

## MEMORANDUM

**TO:** Tom Harmer, Town Manager

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

**Report Date:** October 22, 2021

**Meeting Date:** November 1, 2021

**Subject:** Ordinance 2021-13, Amending Chapter 130, Sound Regulations

### Recommended Action

Forward Ordinance 2021-13 to the December 6, 2021 Regular Meeting for second reading and public hearing.

### Background

At their September 27, 2021 Town Commission Regular Workshop Meeting the Town Commission was provided an overview of draft Ordinance 2021-13, which repeals and replaces the Town's existing Sound Regulations (Town Code Sec. 130.02).

Development of the Ordinance derived from direction at the July 2, 2021 Regular Meeting when Emergency Ordinance 2021-10 was adopted. The Town Commission directed the Town Attorney and Town Manager to review Chapter 130, and to develop a new Sound Ordinance to replace the existing Code language. This direction was in part, to address concerns that the Town's current Ordinance may be difficult to enforce because it lacks sufficient objective standards and criteria to clearly regulate the unwanted behavior. The Town Attorney had previously provided a memorandum dated June 12, 2021, noting that the current Ordinance could be challenged on one or more grounds and advised incorporating more objective standards (i.e., decibel and/or distance measurable standards) into the Town's regulatory process.

The Town Attorney's office produced Ordinance 2021-13 which incorporates two alternative standards, either of which can be used in enforcement, to objectively measure whether sound would be considered unreasonably excessive. The standards consist of: (1) a "plainly audible" standard (revised to a distance of 50 feet); or (2) a limitation on certain sounds as measured by defined decibel levels.

Based on feedback at the September 27, 2021 Regular Workshop Meeting and subsequent Commission comments, the following changes have been incorporated into Ordinance 2021-13. (Note: An underline/strikethrough version of Ordinance 2021-13 is provided, as Attachment B, depicting changes made to the ordinance since the September 27, 2021 Regular Workshop Meeting).

- Revised "Whereas" paragraphs in the recitals to consistently refer to "unreasonably loud or excessive noise" as the issue the Town is addressing. "*Unreasonably loud or excessive noise*" are specifically defined terms within the definitions section of the Ordinance.

- The Definitions section of the Ordinance was revised and amended as follows:
  - Deleted the previous terms and definitions for: dBC Leg (equivalent sound pressure level), and Loudspeaker
  - Amended the “*Person(s) responsible*” definition to add the terms “*residential, tourism or*” to the definition. This will ensure that the managers of a tourism, residential or commercial properties would be considered a person responsible for sound(s) emanating from those particular properties. The prior version of the Ordinance was only applicable to commercial property managers.
  - Amended the “*plainly audible*” definition to clarify that a Town “officer”, rather than a “person” will be the individual responsible for determining whether sound meets the plainly audible sound standards.
  - Amended the definition of “*property*” and “*public property*” to specifically include “*the waters within the jurisdiction limits of the Town*” within such definition.
  - Deleted “*unreasonably excessive noise from a property*” and “*unreasonably excessive noise from a vehicle*” from the definition Section. A more comprehensive definition of “*unreasonably loud or excessive noise*” which includes noise from property and vehicles was developed.
  - Amended the “*unreasonably loud or excessive noise*” definition to include noise from vehicles and property. The revised definition of “*unreasonably loud or excessive noise*” now reads as follows: “*any sound (including pulsation, vibration, or reverberation) from any property, vehicle or source which is: (i) plainly audible from at least fifty (50) feet away, or (ii) exceeds the sound pressure limits set forth in Section 130.02(F), or (iii) is emitted by an animal continuously or persistently for more than 10 minutes.*”
  - Amended and shortened the “*vehicle*” definition to now read as “*any mode of transporting person(s) or thing(s) on land, water or in the air.*”
- Subsections (C) and (D) of Section 130.02 (1), (2), respectively, were revised to be consistent and use the term “*unreasonably loud or excessive noise*” as defined within the Ordinance. These subsections reiterate that that such unreasonably loud or excessive noise is unlawful in the Town, including the Town’s jurisdictional waters. These subsections were also revised to specify that a reasonable time for the “*persons responsible*” to

respond to a Town officer’s noise warning is “*immediately.*” The prior reference to a 15-minute warning period has been deleted.

- Subsection (E) which previously prohibited the placement of loudspeakers on or above the public right-of-way has been deleted.
- A renumbered subsection (E) (previously subsection(F)) that declares “*unreasonably loud or excessive noise*” a public nuisance has been revised slightly for consistency to align with the defined terms in the Ordinance. Additional language relating to the Town Attorney’s or designee’s authority to bring a suit on behalf of the Town has been added to state that such authority is “*subject to Town Commission approval*”. This additional language ensures consistency with Section 30.09 of the Town Code that requires prior Town Commission authorization before a lawsuit on the Town’s behalf can be filed.
- Subsection (F)(1) of Section 130.02 (previously subsection (G)) establishes the maximum permissible decibel levels permitted in a receiving land use zoning district. The subsection was revised to clarify that the measurement of sound (using sound pressure levels (dBA)) is from the “*receiving land use Zoning District.*” Additionally, the sound pressure level table has been amended to cross reference every Town Zoning District within the Town’s Zoning Code (Residential, Mixed Use, Tourism, Open Space, Office-Institutional, Commercial, etc.) to ensure that all Zoning Districts are subject to these standards set forth in this Ordinance. The sound pressure level limits (dBA) were lowered as requested by the Town Commission to conform with neighboring jurisdictions (i.e., Manatee County and the City of Holmes Beach). The revised table now reads as follows:

**SOUND PRESSURE LEVELS BY RECEIVING LAND USE ZONING DISTRICT**

Receiving Land Use Zoning District	Time	Sound Pressure Level Limit (dBA)
Residential(R) Mixed Use Community (MUC) Tourism (T) Open Space (OS), Office-Institutional (OI, INS) Waterways (Land Use) Public right-of-way (Land Use)	7:00 a.m.—10:00 p.m. 10:00 p.m.— 7:00 a.m.	60 55
Commercial (C, M)	7:00 a.m.—10:00 p.m. 10:00 p.m.— 7:00 a.m.	72 55

- Subsection (F)(2) of Section 130.02 (previously subsection (G)) was revised slightly to clarify the sound barrier obligation for construction noise that operates on a 24-hour per day basis and the specific locations where measurements would be taken from. The standard will be triggered when there is a residential zone within 100 feet of such ongoing construction noise and measured from either property line of the closest adjacent residential property or the edge of the right-of-way immediately adjacent to the source property.
- Subsection (G)(6) of Section 130.02 (previously subsection (H)) was amended to further specify that motorized vessel noise remains exempt from the Town’s noise ordinance “*unless such regulation is allowed by applicable Florida law.*” The continued inclusion of this exemption within the Town’s Code for motorized vessel noise is recognition of the existing pre-emption found in Florida Statutes 327.60 (2). It continues to be the recommendation of the Town Attorney’s office that this be included in the Town Code so that the Town’s officers and residents are aware of the existing statutory limitation on the Town’s authority to regulate vessel engine noise.<sup>i</sup>

**Staff Recommendation**

Forward Ordinance 2021-13 to the December 6, 2021 Regular Meeting for second reading and public hearing.

**Attachments**

- A. Ordinance 2021-13 (Available in Town Clerk’s Office)
- B. Ordinance 2021-13: Underline/Strikethrough version depicting changes since the September 27, 2021 Regular Workshop Meeting (Available in Town Clerk’s Office)
- C. PowerPoint Presentation (Available in Town Clerk’s Office)

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<sup>i</sup> Florida Statutes 327.60 (2)(g), in relevant part, states:  
 (2) This chapter and chapter 328 do not prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation:  
 . . .  
 (g) Regulating engine or exhaust noise, except as provided in s. [327.65](#)  
 [Emphasis supplied.]

**End of Agenda Item**