

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 6 "AMUSEMENTS AND ENTERTAINMENT" ; AMENDING CHAPTER 18 "BUSINESSES", SECTIONS 18-28 AND 18-60; AMENDING CHAPTER 30 "FIRE PREVENTION AND PROTECTION", SECTION 30-9; AMENDING CHAPTER 54 "PLANNING AND DEVELOPMENT, SECTIONS 54-82, 54-124, AND 54-160; PROVIDING FOR THE REVIEW AND DETERMINATION OF CERTAIN APPEALS AND VARIANCE REQUESTS TO BE ADMINISTERED BY THE CITY COMMISSION ~~PLANNING BOARD~~; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of Adjustment has recommended the review and determination of variance requests be administered by the Planning Board; and

WHEREAS, the Key West Planning Board at its meeting of February 21, 2008, found consistency with the Key West Comprehensive Plan, and

WHEREAS, the City Commission finds that an administrative variance procedure promotes the health, safety and welfare of the citizens of Key West.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Added language based on changes from the first reading is double underlined and deleted language based upon first reading is ~~struck through twice~~.)

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

Section 1: That section 6-2 of the Code of Ordinances
is hereby amended as follows:

Sec. 6-2. Permit required; application; appeal.

(a) A permit system for street performers and street
artists is hereby established. It shall be unlawful for any
person to engage in any street performance or art vending on
public property in the Historic District without first
obtaining a permit as required by this article. This
ordinance shall not apply to impromptu behavior by persons
not holding themselves out as public performers

* * * *

(e) A person who misses the application deadline set
forth in subsection (b) may appeal to the ~~Key West Board of
Adjustment ("BOA")~~ city commission so long as the following
criteria are met: (i) the person was approved for a permit for
the same proposed activity in the previous year; and (ii) the
ground for appeal is a demonstrable hardship directly related
to the missed application deadline. The appellant shall file
the appeal in writing to the city clerk and pay the standard
~~BOA~~ filing fee. The appeal shall be scheduled for the next

available BOA city commission meeting.

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Section 2: That section 18-28 of the Code of Ordinances is hereby amended as follows:

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

(a) 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 ~~board of adjustment~~ city commission for a variance.

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 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:

* * * *

(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 ~~board of adjustment~~ city commission. A written appeal must be filed with the city clerk within ten days of the receipt of the decision. An appeal shall not stay the city manager's decision unless the city manager's decision calls for a stay upon appeal. If a license is revoked or suspended and the establishment continues to provide live or recorded amplified music without a license, the city attorney is authorized to apply for an injunction from the circuit court.

Section 4: That section 30-9 of the Code of Ordinances is hereby amended as follows:

Sec. 30-9. Schedule of permit fees.

The Office of the Fire Marshal shall charge and collect for the various permits required by the Florida Fire Prevention Code, as adopted by reference in section 30-57 and made part of the ordinances of the city, as follows:

(a) *Plans review.*

* * * *

(b) *Applications.*

(1) Development review committee applications . . .
50.00

~~(2) Application to board of adjustment (zone
variance) . . . 50.00~~

* * * *

Section 5: That section 54-82 of the Code of Ordinances is hereby amended as follows:

Sec. 54-82. 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:

* * * *

Preexisting land use means a land use that was in existence on November 20, 1985, or a land use that commenced after November 20, 1985, and for which impact fees were paid pursuant to this division. Proof of preexisting land use may be established by official city, county, or state records and licenses, affidavits, and photographs. The planning official is charged with the responsibility of determining whether a preexisting land use qualifies under this division. Any person aggrieved by the decision of the planning official may appeal that decision to the ~~board of adjustment~~ city commission by filing a notice with the city clerk within ten days.

* * * *

Section 6: That section 54-124 of the Code of Ordinances is hereby amended as follows:

Sec. 54-124. Estimates of preexisting activity.

In estimating the increased demand caused by any solid waste generating activity, the city manager shall estimate the demand of any preexisting activity according to the table referred to in section 54-118 unless actual measurements of usage are available. Preexisting activity includes activity that was taking place on the property on December 4, 1984, or activity that commenced after December 4, 1984, and for which impact fees were paid pursuant to this division. Proof of

preexisting land use may be established by official city, county, or state records and licenses, affidavits and photographs. The planning official is charged with the responsibility of determining whether a preexisting land use qualifies under this division. Any person aggrieved by the decision of the planning official may appeal that decision to the ~~board of adjustment~~ city commission by filing a notice with the city clerk within ten days.

Section 7: That section 54-160 of the Code of Ordinances is hereby amended as follows:

Sec. 54-160. Estimates of preexisting land use demand.

In estimating the increased demand created by a development, the city manager shall estimate the demand of any preexisting land use according to the table referred to in section 54-154 unless actual measurements of usage are available. A preexisting land use is a land use that was in existence on December 4, 1984, or a land use that commenced after December 4, 1984, and for which impact fees were paid pursuant to this division. Proof of preexisting land use may be established by official city, county or state records and licenses, affidavits and photographs. The planning official is charged with the responsibility of determining whether a preexisting land use qualifies under this division. Any person

aggrieved by the decision of the planning official may appeal that decision to the ~~board of adjustment~~ city commission by filing a notice with the city clerk within ten days.

Section 8: 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 9: 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 10: 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.

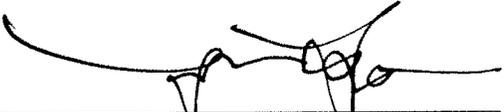
Read and passed on first reading at a regular meeting held this 06th day of May, 2008.

Read and passed on final reading at a regular meeting held this 20th day of May, 2008.

Authenticated by the presiding officer and Clerk of the

Commission on 21st day of May, 2008.

Filed with the Clerk May 21, 2008.



MORGAN McPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK