

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

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 26, ENTITLED "ENVIRONMENT", DIVISION 3, ENTITLED "USE OF BEACHES ON CITY PROPERTY" BY AMENDING SECTION 26-62, TO AMEND DEFINITIONS; AMENDING DIVISION 4, ENTITLED USE OF PARKS LOCATED ON CITY PROPERTY, BY AMENDING 26-96, TO AMEND DEFINITIONS, BY AMENDING 26-97 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 visitors to its parks and beaches while consuming alcoholic beverages pose a significant risk to the health, safety, and welfare of the citizens of the City of Key West and that the proposed ordinance revisions would serve to promote the safety and welfare of the citizens and visitors of the City of Key West; and

WHEREAS, the City Commission for the City of Key West finds that the presence of alcoholic beverages on its beaches and in its parks significantly increases the amount of litter present in those areas.

WHEREAS, the City Commission for the City of Key West finds that there exists a level of vulnerability and significant risk of injury to visitors of the city's beaches and parks if alcoholic beverages are present; and

WHEREAS, the City Commission for the City of Key West finds that the current definitions and prohibitions regarding alcohol in city parks and on city beaches have proven to be ineffective in addressing the issues that accompany drinking in public parks and beaches within the City; and

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

Section 1: That Section 26-62 of the Code of Ordinances is hereby amended as follows\*:

Sec. 26-62. - Possession of open alcoholic beverage containers.

(a)The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, 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.

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

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.

(b) No person shall drink from ~~or possess~~ any open container containing any alcoholic beverage while upon any public beach. An open container shall not be considered to be in the possession of a person upon any public beach if it is in a location not accessible for consumption.

(c) The city commission may grant variances from this section on city property by resolution adopted by the city commission; provided, however, that any such variance shall be issued only to a nonprofit organization and shall require the presence of a security guard during such sale/consumption.

(d) Prima Facie evidence of consumption 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.

Section 2: That Section 26-96 of the Code of Ordinances is hereby amended as follows\*:

Sec. 26-96. - 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 (.05%) percent alcohol or more by weight.

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 park means Indigenous Park, Cozmel Park, Bill Butler Park, Little Hamaca Park, Nelson English Park, Bayview Park, Mallory Square, Mallory Dock, Wickers Field, Clayton Sterling Fields, that portion of Peary Court leased by the city, ~~and~~ the community pool, the area commonly known as the Truman Waterfront owned by the City of Key West, and all designated city pocket parks.

Section 3: That Section 26-97 of the Code of Ordinances is hereby amended as follows\*:

Sec. 26-97. - Possession of open alcoholic beverage containers.

(a) No person shall drink from ~~or possess~~ any open container containing any alcoholic beverage while in any public park. An open container shall not be considered to be in the possession of a person in any public park if it is in a location not accessible for consumption.

(b) The city commission may grant variances from the this section by resolution adopted by the city commission; provided, however, that any such variance shall require the presence of a security guard during such sale/consumption.

(c) Prima Facie evidence of consumption 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.

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 there from 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 \_\_\_\_\_ 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