

## Chapter 38

### OFFENSES AND MISCELLANEOUS PROVISIONS

*State Law References: Fines and forfeitures in county court payable to municipality, F.S. §34.191; punishment for misdemeanors, F.S. §§775.082, 775.083.*

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**ARTICLE I. IN GENERAL**

**Sec. 38-1. Misdemeanors under state law.**

(a) No person shall commit, within the city, any act which is or shall be recognized by the laws of the state as a misdemeanor.

(b) Any person found guilty of violating any act as provided in subsection (a) of this section shall be punished by the same penalty as provided by the laws of the state, but in no case shall such penalty exceed that provided in section 1-13.

*(Code 1976, §14-23)*

*State Law References: Penalty for violation of misdemeanors, F.S. §§775.082, 775.083; discharging firearms in public, F.S. §790.15. See also Florida Statutes general index under heading "Fines and Civil Penalties" for listing of state law misdemeanors.*

**Sec. 38-2. Assessment for law enforcement education.**

As authorized by F.S. § 943.25, the county courts shall assess an additional \$2.00 to each fine imposed by a county judge for violation of a municipal ordinance of the city or a state penal or criminal statute, to be used for criminal justice education and training, including basic training expenditures for city law enforcement officers, part-time law enforcement officers, and support personnel, provided that such education and training activities conform to the requirement of F.S. § 943.14. In addition, \$2.00 from every bond estreature or forfeited bail bond collected in the court shall be used as aforesaid. The provisions of this section shall not apply to parking violations.

*(Code 1976, §1-9)*

*State Law References: Authority to adopt, use of funds, F.S. §943.25(13).*

**Sec. 38-3. Peeping toms.**

Any person who enters on or about the property of another and spies or looks through the windows, transoms or doors is hereby defined as a peeping tom. No person shall be a peeping tom.

*(Code 1976, §§14-30, 14-31)*

**Sec. 38-4. Air guns, slingshots.**

No person shall discharge any air gun or slingshot within the city.

*(Code 1976, §14-41)*

*State Law References: Use of BB guns, etc., by children under 16, F.S. §790.22; slingshots, F.S. §790.09.*

**Sec. 38-5. Discharge of firearms requires permit; exceptions.**

(a) No person shall discharge any gun, pistol or other firearm without a permit from the chief of police, except that a duly authorized federal, state, county or municipal officer may discharge firearms in the legitimate pursuit of his duties.

(b) No target ranges shall be permitted except with the permission of the chief of police or his deputy, after personal inspection, and only at the places and under conditions duly designated by the chief of police as not being hazardous to any person.

*(Code 1976, §14-42)*

*State Law References: Discharging firearms in public, F.S. §790.15.*

**Sec. 38-6. Liability of firearm user.**

Nothing contained in sections 38-4 and 38-5 shall be construed to excuse any person using firearms under the conditions therein set forth from liability for any damage resulting to persons or property.  
(Code 1976, §14-43)

**Sec. 38-7. Sleeping, camping in public place; sleeping in vehicle.**

No person shall sleep or camp on any beach, dune, beach access (dune crossover), sidewalk, parking lot or other public area of the city and no person shall sleep in any vehicle upon any city street, public right-of-way, city property, beach access parking area, parking lot or any other public property between the hours of 11:00 p.m. and 5:00 a.m. the following day.  
(Code 1976, §14-49)

**Sec. 38-8. Seed harvesting.**

The harvesting or removal of seeds from trees, shrubs, bushes, vines and any other vegetation located in, on or under public beaches, dunes, waterways, streets and rights-of-way by any person other than the City or any person operating under the express written authority of the City Council or City Manager is prohibited. This prohibition does not apply to the harvesting or removal of such seeds from yards abutting street pavements that are located within public rights-of-way or easements by the owner(s) or lessee(s) of the property of which such yards are a part.  
(Ord. 986, §1, 3-5-08)

**Sec. 38-9. Attempt to commit offense.**

Whoever attempts to commit any offense prohibited by this Code, and in such attempt does any act toward the commission of such offense, but fails in the perpetration thereof, or is intercepted or prevented in the execution of the offense, shall be punished as provided in section 1-13.  
(Code 1976, §14-7; Ord. 986, §2, 3-5-08)

**Secs. 38-9 thru 38-35. Reserved.**

**ARTICLE II. FIREWORKS**

*State Law Reference: Fireworks, F.S. ch. 791*

**Sec. 38-36. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Fireworks* means any combustible or explosive composition, or any substance or combination of substances, or, except as hereinafter provided, any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion or detonation, and shall include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath for propulsion, firecrackers, torpedoes, skyrockets, Roman candles, or other fireworks of like construction and any fireworks containing any explosives or inflammable compounds or any tablets or other devices containing any explosive substances. The term "fireworks" shall not include sparklers, toy pistols, toy canes, toy guns or other devices in which paper caps containing 25/100ths grains or less of explosive compound are used, provided they are so constructed that the hand of the user cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than 20/100ths grains of explosive mixture.  
(Code 1976, §14-16)

*State Law References: Definition of fireworks, F.S. §791.01*

**Sec. 38-37. Sale and use prohibited.**

No person shall offer for sale, expose for sale, sell at wholesale or retail, or use or explode any fireworks.  
(Code 1976, §14-17)

*State Law Reference: Sale and use of fireworks, F.S. §791.02*

**Secs. 38-38 thru 38-60. Reserved.**

**ARTICLE III. NUDITY**

**Sec. 38-61. Definitions.**

The definitions as contained in this section shall be supplemental to those contained in section 10-36, which shall be applicable throughout this article unless a conflict with the definition provided in this section exists, in which case the meaning provided in this section shall prevail. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Breast* means a portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is reasonably compact and contiguous to the areola and contains at least the nipple and the areola and one-fourth of the outside surface area of such gland.

*Buttocks* means the area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being one-half inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the outside lines), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point at which each nate meets the outer side of each leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either the left inside perpendicular line and the left outside perpendicular line, or the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus that is perpendicular to the ground and to the horizontal lines described above, and that is one-third of the distance from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus that is perpendicular to the ground and to the horizontal lines described above, and that is one-third of the distance from the anus to the right outside line. (The above description can generally be described as covering one-third of the buttocks centered over the cleavage for the length of the cleavage.) However this will not prohibit the wearing of T-back, bikini, and thong bathing suits on the beach.

*Entity* means any proprietorship, partnership, corporation, association, business trust, joint venture, joint stock company or other for profit and/or not-for-profit organization.

*Establishment dealing in alcoholic beverages* means any business, commercial or other establishment (whether for profit or not for profit and whether open to the public at large or where entrance is limited by cover charge or membership requirement) including those licensed by the state for sale and/or service of alcoholic beverages, and any bottle club, hotel, motel, restaurant, nightclub, country club, cabaret, meeting facility utilized by any religious, social, fraternal or similar organization, business, commercial or

other establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the same will be, or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises or curtilage of the business, commercial or other establishment, or business, commercial or other establishment where the consumption of alcoholic beverages is permitted. Premises, or portions thereof such as hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be an establishment dealing in alcoholic beverages.

*Nude* means any person insufficiently clothed in any manner so that any of the following body parts are not entirely covered with a fully opaque covering:

- (1) The male or female genitals.
- (2) The male or female pubic area.
- (3) The female breast.
- (4) The buttocks.

Body paint, body dyes, tattoos, liquid latex whether wet or dried, and similar substances shall not be considered opaque covering. Each female person may determine which one-fourth of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered.

*Person* means any live human being aged ten years of age or older.

*Places provided or set apart for nudity* means enclosed single sex public restrooms, enclosed single sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term shall not be deemed to include places where a person's conduct of being nude is used for his profit or where being nude is used for the promotion of business or is otherwise commercially exploited.

*Public place* means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, business and commercial establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or portions thereof such as hotel rooms, used solely as a private residence, whether permanent or temporary in nature shall not be deemed to be a public place.

(Code 1976, §14-57)

#### **Sec. 38-62. Legislative findings.**

In addition and supplemental to the findings and determinations contained in the "Whereas" provisions of this ordinance which are incorporated by reference into this section, it is hereby found by the council, acting in its legislative capacity for the purpose of regulating the conduct of appearing nude in public places and for the purpose of regulating nudity and other conduct in establishments dealing in alcoholic beverages, that, considering what has happened in other communities, the acts prohibited in section 38-64 encourage or create the potential for the conduct of prostitution, attempted rape, rape and assault in and around establishments dealing in alcoholic beverages; that actual and simulated nudity and sexual conduct, coupled with the consumption of alcoholic beverages in public places, begets and has the potential for begetting undesirable and unlawful behavior; that

sexual, lewd, lascivious and salacious conduct among patrons and employees within establishments dealing in alcoholic beverages results in violation of law and creates dangers to the health, safety, morals and welfare of the public and those who engage in such conduct; and, it is the intent of section 38-64 to specifically prohibit nudity, gross sexuality and the simulation thereof in establishments dealing in alcoholic beverages.  
(Code 1976, §14-58)

**Sec. 38-63. Intent.**

It is the intent of this article to protect and preserve the health, safety, welfare and morals of the citizens of the city by prohibiting a person from intentionally or recklessly appearing or being nude, or causing another person to appear to be nude, in a public place and in other places which may reasonably be expected to be observed by the public within the city, except:

- (1) When such person appears nude in a place provided or set apart for nudity provided such person is nude for the sole purpose of performing the legal function that is customarily intended to be performed within such place provided or set apart for nudity and provided that such person is not nude for the purpose of obtaining money, other financial gain or consideration of any kind for such person or for another person or entity; or
- (2) When the conduct of being nude can not legally be prohibited by this article because it constitutes a part of a bona fide live communication, demonstration or performance by such person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a guise or pretense utilized to exploit nudity for profit or commercial gain (see, for instance, *Board of County Commissioners v. Dexterhouse*, 348 So. 2d 916 (Fla. 2nd DCA 1977) and as such is protected by the United States Constitution or Florida constitution, or because it is otherwise protected by the United States Constitution or Florida constitution.

It is the council's further intention to accomplish those intents and purposes expressed by the council in the provisions of this article, each of which are incorporated by reference into this section.  
(Code 1976, §14-56)

**Sec. 38-64. Nudity, sexual conduct prohibited in establishments dealing in alcoholic beverages.**

The following prohibitions and criteria shall apply within existing and/or newly created establishments dealing in alcoholic beverages and the curtilages thereof:

- (1) No person shall knowingly, intentionally or recklessly appear, or cause another person to appear, nude or expose to public view his genitals, pubic area, vulva or buttocks, or any simulation thereof.
- (2) No female person shall knowingly, intentionally or recklessly expose, nor shall a person cause a female person to expose her breasts or any simulation thereof to public view other than is permitted by F.S. §383.015 (i.e., breastfeeding).
- (3) No person or entity maintaining, owning or operating an establishment dealing in alcoholic beverages shall encourage, allow or permit any person to appear nude or to expose to public view his genitals, pubic area, vulva, anus or any portion of the buttocks or simulation thereof. This section shall be violated if any portion of the buttocks is visible from any vantage point.
- (4) No person or entity maintaining, owning or operating an establishment dealing in alcoholic beverages shall encourage, allow or permit any female person to expose her breasts or any simulation thereof to public view other than permitted by F.S. §383.015.

- (5) No person shall engage in and no person or entity maintaining, owning or operating an establishment dealing in alcoholic beverages shall encourage, allow or permit any specific sexual act, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals, or the simulation thereof.
- (6) The prohibitions of this section shall not apply when a person appears nude in a place provided or set apart for nudity provided such person is nude for the sole purpose of performing the legal function that is customarily intended to be performed within such place provided or set apart for nudity and provided such person is not nude for the purpose of obtaining money, other financial gain or any form of consideration for such person or for another person or entity.
- (7) Each female person may determine which one-fourth of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.
- (8) This section shall not be deemed to address photographs, movies, video presentations or other non-live performances.

*(Code 1976, §14-59)*

**Sec. 38-65. Nudity in places serving food and drink.**

It shall be unlawful for any person to serve food or drink, to mingle, come in contact with or be likely to come in contact with, or in close proximity to customers within areas where food or drink are served, as follows:

- (1) No person shall knowingly, intentionally or recklessly appear, or cause another person to appear, nude or expose to public view his genitals, pubic area, vulva or buttocks, or any simulation thereof.
- (2) No female person shall knowingly, intentionally or recklessly expose, nor shall a person cause a female person to expose her breasts or any simulation thereof to public view other than is permitted by F.S. §383.015 (i.e., breastfeeding).
- (3) No person or entity maintaining, owning or operating an establishment shall encourage, allow or permit any person to appear nude or to expose to public view his genitals, pubic area, vulva, anus or any portion of the buttocks or simulation thereof. This section shall be violated if any portion of the buttocks is visible from any vantage point.
- (4) No person or entity maintaining, owning or operating an establishment shall encourage, allow or permit any female person to expose her breasts or any simulation thereof to public view other than permitted by F.S. §383.015.

*(Code 1976, §14-60)*

**Sec. 38-66. Nudity prohibited in public.**

It shall be unlawful for any person to knowingly, intentionally or recklessly appear, or cause another person to appear, nude in a public place or in any other place which is readily visible to the public, except as provided in section 38-67 and F.S. §383.015. It shall also be lawful for any person or entity maintaining, owning or operating any public place establishment to encourage, suffer or allow any person to appear nude in such public place, except as provided in this section.

*(Code 1976, §14-61)*

**State Law References:** *Breastfeeding infants, F.S. §383.15; exposure of sexual organs, F.S. §800.03.*

**Sec. 38-67. Exemptions.**

The prohibitions of section 38-65 shall not apply:

- (1) When a person appears nude in a place provided or set apart for nudity provided such person is nude for the sole purpose of performing the legal function that is customarily intended to be performed within such place provided or set apart for nudity, and provided such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.
- (2) When the conduct of being nude can not legally be prohibited by this article because it constitutes a part of a bona fide live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication or a genuine message or public expression and the performance, communication or demonstration is not a mere guise or pretense utilized to exploit the conduct of being nude for profit or commercial gain (see for instance, *Board of County Commissioners v. Dexterhouse*, 348 So. 2d 916 (Fla. 2d DCA 1977) and as such is protected by the United States Constitution or Florida constitution, or because it is otherwise protected by the United States Constitution or Florida constitution.

*(Code 1976, §14-62)*

**Sec. 38-68. Penalty.**

Any person who violates any section of this article shall be prosecuted and punished in accordance with the general law and the penalties provided by section 1-13. Such persons shall additionally be subject to suspension of his license or permit as provided in this article.

*(Ord. 602, §3, 4-20-94)*

**Sec. 38-69. Reserved.**

**ARTICLE IV. CURFEW**

*State Law References: Similar provisions, F.S. §§877.20 thru 877.24.*

**Sec. 38-70. Juvenile curfew ordinance.**

(a) The city hereby adopts by reference the provisions of F.S. §§877.20--877.24, to be effective within the city.

(b) If F.S. §§877.20--877.24 are repealed, such repeal shall not affect said laws of the city, and such statutory provisions shall continue to be in effect within the city as if such provisions had not been repealed.

*(Ord. 647, §1, 1-17-96)*

END CHAPTER 38