CALL TO ORDER. Mayor Childs called the workshop to order at 11:00 a.m. Mayor Childs, Mayor Pro Tempore Ott, and Councilmembers Courtney, Samples and Pellegrino (left at 11:57 a.m.) were in attendance. Councilmember Johnson was absent. A quorum was present. Others present: Administrator Fellner; Town Clerk Herrmann, Deputy Administrator Harrah, and Police Chief Hofmann.

Mr. Ott said originally the nuisance code was five paragraphs on one page. Now it is about 60 pages. If we continue to do this with all of our ordinances, we'll need another building here to hold the paperwork. I wanted to make what we have easier, but it has become a nightmare. Next time we do this we need an attorney here. Mr. Ott asked if the existing ordinance was illegal. Mr. Harrah said yes, as it exists. We have to follow the State Law. Mr. Ott asked what happened to local rule. Mr. Harrah said there is some precedence; if you amend the existing ordinance, or do not have an ordinance to address the matter, then it must comply with State Code.

Mr. Courtney agreed with Mr. Ott and said the objective was to make the ordinance less stringent, because it was poorly written. I do not support a 36 page ordinance. Nuisance was never defined. The goal of council was to simplify the code.

Mr. Stevens agreed with Mr. Ott and Mr. Courtney and said I don't want an ordinance that slams individual rights and violates the Constitution that states a person has a right to a trial by jury. This stinks of "gestapo government." In my opinion, the code offered makes council a court and the administrator a judge. I will take whatever legal means there is to stop that from happening. Mr. Harrah referred to Section 4-16 Business License and said that is our current ordinance that provides for appeals to town council and that follows the State Law model. The code presented was affirmed by the attorney and affirmed in all of the court cases that Mr. Battle provided for you. Mr. Stevens said I would like to see the attorney here. A lot of what I read doesn't make sense.

Mr. Ott asked if this code was redundant, because much of it was addressed in other code sections. Mr. Harrah said this nuisance code is to address issues that are not criminal in nature. Mr. Ott asked what would happen when the codes conflict. Mr. Harrah said that is part of the review process. As Mr. Battle pointed out, there are some sections that need to be adjusted. Regarding the economic health of the town, declaring a business a nuisance will impact the neighboring businesses. A business might be detrimental to the neighboring businesses, but without having a nuisance ordinance to apply there is nothing the town could do to simplify the code.

Mr. Harrah said regarding condemned property, State Code allows the town to take property to sell to offset the cost to the resident that is paying to demolish it. Sales offset the lien against the property. There is an appeals process. For example, we currently have an unfit dwelling case. We have to follow State Law. We sent a certified letter to the owners, which in this case they refused to pick up or sign the acknowledgment. The letter has to be filed as a lis pendens with court as required by State Law. There is a time certain during which the owners may appeal to the building official to present their case. At that hearing we determine whether the property can be repaired, if yes, the owners are allowed 60-days to make those repairs. If the repairs are not completed, then the property is posted and condemned as a public safety and health nuisance to the neighborhood and any occupants that may be living in an uninhabitable structure.
Mr. Stevens complained that the information for this workshop should have been delivered at least three or four days in advance. Mr. Harrah explained that he met with the town attorney yesterday afternoon, and it was sent to councilmembers at 8:12 a.m. today. Mr. Stevens said he hasn’t seen the email, because he was too busy. He hasn’t had time to read the information on the dais, and needs time to study it so he will understand it. Mr. Stevens suggested closing the workshop and rescheduling it after members had time to study the information.

Ms. Samples said I am confused by Mr. Stevens’ comments. Councilmembers had the code being recommended by Mr. Harrah in the meeting package for the October 10th meeting. We have had enough time to review the ordinance that he proposed. Today’s information that was on the dais is supporting documentation that is the State Code. Since we are having a workshop, can we talk about some of the things we have issues with? Then, Mr. Harrah will be able to bring some specific information for council.

Mr. Ott agreed with Mr. Stevens’ comment that he is looking at this and he doesn’t understand it. The basic body of this was delivered to us earlier. We are here to hash this out. We can have as many workshops as we want.

Ms. Samples said the code does not apply to the town as much as she would like for it to, specifically, garbage containers and holders have no mention of rights-of-way. This is an issue in town, because we have rights-of-way that are protected from encroachment of any type. In the current ordinance Section 7-24 Removal of existing garbage racks does not require removal of masonry, block, brick or concrete racks. I’m fine with that but we do have a right-of-way issue that may come into play. Those are the kinds of things we need to review. I support implementing State Code into this ordinance, I think we have to have it. But, we also need to address the local issues. She referred to Division 3, Disposal and Collection, Sections 7-15 and 7-16 Unsightly, Offensive or Dangerous Materials. It shall be unlawful for any person to cause or allow unsightly litter or materials causing foul or offensive orders or potentially dangers materials to remain on or emanate from any property under his control. We say that you can’t do it, but I don’t see where there are any penalties. I’m not sure if penalties are covered under that penalty category. Is there a penalty associated with violation of these sections? Mr. Harrah said yes, penalties are stated in the code for nuisance violations.

Mr. Stevens referred to a time when the town put construction materials on a residential lot and he filed a lawsuit to stop that practice. The town needs to be reminded that it, too, must follow the law. Mr. Ott said this is why we need this discussion. We answer our own question, if this was here at that time, it would have stopped that.

(**Multiple conversations being held.)

Mr. Courtney said I don’t see this as being a workshop. We should be sitting at the tables and going through each section. Section 7-24 is commercial containers that are partially in the right-of-way. What you’re saying here is that they will have to be removed. Mr. Harrah said I didn’t write 7-24; it is existing code. Mr. Courtney said this is what we’re trying to accomplish today; we’re not going to paint ourselves into a corner. There are things all over town in the right-of-way. I had to get a state encroachment form for a planter around my mailbox that sits in the right-of-way. I know for a fact that some of our commercial businesses have container boxes that look fantastic, but are either near or on the right-of-way. Is this going to be a problem? Again, I want the ordinance less stringent. Mr. Harrah said the nuisance part is how you want things maintained. If there is broken fencing around a garbage container, the nuisance ordinance is how the town can require it to be repaired. Mr. Courtney said I don’t want code enforcement out there hunting for violations. Mr. Harrah said when the new ordinance was adopted, it would not affect existing properties. Mr. Courtney said good. We’re on the same page.
Mr. Harrah said council may strike any part it deems inappropriate. Mr. Battle told him that
councilmembers may strike a section. During his review it will be added back, if it is required by State
Law.

Mr. Courtney said State Law supersedes town code anyway. Mr. Harrah said it does, but through
ordinances the town is enabled to initiate processes managing and dealing with nuisance properties. Mr.
Courtney referred to Section 7 Code official duties and powers, paragraph (d) Right of entry, permissive
and by warrant, and said based on his experience that code enforcement responds because it’s either
complaint based or an offense is in plain view. Mr. Harrah said it could be both. Mr. Courtney asked if the
officer has a right to enter a premise when the offense is in plain view. Mr. Harrah only with permission.
If permission is denied, then he would seek an administrative search warrant if there is, in fact,
reasonable cause. The code enforcement officer, along with a police officer, would then go to the
property to initiate the search warrant.

Mr. Stevens asked if the administrative search warrant had to be signed by a judge. Mr. Harrah
said the municipal judge would issue the warrant. Mr. Stevens referred to Section 7, (b) Administrative
and interpretive authority, and said the phrase ‘with consent of the administrator’ is totally wrong. Based
on his experience as a code official for DHEC (SC Department of Health and Environmental Services),
code officials should not have to ask an administrator for permission or consent. That puts the
administrator controlling what the code official does. The administrator has no business in code
enforcement. Ms. Samples disagreed with Mr. Stevens. Mr. Pellegrino said warrants are legal
ramifications to that. When the administrator is advised, we ensure that everything is done correctly and
in accordance with the spirit of the code. Mr. Stevens restated his qualifications and said a code
enforcement official does not have to have consent from the administrator or anybody to advise someone
of a violation. The code official can work with the person to correct the violation. It is up to the code
enforcement official how he wants to deal with the situation.

Mr. Ott asked if everyone would allow Mr. Harrah to make his presentation and hold questions
until he is finished. Councilmembers agreed.

Mr. Harrah said the nuisance ordinance was discussed at the October 19th council meeting, and
the members asked for a workshop to discuss it in detail, the discussion paper and codes are on file. He
explained that South Carolina Code enables the town to enforce nuisances that are defined as unfit
dwellings, the applicable abatement process, and then proceeded to cite South Carolina Codes:

- §5-7-80 … shall keep lot or property clean and free of rubbish, debris, and other unhealthy and
unsightly material or conditions that would constitute a public nuisance
- §5-7-30 … town is authorized to provide for the abatement of nuisances
- §5-25-340 … an inspector shall have a right to enter premises to inspect without molestation
upon permission or upon probably cause to believe that a violation of provisions respecting fire
laws, or there exists imminent danger to the occupant thereof
- §6-9-10 … building codes shall be enforced by local government
- §6-9-130 … adopted codes are applicable to building inspections
- §31-15-10 et seq. … town is authorized to abate unfit or unsafe dwellings; cost of abatement
shall become a lien upon the real estate and shall be collectable in the same manner as municipal
taxes

Division 1. Generally.

The code official duties were discussed generally; in relation to administrative and interpretive
authority; inspections; rights of entry by permission and by warrant. The municipal judge is authorized to
issue administrative search warrant, and a law enforcement officer must accompany the code
Ms. Samples asked who decided how long is allowed to comply with the law when a nuisance violation is issued. Mr. Harrah said State Law allows ten to thirty days; however, the owner can ask for an injunction to halt the proceeding until it is heard by the State Court System, which the court has a specific number of days to hear.

Mr. Harrah explained how vacant and boarded up structures become unfit, and that the law enables the town to ensure the buildings are secure according to the standards of the International Property Maintenance Code, which the town adopted. A no trespassing notice may be required and the police department has authority to enforce the no trespass notice. A certified building official has the same authority as a code enforcement officer. Mr. Stevens asked if the owner was allowed to enter a property posted no trespassing. Mr. Harrah said yes; generally owners would contact the code enforcement officer prior to entry because they may not know whether the building is safe.

The definitions that apply to this particular code were discussed, after which there were no questions. The code requires education and certification to ensure application of the code. As a South Carolina Certified Building Official, Mr. Harrah is qualified to make decisions regarding nuisance codes.

There are many types of nuisances including those that affect public health; offending public decency, peace and order; affecting the public welfare and safety; affecting public economy, and others. Each section was presented. Codes for each type were presented.

This division concluded with explanations about the codes for reporting emergencies and emergency actions; prohibited and unlawful nuisances; institution of criminal process and penalty; public abatement, notice, service; appeal procedures, hearing, and liability for costs.

Ms. Samples said the public abatement and appeals process do not change. Mr. Harrah said correct, they are always the same.

Mr. Ott said asked if the definition objectionable, unsightly, and unsanitary could be used in a vindictive manner. A resident may not agree with what staff feels is objectionable. Mr. Harrah said all laws are subjective to a degree; however, the code enforcement officer has education and experience to call upon when making a determination. Mr. Ott did not want to enable anyone to persecute a resident because of political differences or personal feelings. Mr. Harrah was confident the code enforcement officer would do his job within the spirit of the code. If the resident disagrees with a determination, then the appeals process is available. Ms. Samples said this goes to the checks and balances of having the administrator overseeing that hearing officer. Mr. Stevens agreed with Mr. Ott. Mr. Harrah understood Mr. Ott’s concern and said he would look into this the best he can.

Division 2. Rank Growth, Yard Waste, Debris as Public Nuisance, Abatement.

Mr. Harrah explained the definitions for this division; imposition of civic duties; prohibited conditions and/or acts; general published notice; initial individual complaint; method of service; contents of complaint; unaddressed or recurrent violations; administrator’s declaration; public abatement; appeals of assessment and costs.

Division 3. Unfit Dwellings.

Mr. Harrah said this section closely mirrors State Law. Definitions were explained; responsibilities relating to occupied or unoccupied property; council’s determination of existence of unfit dwelling; public officer authority; public officer powers; public officer’s investigation, complain, public hearing and order;
Mr. Stevens asked if this applied to takings of property by a government. Mr. Harrah said no, this is not eminent domain. This code follows the State Law requirements for nuisances. Mr. Stevens said this is why he wants an attorney to go over this very carefully. Mr. Ott said there are a lot of changes in the proposed ordinance. Many corrections were made that do not exist in the original code. Mr. Harrah said this document has been reviewed by the attorney.

Ms. Samples said so the attorney has reviewed this ordinance. Mr. Harrah said yes. Mr. Battle reviewed it and said to let councilmembers make their amendments and then he will review the final document for compliance with State Law.

Mr. Stevens asked if the Section 7-4 Penalties would be ‘tossed’ entirely. Mr. Harrah said no, that language remained in the first part. The document you have does not include the entire chapter. No changes were required before Article III. Municipal Code Corporation will number the sections when codification is done. Mr. Stevens wanted to ensure that citizens would be entitled to a trial by jury. Mr. Harrah said the town attorney will determine whether a matter goes to trial. Mr. Stevens said by the way, I want this on the record. I just want to make sure that we’re not taking peoples’ Constitutional rights away. Mr. Harrah said there are two sections regarding penalties in the current code. The town attorney will determine the applicable chapter. Mr. Stevens said, by the way I want everything I’ve said on the record in this entire hearing. Ms. Herrmann said Mr. Mayor, this is a workshop. Generally workshop minutes are a summation of the meeting. Mayor Childs said no, this is just a workshop. Prepare the minutes in the usual method.

Mr. Ott asked if he kept the copy given to him today that would be the one used. Mr. Harrah said the document presented today in red is the proposed code.

Regarding Section 7-70, Mr. Stevens asked who owned the property if the town foreclosed. Mr. Harrah said the town would be foreclosing for the lien amount, but he was unsure about ownership and deferred to the town attorney. Mr. Stevens said the town attorney should be asked that question. Ms. Samples said the abatement is that you are foreclosing on the lien. You’re not foreclosing on the property, which means the town would get payment. The foreclosure will go to the mortgage holder.

Mr. Harrah said this section closely mirrors the town’s existing code, and of course, the goal is to prevent graffiti.

Mr. Ott asked if a flow chart could be prepared to show when a hearing would be held before Town Council. Mr. Harrah said absolutely.

Mayor Childs said we’re going to end this for today and ask the clerk to schedule the next workshop. I suggest the next workshop begin at nine o’clock in the morning. Mr. Courtney said we need to have the entire council present, because two members were absent at this time. Mr. Ott said I took notes as we went through, and would like to have a questions and answer time at the next workshop.

Ms. Samples said that worked for her, too. However, some of us work and cannot attend day time meetings. Thank you, Mr. Harrah. You gave us exactly what Mr. Ott asked you to bring before council.
am assuming at the next workshop we will review the same document and make recommendations to
correct those things we would like to see changed or improved. Mr. Stevens said I want to remind council
that we take an oath of office to uphold the Constitution of the United States and the State of South
Carolina. That is why I want the attorney to be here so he can make sure that this ordinance meets
Constitutional muster, and we are not taking away any individual rights guaranteed by the Constitution.
Mayor Childs asked if the attorney could just review the document; he will charge $300 an hour to be
here all day. Let’s make changes and then have the attorney review it. Several members voiced
agreement. Mr. Harrah said in speaking with Mr. Battle that was his exact advice. Review it, make your
amendments, and then send it to him for another review. After that review, he will advise council as to
legalities.

Mayor Childs adjourned the workshop at 1:27 p.m.

Prepared and submitted by

Debra E. Herrmann, CMC, Town Clerk

VOTE: Yes No

SURFSIDE BEACH TOWN COUNCIL

______________________________________________
Robert F. Childs, III, Mayor

______________________________________________
Ron Ott, Mayor Pro Tempore

______________________________________________
Timothy T. Courtney, Town Council

______________________________________________
Mark L. Johnson, Town Council

______________________________________________
David L. Pellegrino, Town Council

______________________________________________
Julie M. Samples, Town Council

______________________________________________
Randle M. Stevens, Town Council

Clerk’s Note: This document constitutes minutes of the workshop that was digitally recorded, and is not intended to
be a complete transcript. Appointments to hear recordings may be made with the town clerk; a free copy of the
audio will be given to you provided you bring a new, unopened flash drive. In accordance with FOIA §30-4-80(A)
and (E), workshop notice was distributed to local media and interested parties via the town’s email subscription list.
The notice was posted on the entry door at Town Council Chambers. Workshop notice was also posted on the town
website at www.surfsidebeach.org and the marquee.