

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 18, ENTITLED "BUSINESSES", DIVISION 3 ENTITLED "OPEN CONTAINERS" BY AMENDING SECTION 18-86, TO AMEND DEFINITIONS; AMENDING SECTION 18-87 TO CLARIFY PROHIBITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West finds that pedestrians who are under the influence of alcoholic beverages often congregate on the sidewalk or the street causing vehicular and pedestrian traffic congestion and a significant safety concerns; and

WHEREAS, the City Commission for the City of Key West finds that there exists a significant risk of injury for pedestrians who are under the influence of alcohol while traversing the narrow, congested streets and sidewalks of the City of Key West; 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;

WHEREAS, it is the intent of the City Commission for the City of Key West to prohibit the consumption of alcoholic beverages while in public areas and not the mere

possession of an alcoholic beverage without evidence of consumption; and

**WHEREAS**, the City Commission for the City of Key West finds that the current open container ordinance has proven to be ineffective in addressing the overwhelming issues that accompany drinking in public areas within the City; and

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

Section 1: That Section 18-86 of the Code of Ordinances is hereby amended as follows\*:

Sec. 18-86. - 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:

Alcoholic beverage means any beverage containing more than one half (0.5%) percent alcohol or more by weight. ~~as determined in accordance with F.S. § 561.01(4)(b).~~

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~.) Deleted language at first reading is ~~double struck through~~.

Beverage law means F.S. chs. 561-565.

Commercial establishment parking lot means any private or public area appurtenant to commercial establishments used by the public for parking for, and pedestrian access to, commercial establishments, including drives, parking areas, and sidewalks and walkways appurtenant thereto.

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.

Public or semipublic area open for vehicular or pedestrian travel means any private or public road, street, highway, right-of-way, lane, alley, parking lot, or parking area on which the public is expressly or implicitly invited to travel by motor vehicle or pedestrian means or which is otherwise open for such travel. It shall not include the following:

- (1) Areas such as golf courses;
- (2) Private driveways; or
- (3) Property serving a single dwelling unit.

Section 2: That Section 18-87 of the Code of Ordinances is hereby amended as follows\*:

Sec. 18-87. - Prohibition.

(a) It shall be unlawful for any person to ~~possess or~~ drink from an open container of an alcoholic beverage and be under the influence of said beverage while upon a public or semi-public area open for vehicular or pedestrian travel, a commercial establishment parking lot or property owned by or under lease to the city, except in those areas in which such consumption is permitted pursuant to the beverage law, other state statutes, state administrative rule, or city ordinance or resolution.

(b) All businesses that are licensed to sell or dispense alcoholic beverages shall post at each exit a sign with the following wording: "It is illegal to carry an open container of an alcoholic beverage on the sidewalks or streets of Key West. KW Ord. 18-87." The dimensions of each sign shall be at least two square feet.

(c) Prima Facie evidence of being under the influence 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.

(d) There shall be one verbal or written warning for any first time offender of this section provided that compliance is immediately achieved. Second or subsequent violations are subject to arrest pursuant to FL Statute 901.15. ~~There shall be no warning for glass containers.~~

(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 FL Statute 562.47(2).

Section 3: 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 4: 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 5: 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 \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Filed with the Clerk \_\_\_\_\_, 2011.

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CRAIG CATES, MAYOR

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CHERYL SMITH, CITY CLERK