is determined by the size of the lot and the permitted number of units per acre (density). Limiting the length of a building will have an impact on the total square footage that could be built on that lot (intensity). So while the size of a hotel may be smaller, the number of units remain unaffected.

Staff completed an analysis utilizing the graphics provided by Galen Baken at the meeting which compared a scenario with one large lot versus two smaller lots. It should be pointed out that the scenario with two buildings on two lots requires additional side setbacks in addition to a building separation. After an analysis of one large lot versus two small lots, it was concluded that based on the Zoning Code prior to 2008 and the 2010 Zoning Code the scenario with one large building could be 5.5% larger (60,800 square feet versus 57,600 square feet). The scenario with the two buildings on the two lots would allow for 57,600 square feet under the 2010 Zoning Code and 54,400 square feet under the Zoning Code prior to 2008 (an increase of 5.9%).

It should be noted that there has been some concern about whether the resulting increase in square footage in some manner violates the 2004 Charter Amendment. The 2004 Charter Amendment does not refer or pertain to *any* increase in square footage. Rather, it provides that development cannot exceed maximum allowable floor areas, maximum allowable floor area ratios or the maximum allowable building heights. Neither the 2010 Zoning Code, or the Zoning Code prior to 2008 included maximum allowable floor areas or maximum allowable floor area ratios. These were only regulated by the Comprehensive Plan, which has not been modified. Further, the Comprehensive Plan only included intensity (floor area ratio) provisions for non-residential uses. Therefore, the question raised and the concluding analysis is not based on the regulations in the Comprehensive Plan (which are for illustrative purposes only) and there need not be any concern about charter violations.

Staff analyzed these results and recognized that although the difference in square footage may be minimal, the utilization of aggregation continues to create concerns. Therefore, staff is recommending that in exchange for an applicant aggregating lots, the maximum permitted density shall be limited to 85% of what is permitted by the land use category in the Comprehensive Plan.

Recommendation 4: Amend the design guideline section of the Zoning Code to include the Design Guidelines as mandatory requirements, except for single family homes.

Amending certain Design Guidelines to become mandatory will result in the following changes to the Zoning Code. However, it should be noted that many of the other Design Guidelines are not appropriate to become Zoning Code and should remain as Design Guidelines. Additional provisions provided for in the Building Code are shown as struck through, however, they still exist in the Building Code.

Entrances, Windows & Storefronts

1. Buildings with one continuous height shall be prohibited.
2. Building facades shall incorporate breaks in the wall plane to provide massing and articulation compatible with the historic context. No single wall plane shall exceed 60 feet in length on any exterior façade and shall provide a minimum of a six (6) foot separation from abutting wall planes.
3. Height variations among architectural elements shall have an expression of no less than 5 feet in variation.
4. All building facades, including alleyways, shall be rendered consistently with the overall architectural treatment of the building.
5. Pedestrian entrances shall be easily recognizable and oriented towards the ROW.
6. Divided light window mullions, where provided, shall be through the pane.
7. Exterior burglar bars, fixed “shutters” or similar security devices shall be prohibited.
8. ~~Security shutters, if provided, should be constructed of a see-through, non-solid grate material. Roll-up casings and attachment hardware should be obscured by architectural features or awnings and should be finished to blend with the overall architectural character of the building and its surface materials. Staff recommends deleting due to conflicts in the Zoning Code.~~
9. ~~Impact resistant glass should be used in all window exposures, except ground level non residential uses. Staff recommends deleting due to conflicts with the Building Code.~~
10. Window and storefront articulations shall utilize similar proportions as those within the surrounding context and shall be primarily oriented towards the ROW.
11. Multiple storefronts within a larger building shall have consistent material qualities and articulation and shall relate to the detailing of the entire building.
12. The bottom edge of windows shall be no less than 24 inches above the fronting finished sidewalk elevation.

13. For non-residential uses, the first vertical 10 feet of building elevation shall be composed of 50% minimum transparency. Required percentages of transparency shall be applied to street-facing building facades and walls. Requirements shall be applied within the first 10 feet of height above the public sidewalk. The bottom of transparent openings shall be no higher than 24 inches above the ROW. Display windows used to satisfy these requirements shall have a minimum vertical dimension of 4 feet and shall be internally illuminated.
14. Mirrored and heavily tinted glass shall be prohibited.
15. Balconies shall not extend into the frontage setbacks and shall not be less than five feet (5') in depth.

Awnings, Canopies, 'Eyebrows' and Balconies

All new and replacement awnings shall meet these requirements.

1. Awnings and canopies shall be incorporated to provide pedestrian protection from the elements as well as reduce overall building heat gain. Encroachments by awnings and non-permanent canopies over the public sidewalk are permitted, but shall not be greater than 6' or the width of the sidewalk, whichever is less.
2. Awnings, canopies, "eyebrows" and balconies shall have consistent height and depth.
3. Awnings, canopies, "eyebrows" and balconies shall remain consistent with architectural details and proportions harmonious with the overall building design and historic context.
4. Awnings, canopies, "eyebrows" and balconies shall be consistent on multiple storefronts within a larger building.
5. Awnings shall be fabric or metal. Plastic awnings are prohibited.
6. To reduce visual clutter, awnings shall be solid colors rather than patterned.
7. Awnings shall utilize down lighting. Backlighting shall be prohibited.
8. Awning valances shall be straight rather than curved, except for special architectural elements to be compatible with historic building styles.
9. Awnings shall be attached to the building façades and shall not be supported by vertical elements within the ROW.

Service Areas and Mechanical Equipment

1. Service bays, mechanical equipment, garbage and delivery areas, shall be fully enclosed, screened or located within the interior of the building. These areas shall not be visible from the Right of Way and shall not be visible from properties with adjacent residential or hotel uses.
2. Central air conditioning shall be required for trash rooms.

3. All exterior equipment shall be placed on the roofs and shall be screened by an architectural feature.
4. All exterior equipment shall be architecturally screened.

Underground and Above-Ground Utilities

1. All utilities including telephone, cable, and electrical systems shall be installed underground.
2. ~~Large transformers shall be placed on the first floor/ground and contained with pad mounts, enclosures or vaults. Staff recommends deleting due to conflicts in the Zoning Code.~~
3. All exterior facilities, including but not limited to electrical raceways and transformers, permitted above ground shall be fully concealed and screened.

Parking Structures Staff recommends deleting since a new parking structure section is being proposed.

1. ~~Entrances to parking garages should not be from Collins or Harding Avenue frontages.~~
2. ~~Enclosed parking levels should have an exterior architectural treatment designed to be compatible with neighboring buildings and the area's context.~~
3. ~~All ground levels of a parking structure facing a public Right-of-Way should be lined with active liner uses or screened.~~

Materials and Finishes

1. The predominant surface shall be stucco, stone, metal, glass block and accent wood. Materials vernacular or characteristic to other regions including but not limited to flagstone and adobe shall be prohibited.
2. Materials shall be true and genuine, rather than simulated. Multiple storefronts within a larger building shall have consistent material qualities and articulation.
3. Within high traffic areas, higher quality materials that are easily maintained (in lieu of painted stucco) shall be incorporated at the building's base.
4. ~~Asphalt shingles should be prohibited. Addressed in the roof material section of the Zoning Code.~~
5. ~~Site accessories and materials that have a demonstrated durability and lend themselves to recycling or are produced through recycling means should be preferred. Materials should be made to limit the use of non-renewable resources, retain cultural resources, reduce waste and reduce the impact of manufacturing and transport of materials. Staff recommends deleting due to conflicts with the Building Code.~~

- ~~6. Woods that are certified as being from sustainable sources as designated by the Forest Stewardship Council should be utilized. Staff recommends deleting due to conflicts with the Building Code.~~
- ~~7. CCA treated woods should be prohibited for finish surfaces. Staff recommends deleting due to conflicts with the Building Code.~~

Multifamily Residential and Hotel Design Criteria

1. Separating elements, such as fences or walls shall not be permitted between multifamily residential uses and fronting streets.
2. Entrances to residential and hotel uses shall be kept separate from entrances to other uses in the building.
3. Outdoor activities such as swimming pools, restaurants, etc. shall be required to obtain an annual Conditional Use permit. The permit will dictate hours of activity and other condition necessary to provide compatibility with the surrounding neighborhood. A Conditional Use permit may be rescinded after due process.

Commercial Uses Design Criteria

1. Frontages along Harding Avenue shall provide a minimum six foot (6) wide continuous non-removable awning.
2. External street-level entrances shall be recessed and centered a minimum of 36 inches from the building frontage.
3. Restaurant uses shall have air conditioned trash and garbage facilities.
4. Outdoor dining facilities shall be required to obtain an annual Conditional Use permit. The permit will dictate hours of activity and other condition necessary to provide compatibility with the surrounding neighborhood. A Conditional Use permit may be rescinded after due process.

Exterior Lighting

1. All exterior lighting should avoid unnecessary, excessively strong or inefficient lighting through selection of appropriate fixtures for each application, use of high-efficiency fixtures and photocell controls to turn lights off during daylight.
- ~~2. Energy efficient fixtures and lamps such as Metal Halide cut-off lamps with efficient light distribution and up-to-date energy efficient light bulbs are encouraged. Staff recommends deleting due to conflicts with the Building Code.~~
- ~~3. Solar power (photovoltaic panels) energy supply for outdoor lights should be provided where possible. Staff recommends deleting due to conflicts with the Building Code.~~
5. All lighting shall be controlled by photocell controls.

6. Lighting provisions shall be designed in a manner that reduces light pollution and are turtle-friendly with a full cut-off for 'dark skies.'

~~Environmental Standards~~—This section is not recommended to become Zoning Code and should remain Design Guidelines. Please see attachment regarding challenges between Building Codes and LEED.

- ~~1. It is highly encouraged for all new construction to achieve LEED certification. Higher LEED certifications (silver, platinum, etc.) are also highly encouraged.~~
- ~~2. Rehabilitation of existing structures should achieve the following standards:~~
 - ~~a. Provision of bicycle racks or storage facilities in recreational, office, commercial and multifamily residential areas;~~
 - ~~b. Use of energy-efficient features in window design (exterior shading devices, low-E and insulated glass, etc);~~
 - ~~c. Use of operable windows and ceiling fans to promote natural ventilation when weather permits;~~
 - ~~d. Installation of energy-efficient appliances and equipment;~~
 - ~~e. Reduced coverage by asphalt, concrete, rock and similar substances parking lots and other areas to improve storm-water retention and reduce heat island effects.~~
 - ~~f. Installation of energy-efficient lighting in buildings, parking areas, recreation areas, and other interior and exterior public areas;~~
 - ~~g. Selection, installation and maintenance of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, maintenance and other needs;~~
 - ~~h. Planting of native shade trees to provide a minimum of 40% shade for all recreation areas, sidewalks and parking areas in addition to east and west faces of buildings.~~
 - ~~i. Passive solar orientation of structures, as possible, to reduce solar heat gain by walls and to utilize the natural cooling effects of the wind;~~
 - ~~j. Provision for structural shading (e.g., trellises, awnings and large roof overhangs) wherever practical when natural shading cannot be used effectively; use of the Florida Solar Energy Center Document FSECON-8-86 should be utilized for proper sizing and placement of shade devices.~~
 - ~~k. Inclusion of shaded porch/patio areas in residential units; and~~
 - ~~l. Use of recycled materials.~~
 - ~~m. Use of light-colored materials.~~
 - ~~n. Use of "cool roof" techniques (light colored roof, high reflectance EPDM membrane roof or a planted roof).~~
 - ~~o. Provision of natural daylighting to lower energy use for lighting and to lower cooling loads.~~
 - ~~p. Provision of natural ventilation strategies to induce air movement through the building such as breezeways, interior courtyards, water elements to create a cooling effect, operable windows, high ceilings, and fans.~~

Potable Water Standards

- ~~1. All development should make adequate provisions for water conservation in accordance with the standards established by the USGBC LEED Rating System. Staff recommends deleting due to conflicts with the Building Code.~~

Security Shutters Standards

- ~~1. Security shutters should be constructed of a see-through, non-solid grate material. Roll-up casings and attachment hardware should be obscured by architectural features or awnings and should be finished to blend with surface materials. Staff recommends deleting due to conflicts with the Zoning Code.~~



Town of Surfside Planning and Zoning Memo

Agenda Date: February 24, 2011

Subject: Joint Meeting Recommendations Ordinance

From: Roger M. Carlton, Town Manager
Sarah Sinatra Gould, Town Planner
Lynn Dannheisser, Town Attorney

BACKGROUND:

The Town Commission and Planning and Zoning Board held a Joint Meeting on November 4, 2010 to discuss potential changes to the Zoning Code. At the end of the four hour meeting, staff was directed to process the input and prepare recommended changes. The staff recommendations in this Commission Communication provide solutions to the challenges presented at the Joint Meeting. We believe that the proposed changes add or expand layers of protection, increase focus on the major issues of concern to our citizens and will help to preserve the unique flavor and lifestyle of Surfside.

It was clear to staff that the desired outcome of the first Joint Meeting was to create an expanded level of protection for the quality of life issues of concern to our community while encouraging the positive income generating aspects of certain commercial development. The recommendations in this report achieve those goals through the evolution of Design Guidelines to Zoning Code requirements; the creation of a staff driven required site plan review process which will subsequently be reviewed by the Development Impact Committee, the Planning and Zoning Board and Town Commission, all three of these in public meetings; and, the creation of a Conditional Use annual permitting process for certain outdoor facilities, the use of which could be viewed as intrusive by neighbors.

There were approximately 25 questions, with many sub points in each question, submitted by attendees at the January Planning and Zoning Board meeting. In order to facility this report, staff has consolidated similar or repetitive questions and responded to the questions at the end of this document.

The following are staff's recommendations that have been drafted in a zoning code text in the attached Ordinance:

1. Create parking garage standards to achieve the goal of concealing a parking garage with architectural features, facades and landscaping compatible to the surrounding buildings.
2. Modify the Zoning Code to provide for Developer's Agreements which address not only onsite issues, but offsite issues as well.
3. In exchange for lot aggregation, which provides for greater flexibility in design, the maximum permitted density shall be limited to 85% of what is permitted by the land use category in the Comprehensive Plan.
4. Amend the design guideline section of the Zoning Code to include the current Design Guidelines as mandatory requirements, except for single family homes.

PROPOSED MODIFICATIONS:

Based on the above recommendations, staff is proposing modifications to the Zoning Code. The following are the proposed changes:

Section 90-20, *Development review requirements for submittals other than single-family and two-family.* Staff is recommending a Development Impact Committee (DIC). The DIC will consist of seven (7) department representatives with the goal of reviewing development proposals to determine their impact to the Town. The seven (7) department representatives included are the Town Manager, Town Attorney, Public Works/Landscape, Planning and Zoning, Parks and Recreation, Engineering and Traffic Engineering, and Building. This will be a public meeting with an opportunity for public participation. The DIC will prepare a report for review by the Planning and Zoning Board and Town Commission.

Section 90-23, *Conditional uses.* Currently, the Conditional Use section provides for a list of uses that require conditional use approval, but did not provide clear criteria for the Town Commission to analyze the use. The existing uses requiring Conditional Use approval include the following:

- (1) Institutions, educational or philanthropic, including museums, but not including nursing homes or hospitals.
- (2) Off-street parking lots and garages.
- (3) Public and governmental buildings.
- (4) Public utilities or public service uses, buildings, structures and appurtenances thereto.
- (5) A bar accessible from the pool or pool deck for use solely by guests of hotels and their guests in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.

Staff is recommending including these uses in the use charts as Conditional Uses. This streamlines the code by providing all uses in one location. Also staff is recommending removing "public and governmental buildings" as a Conditional Use since there is no clear justification for the inclusion of this use.

Lastly, Conditional Uses, unless exempted from this requirement, shall annually apply for a permit. The Town Manager shall review the application and determine if the Conditional Use continues to comply with the proposed Standards of Review. If the use fails to meet the

Standards of Review, the permit may be rescinded. Any decision made by the Town Manager regarding Conditional Use permits may be appealed to the Town Commission.

Section 90-41, *Regulated uses.* The Conditional Uses, except public and governmental buildings, are proposed to be included in the use charts as Conditional Uses.

Section 90-46 *Setbacks.* The setback tables provide setbacks for H40 based on width equal to or less than 50 feet and wider than 50 feet. However, the reference to Harding Avenue was found to be unnecessary, therefore Staff is recommending removing the reference, so that the setbacks clearly apply to both Harding and Collins Avenues.

Section 90-45.1 *Aggregation of lots.* The Planning and Zoning Board and the Town Commission expressed concerns over lot aggregation. Specifically, the concern of the mass of the potential development resulting from lot aggregation. Staff analyzed this issue and is proposing a density reduction of 85% of the total gross density permitted by the Comprehensive Plan when lots are aggregated.

Section 90-44. – Section 90-67. Staff is recommending the Code include Design Guidelines which consist of prohibited buildings with one continuous height and requiring at least 5 feet in height variation, permitting awnings to encroach into the public sidewalks not more than 6 feet, storefront and entrance requirements for windows, awning and canopy regulations, requirements for materials, finishes, outdoor lighting, utilities, service areas, mechanical equipment and structured parking garage specifications.

Section 90-73 *Prohibited Signs.* Staff is recommending prohibiting electronic signs which are either installed inside for view through windows or on the exterior of the building.

Section 90-87. *Installation of landscaping and irrigation.* Staff recommends removing garage and rooftop landscaping from this section and utilizing the proposed requirements in Section 90-49.4, Structured Parking Garages.

The Planning and Zoning Board and Town Commission voted to direct staff to present an ordinance based on these recommendations to the Planning and Zoning Board at the January 27, 2011 meeting. The ordinance was reviewed and the Board requested additional time to review the information. Also, attendees at the meeting asked a number of questions. The Board instructed staff to provide responses to the public comments for the February meeting. The following are the comments from the public and staff's responses.

QUESTIONS SUBMITTED AFTER THE P&Z/DRB MEETING OF JANUARY 27, 2011:

1. Are you intending to apply aggregation restrictions to sites with an existing unity of title upon redevelopment and kill the prospect of attracting a hotel?

Requiring that aggregated lots provide no more than 85% of their density for the total lot is addressing a concern raised about density on large lots, which are a result of aggregation.

Requiring a lower density on the total lot is a trade off for the benefits of aggregating parcels of land. Hotels and multifamily will still be permitted on both sites.

2. Why not let your code restrict what can be built, as it does very well, and relax the density allowance in the case of hotels similar to the H40 zoning district?

Relaxing the density allowance would require a land use plan amendment and increases in density are prohibited in the Town Charter.

3. As a fall back, will the Town consider aggregation restrictions just in the case of cross zoning district aggregation and then only on the site being brought in?

The concept of aggregation is not only for different zoning districts. It is intended to reduce the overall density of a building. Also, the aggregation principle is for the total of the lots, not only on one of the lots that are being aggregated.

4. Will the 85% rule apply to lots that were aggregated prior to the effective date of the ordinance? The definition of aggregation is unclear. Moreover, the Code does not provide for a "unity of title." Properties with Unity of Title divided by a right-of-way should be able to count the entire property for density calculations.

The 85% rule will only apply to lots aggregated after the effective date of the ordinance. If a property has a Unity of Title and a street is separating the two lots, the property will be considered one lot. The definition of aggregation is the combining of lots through a unity of title. A definition for Unity of Title should be added. Here is the proposed definition: An agreement executed by and between one or more property owners of more than one lot, which shall not be conveyed, sold, mortgaged, etc. apart from each other and that they shall be held together as one tract. Such unity of title shall be recorded in the public records of Miami-Dade County, Florida and shall run with the land and shall be binding upon the property owner(s), successors and assigns. The 85% rule will not be applicable to properties with a valid building permit.

5. Do you intend to make a hotel reapply for some of its essential ancillary uses, such as a pool, every year? Can't this be regulated through the nuisance or noise ordinance? Zoning standards for annual permit renewals are not an industry standard for the use of permanent structures. This is different from annual occupational licenses, which is a tax. The Town already has enforcement and noise protection measures in Section 90-3, Section 54-78, 54-79, 54-80, 54-81, 54-82 and 54-83.

The Conditional Use permit has specific criteria in which the application shall be reviewed. If the hotel is not in compliance with the criteria, the permit will be revoked. The use of the pool and other outdoor activities is a concern to the Town. Although it may not be typical for an annual review of a pool or other outdoor activities, it is not contrary to the Zoning Code and will provide greater protection to the Town. Any decision made by the Town Manager regarding Conditional Use permits may be appealed to the Town Commission.

6. The Development Impact Committee can be a useful tool to ensure quality developments that meet the Town's objectives but if 'subjectivity' comes into play,

developers are right back to where they started from on the uncertainty issue. The DIC process is not clear. Specifically, the process is lacking standards and/or reference to objective criteria in the Town's Zoning Code. If the DIC recommendations are applied as a condition to a site plan approval, the standards do not meet the rational nexus/rough proportionately tests under Florida law and/or substantive law. This also applies to the standard of review which states "any other condition imposed by the Design Review Board and/or the Development Impact Committee." In combination, the provisions severely restrict development and the certainty required for acquisition, development and financing.

The primary intent of the DIC is to provide a sounding board on all projects, except single-family and two-family homes, prior to submittal to the P&Z/DRB. By definition, the process is "give and take", with the intent of collaborating to create better projects with beneficial impacts on the Town. The DIC meetings are advertised, open to the public and will have a section on each agenda where the public may speak. Such a process should not be rule bound and should allow creativity to prevail through negotiation. It should also be clear that the written report by the DIC is not legally binding on the P&Z/DRB or the Town Commission. It simply provides information for both boards.

7. The items that the DIC will cover are so broad that a developer will not know the size of the compromises they will face until the project is in the permitting process. A developer will have to add a month in its program for the project, which represents more financial charges to it.

The Town's process is as follows. The plans are submitted. The Development Review Committee (DRC) reviews the plans and meets with the applicant approximately two weeks after the submittal. The applicant is provided comments on the technical aspects of the plans. The applicant then revises the plans to meet the Code requirements and the plans are resubmitted to the Town. Once the applicant has met all of the Code requirements, the Town will schedule a DIC meeting. This step will occur approximately two weeks after the final submittal of the plans. The Town Manager will then prepare a report describing the results of the DIC meeting and the Planning Department will prepare a staff report on the technical aspects of the project. The full package of plans and both reports will be heard by the Planning and Zoning Board and the Town Commission. If the Town Commission grants approval of the plans, then the applicant may submit for the building permit. The DIC will occur prior to the project being in the permitting process. There will be no slow down for development. In fact, the early impact of addressing concerns will facilitate the review by the P&Z/DRB and the Town Commission.

8. When will the P & Z board members receive the DIC report?

The Town Manager will prepare a report describing the results of the DIC meeting. This report will be provided to the P & Z Board one week prior to the regularly scheduled P & Z Board meeting. They will receive the DIC report along with the site plan application, plans and staff memorandum. This follows the Planning and Zoning Board/Design Review Board schedule for application review. In general, municipal boards and commissions do not receive more than one week for a review of their agendas.

9. If the Town modifies the code to permit a parking garage as a conditional use, is a unity of title needed?

Yes, to avoid the garage parcel being sold off and leaving the building without parking.

10. If density is now being described in the zoning code, will there be a definition for density?

Density should be defined since it is now being utilized for aggregation purposes in the zoning code. Although a density definition is being proposed, the 120 feet height limitation, setbacks and other development limitations remain in place. Section 9J-5.006 (1) (c) of the Florida Administrative Code requires density to be calculated in gross. Gross density includes one-half the right-of-way of adjacent streets and alleys.

Here are proposed definitions:

Density: The number of dwelling units per gross acre of land.

Gross Acre: The acreage within the perimeter of a lot plus one-half the right-of-way of adjacent streets and alleys.

11. How can you expect 5 feet variations in height if height is measured to the highest point, not to the top of the highest floor? A way to address roofline variation without decreasing the maximum permitted height is to modify the language in Section 90-44 to allow parapet walls where there is a rooftop habitable activity. By removing the limitation on "non-habitable space" from Section 90-44 a parapet wall could be added to the roof of a garage, or any building having a rooftop pool, in the H30C district, 3'6 feet but not higher than 8 feet, to provide for the variation in roofline design. There may be a Town-wide legal non-conforming impact by prohibiting buildings with one continuous height. The current code states that height shall be measured to the highest point of the roof. However, if it stated it was measured to the top of the slab, then the architectural features necessary for security or to create variations in height could be included. Elements like stairs, elevator shafts and equipment should not be subject to the 3 foot height restriction. Some suggestions for changes to the code that could encourage variation in height are the following:

- To allow a 12 foot height rather than 3 foot height for non-habitable architectural elements as described by Section 90-44.1 in the H30C zoning district.

Section 90-44.1 of the Code permits architectural elements including cupolas, chimneys, flagpoles, spires, steeples, stair accessways, antennas, ventilators, tanks, parapets, trellises, screens and similar not used for human habitation, to be erected to a reasonable and necessary height, consistent with and not to exceed 3 feet in height for H30C, 12 feet in height for H40 and SD-B40, and 20 feet in height for H120. Therefore, if the building is within the H30C district, it would need to be 2 feet lower than the maximum height in order to provide the 5 ft parapet.

- Permitting stairways to exceed the maximum height limitations in Section 90-44.2.

Should be included since it is already permitted by Section 90-44.1, not to exceed the maximum permitted height in Section 90-44.1.

- **Stating that height variations among architectural elements “should” instead of “shall” be no less than 5 feet in variation where practical.**

Not recommended. The word “should” does not give clear and measurable direction for staff review and board policy determination.

- **Buildings should be encouraged to vary in overall height and not be contained in a single volume of continuous height.**

Not recommended. Codes should not state that something “should be encouraged” since it is not enforceable.

12. **Requiring conditional uses to be “consistent with the community character of the immediate neighborhood” can provide ambiguity in the interpretation of application of the statement. The vision, goals and objectives of the Comprehensive Plan and/or the Town Code could be restricted in the interpretation or application by existing structures in the immediate neighborhood.**

Staff concurs with this change. Consistency with the community character does not mean identical or uniform types or kinds of structures. Instead, it means respecting the immediate neighborhood's character. This will be modified to “compatible” rather than “consistent” to further clarify the intent. Although the existing neighborhood may consist of structures that are either non-conforming or are not the highest and best use from the Comprehensive Plan, there exists a neighborhood character. A new structure should be able to identify how it relates to the existing surrounding neighborhood.

13. **It should be clear by the Zoning Code notes under section 90.49.4 for a Structured Parking Facility and Services Area and Mechanical Equipment that these uses may be integrated with an adjacent permitted use, i.e., for example, a hotel as permitted in H40.**

The proposed code changes do not suggest that a Structured Parking Facility is a Permitted Use, rather it is recommended as a Conditional Use. Service areas and mechanical equipment are necessary functions and should be included in the Structured Parking Facility section.

14. **The code section requiring a minimum eight (8) foot wide and minimum fifteen (15) foot deep separation of wall plane for every 100 feet of a parking garage creates the following problems:**

- **Internal parking safety issues: may impact sight visibility for vehicles backing out of parking spaces and vehicles in drive aisle ramps.**

Each site plan will be reviewed for traffic circulation and safety issues.

- **External safety issues – CPTED (Crime Prevention through Environmental Design): the courtyard area created by the cutout of the parking building goes**

against the principles of CPTED. Creating a "cut-out" in the building where potential criminals can hide goes against these CPTED principles.

The landscape requirements are extensive and would not allow the condition as described above. The "cut-out" would provide significant area for an applicant to meet their landscape requirement. Furthermore, 6 feet of foundation plantings, along with general requirements for landscaping, are required on each site.

- The proposed requirements may in violation of the Town's Comprehensive Plan which encourages the use of innovative land development regulations and maintains regulations requiring the use of CPTED.

Staff does not agree that this is a violation of the Comprehensive Plan since this is not against the principles of CPTED, as described above.

- These indentations will produce less efficient parking structures, creating another burden to the developer through the loss of parking spaces, therefore affecting cost.

The Town is responsible for encouraging designs that are sensitive to the surrounding neighborhood. The indentations give the appearance of breaking up the façade to provide less massing.

15. Proposed regulations do not apply to municipal parking garages. No planning/zoning basis for unequal treatment. If the regulations are intended to mitigate impacts and improve the appearance of structured parking garages in relation to residential development within the Town, then there is no basis to treat municipal parking garages different from private parking garages as the "visual" impact is the same.

Municipal parking garages are not exempt from the parking garage standards regarding design. They are not subject to the conditional use requirements, as they are a permitted use in the municipal district.

STAFF SUGGESTED CHANGES TO THE ORDINANCE:

As a result of the above questions, staff is recommending the following changes to the proposed ordinance, which are identified by highlighted text in the ordinance document.

1. Question #4 indicates the need for a definition for unity of title and question #10 asks for a definition for density.

Sec. 90-2. Definitions.

Density: The number of dwelling units per gross acre of land.

Gross Acre: The acreage within the perimeter of a lot plus one-half the right-of-way of adjacent streets and alleys.

Unity of Title: An agreement executed by and between one or more property owners of more than one lot, which shall not be conveyed, sold, mortgaged, etc. apart from each other and

shall be held together as one tract. Rights-of-way shall be excluded from the unified lot. Such unity of title shall be recorded in the public records of Miami-Dade County, Florida and shall run with the land and shall be binding upon the property owner(s), successors and assigns.

2. Questions #9 asks if a unity of title will be required for Structured Parking Facilities.

Sec. 90-41. Regulated uses

Retail and General Commercial Uses	H30A	H30B	H30C	H40	H120	SD-B40
Structured Parking Facility	-	-	CU(23)	CU(23)	CU(23)	-

(23) The annual permit requirements in Section 90-23.6 are not applicable to this use. A unity of title shall be required if the Structure Parking Facility is on a lot other than the lot containing the principal use.

3. Question #4 asks if the 85% rule will apply to existing aggregated lots or for future aggregated lots.

90.45.1 Aggregation of lots

(1) In the H30C, H40 and H120 zoning districts, the maximum permitted density shall be limited to eighty-five (85%) percent of the total gross density permitted by the Comprehensive Plan when lots are aggregated. This shall apply to lots aggregated after the effective date of this ordinance.

4. Question 11 recommends permitting stairways to exceed the maximum height limitations.

Sec. 90-44. Modifications of height regulations.

90-44.1 Architectural elements including cupolas, chimneys, flagpoles, spires, steeples, stair accessways, antennas, ventilators, tanks, parapets, trellises, screens and similar not used for human habitation, may be erected to a reasonable and necessary height, consistent with and not to exceed the following limitations:

TABLE INSET:

Designation	Maximum Height (Feet)	Maximum Percentage of Aggregate Roof Area
H30A	3 FT	1%
H30B	3 FT	1%
H30C	3 FT	10%

Designation	Maximum Height (Feet)	Maximum Percentage of Aggregate Roof Area
H40	12 FT	10%
H120	20 FT	30%
SD-B40	12 FT	10%

90-44.2 Mechanical equipment rooms, including elevator shafts, and stair access ways, may be allowed to exceed the maximum height limitations, not to exceed the limitations listed above, provided they shall be of a high architectural quality integral to the design of the building.

5. Question 12 requests clarification on the Conditional Use criteria regarding consistency with the character of the immediate neighborhood.

90-23.2 *Standards of review.* In addition to the standards set forth in this zoning code for the particular use, all proposed Conditional Uses shall meet each of the following standards:

- (1) The proposed use shall be consistent with the Comprehensive Plan and the Zoning Code;
- (2) The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare;
- (3) The proposed use shall be consistent compatible with the community character of the immediate neighborhood. In addition to ~~consistency~~ compatibility there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.

6. Question 13 states that It should be clear by the Zoning Code notes under section 90.49.4 for a Structured Parking Facility and Services Area and Mechanical Equipment that these uses may be integrated with an adjacent permitted use.

Sec. 90.49.4 Structured parking garages

The following requirements apply to all structured parking garages.

a. Overall form

1. For every fifty (50) feet of a building wall in any direction, there shall be a three (3) foot minimum change in wall plane; and
2. For every one-hundred (100) feet of a building wall parallel to the public right of way, there shall be a minimum eight (8) foot wide and minimum fifteen (15) foot deep separation of wall plane; and
3. Façade treatments fronting a public right-of-way shall provide architectural treatments consistent with and compatible to those across the public right-of-way or abutting properties and consistent with Immediate buildings.
4. For the first ten (10) feet of height along all blank walls, a minimum of eighty (80%) percent landscape coverage, such as a vine or hedges, shall be installed and maintained.

5. For facades above the first ten (10) feet, a minimum of fifty (50%) percent landscape coverage, such as vines or planters, shall be installed and maintained.
6. All vegetative coverage shall be maintained and watered appropriately to sustain health and coverage indefinitely without adverse impact to the structure.
7. Service areas and mechanical equipment associated with a primary use are permitted.

CONCLUSION:

Town Staff, the P &Z/DRB and the Town Commission have struggled for a number of years with balancing the clear goal of maintaining quality of life, good design principles, environmental sensitivity and the rights of property owners. A recent analysis by the Town Manager titled, the *5 Year Financial Forecasting for the Town of Surfside*, demonstrates the clear impact on the Town that revenues and taxation have on equity issues of various development strategies. That document appears as the first items on this agenda. The proposed amendments to the Town Code balance these seemingly conflicting, but clearly related, goals. It is clear from recent activity in ownership change in major parcels that we must be prepared to guide the development process in a way which is open, professional and based on a modern code. The amendments proposed take the Town of Surfside into a better prepared status to address the impending development.

The following questions have been provided to Town Staff on Tuesday, February 22, 2011. Staff's responses are in italics.

1. The numbering for Sec. 90-20 is inconsistent.

Staff concurs and will correct.

2. Provide Section 9J-5.006 of the Florida Administrative Code. When was this enacted? Why hasn't the issue come up before? Provide a calculation for a typical development site showing the increase in square footage provided by this definition.

Attached is Rule 9J-5.006 of the Florida Administrative Code. This Rule governs land use planning in the State of Florida. Density is not regulated in the Town's Zoning Code; therefore a definition of density in the Zoning Code was not required. Density in Surfside is only regulated by the Comprehensive Plan, which follows Rule 9J-5.006. However, a definition is now being provided in Section 90.2 of the Zoning Code. There is no increase in square footage since gross density is the method that has always been utilized in the Comprehensive Plan.

3. There appears to be no reference to the proximity of the lots included in the aggregation other than they may be separated by a public right-of-way. Shouldn't there be a provision that the lots subject to the aggregation have some "natural" relationship to each other besides title? May lots in opposite ends of the Town be aggregated?

Staff concurs. The text has been modified to state that aggregated lots shall be contiguous properties and a definition of contiguous has been added to Section 90.2. Contiguous is defined as "next to, abutting, or touching and having a boundary, property line or portion thereof that is common to both properties." It should be noted that the 85% rule that pertains to aggregated lots will only be applicable to those lots that will be aggregated after the effective date of this ordinance; however the 85% rule is only applicable to contiguous properties.

4. If a provision for parking is one of the main driving forces for this definition, shouldn't there be some standard to ensure a reasonable expectation that the lot location will serve that purpose?

This has been addressed with the prior submitted questions. A Unity of Title will be required for parking. The Unity of Title is being defined in Section 90.2 as "an agreement executed by and between one or more property owners of more than one lot, which shall not be conveyed, sold, mortgaged, etc. apart from each other and shall be held together as one tract. Such unity of title shall be recorded in the public records of Miami-Dade County, Florida and shall run with the land and shall be binding upon the property owner(s), successors and assigns."

5. Please support the contention as stated in the answer to submitted question #3 that aggregation "is intended to reduce the overall density of a building."

Requiring 85% of permitted density is less than 100% of permitted density.

6. The 85% rule is based on total gross density. Based on the additional square footage provided by the definition referenced above, what is the effective change to the number of units for "typical" development sites? (Current units allowed to go down, but the square footage of the "lot" goes up).

Land use is measured in gross density. This rule is, and has been, applicable to all density in the Town of Surfside. Therefore, there is no increase in square footage, but there is a decrease in total density (85%) for aggregated lots.

7. This rule would go in effect after the enactment of the proposed ordinance. Are any of the "in-fill" properties referenced in the Five Year Financial Forecast currently without Unity of Title? (i.e. will this rule have any applicability in the near future if at all?)

In order to respond to this question, staff needs to complete a records search through the Clerk of the Courts to determine if the referenced lots have Unity of Title. This question was submitted on Tuesday prior to the Thursday Planning and Zoning Board meeting, which does not provide staff ample time to complete this request. However, the possibility of development extends beyond the in-fill lots described in the Five Year Financial Forecast which will be discussed by the Town Manager at the February 24, 2011 Planning and Zoning Board meeting.

8. Concerns over land use trumping density and intensity in zoning districts were expressed at prior P & Z meetings. Counsel indicated that, if desired, specific language could be added to address this concern. This ordinance refers solely to density "permitted by the Comprehensive Plan." (Perhaps this leads the Town in the opposite direction; it doesn't even reference the "lesser of.")

There is no density provision included in the Zoning Code. Although there have been discussions about density, staff has not been given direction to add density to the Zoning Code.

9. This rule does nothing to address the length, width and size of buildings allowed on aggregated lots.

The 85% rule addresses density only. The other controlling factors in the code address massing, such changes in wall plane, height variations, setbacks, parking, landscaping and transparency requirements. Further, the proposed Development Impact Committee (DIC) will deal with the concerns you have expressed regarding the length, width and size of buildings. The meetings for the DIC will be noticed and open to the public. Finally, the Planning and Zoning Board may recommend modifications to the development orders prepared by the DIC with the ultimate decision remaining with the Town Commission.

10. Provide a typical developer's agreement.

There is no typical developer's agreement. The Town has done this process informally through negotiations at the City Commission meeting. The developer's agreement will formalize how the developer will address onsite and/or offsite issues.

1-ACRE OCEANFRONT PARCEL ACQUIRED FOR \$25 MILLION

by Eric Kalls
ekalls@alm.com

A Miami Beach-based hotel investor has paid a boom-era price for an oceanfront parcel and parking lot in Surfside.

Beach House Hotel, a Miami Beach company managed by investor Jacques G. Murray, purchased the vacant 1.03-acre site and 20,250-square-foot parking lot at 9419 Collins Ave. for \$25.1 million on Feb. 17, according to Miami-Dade County records. Miami-Dade recorded the transaction on Wednesday.

Miami attorney Steven Zolkowitz, managing shareholder at GrayRobinson, represented Beach House Hotel in the acquisition. Zolkowitz confirmed that the company is a subsidiary of the Murray Group and that the acquisition did occur, but declined further comment.

Murray is a Montreal native who has an office at Miami Beach's Grand Beach Suites hotel -- which is owned by another company he manages.

No financing was recorded with the transaction.

The Surfside land is the former site of the 170-room Palms Resort on the Ocean. The previous owner, Beach House Property, razed the hotel in 2007. Beach House Property paid \$26.46 million for the hotel and parking lot in 2004.



“At the end of the day, the value is intrinsically based on the buyer's business plan.”

**PETER MEKRAS
CONTINENTAL REAL ESTATE**

Beach House Property obtained a \$40.5 million loan from South Dakota-based BankFirst in 2006. BankFirst later failed, and an affiliate of Plano, Texas-based Boal Bank acquired the mortgage from the Federal Deposit Insurance Corp.

Beach House Property filed for Chapter 11 bankruptcy protection in 2008, according to U.S. Bankruptcy Court records. Boal, which was owed \$40.5 million for the mortgage, took title to the properties through an auction in July 2010.

A Boal Bank spokesman declined to comment.

Holiday Bonoglio Fowler managing director Harmon Rodriguez and director Jke Ojala marketed the properties for the bank.

In six weeks of marketing, the brokers received significant interest from both hotel and condominium developers.

Rodriguez said:

“There was incredible demand, even before we went out to market,” he said. “The strength of the Surfside market and proximity to Bal Harbour gave potential buyers no doubt about the ability to sell units or get folks to stay there. The size of the property is very manageable and can be developed quickly.”

SEE SURFSIDE, PAGE A8

SURFSIDE: Land's sale price far exceeds assessed value

Beach House Hotel could be trying to capitalize on the momentum of Grand Beach Suites with a hotel project in Surfside, according to Guy Trusty, president of Coral Gables-based Lodging & Hospitality Realty Advisors. Trusty was not involved in the transaction.



Trusty

"That is the newest hotel on Miami Beach, and from what I hear it's doing well," Trusty said. "They know the market and apparently found the opportunity to duplicate the success of Grand Beach."

Beach House Hotel affiliate OBR Ltd. completed Grand Beach Suites at 4835 Collins Ave. in 2009, according to the office of the Miami-Dade County property appraiser.

The previous owner of the Surfside land, Beach House Property, likely intended to develop a hotel-condominium, Trusty said.

Hotel-condo projects were popular during the real estate boom, but many attempted developments collapsed after the market turned.

At \$196,000 per unit "you almost have to do a condo hotel," he said. "It was a good concept, but people abused it."

If the new owners plan to develop a new luxury hotel with the same number of units — 170 — as the original, the purchase price per room would be about

\$148,000.

"The zoning rarely allows you to build more than what was previously there," Trusty said. "The permit price for the land is quite high. But with so few hotel sites in the Surfside area, this would be a great place for a high-end luxury hotel."

The price far exceeds the assessed value of the land. Miami-Dade County most recently valued the properties at \$10.19 million.

The land could have been under-assessed by county appraisers due to a lack of comparable recent land sales, according to Peter Mokras, vice president at Coral Gables-based Continental Real Estate. Mokras was not involved in the transaction.

"The appraisers probably had limited data points to rely upon," Mokras said. "Comparable sales are virtually the only way to value vacant land. At the end of the day, the value is intrinsically based on the buyer's business plan; the only question is whether financing will be available for a large-scale vertical project."

An uptick in vacant land sales is on the horizon for 2011, Mokras said.

"In the last two years, the only land sales that occurred, other than distressed deals, were for horizontal construction," he said. "Now the market is starting to trade sites intended for vertical construction."

Eric Kalls can be reached at (305) 347-6651.

ORDINANCE NO. 2011 _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING SECTION 90-2 "DEFINITIONS", AMENDING SECTION 90-20. "DEVELOPMENT REVIEW REQUIREMENTS" TO ESTABLISH A DEVELOPMENTAL IMPACT COMMITTEE; AMENDING SECTIONS 90-23 "CONDITIONAL USES"; 90-41 "REGULATED USES"; 90-45. "SETBACKS."; 90-45.1 "AGGREGATION OF LOTS"; SECTION 90-44 THROUGH SECTION 90-67 RELATING TO DESIGN REVIEW GUIDELINES; SECTION 90-73 "PROHIBITED SIGNS."; SECTION 90-87 INSTALLATION OF LANDSCAPING AND IRRIGATION; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Commission and Planning & Zoning Board held a Joint Meeting on November 4, 2010 to discuss potential changes to the Zoning Code; and

WHEREAS, Town staff analyzed the code and provided solutions to the challenges presented at the Joint Meeting by preparing recommendations for code changes; and

Whereas the changes were presented at the December 9, 2010 Joint Meeting at which it was determined by consensus that the proposed changes would add or expand layers of protection, increase focus on the major issues of concern to our citizens and will help to preserve the unique flavor and lifestyle of Surfside; and

Whereas, the proposed code changes were presented for discussion to the Planning and Zoning Board at their January 27, 2011 meeting, suggested amendments were prepared and presented finally to the Planning and Zoning Board at their February 24, 2011 meeting sitting as the Local Planning Agency with due public notice and input; and

WHEREAS, the Town Commission held its first public reading on March 8, 2011 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, the Town Commission has conducted a second reading on April 12, 2011 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

ARTICLE I. IN GENERAL

Sec. 90-2. Definitions.

Aggregation: The combining of lots through a unity of title, a covenant in lieu or the platting process.

Contiguous: Next to, abutting, or touching and having a boundary, property line or portion thereof that is common to both properties.

Density: The number of dwelling units per gross acre of land.

Gross Acre: The acreage within the perimeter of a lot plus one-half the right-of-way of adjacent streets and alleys.

Unity of Title: An agreement executed by and between one or more property owners of more than one lot, which shall not be conveyed, sold, mortgaged, etc. apart from each other and shall be held together as one tract. Such unity of title shall be recorded in the public records of Miami-Dade County, Florida and shall run with the land and shall be binding upon the property owner(s), successors and assigns.

Sec. 90-20. Development review requirements for submittals other than single-family and two-family.

(1) Generally, Review and approval of a site plan by staff reviewing agencies, the design review board, and the Development Impact Committee, the planning and zoning board, and the Town Commission is required prior to any development of land in the town.

(4) Developmental Impact Committee.

- (a) There is hereby established a Developmental Impact Committee composed of seven (7) members representing the following Town departments and disciplines:
- i. Town Manager
 - ii. Town Attorney
 - iii. Public Works / Landscape
 - iv. Planning and Zoning
 - v. Park and Recreation Department.
 - vi. Engineering and Traffic Engineering
 - vii. Building
- (b) The Developmental Impact Committee shall review all developments (except single family and two-family homes) and recommend where applicable, whether, and the extent to which:
- i. The development, as proposed, conforms to the Comprehensive Plan and the Zoning Code;
 - ii. The development, as proposed, will have a favorable or unfavorable impact on the environment and natural resources, including a consideration of the means and estimated cost necessary to minimize the adverse impacts, if any;
 - iii. The development, as proposed, will have a favorable or unfavorable impact on the economy of the Town of Surfside;
 - iv. The development, as proposed, will efficiently use or unduly burden water, sewer, solid waste disposal, education, recreation or other necessary public facilities which have been constructed or planned and budgeted for construction in the area;
 - v. The development, as proposed, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, public streets, and roads, which have been planned and budgeted for construction in the area, and if the development is or will be accessible by private or public roads or streets.
 - vi. The development, as proposed, is consistent with the community character of the immediate neighborhood. In addition to consistency there must be congruity between the subject development and neighboring improvements and surroundings including but not limited to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.
 - vii. In the event of redevelopment, applicant shall also submit a detailed plan for demolition.
- (c) The Committee shall meet prior to the Planning and Zoning Board's hearing on the application. The Committee shall be chaired by the Town Manager. The Town Manager or designee shall prepare a summary report of the development application to be distributed to and reviewed by the Development Impact Committee prior to the Committee meeting.

- (d) The Town Manager or designee shall prepare a summary report of the results of the Development Impact Committee to be transmitted to the Planning and Zoning Board and Town Commission upon their review of the development application.
- (e) The Committee shall review and make recommendations pursuant to the criteria stated in (2) to the Planning and Zoning Board and Town Commission whether, and to the extent to which, the development will efficiently use or unduly burden water, sewer, solid waste disposal, education, recreation or other necessary public facilities or public transportation facilities, including roads and streets, which have been constructed or planned and budgeted for construction in the area, and whether the proposed development will have a favorable or unfavorable impact on the economy of the Town of Surfside.
- (f) No public hearing shall be held by any board on any application subject to review by the Developmental Impact Committee until the Committee has made its recommendations with regard thereto.
- (g) Development Impact Committee Meetings shall be noticed on the Town website and shall be open to the public who may comment during a specific time scheduled on the agenda.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. PLANNING AND ZONING BOARD

Sec. 90-23. Conditional uses.

90-23.1 Purpose. Conditional Uses are generally compatible with the other land uses permitted in a zoning district but, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual review as to their location, design, configuration, and/or operation for the particular use at the particular location proposed, as well as the imposition of individualized conditions in order to ensure that the use is compatible with the surrounding neighborhoods and appropriate at a particular location. The purpose of this section is to provide a process which is designed to determine if certain uses, hereafter referred to as conditional uses, should be permitted. Special review of conditional uses is required because such uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare of the community, but because of the nature of the use and possible impact on neighboring properties, require the exercise of planning judgment on location and site plan.

90-23.2 Standards of review. In addition to the standards set forth in this zoning code for the particular use, all proposed Conditional Uses shall meet each of the following standards:

- (1) The proposed use shall be consistent with the Comprehensive Plan and the Zoning Code;
- (2) The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare;
- (3) The proposed use shall be compatible with the community character of the immediate neighborhood. In addition to compatibility there must be congruity between the subject development and neighboring improvements and surroundings including but not limited

to form, spacing, heights, setbacks, materials, color, rhythm and pattern of architectural or aesthetic interest or value as well as with any overlays and other development schemes or legislation.

- (4) Adequate provisions shall be included for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;
- (5) Adequate measures exist including landscaping or other buffering measures or shall be taken to mitigate any adverse effects of noise, light or other potential nuisances; and
- (6) The establishment of the Conditional Use shall not impede the development of surrounding properties for uses permitted in the zoning district; and
- (7) Any other condition imposed by the Design Review Board and/or the Development Impact Committee.

~~Conditional uses enumerated. The following uses may be approved by the town commission as conditional uses in any district in which they are specifically allowed, as indicated within the provisions for individual zoning districts. Approval of such conditional use(s) in accordance with the procedures and standards of this section shall only be granted where it has been clearly shown that the public health, safety, morals, and general welfare will not be adversely affected; that adequate off-street parking facilities, in accordance with this chapter, will be provided; and that necessary safeguards will be provided for the protection of surrounding property:~~

- ~~(1) Institutions, educational or philanthropic, including museums, but not including nursing homes or hospitals;~~
- ~~(2) Off street parking lots and garages;~~
- ~~(3) Public and governmental buildings;~~
- ~~(4) Public utilities or public service uses, buildings, structures and appurtenances thereto;~~
- ~~(5) A bar accessible from the pool or pool deck for use solely by guests of hotels and their guests in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.~~

90-23.3 Applications requirements. No use designated, as a Conditional Use shall be established until after such use has received approval under the provisions of this section and has received all other permits required by the Town. An application for conditional use approval shall be filed with the Town. The application shall include:

1. An illustrative site plan unless the Conditional Use is part of a development requiring Site Plan approval pursuant to Section 90-20.2, in which case all site plan requirements in Section 90-20 shall apply.
2. An application fee, as established by the Town Commission.
3. A written summary of the proposed project.
4. Ownership affidavit and owner's sworn statement to consent, if applicable.
5. A survey less than one year old including owner's affidavit that no changes have occurred since the date of the survey

~~Site plan required. Each application for approval for a conditional use shall be accompanied by a site plan. Such site plan shall be prepared in accordance with the provisions of subsection 90-~~

~~20(3)b. In addition, each application shall be accompanied by a letter and survey indicating compliance with all of the provisions of subsection 90-20(3)b., and any additional information as may be required to permit a determination of the exact nature of the proposed use and its effect on surrounding properties, the adjacent neighborhood, and its consistency with the town's adopted comprehensive plan.~~

90-23.4 Procedures; eConditional uUses. Application and fee shall be submitted to the tTown for a eConditional uUse review and are subject to the requirements of section 90-23. Applications for approval of a eConditional uUse shall be heard by the pPlanning and zZoning board for a recommendation to the tTown eCommission. The pPlanning and zZoning board's report may contain recommendations regarding conditions which should be imposed by to the tTown eCommission in approving the eConditional uUse. The tTown eCommission may establish these and/or additional conditions for an approval by a simple majority vote. Outdoor dining facilities, hotel swimming pools, etc. shall be required to obtain an annual Conditional Use permit. The permit will dictate hours of activity and other conditions necessary to provide compatibility with the surrounding neighborhood.

90-23.5 Conditional Use Expiration. The approval of a eConditional uUse shall be void if the applicant does not obtain a building permit or other permit required to implement the eConditional uUse within 24 months after the granting of the eConditional uUse. An applicant who has obtained approval of a eConditional uUse may request an extension of this time period within the original approval period. The tTown eCommission, at its discretion, may grant one or more extensions for a period of up to a total of six months for good cause shown by the applicant.

90-23.6 Annual Permit Requirements. After approval by the Town Commission, a Conditional Use shall be required to obtain an annual permit. The Town Manager or designee shall review the annual permit application to determine if the Conditional Use continues to comply with the Standards of Review in Section 90-23.2 and any additional conditions approved by the Town Commission. This permit shall include a fee as established by the Town Commission. The permit shall be submitted for and proceed concurrently with the annual Business Tax Receipt.

90-23.7 Revocation. If the Conditional Use fails to meet the Standards of Review in Section 90-23.2 or the conditions approved by the Town Commission, a Conditional Use permit may be rescinded after the Conditional Use permit holder has been notified of these deficiencies. An administrative decision to revoke by the Town may be appealed to the Town Manager within thirty (30) days of the revocation. The Town Manager shall schedule an informal hearing with the applicant and his decision shall be rendered within ten days of the meeting in writing. That decision will be considered final. Any decision made by the Town Manager regarding Conditional Use permits may be appealed to the Town Commission.

ARTICLE IV. DISTRICT REGULATIONS

Sec. 90-41. Regulated uses.

Applicability and validity of tables. Nothing shall be used to misconstrue or reinterpret the provisions, limitations and allowances made herein.

(a) *Purpose.* Permitted uses are considered to be fundamentally appropriate within the district in which they are located and are deemed to be consistent with the comprehensive plan. These uses are permitted as of right, subject to the required permits and procedures described in this section. Permitted uses require final site plan review and approval for compliance with the standards applicable to a particular permitted use as provided in this zoning code.

(b) *Permits required.* Except as explicitly provided herein, no use designated as a permitted use in this chapter shall be established until after the person proposing such use has applied for and received all required development permits.

(c) *Table--Regulated uses.*

TABLE INSET:

	H30A	H30B	H30C	H40	H120	SD-B40
Residential Uses						
Detached single-family	P(1)	P(1)	P(1)	P(1)	P(1)	-
Duplex	-	-	P	P	P	-
Multi-dwelling structure	-	-	P	P	P	-
Townhouse	-	-	P	P	P	-
Lodging uses						
Hotel	-	-		P(7)	P(7)	-
Suite-Hotel	-	-		P(7)	P(7)	-
Office Uses and Professional Services						
Banks	-	-	-	-	-	P
Business and professional offices, except veterinary offices	-	-	-	-	-	P
Currency exchange	-	-	-	-	-	P
Delivery service	-	-	-	-	-	P(9)
Employment agencies	-	-	-	-	-	P(9, 17)
General ticket agencies			-	-		P
Interior decorator	-	-	-	-	-	P
Loan or mortgage office	-	-	-	-	-	P(9)
Medical or dental clinic	-	-	-	-	-	P(9)

	H30A	H30B	H30C	H40	H120	SD-B40
Psychic reading, advising, and consulting, palmistry, clairvoyance, astrological interpretation, tarot card reading, spiritual consultation or fortune telling	-	-	-	-	-	P(9)
Radio or television station or studio	-	-	-	-	-	P(9)
Savings and loan associates	-	-	-	-	-	P
Secretarial service, mailing, bookkeeping, court reporter	-	-	-	-	-	P(9)
Stocks and bond brokers	-	-	-	-	-	P
Taxi agency	-	-	-	-	-	P(9)
Telegraph station	-	-	-	-	-	P
Telephone exchange	-	-	-	-	-	P
Title company	-	-	-	-	-	P(9)
Travel agency	-	-	-	-	-	P
Retail and General Commercial Uses						
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	-	-	-	-	-	P
Coin-operated machines			-	-		P(15)
Department stores	-	-	-	-	-	P
Drug stores and sundries	-	-	-	-	-	P

	H30A	H30B	H30C	H40	H120	SD-B40
Dry cleaning and laundry agency	-	-	-	-	-	P(10)
Dry goods			-	-		P
Flowers and plants	-	-	-	-	-	P
Furniture	-	-	-	-	-	P(14)
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
<u>Structured Parking Facility</u>	-	-	<u>CU(23)</u>	<u>CU(23)</u>	<u>CU(23)</u>	-
Tailor	-	-	-	-	-	P
Toys	-	-	-	-	-	P

	H30A	H30B	H30C	H40	H120	SD-B40
Video tapes sales and rentals	-	-	-	-	-	P(12)
Food Services						
Bakeries	-	-	-	-	-	P(8)
Candy and nut shops			-	-		P(13)
Caterers	-	-	-	-	-	P
Confectionary and ice cream stores	-	-	-	-	-	P(13)
Delicatessens	-	-	-	-	-	P(13)
Fruit shops			-	-		P(13)
Grocery and meat stores or supermarkets	-	-	-	-	-	P(13)
Liquor stores	-	-	-	-	-	P(13)
Restaurants	-	-	-	-	-	P(13)
<u>Outdoor dining facilities</u>						<u>CU</u>
Educational Services						
Dance or music instruction studios	-	-	-	-	-	P(9, 16)
Driving school offices			-	-		P(9, 21)
<u>Institutions, educational or philanthropic, including museums</u>						<u>CU</u>
Modeling school, language school, or athletic instruction	-	-	-	-	-	P(9)
Public schools	-	-	P	P	-	-
Places of Assembly						
See RLUIPA Map and Ordinance 07-1479	-	-	P	-	-	P
Civic Uses						
Parks and open space	P	P	P	P	P	-
Playgrounds	P	P	P	P	P	-

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

TABLE INSET:

Uses	Municipal	Community Facilities
Library	P	P
Parks & Open Space	P	P
Playgrounds	P	P
Community Center	P	P
Gymnasiums	P	P
Town Offices	P	P
Police Facilities	P	P
Pump Stations	P - <u>CU(23)</u>	P - <u>CU(23)</u>
Parking	P	-

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

TABLE INSET:

Accessory uses	H30A	H30B	H30C	H40	H120	SD-B40
Boat docks + moorings	P(2)	-	-	-	-	-
Game courts	P(2)	P(2)	P(2)	P(2)	P(2)	-
Home Bar-B-Q grills	P(2)	P(2)	P(2)	P(2)	P(2)	-
Laundry/service rooms	-	-	P(5)	P(5)	P(5)	-
Office spaces	-	-		P(3)	P(3)	-
Recreational rooms	-	-	P(4)	P(4)	P(4)	-
Subordinate buildings	-	-		-	-	P(18)
Swimming pools	P(2)	P(2)	P(2)	P(2)	P(2)	-
<u>Hotel swimming pools</u>	-	-	<u>CU(2)</u>	<u>CU(2)</u>	<u>CU(2)</u>	-
Vending machines	-	-	P(6)	P(6)	P(6)	-
<u>Bar</u>	-	-	-	-	<u>CU(22)</u>	P
<u>Outdoor dining facilities</u>				<u>CU</u>	<u>CU</u>	

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

(d) *Uses table notes.*

(22) A bar accessible from the pool or pool deck for use solely by guests of hotels and their guests in the H120 district. In all cases, it shall be the exclusive responsibility of the owner, operator, tenant or user of the property to assure that neither the sale nor consumption of beverages shall occur or be allowed to occur off the property or on any portion of the property lying east of the bulkhead line.

(23) The annual permit requirements in Section 90-23.6 are not applicable to this use. A unity of title and a covenant shall run with the land if a Structured Parking Facility is located on a different lot from the main facility. So long as the main lot remains developed, the parking lot shall remain.

Sec. 90-45. Setbacks.

(b) Setbacks.

(1) Required Setbacks--Tables: The following tables shall be utilized for structures in the H30C, H40, H120, and SD-B40 zoning districts.

TABLE INSET:

H30C	Minimum Setback (Feet)
Primary frontage	20 FT
Interior side	5 FT
Rear	10 FT
Secondary frontage (Corner only)	10 FT
Interior side setbacks for lots over 50 feet in width	10% of the frontage

TABLE INSET:

H40 - Harding Avenue + Less than or equal to 50 ft in width	Minimum Setback (Feet)
Primary frontage	20 FT
Interior side	5 FT
Rear	10 FT
Secondary frontage (Corner only)	10 FT

TABLE INSET:

H40 - Harding Avenue + Wider than 50 ft and less than 100-ft	Minimum Setback (Feet)
Primary frontage	20 FT

Interior side	7 FT
Rear	10 FT
Secondary frontage (Corner only)	10 FT

TABLE INSET:

H40 – Harding Avenue + Wider than or equal to 100 ft	Minimum Setback (Feet)
Primary frontage	20 FT
Interior side	7 FT
Rear	10 FT
Secondary frontage (Corner only)	10 FT

TABLE INSET:

H120	Minimum Setback (Feet)
Primary frontage	40 FT
Interior side	10 FT
Rear	30 FT
Secondary frontage (Corner only)	20 FT

TABLE INSET:

SD-B40	Maximum Setback (Feet)
Primary frontage	0 FT
Interior side	0 FT
Rear	0 FT
Secondary frontage (Corner only)	0 FT

TABLE INSET:

CF	Maximum Setback (Feet)
Primary frontage	20 FT
Interior side	10 FT
Rear	20 FT

Secondary frontage (Corner only)	15 FT
----------------------------------	-------

Sec. 90-44. Modifications of height regulations.

90-44.1 Architectural elements including cupolas, chimneys, flagpoles, spires, steeples, stair accessways, antennas, ventilators, tanks, parapets, trellises, screens and similar not used for human habitation, may be erected to a reasonable and necessary height, consistent with and not to exceed the following limitations:

TABLE INSET:

Designation	Maximum Height (Feet)	Maximum Percentage of Aggregate Roof Area
H30A	3 FT	1%
H30B	3 FT	1%
H30C	3 FT	10%
H40	12 FT	10%
H120	20 FT	30%
SD-B40	12 FT	10%

90-44.2 Mechanical equipment rooms, including elevator shafts; and stair access ways may be allowed to exceed the maximum height limitations, not to exceed the limitations listed above, provided they shall be of a high architectural quality integral to the design of the building.

90-44.3 In the H120 district, on lots or parcels where construction is regulated by the State of Florida Coastal Construction Code, maximum height shall be measured from whatever the established elevation is—established determined by the Florida Department of Environmental Protection for the first floor.

90.44.4 Height variations among architectural elements shall be of no less than five (5) feet in variation.

90.44.5 Buildings with one continuous height shall be prohibited.

90.45.1. Aggregation of lots.

- (1) For all lots aggregated in the H30C, H40 and H120 zoning districts after the effective date of this ordinance, the maximum permitted density shall be limited to eighty-five (85%) percent of the total gross density permitted by the Comprehensive Plan when lots are aggregated.
- (2) Two or more lots of record shall be considered one undivided parcel for the purpose of use if there is a recorded unity of title demonstrating single ownership of two or more parcels. However, the underlying land use or zoning shall prevail as to the permitted use on each of the lots.

- (3) Aggregated lots shall be contiguous properties but may be separated by a public right-of-way.

Sec. 90-47. Yards generally, allowable projections.

90-47.2 In all districts excepts SD-B40, Mmoveable awnings may be placed over doors or windows and may project not more than three feet into any required yard. In the SD-B40 district, awnings and non-permanent canopies may project over the public sidewalk, but shall not be greater than six (6) feet or the width of the sidewalk, whichever is less.

Sec. 90-49.1 Entrances, windows and storefronts

The following Design Criteria are applicable to all multi-dwelling and non-residential properties

- a. All building facades, including those facing alleyways, shall be rendered consistently with the overall architectural treatment of the building.
- b. Pedestrian entrances shall be easily recognizable and oriented towards the public right-of-way.
- c. Divided light window mullions, where provided, shall be through the pane.
- d. Exterior burglar bars, fixed "shutters" or similar security devices shall be prohibited.
- e. Window and storefront articulations shall utilize similar proportions as those within the surrounding context and shall be primarily oriented towards the public right-of-way.
- f. Multiple storefronts within a larger building shall have consistent materials and articulation and shall relate to the detailing of the entire building.
- g. The bottom edge of windows shall be no less than twenty-four (24) inches above the fronting finished sidewalk elevation.
- h. For non-residential uses, the first vertical ten (10) feet of building elevation shall be composed of fifty (50%) percent minimum transparency for street-facing building facades and walls. The bottom of transparent openings shall be no higher than twenty-four (24) inches above the public right-of-way. Display windows used to satisfy these requirements shall have a minimum vertical dimension of four (4) feet and shall be internally illuminated.
- i. Mirrored, reflective and opaque tinted glass shall be prohibited.
- j. External street-level entrances shall be recessed and centered a minimum of thirty-six (36) inches from the building frontage.

Sec. 90-49.2 Awnings and canopies

The following Design Criteria are applicable to all multi-dwelling and non-residential properties. All new and replacement awnings and canopies shall meet these requirements.

- a. Awnings and canopies shall have consistent height and depth.
- b. Awnings and canopies shall remain consistent with architectural details and proportions harmonious with the overall building design and historic context.
- c. Awnings and canopies shall be consistent on multiple storefronts within a larger building.
- d. Awnings shall be fabric or metal. Plastic awnings are prohibited.

- e. Awnings shall be solid colors rather than patterned.
- f. Awnings shall utilize down lighting. Backlighting shall be prohibited.
- g. Awning valances shall be straight rather than curved, except for special architectural elements to be compatible with historic building styles.
- h. Awnings shall be attached to the building façades and shall not be supported by vertical elements within the right-of-way.

Sec. 90-49.3 Materials and finishes

The following Design Criteria are applicable to all multi-dwelling and non-residential properties.

- a. The surface shall be stucco, stone, metal, glass block and accent wood. Materials vernacular or characteristic to other regions including but not limited to flagstone and adobe shall be prohibited.
- b. Materials shall be true and genuine, rather than simulated. Multiple storefronts within a larger building shall have consistent material qualities and articulation.

Sec. 90.49.4 Structured parking garages

The following requirements apply to all structured parking garages.

a. Overall form

- (1) For every fifty (50) feet of a building wall in any direction, there shall be a three (3) foot minimum change in wall plane; and
- (2) For every one-hundred (100) feet of a building wall parallel to the public right of way, there shall be a minimum eight (8) foot wide and minimum fifteen (15) foot deep separation of wall plane; and
- (3) Façade treatments fronting a public right-of-way shall provide architectural treatments consistent with and compatible to those across the public right-of-way or abutting properties and consistent with immediate buildings.
- (4) For the first ten (10) feet of height along all blank walls, a minimum of eighty (80%) percent landscape coverage, such as a vine or hedges, shall be installed and maintained.
- (5) For facades above the first ten (10) feet, a minimum of fifty (50%) percent landscape coverage, such as vines or planters, shall be installed and maintained.
- (6) All vegetative coverage shall be maintained and watered appropriately to sustain health and coverage indefinitely without adverse impact to the structure.
- (7) Service areas and mechanical equipment associated with a primary use are permitted.

b. Ground Floor Level Façade

- (1) Facades shall not provide wall openings greater than eight (8) feet in any direction, except for ingress and egress purposes. All wall openings, except for ingress and egress purposes, shall be separated by a minimum five (5) foot wide wall.

Sec. 90-62. Outdoor lighting.

The following are applicable to all multi-dwelling and non-residential properties.

- g. All lighting shall be controlled by photocell controls.

90-67.1 Service areas and mechanical equipment

The following are applicable to all multi-dwelling and non-residential properties.

- a. Service bays, mechanical equipment, garbage and delivery areas, shall be fully enclosed, screened or located within the interior of the building. These areas shall not be visible from the right-of-way and shall not be visible from properties with adjacent residential or hotel uses.
- b. Central air conditioning shall be required for trash rooms.
- c. All mechanical equipment shall be architecturally screened.

90-67.2 Underground and above-ground utilities

The following are applicable to all multi-dwelling and non-residential properties.

- a. All utilities including telephone, cable, and electrical systems shall be installed underground.
- b. All exterior facilities, including but not limited to electrical raceways and transformers, permitted above ground shall be fully concealed and screened.

Sec. 90-73. Prohibited signs.

90-73.1 No sign shall be erected, constructed, or affixed in violation of the provisions of these regulations, and any sign not specifically provided for and permitted by these regulations shall be prohibited. None of the following signs shall be constructed, erected, used, operated or maintained in the town:

(m) Electronic signs either installed inside for view through windows or on the exterior of the building.

Sec. 90-87. Installation of landscaping and irrigation.

~~(4) Garage and rooftop landscaping. Not less than 50 percent of rooftop areas of buildings that are ancillary to and are visible from upper level dwelling or hotel units on the same site shall be screened or buffered through the use of landscaped horizontal trellis structure, shade or palm trees in irrigated planters, canopies, screening walls enclosing mechanical equipment and/or through the decorative surface treatments of flat roof areas with patterns of gravel or other surfacing materials in varying shades and hues to create a graphic composition. Not less than 50 percent of open rooftop parking on garage structures adjacent to upper level residential and hotel~~

~~units shall be screened through the used of trellis structures, canopies or shade or palm trees in irrigated planters. All parking structures require irrigated planters with plant material that screens and buffer the parking structures on all sides.~~

Section 3. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

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

Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 8th day of March, 2011.

PASSED and ADOPTED on second reading this ____ day of _____, 2011.

Daniel Dietch, Mayor

Attest:

Debra E. Eastman, M.M.C., Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Dietch yes _____ no _____

Vice Mayor Graubart yes _____ no _____

Commissioner Karukin yes _____ no _____

Commissioner Kopelman yes _____ no _____

Commissioner Olchyk yes _____ no _____