

M E M O R A N D U M

To: Tom Harmer, Town Manager

From: Allen Parsons, AICP
Director, Planning, Zoning & Building Department

Report date: April 9, 2021

Meeting date: April 19, 2021

Subject: Proposed Amendments to Town Code Chapter 100, Marine Turtle Protection

Recommended Action

Forward Ordinance 2021-01 to the May 3, 2021 Regular Meeting for first reading.

Background

At their February 16, 2021 Regular Workshop Meeting, the Town Commission held a second discussion on a series of staff recommendations to update the Marine Turtle Protection Ordinance (Town Code Chapter 100). The Commission provided consensus to forward the recommendations to a future Regular Workshop Meeting for further consideration, including review of draft ordinance language. The Commission also directed staff to seek additional information, from window manufacturer(s), on impacts associated with increasing the window tinting percentage requirement on applicable newly installed/constructed windows.

Attachment A, proposed Ordinance 2021-01 illustrates recommended amendments in underline/strikethrough format. A summary of the proposed amendments is provided below.

As a follow-up to prior research conducted, staff coordinated with local window manufacturer, PGT Custom Windows + Doors (PGT) for their insights into materials, costs, and other considerations associated with varying levels of window tinting percentages. A Senior Code Compliance Engineer, Erin Koss, will be available at the Regular Workshop Meeting to respond to technical questions, along with providing glass samples that will allow the Commission to view samples of window tinting percentages. Information received from PGT diverges, in part, from information staff had received from Universal Window Solutions (a distributor for Anderson Windows, WinDoor Windows, CGI, PGT, CWS and Mi Windows) with regard to cost impacts associated with increased window tinting percentages.

Previous information received (see Attachment B) indicated that increased window tint percentages would not “dramatically change the price” from a percentage of 45% light emission to a 20-25% emission. Manufactured window tinting percentages below a 20% light emission threshold do appear to have noteworthy cost implications. While various manufacturers and dealers may price window tinting below the 20% threshold differently, local manufacturer PGT has a manufacturer’s suggested retail pricing

(MSRP) with cost increases of four times (see Attachment C) that of lower window tinting percentages (> 20% tinting). Subsequent correspondence from Universal Window Solutions confirms pricing increases ranging from 25% to 400%, along with additional lead times to order this special-order product (see Attachment D).

The application of window film to achieve varying tinting percentages does not appear to have similar pricing increases below the 20% threshold. Of note with window film, however, is its application over certain window types can void warranties. According to representatives from Universal Window Solutions, the company '3M' is one of the only companies that will assume warranty liability for the application of its tinted window film. Therefore, while window tinting utilizing film may not have additional costs associated with the previously recommended 15% window tinting, it does have limitations with regard to warranties of certain windows.

Staff also followed-up on feedback received from the Town Attorney's office at the February 16, 2021 Regular Workshop Meeting regarding the importance of having data to support a previous staff recommendation to provide a differentiation of required window tinting percentages for tourism and residential uses¹. Staff reviewed locations of lighting violations documented over the past two nesting seasons. There was no demonstrable evidence of more lighting violations near tourism properties, compared to residential properties. Similarly, a review of detailed disorientation locations for the past two nesting seasons reveals some clustering at certain properties, but not enough to clearly differentiate between tourism and residential properties.

Given the likely considerable cost and warranty implications that would result from requiring window tinting percentages of 15% on new construction and/or window replacements, staff is withdrawing its recommendation to revise the window tinting percentage requirement. Staff is also withdrawing its recommendation to have differing window tinting percentage requirements for tourism and residential properties. Staff is recommending that a clarification be added to the existing 45% window tinting requirement to describe that providing that percentage of window tinting does not constitute "turtle-friendly glass" or similar status and to note that additional window coverings may be necessary, depending on the amount of light inside, to comply with the ordinance requirement to prevent artificial light being visible from the beach.

¹ Staff had proposed to have a window tint percentage of 15% be applicable to tourism uses due to the more transient nature of persons staying in tourism units and the associated ongoing challenges with ensuring awareness and compliance. For residential uses, staff had recommended the addition of a clarification to the existing 45% window tinting requirement to note that additional window coverings may be necessary, depending on the amount of light inside, in order to be compliant with the ordinance's requirement to prevent artificial light being visible from the beach. This was based on the likelihood of having sufficient awareness from residential uses on the potential to need to use other measures such as blinds, drapes or other window coverings to reduce lighting impacts on the beach.

Proposed Ordinance 2021-01, Ch. 100 Amendments Overview

A summary of the noteworthy amendments to Chapter 100 are provided below. The changes are recommendations previously presented to the Commission and are intended to address clarifications to the existing Ordinance², along with incorporating additional best management practices for protection of endangered marine turtles and nesting activities.

Sec. 100.02 Definitions: Recommended changes include minor language corrections and the addition of eight new definitions to provide clarification of terms within the Ordinance. Notable additions include a definition of Recreational Use Agreement associated with a proposed addition, allowing for case-by-case approvals by the Town of recreational furniture, recreational equipment, and the limited operation of motor vehicles (i.e. all-terrain vehicles). In addition, the definition of “Tinted or filmed glass,” which includes the existing 45% window tinting percentage, has been amended to note that additional window coverings may be required “to be compliant with existing requirements to not directly, indirectly or cumulatively illuminate the beach.”

Sec. 100.03 Lighting Standards for New Development: Recommended changes include both clarifications intended to simplify existing requirements and changes to incorporate Florida Fish and Wildlife Commission (FWC) recommendations for best management lighting practices.

The first recommended change addresses the language that a point source of artificial light or bulb be directly visible from the beach. Enforcement experience has shown that some lights, where the point source or bulb are not visible, can still be seen clearly from the beach, and can negatively impact marine turtles. The existing requirements address this by prohibiting the illumination of the beach, directly, indirectly or cumulatively. In addition, the change would require light sources, visible from the beach, to be shielded and utilize approved marine turtle fixtures (aka turtle-friendly). As noted previously, the FWC, and the U.S. Fish & Wildlife Service (USFWS), now certify light fixtures as turtle-friendly. In order to qualify, a luminaire must be mounted as low as practical for an intended illumination task, have full cut-off or be completely shielded from the beach, and be lamped with a bulb that produces long-wavelength light, which appears as amber colored. Turtles have trouble seeing monochromatic yellow, amber, and red light, but are most attracted to bright white polychromatic lights, such as white fluorescent, metal halide, halogen, and mercury vapor. Participating manufacturers are becoming commonplace and fixtures can be purchased on-line and at most hardware stores.

The second primary recommended change is intended to clarify existing provisions addressing “floodlights, uplights, spotlights, and decorative lighting” by similarly eliminating reference to the “point source of artificial light,” as the overall requirement for this lighting type prohibits it from, “directly, indirectly or cumulatively illuminating the beach.” Use of FWC approved marine turtle bulbs in floodlights, uplights spotlights or

² As noted in the attached memorandum from the Town Attorney (Attachment E), at the time of adoption, the Town’s ordinance amendments mirrored regulatory language adopted by both Sarasota County and the City of Venice. Following two appeals that were filed in the Twelfth Judicial Circuit, one in Manatee County and one in Sarasota County, the Courts in both cases affirmed the Town’s ordinance stating that the ordinance was clear and unambiguous.

decorative lighting would be continued. As a side-note, FWC does not recommend the usage of approved marine turtle bulbs in floodlights, uplights, spotlights and decorative lighting. FWC recommendations generally call for no light, or, shielded and downward directed lighting. Usage of turtle-friendly bulbs in flood lights, uplights, spotlights or decorative lighting can be further evaluated in future reviews of the Code.

The Ordinance amendments include elimination of an existing exception to motion detecting lighting devices, as these fixtures can accept turtle-friendly bulbs, while providing for security lighting.

The Ordinance also includes the addition of lighting standards for pools and pool lighting, that are visible from the beach, in order to protect marine turtles from the adverse effects of this type of artificial lighting. The addition would apply and recognize Life/Safety Code requirements for pool lighting.

Sec. 100.04 (New Section) Permit Applications for New Development: The Ordinance includes the addition of language that explicitly enumerates a permitting review process, which is not presently in the Ordinance. This would clarify existing practices associated with reviewing new/applicable developments. A Code requirement, for reviewing lighting plans prior to construction, would provide the explicit authority to the review process staff currently undertakes.

Sec. 100.05 (New Section) Inspections for New Development: The Ordinance also includes the addition of language addressing inspections, which is not presently in the Ordinance. Formalizing the requirement for lighting inspections, following construction, to provide explicit authority for the inspection process staff currently undertakes.

Sec. 100.07 Existing Development: The recommended changes to lighting standards for existing developments largely mirror recommended changes proposed to the lighting standards for new development (Sec. 100.03) including, eliminating reference to the point source of artificial lighting, and requiring the use of turtle-friendly fixtures or bulbs on outdoor lighting. Clarifying changes to floodlights, uplights, spotlights, and decorative lighting are the same as those proposed for new development. The use of motion detector lighting devices is recommended to be eliminated, as these fixtures can accept FWC approved marine turtle bulbs, while providing for security lighting. And this Section includes a recommendation for the addition of lighting standards for pools and pool lighting, that are visible from the beach.

Sec. 100.09 Prohibited Activities: Includes two recommended changes. The first would add the category of “temporary lighting” as a prohibited activity between sunset and sunrise, unless utilizing a long wavelength (i.e. turtle-friendly) light source. As noted previously, temporary lighting can greatly affect disorientation rates. The change would prohibit the use of temporary lighting such as lanterns or tiki torches, while encouraging smaller personal flashlight devices with FWC approved bulbs, but not prohibiting a personal flashlight’s use.

The second recommended change to this Section would allow for the limited use of motorized vehicles (e.g. all-terrain-vehicles, or ATV’s) to retrieve and place beach furniture. Such an allowance would be available, by Recreational Use Agreement (consistent with allowances by Sarasota County) with the Town, and would additionally

be coordinated with Mote Marine or designee. During the last Commission discussion on this issue a question was raised about the legality of motorized vehicles being allowed on the beach via Fla. Stat. 161.58 prohibitions of vehicular traffic on coastal beaches. We have coordinated with the Town Attorney and believe this provision does not conflict with state law, as the prohibition addresses motor vehicles, such as cars and trucks, not being authorized on the grassy dune areas. In addition, the Florida Statutes makes a clear distinction between motor vehicles and all-terrain vehicles based on their highway or off-highway use. Many jurisdictions around Florida allow ATV's to move beach furniture.

Sec. 100.10 Obstructions on the Beach and Beach Access Prohibited:

Recommended changes include the addition of an allowance for the storage of recreational equipment (e.g. kayaks, paddle boards, etc.), similar to an allowance to store recreational furniture as close to the dune line or to upland building(s) as possible. This approach would provide for a straightforward mechanism of a Recreational Use Agreement where the proper placement and organization of materials could be verified with the Town and appropriate marine turtle organizations, as necessary. This option is similar to one used by Sarasota County. The intent would be to reduce the amount of obstructions on the beach at night that impact marine turtles and protect the dune system, by providing for better organization of materials.

Staff also recommends a clarification to the existing allowance for beach furniture to be placed as close as possible to the dune line or to upland building(s). Staff believes the intent of this provision was to allow certain upland property owners (having a property ownership interest along the shoreline) to leave certain temporary structures on the beach provided that the structures are left along the dune/native vegetation and orderly stored, so they do not interfere with turtle nesting. However, the existing language does not indicate that such rights are only applicable to upland property owners. The recommended change would clarify this provision to avoid the unintended consequence of allowing any Town residents or visitors to leave their recreational furniture overnight and return to such furniture the next day.

In addition, a similar straightforward mechanism, to allow for the proper placement of beach furniture, to be verified with staff, is proposed via a Recreational Use Agreement. This would have the effect of dramatically improving compliance by ensuring that any beach furniture is appropriately located and identifiable. Staff anticipates a simple and no-cost approval process to establish this particular type of Recreational Use Agreement. Such an agreement would only be needed if a property owner wanted to leave beach furniture out overnight, in an allowed location.

Finally, two new requirements are proposed that are intended to address challenges associated with sea turtles that can become entangled in beach furniture or otherwise be impacted, even when such equipment is relocated adjacent to dunes. A provision has been added that requires beach furniture to be stacked, *if possible*, with similar temporary structures and a provision has been included requiring recreational furniture or equipment to *not* be placed within five feet of a marked/identified marine turtle nest, consistent with FWC's recommendations for best management practices.

Staff is recommending the amendments to have a phase-in period effective prior to the 2022 sea turtle nesting season to allow for additional education/outreach, and due to the proximity of the start of the 2021 sea turtle nesting season.

Staff Recommendation

Forward ordinance 2021-01 to the May 3, 2021 Regular Meeting for first reading.

Attachments

- A. Proposed Ordinance 2021-01 (Available in Town Clerk's Office)
- B. Correspondence from Universal Window Solutions (Available in Town Clerk's Office)
- C. Correspondence from PGT Windows + Doors (Available in Town Clerk's Office)
- D. Correspondence from Universal Window Solutions (Available in Town Clerk's Office)
- E. Town Attorney Memorandum and attachments, Summary of Cases Interpreting the Town's Marine Protection Ordinance (Available in Town Clerk's Office)
- F. PowerPoint Presentation (Available in Town Clerk's Office)

End of Agenda Item