

RESOLUTION 15-19
RESOLUTION WITH RESPECT TO THE CALLING OF A SPECIAL MEETING
OF THE BOARD OF COMMISSIONERS

WHEREAS, North Carolina G.S. §160A-71(a)(3) provides that, “During any regular meeting, or any duly called special meeting, provided that the motion or resolution calling or scheduling any such special meeting shall specify the time, place and purpose or purposes of such meeting and shall be adopted during an open session;”

WHEREAS, §30.14 of the Town’s Ordinances provides that, “Special meetings of the Town BOC shall be subject to the [forgoing] provisions of G.S. §160A-71;”

WHEREAS, at this regular meeting of the Town BOC, a resolution introducing and proposing the adoption of the amendments to Chapter 30 of the Town’s Ordinances relating to Town Government and Officials, in the forms presented at that meeting and hereto attached as Exhibits 1-A, 1-B, 1-C, 1-D and 1-E, was adopted by a vote of the Town BOC;

WHEREAS, at this regular meeting of the Town BOC, a resolution introducing and proposing the adoption of the amendments to Chapter 92 of the Town’s Ordinances relating to Noise Control, in the forms presented at that meeting and hereto attached as Exhibit 2-A, was adopted by a vote of the Town BOC;

WHEREAS, at this regular meeting of the Town BOC, a resolution introducing and proposing the adoption of the amendments to Chapter 155 of the Town’s Ordinances relating to the Establishment, Organization and Operation of the Planning and Zoning Board and the Establishment of Community Advisory Committees of the Planning and Zoning Board, in the forms presented at that meeting and hereto attached as Exhibits 3-A and 3-B, was adopted by a vote of the Town BOC;

WHEREAS, the Town BOC has determined that it would be in the best interest of the Town to consider and vote upon the adoption of each of the proposed ordinance amendments prior to the next regular meeting of the Town BOC;

NOW, THEREFORE, BE IT RESOLVED, that a special meeting of the Town BOC is hereby called and shall be held at 7:00 pm on Wednesday, December 16, 2015 in the Assembly Room of the Holden Beach Town Hall for the following purposes:

1. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO §30.05 OF THE ORDINANCES RELATING TO THE MAYOR PRO TEMPORE AND THE EXECUTIVE SECRETARY in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 1-A;

2. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO §30.17 OF THE ORDINANCES RELATING TO OFFICIAL RECORDS OF PROCEEDINGS in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 1-B;
3. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO ADD TO CHAPTER 30 OF THE ORDINANCES A NEW §30.25 RELATING TO COMMISSIONS, BOARDS, AGENCIES AND AUTHORITIES ESTABLISHED BY ORDINANCE OR UNDER THE AUTHORITY OF THE BOC in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 1-C;
4. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO ADD TO CHAPTER 30 OF THE ORDINANCES A NEW §30.26 RELATING TO THE ESTABLISHMENT OF AN AUDIT COMMITTEE OF THE BOARD OF COMMISSIONERS, in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 1-D;
5. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO ADD TO CHAPTER 30 OF THE ORDINANCES A NEW §30.27 RELATING TO HIRING OR ENGAGEMENT OF LAWYERS, CONSULTANTS AND OTHER SIMILAR THIRD PARTY SERVICE PROVIDERS, in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 1-E;
6. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO CHAPTER 92 OF THE ORDINANCES TO AMEND §92.20 IN ITS ENTIRETY AND TO ADD §§92.21 THROUGH 92.27 RELATING TO NOISE CONTROL, in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 2-A;
7. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO CHAPTER 155 OF THE ORDINANCES TO AMEND §155.12 IN ITS ENTIRETY RELATING TO OFFICERS, RULES AND MEETINGS OF THE PLANNING AND ZONING BOARD, in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 3-A, and to consider non-ordinance resolutions related to the composition of the Planning and Zoning Board; and

8. To consider and vote upon the adoption of the PROPOSED AMENDMENT TO ADD TO CHAPTER 155 OF THE ORDINANCES §155.15 RELATING TO THE ESTABLISHMENT OF COMMUNITY ADVISORY COMMITTEES BY THE PLANNING AND ZONING BOARD, in the form introduced at the regular meeting of the Town BOC on December 8, 2015 and attached hereto as Exhibit 3-B.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the agenda for the special meeting shall provide for separate public comment periods at the special meeting which respect to: (1) the Proposed Amendments to Chapter 30 of the Town's Ordinances relating to Town Government and Officials; (2) the Proposed Amendments to Chapter 92 of the Town's Ordinances relating to Noise Control; and (3) the Proposed Amendments to Chapter 155 of the Town's Ordinances relating to the Planning and Zoning Board and the Establishment of Community Advisory Committees of the Planning and Zoning Board;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Town Clerk shall provide and publish notice of the special meeting in the manner provided for herein and as required by North Carolina G.S. §160A-71(a)(3).

This the 8th day of December, 2015.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

EXHIBIT 1-A

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO THE
MAYOR PRO TEMPORE AND THE EXECUTIVE SECRETARY**

*SECTION 30.05 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS
HEREBY AMENDED TO READ IN ITS ENTIRETY AS FOLLOWS:*

§ 30.05 MAYOR PRO TEMPORE AND EXECUTIVE SECRETARY

The BOC shall elect from one of its members: (1) a Mayor Pro Tempore, and (2) an Executive Secretary, who shall not be the same member. The normal term of office of both the Mayor Pro Tempore and the Executive Secretary shall be one year, commencing at the first regular meeting in December; provide, however that each shall serve at the pleasure of the BOC.

The Mayor Pro Tempore shall discharge the duties and exercise the powers and authority of Mayor in the absence, disability, disqualification of the Mayor and during a vacancy in the office of Mayor; provided his or her rights and duties as BOC shall remain unimpaired; except he or she shall receive the salary or expenses of Mayor when serving in that capacity. No additional oath of office shall be required of the Mayor Pro Tempore upon assuming the duties of the Mayor beyond that oath taken at the time of appointment to Mayor Pro Tempore.

The Executive Secretary shall be responsible for: (1) creating the agenda for each regular and special meeting of the BOC, and (2) assembling all supporting agenda package materials, in consultation with the other members of the BOC and the Town Manager and Town Attorney, as applicable. The Executive Secretary shall timely deliver the same to the Town Clerk for copying, delivery and publication in accordance with these ordinances and the Rules of Procedure provided for herein. The Town Clerk and Town Manager shall provide logistical and advisory support to the Executive Secretary in performing these functions and the Town Attorney shall provide legal interpretation or support as requested by the Executive Secretary. No notice of any regular or special meeting of the BOC, nor any agenda or agenda package materials with respect thereto shall be delivered or published by the Town Clerk without the express prior authorization of the Executive Secretary.

EXHIBIT 1-B

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO
OFFICIAL RECORDS OF PROCEEDINGS**

*SECTION 30.17 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS
HEREBY AMENDED TO READ IN ITS ENTIRETY AS FOLLOWS:*

§ 30.17 OFFICIAL RECORD OF PROCEEDINGS REQUIRED.

The BOC and all committees and sub-committees thereof, and each of the various commissions, boards, agencies and authorities of the town appointed by or under delegation of the authority of the BOC, and all committees and sub-committees thereof shall (1) make and keep a correct, complete and accurate record of their respective acts and doings, including written communications on which such bodies are required to act, and (2) make and keep an audio or audio-video recording of all public and executive meetings. A copy of the minutes of all meetings of the BOC and of the various commissions, boards, agencies and authorities of the town, together in each case with all agendas, agenda packages and materials presented at such meetings, shall be furnished to the Town Clerk and the Mayor and BOC within a time specified by each body's by-laws approved by the BOC. The town shall maintain all such agendas, agenda packages and other materials, all such minutes, and all such audio and audio-video recording permanently as public records of the town available to the public in accordance with applicable provisions of North Carolina law. Commencing January 1, 2016, the Town Clerk shall cause all agenda, agenda packages, materials, and recordings, except only for any portions thereof that constitute non-public records, to be published and made available on the website of the town.

EXHIBIT 1-C

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO
COMMISSIONS, BOARDS, AGENCIES AND AUTHORITIES ESTABLISHED BY
ORDINANCE OR UNDER THE AUTHORITY OF THE BOC**

CHAPTER 30 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED TO ADD THE FOLLOWING § 30.25 TO THAT CHAPTER:

§ 30.25 COMMISSIONS, BOARDS, AGENCIES AND AUTHORITIES ESTABLISHED BY ORDINANCE OR UNDER THE AUTHORITY OF THE BOC.

Except as otherwise expressly provided for in these ordinances: (1) no person shall be appointed or elected by the BOC, or pursuant to any authority delegated by the BOC, as a voting or non-voting member or officer or other official of any commission, board, agency, authority or other similar group or body established by ordinance or otherwise under the authority of the BOC (other than committees and sub-committees of the BOC that are comprised only of members of the BOC or the Audit Committee of the BOC) who is member of the BOC; the Town Manager, Town Attorney, Town Clerk, Police Chief or any full or part-time employee of the town who reports to any of the forgoing; a contractor, consultant or other person providing good or services to the town in consideration of cash or other thing valued at more than \$1,000 in any one year or an officer or material owner thereof; or the spouse, domestic partner, child, parent or sibling of any of the forgoing; (2) no such person, once so appointed or elected, shall remain a member, officer or other official thereof, if such person is or subsequent to his or her appointment or election becomes any of the forgoing; and (3) all persons so elected or appointed shall be either residents of the town or owners of residential property located within the town.

In addition, without limiting the forgoing and notwithstanding any other provisions of these regulations to the contrary, none of the Town Manager, any employee of the town reporting to the Town Manager, the Town Clerk or the Town Attorney shall serve or function as the chairperson, vice chairperson, secretary or any similar capacity of (1) any commission, board, agency, authority or other similar group or body established by ordinance or otherwise under the authority of the BOC, or (2) any committee, working group or similar group thereof; provided, however that this shall not prevent any such persons from providing logistical and advisory support to such commission, board, agency, authority or other similar group or body or any committee, working group or similar group thereof, and such support shall be provided at the request of the chairperson or secretary thereof.

In addition, without limiting the forgoing and notwithstanding any other provisions of these regulations to the contrary: (1) no person shall be appointed or elected by the BOC as a voting or non-voting member or officer or other official of the Board of Adjustment; and (2) no such person, once so appointed or elected, shall remain a member, officer or other official thereof if such person is or subsequent to his or her appointment or election becomes: (A) a licensed real estate agent or an officer, owner or management employee of any licensed real estate agency doing any material business in the town; (B) a licensed construction or construction trades contractor or an officer, owner or management employee of any licensed construction or construction trades contractor company doing

any material business in the town; or (C) the spouse, domestic partner, child, parent or sibling of any of the forgoing.

EXHIBIT 1-D

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH
PROVIDING FOR THE ESTABLISHMENT OF AN
AUDIT COMMITTEE OF THE BOARD OF COMMISSIONERS**

CHAPTER 30 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED BY ADDING THE FOLLOWING § 30.26 TO THAT CHAPTER:

§ 30.26 AUDIT COMMITTEE OF THE BOC

There is hereby established an Audit Committee of the BOC, which shall be comprised of: a Chairman of the BOC Audit Committee, who shall be a member of the Board of Commissioners; and not fewer than two nor more than four Public Members, as determined by the BOC at the first regular meeting in January. The Chairman of the BOC Audit Committee and each of the Public Members shall have a normal term of one year, and all shall serve at the pleasure of the BOC. The Chairman of the BOC Audit Committee shall be elected by the BOC at the first regular meeting in January. The Public Members shall be appointed by the Chairman of the BOC Audit Committee, subject to confirmation by the BOC.

The functions of the BOC Audit Committee shall be: (1) to assist and advise the BOC in its oversight responsibilities for the town's: financial reporting process, system of internal controls over financial reporting and the external audit process; (2) to assist and advise the BOC in its responsibilities for performance management and evaluation of the Town Manager and town employees reporting to the Town Manager; (3) in consultation with the Town Manager, Town Attorney and Town Clerk, monitor, report to and advise the BOC with respect to the town's compliance with these ordinances and with other applicable laws and regulations, including, without limitation, reviewing and monitoring compliance with the town's policies, procedures and training programs relating to open meetings and public records; (4) in consultation with the Town Manager and Town Attorney, monitor and report to and advise the BOC with respect to all litigation or threats of litigation affecting the town; (5) in consultation with the Town Manager and Town Attorney review, advise and make recommendations to the BOC with respect to the town's risk management policies and procedures, including without limitation, the town's insurance and self-insurance policies; (6) in consultation with the Town Attorney, conduct such investigation or hearings with respect to any of the foregoing as the BOC shall from time-to-time direct; and (7) such other related functions as shall be delegated or assigned to it by the BOC from time-to-time.

Not later than the first regular meeting in February 2016, the BOC Audit Committee shall adopt, and present to the BOC for confirmation or modification, By-Laws setting forth such other policies and procedures as it shall deem necessary or appropriate to carry out its function. Such By-Laws may be amended by the BOC, subject to confirmation or modification by the BOC.

EXHIBIT 1-E

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO
HIRING OR ENGAGEMENT OF LAWYERS, CONSULTANTS AND OTHER SIMILAR
THIRD PARTY SERVICE PROVIDERS**

CHAPTER 30 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED TO ADD THE FOLLOWING § 30.27 TO THAT CHAPTER:

§ 30.27 HIRING OR ENGAGEMENT OF LAWYERS, CONSULTANTS AND OTHER SIMILAR THIRD PARTY SERVICE PROVIDERS.

The town shall not hire, engage, enter into any engagement with, or otherwise make payment or incur payment obligations to any lawyer or law firm (other than the Town Attorney providing services pursuant to his or her engagement agreement with the town), unless the BOC expressly approves such hiring, engagement, payment or obligation by resolution based upon review and recommendation by the Town Attorney. In addition the Town Attorney shall not undertake the representation of the town in any legal proceeding or transactional matter not expressly identified in that engagement agreement, unless expressly approved by resolution of the BOC.

The town shall not hire, engage, enter into any engagement with, or otherwise make payment or incur payment obligations to any consultant or other similar third party service provider, unless the BOC expressly approves such hiring, engagement, payment or obligation by resolution based upon review and recommendation by the Town Attorney. Without limiting the forgoing, the appropriation of funds for such hiring, engagement, payment or incurrence of payment obligation shall not constitute approval for this purpose unless the budget identifies the consultant or other similar third party service provider and specifies the nature and scope of the services to be provided.

The town shall not submit any application for any permit or funding grant relating to the expenditure, purchase or incurrence of any obligation by the town of more than five thousand dollars in the aggregate, unless the BOC expressly approves such submission and the terms and conditions of such application or permit.

EXHIBIT 2-A

PROPOSED AMENDMENT TO THE ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO NOISE CONTROL

CHAPTER 92 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED TO AMEND §92.20 IN ITS ENTIRETY TO READ AS FOLLOWS AND TO ADD THE FOLLOWING §§92.21 THROUGH 92.27 TO THAT CHAPTER:

§92.20 Purpose

The town is recognized as a quiet, family-oriented beach community, and houses in the town are situated so that they are in close proximity. Residents and visitors come to the beach community to enjoy the relative peacefulness and serenity of the place, and excessive noise from one location can disturb the peace and become a nuisance to the public.

Furthermore, it is recognized that excessive and unnecessary noise: (i) endangers the physical and emotional health and welfare of people who reside or vacation in the residential neighborhoods and on the beach strand of the town; (ii) interferes with legitimate family and recreational activities; (iii) depresses property and rental values; and (iv) contributes to potentially violent confrontations among persons occupying neighboring properties or enjoying the beach strand; and (v) requires police and public safety resources to respond to such disturbances and confrontations.

§92.21 Intent

Brunswick County, North Carolina has addressed these nuisance, health, welfare and public safety issues by adopting a comprehensive noise ordinance. However, that ordinance does not apply to the town. The intent of this section is to adapt the provisions of the Brunswick County noise ordinance to the particular circumstances of the town as a quiet, family-oriented beach community, and to construe and enforce these sections in a manner consistent with the Brunswick County noise ordinance.

§92.22 Definitions.

- (a) **“High-Volume Loud Speaker System”** means
- a. any amplified audio device or system capable of generating high volume sound, including, without limitation, commercial sound systems, karaoke systems and free-standing audio speakers,
 - b. but excludes (A) built-in and landscape audio and video systems that have speakers no greater than eight (8) inches in diameter, and (B) battery-operated personal entertainment systems, including, without limitation, portable radios, DVD players and MP3 players, that have speakers no greater than four (4) inches in diameter.

- (b) **“Measured Sound Level”** means a sound level that is
- a. measured average decibels (dBA) over a range of four (4) decibels or more (a slow response setting),
 - b. using a sound meter instrument that conforms to the ANSI S1.4 1983 standard or any comparable successor standard that is set to obtain an average value,
 - c. using procedures that conform to the operating instructions included in the operator’s manual for such instrument, and
 - d. which instrument is operated by a Noise Enforcement Agent who has been trained in accordance with the minimum training standards for such operations established by the Sheriff of Brunswick County, North Carolina.
- (c) **“Nighttime Hours”** means: (i) during the months of June, July and August, the hours between 10:00 pm and 7:00 am; and (ii) during the rest of the year, the hours between 9:00 pm and 7:00 am; and **“Daytime Hours”** means all other hours of the day.
- (d) **“Noise Disturbance”** means sound generated by:
- a. any radio, television, audio player, amplified microphone or similar device;
 - b. any musical instrument;
 - c. shouting, yelling, singing and other vocalization in excess of a normal conversational level generated by any assembly or gathering of ten (10) or more people that is not completely contained within a dwelling structure, but spills outdoors onto balconies, yards, swimming pools or other outdoors areas, including without limitation, the beach strand; or
 - d. any combination of the foregoing.
- (e) **“Enforcement Authority”** means: (i) any uniformed police officer of the Police Department; and/or (ii) any Noise Enforcement Agent duly appointed pursuant to §92.27.
- (f) **“Plainly Audible”** means
- a. any sound related to a Noise Disturbance,
 - b. other than the sound of unamplified human conversation of either (A) persons assembled or gathered completely inside a dwelling structure, or (B) of any other assembly or gathering of fewer than ten (10) persons,
 - c. which sound can be readily detected by a person using his unaided hearing faculties,
 - d. from the street or beach strand, from across the property line of any property adjacent to property from which the sound emanates or within any neighboring dwelling structure.

- (g) **“Residential District”** means any district of the town classified as residential under Chapter 157 of the town’s ordinances, and includes the beach strand adjacent thereto.

§92.23 Request For Immediate Corrective Action By Enforcement Authority

- (a) Any person adversely affected by a Noise Disturbance or by the outdoor use of High-Volume Loud Speakers in any Residential District may notify any Enforcement Authority, orally or by text message, email or other writing, and request immediate corrective action. Failure to promptly comply and maintain compliance with any abatement order issued by any Enforcement Authority shall be considered a violation of this section and shall be subject to civil penalties and/or impoundment, as applicable under this section. No responding Enforcement Authority shall fail to take any required enforcement action if a proper abatement order is not promptly complied with or if such compliance is not maintained.
- (b) Upon receipt of an oral or written request for corrective action pursuant to this subsection, the responding Enforcement Authority shall:
- (i) Keep a written record of such request for corrective action or any noise complaint, including date, time and location, any abatement order issued and any other corrective action taken;
 - (ii) If the Enforcement Authority responding to such requests finds a violation of §92.24 (Noise Disturbance), based upon either the Plainly Audible or Measured Sound Level Standard, as applicable, the responding Enforcement Authority shall issue an abatement order, and, if such order is not promptly complied with, shall issue a citation of such violation;
 - (iii) If the responding Enforcement Authority finds a violation of §92.25 (Outdoor High-Volume Loud Speaker), the responding Enforcement Authority shall (A) issue an abatement order and direct the disconnection of the High-Volume Loud Speakers, and, if such order is not promptly complied with, shall issue a citation of such violation and shall impound the High-Volume Loud Speakers and all devices or equipment related thereto pursuant to §92.26;
 - (iv) If a written abatement order is issued pursuant to (ii) or (iii), above, and a subsequent violation of either §92.24 (Noise Disturbance) or §92.25 (Outdoor High-Volume Loud Speaker) or both re-occurs at the same locations or involving the same persons prior to 7:00 am of the next day, the responding Enforcement Authority shall issue a citation pursuant to §92.26 for such violations;
 - (v) In the case of a violation of §92.25 (High-Volume Loud Speaker) involving a commercial operator of such audio devices, (A) compliance with an abatement order shall require complete disconnection of all such High-Volume Loud Speakers, together with all equipment or devices operated in connection therewith, including, without limitation, all amplifiers, mixers, microphones and audio players attached thereto, provided by such

operator and the prompt removal thereof from the Residential District, and (B) any such abatement order or citation shall be issued to such operator .

§92.24 Noise Disturbance Violation

A Noise Disturbance shall constitute a violation of this section if:

- (a) The Noise Disturbance occurs within a Residential District;
- (b) One or more persons in that Residential District have made an oral or written request for corrective action with respect the Noise Disturbance as provided for in §92.23, above; and
- (c) Either or both of the following conditions are satisfied:
 - a. The Noise Disturbance (i) occurs or continues during Nighttime Hours, and (ii) is Plainly Audible; or
 - b. The Measured Sound Level of the Noise Disturbance, exceeds the following applicable dB(A) level measured from the street or beach strand or from across the property line of any property adjacent to the property from which the sound emanates:

Nighttime Hours	Non-Nighttime Hours
50 dB(A)	60 dB(A)

§92.25 Outdoor Use of High-Volume Loud Speaker Violation

Operation of a High-Volume Loud Speaker shall constitute a violation of this Section if:

- (a) The operation occurs and the High-Volume Loud Speaker is located outdoors, including the balcony, deck, porch or covered parking area of any structure, within a Residential District; and
- (b) One or more persons in that Residential District have made an oral or written request for corrective action with respect the Noise Disturbance as provided for in §92.23, above.

§92.26 Civil Penalties, Equitable Relief From Nuisance and Impoundment of High-Volume Loud Speakers

- (a) Any person who, individually or in conjunction with others: (1) causes or permits to occur or continue any Noise Disturbance violation under §92.24 or any outdoor use of High-Volume Loud Speaker violation under §92.25; and (2) fails to immediately abate such violation after being directed to do so by any Enforcement Authority or, having abated such violation, causes or permits to occur or continue any subsequent violation under §92.24 or §92.25 prior to 7:00 am following a direction to abate, shall be subject to a civil penalty as provided for in this subsection.

- (b) The civil penalty for the violation of either §92.24 (Noise Disturbance) or §92.25 (Outdoor High-Volume Loud Speaker) shall be assessed in an amount equal to \$300 per violation against each person who causes or permits to occur or continue any violation under §92.24 or §92.25 at a specified location. Concurrent violations of §92.24 and §92.25 shall be assessed as two separate violations. Violations of §92.24 and §92.25 shall be deemed to be committed on each calendar day during which a violation occurs or continues.
- (c) In the event that two (2) or more civil penalties for violations §92.24 and/or §92.25 are assessed within a period of twelve (12) months from the date of the first violation relating to events or activities at a single dwelling unit or other location within a Residential District, the use of such dwelling unit or other location shall be deemed to constitute a nuisance for purposes of any action for appropriate legal and/or equitable relief therefrom by any resident, homeowner or other property owner within such Residential District whose peaceful and quiet enjoyment of his or her property is adversely affect by such repeated violations.
- (d) Any High-Volume Loud Speakers operated in the Residential District in violation of §92.25, together with all equipment or devices operated in connection therewith, including, without limitation, all amplifiers, mixers, microphones and audio players attached thereto, shall be impounded by the Enforcement Authority, and shall be held by the Town (pursuant to policies adopted from-time-to-time by the Town Clerk) until the payment of all civil penalties related to such operation, and any Noise Disturbance resulting therefrom, during regular business hours of the Town; provided, however, that where the Enforcement Authority is a Noise Enforcement Agent, that Noise Enforcement Agent shall summon a police officer, and the police officer shall impound such High-Volume Loud Speakers and related equipment.

§92.27 Noise Enforcement Authority

- (a) There is hereby established a Noise Enforcement Authority of the Town and a Director of such Noise Enforcement Authority who shall be appointed by and serve at the pleasure of the Board of Commissioners.
- (b) Not later than ninety (90) days after the effective date of this section, the Director shall develop and recommend to the Board of Commissioners for adoption a training protocol for officers of the Police Department and Noise Enforcement Agents with respect to the enforcement of this section, including without limitation, the instrument training referred to in §92.22(b), training with respect to the provisions of this section and the mandatory and non-discretionary application of the enforcement provisions thereof, education with respect to the adverse health and safety consequences of noise disturbances and community policing standards for the peaceful and voluntary abatement of Noise Disturbances and High-Volume Loud Speaker violations of this section and the resolution of community conflicts related thereto. Not later than 60 days after the adoption of such training protocols by the Board of Commissioner, the Police Chief shall cause all officers of the Police Department to receive such training under the supervision of the Director of the Noise Enforcement Agency.

- (c) Pursuant to procedures to be developed by the Director from time-to-time and approved by resolutions of the Board of Commissioners, the Director shall recruit Noise Enforcement Agents who shall receive training in accordance with the protocols provided for in §92.22(b).
- (d) Upon completion of such training, such Noise Enforcement Agents shall be issued credentials identifying them as civil enforcement agents of the Town with a jurisdiction limited exclusively to issuing abatement orders, issue citations for civil penalties and impound High-Volume Loud Speakers pursuant to §§92.27(b).
- (e) Such Noise Enforcement Agents shall exercise no police powers, but shall be authorized to issue abatement orders, issue citations for civil penalties and direct police officers to impound High-Volume Loud Speakers pursuant to §§92.20 through 92.25 as civil enforcement agents of the town. Such agents shall not be members of the Police Department, shall not exercise police powers, and shall not report to the Chief of Police. Such agents shall not carry firearms or any other weapon, and shall not be authorized to make arrests or otherwise detain any person. In the event of any violence, threats of violence, verbal or physical assault or the refusal of any person to voluntarily comply with any abatement order, the Noise Enforcement Agent shall have no police powers and shall summon the assistance of the Police Department.
- (f) Except as otherwise provide by resolutions adopted from time-to-time by the Board of Commissioners, the Director and all Noise Enforcement Agents shall be volunteers serving without pay, benefits or other compensation. The Director and all Noise Enforcement Agents shall sign and deliver a liability waiver and release for the benefit of the Town releasing the Town from all liability for any injury or damages arising out of the performance of their functions, in a form to be prepared by the Director and approved by the Board of Commissioners. All such Noise Enforcement Agents shall serve at the pleasure of the Director and/or at the pleasure of the Board of Commissioners.
- (g) There is hereby appropriated the amount of \$5,000 per year to be used by the Director for equipment, training, uniforms and other expenses of the Noise Enforcement Authority. A subordinate police officer (to be designated by the Chief of Police and identified by the Chief of Police in writing to the Board of Commissioners not later than 30 days after the effective date of this section) shall cooperate with the Director of the Noise Enforcement Authority to develop and recommend policies and procedures and communications equipment and protocol to facilitate coordinated communication of and response to requests for corrective action under this section, including any recommendations with respect to resolutions, Town funding or ordinance provisions necessary or appropriate to implement such cooperation.
- (h) It shall be a separate criminal violation of this section subject to a criminal fine of \$500 for any person to assault, verbally assault or abuse or otherwise interfere in any way with any Noise Enforcement Agent in the exercise of his or her functions under this section. Any such violation shall be separate from and in addition to (1) any related civil penalty or impoundment for violation of

any provision of these sections, and/or (2) any related assault, battery or other criminal offense under North Carolina criminal statutes.

EXHIBIT 3-A

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH RELATING TO THE
OFFICERS; RULES; AND MEETINGS OF THE
PLANNING AND ZONING BOARD**

SECTION 155.12 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED TO READ IN ITS ENTIRETY AS FOLLOWS:

§ 155.12 OFFICERS; RULES; MEETINGS.

The Planning and Zoning Board shall elect a Chairperson and Vice-Chairperson, normally at the July meeting, from among the members appointed by the governing body, whose terms of office shall be one year with eligibility for re-election. The Board shall adopt rules for transaction of its business. The Planning and Zoning Board shall also elect a Secretary, from among the members appointed by the governing body, whose term of office shall be one year with eligibility for re-election, and who shall be responsible for providing notices and keeping minutes for the Planning and Zoning Board. The Director of Planning and Inspections, and his or her designee, shall be responsible for providing all necessary technical, clerical and logistical support to the Planning and Zoning Board, the Secretary of the Planning and Zoning Board and any committees established by the Planning and Zoning Board. The Board should hold at least one meeting monthly, unless there is no business to transact. All meetings shall be open to the public. The agendas and minutes of all meetings, and all documents or materials presented at any meeting shall be made available to the public. An audio or audio and video recording of all meetings shall be kept and shall be made available to the public. There shall be a quorum of four members for the purposes of taking an official action.

EXHIBIT 3-B

**PROPOSED AMENDMENT TO THE
ORDINANCES OF THE TOWN OF HOLDEN BEACH
PROVIDING FOR THE ESTABLISHMENT OF
COMMUNITY ADVISORY COMMITTEES BY THE
PLANNING AND ZONING BOARD**

CHAPTER 155 OF THE ORDINANCES OF THE TOWN OF HOLDEN BEACH IS HEREBY AMENDED BY ADDING THE FOLLOWING § 155.15 TO THAT CHAPTER:

§ 155.15 COMMUNITY ADVISORY COMMITTEES.

At the direction of the BOC, the Planning and Zoning Board shall establish subordinate committees to be known as Community Advisory Committees, only as provided for in this section. Without the express direction of the BOC, the Planning and Zoning Board shall not establish any committee, subcommittee, working or similar group comprised of regular or alternate members, members of the public or any combination thereof, that is not a Community Advisory Committee established pursuant to this section.

Except as otherwise directed by the BOC, any Community Advisory Committee shall be comprised of (1) three members of the public, each of whom shall be residents or owners of residential property located in the town, and (2) two regular or alternate members of the Planning and Zoning Board, all of whom shall be appointed by the Planning and Zoning Board by vote taken at a meeting of the Planning and Zoning Board, and each shall serve at the pleasure of the BOC. One of the regular or alternate members shall be appointed as the Chairman and one shall be appointed as the Secretary of the Community Advisory Committee by the Planning and Zoning Board. There shall be a quorum of four members of the Community Advisory Committee for the purposes of taking an official action.

Unless a Community Advisory Committee is designated as a standing committee by the BOC, the term of existence of a Community Advisory Board shall be no more than three months, unless that term is extended by the BOC. Each Community Advisory Board shall make a report to the Planning and Zoning Board at each regular meeting thereof. Unless otherwise directed by the BOC, (1) no Community Advisory Committee nor any member thereof shall make any report to the BOC, (2) only the Chairman or Vice Chairman of the Planning and Zoning Board shall deliver any report or recommendation based on the work of any Community Advisory Committee to the BOC, and (3) no such report or recommendation shall be delivered unless it has been adopted by the Planning and Zoning Board. Unless otherwise directed by the BOC, a Community Advisory Committee and the Planning and Zoning Board shall present any recommendation as a range of alternatives, and not as a single recommendation.

In directing the establishment of a Community Advisory Committee, the BOC shall clearly describe the subject matter, scope and function of the Community Advisory Committee.

The agendas and minutes of all meetings, and all documents or materials presented at any meeting of a Community Advisory Committee shall be made available to the public. An audio or audio and video recording of all meetings shall be kept and shall be made available to the public.