



TOWN OF MELBOURNE BEACH

TOWN COMMISSION WORKSHOP

DECEMBER 16, 2024

AGENDA PACKET

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Town of Melbourne Beach

TOWN COMMISSION WORKSHOP
Monday, December 16, 2024 at 6:00 p.m.
COMMUNITY CENTER – 509 OCEAN AVENUE

PUBLIC NOTICE

AGENDA

Commission Members:

Mayor Alison Dennington
Vice Mayor Dawn Barlow
Commissioner Robert Baldwin
Commissioner Anna Butler
Commissioner Tim Reed

Staff Members:

Town Manager Elizabeth Mascaro
Town Clerk Amber Brown

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, THE TOWN HEREBY ADVISES THE PUBLIC THAT: In order to appeal any decision made at this meeting, you will need a verbatim transcript of the proceedings. It will be your responsibility to ensure such a record is made. Such person must provide a method for recording the proceedings verbatim as the Town does not do so. In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

I. Call to Order

II. Roll Call

III. Pledge of Allegiance and Moment of Silence

IV. New Business

- A. Discussion on the proposed vacation rental ordinance changes – Town Attorney Ryan Knight
- B. Discussion on vacation rental ordinance recommendations by resident Bruce Larson sponsored by Commissioner Tim Reed
- C. Discussion on impact fees for short term rentals – Mayor Alison Dennington
- D. Discussion on the proposed noise ordinance changes – Town Attorney Ryan Knight
- E. Discussion to summarize and review all open topics with a commitment to utilizing the task list in the Town Commission packet – Vice Mayor Dawn Barlow

V. Public Comment

After being acknowledged by the Mayor, members of the public should state their name and address for the record. The Commission encourages citizens to prepare their comments in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) related to Town business, not on the Agenda. Please remember to sign the sign-in sheet provided if you will be speaking at the meeting.

VI. Adjournment

Town Commission Meeting

Section: New Business
Meeting Date: December 16, 2024
From: Town Attorney Ryan Knight
RE: Proposed Vacation Rental Ordinance Changes

Background Information:

The Town Commission directed the Town Attorney to draft proposed changes to the vacation rental ordinance.

Recommendation:

Discuss the proposed language changes for the vacation rental ordinance.

Attachments:

Draft of the vacation rental ordinance changes.

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, FLORIDA, AMENDING CHAPTER 74, “VACATION RENTALS”; AMENDING PARKING REQUIREMENTS TO LIMIT AMOUNT OF VEHICLES AT VACATION RENTALS; AMENDING MAXIMUM OCCUPANCY CAPACITY; PROVIDING FOR NOISE REGULATIONS AND PENALTIES; PROVIDING FOR REGISTRATION SUSPENSION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 20, 2020, the Town Commission of the Town of Melbourne Beach adopted Ordinance 2020-02 to provide for the regulation of vacation rentals; and

WHEREAS, the Town Commission has conducted workshops and has directed staff to review parking requirements, maximum occupancy levels, and enforcement provisions related to vacation rentals; and

WHEREAS, after hearing from the citizens of the Town of Melbourne Beach, many of whom are directly impacted by vacation rentals, and after review of Ordinance 2020-02, the Town Commission desires to modify the provisions of Ordinance 2020-02 related to parking requirements and maximum occupancy levels, and to provide for enforcement and penalties related to violations of the Town Code of Ordinances related to vacation rentals.

NOW THEREFORE, BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

Section 1. The findings set forth in the recitals above are adopted and fully incorporated herein as legislative findings of the Town Commission pertaining to this Ordinance.

Section 2. Chapter 74, “Vacation Rentals,” of the Town of Melbourne Beach Code of Ordinances, shall be amended as follows (Note: additions indicated by underscore; deletions indicated by ~~striketrough~~; and text that shall remain unaltered that is not reproduced here is indicated by ellipses (***)):

Section 3. Chapter 74, “Vacation Rentals,” is hereby amended to read as follows:

ARTICLE I. GENERAL PROVISIONS

§ 74-1. AUTHORITY, SCOPE, AND PURPOSE.

(A) This chapter is enacted under the home rule authority and power of the Town of Melbourne Beach in the interest of the health, peace, safety and general welfare of the citizens of the Town of Melbourne Beach.

(B) Section 509.013, Florida Statutes, provides a distinction between "transient public lodging establishments," defined as dwelling units which are rented, advertised or held out for rental to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, and "nontransient public lodging establishments," defined as dwelling units which are rented, advertised or held out for rental to guests for periods of at least 30 days or one calendar month, whichever is less.

(C) Section 509.242(1)(c), Florida Statutes, further provides for a subset of transient public lodging establishments, classified as "vacation rental" which is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

(D) It is the intent of this chapter to regulate vacation rental transient public lodging establishments as defined by Florida Statutes, which are located in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

(E) In 2011, the Florida Legislature passed House Bill 883 (Chapter 2011-119, Laws of Florida) amending Florida Statutes, § 509.032(7)(b) to provide that, "[a] local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

(F) In 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida) amending Florida Statutes, § 509.032(7)(b) to read, "[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

(G) The official statement of legislative intent of Senate Bill 356 as reflected in the House of Representatives' Final Bill Analysis, dated June 19, 2014, states that the "Effect of the Bill" is as follows:

(1) The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

(2) The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

(3) The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulation passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced.

(H) This chapter does not prohibit vacation rentals, or the duration or frequency of vacation rentals, nor is it the intention of the Town of Melbourne Beach to do so, but rather, this chapter is intended to address life, safety, and compatibility concerns in the interests of the health, peace, safety, and general welfare of the citizens and visitors to the Town of Melbourne Beach.

§ 74-2. FINDINGS OF FACTS.

Based on information presented to the Town Commission Members by residents of Melbourne Beach and managers, owners, and operators of vacation rentals, the practical first-hand experience and observations of Town Commission Members, common sense deductions of Town Commission Members based on long-term experiences in Melbourne Beach and familiarity with the character of the town's residential zoning districts, information learned by Town of Melbourne Beach staff, information from the U.S. Census as well as evidence and testimony presented at public hearings before the Town Commission, and after consideration of the Short- Term Rental Housing Restrictions White Paper, prepared by Robinson & Cole, Attorneys at Law, in 2011, prepared for the National Association of Realtors®, the Town Commission finds:

(A) Residents residing within their residential dwelling units are inherently familiar with the local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from their residential dwellings, thereby minimizing potential risks to themselves and their families.

(B) In contrast, transient occupants of vacation rentals, due to their transient nature, are typically not familiar with local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from the vacation rentals in which they are staying, thereby increasing potential risks to themselves and their families, and putting an additional burden on, and potentially putting at risk, emergency personnel in the event of an emergency situation.

(C) Certain vacation rentals may be presently located within the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

(D) Vacation rentals, left unregulated, can create negative impacts within residential neighborhoods due to excessive noise, parking and traffic problems, excessive use and impact on public services and public works, extreme size, and/or greater occupancy.

(E) Vacation rentals situated within residential neighborhoods can disturb the quiet nature and atmosphere of the residential neighborhoods and the quiet enjoyment of residents of such neighborhoods.

(F) Vacation rentals located within established residential neighborhoods can create negative compatibility impacts relating to extreme noise levels, late night activities, on-street parking issues, and traffic congestion.

(G) A residential dwelling is typically the single largest investment a family will make with the residents of the residential dwelling desiring the tranquility and peaceful enjoyment of their neighborhood without excessive noise and increased parking issues and traffic congestion caused by transient occupants of vacation rentals.

(H) According to the U.S. Census, (2010), the Town of Melbourne Beach has an average household size of 2.30 persons.

(I) According to the U.S. Census, (2010), the Town of Melbourne Beach has an average household size of owner-occupied units of 2.36 persons.

(J) According to the U.S. Census, (2010) the Town of Melbourne Beach has an average household size of renter-occupied units of 2.02 persons.

(K) Vacation rentals situated in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts can and do create a great disparity in occupancy.

(L) The town finds that such rentals increase the demands upon code enforcement, police, fire, and emergency services beyond those created by non- vacation rental residential dwelling units.

(M) Vacation rental use and longer-term residential use and ownership can be generally incompatible, due to rapid turnover associated with short-term vacation residential use and its potentially disruptive effect on the peaceful use and enjoyment of residential areas.

(N) The primary reasonable investment-backed expectation of owners of residential dwelling units in the town is that adjacent and surrounding residential dwelling units will be used as family occupied residential units and not vacation rentals.

(O) Vacation rentals are a use that is more similar to the character of the use of hotels, motels, and timeshares than to that of family-occupied residential units.

(P) The regulation of vacation rentals will contribute to the stability of existing residential neighborhoods.

(Q) The regulation of vacation rentals will protect visitors to the town by assuring that fire and safety inspections are periodically conducted, that they receive necessary information about the dwelling which they have rented, and notifying them of the owner of the dwelling's obligation to provide for their safety and welfare.

(R) The regulation of vacation rentals is necessary in order to protect the public health, safety and welfare of the town, its residents and its visitors.

§ 74-3. DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEDROOM. Any room in a vacation rental which has a bed or other place for sleeping and a separate closet that is an integral part of the permanent construction within the bedroom or an ensuite bathroom, and complies with the Florida Fire Code and Florida Life Safety Code as a bedroom, but shall not include a bathroom, a kitchen, a dining room, or any main living area. If a room has been added, altered, or converted without any required building permit having been granted, such room shall not be deemed a bedroom. If a previously approved bedroom exists as of the effective date of this chapter and does not have a separate closet that is an integral part of the permanent construction of the structure, but rather utilizes an armoire or other furniture piece for clothing storage, the requirement for a closet to qualify as a bedroom is waived.

FAMILY. Shall be defined as provided in § 1A-3, Appendix A, Land Development Code.

LIVING AREA. The minimum floor area of a residential dwelling as measured by its outside dimensions exclusive of carports, porches, sheds and attached garages. As used in this chapter, the total living area shall be computed as follows: the exterior dimensions of all enclosed spaces within the framework of the dwelling unit (length and width) multiplied and totaled, as follows:

- (1) Any room or area accessible from any other room or area within the framework shall constitute living area.
- (2) A room or area must be totally enclosed by walls and covered by roofing.
- (3) A room or area must be protected from the elements.
- (4) A utility room within the framework of the residential dwelling and accessible within the main living area constitutes living area.

OCCUPANT. Any person who occupies a vacation rental overnight.

OWNER-OCCUPIED. The vacation rental is then occupied by person(s), at the vacation rental owner's consent, who do not pay rent for the occupancy of the vacation rental, when such persons are members of the family of the vacation rental owner.

PEER-TO-PEER PLATFORM/ENTITY. Any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupant whether through the internet or other means.

RESPONSIBLE PARTY. The owner, or the person designated by the owner of a vacation rental to be called upon to answer for the maintenance of the vacation rental and the conduct and acts of the occupants of the vacation rental.

TOWN CODE. The Town of Melbourne Beach Code of Ordinances and Land Development Code, Appendix "A" to the Code of Ordinances, including, but not limited to, the Zoning Code of the Town of Melbourne Beach, Florida, the Comprehensive Plan, the Future Land Use Map, and any items incorporated by reference.

TRANSIENT PUBLIC LODGING ESTABLISHMENTS. Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

VACATION RENTAL. Collectively a vacation rental as defined under Florida Statutes, and any transient public lodging establishment, which is operated in a dwelling unit or living unit as defined under § 1A-3, Appendix A, Land Development Code in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach.

VACATION RENTAL OWNER. The fee simple owner of the Vacation rental property, whether an individual, partnership, corporation, limited liability company, trust, or other entity. In the event the vacation rental owner is not an individual, the vacation rental owner shall designate a responsible natural person to perform the functions and duties of a vacation rental owner as provided in this chapter. The duties and functions of a vacation rental owner may, at the option of the vacation rental owner, be performed by an agent of the vacation rental owner, so long as the vacation rental owner notifies the town in writing, on a form provided by the town, of the identity and contact information of such agent, and the specific duties that the agent will be performing for the vacation rental owner. The vacation rental owner may change the designation of agent at any time through the filing of a new form and the payment of an administrative fee in an amount as set by the Town Commission. The vacation rental owner shall be held responsible for all actions of such designated agent with respect to the applicable vacation rental.

§ 74-4. ENFORCEMENT.

Violations of this chapter shall be enforced as code violations in accordance with the provisions of Florida Statutes, Chapter 162, and §§ 11-15 through 11-22 of the Town of Melbourne Beach Code of Ordinances.

§ 74-5. APPEALS.

Any decision of the Town Manager or his or her authorized designee relating to implementation of this chapter shall be rendered in writing in appealable form, and reviewed by the Town Attorney if a notice by the vacation rental owner or agent is filed with the Town Clerk within ten days after the action to be reviewed. The Town Clerk or designee shall place the matter on the agenda of the next available meeting of the Town Commission, but no later than 35 days

after the notice by the vacation rental owner or agent is filed, at which the matter will be reviewed. The decision of the Town Commission shall be final and shall be rendered in writing in appealable form. Such final decision may be reviewed as permitted under Florida law.

§ 74-6. CONSTRUCTION OF CHAPTER.

This chapter shall be liberally construed to accomplish its purpose of regulating vacation rentals, protecting the residential character of the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts of the Town of Melbourne Beach, the health, safety, and general welfare of its residents and visitors, and the quiet enjoyment by Melbourne Beach residents of their residential property located in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts.

§§ 74-7. – 74-14. RESERVED.

ARTICLE II. VACATION RENTAL REGISTRATION

§ 74-15. REGISTRATION REQUIRED.

As of August 1, 2020, a vacation rental registration shall be required to operate a vacation rental within the Town of Melbourne Beach in the 1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts, utilizing forms promulgated by the town, electronically or in hard copy. The town may extend the date that such registration is required by notice on the town's website should the town not publish forms and fees for registration by July 1, 2020. Prior to the issuance of a vacation rental registration, the responsible party has the affirmative duty to ensure that the residential dwelling unit and property in or on which the vacation rental is or will be located, is in full compliance with the appropriate portions of Town of Melbourne Beach Code of Ordinances, the Florida Building Code, the Florida Administrative Code, and the Florida Fire Prevention Codes. A separate vacation rental registration shall be required for each separate residential dwelling unit constituting a vacation rental. The operation of a vacation rental without registration after the date registration is required shall be a violation of this chapter, except in the instance of providing accommodations to fulfill a pre-existing contract.

§ 74-16. VACATION RENTAL REGISTRATION.

(A) A vacation rental owner, agent, or responsible party, as applicable, registering a vacation rental with the town shall submit to the town a completed registration form, utilizing a form promulgated by the town, together with all applicable registration and inspection fees in the amount set by resolution of the Town Commission.

(B) A registration application shall include the following:

(1) Full address of the vacation rental property being registered, along with proof of ownership;

(2) Name, physical address, phone number, and e-mail, of the vacation rental owner;

(3) Name, physical address, e-mail, and emergency contact phone number of responsible party for the vacation rental, which shall be a 24-hour, seven days a week contact number;

(4) The vacation rental's current and active license number as a transient public lodging establishment issued by the Florida Department of Business and Professional Regulation (DBPR), if the registrant has such license;

(5) A copy of the vacation rental's current and active certificate of registration with the Florida Department of Revenue and Brevard County for sales and tourist development tax collection, respectively, if the registrant has such certificates or accounts; unless a peer-to-peer platform entity through which the vacation rental is booked will be remitting all such taxes associated with the vacation rental on the responsible party's behalf;

(6) Business tax receipt from the Town of Melbourne Beach, if applicable, in accordance with Chapter 65, Town of Melbourne Beach Code of Ordinances;

(7) Statement attesting to the number of bedrooms and paved off-street parking spaces available on the property demonstrating compliance with § 7A-50, Land Development Code regarding off-street parking and affirming that, "parking serving the vacation rental shall be in compliance with all town parking requirements;"

(8) Exterior site sketch. An exterior sketch of the vacation rental facility shall be provided. The sketch shall show and identify all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking. For purposes of the sketch, off-street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the vacation rental owner, such sketch may be hand drawn and need not be professionally prepared, but must be scaled, must show dimensions, and must show scale;

(9) Interior building sketch by floor. A building sketch by floor shall be provided, showing a floor layout identifying all bedrooms, other rooms, exits, hallways, stairways, and safety equipment as applicable. At The option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared, but must be scaled, must show dimensions, and must show scale;

(10) Acknowledgment signed by the vacation rental owner, agent, or designated responsible party, understanding and agreeing to initial and ongoing compliance with this chapter and all other applicable local, state, and federal laws, regulations, and standards; and

(11) The landline telephone number on the main level and in the common area at the vacation rental with the ability to call 911 as required by §§ 74-35 through 74-39.

(C) If a registration form is incomplete, the registrant will be notified of the deficiency, and be allowed 15 days to provide any missing information.

(D) The operation of a vacation rental without registration after the date registration is required shall be a violation of this Article. Every day of such operation without registration shall constitute a separate violation.

§ 74-17. MODIFICATION/CHANGE OF OWNERSHIP OF VACATION RENTAL REGISTRATION.

(A) An amendment of a vacation rental registration application and affidavit of compliance shall be required, with payment of the appropriate fee set by resolution, in the event that any of the following changes to the vacation rental are proposed:

- (1) An increase in the number of bedrooms in the vacation rental.
- (2) An increase or decrease in the number of parking spaces or a change in the location of parking spaces for the vacation rental.
- (3) A change in the designated responsible party,

(B) A change of ownership shall require a new application and all required documents including appropriate fees set by resolution.

§ 74-18. DURATION OF VACATION RENTAL REGISTRATION.

A vacation rental registration shall be valid for one year after the date of registration.

§ 74-19. RENEWAL OF VACATION RENTAL REGISTRATION.

A vacation rental owner must renew its registration annually prior to the expiration date of the previous vacation rental registration. At the time of said renewal, the vacation rental shall be subject to an annual inspection and applicable renewal fees shall apply.

§ 74-20. INSPECTION OF VACATION RENTALS.

(A) Inspection of a vacation rental to verify compliance with the Florida Building Code and the Florida Fire and Life Safety Codes, which governed at the time of completion of the construction of the subject residential dwelling unit, shall be required subsequent to the initial registration of the vacation rental and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the Florida Building Code and Florida Fire and Life Safety Codes are otherwise handled in the town. Enforcement of violations of the Florida Building Code and Florida Fire and Life Safety Codes by the town shall not affect rental contracts that preexist the effective date of this chapter unless such violations present a heightened threat the public, health, safety, and welfare of the occupants of a vacation rental. This inspection fee shall be set by Resolution of the Town Commission.

(B) Annual inspections to verify compliance with the Florida Building Code and the Florida Fire and Life Safety Codes, and the posting of notice requirements required herein shall be made by the town or designated contractor through appointment with the vacation rental owner, agent, or responsible party, as applicable. The annual inspection fee shall be set by Resolution of the Town Commission. If a Town Inspector or designated contractor has made an appointment with vacation rental owner or agent, as applicable, for an inspection, and the Town Inspector or designated contractor is unable to complete the inspection as a result of an action or inaction of the vacation rental owner, agent, responsible party, or an occupant of the vacation rental, the vacation rental owner shall be charged a "re-inspection" fee in an amount set by resolution of the Town Commission to cover the inspection expense incurred. The re-inspection fee shall be paid prior to scheduling the re-inspection. In addition, failure of a vacation rental owner agent, or responsible party, as applicable, to make the vacation rental available for an inspection within 20 days after notification by the town in writing that the town is ready to conduct an annual inspection, shall be a violation of this chapter punishable by a fine as set by resolution by the Town Commission. Such violation shall continue until the inspection is accomplished. Each day that such violation continues shall be a separate violation. Such violation may be enforced in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

§ 74-21. SALE OF VACATION RENTAL PROPERTY.

When the ownership of the vacation rental is sold or otherwise transferred, the new owner shall file a new registration with the town within 30 days from the date of the sale or transfer. Failing such application for registration, any Certificate of Compliance as to that Vacation Rental Property shall be null and void on the thirty-first day after such sale or transfer.

§ 74-22. VESTED RIGHTS/WAIVER/ESTOPPEL.

A vacation rental registration shall not be construed to establish any vested rights or entitle the registered vacation rental to any rights under the theory of estoppel. A vacation rental registration shall not be construed as a waiver of any other requirements contained within the Town of Melbourne Beach Code of Ordinances and is not an approval of any other Town Code requirement outside this chapter. The registration of a vacation rental is not an approval of a use or activity that would otherwise be illegal under Florida law, the Florida Building Code, the Florida Fire Code or Life Safety Code, or in violation of the Town of Melbourne Beach Code of Ordinances.

§ 74-23. FALSE INFORMATION.

It shall be unlawful for any person to give any false or misleading information in connection with any application for registration, modification, or renewal of a vacation rental as required by this chapter. Vacation rental applications shall be sworn to under penalty of perjury. Any false statements made in an application shall be a basis for the revocation of any license issued pursuant to such application. In addition, such violations shall be enforced as provided in § 74-4, Town of Melbourne Beach Code of Ordinances.

§ 74-24. EFFECTIVE DATE FOR EXISTING VACATION RENTALS.

The provisions of § 74-15 through § 74-23 will not become effective for existing vacation rental properties until August 1, 2020. If the registration forms to implement the required registration provisions of this chapter are not available on July 1, 2020, the town may extend the requirement to register vacation rental properties by notice on the town's website.

§ 74-25. DUTIES OF VACATION RENTAL OWNER OR RESPONSIBLE PARTY.

(A) Every vacation rental owner or responsible party, as applicable, shall be available by phone at the listed phone number 24-hours a day, seven days a week to respond to police, fire, or other emergency personnel requests. Otherwise, response to attempted contact by the town's vacation rental regulatory personnel shall be required only Monday through Friday, except holidays, from 9 a.m. to 5 p.m. Failure of the vacation rental owner or responsible party, as applicable, to fulfill this duty, shall constitute a violation of this chapter which shall be punished by fine in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

(B) Responsible party. All vacation rental units, if not managed by the vacation rental owner, shall have a designated responsible party.

(1) The responsible party shall be available 24 hours per day, seven days a week, for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. The responsible party must have authority to immediately address and take affirmative action, within one hour of notice from the town, on violations concerning life-safety, noise, and parking violations. A record shall be kept by the town of the complaint and the responsible party's response, as applicable.

(2) A vacation rental owner may change his or her designation of a responsible party temporarily, up to 30 cumulative days during any consecutive 12-month period, or permanently; however, there shall only be one designated responsible party for each vacation rental property at any given time. To change the designated agent or responsible party, the vacation rental owner shall notify the town in writing including all information required by § 74-16(B)(3) Town of Melbourne Beach Code of Ordinances, along with a signed affidavit from the new responsible party acknowledging and agreeing to serve in this capacity and perform the duties of this chapter. Any notice of violation or legal process which has been delivered or served upon the previous responsible party, prior to the town's receipt of notice of change of the responsible party, shall be deemed effective service.

(3) It shall be the sole responsibility of the vacation rental owner to appoint a reliable responsible party and to inform the town of his or her correct mailing address, telephone number, and email address. Failure to do so shall not be a defense to a violation of this section. Service of notice on the responsible party shall be deemed service of notice on the vacation rental owner, occupant, or violator.

(C) (1) A vacation rental owner or responsible party is responsible for ensuring sexual offenders/predators as defined in Florida Statutes § 775.21, § 943.0435, § 944.607, or § 985.4815 register at the Brevard County Sheriff's office and the Town of Melbourne Beach Police Department following the process set forth in § 775.21, 48 hours prior to arrival at a vacation rental, regardless of the length of stay.

(2) A vacation rental owner and/or responsible party shall comply with Florida Law, § 775.215, as amended from time to time, pertaining to the distance separation of homes with a sexual offender/predator residing within the vacation rental and any business, school, child care facility, park, playground, or other places where children regularly congregate.

(3) Failure to comply with this section shall constitute a violation of this chapter and shall result in the revocation of the business tax receipt, if applicable, and vacation rental registration for the vacation rental and other enforcement provisions outlined in § 74-4, Town of Melbourne Beach Code of Ordinances.

(D) The vacation rental owner or responsible party shall inquire prior to check-in if any guest of at the vacation rental is a sexual offender/predator as defined in § 775.21, § 943.0435, § 944.607, or § 985.4815. If any guest of a Vacation Rental is a sexual offender/predator as defined in § 775.21, § 943.0435, § 944.607, or § 985.4815, the operator shall immediately notify the Melbourne Beach Police Department. A vacation rental owner and/or responsible party shall obtain a copy of the photo identification of each vacation rental occupant who is 18 years of age or older prior to check-in, and shall maintain those records for a period of two years from the date of check-in and make such records available to the town upon request.

(E) The owner or responsible party shall provide the town, and post in a conspicuous place in the living area of the vacation rental, the name, address, and day/evening telephone numbers of the responsible party who shall be available 24 hours per day, seven days a week for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. Any change in the responsible party shall require written notification to the town on forms provided by the town and in a manner promulgated by the town upon payment of the applicable fees.

(F) Complaints made to the responsible party concerning violations of this chapter by occupants of vacation rental shall be responded to within a reasonable time but in no instance greater than three hours. A record of the complaint and of the responsible party's response shall be maintained in the file for the registration of the vacation rental and shall be available for inspection of the public during business hours of the town in accordance with Florida's public record law.

(G) It shall be the sole responsibility of the vacation rental owner to appoint a reliable responsible party and to inform the responsible party of his or her correct contact information. Failure to do so shall not be a defense to the town's claim of delivery of notice of a violation of this chapter to the responsible party. No vacation rental owner shall designate as a responsible party any person who does not expressly comply with the provisions of this section. The vacation rental owner or the responsible party shall be deemed to be the "violator" of this chapter as the

term is used in Florida Statutes § 162.06. Service of notice on the responsible party shall be deemed service of notice on the vacation rental owner, occupant, or violator.

§§ 74-26. – 74-34. RESERVED.

ARTICLE III. STANDARDS AND REQUIREMENTS FOR VACATION RENTALS

§ 74-35. GENERALLY.

The standards and requirements set forth in this Article shall apply to the rental, use, and occupancy of vacation rentals in the Town of Melbourne Beach.

§ 74-36. MINIMUM LIFE/SAFETY AND OPERATIONAL REQUIREMENTS.

Vacation rentals in the Town of Melbourne Beach shall meet all applicable standards under the Florida Statutes, the Florida Building Code, the Florida Administrative Code, the Florida Swimming Pool Safety Act, and the Florida Fire Code and Life Safety Code. Each vacation rental shall also have the following:

(A) At least one landline telephone on the main level and in a common living area with the ability to call 911. The landline telephone number shall be registered at all times with Brevard County Emergency Management for the purpose of receiving emergency alerts for items including, but not limited to, mandatory evacuations for hurricanes and requests to limit utility usage. Additionally, the landline telephone number shall be registered at all times with the City of Melbourne, the water provider within the Town of Melbourne Beach, for the purposes of receiving boil water alerts and rescinding alerts.

(B) A swimming pool, spa, or hot tub shall comply with the current standards of Florida Statutes, Chapter 515, Residential Swimming Pool Safety Act.

(C) Smoke and carbon monoxide (CO) detection and notification system. There shall be a smoke and carbon monoxide detection system, installed and maintained in compliance with the requirements of Florida Building Code Residential, Sections R314 Smoke Alarms R315 Carbon Monoxide Alarms. Smoke and carbon monoxide detection systems shall have both audio and visual warning function capabilities.

(D) Fire extinguisher. On each floor there shall be available a portable, multi-purpose dry chemical 2A: 1 0B:C fire extinguisher, which shall be installed and maintained in compliance with NFPA 10.

(E) Battery powered emergency lighting. Battery powered emergency lighting, which illuminates automatically for at least one hour when electricity is interrupted, is required at each building exit.

§ 74-37. MAXIMUM OCCUPANCY BASED ON SITE CAPACITY/LIMITATIONS/GRANDFATHERING.

(A) The maximum occupancy of a vacation rental shall be stated in the vacation rental registration form and shall be limited to the lesser of: two occupants per bedroom plus two occupants in one common living area, with a maximum capacity of 12 persons in any vacation rental.

(1) Two (2) occupants per bedroom, plus two occupants in one common living area.

(2) A total of eight (8) occupants per vacation rental.

(B) The maximum occupancy restriction as set forth above shall not apply when the property serves as the primary residence of, and is occupied by, the vacation rental owner.

(C) Notwithstanding the above, residential dwelling unit that is being used as a vacation rental on of the effective date of this chapter, may apply for grandfathered status, which, if granted, allows operation of the grandfathered vacation rental at a capped occupancy rate higher than ~~12~~ 8 occupants for a period not to exceed ten years. Vacation rentals that have an occupancy of ~~12~~ 8 occupants or less do not require grandfathering to maintain that occupancy.

(1) A grandfathered vacation rental shall have its maximum occupancy based upon two persons per bedroom and two additional persons per one common living area being utilized for the occupants of the vacation rental at the time of application for grandfathered status. A change in the number of bedrooms at the vacation rental shall cause such vacation rental to lose its grandfathered status.

(2) The vacation rental owner, agent, or responsible party, as applicable, ("grandfathering applicant"), shall complete a grandfathering application as prescribed by the town, which shall be submitted under oath and upon penalty of perjury and shall provide verifiable written proof of the number of bedrooms and living areas as herein defined in the vacation rental.

(3) The grandfathering application and supporting proof shall be submitted to the town for review by town staff which shall make a written determination as to the maximum occupancy of the grandfathered vacation rental.

(4) If the town staff denies the requested occupancy level, the Town of Melbourne Beach shall notify the grandfathering applicant of the denial and shall provide the maximum approved occupancy level for the vacation rental in writing. Within 20 days after the service of the written notice, the grandfathering applicant may appeal the denial of the grandfathering application to the Town Commission by filing a written appeal with the Town Clerk. At the hearing on said appeal, the grandfathering applicant may present evidence supporting the requested occupancy. A final determination of occupancy by the Town Commission after the hearing of said appeal shall be final. Such final determination

may be reviewed as permitted under Florida law. If no written appeal is filed within the 20-day period stated herein, the occupancy determined by the town staff shall be final.

(5) An application for grandfathered status shall be submitted, no later than the time of initial registration of the vacation rental, along with fees established by the Town Commission by resolution. If the town extends the date that registration is required, the deadline for the submission of grandfathering applications shall also be extended to the same extended date. If a vacation rental has been registered, but a final determination as to the occupancy level based upon grandfathering has not yet been made, such vacation rental may allow occupancy up to the occupancy requested in the grandfathering application until such time as a final determination as to occupancy has been made.

(6) If it is reasonably determined by the town staff that any information supplied to the Town of Melbourne Beach in support of a grandfathering application was intentionally false or fraudulent, such action shall be deemed to be a violation of this chapter and may be enforced in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

(7) If a vacation rental registration remains expired period in excess of 13 months, any grandfathering determination shall be deemed abandoned and shall no longer be applicable to the previously registered vacation rental.

§ 74-38. PARKING, SOLID WASTE DISPOSAL, LEGAL COMPLIANCE, EVACUATIONS, MISCELLANEOUS PROVISIONS.

(A) All vehicles associated with the vacation rental, including visitors not residing at the vacation rental, must be parked in compliance with §§ 30-41 through 30-48 of the Town of Melbourne Beach Code of Ordinances. All vehicles utilized by the occupants of the vacation rental must be parked within a driveway located on the subject property. There shall be no sidewalk, on street, right-of-way, or grass parking. The maximum collective number of automobiles, trucks, boats, motorcycles, and trailers shall be limited to a total of three (3) at any vacation rental. Violations of this section may be punished through town parking citations in accordance with section 30-44 of this code or ordinances, and vehicles parked in violation of the approved parking plan or which otherwise interfere with convenient vehicle access to and through the neighborhood are subject to being towed at the vehicle owner's expense.

(B) Parking of trailers, boats, and recreational vehicles at vacation rentals shall be in accordance with § 7A-57, Appendix "A," Land Development Code.

(C) Solid waste disposal (household garbage, recycling, and yard trash) at vacation rentals shall be in compliance with the solid waste franchise agreement adopted by the town.

(D) Vacation rental occupants are required to comply with all local, state, and federal laws at all times, including those related to illegal activities, local nuisance ordinances, and emergency management.

(E) Vacation rental occupants are required to participate in all mandatory evacuations due to hurricanes, tropical storms, or other threats to resident safety, as required by state and local laws.

(F) A vacation rental shall not be eligible for a special event permit under Chapter 52, Town of Melbourne Beach Code of Ordinances.

(G) No temporary storage containers may be stored on the vacation rental premises. The term "temporary storage container" shall mean any container, structure, box, cylinder, or crate made of any material not permanently affixed to real property, that is enclosed or capable of being enclosed on all sides, top and bottom, that is stored, placed, located or put on any real property within the town for the purpose of storing personal property, construction material, trash, refuse, garbage, debris, or other material or matter. Provided, however, with prior authorization from the Building Department a temporary storage container may be authorized during valid construction permit activity for this location.

(H) Except for dwelling and living unit structures that constitute nonconforming structures pursuant to § 7A-83, Appendix A, Land Development Code, no accessory structure, vehicle, recreational vehicle, trailer, camper, or similar apparatus shall be utilized, rented, or registered as a Vacation Rental.

§ 74.39. NOISE REGULATIONS; EXCEPTIONS.

No person located in or around a vacation rental at any time shall create, or cause to be created any noise or sound which is clearly audible within any other residence in the RS-1 single family residential district when the residence in which the noise or sound is clearly audible has its windows and doors closed. This shall not include cries for emergency assistance or warning calls, properly functioning HVAC systems, pool pumps, lawn mowers, leaf blowers, or fire alarms or burglar alarms prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the vacation rental served by any such alarm to turn off the alarm. The provisions of this section are in addition to other noise regulations generally applicable in the town.

§ 74.40. NOISE REGULATIONS; PENALTIES.

- (a) Noise violations may be enforced utilizing any legal means, including, but not limited to, citations issued by code officers, police officers, or any other person designated by the Town Manager, arrest, actions before the special magistrate, or injunctive relief. Citations issued to renters shall be in amounts as set by resolution of the Town Commission.
- (b) If there are three (3) noise violations with citations (whether such violations are paid, or if they are challenged and the special magistrate upholds such citation), issued over a rolling period of twelve (12) months, the special magistrate, at the request of the town, may deem the property a "noise nuisance property" to be effective for a period of twelve (12) months from the later of the special magistrate order deeming the property a "noise nuisance property" or any citation for a noise violation as to such property, and may impose one (1) or more of the following orders:

- (1) Require that whenever in the twelve (12) months following the special magistrate order there is a change of occupancy of the property (i.e., new people staying in and/or renting the noise nuisance property) the property owner or responsible party must provide proof to the town that the property owner or responsible party has visited the property during the first day of the stay of the new tenants and delivered a copy of the town's noise ordinances to the new occupants of the property and explained the seriousness of the violations of such ordinances and the fines and penalties which are applicable. Failure to provide said notice shall constitute operating without registration and the vacation rental owner shall be subject to the applicable fine for operating without a registration.

- (2) Require that the owner of the noise nuisance property shall be required to impose for all future rentals of the noise nuisance property over the next twelve (12) months, an additional deposit in an amount no less than five hundred dollars (\$500.00), with the condition of the deposit being that it will be forfeited to the town if the renter or any occupant of the noise nuisance property receives a noise violation during the term of the rental agreement. All such renters and occupants shall be warned, by the property owner or responsible party, of such additional deposit and what would cause the forfeiture of such deposit prior to execution of the rental agreement. A prominent notice of the conditions of such deposit and the potential forfeiture of such deposit shall be posted in each and every noise nuisance property. Failure to require the additional deposit shall constitute a violation of town regulations and the property owner shall be subject to a penalty in the amount charged for operating without registration. Proof of the additional deposit must be provided to the town by the property owner or responsible party for each and every rental of the property as long as the property is designated a noise nuisance property.

§ 74-39 ~~41~~. REQUIRED POSTING OF LOCAL INFORMATION IN A VACATION RENTAL AND IN AGREEMENT.

(A) In each vacation rental, there shall be posted, in a prominent location on the inside of the vacation rental, the following written information:

- (1) The official street address and landline telephone phone number of the vacation rental.

- (2) The name, address, and phone number of the vacation rental owner or responsible party as applicable.

- (3) The maximum occupancy of the vacation rental.

- (4) A copy of a document to be supplied by the town which includes excerpts from Town of Melbourne Beach Code of Ordinances of general application relevant to vacation rentals, including, but not limited to, solid waste and recycling pick-up regulations and

days/times, regulations related to sea turtles and sea turtle lighting, parking, and noise regulations. Said document shall also be included as an addendum to each vacation rental agreement. The town will make available to vacation rental owners and agents a copy of such document in digital format upon request and the town will post such document on its website.

(5) The maximum number of vehicles that will be allowed to park at the vacation rental, along with a sketch of the location of the paved off-street parking and a notice that visitors to the vacation rental, must comply with §§ 30-41 through 30-48, Town of Melbourne Beach Code of Ordinances.

(6) Phone number and address of Holmes Regional Medical Center Melbourne and Health First Viera Hospital and directions from the vacation rental to the hospital.

(7) Emergency and nonemergency phone numbers for Melbourne Beach Police and Fire Departments.

(8) Emergency evacuation instructions.

(9) Rip currents are prevalent in the Atlantic Ocean here in Brevard County. Information from the National Weather Service, available via from <http://weather.gov/mlb> shall be provided to occupants on the dangers of rip currents that occur in the Atlantic Ocean shall be prominently displayed.

(10) Notice of the need for respect for the peace and quiet of neighborhood residents in compliance with Chapter 48, Town of Melbourne Beach Code of Ordinances. A statement shall specifically provide that occupants shall be prohibited from making excessive or boisterous noise in or about any residential dwelling unit at all times.

(11) In addition, there shall be posted, next to the interior door of each bedroom, and the exterior doors exiting the vacation rental a legible copy of a building evacuation map - minimum eight and one-half inches by 11 inches.

(12) A vacation rental agreement must include a list of occupant names and a record of the license plate numbers of vehicles used by occupants during any rental term or such information shall be provided in writing to the vacation rental owner prior to, or at the time of, the commencement of the rental term. This information shall be maintained by a vacation rental owner for no less than one year from the commencement of the rental term.

§ 74-41. REGISTRATION SUSPENSION

The code enforcement magistrate or court may, in addition to assessing code enforcement fines and orders requiring compliance, as provided for in Chapter 11, Article II of the town's code of ordinances and state law, as may be amended, may order that the vacation rental owner's

registration, and accompanying authorization to operate, may be suspended for the following reasons and for up to the corresponding suspension periods:

- (a) Knowingly submitting false information in support of a registration application as prohibited by section 74-23 for a period of up to one (1) year.
- (b) Three orders finding a violation of any provision of this article within a six-month period, where the orders finding violation have become final through any timely appeal, for a period of up to six (6) months.
- (c) Allowing a vacation rental to be rented by, and actually used by occupants, during a period of suspension, for a period of up to one (1) year.

§§ 74-402. – 74-49. RESERVED.

ARTICLE IV. EXEMPTIONS

§ 74-50. EXEMPTION FOR PRE- EXISTING RENTAL AGREEMENTS.

(A) Notwithstanding any other provision of this chapter, rental agreements with prospective occupants for vacations rentals that were pre-existing as of the effective date of this chapter (hereinafter "Pre-existing Agreements") are exempt from the provisions of this chapter.

(B) If a vacation rental owner is cited for a violation of noncompliance with this chapter, when the vacation rental is occupied under the terms of a pre-existing agreement, the vacation rental owner may defend such violation based on the fact that the vacation rental was exempt from this chapter due to it being occupied pursuant to a pre-existing agreement. Such defense shall be determined based upon the following information, and upon any additional information supplied by the vacation rental owner:

- (1) Copy of deposit or payment information evidencing a pre-existing agreement;
- (2) Copy of e-mail or other communication evidencing a binding pre-existing agreement;
- (3) Information from the occupant confirming that there was a binding preexisting agreement; or
- (4) Written vacation rental agreement dated prior to April 15, 2020.

(C) Any person who supplies false or fraudulent information supporting a pre-existing agreement shall be in violation of this chapter and shall be subject to enforcement in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

(D) Determination of exemption of a pre-existing agreement for a vacation rental from the requirements of this chapter under this section shall not exempt the occupants of the vacation

rental from compliance with all other Town of Melbourne Beach Code of Ordinances requirements, including those related to noise, parking, nuisances.

§ 74-51. EXEMPTION FOR OWNER-OCCUPIED VACATION RENTALS.

The provisions of this chapter shall not apply to owner occupied vacation rentals or property which qualifies as homestead under the Florida Constitution and Florida law. Any person desiring to qualify for the exemption herein shall file an affidavit in substantially the following form:

"Affidavit of Exemption"

State of

County

Before me the undersigned authority personally appeared (hereinafter the "Owner") who upon oath deposes and states:

1. I am over the age of 18 and competent to make this Affidavit.

2. I own the following real property in the Town of Melbourne Beach, Brevard County, State of Florida:

(Legal description and Street Address)

3. Check one or both as applicable:

I currently occupy the property described in Paragraph 2 above and have resided on this property continuously and uninterruptedly from (date) to the date of this Affidavit.

Or

I have applied for and received the homestead tax exemption as to the above-described property, that is the tax identification parcel number of this property, and that the undersigned has resided on this property continuously and uninterruptedly from (date) to the date of this Affidavit.

4. The purpose of this Affidavit is to qualify for exemption from the Chapter 74 of the Town of Melbourne Beach Code of Ordinances regulating Vacation Rentals.

Sworn to (or affirmed) and subscribed before me by means of or online notarization, this day of (year) by "Notary".

Section 4. Codification. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of the Town of Melbourne Beach, as additions or amendments thereto.

Section 5. Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this Ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

Section 6. Conflicting Ordinances. All ordinances or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2024, by the Town Commission of the Town of Melbourne Beach, Florida.

PASSED ON FIRST READING: _____

PASSED ON SECOND READING: _____

TOWN OF MELBOURNE BEACH, FLORIDA

By: _____
ALISON DENNINGTON, Mayor

ATTEST:

(TOWN SEAL)

Amber Brown, Town Clerk

Town Commission Meeting

Section: New Business
Meeting Date: Dec 16, 2024 Workshop
From: Commissioner Tim Reed
Re: Agenda Items/Topics/Focus

Background:

I am assuming the 2 proposed ordinances (vacation rental & noise) are already on the agenda.

Recommendation:

Please Add Agenda Items ~~s-listed below to specifically address:~~

1. I wish to sponsor the Vacation Rental Ordinance Recommendations provided by resident Bruce Larson, to include the removal of the Owner-Occupied Exemption (74-51).

~~1. Removing/Repealing Chapter 74: Vacation Rentals~~

~~This item is intended to continue the discussion/effort to eliminate Chapter 74. Rationale is that it was improperly enacted both procedurally, and in conflict with the Land Development Code which far preceded it and the states June 1, 2011 deadline.~~

~~Appendix "A" Land Development Code Chapters:~~

~~7A-31 (e) (4), 7A-32 (e) (4), and 7A-33 (e) (4) for 1-RS, 2-RS & 3-RS SFR respectively~~

~~7A-34 (e) (4) and 7A-35 (e) (4) for 4-RM & 5-RMO Multi-Family respectively~~

~~2. Code Enforcement~~

~~• Town Manager to provide:~~

- ~~1. Summary & update on the hiring of a Code Enforcement Officer to include number of candidates interviewed, what the job qualifications are, and outlook.~~
- ~~2. Draft or actual copy of what the "Suspected" Vacation Rentals report looks like.~~
- ~~3. Summary & update on the research/review of Vacation Rental monitoring tools to include names & number of providers contacted, services provided, respective costs, & path forward.~~

Attachments:

[Please see file attached to Mr. Larsons 12/9 email to the commission for the specifics.](#)

Recommendations for Enhancing the Town Code of Ordinances Regulating Vacation Rentals

Town Commission Workshop - December 16th, 2024
Melbourne Beach, FL

Executive Summary

Vacation rentals primarily serve as revenue sources for their owners and are changing the community values of Melbourne Beach. The short-term rental market is dynamic in nature and experiencing rapid growth and transformation daily, driven by the advent of emerging technologies and market demand. However, the existing Town ordinances, enforcement processes, and resources employed to regulate vacation rentals in Melbourne Beach are outdated and inadequate. The Town's Code must be updated to achieve the sole stated goal of Section 74-1 (A): **“This chapter is enacted under the home rule authority and power of the Town of Melbourne Beach in the interest of the health, peace, safety, and general welfare of the citizens of the Town of Melbourne Beach.”**

The regulation of vacation rentals in Melbourne Beach has been a priority theme in elections and Town Council meetings for over a year. Despite this, there have been no significant updates to address the inadequacies of the town's code. This workshop presents a crucial and much anticipated opportunity for citizens to engage in the process and for the Town Council to act. It has become evident, contrary to previous misconceptions and false statements, that most vacation rentals operating within the town are in fact operating illegally and that there is legal authority granted to the town by the state for regulating vacation rentals.

The town's ordinances pertaining to vacation rentals were adopted in 2020 and have failed to keep pace with the evolving business models and scale of the vacation rental market. Cities across the United States are grappling with similar challenges, and numerous examples of best practices and ordinance templates are now available for reference. The comments and recommendations presented in this report are derived from examples of other cities' codes.

This report incorporates existing code, the Town Attorney's recommended revisions to ordinances and fee schedule, input from citizens, and research of vacation rental regulatory frameworks already in place in cities across Florida and elsewhere. It presents recommendations for enhancing our Town Code with the sole stated objective to safeguard the **“health, peace, safety, and general welfare of the citizens of the Town of Melbourne Beach.”**

Recommended changes to existing code are indicated by ~~striketrough~~ for deletion, and additions are underlined. Sections of Code that are omitted are referenced by three periods ... and are intended to remain unchanged.

Topic 1

Subject: Updated Language for Chapter 74 Article 1 - General Provisions

Discussion: We recommend updating the language of Article 1 to reflect the current day situation and to avoid declarations that are in conflict with other sections of the Town Code or superior regulations. The current 2020 language was the first attempt at regulating vacation rentals in Melbourne Beach. However, it does not align with current community concerns or the evolving dynamics of the vacation rental market. Consequently, several points in Article 1 are either inaccurate in the present context or conflict with, or could lead to future conflicts with, other sections of the Town Code or superior regulations.

Recommended Ordinance Language

§ 74-1. AUTHORITY, SCOPE, AND PURPOSE.

...

(D) It is the intent of this chapter to regulate vacation rental transient public lodging establishments as defined by Florida Statutes, which are located in the ~~1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B~~ zoning districts of the Town of Melbourne Beach which permit vacation rentals to operate per Melbourne Beach Code of Ordinances Appendix A Land Development Code §7A 31-36 and such zoning districts as may be added in the future.

§ 74-2. FINDING OF FACTS.

...

(C) Certain vacation rentals ~~may be~~ are presently located ~~operating~~ within the ~~1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B~~ zoning districts of the Town of Melbourne Beach without registering with the Town and are in violation of Town Code.

§ 74-3 DEFINITIONS.

...

DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a

single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking or eating.

...

~~PEER-TO-PEER ADVERTISING PLATFORM/ENTITY.~~ Any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupants whether through the internet or other means.

...

~~OWNER-OCCUPIED VACATION RENTAL. The vacation rental is then occupied by person(s), at the vacation rental owner's consent, who do not pay rent for the occupancy of the vacation rental, when such persons are members of the family of the vacation rental owner. A property that is the owner's primary residence, qualifies as a homestead for the owner under the Florida Constitution and Florida law (meaning that all, or substantially all, of the property may not be rented for more than thirty (30) days per year to retain homestead status) and has a Dwelling Unit on the property which is a vacation rental.~~

§ 74-6. CONSTRUCTION OF CHAPTER.

This chapter shall be liberally construed to accomplish its purpose of regulating vacation rentals, protecting the residential character of the ~~1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B~~ zoning districts of the Town of Melbourne Beach, the health, safety, and general welfare of its residents and visitors, and the quiet enjoyment by Melbourne Beach residents of their residential property located in the ~~1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B~~ zoning districts within the Town of Melbourne Beach.

Topic 2

Subject: Vacation Rental Registration

Discussion: Updated language to move past the 2020 ordinance language and to accommodate more modern construct of the registration processes. Most importantly, this establishes that at no time will a vacation rental operate without having an owner and responsible party named to be responsible for actions at the rental.

Recommended Ordinance Language

§ 74-15. REGISTRATION REQUIRED.

~~As of August 1, 2020, a~~ A vacation rental registration certificate shall be required to operate a vacation rental within the Town of Melbourne Beach in the ~~1-RS, 2-RS, 3-RS, 4-RM, 5-RMO, and 8-B zoning districts,~~ utilizing forms promulgated by the town, electronically or in hard copy. ~~The town may extend the date that such registration is required by notice on the town's website should the town not publish forms and fees for registration by July 1, 2020.~~ Prior to the issuance of a vacation rental registration certificate, the responsible party has the affirmative duty to ensure that the ~~residential~~ vacation rental dwelling unit and property in or on which the vacation rental is or will be located, is in full compliance with the appropriate portions of Town of Melbourne Beach Code of Ordinances, the Florida Building Code, the Florida Administrative Code, and the Florida Fire Prevention Codes. A separate vacation rental registration shall be required for each separate ~~residential~~ dwelling unit constituting a vacation rental. ~~The operation of a vacation rental without approved registration after the date registration is required shall be a violation of this chapter, except in the instance of the period immediately following the sale or transfer providing accommodations to fulfill a pre-existing contract.~~

§ 74-16 VACATION RENTAL REGISTRATION.

...

(B) A registration application shall include the following:

...

~~(12) a copy of any pre-existing rental contracts, if any exist, for dates after the date of application;~~

~~(13) proof of Brevard County homestead exemption for the vacation rental property if the owner is registering the property as an owner-occupied vacation rental.~~

...

(D) The operation of a vacation rental without registration after the date this ordinance becomes effective shall be a violation of this Article and is considered irreparable. Exemptions to this section are listed in section §74-50 of this chapter defining exemptions. Listing a vacation rental on an Advertising Platform for rent shall constitute prima facie evidence of operation. Upon discovery of such a violation, the Code Enforcement officer, or other Town official, shall make a reasonable effort to notify the violator and shall immediately issue a citation and set a hearing before the special magistrate. Each day of such operation without registration shall constitute a separate violation.

Topic 3

Subject: Sale of a Vacation Rental Property

Discussion: Updated language to clarify the responsibilities of the seller and buyer of a vacation rental property and address the process to follow for continued operation of the property as a vacation rental. The removal of one section is necessary due to an overlap between two sections of the code.

Recommended Ordinance Language

§ 74-17. MODIFICATION/~~CHANGE OF OWNERSHIP OF VACATION RENTAL REGISTRATION.~~

(A) An amendment of a vacation rental registration application and affidavit of compliance shall be required to be submitted by the owner, with payment of the appropriate fee set by resolution, ~~in the event that a minimum of thirty (30) days prior to~~ any of the following changes to the vacation rental ~~are proposed:~~

- (1) An increase in the number of bedrooms in the vacation rental;
- (2) An increase or decrease in the number of parking spaces or a change in the location of parking spaces for the vacation rental;
- (3) A change in the designated responsible party.

~~(B) A change of ownership shall require a new application and all required documents including appropriate fees set by resolution.~~

§ 74-21. SALE OR CHANGE OF OWNERSHIP OF VACATION RENTAL PROPERTIES.

~~When the ownership of the vacation rental is sold or otherwise transferred, the new owner shall file a new registration with the town within 30 days from the date of the sale or transfer. Failing such application for registration, any Certificate of Compliance as to that Vacation Rental Property shall be null and void on the thirty-first day after such sale or transfer.~~

(A) Prior to the sale or transfer of the property, the seller or transferor must provide in writing to the prospective buyer or transferee any unresolved code violations and, if applicable, any outstanding fines. Any unresolved code violations or unpaid fines will become the responsibility of the new owner.

~~(B) A change of ownership shall require a new application and all required documents including appropriate fees set by resolution.~~

~~(B) When the ownership of the vacation rental is sold or the ownership transferred, the following shall occur no later than thirty (30) days prior to the transfer of title:~~

- ~~(1) The seller or previous owner shall submit in writing to the Town a declaration of intent to sell or transfer the property and the date of title transfer. The existing vacation rental registration status or Certificate of Compliance will be terminated on the date of title transfer;~~
- ~~(2) The new owner shall submit a new registration application to the Town with all required documents including appropriate fees set by resolution;~~
- ~~(3) Rental contracts fulfilled after the title transfer and before the new owner's registration application submission are prohibited and constitute a violation of Town Code;~~
- ~~(4) When submitting the new application to the Town, the new owner must provide evidence of any existing rental contracts for dates within the sixty (60) days following the title transfer. The new owner is permitted to fulfill these rental contracts, subject to the following conditions: the complete registration application has been submitted, and there are no other code violations or safety concerns at the property that violate any part of this chapter or the remainder of the Town Code;~~
- ~~(5) If the vacation rental is not fully compliant and registered after sixty (60) days from the registration submission, then fulfilling further rental contracts prior to obtaining the full registration certificate shall be considered operation without a registration and a code violation.~~

Topic 4

Subject: Effective Dates for Vacation Rentals

Discussion: Clean-up language left over from the 2020 ordinance.

Recommended Ordinance Language

§ 74-24. EFFECTIVE DATE FOR EXISTING VACATION RENTALS.

The provisions of § [74-15](#) through § [74-23](#) will ~~not~~ become effective for ~~existing~~ vacation rental properties ~~until August 1, 2020 in Melbourne Beach upon adoption of this amended ordinance. If the registration forms to implement the required registration provisions of this chapter are not available on July 1, 2020, the town may extend the requirement to register vacation rental properties by notice on the town's website. Vacation rentals with active registrations and which are in full compliance with the Town Code on the date of effectivity of the amended ordinance will have the greater of either one hundred eighty (180) days or the end of their current registration period to become compliant with this Chapter of Town Code.~~

Topic 5

Subject: Duties of Vacation Rental Owners

Discussion: The past 5 years has greatly expanded our understanding of the negative impacts that vacation rentals can have on our community. There are numerous examples of best practices implemented by other cities - we should leverage their examples.

Recommended Ordinance Language

§ 74-25. DUTIES OF VACATION RENTAL OWNER OR RESPONSIBLE PARTY.

(A) Every vacation rental owner or responsible party, as applicable, shall be available by phone at the listed phone number 24-hours a day, seven days a week to respond to police, fire or other emergency personnel requests. Otherwise, response to attempted contact by the town's vacation rental regulatory personnel shall be required only Monday through Friday, except holidays, from 9 a.m. to 5 p.m. Failure of the vacation rental owner or responsible party, as applicable, to fulfill this duty, shall constitute a violation of this chapter which shall be punished by fine in accordance with § [74-4](#), Town of Melbourne Beach Code of Ordinances.

(B) Responsible party. All vacation rental units, if not managed by the vacation rental owner, shall have a designated responsible party. The vacation rental owner shall notify the town in writing the name and contact details for the responsible party.

(1) The responsible party shall be available twenty-four (24) hours per day, seven days a week, for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. The responsible party must have authority to immediately address and take affirmative action, within one hour of notice from the town, on violations concerning life-safety, noise, and parking violations. A record shall be kept by the town of the complaint and the responsible party's response, as applicable.

...

~~(C) (1) A vacation rental owner or responsible party is responsible for ensuring sexual offenders/predators as defined in Florida Statutes § 775.21, § 943.0435, § 944.607, or § 985.4815 register at the Brevard County Sheriff's office and the Town of Melbourne Beach Police Department following the process set forth in § 775.21, 48 hours prior to arrival at a vacation rental, regardless of the length of stay.~~

~~—(2) A vacation rental owner and/or responsible party shall comply with Florida Law, § 775.215, as amended from time to time, pertaining to the distance separation of homes with a sexual offender/predator residing within the vacation rental and any business, school, child care facility, park, playground, or other places where children regularly congregate.~~

(C) Vacation rental properties within 2,000 feet of any school, designated public school bus stop, day care center, park, playground, or other private or public recreational facility where children regularly congregate shall not be rented to nor occupied by any person who has been convicted of a violation of F.S. §§ 794.011, 800.04, 827.071, or 847.0145, or convicted of a similar felony sexual offense in any other state, Federal Court or military tribunal in the United States, regardless of whether adjudication has been withheld.

(1) The vacation rental owner is responsible for determining, prior to submission of an application for a vacation rental license, whether the vacation rental property is in an area in which it is unlawful for sexual offenders or sexual predators to establish residence.

(2) The vacation rental owner is responsible for ensuring that a sexual predator background check is conducted for all occupants of the rental property over eighteen (18) years of age, to a reasonable person's standard, and determining if any occupants are listed as sexual offenders/predators. This check shall be conducted no less than forty-eight (48) hours prior to guests check-in. The owner shall demonstrate compliance with this requirement by retaining a full copy of each background check and the names of all occupants for each rental contract for a minimum of twenty-four (24) months after the rental date, and providing a copy to Town Staff upon request.

(3) The vacation rental owner is responsible for ensuring sexual offenders/predators, as defined in Florida Statutes § 775.21, § 943.0435, § 944.607, or § 985.4815, register at the Brevard County Sheriff's office and the Town of Melbourne Beach Police Department following the process set forth in § 775.21, no less than forty eight (48) hours prior to arrival at the vacation rental, regardless of the length of stay.

(4) Failure to comply with this section shall constitute a violation of this chapter and shall result in the immediate revocation of the business tax receipt, ~~if applicable~~, and vacation rental registration for the vacation rental and other enforcement provisions outlined in § 74-4, Town of Melbourne Beach Code of Ordinances. The Special Magistrate may also issue like penalties for any other vacation rental properties operating in the Town owned by the same person or legal entity.

~~(D) The vacation rental owner or responsible party shall inquire prior to check-in if any guest of at the vacation rental is a sexual offender/predator as defined in § 775.21, § 943.0435, § 944.607, or § 985.4815. If any guest of a Vacation Rental is a sexual offender/predator as defined in § 775.21, § 943.0435, § 944.607, or § 985.4815, the operator shall immediately notify the Melbourne Beach Police Department.~~

(D) The owner or responsible party shall provide the town, and post in a conspicuous place in the living area of the vacation rental, the name, address, and day/evening telephone numbers of the responsible party who shall be available 24 hours per day, seven days a week for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. Any change in the responsible party shall require written notification to the town on forms provided by the town and in a manner promulgated by the town upon payment of the applicable fees.

(E) Complaints made to the responsible party concerning violations of this chapter by occupants of vacation rental shall be responded to within ~~a reasonable time but in no instance greater than three hours~~ one hour. A record of the complaint and of the responsible party's response action and timing shall be maintained in the file for the registration of the vacation rental and shall be available for inspection of the public during business hours of the town in accordance with Florida's public record law.

~~(F)~~ It shall be the sole responsibility of the vacation rental owner to appoint a reliable responsible party and to inform the responsible party of his or her correct contact information. Failure to do so shall not be a defense to the town's claim of delivery of notice of a violation of this chapter to the responsible party. No vacation rental owner shall designate as a responsible party any person who does not expressly comply with the provisions of this section. The vacation rental owner or the responsible party shall be deemed to be the "violation" of this chapter as the term is used in Florida Statutes § 162.06. Service of notice on the responsible party shall be deemed service of notice on the vacation rental owner, occupant, or violator.

Topic 6

Subject: Maximum Occupancy

Discussion:

Recommended Ordinance Language

§ 74-37. MAXIMUM OCCUPANCY BASED ON SITE CAPACITY/LIMITATIONS/GRANDFATHERING.

(A) The maximum occupancy of a vacation rental shall be stated in the vacation rental registration form and shall be limited to the lesser of:

- (1) two occupants per bedroom plus two occupants in one common living area;
- (2) a maximum capacity of eight (8) persons in any vacation rental.

(B) The maximum occupancy restriction as set forth above shall not apply when the property ~~serves as the primary residence of,~~ and is occupied solely by the vacation rental owner and their guests.

(C) Notwithstanding the above, residential dwelling unit that is being used as a vacation rental on of the effective date of this chapter, may apply for grandfathered status, which, if granted, allows operation of the grandfathered vacation rental at a capped occupancy rate not higher than twelve (8 12) occupants for a period not to exceed ten the remainder of the current registration period plus one (1) years. Currently registered and compliant vacation rentals that have an occupancy of 12 eight (8) occupants or less do not require grandfathering to maintain that occupancy.

(1) ~~A grandfathered vacation rental shall have its maximum occupancy based upon two persons per bedroom and two additional persons per one common living area being utilized for the occupants of the vacation rental at the time of application for grandfathered status.~~ A change in the number of bedrooms or parking plan at the vacation rental shall cause such vacation rental to lose its grandfathered status.

(2) The vacation rental owner, agent, or responsible party, as applicable, ("grandfathering applicant"), shall complete a grandfathering application as prescribed by the town, which shall be submitted under oath and upon penalty of perjury and shall provide verifiable written proof of the number of bedrooms and living areas as herein defined in the vacation rental.

(3) The grandfathering application and supporting proof shall be submitted to the town for review by town staff ~~which who~~ shall make a written determination recommendation as

to the maximum occupancy of the grandfathered vacation rental and submit the recommendation to the Town Commission for approval.

(4) If the Town ~~staff~~ Commission denies the requested occupancy level, the Town of Melbourne Beach shall notify the grandfathering applicant of the denial and shall provide the maximum approved occupancy level for the vacation rental in writing. Within 20 days after the service of the written notice, the grandfathering applicant may appeal the denial of the grandfathering application to the Town Commission by filing a written appeal with the Town Clerk. At the hearing on said appeal, the grandfathering applicant may present evidence supporting the requested occupancy. A final determination of occupancy by the Town Commission after the hearing of said appeal shall be final. Such final determination may be reviewed as permitted under Florida law. If no written appeal is filed within the 20-day period stated herein, the occupancy determined by the town staff shall be final.

(5) An application for grandfathered status shall be submitted, no later than the time of initial registration of the vacation rental, along with fees established by the Town Commission by resolution. If the town extends the date that registration is required, the deadline for the submission of grandfathering applications shall also be extended to the same extended date. If a vacation rental has been registered, but a final determination as to the occupancy level based upon grandfathering has not yet been made, such vacation rental may allow occupancy up to the occupancy requested in the grandfathering application until such time as a final determination as to occupancy has been made.

(6) If it is reasonably determined by the town staff that any information supplied to the Town of Melbourne Beach in support of a grandfathering application was intentionally false or fraudulent, such action shall be deemed to be a violation of this chapter and may be enforced in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

(7) If a vacation rental registration remains expired for a period in excess of more than ~~13 months~~ sixty (60) days any grandfathering determination shall be deemed abandoned and shall no longer be applicable to the previously registered vacation rental.

Topic 7

Subject: Parking

Discussion: Over the past 5 years of experience with vacation rentals in Town, improper parking has been one of the most significant negative impacts from vacation rentals on the Town and its citizens and a nearly sure-fire way to assess if there are going to be problems with a party of guests at a vacation rental is certainly when there are 4 or more cars parked on-site. Here we suggest a minor edit to clarify the limitation of the total number of vehicles allowed for rental occupants to park at a vacation rental.

Recommended Ordinance Language

§ 74-38. PARKING, SOLID WASTE DISPOSAL, LEGAL COMPLIANCE, EVACUATIONS, MISCELLANEOUS PROVISIONS.

(A) All vehicles associated with the vacation rental, including visitors not residing at the vacation rental, must be parked in compliance with §§ 30-41 through 30-48 of the Town of Melbourne Beach Code of Ordinances. All vehicles utilized by the occupants and guests of the vacation rental must be parked within a driveway located on the subject property. There shall be no sidewalk, on street, right-of-way, or grass parking. For occupants and guests, the maximum collective number of automobiles, trucks, boats, motorcycles, and trailers shall be limited to a total of three (3) at any vacation rental. Violations of this section may be punished through town parking citations in accordance with section 30-44 of this code or ordinances, and vehicles parked in violation of the approved parking plan or which otherwise interfere with convenient vehicle access to and through the neighborhood are subject to being towed at the vehicle owner's expense.

Topic 8

Subject: Noise Regulations

Discussion: Minor edit to the proposed draft from the Town Attorney

Recommended Ordinance Language

§ 74-39 NOISE REGULATION EXCEPTIONS.

No person located in or around a vacation rental at any time shall create, or cause to be created any noise or sound which is clearly audible within any other residence in the ~~RS-1 single family residential district~~ Town of Melbourne Beach when the residence in which the noise or sound is clearly audible has its windows and doors closed.

Topic 9

Subject: Vacation Rental Code Enforcement

Discussion: Historical instances of code violations in Melbourne Beach involving vacation rentals have suffered from protracted delays and inadequacies in the Town's efforts to identify, investigate, adjudicate, and impose penalties on violators. The substantial deficiency may be in the lack of effective procedures and limited resources needed to effectively enforce Town Code pertaining to vacation rentals.

The Town's enforcement efforts in addressing vacation rental violations have been significantly lacking to date. The Town must strengthen its procedures and enforcement measures beginning with establishing a comprehensive and enforceable code structure and providing the necessary resources to conduct effective enforcement activities.

It is important to acknowledge that many violations pertaining to vacation rentals are irreparable. These violations cannot be remedied, and the current system of issuing verbal warnings and/or letters over months, followed by a special magistrate hearing that may never impose any fines or penalties at all even when the violator is found guilty. This current process is grossly inefficient and ineffective in encouraging compliance. In cases where violations are irreparable, Town enforcement personnel must be authorized to call special magistrate hearings and issue citations immediately without any warnings or even having the violators present. The violator has the option to accept the penalty or challenge the citation with the Special Magistrate. After all, is this not the same approach we employ when addressing speeding violations on our roads?

Recommended Ordinance Language

§ 11-19. ENFORCEMENT PROCEDURES; NOTICE.

(a) It shall be the duty of the Code Inspector to initiate enforcement proceedings of violations of the Town codes and ordinances. The special magistrate shall not have the power to initiate such enforcement proceedings.

(b) Except as provided in divisions (c) and (d) of this section, if a violation of a particular code is found, the Code Inspector shall notify the violator and give a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the Code Inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to § 162.12, Fla. Stat., or as such section may be amended. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Code Inspector, the case may be presented to the

special magistrate even if the violation has been corrected prior to the hearing and the notice shall so state.

(c) If a repeat violation is found, the Code Inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Inspector, upon notifying the violator of a repeat violation, shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to § 162.12, Fla. Stat., or as such section may be amended. The case may be presented to the special magistrate even if the violation has been corrected prior to the Board hearing and the notice shall so state.

(d) If the Code Inspector has reason to believe a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the Code Inspector shall make a reasonable effort to notify the violator and may immediately set a hearing before the special magistrate.

(e) If a code violation is irreparable or irreversible in nature, the Special Magistrate shall convene a hearing, with or without the violator present, and may immediately issue initial or repeat code violation citations, as well as other penalties permitted by law and this Town Code, in the name of the property owner listed in the Brevard County Property Tax Appraiser's Office records.

(f) If the owner of a property that is subject to an enforcement proceeding before the special magistrate transfers ownership of the property, or the court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the Code Inspector of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

(5) If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held. Nothing herein shall prevent the Town from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.

_(g) All notices required to be made as part of the Town's code enforcement process shall be made as provided in § 162.12, Fla. Stat., or as such section may be amended

Topic 10

Subject: Exemption of pre-existing rental agreements

Discussion: The execution of rental agreements at vacation rentals within the town of Melbourne Beach must always conform to the Town Code. In the recommendation above at Topic #2 regarding § 74-16 VACATION RENTAL REGISTRATION we already layout a framework for handling pre-existing rental agreements. There must never be a rental event that does not have a owner and a responsible party to ensure compliance. It is the explicit responsibility of the owner to comply fully with town code.

Recommended Ordinance Language

§ 74-50. EXEMPTION FOR PRE- EXISTING RENTAL AGREEMENTS.

(A) Notwithstanding any other provision of this chapter, rental agreements with prospective occupants for ~~vacations~~ rentals that were pre-existing as of the effective date of this chapter that the vacation rental owner submitted the registration application to the Town, with copies of any and all pre-existing rental agreements, (hereinafter "Pre-existing Agreements") ~~are exempt will be governed by from~~ the provisions of this chapter with the sole exception of the 60-day period immediately after submission of registration application, but before such application is approved.

(B) ~~If a vacation rental owner is cited for a violation of noncompliance with this chapter, when the vacation rental is occupied under the terms of a pre-existing agreement, the vacation rental owner may defend such violation based on the fact that the vacation rental was exempt from this chapter due to it being occupied pursuant to a pre-existing agreement. Such defense shall be determined based upon the following information, and upon any additional information supplied by the vacation rental owner:~~

- ~~—(1) Copy of deposit or payment information evidencing a pre-existing agreement;~~
- ~~—(2) Copy of e-mail or other communication evidencing a binding pre-existing agreement;~~
- ~~—(3) Information from the occupant confirming that there was a binding preexisting agreement; or~~
- ~~—(4) Written vacation rental agreement dated prior to April 15, 2020.~~

(E B) Any person who supplies false or fraudulent information supporting a pre-existing agreement shall be in violation of this chapter and shall be subject to enforcement in accordance with § 74-4, Town of Melbourne Beach Code of Ordinances.

~~(D C) Determination of exemption of a pre-existing agreement for a vacation rental from the requirements of this chapter under this section shall not exempt the occupants of the vacation rental from compliance with all other Town of Melbourne Beach Code of Ordinances requirements, including those related to noise, parking, nuisances.~~

Topic 11

Subject: §74-51 Exemption for Owner-Occupied Vacation Rentals

Discussion: Recommend deleting this entire section, as there are no operational or regulatory distinctions between Vacation Rentals and Owner-Occupied Vacation Rentals. While there is, on average, a disparity in rental rates as owner-occupied vacation rentals typically rent only a portion of their property. A reduced registration fee is appropriate for owner-occupied vacation rentals.

Topic 12

Subject: Increased Fees and Fines

Discussion: As per our Town Code, Vacation Rentals impose a burden on Town Staff, Code Enforcement, and Public Safety Officers. These costs are substantial and are necessary to effectively regulate Vacation Rentals. Given that vacation rentals are for-profit businesses, and adversely impact the town, the costs associated with regulating them should be equitably borne by the vacation rental owners.

The current fees and fines for vacation rentals are far too low and need to be revised to reflect the additional financial burden imposed on the Town by vacation rental regulation. The annual cost to the Town is approximately \$100,000, which represents nearly 2% of the total annual Town budget. Considering the relatively low number of vacation rentals registered today (less than 50), annual registration fees of approximately \$1,000 are deemed reasonable.

The inspection fees should be established on a cost-plus overhead basis, reflecting the actual expenses incurred by the Town to execute these tasks. Fines should be set such that they will be sufficient to serve as an incentive for vacation rental owners to be compliant with Town Code. Today the maximum fine is around one-third of the nightly rental rate for many properties operating in town, there is a little incentive to be compliant. It is imperative that the costs associated with Town legal, code enforcement, and special magistrate teams be factored into the fines levied against any party found in violation of the Town Code.

These for-profit businesses should pay at least ½ of the costs the Town has to expend to regulate them. Don't force the rest of the taxpayers to pay for their profits.

The above narrative is directly supported by the EXISTING Town code referenced below:

§74-2 FINDING OF FACTS.

...

(L) The town finds that such rentals increase the demands upon code enforcement, police, fire, and emergency services beyond those created by non-vacation rental residential dwelling units.

...

(R) The regulation of vacation rentals is necessary in order to protect the public health, safety and welfare of the town, its residents and its visitors.

Town Commission Meeting

Section: New Business
Meeting Date: December 16, 2024
From: Mayor Alison Dennington
RE: Discuss impact fees for short term rentals

Background Information:

Please add a discussion of impact fees for STRs

I already spoke to the TA on this a week ago as well as a few other issues on STRs after my 2.5 hr CC with an air bnb rep.

Recommendation:

Discuss impact fees for short term rentals

Attachments:

Email request

From: [Alison Dennington](#)
To: [Melbourne Beach Town Clerk](#); [Ryan Knight](#)
Subject: Dec 6 workshop - add impact fee discussion
Date: Tuesday, December 10, 2024 2:00:28 PM

also please add a discussion of impact fees for STRs

I already spoke to the TA on this a week ago as well as a few other issues on STRs after my 2.5 hr CC with an air bnb rep.

The TA had said he would include discussion and potential language

This is a reminder to do so and my formal “adding” it as a discussion item on STR issues for Dec 16.

Thanks

Sincerely,

Mrs. Alison Dennington
Mayor, Town of Melbourne Beach

(Please pardon any spelling errors; Sent from my iPhone)

Town Commission Meeting

Section: New Business
Meeting Date: December 16, 2024
From: Town Attorney Ryan Knight
RE: Proposed Noise Ordinance Changes

Background Information:

The Town Commission directed the Town Attorney to draft proposed changes to the noise ordinance.

Recommendation:

Discuss the proposed language changes for the noise ordinance.

Attachments:

- Draft of the noise ordinance changes
- Brevard County's noise ordinance

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, FLORIDA, AMENDING CHAPTER 48, “NOISE CONTROL,” RELATING TO NOISE REGULATIONS; AMENDING REGULATIONS, DEFINITIONS, AND TESTING PROTOCOLS RELATED TO NOISE RESTRICTIONS; PROVIDING MAXIMUM PERMISSIBLE SOUND LEVELS IN RESIDENTIAL USE CATEGORY; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SPECIAL PERMITS AND LICENSE; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and Laws of Florida authorize the Town of Melbourne Beach to adopt ordinances regulating, restricting, or prohibiting the production or emission of noises that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the measurement of noise level presents unique challenges, particularly along busy roadways; and

WHEREAS, the Town Commission finds the reliance upon a “reasonable person” standard in cases where it is impractical to perform a noise level reading due to ambient noise levels injects and undue amount of subjectivity into the process of determining noise levels; and

WHEREAS, the Town Commission finds it to be more reasonable and effective to use the ambient noise level as the maximum noise level in circumstances when ambient noise meets or exceeds the maximum noise level allowed by the Code; and

WHEREAS, it is the policy and intent of the Town of Melbourne Beach to protect the health, safety, and welfare of its citizens and to promote an environment free from sound and noise disruptive of peace and good order.

NOW THEREFORE, BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

Section 1. Chapter 48, “Noise Control,” of the Town of Melbourne Beach Code of Ordinances, shall be amended as follows (Note: additions indicated by underscore; deletions indicated by ~~strikethrough~~; and text that shall remain unaltered that is not reproduced here is indicated by ellipses (***)):

Section 2. The findings set forth in the recitals above are adopted and fully incorporated herein as legislative findings of the Town Commission pertaining to this Ordinance.

Section 3. Chapter 48, “Noise Control,” is hereby amended to read as follows:

CHAPTER 48: NOISE CONTROL

§ 48-1. UNUSUAL AND LOUD NOISE PROHIBITED.

~~—(a) It shall be unlawful, for any person, firm or corporation to create or assist in creating any unreasonably loud and disturbing noise in the town. Noise of such character, intensity and duration as to be detrimental to the public health, welfare and peace is prohibited. except as expressly permitted in this article, to make, cause or allow the making of any noise or sound in such a manner as to create a noise disturbance.~~

~~—(b) The following acts, among others, are declared to be loud and disturbing noises in violation of this section, but this enumeration shall not be deemed to be exclusive:~~

~~—(1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sounding of such device for an unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle.~~

~~—(2) The playing of any radio (except in a motor vehicle as defined in Section 316.003, Florida Statutes), phonograph, or other musical instrument in a manner or with such volume, particularly during hours between 11:00 p.m. and 7:00 a.m. as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling, hotel or other type of residence.~~

~~—(3) The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity.~~

~~—(4) The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in a manner as to create loud grating, grinding, rattling or other noise.~~

~~—(5) The blowing of any steam whistle attached to any stationary boiler or engine, except to give notice of the time to begin or stop work or as a warning of danger.~~

~~—(6) The sounding of any bell or gong (except emergency equipment) attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof.~~

~~—(7) The conducting, operating or maintaining of any garage or service station in any residential area so as to cause loud or offensive noises to be emitted therefrom between the hours of 10:00 p.m. and 7:00 a.m. on weekdays or on Sundays.~~

~~—(8) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same are in session, or within 150 feet of any hospital, which unreasonably interferes with the working of those institutions, provided conspicuous signs are displayed in those streets indicating that the area is a school, court or hospital area.~~

~~—(9) The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street.~~

~~—(10) The erection (including excavation), demolition, alteration, or repair in the event that such alteration or repair creates noise of such character, intensity and duration as to be detrimental to public health, welfare, and peace, of any building in a residential or business district other than~~

~~between the hours of 7:00 a.m. and 6:00 p.m., on weekdays, except in the case of urgent necessity in the interest of public safety and then only with a permit from the Building Inspector, which permit may be renewed for a period of three days or less while the emergency continues.~~

~~—(11) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.~~

~~—(12) The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.~~

~~—(13) The use of any drum, loud speaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise.~~

~~—(14) The use of any mechanical loud speakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the Town Commission.~~

~~—(15) The operation of a radio, tape player or other mechanical sound-making device or instrument from a motor vehicle, as defined in Section 316.003, Florida Statutes, on a street or highway by any person operating or occupying said motor vehicle, so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle or is louder than necessary for the convenient hearing by persons inside the motor vehicle in areas adjoining churches, schools, or hospitals. This provision shall not apply to circumstances as described in Section 316.3045, Florida Statutes.~~

§ 48-2. DEFINITIONS.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this article which is not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dBA.

Ambient noise means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

Building line means an imaginary line extending at a ninety-degree angle from the right-of-way to the nearest corner of a building.

Town Manager means the town manager of the Town of Melbourne Beach or the manager's designee.

C-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the C-weighted network. The level so read is designated dBC.

Decibel means a unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micrometers per square meter.

Emergency work means any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or eminent peril.

Noise disturbance means any sound which:

- (1) Endangers or injures the safety or health of humans or animals; or
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

For purposes of this definition, any sound that exceeds the maximum permissible sound levels set forth in section 48-4 of this article shall constitute a noise disturbance per se. It is the intent and purpose of this definition that sounds that either meet the aforesaid criteria or exceed the sound levels in section 48-4 shall constitute a violation of this article.

Originating property means the property from which any sound originates.

Receiving property means property into which any sound is projected other than the originating property.

Sound level means the weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in American National Standards Institute specifications for sound level meters, ANSI S1.4-1983, or in successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means an instrument, which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighing networks used to measure sound pressure levels. The output meter reads sound pressure levels when properly calibrated, and the instrument is to type 2 or better, as specified in the American National Standards Institute Publications, S1.4-1983, or its successor publications.

Sound pressure level means twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure level to the reference of twenty (20) micronewtons per square meter.

Testing protocol shall be at least two (2) fifteen (15) second readings taken from a receiving property as provided herein. In cases where the city has received a complaint regarding sound levels, the readings shall be taken from the property from which the complaint is made, if known. In cases where the city has received no complaint or where the location of the complainant is not known, the readings shall be taken from the right-of-way adjacent to the nearest developed receiving property to the originating property from approximately the point at which the building line nearest to the originating property intersects the right-of-way.

§ 48-3. MEASUREMENT OF SOUND.

Standards, instrumentation, measurement procedures, and instrumentation maintenance used in the measurement of sound shall be in accordance with ANSI S1.4-1983 or its successor publications. Town personnel that will be taking sound level measurements shall be trained to use sound testing devices.

§ 48-4. MAXIMUM PERMISSIBLE SOUND LEVELS IN RESIDENTIAL USE CATEGORY.

No person shall cause, suffer, allow or permit the operation of any source of sound in such a manner as to create a sound level that exceeds the sound level limits listed in table 1 when measured beyond the originating property's property line. Sound or noise projecting from one zoning district into another zoning district with a different decibel level limit shall not exceed the limits of the zoning district into which the noise is projected when measured from within such receiving zoning district. Sound pressure levels in excess of those established in table 1 shall constitute prima facie evidence that such sound is in violation of this article. The sound shall be measured using the "A" and "C" scale in slow time constant. In circumstances where the ambient noise level is equal to or exceeds the sound pressure levels established in table 1, the ambient noise level shall represent the maximum sound pressure level for purposes of performing the measurement provided for herein.

TABLE 1
MAXIMUM SOUND LEVELS FOR
RESIDENTIAL USE CATEGORY

<u>Use Occupancy Category</u>	<u>Time</u>	<u>Maximum Sound Level Limit—dBA</u>	<u>Maximum Sound Level Limit—dBC</u>
<u>Residential¹</u>	<u>7:00 a.m.—10:00 p.m.</u>	<u>60</u>	<u>65</u>
	<u>10:00 p.m.—7:00 a.m.</u>	<u>55</u>	<u>60</u>

§ 48-5. NOISE LEVEL EXEMPTIONS.

The following uses and activities shall be exempt from this article's noise level regulations except as listed in table 1.

- (1) Air conditioners when functioning in accord with the manufacturers' [specifications], standard mufflers and noise-reducing equipment in use and in proper operating condition according to standards promulgated by the American Refrigeration Institute. The same exception shall apply to lawn mowers and agricultural equipment during daylight hours.
- (2) Non-amplified crowd noises resulting from activities such as those planned by student, governmental or community groups.
- (3) Construction operations for which building permits have been issued, or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers'

¹ The Town's zoning map shall be relied upon for purposes of defining residential use properties.

- specifications and with all standard equipment, mufflers and noise-reducing equipment in use and in proper operating condition.
- (4) Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches.
- (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
- (6) Noises resulting from emergency work.
- (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a permit therefor has been granted by the city in accordance with this article. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in this article.
- (8) Noises made by persons having obtained a permit to use the streets.
- (9) All noises coming from the normal operations of aircraft (not including scale model aircraft).
- (10) Motor vehicles defined in F.S. Ch. 316.
- (11) All noises generated by the Town and its agents and/or from Town sponsored events.
- (12) All noises generated during the July 4th holiday from fireworks.

§ 48-6. OTHER NOISE.

- (a) With the exception of those exemptions provided by state law, noises prohibited by this section are unlawful, notwithstanding the fact that no violation of section 48-4 is involved, and notwithstanding the fact that the activity complained about is exempted in section 48-5.
- (b) Thus, the following acts are declared to be loud, disturbing and unnecessary noises in violation of this article:
- (1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning;
- (2) The creation by means of any signaling device of any unreasonably loud or harsh sound;
- (3) The sounding of any signaling device for any unnecessary or unreasonable period of time; and the unreasonable use of any signaling device.

§ 48-7. SPECIAL PERMITS FOR RELIEF OF MAXIMUM ALLOWABLE NOISE LEVELS.

- (a) Applications for a special permit for relief from the maximum allowable noise level limits designated in this article may be made in writing to the Town Manager. Any special permit granted by the Town Manager hereunder must be in writing and shall contain all conditions upon which said special permit shall be effective.
- (b) The Town Manager may grant the relief as applied for under the following conditions:

- (1) The Town Manager may require the applicant to exhaust all technically reasonable abatement measures before a special permit is issued. These abatement measures shall be selected and installed by the applicant at his/her own risk.
- (2) Special permits may be granted for the purpose of entertainment that exceeds the maximum allowable noise levels established in this article under the following conditions:
 - a. The function must be open to the public (admission may be charged).
 - b. The function must take place on public property.
 - c. The special permit will be given for only four (4) hours in one (1) twenty-four-hour day.
 - d. The function shall be staged between the hours of 8:00 a.m. and 8:00 p.m.
- (3) Special permits for non-entertainment special purposes may be issued under any of the following conditions:
 - a. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or if the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant.
 - b. If the special purpose is a recurring purpose, that it not recur more often than four (4) times each calendar year.
 - c. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or if the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur.
 - d. Except in emergency situations, as determined by the Town Manager, the special permit may be issued only four (4) hours between 8:00 a.m. and 8:00 p.m. on weekdays.
 - e. Special permits may be issued for no longer than fifteen (15) consecutive days, renewable by further application to the Town Manager.
- (4) No special permit shall be issued to permit the use of any loudspeaker or sound-amplifying device on the exterior of any building, which at any time exceeds the sound level limits in table 1, except those used for emergency warnings.

§ 48-8. LICENSE FOR USE OF LOUDSPEAKERS OR PUBLIC ADDRESS SYSTEMS.

- (a) Loudspeakers or public address systems used to produce sound signals from any source for either advertising or other purposes shall not be operated on or over public property and public rights-of-way, unless a license has been issued by the Town Manager. Such systems may be used Monday through Saturday during daylight hours only. No such systems shall be used, except systems used by police officers and/or Town employees acting in an official capacity, systems approved in conjunction with special permits and special events approved by the Town Manager and special uses approved by the Town Commission.
- (b) Favorable recommendation of the police chief is required before issuance of a license. Such a recommendation must be given if the proposed activity will not violate any ordinance and will not endanger the public health and safety.
- (c) No loudspeakers or sound-amplifying devices shall be operated pursuant to this section within the hours of 8:00 p.m. and 8:00 a.m.
- (d) No loudspeakers or sound-amplifying devices shall be allowed to operate pursuant to this section during any hour of the day or night that exceeds the maximum permissible sound levels as described in section 48-4 unless a special permit for relief from the maximum allowable noise level limits established in this article has been approved by the Town Manager.

§ 48-2 9. PENALTIES.

~~Any person, firm, or corporation violating any provision of this chapter shall upon conviction be punished by a fine not to exceed \$200.~~

- (a) Each violation of this article shall carry the following civil penalties:
- (1) First violation within a one hundred eighty-day period, a written warning and notice to cure.
 - (2) Second violation within a one hundred eighty-day period, a citation in the amount of two hundred fifty dollars (\$250.00).
 - (3) Third and subsequent violations within a one hundred eighty-day period, a citation in the amount of five hundred dollars (\$500.00).

In the event that a person contests the citation issued him or her, or if he or she is convicted of the above charge, the court will set the fine in an amount not exceeding the statutory limits plus any costs the court may impose. The Town may also seek payment of outstanding expenses as restitution.

§§ 48-3 10. – 48-99 RESERVED.

Section 4. Codification. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of the Town of Melbourne Beach, as additions or amendments thereto.

Section 5. Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this Ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

Section 6. Conflicting Ordinances. All ordinances or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2024, by the Town Commission of the Town of Melbourne Beach, Florida.

PASSED ON FIRST READING: _____

PASSED ON SECOND READING: _____

TOWN OF MELBOURNE BEACH, FLORIDA

By: _____
ALISON DENNINGTON, Mayor

ATTEST:

(TOWN SEAL)

Amber Brown, Town Clerk

PART II - CODE OF ORDINANCES
Chapter 46 - ENVIRONMENT
ARTICLE IV. NOISE

ARTICLE IV. NOISE¹

Sec. 46-126. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Definitions of technical terms used in this article which are not defined in this section shall be obtained from publications of acoustical terminology issued by the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their successor bodies.

Agricultural means any area that is being lawfully used for an agricultural use pursuant to the county's land development regulations.

Ambient noise sound means the surrounding or steady background sound associated with a given environment, exclusive of a particular sound being tested, being usually a composite of sounds from many sources near and far, exclusive of intruding sounds from isolated identifiable sources.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network on a sound level meter that meets the standards set forth in ANSI Standard S.1.4-1983 (or more recent version). The level is designated dBA.

Adjoining property means property which shares a contiguous boundary with another property.

ASTM means the American Society for Testing and Materials or its successor body or bodies.

Amplified sound means any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.

ANSI means the American National Standards Institute or its successor body or bodies.

C-weighted sound level means the sound pressure level in decibels measured using the C- weighting network on a sound level meter that meets the standards set forth in ANSI Standard S1.4-1983 (or more recent version). The level so read is designated "dBC."

Commercial use means any area that is being lawfully used for a commercial use pursuant to the county's land development regulations.

Continuous sound means a sound which remains essentially constant in level during a period of observation.

¹Editor's note(s)—Ord. No. 2023-18, § 2, adopted August 22, 2023, repealed the former Art. IV, §§ 46-126—46-131, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter and derived from Ord. No. 93-09, §§ 2(14-20.42(D)(1)(a)—(f)), 2(14-20.42(D)(1)(h)), adopted May 18, 1993; Ord. No. 94-01, § 2, adopted Jan. 11, 1994; Ord. No. 94-14, § 2, adopted June 21, 1994; Ord. No. 95-14, § 1, adopted March 21, 1995; Ord. No. 95-58, §§ 1(A—E), adopted Dec. 12, 1995; Ord. No. 01-45, § 3, adopted Sept. 4, 2001.

State law reference(s)—Motor vehicle noise generally, F.S. §§ 316.272 et seq., 403.415; noise from watercraft, F.S. § 327.65.

Construction activity means any site preparation, assembly, erection, substantial repair, alteration, improvement or similar action on real property, whether publicly or privately owned, and whether above ground or below ground.

Daytime hours means 7:00 a.m. to 10:00 p.m.

Decibel (db) means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency means any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

Enforcement officer means all officers authorized to enforce the provisions of this article, including, but not limited to, Brevard County code enforcement officers and the county sheriff and his duly authorized deputies.

Impulsive sound means non-repetitive sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and drop force impacts.

Industrial use means any area that is being lawfully used for an industrial use pursuant to the county's land development regulations.

Institutional use means any area that is being lawfully used for an institutional use pursuant to the county's land development regulations.

Leq means the average sound level.

Motor vehicle means a self-propelled vehicle not operated upon rails or guideway and including, but not limited to, automobiles, passenger cars, motorcycles, trucks, trailers, semitrailers, truck tractor and semitrailer combinations, or any other vehicle operated on the roads used to transport persons or goods.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

Necessary activity means any activity analyzed and determined by the county to be an activity that cannot be avoided for the purpose of construction, public safety, constitutionality, or any other activity otherwise prohibited which the county considers acceptable to be permitted for a limited period of time.

Necessary business equipment means equipment physically affixed, joined, or connected to the outside of a building, and without which a business located inside the building would not be able to operate. Examples include but are not limited to heating and air conditioning units, electrical generators, water pumps, ventilation systems, and air/water chillers.

Neighboring property means property which does not share a contiguous boundary with another property, but which is close enough in proximity to be affected by sound produced on the other property.

Nighttime hours means 10:01 p.m. to 6:59 a.m.

Noise is a type of sound which disturbs a reasonable person of ordinary sensibilities or which causes or tends to cause an adverse psychological or physiological effect on a reasonable person of ordinary sensibilities. "noise" includes, but is not limited to, low frequency sounds caused by amplified bass music that can induce vibration in building structures or human beings.

Noise disturbance means any sound or vibration or combination of sounds or vibrations which:

- (1) May disturb, annoy, or be harmful or injurious to the health or welfare of a reasonable person of ordinary sensibilities; or
- (2) Which, because of its volume or quality or time of day, tends to annoy, disturb, frighten, or otherwise cause an adverse psychological or physiological effect upon a reasonable person of normal sensitivity, or unreasonably prevents such person from being able to enjoy her or his activities of daily living; or
- (3) Exceeds the maximum allowable limits set forth in this article.

Person shall mean and include any officer, employee, department, agency, or instrumentally of the state or any political subdivision of the state and shall include a natural person and any corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Plainly audible means any noise, sound, or component of sound produced by any source, or reproduced by a radio, audio visual equipment, sound equipment, sound amplification device, exterior loudspeaker, musical instrument and similar devices, or other mechanical or electronic sound-making device, for which any of the content of that sound is unambiguous, verifiable, and discernible above ambient levels by a person using his or her unaided hearing faculties, including, but not limited to, comprehensible musical rhythms, understandable speech, or rhythmic bass, or that can be clearly heard by a person using his or her normal hearing faculties, at a distance from the property line or right-of-way line of the source of the noise as follows:

Time of Day	Distance
Daytime hours	300 feet or more
Nighttime hours	150 feet or more

Without in any way limiting the foregoing, the detection of a rhythmic bass reverberating type of noise is sufficient to be plainly audible.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity and includes all property interests as set forth in the definition of the term at F.S. § 334.03, or its successor provisions.

Public space means any real property, including any structure thereon, which is owned or controlled by a governmental entity.

Pure tone means any sound which can be distinctly heard as a single pitch or as a set of single pitches.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property division, otherwise defined as the imaginary line along the ground surface, including its vertical extension that separates one parcel of real property from another; or the vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling-unit building.

Receiving property means the property which receives the transmission of sound.

Residential use means any area that is being lawfully used for a residential use pursuant to the county's land development regulations.

RMS sound pressure means the square root of the time averaged square of the sound pressure, denoted P_{rms} .

Short duration and *non-repetitive* mean any sound with a duration of less than thirty seconds.

Sound means an oscillation, including temporal and spatial oscillation, in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and

rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound equipment means any radio, record player, compact disc player, stereo, television, tape deck or player, Bluetooth speaker, loudspeaker, amplifier, sound truck, or other device for producing, reproducing, or amplifying sounds.

Sound level means the conversion of sound pressure to a logarithmic measure called the decibel. The criteria required to properly define the sound level limits include the following:

- (1) The actual sound level limit with the frequency weighting to be used, such as A-weighting or C-weighting (e.g. 55 dBA, 60 dBA, etc. or 60 dBC, 65 dBC, etc.)
- (2) The acoustical metric to be used, such as real time measurement using fast/slow time constant, an average sound level (Leq), a maximum sound level (Lmax), etc. or a combination of multiple metrics.
- (3) The time duration of the measurement (e.g. instantaneous, time average, percentage of time sound level is not to be exceeded, etc.)

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output or display meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in American National Standards Institute 1.4-1971 as amended from time to time.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

Sound pressure level means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micronewtons per square meter ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Vessel means a watercraft used or capable of being used as a means of transportation on water.

Vibration means a temporal and spatial oscillation of displacement, velocity, or acceleration in a solid material.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-127. Statement of public policy.

The Board of County Commissioners finds and declares that:

- (1) Excessive noise is a serious hazard to the public health and welfare and the quality of life in a close urban society.
- (2) A substantial body of science and technology exists by which excessive noise can be substantially abated without serious inconvenience to the public.
- (3) Certain noise-producing equipment is essential to the quality of life in the community and should be allowed to continue at reasonable levels with moderate regulation.
- (4) Each person has a right to an environment reasonably free from noise which jeopardizes health, welfare, or unnecessarily degrades the quality of life.
- (5) It is the policy of this county to promote an environment free from excessive noise, otherwise properly called noise pollution, which unnecessarily jeopardizes the health and welfare and degrades the quality of the lives of the residents of this community, without unduly prohibiting, limiting, or otherwise

regulating the function of certain noise-producing equipment which is not amenable to such controls and yet is essential to the economy and quality of life of the community.

- (6) Noise exceeding certain levels or durations and during specific times of day can be detrimental to the health, safety, and welfare of the citizenry, and may infringe upon an individual's right to peaceful and quiet enjoyment of their activities of daily living. It is the policy of the county to prohibit noise disturbances or unreasonably loud noise from all sound sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Brevard County.
- (7) Nothing in this article is intended to deter individuals from lawfully exercising the individual right of freedom of speech, or any other freedom guaranteed under the constitutions of the United States of America or of the State of Florida, or to unreasonably limit or restrain commercial or industrial enterprises.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-128. Purpose and application.

- (a) The purpose of this article is to establish standards for the control of noise pollution in the unincorporated areas of Brevard County by setting maximum permissible sound levels to protect the public health, comfort, convenience, safety, prosperity, and general welfare.
- (b) It is the general and specific intent of this article to implement the public policy of the Board of County Commissioners relative to the protection of the public health, safety, and welfare with regard to the regulation of sound and noise.
- (c) This article shall apply to the control of all noise originating within the unincorporated areas of Brevard County except where a state or federal agency has adopted a different standard or rule than that prescribed within this article and has so preempted the regulation of noise from a particular source as to render this article inapplicable thereto.
- (d) Except as allowed in this article, it is prohibited and unlawful for a person to willfully engage in any activity on any premises or public space in the unincorporated areas of Brevard County, which activity produces or constitutes a noise disturbance on adjoining or neighboring properties or public spaces or otherwise violates the provisions of this article.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-129. Exempt activities or actions.

This article shall not apply to the following:

- (1) The reasonable emission of sound for the purpose of alerting persons to the existence of an emergency when such emergency exists or is reasonably believed to exist such as, but not limited to, the sound or noise of safety signals, warning devices, fire alarms, burglar alarms, civil defense alarms, sirens, whistles, emergency pressure relief valves, cries for emergency assistance, and warning calls. Testing of a stationary emergency signaling device may occur at the same time of day each time the test is performed, but not before 9:00 a.m. or after 5:00 p.m. Any such testing shall use only the minimum cycle test time; provided, however that test times shall not exceed 60 seconds.
- (2) The reasonable emission of sound in the performance of governmental or governmentally authorized emergency work including, but not limited to, radios, sirens, horns, and bells on emergency vehicles while performing in conjunction with the official duties of emergency personnel.

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- (3) The unamplified human voice, except those activities prohibited by section 46-130 which relates to unreasonable actions and activities.
 - (4) Sounds reasonably emanating from bona fide farm operations on land classified as agricultural land by the Brevard County Property Appraiser and which are exempt from local government regulation pursuant to F.S. § 823.14, the "Florida Right to Farm Act," as amended.
 - (5) Rail and air transportation and public mass transportation vehicles, operations, and equipment relating thereto while operating in conformity with controlling federal or state law which are preempted from regulation by the county.
 - (6) Special events approved by the county, within such hours as may be imposed as a condition for the issuance of the permit and subject to any limitations placed upon noise in the permit.
 - (7) The emission of sound in the performance of military operations, exclusive of travel by individuals to or from military duty, when preempted from regulation by the county.
 - (8) The emission of sound in the legal discharge of weapons or in fireworks displays permitted by the county or on such dates that fireworks are otherwise authorized by controlling state law and applicable county ordinance.
 - (9) Landscape maintenance equipment with stock sound arrestor between the hours of 7:00 a.m. and 8:00 p.m., provided that all equipment is reasonably operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition.
 - (10) Motor vehicles operating on a public right-of-way in compliance with F.S. ch. 316 and § 403.415, as amended. Such exception shall not apply to noise or sound prohibited under section 46-130.
 - (11) Vessels operating upon any watercourse, lake, river, or swamp. Such exception shall not apply to noise or sound generated by vessels impacting abutting land areas, unless located at or on a properly zoned marina vessel repair shop or manufacturing facility, or to noise or sound prohibited under section 46-130.
 - (12) Any residential unit with air-conditioning or pool pump equipment when in reasonable mechanical condition operating with the standard sound and vibration control systems typically provided by the manufacturer in a sound level not to exceed 60 dBA or 65 dBC. Air conditioning units are presumed to be in reasonable mechanical condition if the unit meets the sound specifications contained in the Air Conditioning, Heating, and Refrigeration Institute's ("AHRI") Applied Directory of Certified Product Performance Variable Air Volume terminals.
 - (13) Impulsive sounds which are emanating in a manner consistent with the provisions of this article.
 - (14) Sport shooting ranges in compliance with F.S. §§ 790.33 and 823.16, as amended, and operating in a manner that is preempted from regulation by the county.
 - (15) Activities on or in county and school athletic facilities and on or in publicly owned property and facilities, provided that such activities have been authorized by the owner of such property or facilities or its agent.
 - (16) Sound or noise emanating from any school facility between the hours of 7:00 a.m. and 5:00 p.m.
 - (17) Sound or noise emanating from county permitted concerts, street fairs, festivals, or other public celebrations produced, sponsored, or approved by the county and other similar county events held between the hours of 7:00 a.m. and 11:00 p.m. and in accordance with an associated special event permit.

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- (18) Construction activity performed within the hours permitted by section 46-33, provided that all equipment is operated in accordance with manufacturer's specifications and equipped with all noise-reducing equipment in proper condition.
 - (19) The reasonable use of necessary business equipment, provided that such equipment is operated in accordance with manufacturer's specifications, is in good working order, and is equipped with appropriate noise-reducing equipment and any reasonable screening; provided, however, that necessary business equipment shall not include equipment that broadcasts sound or noise from a business conducting entertainment activities.
 - (20) The collection of garbage, recyclables, or yard waste between the hours of 5:00 a.m. and 9:00 p.m. or as set forth in a solid waste franchise agreement with the county.
 - (21) The operation of tow trucks while assisting motorists or towing disabled vehicles.
 - (22) Air blasts as a result of mining activity as regulated by the Florida State Fire Marshal.
 - (23) Church or clock carillons, bells, or chimes during daytime hours.
 - (24) Law enforcement activities, including training.
 - (25) Launches approved by the National Aeronautics and Space Administration, the United States Space Force, the Federal Aviation Administration, or other appropriate federal agency having jurisdiction.
 - (26) Any other sound authorized by county permit or county contract, but only to the extent allowed by such permit or contract.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-130. Specific activities prohibited.

The following actions and activities are prohibited and unlawful:

- (1) Peddling, hawking, vending or barking by shouting or raised voice within any residential or commercial area in the county including, but not limited to, shouting, crying out by peddlers, hawkers, or vendors along or on a roadway.
- (2) Loading and unloading boxes, crates, containers, building materials, garbage cans, or similar objects during nighttime hours as to create a noise disturbance across a residential real property boundary.
- (3) Motor vehicle or vessel repairs, rebuilding, modifying, and testing in such a manner as to cause a noise disturbance across a residential real property boundary.
- (4) The sounding of any horn or signal device on any motor vehicle for an unnecessary or unreasonable period of time, or when directed to another person without a legitimate purpose and for the purposes of harassment.
- (5) The use of any siren upon any vehicle other than police, fire, ambulance, or other emergency vehicles.
- (6) The intentional projection, creating, making, or maintaining of any noise from any drum, cymbals, music, loudspeaker, or other instrument or device onto adjoining or neighboring properties for the purpose of attracting attention by creation of noise to any business, location, performance, show, event, sale, or display of merchandise, or place of business, except for activities permitted during a special event.
- (7) Operating any internal combustion engine including, but not limited to, an engine associated with a vessel or motor vehicle, without a muffler or other device at least as effective as that installed as

original equipment by the manufacturer, which will effectively prevent loud or explosive noises therefrom.

- (8) Operating any motor vehicle or vessel so out of repair, or so loaded or in such manner as to create loud, grating, grinding, rattling, so as to create a noise disturbance.
- (9) Yelling, shouting, hooting, whistling, singing, or the making of similar noises, and loud, boisterous conduct other than normal conversation at reasonable levels, inside of or on the grounds of any public or private property during nighttime hours, so as to create a noise disturbance.
- (10) No amplifier, loudspeaker, or other instrument or device in, upon, or attached to a motor vehicle shall be operated or permitted to be operated for advertising purposes or to attract the attention of the public. Ice cream trucks shall be specifically exempt from this prohibition.
- (11) A noise disturbance.
- (12) Any other violation of this article.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-131. Maximum noise levels established; noise violation based on sound level meters.

- (a) *Sound level limits.* No person shall generate or cause to be generated from any source, sound which, when measured in accordance with the requirements of subsection (d) of this section, exceeds:
 - (1) 60 dBA or 65 dBC if the generating land is a residential property during daytime hours.
 - (2) 55 dBA or 60 dBC if the generating land is a residential property during nighttime hours.
 - (3) 65 dBA or 70 dBC if the generating land is a commercial or institutional use during daytime hours.
 - (4) 55 dBA or 60 dBC if the generating land is a commercial or institutional use during nighttime hours.
 - (5) 75 dBA or 80 dBC if the generating land is an industrial use during daytime hours.
 - (6) 65 dBA or 70 dBC if the generating land is an industrial use during nighttime hours.
- (b) *Correction for character of sound.* For any source of sound which emits a continuous pure tone, the maximum sound level limits set forth in subsection (a) shall be reduced by 5 dBA or 5 dBC. For any impulsive sound, the maximum sound level limits set forth in subsection (a) shall be increased by 5 dBA or 5 dBC during daytime hours. Impulsive sound is not permitted during the hours of 10:00 p.m. to 7:00 a.m.
- (c) *Correction for ambient noise sound.* Corrections for ambient noise sound should be made in accordance with applicable ASTM standards.
- (d) *Methods of measurements.*
 - (1) Enforcement of this article does not require the use of a sound level meter to determine compliance. However, when a sound level meter is used to determine sound levels pursuant to this article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified in this section.
 - (2) Sound level measurements shall be made with a sound level meter using the A-weighted or C-weighted scale which shall be set on slow response as technically appropriate.
 - (3) Sound level meters shall be serviced, calibrated, and operated as recommended by the manufacturer. Persons using the sound level meter shall be trained or otherwise experienced in sound level measurement and the operation of sound level meters.

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- (4) Sound level measurements shall be made no closer to the sound source than the real property boundary of the property from which the sound is generated. Whether the sound level violates the prescribed limits of this section will be determined by whether the readings taken are in excess of the levels allowed from the property that is the source of the sound.
 - (5) Except with regard to traffic noise and noise from other sources not connected with the sound being measured which shall not be considered in taking sound level measurements, the sound level measurement shall be averaged over a period of at least 30 seconds for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than three decibels or equivalent measurement at any time during the measurement period.
 - (6) During sound level measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen shall be used when technically appropriate.
 - (7) In the case of noise that is impulsive or not continuous, the sound level measurement shall be taken over a period of time of at least one minute. Any such sound or noise that exceeds the prescribed level more than two times in a minute shall be deemed to exceed the prescribed sound levels.
 - (8) If an enforcement officer does not have possession of a sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this section may not be taken using any other device, including, but not limited to, applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this article in order to determine whether a noise disturbance is occurring.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-132. Noise disturbance prohibited; noise violation based on plainly audible standard.

- (a) It is prohibited and unlawful to cause a noise disturbance.
- (b) Noise determined to be a noise disturbance may be confirmed by an enforcement officer when the officer actually witnesses the sound or noise personally and the noise disturbance is plainly audible without using a sound level meter.
- (c) Violations may be based upon statements and evidence obtained from complaining witnesses when the enforcement officer determines that such evidence is reliable, appropriate, and sufficient.
- (d) Although it is preferable for enforcement officers to use a sound level meter as their primary means of detection, when in the field in many circumstances, the officer's normal hearing faculties will need to be the means of detection, provided the officer's hearing is not enhanced by any mechanical or medical device, such as a hearing aid. In such circumstances, the enforcement officer shall have a direct line of sight and hearing to the real property that is the source of the noise so that the officer can identify the offending source of such noise and the distance involved. The enforcement officer shall assess the noise according to the following standards, factors, and considerations:
 - (1) The volume of the noise.
 - (2) The intensity of the noise.
 - (3) Whether the nature of the noise is usual or unusual.
 - (4) Whether the origin of the noise is natural or unnatural.
 - (5) The volume and intensity of the background noise, if any.
 - (6) The proximity of the noise to residential sleeping facilities.

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- (7) The nature and zoning of the area from which the noise emanates.
 - (8) The density of the inhabitation of the area from which the noise emanates.
 - (9) The time of the day or night the noise occurs.
 - (10) The duration of the noise.
 - (11) Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses.
 - (12) Whether the noise is recurrent, impulsive, intermittent, or constant.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-133. Construction; hours of operation; exception; permit.

- (a) It is prohibited and unlawful for a person to operate or permit the operation of any tools or equipment in construction activity, drilling, or demolition work of any type or nature, outside of the hours of 7:00 a.m. to 8:00 p.m. Monday through Saturday or at any time on Sunday, except for emergency work or as permitted pursuant to subsection (b).
- (b) Upon application to the building official, a contractor may be approved to exceed the time limitations set forth in this section. Such approval shall be in the form of a permit that shall set forth the days and time frame in which the time limits may be exceeded, and the duration of the permit. The approval shall be based upon the applicant demonstrating by clear and convincing evidence that the public health, safety, and welfare will not be materially harmed, and that there are bona fide construction requirements which support the time limits being exceeded.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-134. Warnings issued.

- (a) When an enforcement officer determines that there is a violation of this article, the enforcement officer shall issue a warning to the person or persons responsible for the noise. The warning shall advise the person or persons of the violation, and of the possible penalty if they fail to eliminate or reduce the noise to within allowable limits. The officer shall document the warning in writing, recording the date, time, property address, and name or identity of the person given the warning.
- (b) After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the warning shall be given. A reasonable time shall generally be deemed immediately or so long as it would take a reasonably diligent person to reduce the noise, but shall not exceed five minutes.
- (c) If the noise is not eliminated or reduced to allowable limits after the warning was given, or if the person or persons so warned comply with the warning but violate this article again after the first warning, the person or persons so warned and not complying shall be subject to the penalties and legal remedies set forth in this article.

(Ord. No. 2023-18, § 2, 8-22-23)

Sec. 46-135. Penalty; code enforcement remedies and powers; special magistrate proceedings; noise disturbances; hearings and orders.

- (a) It is prohibited and unlawful to violate any provision of this article. The enforcement officers shall enforce the provisions of this article and may use any and all lawful powers, authorities, process, and procedures in taking actions to implement and enforce the provisions of this article.
- (b) Any person who violates any provision of this article shall be punished as provided in section 1-7.
- (c) Violations of this article may result in the issuance of a notice of violation and the initiation of code enforcement proceedings as provided in chapter 2 of this Code and F.S. ch. 162. In accordance with the provisions of section 2-173, the county may bring cases before the code enforcement special magistrate alleging that a violation of this article is occurring or has occurred on a parcel of property. It shall not be a lawful defense to a code enforcement proceeding brought pursuant to this article to assert that some person other than the property owner caused the violation. No notice of violation shall be issued against an absentee owner unless at least one of the following applies:
 - (1) The absentee owner was notified of at least two warnings issued by any enforcement officer for a violation of this article within the previous 12-month period. Notice of any previous warnings or violations pursuant to this subsection shall be affected in writing by registered or certified mail.
 - (2) The violation is a repeat violation.

All provisions of section 2-174 shall apply to special magistrate proceedings relating to violations of this article; provided, however, that any order of the special magistrate finding a violation of this article to have occurred shall include a provision that the property shall not be deemed in compliance until it has been free of any noise violations for a period of 30 days.

- (d) In addition to the specific remedies set forth in this article, the county may pursue any and all remedies available to the county under controlling law in any forum or process available to the county.

(Ord. No. 2023-18, § 2, 8-22-23)

Secs. 46-136—46-160. Reserved.

Town Commission Meeting

Section: New Business

Meeting Date: 12/16/2024

From: Dawn Barlow

RE: Discussion: Summarize and review all open topics with commitment to utilize task list in the Town Commission packet

Background Information:

With 4 new Town Commissioner's, believe it to be beneficial to outline topics, latest state of each topic and define next steps associated with each topic.

Recommendation:

Working discussion to review and incorporate these items into the task list section of the packet. Beneficial for organizational purposes, but also a place to track progress for the Commission and Town's people.

Attachments:

Summary of open topics as of 11302024

STR

- Language modification on STR ordinance
 - Reviewing at Workshop on 12/16/24
 - 1st reading targeted for 12/18/24
- Language modification on noise ordinance (Part STR, Part all Melbourne Beach)
 - Reviewing at Workshop on 12/16/24
 - 1st reading targeted for 12/18/24
- Code violations
 - Process for code violations – internal v legal process
- Regulating: Registered v non-registered
 - Process for regulating
 - Town Manager to add report for 12/18/24 meeting- Existing registered, addresses believed to be operating without being registered, pending applications with anticipated inspection dates
 - Evaluation of 3rd party vendor – Town Manager plans to have details to share at the 12/16 Workshop
 - Orange Data
 - Deckard Technologies

P&Z

- Foundation height
 - P&Z discussed at 11/13/24
- Tree removal/replacement
 - Joint EAB/P&Z discussion – bringing proposed language forward
 - Town manager update – 11/26/24 - Meeting with Ryan Knight, Corey O’Gorman and Robert Bitgood to discuss.

Storm Water

- Schedule workshop meetings
 - Town Manager to get BSE availability.
 - Determine if Special Meeting is scheduled or add to Jan and Feb Workshop
 - Basin 10
 - Scope findings from BSE
 - Basin 1
 - BSE anticipates having engineering work completed by the end of Dec
 - Next step - cost estimates – possibly 3 phases – RFP
 - Ocean Avenue – possibly sinkhole
 - PW investigating
 - River View Lane – crushed outflow pipe
 - BSE will prepare cost

Budget Education

- Target April/May Workshop-Town Manager and Finance Director

Records Retention – Digital Project

New Town Website

- Circulate/market on subscription options
- Consider website feedback field

Infrastructure

- Riverside paving
 - Completion date? 11/24 – Town Manager - Skid under repair-has a hole in the base. Completion date extended an additional week -2 weeks.
 - Extension of Ocean Ave to be paved? Costs? 11/24/24 – Town Manager-Paving and curb work cost \$66,961. Not in budget. We will wait until we have additional paving and incorporate the final piece and/or wait until the left-hand turn lane is operational (road work required) and then repave.
- Ocean Ave left turn lane-11/24/24 – Town Manager -This is pending with FDOT
- Cherry Dr/A1A crossover-11/24/24 Town Manager - This is pending with FDOT
- School zone – Brevard County responsible, PW emailed on 11/7

Charter Review Committee

- Considered to be established with goal to have changes added to ballot for the election in Nov 2025- pass by TC on 11/20/24
 - Each TC submits a resident for 12/18
 - Anticipated to start January and finalize by June to meet referendum deadline

Sand Tennis

- Discussed and possible sponsorship by Bruce Larson – 11/24/24 Town Manager-I have spoken with Tom Davis and he is not in favor. Would not want tennis folks taking our net down and up for every use. Also does not want to leave their net in place. According to Tom there is and a group who plays volleyball on Saturdays.

Parks

- Meeting to discuss the below TBD when new Parks Chair is named
 - Hometown Heroes – applications out – display targeted for Memorial Day 2025 - 11/24/24 Town Manager - we have received 4 applications so far.
 - Circle Park refresh-Public Works can start on this at any time once you have your final or partial plans.
 - Honor Walk location-consider Honor Walk in front of the Community Center.
 - Bicentennial - Garden Club- ideas being exchanged between Garden Club and Parks Board

Law Suits

- Shed Case
 - Remains open – 11/24/24 Town Manager - Waiting for Judge Seagel to render final decision after filing for dismissal.
 - Dennington’s Attorney asking for Magistrate to issue a change in findings saying no wrong doing. This was never a part of the Settlement Agreement.

Town Manager Contract and Town Policies & Procedures

- Schedule Special Workshop or incorporate into Jan Workshop
 - 11/24/24 – Town Manager - Policies and Procedures Manual due in February.
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- Additional Items