

ORDINANCE NO. 11-03

AN ORDINANCE OF THE CITY OF KEY WEST,
FLORIDA, AMENDING CHAPTER 18 OF THE
CODE OF ORDINANCES ENTITLED
"BUSINESSES" BY AMENDING SECTION 18-28
TO PROVIDE CRITERIA FOR THE GRANTING OF
A SPECIAL EXCEPTION FROM THE
PROHIBITION AGAINST ALCOHOL SALES IN
PROXIMITY TO CHURCHES, SCHOOLS,
CEMETERIES AND FUNERAL HOMES; PROVIDING
FOR APPEAL; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE
DATE

WHEREAS, the Key West City Commission finds that the establishment of defined criteria in granting special exceptions to permit the sale of alcohol within a certain proximity to churches, school, cemeteries and funeral homes serves to promote the health, safety and welfare of the citizens of Key West;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 18-28 of the Code of Ordinances is hereby added/amended as follows*:

Sec. 18-28. Proximity to churches, schools, cemeteries and funeral homes.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Language suggested at second reading and added for third reading is double underlined.)

(a) Except as provided herein, No person shall conduct in the city any business involving the sale of alcoholic beverages where such place of business is within 300 feet of any established church, school, cemetery, or funeral home. Such distance shall be measured by following the shortest route of ordinary fare from the nearest point of the property line of the place of business to the property line of the church, school, cemetery, or funeral home grounds and used as a part of the church, school, cemetery, or funeral home facilities. However, any person licensed to conduct and legally conducting a business involving the sale of alcoholic beverages as of January 4, 1995, shall be governed by the provisions of this section which existed at the time of the original licensure of such business.

~~(b) Any property owner aggrieved by subsection (a) of this section may apply to the city commission for a variance.~~

The prohibition in section (a) above shall not apply if a property owner is granted a special exception to specifically sell alcoholic beverages:

- (1) in conjunction with an approved conditional use application that includes consideration of the public welfare factors listed in subsection 2 below; or

(2) pursuant to authorization granted by the Planning Board that the use will not detrimentally impact the public health, safety or welfare after consideration of all the following criteria:

- A. Compatibility with surrounding existing uses;
- B. The extent of conflict between the proposed use and the hours of operation of the facilities described in section (a) above;
- C. Mitigation measures agreed to be implemented by the applicant;
- D. Public input;
- E. That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the application, and by addressing the objections expressed by these neighbors.
- F. Any other factors the approving body determines relevant to the public's health, safety and welfare.

(c) Any special exception granted hereunder may be approved with conditions, which conditions shall

be monitored in accordance with Section 18-610.
The exception shall be to the applicant only,
shall not be transferable and shall only be
effective in conjunction with the use(s)
specified in the application.

(d) All applications for a special exception
hereunder shall be on a form required and
provided by the city planner. Such application
shall be submitted to the city planning office
together with the fee established by resolution
of the city commission. A completed application
shall include the application form, the fee and
all required supplemental information necessary
to render determinations related to the request.

(e) Upon receipt of an application, the planning
board shall hold a public hearing upon the
application in accordance with the procedures
cited in section 90-393 and shall render an order
granting or denying such application. In granting
such application the planning board must make
specific findings respecting each of the matters
specified in subsection 2(b) above.

(f) The Planning Board's decision regarding an
application for a special exception hereunder may
be appealed to the City Commission in accordance
with the provisions of section 90-431.

Section 2: If any section, provision, clause,
phrase, or application of this Ordinance is held invalid or

unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 4th day of January, 2011.

Read and passed on final reading at a regular meeting held this 1st day of February, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 2nd day of February, 2011.

Filed with the Clerk February 2, 2011.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK