

ORDINANCE NO. 17 – 11062

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 86 “WATERWAYS”; ARTICLE II, “PUBLIC BEACHES”, SPECIFICALLY AMENDING SECTION 86-26 “DEFINITIONS”; SPECIFICALLY AMENDING SECTION 86-31 “BEACH FURNITURE PERMIT REQUIREMENTS”; SPECIFICALLY AMENDING 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, on December 13, 2016 the Town Commission adopted Ordinance No. 16-1658 to regulate beach furniture and its corresponding *Administrative Policy: Beach Furniture and Equipment* which provides for public access and safety and requirements for beach furniture; and

WHEREAS, on April 13, 2017 the Town Commission directed Town Administration to amend the beach furniture ordinance to clarify terms in the ordinance; and

WHEREAS, the Town Commission held its first public hearing on May 9, 2017 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 June 13, 2017 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. Article II, “Public Beaches,” specifically Section 86-26 “Definitions,” Section 86-31 “Beach Furniture Permit Requirements” and Section 86-33 “Violations, Civil Fines and Penalties” is hereby amended as follows:

Sec. 86-26. - Definitions.

* * *

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.~~ a hotel or Condominium Association located on the east side of Collins Avenue that provides beach furniture services to its residents and guests or a hotel located on the west side of Collins Avenue so approved by the Town Commission pursuant to Section 86-31(B)(2) of the Town Code.

Beach Furniture Setup is the organized preplacement of beach furniture by a Beach Furniture Operator in anticipation of use by an individual Beach Furniture User.

Beach Furniture Storage is the overnight placement of beach furniture on the public beach.

Beach Furniture User is an individual using any item of beach furniture while on the public beach. This applies to the general public, condominium residents and hotel guests.

* * *

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

Beach Furniture Operator, as defined in this article must obtain a permit for Beach Furniture Setup and Beach Furniture Storage ~~to place beach furniture~~ on the public beach within the Town. Town Manager or designee shall establish an Administrative Policy: Beach Furniture and Equipment 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.~~ A hotel 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 ~~86-26 86-31~~ to 86-33 herein shall be reviewed by the Town Commission within one year of after its enactment and the Town will notify any Beach Furniture Permit holder prior to any meeting of such review. 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 Beach Furniture pPermit 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.~~

A. Beach Furniture Permit applications for hotels or Condominium Association located on the east side of Collins Avenue shall include the following:

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

B. Beach Furniture Permit applications for hotels located on the west side of Collins Avenue must be approved by the Town Commission.

- (1) Beach Furniture Permit applications for hotels located on the west side of Collins Avenue shall include the following:
 - a. An application fee of \$500.00;
 - b. Beach Furniture Operations Plan, including specifications on storage, staffing and clean-up, and an evacuation plan, in the event of a natural disaster such as a tropical storm or hurricane, including a storage area;
 - c. Compliance with indemnification and insurance requirements pursuant to Section 86-32 of the Town of Surfside Code;
- (2) All applications for hotels located on the west side of Collins Avenue are subject to the Town Administrative Policy: Beach Furniture and Equipment and shall be approved by the Town Commission.
 - a. The Town Commission shall review each application for conformity with the Town Administrative Policy: Beach Furniture and Equipment and decide whether the application shall be approved, approved with conditions, or denied.
 - b. The Town Commission Public Hearing shall be advertised at least once in a local newspaper of general circulation or publicly posted in the Town Hall at least ten days prior to the Public Hearing. Written courtesy notices shall be sent by first class mail to affected property owners within a radius of 300 feet and shall contain a copy of the Beach Furniture Permit application.

A notice, 18 inches by 24 inches, shall be placed in a prominent place on the property by the applicant at the applicant's own expense denoting the following:

REQUEST FOR: _____

TOWN COMMISSION MEETING: DATE AND TIME

TOWN HALL
9293 Harding Avenue
Surfside, FL 33154

COMPLETE INFORMATION REGARDING THE BEACH FURNITURE PERMIT APPLICATION IS AVAILABLE BY CONTACTING THE TOWN HALL.

B. C. 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. D. Review of Beach Furniture Permit application. A permit shall be granted upon the submittal of a completed application and the required fee, unless the Town Manager or designee or the Town Commission for Beach Furniture Permit applications pursuant to Section 86-31(B)(2) of the Town Code, 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. E. A ~~Beach Furniture Permit~~ is revocable if the applicant does not meet the requirements as specified in the Town Code, Administrative Policy: Beach Furniture and Equipment and applicant's operation plan. A hotel Beach Furniture Operator is subject to the provisions of Article II "Local Business Tax Receipt" of Chapter 70 of the Town Code.

E. F. Appeals. If a Beach Furniture 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. 86-33. - Violations, Civil fines and penalties.

Any person or entity found to be in violation of any condition of this section ~~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 as provided pursuant to in~~ 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.~~

Violations of this section shall be subject to the following fines.

- a. If the violation is the first violation-\$100.00
- b. If the violation is the second violation within the preceding 12 months-\$500.00

c. Any subsequent violation after the second violation within the preceding 12 months-\$1,000.00

d. After the third violation, a Beach Furniture Operator shall be suspended from Beach Furniture operations for a period of one year from the date of violation.

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 9 day of May, 2017.

PASSED and **ADOPTED** on second reading this 13 day of June, 2017.

On Final Reading Moved by: Commissioner Gielchinsky
On Final Reading Second by: Commissioner Karukin

FINAL VOTE ON ADOPTION

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

yes
yes
Absent
no
yes



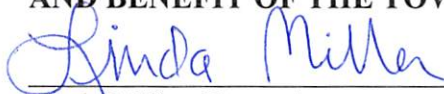
Daniel Dietch, Mayor

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