

TAB 3

REGULATION OF PERSONS UNDER 21 IN BARS AND NIGHTCLUBS

Point Paper
October 6, 2008

ISSUE: In 2006 Manatee County adopted Ordinance 06-42, regulating alcoholic beverages. This ordinance was codified in Chapter 2-3 of the Manatee County Code of Ordinances. Section 2-3-9 of the County ordinance 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 City of Palmetto's alcoholic beverage ordinance addresses some, but not all, of the matters regulated in the County ordinance. The City's ordinance does not make it unlawful for a person under 21 to be present in a bar or night club. Frequently off-duty Sheriff Deputies work as security guards for bars and nightclubs in Palmetto, along with off-duty Palmetto Police Officers. The Deputies do not have the authority to enforce a City alcoholic beverage ordinance, and may enforce the County's alcoholic beverage ordinance only to the extent authorized by the City Commission.

BACKGROUND: After reviewing the above issue in a workshop format, the Commission requested that staff bring the item back with an analysis of how the above referenced County ordinance compared to Chapter 4 of the City Code of ordinances. A memorandum from the City Attorney setting forth basic areas of conflict has been provided in the agenda materials. Staff also was asked to look into the Manatee County Sheriff's willingness to enforce the County ordinance within the City if the City were to authorize the Sheriff to enforce only select provisions of the ordinance within the City. Legal Counsel for the Sheriff has advised that the selection of certain provisions, especially when coupled with differences in terminology, would cause confusion for deputies in the field.

ALTERNATIVES:

1. Pass a resolution authorizing Palmetto Police Officers and Code Enforcement Officers to act as code enforcement officers for the purposes of enforcing all of Chapter 2-3 of the County Code, and repeal conflicting provisions of Chapter 4 of the City Code. See attached draft resolution.
2. Revise Chapter 4 of the City Code to make it unlawful for persons under the age of 21 to be present in certain types of establishments that serve alcohol. See attached draft ordinance.
3. Adopt an ordinance containing terminology and language substantially similar to provisions of the County ordinance while, to the extent possible, retaining the substance of the current City ordinance.

RECOMMENDATIONS: Contingent upon discussion with Commission

BUDGET IMPACT: None

CITY OF PALMETTO, FLORIDA
RESOLUTION NO. 08-_____

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 _____ day of _____, 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

**EXHIBIT A
SCHEDULE OF FEES
REMOVAL AND REPLACEMENT OF TREES**

<u>Application</u>	<u>Fee</u>
Tree Removal Permit, 0-5 trees	\$10
Tree Removal Permit, 6-25 trees	\$25
Tree Removal Permit, 26 or more trees	\$50

Payment-in-lieu of Tree Replacement

Removal of a tree that has a caliber of 4"- 15" D.B.H. requires replacement with one 3" caliber tree, or a payment-in-lieu of \$600

Removal of a tree that has a caliber of 16"- 30" D.B.H. requires replacement with three 3" caliber trees, or a payment-in-lieu of \$1800

Removal of a tree that has a caliber over 30" D.B.H. requires replacement with four 5" caliber trees, or a payment-in-lieu of \$2900

Important Notes:

Non-refundable fees shall be paid upon filing the application or request, and no consideration shall be undertaken until all applicable fees are paid.

Cash payment in lieu of tree replacement shall be made prior to the issuance of any building permit for the property upon which trees must be replaced. Utilization of the payment-in-lieu option shall be approved by the City Commission for amounts greater than \$5,000.00 or the Director of Public Works for amounts of less than five thousand dollars \$5,000.00.

Applicants shall be responsible to the City for the actual cost of professional consulting services associated with the City's review and consideration of submitted applications, including but not limited to legal, engineering, and surveying services.

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ORDINANCE 08-__

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA PERTAINING TO THE SALE, SERVING AND ALLOWING CONSUMPTION OF INTOXICATING LIQUORS BY PERSONS UNDER THE AGE OF TWENTY-ONE; REGULATING ACCESS BY PERSONS UNDER THE AGE OF TWENTY-ONE TO ESTABLISHMENTS WHERE INTOXICATING LIQUORS ARE SOLD FOR CONSUMPTION ON THE PREMISES ; PROHIBITING THE USE OF FALSE IDENTIFICATION TO OBTAIN ENTRY TO ESTABLISHMENTS WHERE INTOXICATING LIQUORS ARE SOLD FOR CONSUMPTION N THE PREMISES; PROVIDING FOR REPEAL OF ORDINANCES 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, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; 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, within the above-referenced grant of powers, the City of Palmetto (the "City") has the authority to regulate conditions and activities within the City for the protection of the public health, safety and welfare; and

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

WHEREAS, there are establishments within the City that sell intoxicating liquors for consumption on the premises; and

WHEREAS, such establishments often permit persons over the age of eighteen but under the age of twenty-one to be present while alcoholic beverages are being served to persons age twenty-one (21) and older; and

WHEREAS, City staff and members of the Palmetto Police Department have informed the City Commission that persons under the age of twenty-one (21) frequently enter and consume alcohol within such establishments in violation of Florida law; and

WHEREAS, the City Code of Ordinance currently makes it unlawful for owners and operators of such establishments to permit access to person's under the age of eighteen (18) but does not regulate access or consumption of alcoholic beverages by persons between the ages of eighteen (18) and twenty-one (21); and

WHEREAS, the City Commission finds that it is in the best interest of the public to, subject to certain exceptions, make it unlawful for persons under the age of twenty-one (21) to enter or remain in an establishment where intoxicating liquors are sold for consumption on the premises; and

WHEREAS, the City Commission further finds that the public interest is served by making it unlawful for any holder of a license to operate an establishment where intoxicating liquors are sold for consumption on the premises to permit access to minors; and

WHEREAS, the City Commission further finds that prohibiting the use or attempted use of false identification to gain entry to establishments where intoxicating liquors are sold for consumption on the premises is a reasonable means of preventing access to alcoholic beverage establishments by persons under the age of twenty-one (21); and

WHEREAS, consistent with the findings stated above, the City Commission has determined that adoption of this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PALMETTO, FLORIDA, as follows:

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

Section 2. Revision Language. Chapter 4, Division 4-4, of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 4-4. Person's under 21 in alcoholic beverage establishments.

(a) It shall be unlawful for any holder of a license to operate a saloon, bar, cocktail lounge or other place where intoxicating liquors are sold for consumption on the premises to allow or permit any person under the age of twenty-one (21) years to visit, loiter, idle, stroll, wander or loaf in such premises, unless such minor is attended or accompanied by his parent or guardian.

(b) Notwithstanding the provision of subsection (a), a person under the age of twenty-one (21) years, without being attended or accompanied by a parent or guardian, may be allowed to be present at and remain on the premises of any bona fide restaurant or any holder of a special license issued by the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation under section 561.20(2) and (7), Florida Statutes, or any rules issued under said statute by Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation; provided, that alcoholic beverages are sold only during the time such holder is actively engaged in the primary business of the holder.

(c) It shall be unlawful for any person under the age of twenty-one (21) to enter or remain on the premises of any establishment where intoxicating liquors are sold for consumption on the premises while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(d) 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 establishment where intoxicating liquors are sold for consumption on the premises while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(e) It shall be unlawful for any establishment where intoxicating liquors are sold for consumption on the premises, 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 twenty-one (21) while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(f) Each establishment where intoxicating liquors are sold for consumption on the premises 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 City of Palmetto Chief of Police. The Palmetto Police Department is authorized to develop, publish and periodically revise a model age verification system for such establishments. Should the Palmetto Police Department publish a model system, any establishment where intoxicating liquors are sold for consumption on the premises 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.

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

- (1) Being present in an establishment where intoxicating liquors are sold for consumption on the premises as an employee of that establishment to perform work duties;
- (2) Being present in an establishment where intoxicating liquors are sold for consumption on the premises 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 an establishment where intoxicating liquors are sold for consumption on the premises for the purposes of making a delivery of goods to that establishment;
- (4) Being present in a alcoholic beverage establishment while performing a public or legal duty, such as law enforcement, fire suppression, building inspection, or health inspection;

(5) Being present in an establishment where intoxicating liquors are sold for consumption on the premises 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 twenty-one (21) have left the premises after any such program prior to resumption of service of alcoholic beverages.

Section 3. **Repeal of Inconsistent Ordinances.** This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. **Effective Date.** This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	
PUBLICATION DATE	
SECOND READING	

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this ____, day of _____, 2008.

By: _____

Lawrence E. Bustle, Jr., Mayor

ATTEST:

By: _____

James R. Freeman, City Clerk

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DRAFT

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MEMORANDUM

TO: Mayor Lawrence E. Bustle, Jr.
City Commission
FROM: Michele S. Hall, City Attorney
DATE: September 30, 2008
RE: Conflicts between County and City Ordinances
Regulating Alcoholic Beverages

Manatee County Code of Ordinances, Chapter 2-3 is provided below. Terms in the County ordinance that conflict with provisions of Chapter 4 of the City Code of Ordinances are highlighted in yellow. Brief explanations as to why portions of the County's ordinance do or do not conflict with the City's ordinance are provided in *bold italics*.

Manatee County Code of Ordinances
Chapter 2-3 ALCOHOLIC BEVERAGE RELATED REGULATIONS

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 ten (10) per cent 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 F.S. § 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 F.S. § 561.01(13).

(b) Words or phrases not herein defined but which are defined within F.S. Chs. 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.

Conflict: Chapter 4 of the City Code uses the terms “intoxicating beverage”, “intoxicating liquor” and “alcoholic beverage” but defines none of these terms. Section 4-3, however, which regulates the consumption of alcohol in specific locations, makes it unlawful for “any person to drink or consume any alcoholic beverage containing more than one (1) percent of alcohol by weight”. This provisions conflicts with the County’s definition of “alcoholic beverage” and the regulation of beverages included within that definition.

Conflict: The definitions of “restaurant” and “actively engaged in a primary business” found in section 4-5 of the City Code are in conflict with the County’s definitions of “alcoholic beverage establishment or establishment dealing in alcoholic beverages” and “stand alone bar or nightclub”. The phrase “saloon, bar, cocktail lounge or other place where intoxicating liquors are sold for consumption on the premises” found in section 4-4 of the City Code also presents a conflict.

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.

Conflict: Subject to stated exceptions, section 4-1 of the City Code provides that "intoxicating beverages" may not be sold, served or dispensed between 2:30 a.m. and 6:00 a.m. on weekdays or between 2:30 a.m. on Sunday and 6:00 a.m. on Monday.

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.

No conflict: Section 4.2 of the City Code prohibits the sale of "intoxicating beverages" in certain locations (in proximity to churches, schools, and specified rights of way), and the sale of "intoxicating liquors" except beer and wine unless such sale takes place in one of the specified locations. Section 2-3-3 of the County ordinance does not address the sale of alcoholic beverages - - only the consumption and possession of open containers.

No conflict: The City Code does not regulate possession of open containers of alcoholic beverages.

Conflict: Section 4-3 of the City Code prohibits the consumption of any alcoholic beverage containing more than 1% of alcohol in designated locations.

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

(a) It shall be unlawful for any person under the age of twenty-one (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 twenty-one (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 twenty-one (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 twenty-one (21) have left the premises after any such program prior to resumption of service of alcoholic beverages.

No conflict: The City Code does not make it unlawful for persons under the age of 21 to be in a bar, nightclub or other similar facility.

Conflict: Section 4-4 of the City Code makes it unlawful for any holder of a license to operate a bar to permit persons under 18 to be present in the bar without a parent or legal guardian.

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 and Firearms are also so designated providing their respective agencies consent to such designation.

(b) Any act or omission prohibited by the provisions of F.S. § 322.212 (false identification) or F.S. § 562.11 (service to person under twenty-one (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 F.S. § 162.21, 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 offense by persons under the age of twenty-one (21): One hundred dollars (\$100.00), and second and subsequent offenses: five hundred dollars (\$500.00);

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

(3) An offense by a stand alone bar or nightclub shall result in a five hundred dollar (\$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 twenty-one (21) found on the premises of such establishment to leave.

(f) Pursuant to F.S. § 162.30, 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 F.S. §§ 162.21(8) and 162.22, 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 F.S. Ch. 901, and upon conviction may be sentenced to pay the fine specified in this section, or if none is specified, a fine not to exceed five hundred dollars (\$500.00), a definite term of imprisonment not to exceed sixty (60) days in the County jail, and the restitution of applicable costs and defender fees as authorized by F.S. § 162.30.

Conflict: Chapter 4 of the City Code provides no special enforcement provisions and does not authorize arrest of violators. Violations of Chapter 4 are handled pursuant to established procedures including issuance of a notice of violation or issuance of a citation by a City Code Enforcement Officer, with fines provided in the schedule last approved by the City Commission.