

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: June 24, 2021

Meeting date: July 2, 2021

Subject: Emergency Ordinance 2021-10, Amending Chapter 130.02, Sound Regulations Enforcement; and Resolution 2021-18, Amending the Schedule of Violations and Fines

Recommended Action

Adopt Emergency Ordinance 2021-10; and Pass Resolution 2021-18.

Background

Following the Town Commission's direction at the June 21, 2021 Regular Workshop Meeting, the Town Manager and Town Attorney were directed to prepare an Emergency Ordinance to provide for enforcement of violations of the Sound Regulations (Town Code Section. 130.02) via the Town's Code Enforcement processes. This action follows from the Town Commission receiving numerous complaints from residents relating to noise sources within the Town's jurisdiction and an expectation that such noise issues will continue to exacerbate over the Summer months and during weekends and holidays. The Town Commission therefore, deemed it necessary to immediately address such noise issues and their enforcement for the preservation of the peace, safety, health and welfare of the Town's inhabitants.

Emergency Ordinance adoptions are governed by Florida Statutes, the Town Charter and Town Code. The Emergency Ordinance adoption process, allows the Town Commission to effectively pass an ordinance on one reading and public hearing, with limited notice, when the action of the Town Commission is required "for the immediate protection and preservation of the peace and safety, health or property of the Town or its inhabitants" (See Art. II, Sec. 17, Town Charter). Florida Statutes 166.041(3)(b) and the Town Charter both speak to the minimum vote that is required for the enactment of an emergency ordinance. Florida Statutes requires a 2/3 vote to enact an Emergency Ordinance, and the Town Charter requires an affirmative vote of at least four members on the Emergency Ordinance.

Emergency Ordinance 2021-10, amends two Sections of Town Code. The first repeals existing restrictions in Chapter 33 that prevent the Special Magistrate from having the authority to review and enforce the Town's Sound Regulations (as codified in Chapter 130 of the Town Code). The proposed amendment to Section 33.09 is provided below:

Chapter 33 – BOARDS AND COMMISSIONS

33.09 Powers.

- (B) The Code Enforcement Board and Special Magistrate shall have the power to conduct hearings relating to the enforcement of the Town Code and shall have the authority and jurisdiction to consider and enter enforcement orders or civil

finer relating to any provision of the Town Code, including any future amendments, and its ordinances, resolutions, orders, approvals, and permits issued thereunder but specifically excluding from Code Enforcement Board and Special Magistrate jurisdiction the provisions in Chapters 70, 71, 73, and 75 of the Town Code. (Amendments are to add reference to Chapter 75 and remove reference to Chapter 130)

The second amends the Sound Regulations' "*Violations, remedies*" provisions to specifically provide that enforcement may occur through the processes provided for in Chapter 33 and by other equitable or legal judicial proceeding. The proposed amendment to Sec. 130.02(G) is provided below:

130.02-Sound regulations.

(G) *Violations; remedies.*

(1) *Violations.* (Delete the following sentence) Any person violating this section shall, upon conviction thereof, be punished in accordance with section 10.99 of the Longboat Key Code. (and add the following language) The Town's code enforcement officer or any law enforcement officer shall have the power to enforce the provisions of this section through civil fines and administrative proceedings, including, but not limited to, code enforcement proceedings in accordance with chapter 33 of the Code of Ordinances of the Town of Longboat Key, F.S. Chapter 162, and by equitable or legal judicial proceedings. Each day of any such violation shall constitute a separate and distinct offense.

(2) *Additional remedies.* No provision of this section shall be construed to impair any common law, or equitable or statutory cause of action, or other legal remedy of any person for injury or damage arising from any violation of this section.

Emergency Ordinance 2021-10 is followed by Resolution 2021-18, which updates the Schedule of Violations and Fines to add violations of the Sound Regulations as an additional Code that can be enforced through the Town's Code Enforcement citation process. Such citations provide for graduated civil fines as follows: \$100.00 fine for a first offense, a \$250.00 fine for a second offense and the \$500.00 fine the third and each subsequent offense. Such citations also provide a process that allows them to be contested by the Special Magistrate.

Emergency Ordinance 2021-10 and Resolution 2021-18 are recommended to be heard and approved by formal action of the Town Commission.

Staff Recommendation

Adopt Emergency Ordinance 2021-10; and Pass Resolution 2021-18.

Attachments

- A. Emergency Ordinance 2021-10 (Available in Town Clerk's Office)
- B. Resolution 2021-18 (Available in Town Clerk's Office)

End of Agenda Item