

FSS and City Ordinances concerning Alcohol selling establishments.

Intro:

1. Time for selling and consumption of alcoholic beverages.
2. Searches of alcohol selling establishments.
3. Selling, giving, or serving alcoholic beverages to persons under 21 yoa.
4. Possession of alcoholic beverages by persons under 21 yoa.
5. Minors patronizing Dance Halls.
6. Noise Violations.
7. Nudity and sexual acts in establishments dealing in alcoholic beverages.
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10. Disorderly Conduct.
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12. Self Defense
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1. 562.14 Regulating the time for sale of alcoholic and intoxicating beverages; prohibiting use of licensed premises.--

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day. This section shall not apply to railroads selling only to passengers for consumption on railroad cars.

(2) Except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages, shall allow the licensed premises, as defined in s. 561.01(11), to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. However, this prohibition shall not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex as defined in s. 565.02(6) or an entertainment/resort complex as defined in s. 561.01(18).

(3) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Sec. 4-5. Consumption on certain premises prohibited during certain hours.

(a) It is unlawful for any person to consume or to permit the consumption of any alcoholic beverages in bottle clubs or on premises open to the public, catering to the sale and/or consumption of alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. immediately following on Tuesday, Wednesday, Thursday, Friday, or Saturday, or between the hours of 2:00 a.m. and 1:00 p.m. on Sunday, or between the hours of 11:00 p.m. on Sunday and 7:00 a.m. immediately following on Monday. All time is Eastern Standard Time or Eastern daylight saving time, whichever is in effect.

(b) The provisions of this section shall apply whether the premises holds a valid beverage license or not and shall apply within or without any improvements located thereon.

2. 562.41 Searches; penalty.--

(1) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may make searches of persons, places, and conveyances of any kind whatsoever in accordance with the laws of this state for the purpose of determining whether or not the provisions of the Beverage Law are being violated.

(2) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may enter in the daytime any building or place where any beverages subject to tax under the Beverage Law or which would be subject to tax there under if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any alcoholic beverages, are manufactured, produced, or kept, so far as may be necessary, for the purpose of examining said beverages. When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

(3) Any owner of such premises or person having the agency, superintendency, or possession of same, who refuses to admit such officer or to suffer her or him to examine such beverages, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who shall forcibly obstruct or hinder the director, any division employee, any sheriff, any deputy sheriff, or any police officer in the execution of any power or authority vested in her or him by law, or who shall forcibly rescue or cause to be rescued any property if the same shall have been seized by such officer, or shall attempt or endeavor to do so, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Licensees, by the acceptance of their license, agree that their places of business shall always be subject to be inspected and searched without search warrants by the authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or at any other time such premises are occupied by the licensee or other persons.

3. 562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a) It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. Anyone convicted of violation of the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A licensee, or his or her or its agents, officers, servants, or employees, may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee except as authorized pursuant to s. 562.111 or s. 562.13, and may not permit a person younger than 21 years of age who is employed by the licensee to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. A licensee, or his or her or its agents, officers, servants, or employees, who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This paragraph may be cited as "the Christopher Fugate Act."

(c) A licensee who violates paragraph (a) shall have a complete defense to any civil action therefore, except for any administrative action by the division under the Beverage Law, if, at the time the alcoholic

c. For the purposes of this section, it is sufficient warning for all prohibited sounds if the person or persons responsible for any succeeding sounds are warned of, or cited for, one or more offending sounds of the same type within the previous 90 days, or in the case of a business, in the time period since ownership of the business changed, whichever is less.

(2) Citation; confiscation of sound emitter.

a. If the sound is not eliminated or is not reduced to allowable limits within a reasonable time after the warning, or if the noise or sound is abated after warning and then reoccurs, the person so warned and not complying shall be cited for a violation of this chapter.

b. The city manager or designee shall notify the operator of any device that produces sound in excess of the limits set by Table I or Table I-A in section 15-3(b) that the device is a health hazard. The city manager or designee shall have the power and authority to have the device removed or toned down instantly until such time as it can be otherwise operated in compliance with this chapter.

(b) Violation of plainly audible standard on posted property.

(1) When a designated official of the city determines a person or persons are making, causing or allowing the making of sound that is in violation of the plainly audible standard on property posted as described below, the official shall issue a citation for violation of this chapter to such person or persons.

(2) Property shall be considered posted for the purposes of this subsection if at least one warning sign is posted in a conspicuous place on the property, clearly visible and readable to all persons entering the property, warning persons that noise that is plainly audible is prohibited. Signs shall read as follows:

WARNING
Playing a stereo
radio, or amplifier
that can be heard 200 feet
away is prohibited.
City Ord. Sec. 15-3

Letters in the word "WARNING" must be at least two inches high in bold type. Letters for the remaining text must be at least one inch high in normal type, and the words "City Ord. Sec. 15-3" must be at least one-half inch high in normal type. All letters must be light-reflective on a contrasting background. The sign structure containing the required warning must be permanently installed with the word "WARNING" not less than three feet and not more than six feet above ground level.

(3) The city manager or designee may require a property to be posted if it is used for commercial purposes, including as a parking lot for an adjacent business, and:

a. The business is generally unattended by the owner or an agent of the owner during normal operating hours; or

b. Two or more citations for violation of this chapter resulting in payment of a fine or adjudication of guilt by a judge are issued due to acts of patrons or visitors during any 90-day period.

(c) Other limits; complaint procedure.

(1) Any complaint regarding a sound or noise disturbance based solely on its disturbing a reasonable person of normal sensitivities must be filed by a person who is disturbed by the sound or noise. The burden of proof of this complaint will be on the complainant if the complaint results in a hearing before a judge. The complaint may be filed at the time of the disturbance or within a reasonable period of time after the fact.

(2) When a complaint has been received, a designated official shall investigate the charges. If the official finds probable cause to believe the owner/operator is in violation of this chapter, the official shall issue a warning to cease and desist the violation.

(3) If the owner/operator does not take corrective action within a reasonable time as defined in section 15-2 or if the noise or sound is abated after warning and then reoccurs, the official may issue a citation or file a sworn complaint with the state attorney. For purposes of section 15-3(d)(5) (animal noises), the noise will be considered to be unabated, or abated and reoccurring, if the official hears the same noise

more than ten minutes after issuing the warning; and the official may then issue a citation based on this violation.

(d) Joint and several responsibilities. The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with this chapter. It shall not be a lawful defense to assert that some other person caused the sound. The lawful possessor or operator of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the sound is also punished.

(e) Violation may be declared public nuisance. The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter which endangers the public health, safety and quality of life of residents in the area is declared to be a public nuisance, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Sec 15-7 Penalties.

(a) The provisions of this chapter may be enforced by civil citation or by criminal citation. Any person not in compliance with this chapter shall, upon conviction, be subject to the penalties designated in section 1-9 or section 2-339. Each violation shall be considered a separate offense, which can be prosecuted separately.

(b) Any person responsible for an unlawful sound shall be subject to the confiscation of the sound emitter or emitters if convicted three times under this chapter within a 12-month period and provided the convictions are for sounds created by the same or same type of sound emitter. Upon the third conviction, the appropriate court shall authorize the city to confiscate the sound emitter until such time as the offender can positively demonstrate to the court both willingness and ability to operate the emitter within the limits prescribed by this chapter. Any further conviction shall authorize the permanent confiscation of the sound emitter by the appropriate court.

7. Sec. 17-15. 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:

(a) No person shall knowingly, intentionally or recklessly appear, or cause another person to appear, nude, or, expose to public view his or her genitals, pubic area, vulva, anus, or any simulation thereof.

(b) No female person shall knowingly, intentionally or recklessly expose, or cause another female person to expose, her breasts or any simulation thereof to public view other than as permitted by Florida law (i.e. breastfeeding).

(c) 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 or her genitals, pubic area, vulva, anus, or simulation thereof.

(d) 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 as permitted by Florida law.

(e) The prohibitions of this section 17-15 shall not apply when a person appears nude in a place provided or set apart for nudity provided

(1) Such person is nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such place provided or set apart for nudity; and

(2) Such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.

(f) 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.

(g) This section 17-15 shall not be deemed to address photographs, movies, video presentations, or other non live performances.

(Ord. No. 4080, § 1, 5-22-95)

Sec. 17-16. Nudity prohibited in public places.

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 17-17. It shall also be unlawful 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.

8. 810.08 Trespass in structure or conveyance.--

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

9. 776.012 Use of force in defense of person.—

A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against such other's imminent use of unlawful force. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

776.031 Use of force in defense of others.—

A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on, or other tortuous or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.

10. Sec. 17-4. Disorderly conduct.

(a) Commission of the following acts shall constitute disorderly conduct:

(1) Any person who shall act in a violent or tumultuous manner toward another so as to place him/her or any other person in reasonable fear of safety of his/her life, limb, or health;

- (2) Any person who shall act in a violent or tumultuous manner toward another with the result that his/her property, or that of any other person is placed in danger of being destroyed or damaged;
 - (3) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
 - (4) Any person who shall assemble or congregate with another for the purpose or with the intent to engage in conduct which is prohibited by the ordinances of the city or by state or federal law;
 - (5) Any person who shall frequent any public place with intent to obtain money from other persons by illegal or fraudulent schemes, tricks, artifices or devices;
 - (6) Any person who shall accost or attempt to force his/her company upon any other person;
 - (7) Any person who shall use fighting words directed towards any person who becomes thereby outraged and thus creates a turmoil;
 - (8) Any person who shall by acts or threats of violence interfere with another's pursuit of a lawful occupation;
 - (9) Any person, who shall congregate with another or others in or on any public way so as to halt or materially impair the flow of vehicular or pedestrian traffic in a manner which threatens public safety or breach of the peace after being ordered by a police officer to move;
 - (10) Any person who shall obstruct any public street or sidewalk provided for public use by being or remaining in or on such street or sidewalk in such a manner as to block or impair movement of vehicles or pedestrians in a manner which threatens public safety or breach of the peace after being ordered by a police officer to move.
- (b) Any person deemed guilty of disorderly conduct as above defined, and, being convicted thereof, shall be fined or imprisoned as provided in section 1-9.

856.011 Disorderly intoxication.--

(1) No person in the state shall be intoxicated and endanger the safety of another person or property, and no person in the state shall be intoxicated or drink any alcoholic beverage in a public place or in or upon any public conveyance and cause a public disturbance.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Sec. 17-8. Urinating or defecating.

(a) Prohibitions and exceptions. It shall be unlawful for any person to urinate or defecate in, or in view of, a public place other than one set aside and designated for that particular purpose.

(b) Public place defined. Any place where the conduct may reasonably be expected to be viewed or could be viewed by others is a public place.

(c) Penalty for violation.

(1) *Urinating.* The provisions of this section, for urinating in public, may be enforced by civil citation as provided in Chapter 2, Division 6 of this Code, or as otherwise provided in section 1-9 of this Code. Any person not in compliance with this section shall be subject to the penalties designated in section 1-9 or section 2-339. Each violation shall be considered a separate offense, which can be prosecuted separately.

(2) *Defecating.* The provisions of this section, for defecating in public, shall be enforced as provided in section 1-9 of this Code.

11. 784.03 Battery; felony battery.--

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or
2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

784.041 Felony battery.--

(1) A person commits felony battery if he or she:

- (a) Actually and intentionally touches or strikes another person against the will of the other; and
- (b) Causes great bodily harm, permanent disability, or permanent disfigurement.

(2) A person who commits felony battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

790.01 Carrying concealed weapons.--

- (1) Except as provided in subsection (4), a person who carries a concealed weapon or electric weapon or device on or about his or her person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (2) A person who carries a concealed firearm on or about his or her person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) This section does not apply to a person licensed to carry a concealed weapon or a concealed firearm pursuant to the provisions of s. 790.06.
- (4) It is not a violation of this section for a person to carry for purposes of lawful self-defense, in a concealed manner:
 - (a) A self-defense chemical spray.
 - (b) A nonmetal stun gun or remote stun gun or other nonlethal electric weapon or device which does not fire a dart or projectile and is designed solely for defensive purposes.
- (5) This section does not preclude any prosecution for the use of an electric weapon or device or remote stun gun or self-defense chemical spray during the commission of any criminal offense under s. 790.07, s. 790.10, s. 790.23, or s. 790.235,

12. SELF-DEFENSE

The Florida Legislature passed, and the Governor signed into law, a bill creating a new § 776.013, F.S., which defines and further refines one's right to self-defense and defense of others.

The legislation:

- (1) authorizes a person to use force, including deadly force, against an intruder or attacker in a dwelling, residence, or vehicle under certain circumstances.
- (2) creates a presumption that a reasonable fear of death or great bodily harm exists under certain circumstances.
- (3) creates a presumption that a person acts with the intent to use force or violence under specified circumstances.
- (4) provides definitions to help clarify the intent of the legislation.
- (5) provides that a person is justified in using deadly force under certain circumstances.

(6) provides that a person has no duty to retreat and has the right to stand his/her ground and meet force with force if:

- the person is in a place where he/she has a right to be and;
- the force is necessary to prevent death, great bodily harm, or the commission of a forcible felony.

(7) provides immunity from criminal prosecution or civil action for using deadly force.

- authorizes a law enforcement agency to investigate the use of deadly force but prohibits the agency from arresting the person unless the agency determines that there is probable cause that the force the person used was unlawful.

(8) provides for attorney's fees, court costs, compensation for loss of income and other expenses to a defendant in a civil suit who was immune from prosecution under this section.

(9) The legislation is **EFFECTIVE** on **OCTOBER 1, 2005**.

The **presumption of reasonable fear of imminent peril or death or great bodily harm to self or another** exists if:

- a. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering or had unlawfully and forcibly entered a dwelling, residence or occupied vehicle; or
- b. The person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
- c. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

The **presumption of reasonable fear of imminent peril or death or great bodily harm to self or another** does **NOT** apply if:

- a. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against the person; or
- b. The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or
- c. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

d. The person against whom the defensive force is used is a **law enforcement officer**, as defined in § 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle **in the performance of his/her official duties**, and the officer identified himself/herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

A person not engaged in an unlawful activity and who is attacked in any other place where he/she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he/she reasonably believes it is necessary to do so to prevent the commission of a forcible felony.

A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

13. Sec. 10-6. Certificate of occupancy.

No certificate of occupancy shall be issued by the city unless the fire chief certifies by affixation of signature on the certificate of occupancy that the business, profession or occupation for which the certificate of occupancy sought is in full compliance with all the rules, codes and ordinances of the city relating to fire protection at the particular location that the license is to be issued for.

Sec. 10-7. Report of violation.

Police officers and firefighters shall report all violations of this chapter to the chief of police or to the chief of the fire department. Such officers shall see that all violations are prosecuted.

Sec. 10-8. Penalty for violations.

Except as otherwise provided in this chapter, whenever in this Code or in any ordinance of the city or in any rule or regulation adopted pursuant to this Code, any act is prohibited or is made or declared to be unlawful or an offense, misdemeanor or public nuisance, or whenever in such Code, ordinance, rule or regulation the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty, is provided therefore, the violation of any such provision of this Code or any ordinance, rule or regulation shall be punished by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense.

(b) In addition to the penalty provided in subsection (a), any condition which has been declared a nuisance may be abated as provided in this Code.

Summary Questions