

ORDINANCE NO. 18 - 1680

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING ARTICLE III, PROPERTY MAINTENANCE STANDARDS, OF CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, AND CHAPTER 90, ZONING, TO PROHIBIT USE OF MULCH IN THE RIGHT-OF-WAY AND ADDRESS PROPERTY OWNER MAINTENANCE RESPONSIBILITIES FOR PUBLIC RIGHT-OF-WAY ADJACENT TO PRIVATE PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida
2 Statutes, provide municipalities the authority to exercise any power for municipal purposes,
3 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

4 **WHEREAS**, the Town Code of Ordinances (the “Town Code”) requires property owners to
5 maintain the right-of-way. including sod, landscaping and trees, adjacent to their property; and

6 **WHEREAS**, many property owners fail to maintain said right-of-ways, and particularly the
7 trees in such right-of-ways, in a manner which does not interfere with above- and below-ground
8 utilities and particularly power lines; and

9 **WHEREAS**, untrimmed trees cause particular risk and damage during storm events and in
10 Hurricane Irma, created a number of power issues; and

11 **WHEREAS**, the Town desires to more stringently enforce the existing maintenance
12 requirements of the Town Code in order to preserve and protect the public welfare, especially in
13 light of forecast increases in storm activity during upcoming hurricane seasons; and

14 **WHEREAS**, the Town desires to clarify the requirements for property owner maintenance of
15 trees and landscaping on both private property and the adjacent right-of-way in order to maintain
16 FPL lines free and clear and eliminate interference and potential damage to above- and below-
17 ground utilities; and

¹Additions to the text are shown in underline. Deletions are shown in ~~striketrough~~. Additions between first and second reading are shown in double underline.

18 **WHEREAS**, the Town Code provides that failure to maintain property, including adjacent
19 right-of-way, may result in the Town performing or arranging for such maintenance and that the
20 cost of such maintenance may be imposed upon the property owner and liened against the
21 property; and

22 **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town,
23 held its hearing on the proposed amendment on February 22, 2018 with due public notice and
24 input; and

25 **WHEREAS**, the Town Commission held its first public hearing on February 13, 2018 of the
26 proposed amendments to the Code of Ordinances having complied with the notice requirements
27 by the Florida Statutes; and

28 **WHEREAS**, the Town Commission has conducted a second duly noticed public hearing on
29 these regulations on March 13, 2018 and April 10, 2018 as required by law on and further finds
30 the proposed change is consistent with the Comprehensive Plan and in the best interest of the
31 community.

32
33 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
34 **THE TOWN OF SURFSIDE, FLORIDA¹:**

35
36 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated herein by
37 this reference:

38
39 **Section 2. Town Code Amended.** Chapter 14, Buildings and Building Regulations,
40 Article III, Property Maintenance Standards, of the Town of Surfside Code of Ordinances is here
41 by amended to read as follows¹:

42 **CHAPTER 14 – BUILDINGS AND BUILDING REGULATIONS**

43 * * *

44 **ARTICLE III. - PROPERTY MAINTENANCE STANDARDS**

45 **Sec. 14-51. - Established.**

46 (a) The owner of every single-family or multiple-family dwelling or commercial property, or
47 his appointed agent, shall be responsible for maintaining the exterior in a clean, sanitary and

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48 safe condition. All structures and all parts thereof shall be maintained in good repair and
49 shall be capable of performing the function for which such structure or part or any feature
50 thereof was designed or intended to be used.

51 (b) All exterior walls of every structure shall be maintained weathertight and otherwise
52 maintained so as to resist decay or deterioration from any cause. All exterior surfaces
53 subject to deterioration shall be properly maintained and protected from the elements by
54 paint or other approved coating, applied in a workmanlike fashion. All exterior surfaces
55 including walls, trim, doors and signs shall be properly maintained in a clean and sanitary
56 condition, free of dirt, mold, mildew and faded or chipped paint, and must be repainted,
57 recovered or cleaned when 25% or more of any exposed surface becomes discolored or is
58 peeling in the approved color.

59 (c) Exterior property areas of all premises shall be kept free of any debris, object, material or
60 condition which may create a health, accident or fire hazard, or which constitutes a blighting
61 or deteriorating influence on the neighborhood. Lawns, landscaping and driveways shall
62 also be maintained so as not to constitute a blighting or deteriorating effect in the
63 neighborhood.

64 (d) Whenever there is an unpaved area between the sidewalk and the curb, or between the
65 sidewalk and the property line, or between the paved roadway and the property line, it shall
66 be the responsibility of the owner and/or occupant of the property to make sure that there are
67 no holes or hidden dangers in the unpaved areas, and to maintain any plants, including trees
68 and sod, and irrigation located in said area. Such areas shall be maintained free of mulch.

69 (e) Each property owner is responsible for hiring a qualified, licensed and insured contractor as
70 necessary to maintain all trees on their property or within the right-of-way adjacent to their
71 property, free and clear of power lines so as to prevent or alleviate the danger of the tree
72 damaging power lines, consulting with American National Standards Institute ("ANSI")
73 A300 (Part I)—2001 Pruning Standards, as amended, and ANSI Z133.1-2000 Pruning,
74 Repairing, Maintaining, and Removing Trees, and Cutting Brush Safety Requirements, as
75 amended, and in a manner which does not interfere with or cause damage to above or
76 below-ground utilities.

77 (f) The town manager is hereby authorized and directed to employ necessary personnel and
78 equipment to enter upon any property whose owner or occupant fails to maintain lawns,
79 landscaping, ~~and~~ driveways, and adjacent right-of-ways in accordance with this article and
80 to maintain same.

81 (gf) In order to defray the cost to the town of maintaining such property there is hereby levied
82 and assessed against each owner or occupant who fails to maintain such lawns, landscaping
83 and driveways in accordance with this article, an administrative fee as set forth in the
84 schedule of fines adopted by resolution per time the town provides such maintenance, in

85 addition to the actual costs incurred for said maintenance. The fee for tree trimming shall be
86 the actual costs incurred by the Town from the service provider plus \$100.00 for processing
87 and administration. All charges becoming due and payable under this subsection constitute,
88 and are hereby imposed as liens against the real property, and, upon becoming delinquent
89 April 1 of the following year, until fully paid and discharged, shall remain liens, equal in
90 rank and dignity with the ad valorem taxes of the town, and may be satisfied by the sale of
91 certificates in the same manner as is provided for the sale of certificates on delinquent ad
92 valorem taxes. Such lien shall be superior in rank and dignity to other liens, encumbrances,
93 titles and claims in, to or against the real property involved.

94 * * *

95 **Section 3. Town Code Amended.** Chapter 90, Zoning of the Town of Surfside Code of
96 Ordinances is here by amended to read as follows:

97 **Chapter 90 - ZONING**

98 * * *

99 **ARTICLE V. – Design Standards**

100 * * *

101 **Sec. 90-52. - Required clearances.**

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

- 107 (a) All corner properties shall provide and maintain unobstructed corner clearance areas along
108 both the front and side lot lines; and
- 109 (b) All objects, fences, walls, gateways, ornamental structures, signs, hedges, shrubbery, and
110 other fixtures, construction, and planting within any corner clearance areas shall provide
111 unobstructed cross-visibility at a level between 30 inches and eight feet, with the exception
112 of tree trunks that do not create a traffic hazard; and
- 113 (c) The property owner shall be responsible for maintaining all landscaping within the corner
114 clearance areas; and
- 115 (d) It shall be unlawful for any person to plant or cause to be planted any tree or shrubs or to
116 place any structure in the public right-of-way without a permit from the town manager or
117 designee. The elevation grades of the public right-of-way adjacent to private property shall
118 not be altered; and

119 (e) Only turf as defined in section 90-85.2of the Code shall be located within the public-right-
120 of-way between the edge of any roadway or curb and the private property line; and

121 (f) The placement of mulch within the public right-of-way is prohibited; and

122 (g) The town manager or designee shall make the final determination regarding unobstructed
123 corner clearance areas.

124 (i) If any property owner fails to maintain clearances and conditions required by this section,
125 the Town shall take action pursuant to Chapter 15, Article I, Code Enforcement provided
126 that should a property owner fail to remedy the violation within the timeframe provided by
127 the Notice of Violation or ~~should~~ the violation creates an immediate threat hazardous
128 condition ~~for~~ to the operation of any utilities or ~~endanger~~ the life safety and welfare, the
129 Town may take action and assess costs pursuant to Article III, Property Maintenance
130 Standards of Chapter 14.

131 * * *

132

133 **ARTICLE VIII. – Landscape Requirements**

134 * * *

135 **Sec. 90-87. - Installation of landscaping and irrigation.**

136 All landscaping and irrigation shall be installed according to accepted horticultural planting
137 procedures with the quality of plant materials as hereinafter described, including:

138 (1) Planting soil/topsoil shall be of the minimum quality as specified in the plant materials
139 section of this Code. All trees, palms, shrubs, and ground covers shall be planted with a
140 minimum of 12 inches or two times the root ball of planting soil around root ball. A
141 minimum of three inches of shredded, approved arsenic free, organic mulch or groundcover
142 shall be installed around each tree planting for a minimum of 18 inches beyond its trunk in
143 all directions, including palms, and throughout all hedge, shrub, and groundcover planting.
144 The use of mulch obtained from Melaleuca, Eucalyptus, or other invasive plant species is
145 encouraged in order to reduce their impact on the environment and to preserve the remaining
146 native plant communities.

147 (2) All trees/palms shall be properly guyed and staked at the time of planting until one year from
148 landscape final or establishment. The use of nails, wire or rope, or any other method which
149 damages the trees or palm, is prohibited. All plants shall be installed so that the top of the
150 root ball remains even with the soil grade or ten percent or the root flare is visible above the
151 surrounding grade. All synthetic string, synthetic burlap, cords, or wire baskets shall be
152 removed before planting.

153 (3) All parking islands, medians, and other landscape areas shall be installed with continuous
154 Type "D" curbing to prevent damage to the plant material and the displacement of topsoil
155 and mulch. Also, all landscape islands, divider medians, and planters shall be excavated of
156 limerock and/or compacted soil to a depth of 30 inches and backfilled with specified planting
157 mix to the top of curb. Additionally, all areas along buildings shall be excavated to a depth of
158 12 inches and backfilled with specified planting mix. No mulch shall be permitted in
159 adjacent swales or right-of-way.

160 * * *

161 **Sec. 90-88. - Maintenance of landscaped areas.**

162 (1) An owner of land subject to this Code shall be responsible for the maintenance of said land
163 and landscaping so as to present a healthy, vigorous and neat appearance free from refuse and
164 debris. All landscaped areas shall be sufficiently fertilized and irrigated to maintain the plant
165 material in a healthy and viable condition.

166 *NOTE:* All fertilizer shall be safe and environmentally friendly. Also, the applications shall
167 conform to the manufacturer's specifications.

168 (2) Three inches of clean, weed-free, arsenic free, organic mulch shall be maintained over all
169 areas originally mulched at all times. Turfgrass shall be kept trimmed and/or mowed
170 regularly to a height not exceeding eight inches above the ground. The use of mulch in
171 swales or right-of-way is prohibited.

172 * * *

173 **Sec. 90-89. - Plant material**

174 * * *

175 *90-89.4 Trees:*

176 * * *

177 (6) *Street tree requirements:*

178 a. Street trees shall be required at one shade tree/palm tree per 20 linear feet of street
179 frontage thereof along all public or private street right-of-ways in all zoning
180 districts.

181 b. Street trees shall be of a species typically grown in South Florida that normally
182 matures to a height of at least 20 feet. Street trees shall have a clear trunk of over
183 seven feet, an overall height of fourteen (14—16) feet and a minimum of 2½ inches
184 DBH at time of planting. Palm trees utilized as street trees shall have eight foot clear
185 wood.

- 186 c. The average spacing requirement for H40 districts shall be based on the total lineal
187 footage of roadway for the entire project and not based on individual lot widths.
- 188 d. Street tree species shall be approved by the town during plan review. Street trees
189 shall visually define the hierarchy of roadways, provide shade along roadways, and
190 provide a visual edge along roadways. Consideration shall be given to the selection
191 of trees, plants and planting site to avoid serious problems such as clogged sewers,
192 cracked sidewalks, and power service interruptions.
- 193 e. Street trees shall be placed within the swale area or shall be placed on private
194 property where demonstrated to be necessary due to right-of-way obstructions as
195 determined by the town. A Public Works permit shall be obtained prior to planting
196 any tree in the right-of-way. Trees shall be planted in conformance with the Right
197 Tree, Right Place Guidelines for planting trees near power lines published within
198 Florida Power & Light's "Right Tree, Right Place" brochure, as amended.
- 199 f. Street trees planted along roadways and/or sidewalks shall be placed a minimum of
200 four feet off the interior pavement edge.
- 201 g. Street trees planted within sidewalk or curbed planting area along parallel parking
202 shall have a minimum planting area of six feet by six feet. If the street tree is planted
203 within the sidewalk, root barrier(s) of minimum depth of 12 inches shall be installed
204 per manufacturer's recommendations. These trees shall require adjustable tree grates
205 or groundcover to full coverage inside planting area.
- 206 h. When trees are planted within the right-of-way, the owners of land adjacent to the
207 areas where street trees are planted must maintain those areas including the trees,
208 plants, irrigation and sod. Trees must be maintained free and clear of powerlines and
209 all trees and plantings shall be maintained in a manner to which prevents and
210 alleviates the danger of the trees damaging power lines, consulting with American
211 Natural Standards Institute ("ANSI") A300 (Part D)—2001 Pruning Standards, as
212 amended, and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing
213 Trees, and Cutting Brush Safety Requirements, as amended. ~~interference with~~
214 ~~above or below ground utilities.~~ Where the state, county or town determines that
215 the planting of trees and other landscape material is not appropriate in the public
216 right-of-way, they may require that said trees and landscape material be placed on
217 private property.
- 218 i. If any property owner fails to maintain trees and other landscaping in right-of-way
219 or on private property, as required by this code ~~free and clear of power lines and in a~~
220 ~~manner which does not interfere with or cause damage to above or below ground~~
221 ~~utilities,~~ the Town shall provide a written warning with 45 ~~30~~ days to remedy, after
222 which, the Town may take action and assess costs pursuant to Article III, Property
223 Maintenance Standards of Chapter 14.
- 224 j. Where the Town determines a tree or landscaping in the right-of-way poses an
225 immediate threat ~~is detrimental~~ to the health, safety and welfare of residents or is
226 extremely likely to cause imminent ~~has a significant likelihood of causing~~ damage to
227 utilities or powerlines, said tree or landscaping may be removed by the Town, at the

228 owner's expense. Such costs shall be assessed against a property owner and
229 property pursuant to Article III, Property Maintenance Standards of Chapter 14.

230 * * *

231 **Section 4. Severability.** If any section, sentence, clause or phrase of this ordinance is
232 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding
233 shall in no way affect the validity of the remaining portions of this ordinance.

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

240 **Section 6. Conflicts.** Any and all Ordinances and Resolutions or parts of Ordinances or
241 Resolutions in conflict herewith are hereby repealed.

243 **Section 7. Effective Date.** This ordinance shall become effective upon adoption.

244
245 **PASSED and ADOPTED** on first reading this 13th day of February, 2018.

247 **PASSED and ADOPTED** on second reading this 10th day of April, 2018.


250 On Final Reading Moved by: Mayor Dietch

252 On Final Reading Second by: Vice Mayor Gielchinsky

255 **FINAL VOTE ON ADOPTION:**

| | |
|-----------------------------------|--------|
| 256 Commissioner Barry Cohen | Absent |
| 257 Commissioner Michael Karukin | NO |
| 258 Commissioner Tina Paul | YES |
| 259 Vice Mayor Daniel Gielchinsky | YES |
| 260 Mayor Daniel Dietch | YES |

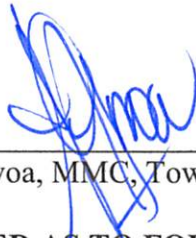
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Daniel Dietch, Mayor

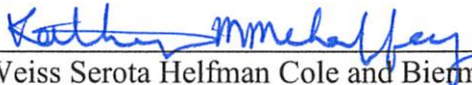
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ATTEST:



Sandra Novoa, MMC, Town Clerk

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



Weiss Serota Helfman Cole and Bierman, P.L.
Town Attorney