



**Town of Surfside
Town Commission Special Meeting
AGENDA**

**August 5, 2013
7 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. Welcome and Opening Remarks – Mayor Daniel Dietch

D. Report on Current Regulation and Enforcement Efforts– Joe Damien, Code Compliance Director

E. Presentation on Regulations Sight Triangles (Florida Green Book) – Jeff Cohen PE, Assistant Chief Miami Dade County Traffic Engineering Division

F. Discussion Items:

1. Legislative History of Sight Triangle/Hedges Regulations
2. Staff Reports Including Street Curb (bump-outs) and Corner Alternatives
3. Policy Discussion on : Continued Enforcement; Resolution of Existing Fines/Penalties (Special Master vs. Administrative Mitigation Policy); and Possible Code Amendments.

G. Public Comments

H. Staff Recommendations and Action on Discussion Items

I. Adjournment

Respectfully submitted,

Michael P. Crotty
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

Notice of Code Compliance Special Meeting

on

Hedges and Sight Triangle (Corner Visibility) Code

You are cordially invited to attend a Town Commission Special Meeting to discuss Town Code provisions and policy on enforcement and compliance associated with Hedge heights, Corner Visibility (Sight Triangles) and related Town Code provisions.

Date and Time: August 5, 2013; 7:00 P.M.

Location: Town Hall Commission Chambers
9293 Harding Avenue
Surfside, Florida 33154

For additional information you may contact the Code Compliance Division at (305) 861-4863 ext. 233.

In accordance with the ADA persons with disabilities requiring accommodations in order to participate in this public hearing should contact the Office of the Town Clerk at (305) 861-4863 no later than two business days prior to such proceedings.

Please note that one or more members of the Town Commission may be present at this meeting.



**Town of Surfside
Commission Communication**

MEMORANDUM

To: Mayor and Members of the Town Commission
From: Michael P. Crotty, Town Manager
Date: August 1, 2013
Subject: Special Meeting: Monday, August 5, 2013 (7 pm);
[Hedges and Sight Triangles/Corner Visibility]

A Special Meeting will be held on Monday, August 5, 2013 at 7:00 pm to discuss code requirements pertaining to sight triangles/corner visibility at intersections and hedges. The following information is offered in support of items on the enclosed agenda:

Agenda Item D: Report on Current Regulation on Enforcement Efforts

Code Compliance Director Joe Damian prepared the enclosed report for the August 5, 2013 meeting on hedges and sight triangle/corner visibility issues. This report included the history of the recent enforcement effort; the enforcement process/action steps; and a statistical report on the status of enforcement actions. This report is enclosed and marked as **Attachment A**.

At the July, 2013 Commission meeting, it was requested that Staff provide copies of the notices sent to residents regarding hedges/sight triangle violations.

Enclosed and marked as **Attachment B**, is a July 27, 2013 email from the Code Compliance Director providing copies of the notices and the order in which they were issued. The email also indicates that in addition to the notices, all residents who received notices "were afforded at least one on-sight visit by a Code Compliance Officer, in many cases two or three visits, to explain the Town code and process to resolve."

Agenda Item E: Presentation on Regulations – Sight Triangles (Florida Green Book)

The ultimate authority for sight triangle/corner visibility at intersections within the Town legally falls under the jurisdiction of Miami-Dade County. Jeff Cohen, PE, Assistant Chief,

Miami-Dade Traffic Engineering Division will attend the Special Meeting and discuss the minimum safe sight distance standards required under the provisions of the Florida Green Book. Enclosed and marked as **Attachment C**, are the regulations from the Green Book and the current Miami-Dade County regulations. We have requested Mr. Cohen to discuss the Miami-Dade regulations and compare/comment on Surfside's sight triangle regulations.

Agenda Item F: Discussion Items

1. Legislative History of Sight Triangles

Enclosed is **Attachment D** which contains a memo from Town Attorney Linda Miller on the legislative history of code negotiations and amendments and copies of the actual ordinances amending the code since 1999. Also included in the Town Attorney's memo/packet is information submitted by Commissioner Graubart. [Note: the actual, full text of the amending ordinances is included as this information may be essential component of items discussed at the meeting].

2. Staff Report

- **Public Works Director Joseph Kroll:**

After looking at the intersections in question for bump outs, Public Works has determined that minimally to have these installed would cost about \$4,500 per intersection. Every intersection varies in the percent of drainage fall ranging from 2% to 5% from middle of intersection to curb. With that said, there could be a drainage obstruction at the intersections, which would require the engineer to certify before being built to ensure positive flow. The roadway is wide enough to accommodate parking as well as the bump outs but may not improve the line of sight. Reason being, the stop bar is in approximately the same location just more to the middle of the roadway. To have a better line of sight, you would have to be able to be more in the intersection to achieve a more clear view of the oncoming traffic. Currently, when approaching the intersection, one would have to ease out to the middle of the intersection to see, and would still have to do the same thing with the bump outs. You may gain an improved sight but probably not enough for the recommended 25 ft. line of sight triangle that is required. Both the drainage and sight line issues should be verified by professional engineers.

3. Policy Discussion

- **Resolution of Existing Fines/Penalties (Special Master vs. Administrative Mitigation Policy)**

At meetings over past several months, the Commission has inquired and requested follow-up on these questions relating to fines/penalties:

When compliance has been attained:

1. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have been heard by a Special Magistrate?
2. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have not been heard by a Special Magistrate?
3. Does the Administration or the Town Commission have authorization to release liens that have been filed associated with Civil Citations on cases that have or have not been heard by a Special Magistrate?

When compliance has not been attained:

1. Does the Administration or the Town Commission have authorization to reduce or waive fines and/or release liens associated with the Civil Citations?

The following questions, which are excerpts from a June 4, 2013 memo of Town Attorney Linda Miller, will provide guidance to the Commission as it addresses the issue of resolution of outstanding fines/penalties:

Question No. 1: Whether the Town Commission has the authority to direct the Town Manager to pause and stop code enforcement of Sections 90-52 "Required Clearances" and 90-92 "Sight Triangles and Clearances."

Answer: Yes. The Town Commission has the authority to make determinations of policy including but not limited to Town policies on code compliance efforts. Section 11 of the Town Charter states "All powers of the Town...and the determination of all matters of policy are vested in the Commission." Section 35 of the Town Charter provides that the Town Manager shall be responsible to the Commission for the proper administration of all affairs of the Town.

Question No. 2: Whether the Town Commission has the power to reduce the fine assessed against the property owner by Order of the Special Master.

Answer: No. The Town Commission does not have authority to change an order issued by the Special Master. Per Town Code Section 15-8(8), once a Special Master has issued an order, only the Special Master has the power to reduce fines, liens and administrative costs.

Question No. 3: Whether the Town Commission has the authority to release the lien imposed by Order of the Special Master.

Answer: Yes. Upon the filing of a lien, the Town Commission has the authority to satisfy or release a lien filed in the Town's favor. Section 162.09, Florida Statutes establishes that the lien that results from a fine is granted in favor of the local governing body. It is the governing body that has the power to determine whether the lien has been satisfied and therefore the Commission may execute the legal satisfaction or release from the lien (Fla. AGO 2002-62).

Question No. 4: Whether the Town Manager has authority to mitigate the fines prior to being heard and ruled on by the Special Master.

Answer: Yes. Per Section 15-9(b) At any time prior to a hearing before the Special Master, the Town Manager with the concurrence of the Town Attorney may resolve or settle a matter prior to being heard by the Special Master. A Special Master shall hear only cases which cannot otherwise be resolved by the Town Manager.

Question No. 5: Whether the Town Commission or Town Manager can mitigate the fines imposed by a Special Master.

Answer: No. The authority to mitigate fines imposed by the Special Master is only with the Special Master. Per Town Code Section 15-8(8), Special Masters shall have the power to: reduce fines, liens and administrative costs. See also Section 15-14(4). Upon a finding of good cause, the Special Master has the sole discretion to grant or deny the request, the reduction of fine and/or administrative costs. If the fine and/or administrative costs are reduced, the order of the Special Master shall provide that if the violator fails to pay the reduced fine and/or administrative costs by the date ordered by the Special Master then the original amount of the fine shall automatically be reinstated. Upon receipt of timely payment in full of the amount of the reduced fine and/or administrative costs, and the recording costs, the Town Manager, or designee, shall record a copy of the order reducing the fine and/or administrative costs and a satisfaction of lien. A reduction of fine and/or administrative costs may only be granted once as to any violation of an order of the Special Master.

At the July 16, 2013 meeting, the Commission directed that the residents in compliance who have accumulated fines imposed by the Special Master be afforded the opportunity to request mitigation at the July 26, 2013 Special Master Hearing. The following is an excerpt from a July 22, 2013 email from the Code Compliance Director which shares his thoughts prior to the mitigation requests appearing before the Special Master:

I advised the affected parties that the Town Commission had requested this outreach and asked if they would like to have their case placed on this agenda for mitigation of the existing fines, and asked that they respond by e-mail. I also offered that if they are unable to attend on this date, or would prefer to appear at a future hearing, to please let me know and I would place the item on a future agenda.

At the hearing they will have an opportunity to provide any evidence or witnesses to support the request for mitigation.

Since there were differing positions from the Town Commission as to maximum amount of reductions on mitigation requests, the following is provided for your review and comment:

A very conservative estimate of costs associated from Courtesy Notice, through Special Magistrate and Mitigation hearings may be found below. This does not include inspector's time at hearings.

- The Town code Section 15-13 (n) (2) provides that "If the decision of the special master is to affirm the decision of the code compliance officer, the following elements shall be included: ... Administrative costs of hearing in the amount of *not less than \$200.00."

- Most hedge cases, include the following costs on average:

- o 4 Inspections at 15 minutes a-piece \$ 30.00

o 4 Notices, Letters, or Citations drafted, printed	\$30.00
o 4 Affidavits (signed & notarized) generated	\$30.00
o 2 Lien/Release Documents generated	\$15.00
o 2 Lien/Release Documents (recorded)	\$39.50
o 4 Certified Mailings cost	\$24.44
o 2 Regular mail cost	\$00.92
o 2 Magistrate Orders generated	\$15.00
o 2 Magistrate Orders mailed (1 Certified, 1 Reg.Mail)	\$6.60
o *Original Hearing Cost	\$200.00
o Mitigation Hearing Costs	\$200.00
o TOTAL	\$591.40

Most affected parties have responded that they would like to attend to mitigate.

Four of the five residents eligible to seek mitigation indicated their desire to proceed. They were informed on July 26, 2013 that there would be a Commission meeting on this topic on August 5, 2013 at which the mitigation of fines for residents who have come into compliance would likely be discussed. They were provided the option of having their mitigation request heard at the July Special Master Hearing or delay until the August, 2013 Special Master Hearing. All chose to delay their mitigation until after the August 5, 2013 Special Commission Meeting.

Agenda Item H: Staff Recommendations and Action on Discussion Items

As evidenced by the information detailed in **Attachment D**, sight triangles/hedges is not a new issue from either the legislature or enforcement standpoint. Further, this issue is intensified by the fact that hedges are an integral part of preferred landscaping material utilized by residents for both aesthetic and privacy/security issues.

Over the past several months, I have probably spoken with several dozen residents (mostly residing on corner lots) regarding this matter. Their views are passionate regarding their desire to maintain their landscaping materials, however, most have recognized the need to have safe intersections where visibility is reasonably maintained to achieve safety for pedestrians, bicyclists and motorists.

From a policy perspective, based on recent deliberations at public meetings, there appears to be varying views on the regulations, enforcement and penalties.

As with most community conflicts/concerns, input provided is primarily from those who are directly impacted. A substantial portion of the community does not participate; however, their needs must be part of the final outcome.

In formulating a recommendation, Staff is driven by an obligation to ensure that our intersections are safe and that any condition which makes an intersection unsafe is properly addressed.

Given the complexities, history and varying opinions at both the policy and community levels, the following alternatives are offered to assist in the discussion and resolution of this issue:

1. Proceed with enforcement of current code requirements but review measures to achieve more voluntary compliance and in response to input, revisit penalty/fine approach as part of achieving compliance.
2. Despite previous reviews and amendments to the Town code, undertaking a review of the Town's regulations to identify modifications to address both safety and resident's concerns; and minimum statutory compliance might be necessary to bring this issue to closure.

[Note: A traffic study might also be necessary and useful not only as it relates to possible revision to regulations but such a study could address physical modifications to intersections that would make visibility at certain intersections compliant with existing regulations. An initial analysis investigated bump outs in nearby communities and preliminary cost estimates prepared. A professional traffic study could identify other intersection modifications; provide traffic analysis; crash/accident history; etc.].

The presentation by Jeff Cohen, PE (Miami-Dade County) could identify any areas of potential "relief" to address concerns of corner lot residents. However, based on preliminary Staff review, such "relief", if available, would likely be minimal and probably not address the desires/concerns of many of the corner lot residents who have expressed their opposition to complying with the current regulations.


This review of the regulations and possible traffic study, would definitively identify the minimum statutory requirements; possible modifications to either regulations or intersections and identify the Town's responsibility regarding this issue.

3. Provide Policy Direction: Resolution of Existing Fines/Penalties (Special Master vs. Administrative Mitigation Policy)

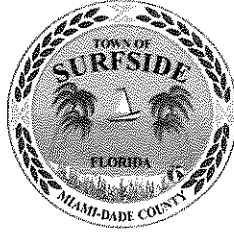
In response to the discussion about the amount of fines/penalties associated with non-compliance and how the fines/penalties are or could be mitigated, Staff requests policy direction. Specifically, the Town Commission is requested to review the section of this memo (Agenda Item F(3)) to determine if the Town Attorney should be directed to prepare an ordinance revising Town procedures relating to liens, and mitigation of fines/penalties imposed by Special Master.

Should you have any comments or questions, please contact me.

Respectfully submitted

by: 
Michael P. Crotty
Town Manager

MPC/dh



**Town of Surfside
Hedge & Sight Triangle Special Meeting**

August 5, 2103

Subject: HEDGES & SIGHT TRIANGLE (CORNER VISIBILITY) VIOLATIONS

The following communication relates to the corner visibility/sight triangle hedge height issue and the recent discussions that have arisen since enforcement of these provisions were initiated in October of 2011.

On July 16, 2013, the Mayor and Town Commission requested that a meeting be held to address this matter and review additional information and staff recommendations. Moreover, this meeting would provide a venue to obtain residents input and identify available options, and the cost and viability of each. Below is a summary of the history associated with the hedges and sight triangle violation enforcement under the current Code Compliance administration.

Background:

Enforcement of the sight triangle/corner visibility provisions began in November 2011, in response to a complaint received regarding three specific addresses with line-of-sight obstructions that were deemed by complainants to be dangerous to pedestrians, bicyclists and vehicle operators. A cursory review of other intersections around the Town revealed that there were multiple locations that were, and continue to be in violation of the current Town Code.

Analysis:

Initially, 22 Courtesy Notices were issued, with the intent to follow up with the balance of the non-compliant properties once time and resources would permit. The initial group of non-compliant property owners were each provided with a Courtesy Notice clearly identifying the issue, including: 1) a description of the violation, as well as the language of the Town Code Section that governs; 2) the physical location of the violation; 3) a diagram, both in plan and elevation, delineating the specific code requirements; 4) a request for their cooperation; and 5) that they contact the Town if they had any questions or needed clarification.

Each Courtesy Notice was sent via Certified Mail, and property owners were given ten days to comply. The Code Compliance Director made himself available and personally met with all

parties who requested additional information or clarification. In March of 2012 a second notice was mailed to any property owner whose property remained non-compliant that provided for an additional 7 days to comply. Although the staff continued to meet with the affected parties while attending to other compliance issues town-wide, there was a definitive group of property owners that continued to seek alternatives to compliance, citing privacy, child and pet safety, and other issues that were of greater importance to them.

As time permitted, pursuit of the non-compliant cases was continued. As of early December 2012, only four properties of the 22 were in compliance. At that time, Civil Citations were issued to the non-compliant properties, via certified mail, providing for: 1) an additional ten days to comply; 2) an appeal period of 20 days from receipt of notice; and 3) a \$100 per day civil penalty for failure to comply at the expiration of the additional ten day period, if no appeal was filed. Only two property owners took advantage of the appeal process.

After allowing for additional time, in early February of 2012, property owners associated with eight of the cases which remained non-compliant, including the two who appealed, were provided a Notice to Appear before a Special Magistrate on February 27, 2013, and given the opportunity to be heard by a Magistrate. The rest of the cases were to be scheduled for the next hearing date, which had been tentatively set for June 20, 2013.

To date, Code Compliance efforts have resulted in the following:

Courtesy Notices Issued	22	Complied prior to scheduling hearing	5
Compliance Attained Prior to Citation	4	Complied after hearing was scheduled	4
Civil Citations Issued	18	Hearings still to be scheduled	9
Special Master(SM) Hearing Scheduled	8	Cases that remain non-compliant	9
S.M. Continuances Granted	2	Orders with Liens	6
S.M. Hearings Held	6		

At the May 15, 2013 Commission Meeting, the Mayor and Town Commission directed the Administration to “pause” all enforcement actions associated with hedges and sightline provision violations (Sections 90-52 and 90-92 of the Town Code), including: 1) discontinuing issuance of new violation notices; 2) discontinuing prosecution of existing cases; and 3) tolling of any fines that may be accruing. The actions taken by the Administration towards that end were as follows:

1. Ceased all enforcement action, and discontinued the issuance of Courtesy Notices and Civil Citations associated hedge associated therewith;
2. Updated the case records to reflect the tolling of any fines that may be accruing on existing Civil Citations, that have already been issued but have yet to be scheduled to be heard by a Special Magistrate; and
3. Sought and obtained a Special Magistrate Order on July 26, 2013, that reflects the continued tolling of fines (on two cases) that had already been tolled by a Special Magistrate through June 28, 2013, but had begun to toll once again on June 29. The newly issued Order includes that no additional fines would be incurred in the period between June 28 and July 26, or going forward until a determination on resolution was arrived at by the Town.

Moreover, the Commission sought answers to the following questions related to same:

When compliance has been attained:

1. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have been heard by a Special Magistrate?
2. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have not been heard by a Special Magistrate?
3. Does the Administration or the Town Commission have authorization to release liens that have been filed associated with Civil Citations on cases that have or have not been heard by a Special Magistrate?

When compliance has not been attained, does the Administration or the Town Commission have authorization to reduce or waive fines and/or release liens associated with the Civil Citations?

Answers to these questions are being addressed by the Town Attorney's Office.

Imposition of Penalties:

Pursuant to Town Code the Special Magistrates may have sole discretion as to reduction of fines on cases that have been previously heard by a Magistrate. However, the Magistrate does not originally impose the fines associated with these cases, but in accordance to the provisions of the Town Code the fines begin to accrue when the compliance period provided in the Civil Citation expires (if no appeal is filed by the property owner). At the hearings, the Magistrates do confirm that a default has occurred, that the imposition of the fines is valid, and that a lien may be recorded. The hearing also provides a venue wherein the respondents may have an opportunity to express themselves, if they did not timely file an appeal of the Code Officer's determination.

Enforcement Policy Going Forward:

Notwithstanding the outcome of this specific group of cases, it is recommended that careful consideration be given to how enforcement of the Town Code is addressed going forward. As per the direction given to the Code Compliance Division, staff has gone to great lengths to enforce the Town Codes in a very measured and stepped approach so as not to impose harsh penalties or create a hardship for the Town's residents. Although there has been a lot of debate about the amount of the fines that have accrued in certain instances, one must not lose sight that these fines accumulated only because of a lack of compliance that endured for weeks or months on end on the part of the property owners, and not because they were arbitrarily imposed at one time by the Division or the Magistrate. Moreover, the fines did not immediately begin accruing, but did so only after months and months of notices, conversations and discussions.

Careful consideration must be given to pursuit of an enforcement policy that does not include a substantial penalty for non-compliance, as it may ultimately lead those who would generally comply with the Code to resist, since there would be no “down-side” to non-compliance.

Apart from the issue of fairness and selective enforcement that may arise, the overall code compliance program may be at risk.

Next Steps

Identifying Issues of Concern as to Safety vs. Privacy:

- Hedge height in general (front, side, rear) in corner lots and interior lots
- Corner visibility in corner lots

Safety:

- Minimum Standards for Sight Distance Requirements
- Representative from the Miami-Dade County Traffic Division will provide information on State and County requirements

Street Curb & Corner Alternatives

- Public Works Department will provide information on cost and viability of alternatives

Pedestrian and Commuter Safety

- Police Department will provide data

Privacy:

- Residents' privacy in their front yard
- Child and pet safety afforded by hedges

Legal Issues: Town Attorney's Office

Discussion Items

- Continued Prosecution of Existing Cases
- Accrued Penalty Resolution on Existing Cases
- Impact of Code Amendments or Policy Changes
- Liability to Town
- Code Amendments
- Enforcement Policy Going Forward
- Alternative Enforcement Process
- Fine Schedule Going Forward
- Administrative Mitigation Policy

Administration Recommendations

- Identify Enforcement Priorities
- Enforce Town Code Provisions, as prioritized
- Amend, Remove, or Add Code Provisions in keeping with priorities.
- Consider Notice of Violation procedure, in addition to, or as an alternative to Citation procedures
- Follow through on all violations that are initiated until compliance is attained.

Michael Crotty

From: Joe Damien
Sent: Saturday, July 27, 2013 2:05 PM
To: Michael Crotty
Cc: Dawn Hunziker
Subject: Request by Commission Member to provide copies of notices sent to property owners
RE: "sight-triangle" hedge violations
Attachments: Sight Tri Notices for Commission.pdf
Importance: High

Mr. Manager,

At the last Commission Meeting, at least one Commissioner requested that we forward copies of the Notices sent to the parties affected by the Sight-Triangle Code violations.

Attached are copies of the various notices sent to property owners affected by the Sight-Triangle enforcement. Apart from these notices, all parties were afforded at least one on-sight visit by a Code Compliance Officer, in many cases two or three visits, to explain the Town Code and process to resolve.

The following list shows the order in which notices were issued.

1. ORIGINAL NOTICE SENT IN NOVEMBER OF 2011 (PAGE 1, 2 and *7 or **8)
 - a. It writes about informing and assisting the residents
 - b. Explains the issue and the safety concerns
 - c. Explains exactly where the problem is
 - d. Includes code sections
 - e. Asks for cooperation
 - f. Provides 10 day compliance period
 - g. Provides contact information for Officer
 - h. Provides a diagram of the corner and compliance requirements

2. SECOND NOTICE SENT MARCH OF 2012 (PAGE 3)
 - a. Advises that the problem persists
 - b. Requests compliance, once again
 - c. Provides additional time to comply
 - d. Offers to meet with resident to provide recommendations on compliance

3. CIVIL VIOLATION NOTICE SENT DECEMBER OF 2012 (PAGES 4,5,6, *7 or **8)
 - a. Clearly states probable cause for Citation
 - b. Clearly states action required to comply
 - c. Clearly states code sections violated
 - d. Provides additional time to comply
 - e. Clearly states penalties for non-compliance
 - f. Provides for appeal of Officer's determination
 - g. Provides that no further notices will be given
 - h. Asks that Officer be contacted
 - i. Provides a diagram of the corner and compliance requirements

* Page 7 if hedge or shrubs

** Page 8 if a wall or fence

Please let me know if you will forward, or should I. You may also consider including the items for the August 5 Workshop.

Thank you. I will await your reply.

Thanks.

Joe

Joe Damien
Code Compliance Director
Town of Surfside



Town of Surfside
Code Compliance

COURTESY NOTICE

November 30, 2011

Case: C _____

John & Mary Resident
123 – ABC Street
Surfside, FL 33154

Certified Mail No. XXX XXX XXX XX

PROPERTY: 123 – ABC Street, Surfside FL 33154

SUBJECT: Hedges/Foliage Obstructs Corner Visibility for Vehicular and Pedestrian Traffic

Dear Mr. & Mrs. Resident,

I write you on behalf of the Town of Surfside with regard to its efforts to inform and assist its residents and the business community in gaining a better understanding of the Town’s Municipal Codes and Ordinances and assist with the process of complying with these regulations.

I would like to bring to your attention an issue of concern that has been identified on your Property that is negatively impacting the safety and welfare of the Town’s residents and visitors, and needs to be addressed as soon as possible.

The hedges, bushes and other foliage growing on your property and located in the vicinity of the intersection of ABC Street and 1st Avenue, are not permitting drivers and pedestrians to have clear sightlines at the roadway intersections and creating a hazard for vehicular and pedestrian traffic. Below, for your information and use, are excerpts of the specific Town Code sections (or Ordinances) which address this issue (Also see attached Diagram).

Sec. 90-88. (8) - Maintenance of landscaped areas

Shrubs and hedges shall be maintained that such plant materials do not obstruct clear sight triangles and promote vehicular and pedestrian visibility. Also, hedges planted along property lines shall be maintained and trimmed to prevent branches from extending over and/or touching structures on adjacent properties.

Sec. 90-92 - Sight triangles and clearances

When the subject property abuts the intersection of one or more streets or access ways, all landscaping within the triangular area located within 25 feet of the intersection of the front and side street property lines shall provide unobstructed cross-visibility at a

November 30, 2011
Sight Triangle Courtesy Notice
123 - ABC Street

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Page 2 of 2

level between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard. The property owner shall be responsible for maintaining all landscaping within the cross-visibility triangle. Landscaping, except required turf and groundcover, shall not be located closer than five feet from the edge of any roadway and three feet from the edge of any alley or pavement. All sight triangles shall be indicated on the landscape plans.

The Town hereby requests your cooperation in trimming, cutting and/or removing any hedges, bushes, plants, trees and other foliage (or any other physical obstructions) that lie within the site triangle of visibility as provided in the Code. Specifically on your property the hedge, trees, bushes or other foliage located on the N.W. corner of your property must be removed, cut-back or trimmed no later than 10 days from receipt of this letter. Your cooperation will be greatly appreciated.

If you have any questions or need any additional information, please do not hesitate to call me at (305) 861-4863, ext. 230. We will be glad to meet you on-site to reach an agreement on the required remediation.

Thank you,

Joe Damien

Code Compliance Director
Town of Surfside

Attachment: Sight Triangle Diagram



**Town of Surfside
Code Compliance Department**

March 30, 2012

John & Mary Resident
123 – ABC Street
Surfside, FL 33154

PROPERTY: 123 – ABC Street, Surfside FL 33154

CASE: C2012-XX

SUBJECT: Hedges/Foliage Obstructs Corner Visibility for Vehicular and Pedestrian Traffic

Dear Mr. and Mrs. Resident,

On November 30, 2011, I wrote you regarding an issue of concern that was identified on your Property associated with your hedges, shrubs and street corner visibility.

To date, the problem still persists, and the hedges, bushes and other foliage growing on corner of your property that is located in the vicinity where the streets intersect, continue to obstruct the sightlines at the roadway intersections and create hazard for vehicular and pedestrian traffic.

As I wrote you previously, the Town hereby requests your cooperation in trimming, cutting and/or removing any hedges, bushes, plants, trees and other foliage (or any other physical obstructions) that lie within the site triangle of visibility as provided in the Code. As such, we respectfully request that the hedge, trees, bushes or other foliage on the corner of your property (in proximity to the street intersection) be removed, cut-back or trimmed no later April 6, 2012. Your cooperation will be greatly appreciated.

I once again ask that you please contact me at (305) 861-4863, ext. 230 and advise as to whether you intend to comply with the terms of the Courtesy Notice you received, or if you may need additional time. The Town will make every effort to work with you on providing a reasonable timeline. However, failure to comply will result in the issuance of a Civil Violation Notice including daily fines.

I remain available to meet with you and offer recommendations and specifics on how to bring your Property into compliance.

Thank you,

Joe Damien
Code Compliance Director



**Town of Surfside
Code Compliance
CIVIL VIOLATION NOTICE**

Date of issuance: December 5, 2012

Case number: 12-115

Time of issuance: 12:50PM

Date inspected: December 4, 2012

Issued by: Joe Damien, Code Compliance Director

Time of inspection: 4:50PM

Issued to: John & Mary Resident
123 ABC Street, Surfside, FL 33154

Certified Mail No. 0000 0000 0000 0000 0000

Property address: 123 ABC Street, Surfside, FL 33154

Folio No: 00-000-0000-00

Legal description: 34 35 52 42 NORMANDY BEACH 2ND AMD PL PB 16-44 LOTS 11 & 12 BLK 24 LOT SIZE 111.25 X 112 OR 20361-3024 0701 5

This notice is to inform you that the property identified above which is owned or is occupied by you is in violation of the Town of Surfside Code of Ordinances.

FACTS CONSTITUTING REASONABLE CAUSE: The hedges, bushes and other foliage growing on the corner of your property and located adjacent to the intersecting streets, are not permitting drivers and pedestrians to have clear sightlines at the roadway intersections and creating a hazard for vehicular and pedestrian traffic.

ACTION REQUIRED: Please comply by trimming, cutting and/or removing any hedges, bushes, plants, trees and other foliage (or any other physical obstructions) that lie within the site triangle of visibility as provided in the Code. Specifically the hedges, bushes and other foliage growing (or any other physical obstructions) on the corner of your property and located adjacent to the intersecting streets must be removed, cut-back or trimmed in accordance with the Code sections provided below.

CODE SECTION(S) VIOLATED:

Sec. 90-88. (8) - Maintenance of landscaped areas

Shrubs and hedges shall be maintained that such plant materials do not obstruct clear sight triangles and promote vehicular and pedestrian visibility. Also, hedges planted along property lines shall be maintained and trimmed to prevent branches from extending over and/or touching structures on adjacent properties.

Sec. 90-92 - Sight triangles and clearances

When the subject property abuts the intersection of one or more streets or access ways, all landscaping within the triangular area located within 25 feet of the intersection of the front and side street property lines shall provide unobstructed cross-visibility at a level between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard. The property owner shall be responsible for maintaining all landscaping within the cross-visibility triangle. Landscaping, except required turf and groundcover, shall not be located closer than five feet from the edge of any roadway and three feet from the edge of any alley or pavement. All sight triangles shall be indicated on the landscape plans.

PENALTIES FOR OFFENSES: Sec. 15-6. of the Town Code provides that a violation of the Code shall constitute a civil offense punishable by civil penalty as prescribed in sections 1-8 of the Code and section 15-18 hereof.

Sec. 1-8. - Penalty for violations.

(a) In this section "violation of this Code" means:

(1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or **by rule or regulation authorized by ordinance.**

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.

(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, whenever in town ordinances, codes, resolutions, rules and regulations; provisions, rules and regulations of the South Florida Building Code; applicable sections of the Code of Miami-Dade County; applicable rules and regulations of the state board of health and of the state hotel and restaurant division; or such other land development regulations or ordinances as may be adopted by the town, any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of same shall be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed 60 days, or by both such fine and imprisonment. Unless otherwise stated, each day that a violation continues shall constitute a separate punishable offense.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(e) Violations of this Code that are continuous with respect to time and in particular those mentioned in Chapter 15, Section 15-19 hereinbelow are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty, however, does not prevent the simultaneous granting of equitable relief in appropriate cases.

(f) As an additional means of enforcement and supplemental to any other provision of this Code, any penalties, attorneys' fees and costs awarded in connection with enforcement of this Code shall be and constitute a lien against all real property of the person(s) owing such fees, costs and penalties, and shall become effective and binding as such lien from the date upon which it becomes due, unpaid or in arrears. Existing liens and liens hereafter imposed pursuant to this section shall be treated as and shall constitute special assessment liens against the subject real property, and until fully paid and discharged shall remain liens equal in rank and dignity to lien the ad valorem taxes, and shall be superior in rank and dignity to all other lien encumbrances, titles and claims in, to or against the subject real property. The maximum rate of interest allowable by law shall accrue on such delinquent sums or accounts. Such liens shall be enforced by any method provided by law, including but not limited to foreclosure proceedings instituted and prosecuted under provisions applicable to foreclosure of mortgages on real estate. Collection of payment thereof may also be accomplished by any other method provided by law. The owner or person(s) owing such amounts or so liened shall pay all costs of collection, including but not limited to reasonable trial and appellate attorneys' fees incurred in collection or enforcement of any penalties, fees, costs, service charges and lien imposed by virtue of this section. The remedies provided in this section shall be cumulative and shall not be construed to waive the right of the town to require payment of any sum in arrears prior to issuing any permits or licenses required by this Code.

Sec. 15-18. - Violations; schedule of civil penalties.

(a) Violations of this chapter shall be subject to the imposition of penalties as provided herein and subject to all of the provisions of section 1-8 and any other applicable penalty section(s) of the Code of the Town of Surfside. Each day of violation shall constitute a separate, punishable offense.

(b) The town commission may approve from time to time by resolution a schedule showing the sections of the Code and ordinances which may be enforced pursuant to the provisions of this chapter and the dollar amount of civil penalty for the violation of these sections as they may be amended.

(c) Any "description of violations" is for informational purposes only and is not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, ordinances, laws, rules or regulations. To determine the exact nature of the activity proscribed or required by the Code, ordinances, laws, rules or regulations, the relevant Code, ordinances, laws, rules or regulations section must be examined.

(d) For violations of any section of this Code for which a specific penalty is not prescribed herein, a penalty shall be imposed which shall not be less than \$25.00 or more than \$250.00 per day for a first violation and shall not be less than \$50.00 or more than \$500.00 per day for a repeat violation. For the purposes of continuing violations, each day shall constitute a separate violation.

You must correct the violation within 10 days of your receipt of this Notice, or pay a civil penalty of \$100 which shall be assessed and payable for each day the violation continues. If you correct the violation within the time allowed and timely notify the code compliance officer, if applicable, you may avoid paying the civil penalty. Civil penalties may be paid at the office of the Town Clerk, 9293 Harding Avenue, Surfside. No further notices will be given.

If this blank is checked , the violation constitutes a serious threat to the public health, a serious nuisance to the public safety or welfare, is uncorrectable, or is a repeat violation, and you must pay the civil penalty provided for above for each day the violation continues, beginning with the date of this civil violation notice, if no other date is set forth above.

You may request an administrative hearing before a Special Master to appeal this civil violation notice. The request for the hearing must be filed in writing, within twenty calendar days of service of this civil violation notice, with the Town Clerk at the above address and must set forth the specific grounds of fact and in law for the appeal. If you do not request a hearing, you will be deemed to have admitted to the violation and waived your right to a hearing.

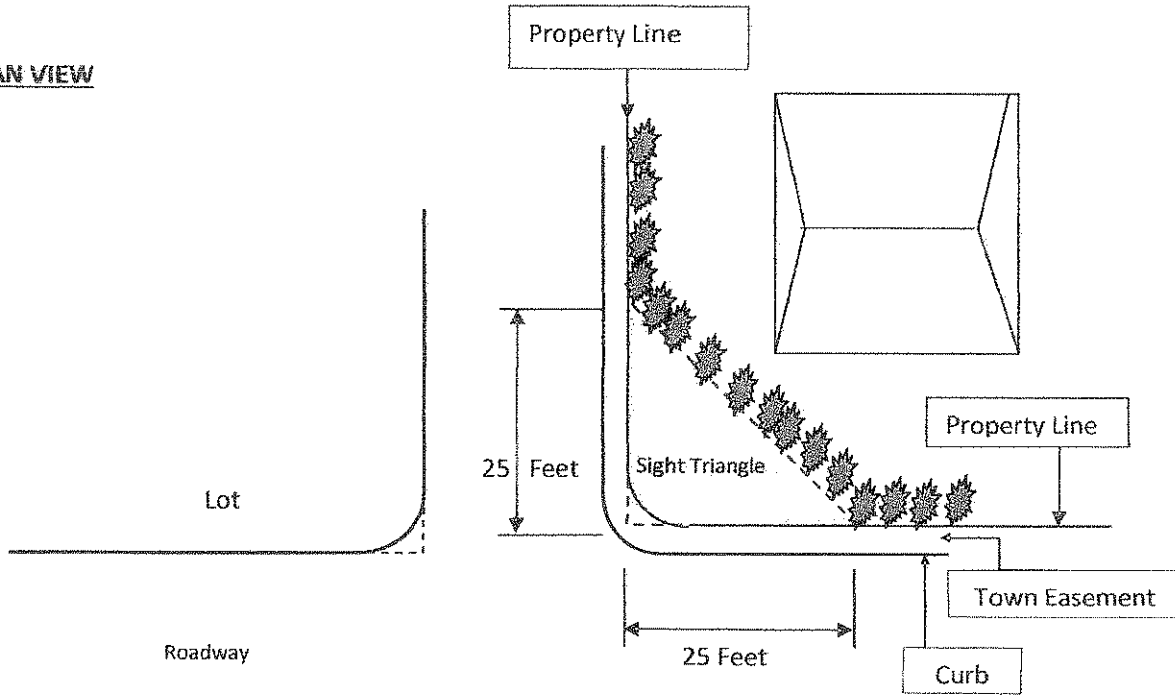
If you fail to pay the civil penalty within the time allowed and correct the violation, as applicable, or to timely request a hearing to appeal the civil violation notice, you will be deemed to have waived your right to contest this civil violation notice and an order or judgment may be entered against you for the amount of the civil penalty and continuing violation penalties.

You may be liable for the reasonable administrative costs of the hearing if you are found in violation by the Special Master. For more information, please call the Code Compliance Office at (305) 861-4863, ext 230.

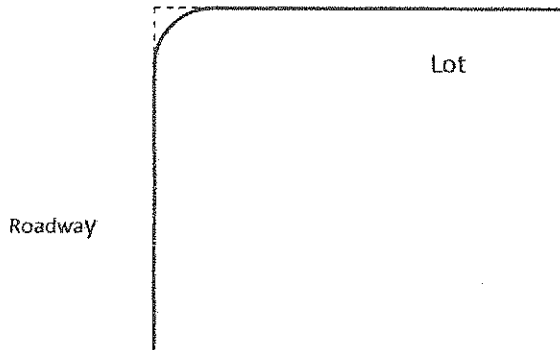
Joe Damien
Code Compliance Director
Town of Surfside, Florida

SIGHT TRIANGLE DIAGRAM

PLAN VIEW

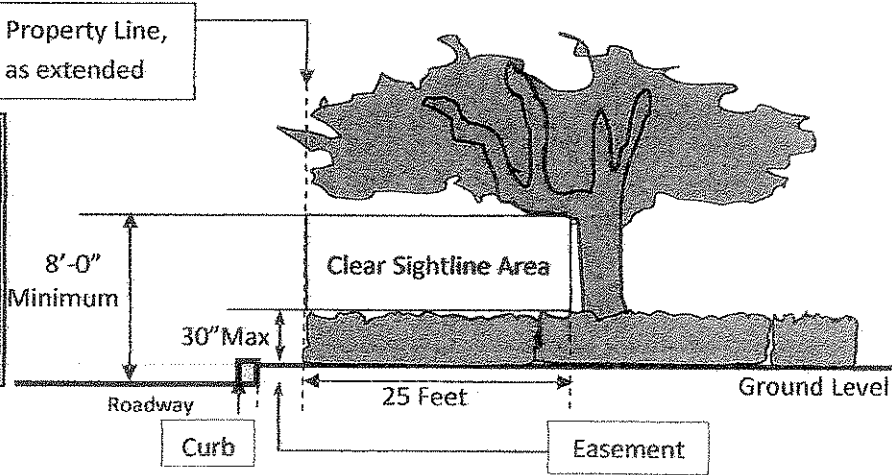


NOTE: Your property lines may or may not be set back away from the concrete curb of the roadway and should be checked against your property survey to ensure accuracy. In many instances there is a Town Easement between your property line and the curb/edge of the roadway.



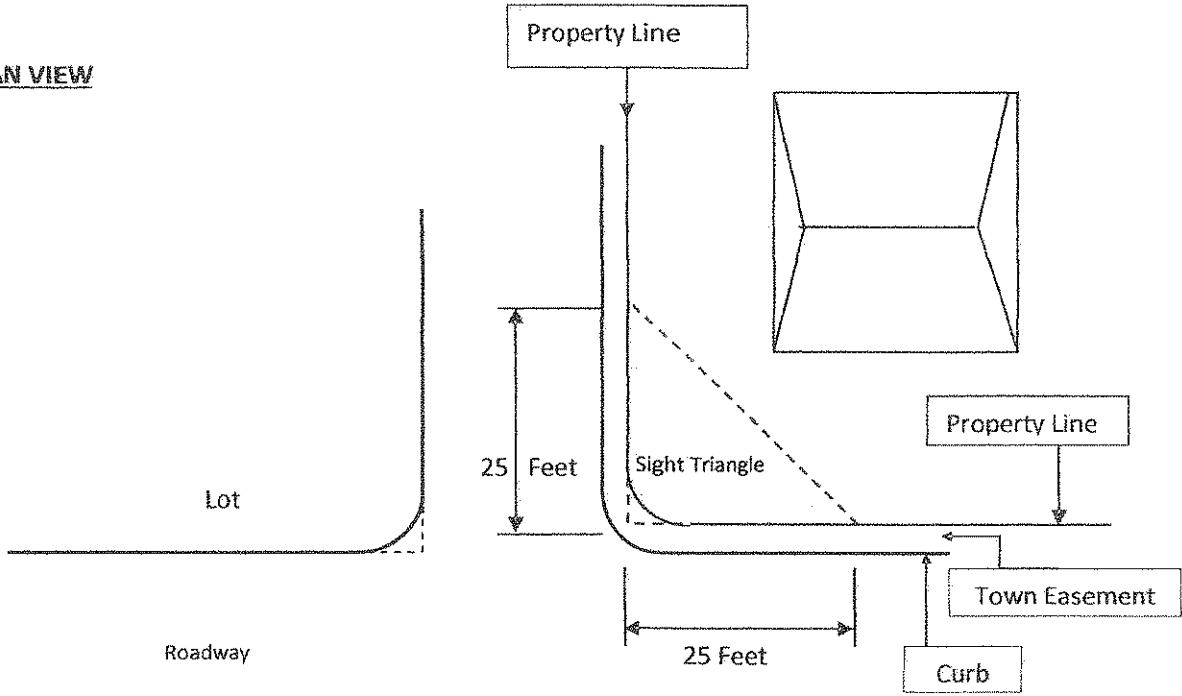
ELEVATION VIEW

Any wall, fence, hedge, shrub, bush, tree or other obstruction within the Sight Triangle must be less than 30 inches in height and provide a clear unobstructed view up to 8 feet in height.

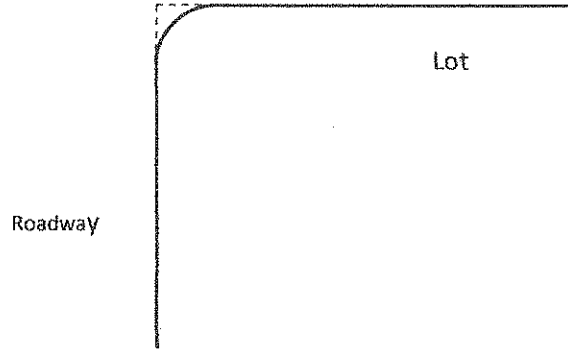


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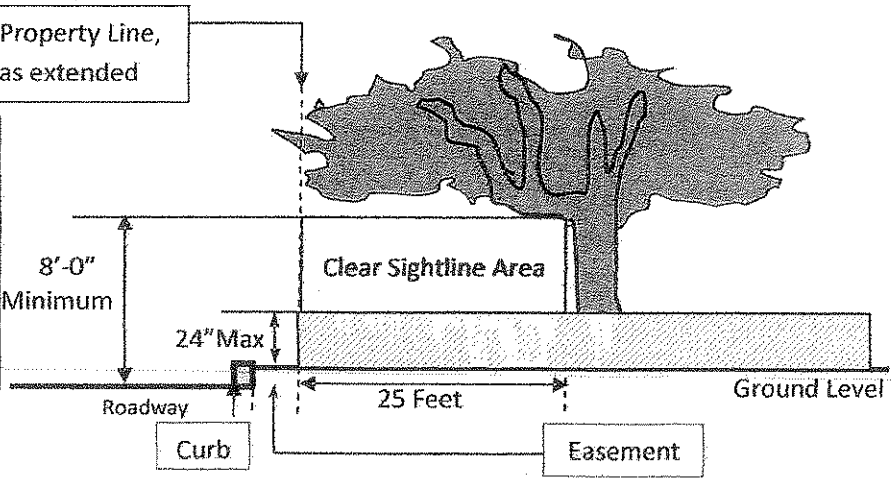


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ELEVATION VIEW

Any wall, fence, or other obstruction within the Sight Triangle must be less than 24 inches in height and provide a clear unobstructed view up to 8 feet in height.



Design and the Florida Building Code (Rule 9B-7.0042), Chapter 11, shall be provided at all pedestrian crossings, including mid block crossings and intersections to give persons with disabilities safe access. A level landing is necessary for turning, maneuvering, or bypassing the sloped surface.

F.3 Controls

Signs, signals, and markings should be utilized to provide the necessary information and direction for pedestrians. All directions and regulations should be clear, consistent and logical, and should, at a minimum, conform to the requirements given in the MUTCD. The use of accessible pedestrian signals that include audible and/or vibro-tactile, and visual signals, should be considered for pedestrian traffic control and regulation.

F.4 Sight Distance

The general requirements for sight distances for the driver are given in CHAPTER 3 - GEOMETRIC DESIGN.

Stopping sight distances greater than the minimum should be provided at all pedestrian crossings. These sight distances should include a clear view of the pedestrian approach pathway for at least 15 feet from the outside travel lane. Where parallel pedestrian pathways are within the roadside recovery area, or where casual pedestrian crossings are likely, the normal required stopping sight distance should also include a clear view of the entire roadside recovery area.

Sight distances shall be based upon a driver's eye and object height as discussed in CHAPTER 3 – GEOMETRIC DESIGN. Due to the small size of some pedestrians (particularly children), they are generally easy to confuse with other background objects.

Parking shall be prohibited where it would interfere with the required sight distance. Particular care should be exercised to ensure ample mutual sight distances are provided at all intersections and driveways.

F.5 Lighting

Lighting of the roadway itself is not only important for the safety of vehicular traffic,

C.3.a Stopping Sight Distance

Safe stopping sight distances shall be provided continuously on all streets and highways. The factors, which determine the minimum distance required to stop, include:

- Vehicle speed
- Driver's total reaction time
- Characteristics and conditions of the vehicle
- Friction capabilities between the tires and the roadway surface
- Vertical and horizontal alignment of the roadway

It is desirable that the driver be given sufficient sight distance to avoid an object or slow moving vehicle with a natural, smooth maneuver rather than an extreme or panic reaction.

The determination of available stopping sight distance shall be based on a height of the driver's eye equal to 3.50 feet and a height of obstruction to be avoided equal to 0.50 feet. It would, of course, be desirable to use a height of obstruction equal to zero (coincident with the roadway surface) to provide the driver with a more positive sight condition. Where horizontal sight distance may be obstructed on curves, the driver's eye and the obstruction shall be assumed to be located at the centerline of the travel lane on the inside of the curve.

The stopping sight distance shall be no less than the values given in Table 3 - 6.

C.3.b Passing Sight Distance

The passing maneuver, which requires occupation of the opposing travel lane, is inherently dangerous. The driver is required to make simultaneous estimates of time, distance, relative speeds, and vehicle capabilities. Errors in these estimates result in frequent and serious crashes.

Highways with two or more travel lanes in a given direction are not subject to requirements for safe passing sight distance. Two-lane, two-way highways should be provided with safe passing sight distance for as much of the

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highway as feasible. The driver demand for passing opportunity is high and serious limitations on the opportunity for passing reduces the capacity and safe characteristics of the highway.

The distance traveled after the driver's final decision to pass (while encroaching into the opposite travel path) is that which is required to pass and return to the original travel lane in front of the overtaken vehicle. In addition to this distance, the safe passing sight distance must include the distance traveled by an opposing vehicle during this time period, as well as a reasonable margin of safety. Due to the many variables in vehicle characteristics and driver behavior, the passing sight distance should be as long as is practicable.

The determination of passing sight distance shall be based on a height of eye equal to 3.50 feet and a height of object passing equal to 3.50 feet. Where passing is permitted, the passing sight distance shall be no less than the values given in Table 3 - 6.

C.3.c Sight Distance at Decision Points

It is desirable to provide sight distances exceeding the minimum at changes in geometry, approaches to intersections, entrances and exits, and other potential decision points or hazards. The sight distance should be adequate to allow the driver sufficient time to observe the upcoming situation, make the proper decision, and take the appropriate action in a normal manner.

Minimum stopping distance does not provide sufficient space or time for the driver to make decisions regarding complex situations requiring more than simple perception-reaction process. In many cases, rapid stopping or lane changing may be extremely undesirable and cause hazardous maneuvers (i.e., in heavy traffic conditions); therefore, it would be preferable to provide sufficient sight distance to allow for a more gradual reaction.

The sight distance on a freeway preceding the approach nose of an exit ramp should exceed the minimum by 25 percent or more. A minimum sight distance of 1000 feet, measured from the driver's eye to the road surface is a desirable goal. There should be a clear view of the exit terminal including the exit nose.

C.3.d Intersection Sight Distance

Sight distances for intersection movements are given in the general intersection requirements (C.9 Intersection Design, this chapter).

C.4 Horizontal Alignment

C.4.a General Criteria

The standard of alignment selected for a particular section of highway should extend throughout the section with no sudden changes from easy to sharp curvature. Where sharper curvature is unavoidable, a sequence of curves of increasing degree should be utilized.

Winding alignment consisting of sharp curves is hazardous, reduces capacity, and should be avoided. The use of as flat a curve as possible is recommended. Flatter curves are not only less hazardous, but also frequently less costly due to the shortened roadway.

Maximum curvature should not be used in the following locations:

- High fills or elevated structures. The lack of surrounding objects reduces the driver's perception of the roadway alignment.
- At or near a crest in grade
- At or near a low point in a sag or grade
- At the end of long tangents
- At or near intersections, transit stops, or points of ingress or egress
- At or near other decision points

The "broken back" arrangement of curves (short tangent between two curves in the same direction) should be avoided. This is acceptable only at design speeds of 30 mph or less. This arrangement produces an unexpected and hazardous situation.

When reversals in alignment are used and superelevation is required, a sufficient length of tangent between the reverse curves is required for adequate superelevation transition.

C.9.b.2 Obstructions to Sight Distance

The provisions for sight distance are limited by the highway geometry and the nature and development of the area adjacent to the roadway. Where line of sight is limited by vertical curvature or obstructions, stopping sight distance shall be based on the eye height of 3.50 feet and an object height of 0.50 feet. At exits or other locations where the driver may be uncertain as to the roadway alignment, a clear view of the pavement surface should be provided. At locations requiring a clear view of other vehicles or pedestrians for the safe execution of crossing or entrance maneuvers, the sight distance should be based on a driver's eye height of 3.50 feet and an object height of 3.00 feet (preferably 1.50 feet). The height of eye for truck traffic may be increased for determination of line of sight obstructions for intersection maneuvers. Obstructions to sight distance at intersections include the following:

- Any property not under the highway agency's jurisdiction, through direct ownership or other regulations, should be considered as an area of potential sight distance obstruction. Based on the degree of obstruction, the property should be considered for acquisition by deed or easement.
- Areas which contain vegetation (trees, shrubbery, grass, etc.) that cannot easily be trimmed or removed by regular maintenance activity should be considered as sight obstructions.
- Parking lanes shall be considered as obstructions to line of sight. Parking shall be prohibited within clear areas required for sight distance at intersections.
- Large (or numerous) poles or support structures for lighting, signs, signals, or other purposes that significantly reduce the field of vision within the limits of clear sight shown in Figure 3 - 8 may constitute sight obstructions. Potential sight obstructions created by poles, supports, and signs near intersections should be carefully investigated.

In order to ensure the provision for adequate intersection sight distance, on-site inspections should be conducted before and after construction, including placement of signs, lighting, guardrails, or other objects and how they impact intersection sight distance.

C.9.b.3 Stopping Sight Distance

The provision for safe stopping sight distance at intersections and on turning roadways is even more critical than on open roadways. Vehicles are more likely to be traveling in excess of the design or posted speed and drivers are frequently distracted from maintaining a continuous view of the upcoming roadway.

C.9.b.3.(a) Approach to Stops

The approach to stop signs, yield signs, or traffic signals should be provided with a sight distance no less than values given in Table 3 - 14. These values are applicable for any street, highway, or turning roadway. The driver should, at this required distance, have a clear view of the intersecting roadway, as well as the sign or traffic signal.

Where the approach roadway is on a grade or vertical curve, the sight distance should be no less than the values shown in Figure 3 - 7. In any situation where it is feasible, sight distances exceeding those should be provided. This is desirable to allow for more gradual stopping maneuvers and to reduce the likelihood of vehicles running through stop signs or signals. Advance warnings for stop signs are desirable.

C.9.b.3.(b) On Turning Roads

The required stopping sight distance at any location on a turning roadway (loop, exit, etc.) shall be based on the design speed at that point. Ample sight distance should be provided since the driver is burdened with negotiating a curved travel path and the available friction factor for stopping has been reduced by the roadway curvature. The minimum sight distance values are given in Table 3 - 14 or Figure 3 - 7. Due to the inability of vehicle headlights to adequately illuminate a sharply curved travel path, roadway lighting should be considered for turning roadways.

C.9.b.4 Sight Distance for Intersection Maneuvers

Sight distance is also provided at intersections to allow the drivers of stopped vehicles a sufficient view of the intersecting highway to

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C.9.b.4 Sight Distance for Intersection Maneuvers

Sight distance is also provided at intersections to allow the drivers of stopped vehicles a sufficient view of the intersecting highway to

requiring the greatest ISD will control. Cases that must be considered are as follows (Case numbers correspond to cases identified in the AASHTO Green Book):

Case B1 – Left Turns from the Minor (stop controlled) Road

Case B2 – Right Turns from the Minor (stop controlled) Road

Case B3 – Crossing the Major Road from the Minor (stop controlled) Road

See Sections C.9.b.4.(c) and (d) for design time gaps for Case B.

For Intersections with Traffic Signal Control see Section C.9.b.4.(e) (AASHTO Case D).

For intersections with all way stop control see Section C.9.b.4.(f) (AASHTO Case E).

For left turns from the major road see Section C.9.b.4.(g) (AASHTO Case F).

C.9.b.4.(a) Driver's Eye Position and Vehicle Stopping Position

The vertex (decision point or driver's eye position) of the departure sight triangle on the minor road shall be a minimum of 14.5 feet from the edge of the major road traveled way. This is based on observed measurements of vehicle stopping position and the distance from the front of the vehicle to the driver's eye. Field observations of vehicle stopping positions found that, where necessary, drivers will stop with the front of their vehicle 6.5 feet or less from the edge of the major road traveled way. Measurements of passenger cars indicate that the distance from the front of the vehicle to driver's eye for the current U.S. passenger car fleet is almost always 8 feet or less.

When executing a crossing or turning maneuver after stopping at a stop sign, stop bar, or crosswalk as required in Section 316.123, Florida Statutes, it is assumed that the vehicle will move slowly forward to obtain sight distance (without intruding

into the crossing travel lane) stopping a second time as necessary.

C.9.b.4.(b) Design Vehicle

Dimensions of clear sight triangles are provided for passenger cars, single unit trucks, and combination trucks stopped on the minor road. It can usually be assumed that the minor road vehicle is a passenger car. However, where substantial volumes of heavy vehicles enter the major road, such as from a ramp terminal, the use of tabulated values for single unit or combination trucks should be considered.

C.9.b.4.(c) Case B1 - Left Turns From the Minor Road

Design time gap values for left turns from the minor road onto two lane two way major highway are as follows:

Design Vehicle	Time Gap (t_g) in Seconds
Passenger Car	7.5
Single Unit Truck	9.5
Combination Truck	11.5

If the minor road approach grade is an upgrade that exceeds 3 percent, add 0.2 seconds for each percent grade for left turns.

For multilane highways without medians wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle, add 0.5 seconds for passenger cars or 0.7 seconds for trucks for each additional lane from the left, in excess of one, to be crossed by the turning vehicle. The median width should be included in the width of additional lanes. This is done by converting the median width to an equivalent number of 12 foot lanes.

For multilane highways with medians wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle a two step maneuver may be assumed. Use case B2 for crossing to the median.

C.9.b.4.(d) Case B2 - Right Turns From the Minor Road and Case B3 – Crossing Maneuver From the Minor Road

Design time gap values for a stopped vehicle on a minor road to turn right onto or cross a two lane highway are as follows:

Design Vehicle	Time Gap (t_g) in Seconds
Passenger Car	6.5
Single Unit Truck	8.5
Combination Truck	10.5

If the approach grade is an upgrade that exceeds 3 percent, add 0.1 seconds for each percent grade.

For crossing highways with more than 2 lanes, add 0.5 seconds for passenger cars or 0.7 seconds for trucks for each additional lane to be crossed. Medians not wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle should be included in the width of additional lanes. This is done by converting the median width to an equivalent number of 12 foot lanes.

For crossing divided highways with medians wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle, a two step maneuver may be assumed. Only the number of lanes to be crossed in each step are considered.

C.9.b.4.(e) Intersections with Traffic Signal Control (AASHTO Case D)

At signalized intersections, the first vehicle stopped on one approach should be visible to the driver of the first vehicle stopped on each of the other approaches. Left turning vehicles should have sufficient sight distance to select gaps in oncoming traffic and complete left turns. Apart from these sight conditions, no other sight triangles are needed for signalized intersections. However, if the traffic signal is to be placed on two-way flashing operation in off peak or nighttime conditions, then the appropriate departure sight triangles for Cases B1, B2, or B3, both to the left and to the right, should be

provided. In addition, if right turns on red are to be permitted, then the appropriate departure sight triangle to the left for Case B2 should be provided to accommodate right turns.

C.9.b.4.(f) Intersections with All-Way Stop Control (AASHTO Case E)

At intersections with all-way stop control, the first stopped vehicle on one approach should be visible to the drivers of the first stopped vehicles on each of the other approaches. There are no other sight distance criteria applicable to intersections with all-way stop control.

C.9.b.4.(g) Left Turns from the Major Road (AASHTO Case F)

All locations along a major highway from which vehicles are permitted to turn left across opposing traffic shall have sufficient sight distance to accommodate the left turn maneuver. In this case, the ISD is measured from the stopped position of the left turning vehicle (see Figure 3 - 10). Design time gap values for left turns from the major road are as follows:

Design Vehicle	Time Gap (t_g) in Seconds
Passenger Car	5.5
Single Unit Truck	6.5
Combination Truck	7.5

For left turning vehicles that cross more than one opposing lane, add 0.5 seconds for passenger cars and 0.7 seconds for trucks for each additional lane to be crossed.

C.9.b.4.(h) Intersection Sight Distance References

The Department's Design Standards, Index 546, provides ISD values for several basic intersection configurations based on Cases B1, B2, B3, and D, and may be used when applicable. For additional guidance on Intersection Sight Distance, see the AASHTO Green Book.

requiring the greatest ISD will control. Cases that must be considered are as follows (Case numbers correspond to cases identified in the AASHTO Green Book):

Case B1 – Left Turns from the Minor (stop controlled) Road

Case B2 – Right Turns from the Minor (stop controlled) Road

Case B3 – Crossing the Major Road from the Minor (stop controlled) Road

See Sections C.9.b.4.(c) and (d) for design time gaps for Case B.

For Intersections with Traffic Signal Control see Section C.9.b.4.(e) (AASHTO Case D).

For intersections with all way stop control see Section C.9.b.4.(f) (AASHTO Case E).

For left turns from the major road see Section C.9.b.4.(g) (AASHTO Case F).

C.9.b.4.(a) Driver's Eye Position and Vehicle Stopping Position

The vertex (decision point or driver's eye position) of the departure sight triangle on the minor road shall be a minimum of 14.5 feet from the edge of the major road traveled way. This is based on observed measurements of vehicle stopping position and the distance from the front of the vehicle to the driver's eye. Field observations of vehicle stopping positions found that, where necessary, drivers will stop with the front of their vehicle 6.5 feet or less from the edge of the major road traveled way. Measurements of passenger cars indicate that the distance from the front of the vehicle to driver's eye for the current U.S. passenger car fleet is almost always 8 feet or less.

When executing a crossing or turning maneuver after stopping at a stop sign, stop bar, or crosswalk as required in Section 316.123, Florida Statutes, it is assumed that the vehicle will move slowly forward to obtain sight distance (without intruding

into the crossing travel lane) stopping a second time as necessary.

C.9.b.4.(b) Design Vehicle

Dimensions of clear sight triangles are provided for passenger cars, single unit trucks, and combination trucks stopped on the minor road. It can usually be assumed that the minor road vehicle is a passenger car. However, where substantial volumes of heavy vehicles enter the major road, such as from a ramp terminal, the use of tabulated values for single unit or combination trucks should be considered.

C.9.b.4.(c) Case B1 - Left Turns From the Minor Road

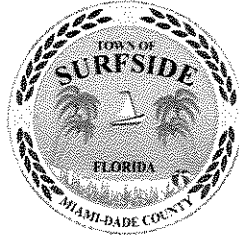
Design time gap values for left turns from the minor road onto two lane two way major highway are as follows:

Design Vehicle	Time Gap (t_g) in Seconds
Passenger Car	7.5
Single Unit Truck	9.5
Combination Truck	11.5

If the minor road approach grade is an upgrade that exceeds 3 percent, add 0.2 seconds for each percent grade for left turns.

For multilane highways without medians wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle, add 0.5 seconds for passenger cars or 0.7 seconds for trucks for each additional lane from the left, in excess of one, to be crossed by the turning vehicle. The median width should be included in the width of additional lanes. This is done by converting the median width to an equivalent number of 12 foot lanes.

For multilane highways with medians wide enough to store the design vehicle with a clearance of 3 feet on both ends of the vehicle a two step maneuver may be assumed. Use case B2 for crossing to the median.



TOWN OF SURFSIDE
Office of the Town Attorney
MUNICIPAL BUILDING
9293 HARDING AVENUE
SURFSIDE, FLORIDA 33154-3009
Telephone (305) 993-1065

TO: Elected Officials

FROM: Linda Miller *LM*
Town Attorney

CC: Michael P. Crotty, Town Manager
Sarah Johnston, Assistant Town Attorney
Joe Damien, Code Compliance Director

DATE: August 5, 2013

SUBJECT: History of Fences, Walls, and Hedges and Sight Triangle Code Provisions.

Attached is a history detailing the changes to the Fences, Walls, and Hedges and the Sight Triangle Code provisions. (See Attachment "A") This history was developed using the Town Clerk's listing of all ordinances passed, the 2004 Zoning Code, and Municode-because of the long history of these code provisions there may be (no longer applicable) code changes that are not reflected below. This initial review of the applicable code provisions includes the recommended change in the proposed Sight Triangle and Required Clearance Ordinance. Additionally, Commissioner Graubart has provided this Office with the attached copy of various emails which includes an historical perspective and a diagram on provisions that maintain corner vision clearance (Triangle Visibility). (See Attachment "B")

Fences, Walls, and Hedges

Ordinance: 99-1401

Hedges, ornamental fences, and walls may be no more than 5 feet. No fences, wall, or structure shall be constructed in a front yard or a side yard abutting a public right of way. Ornamental hedges are permitted if less than 3 feet.

Ordinance: 05-1456

Deleted the section "Fences, Walls, and Hedges" and amended landscaping requirements.

Ordinance: 07-1478

Amended the "Fences Walls, and Hedges" code provision-allowed side and rear yard FWH not more than 6 feet. Ornamental fence or wall may be placed in front yard or side corner yard if approved by DRB. Hedges in front yard and side corner yard shall be no more than 4 feet and 10 feet in rear and side yards. Hedges can be higher with DRB approval.

Ordinance: 08-1491

Adoption of new zoning code. Included FWH.

Ordinance: 09-1520

Added provisions relating to opacity, lot frontage/height.

Ordinance: 09-1529

Changes applicability of the added provisions relating to opacity and lot frontage/height to "fences and ornamental walls" replacing "ornamental fences and walls."

Ordinance: 10-1549

Added restrictions for construction fencing.

Ordinance: 10-1558

Re-adoption of the 2008 Zoning Code and all subsequent changes.

Ordinance: 12-1590

Renumbered previous changes relating to opacity lot frontage /maximum height and increased maximum height to 4 feet for practicality (the previous height was a custom height for fences, 4 ft. is easier to purchase)

Vision Clearance/Required Clearances/Sight Triangles and Clearances

Ordinance: 93-1317

Amended 90-181, Vision Clearance which provided that for proposed construction there will be a 2 foot limitations (measured from the curb)of height of fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, etc. for a distance of 25 feet along both the front and side lot lines at corners of intersecting streets. It also provided that a tree, shrub, flowers, or structures shall not be planted in the public right of way without a permit from the Town Manager.

Ordinance: 08-1491

Adoption of new zoning code.

Ordinance: 10-1558

Re-adoption of the 2008 Zoning Code and all subsequent changes. This created two code sections with an inconsistency.

- *Sec. 90-52 Required Clearances applied to new construction and limited the height of fences, walls, gateways, signs, shrubbery, hedges, etc. to two feet for a distance of 25 feet along both the front and side lot lines at corners of intersecting streets. It also provided that a tree, shrub, flowers, or structures shall not be planted in the public right of way without a permit from the Town Manager.*
- *Sec. 90-92 Sight triangles and clearances applied to properties abutting one or more intersecting streets and required that all landscaping located within the 25 foot sight triangle shall not be more than 30 inches and eight feet and created an exception for tree trunks. It also provided that all landscaping shall not be located closer than 5 feet from the edge of the roadway and 3 feet from the edge of any alley or pavement.*

Proposed Ordinance: *(to delete section 90-92 and remove the provision in 90-52 relating to proposed construction, increasing the height limitation to 30 inches, allowing for tree trunks, including the 5 foot right of way exclusion for landscaping, and granting authority with the Public Works Director (after consultation with Code Compliance Director) to have final approval of clear sight triangles.*

ORDINANCE NO. 1401

AN ORDINANCE AMENDING SECTION 90-183 OF THE CODE OF THE TOWN OF SURFSIDE CONCERNING FENCES, WALLS AND HEDGES; PROVIDING INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:

Section 1. That Section 90-183 of the Code of the Town of Surfside is hereby deleted in its entirety and a new Section 90-183 is hereby enacted to read as follows:

Sec. 90-183. Fences, walls and hedges.

An ornamental fence, wall or hedge, not more than five feet in height, may project into or enclose any side or rear yard, except as otherwise provided herein. The height of such ornamental fence, wall or hedge shall be measured from the ground upon which it is located. No fence, wall or structure of any kind shall be constructed in a front yard, nor on a corner lot in a side yard, where such side yard abuts a public right-of-way. An ornamental hedge with a height of not more than three feet shall be permitted. Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 190-181 (vision clearance).

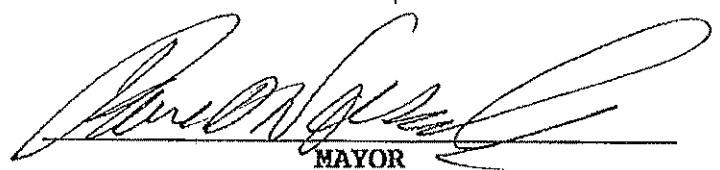
Section 2. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed insofar as they are in conflict.

Section 3. That it is the intention of the Commission of the Town of Surfside, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of the

Town of Surfside. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article" or other appropriate word.

Section 4. That this ordinance shall become effective at the expiration of twenty (20) days after posting in the Town Hall following final passage.

PASSED AND ADOPTED this 11 day of May, 1999.


MAYOR

Attest:


TOWN CLERK

First reading: 4/13/99

Second reading 5/11/99

Adopted: 5/11/99

Approved as to form and legal sufficiency:


TOWN ATTORNEY

ORDINANCE NO. 1456

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING CHAPTER 90 "ZONING," OF THE TOWN CODE BY AMENDING SECTION 90-37 "PERMITS, PLATS AND FILING FEES;" BY DELETING SECTION 90-183 "FENCES, WALLS AND HEDGES;" BY AMENDING SECTION 90-194 "LANDSCAPING REQUIREMENTS" TO REVISE THE REQUIREMENTS FOR THE INSTALLATION AND MAINTENANCE OF LANDSCAPING AND OPEN SPACE IN THE TOWN; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 30, 2005, the Planning and Zoning Board considered revisions to the Town's current landscaping requirements; and

WHEREAS, the Planning and Zoning Board recommends that the Town Commission approve the revisions to the Town's landscaping regulations as set forth in this Ordinance; and

WHEREAS, the Town Commission finds that approval of this Ordinance amending the current requirements for the installation and maintenance of landscaping and open space in the Town is in the best interest of the Town and its residents.

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

Section 1. Recitals. The foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Town Code Amended. Section 90-37, "Permits, plats and filing fees," of

the Town Code is hereby amended to read as follows:

Sec. 90-37. Permits, plats and filing fees.

* * * *

(c) *Applications for building permits.* Applications for building permits in ~~RD-2~~, RM-1, RMO-1, RT-1 and ~~CO-1~~ NCS-0 districts must be accompanied by the following:

- (1) A plot plan showing provisions for adequate drainage where required.
- (2) A rendering showing details of materials to be used on the exterior of the building.
- (3) A detailed landscaping plan, prepared by a registered landscape architect, including scale demonstrating actual size of plants to be used.

Section 3. Town Code Amended. Section 90-183, "Fences, walls and hedges," of

the Town Code is hereby deleted in its entirety as follows:

~~Sec. 90-183. Fences, walls and hedges.~~

~~An ornamental fence, wall or hedge, not more than five feet in height, may project into or enclose any side or rear yard, except as otherwise provided herein. The height of such ornamental fence, wall or hedge shall be measured from the ground upon which it is located. No fence, wall or structure of any kind shall be constructed in a front yard, nor on a corner lot in a side yard, where such side yard abuts a public right-of-way. An ornamental hedge with a height of not more than three feet shall be permitted. Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 190-181 (vision clearance).~~

Section 4. Town Code Amended. Section 90-194 "Landscaping Requirements," of

the Town Code is hereby amended to read as follows:

Sec. 90-194. Landscaping requirements.

- ~~(a) All front yard areas, exclusive of required driveways and entrance ways (but never less than 50 percent of the entire front yard area) shall be landscaped and be readily permeable by rainwater and groundwater, except as provided in section 90-188. Where bricks or pavers of any kind are utilized, openings in them or spaces between them shall not be considered in the 50 percent landscape requirement.~~
- ~~(b) Rear yard areas in the RS-1, RS-2 and RD-1 districts, shall not be less 40 percent landscaped and be readily permeable by rainwater and groundwater.~~
- ~~(c) All off street parking areas, and all lands upon which vehicles traverse the property as a function of its primary use, including but not limited to, activities of a drive in nature, such as, but not limited to, filling stations, grocery and dairy stores, banks, restaurants and the like, shall conform to the landscaping requirements of Dade County Code Section 18A as same shall be amended from time to time.~~
- ~~(d) In the RT-1 district, in lieu of subsection (c), for the purpose of creating shade, screening and architectural landscaping ornamentation, a trellis structure will be permitted within the internal side setback area subject to the following:
 - ~~(1) The structure's purpose is to support landscaping material.~~
 - ~~(2) The structure must be completely open on all four sides. However, the side abutting the adjacent property may contain virtually transparent plant supporting material.~~
 - ~~(3) The structure shall not be roofed.~~
 - ~~(4) The top of the structure must be open with an open to solid ratio of at least 70 percent open to 30 percent solid.~~
 - ~~(5) The structure shall not exceed ten feet in height. The vertical supports must not exceed a slenderness ratio of ten feet to eight inches in thickness and may not be less than 12 feet apart. The structure may not exceed 35 percent of the internal side yard area.~~~~
- ~~(e) Landscaping plans shall be submitted as required by subsection 90-37(e)(3), and shall be subject to the approval of the town manager with the recommendation of the planning and zoning board.~~

A. Title. This shall be known as the "Town of Surfside Landscape Ordinance."

B. Purpose and Intent. The purpose and intent of this Ordinance is to provide requirements, standards and regulations for the installation and maintenance of landscaping and landscaped open space. The Town recognizes the aesthetic, ecological and economic value of landscaping and requires its use to:

1. Preserve and enhance Surfside's urban forests;
2. Promote the re-establishment of vegetation in the urban area for aesthetic, health and urban wildlife reasons;

3. Reduce storm water runoff pollution, temperature and rate and volume of water flow;
4. Establish and enhance a pleasant visual character, which recognizes aesthetics and safety issues;
5. Create and enhance a subtropical environment to reinforce the identity, distinctiveness and sense of place for Surfside that is essential to the quality of visitor experiences that strengthen the Town's economic base of tourism.
6. Promote compatibility between land uses by reducing the visual, noise, and lighting impacts of specific development on users of the site and abutting uses;
7. Unify development and enhance and define public spaces;
8. Promote the retention and use of existing and native vegetation;
9. Aid in energy conservation by providing shade from the sun and shelter from the wind;
10. Restore natural communities through re-establishment of native plants;
11. Mitigate for the loss of natural resource values; and
12. Maintain and improve the aesthetic quality of the Town of Surfside, thereby promoting the health and general welfare of its citizenry.

C. Applicability. The provisions of this Ordinance and Chapter 18A of the Code of Miami-Dade County, the "Miami-Dade County Landscape Ordinance," as may be amended from time to time, shall apply to all public and private development within the Town including (i) all new construction; (ii) substantial additions or alterations in excess of fifty percent (50%) of the fair market value of the existing structure; or (iii) where more than fifty percent (50%) of the total site landscaping requires replacement.

D. Definitions. The definitions contained in Section 90-2 of the Town Code and Chapter 18A of the Code of Miami-Dade County, the "Miami-Dade County Landscape Ordinance," as amended from time to time, shall apply to this Ordinance. In addition, the following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Buffer/perimeter landscape: An area of land that is set aside along the perimeter of a parcel of land in which landscaping is required to provide a visual barrier or aesthetic transition between different land uses and to eliminate or reduce the adverse environmental impact and incompatible land use impact; or an area of land that complies with Section 90-181 of the Town Code and provides a landscape area between the public right-of-way and the off-street parking area.

Dumpster: A refuse container of one cubic yard or larger.

Grey wood: The area of trunk on a palm from ground level to the palm frond sheath except where removal of fronds is necessary to protect property and public safety.

Hatrack. To flat-cut the top of a tree, severing the leader or leaders; to prune a tree by stubbing off mature wood larger than three inches in diameter; or to reduce the tree's living canopy by more than one-third except where removal of branches is necessary to protect property and public safety. The following trees are exempt from this section: *Schinus terebinthifolius* (Brazilian Pepper), *Metopium toxiferum* (Poison Wood), *Casuarina* spp. (Australian Pine), *Melaleuca quinquenervia* (Cajeput Tree), *Acacia Auriculiformis*, *Bischofia Javanica*, *Araucaria heterophylla* (Norfolk Island Pine), or *Thespesia Populnea* (Seaside Mahoe) or any species of ficus.

Hedge: A landscape barrier consisting of a continuous, dense planting of shrubs or trees or any combination thereof that form a barrier or boundary along a property line.

Height: The height of a wall, fence or hedge shall be the vertical distance measured from the average elevation of the finished building site to the top of the wall, fence or hedge except that the height of walls, fences or hedges within the front yard area and for corner lots the side street yard area, shall be measured from the top elevation of the adjoining curb, gutter if no curb exists, or edge of street pavement if no curb or gutter exists. The average elevation shall be measured along the wall, fence or hedge line where same is to be placed. The land within the area where the wall, fence or hedge is to be placed shall not be increased or decreased to affect the permitted height, unless the entire building site is to be graded to level off said area.

Native Plant Species: Plant species with a geographic distribution indigenous to all or part of Miami-Dade County. Plants that are described as being native to Miami-Dade County in botanical manuals such as, but not limited to, "A Flora of Tropical Florida" by Long and Lakela and "The Biology of Trees Native to Tropical Florida" by P.B. Tomlinson, are native plant species within the meaning of this definition. Plant species that have been introduced Miami-Dade County by man are not native plant species.

Natural or Conservation Area: An area, as identified in the Town's comprehensive plan, designated on the site plan containing natural vegetation, which will remain undisturbed when property is fully developed.

Palms: Members of the *Palmae* family that are monocots characterized by palmac or pinnate fronds attached to a trunk with a single growing point on each trunk. Palms may be single or multiple trunk.

Prohibited Plant Species: Those plants listed in both Section 90-195 of the Town Code and the Miami-Dade County landscape manual which are demonstrably detrimental to native plants, native wildlife, ecosystems or human health, safety,

and welfare, except as specifically allowed as hedge material only and upon approval of the Town Building Official.

Protective Barrier: A temporary fence or other structure built to restrict passage into an area surrounding a tree for the purpose of preventing any disturbance to the roots, trunk or branches of the tree.

Retention Area: An area designed and used for the temporary or permanent storage of stormwater runoff, which may be either dry or wet retention as defined below:

(1) Dry retention is an area that is designed for temporary storage of stormwater runoff and that is one foot above the ground water level as established by the South Florida Water Management District and has a maximum slope of 4:1.

(2) Wet retention is an area that is designed for the permanent storage of water and is at least one-half acre in size, with an average width of not less than 100 feet and a minimum depth of eight feet below ground water level as established by the South Florida Water Management District, with maximum slope 4:1 extending down to a point five feet below the low water line.

Shrub: A self-supporting woody perennial plant, usually with several permanent stems, normally growing to a height of 36 inches or greater, characterized by multiple stems and branches continuous from the base.

Tree: Any self-supporting woody perennial plant that, at maturity, attains a trunk diameter of at least four inches when measured at a point 4 1/2 feet above ground level and that normally attains an overall height of at least 25 feet, usually with one main stem or trunk and many branches.

Untended Vegetation: Turf grass, weeds or underbrush in excess of eight (8) inches in height from the ground, vines or other vegetation.

Visual Screen: A physical obstruction used to separate two areas or uses, which are at least 75 percent opaque. Visual screens shall be living plant material, of natural or man-made construction material, or any combination thereof.

Xeriscape: A type of landscaping utilizing native plants and ground cover that needs reduced water and little maintenance, which is detailed in the South Florida Water Management District publication, Xeriscape, Plant Guide II as may amended from time to time.

E. Landscape Plan Required.

(1) Except for RS, RS-1, RS-2, RD-1 and RD-2 Districts, prior to the issuance of a building permit for exterior construction (interior renovations, exterior painting and signage permits are exempted) greater than \$5000 in value or site plan approval, a landscape plan shall be submitted to and approved by the Town Building Official. The landscape plan shall be drawn to a scale not less than 1" = 20'-0". All landscape plans must be signed and sealed by a State of Florida Registered Landscape Architect. The landscape plan shall clearly delineate existing and proposed buildings, parking, driveways, or other vehicular use areas. The plan shall also designate the name (botanical and common), size (height and spread), quantity, quality and location of the plant material to be installed, as well as the name, size, location, and condition of viable, existing vegetation. The plan shall also include a tabulation of required and provided plant materials. The use of Xeriscape principles in the development of such plan is strongly encouraged. No building permit or site plan approval shall be issued unless such landscape plan complies with the provisions herein.

(2) For RS, RS-1, RS-2, RD-1 and RD-2 districts, a sketch plan indicating the general location of new landscaping in relation to existing and proposed structures, property lines and major site improvements such as pools and patios, the type of plant material (tree, palm, shrub, ground cover, turf grass, flower bed) and the approximate size of the plant material at time of installation shall be submitted. The common or botanical name of the plant material shall be indicated to the greatest extent possible to assure compliance with Section 90-195 of the Town Code, "Prohibited Plants, Trees, Shrubs, Weeds and Vegetation," and the Miami-Dade County landscape manual. All existing trees of greater than 3-inch trunk diameter at breast height shall be noted on the sketch as to approximate location and trunk diameter.

F. Minimum Landscape Requirements for all Zoning Districts.

(1) Tree specifications.

a. For all RS, RS-1 and RS-2 Districts there shall be located within the front yard area not less than three (3) trees per platted lot. For RD-1 and RD-2 Districts there shall be not less than nine (9) trees per platted lot, at least three of which shall be in the front yard area. For RM-1 and RT Districts there shall be not less than twenty-eight (28) trees per acre of net lot area. Fractions of a lot or an acre shall require a proportional number of trees to the nearest whole number. Required trees shall be of a species that normally grow to a minimum height of 25 feet and have a mature crown spread of not less than 20 feet with trunks that can be maintained with over six feet of clear wood. Emphasis shall be given to the use of native species.

b. All required trees shall have a minimum caliper – the trunk diameter at breast height - of three inches and be a minimum of 10 feet in height overall at time of planting. A list of approved required trees is available from the Town Building Official.

c. Palms, if required by the Town Building Official, shall be a minimum of 10 feet in height and six feet of grey wood.

d. No more than 40 percent of all required trees shall be of a palm species.

e. Three palm trees shall be clustered to equal one required shade tree. The three palm trees in the cluster shall be of differing heights, with a minimum three-foot stagger between adjacent palms, but, in no case smaller than 10 feet in height. Roystonea sp. (Royal Palm) and Phoenix sp. (Date Palm) may have matching heights. Such clustering shall be determined by the Town Building Official.

f. Painting the trunks of trees or palms any color is prohibited.

(2) Other plant material specifications.

a. *Shrubs and hedges:* Shall be of a self-supporting, woody, evergreen species and shall be a minimum of two feet in height at time of planting. Hedges shall be planted and maintained so that within one year from planting the hedge will form a continuous, solid visual screen, of not less than three feet in height. Spacing of plants shall be no more than 24 inches on center. Double staggered rows may be required in some areas as determined by the Town Building Official.

b. *Ground covers:* May be used in lieu of turf grass. Gravel, crushed rock or similar surface treatments devoid of plant material are not ground cover. Where active use of landscaped yard areas is expected, some turf grass lawn areas to support such use is recommended. Ground covers shall present a finished appearance and reasonably complete coverage at time of planting.

c. *Lawn grass:* For RS, RS-1, RS-2, RD-1 and RD-2 districts, lawn (turf grass) areas shall not exceed 60% of the required landscaped area. For RM-1 and RT-1 Districts, lawn (turf grass) areas shall not exceed 40% of the required landscaped area. The balance of landscaped areas shall be shrubs and ground cover. Turf grasses shall be St. Augustine 'Floratan' solid sod, or other lawn type as approved by the Town Building Official, reasonably free of insects and noxious weeds.

d. *Quality:* Plant material shall comply with required inspections, grading standards and plant regulations as set forth by the Florida Department of Agriculture's "Grades and Standards of Nursery Plants, Part I," latest revision, and "Grades and Standards for Nursery Plants, Part II for Palms and Trees," latest revision, or with any superseding standards set forth in this Ordinance. Plants shall conform to Florida No. 1 (as set forth in the above publications) or better regarding:

- i. *Shape and form.*
- ii. *Health and vitality.*
- iii. *Condition of foliage.*
- iv. *Root system.*
- v. *Free from pest and mechanical damaged.*
- vi. *Heavily branched and with dense foliage.*

e. *Mulch:* All exposed soil areas in planting beds, including hedge rows, shall be kept weed free, and mulched (excluding seasonal color beds) to a minimum one-inch depth (three inches preferable). Mulch should be replenished, as needed, to meet this requirement. The use of shredded and composted Melaleuca, grade B mulch is encouraged.

f. *Vines:* Shall be not less than 24 inches in height at time of planting and may be used in conjunction with fences or walls. Where required, vines shall be supported by either a trellis or other suitable support system that allows the vines to grow to the top of the fences or walls.

g. *Power lines:* Where the height and location of overhead power lines require the planting of low growing trees, trees shall have a minimum height of eight (8) feet, a minimum caliper of one and one-half (1 1/2) inches at time of planting, and shall meet the following requirements:

- i. *Single trunk trees clear of lateral branches to four (4) feet and/or multi trunk trees or tree/shrubs, as referenced in the Miami-Dade County Landscape Manual, cleared of foliage to a height of four (4) feet.*
- ii. *A maximum average spacing of twenty-five (25) feet on center.*
- iii. *Maturing to a height and spread not encroaching within five (5) feet of overhead power distribution lines.*
- iv. *Under high voltage (50kV and above) transmission lines installed independent of under-built distribution lines, tree height and spread shall not exceed the minimum approach distances specified in the current ANSI (American National Standards Institute) Z133.1 Standards.*

(3) *Installation.*

a. *Planting methods:* All plant material shall be installed following accepted planting procedures set forth by the American Association of Nurserymen and The Florida Nurserymen and Growers Association.

b. *Curbing:* Except for RS, RS-1, RS-2, RD-1 and RD-2 districts, landscaped areas, walls, structures, and walks shall require protection from the encroachment or overhang of vehicles. A continuous concrete curb not less than six inches in height, approved by the Town Building Official, shall be installed to prevent encroachment.

c. *Existing plant credit:* In instances where healthy plant material exists on-site (particularly native or Xeriscape species), the Town Building Official may adjust the requirements set forth in this Ordinance to allow credit for such plant material if, in the Building Official's opinion, such an adjustment is in keeping with and will preserve the intent of this Ordinance.

d. *Permit requirements:* A landscape permit will be required prior to installation.

(4) *Irrigation.* Except in RS, RS-1, RS-2, RD-1 and RD-2 Districts, all newly landscaped areas shall be provided with a fully automatic underground irrigation system that provides 100 percent coverage to all landscaped areas. The Town Building Official may approve exceptions for Xeriscaped areas. The irrigation system shall be designed to provide only the required water to sustain viable plant material. The use of a porous, pipe subsurface irrigation system that requires low water volume and pressure is encouraged when adjacent to vehicular roadway areas.

a. *The operation of an irrigation system during periods of heavy rainfall is prohibited and shall conform to standards and regulations as established by the South Florida Water Management District. Irrigation controllers shall be switched to manual operation during periods of increased rainfall. Use of rain gauge sensors is required.*

b. *For purposes of water conservation and good horticultural practice, sprinkler heads irrigating lawns or other high water demand landscape areas shall be circuited so that they are on a separate zone and schedules from those irrigating trees, shrubbery or other reduced water requirement areas.*

c. *Landscape irrigation systems shall be designed so that, to the greatest extent practical, water being applied to non-pervious areas is eliminated.*

d. *Use of non-potable water for use in the irrigation of lawn and plant material is required when available.*

e. Properties that receive three or more code violations in a 12-month period for landscaping that are attributable, wholly or partially, to lack of proper watering shall be required to install an irrigation system.

G. MAINTENANCE

- (1) *General.* In all districts, the property owner shall be responsible for maintaining all landscape material in good condition so as to present a healthy, neat, and orderly appearance which is clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all Town, Miami-Dade County and State if Florida site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extending across the property line or otherwise encroaching on an adjacent property. Trees and tall shrubs shall be maintained and trimmed to prevent branches from extending over or contacting structures on adjacent properties. All lawn turf grasses shall be kept trimmed or mowed to a height not exceeding 8 inches above ground level. Tree species prone to wind damage shall be adequately trimmed prior to and during hurricane season (June - November).
- (2) *Prohibition of litter and untended vegetation.*

 - a. All property owners shall keep such property and the adjoining unpaved portions of the public rights-of-way, swales, and bulkheads clean and free from any accumulation of garbage, trash, or litter.
 - b. Property owners within the Town shall not permit untended vegetation upon the property, and the adjoining portions of the rights-of-way, swales and canal banks.
 - c. Plastic plants or similar artificial landscape materials shall be prohibited except for seasonal decorative displays of less than sixty (60) days' duration.
- (3) *Tree Hatracking.* It shall be unlawful for any person to hatrack any tree within the Town. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section by the Town Building Official.
- (4) *Edging.* Edging shall be accomplished in such a manner so as not to destroy landscaping material.
- (5) *Fertilization.* Landscaping material shall be fertilized as needed to maintain healthy, viable growth. Use of environmentally safe fertilizer is required. The application and use of fertilizer must conform to manufacturer's specifications.
- (6) *Noncompliance by owner.*

 - a. *Notice of violation.* The enforcement of this Ordinance shall be in accordance with the Town Code.

b. *Non-compliance with notice of violation.* In addition to any other remedies provided for by the Town Code, if the property owner fails to complete corrective action by the date specified in the notice of violation, the Town Manager may authorize the correction of the non-complying condition by the Town. The Town shall have the right to mow, trim and/or remove untended vegetation and litter from any property not in compliance with the Town Code and shall have the right to place a lien upon the property in an amount equal to the direct and indirect costs to the Town to remedy the violation(s).

H. TREE REMOVAL PERMIT.

Except for trees or large shrubs listed in Section 90-195 of the Town Code, an existing tree having a trunk diameter of three inches or greater, shall not be removed or relocated without a permit. Tree removal shall include removal of the stump and grinding to ground level, if necessary. In evaluating whether to grant a tree removal permit, the Town Building Official shall consider the size, species (native or not), health, rareness and age of the tree.

A tree survey identifying all existing trees over three inches in diameter shall be included with any building permit application. This survey drawing shall be overlaid directly upon the site plan sufficiently to provide the accurate location of all existing trees which are proposed to be destroyed, relocated, or preserved, the botanical name and common name of each tree, and the diameter, height and canopy spread of each tree.

(1) *Protective Barrier.* During site development, trees designated for preservation shall have protective barriers placed around each tree or cluster of trees at the drip line, or a minimum of six feet (in radius) from the trunk whichever is greater, of any protected tree. In addition, no excess soil, fill, equipment, building materials or building debris shall be placed within the areas surrounded by protective barriers.

(2) *Relocation Standards.* Trees shall be relocated in accordance with the following minimum standards:

a. Tree roots shall be severed a minimum of six weeks prior to relocation and in such a manner to provide a root ball which is sufficient to ensure survival of the tree when relocated.

b. After relocation, a tree shall be watered a minimum of three times per week until the tree is established.

c. Any tree that dies or becomes non-viable within six months of relocation shall be replaced with a tree of comparable species and size, as determined by the Town Building Official.

(3) *Tree removal authorization.* Tree removal may be authorized when one of the following conditions exists:

- a. It is determined by the Town Building Official that tree relocation is not feasible.
- b. An equivalent tree canopy is replaced on the same site. The property owner shall be responsible for replacing any tree that dies with a tree of comparable species and size as determined by the Town Building Official.
- c. The Town Building Official has determined that the tree to be removed is either dead, severely damaged, or a safety hazard.

I. **MINIMUM DESIGN STANDARDS.** The following shall apply to all developments requiring site plan or permit approval except for single and two-family dwellings (RS, RS-1, RS-2, RD-1 and RD-2 districts):

(1) *Landscape Plan.* A landscape plan shall be prepared by, and bear the seal of, a landscape architect licensed to practice in the State of Florida, or by persons authorized to prepare landscape plans or drawings by Chapter 481, Florida Statutes. A landscape plan shall be submitted with the master plan for the development.

(2) *Perimeter Landscape Requirements.* Between dissimilar uses, adjacent to any street right-of-way, plus along the perimeter of all vehicular use areas, there shall be a continuous buffer strip of not less than five feet in width. A buffer strip shall include at least one tree for each 30 linear feet, or portion thereof, of perimeter. Where a buffer strip abuts a vehicular use area, there shall be installed a hedge, berm, or other durable landscaped visual barrier of not less than three feet in height at the time of planting, and solid within one year of planting. Where the vehicular use area is visible from the public right-of-way, a double row of hedge may be required by the Town Building Official. Sod or ground cover with irrigation shall be installed to the edge of pavement. The following are exceptions to the perimeter landscape requirements:

- a. *Access drives:* Necessary accessways shall be permitted to traverse required perimeter buffer strips.
- b. *Abutting a right-of-way but no vehicular use area:* Buffer strips of not less than five feet in width shall require continuous hedges and one tree for every 25 linear feet.
- c. *Abutting another vehicular use area:* Accessways may traverse required buffer strips along common interior lot lines when said accessways

improve overall vehicular circulation within and between abutting properties.

d. RM, RT-1 and B-1 Districts abutting a RS, RS-1, RS-2, RD-1 or RD-2 District: A buffer strip of not less than five feet in width shall include a continuous solid wall, hedge, or other barrier vegetation at least six (6) feet in height, and one tree every 25 linear feet. All walls adjacent to a public roadway are to be located in order to allow vegetation and/or a vine to be planted at the base of the wall to screen the wall for anti-graffiti purposes. In addition, grass or ground cover shall be planted in the remaining open space of the buffer.

(3) Interior Landscape Requirements. For RM-1, RT-1 and B-1 Districts, within the interior of any vehicular use area (total area less required perimeter buffer strips), the following shall be required:

a. When the interior of any vehicular use area is designed for off-street surface parking purposes, the following shall be provided:

i. Terminal Islands: Contiguous rows of parking spaces shall be terminated on both ends with landscaped islands with not less than seven feet in width (excluding curbing), and with a minimum of one tree per each island. The ends of such islands may be tapered to accommodate vehicle circulation. Such islands shall extend the entire length of the parking space and include at least one tree for every 100 square feet, or portion thereof, of said island. The remainder of the terminal island shall be well landscaped with grass or ground cover.

ii. Interior Islands: Landscaped interior islands shall be seven feet in width (excluding curbing) and not less than 90 square feet each in area and shall be placed within individual rows of contiguous parking spaces so that there is not less than one island for every ten parking spaces, or portion thereof and shall continue the full length of the contiguous parking space. At least one tree shall be planted in every interior island and the remainder of the island shall be landscaped with grass or ground cover. Interior islands shall not be placed directly opposite each other when in abutting parking rows, except when a pedestrian walkway crosses a parking area and it is desirable to utilize aligned islands to provide a pathway for pedestrian movements, in which case the island may be paved with interlocking, sand set pavers. The Town Building Official may approve any arrangement that creates a non-regimented appearance, relieves monotony, increases tree canopy and fulfills the requirements of this Ordinance.

Where any row of contiguous parking spaces is located so as to abut another row of contiguous parking spaces, a landscaped divider median of not less than seven feet (excluding curbing) in width shall be required between contiguous rows.

iii. Divider medians: Where any row of contiguous parking spaces is located so as to abut an interior driveway rather than another row of contiguous parking spaces, a landscaped divider median of not less than seven feet (excluding curbing) in width shall be required between said row and the abutting driveway. At least one tree shall be planted for every 25 linear feet of said median and the remainder of said median shall be landscaped with grass or ground cover.

b. When the interior of any vehicular use area is designed primarily for purposes other than off-street parking, such as for drive-in or drive-through banking or retailing, the drive-through lane shall be separated from other vehicular use areas for its entire length, with a five-foot wide (excluding curbing) landscaped area planted with one tree for every 25 linear feet, and with lawn grass or ground cover. The portion of the drive-through lane that is adjacent to the primary structure shall have a minimum three feet wide landscaped area between the structure and the drive-through lane, or as determined by the Town Building Official.

(4) Landscape requirements for non-vehicular use areas. A landscape plan that beautifies, provides shade, and complements the architecture of the adjacent building, which is approved by the Town Building Official.

(5) Clear sight triangles.

a. When an accessway intersects a public street or alley right-of-way, or another accessway, or when the vehicular use area is contiguous to the intersection of two or more public rights-of-way, all landscaping within the triangular areas created by such intersections and defined below shall provide unobstructed vision clearance at an elevation of 30 inches to eight feet in height.

b. Trees having over six feet of clear trunk with limbs and foliage trimmed in such a manner as not to extend into the vision clearance area shall be permitted, provided they in no way create a traffic hazard. No landscaping elements, except for grass, ground cover, or hedges shall be located nearer than five feet to any accessway intersection of a public road.

c. Intersection of two public streets: The vision clearance area shall be the triangular area formed by the intersection of the two streets beginning at the point where property lines meet at the corner, or in the case of rounded property

corners, the point at which they would meet without such rounding, and then extending 25 feet along each property line. The vision clearance area shall be where a diagonal line connects the two furthestmost points.

d. Intersection of any alley or accessway with a public street, or with another alley or accessway: The vision clearance area shall be the triangular area formed by the intersection of the alley or accessway and the other alley, accessway or street beginning at the point where property lines meet at the corner, or in the case of rounded property corners, the point at which they would meet without such rounding, and then extending 15 feet along each property line. The vision clearance area shall be where a diagonal line connects the two furthestmost points.

e. All Town, Miami-Dade County, and FDOT design criteria related to highway safety for landscaping material shall be met by the property owner as required by the Town Building Official.

- (6) Required Landscape or Pervious Areas. Not more than 60 percent of such areas shall be grass. The balance shall be ground cover, shrubs, or other suitable landscape material.
- (7) Dumpsters. All dumpsters shall be completely screened from view from the adjacent properties and the public right-of-way by the use of walls or fences and landscaping material and the location shall be approved by the Town Building Official.
- (8) Retention Areas. Retention areas shall be landscaped with suitable planting material so as to create an aesthetically pleasing appearance and shall be approved by the Town Building Official.
- (9) Drive-through. Drive-through or loading areas shall be screened from view from the adjacent properties and the public right-of-way by the use of landscaping material and shall be approved by the Town Building Official.
- (10) Garage and Building Rooftop Landscaping. Not less than fifty (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 structures, 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 fifty (50) percent of open rooftop parking on garage structures adjacent to upper level residential and hotel units shall be screened through the use of landscaped trellis structures, canopies or shade or palm trees in irrigated planters.

(11) Trellis Structures in the RT-1 District. For the purpose of creating shade, screening and architectural ornamentation, a trellis structure shall be permitted within the internal side and rear setback area subject to the following:

- a. The structure's purpose is to support landscaping material.
- b. The structure must be completely open on all four sides. However, the side abutting an adjacent property may contain virtually transparent plant supporting material (wire mesh or similar).
- c. The structure shall not be roofed.
- d. The top of the structure must be open with an open-to-solid ratio of at least 70 percent open.
- e. The structure shall not exceed ten feet in height. The vertical supports must not exceed eight inches in diameter and be at least twelve feet apart. The entire structure may not cover greater than 35 percent of the yard area in which it is placed.

J. HEDGES, FENCES AND WALLS

(1) Location.

a. Front and Corner Yard Areas - For residentially zoned properties (RS, RS-1, RS-2, RD-1, RD-2, RM and RT-1 districts), within the boundary of a front or corner yard area as defined by the required setbacks in Section 90-155, the following are permitted:

- i. A hedge not exceeding 3 6 feet in height.
- ii. A visually transparent (in accordance with sub section (2)(b) below) fence not exceeding 6 feet in height except that a wood picket fence may not exceed 4 feet in height. A masonry or stone column up to sixteen inches wide, seven feet high and spaced not less than eight feet on center may be erected as a structural support for a fence. Gates must be constructed similar in design and material to the fence.
- iii. A wall not exceeding 3 feet in height. A fence, including wood picket fences, may be erected on top of a wall, overall not to exceed 6 feet in height. All walls on the front property line shall be set back at least one foot (12 inches) to permit foundation plantings to soften and partially screen such walls. Where public concrete sidewalks abut the front property line, the exterior of the wall shall be landscaped at their base with low shrubs or vines spaced not less than ten feet on center for the length of the wall.
- iv. Massed plantings of palms and small trees along property lines shall not be considered as hedges.
- v. All walls and fences within front yard areas shall require review and approval of the Planning and Zoning Board.

b. Interior Side and Rear Yard Areas - For residentially zoned properties (RS, RS-1, RS-2, RD-1, RD-2, RM and RT-1 districts), within the boundary of a side or rear yard the following are permitted:

- i. A hedge not exceeding 8 feet in height.
- ii. A wall or fence (solid or picket) not exceeding 6 feet in height.
- iii. Massed plantings of palms and small trees along property lines shall not be considered as hedges.

c. Commercially Zoned B-1 Properties -

- i. An eight-foot high wall, hedge or fence shall be required along all side and rear commercial B-1 property lines that are contiguous to residential zoned property.

d. Other Locations -

- i. All permitted outdoor storage areas in multiple-family residential and commercial zones shall be visually screened from view by a six-foot high solid wood or masonry fence or wall.

ii. All vacant lots abutting Collins Avenue or Harding Avenue shall be hedged along that portion of the lot that is adjacent to the street right-of-way. The hedge shall not exceed four feet in height, not be lower than two feet in height and shall be of sufficient thickness and density so as to provide a physical and visual barrier similar in effect to a fence. All hedges shall be continually and regularly trimmed, and any dead plants, or plants that fail to bear leaves, shall be regularly and timely replaced. The other portions of said lots shall be hedged or fenced so as to prevent the unauthorized entry of motor vehicles thereon.

iii. Fences or walls to be built in connection with other permitted recreational uses such as baseball backstops, tennis courts, handball courts and the like shall be permitted at the height necessary and customary for the particular use.

iv. No fence, wall or hedge shall be constructed, installed or maintained within six feet of any fire hydrant or other emergency apparatus.

v. As provided in Town Code Section 90-181, Vision Clearances, no fence, wall or hedge shall be constructed, installed or maintained in any manner that creates a visual obstruction to vehicular traffic.

vi. Hedges and trees are strictly prohibited within the Town street rights-of-way except in accordance with any master streetscape-landscape plan prepared and adopted by the Town. Nothing in this section shall be construed to prohibit the planting of low growth landscaping, such as flower beds, in public street right-of-way subject to the following:

a. Prior to planting within any right-of-way area, a landscaping plan shall be provided to the Town for review and approval.

b. Prior to planting in any right-of-way area, the property owner shall obtain a permit from the Town, and shall execute an agreement granting the Town permission to remove any plantings in the right-of-way area along with a release and indemnification agreement in a form acceptable to the Town.

c. In the event that the right-of-way landscaping impedes access, it is subject to removal by the Town without notice and the Town shall have the right to place a lien upon the property in an amount equal to the direct and indirect costs to the Town for removal. The Town shall not be responsible for damage to or restoration of the removed landscaping.

vii. Any permit application for a wall, fence, or landscape planting in any public utility easement of record shall provide that it is subject to revocation by the Town. Every application shall include a letter from the respective utility company controlling such easement granting approval for the wall, fence or planting. Each such wall, fence or planting shall be constructed or planted subject to the conditions that the said wall, fence or planting shall be removed by the owner at any time on request of the utility company requiring the use of the space for utility purposes, and that if the owner of such property fails to remove such wall, fence or planting after request and notice, the utility company or the Town may remove such wall, fence or planting at the property owner's expense. The Town shall have the right to place a lien upon the property in an amount equal to the direct and indirect costs to the Town for removal and shall not be responsible for damage to or restoration of the removed wall, fence or landscape planting.

(2) Walls and Fences – Materials and Specifications.

- a. Walls may be constructed of the following materials:
- i. Coral Rock
 - ii. Concrete block stuccoed on both sides with a concrete cap
 - iii. Slump or adobe brick

iv. Pre-cast Concrete

v. Used red brick, limed red brick or cement brick painted subject to approved by the Planning and Zoning Board.

b. Fences within corner and front yard areas may be constructed of the following materials: wood, ornamental wrought iron, ornamental cast iron or cast aluminum, and vinyl limited to visually transparent picket fences (not more than 50% of the area of said fence, as measured by the overall width times overall height of the fence, may be visually obstructed by the pickets) with no more than three inches between pickets, and shall be painted, except for integral color aluminum and vinyl.

c. i. Fences within interior side and rear yard areas may be constructed of the following materials:

a. Vinyl coated galvanized steel chain link in one of the following colors: black, dark green, forest green, and turf green;

b. Ornamental wrought iron, ornamental cast iron or cast aluminum;

c. Wood; or

d. Vinyl.

ii. Chain link fences shall be landscaped with shrubs or vines so as to fully screen them from view if capable of being seen from a public street right-of-way. Except for weather resistant woods such as redwood, teak, Ipé, and the like, all wood fences must be painted, stained or sealed on each side such that bare construction grade materials are visually finished and maintained in good condition. Fences that are erected with sheathing, pickets or slats on one side only shall have such materials placed on the side of the fence facing the adjacent property in such a manner as to conceal the structural elements of the fence from off-premises view.

d. Ornamental entrances, fountains, plant containers and similar architectural features within front yard areas that exceed the fence height restriction shall be permitted, provided that:

i. No such feature shall exceed nine (9) feet in height;

ii. The feature shall be approved by the Town Building Official; and

ii. There shall be only one such feature in any front yard, except that there may be two entrance gates.

(3) Hedges – Materials and Specifications.

a. Hedge plantings shall conform to Section 90-195 of the Town Code, except that hedge plantings of Ficus species existing on the effective date of Ordinance may be retained in accordance with maintenance standards set forth in this Ordinance and shall be strictly trimmed to the permitted height to contain root growth. Where the potential for root damage to underground utilities exists, the Town may require removal of a Ficus hedge at the owner's expense.

b. The use of Ficus species for new hedge plantings is prohibited except to replace damaged or dead plant material in Ficus hedges existing on the effective date of this Ordinance.

K. PERMEABILITY – MINIMUM DESIGN STANDARDS - SINGLE FAMILY AND DUPLEX.

The following shall apply to all developments in the R, RS-1, RS-2, RD-1, and RD-2 Districts:

- (1) All front yard areas, exclusive of required driveways and entrance ways (but never less than 30 percent of the entire front yard area) shall be landscaped and be readily permeable by rainwater and groundwater, as provided in Section 90-188. Where bricks or pavers of any kind are utilized, openings in them or spaces between them shall not be counted towards the 30 percent landscape requirement.
- (2) Rear yard areas in the RS, RS-1, and RS-2 Districts shall have not less than 40% of the area landscaped and readily permeable by rainwater and groundwater.
- (3) Rear yard areas in the RD-1 district with a required rear yard depth of at least 20 feet shall have not less than 40% of the area landscaped and readily permeable by rainwater and groundwater.

L. RECOMMENDED XERISCAPE PLANT SPECIES FOR LANDSCAPING.

It is recommended that at least 50% of the landscape plant material used consist of Xeriscape plants that are native and subtropical species well adapted to the local climate and growing conditions of South Florida. Xeriscape plants are especially drought tolerant, well-suited to the local soil conditions, relatively pest free, and easily maintained. A recommended list of native Xeriscape plant material is available from the Town.

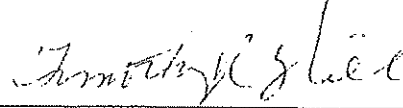
Section 5. Penalty. Any person, persons, firm or corporation violating any of the provisions of this Ordinance, shall, upon conviction thereof, be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 6. Severability. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed insofar as they are in conflict.

Section 7. Inclusion in the Code. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Surfside. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. **Effective Date.** This ordinance shall become effective at the expiration of twenty (20) days after posting in the Town Hall following final passage.

PASSED AND ADOPTED this 13th day of December, 2005.



MAYOR

Attest:




TOWN CLERK

First reading: November 8, 2005

Second reading: December 13, 2005

Effective Date. January 2, 2006

Approved as to form and legal sufficiency:



TOWN ATTORNEY

ORDINANCE NO. 07- 1478

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING"; ARTICLE V "SUPPLEMENTARY REGULATIONS"; DIVISION 1 "GENERALLY"; SECTION 90-183 "FENCES, WALLS AND HEDGES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") recognizes the need to regulate fences, walls and hedges for the health, safety and welfare of the Town; and

WHEREAS, the Commission believes it is in the best interest of the Town to amend the Code of Ordinances to address the placement of fences, wall and hedges.

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

Section 1. Code Amended. The Town Code is hereby amended by amending Section 90-183 "Fences, walls and hedges" included in Chapter 90 "Zoning," Article V "Supplementary Regulations," Division 1 "Generally," which shall read as follows: ¹

Sec. 90-183. Fences, walls and hedges.

1) An ornamental fence, or wall or hedge, not more than five six feet in height, may project into or enclose any side or rear yard, except as otherwise provided herein. The height of such ornamental fence, or wall or hedge shall be measured from the ground upon which it is located. grade. ~~No fence, wall or structure of any kind shall be constructed in a front yard, nor on a corner lot in a side yard, where such side yard abuts a public right-of-way. An ornamental hedge with a height of not more than three feet shall be permitted~~

¹ Proposed additions to existing town code text are indicated by underline; proposed deletions from existing town Code text are indicated by ~~striketrough~~.

An ornamental fence or wall may be placed within the front yard or side corner yard if granted approval by the Design Review Board.

3) Hedges shall be no more than ~~three~~ four feet in height in the front yard and side corner yards and ~~six~~ ten (10) feet in height in the rear and side yards. Hedges may be higher if granted approval by the Design Review Board, on a case by case basis.

4) Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 190-181 (vision clearance) or fire codes including the concealment of fire hydrants.

5) No fence, wall or hedge may be placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than one hundred and fifteen (115) feet in width shall be permitted provided that it is understood by the property owner that the Town does not waive its right to demand removal without notice as deemed necessary within the Town's discretion and Town shall not be liable for any damages arising from such removal. Property owner plants said materials at his/her own risk. All improvements, other than groundcover (defined as plant material other than grass no more than twenty-four (24) inches in height) shall be placed on private property.

6) Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which the it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside

of the fence provided that the horizontal rails are at least 50% covered by boards on the side facing away from the property on which the fence is constructed

7) It shall be a violation under this article for any person to erect or maintain a structure to serve as a fence in a manner that endangers the health, safety, and welfare of the public as described in this section and as determined by the Town Manager.

8) The following fencing material shall be prohibited:

a. Chainlink and other wire fencing

b. Loosely attached masonry products, such as concrete blocks, bricks or other similar products not bonded together by mortar or comparable adhesive.

9) Chain link fences located in the front yard or street side yard shall be removed within 180 days of the adoption of this Ordinance. No grandfathering of chain link fences shall be permitted in the front yard or in the street side yard. No grandfathering of chain link fences shall be permitted in interior side yard and rear yards if the fence is not covered by plant materials.

10) An 8ft high fence or wall shall be required along all side and rear commercial B-1 property lines that are contiguous to residential zoned properties.

11) In all districts, the owner, or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat, and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extending across the property line or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy neat and orderly appearance is being maintained shall be determined by the Town Manager or his designee.

Section 2. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

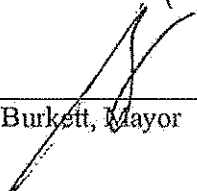
Section 3. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective in ten (10) days after second reading.

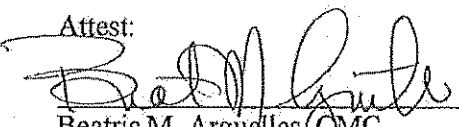
PASSED and ADOPTED on First Reading the 10th day of April, 2007.

PASSED and ADOPTED on Second Reading this 15 day of May, 2007.



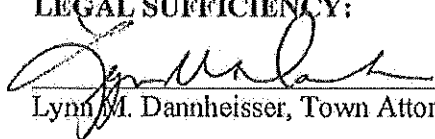
Charles W. Burkett, Mayor

Attest:



Beatris M. Arguelles, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Lynn M. Dannheisser, Town Attorney

Moved by: Levine
Second by: Imberman

Vote:

Mayor Burkett	yes	<input checked="" type="checkbox"/>	no	_____
Vice Mayor Weinberg	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Blumstein	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Imberman	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Levine	yes	<input checked="" type="checkbox"/>	no	_____

Ordinance No. 07-1478

Listed under
both:
"Fences...." &
"Vision Clearing"

ORDINANCE NO. 08-1491

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" OF THE CODE OF SURFSIDE, FLORIDA BY REPEALING AND REPLACING CHAPTER 90 ENTITLED "ZONING" IN ITS ENTIRETY; ADOPTING A NEW CHAPTER 90 ENTITLED "ZONING" INCLUDING ADOPTION OF AN OFFICIAL TOWN ZONING MAP FOR ALL DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") indicated its desire to update and streamline its existing Zoning Code to better reflect the Town's future needs and community vision; and

WHEREAS, the Town has undertaken a comprehensive rewrite of the Zoning Code as well as the creation of an official Zoning Map; and

WHEREAS, this Ordinance purports to now repeal and replace Chapter 90 "Zoning" in its entirety, including but not limited to, the previously and separately adopted "Sign Code" as well as the adoption of an official zoning map, all of which is incorporated into the revised Zoning Code attached hereto as Exhibit "A"; and

WHEREAS, after numerous public workshops considering recommendations of staff and public opinion, and after conducting a properly noticed public hearing on December 20, 2007, the Local Planning Agency (the Planning and Zoning Board) has recommended that the aforementioned Zoning Code and Official Zoning Map contained attached as Exhibit "A" as advisable and consistent with the Town Comprehensive Plan; and

WHEREAS, the Town Commission has reviewed this Ordinance at duly noticed and held public hearings beginning January 8, 2008 and determined that it is consistent with the Town's comprehensive plan, the adopted vision of the Town developed in 2006 in the Town charette (as evidenced by the post-charette booklet), as well as all requirements of the law; and

WHEREAS, the Local Planning Agency (the Planning and Zoning Board) considered and approved the "Sign Code" as a separate ordinance (Sign Code Ordinance) which ordinance is now fully folded and incorporated into this ordinance containing the zoning code in its entirety, and

WHEREAS, the Sign Code Ordinance adopted by the Planning and Zoning Board contained the following recitals relating to Division II. "Signs" Sections 90-71 through 90.80 which are hereby incorporated into and fully adopted as part of this ordinance and the zoning code adopted herein. They are as follows:

"WHEREAS, the Town has determined that there is a need to amend its sign regulations to address recent federal cases addressing sign regulation in the Eleventh Circuit Court of Appeals; and

WHEREAS, the Town Commission finds and determines that the Town's sign regulations were always intended to maintain and improve the aesthetics, quality of life, and safety of the Town and its residents, while meeting the need for signage that clearly identifies locations, advertises businesses, and otherwise communicates commercial and noncommercial messages; and

WHEREAS, sign regulation designed to advance the governmental purpose of aesthetics has long been upheld by the state and federal courts; and

WHEREAS, as long ago as 1954, the U.S. Supreme Court recognized that "the concept of the public welfare is broad and inclusive," that the values it represents are "spiritual as well as physical, aesthetic as well as monetary," and that it is within the power of the Town Commission to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled," in *Berman v. Parker*, 348 U.S. 26, 33 (1954), which was followed by *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980); and

WHEREAS, sign regulations have been held to advance these aesthetic purposes and advance the public welfare in *City of Lake Wales v. Lamar Advertising Ass'n of Lakeland, Florida*, 414 So. 2d 1030 (Fla. 1982); and

WHEREAS, the Town Commission finds and determines that the Town's zoning regulations are required to regulate signs as provided by Sign Code 163.3202(2)(f), Florida Statutes; and

WHEREAS, the Town Commission finds and determines that this Ordinance is consistent with all applicable policies of the Town's adopted Comprehensive Plan; and

WHEREAS, the Town Commission finds and determines that the Town has consistently adopted severability provisions in connection with its Code of Ordinances and Zoning Code, and that the Town wishes to assure that its severability provisions will be applied to its Zoning Code, including its sign regulations at Chapter 90; and

WHEREAS, in several recent judicial decisions, the courts have failed to give full effect to severability provisions applicable to sign regulations, and expressed uncertainty over whether Town Commission's intended that severability would apply to certain factual situations despite the plain and ordinary meaning of the severability clauses; and

WHEREAS, the Town Commission is aware that the failure of some courts to apply severability clauses has led to an increase in litigation by billboard developers and other applicants seeking to strike down sign regulations in their entirety so that they may argue that their applications to erect billboards or other signs must be granted; and

WHEREAS, the Town Commission desires that there be an ample and unequivocal record of its intention that the severability clauses it has adopted related to its sign regulations shall be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances, or other sign provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the Town Commission further finds and determines that the Town has long allowed non-commercial speech to appear wherever commercial speech appears and that it has codified that practice through the adoption of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages; and

WHEREAS, the Town Commission specifically intends that this substitution clause and past practice be applied so that its sign regulations can never be construed to impermissibly favor commercial messages over noncommercial messages, and desires to amplify this substitution clause in this Ordinance to bolster its effectiveness; and

WHEREAS, the Town further provides for the political expression of its residents, as required by *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), by allowing a permanent non-commercial sign to be posted in any residential zoning district;

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on December 20, 2007, and recommended its adoption; and

WHEREAS, the Town Commission has reviewed the Ordinance in its entirety including the sign code which had previously been adopted separately and is now incorporated into the zoning code at a duly noticed hearing and determined that it is consistent with the Town's comprehensive plan; and

WHEREAS, the Town Commission hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

WHEREAS, the Town Commission hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest as well as promotes the public health, safety and welfare of the citizens of the Town of Surfside.

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

Section 1. Recitals. Each of the above stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption of the Zoning Code. The Town Commission hereby repeals the existing Chapter 90 "Zoning" of the Town Code (including Division II Signs) and replaces it with the Zoning Code and Official Zoning Map attached hereto as composite Exhibit "A" and incorporated as if fully set forth herein.

Section 3. Repeal of Conflicting Provisions.

All provisions of the Code of the Town of Surfside and any prior Official Zoning Maps that are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part. It should be noted Section 90-71 of the Code contains its own severability clauses with respect to "Division II Signs" and these severability provisions with respect to Signs shall govern over this general severability clause if any section of the Code between Section 90.71 through 90.80 is held invalid or unconstitutional.

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

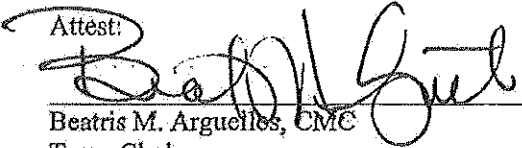
Section 6. Effective Date. This Ordinance shall be effective upon adoption on second reading.

PASSED and ADOPTED on First Reading the 12th day of July, 2008.

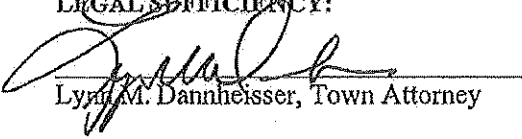
PASSED and ADOPTED on Second Reading this 13th day of May, 2008.


Charles W. Burkett, Mayor

Attest:


Beatris M. Arguelles, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Lynn M. Dannheisser, Town Attorney

Moved by: Vice Mayor Douberman

Second by: Commissioner Calderon

Vote: 4-1

Mayor Burkett	yes	no	<input checked="" type="checkbox"/>
Vice Mayor Weinberg	yes	no	<input checked="" type="checkbox"/>
Commissioner Blumstein	yes	no	<input checked="" type="checkbox"/>
Commissioner Imberman	yes	no	<input checked="" type="checkbox"/>
Commissioner Levine	yes	no	<input checked="" type="checkbox"/>

ORDINANCE NO. 09-1520

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING"; ARTICLE V "DESIGN STANDARDS"; SECTION 90-56 "FENCES, WALLS AND HEDGES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") recognizes the need to regulate fences, walls and hedges for the health, safety and welfare of the Town; and

WHEREAS, the Commission has attempted to create regulations to address the specific needs of this unique community and continues to amend these regulations to address the placement of fences, walls and hedges as they may best suit the needs of the community; and

WHEREAS, the Planning and Zoning Board as the local planning agency for the Town held its hearing on the proposed amendments to the fence, walls and hedges regulations on December 18, 2008 with due public notice and input; and

WHEREAS, the Town Commission held its first public hearing on March 10, 2009, having complied with the notice requirements required by Florida Statutes; and

WHEREAS, the Town Commission shall have conducted a second duly noticed public hearing on these regulations as required by law on April 14, 2009.

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

Section 1. Code Amended. The Town Code is hereby amended by amending Section 90-56 "Fences, walls and hedges" included in Chapter 90 "Zoning," Article V "Design Standards" which shall read as follows:

¹ Sec. 90.56

Fences, walls and hedges

90.56.1

An ornamental fence or wall not more than six (6) feet in height, as measured from grade crown of road, may project into or enclose any yard, ~~except as otherwise provided herein~~ an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall.

90.56.3~~2~~

An ornamental fence or wall may be placed within the front yard or primary corner yard if granted approval by the Design Review Board.

90.56.3

Ornamental fences or walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in Table 90.56.4:

90.56.4

Front Yard and Corner Yard Ornamental Fences and Walls - Table

<u>Lot Frontage</u>	<u>Maximum Height (Feet)</u>	<u>Maximum Opacity (percent)</u>
<u>Less than or equal to 50 ft in width</u>	<u>3 ½ FT</u>	<u>All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent</u>
<u>Wider than 50 ft and less than 100 ft</u>	<u>3 ½ FT + ½ FT per 10 feet of lot width exceeding 50 feet, maximum 5 FT</u>	
<u>Wider than or equal to 100 ft</u>	<u>3 ½ FT + ½ FT per 10 feet of lot width exceeding 50 feet, maximum 6 FT</u>	
<u>Secondary frontage (Corner only)</u>	<u>Shall adhere to the height and opacity limitations for corresponding lot frontage</u>	

90.56.5

Modification of secondary frontage ornamental fence regulations.

1. An ornamental fence that has a maximum opacity of 100% and a maximum height of five (5) feet, as measured from grade, may project into or enclose up to fifty (50%) percent of the rear portion of the primary corner yard provided that the fence shall be placed at least ten (10) feet from the right of way line or the fence shall be aligned with the wall plane of the subject home.

2. Section 90.56.4 (Modification of secondary frontage ornamental fence regulations) shall not be applied to ornamental walls, which shall adhere to the height and opacity limitations for the corresponding lot frontage.

90.56.6

When being installed as a safety feature for a swimming pool in a front or primary corner yard, an ornamental fence or wall shall be permitted at a maximum of four (4) feet in height. The applicant shall demonstrate

¹ Proposed additions to existing town code text are indicated by underline; proposed deletions from existing town Code text are indicated by strikethrough.

- evidence relative to this hardship.
- 90.56.27 ~~The height of such ornamental fence or wall shall be measured from grade, the elevation of the crown of the road upon the street serving the lot or building site. A berm or retaining wall shall not be created with the purpose of increasing the grade such that an ornamental wall or fence height exceeds the maximum height permitted by this Code.~~
- 90.56.4 ~~Ornamental walls and fences placed within the front yard or side corner yard shall be subject to the following:~~
- ~~a. The top twenty (20) percent of the wall shall have variations in height at regular intervals and it shall be consistent with the architectural etyle of the building; or~~
 - ~~b. All wall surfaces above twenty-four (24) inches measured from grade shall maintain a maximum opacity of fifty (50) percent; or~~
 - ~~c. No ornamental walls and fences shall have a continuous distance on the same plane of greater than ten (10) feet and planes shall be separated by a minimum of three (3) feet. Areas between the plane offset shall be landscaped.~~
- 90.56.68 In order to prevent water ponding at the base of ornamental walls, the installation of weep holes or other similar drainage features shall be required. The number and spacing shall be determined per lot per review.
- 90.56.69 Hedges shall be no more than four (4) feet in height in the front yard and side corner yards and ten (10) feet in height in the rear and interior side yards. Hedges may be higher if granted approval by the Design Review Board, on a case-by-case basis.
- 90.56.710 Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of Section 90-52 (Required Clearances) or fire codes, including concealment of fire hydrants.
- 90.56.811 No fence, wall or hedge maybe placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than one hundred and fifteen (115) feet in width shall be permitted, provided that it is understood by the property owner that the Town does not waive its right to demand removal without notice as deemed necessary within the Town's discretion and the Town shall not be liable for any damages arising from such removal. Property owner shall install or plant such materials at own risk. All improvements, other than groundcovers, as defined in the landscape section, shall be placed on private property.
- 90.56.912 Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property, such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside of the fence provided that the horizontal rails are at

- least fifty (50) percent covered by boards on the side facing away from the property on which the fence is constructed.
- 90.56.4013 It shall be a violation under this Article for any person to erect or maintain a structure to serve as a fence in manner that endangers the health, safety, and welfare of the public as described in this Section and as determined by the Town Manager or designee.
- 90.56.4114 The following fencing material shall be prohibited:
- a. Chain-link and other wire fencing
 - b. Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.
- 90.56.4215 No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.
- 90.56.4316 In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property line or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the Town Manager or designee.
- 90.56.4417 Temporary construction fences shall be permitted. The maximum height of such fence shall be six (6) feet as measured from crown of road. The fence shall be constructed of wood or chain-link and shall be concealed with a windscreen.

Section 2. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 3. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall become effective in ten (10) days after second reading.

PASSED and ADOPTED on First Reading the 10 day of March, 2009.

PASSED and ADOPTED on Second Reading this 14 day of April, 2009.

Charles W. Burkett, Mayor

Attest:

Renee Castro

Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Lynn M. Dannheisser
Lynn M. Dannheisser, Town Attorney

On Second Reading Moved by: Commissioner Levine

On Second Reading Seconded by: Commissioner Calderon

Vote:

Mayor Burkett	yes	<input checked="" type="checkbox"/>	no	_____
Vice Mayor Imberman	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Calderon	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Levine	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Weinberg	yes	<input checked="" type="checkbox"/>	no	_____

Ordinance No. 09-1520

ORDINANCE NO. 09-1529

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING"; ARTICLE V "DESIGN STANDARDS"; SECTION 90.2 "DEFINITIONS" AND SECTION 90-56 "FENCES, WALLS AND HEDGES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") recognizes the need to regulate fences, walls and hedges for the health, safety and welfare of the Town; and

WHEREAS, the Commission has attempted to create regulations to address the specific needs of the this unique community and continues to amend these regulations to address the placement of fences, walls and hedges as they may best suit the needs of the community; and

WHEREAS, the Planning and Zoning Board as the local planning agency for the Town held its hearing on the proposed amendments to the fence, walls and hedges regulations on May 28, 2009 with due public notice and input; and

WHEREAS, the Town Commission held its first public hearing on June 9, 2009, having complied with the notice requirements required by Florida Statutes; and

WHEREAS, the Town Commission shall have conducted a second duly noticed public hearing on these regulations as required by law on July 15, 2009.

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

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Code Amended. The Town Code is hereby amended by amending Section 90.2 Definitions and 90-56 "Fences, walls and hedges" included in Chapter 90 "Zoning," Article

V "Design Standards" which shall read as follows:

Sec. 90.2 Definitions.

Ornamental: when used to describe a wall constructed for beauty, decorative, or security effect.

Sec. 90.56 Fences, walls and hedges

90.56.1 An ~~ornamental~~ A fence or ornamental wall not more than six (6) feet in height, as measured from grade, may project into or enclose an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall.

90.56.2 An ~~ornamental~~ A fence or ornamental wall may be placed within the front yard or primary corner yard if granted approval by the Design Review Board.

90.56.3 ~~Ornamental~~ Fences or ornamental walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in Table 90.56.4:

90.56.4 Front Yard and Corner Yard ~~Ornamental~~ Fences and Ornamental Walls - Table

Lot Frontage	Maximum Height (Feet)	Maximum Opacity (percent)
Less than or equal to 50 ft in width	3 ½ FT	All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent
Wider than 50 ft and less than 100 ft	3 ½ FT + ½ FT per 10 feet of lot width exceeding 50 feet, maximum 5 FT	
Wider than or equal to 100 ft	3 ½ FT + ½ FT per 10 feet of lot width exceeding 50 feet, maximum 6 FT	
Secondary frontage (Corner only)	Shall adhere to the height and opacity limitations for corresponding lot frontage	

90.56.5 Modification of secondary frontage ~~ornamental~~ fence and ornamental wall regulations.

1. An ~~ornamental~~ A fence that has a maximum opacity of 100% and a maximum height of five (5) feet, as measured from grade, may project into or enclose up to fifty (50%) percent of the rear portion of the primary corner yard provided that the fence shall be placed at least ten (10) feet

from the right of way line or the fence shall be aligned with the wall plane of the subject home.

~~2. Section 90.56.4 (Modification of secondary frontage ornamental fence regulations) shall not be applied to ornamental walls, which shall adhere to the height and opacity limitations for the corresponding lot frontage.~~

2. An ornamental wall whose surface above two (2) feet measured from grade maintains a maximum opacity of fifty (50%) percent and a maximum height of five (5) feet, may project into or enclose up to fifty (50%) percent of the rear portion of the primary corner yard provided that the ornamental wall shall be placed at least ten (10) feet from the right of way line or the ornamental wall shall be aligned with the wall plane of the subject home.

- 90.56.6 When being installed as a safety feature for a swimming pool in a front or primary corner yard, ~~an ornamental~~ a fence or ornamental wall shall be permitted at a maximum of four (4) feet in height. The applicant shall demonstrate evidence relative to this hardship.
- 90.56.7 The height of such ~~ornamental fence~~ or ornamental wall shall be measured from grade. A berm or retaining wall shall not be created with the purpose of increasing the grade such that an ornamental wall or fence height exceeds the maximum height permitted by this Code.
- 90.56.8 In order to prevent water ponding at the base of ornamental walls, the installation of weep holes or other similar drainage features shall be required. The number and spacing shall be determined per lot per review.
- 90.56.9 Hedges shall be no more than four (4) feet in height in the front yard and side corner yards and ten (10) feet in height in the rear and interior side yards. Hedges may be higher if granted approval by the Design Review Board, on a case-by-case basis.
- 90.56.10 Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of Section 90-52 (Required Clearances) or fire codes, including concealment of fire hydrants.
- 90.56.11 No fence, wall or hedge maybe placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than one hundred and fifteen (115) feet in width shall be permitted, provided that it is understood by the property owner that the Town does not waive its right to demand removal without notice as deemed necessary within the Town's discretion and the Town shall not be liable for any damages arising from such removal. Property owner shall install or plant such materials at own risk. All improvements, other than groundcovers, as defined in the landscape section, shall be placed on private property.
- 90.56.12 Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete

block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property, such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside of the fence provided that the horizontal rails are at least fifty (50) percent covered by boards on the side facing away from the property on which the fence is constructed.

- 90.56.13 It shall be a violation under this Article for any person to erect or maintain a structure to serve as a fence in manner that endangers the health, safety, and welfare of the public as described in this Section and as determined by the Town Manager or designee.
- 90.56.14 The following fencing material shall be prohibited:
- a. Chain-link and other wire fencing
 - b. Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.
- 90.56.15 No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.
- 90.56.16 In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property lone or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the Town Manager or designee.
- 90.56.17 Temporary construction fences shall be permitted. The maximum height of such fence shall be six (6) feet as measured from crown of road. The fence shall be constructed of wood or chain-link and shall be concealed with a windscreen.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

Section 6. Effective Date. This ordinance shall become effective after adoption on second reading.

PASSED and ADOPTED on First Reading the 6 day of June, 2009.

PASSED and ADOPTED on Second Reading this 15 day of July, 2009.

Charles W. Burket, Mayor

Attest:


Debra E. Eastman, MMC
Town Clerk

Approved as to form and legality for the use
and benefit of the Town of Surfside only:


Lynn M. Dannheisser
Town Attorney

Ordinance No. 09-15-29

On Second Reading Moved by: Commissioner Calderon

On Second Reading Seconded by: Commissioner Levine

Vote:

Mayor Burkett	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Vice Mayor Imberman	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Calderon	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Levine	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Weinberg	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>

ORDINANCE NO. 10- 1549

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING"; ARTICLE V "DESIGN STANDARDS"; SECTION 90-56 "FENCES, WALLS AND HEDGES"; CREATING SECTION 90-56.1 PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") recognizes the need to regulate fences, walls and hedges for the health, safety and welfare of the Town; and

WHEREAS, the Commission has attempted to create regulations to address the specific needs of the this unique community and continues to amend these regulations to address the placement of fences, walls and hedges as they may best suit the needs of the community; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments to the fence, walls and hedges regulations on February 25, 2010 with due public notice and input; and

WHEREAS, the Town Commission held its first public hearing on February 9, 2010, having complied with the notice requirements required by Florida Statutes; and

WHEREAS, the Town Commission shall have conducted a second duly noticed public hearing on these regulations as required by law on March 9, 2010.

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

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Code Amended. The Town Code is hereby amended by amending Section 90-56 "Fences, walls and hedges" and creating Section 90-56.1 "Construction Fencing" included

in Chapter 90 "Zoning," Article V "Design Standards" which shall read as follows:

Sec. 90.56 Fences, walls and hedges

- (n) The following fencing material shall be prohibited:
- (1) Chain-link and other wire fencing, except as permitted herein.
 - (2) Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.
- (o) No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.
- (p) In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property line or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the town manager or designee.
- (q) ~~Temporary construction fences shall be permitted pursuant to standards provided in subsection 90-56.1. The maximum height of such fence shall be six feet as measured from crown of road. The fence shall be constructed of wood or chain link and shall be concealed with a windscreen.~~

90-56.1 Construction Fencing

A. Temporary construction fencing. No person or entity shall install or construct a temporary construction fence in this Town without first obtaining a permit from the Town's Building Department. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.

B. Permitted fences.

- (1) Except on Harding Avenue and Collins Avenue, the following temporary construction fences are permitted in all the zoning districts:
- (a) Wrought iron or blackened aluminum.
 - (b) Stucco and stone match main structure.
 - (c) Masonry walls pursuant to section 90-56(1).
 - (d) Wood pickets.
 - (e) Concrete wall pursuant to section 90-56(1).
 - (f) Frame plywood panel.
 - (g) Chain-link fences with canvas (or similar material) are permitted if the property owner or agent has obtained a demolition permit from the Building Department. The chain-link fence shall be permitted to be utilized as a demolition fence for a period of no longer than two months or until expiration of the demolition permit, whichever occurs first. However, such demolition fence shall not be removed until the installation of a permitted construction fence, as defined in this section. The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel

remain without a protective barrier. Any person or entity found to be in violation of this subsection shall be subject to a fine of \$500 per day.

(2) A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.

(3) Chain-link fences with canvas (or similar material) backing or meshing may be permitted, provided they are neatly designed and maintained as approved by the Building and Zoning Departments.

C. Prohibited fences.

(1) The following fences are not permitted, except as otherwise provided in Code herein below:

(a) Chain-link fences.

(b) Barbed-wire fences.

(c) Fences made of canvas material.

(d) Any fences that fail to meet the requirement of the Florida Building Code.

(2) Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are neatly designed and maintained as approved by the Building and Zoning Departments.

D. Maximum and minimum height. A fence is permitted a maximum height of 12 feet and a minimum height of six feet.

E. Setbacks. A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the Town Commission. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No temporary construction permit shall be issued unless a landscape plan is approved by the Town for the buffer. Failure to maintain the landscaping will result in the Town taking action to replace same and lien the property for the costs of landscaping.

F. Expiration of permit. A temporary construction fence permit issued under this chapter shall expire upon the issuance of a certificate of occupancy. The temporary fence shall remain on the property until the completion of construction, provided that it shall be removed in accordance with the terms of the Florida Building Code.

G. Murals and graphics. Graphics and murals on temporary construction fencing are prohibited unless approved by the Town Commission at site plan review pursuant to section 90-20. The Town Commission, in its discretion, may permit graphics and painted murals on temporary construction fences for aesthetic enhancement of the fence and advertisement of the project to be constructed at site plan review.

H. Fees. The Town Manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the Building Official.

I. Access gates. All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.

J. Temporary construction signs. Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.

K. Appeals. Any decision made by the Town Manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the Town Commission.

L. Enforcement and penalties. The Code Enforcement and Building Department shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to a \$500 fine per day.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

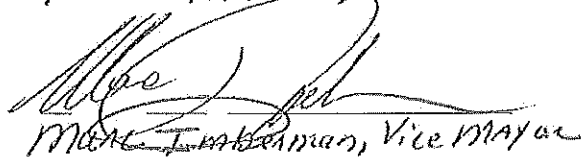
Section 4. Inclusion in the Code. It is the intention of the Commission, and it is hereby ordained that this Ordinance shall become and be made a part of the Town of Surfside Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

Section 6. Effective Date. This ordinance shall become effective after adoption on second reading.

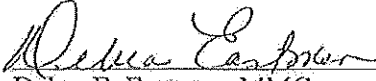
PASSED and ADOPTED on First Reading the 9 day of February, 2010.

PASSED and ADOPTED on Second Reading this 9 day of March, 2010.

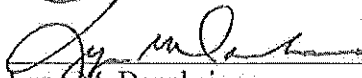

MICHAEL J. Imboden, Vice Mayor

Attest:

Ordinance No. 10-1549


Debra E. Eastman, MMC
Town Clerk

Approved as to form and legality for the use
and benefit of the Town of Surfside only:


Lynn M. Damheisser
Town Attorney

On Second Reading Moved by: Vice Mayor Imberman

On Second Reading Seconded by: Commissioner Steven Levine

Vote:

Mayor Burkett	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Vice Mayor Imberman	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Calderon	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Levine	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Weinberg	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>

Listed under
both:
"Fences" &
"Vision Clearance"

ORDINANCE NO. 10-1558

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" OF THE CODE OF SURFSIDE, FLORIDA BY REPEALING AND REPLACING CHAPTER 90 ENTITLED "ZONING" IN ITS ENTIRETY; ADOPTING A NEW CHAPTER 90 ENTITLED "ZONING" INCLUDING ADOPTION OF AN OFFICIAL TOWN ZONING MAP FOR ALL DISTRICTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") has been updating and streamlining its Zoning Code and had amended its official Zoning Map to better reflect the Town's future needs and community vision; and

WHEREAS, this Ordinance purports to repeal and replace Chapter 90 "Zoning" in its entirety, including but not limited to, Ordinance 08-1491, all subsequent amendments thereto, up through and including the date of this Ordinance (and including but not limited to 08-1504, 08-1505, 09-1510, 09-1514, 09-1515, 09-1520, 09-1523, 09-1524; 09-1526; 09-1528, 09-1529; 09-1532; 09-1539; 09-1542; 10-1545; 10-1549; 10-1550; 10-1551 and 10-1552) as well as the official Zoning Map, as may have been amended from time to time, all of which is incorporated into the revised Zoning Code attached hereto as Exhibit "A"; and

WHEREAS, after the prior intended adoption on May 13, 2008 as well as the hearings for each amendment thereto since 2008, and properly noticed public hearings on each amendment before the Local Planning Agency pursuant to Section 163.3174 (4) (c) which in each case determined that the aforementioned Zoning Code, Official Zoning Map, and all updates thereto contained attached as Exhibit "A" were (and are) consistent with the Town Comprehensive Plan; and

WHEREAS, the Town Commission has reviewed this Ordinance at duly noticed and held public hearings beginning June 8, 2010 and before the LPA which again determined that it is consistent with the Town's comprehensive plan and the continuing development of the vision of the Town, as well as all other requirements of the law; and

WHEREAS, all of the recitals contained in Ord. 08-1491 are hereby incorporated into and fully adopted as part of this ordinance and the zoning code adopted herein.

WHEREAS, the Town Commission hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest as well as promotes the public health, safety and welfare of the citizens of the Town of Surfside.

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

Section 1. Recitals. Each of the above stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption of the Zoning Code.

- A. The Town Commission hereby repeals the existing Chapter 90 "Zoning" of the Town Code (including Division II Signs) and replaces it with the Zoning Code, the Official Zoning Map, together with all amendments to the Zoning Code adopted since May 13, 2008 attached hereto as composite Exhibit "A" and incorporated as if fully set forth herein subject only to the removal of "hotel" as a permitted use from the H30C.
- B. It is the not the intent of this Ordinance to increase existing heights, densities or intensities in any manner whatsoever. Accordingly, regardless of the measurements, computations or considerations, the density, intensity and

height of development and structures within the Town of Surfside shall not exceed the maximum allowable floor areas, maximum allowable floor area ratios or the maximum allowable building heights that are set out in the Town of Surfside Comprehensive Plan or the Code of the Town of Surfside, whichever provisions are most restrictive, which were in effect on the date that this amendment was adopted by the electorate in 2004 and to the extent it was further implemented by the Zoning Code previously in effect in 2007.

Section 3. Repeal of Conflicting Provisions.

All provisions of the Code of the Town of Surfside and any prior Official Zoning Maps that are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part. It should be noted Section 90-71 et. seq. of the Code contains its own severability clauses with respect to "Division II Signs" and these severability provisions with respect to Signs shall govern over this general severability clause if any section of the Code between Section 90.71 through 90.80 is held invalid or unconstitutional.

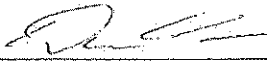
Section 5. Inclusion in the Code. It is the intention of the Town Commission, and it is hereby ordained that the provision of this Ordinance shall become and made part of the Town of Surfside, Florida, Code of Ordinances; that the sections of this Ordinance may be renumbered or

re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.


Section 6. Effective Date. This Ordinance shall be retroactive to May 13, 2008 upon adoption on second reading.

PASSED and ADOPTED on First Reading the 8th day of June, 2010.

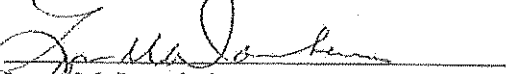
PASSED and ADOPTED on Second Reading this 10th day of Aug, 2010.



Daniel Dietch, Mayor

Attest:


Debra Eastman
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Lynn M. Dannheisser, Town Attorney

Moved by: Commissioner Kopelman

Second by: Commissioner Karukin

Vote:

Mayor Dietch	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Vice Mayor Graubart	yes	<input type="checkbox"/>	no	<input checked="" type="checkbox"/>
Commissioner Karukin	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Kopelman	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Olchyck	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>

ORDINANCE NO. 12- 1590

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" AND SPECIFICALLY AMENDING SECTION 90-56.1-4 "FENCES, WALLS, AND HEDGES" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") by Ordinance 12-1558, § 2 adopted regulations for fence, walls, and hedges height and opacity limitations as related to the lot frontage; and

WHEREAS, the Commission having already heard one request for a fence in the front setback on the condition of satisfying the fence height requirement now anticipates the height requirement will need to be amended which can be easily handled by the Town Manager and the Town Commission hereby wishes to increase the height limitation; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, shall conduct a hearing on the proposed amendment on June 28, 2012 with due public notice and input; and

WHEREAS, the Town Commission shall have conducted a first duly noticed public hearing on these regulations as required by law on July 17, 2012; and

WHEREAS, the Town Commission shall have conducted a duly noticed second public hearing on these regulations as required by law on August 15, 2012.

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

Ordinance No. _____

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:

Sec. 90-56. - Fences, walls and hedges.

90-56.1 A fence or ornamental wall not more than six (6) feet in height, as measured from grade, may project into or enclose an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall.

90-56.2 A fence or ornamental wall may be placed within the front yard or primary corner yard if granted approval by the Design Review Board.

90-56.3 Fences or ornamental walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in Table 90-56(d).**4.**

90-56.4 Front yard and corner yard fences and ornamental walls—Table.

Lot Frontage	Maximum Height (Feet)	Maximum Opacity (Percent)
Less than or equal to 50 ft in width	3½-4 ft	All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent
Wider than 50 ft and less than 100 ft	3½ 4ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 5 ft	
Wider than or equal to 100 ft	3½ 4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 6 ft>	
Secondary frontage (Corner only)	Shall adhere to the height and opacity limitations for corresponding lot frontage	

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.

Ordinance No. _____

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.

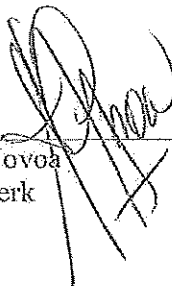
PASSED and ADOPTED on first reading this 17 day of July, 2012.

PASSED and ADOPTED on second reading this 15 day of August, 2012.



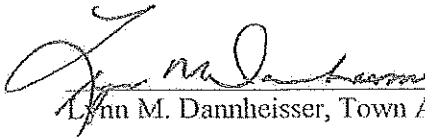
Daniel Dietch, Mayor

Attest:



Sandra Novoa
Town Clerk

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



Lynn M. Dannheisser, Town Attorney

Ordinance No. _____

On First Reading Moved by: Commissioner Kligman

On Second Reading Seconded by: Comisstoner Rligman

Vote:

Commissioner Michelle Kligman	yes	<input checked="" type="checkbox"/>	no	_____
Commissioner Marta Olchyk	yes	<input checked="" type="checkbox"/>	no	_____
Vice Mayor Michael Karukin	yes	<input checked="" type="checkbox"/>	no	_____
Mayor Daniel Dietch	yes	<input checked="" type="checkbox"/>	no	_____

Ordinance No. _____

ORDINANCE NO. 1317

AN ORDINANCE AMENDING SECTION 18-32 OF THE CODE OF THE TOWN OF SURFSIDE BY ADDING SUBSECTION (B) REQUIRING PERMIT TO PLANT TREES, SHRUBS OR FLOWERS OR PLACE ANY STRUCTURE IN THE PUBLIC RIGHT-OF-WAY; PROVIDING INCLUSION IN THE CODE; PROVIDING PENALTY FOR VIOLATION OF THE PROVISIONS HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:

Section 1. That Section 18-32 of the Code of the Town of Surfside is hereby amended by adding a new Subsection (B) at the end thereof to read as follows:

- (B) It shall be unlawful for any person, firm or corporation to plant or cause to be planted any tree, shrub or flowers or to place any structure in the public right-of-way or anywhere on public property without a permit from the Town Manager. The grade of the public right-of-way adjacent to private property shall not be altered except by written permission from the Town Manager.

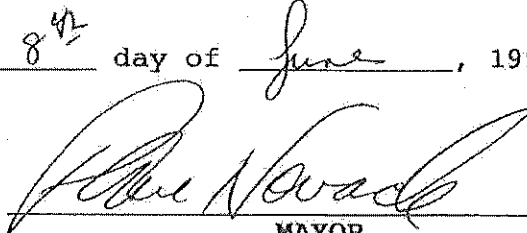
Section 2. That any person, persons, firm or corporation violating any of the provisions of this ordinance, shall, upon conviction thereof, be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 3. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed insofar as they are in conflict.

Section 4. That it is the intention of the Commission of the Town of Surfside, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of the Town of Surfside. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article" or other appropriate word.

Section 5. That this ordinance shall become effective at the expiration of twenty (20) days after posting in the Town Hall following final passage.

PASSED AND ADOPTED this 8th day of June, 1993.


MAYOR

Attest:


TOWN CLERK

First reading: 5-11-93

Second reading 6-8-93

Adopted: 6-8-93

Approved as to form and legal sufficiency:


TOWN ATTORNEY

Sec. 90-52. - Required clearances.

As an aid to free and safe movement of vehicles at and near street intersections and in order to promote more adequate protection for the safety of children, pedestrians, operators of vehicles and for property, for proposed construction hereafter, there shall be limitations on the height of fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and other fixtures, construction, and planting on corner lots in all districts where front yards are required as follows:

- (a) All corner properties shall provide and maintain unobstructed corner clearance areas measured a distance of 25 feet along both the front and side lot lines, measured from the point of intersection, of the intersecting lot lines.
- (b) All objects within any corner areas as previously defined shall be limited to a maximum height of 24 inches above the established elevation of the nearest curb;
- (c) Any permanent or semi-permanent structures, including trees or shrubs, with the exception of walls or fences subject to the height limitations stated herein, shall not be allowed or constructed within any part of the corner clearance areas; and
- (d) It shall be unlawful for any person to plant or cause to be planted any tree or shrubs or to place any structure in the public right-of-way without a permit from the Town Manager or designee. The elevation grades of the public right-of-way adjacent to private property shall not be altered.

(Ord. No. 1558, § 2(Exh. A), 8-10-10)

Sec. 90-92. - Sight triangles and clearances.

When the subject property abuts the intersection of one or more streets or access ways, all landscaping within the triangular area located within 25 feet of the intersection of the front and side street property lines shall provide unobstructed cross-visibility at a level between 30 inches and eight feet, with the exception of tree trunks that do not create a traffic hazard. The property owner shall be responsible for maintaining all landscaping within the cross-visibility triangle. Landscaping, except required turf and groundcover, shall not be located closer than five feet from the edge of any roadway and three feet from the edge of any alley or pavement. All sight triangles shall be indicated on the landscape plans.

NOTE: The town traffic engineer shall have final approval of the clear sight triangles.

(Ord. No. 1558, § 2(Exh. A), 8-10-10)

Subj: **RE: Surfside's P & Z**
 Date: 5/4/04 9:29:13 AM Eastern Daylight Time
 From: jlluft@earthlink.net
 To: CoastalJoe@aol.com

Thanks for your question,

The issue seems to be that certain corner lots in Surfside were originally developed with homes oriented toward the long dimension of the lot; i.e. turned to face the side street such that what the code defines as the "Front" yard (the short dimension of the lot) actually functions as a side yard for those particular homes. This has some importance since many of these homes have fenced in this side area (actually defined as the "front" of the home in the code) and use it as a private outdoor yard area. Because this area is legally defined as the "front yard" such a six foot high privacy fence would not be allowed – only a 3 ½ foot high picket fence. Meanwhile, the actual front of their home is not fenced and the main house entrance faces a yard that is open to the street as most homes are. Yet this "side yard" could have a privacy fence 6' high but the layout of the home (living room in the front – kitchen in the back) doesn't really work for this yard to be a private living area.

So the compromise needs to recognize that for **existing** corner lot homes that are built facing the "side" street yard area, some exception or waiver to preserve the privacy of the area that is actually the "front yard" but needs to have screening or fencing should be provided in the new ordinance to allow a hedge or fence 6 foot high. The City attorney interjected that the code should not allow such exceptions but that these cases should be treated as variances. I disagree because your new variance ordinance requires a finding of "hardship" such that one would have to demonstrate that all reasonable use of the property would be denied in order to grant the variance. Not being able to have a private "front" yard is an inconvenience and a frustration but it does not meet the test of "denial of all reasonable use" and so would have to be denied. Thus the code needs to have an administrative waiver available for these preexisting cases.

-----Original Message-----

From: CoastalJoe@aol.com [<mailto:CoastalJoe@aol.com>]
Sent: Monday, May 03, 2004 10:34 PM
To: JLLUFT@earthlink.net
Cc: Jimeores@aol.com
Subject: RE: Surfside's P & Z

Hello Jack:

This is Joe Graubart from the Surfside P & Z. I'm the one that was sitting (to your right) next to the town's Attorney.

I am writing you regarding concerns you made at the very end of the last P & Z meeting... the hedge and fence ordinance. It was late and I believe that you were cut short. In particular, you wanted to address some residential lots that may be unusual and need special attention or addressed in the ordinance in such a way as to address their needs? We all learned that most residents don't know their side yards or front yards from their back yard. They therefor may or may not understand how the ordinance may affect their lot?

What I'm saying or questioning is: It seemed to me that you had a revelation that night regarding some of the residential lots?

Will you kindly share your thoughts on this with our liaison Commissioner Orestes Jiminez and Mayor Will.

As you know, the Town does not grant variances very easily and if you believe the ordinance should be written to accommodate these unusual residential lots, I'm sure that both the Mayor and Commission would like to know. As you know, Mayor Will respects and values your input and opinion greatly.

Friday, May 07, 2004 America Online: CoastalJoe

Thank You, Joe Graubart

Amendment to:

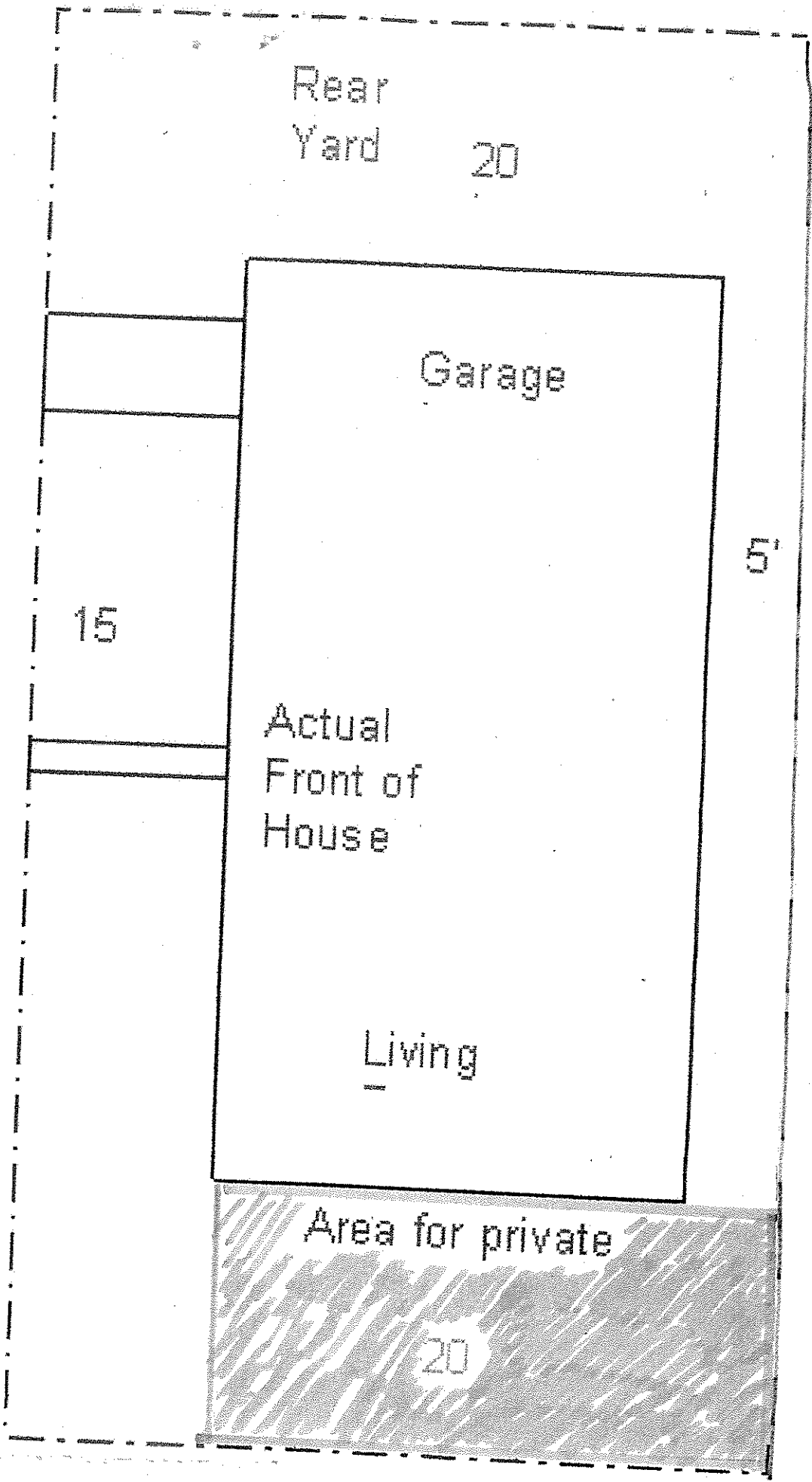
Section 90-92 Special Exceptions

Adding a paragraph

(4) An exception to permit a hedge greater than three feet in height as permitted by Section 90-194. Landscaping Requirements J(1)a. but not to exceed 6 feet in height on a corner lot where the primary building entrance is oriented to the street side yard and ten feet or less in width as measured from the building wall to the side property line is available for private recreational space within the interior side yard area that functions effectively as the residence's rear yard area. The Planning and Zoning Board shall review the application and, if approval is recommended to the Commission, may include conditions or limitations on type of plant material, maximum height (if less than six feet) and setbacks of the hedge, if any, from property lines to provide improved compatibility with adjacent properties.

Steve: Note that Section 90-58 does not specifically grant the P&Z board the right to review special exceptions. Perhaps this needs to be added to 90-58 since it appears to be an oversight that Special Exceptions are the only zoning applications they do not automatically review.

As to the issue of cleaning up the Code, in Section 90-121 the table shows the old CO-1 district which has been eliminated (it is no longer in the Article IV District Regulations but does not show the recently adopted NCS-O Neighborhood Commercial Services Overlay District (for Publix). Likewise in Sec. 90-155, Table I there is a listing for RMO-1 (Residential Mixed Use Overlay) which no longer exists and is not in Article IV District Regulations.



Rear
Yard 20

Garage

15

Actual
Front of
House

Living

Area for private

20

20

SIDE
(Street
)

Subj: **RE: Fences - Walls**
Date: 2/2/2009 2:49:51 P.M. Eastern Standard Time
From: ldannheisser@townofsurfsidefl.gov
To: stevine@townofsurfsidefl.gov, CoastalJoe@aol.com, gword@townofsurfsidefl.gov, ssinatra@calvin-giordano.com
CC: daniel.dietch@ch2m.com

Karen advises she has taken Joe's comments and incorporated them. I will check.

-----Original Message-----

From: Steve Levine
Sent: Monday, February 02, 2009 2:29 PM
To: CoastalJoe@aol.com; Gary Word; ssinatra@calvin-giordano.com; Lynn Dannheisser
Cc: Daniel Dietch
Subject: RE: Fences - Walls

I concur with what Joe is speaking about. In fact, right now the homes which abut the vacant parking lot on 96th street already have a wall for that very reason. It makes sense for homes on interior lots which are adjacent to the sewer pumping stations for example.

Steve

From: CoastalJoe@aol.com [CoastalJoe@aol.com]
Sent: Friday, January 30, 2009 10:58 AM
To: Gary Word; ssinatra@calvin-giordano.com; Lynn Dannheisser; Steve Levine
Cc: Daniel Dietch
Subject: RE: Fences - Walls

Hello All:

Thank you for your consideration to the 'special' needs residents living in corner lot homes have, as compared to interior lot homes. I hope you conclude with a 'rule' or code that addresses their concerns. As you continue to review and visit these corner lot properties, you will note that many have no 'traditional' backyard. The orientation of their home (address - front door) seems to dictate yard use.

I spoke quite a long while ago at a workshop and with Ms. Dannheisser about homes that abut 'municipal' property or are on a particularly busy or dangerous thoroughfare ie: Harding/Collins Ave. Residents living in homes abutting 96th Street for example may want to put a 'solid' wall to help eliminate noise, dust, dirt, etc., - Also, those homes abutting municipal properties may have similar needs. There are three municipal pumping stations in Town that abut homes.

I am humbly and respectfully suggesting that the above concerns be included or 'written-in' this new or revised code to prevent the need for these residents to ask for variances.

I am available to express these concerns, review properties, or any input that you may find helpful.

Perhaps our Town Manager and/or Ms. Sinatra would be kind enough to spend fifteen minutes or so to view these properties and address the above concerns.

Thanking you all in advance,

Joe Graubart
305 865 5576
Jan. 30, 2009

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