

TAB 4

POINT PAPER
REGULATION OF PERSONS UNDER 21 IN BARS AND NIGHTCLUBS

PROBLEM:

In 2006 the Board of County Commissioners of Manatee County, Florida enacted County Ordinance 06-42, which in part provides that persons under the age of 21 years of age shall not be admitted or enter stand alone bars or nightclubs while such establishments are selling and/or serving alcoholic beverages for consumption on the premises. Section 2-3-4 of this Ordinance provides for certain exceptions as articulated in the Ordinance, and Section 2-3-9 provides that "All municipal police and code enforcement officers are also designated as Code Enforcement Officers for the purpose of enforcing the provisions of this Ordinance providing their governing bodies consent to such designation by resolution or otherwise." The State of Florida as well as The City of Palmetto have statutes and ordinances in place which govern the hours of sale of alcoholic beverages and governing the locations where alcoholic beverages may be consumed. However, the City of Palmetto does not regulate the age of persons entering or remaining in establishments which sell or serve alcoholic beverages.

BACKGROUND:

The City of Palmetto has business establishments within the corporate city limits who primary business is the sale of alcoholic beverages for consumption on the premises. The City of Palmetto does not currently regulate the age of persons who may enter a stand alone bar or nightclub while alcoholic beverages are being sold and/or served. Certain stand alone bars and nightclubs have been the scene of persons under the age of 21 years entering and consuming alcoholic beverages on those premises. It is recommended that Commission pass a resolution consenting to Palmetto Police Officers acting as Code Enforcement Officers for the purposes of Manatee County Ordinance 06-42.

ALTERNATIVES:

1. Pass a resolution empowering Palmetto Police Officers and Code Enforcements Officers to act as code enforcement officers for the purposes of enforcing Manatee County Ordinance 06-42.
2. Do not pass a resolution as defined in alternative 1.

RECOMMENDATIONS:

Pass a resolution empowering Palmetto Police Officers and Code Enforcement Officers to act as code enforcement officers for the purposes of enforcing Manatee County Ordinance 06-42.

BUDGET IMPACT: None

CITY OF PALMETTO, FLORIDA
RESOLUTION NO. 08-24

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA; PROVIDING FOR FINDINGS OF FACT; AUTHORIZING CITY POLICE AND CODE ENFORCEMENT OFFICERS TO ENFORCE MANATEE COUNTY ORDINANCE NO. 06-42, REGULATING THE PRESENCE OF PERSONS UNDER THE AGE OF 21 IN BARS AND NIGHT CLUBS; SUPERSEDING RESOLUTIONS IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, Manatee County has adopted Ordinance No. 06-42 which, among other things, regulates the presence of persons under the age of 21 in bars and night clubs; and

WHEREAS, Manatee County Ordinance No. 06-42 is effective throughout Manatee County, including the City of Palmetto, except where a municipal ordinance is in conflict; and

WHEREAS, Manatee County Ordinance No. 06-42 provides municipal police and code enforcement officers with authority to enforce the provisions thereof upon consent by the appropriate municipal governing body; and

WHEREAS, the City Commission has considered the recommendations of City staff concerning this matter and finds that adoption of this resolution is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Palmetto, Florida, as follows:

Section 1. Findings of Fact. The above-referenced "WHEREAS" clauses are adopted herein as findings of fact.

Section 2. Consent and Authorization. The City Commission of the City of Palmetto hereby authorizes the Palmetto Police Department and duly designated City Code Enforcement Officers to enforce Manatee County Ordinance No. 06-42, as amended from time to time.

Section 3. Resolutions In Conflict. This Resolution hereby supersedes all resolutions, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. Severability. It is the intent of this Resolution to comply with the requirements of all applicable law and constitutional requirements. If any provision or portion of this Resolution is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then such provision or

portion shall be deemed null and void but all remaining provision and portions of this Resolution shall remain in full force and effect.

Section 5. Effective Date. This Resolution shall take effect as provided by law.

PASSED AND DULY ADOPTED, in regular session, by the City Commission of the City of Palmetto, with a quorum present and voting, this 4th day of August, 2008.

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY COMMISSION
OF THE CITY OF PALMETTO

By: _____
LAWRENCE E. BUSTLE, JR., MAYOR

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk/Deputy Clerk

RECORD
R. B. SHORE

2006 JUN -7 AM 11: 22

CLERK OF COUNTY
MANATEE CO. FLORIDA

ORDINANCE 06-42

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, REPEALING SECTIONS 2-3-1 THROUGH 2-3-3 OF THE MANATEE COUNTY CODE; CREATING A NEW CHAPTER 2-3 OF THE MANATEE COUNTY CODE ENTITLED ALCOHOLIC BEVERAGE RELATED REGULATIONS; ADOPTING HOURS OF SALE OF ALCOHOLIC BEVERAGES; PROHIBITING THE POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN CERTAIN CIRCUMSTANCES; PROHIBITING PERSONS UNDER 21 YEARS OF AGE FROM ENTERING OR REMAINING IN BARS OR NIGHTCLUBS; PROHIBITING PRESENTATION OF FALSE PROOF OF AGE TO GAIN ENTRY THERETO; PROHIBITING BARS OR NIGHTCLUBS OR THEIR AGENTS FROM ADMITTING TO, OR PERMITTING PERSONS UNDER 21 YEARS OF AGE TO REMAIN IN THE BAR OR NIGHTCLUB; PROVIDING DEFINITIONS AND EXCEPTIONS; REQUIRING DEVELOPMENT OF WRITTEN POLICIES BY BARS OR NIGHTCLUBS AND PROVIDING FOR ADOPTION BY SHERIFF OF MODEL POLICIES; PROVIDING FOR TERRITORIAL EFFECT, ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

CLERK OF COUNTY
MANATEE CO. FLORIDA

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WHEREAS there are various business establishments within Manatee County, commonly known as bars or nightclubs, which sell and serve alcoholic beverages for consumption on premises and which, unlike other establishments which sell or serve alcoholic beverages for consumption on premises such as restaurants and hotels, do not also sell and serve substantial food items for consumption at the same time; and

WHEREAS Florida law prohibits the selling, serving, or allowing the consumption of alcoholic beverages to persons under 21 years of age; and

WHEREAS there have been numerous recent instances of severe violence on the premises of various bars or nightclubs within Manatee County and neighboring jurisdictions, including violence resulting in death; and

WHEREAS lesser forms of regulation, including current Florida statutes and current standards for security and lighting required of certain bars or nightclubs by virtue of local regulation have not had the effect of preventing persons under 21 years of age from gaining access to the premises of bars and nightclubs and obtaining and consuming alcoholic beverages in violation of Florida law; and

WHEREAS the Manatee County Board of County Commissioners finds that it would be in the best interests of the public health, safety and welfare of the citizens of and visitors to Manatee County to prohibit, with certain logical exceptions, persons under 21 years of age from being present on the premises of a bar or nightclub, and to prohibit bars and nightclubs from permitting persons under 21 years of age from being present on their premises; and

WHEREAS Manatee County had previously adopted several ordinances addressing hours of operation of establishments permitting consumption of alcohol and possession of open containers of alcohol, which came to be codified as Sections 2-3-1 through 2-3-3 of the Manatee County Code; and

WHEREAS those ordinances, as codified, require revision to correct possibly inconsistent or duplicative definitions, misspelling and duplicate code section numbers.

NOW THEREFORE BE IT ORDAINED by the Manatee County Board of County Commissioners that:

Section 1. The entirety of Chapter 2-3 of the Manatee County Code, entitled Alcoholic Beverages, and consisting of sections 2-3-1 through 2-3-3 of the Manatee County Code is hereby repealed in its entirety.

Section 2. A new Chapter 2-3 of the Manatee County Code is hereby created, and shall be entitled "**Alcoholic Beverage Related Regulations.**"

Section 3. Section 2-3-1 of the Manatee County Code is hereby created to read:

Sec. 2-3-1. Definitions.

(a) *Definitions.* The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

(1) "*Alcoholic beverage*" means any spirit, wine, beer, ale or other beverage containing one-half of one (0.5) per cent or more of alcohol by volume. This definition does not include any medicine, including cough syrup, designed and sold for medical purposes.

(2) "*Alcoholic beverage establishment*" or "*Establishment dealing in alcoholic beverages*" means any person, group, or legal entity licensed by the State Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages and who sells or otherwise trades, transfers, gives or dispenses alcoholic beverages to customers, patrons, members or other persons, including any bottle club, hotel, motel, restaurant, night-club, or similar establishment. This definition does not include private residences and social, fraternal or civic associations or organizations, which only occasionally provide facilities for on-premises consumption of alcoholic beverages for members and their guests and which are not licensed to sell alcoholic beverages.

(3) "*Operator*" means any person physically present and managing or in charge of operations of an alcoholic beverage establishment.

(4) "*Open container*" means any container of alcoholic beverage immediately capable of being consumed from, or the seal of which has been broken.

(5) "*Premises*" means the physical building or other structure, including any porch, patio, balcony, rooftop, or tent, and includes any privately-owned parking areas adjacent to the building or structure.

(6) "*Stand alone bar or nightclub*" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway, or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand alone bar or nightclub in which the service of food is merely incidental in accordance with this definition if the premises derives no more than 10% of its gross revenue from the sale of food consumed on the licensed premises. This definition shall be construed consistent with any judicial construction given to Florida Statute 386.203(11). This definition does not include sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held; nor hotels, motels, and bona fide restaurants whose primary business is the service of full course meals, where such businesses are licensed by the State's Division of Hotels and Restaurants. This definition does not include any airport vendor holding a special airport license, as defined by Florida Statute § 561.01(13).

(b) Words or phrases not herein defined but which are defined within Florida Statutes Chapter 561 through 565, the Florida Beverage Law, shall be given their statutory meaning. Words or phrases not defined herein nor in the Florida Beverage Law shall be given their ordinary meaning.

Section 4. Section 2-3-2 of the Manatee County Code is hereby created to read:

Sec. 2-3-2. Hours of sale.

No establishment dealing in alcoholic beverages in unincorporated Manatee County shall remain open for business, admit the public to remain within, or permit the consumption of alcoholic beverages in or upon such premises between the hours of 2:30 a.m. and 7:00 a.m. of any day; provided, however, in the case of restaurants, hotels and motels, such establishments may be kept open for business during such hours but no alcoholic beverages may be sold or consumed during such hours.

Section 5. Section 2-3-3 of the Manatee County Code is hereby created to read:

Sec. 2-3-3. Possession and consumption of alcoholic beverages, open containers.

(a) It is unlawful for any person to possess an open container of alcoholic beverage or to consume an alcoholic beverage in the following places:

(1) In or upon any public street or sidewalk or any real property owned or maintained by Manatee County, where such public street or sidewalk or real property is within three hundred (300) feet of any alcoholic beverage establishment;

(2) In or upon any parking lot, vacant lot or area or parcel of real property or in any vacant or abandoned residential, commercial, or other structure where such lot, area, parcel, or structure is adjacent to or within three hundred (300) feet of an alcoholic beverage establishment;

(3) In or on any premises of an alcoholic beverage establishment unless such establishment's state license authorizes on-premises consumption of alcoholic beverages.

(b) It is unlawful for any operator of an alcoholic beverage establishment that is not licensed for on-premises consumption to allow or permit any person to possess an open container of alcoholic beverage or to consume an alcoholic beverage on the premises of such establishment.

(c) The prohibitions in subsections (a)(1) through (3), above, do not apply:

(1) To any private residence;

(2) To a duly licensed alcoholic beverage establishment whose license allows consumption of alcoholic beverages on the premises and which is located within three hundred (300) feet of another alcoholic beverage establishment;

(3) To the possession of any open container collected by any person engaged in picking up empty containers for the sole purpose of collecting the deposit or value of the bottle or can itself or by any person picking up such containers for the purpose of recycling or taking part in a litter control campaign, provided that no alcoholic beverage is consumed by such person from any open container;

(4) To the possession of any open container of alcoholic beverage by any duly ordained or authorized minister, pastor, priest, rabbi and any other similarly designated person or persons, but only for purposes specifically related to the fulfillment of such person's religious duties, or any person to whom such minister, pastor, priest, rabbi or other designated person is administering sacraments or religious rites;

(5) To the possession of any open container of alcoholic beverage by any code enforcement officer, law enforcement officer or employee of a law enforcement agency, but only while in the authorized performance and scope of such person's lawful and official duties;

(6) To the possession of any open container or consumption of alcoholic beverage by any person at an activity or event authorized or permitted by the board of county commissioners or the Manatee County Civic Center Authority, provided that the authorization or permit specifically allows the possession and consumption of alcoholic beverages at the activity or event on property owned or controlled by the county or the civic center authority.

(d) It is unlawful for any person to urinate or defecate in a public place except in restroom facilities set aside for such purposes.

Section 6. Section 2-3-4 of the Manatee County Code is hereby created to

read:

Sec. 2-3-4. Persons under 21 years of age in stand alone bars or nightclubs.

(a) It shall be unlawful for any person under the age of 21 to enter or remain on the premises of any stand alone bar or nightclub while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(b) It shall be unlawful for any person to present any false, altered or otherwise fraudulent proof of age to attempt to gain entry to, any stand alone bar or nightclub while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(c) It shall be unlawful for any stand alone bar or nightclub, or any employee or agent thereof, to knowingly admit, or permit to remain on the premises of such establishment any person under the age of 21 while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(d) Each stand alone bar or nightclub shall develop a written policy setting forth its system for verifying the age of persons it admits onto its premises and shall provide a copy of such policy to the Manatee County Sheriff and to the Chief of Police of the municipality wherein the establishment exists. The Sheriff is authorized to develop, publish and periodically revise a model age verification system for such establishments. Should the Sheriff publish a model system, any stand alone bar or nightclub which adopts and implements that system may subsequently be found in violation of this section but shall not be fined for an unintentional violation unless it has already been found in violation within the six (6) months preceding the current violation. Each establishment shall only be able to benefit from this fine forbearance once.

(e) Nothing herein shall be deemed to in any way prohibit any person under the age of 21 from:

(1) Being present in a stand alone bar or nightclub as an employee of that establishment to perform work duties;

(2) Being present in a stand alone bar or nightclub pursuant to an agreement with that establishment to provide some service, including providing security, maintenance, or entertainment to the establishment or its patrons;

(3) Being present in a stand alone bar or nightclub for the purposes of making a delivery of goods to that establishment;

(4) Being present in a stand alone bar or nightclub while performing a public or legal duty, such as law enforcement, fire suppression, building inspection, or health inspection;

(5) Being present in a stand alone bar or nightclub when such establishment is not then selling and/or serving alcoholic beverages but is otherwise open to the public, such as when such establishment is holding a "teen night" or similar program. Such establishment shall ensure that all persons under the age of 21 have left the premises after any such program prior to resumption of service of alcoholic beverages.

Section 7. Sections 2-3-5 through 2-3-8 of the Manatee County Code shall be shown by the codifier as reserved for possible future enactments.

Section 8. Section 2-3-9 of the Manatee County Code is hereby created to read:

Sec. 2-3-9. Enforcement.

(a) The Sheriff and his or her deputies are hereby designated as Code Enforcement Officers for purposes of enforcing the provisions of this Chapter 2-3. All municipal police and code enforcement officers are also so designated, providing their governing bodies consent to such designation by resolution or otherwise. All law enforcement officers of the State of Florida, including but not limited to the FDLE, Highway Patrol, and Bureau of Alcohol, Tobacco & Firearms are also so designated providing their respective agencies consent to such designation.

(b) Any act or omission prohibited by the provisions of Florida Statute § 322.212 (false identification) or Florida Statute § 562.11 (service to person under 21, false identification to obtain service), as may from time to time be amended or renumbered, may be prosecuted under the enforcement provisions of those statutes.

(c) Violations of this chapter 2-3 may be processed under the procedures set forth in §162.21, Florida Statutes, except that, due to the serious inherent threat to the public health, safety and welfare created by any delay in enforcement, any officer designated a Code Enforcement Officer under this section may immediately issue a notice to appear or citation to any person or entity violating this chapter without a waiting period.

(d) The fine structure for violation of section 2-3-4 shall be as follows:

(1) A first offence by persons under the age of 21: \$100.00, and second and subsequent offences: \$500.00;

(2) An offence by an employee or agent of a stand alone bar or nightclub: \$500.00;

(3) An offence by a stand alone bar or nightclub shall result in a \$500.00 fine and, in addition, the municipal occupational license of such establishment, if one is possessed, may be suspended or revoked as provided by the relevant municipal ordinance;

(4) In addition to the foregoing and unless otherwise prohibited by law, restitution may be awarded to the State agency, County, Sheriff, and/or

municipality for the actual costs associated with enforcement and investigation of a proven violation.

(e) The Code Enforcement Officer shall confiscate any fake identification offered by any person in an attempt to gain entry into a bar or nightclub, and may direct any person under the age of 21 found on the premises of such establishment to leave.

(f) Pursuant to § 162.30, Florida Statutes, and as an alternative to a code enforcement action, violators of any provision of this chapter 2-3 shall be subject to a civil action wherein all manner of civil relief, including injunctive relief, may be sought.

(g) Notwithstanding any of the foregoing, as an alternative to civil enforcement, and pursuant to §162.21(8) and § 162.22, Florida Statutes, violators of any provision of this chapter 2-3 shall be subject to the issuance of a summons and notice to appear and/or arrest, as provided in Chapter 901, Florida Statutes, and upon conviction may be sentenced to pay the fine specified in this section, or if none is specified, a fine not to exceed \$500.00, a definite term of imprisonment not to exceed 60 days in the County jail, and the restitution of applicable costs and defender fees as authorized by § 162.30, Florida Statutes.

Section 9. This ordinance shall be effective throughout Manatee County, except as otherwise stated herein, or if a section or provision hereof conflicts with any pre-existing or subsequently adopted provision of a municipal ordinance or any general or special act of the Legislature, then that section or provision will have no effect within that municipality. Nothing herein shall be read or interpreted so as to prevent any municipality from making such enforcement decisions within its jurisdictional borders as it so desires.

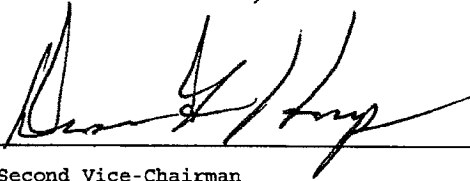
Section 10. If any section, subsection, sentence, clause, provision or word of this ordinance is held unconstitutional or invalid, same shall be severable and the remainder of this ordinance shall not be affected thereby. The Manatee County Board of County Commissioners expressly indicates that it desires any remainder of the ordinance to withstand any severed provision, as it would have adopted the ordinance and its regulatory scheme even absent the unconstitutional or invalid part.

Section 11. This ordinance shall take effect immediately upon filing with the Department of State in Tallahassee, Florida.

PASSED AND DULY ADOPTED in open session, with a quorum present and voting this 23rd day of MAY, 2006.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

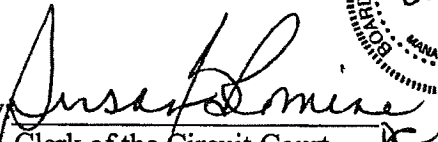
By:




Second Vice-Chairman

ATTEST: R. B. SHORE



By: 
Clerk of the Circuit Court



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.
Witness my hand and official seal this 30th day of May, 2006
R.B. SHORE
Clerk of Circuit Court
By:  .P.C.