



**SURFSIDE BEACH TOWN COUNCIL WORKSHOP
TOWN COUNCIL CHAMBERS
115 US HIGHWAY 17 NORTH, SURFSIDE BEACH, SC
OCTOBER 19, 2017 AT 11:00 A.M.**

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 until a criminal violation occurred.

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.

Town Council Workshop – Nuisance Ordinance
October 19, 2017

53 Mr. Stevens complained that the information for this workshop should have been delivered at
54 least three or four days in advance. Mr. Harrah explained that he met with the town attorney yesterday
55 afternoon, and it was sent to councilmembers at 8:12 a.m. today. Mr. Stevens said he hasn't seen the
56 email, because he was too busy. He hasn't had time to read the information on the dais, and needs time
57 to study it so he will understand it. Mr. Stevens suggested closing the workshop and rescheduling it after
58 members had time to study the information.
59

60 Ms. Samples said I am confused by Mr. Stevens' comments. Councilmembers had the code being
61 recommended by Mr. Harrah in the meeting package for the October 10th meeting. We have had enough
62 time to review the ordinance that he proposed. Today's information that was on the dais is supporting
63 documentation that is the State Code. Since we are having a workshop, can we talk about some of the
64 things we have issues with? Then, Mr. Harrah will be able to bring some specific information for council.
65

66 Mr. Ott agreed with Mr. Stevens' comment that he is looking at this and he doesn't understand it.
67 The basic body of this was delivered to us earlier. We are here to hash this out. We can have as many
68 workshops as we want.
69

70 Ms. Samples said the code does not apply to the town as much as she would like for it to,
71 specifically, garbage containers and holders have no mention of rights-of-way. This is an issue in town,
72 because we have rights-of-way that are protected from encroachment of any type. In the current
73 ordinance Section 7-24 Removal of existing garbage racks does not require removal of masonry, block,
74 brick or concrete racks. I'm fine with that but we do have a right-of-way issue that may come into play.
75 Those are the kinds of things we need to review. I support implementing State Code into this ordinance,
76 I think we have to have it. But, we also need to address the local issues. She referred to Division 3,
77 Disposal and Collection, Sections 7-15 and 7-16 Unsightly, Offensive or Dangerous Materials. It shall be
78 unlawful for any person to cause or allow unsightly litter or materials causing foul or offensive orders or
79 potentially dangers materials to remain on or emanate from any property under his control. We say that
80 you can't do it, but I don't see where there are any penalties. I'm not sure if penalties are covered under
81 that penalty category. Is there a penalty associated with violation of these sections? Mr. Harrah said yes,
82 penalties are stated in the code for nuisance violations.
83

84 Mr. Stevens referred to a time when the town put construction materials on a residential lot and
85 he filed a lawsuit to stop that practice. The town needs to be reminded that it, too, must follow the law.
86 Mr. Ott said this is why we need this discussion. We answer our own question, if this was here at that
87 time, it would have stopped that.
88

89 (**Multiple conversations being held.)
90

91 Mr. Courtney said I don't see this as being a workshop. We should be sitting at the tables and
92 going through each section. Section 7-24 is commercial containers that are partially in the right-of-way.
93 What you're saying here is that they will have to be removed. Mr. Harrah said I didn't write 7-24; it is
94 existing code. Mr. Courtney said this is what we're trying to accomplish today; we're not going to paint
95 ourselves into a corner. There are things all over town in the right-of-way. I had to get a state
96 encroachment form for a planter around my mailbox that sits in the right-of-way. I know for a fact that
97 some of our commercial businesses have container boxes that look fantastic, but are either near or on
98 the right-of-way. Is this going to be a problem? Again, I want the ordinance less stringent. Mr. Harrah
99 said the nuisance part is how you want things maintained. If there is broken fencing around a garbage
100 container, the nuisance ordinance is how the town can require it to be repaired. Mr. Courtney said I don't
101 want code enforcement out there hunting for violations. Mr. Harrah said when the new ordinance was
102 adopted, it would not affect existing properties. Mr. Courtney said good. We're on the same page.
103

Town Council Workshop – Nuisance Ordinance
October 19, 2017

104 Mr. Harrah said council may strike any part it deems inappropriate. Mr. Battle told him that
105 councilmembers may strike a section. During his review it will be added back, if it is required by State
106 Law.
107

108 Mr. Courtney said State Law supersedes town code anyway. Mr. Harrah said it does, but through
109 ordinances the town is enabled to initiate processes managing and dealing with nuisance properties. Mr.
110 Courtney referred to Section 7 Code official duties and powers, paragraph (d) Right of entry, permissive
111 and by warrant, and said based on his experience that code enforcement responds because it's either
112 complaint based or an offense is in plain view. Mr. Harrah said it could be both. Mr. Courtney asked if the
113 officer has a right to enter a premise when the offense is in plain view. Mr. Harrah only with permission.
114 If permission is denied, then he would seek an administrative search warrant if there is, in fact,
115 reasonable cause. The code enforcement officer, along with a police officer, would then go to the
116 property to initiate the search warrant.
117

118 Mr. Stevens asked if the administrative search warrant had to be signed by a judge. Mr. Harrah
119 said the municipal judge would issue the warrant. Mr. Stevens referred to Section 7, (b) Administrative
120 and interpretive authority, and said the phrase 'with consent of the administrator' is totally wrong. Based
121 on his experience as a code official for DHEC (SC Department of Health and Environmental Services),
122 code officials should not have to ask an administrator for permission or consent. That puts the
123 administrator controlling what the code official does. The administrator has no business in code
124 enforcement. Ms. Samples disagreed with Mr. Stevens. Mr. Pellegrino said warrants are legal
125 ramifications to that. When the administrator is advised, we ensure that everything is done correctly and
126 in accordance with the spirit of the code. Mr. Stevens restated his qualifications and said a code
127 enforcement official does not have to have consent from the administrator or anybody to advise someone
128 of a violation. The code official can work with the person to correct the violation. It is up to the code
129 enforcement official how he wants to deal with the situation.
130

131 Mr. Ott asked if everyone would allow Mr. Harrah to make his presentation and hold questions
132 until he is finished. Councilmembers agreed.
133

134 Mr. Harrah said the nuisance ordinance was discussed at the October 19th council meeting, and
135 the members asked for a workshop to discuss it in detail, the discussion paper and codes are on file. He
136 explained that South Carolina Code enables the town to enforce nuisances that are defined as unfit
137 dwellings, the applicable abatement process, and then proceeded to cite South Carolina Codes:
138

- 139 • §5-7-80 ... shall keep lot or property clean and free of rubbish, debris, and other unhealthy and
- 140 unsightly material or conditions that would constitute a public nuisance
- 141 • §5-7-30 ... town is authorized to provide for the abatement of nuisances
- 142 • §5-25-340 ... an inspector shall have a right to enter premises to inspect without molestation
- 143 upon permission or upon probable cause to believe that a violation of provisions respecting fire
- 144 laws, or there exists imminent danger to the occupant thereof
- 145 • §6-9-10 ... building codes shall be enforced by local government
- 146 • §6-9-130 ... adopted codes are adopted codes are applicable to building inspections
- 147 • §31-15-10 et seq. ... town is authorized to abate unfit or unsafe dwellings; cost of abatement
- 148 shall become a lien upon the real estate and shall be collectable in the same manner as municipal
- 149 taxes

150
151 Division 1. Generally.
152

153 The code official duties were discussed generally; in relation to administrative and interpretive
154 authority; inspections; rights of entry by permission and by warrant. The municipal judge is authorized to
155 issue administrative search warrant, and a law enforcement officer must accompany the code

Town Council Workshop – Nuisance Ordinance
October 19, 2017

156 enforcement official to execute any warrant. He explained that this section ensures town staff will be
157 properly identified and will uniformly apply the code.

158
159 Ms. Samples asked who decided how long is allowed to comply with the law when a nuisance
160 violation is issued. Mr. Harrah said State Law allows ten to thirty days; however, the owner can ask for
161 an injunction to halt the proceeding until it is heard by the State Court System, which the court has a
162 specific number of days to hear.

163
164 Mr. Harrah explained how vacant and boarded up structures become unfit, and that the law
165 enables the town to ensure the buildings are secure according to the standards of the International
166 Property Maintenance Code, which the town adopted. A no trespassing notice may be required and the
167 police department has authority to enforce the no trespass notice. A certified building official has the
168 same authority as a code enforcement officer. Mr. Stevens asked if the owner was allowed to enter a
169 property posted no trespassing. Mr. Harrah said yes; generally owners would contact the code
170 enforcement officer prior to entry because they may not know whether the building is safe.

171
172 The definitions that apply to this particular code were discussed, after which there were no
173 questions. The code requires education and certification to ensure application of the code. As a South
174 Carolina Certified Building Official, Mr. Harrah is qualified to make decisions regarding nuisance codes.

175
176 There are many types of nuisances including those that affect public health; offending public
177 decency, peace and order; affecting the public welfare and safety; affecting public economy, and others.
178 Each section was presented. Codes for each type were presented.

179
180 This division concluded with explanations about the codes for reporting emergencies and
181 emergency actions; prohibited and unlawful nuisances; institution of criminal process and penalty; public
182 abatement, notice, service; appeal procedures, hearing, and liability for costs.

183
184 Ms. Samples said the public abatement and appeals process do not change. Mr. Harrah said
185 correct, they are always the same.

186
187 Mr. Ott said asked if the definition objectionable, unsightly, and unsanitary could be used in a
188 vindictive manner. A resident may not agree with what staff feels is objectionable. Mr. Harrah said all
189 laws are subjective to a degree; however, the code enforcement officer has education and experience to
190 call upon when making a determination. Mr. Ott did not want to enable anyone to persecute a resident
191 because of political differences or personal feelings. Mr. Harrah was confident the code enforcement
192 officer would do his job within the spirit of the code. If the resident disagrees with a determination, then
193 the appeals process is available. Ms. Samples said this goes to the checks and balances of having the
194 administrator overseeing that hearing officer. Mr. Stevens agreed with Mr. Ott. Mr. Harrah understood
195 Mr. Ott's concern and said he would look into this the best he can.

196
197 Division 2. Rank Growth, Yard Waste, Debris as Public Nuisance, Abatement.

198
199 Mr. Harrah explained the definitions for this division; imposition of civic duties; prohibited
200 conditions and/or acts; general published notice; initial individual complaint; method of service; contents
201 of complaint; unaddressed or recurrent violations; administrator's declaration; public abatement; appeals
202 of assessment and costs.

203
204 Division 3. Unfit Dwellings.

205
206 Mr. Harrah said this section closely mirrors State Law. Definitions were explained; responsibilities
207 relating to occupied or unoccupied property; council's determination of existence of unfit dwelling; public
208 officer authority; public officer powers; public officer's investigation, complain, public hearing and order;

Town Council Workshop – Nuisance Ordinance
October 19, 2017

209 council sets show cause hearing; council order; council's standard of review in show cause hearing;
210 order; owner or parties in interest failure to comply with council's order; assessment; appeal of
211 assessment; power of town to declare nuisance or unkempt properties not impaired; service of
212 complaints, orders and assessments, posting and filing copies; rights of persons affected by orders; sale
213 of materials of removed or demolished dwelling; immunity of enforcement personnel from liability;
214 renting, etc., unfit dwellings to others; living in unfit dwellings prohibited, and article provisions are
215 cumulative.

216
217 Mr. Stevens asked if this applied to takings of property by a government. Mr. Harrah said no, this
218 is not eminent domain. This code follows the State Law requirements for nuisances. Mr. Stevens said this
219 is why he wants an attorney to go over this very carefully. Mr. Ott said there are a lot of changes in the
220 proposed ordinance. Many corrections were made that do not exist in the original code. Mr. Harrah said
221 this document has been reviewed by the attorney.

222
223 Ms. Samples said so the attorney has reviewed this ordinance. Mr. Harrah said yes. Mr. Battle
224 reviewed it and said to let councilmembers make their amendments and then he will review the final
225 document for compliance with State Law.

226
227 Mr. Stevens asked if the Section 7-4 Penalties would be 'tossed' entirely. Mr. Harrah said no, that
228 language remained in the first part. The document you have does not include the entire chapter. No
229 changes were required before Article III. Municipal Code Corporation will number the sections when
230 codification is done. Mr. Stevens wanted to ensure that citizens would be entitled to a trial by jury. Mr.
231 Harrah said the town attorney will determine whether a matter goes to trial. Mr. Stevens said by the way,
232 I want this on the record. I just want to make sure that we're not taking peoples' Constitutional rights
233 away. Mr. Harrah said there are two sections regarding penalties in the current code. The town attorney
234 will determine the applicable chapter. Mr. Stevens said, by the way I want everything I've said on the
235 record in this entire hearing. Ms. Herrmann said Mr. Mayor, this is a workshop. Generally workshop
236 minutes are a summation of the meeting. Mayor Childs said no, this is just a workshop. Prepare the
237 minutes in the usual method.

238
239 Mr. Ott asked if he kept the copy given to him today that would be the one used. Mr. Harrah said
240 the document presented today in red is the proposed code.

241
242 Regarding Section 7-70, Mr. Stevens asked who owned the property if the town foreclosed. Mr.
243 Harrah said the town would be foreclosing for the lien amount, but he was unsure about ownership and
244 deferred to the town attorney. Mr. Stevens said the town attorney should be asked that question. Ms.
245 Samples said the abatement is that you are foreclosing on the lien. You're not foreclosing on the
246 property, which means the town would get payment. The foreclosure will go to the mortgage holder.

247
248 Division 4. Graffiti.

249
250 Mr. Harrah said this section closely mirrors the town's existing code, and of course, the goal is to
251 prevent graffiti.

252
253 Mr. Ott asked if a flow chart could be prepared to show when a hearing would be held before
254 Town Council. Mr. Harrah said absolutely.

255
256 Mayor Childs said we're going to end this for today and ask the clerk to schedule the next
257 workshop. I suggest the next workshop begin at nine o'clock in the morning. Mr. Courtney said we need
258 to have the entire council present, because two members were absent at this time. Mr. Ott said I took
259 notes as we went through, and would like to have a questions and answer time at the next workshop.
260 Ms. Samples said that worked for her, too. However, some of us work and cannot attend day time
261 meetings. Thank you, Mr. Harrah. You gave us exactly what Mr. Ott asked you to bring before council. I

Town Council Workshop – Nuisance Ordinance
October 19, 2017

262 am assuming at the next workshop we will review the same document and make recommendations to
263 correct those things we would like to see changed or improved. Mr. Stevens said I want to remind council
264 that we take an oath of office to uphold the Constitution of the United States and the State of South
265 Carolina. That is why I want the attorney to be here so he can make sure that this ordinance meets
266 Constitutional muster, and we are not taking away any individual rights guaranteed by the Constitution.
267 Mayor Childs asked if the attorney could just review the document; he will charge \$300 an hour to be
268 here all day. Let's make changes and then have the attorney review it. Several members voiced
269 agreement. Mr. Harrah said in speaking with Mr. Battle that was his exact advice. Review it, make your
270 amendments, and then send it to him for another review. After that review, he will advise council as to
271 legalities.

272
273 Mayor Childs adjourned the workshop at 1:27 p.m.

274
275 Prepared and submitted by

276
277 _____
278 Debra E. Herrmann, CMC, Town Clerk

279	VOTE:	Yes	No	SURFSIDE BEACH TOWN COUNCIL
280				
281		<input type="checkbox"/>	<input type="checkbox"/>	_____
282				Robert F. Childs, III, Mayor
283				_____
284		<input type="checkbox"/>	<input type="checkbox"/>	_____
285				Ron Ott, Mayor Pro Tempore
286				_____
287		<input type="checkbox"/>	<input type="checkbox"/>	_____
288				Timothy T. Courtney, Town Council
289				_____
290		<input type="checkbox"/>	<input type="checkbox"/>	_____
291				Mark L. Johnson, Town Council
292				_____
293		<input type="checkbox"/>	<input type="checkbox"/>	_____
294				David L. Pellegrino, Town Council
295				_____
296		<input type="checkbox"/>	<input type="checkbox"/>	_____
297				Julie M. Samples, Town Council
298				_____
299		<input type="checkbox"/>	<input type="checkbox"/>	_____
300				Randle M. Stevens, Town Council
301				_____
302				

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