



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
Wednesday, December 2, 2020
6:30 P.M.**

Town Hall

Assembly Hall

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. PUBLIC FORUM: Non-Agenda Items Only NOTE:** A three minute time limit applies to all comments from the public on non-agenda items only. If a person wishes to address the Board of Commissioners, please fill out a "Speakers Card" and give it to the Town Clerk prior to the start of the meeting.
- 6. REPORTS**

Public Safety	Commissioner Kornijtschuk
Building/Code	Commissioner Will
Public Works/Parks	Commissioner Steiermann
Finance	Vice Mayor Dorgan
Mayor	
Town Clerk	
Attorney Daigneault	
Boards & Committees	
- 7. CONSENT AGENDA**
 - A. Board Regular Meeting Minutes, November 18, 2020**
 - B. Bill List for Day Ending November 30, 2020**
- 8. UNFINISHED BUSINESS**
- 9. NEW BUSINESS**
 - A. Discussion: Code Revision Chapter 8 Elections**
 - B. Discussion: Code Revision Chapter 11 Miscellaneous Offenses**
- 10. OTHER BUSINESS**
- 11. ADJOURNMENT**



Note: The Town of Redington Beach Board of Commissioners meet the First and Third Wednesday of each month beginning at 6:30 p.m.

The Town of Redington Beach Board of Commissioners may take action on any matter during this meeting, including items that are not set forth within this agenda.

Minutes of the Board of Commissioners meeting may be obtained from the Town Clerk's office. The meetings may be recorded. The Minutes are not transcribed verbatim. It is the policy of the Board of Commissioners to make "action minutes" of all meetings

Persons requiring a verbatim transcript of any Town meeting (for purposes of appeal or otherwise) should make arrangements to have a certified Court Reporter, at their own cost and expense, present at the meeting.

Persons who wish to appeal any decision made by the Board of Commissioners with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. (F.S. 286.0105) **Notice Regarding Special Accommodations: (F.S. 286.26)**



TOWN OF REDINGTON BEACH, FLORIDA
BOARD REGULAR MEETING MINUTES
Wednesday, November 18, 2020
6:30 p.m.

Having been duly advertised as required by law, the **Regular Meeting** of the Board of Commissioners of the Town of Redington Beach, Florida, was held on **Wednesday, November 18, 2020, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

Mayor Simons called the **Regular Meeting** to order and led the pledge of allegiance.

Roll Call

	Present	Absent
Commissioner Kornijtschuk	X	
Commissioner Steiermann	X	
Commissioner Will	X	
Vice Mayor Dorgan	X	
Mayor Simons	X	
Town Attorney Daigneault	X	
Town Clerk Clarke	X	

Agenda: A motion by Commissioner Kornijtschuk and seconded by Commissioner Will to accept the agenda as presented. No public comment. Motion passed with all ayes.

Public Forum: No public comment.

Reports

Public Safety

- Nothing to Report

Building/Code

- Nothing to Report

Public Works/Parks

- Would like to have a discussion on permitting regarding residents being able to start to perform work without a building permit, by having the licensed contractor take pictures before, during and after the work has been completed and then submit to the building department for a permit.

Finance

- Nothing to Report

Mayor

- Nothing to Report

Town Clerk

- Lynn Burnett will be hosting a neighborhood workshop on December 15th at 5:00 p.m. at Redington Drive and 3rd Street at 163rd Avenue to inform the neighbors on the stormwater project with details, timing, the scope of work and locations.

Town Attorney

- Nothing to Report

Boards and Committees

- Nothing to Report

CONSENT AGENDA: A motion by Commissioner Kornijtschuk and seconded by Commissioner Will to approve the consent agenda as presented. No public comment. Motion passed with all ayes.

UNFINISHED BUSINESS

- A. Final Reading: Ordinance 2020-08: An Ordinance granting to Duke Energy Florida, LLC d/b/a Duke Energy, an Electric Utility Rights of Way Utilization Franchise; Prescribing the Terms and Conditions Related to the Occupancy of Municipal Streets and Rights of Way in the Town of Redington Beach, Florida, for the Purpose of Providing Electric Service; Providing for Severability of Provisions; and Providing for an Effective Date.** Attorney Daigneault read the ordinance by title only. A motion by Commissioner Will and seconded by Commissioner Steiermann to adopt Ordinance 2020-08 on its final reading. Mayor Simons gave background information on the ordinance. Jeff Baker, from Duke energy was present to answer any questions the commission would have. No questions from commission or public. Motion passed with all ayes by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk			X		
Commissioner Steiermann		X	X		
Commissioner Will	X		X		
Vice Mayor Dorgan			X		
Mayor Simons			X		

- B. Discussion: Dock Ordinance:** Commissioner Will stated that he believed there was an error in the wording and this needs to be changed. Commissioner Steiermann presented drawings of a 100' lot and a 60' lot and how the dock facilities would be contained within the center third of the property. Vice Mayor Dorgan commented that it sounds like the ordinance made it worse than better. Commissioner Kornijtschuk commented that the new ordinance is too restrictive. Mayor Simons commented that he doesn't feel that a mistake was made.

Comments were made from Steve Redman, 16496 Redington Drive, Doug Speeler, 519 Crystal Drive, Chris Kwon, 16458 Redington Drive, Richard Pine, 16480 Redington Drive, Darrow Fiedler, 16119 6th Street, Tom Lechowicz, 16045 Redington Drive, Steve Miller, 16335 Redington Drive, Mike Massucci, 16219 Redington Drive, Chris Newman, 16335 Redington Drive, Tara Eckel, 16313 Redington Drive, Tim Rashleger, 16327 Redington and Tom Carberry, 16341 Redington Drive. All spoke on the need for the commission to revisit the ordinance and change it to make it not so restrictive.

Bruce McLaughlin, Town Planner spoke on the three advertised public hearings that were held prior to the commission hearing the ordinance. He also touched on the background of sovereign submerged land and what two of the neighboring cities are doing.

The consensus of the board was to move forward with the changes after the planning board hears the proposed ordinance.

NEW BUSINESS

- A. Resolution 2020-12: A Resolution of the Board of Commissioners of the Town of Redington Beach, Florida, Amending the 2019-2020 Annual Fiscal Year Budget; and Providing for an effective date.** Attorney Daigneault read the resolution by title only. A motion by Commissioner Kornijtschuk and seconded by Commissioner Will to adopt Resolution 2020-12. Town clerk reported that the overall budget has not changed. The revenues did not change and the expenditures only changed by department. The five departments affected were the town clerk, legal, planning, code enforcement, and impact fees. The increases were to the town clerk, code enforcement and impact fees. The other two departments were decreased.

The capital fund's overall budget also was not changed as monies were taken from the infrastructure department and placed in the capital outlay. This was due to the Friendship Park renovations.

The stormwater funds only change was a decrease in the stormwater expense department and an increase in the maintenance of storm drains. This was to repair a void in a storm drain that was not budgeted on Redington Drive.

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk	X		X		
Commissioner Steiermann			X		
Commissioner Will		X	X		
Vice Mayor Dorgan			X		
Mayor Simons			X		

Other Business

With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Commissioner Will to adjourn. Regular meeting was adjourned at 8:15 p.m.

Adopted: November , 2020

Missy Clarke, CMC, Town Clerk

Date: 11/30/2020
Time: 12:29 pm
Page: 1

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 512 Town Clerk							
101-512-512.440	Utilities- Water/EI						
	DUKE ENERGY	73928-48713	2020-11-30 November 2020	0	11/27/2020	11/27/2020	453.38
							453.38
101-512-512.472	Election Expense						
	SUPERVISOR OF ELECTION	14477	Mar. 9, 2021 Election	0	11/18/2020	11/18/2020	3,185.58
	TIMES PUBLISHING COMPAN	122246	Mar. 9, 2021 Election Notice	0	11/18/2020	11/18/2020	61.00
							3,246.58
101-512-512.510	Office Supplies						
	APEX OFFICE PRODUCTS		Copy paper	0	11/25/2020	11/25/2020	39.99
							39.99
Total Dept. Town Clerk:							3,739.95
Dept: 515 Comprehensive Planning							
101-515-515.310	Planning						
	BRUCE MCLAUGHLIN CONSULTING	2020-11-25	11/13/2020-11/24/2020	0	11/25/2020	11/25/2020	2,097.00
							2,097.00
Total Dept. Comprehensive Planning:							2,097.00
Dept: 521 Law Enforcement							
101-521-521.340	Law Enforcement						
	PINELLAS COUNTY SHERIFF'S OFFICE	948099	Dec. 2020 - Law Enf Svcs	0	11/24/2020	11/24/2020	22,479.00
							22,479.00
Total Dept. Law Enforcement:							22,479.00
Dept: 541 Roads & Streets							
101-541-541.467	Maint - Street Lighting						
	DUKE ENERGY	73928-48713	2020-11-30 November 2020	0	11/27/2020	11/27/2020	2,263.84
							2,263.84
Total Dept. Roads & Streets:							2,263.84
Dept: 572 Parks and Recreation							
101-572-572.341	Storm Debris Collection						
	WASTE CONNECTIONS OF FLORIDA	3128032	TS ETA Debris Clean up	0	11/15/2020	11/15/2020	356.78
							356.78
101-572-572.430	Utilities						
	DUKE ENERGY	60814-47178	2020-11-30 10/21/2020-11/19/2020	0	11/19/2020	11/19/2020	15.69
	DUKE ENERGY	73928-48713	2020-11-30 November 2020	0	11/27/2020	11/27/2020	39.30
							54.99
101-572-572.462	Maintenance - Gravel						
	QFC SUPPLY	15-12194	Dog Waste Bags	0	11/17/2020	11/17/2020	108.00
							108.00
101-572-572.522	Gasoline & Oil						
	WEX BANK	222422	Unleaded	0	11/25/2020	11/25/2020	33.20
							33.20
101-572-572.535	Signage						
	OSBURN ASSOCIATES INC	280387	Speed limit signs - 161st Ave	0	11/10/2020	11/10/2020	146.20
							146.20
Total Dept. Parks and Recreation:							699.17
Total Fund General Fund:							31,278.96

Date: 11/30/2020
Time: 12:29 pm
Page: 2

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 400 Storm Water							
Dept: 535 Storm Water							
400-535-535.650	Engineering Expense						
	LTA ENGINEERS, LLC	2183	10/1/2020-10/31/2020	0	11/23/2020	11/23/2020	5,884.24
							5,884.24
Total Dept. Storm Water:							5,884.24
Dept: 541 Roads & Streets							
400-541-541.468	Maintenance - Streets						
	US FOUNDRY	SLI-10292924	Storm Grates	0	11/23/2020	11/23/2020	876.99
							876.99
Total Dept. Roads & Streets:							876.99
Total Fund Storm Water:							6,761.23
Grand Total:							38,040.19

11/18/2020

9548 Payroll	277.05
9549 Payroll	277.05
9550 Payroll	381.75
9551 Payroll	277.05
9552 Payroll	277.05
9553 Payroll	2,324.28
9554 Payroll	1,391.26
9555 Payroll	1,455.95
9556 Payroll	1,085.64
EFT Retirement	1,606.45
EFT Payroll Liabilities	3,548.25

12,901.78

MAYOR SIMONS

COMMISSIONER WILL

COMMISSIONER KORNIJTSCHUK

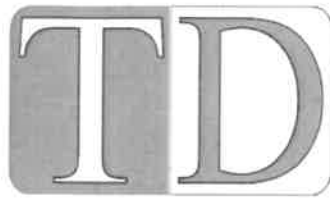
VICE MAYOR DORGAN

ATTEST:

COMMISSIONER STEIERMANN

Missy Clarke, CMC, Town Clerk

Regular Meeting of December 2, 2020



T R A S K
DAIGNEAULT
—LLP—
A T T O R N E Y S

THOMAS J. TRASK, B.C.S.*
JAY DAIGNEAULT
ERICA F. AUGELLO
RANDY MORA, B.C.S.*
ROBERT M. ESCHENFELDER, B.C.S.*
PATRICK E. PEREZ
DAVID E. PLATTE
JEREMY SIMON

** Board Certified by the Florida Bar in
City, County and Local Government Law*

MEMORANDUM

DATE: October 30, 2020

TO: Mayor James "Nick" Simons
Vice Mayor Tom Dorgan
Commissioner Fred Steiermann
Commissioner David Will
Commissioner Tim Kornijtschuk

FROM: Jay Daigneault, Esq., Town Attorney

RE: Redington Beach Code Revision Project (Chapter 8 (Elections))

Dear Mayor, Vice Mayor, and Commissioners:

As you will recall, the Town Commission assigned the Town Attorney's Office to conduct a "top to bottom" review of the Town Code (minus the Land Development Code) with the goal of modernizing the Code and ensuring it was up to date.

The Town has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town. The Town Commission regularly adopts ordinances amending the Code. However, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years. Since part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions, it made this review assignment.

As you know, in processing the assignment, I am delivering it to the Commission in segments as this will be easier for both Commissioners and interested citizens to focus on with respect to what changes are being recommended.

This submission addresses Chapter 8 of the Code which concern Town elections.

Before reviewing the revisions recommended, I note the legal issues and analysis which has informed my recommendations.

First, current Code § 8-2 addresses “absentee balloting” and references that topic as being addressed in Florida Statutes § 101.62. However, in recent years, the Legislature changed the term “absentee balloting” to “vote by mail” in the Florida Election Code, and revised the statutory numbering of those parts of the Florida Election Code pertaining to voting by mail so that those provisions now begin at Florida Statutes § 101.6105.

In addition, while current Code § 8-2(a) refers to Florida Statutes § 101.70, that section of Florida law was repealed by Chapter Law 77–175, § 6, Laws of Florida 1977. There has been no Florida Statutes § 101.70 since 1977.

Finally, while current Code § 8-7(d) and § 8-8(d) provide “All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflicts,” Florida law provides that repeals of earlier ordinances by implication without specific reference to those ordinances or parts thereof being repealed is disfavored. *American Bakeries Co. v. Haines City*, 131 Fla. 790 180 So. 524 (Fla. 1938); *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So.2d 249 (Fla. 1987); *City of Treasure Island v. Tahitian Treasure Island, LLC*, 253 So.3d 649 (Fla. 2d DCA 2017). Such language, especially once codified, can also present due process challenges to persons regulated by the code since they were not put on fair notice of what other possible code provisions may or may not apply to them, and finally such language may also violate the notice and content rules applicable to amendment of municipal ordinances found in Florida Statutes § 116.041.

Revisions to Chapter Eight

With that overview I am recommending:

- The title of § 8-2 should be amended to change the phrase “absentee balloting” to “vote by mail” to be consistent with Florida Election Code provisions related to that topic.
- The cross-reference in § 8-2(a) to Florida Statutes § 101.62 should be changed to Florida Statutes § 101.6105 to be consistent with Florida Election Code.
- The reference to Florida Statutes § 101.70 in § 8-2(b) should be removed as it refers to a non-existent statute.
- The provision “All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflicts” in § 8-7(d) and § 8-8(d) should be removed.

As always, please do not hesitate to contact me should you have concerns regarding this matter.

/s/ Jay Daigneault, Esq.
Town Attorney

ORDINANCE NO. 2020 - 09

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 8 (ELECTIONS) OF THE TOWN CODE TO REMOVE OUTDATED, PREEMPTED OR UNENFORCABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

WHEREAS, the Town Board of Commissioners (the Commission) regularly adopts ordinances amending the Code; and

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town's Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code's current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 8 of the Code, and has recommended that the Commission make the revisions to that Chapter as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney's recommendations and finds them to be consistent with the goals of the Commission; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. Sections 8-2, 8-7 and 8-8 of Chapter 8 (Elections) of the Redington Beach Town Code are hereby amended to read as follows:

Sec. 8-2. — Vote by mailAbsentee balloting.

(a) That portion of Florida Statutes § 101.62105 et seq., relative to voting by mailabsentee balloting, is hereby adopted and each of the provisions thereof is hereby declared to be the law and a part of the election law applicable to and for the town as provided by F.S. § 101.70.

(b) The town clerk is hereby required to perform the several duties set forth in such state law and to provide all necessary forms and materials therefor.

Sec. 8-7. - Adoption of state election laws.

(a) The provisions of the state election laws pertaining to state and municipal elections relating to qualifications of electors, registrations, transfer of electors from one district to another, manner of voting, duties of election officers, canvassing of returns and all other particulars in respect to the management of elections, except as provided in the Charter or this chapter, shall, as far as such may be applicable, govern all municipal elections.

(b) Any person violating the state election laws is subject to the penalties set forth in the state election laws.

(c) If any portion, part or subsection of this section is declared invalid, the remainder hereof shall remain in full force and effect.

(d) All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflicts.

Sec. 8-8. - Supervisor of elections; election officials.

(a) The town clerk is designated as the town's "supervisor of elections" for all municipal elections.

(b) The designation of election officials shall be accomplished by appropriate motion or resolution of the town's board of commissioners.

(c) If any portion, part or subsection of this section is declared invalid, the remainder hereof shall remain in full force and effect.

(d) All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflicts.

Section 2. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

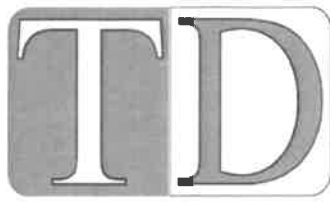
James Simons, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

Approved as to form:

Jay Daigneault, Town Attorney



T R A S K
DAIGNEAULT
—LLP—
A T T O R N E Y S

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** Board Certified by the Florida Bar in
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MEMORANDUM

DATE: October 30, 2020

TO: Mayor James "Nick" Simons
Vice Mayor Tom Dorgan
Commissioner Fred Steiermann
Commissioner David Will
Commissioner Tim Kornijtschuk

FROM: Jay Daigneault, Esq., Town Attorney

RE: Redington Beach Code Revision Project: Chapter 11 (Miscellaneous Offenses)

Dear Mayor, Vice Mayor, and Commissioners:

As you will recall, the Town Commission assigned the Town Attorney's Office to conduct a "top to bottom" review of the Town Code (minus the Land Development Code) with the goal of modernizing the Code and ensuring it was up to date and contained all necessary and desirable terms so as to be in the best interests of the Town and its residents.

The Town has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town. The Town Commission regularly adopts ordinances amending the Code. However, many portions of the Code existing prior to this update assignment date back to 1980, with other portions of the Code not having been updated for ten or more years. Since part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions, it made this review and update assignment.

As you know, in processing the assignment, I am delivering it to the Commission in segments as this will be easier for both Commissioners and interested citizens to focus on with respect to what changes are being recommended.

This submission addresses Chapter 11 of the Code which concerns Miscellaneous Offenses not provided for in other chapters of the Town Code.

Before reviewing the recommended revisions, I would note the legal issues and analysis which has informed my recommendations.

First, I note that according to the MuniCode annotations, the current sections of Chapter 11 date at least to what appears to be an overall recodification of the Code in 1980, and it is likely these provisions date back even further than that.

The first section of the chapter simply adopts all state criminal statutes which set forth actions which are a misdemeanor and proclaims the same acts are also code violations. While it is true that the Florida Supreme Court has ruled that adoption of a state law relating to misdemeanors by a city was a valid act, *McFarland v. Roberts*, 74 So.2d 88 (Fla. 1954), this ruling was issued in a time in Florida when certain crimes were prosecuted in what were called municipal courts. However, Article V of the 1967 Florida Constitution did away with municipal courts and provides now that misdemeanors are tried in the County Court.

Although Florida historically viewed the state and its municipalities as dual sovereignties when it came to adopting laws which called for incarceration, the United States Supreme Court has determined that they are not. *Waller v. Florida*, 397 U.S. 387 (1970), reh'g. denied, 398 U.S. 914 (1970). In *Waller*, the court recognized that municipal prosecutions for offenses punishable by incarceration deserve constitutional protections afforded in criminal prosecutions, including the provision of speedy trial and a public defender. See, *City of Fort Lauderdale v. Mattlin*, 566 So.2d 1330, 1332 (Fla. 4th DCA 1990):

In our judgment, an ordinance violation punishable by incarceration is the equivalent of a misdemeanor for the purpose of applying speedy trial rules. A municipality may not deny an accused rights under the speedy trial rule, where the accused is formally charged with an act that is a crime under state law and is punishable by incarceration, simply by arbitrarily electing to charge him by ordinance.

While I have retained but simplified the language in the current Section 11-1, since our modern law enforcement and criminal justice system now have ample resources and authority to arrest and prosecute persons who commit acts which are defined as criminal under Florida law, and since I am unaware of the Town's having utilized this section in any enforcement action in its recent history, the Commission may want to remove the section as a vestige of the old municipal court system.

Revisions to Chapter Eleven

With that overview, in the attached draft ordinance, I am recommending:

- Creating new Articles within Chapter 11 so as to divide the chapter into focused topics. I have also created more space between each section number so that in the future, should the Commission wish to add new offenses the chapter's overall organizational structure can be maintained.
- Revisions to sec. 11-1 to delete unnecessary citations to legal authorities, some of which are outdated or no longer applicable
- Revisions to sec. 11-2 to remove references to "interfering with" public property inasmuch as this part of the section is vague as to meaning and intent and the remaining language sufficiently addresses inflicting damage to the Town's property
- Substantial revisions to sec. 11-3 concerning obstruction of traffic. As this section is currently written, it may well be vulnerable to constitutional attack as being too vague,

failing to make sufficient provision for due process notice, and potentially being able to be used to interfere with valid First Amendment activities. My recommended revisions address these issues when examined against current federal caselaw.

- Creation of a new sec. 11-4 addressing the obstruction of Town officials in the performance of their duties
- Revision of sec. 11-5 to recognize the fact that Pinellas County has adopted a countywide ordinance providing detailed regulations as to the cutting or destruction of mangroves, as authorized by Florida Statutes
- Substantial revision of sec. 11-6 concerning sleeping in certain places is recommended. In the past decade, there have been many federal court rulings on the regulation of sleeping in public places and the language I am recommending, while more lengthy than the current wording, sufficiently addresses the limitations the courts have placed on local sleeping ordinances so as to address due process, liberty and First Amendment concerns.
- Creation of new sections 11-21 and 11-22 to address trespassing, and to provide a detailed method for the Town to trespass someone from Town property in light of certain federal court rulings addressing the interplay between a government's use of the trespass right and a citizen's First Amendment and due process rights.
- Creation of a new Article III (sections 11-30 – 11-36) to replace the current sec. 11-4 dealing with false alarms. The existing language does not appear to be used and to the extent the Commission desires to provide for a false alarm regulatory scheme, the Code needs to provide substantially greater specificity as to the duties owed by the owners or occupants of structures with alarm systems, and to set forth how registration and enforcement would occur. In addition, I have included a provision recognizing that this Article only applies to fire department calls since Pinellas County has adopted its own police false alarm regulations and system registration rules which are administered by the Sheriff.

I emphasize that some of the new provisions in this draft ordinance are centered around policy choices, not legal mandates. I have included them after having conducted a comprehensive review of the fire safety codes of other Florida municipalities which appear to be "best practices" or otherwise worthy of consideration by the Board of Commissioners. Therefore, any such provisions which, upon consideration, the Commission does not desire to retain in the draft may easily be removed before the ordinance reaches final adoption.

As always, please do not hesitate to contact me should you have questions or concerns regarding this matter in advance of the public hearing on the ordinance.

/s/ Jay Daigneault, Esq.
Town Attorney

ORDINANCE NO. 2020 - 11

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 11 (MISCELLANEOUS OFFENSES) OF THE TOWN CODE TO REMOVE OUTDATED, PREEMPTED OR UNENFORCABLE PROVISIONS AND TO INCORPORATE CURRENT STATE AND FEDERAL LAW REQUIREMENTS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Redington Beach (the Town) has codified its ordinances over time into a Town Code (the Code) which sets forth the cumulative law of the Town; and

WHEREAS, the Town Board of Commissioners (the Commission) regularly adopts ordinances amending the Code; and

WHEREAS, however, many portions of the Code date back to 1980, with other portions of the Code not having been updated for ten or more years; and

WHEREAS, part of the Commission's duties include the necessity to ensure that the Town's ordinances, as codified in the Code, are up to date, reflect current Florida and federal statutory and case law, that they reflect current actual Town operations, and that they do not contain outdated, redundant or erroneous provisions; and

WHEREAS, in light of the foregoing, the Commission has charged the Town Attorney with the task of conducting a complete review of the Town's Code (excluding the Land Development Code) and to bring forward any recommended revisions to the Code which would alleviate any of the aforementioned potential concerns with the Code's current text; and

WHEREAS, the Town Attorney has submitted his assessment of Chapter 11 of the Code concerning miscellaneous offenses, and has recommended that the Commission make the revisions to that Chapter as are set forth in this Ordinance; and

WHEREAS, the Commission has considered the Town Attorney's recommendations and finds them to be consistent with the goals of the Commission; and

WHEREAS, the Commission therefore finds that it is in the best interests of the Town, and its citizens, property owners and businesses to adopt this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. Chapter 11 (Miscellaneous Offenses) of the Redington Beach Town Code are hereby amended to read as follows:

Chapter 11 - MISCELLANEOUS OFFENSES

ARTICLE I. – GENERAL OFFENSES

Sec. 11-1. - Adoption of state law misdemeanors.

It shall be unlawful for any person to commit within the corporate limits of the town any act which is or shall be recognized by the laws of the state as a misdemeanor.

Sec. 11-2. - Damaging public property.

It shall be unlawful for any person to injure, damage, or deface public property of any nature within the town.

Sec. 11-3. – Obstruction of public sidewalks and abutting entryways.

- (a) *Prohibition.* No person shall, either alone or in conjunction with others, stand, sit, lie, congregate, or place objects or obstructions in such a manner as to obstruct:
 - (1) The safe and efficient movement of pedestrian traffic upon any sidewalk, walkway, or right-of-way upon which the public has a right to travel, or
 - (2) Any person's safe and efficient access to the entryway of any building, where such entryway abuts a sidewalk, walkway, or right-of-way upon which the public has a right to travel.
- (b) *Notice.* If a person is found to be in violation of this section, a law enforcement officer shall notify the person that he or she is causing an obstruction in violation of this section and shall request the person to move his or her person or objects so as to remove the obstruction. The person shall not be charged with a violation of this section if the person voluntarily removes the obstruction and does not repeat a violation of this section for the 72-hour period following the law enforcement officer's notice and request.
- (c) *Exception.* The prohibition in subsection (a) of this section shall not apply to any person who causes such obstruction during the course of performing activities specifically permitted by a valid government-issued permit or in accordance with the conditions of a maintenance of traffic (MOT) plan that has been approved by the town.

Sec. 11-4. – Obstructing town officials.

It shall be unlawful for any person to hinder, obstruct or oppose any town officer or official, or any legally authorized person, in the execution of legal process or in the lawful execution of any of such person's legal duty. It shall be unlawful to hinder or interfere with any employee or contracted agent of the town in the performance of that person's official town duties.

Sec. 11-5. - Destruction of mangrove trees.

No mangrove within the town may be trimmed, cut, defoliated, killed or removed unless such act is performed pursuant to a current permit issued under the authority of article XVI of Chapter 58 of the Pinellas County Code. Violations of this section shall be enforced pursuant to § 58-609 of the Pinellas County Code, unless such enforcement authority is delegated to the town by interlocal agreement as provided for in § 58-602 of the Pinellas County Code. Owners of property on which mangroves exist shall be responsible for the protection of these trees and may be held liable for damage of the trees on their property.

ARTICLE II. – PUBLIC AND PRIVATE PROPERTY OFFENSES

Sec. 11-20. – Sleeping, lying or reclining on the rights-of-way during daylight hours.

(a) *Purpose/findings.*

- (1) Public streets, sidewalks, walkways, and other paths for vehicular or pedestrian travel are created and maintained for the primary purposes of enabling pedestrians and lawfully permitted vehicles to safely and efficiently move about from place to place, facilitating deliveries of goods and services, and providing all potential customers and visitors with convenient access to recreation, goods and services.
- (2) Such public streets, sidewalks, walkways, and paths are prone to congestion, and should be kept available to serve these primary purposes.
- (3) Except in places provided for that purpose or where reasonably necessary, the act of sleeping, lying, or reclining on public streets, sidewalks, walkways or other paths for vehicular or pedestrian travel interferes with the primary purposes of the public street, sidewalk, walkway, or path; threatens public safety; and damages public welfare.

(b) *Prohibitions.*

- (1) It shall be unlawful for any person to sleep, lie, or recline in or on any part of the prohibited areas during daylight hours.
- (2) For purposes of this section, "prohibited areas" means, collectively, all of the following areas:
 - a. The town's streets, roads and abutting rights-of-way, which shall include any public sidewalk.
 - b. Any public path for vehicular, bicycle or pedestrian travel.
 - c. A public park or public beach access point other than during daylight hours (meaning the period from sunrise to sunset).

(c) *Notice.*

- (1) If a person is found to be sleeping, lying, or reclining in a manner prohibited by this section, a law enforcement officer shall request the person to move to an area where

sleeping, lying, or reclining is not prohibited. The person shall not be charged with a violation of this section if the person voluntarily moves from the prohibited area.

- (2) No person shall be cited under subsection (b) unless the person engages in conduct prohibited by said subsection after having been notified by a law enforcement officer that the conduct violates subsection (b).
- (d) *Exceptions.* The prohibition in subsection (b) shall not apply under the following circumstances:
 - (1) To any person lying down in the prohibited zone due to a medical emergency;
 - (2) To any person utilizing an object, placed in the prohibited zone by the town or other public agency, in the manner in which it was intended, such as sitting on a transit system bench waiting for scheduled transportation;
 - (3) Any conduct that is in conformity with the conditions of any permit issued pursuant to the town code;
 - (4) Any passenger asleep while traveling in the prohibited zone if that passenger is being transported by another person in or on any device or by any method otherwise legally permitted in the part of the right-of-way or other public path for vehicular or pedestrian travel being used for such travel.

Sec. 11-21. – Trespass prohibited; authorization to issue trespass warning for private property.

- (a) It shall be unlawful and a trespass for any person to, without authority of law, go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted on such lands, buildings or premises or any part, portion or area thereof, at a place or places where the sign may be reasonably seen with letters not less than two inches in height.
- (b) It shall be unlawful and a trespass for any person to enter or remain in any unoccupied or unfinished building or structure without the consent of the owner or agent thereof.
- (c) For the purposes of this section, the term "person lawfully in charge" includes officers/deputies of the town's contracted law enforcement agency when the owner, lessee, custodian, agent, manager, or other person lawfully in charge of the property provides written authorization, according to procedures set out by that agency, for officers/deputies to issue trespass warnings. Such authorizations shall be kept on file with the town's contracted law enforcement agency.

Sec. 11-22. – Trespass warnings; authorization to issue trespass warning for public property.

- (a) The town's employees or officials, or their designees, having control over a town facility, building, or outdoor area, including town hall and municipal parks, are authorized to issue a

trespass warning to any individual who violates any town ordinance, rule or regulation, or state law or lawful directive of a town employee or official, which violation was committed while on or within a town facility, building, or outdoor area (excluding rights-of-way), for the specific property where the violation occurred.

- (b) When no other town employee or official having control over a town facility, building, or outdoor area is present, a law enforcement officer is authorized to issue a trespass warning to any individual who violates any town ordinance or state law which was committed while on or within a town facility, building, or outdoor area (excluding rights-of-way), for the specific property where the violation occurred.
- (c) For the purpose of this section, right-of-way shall include those sidewalks which are closest to a paved street, provided that the street side edge of the sidewalk is within 20 feet of the curbline closest to the property.
- (d) Trespass warnings shall be issued as follows:
 - (1) For the first violation, the individual may be issued a trespass warning for a period not to exceed one year.
 - (2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two years.
- (e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the town employee or official having control over the town park, facility, building or outdoor area. The written trespass warning shall advise of the right to appeal and the location and telephone number for filing the appeal.
- (f) Any person found on or within any town facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.
- (g) The town employee or official having control over a town facility, building, or outdoor area, including municipal parks, may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.
- (h) This section shall not be construed to limit the authority of any town employee or official to issue a trespass warning to any person for any lawful reason for any town property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the town employee or official.
- (i) *Appeal of trespass warning.* A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:
 - (1) An appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.
 - (2) The appeal shall be filed at the desk of the town clerk.

- (3) Appeals shall be heard by a special magistrate which the town contracts with to provide this service.
- (4) Within five days following the filing of the appeal, the special magistrate shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of two ways:
 - a. By leaving or posting the notice at the desk of the town clerk, or
 - b. By telephone if a telephone number has been provided. If appellant cannot be reached by telephone, then notice at the clerk's desk shall be sufficient.
- (5) The special magistrate shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 30 days from the filing of the appeal.
- (6) Copies of documents in the town's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
- (7) The appellant and the town shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at his or her own expense.
- (8) The special magistrate shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.
- (9) The town shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.
- (10) If the appellant fails to attend a scheduled hearing, the special magistrate shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- (11) Within five days of the hearing, the special magistrate shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the town clerk's desk.
- (12) The decision of the special magistrate shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

ARTICLE III. - ALARM SYSTEMS

Sec. 11-30. - 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:

Alarm system means any mechanical or electrical or radio-controlled device which is designed to be used for the detection of flames, smoke, heat or water flow in a building, structure or facility

which emits a sound or transmits a signal or message when activated. Alarm systems include, but are not limited to, direct-dial devices, audible alarms and proprietor alarms. Excluded from the definition of alarm systems are devices which are designed or used to register alarms that are audible, visible or perceptible in or from any motor vehicle or auxiliary devices installed by telephone companies to protect telephone systems from damage or disruption of service.

Automatic dialing devices means an alarm system which automatically sends over regular telephone lines, by direct connection, wireless or otherwise, a prerecorded voice message or coded signal indication the existence of the emergency situation that the alarm that the alarm system is designed to detect.

Commercial premises means any structure or area which is not defined in this section as a residential premise.

False alarm means the activation of an alarm system through the mechanical failure, malfunction, improper installation, or the neglect or intentional misuse by the owner or lessee of an alarm system or by her/his/its employees, servants or agents or by any other activation of the alarm system not caused by or because of an actual fire. Such terminology does not include alarms caused by acts of nature such as hurricanes, tornadoes, other severe weather conditions, or alarms intentionally activated by an owner or lessee of an alarm system by her/his/its servants, or other agents who visually observed or heard suspicious circumstances which would cause a careful and prudent person to believe that an actual fire or hazardous condition existed at the premises protected by the alarm system.

False alarm response exists when a firefighter or fire-medec is dispatched to or otherwise learns of the activation of an alarm system which is subsequently is found to be a false alarm.

Fee means an assessment of costs imposed pursuant to this article to defray the expense of responding to a false alarm.

Fire official means any respective official(s) of the fire department or district with which the town contracts for fire protection services who is designated by that department or district to perform the role.

Newly installed fire alarm system means a system that has been installed and operating for a period of less than 31 days.

Residential premises means any structure or combination of structures which serves as a dwelling unit, including single-family and multi-family units, regardless of current occupancy and regardless of the permanence of the occupants.

Responsible party means the adult person(s) occupying the premises (not including employees working in a commercial premises) or the person or entity controlling the residential or commercial premises on which the alarm is located. The term expressly includes the record owner of the premises, landlords, and tenants. It does not include guests temporarily staying with a permanent resident while that resident is also occupying the premises.

Security alarm means an alarm system subject to the provisions of § 54-2 of the Pinellas County Code or its successor, and which are not regulated by this article.

Sec. 11-31. - Notification.

Every person who shall own, operate or lease any fire alarm system within the town, whether existing or to be installed in the future, shall notify the town's contracted fire department on such forms or on-line registration system as may be provided by that department of the following:

- (1) The type, make model of the alarm system;
- (2) Whether installed in a residential or commercial premises;
- (3) The name, address, business or home phone number of the owner or lessee of the fire alarm system; and
- (4) The names, addresses and telephone numbers of no less than two persons to be notified of alarm activation.

Sec. 11-32. - Response to false alarms; required reports; corrective action penalties; disconnection.

- (a) For the purpose of this article, responsibility for a false alarm shall be borne by the person occupying or controlling the premises on which the alarm is located. To the extent the occupant and the person or entity controlling the premises are not the same, this responsibility shall be a joint responsibility of both the occupant and controlling party.
- (b) The following shall be required by each entity or adult person who owns or controls any commercial or residential premises for each incident of a response to a false alarm:
 - (1) For each of the first, second and third false alarm response to a premise within a calendar year, the responsible party shall within ten days file with the fire department a written report detailing the cause of the false alarm and the corrective action taken. A licensed contractor's service receipt detailing the service performed and corrective action taken will suffice as a written report.
 - (2) For a fourth or any succeeding false alarm response to a premise within a calendar year, a fine shall be charged. The fine shall be established by resolution of the town commission from time to time. If such fourth or any succeeding false alarm response is a result of failure to take corrective action, the fire department may order the disconnection of the alarm system and may order a mandatory fire watch for the premises, as such fire watch may be authorized by the fire code as adopted by the town or applicable to the town. Additionally, it shall be a violation of this article not to disconnect or to reconnect such alarm system without the permission of the fire department, provide that no disconnection shall be ordered on any premises required by law to have an alarm system in operation. Any order for disconnection shall be rescinded by the fire department upon presentation of evidence sufficient to establish that corrective action has been taken, and subsequent inspection by the fire department confirms that adequate corrective action has been taken.
 - (3) The provisions of this section shall not apply to any newly-installed fire alarm system for a period of 30 days from the date of installation.
 - (4) *Testing alarms systems.* Notwithstanding any other provision of this article, it shall not be a violation of this section to test an alarm system pursuant to the testing procedures of

the contracted alarm monitoring provider, or in the absence of such provider, under the following conditions:

- a. Where there is no visual, audio, electronic or other indication of the alarm which can be seen, heard, or received beyond the boundaries of the property upon which the test is occurring; or
- b. Where there is a visual, audio, electronic, or other indication of the alarm which can be seen, heard, or received beyond the boundaries of the property upon which the test is occurring, and one of the following two precautions are observed:
 1. Adequate measures are taken to ensure that anyone seeing, hearing, or receiving the indication of an alarm will not report it either directly or indirectly to the fire department as an alarm requiring assistance of the fire department; or
 2. The fire department is notified that the test is to occur and is instructed not to respond by the responsible party.

Sec. 11-33. - Failure to report to premises after notification by the fire department.

Every person who owns operates or leases an alarm system and shall knowingly or purposefully fail to respond to his premises or facility after notification by the fire department of the activation of any alarm system, whether false or not, within one hour of notification shall be deemed in violation of this article.

Sec. 11-34. - Automatic dialing devices.

It shall be a violation of this article for any person to install, maintain, own, possess or operate any automatic dialing device alarm system regulated or programmed to make connection with any telephone number installed in any town facility or any facility of the town's contracted fire department.

Sec. 11-35. - Enforcement.

Unless otherwise specified herein, violations of this article shall be enforced as a code violation in the manner set forth in § 1-14 and article III of chapter 2 of this code.

Sec. 11-36. - Security alarms.

Security alarm systems, as described by § 54-2 of the Pinellas County Code or its successor, are regulated by the provisions of that code and not by this chapter. Enforcement of such regulation is by the Pinellas County Sheriff.

Every person who owns operates or leases a security alarm system shall register his/her alarm system with the Pinellas County Sherriff's Office SHARP alarm registration program to the extent such program is maintained by the Sheriff.

Section 2. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the ____ day of _____, 2020, by the Board of Commissioners of the Town of Redington Beach, Florida.

James Simons, Mayor

Attest:

Missy Clarke, CMC, Town Clerk

Approved as to form:

Jay Daigneault, Town Attorney