



TOWN OF SURFSIDE
Joint Meeting of the Town Commission and Tourist Board
Monday October 6, 2014 – 6:00 p.m.
Town Hall Commission Chambers
9293 Harding Avenue, 2nd Floor
Surfside, FL 33154

AGENDA

- I. Call to Order and Roll Call**
- II. Review of proposed changes to the Resort Tax Ordinance**
- III. Review of proposed Tourist Board Operating Procedures**
- IV. Review of proposed Tourist Board Conflict of Interest and Ethics Policy**
- V. Public Comment**
- VI. Recommendations to Staff**

- VII. Adjournment**

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. 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 305-861-4863 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING.

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.

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Town of Surfside Commission Communication

Agenda Item #

Agenda Date: October 6, 2014

Subject: Resort Tax Ordinance / Tourist Board Policies & Procedures, Ethics and Governance

Background: *This initiative is part of the Town Manager's Transition: Status Report and Work Plan.*

This joint meeting with the Town Commission (Commission) and Tourist Board (Board) was a request by the Commission to address the proposed changes to the Resort Tax Ordinance as well as determine possibly the establishment of Board Operating Procedures, a Conflict of Interest and Ethics Policy and to address Board Governance.

The objective of this meeting is to provide definitive direction to the Town Administration (Administration) by meeting together at one time. Similar to a previous joint meeting between the Commission and the Planning & Zoning Board, this meeting will better align the vision and direction of the two bodies as well as seek to avoid a repeat occurrence of what transpired on these initiatives earlier this year whereby the Commission and Board were not in agreement. Any changes in the Resort Tax Ordinance (Ordinance), et al, will come before the Commission at the November 18, 2014 meeting for ratification.

Attachment A: Surfside Town Charter reference to Resort Tax and the Board (Sec. 69-A).

Attachment B: Article IV. Resort Tax Sec. 70-106 through Sec 70-128 ~ existing ordinance with recommended changes.

Attachment C: Tourist Board Operating Procedures recommendation.

Attachment D: Tourist Board Conflict of Interest and Ethics Policy recommendation.

Attachment E: Commission Communication/Agenda Packet Information from March 11, 2014 meeting.

Attachment F: Chapter 67-930 Sec.8 Laws of Florida ~ powers and procedural references.

Preparing for the projected substantial increase in Resort Tax revenue, and the inherent new opportunities this increase affords, was a driving force behind completing the now approved Five Year Tourism Strategic Plan. This plan confirmed the view that the Board's mission will include the challenge of appropriately managing its increasing portion of the Resort Tax revenue; the need to formalize for the first time policies and procedures; and create an ethics policy.

The Board started to address these various issues in January 2013 and focused fifteen (15) meetings, plus two (2) dedicated workshops, on developing the Tourist Board Operating Procedures, an Ethics Policy and Board Governance (Attachment C & D). With the assistance of Robert Meyers Esq., former Executive Director of the Miami-Dade Commission on Ethics, the majority of the Tourist Board Members supported all that was subsequently presented to the Commission for first reading on February 11, 2014.

The Board, while always consisting of educated and passionate residents, should include industry professionals if the Town is to ensure ultimate success in an extremely competitive tourism environment locally, nationally and globally. Staff believes that such expanded participation to include representation by the tourism industry is a logical and necessary next step.

The increase in Board membership was recommended to the Commission by the Board and included in the Ordinance approved on first reading at the February 20, 2014, Commission meeting.

At first reading, there were concerns expressed that there should not be more than one tourism industry representative from the same entity appointed to the Board and that the TEDACS Director should not have specific spending authority.

Attachment E is the information included in the Commission agenda packet at the March 11, 2014 meeting. At this meeting, upon second reading, the Commission directed the Administration to return to the Board to vet the proposals as there was lack of support by the Commission to move the recommendations forward. Some on the Commission felt that having a more stringent ethics policy for the Board was not necessary even though the Board's role in expending funds is unique to the Town, even unique to other Boards or Committees, and notwithstanding the projected increase in those funds and the potential scrutiny that may and has ensued. Also, the automatic provision of voting of Chair and Vice Chair positions annually was deemed too onerous and unnecessary.

As the Board majority of the day supported all that was presented, and had vetted the recommendations over the course of fifteen (15) months, the Administration suggested that these items should wait until after the Commission election of March 18, 2014 and to have the newly appointed members to the Board address these matters.

The new Board met for the first time on May 5, 2014 with their orientation packets including information on these matters. As three (3) out of the five (5) Board members are new to the roles

and responsibilities of the Board, the Board as a whole required time to absorb the workings of the Tourist Bureau and Town; the approved Five Year Tourism Strategic Plan; and eminent Town Budget process let alone the existing Ordinance (with recommended changes / Attachment B). A meeting was scheduled for the Board to only discuss in detail this initiative for September 8, 2014; however the meeting did not occur due to a lack of quorum. The Board has received information packets on this matter a minimum of three times over the course of the last five (5) months and the TEDACS Director has conducted outreach on a number of occasions to the members in an effort to answer any questions any of them may have.

Analysis: The following are recommendations previously approved by the Tourist Board and should be discussed at the October 6, 2014 meeting in an attempt to provide direction regarding these issues:

Sec. 70-109 (a): Removal of taxation on identifiable food and beverage take-out.

Sec. 70-124 (a): Increase board membership from five to seven members to include two tourism industry professionals appointed by the majority vote of the Town Commission. No two members, shall not be representatives from the same hotel, company or entity.

(f) Stricter requirements to attend meetings and to remain active Board members.

Sec. 70-126 (6): Amend fiscal year budget plan language to align with the Town's existing procedure for departments.

Sec 70-128: Clarify expenditure and management of funds to align with the Town's existing procurement and expenditure policies.

There should also be a provision that requires hotels to provide occupancy reports (total number of rooms) on a monthly basis to accompany their Resort Tax submission. This would provide Staff with information that will assist in revenue verification via cursory auditing of Resort Tax submittals.

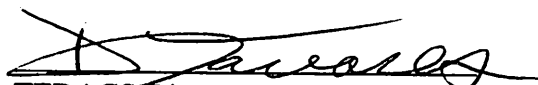
An amended Ordinance, along with the accompanying recommendations (Attachment s C and D) will provide the Commission, the Board and Administration with a more concise and professional reference and guide that transcends any one person's interpretation or views on these matters. This will succinctly assist with implementing the statutory requirements and mission associated with collecting and expending Resort Tax funds in an open, transparent manner.

It is important to note that while the Board has all of the power and authority to expend its Resort Tax funds; it is only the Town Commission that has the authority, by Town Charter, to enter into contracts. However, Chapter 67-930 Sec.8 Laws of Florida (Attachment F) does allow for this provision to be granted by a vote of four fifths (4/5) from the Board and Commission.

Budget Impact: It will be difficult for some restaurants to differentiate what is consumed on property versus that taken off premises (eg Starbucks and Serendipity). It will also be difficult for the Town to ensure proper compliance by said businesses because of this very issue. The resulting loss of revenue, by no longer requiring resort tax on take out, should be minimal compared to the overall revenue received. However it is important to note that the figure could be as high as \$10,000 per year or more. The Town will need to closely evaluate and scrutinize the tax exceptions submitted by the affected businesses. All other recommendations have no budgetary impact.

Staff Impact: None. However annual audits of businesses applying the take out exemption will be necessary to ensure compliance as best possible and to mitigate the loss of revenue being anything but minimal.

Recommendation: The Administration seeks policy direction from this new Board and Commission to provide definitive direction. (n.b. Attachment F as a vote of four fifths (4/5) is required by the Board and Commission for adoption of “membership, qualification for membership, tenure and any other power” changes)


TEDACS Director


Town Manager

Sec. 69-A. Resort tax.

The Town of Surfside shall have the right, pursuant to the provisions of Laws of Fla. ch. 67-930, as amended by Laws of Fla. ch. 83-363, to impose, levy and collect a municipal resort tax, not to exceed four per cent (4%) upon the rent of rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp as same are defined in F.S. ch. 212, and not to exceed two per cent (2%) upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises, provided that the tax shall not apply to sales which are less than fifty cents (50¢). The total receipts from the above tax levy shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. Said fund shall be used for the following purposes only: payment of necessary expenses of collecting, handling and processing of said tax; creating and maintenance of convention and publicity bureaus, cultural and art centers; enhancement of tourism; publicity and advertising purposes; for the future cost, purchase, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or other structures; and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.
(Res. No. 677, § 1, 10-12-67; Ord. No. 1285, § 1, 8-11-92)

ARTICLE IV. RESORT TAX*

***Charter reference - Resort Tax, § 69-A.**

Sec. 70-106. Short title of article.

This article shall be known as the Surfside Resort Tax Ordinance.

Sec. 70-107. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment house means any building or part thereof where separate accommodations for two or more families living independently of each other are supplied to transient or permanent guests or tenants either owned or operated by an individual, trust, or corporate entity. The term "apartment house" shall include houses, condominium, bungalow courts, timeshare rentals, and all other dwellings or similar character.

Appeal is the process for requesting a formal change to an official decision.

Audit means an examination and verification of accounting records and supporting documents.

False or fraudulent return means a return that is filed with incorrect and/or incomplete information.

Guest means any person making a retail purchase of (a) food or beverages; or (b) alcoholic beverages sold at retail for consumption on the premises, at any restaurant or other business premises required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department.

Hotel and *motel* mean every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, whether or not there is, in connection with any of the building, any dining room, cafe or other place where meals or lunches are sold or served to guests.

Lawful means obeying or conforming to the law.

Occupancy means the use or possession or the right to the use or possession of any room in a hotel, motel or apartment house, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of such room.

Occupant means a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, motel or apartment house under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a hotel, motel, apartment house or any person operating a restaurant or other premises serving or selling at retail food or beverages, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department in the town, including but not limited to the owner or proprietor of such premises, the

lessee, sublessee or mortgagee in possession, the licensee, or any other person otherwise operating such hotel, motel, apartment house, restaurant or other premises.

Person means an individual, partnership, society, association, joint stock company, corporation, estate receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Rent means the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Restaurant means any business or place for the serving of food or beverages required by law to be licensed by the Hotel and Restaurant Commission of the State, or any premises required by law to be licensed by the State Beverage Department for the sale of alcoholic beverages.

Return means any return filed or required to be filed as provided in this article.

Room means any room of any kind in any part or portion of a hotel, motel or apartment house, which is available for or let out for use or possession for any purpose other than as a place of public assembly.

Sales price means the retail sales price charged by the operator to a guest, consumer or any other person for each sale of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises.

Special master or special magistrate means a person appointed pursuant to this chapter.

Take out means consumption away from and/or within the environs of the business.

Town manager means the town manager of the town or designee.

Unlawful means not obeying and not conforming to the law.

Sec. 70-108. Violations of article generally.

(a) Any operator or other person who fails or refuses to register as required in this article or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the town manager, or who renders a false or fraudulent return or claim shall be guilty of a violation of this article and shall be punishable as provided in section 1-8

(b) Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be guilty of a violation of this article and shall be punishable as provided in section 1-8

(c) In addition to the foregoing the town, in its sole discretion, may revoke all other licenses including, but not limited to, certificate of occupancy, certificate of use, and such other licenses as permitted by law.

Sec. 70-109. Imposition; amount.

(a) There is hereby levied and there shall be paid a tax of four percent on the rent of every occupancy of a room in any hotel, motel or apartment house in the town,

and also two percent upon the total sales price of all items of food or beverages sold at retail and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises ~~or consumption away from and/or within the environs of the business (take-out)~~ of any restaurant or business selling such items.

(b) As provided by Ordinance No. 1286, enacted on August 11, 1992, in lieu of the tax imposed and levied pursuant to section 70-109(a) above, there is hereby imposed and levied a municipal resort tax:

(1) Upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, as the same are defined in Part I, Chapter 212, Florida Statutes, in the town, at the rate of four percent of the rent received by the person renting such room or rooms from the person paying such rent; and

(2) Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises ~~or consumption away from and/or within the environs of the business (take-out)~~ of any restaurant or at any place of business selling such items in the town required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department, at the rate of two percent of such retail sales price.

(c) The tax shall constitute a debt owed by the occupant or guest to the town which shall be extinguished only by payment to the operator or to the town. The occupant or guest shall pay the tax to the operator of the hotel, motel, apartment house or restaurant at the time the rent or the sales price is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the occupant's ceasing to occupy space in the hotel, motel or apartment house. The operator is solely responsible for payment to the town regardless of the operator's collection deficiencies and/or inability to collect from the occupant or guest.

Sec. 70-110. Exemptions, applicability.

(a) No municipal resort tax shall be imposed pursuant to this article upon:

(1) Federal, state or town governments, or any agency thereof.

(2) Any nonprofit religious, nonprofit educational or nonprofit charitable institution when engaged in carrying on the customary nonprofit religious, nonprofit educational or nonprofit charitable activities.

(3) Persons and transactions exempted as provided by section 4, chapter 67-930, Laws of Florida, 1967.

(b) No municipal resort tax shall be paid on any transaction involving rent or a sales price of less than fifty cents (\$.50). No municipal resort tax shall be imposed or paid on any rents collected under a written lease for a period longer than six consecutive months.

Sec. 70-111. Registration required; registration certificate.

(a) Within 30 days after the effective date of the ordinance from which this article is derived, or within 30 days after commencing business, whichever is later, each operator of any hotel, motel, apartment house or restaurant shall register the hotel, motel, apartment house or restaurant with the town manager and obtain a resort tax registration certificate, to be posted in a conspicuous place on the premises at all times. The certificate shall, among other things, state the following:

(1) The name of the Operator, mailing address and names of the corporate officials if applicable.

(2) The address of the hotel, motel, apartment house or restaurant.

(3) The date upon which the certificate was issued.

(b) Such certificate shall contain the following statement:

"This Resort Tax Registration Certificate signifies that the Person named on the face hereof has fulfilled the requirements of the Resort Tax Ordinance by registering with the Town Manager for the purpose of collecting from Occupants or Guests the Resort Tax and remitting said tax to the Town Manager. This certificate does not authorize any Person to conduct any unlawful business in an unlawful manner, nor to operate a Hotel, Motel, Apartment House or Restaurant without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this Town. This certificate does not constitute a permit."

(c) Such registration certificate shall not be assignable or transferable, and each new operator shall be required to obtain a new registration certificate.

(d) All businesses must secure an annual business tax receipt, an annual occupational license, certificate of occupancy and certificate of use. As permitted by law the issuing of these licenses is conditional upon payment of all outstanding resort tax returns.

Sec. 70-112. Collection by operator.

Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent or sales price is collected from every occupant or guest. No operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator; that it will not be added to the rent or sales price; or that, if added, any part will be refunded except in the manner provided in this article.

Sec. 70-113. Records to be maintained by operator.

It shall be the duty of every operator to keep all records as may be necessary to determine the amount of tax due pursuant to this article and to preserve such records for a period of three years. The town manager, or his/her designee including independent auditors, shall have the right to inspect such records at all reasonable times and to conduct an audit as deemed necessary. The following records shall be kept available for inspection/audit: invoices of product purchases, sales receipts, tax receipts submitted to the State of Florida, tax returns, and all other relevant documents.

Sec. 70-114. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the town manager within one year of the date of payment. The claim shall be on forms furnished by the town manager.

(b) An operator may claim as a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, or when it is established in a manner prescribed by the town manager that the person from whom the tax has been collected was not an occupant or guest lawfully subject to the tax collected pursuant to this article; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the occupant or guest or credited to rent subsequently payable by the occupant or guest to the operator.

(c) An occupant or guest may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the town, by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the occupant or guest directly to the town manager or when the occupant or guest, having paid the tax to the operator, establishes to the satisfaction of the town manager that the occupant or guest has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto with supporting documents as outlined in section 70-113. No refund or credit shall be allowed unless a signed affidavit and claim in writing is timely filed with the town manager as described in subsection (a) above.

Sec. 70-115. Operator's credit for collecting tax.

For the purpose of compensating the operator for the keeping of prescribed records and the proper accounting and remitting of taxes by him, such operator shall be allowed two percent of the amount due and accounted for and remitted to the Town, in the form of a deduction, in submitting his report and paying the amount due by him, and the town manager shall allow such deduction of two percent of the amount of the tax to the person paying the tax for remitting the tax in the manner provided in this article and for paying the amount due to be paid by him. The amount of compensation is not to exceed \$50.00 per monthly remittance per registered business. The two-percent allowance shall not be granted, nor shall any deduction be permitted, where the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports.

Sec. 70-116. Filing of return; remittance of tax.

Each operator shall, on or before the 30th day of the month following the close of each calendar month, or at the close of any longer reporting period which may be

established by the town manager, make a return on forms provided by the town manager, of the total rent or sales prices charged and received and the amount of tax collected. Operators shall file a zero return if applicable. At the time the return is due and filed, the full amount of the tax collected, less the applicable operator's credit for collecting tax shall be remitted to the town manager. Applicable penalties will be applied for any late submittal of returns and the operator's credit will not qualify. The town manager may, establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax, and he may require further information on the return. Returns and payments are due immediately upon cessation of business for any reason. All returns shall be accompanied with copies of tax receipts filed with the county/state. The town reserves the right to conduct a resort tax audit of the participating businesses. All taxes collected by operators pursuant to this article shall be held in trust for the account of the town until payment thereof is made to the town. The filing of returns electronically is mandatory upon notification from the town manager.

Sec. 70-117. Delinquency penalties; interest.

(a) *Original delinquency.* Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

(b) *Continued delinquency.* Any operator who fails to remit such tax on or before the 30th day following the date on which the tax first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax, plus the ten percent penalty first imposed.

(c) *Fraud.* If the town manager determines that the nonpayment of any tax due under this article is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest, at the rate of one percent per month or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(e) *Penalties and interest merged with tax.* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid under this article.

Sec. 70-118. Failure to collect and report tax; determination of tax by town manager.

(a) If any operator shall fail or refuse to collect the tax imposed by this article and to make, within the time provided in this article, any report and payment of the tax or any portion thereof required by this article, the town manager shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the town manager shall procure such facts and information as he is able to obtain, upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the tax and to make such report and payment, the

town manager shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article.

(b) If any operator charged in this section fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such operator or person, fails or refuses to register as an operator, or fails to make a report and pay the tax as provided by this division, or makes a grossly incorrect report, or makes a report that is false or fraudulent, it shall be the duty of the town to make an assessment from an estimate based upon the best information then available to it for the taxable period of sales or rentals, together with interest, plus penalty, if such have accrued, as the case may be. Then the Town shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest with the operator.

(c) The town manager may charge a reasonable fee for obtaining information which requires the ascertainment of the amount of any tax collected by the operator or any prorations and any expenses entailed by the town in determining the prorations of any amount collected or due upon any transfer.

(d) In case such determination is made, the town manager shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed, at his last known address. Such operator may, within five business days after the serving or mailing of such notice;

- (1) Pay the amount due and any additional assessed fees in the manner and within the time indicated on the notice; or
- (2) Request an administrative hearing before a special master to appeal the decision of the town manager which resulted in the assessed tax, interest, and penalties.

(e) An appeal of the determination of the tax notice shall be accomplished by filing a request in writing setting forth the specific grounds of fact and in law for the appeal, at the address indicated on the tax determination notice, not later than five business days after the service of the tax determination notice. Failure of the named violator to appeal the decision of the town manager within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before a special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and the penalties shall be assessed accordingly.

(f) If the named violator, after service of the tax determination notice, fails to pay the tax assessed, interest, and penalties, or timely request an administrative hearing before a special master, the town manager shall prepare an affidavit of default. The affidavit must so reflect and must set forth a request that the special master issue an order finding the violator guilty of a continuing violation, imposing continuing delinquency penalties to be effective beginning on the date of the tax determination notice, and ending at the date the taxes, fees, and penalties are paid. The town manager in consultation with a special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

Sec. 70-119. Hearing procedures; enforcement of orders.

(a) Upon receipt of a named violator's timely request for an administrative hearing for any tax determination notice, or upon receipt of affidavit(s) of noncompliance from the town manager, the special master shall set the matter down for hearing on the next scheduled hearing date or as soon thereafter as possible.

(b) The manager shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:

- (1) The name of the town manager or designee who issued the tax determination notice.
- (2) The factual description of the alleged violation constituting reasonable cause.
- (3) The date of alleged violation.
- (4) The section of the Code allegedly violated.
- (5) The place, date and time of the hearing.
- (6) The right of a violator to be represented by an attorney.
- (7) The right of violator to present evidence, witnesses and cross-examine witnesses, if not waived pursuant to section 70-118(e).
- (8) Notice that failure of the violator to attend the hearing may result in a civil penalty and administrative hearing costs being assessed.
- (9) Notice that requests for continuances will not be considered unless received by the special master at least five calendar days prior to the date set for the hearing, and absent a showing of good cause.

(c) If there are cases to be heard, the special master shall call hearings on a monthly basis or upon the request of the manager, no hearing shall be set sooner than ten calendar days from the date of service of the civil violation notice, excluding Saturdays, Sundays and holidays.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by a special master and the manager at least five calendar days prior to the date set for the hearing.

(e) All hearings of a special master shall be open to the public. All testimony shall be under oath. Upon proper prior notice, a hearing shall proceed in the absence of the named violator or the special master may enter a default order.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The town clerk shall provide clerical services and the manager shall provide administrative personnel as may be reasonably required by special masters for the proper performance of their duties.

(h) Each case before a special master shall be presented by the manager, his or her designee or the town attorney. The manager shall have the authority to retain legal counsel for the special master upon request.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) A special master shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the town manager's decision, a special master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the Code.

(l) The fact-finding determination of the special master shall be limited to whether or not the violation alleged occurred, and, if so, whether the person named in the notice of violation may be held responsible for that violation. Based upon this fact-finding determination, a special master shall either affirm or reverse the decision of the town manager as to the responsibility of the named violator of the code violation. If a special master reverses the decision of the Town Manager and finds the named violator not responsible for the code violation in the alleged civil violation notice because the town did not present a preponderance of evidence to indicate that such violator is responsible for the violation, then, and in that case, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special master's findings pursuant to section 70-120 hereof.

(m) If the decision of the special master is to affirm the decision of the town manager, the following elements shall be included:

- (1) The amount of tax, fees, and penalties in the tax determination notice and as otherwise provided for herein.
- (2) Administrative costs of hearing in the amount of not less than \$200.00.
- (3) The date by which the violation must be corrected to prevent resumption of continuing violation penalties, if any.

(n) If correction is not made within the period set by the special master, continuing violation penalties shall begin to accrue again after the time for correction has run and the town manager has filed an affidavit of noncompliance and a notice of continuing violation. The town manager shall serve on the violator a copy of the affidavit of noncompliance and a notice of continuing violation which shall include the following:

- (1) Date of issuance.
- (2) A reference to the order of the special master that continues to be violated.
- (3) Notice of the right to request an administrative hearing before the special master and instructions on how to file the request.
- (4) Notice that failure to request an administrative hearing within five business days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.
- (5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the special master.

- (6) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing. At reasonable intervals, a violator may request an inspection to determine compliance with an order of the special master. After his inspection, the town manager shall issue an affidavit of noncompliance and notice of continuing violation or an affidavit of compliance, in recordable form, as appropriate.

Sec. 70-120. Appeals.

- (a) An aggrieved party, including the town, may appeal a final order of a special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the special master conclusive, binding and final.
- (b) Unless the findings of a special master are overturned in a proceeding held pursuant to this section, the findings of the special master shall be admissible in any proceeding to collect unpaid penalties.
- (c) No aggrieved party other than the town may apply to the court for relief unless such party has first exhausted all remedies provided for in this chapter and has taken all available steps provided in this chapter. It is the intention of the town that all steps provided by this chapter shall be taken before any application is made to the court for relief, and no application shall be made by any aggrieved party other than the town to a court for relief except from an order issued by a special master pursuant to this chapter. It is the intention of the town that, notwithstanding anything to this chapter to the contrary, the town shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the Code. For purposes of an appeal, the clerk shall make available, for public inspection and copying, the record upon which each final order of a special master is based. The clerk shall make a reasonable charge, commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court, for making certified copies of any record or portion thereof.

Sec. 70-121. Actions to collect, enforcement.

- (a) Any tax required to be paid by any occupant or guest under the provisions of this article shall be deemed a debt owed by the occupant or guest to the town. Any such tax collected by an operator which has not been paid to the town shall be deemed a debt owed by the operator to the town. Any person owing money to the town under the provisions of this article shall be liable to an action brought in the name of the Town for the recovery of such amount and all reasonable and applicable administrative and legal fees.
- (b) The town shall have the same duties and privileges as the Department of Revenue under F.S. Chapter 212, Part I, and may use any power therein granted to the Department of Revenue, including enforcement and collection procedures and penalties.

Sec. 70-122. Taxes to constitute special fund.

The total receipts of the resort tax portion from the tax imposed and levied pursuant to this article shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. The use of this fund is subject to the budgetary process of the town on a fiscal year basis. A budget for the utilization of this fund must be submitted for the town commission approval as a part of the budget adoption process. A minimum of 34 percent of the fund shall be used for the promotion of the tourist industry under the annual tourist bureau budget, which shall include but not be restricted to the following: publicity, advertising, promotional events, tourist bureau activities.

Sec. 70-123. Created.

There is hereby established a resort tax board as a governmental agency of the town ("the board").

Sec. 70-124. Composition; appointment; vacancies; compensation; removal from office, etc.

(a) *Number, term and qualification of members.* The board shall consist of ~~five~~ seven members. Each commissioner shall appoint one board member, and two board members shall be appointed by a majority vote of the Town Commission. All appointed board members must be ratified by a vote of the town commission. Any newly elected commissioner has the right to appoint a resort tax board member unless the corresponding appointment has yet to reach the end of their two-year term. Each of the five individual commissioner appointments shall be persons who either work or reside in Surfside and preference will be given to industry professionals with experience in tourism and tourism-related activities. ~~at least three of the five members shall be persons who have experience in tourism and/or tourism-related activities~~ The two members appointed by the majority vote of the Town Commission shall be identified as industry professionals employed in the hotel or hospitality management industry. The two industry professional members, appointed by the majority vote of the Town Commission, shall not be representatives from the same hotel and/or private company. One town commissioner shall serve as a non-voting ex-officio member of the board.

(b) *Vacancies.* Any vacancies occurring on the board shall be filled at the earliest, possible date by the town commission for the remainder of the unexpired term.

(c) *Reappointment.* Board members shall be eligible for reappointment and shall hold office until their successors have been duly appointed and qualified.

(d) *Compensation of members.* Members of the board shall serve without compensation but shall be reimbursed for necessary expenses occurred in the performance of the official duties, as shall be determined and pre-approved by the town commission.

(e) *Acceptance of appointment.* Before entering upon the duties of office, each board member shall file a written acceptance of appointment and take and subscribe to the oath of office prescribed by law, which shall be filed in the office of the town clerk. Each appointed member is required to provide the town clerk

with a Form 1-Statement of Financial Interests, within three business days of being appointed to the board.

~~(f) *Removal of members from office; attendance.* A board member may be removed from office only by a majority vote of the entire membership of the town commission; however, whenever a board member shall fail to attend three consecutive meetings without prior notification to the director or town manager, the chairman shall certify such non-attendance to the town commission, and, upon such certification, the board member shall be deemed to have been removed~~ A board member who misses twenty-five percent (25%) of all regular and special meetings over a twelve (12) month period or misses three (3) consecutive meetings is automatically removed from the board and the Town Commission shall fill the vacancy pursuant to paragraph (b) above.

Sec. 70-125. Organization.

(a) *Generally.* The members of the board shall select a ~~chairman~~ chairperson and vice chairperson from among the members who shall serve at the pleasure of the board, and such other officers as deemed necessary or desirable. The term of office for the chairperson and vice-chairperson shall be one year. No person shall serve as chairperson for more than four consecutive terms. At the conclusion of the term, the board shall move to nominate and elect a chairperson and vice chairperson for the upcoming year. A member of the town commission shall serve as a non-voting ex-officio member of the board.

(b) *Staff.* A director, or other town manager designee, shall oversee the daily operation and administering of the resort tax board and will work with the board to achieve budgetary objectives. The town manager shall provide adequate clerical and other administrative backup for the board.

(c) *Minutes.* Minutes of each board meeting shall be kept and prepared under supervision and direction of the board. Copies of the minutes shall be filed with the town clerk.

(d) *Rules and regulations.* The board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the board's activities. The board shall adopt the rules and regulations and a copy shall be maintained on file with the Town Clerk.

Sec. 70-126. Power and duties.

The board shall have the following enumerated powers and duties.

- (1) To adopt and/or amend procedures as it related to publicity, advertising, promotional events, tourist board activities.
- (2) To expend resort tax funds collected pursuant to Chapter 70 of the Town Code. Specifically, those amounts allocated by the commission during their annual budgetary process, the minimum being 34 percent

- of the resort tax collected, to advertising promotion and special events as part of the tourist bureau budget.
- (3) To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific tourist board activities. The tourist board shall designate a member to assist the town manager, upon request, in the process of selecting a director for the department.
 - (4) To authorize placement of advertising in various media.
 - (5) To organize special events for the promotion of Surfside as a tourist destination.
 - (6) To create a formalized Budget Plan with staff and in consultation with the Town Manager Designee and to submit an annual report the Budget Plan to the town commission Town Manager every May-year as part of the budgetary process.

Sec. 70-127. Compliance with applicable law.

The board shall comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and those with respect to competitive bidding requirements for purchase of goods and services.

Sec. 70-128. Budget and Expenditure of Funds.

All expenditures of the Board shall be made in accordance with the powers and duties outlined herein.

- (1) Expenditures for items not included in the current Fiscal Year Budget shall require an affirmative vote of the majority of the Board's membership.
- (2) Expenditures utilizing Resort Tax Reserve Funds shall require an affirmative vote of the majority of the Board's membership.
- (3) Annual Resort Tax Fund Reserves shall remain under the governance of the Board.
- (4) The Town Manager Designee shall have the same spending authority limit as the Town Manager with approval from the Chairperson, in the absence of the Chairperson, the Vice-Chairperson.

TOWN OF SURFSIDE TOURISM BOARD OPERATING PROCEDURES

I. INTRODUCTION

The Town of Surfside Resort Tax Board is vested with specific powers and duties codified in Article IV. Resort Tax of the Town Code. In order to properly and effectively carry out these responsibilities, the Board must adopt policies and procedures to implement these duties. The importance of establishing protocols and written procedures demonstrating fiscal and budgetary accountability is particularly significant in light of the additional resources entrusted to the Board to spend over the next decade due to increases in resort taxes expected to be collected by the Town.

II. COMPLIANCE WITH APPLICABLE LAWS

The Board is required to comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and with respect to competitive bidding requirements for purchase of goods and services.

III. CORE FUNCTIONS

The Tourism Board's responsibilities include the following:

1. Adopt and/or amend procedures as they relate to publicity, advertising, promotional events, and for tourist board activities.
2. To expend resort tax funds collected pursuant to the Town Code.
3. To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific tourist board activities.
4. To authorize placement of advertising in various media.
5. To organize special events for the promotion of Surfside as a tourist destination.

IV. OTHER SUBSTANTIVE TASKS

The two other substantive tasks assigned to the Resort Tax Board are:

1. Authorizing the placement of advertising in various media.
2. Organizing special events.

RECOMMENDATIONS

The Board retained the services of a consultant to analyze current operations and to suggest policies that enable the Board to carry out its mission more effectively. As a result of the discussions with the consultant, the Board took action at its meetings on October 7 and November 6, 2013 by making the following recommendations:

1) **Board Recommendation: Voting**

For unbudgeted items, approval requires a simple majority of the Board membership.

For utilizing reserve funds, approval also requires a simple majority of the Board's membership.

2) **Board Recommendation: Management and Budget Plan**

A formalized Management and Budget Plan will be created for FY 2014-15 by the Board and staff in consultation with the Town Finance Director.

3) **Board Recommendation: Attendance**

A Board member who misses 25% of all regular and special meetings over a twelve-month period or misses three consecutive meetings is automatically removed from the Board.

No distinction is made between excused and unexcused absences. The prior notification requirement is repealed.

4) **Board Recommendation: Chairperson/Vice Chairperson**

No person shall serve as chairperson for more than two consecutive terms.

The term of office for the chairperson and vice chairperson shall be two years. At the conclusion of the first year of the term, the Board shall move to continue or replace the Chair and Vice-Chair by a majority vote.

5) **Board Recommendation: Director's Spending Authority**

The Director will have the same spending authority as the Town Manager (up to \$8,500) upon approval from the chair or, in the absence of the chair, the vice chair.

6) **Board Recommendation: Procurement**

The Board will follow the Town's Procurement Policy.

7) Board Recommendation: Miscellaneous

Draft a policy that clearly and unambiguously states that Board reserves remain with the Board and are not subject to capture by the Town Commission or Manager.

Draft a reserve policy to explain procedures by which reserve funds can be spent by the Board.

Note: The preceding seven items do not require approval by the Town Commission. Item number 8, listed below, requires a 4/5 vote of the Town Commission.

8) Board Recommendation: Expansion of Board

Size of the Board will increase to seven members. Each Town Commission will have one appointment and two members will be appointed at-large.

Five of the seven members must work or reside in the Town of Surfside. For the members who do not work or reside in the Town, preference will be given to members who are industry professionals with experience in tourism and tourism-related activities. At least one of the two members who are identified as industry professionals shall be employed in the hotel or hospitality management field.

TOURISM BOARD CONFLICT OF INTEREST AND ETHICS POLICY

I. Intent and Declaration of Policy

Due to the unique responsibilities entrusted to the Resort Tax Board (hereinafter "Tourism Board") in expending resort tax funds with minimal oversight by the Town of Surfside Town Commission and to assure public confidence that its Board members are acting as responsible stewards, the public interest is served by establishing additional ethics requirements beyond those existing in Florida Statutes, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and the Town of Surfside Code of Ethics.

It is not sufficient for the Tourism Board to comply with applicable state and local laws. Board members must avoid even the appearance of impropriety or any actual or perceived conflict of interest in performance of their official duties as members of the Tourism Board.

II. Definitions

For purposes of this section, the following words, terms and phrases shall have the meaning as indicated below:

- a) *Board member.* An individual duly appointed to serve on the Tourism Board.
- b) *Gift.* The transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration.
- c) *Immediate family.* The spouse, domestic partner, parents, stepparents, children, and stepchildren of a Board member.
- d) *Lobbyist.* All persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modification of any action, decision or recommendation of the Tourism Board.
- e) *Transacting business.* The purchase or sale by the Town or Tourism Board of specific goods or services for consideration.

III. General Principles

Resort Tax Board members shall demonstrate their commitment to the general principles of Board service. These principles are aspirational in nature. A member who acts contrary to these principles is not acting in the best interest of the Board and may be censured by the Board. However, this section of the Board's Ethics Policy does not confer jurisdiction over the Miami-Dade Commission on Ethics and Public Trust to commence an investigation or take

enforcement action against a member alleged to have violated one or more of these general principles.

- a) Board members shall act with integrity and in an ethical and professional manner in their interactions with each other, Town of Surfside elected officials and staff, consultants, advisors and the general public, so that their behavior will reflect positively upon the Town of Surfside.
- b) Board members will be sensitive to the considerable workload of staff when making requests for assistance.
- c) Board members must recognize that all Board decisions and actions are to be based on integrity, competence and independent judgment on the merits and benefits to the general public, tourists, local businesses and residents in the Town of Surfside.
- d) Board members shall act with competence and shall strive to maintain and enhance their competence and that of their fellow board members.
- e) Board members will respectfully consider the opinions of others during deliberations in decision-making, will respect the judgment of the Board in regards to its decisions and will represent the Board's position to the Town Commission when necessary.
- f) Board members will refrain from using Board meeting to advance their personal agendas.

IV. Standards of Conduct

The Miami-Dade Commission on Ethics and Public Trust will have exclusive jurisdiction for investigation and enforcement of the following standards of conduct, which are unique to the Tourism Board and generally represent stricter standards than those enumerated in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance or the Town Code of Ethics.

A) Gifts

- 1. A board member shall not solicit or receive a gift regardless of value from lobbyists registered with the Town of Surfside or from proposers, vendors or contractors with the Town of Surfside or the Tourism Board.
- 2. Board members may accept gifts from other sources given to them in their official capacity where not otherwise inconsistent with the provisions of the Florida Statutes, the Miami-Dade County Ethics Ordinance and the Town of Surfside

Code of Ethics and shall report any gift, or series of gifts from any one person or entity in excess of one hundred dollars.

3. Board members will be permitted to solicit gifts on behalf of the Town of Surfside in performance of their official duties for use solely by the Town in conducting its official business or official business of the Tourism Board.
4. Board members will be permitted to accept gifts or expenses given to them associated primarily with their employment or business or related to community service performed as an officer, director or volunteer of a corporation or organization not related to this Tourism Board.

B) Voting Conflicts

1. No Board member shall participate in or vote on any matter presented to the Board if the member or the member's immediate family will be directly affected by the action of Board unless the action taken would affect the Board member no differently than it would affect the public-at-large. Further, no Board member who has a special relationship (defined as an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary) with an applicant or party with a matter before the Board may participate in the discussions or vote on a matter when such applicant or party with the special relationship appears before the Board.
2. Board member is not required to absent himself or herself from the meeting when the item is under consideration and may be counted for purposes of maintaining a quorum.

C) Duty to Disclose

A board member who stands to indirectly benefit from an action or decision by the Board or has a business or professional relationship not enumerated above in the Voting Conflicts section, has a duty to disclose this information verbally at the meeting when such relationship becomes known by the Board member.

D) Communications Outside of Public Meetings

Section 286.011, Florida Statutes, prohibits board members from communicating with one another concerning matters before the Tourism Board or on any matter which foreseeably come before the Tourism Board. Consistent with the ethics in public contracting section of the Town Code of Ordinance (3-16) and the general principles set forth in Section 2-11.1 of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and Section 2-226 of the Town Code of Ordinances, Board members shall not communicate with persons under consideration for consulting work as it relates to specific Tourist Board activities, including but not limited to, individuals or entities seeking to be retained as

advertising and/or public relations consultants; individuals or entities wishing to assist the Board in organizing special events for the promotion of Surfside as a tourist destination and individuals and entities associated with the media for purposes of placing advertising with said media.

E) **Transacting Business with the Board**

1. A firm, company, partnership or other business or professional entity employing a Board member or the member's immediate family may not transact business with the Board unless a waiver is granted by a 2/3 vote of the entire Board.
2. Board members will have no private contracts or business dealings with the Board or with Town absent those dealings to which members of the general public are entitled.

F) **Prohibition on Certain Business Transactions**

No Board member shall enter into a business transaction with any person or entity that has a contract with the Town of Surfside or the Tourism Board unless the business transaction is an arms-length transaction made in the ordinary course of business.

V. **Town Attorney to Render Opinions**

Whenever a Board member is in doubt as to the proper interpretation or application of the Board Ethics Policy with respect to contemplated conduct by the Board member, that person may request an opinion from the Town Attorney by providing a statement of all the material facts and questions. Opinions issued under this section shall be published without the use of the name of the person advised unless the person permits the use of a name. If the Board member acts in accordance with the opinion and no material facts were misstated or omitted when requesting an opinion, the opinion will insulate the Board member from prosecution by the Miami-Dade Commission on Ethics.

VI. **Acknowledgement of Receipt**

Tourism Board members are required to abide by the provisions set forth in the Board Conflict of Interest and Ethics Policy, and upon appointment to the Board, each Member will receive a copy of the Policy and acknowledge his or her commitment to upholding these principles by reviewing and signing the document and returning it to staff for publication on the Town's website.



Town of Surfside Commission Communication

Agenda Item #

Agenda Date: March 11, 2014

Subject: Second Reading: Amendments to the Chapter 70 Article IV "Resort Tax" Ordinance.

A friendly amendment at first reading on February 11, 2014 specified that in Sec. 70-124 (a) the two additional Industry Board members cannot be from the same hotel and/or private company and is reflected in the ordinance.

A resolution adopting the Resort Tax Board (Tourism Board) Conflict of Interest and Ethics Policy and Operating Procedures (addressed below) is before the Town Commission at the March 11, 2014 Meeting.

Background: Surfside is one of only three municipalities in Miami-Dade County eligible by Florida State Law Chapter 67-930 Municipal Resort Tax (Attachment 1) to impose a Resort Tax of four percent (4%) on accommodations and two percent (2%) on food and beverage sales. Miami Beach and Bal Harbour are the other two municipalities allowed to exercise the tax. This unique revenue generating opportunity is also defined in the Town's Charter in Sec. 69-A. Resort Tax (Attachment 2) and comes with set guidelines on its use and management.

The Town addresses the collection, management and use of the tax in Chapter 70 Article IV Resort Tax. This Ordinance was updated for the first time since its 1960 inception in April 2011. Since the Ordinance was revised, the Town and Tourist Board (Board) have encountered some sections that require modification.

Last fiscal year, the Board undertook the completion of a Five Year Tourism Strategic Plan to assist in managing the portion of the fund that is allocated to the Board's budget. During the same period the Board retained Robert Meyers, Esq., former Executive Director of Miami-Dade Commission on Ethics, to assist in developing policies and procedures, a code of conduct/ethics policy as well as address the legislation on governance of the Board's budget.

Language regarding the governance of the Board's portion of the Resort Tax Fund was addressed in the April 2011 ordinance changes; it is felt that further clarification is needed. The Board represents the Commission in all matters on the expenditure of its portion of the Resort Tax; it has sole oversight on how the Board's Resort Tax portion is utilized. However, clearly defined roles and responsibilities for the Board members is still needed. The Board also felt that a Policy and Procedures Manual as well as a Code of Conduct/Ethics Policy needed to be addressed in anticipation of larger budgets emanating from the new hotel tax revenue and possible increased scrutiny on how the funds are utilized.

The Board met throughout 2013 and has recently adopted Mr. Meyers' report on the initiatives (Attachment 3) by an overwhelming majority. The one dissenting vote was by the Board's Chair who

felt that the Code of Conduct/Ethics policy was more stringent than existing Town policies and therefore not necessary. The Board also supported increasing its membership to seven. The two new members would be appointed by the Town Commission at large and will comprise of professionals from the tourism industry: Sec. 70-124 (a). This was deemed a necessary element to provide the Board with expertise as it manages the expenditure of their ever increasing revenue. The Board realizes that it, and the Town, will benefit from the opinion and experience of industry professionals as they implement recommendations from the Five Year Tourism Strategic Plan. The Board Chair also cast the only dissenting vote on this particular ordinance revision.

Analysis: The Tourist Board approved recommendations in Mr. Meyers' report that need to be codified in the Ordinance are listed below. The other items will form a document of record for the Town and assist in serving as a manual for the Tourist Board.

Sec. 70-109 (a): Removal of taxation on identifiable food and beverage take-out.

Sec. 70-124 (a): Increase board membership from five to seven members to include two tourism industry professionals appointed by the majority vote of the Town Commission, shall not be representatives from the same hotel and/or private company.

(f) Stricter requirements to attend meetings and to remain active Board members.

Sec 70-125 (a): Automatically provide for voting of Chair and Vice Chair positions annually.

Sec. 70-126 (6): Amend fiscal year budget plan language to align with the Town's existing procedure for departments.

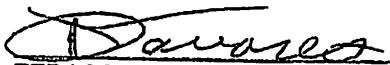
Sec 70-128: Clarify expenditure and management of funds to align with the Town's existing procurement and expenditure policies.

The amended Ordinance, along with Mr. Meyers' report, will provide the Town Commission, the Board and Administration with a more concise and professional reference guide. This will assist with implementing the statutory requirements and mission associated with collecting and expending Resort Tax funds in an open, transparent manner.

Budget Impact: The revision of the Ordinance to eliminate take-out as taxable items will result in a negligible decrease to the amount of Resort Tax collected from applicable businesses. This only applies to establishments that can clearly identify the items that are to be consumed away from the premises. All other changes do not have a budgetary impact.

Staff Impact: Existing staff resources will be utilized to facilitate these changes.

Recommendation: The Town Administration, along with the majority of the Tourist Board, the Five Year Tourism Strategic Plan and Mr. Robert Meyers, recommend that the Town Commission approve these amendments to the Chapter 70 Article IV Resort Tax Ordinance.


TEDACS Director


Town Manager

Municipal Resort Tax

Chapter 67-930, Laws of Florida,

As amended by Chapters 82-142, 83-363, 93-286, and 94-344, Laws of Florida

Brief Overview

The Municipal Resort Tax may be levied at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars in certain municipalities whose respective county population fall within specified limits based on the 1960 Census and whose municipal charter specifically provided for the levy of this tax prior to January 1, 1968. The tax levy must be adopted by an ordinance approved by the governing body. Revenues can be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

General Law Amendments

There were no general law amendments resulting from the 2010 Regular Legislative Session.

Authorization to Levy

Municipalities in counties having a population of not less than 330,000 and not more than 340,000 (i.e., Broward County) and in counties having a population of more than 900,000 (i.e., Miami-Dade County), according to the 1960 decennial census, whose charter specifically provided or whose charter was so amended prior to January 1, 1968, for the levy of this exact tax, are eligible to impose it by ordinance adopted by the governing body. The tax shall be levied upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp, as the same are defined in part 1 of ch. 212, F.S., and upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. However, the tax shall not apply to those sales the amount of which is less than 50 cents nor to sales of food or beverages delivered to a person's home under a contract providing for deliveries on a regular schedule when the price of each meal is less than \$10.

Municipalities Eligible to Levy

Currently, only three municipalities in Miami-Dade County (i.e., Bal Harbour, Miami Beach, and Surfside) are eligible to impose the tax. According to the Department of Revenue (DOR), all three municipalities are imposing the tax at the following rates: 4 percent of transient rental transactions and 2 percent on the sale of food and beverages.

Administrative Procedures

It is the duty of every person renting a room or rooms and every person selling at retail food or beverages or alcoholic beverages for consumption on the premises to act as the collection agent. Every such person must collect, report, and pay over to the municipality all such taxes imposed, levied, and collected, in accordance with the accounting and other provisions of the enacted ordinance. Any municipality collecting the tax shall have the same duties and privileges as the DOR under part I of ch. 212, F.S., and may use any power granted to the DOR under this part, including enforcement and collection procedures and penalties, which shall be binding upon all persons and entities that are subject to the tax. Additionally, municipalities responsible for administering the tax shall participate in the Registration Information Sharing and Exchange (RISE) Program and share tax administration information as prescribed by the DOR.¹

Distribution of Proceeds

The governing body may authorize by ordinance the creation of an authority or commission empowered to contract and be contracted with its own name as an agency of the municipality to expend such portion of the proceeds of this tax as the body may determine appropriate.

Authorized Uses of Proceeds

The tax proceeds shall only be used for the creation and maintenance of convention and publicity bureaus; development and maintenance of art and cultural centers; enhancement of tourism; publicity and advertising; construction, operation, and maintenance of auditoriums, community centers, and convention structures; or relief from ad valorem taxes being used for any of these other purposes.

Relevant Attorney General Opinions

No opinions specifically relevant to this tax have been issued.

1. Section 213.0535, F.S.

ATTACHMENT **A**

Sec. 69-A. Resort tax.

The Town of Surfside shall have the right, pursuant to the provisions of Laws of Fla. ch. 67-930, as amended by Laws of Fla. ch. 83-363, to impose, levy and collect a municipal resort tax, not to exceed four per cent (4%) upon the rent of rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp as same are defined in F.S. ch. 212, and not to exceed two per cent (2%) upon the retail sale of all items of food, beverages and alcoholic beverages, other than beer or malt beverages, sold at retail for consumption on the premises, provided that the tax shall not apply to sales which are less than fifty cents (50¢). The total receipts from the above tax levy shall be kept and maintained in a separate fund and shall in no event be transferred to the general fund. Said fund shall be used for the following purposes only: payment of necessary expenses of collecting, handling and processing of said tax; creating and maintenance of convention and publicity bureaus, cultural and art centers; enhancement of tourism; publicity and advertising purposes; for the future cost, purchase, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing and otherwise operating auditoriums, community houses, convention halls, convention buildings or other structures; and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

(Res. No. 677, § 1, 10-12-67; Ord. No. 1285, § 1, 8-11-92)

TOURISM BOARD CONFLICT OF INTEREST AND ETHICS POLICY

I. Intent and Declaration of Policy

Due to the unique responsibilities entrusted to the Resort Tax Board (hereinafter "Tourism Board") in expending resort tax funds with minimal oversight by the Town of Surfside Town Commission and to assure public confidence that its Board members are acting as responsible stewards, the public interest is served by establishing additional ethics requirements beyond those existing in Florida Statutes, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and the Town of Surfside Code of Ethics.

It is not sufficient for the Tourism Board to comply with applicable state and local laws. Board members must avoid even the appearance of impropriety or any actual or perceived conflict of interest in performance of their official duties as members of the Tourism Board.

II. Definitions

For purposes of this section, the following words, terms and phrases shall have the meaning as indicated below:

- a) *Board member.* An individual duly appointed to serve on the Tourism Board.
- b) *Gift.* The transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration.
- c) *Immediate family.* The spouse, domestic partner, parents, stepparents, children, and stepchildren of a Board member.
- d) *Lobbyist.* All persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modification of any action, decision or recommendation of the Tourism Board.
- e) *Transacting business.* The purchase or sale by the Town or Tourism Board of specific goods or services for consideration.

III. General Principles

Resort Tax Board members shall demonstrate their commitment to the general principles of Board service. These principles are aspirational in nature. A member who acts contrary to these principles is not acting in the best interest of the Board and may be censured by the Board. However, this section of the Board's Ethics Policy does not confer jurisdiction over the Miami-Dade Commission on Ethics and Public Trust to commence an investigation or take

enforcement action against a member alleged to have violated one or more of these general principles.

- a) Board members shall act with integrity and in an ethical and professional manner in their interactions with each other, Town of Surfside elected officials and staff, consultants, advisors and the general public, so that their behavior will reflect positively upon the Town of Surfside.
- b) Board members will be sensitive to the considerable workload of staff when making requests for assistance.
- c) Board members must recognize that all Board decisions and actions are to be based on integrity, competence and independent judgment on the merits and benefits to the general public, tourists, local businesses and residents in the Town of Surfside.
- d) Board members shall act with competence and shall strive to maintain and enhance their competence and that of their fellow board members.
- e) Board members will respectfully consider the opinions of others during deliberations in decision-making, will respect the judgment of the Board in regards to its decisions and will represent the Board's position to the Town Commission when necessary.
- f) Board members will refrain from using Board meeting to advance their personal agendas.

IV. Standards of Conduct

The Miami-Dade Commission on Ethics and Public Trust will have exclusive jurisdiction for investigation and enforcement of the following standards of conduct, which are unique to the Tourism Board and generally represent stricter standards than those enumerated in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance or the Town Code of Ethics.

A) Gifts

1. A board member shall not solicit or receive a gift regardless of value from lobbyists registered with the Town of Surfside or from proposers, vendors or contractors with the Town of Surfside or the Tourism Board.
2. Board members may accept gifts from other sources given to them in their official capacity where not otherwise inconsistent with the provisions of the Florida Statutes, the Miami-Dade County Ethics Ordinance and the Town of Surfside

Code of Ethics and shall report any gift, or series of gifts from any one person or entity in excess of one hundred dollars.

3. Board members will be permitted to solicit gifts on behalf of the Town of Surfside in performance of their official duties for use solely by the Town in conducting its official business or official business of the Tourism Board when directed by the Town Commission or by Tourist Board directive to assist with specific initiatives, programs and/or events.
4. Board members will be permitted to accept gifts or expenses given to them associated primarily with their employment or business or related to community service performed as an officer, director or volunteer of a corporation or organization not related to this Tourism Board.

B) Voting Conflicts

1. No Board member shall participate in or vote on any matter presented to the Board if the member or the member's immediate family will be directly affected by the action of Board unless the action taken would affect the Board member no differently than it would affect the public-at-large. Further, no Board member who has a special relationship (defined as an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary) with an applicant or party with a matter before the Board may participate in the discussions or vote on a matter when such applicant or party with the special relationship appears before the Board.
2. Board member is not required to absent himself or herself from the meeting when the item is under consideration and may be counted for purposes of maintaining a quorum.

C) Duty to Disclose

A board member who stands to indirectly benefit from an action or decision by the Board or has a business or professional relationship not enumerated above in the Voting Conflicts section, has a duty to disclose this information verbally at the meeting when such relationship becomes known by the Board member.

D) Communications Outside of Public Meetings

Section 286.011, Florida Statutes, prohibits board members from communicating with one another concerning matters before the Tourism Board or on any matter which foreseeably come before the Tourism Board. Consistent with the ethics in public contracting section of the Town Code of Ordinance (3-16) and the general principles set forth in Section 2-11.1 of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and Section 2-226 of the Town Code of Ordinances, Board members shall not communicate with persons under

consideration for consulting work as it relates to specific Tourist Board activities, including but not limited to, individuals or entities seeking to be retained as advertising and/or public relations consultants; individuals or entities wishing to assist the Board in organizing special events for the promotion of Surfside as a tourist destination and individuals and entities associated with the media for purposes of placing advertising with said media.

E) Transacting Business with the Board

1. A firm, company, partnership or other business or professional entity employing a Board member or the member's immediate family may not transact business with the Board unless a waiver is granted by a 2/3 vote of the entire Board.
2. Board members will have no private contracts or business dealings with the Board or with Town absent those dealings to which members of the general public are entitled.

F) Prohibition on Certain Business Transactions

No Board member shall enter into a business transaction with any person or entity that has a contract with the Town of Surfside or the Tourism Board unless the business transaction is an arms-length transaction made in the ordinary course of business.

V. Town Attorney to Render Opinions

Whenever a Board member is in doubt as to the proper interpretation or application of the Board Ethics Policy with respect to contemplated conduct by the Board member, that person may request an opinion from the Town Attorney by providing a statement of all the material facts and questions. Opinions issued under this section shall be published without the use of the name of the person advised unless the person permits the use of a name. If the Board member acts in accordance with the opinion and no material facts were misstated or omitted when requesting an opinion, the opinion will insulate the Board member from prosecution by the Miami-Dade Commission on Ethics.

VI. Acknowledgement of Receipt

Tourism Board members are required to abide by the provisions set forth in the Board Conflict of Interest and Ethics Policy, and upon appointment to the Board, each Member will receive a copy of the Policy and acknowledge his or her commitment to

upholding these principles by reviewing and signing the document and returning it to staff for publication on the Town's website;

TOWN OF SURFSIDE TOURISM BOARD OPERATING PROCEDURES

I. INTRODUCTION

The Town of Surfside Resort Tax Board is vested with specific powers and duties codified in Article IV, Resort Tax of the Town Code. In order to properly and effectively carry out these responsibilities, the Board must adopt policies and procedures to implement these duties. The importance of establishing protocols and written procedures demonstrating fiscal and budgetary accountability is particularly significant in light of the additional resources entrusted to the Board to spend over the next decade due to increases in resort taxes expected to be collected by the Town.

II. COMPLIANCE WITH APPLICABLE LAWS

The Board is required to comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and with respect to competitive bidding requirements for purchase of goods and services.

III. CORE FUNCTIONS

The Tourism Board's responsibilities include the following:

1. Adopt and/or amend procedures as they relate to publicity, advertising, promotional events, and for tourist board activities.
2. To expend resort tax funds collected pursuant to the Town Code.
3. To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific tourist board activities.
4. To authorize placement of advertising in various media.
5. To organize special events for the promotion of Surfside as a tourist destination.

IV. OTHER SUBSTANTIVE TASKS

The two other substantive tasks assigned to the Resort Tax Board are:

1. Authorizing the placement of advertising in various media.
2. Organizing special events.

ORDINANCE NO. _ - _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 70 "TAXATION" AND SPECIFICALLY AMENDING SECTIONS 70-109 "IMPOSITION; AMOUNT", SECTION 70-124 "COMPOSITION; APPOINTMENT; VACANCIES; COMPENSATION; REMOVAL FROM OFFICE, ETC.", SECTION 70-125 "ORGANIZATION", SECTION 70-126 "POWER AND DUTIES", AND CREATING SECTION 70-128 "BUDGET AND EXPENDITURE OF FUNDS" 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 of Surfside ("Town") proposes to amend its Code of Ordinances to amend the guidelines for imposition and collection of the resort tax and to amend the guidelines for the composition, organization and budget and expenditures of the Resort Tax Board ("Board"); and

WHEREAS, the Board completed a Five Year Tourism Strategic Plan and a part of the plan resulted in a review of the existing Code where areas needing additional clarification and guidelines were identified; and

WHEREAS, the Board recommends the included changes to the Code of Ordinances; and

WHEREAS, the Town Commission held its first public reading on February 11, 2014 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, the Town Commission has conducted a second duly noticed public hearing on these regulations as required by law on March 11, 2014 and further finds the proposed change to the Code necessary and in the best interest of the community.

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

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. 70-109. Imposition; amount.

(a) There is hereby levied and there shall be paid a tax of four percent on the rent of every occupancy of a room in any hotel, motel or apartment house in the town, and also two percent upon the total sales price of all items of food or beverages sold at retail and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises ~~or consumption away from and/or within the environs of the business (take-out)~~ of any restaurant or business selling such items.

(b) As provided by Ordinance No. 1286, enacted on August 11, 1992, in lieu of the tax imposed and levied pursuant to section 70-109(a) above, there is hereby imposed and levied a municipal resort tax:

(1) Upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, as the same are defined in Part I, Chapter 212, Florida Statutes, in the town, at the rate of four percent of the rent received by the person renting such room or rooms from the person paying such rent; and

(2) Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages, including all refrigerated beverages, sold at retail for consumption on the premises ~~or consumption away from and/or within the environs of the business (take-out)~~ of any restaurant or at any place of business selling such items in the town required by law to be licensed by the State Hotel and Restaurant Commission or by the State Beverage Department, at the rate of two percent of such retail sales price.

Sec. 70-124. Composition; appointment; vacancies; compensation; removal from office, etc.

(a) *Number, term and qualification of members.* The board shall consist of ~~five~~ seven members. Each commissioner shall appoint one board member, and two board members shall be appointed by a majority vote of the Town Commission. All appointed board members must be ratified by a vote of the town commission. Any newly elected commissioner has the right to appoint a resort tax board member unless the corresponding appointment has yet to reach the end of their two-year term. Each of the five individual commissioner appointments shall be persons who either work or reside in Surfside and preference will be given to industry professionals with experience in tourism and tourism-related activities. ~~at least three of the five members shall be persons who have experience in tourism and/or tourism-related activities~~ The two members appointed by the majority vote of the Town Commission shall be identified as industry professionals employed in the hotel or hospitality management industry. The two industry professional members, appointed by the majority vote of the Town Commission, shall not be

representatives from the same hotel and/or private company. One town commissioner shall serve as a non-voting ex-officio member of the board.

(b) *Vacancies.* Any vacancies occurring on the board shall be filled at the earliest possible date by the town commission for the remainder of the unexpired term.

(c) *Reappointment.* Board members shall be eligible for reappointment and shall hold office until their successors have been duly appointed and qualified.

(d) *Compensation of members.* Members of the board shall serve without compensation but shall be reimbursed for necessary expenses occurred in the performance of the official duties, as shall be determined and pre-approved by the town commission.

(e) *Acceptance of appointment.* Before entering upon the duties of office, each board member shall file a written acceptance of appointment and take and subscribe to the oath of office prescribed by law, which shall be filed in the office of the town clerk. Each appointed member is required to provide the town clerk with a Form 1-Statement of Financial Interests, within three business days of being appointed to the board.

(f) *Removal of members from office; attendance.* ~~A board member may be removed from office only by a majority vote of the entire membership of the town commission; however, whenever a board member shall fail to attend three consecutive meetings without prior notification to the director or town manager, the chairman shall certify such non-attendance to the town commission, and, upon such certification, the board member shall be deemed to have been removed.~~ A board member who misses twenty-five percent (25%) of all regular and special meetings over a twelve (12) month period or misses three (3) consecutive meetings is automatically removed from the board and the Town Commission shall fill the vacancy pursuant to paragraph (b) above.

Sec. 70-125. Organization.

(a) *Generally.* The members of the board shall select a ~~chairman~~ chairperson and vice chairperson from among the members who shall serve at the pleasure of the board, and such other officers as deemed necessary or desirable. The term of office for the chairperson and vice-chairperson shall be one year. No person shall serve as chairperson for more than four consecutive terms. At the conclusion of the term, the board shall move to nominate and elect a chairperson and vice chairperson for the upcoming year. A member of the town commission shall serve as a non-voting ex-officio member of the board.

(b) *Staff.* A director, or other town manager designee, shall oversee the daily operation and administering of the resort tax board and will work with the board to achieve budgetary objectives. The town manager shall provide adequate clerical and other administrative backup for the board.

(c) *Minutes.* Minutes of each board meeting shall be kept and prepared under supervision and direction of the board. Copies of the minutes shall be filed with the town clerk.

(d) *Rules and regulations.* The board shall make and prescribe such rules and regulations reasonably necessary and appropriate for the board's activities. The

board shall adopt the rules and regulations and a copy shall be maintained on file with the Town Clerk.

Sec. 70-126. Power and duties.

(6) To create a formalized Budget Plan with staff and in consultation with the Town Manager Designee and to submit an annual report the Budget Plan to the town commission Town Manager every May-year as part of the budgetary process.

Sec. 70-128. Budget and Expenditure of Funds.

All expenditures of the Board shall be made in accordance with the powers and duties outlined herein.

- 1) Expenditures for items not included in the current Fiscal Year Budget shall require an affirmative vote of the majority of the Board's membership.
- 2) Expenditures utilizing Resort Tax Reserve Funds shall require an affirmative vote of the majority of the Board's membership.
- 3) Annual Resort Tax Fund Reserves shall remain under the governance of the Board.
- 4) The Town Manager Designee shall have the same spending authority limit as the Town Manager with approval from the Chairperson, in the absence of the Chairperson, the Vice-Chairperson.

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

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

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

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

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

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

Daniel Dietch, Mayor

Attest:

Sandra Novoa
Town Clerk

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



Linda Miller, Town Attorney

On Final Reading Moved by: _____

On Final Reading Seconded by: _____

Vote:

Mayor Daniel Dietch	yes	no
Vice Mayor Michael Karukin	yes	no
Commissioner Graubart	yes	no
Commissioner Kligman	yes	no
Commissioner Olchyk	yes	no

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Town of Surfside Commission Communication

Agenda Item #

Agenda Date: March 11, 2014

Subject: Second Reading: Amendments to the Chapter 70 Article IV "Resort Tax" Ordinance.

A friendly amendment at first reading on February 11, 2014 specified that in Sec. 70-124 (a) the two additional industry Board members cannot be from the same hotel and/or private company and is reflected in the ordinance.

A resolution adopting the Resort Tax Board (Tourism Board) Conflict of Interest and Ethics Policy and Operating Procedures (addressed below) is before the Town Commission at the March 11, 2014 Meeting.

Background: Surfside is one of only three municipalities in Miami-Dade County eligible by Florida State Law Chapter 67-930 Municipal Resort Tax ~~XXXXXX~~ to impose a Resort Tax of four percent (4%) on accommodations and two percent (2%) on food and beverage sales. Miami Beach and Bal Harbour are the other two municipalities allowed to exercise the tax. This unique revenue generating opportunity is also defined in the Town's Charter in Sec. 69-A. Resort Tax ~~XXXXXX~~ and comes with set guidelines on its use and management.

The Town addresses the collection, management and use of the tax in Chapter 70 Article IV Resort Tax. This Ordinance was updated for the first time since its 1960 inception in April 2011. Since the Ordinance was revised, the Town and Tourist Board (Board) have encountered some sections that require modification.

Last fiscal year, the Board undertook the completion of a Five Year Tourism Strategic Plan to assist in managing the portion of the fund that is allocated to the Board's budget. During the same period the Board retained Robert Meyers, Esq., former Executive Director of Miami-Dade Commission on Ethics, to assist in developing policies and procedures, a code of conduct/ethics policy as well as address the legislation on governance of the Board's budget.

Language regarding the governance of the Board's portion of the Resort Tax Fund was addressed in the April 2011 ordinance changes; it is felt that further clarification is needed. The Board represents the Commission in all matters on the expenditure of its portion of the Resort Tax; it has sole oversight on how the Board's Resort Tax portion is utilized. However, clearly defined roles and responsibilities for the Board members is still needed. The Board also felt that a Policy and Procedures Manual as well as a Code of Conduct/Ethics Policy needed to be addressed in anticipation of larger budgets emanating from the new hotel tax revenue and possible increased scrutiny on how the funds are utilized.

The Board met throughout 2013 and has recently adopted Mr. Meyers' report on the initiatives ~~XXXXXX~~ by an overwhelming majority. The one dissenting vote was by the Board's Chair who

felt that the Code of Conduct/Ethics policy was more stringent than existing Town policies and therefore not necessary. The Board also supported increasing its membership to seven. The two new members would be appointed by the Town Commission at large and will comprise of professionals from the tourism industry: Sec. 70-124 (a). This was deemed a necessary element to provide the Board with expertise as it manages the expenditure of their ever increasing revenue. The Board realizes that it, and the Town, will benefit from the opinion and experience of industry professionals as they implement recommendations from the Five Year Tourism Strategic Plan. The Board Chair also cast the only dissenting vote on this particular ordinance revision.

Analysis: The Tourist Board approved recommendations in Mr. Meyers' report that need to be codified in the Ordinance are listed below. The other items will form a document of record for the Town and assist in serving as a manual for the Tourist Board.

Sec. 70-109 (a): Removal of taxation on identifiable food and beverage take-out.

Sec. 70-124 (a): Increase board membership from five to seven members to include two tourism industry professionals appointed by the majority vote of the Town Commission, shall not be representatives from the same hotel and/or private company.

(f) Stricter requirements to attend meetings and to remain active Board members.

Sec 70-125 (a): Automatically provide for voting of Chair and Vice Chair positions annually.

Sec. 70-126 (6): Amend fiscal year budget plan language to align with the Town's existing procedure for departments.

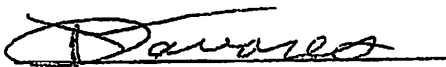
Sec 70-128: Clarify expenditure and management of funds to align with the Town's existing procurement and expenditure policies.

The amended Ordinance, along with Mr. Meyers' report, will provide the Town Commission, the Board and Administration with a more concise and professional reference guide. This will assist with implementing the statutory requirements and mission associated with collecting and expending Resort Tax funds in an open, transparent manner.

Budget Impact: The revision of the Ordinance to eliminate take-out as taxable items will result in a negligible decrease to the amount of Resort Tax collected from applicable businesses. This only applies to establishments that can clearly identify the items that are to be consumed away from the premises. All other changes do not have a budgetary impact.

Staff Impact: Existing staff resources will be utilized to facilitate these changes.

Recommendation: The Town Administration, along with the majority of the Tourist Board, the Five Year Tourism Strategic Plan and Mr. Robert Meyers, recommend that the Town Commission approve these amendments to the Chapter 70 Article IV Resort Tax Ordinance.


TEDACS Director


Town Manager

RESOLUTION NO. 14 - _____

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, ADOPTING THE RESORT TAX BOARD CONFLICT OF INTEREST AND ETHICS POLICY AND OPERATING PROCEDURES; PROVIDING FOR POLICIES, PRINCIPLES, STANDARDS OF CONDUCT, AND OPERATING PROCEDURES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a Resort Tax Board was created pursuant to Chapter 70, Section 70-123 of the Town of Surfside Code of Ordinances; and

WHEREAS, the Resort Tax Board ("Board") developed additional policies and procedures because of the unique authority granted to the Board by the Laws of Florida Chapter 67-930 Municipal Resort Tax (incorporated herein by reference); and

WHEREAS, the Board is granted with the authority to manage and spend the allocated portion of the Resort Tax revenues received by the Town; and

WHEREAS, the Board and Town Commission finds that a clearly defined Conflict of Interest and Ethics Policy and Operating Procedures (attached hereto as Exhibit "A") are in the best interest of the Town.

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

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

Section 2. Approval and Adoption. The Commission hereby approves and adopts the Resort Tax Board Conflict of Interest and Ethics Policy and Operating Procedures (attached hereto as Exhibit "A").

Section 3. Resort Tax Board Members. Members of the Resort Tax Board shall be appointed in accordance with and shall follow the Policy and Procedures adopted herein.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this ____ day of _____ 2014.

Motion by Commissioner _____, second by Commissioner _____.

FINAL VOTE ON ADOPTION

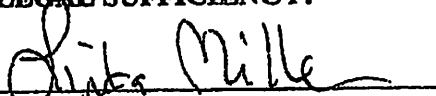
Commissioner Joseph Graubart _____
Commissioner Michelle Kligman _____
Commissioner Marta Olchyk _____
Vice Mayor Michael Karukin _____
Mayor Daniel Dietch _____

Daniel Dietch, Mayor

ATTEST:

Sandra Novoa, CMC
Town Clerk

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



Linda Miller, Town Attorney

TOURISM BOARD CONFLICT OF INTEREST AND ETHICS POLICY

I. Intent and Declaration of Policy

Due to the unique responsibilities entrusted to the Resort Tax Board (hereinafter "Tourism Board") in expending resort tax funds with minimal oversight by the Town of Surfside Town Commission and to assure public confidence that its Board members are acting as responsible stewards, the public interest is served by establishing additional ethics requirements beyond those existing in Florida Statutes, the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and the Town of Surfside Code of Ethics.

It is not sufficient for the Tourism Board to comply with applicable state and local laws. Board members must avoid even the appearance of impropriety or any actual or perceived conflict of interest in performance of their official duties as members of the Tourism Board.

II. Definitions

For purposes of this section, the following words, terms and phrases shall have the meaning as indicated below:

- a) *Board member.* An individual duly appointed to serve on the Tourism Board.
- b) *Gift.* The transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration.
- c) *Immediate family.* The spouse, domestic partner, parents, stepparents, children, and stepchildren of a Board member.
- d) *Lobbyist.* All persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modification of any action, decision or recommendation of the Tourism Board.
- e) *Transacting business.* The purchase or sale by the Town or Tourism Board of specific goods or services for consideration.

III. General Principles

Resort Tax Board members shall demonstrate their commitment to the general principles of Board service. These principles are aspirational in nature. A member who acts contrary to these principles is not acting in the best interest of the Board and may be censured by the Board. However, this section of the Board's Ethics Policy does not confer jurisdiction over the Miami-Dade Commission on Ethics and Public Trust to commence an investigation or take

enforcement action against a member alleged to have violated one or more of these general principles.

- a) Board members shall act with integrity and in an ethical and professional manner in their interactions with each other, Town of Surfside elected officials and staff, consultants, advisors and the general public, so that their behavior will reflect positively upon the Town of Surfside.
- b) Board members will be sensitive to the considerable workload of staff when making requests for assistance.
- c) Board members must recognize that all Board decisions and actions are to be based on integrity, competence and independent judgment on the merits and benefits to the general public, tourists, local businesses and residents in the Town of Surfside.
- d) Board members shall act with competence and shall strive to maintain and enhance their competence and that of their fellow board members.
- e) Board members will respectfully consider the opinions of others during deliberations in decision-making, will respect the judgment of the Board in regards to its decisions and will represent the Board's position to the Town Commission when necessary.
- f) Board members will refrain from using Board meeting to advance their personal agendas.

IV. Standards of Conduct

The Miami-Dade Commission on Ethics and Public Trust will have exclusive jurisdiction for investigation and enforcement of the following standards of conduct, which are unique to the Tourism Board and generally represent stricter standards than those enumerated in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance or the Town Code of Ethics.

A) Gifts

1. A board member shall not solicit or receive a gift regardless of value from lobbyists registered with the Town of Surfside or from proposers, vendors or contractors with the Town of Surfside or the Tourism Board.
2. Board members may accept gifts from other sources given to them in their official capacity where not otherwise inconsistent with the provisions of the Florida Statutes, the Miami-Dade County Ethics Ordinance and the Town of Surfside

Code of Ethics and shall report any gift, or series of gifts from any one person or entity in excess of one hundred dollars.

3. Board members will be permitted to solicit gifts on behalf of the Town of Surfside in performance of their official duties for use solely by the Town in conducting its official business or official business of the Tourism Board when directed by the Town Commission or by Tourist Board directive to assist with specific initiatives, programs and/or events.
4. Board members will be permitted to accept gifts or expenses given to them associated primarily with their employment or business or related to community service performed as an officer, director or volunteer of a corporation or organization not related to this Tourism Board.

B) Voting Conflicts

1. No Board member shall participate in or vote on any matter presented to the Board if the member or the member's immediate family will be directly affected by the action of Board unless the action taken would affect the Board member no differently than it would affect the public-at-large. Further, no Board member who has a special relationship (defined as an officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary) with an applicant or party with a matter before the Board may participate in the discussions or vote on a matter when such applicant or party with the special relationship appears before the Board.
2. Board member is not required to absent himself or herself from the meeting when the item is under consideration and may be counted for purposes of maintaining a quorum.

C) Duty to Disclose

A board member who stands to indirectly benefit from an action or decision by the Board or has a business or professional relationship not enumerated above in the Voting Conflicts section, has a duty to disclose this information verbally at the meeting when such relationship becomes known by the Board member.

D) Communications Outside of Public Meetings

Section 286.011, Florida Statutes, prohibits board members from communicating with one another concerning matters before the Tourism Board or on any matter which foreseeably come before the Tourism Board. Consistent with the ethics in public contracting section of the Town Code of Ordinance (3-16) and the general principles set forth in Section 2-11.1 of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance and Section 2-226 of the Town Code of Ordinances, Board members shall not communicate with persons under

consideration for consulting work as it relates to specific Tourist Board activities, including but not limited to, individuals or entities seeking to be retained as advertising and/or public relations consultants; individuals or entities wishing to assist the Board in organizing special events for the promotion of Surfside as a tourist destination and individuals and entities associated with the media for purposes of placing advertising with said media.

E) Transacting Business with the Board

1. A firm, company, partnership or other business or professional entity employing a Board member or the member's immediate family may not transact business with the Board unless a waiver is granted by a 2/3 vote of the entire Board.
2. Board members will have no private contracts or business dealings with the Board or with Town absent those dealings to which members of the general public are entitled.

F) Prohibition on Certain Business Transactions

No Board member shall enter into a business transaction with any person or entity that has a contract with the Town of Surfside or the Tourism Board unless the business transaction is an arms-length transaction made in the ordinary course of business.

V. Town Attorney to Render Opinions

Whenever a Board member is in doubt as to the proper interpretation or application of the Board Ethics Policy with respect to contemplated conduct by the Board member, that person may request an opinion from the Town Attorney by providing a statement of all the material facts and questions. Opinions issued under this section shall be published without the use of the name of the person advised unless the person permits the use of a name. If the Board member acts in accordance with the opinion and no material facts were misstated or omitted when requesting an opinion, the opinion will insulate the Board member from prosecution by the Miami-Dade Commission on Ethics.

VI. Acknowledgement of Receipt

Tourism Board members are required to abide by the provisions set forth in the Board Conflict of Interest and Ethics Policy, and upon appointment to the Board, each Member will receive a copy of the Policy and acknowledge his or her commitment to

upholding these principles by reviewing and signing the document and returning it to staff for publication on the Town's website.

TOWN OF SURFSIDE TOURISM BOARD OPERATING PROCEDURES

I. INTRODUCTION

The Town of Surfside Resort Tax Board is vested with specific powers and duties codified in Article IV. Resort Tax of the Town Code. In order to properly and effectively carry out these responsibilities, the Board must adopt policies and procedures to implement these duties. The importance of establishing protocols and written procedures demonstrating fiscal and budgetary accountability is particularly significant in light of the additional resources entrusted to the Board to spend over the next decade due to increases in resort taxes expected to be collected by the Town.

II. COMPLIANCE WITH APPLICABLE LAWS

The Board is required to comply with all applicable provisions of state law, county ordinances and the Town Code, including but not limited to those pertaining to public records, open meetings, financial disclosure and with respect to competitive bidding requirements for purchase of goods and services.

III. CORE FUNCTIONS

The Tourism Board's responsibilities include the following:

1. Adopt and/or amend procedures as they relate to publicity, advertising, promotional events, and for tourist board activities.
2. To expend resort tax funds collected pursuant to the Town Code.
3. To employ or retain an advertising and/or public relations consultant and/or firm as it relates to specific tourist board activities.
4. To authorize placement of advertising in various media.
5. To organize special events for the promotion of Surfside as a tourist destination.

IV. OTHER SUBSTANTIVE TASKS

The two other substantive tasks assigned to the Resort Tax Board are:

1. Authorizing the placement of advertising in various media.
2. Organizing special events.

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CHAPTER 67-930 LAWS OF FLORIDA

Section 8. The governing body of any city or town adopting any ordinance imposing the tax hereby authorized may also, by ordinance create an authority or commission empowered to contract and be contracted with in its own name as an agency of the city and to administer and expend such portion of the proceeds of said tax as the governing body may determine. The membership, qualifications for membership, tenure, and any other powers to be exercised by said authority or commission shall be prescribed by ordinance. Provided, however, that no ordinance or measure abolishing any authority or commission, as herein described, which may be created pursuant to this act, or curtailing, limiting or changing the powers of such authority or commission, or reducing or enlarging the number of its members, or reducing the percentage of funds to be administered or expended by said authority or commission, shall be valid unless such ordinance or measure so providing, shall first be approved by the electorate in a referendum election, unless such ordinance or measure is adopted by a four fifths (4/5) vote of the authority plus a five sevenths (5/7) vote of the council.