

ORDINANCE NO. 14-08

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 18 "BUSINESSES", ARTICLE II "ALCOHOLIC BEVERAGES", DIVISION 2 "ENTERTAINMENT LICENSE", TO AMEND SECTION 18-56 REGARDING DEFINITIONS; BY AMENDING SECTION 18-59 TO UPDATE DEFINITIONS; BY AMENDING SECTION 18-60 TO INCREASE THE NUMBER OF VIOLATIONS BEFORE AN ENTERTAINMENT LICENSE MAY BE REVOKED OR SUSPENDED; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that in reviewing its sound control ordinance certain revisions are necessary to its entertainment license provisions to provide for the health, safety and welfare of its citizens.

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

Section 1: That Section 18-56 of the Code of Ordinances is hereby amended as follows*:

Sec. 18-56. Definitions.

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

Soundproof means any physical arrangement or configuration of a building that is sufficient to prevent the sound of live

entertainment or amplified sound from constituting unreasonably ~~noise or disturbing~~ excessive noise, as provided in division 3 of article II of chapter 6 and article IV of chapter 26.

Section 2: That Section 18-59 of the Code of Ordinances is hereby amended as follows*:

Sec. 18-59. Mediation regarding complaints of noise.
The city manager shall conduct a mediation between the holder of an entertainment license and any person complaining of noise at such establishment if:

(2)The establishment is the subject of chronic noise complaints within any 30-day period. For the purpose of this subsection, the term "chronic" shall mean that the city manager initially has received a complaint of unreasonably excessive noise ~~or disturbing noise~~ at a location from more than one person, and similar noise complaints continue after an investigating officer has issued either a citation or a warning. Submission to mediation shall be a requirement of the holding of an entertainment license. Upon issuance of the entertainment license, the licensing division shall provide the holder with a written notice of its responsibilities under this subsection. The city manager shall provide notice and opportunity to be

heard by the parties at mediation, and shall issue final recommendations. The mediation is nonbinding.

Section 3: That Section 18-60 of the Code of Ordinances is hereby amended as follows*:

Sec. 18-60. Revocation or suspension.

(a) If a license holder is found in violation or pleads no contest to a violation of division 3 of article II of chapter 6 and article IV of chapter 26 ~~two~~ three (3) times within any annual period and the noise violations are music related, the city manager may determine whether to revoke or suspend for a period of time the license holder's entertainment license.

Before reaching a decision, the city manager shall:

(1) Afford the license holder notice of the hearing and a reasonable opportunity to be heard;

(2) Consider the license holder's record of noise violations;

(3) Consider the seriousness and recurrence of the violation;

(4) Consider the degree of disturbance on persons or neighboring property owners; and

(5) Evaluate the license holder's record in mediation under section 18-59

(b) The city manager's decision to revoke or suspend an entertainment license shall be issued in writing and shall inform the license holder of the right to appeal the decision to the city commission. A written appeal must be filed with the city clerk within ten days of the receipt of the decision. The City Commission shall have the ability upon appeal to reverse or affirm, wholly or partly, or modify the determination made by the City Manager and may make any necessary further decisions respecting the subject of the appeal and, to that end, shall have all the powers as the City Manager respecting such matter pursuant to subsection (a) above.

(Coding: Added language is underlined; deleted language is struck through.)

Section 4: 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 5: 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 6: 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 22nd day of April, 2014.

Read and passed on final reading at a regular meeting held this 6th day of May, 2014.

Authenticated by the presiding officer and Clerk of the Commission on 6th day of May, 2014.

Filed with the Clerk May 7, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>No</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>No</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



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Memorandum

TO: Mayor & Commissioners
FROM: Shawn D. Smith, City Attorney
RE: Sound Ordinance revisions
DATE: March 25, 2014

Mayor and Commissioners

I, along with Chief Assistant Larry Erskine, have been working with the Planning and Code departments on alterations to the sound control ordinance specific to issues raised at the last City Commission meeting. Your current agenda for second reading includes those alterations you voted upon at the last meeting. There is also an ordinance proposed for first reading which includes the "3 strikes" revision discussed, as well as the placement of speakers requested at the meeting.

We have spent a good deal of time considering appropriate language and a manner to accomplish some of your other requested changes that were not specifically voted upon at first reading or included in the revisions proposed for the April 1 agenda concerning entertainment licenses. In particular, we were asked to come back with changes that would 1) put the HCT zoning district into a residential sound category or some other lower decibel limit; 2) provide for a manner to cite only the party ultimately responsible for allowing sound to exceed the specified levels; 3) to create ramifications for those who file numerous unsubstantiated noise complaints; and 4) to prosecute the violations in code compliance rather than exclusively as a county court proceeding.

1. With respect to the HCT designation, your Planning staff spent a considerable amount of time reviewing the issue. Attached to this Memo is an email from Don Craig. As you can see from Mr. Craig's email, HCT is densely commercial and does not provide a rational basis to treat it with a residential sound level. There are only an estimated 4 single family residences in the entire District. Mr. Craig does see opportunities in the other districts he identified. However, because that was not the focus of the Commission, we have not undertaken a rewrite for a new category for those fringe or buffer areas.

2. Regarding language changes for those who have ultimate control over the sound level, I've provided some draft language below for your consideration. However, in order to provide flexibility, Code recommends keeping the language approved at first reading. A possible alteration to meet the desire expressed by members of the Commission is as follows: In section 26-195 on page 16,

"Sec. 26-195. Liability; citizen suit

(a) Liability. The individual controlling or responsible for maintaining the volume ~~maker or creator~~ of unreasonably excessive noise and the operator and/or owner of the premises that are ~~it's~~ the sound source shall each be subject to liability for violations of this article....."

3. Regarding unsubstantiated complaints, staff has a concern that true complainants may be discouraged from coming forward if they face sanctions for bringing forward an allegation. As such, any regulation must be specifically and narrowly tailored to meet egregious cases. If the Commission desires to proceed, I suggest adding a subparagraph "d" to section 26-195 referenced above. The language could read:

"(d) Multiple Unsubstantiated Complaints.

An unsubstantiated complaint is one to which a noise control officer has responded and found either no evidence of any noise, or sound that is ten (10) decibels or more below the standard for the finding of a violation of unreasonable excessive noise. The noise control office shall explain his or her findings to the complainant and detail the relevant standards for determining a violation as specified by the City Code. It shall be a violation of this Article subjecting an individual to the provisions of Chapter 2, Article VI, Division 2 of the Code of Ordinances for the City of Key West for any individual to make three or more unsubstantiated complaints within a one month period."

4. With respect to code compliance proceedings for violators, I suggest deleting "~~section 4-15~~" on page 16 and replacing it with "in Chapter 2, Article VI, Division 2 of the Code of Ordinances for the City of Key West."

I encourage you to contact me, Jim Young or Don Craig in advance of the meeting if you would like to discuss any items raised in this memo or other options available in a sound control ordinance.

Shawn D. Smith

Cc: Jim Young
Don Craig