

## 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:** May 27, 2021

**Meeting date:** June 7, 2021

**Subject:** Ordinance 2021-01, Amending Town Code Chapter 100, Marine Turtle Protection

### **Recommended Action**

Adopt Ordinance 2021-01.

### **Background**

At their May 3, 2021 Regular Meeting the Town Commission held first reading and forwarded Ordinance 2021-01 2021 to the June 7, 2021 Regular Meeting for second reading, public hearing and adoption. The Ordinance has been updated to reflect direction received at first reading including:

- placement of the window tinting percentage requirement in the standards applicable to new and existing development (instead of being located in the *Tinted or filmed glass* definition);
- clarifying the proposed lighting requirements applicable to pools and pool areas to indicate that minimum life/safety lighting requirements are applicable and that turtle friendly bulbs are not required, if provided lighting does not illuminate the beach;
- revising a newly recommended provision regarding a prohibition on leaving significantly sized holes in the sand at nighttime (a previously recommended prohibition on sand sculptures was removed);
- eliminating a previously recommended provision requiring the securing of trash containers (staff will research this issue further and may be bringing a separate report and recommendations for the Commission's consideration); and
- eliminating Sec. 100.20, which addressed additional vegetation protections on the beach fronting area generally located in front of the mobile home parks (these provisions were related to a coordinated vegetation enhancement effort by the Town and the Florida Department of Environmental Protection, which have been achieved).

Attachment A, Ordinance 2021-01 illustrates recommended amendments in underline/strikethrough format (changes noted above are highlighted). Attachment B, is a clean copy (i.e. with none of the underline/strikethrough changes showing) depicting a final version of Ordinance 2021-01, reflecting an updated Marine Turtle Protection

Ordinance (Town Code Chapter 100). A summary of the amendments is provided below.

As a reminder, these 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, Chapter 100 Amendments Overview**

A brief summary of the noteworthy amendments to Chapter 100 are provided below.

**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). As noted above, the definition of “tinted or filmed glass,” has been revised to relocate the existing 45% window tinting percentage standard to the applicable provisions for new and existing development.

**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. This addition has been updated to clarify the primacy of Life/Safety Code requirements for pool lighting and that turtle friendly bulbs need not be provided if overall lighting does not illuminate the beach.

**Sec. 100.04 (New Section) Permit Applications for New Development:** The Ordinance adds language that addresses the permitting review process, which is not presently in the Ordinance, providing 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, providing 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 also includes the updated recommendation for the addition of lighting standards for pool lighting, visible from the beach.

**Sec. 100.09 Prohibited Activities:** Includes three recommended changes. The first addresses “temporary lighting” that purposely illuminates the beach, which is currently a prohibited activity (a clarification has also been added recognizing that this prohibition is applicable at nighttime, which is a defined term). The provision recognizes that long wavelength (i.e. turtle-friendly) light source are allowed and that personal flashlight devices may be allowed when used for personal safety.

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.

The third recommended change includes a provision requiring the filling of holes in the sand, at nighttime, which are “substantially lower than the surrounding sand.” In addition to potentially being hazards to those walking along the beach in the dark, significant sized holes in the sand can become traps or impediments for female sea turtles and their hatchlings, which must make their way to and from land as part of their nesting. Staff anticipates that this would be a rarely formally enforced prohibition, likely to be associated extreme case regarding the size of a hole and associated with a non-cooperative responsible party. However, having the code authority to refer to when requesting responsible parties to fill in significantly sized holes would provide back-up to such a request.

**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 in this subsection 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.

As noted previously, staff is recommending the amendments have a phase-in period to allow them to become effective prior to the 2022 sea turtle nesting season to provide time for additional education/outreach, and due to the fact that that the 2021 sea turtle nesting season is already underway. Ordinance 2021-01 therefore has an effective date of 6 months after adoption (December 7, 2021). Note: Additional back-up materials presented at prior Commission Regular Meetings and Regular Workshop Meetings are included as part of the record.

### **Staff Recommendation**

Adopt Ordinance 2021-01.

### **Attachments**

- A. Ordinance 2021-01 Underline/Strikethrough Version (Available in Town Clerk's Office)
- B. Ordinance 2021-01 Clean Version (Available in Town Clerk's Office)
- C. PowerPoint Presentation (Available in Town Clerk's Office)

**End of Agenda Item**