

ORDINANCE NO. 13-22

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 26, ENTITLED "ENVIRONMENT", DIVISION 3 ENTITLED "USE OF BEACHES LOCATED ON CITY PROPERTY" BY AMENDING SECTION 26-62 TO CLARIFY PROHIBITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, it is the intent of the City Commission for the City of Key West to prohibit the consumption of alcoholic beverages while on city beaches; and

WHEREAS, the City Commission for the City of Key West finds that the proposed ordinance revisions would serve to promote the safety and welfare of the citizens and visitors of the City of Key West;

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

Section 1: That Section 26-62 of the Code of Ordinances is hereby amended as follows*:

Sec. 26-62. Possession of open alcoholic beverage
containers on city beaches.

Sec. 26-62. Possession of open alcoholic beverage
containers

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcoholic beverage means any beverage containing more than one-half (0.5) percent alcohol or more by ~~weight~~ volume.

Open container means any receptacle or container immediately capable of being consumed from by a person or which has been opened or a seal broken or the contents of which have been partially removed.

(b) No person shall drink from any open container containing any alcoholic beverage while upon any public beach. An open container shall not be considered to be in the possession of a person upon any public beach if it is in a location not accessible for consumption.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Double Underlined and ~~strike through~~ for second reading)

(c) The city commission may grant variances from this section on city property by resolution adopted by the city commission; provided, however, that any such variance shall be issued only to a nonprofit organization and shall require the presence of a security guard during such sale/consumption.

(d) Prima facie evidence of a violation of this section shall consist of (1) direct evidence of consumption of an alcoholic beverage while on public or semi-public property or area(s); or (2) ~~credible~~ evidence demonstrating any indicia of consumption of an alcoholic beverage ~~shall consist of credible evidence demonstrating any indicia of consumption~~ including but not limited to; bloodshot eyes, an unsteady gait, slurred speech, or an odor of an alcoholic beverage emanating from one's breath or person based on that officer's training and experience, while on a city beach, ~~while~~ and in possession of an open alcoholic beverage container.

(e) Proof that the beverage in question was contained in a container labeled as "beer," "ale," "malt liquor," "malt beverage," "wine," or "distilled spirits" or with other similar name; and which bears the manufacturer's insignia, name, or trademark shall serve as prima facie evidence that

such beverage is an alcoholic beverage as defined in this section and in accordance with F.S. § 562.47(2). Further, proof that a container contains alcohol as defined in this section, that is not so clearly marked as described herein, shall be established by testimony that the contents or remnants therein is consistent with alcohol through the officer's training and experience including but not limited to: odor, texture, appearance and color in combination with the officer's observations of the violator, including but not limited to: bloodshot eyes, unsteady gait, slurred speech, odor of an alcoholic beverage and affect consistent with alcohol consumption.

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 there from 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 19th day of November, 2013.

Read and passed on final reading at a regular meeting held this 3rd day of December, 2013.

Authenticated by the presiding officer and Clerk of the Commission on 4th day of December, 2013.

Filed with the Clerk December 4, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Absent</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

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EXECUTIVE SUMMARY

To: The Mayor and City Commissioners for the City of Key West
From: Ronald Ramsingh, Esq., Assistant City Attorney
Date: November 12, 2013
RE: Amendment of Sec. 26-62 Alcohol on Beach, Sec. 18-87 Open Containers, and Sec. 26-97 Alcohol in Parks *for second reading.*

Background:

This proposed amendment is a companion to the current open container ordinance revision that is also currently before the Commission. The 2 revisions for Alcohol in Parks and Alcohol on Beaches likewise contain the same definition of alcohol as well as the same methods of proving these cases. Therefore, for consistency, these 2 ordinances are likewise proposed to be so amended. For second reading, further language has been clarified or eliminated as duplicitous. Those new proposed changes are double stricken through and double underlined.

Options:

1. To pass the proposed ordinance revisions at second reading for Open Container, Alcohol in Parks and Alcohol on Beaches and Alcohol in Parks, thereby closing a perceived loophole in the definitions and proof by the Court, while making it much clearer for enforcement purposes;
2. To defeat the proposed revision and the existing ordinance will continue to be enforced.

Recommendation: To pass the attached proposed ordinance revisions at second reading.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Ramsingh".

Ron Ramsingh, Esq.