

ORDINANCE NO. 16 – 1658

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE II “LOCAL BUSINESS TAX RECEIPT” OF CHAPTER 70 “TAXATION” AND SPECIFICALLY AMENDING “SECTION 70-41 “LOCAL BUSINESS TAX SCHEDULE” TO INCLUDE BEACH FURNITURE OPERATION; AMENDING CHAPTER 86 “WATERWAYS”; ARTICLE II, “PUBLIC BEACHES”, SPECIFICALLY AMENDING SECTION 86-26 “DEFINITIONS”; CREATING SECTION 86-30 “BEACH FURNITURE”; CREATING SECTION 86-31 “BEACH FURNITURE PERMIT”; CREATING SECTION 86-32 “INDEMNIFICATION AND INSURANCE”; CREATING SECTION 86-33 “VIOLATIONS, CIVIL FINES AND PENALTIES”; 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 has the authority to promulgate laws to regulate the public beach in a reasonable manner to protect public health, safety, and welfare, which must have a rational relation and be reasonably designed to accomplish a purpose necessary for the protection of the public; and

WHEREAS, the Florida Constitution states that “The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people,” s.11, Art. X, Fla. Const; and

WHEREAS, the public trust doctrine requires that governmental regulation of sovereign beach lands be in furtherance of this trust and, therefore, be in the best interest of all the people; and

WHEREAS, pursuant to §205.042, Fla. Stat. and Section 70-26 of the Surfside Town Code, it is unlawful for any person to conduct or engage in any business, profession or occupation without first procuring a local business tax receipt and paying to the Town the local business tax; and

WHEREAS, it is in the best interest of the Town to establish an ordinance and an Administrative Policy to regulate the placement of beach furniture on the public beach by Beach Furniture Operators for public safety, access and maintenance, which will be reviewed after one year by the Town Commission; and

WHEREAS, a beach furniture permit will be revocable if the applicant does not meet the requirements as specified in the Town Code, Administrative Policy and operation plan; and

WHEREAS, the Town Commission held its first public hearing on October 13, 2016 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 December 13, 2016 and further finds the proposed change to the Code necessary and in the best interest of the community.

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

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 Ordinances of the Town of Surfside, Chapter 70 “Taxation” “Section 70-41 “Local Business Tax Schedule” is hereby amended as follows:

Sec. 70-41. - Local business tax schedule. There hereby are levied and imposed local business taxes for the privilege of engaging in or managing any business, profession or occupation within the town; the rates for such tax to be no greater than those as indicated herein.

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Beach furniture operation 500.00

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Section 3. Code Amendment. The Code of Ordinances of the Town of Surfside, Chapter 86 “Waterways”; Article II, Public Beaches” is hereby amending Section 86-26 “Definitions” and creating Sections 86-30 to 86-33 to read as follows:

Sec. 86-26. - Definitions.

* * *

Beach furniture includes, but is not limited to, any chair, umbrella, tent or any other object that is used on the beach.

* * *

Public beach means ~~that land area in the RT-1 Zoning District, "Tourist District,"~~ that is seaward of the erosion control line. It shall also include all easements and rights-of-way within the area that are utilized for public beach purposes.

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Beach Furniture Operator is a hotel located on the east side of Collins Avenue which uses or allows another party to use such beach furniture as part of a short-term paid lodging authorized through a Certificate of Use issued by the Town.

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Sec. 86-30. – Limitations on Beach Furniture.

Beach furniture shall not inhibit access to the public beach, nor obstruct reasonable access on the beach for pedestrians and emergency vehicles, nor impact native vegetation, nor affect sea turtles or other wildlife.

Sec. 86-31. - Beach Furniture Permit Requirements.

Beach Furniture Operator, as defined in this article must obtain a permit to place beach furniture on the public beach within the Town. Town Manager or designee shall establish an Administrative Policy for the placement of beach furniture on the public beach by Beach Furniture Operators for public safety, access and maintenance, as set forth by Administrative Policy. Beach Furniture Operators must procure a local business tax receipt and comply with the regulations of Section 70-41 of the Town of Surfside Code and all required licenses or permits from Miami-Dade County, the State of Florida and federal entities.

Sections 86-31 to 86-33 herein shall be reviewed by the Town Commission one year after its enactment. Nothing in Sections 86-31 to 86-33 shall require a permit from the general public to place beach chairs and/or equipment on the beach for personal use on an as needed basis.

A. Application. Any Beach Furniture Operator shall apply for a permit on a form prepared by the Town along with the applicable permit application fee. All permit applications shall include the following:

- (1) An application fee of \$500.00;
- (2) An evacuation plan, in the event of a natural disaster such as a tropical storm or hurricane, including a storage area.
- (3) Beach furniture operations plan, including specifications on storage, staffing and clean-up.
- (4) Compliance with indemnification and insurance requirements pursuant to Section 86-32 of the Town of Surfside Code.

B. Exemption. Nothing in this article shall require a permit from a member of the general public to place beach furniture on the public beach for personal use.

C. Review of permit application. A permit shall be granted upon the submittal of a completed application and the required fee, unless the Town Manager or designee determines that the granting of such a permit:

(1) Unduly impedes governmental business or public access;

(2) Conflicts with previously scheduled activities;

(3) Imperils public safety; or

(4) Violates any public policy or local, state or federal law.

D. A beach furniture permit is revocable if the applicant does not meet the requirements as specified in the Town Code, Administrative Policy and operation plan.

E. Appeals. If a permit is denied or revoked by the Town Manager or designee, the Beach Furniture Operator may, within 30 days of the decision, file a notice of appeal to the Town Commission. The appeal shall be heard as a quasi-judicial matter.

Sec. 86-32. - Indemnification and insurance.

A. The Beach Furniture Operator agrees to indemnify, defend, save and hold harmless the Town, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the Beach Furniture Operator's activity on the public beach.

B. The Beach Furniture Operator agrees to obtain and maintain for the entire permit period, at its own expense, the following requirements:

(1) Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The Town must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.

(2) Workers' compensation and employers' liability as required by the state.

C. All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.

D. The Town must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.

E. The Beach Furniture Operator must provide and have approved by the Town an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.

F. Failure to comply with these requirements shall be deemed to be operating without a valid permit and shall cause an immediate suspension or revocation of the permit.

Sec. 86-33. - Violations, Civil fines and penalties.

Any person or entity found to be in violation of any condition of the permit issued herein shall first be issued a warning. Failure to correct the violation within one hour following the issuance of a warning shall result in the issuance of a Civil Violation Notice to the Beach Furniture Operator. The notice shall be provided pursuant to Section 15-10 of the Town Code. Failure to correct the violation may result in revocation of the permit. Failure to obtain the required permit shall subject the owner to a fine of \$500 per day.

Section 4. 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 5. 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 6. 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 relettered to accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other appropriate word.

Section 7. Effective Date. This Ordinance shall be effective upon final adoption on second reading.

PASSED and **ADOPTED** on first reading this 13th day of October, 2016.


PASSED and **ADOPTED** on second reading this 15th day of December, 2016.

On Final Reading Moved by: Commissioner Paul.
On Final Reading Second by: Mayor Dietch

FINAL VOTE ON ADOPTION

Commissioner Daniel Gielchinsky
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Barry Cohen
Mayor Daniel Dietch

yes
yes
yes
no
yes



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

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



Linda Miller, Town Attorney

Administrative Policy

BEACH FURNITURE AND EQUIPMENT

The Town has the authority to promulgate laws to regulate the public beach in a reasonable manner to protect public health, safety, and welfare, which must have a rational relation and be reasonably designed to accomplish a purpose necessary for the protection of the public. Pursuant to Section 86-30 and 86-31 of the Town of Surfside Code, beach furniture shall not inhibit access to the public beach, nor obstruct access on the beach for pedestrians and emergency vehicles, nor impact native vegetation, nor affect sea turtles or other wildlife.

PUBLIC ACCESS AND SAFETY

- Beach furniture may not be placed directly behind of or in front of a lifeguard tower or within 10 feet of the entire perimeter of the lifeguard tower, or obstruct a lifeguard's or emergency personnel's view of the beach or ocean.
- No beach furniture shall be placed in the area immediately adjacent to or directly seaward of the street ends throughout the Town of Surfside.
- All beach furniture shall be set at no less than 12 feet and up to 20 feet seaward of the edge of the vegetation line of the dune.
- Beach Furniture Operator shall submit an operations plan approved by the Town Manager which includes specifications on storage, staffing and clean-up.
- Beach furniture shall not be set out in the morning before sunrise, or before completion of daily monitoring for turtle nesting activity by a Florida Fish and Wildlife Conservation Commission authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.

REQUIREMENTS FOR PERMIT HOLDERS

- The Beach Furniture Operator shall be responsible for ensuring that the beach furniture is clearly identified as to its ownership, maintained in good condition, free from evidence of deterioration, weathering, and discoloration, at all times.

- Beach furniture shall be deployed in a manner to assure public access and to encourage public use of the beach and shall cause no obstruction to the general public.
- A Beach Furniture Operator may store beach furniture on their property or east of the dune neatly organized and secured to the ground.
- Any request from a code enforcement officer, or lifeguard to relocate beach furniture shall be complied with immediately.
- In the event of a declared state of emergency, the Town Manager or designee may issue a warning to the Beach Furniture Operator to remove and secure the beach furniture. If the Beach Furniture Operator fails to remove the beach furniture, the Town Manager or designee, at its option, may remove the beach furniture from the public beach. The Beach Furniture Operator shall be liable for all costs incurred by the Town for the removal and storage of the beach furniture in the event of an emergency.
- The Beach Furniture Operator shall comply with any order issued by the State of Florida, and Miami-Dade County regulations regarding the preservation of marine turtle nesting grounds to ensure that nesting surveys are conducted in accordance with the conditions set forth by the state and the county. In the event an unmarked marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the Florida Marine Patrol (1-800-DIAL-FMP) shall be notified immediately for appropriate conservation measures to be taken.