

ORDINANCE NO. 64

AN ORDINANCE PROHIBITING THE USE OF LIVE MUSIC OR ELECTRONIC REPRODUCTIONS THEREOF AFTER CERTAIN HOURS, PROVIDING PENALTIES THEREFORE, PROVIDING AN EFFECTIVE DATE, AND REPEALING ALL ORDINANCES IN CONFLICT HERewith.

WHEREAS, the Town Council of the Town of Mexico Beach is of the opinion that the immediate enactment of this ordinance is required for the protection and preservation of the peace, safety, health and prosperity of the Town and its inhabitants, now, therefore,

BE IT ORDAINED BY THE PEOPLE OF THE TOWN OF MEXICO BEACH, FLORIDA,

SECTION 1. No jukebox, phonograph, record player, or other sound reproduction device may be operated by any commercial establishment between the hours of 12:01 A.M. and 8:00 A.M., where the sound produced thereby can be detected beyond the premises of said commercial establishment. No sound amplifying device may be used by any commercial establishment between the hours of 12:01 A.M. and 8:00 A.M., where to do so will result in the sound being heard or detected by persons not on the property of said commercial establishment.

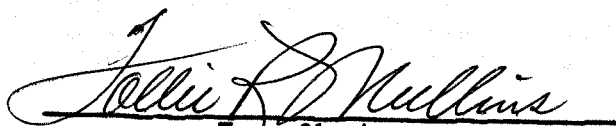
SECTION 2. Sound amplification device includes any amplifier or other electronic device used for the amplification of sound.

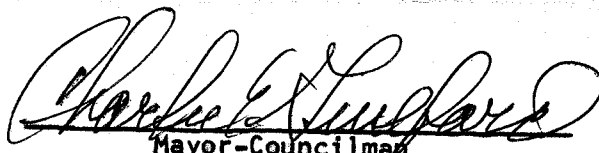
SECTION 3. Any person who is found guilty of violating this ordinance shall be subject to a fine of \$300.00 or confinement in the County Jail for thirty days, or both said fine and imprisonment. Offenses occurring on two or more different days shall constitute separate offenses.

SECTION 4. All ordinances in conflict herewith are hereby repealed to the extent of said conflict.

SECTION 5. This ordinance shall take effect as provided by law.

This Ordinance INTRODUCED at a regular meeting of the Town Council on the 13th day of April, 1976, and ADOPTED by the Town Council on the 8th day of June, 1976.


Town Clerk


Mayor-Councilman

Gulf Cabanas

MOTEL AND APARTMENTS

MEXICO BEACH

ROUTE 3, BOX 171

PORT ST. JOE, FLORIDA 32456

PHONE (904) 648-3121

AL AND HELEN ST. JOHN
OWNERS AND MANAGERS

August 18, 1977

City Council of Mexico Beach
Mexico Beach, Florida 32456

Gentlemen;

It has been more than 2 months since the Ordinance 64 was ruled unconstitutional by Judge Sirmons of Bay County Circuit Court.

The problem of excessive disturbances still exist in the area of 42nd Street and Highway 98.

We would appreciate knowing what, if anything, this council plans to do to eliminate the problem. We request this issue be put on the agenda for the next regular meeting of the Mexico Beach City Council.

We further request a new Ordinance or rewording of Ordinance 64 be lawfully accepted and drawn up by the City attorney for consideration. We need a 12:01 AM time for the music to stop to eliminate the disturbances caused in this municipality. Our reasons being the patrons of this/these establishments cause undue distress and disturbance of the peace of this town.

Respectfully,

Mr & Mrs. A. A. St. John

IN THE COUNTY COURT
BAY COUNTY, FLORIDA

CITY OF MEXICO BEACH,

Plaintiff,

-vs-

RALPH BUSH,

Defendant.

FILED
CLERK OF DISTRICT COURT
BAY COUNTY, FLORIDA
CASE NO. 77-943-MO
JUN 10 1977

O R D E R

THIS CAUSE having come before the Court upon the Defendant's Motion to Dismiss and the Court after hearing argument of counsel finding that:

1. Ordinance no. 64, Section 1, of the town of Mexico Beach is not unconstitutional as it is applied against this Defendant.

2. Ordinance no. 64 of the town of Mexico Beach, as currently worded, is unconstitutionally void for vagueness. A Penal Statute or Ordinance which forbids the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application, violates the due process clause of the 14th Amendment to the U.S. Constitution and Article 1, Section 9, of the Fla. Constitution, 1968. Case law has established that it is fundamental for such laws to be sufficiently definite in describing the conduct prohibited in order that the ordinary person may know how to comply with its provisions.

Steffens -v- State ex rel logo 343 So. 2d 90 (3 DCA, 1977); State -v- Smith 237 So. 2d 139 (Fla. 1970); McCall -v- State 156 Fla. 437, 23 So. 2d 492 (Fla. 1945); Connally -v- General Construction Co. 269 U.S. 385, 46 S.Ct. 126, 70 L. Ed. 322 (1926).

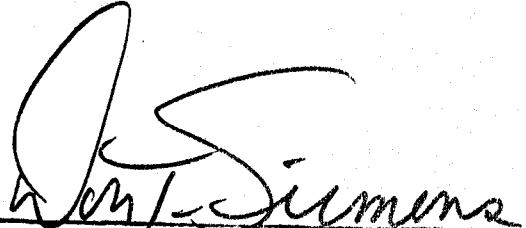
Ordinance no. 64, Section 1, states:

"No jukebox, phonograph, record player, or other sound reproduction device may be operated by any commercial establishment between the hours of 12:01 A.M. and 8:00 A.M., where the sound produced thereby can be detected beyond the premises of said commercial establishment. No sound amplifying device may be used by any commercial establishment between the hours of 12:01 A.M. and 8:00 A.M., where to do so will result in the sound being heard or detected by persons not on the property of said commercial establishment."

This Ordinance proscribes certain acts being done by a "commercial establishment". First, what is the definition of a "commercial establishment"? The Ordinance is silent on this point. Secondly, who is to be punished under the Ordinance? A commercial establishment is an inanimate object and as such, it, by itself, cannot "operate" or "use" any sound devices as would a person. However, under Section 3 of Ordinance no. 64, "any person" and not any commercial establishment, who is found guilty of violating the Ordinance is subject to a fine and/or imprisonment. A patent ambiguity therefore exists in defining who commits the violation and the party who is to be punished for the violation. The vagueness of this Ordinance is more clear in its failure to take into account any intent of the proprietor of a commercial establishment to violate its terms. McCall -v- State ex rel Daniels 23 So. 2d 492 (Fla. 1945). A proprietor totally ignorant of an act supposedly performed "by" his commercial establishment could find himself facing a fine or imprisonment. These questions suggest themselves, but the answers are not suggested by them. This Ordinance must be set up so that men of common intelligence are not required to guess at its meaning or to whom it applies and possibly differ as to its application. It is therefore

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss the Information filed is granted on the grounds that the Ordinance under which he is charged is unconstitutional on its face.

DONE AND ORDERED this 28th day of June, 1977, at Panama City, Bay County, Florida.



COUNTY JUDGE