

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: November 22, 2021

Meeting Date: December 6, 2021

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

Recommended Action

Forward Ordinance 2021-13 to the January 10, 2022 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 Ordinance 2021-13, which repeals and replaces the Town's existing Sound Regulations (Town Code Section 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 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 loud or 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. Note: The Purpose Statement (Sec. 130.02(A)) was similarly updated.
- The Definitions Section of the Ordinance was revised and amended as follows:
 1. Deleted the previous terms and definitions for: dBC, L_{eq} (equivalent sound pressure level), and Loudspeaker.
 2. Revised the “*Officer*” definition to refer to *Code Enforcement Officers* rather than *Code Inspectors*.
 3. 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.
 4. 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.
 5. Amended the definition of “*property*” and “*public property*” to specifically include “*the waters within the jurisdiction limits of the Town*” within such definition.
 6. 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.
 7. 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.*”

8. 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.
 - Relocated subsection that declares “*unreasonably loud or excessive noise*” a public nuisance (previously subsection(F)) to subsection (H) in order to be clearly applicable to the entire Sound Ordinance. This subsection additionally was 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 (E)(1) 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:

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SOUND PRESSURE LEVELS BY RECEIVING LAND USE ZONING DISTRICT

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

- Created a new Subsection (F) of Section 130.02 (previously subsection 130.02(G)(2)(c)) to specifically address allowances for *Machinery and Construction Equipment noise* and to provide that this subsection is applicable to the entire Sound Ordinance. This subsection clarifies that machinery or equipment at construction sites are required to have either a muffler or other noise reduction device “*at least as effective as that recommended by the manufacturer or provided as original equipment.*” Provisions were also added to encourage the placement of power-driven machinery and construction equipment to minimize impacts to abutting residentially zoned properties and to encourage the usage of electric power-driven equipment rather than internal combustion engines to reduce sound impacts and pollution. This subsection was also 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 the closest adjacent residential property line. In addition, this subsection provides that non-power driven construction noise (i.e. hammering, sawing, putting debris in dumpsters, etc.) is exempt from the Sound Ordinance provisions as these types of sounds are a typical and unavoidable part of construction activity.

- Created a new Subsection (G) of Section 130.02 (previously subsection 130.02(G)(2)(d)) to address Waivers of Sound Ordinance requirements, which can be authorized by the Town Manager, and that this subsection is applicable to the entire Sound Ordinance. The language was revised slightly to consistently refer to the granting of a “waiver” rather than additionally using the term “permit” or “special permit.” In addition, another criteria (#11) was inserted addressing the format of a waiver approval, including the allowance for conditions of approval.
- Subsection (I)(3) of Section 130.02 (previously subsection (G)(3)) was amended to clarify the exemption provisions for property maintenance related sounds, that include both power and manual tools, are applicable for property maintenance activities that do not require a building permit.

Staff Recommendation

Forward Ordinance 2021-13 to the January 10, 2022 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)

End of Agenda Item