

ORDINANCE NO. 2024-1780

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING “SECTION 2-153 – NONDISCLOSURE AGREEMENTS” UNDER “ARTICLE IV. – OFFICERS AND EMPLOYEES”, LIMITING THE USE OF NONDISCLOSURE AND/OR NON-DISPARAGEMENT AGREEMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

1 **WHEREAS**, the Town of Surfside (the “Town”) recognizes that Town employees
2 are public servants who are hired to undertake their job duties and responsibilities to
3 serve the public; and

4 **WHEREAS**, Town employees are paid with public money, and they and the Town
5 are accountable to the public for the way they carry out their public duties and
6 responsibilities; and

7 **WHEREAS**, the Town recognizes that the public has a fundamental interest in
8 transparency concerning the conduct of its government, including one’s First Amendment
9 right to criticize elected officials and municipal employers. The Town seeks to ensure free
10 speech, open meetings, and the broad disclosure of public records in furtherance of the
11 ideal that public policy is public business that may not be conducted in secret. These
12 principles are intended to provide the public with as much knowledge as possible about
13 how public business is being conducted while it is being conducted; and

14 **WHEREAS**, the Town finds that nondisclosure and/or non-disparagement
15 agreements imposed as a condition of employment, that effectively prohibit such
16 applicants and employees, past and present, from disclosing details about their
17 prospective, current, or past Town service, obstructs these fundamental principles of
18 transparency and accountability. The details of public business should not be hidden from
19 public view by means of such agreements as a condition of employment with the Town;
20 and

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~highlighted double-strikethrough~~ and double underline.

21 **WHEREAS**, in the absence of legitimate concerns about the protection of privacy
22 interests, or to protect against disclosure of matters that are truly confidential and
23 sensitive to the public interest, the Town should not be permitted to silence such
24 applicants or employees, present or past, from being able to speak openly about their
25 prospective, current, or past Town service through the imposition of nondisclosure and/or
26 non-disparagement agreements. Such applicants and employees, present or past, should
27 ordinarily be permitted to speak openly about their prospective, current, or past Town
28 service; and

29 **WHEREAS**, by enacting this ordinance, the Town intends to restrict the ability of
30 the Town from requiring applicants for employment or employees, current and past, to
31 enter into nondisclosure and/or non-disparagement agreements as a condition of
32 employment. Absent select circumstances, the Town intends to prohibit enforcement of
33 same and deem them void as against public policy and of no legal force and effect.
34 Further, the Town intends that this ordinance be liberally construed to further the
35 fundamental principle that Town government be conducted transparently and in public to
36 the greatest extent possible.

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38 **NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE
39 HEREBY ORDAINS:**

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41 **Section 1. Recitals Adopted.** The above-stated recitals are hereby adopted
42 and confirmed.

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44 **Section 2. Town Code Amended.** The Code of Ordinances of the Town of
45 Surfside, Florida is hereby amended by adding Section 2-153. "Nondisclosure and Non-
46 disparagement Agreements", as follows:

47
48 Article IV. – Officers and Employees

49 * * *

50 Section 2-153. – Nondisclosure and Non-disparagement Agreements

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52 * * *

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54 **2-153. Nondisclosure and non-disparagement agreements.**
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56 (1) The Town shall not make it a condition of employment that any Town
57 employee execute a contract or other form of agreement that prohibits, prevents, or
58 otherwise restricts the disclosure of factual circumstances concerning the employee's
59 employment with the Town, including the disparagement of elected officials and Town
60 government, unless the prohibition or restriction in the contract or agreement is necessary
61 to prevent disclosure of:

62 (a) The employee's identity, facts that might lead to the discovery of the
63 employee's identity, or factual circumstances relating to the employment that reasonably
64 implicate legitimate privacy interests of the employee who is a party to the agreement;

65 (b) If the employee elects in the employee's sole and absolute discretion
66 to restrict disclosure of the employee's identity or such facts and circumstances;

67 (c) personal identification information, as defined in Section
68 817.5685(1), Florida Statutes; or matters that are required to be kept confidential by
69 federal law or regulations, the state constitution, state law, state regulations, or state
70 rules, or a court of law or as attorney-client privileged communications, as privileged work
71 product, as communications related to a threatened or pending legal or administrative
72 action, or as materials related to personnel or regulatory investigations by the employer;

73 (d) Trade secrets or other confidential or sensitive information provided
74 to or made accessible to the employee by a current or prospective contractor, vendor,
75 grantee or as part of a public-private partnership, or entity working with the Town;

76 (e) Trade secrets or other confidential or sensitive information provided
77 to or made accessible to the employee by the Town's current or prospective customer,
78 contractor, lessee, lessor, business partner, or affiliate;

79 (f) Trade secrets or other confidential or sensitive information provided
80 to or made accessible to the employee by a purchaser or seller of property that is engaged
81 in negotiations or under contract with the Town;

82 (g) Information bearing on the specialized details of security
83 arrangements or criminal investigations including for elected officials or other individuals,
84 physical infrastructure, or cybersecurity;

85 (h) Information derived from communications of the Town related to
86 threatened or pending legal or administrative action;

87 (i) Discussions that occur in an executive session authorized by Section
88 286.011, Florida Statutes;

89 (j) Trade secrets or information derived from trade secrets or proprietary
90 information of the Town;

91 (k) Information and records not subject to disclosure under Chapter 119,
92 Florida Statutes; or

93 (l) Trade Secrets Owned by the Town.

94 (2) Any provision in any contract or agreement that violates subsection (1) of
95 this section, which shall be liberally construed, is deemed to be against public policy and
96 is unenforceable against an employee unless the provision is intended to prevent
97 disclosure of:

98 (a) The employee's identity, facts that might lead to the discovery of the
99 employee's identity, or factual circumstances relating to the employment that reasonably
100 implicate legitimate privacy interests of the employee who is a party to the agreement;

101 (b) If the employee elects in the employee's sole and absolute discretion
102 to restrict disclosure of the employee's identity or such facts and circumstances;

103 (c) personal identification information, as defined in Section
104 817.5685(1), Florida Statutes; or matters that are required to be kept confidential by
105 federal law or regulations, the state constitution, state law, state regulations, or state
106 rules, or a court of law or as attorney-client privileged communications, as privileged work
107 product, as communications related to a threatened or pending legal or administrative
108 action, or as materials related to personnel or regulatory investigations by the employer;

109 (d) Trade secrets or other confidential or sensitive information provided
110 to or made accessible to the employee by a current or prospective contractor, vendor,
111 grantee or as part of a public-private partnership, or entity working with the Town;

112 (e) Trade secrets or other confidential or sensitive information provided
113 to or made accessible to the employee by the Town's current or prospective customer,
114 contractor, lessee, lessor, business partner, or affiliate;

115 (f) Trade secrets or other confidential or sensitive information provided
116 to or made accessible to the employee by a purchaser or seller of property that is engaged
117 in negotiations or under contract with the Town;

118 (g) Information bearing on the specialized details of security
119 arrangements or criminal investigations including for elected officials or other individuals,
120 physical infrastructure, or cybersecurity;

121 (h) Information derived from communications of the Town related to
122 threatened or pending legal or administrative action;

123 (i) Discussions that occur in an executive session authorized by Section
124 286.011, Florida Statutes;

125 (j) Trade secrets or information derived from trade secrets or proprietary
126 information of the Town;

127 (k) Information and records not subject to disclosure under Chapter 119,
128 Florida Statutes; or

129 (l) Trade Secrets Owned by the Town.

130 (3) The Town shall not take any materially adverse employment-related action,
131 including, without limitation, withdrawal of an offer of employment, discharge, suspension,
132 demotion, discrimination in the terms, conditions, or privileges of employment, or other
133 adverse action against an employee on the grounds that the employee does not enter
134 into a contract or agreement deemed to be against public policy and unenforceable under
135 this section. The taking of such a materially adverse employment-related action after an
136 employee has refused to enter into such a contract or agreement is prima facie evidence
137 of retaliation.

138 (4) Any enforcement or attempts to enforce a provision deemed by a court as
139 against public policy and unenforceable pursuant to this section may give rise to liability
140 for the employee's reasonable attorney's fees and costs in defending against the action.

141 (5) An action to enforce a provision of this section must be brought in the circuit
142 court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida or the district
143 court for the Southern District of Florida, as applicable.

144 (6) A settlement agreement between the Town and an employee of the Town
145 must be signed by both the Town and the employee.

146 (7) A nondisclosure agreement may not prohibit the release of information
147 required to be released under Chapter 119, Florida Statutes.

148 (8) Nothing in this section prevents the Town from requiring an employee to
149 enter into a nondisclosure agreement with a third party in the employee's official capacity
150 and on behalf of the Town.

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152 (9) As used in this section:

153 (a) "Condition of Employment" means an employment-related policy,
154 practice, requirement, or restriction dictated by the Town that an individual must agree to
155 abide by to be hired by or retain employment with the Town.

156 (b) "Employee" means an applicant for employment with or current or
157 past employee of the Town.

158 * * *

159 **Section 3. Severability.** If any section, sentence, clause or phrase of this
160 ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
161 then said holding shall in no way affect the validity of the remaining portions of this
162 ordinance.

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

168 **Section 5. Conflicts.** Any and all Ordinances and Resolutions or parts of
169 Ordinances or Resolutions in conflict herewith are hereby repealed.

170 **Section 6. Effective Date.** This Ordinance shall become effective upon
171 adoption.

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173 **PASSED AND ADOPTED** on first reading this 18th day of June, 2024.

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175 **PASSED AND ADOPTED** on second reading this 9th day of July, 2024.

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177 **First Reading:**

178 Motion by: Commissioner Coto

179 Second by: Commissioner Velasquez

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181 **Second Reading:**

182 Motion by: Commissioner Coto

183 Second by: Commissioner Velasquez

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185 **FINAL VOTE ON ADOPTION**

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187 Commissioner Ruben A. Coto Yes

188 Commissioner Nelly Velasquez Yes

189 Commissioner Gerardo Vildostegui Yes

190 Vice Mayor Tina Paul Yes

191 Mayor Charles W. Burkett Yes

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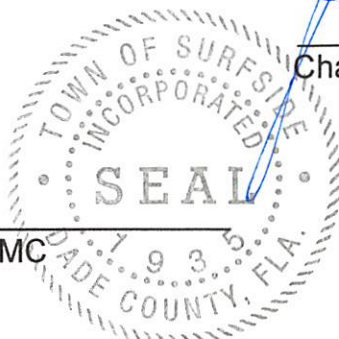
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Charles W. Burkett, Mayor

ATTEST:


Sandra N. McCready, MMC
Town Clerk



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


Mark Blumstein, Esq.
Interim Town Attorney