

RESOLUTION NO. 13-2146

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, (“TOWN”) ESTABLISHING THE TOWN’S “ATTORNEY/CLIENT CONFLICT DISCLOSURES AND WAIVER” POLICY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, consistent with those powers and duties specifically imposed upon the Town Attorney pursuant to Town Charter Article II, section 28 thereof, and in recognition of the complexities of legal issues presented to the Town, on occasion the Town Attorney requires the services of Special Legal Counsel with expertise in a particular area of law; and

**WHEREAS**, pursuant to Florida Bar Rule of Conduct 4-1.7 (applicable to attorneys practicing law in the State of Florida), prior to being retained such Special Counsel must obtain the consent of the Town Commission in those instances when:

- (1) The representation of 1 client will be directly adverse to another client; or
- (2) There is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; and

**WHEREAS**, in order to ensure transparency regarding the Town’s process of retaining Special Legal Counsel, and in furtherance of affording the Town Commission a reasonable opportunity as Client to consider the risks and alternatives of such retention and to raise questions and concerns related thereto, the Town Commission hereby establishes the following policy governing “Attorney/Client Conflict Disclosures and Waiver”.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:**

**SECTION 1. Recitals.**

The above and foregoing recitals are true and correct and are incorporated herein by reference.

**SECTION 2. “Attorney/Client Conflict Disclosures and Waiver Policy”.**

For purposes of this Policy, the Town Commission shall constitute the “Client” for purposes of affording Town waiver of Special Counsel conflicts under Florida Bar Rules.

In those instances in which the Town Attorney has determined a need to retain the services of Special Legal Counsel, prior to such retention the Town Attorney shall analyze applicable Florida Bar Rules of Conduct in order to determine whether such Special Counsel presents conflict issues. In the event the Town Attorney has determined that

conflict issues exist requiring Client consent (or, in the event Special Counsel makes independent request for Client consent), the Town Attorney shall prior to retaining such Special Counsel, place on a public meeting agenda of the Town Commission a written explanation of the matter—including an explanation of the implications of the subject common representation and the advantages and risks involved--along with recommended action. Should a conflict issue not exist under the Florida Bar Rules, the Town Attorney shall nonetheless notify the Commission in the event such Special Counsel is retained, with no Commission action thereon. If, after being fully informed, the Town Commission consents to waive the conflict by a majority vote of the Commission, the Town Attorney may retain the Special Counsel, with the public record of said Town Commission meeting reflecting such vote and consent. Should the Town Attorney determine that a conflict issue does not exist under the Florida Bar Rules, the Town Attorney may retain Special Counsel with no Commission action thereon, and shall thereafter provide notice to the Commission of such retention.

**SECTION 3. Implementation.**

The Town Manager and Town Attorney are hereby directed to ensure that the matters set forth in this Resolution shall serve as the Town’s Policy on “Attorney/Client Conflict Disclosures and Waiver” and that it shall be referenced in all future Town contracts for professional legal services, and shall further be posted prominently on the Town Attorney’s website page.

**SECTION 4. Effective Date.**

This Resolution shall become effective immediately upon its adoption.

**PASSED and ADOPTED** on this day 12 day of March, 2013.

Motion by Commissioner Olchyk, second by <sup>Mayor</sup> Commissioner Dietch.

**FINAL VOTE ON ADOPTION**

Commissioner Joseph Graubart	<u>yes</u>
Commissioner Michelle Kligman	<u>yes</u>
Commissioner Marta Olchyk	<u>yes</u>
Vice Mayor Michael Karukin	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>

  
\_\_\_\_\_  
Daniel Dietch, Mayor

**ATTEST**



\_\_\_\_\_  
Sandra Novoa  
Town Clerk

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



\_\_\_\_\_  
Linda Miller, Interim Town Attorney