

ORDINANCE NO. 23 - 1748

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY CREATING A NEW CHAPTER 76 "PUBLIC RIGHTS-OF-WAY" TO ESTABLISH RULES AND REGULATIONS TO MANAGE THE PLACEMENT AND MAINTENANCE OF NON-UTILITY FACILITIES, IMPROVEMENTS, AND ENCROACHMENTS WITHIN PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 90-56.11 OF SECTION 90-56 "FENCES, WALLS, AND HEDGES" TO CONSOLIDATE REGULATIONS FOR FENCES, WALLS, HEDGES, PLANT MATERIALS, AND IMPROVEMENTS WITHIN THE RIGHT-OF-WAY IN THE NEW CHAPTER 76; PROVIDING FOR SEVERABILITY; 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 with the authority to exercise any power for municipal
3 purposes, except where prohibited by law, and to adopt ordinances in furtherance of such
4 authority; and

5 **WHEREAS**, the Town Commission of the Town of Surfside ("Town Commission")
6 finds it periodically necessary to amend its Code of Ordinances ("Code") in order to update
7 regulations and procedures to maintain consistency with state law, to implement municipal
8 goals and objectives, to clarify regulations and address specific issues and needs that may
9 arise; and

10 **WHEREAS**, the Town's public rights-of way, which include public streets (and their
11 associated swales), alleys, easements, street ends, and pedestrian paths are a valuable
12 public asset that must be preserved and maintained unobstructed for the free flow of
13 pedestrians and traffic, necessary utility and infrastructure improvements, and
14 telecommunications facilities serving vital communication needs; and

15 **WHEREAS**, the Town Commission of the Town of Surfside (the "Town") desires to
16 clearly provide in the Town's Code of Ordinances (the "Code") by creating Chapter 76
17 "Public Rights-of-Way" for regulations to manage the placement and maintenance of non-

Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~highlighted double-strikethrough~~ and double underline.

18 utility facilities, improvements, and encroachments within the Town’s public rights-of-way,
19 and any construction or maintenance work in the public-rights-of-way, and provide for a
20 methodology and permit process for the placement and installation of facilities,
21 improvements and encroachments thereon; and

22 **WHEREAS**, it is the intent of the Town to promote the public health, safety and
23 general welfare by: providing allowances for the placement and maintenance of non-utility
24 and telecommunications facilities in appropriate locations within rights-of-way, including
25 without limitation the public streets, alleys, easements, and pedestrian paths within the
26 Town; and adopting and administering reasonable rules and regulations not inconsistent
27 with state and federal law; and

28 **WHEREAS**, Section 56.11 of Section 90-56 “Fences, Walls and Hedges” of the
29 Town Code currently provides for some restrictions on the placement of fences, walls and
30 hedges, and plant and groundcover in the public rights-of-way, and the Town Commission
31 wishes to revise these provisions and incorporate them into the new Chapter 76
32 regulations comprehensively addressing all encroachments and facilities placed in the
33 public right-of-way; and

34 **WHEREAS**, at the Town Commission meeting on May 9, 2023, the Town Commission
35 generally discussed regulations related to the placement of improvements and
36 encroachments within appropriate locations of the public rights-of-way, provided a permit
37 is obtained and the owner complies with established requirements, including the execution
38 of a Right-of-Way Encroachment Agreement; and

39 **WHEREAS**, the Town Commission finds it in the best interest and welfare of the Town
40 to regulate the public–rights-of-way and the placement of maintenance of facilities and
41 encroachments, and any construction or maintenance work thereon; and

42 **WHEREAS**, the Town Commission held its first public hearing on June 13, 2023 and,
43 having complied with the notice requirements in the Florida Statutes, approved the
44 proposed amendments to the Code with changes; and

45 **WHEREAS**, the Planning and Zoning Board, as the local planning agency for the
46 Town, held its hearing on the proposed amendments to the Code on May 24, 2023 with
47 due public notice and input, and recommended approval of the proposed amendments to
48 the Code; and

49 **WHEREAS**, the Town Commission has conducted a second duly noticed public
50 hearing on these Code amendments as required by law on July 11, 2023 and further finds
51 the proposed changes to the Code are necessary and in the best interest of the Town.

52 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
53 **TOWN OF SURFSIDE, FLORIDA¹:**

54
55 **Section 1. Recitals.** The above Recitals are true and correct and are incorporated
56 herein by this reference:

57
58 **Section 2. Town Code Amended.** The Town Code is hereby amended to create
59 a new Chapter 76 “Public Rights-of-Way” as follows:

60. **Sec. 76-1. - Short title.**

61 This Chapter and ordinance shall be known and may be cited as the Town of Surfside
62 Public Rights-of-Way Ordinance.

63. **Sec. 76-2. - Intent and purpose.**

64 It is the intent of the Town to promote the public health, safety and general welfare by
65 protecting and maintaining the Town’s public rights-of way, which are a valuable public
66 asset, free of obstructions for the free flow of pedestrians and traffic, necessary utility and
67 infrastructure improvements and facilities, by establishing reasonable rules and
68 regulations necessary to manage the placement and maintenance of non-utility facilities,
69 improvements, and encroachments within the Town’s public rights-of-way, and any
70 construction or maintenance work in the Town’s public rights-of-way, and minimizing
71 disruption to the public rights-of-way, and providing for a methodology and permit process
72 to allow facilities, improvements and encroachments thereon a limited and permitted basis.

73 **Sec. 76-3. Definitions**

74
75 For purposes of this Chapter, the following terms, phrases, words and their derivations
76 shall have the meanings given. Where not inconsistent with the context, words used in
77 the present tense include the future tense, words in the plural number include the
78 singular number, and words in the singular number include the plural number. The words
79 "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined
80 shall be construed to mean the common and ordinary meaning.

81
82 “Encroachment” is any building, structure, facility, improvement, item, landscape or
83 hardscape element, or other obstruction that is placed in, on, under, over, upon, or across

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84 the at-grade surface of any public right-of-way, street, alley or easement, or any work
85 within the public right-of-way (including, preexisting and unpermitted as of the date of this
86 Ordinance), except for those structures, facilities, improvements or items placed by the
87 Town, or telecommunications or utility facilities regulated pursuant to Chapters 72 and 78,
88 respectively. Examples of encroachments include, but are not limited to, pavers,
89 driveways, drains, mailboxes, fences, walls, trash collection bins, trees, bushes, hedges,
90 shrubs and other vegetative and non-vegetative mater, including synthetic turf.

91 "In public right-of-way" shall mean in, on, over, under or across the public right-of-way.

92 "Place or maintain" or "placement or maintenance or placing or maintaining" shall mean
93 to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy,
94 locate or relocate.

95
96 "Property Owner," "Applicant," or "Occupant" shall mean the owner or occupant of private
97 property abutting an encroachment within the public right-of-way.

98
99 "Right-of-way" shall mean a public right-of-way, public utility easement, highway, street,
100 street end, bridge, tunnel or alley for which the town is the authority that has jurisdiction
101 and control and may lawfully grant access to pursuant to applicable law, and includes
102 the surface, the airspace over the surface and the area below the surface. "Public right-
103 of-way" shall not include private property. "Public right-of-way" shall not include any real
104 or personal town property except as described above and shall not include town
105 buildings, fixtures, poles, conduits, facilities or other structures or improvements,
106 regardless of whether they are situated in the public right-of-way.

107
108 "Right-of-way Encroachment Agreement" shall mean an agreement and covenant
109 running with the property executed by a property owner in favor of the Town whereby
110 the Town grants permission for an encroachment to be placed or maintained on the Town
111 public right-of-way in accordance with the Right-of-Way Permit issued by the Town, and
112 whereby the property owner agrees to the conditions of and requirements for placement
113 and maintenance of the encroachment on the public right-of-way.

114 "Right-of way permit" shall mean a permit issued by the Town's ~~Public Work's~~
115 ~~Department Manager~~ or ~~Director~~ Designee permitting the placement and maintenance
116 of non-utility facilities, improvements, and/or an Encroachment in the Town's public right-
117 of-way, or permitting any form of construction or maintenance work in the public rights-
118 of way, which may include conditions and requirements on the placement and/or
119 maintenance of such facilities or work.

120 **Sec. 76-4 - Encroachments and facilities on or in the Public Right-of-Way.**

121
122 (a) Encroachments. No Encroachment, as defined herein, shall be permitted to
123 be placed or maintained in, on, under, over, upon, or across the public right-of-way,
124 except as approved by the Town Public Works Department or Director by Right-of-Way

125 Permit pursuant to this section. Applications for a Right-of-Way Permit within the public
126 right-of-way shall be governed by this Chapter.

127
128 (b) Application. An application for a Right-of-Way Permit for an Encroachment
129 shall be submitted to the Town Manager or designee Public Works Department by the
130 property owner/applicant in the form prescribed by the Town and shall pay an application
131 fee, as may be established by resolution, at the time of submission of the application.
132 The Town Manager or designee Public Works Department or Director may grant a Right-
133 of-Way Permit for an Encroachment upon a finding that:

- 134
135 a. The proposed Encroachment will not unreasonably restrict or obstruct
136 the public right-of-way;
137 b. The proposed Encroachment will not be detrimental to the health, safety
138 or welfare of the Town, and the rights of ingress and egress of the
139 surrounding property owners, and the rights and obligations of utility and
140 telecommunication providers will not be impacted or obstructed and
141 c. The proposed Encroachment will not be visually or aesthetically
142 impactful to the Town or surrounding neighborhood or community
143 character.

144
145 No permit for work or the placement and maintenance of an Encroachment on the
146 Town public-right-of-way described in this subsection (b) shall be issued unless a written
147 application for the issuance of a Right-of-Way Permit is submitted to the Town Manager
148 or designee Public Works Director in accordance with the following:

- 149
150 a. The written application shall state the name and address of the
151 applicant, the nature, location and purpose of the work, the date of
152 proposed commencement and date of proposed completion of the
153 work, and such other information as may be required by the Town
154 Manager or designee Public Works Director.
155
156 b. The application shall be accompanied by plans showing the
157 proposed facilities and work, the location of the work and cross-
158 sectional drawings showing existing underground facilities and
159 utilities, and proposed installations, and such other information as
160 may be required by the Town Manager or designee Public Works
161 Director.
162
163 c. As a condition of granting a Right-of-Way Permit, the Town
164 Manager or designee Public Works Director may impose reasonable
165 conditions governing the location, placement, or maintenance of
166 Encroachment on the public right-of-way, including the payment of
167 fees and costs or the provision of improvements on the public right-
168 of-way, including improvements intended to mitigate impacts to the
169 right-of-way, such as without limitation, drainage facilities.

170

171 d. The granting of a Right-of-Way Permit to permit an Encroachment
172 shall be at the discretion of discretionary with the Town Manager or
173 designee Public Works Director and the Town reserves the right to
174 deny an application for any reason for reasonable or good cause.
175

176 (c) Right-of-Way Encroachment Agreement. As a condition of a Right-of-Way
177 Permit permitting the Encroachment, the Town Manager or designee Public Works
178 Director shall may require the applicant to execute a Right-of-Way Encroachment
179 Agreement, in form and substance acceptable to the Town Manager and Town Attorney,
180 imposing such requirements and conditions as deemed necessary or prudent, including,
181 but not limited to, requiring insurance and security, providing that the Right-of-Way
182 Permit may be revoked and the Encroachment may be removed, at the will of the Town
183 Manager or designee Public Works Director, and providing for any other conditions that
184 the Town Manager or designee Public Works Director may deem necessary to protect
185 the interests of the Town.
186

187 (d) Any Right-of-Way Permit granted by the Town Manager or designee Public
188 Works Director to create, preserve or maintain an Encroachment on the public right-of-
189 way, and any and all unpermitted Encroachments preexisting as of the date of this
190 Ordinance, constitute a mere revocable permit or permission by the Town regarding the
191 temporary use of Town right-of-way, which permit or permission is revocable at will. The
192 granting of any such Right-of-Way Permit or unpermitted Encroachments preexisting as
193 of the date of this Ordinance do not provide a property owner or applicant with any
194 property rights, vested or otherwise, in any portion of any property in or upon which such
195 Encroachment rests or occurs, nor is any right of use granted beyond that which is
196 specifically provided for herein.

197 (e) The Town Manager or designee Public Works Director may terminate
198 permission for any Encroachment by notifying, in writing, the abutting property owner or
199 occupant to remove any such Encroachment based on the Town Public Works
200 Director Manager's or designee's determination that it is in the public interest to have the
201 Encroachment permission terminated and the Encroachment removed. The Town Public
202 Works Director Manager or designee shall establish a reasonable time for termination or
203 removal pursuant to the procedures set forth in subsection (f) below.

204 (f) The Town Manager or designee Public Works Director is hereby authorized
205 and empowered to notify, in writing, the abutting property owner or occupant who has
206 created, caused or maintained an Encroachment and to direct said owner or occupant
207 to remove or alleviate the Encroachment. The following procedures shall apply:

208 a. Such notice shall be by regular mail and registered or certified mail,
209 addressed to the property owner, occupant or agent of the owner at his or
210 her last known address, and shall be posted visibly on the property.

211 b. Upon the failure, neglect or refusal of any property owner or occupant
212 notified pursuant to this section to remove or eliminate the Encroachment

213 described therein within the time limits stated in the notice, or to obtain
214 permission from the Town ~~Manager or designee~~ ~~Public Works Director~~ to
215 maintain said Encroachment, the Town ~~Manager or designee~~ ~~Public Works~~
216 ~~Director~~ may authorize the removal of said Encroachment without any
217 further notice to the property owner or occupant.

218 c. The procedures of this subsection shall also apply upon the Town Public
219 Works Director's revocation of any Right-of-Way Permit granted for the
220 creation or maintenance of an Encroachment. The cost of any such
221 removal conducted by or at the direction of the Town shall be billed to the
222 property owner and upon the Town's failure to receive payment of the bill
223 within thirty (30) days of its receipt, the charges for such services shall be
224 a lien against the abutting property which lien may be foreclosed as
225 provided by law. The procedures set forth in this subsection are in addition
226 to, and not in lieu of, any and all other enforcement procedures available to
227 the Town under this Code or by law.

228 (g) The failure of the Town ~~Manager or designee~~ ~~Public Works Director~~ to require
229 removal of any Encroachment existing without a Right-of-Way Permit or to act within any
230 specific time period to remove Encroachments after notice is provided pursuant to
231 subsection (f) above, shall not serve as a waiver by or an estoppel against the Town's
232 right and authority to require the removal of any such Encroachments at any time the
233 Town deems it desirable or appropriate to do so.

234 (ih) In the event of a public emergency, such as a hurricane, tropical storm, flood
235 or any other act of God, or any other condition that merits immediate removal of the
236 Encroachment, the requirements of this section may be waived and the Town ~~Manager~~
237 ~~or designee~~ ~~Public Works Director~~ may authorize the removal of any Encroachment
238 without prior notice, and without regard to the notice provisions set forth in subsection
239 (f).

241 (ji) The Town ~~Manager or designee~~ ~~Public Works Director~~ shall have the power
242 to prohibit or limit the placement of new Encroachments within the public right-of-way, if
243 there is insufficient space to accommodate all of the requests to place or maintain
244 Encroachments in that area, for the protection of existing facilities, or to accommodate
245 Town plans for public improvements or projects that the Town ~~Manager or~~
246 ~~designee~~ ~~Public Works Director~~ determines are in the public interest and to the extent
247 not prohibited by applicable law.

249 (kj) The Town ~~Manager or designee~~ ~~Public Works Director~~ may waive the
250 permitting procedure of this section in cases of extreme emergency. The term
251 "emergency" shall mean a condition that affects the public's health, safety or welfare,
252 which includes an unplanned out-of-service condition of a pre-existing service.

254 (lk) A permittee under this section shall take appropriate measures to ensure that
255 during the performance of the permitted work, traffic conditions as nearly normal as

256 practicable shall be maintained, provided that the Town Manager or designee
257 Public Works Director may permit the closing of streets to traffic for a period of time prescribed
258 by him or her if in his or her opinion it is necessary. The permittee shall route and control
259 traffic as directed by the police department.

260
261 (ml) A permittee under this section shall not interfere with any existing utility or
262 telecommunications facilities without the written authorization of the Town Manager or
263 designee Public Works Director and the owner of such facilities. Prior to the interruption
264 of any telecommunications or utility service, reasonable notice must be given to the
265 public through the use of newspapers or electronic media, except that repairs,
266 maintenance, or removal of Encroachments determined by the Town Manager or
267 designee Public Works Director to be of an emergency nature pursuant to subsection (h)
268 are not subject to this notification procedure.

269
270 (nm) A permittee under this section shall at all times, and at its own expense,
271 preserve and protect from injury any adjoining property by providing proper foundations
272 and taking other measures suitable for such purpose.

273
274 (on) Any public or private property which is affected by an encroachment must be
275 preserved from damage during the operation and restored to its original or better
276 condition upon completion or cessation of the work. All damage resulting from work
277 under this subsection shall be repaired by the permittee.

278
279 (po) Any person who may cause any damage to a public right-of-way is liable to
280 the Town for the damages and is responsible to the Town for the actual cost to repair
281 Town property. The Town may recover all costs to repair damage to Town property,
282 including reasonable attorney's fees and costs.

283
284 (pp) The Town Manager or designee Public Works Director may suspend a permit
285 issued under this section, or deny an application for a new or subsequent permit under
286 this section, for failure to satisfy permit conditions or requirements set forth in this
287 section, including without limitation, failure to take reasonable safety precautions, or
288 failure to restore any affected property. After the suspension or denial of a permit
289 pursuant to this section, the Town Manager or designee Public Works Director shall
290 provide written notice to the permittee.

291
292 (rq) Prior to issuance of a permit, the applicant shall provide assurance that such
293 owner and all persons or entities performing work (and those acting on its behalf) have
294 adequate insurance, which shall be such insurance coverage as the Town deems
295 necessary depending upon the nature of the Encroachment.

296
297 (sr) Security. As required by the Public Works Director Town Manager or designee,
298 each applicant may be required to obtain a performance bond or a letter of credit to
299 ensure the performance of its responsibilities under this subsection, including sufficient
300 funds to cover removal of Encroachments or facilities. The amount of the performance
301 bond or letter of credit shall be in the amount determined by the Town to be 100 percent

302 of the removal cost of the Encroachment. The bond or letter of credit shall be in a form
303 acceptable to the Town Manager and Town Attorney.

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305 * * *

306
307 **Section 3. Town Code Amended.** Section 90-56.11 of Section 90-56 “Fences,
308 Walls and Hedges” of the Code is hereby amended as follows:

309 * * *

310
311 90-56.11 No Fences, walls or hedges may be placed within the public right-of-way
312 prior to the effective date of this ordinance shall be regulated by and in accordance with
313 the requirements of Chapter 76 of this Code, except that landscaped islands surrounded
314 by circular driveways on lots no more than 115 feet in width shall be permitted, subject
315 to all requirements of Chapter 76 of the Code, provided that it is understood by the
316 property owner that the town does not waive its right to demand removal without notice
317 as deemed necessary within the town's discretion and the town shall not be liable for any
318 damages arising from such removal. Property owner shall install or plant such materials
319 at own risk. Property owner shall install or plant such materials at own risk. All
320 improvements, other than groundcovers, as defined in the landscape section, shall be
321 placed on private property. No new fences, walls, or hedges shall be permitted to
322 encroach in the right-of-way.

323
324 * * *

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326
327 **Section 4. Severability.** If any section, sentence, clause or phrase of this
328 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
329 then said holding shall in no way affect the validity of the remaining portions of this
330 Ordinance.

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

336
337 **Section 6. Conflicts.** Any and all ordinances and resolutions or parts of
338 ordinances or resolutions in conflict herewith are hereby repealed.

339
340 **Section 7. Effective Date.** This ordinance shall become effective upon adoption
341 on second reading.

342
343 **PASSED and ADOPTED** on first reading this 13th day of June 2023.

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PASSED and ADOPTED on second reading this 11th day of July 2023.

On Final Reading Moved by: Vice Mayor Rose

On Final Reading Second by: Commissioner Landsman

First Reading:

Motion by: Vice Mayor Rose

Second by: Mayor Danzinger

Second Reading:

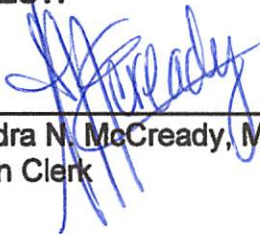
Motion by: Vice Mayor Rose

Second by: Commissioner Landsman

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeff Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

ATTEST:



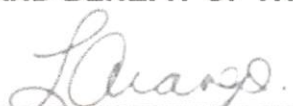
Sandra N. McCready, MMC
Town Clerk





Shlomo Danzinger, Mayor

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



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