

ORDINANCE NO. 20-

AN UNCODIFIED ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, TO MANDATE THAT ALL BARS, RESTAURANTS, AND FOOD SERVICE ESTABLISHMENTS SHALL CLOSE FROM 12:00 A.M. UNTIL 6:00 A.M. EACH DAY STARTING AT 12:00 A.M. ON WEDNESDAY, NOVEMBER 11, 2020 AND ENDING AT 6:00 AM ON THURSDAY, DECEMBER 3, 2020; PROHIBITING ALCOHOL SALES FROM 12:00 A.M. UNTIL 7:00 A.M. EACH DAY STARTING AT 12:00 A.M. ON WEDNESDAY, NOVEMBER 11, 2020 AND ENDING AT 7:00 AM ON THURSDAY, DECEMBER 3, 2020; DECLARING THIS ORDINANCE TO BE AN EMERGENCY MEASURE; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE AND SUNSET DATE.

WHEREAS, the City of Key West finds that Coronavirus Disease 2019 (COVID-19) presents a danger to the health, safety, and welfare of the public; and

WHEREAS, the State Health Officer and Surgeon General has issued a Declaration of Public Health Emergency, stating that COVID-19 is a threat to public health in Florida; and

WHEREAS, the State Health Officer and Surgeon General has issued a Public Health Advisory stating "[a]ll individuals should wear face coverings in any setting where social distancing is not possible", and advising everyone to Avoid the 3 Cs, that is, to avoid "Closed Spaces," avoid "Crowded Places," and avoid "Close-Contact Settings,"; and

WHEREAS, Executive Order 20-244 moves the State of Florida into Phase 3 of the Governor's Reopening Plan with certain specific caveats when it comes to local government regulation as detailed and discussed by the Third District Court of Appeal in *Miami-Dade County v. Miami Gardens Square One, Inc.*, 3D20-1512, 2020 WL 6472542 (Fla. 3d DCA Nov. 4, 2020); and

WHEREAS, the City of Key West finds that it is in the best interest of public health, safety and welfare of the residents, workers and employees of the City of Key West in order to mitigate a surge in COVID-19 cases in Key West to institute a curfew to reduce the hours of operation of certain indoor spaces where groups of people congregate without social distancing in order to slow the spread of COVID-19; and

WHEREAS, the City of Key West finds implementation of this ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that the residents, workers, and visitors in the City of Key West remain safe and secure and that this ordinance promotes business operation and economic recovery while maintaining focus on core safety principals and slowing the spread of COVID-19, given a recent

increase in positive reported cases of COVID-19 within the City of Key West; and

WHEREAS, the Centers for Disease Control (CDC) advises that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("pre-symptomatic") can transmit the virus to others before showing symptoms; and

WHEREAS, the CDC strongly advises that every community fully observe social distancing, wear facial coverings, and fully adhere to the CDC-sanitation guidelines in order to minimize the risk of a dramatic increase in infections that might overwhelm the available public health resources and require closure of amenities and businesses; and

WHEREAS, CDC has specifically stated that the more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread and that the risk of COVID-19 spread increases in a restaurant or bar setting with the highest risk consisting of on-site dining with both indoor and outdoor seating where seating capacity is not reduced and tables are not spaced at least 6 feet apart; and

WHEREAS, the City of Key West has adopted Emergency Ordinance 20-17, extending its previous emergency ordinances requiring

individuals to use masks in order to reduce the spread of COVID-19; and

WHEREAS, the City of Key West saw a decline in COVID-19 cases in August and September, there is now an increase in COVID-19 cases both in the City of Key West and in Monroe County; and

WHEREAS, the White House Coronavirus Task Force Report (White House Report), which discusses Florida, dated October 25, 2020, lists the City of Key West and Monroe County in the 'Yellow Zone' defined as those core-based statistical areas and counties that during the last week have seen a certain threshold of new cases of COVID-19 based on population; and

WHEREAS, the White House Report states that in Florida counties with rising cases mitigation efforts should continue to include mask wearing, physical distancing, hand hygiene, and avoiding crowds in public and social gatherings in private; and

WHEREAS, the City, during this pandemic, despite the City's implementation of a mandatory mask requirement, has observed that persons socializing at night, particularly youth, are often not attentive to social distancing, especially in places where alcohol is served or available, including bars and restaurants; and

WHEREAS, persons in bars and restaurants, and other places where food and drink are consumed are not wearing masks, rendering

social distancing all the more important; and

WHEREAS, to such a degree, certain bars and restaurants have also been noncompliant with regards to requiring masks and social distancing, while others have had difficulty implementing such measures notwithstanding good faith attempts to implement mandatory masks and social distancing, as evident by the City's observation of non-compliance by individuals, making individualized enforcement efforts impractical and insufficient at this time; and

WHEREAS, the purpose of the curfew is to reduce the spread of COVID-19, among other things, prohibiting late night socializing which is a critical component in the spread of COVID-19 among individuals in Key West, including recently, employees of such businesses; and

WHEREAS, the medical experts consulted by the City have recommended additional measures, such as curfews, be implemented to slow the spread of COVID-19; and

WHEREAS, a curfew is necessary to ensure that people, particularly young people, are not gathering and socializing in ways that pose a direct threat to the health of themselves, their parents, and grandparents; and

WHEREAS, the Third District Court of Appeal has stated that

"safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state", further emphasizing that "[h]ad the Governor meant to preempt local governments from imposing curfews, he could have said so", finding that "EO 20-244 does not expressly preempt curfews by local government" and that "[n]either implied preemption nor conflict precluded [...] curfew orders." *Miami-Dade County v. Miami Gardens Square One, Inc.*, 3D20-1512, 2020 WL 6472542 (Fla. 3d DCA Nov. 4, 2020); and

WHEREAS, the State of Florida has not preempted local governments from instituting curfews with respect to COVID-19; and

WHEREAS, the City Commission of the City of Key West have instituted emergency ordinances with respect to COVID-19, that are enforceable as misdemeanors by law enforcement though F.S. 252.47 and F.S. 252.50; and

WHEREAS, the City of Key West remains under a State of Local Emergency, adopting regulations via ordinance would permit additional enforcement options and impose additional requirements for establishments within the City of Key West that fail to comply with the established guidelines; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean

"a location where business is conducted, goods are made or stored or processed or where services are rendered." *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013).

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

Section 1: **Findings.** The above recitals are adopted by the City Commission as legislative findings.

Section 2: **Definitions.** For purposes of this ordinance, the following terms are defined as follows:

- (a) A *food service establishment* is defined to have the same definition as provided for in F.S. 500.03(1)(r) and/or F.S. 509.013(5)(a), Florida Statutes, (2020), and to include mobile food vendors such as food trucks and carts.
- (b) A *bar* is defined as any vendor licensed by the Department of Business and Professional Regulations (DBPR) to sell alcoholic beverages to-go and/or for consumption on the premises.
- (c) An *operator* shall mean any individual or entity that owns a bar and/or food service establishment or controls the operation of the business even if only for a period of time, regardless of the formal title or role held by that individual.

Section 3: **Requirements.**

- (a) During the period when this ordinance is in effect, a bar and/or food service establishment shall close to the public during the hours of 12:00 A.M. and 6:00 A.M.
- (b) During the period when this ordinance is in effect, no vendor may sell alcoholic beverages during the hours of 12:00 A.M.

and 7:00 A.M.

- (c) This prohibition does not prevent a bar or food service establishment from having employees on premises during the hours when closed under this ordinance to engage in food preparation, restocking supplies, cleaning the establishment, or maintaining security.
- (d) The operator of the bar and/or food service establishment shall ensure that every individual in that bar and/or food service establishment complies with this ordinance.
- (e) This prohibition does not prevent a restaurant from selling only food to customers via drive through, delivery, and/or curbside service during the hours of 12:00 A.M. and 6:00 A.M.

Section 4: **Penalties and Enforcement.** This ordinance may be enforced in the following manner:

(a) Civil Citation.

- (1) A code compliance or law enforcement officer upon observation of a violation by a person and/or business, after having received a verbal warning, may issue a notice to appear or civil citation to appear in County Court.
- (2) Any person or business establishment prosecuted under this subsection and found in violation of this ordinance may be punished by a fine of up to \$500.00. Each day a violation of this ordinance occurs is considered a separate offense.

(b) Administrative Notice of Violation

- (1) A code compliance or law enforcement officer upon observation of a violation by a person and/or business, after having received a verbal warning, may issue a notice of violation and notice to appear before the special magistrate.
- (2) Any person or business establishment found in violation of this ordinance may be fined pursuant to part I of chapter 162, Florida

Statutes. Each day a violation of this ordinance occurs is considered a separate offense.

(c) Criminal.

(1) A law enforcement officer may arrest or issue a notice to appear for any knowing and intentional violations of this ordinance committed in his or her presence or through procurement of an arrest warrant. Violations may be prosecuted by the State Attorney of the 16th Judicial Circuit, or an Attorney for the City of Key West.

(2) A person found in violation may be punished by up to 60 days in the County jail and/or a fine of up to \$500.00. Each day a violation of this ordinance occurs is considered a separate offense.

(d) Injunctive relief. This Ordinance may be enforced through injunctive relief through a complaint for injunctive relief in Circuit Court seeking to enjoin violations that occur within the City of Key West.

Section 5: Declaration of Emergency. This Ordinance is hereby declared to be an emergency measure and necessary for the immediate preservation of the general welfare, health, and safety of the general public of the City of Key West, Florida, said emergency arising from the fact that Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza and, in some cases, cause death, and the difficulty the City of Key West has had so far in enforcing its face covering and social distancing directives and ordinances

and that the City Commission is not scheduled to meet for a regular meeting until November 17, 2020, and the immediate need to mitigate the risk of a dramatic increase in infections that might overwhelm the available public health resources and require closure of amenities and businesses.

Section 6: **Severability.** 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 7: **Conflict.** 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 8: **Effective Date.** 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. However, the City will not commence enforcement of this ordinance until 12:00 a.m. on Wednesday, November 11, 2020.

Section 9: **Sunset Date.** Unless repealed or re-enacted pursuant to Ordinance 7.02, City of Key West, this emergency

ordinance shall automatically stand repealed as of 12:00 a.m. on Thursday, December 3, 2020, unless extended as provided by law.

Section 10: Codification. Due to the temporary nature of this ordinance, the City of Key West directs the Clerk to send the ordinance to the Municipal Code for publication on its website but with instructions to not codify the ordinance within the Code of the City of Key West.

PASSED AND ADOPTED as an emergency ordinance at an emergency meeting this _____ day of _____, 2020.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2020.

Filed with the Clerk _____, 2020.

Mayor Teri Johnston	_____
Vice Mayor Sam Kaufman	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK