

County of Monroe

The Florida Keys



BOARD OF COUNTY COMMISSIONERS

Mayor Heather Carruthers, District 3
Mayor Pro Tem Michelle Coldiron, District 2
Craig Cates, District 1
David Rice, District 4
Sylvia J. Murphy, District 5

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Steven T. Williams, Assistant County Attorney**
Peter H. Morris, Assistant County Attorney**
Patricia Eables, Assistant County Attorney
Paunece Scull, Assistant County Attorney
Joseph X. DiNovo, Assistant County Attorney


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** Board Certified in City, County & Local Govt. Law

MEMORANDUM

TO: Pamela Hancock, Deputy Clerk

FROM: Kathy M. Peters, CP, County Attorney's Office 

RE: County Attorney Public Hearing Add On Day of Meeting P-12: BOCC Meeting 7/15/20

DATE: July 16, 2020

Enclosed please find the originally stamped and prepped emergency *Ordinance No. 023-2020*, as amended and approved by the Board on July 15, 2020 (P-12), **for execution by the Mayor/Clerk's attest, transmittal to the Department of Statement and Municode (for publication on the website with instructions not to codify the ordinance within Monroe County Code)**, distribution and posting on the Clerk's website.

Please note: As an emergency ordinance, pursuant to F.S. 125.66(3), the notice requirements are waived for adoption of this ordinance and the County Attorney is requesting expedited processing of this ordinance to allow for the most expeditious enforcement.

P. PUBLIC HEARINGS (ADD ON DAY OF MEETING)

12. **PUBLIC HEARING: COUNTY ATTORNEY:** A public hearing to consider adoption of an emergency, temporary ordinance mandating that all bars and restaurants close from 11 p.m. to 5 a.m. effective July 26, 2020 through August 9, 2020.

As always, thank you for all you do.

KMP:

Enclosure: Originally stamped and prepped *Ordinance No. 023-2020*, as amended and approved by the Board on July 15, 2020 (P-12)

ORDINANCE NO. 023 - 2020

AN UNCODIFIED EMERGENCY ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA TO MANDATE THAT ALL BARS, RESTAURANTS, AND FOOD SERVICE ESTABLISHMENTS CLOSE FROM 11 P.M. UNTIL 5 A.M. EACH DAY STARTING AT 11 P.M. ON JULY 24, 2020 AND ENDING AT 5 A.M. ON AUGUST 19, 2020; PROHIBITING ALCOHOL SALES FROM 11 P.M. UNTIL 7 A.M. EACH DAY STARTING AT 11 P.M. ON JULY 24, 2020 AND ENDING AT 7 A.M. ON AUGUST 19, 2020; ESTABLISHING A MINIMUM COUNTY-WIDE REQUIREMENT, EXCEPT TO THE EXTENT OF A MUNICIPAL ORDINANCE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF STATE AND PROVIDING FOR AN EFFECTIVE AND SUNSET DATE.

WHEREAS, the Board of County Commissioners of Monroe County, Florida (hereinafter “Board”) finds that COVID-19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, the Centers for Disease Control (CDC) advises that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); and

WHEREAS, the 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. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing - even if those people are not exhibiting symptoms; and

WHEREAS, despite several protective measures taken by the State and the County, the infection rates have grown worse; and

WHEREAS, state and local officials from Miami-Dade, Broward and Palm Beach Counties have recognized that those three counties have seen the gravest infection rates of the State; and

WHEREAS, Miami-Dade County is immediately adjacent to Monroe County and Broward County is located between Miami-Dade and Palm Beach counties; and

WHEREAS, according to representatives of the Monroe County Tourist Development Council, much of the summer tourism market in the Keys stems from residents of Miami-Dade, Broward, and Palm Beach counties; and

WHEREAS, current research has shown that a leading means of spreading the virus is by passage of aerosol particles exhaled by infected persons; and

WHEREAS, the CDC, State and Local Health Officials, as well as Monroe County have adopted recommendations and requirements to limit opportunities for spread through such measures as limiting crowd size, facial covering rules and recommendations, closing bars and limiting restaurant service; and limiting other activities where people come into contact with other people with whom they have not quarantined; and

WHEREAS, the Florida Fish & Wildlife Commission (FWC) has established a 2-day sport season for recreational harvest of spiny lobster; and

WHEREAS, this 2-day mini season precedes the opening of commercial lobster season so as to reduce conflicts between recreational and commercial fishermen competing for lobsters if there was but one opening day of lobster season; and

WHEREAS, in 2020, the lobster mini-season falls on July 29 and 30 and the regular lobster season begins on August 6, 2020; and

WHEREAS, FWC has advised that, by far, Monroe County is the county most impacted by mini-season in terms of the number of people participating in the season; and

WHEREAS, experience has demonstrated that the annual mini-lobster season attracts a large number of visitors to Monroe County; and

WHEREAS, while the actual act of harvesting of lobster involves scuba diving, free diving, snorkeling, and bully netting, activities that do not directly facilitate the spread of the virus, many of the people doing the harvesting will engage in social activities in off-hours that risk the community spread of the virus, including the patronizing of local restaurants and bars; and

WHEREAS, experience has demonstrated that many recreational lobster fishermen also flock to the Keys at the opening of the regular lobster season in early August; and

WHEREAS, on June 26, 2020, the Florida Department of Business and Professional Regulation (DBPR) issued Emergency Order 2020-09, which closed bars for all but carry out service, as amended on July 1, 2020; and

WHEREAS, DBPR premised that order on the statement that bars serve as venues for spread of the virus because people tend not to engage in social distancing and tend to mix with people with whom they have not been quarantining; and

WHEREAS, the local effect of DBPR’s order is that people who used to gather at bars have shifted to restaurants as the preferred spot for late night congregating without engaging in social distancing; and

WHEREAS, the Board finds it is in the best interest of public health, safety and welfare of the residents and workers of, and visitors to, the Florida Keys to prohibit bars and restaurants from operating during the hours of 11 P.M. until 5 A.M. during the period beginning 11:00 P.M. on July 24, 2020, the Friday before mini-season and concluding at 11:00 P.M. on Wednesday August 19, 2020; and

WHEREAS, the Board finds that the inconvenience of an ordinance requiring the late night closures of bars and restaurants during this two-week period is minimal compared to the risk to the health, safety, and welfare of the community were no such rule imposed and is preferable to requesting the FWC cancel or reschedule mini-lobster season; and

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

WHEREAS, several other State and local jurisdictions across the country have mandated curfews for restaurants and bars in their response to COVID-19; and

WHEREAS, Section 1(f) of Article VIII of the Florida Constitution vests the Board with the authority to enact ordinances having countywide effect that are not inconsistent with state law, provided that such ordinance shall not be effective within a municipality that has adopted an ordinance in conflict with the County ordinance, to the extent of such conflict; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19; and

WHEREAS, adopting regulations via ordinance allows for enforcement through a variety of mechanisms including a quasi-criminal offense under F.S. 125.69(1); civil and administrative remedies under chapter 162, Florida Statutes; and enforcement actions for injunctive and other relief in circuit court; and

WHEREAS, the Florida Legislature has declared that “[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state” such as Monroe County and its five municipalities; F.S. 252.38; and

WHEREAS, F.S. 252.38(3)(a)(5) gives the County the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law in order to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community; and

WHEREAS, F.S. 125.66(3) permits the Board to waive the notice requirement and adopt an ordinance by 4/5th vote in emergency circumstances.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

SECTION 1. Findings. The above recitals are adopted by the Board as legislative findings. The Board further finds that an emergency exists that necessitates dispensing with the notice requirements in F.S. 125.66.

SECTION 2. Definitions. The following definitions shall apply in this ordinance.

- (1) 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.
- (2) A *bar* is defined as any vendor licensed by the Department of Business and Professional Regulations (DBPR) to sell alcoholic beverages for consumption on premises.
- (3) 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. Mandatory requirements.

- (1) 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 11:00 P.M. and 5:00 A.M. the following morning.
- (2) 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.
- (3) 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.
- (4) During the period when this ordinance is in effect, no vendor may sell alcoholic beverages during the hours of 11 P.M. and 7:00 A.M. the following morning.

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

- (1) Quasi-Criminal Offense.
 - a. Any state, county, or municipal law enforcement officer may arrest or issue a notice to appear for any knowing and intentional violations committed in his or her presence or through procurement of an arrest warrant. Violations shall be prosecuted by the State Attorney of the 16th Judicial Circuit.
 - b. 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. Each day a violation of this ordinance occurs is considered a separate offense.

- (2) Civil Citation.
 - a. A county or municipal code compliance or state, county, or municipal law enforcement officer may, upon observation of a violation by a person, issue a notice to appear or civil citation to appear in County Court.
 - b. 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.

- (3) Administrative Notice of Violation
 - a. A county or municipal code compliance officer may, upon discovery of a violation, issue a notice of violation and notice to appear before the Code Compliance board or special magistrate of that officer's jurisdiction.
 - b. 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.

- (4) Injunctive relief.
 - a. The State Attorney of the 16th Judicial Circuit and/or the County Attorney may file an action for injunctive relief in Circuit Court seeking to enjoin violations that occur throughout the County, except for violations that occur in a municipality that has adopted an ordinance in conflict with this ordinance.
 - b. The City or Village Attorney for a municipality may file an action for injunctive relief in Circuit Court seeking to enjoin violations that occur with that municipality.

- (5) Private Right of Action. Any natural person may seek injunctive relief in the Circuit Court for the 16th Judicial Circuit to enforce violations of this section against a violator. Attorney's fees and costs incurred in an action to enforce this ordinance may be awarded to the substantially prevailing party at the discretion of the court.

SECTION 5. Severability. If any section, subsection, sentence, clause, or provision of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 6. Applicability and Conflict. This ordinance is intended to have countywide application except within a municipality which has adopted an ordinance in conflict with this ordinance pursuant to Article VIII, Section 1 of the Florida Constitution. All County ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

SECTION 7. Effective Date. This Ordinance shall take immediate effect upon adoption and filing with the Department of State and shall become enforceable at 11:00 P.M. on Friday July 24, 2020.

SECTION 8. Sunset Date. This ordinance shall sunset at 11:00 P.M. on Wednesday, August 19, 2020.

SECTION 9. Codification. Due to the temporary nature of this ordinance, the Board directs the Clerk to send the ordinance to the Municipal Code Corporation for publication on its website but with instructions not to codify the ordinance within the Monroe County Code.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 15th day of July 2020.

Mayor Heather Carruthers	<u>Yes</u>
Mayor <i>Pro Tem</i> Michelle Coldiron	<u>Yes</u>
Commissioner Craig Cates	<u>Yes</u>
Commissioner David Rice	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>

(SEAL)
Attest: KEVIN MADOK, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
As Deputy Clerk

By: _____
Mayor Heather Carruthers

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
COUNTY ATTORNEY

Date 7/15/2020