

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 23, 2021

Meeting date: May 3, 2021

Subject: Ordinance 2021-01: Proposed Amendments to Town Code Chapter 100, Marine Turtle Protection

Recommended Action

Forward Ordinance 2021-01 to the June 7, 2021 Regular Meeting for second reading and public hearing.

Background

At their April 19, 2021 Regular Workshop Meeting, the Town Commission held a third 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 discussed at that meeting to the May 3, 2021 Regular Meeting for first reading.

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

As a brief overview, the recommended amendments to Chapter 100 arise from Town staff's experience with implementing and enforcing these requirements. That experience, along with continued updates to guidance and best practices associated with protecting nesting sea turtles and their hatchlings, has provided us the ability to evaluate and recommend updates to our Town Code to continue to meet its purpose and intent.

The stated purpose of the Town's marine turtle protection ordinance is:

"to protect marine turtles which nest along the beaches of the town by safeguarding the nesting female and hatchlings from the adverse effects of artificial light and from injury or harassment by prohibiting activities disruptive to marine turtles, while maintaining lighting standards necessary for public safety and security. (Sec. 100.01)"

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 Ordinance, along with incorporating additional best management practices for protection of endangered marine turtles and nesting activities.

Sec. 100.02 Definitions: Amendments 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 an 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: Amendments 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 amendment 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 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 adds 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 adds 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 to lighting standards for new development (Sec. 100.03), and eliminates 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. 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 April 5, 2021 Regular Meeting 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, 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 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. To accomplish that, the proposed ordinance would go into effect 6 months after adoption. If the Commission adopts the Ordinance at their June 7th Meeting, the effective date of the changes would be December 7, 2021.

Staff Recommendation

Forward Ordinance 2021-01 to the June 7, 2021 Regular Meeting for second reading and public hearing.

Attachments

- A. Ordinance 2021-01 (Available in the Town Clerk's Office)
- B. November 9, 2020 Town Commission Regular Workshop Discussion Package (Available in the Town Clerk's Office)
- C. February 16, 2021 Town Commission Regular Workshop Discussion Package (Available in the Town Clerk's Office)
- D. April 19, 2021 Town Commission Regular Workshop Discussion Package (Available in the Town Clerk's Office)
- E. PowerPoint Presentation (Available in the Town Clerk's Office)

End of Agenda Item