



## Office of the City Attorney

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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