

Chapter 14

OFFENSES AND MISCELLANEOUS PROVISIONS*

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*Cross reference—General penalty, § 1-9.

ARTICLE I. IN GENERAL

Sec. 14-1. Adoption of state laws relating to misdemeanors.

(a) All applicable or appropriate misdemeanor statutes and definitions contained in the laws of the state pertaining to the acts or criminal offenses are hereby adopted by reference and incorporated as fully as if set out at length in this section, and the provisions thereof shall be controlling in the legal application and effect of such.

(b) It shall be unlawful for any person to commit, within the corporate limits of the town, any act which is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden.

(c) Whoever commits any of the acts or criminal offenses adopted by this section and declared to be unlawful within the corporate limits of the town shall be charged with a violation of this section of the Code, together with the specific section of the laws of the state constituting the applicable misdemeanor adopted by reference in this section.

(Code 1980, § 16-1)

Case law references—Adoption of state law relating to misdemeanors by city upheld, see *McFarland v. Roberts*, 74 So.2d 88 (Fla. 1954); also *Orr v. Quigg*, 135 Fla. 653, 185 So.726 and *Wright v. Worth*, 83 Fla. 204, 91 So.87; adoption of state law misdemeanors by reference includes laws both in existence at the time and those later adopted by the state legislature, see *State v. Smith*, 189 So.2d 846 (Fla. 4th D.C.A. 1966). Follows rule in *Hecht v. Shaw*, 112 Fla. 762, 151 So.333(1933), " . . . when the adopting statute makes no reference to any particular statute or part of statute by its title or otherwise, but refers to the law generally which governs a particular subject, the reference in such a case includes not only the law in force at the date of the adopting act, but also all subsequent laws on the particular subject referred to"

- (1) A municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against state law. See *Jaramillo v. City of Homestead*, 322 So.2d 496 (Fla. 1975).
- (2) A municipality by ordinance may adopt state misdemeanor statutes by specific reference or by general reference, such as that contained in an ordinance making it unlawful to commit, within city limits, any act which is or shall be recognized by the laws of the state as a misdemeanor. *Id.*
- (3) An adoption by general reference of a misdemeanor statute permits subsequent amendments, revisions and repeals of the laws by the state legislature to apply to the municipal ordinances. *Id.*

State law references—Fines in county court payable to city, F.S. § 34.191; state law misdemeanors, see Florida Statutes general index under heading "Crimes" for listing of state law misdemeanors; penalty for misdemeanors, F.S. §§ 775.082, 775.083.

Sec. 14-2. Posting bills prohibited.

No person shall post any advertisement, notice, circular, handbill or poster of any kind upon any public building or upon a gate or fence surrounding any public building or any public square or park, or upon any street, post, streetlamp, lamp post or upon any shade tree or other tree in any street or square.

(Code 1980, § 16-12)

Sec. 14-3. Damage to trees prohibited.

It shall be unlawful for any person to cut, destroy or injure any of the trees growing in or upon any of the public squares or streets of the town, provided that nothing in this section shall be so construed as to prevent the town from trimming or removing such trees at its discretion. (Code 1980, § 19-2)

Sec. 14-4. Discharge of air rifles prohibited.

It shall be unlawful for any person to discharge any air rifle, air pistol or any other device using compressed air to fire or propel any shot, slug or projectile. (Code 1980, § 16-2)

Secs. 14-5—14-25. Reserved.

ARTICLE II. PUBLIC NUDITY*

Sec. 14-26. Title.

This article shall be known as the Havana Public Nudity Ordinance. (Ord. No. 265, § 1, 2-22-94)

Sec. 14-27. Intent.

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

- (1) When such person appears nude in a place provided or set apart for nudity provided (i) 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 (ii) such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity; or
- (2) When the conduct of being nude cannot legally be prohibited by this article (i) 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

***Editor's note**—Sections 1—10 of Ord. No. 265, adopted February 22, 1994, added provisions to the Code, but did not specify manner of inclusion. At the discretion of the editor, therefore, said provisions have been included as §§ 14-26—14-35 herein.

instance Board of County Commissioners v. Dexterhouse, 348 So.2d 916 (Fla. 2nd DCA 1977) and as such is protected by the United States or Florida Constitution or (ii) because it is otherwise protected by the United States or Florida Constitution.

It is the town's further intention to accomplish those intents and purposes expressed by the town in the provisions of this article, each of which are incorporated by reference into this section 14-27.

(Ord. No. 265, § 2, 2-22-94)

Sec. 14-28. Definitions.

Terms, when used in this article, shall have the following meanings:

Alcoholic beverages. All distilled spirits and all beverages containing one-half to one percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

Breast. 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 (i) reasonably compact and contiguous to the areola and (ii) contains at least the nipple and the areola and $\frac{1}{4}$ of the outside surface area of such gland.

Buttocks. (For a short general description see the last sentence of this subsection.) 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 of such line being $\frac{1}{2}$ 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 $\frac{1}{2}$ 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(s) 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 (i) the left inside perpendicular line and the left outside perpendicular line or (ii) the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left outside perpendicular line shall be an imaginary straight line on the left side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above and (ii) that is $\frac{1}{3}$ 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 (i) that is perpendicular to the

ground and to the horizontal lines described above and (ii) that is $\frac{1}{3}$ of the distance from the anus to the right outside line. (The above description can generally be described as covering $\frac{1}{3}$ of the buttocks centered over the cleavage for the length of the cleavage.)

Entity. Any proprietorship, partnership, corporation, association, business trust, joint venture, jointstock company or other for profit and/or not for profit organization.

Establishment dealing in alcoholic beverages. 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; night club; 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 said 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 alcoholic beverages.

Nude. 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, or
- (2) The male or female pubic area, or
- (3) The female breast (see the last sentence in definition of "nude"), or
- (4) The buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-Strings, T-Backs, dental floss and thongs.

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 $\frac{1}{4}$ of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered.

Person. Any live human being aged ten years of age or older.

Places provided or set apart for nudity. Shall mean 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 or her profit or where being nude is used for the promotion of business or is otherwise commercially exploited.

Public place. 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, forests, lakes, 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.

(Ord. No. 265, § 3, 2-22-94)

Sec. 14-29. Legislative findings.

In addition and supplemental to the findings and determinations contained in the "whereas" provisions of this ordinance [Ord. No. 265] which are incorporated by reference into this section, it is hereby found by the town, 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 14-30 hereinbelow 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 14-30 of this article to specifically prohibit nudity, gross sexuality and the simulation thereof in establishments dealing in alcoholic beverages.

(Ord. No. 265, § 4, 2-22-94)

Sec. 14-30. 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 or her genitals, pubic area, vulva, or buttocks, or any simulation thereof.
- (2) 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).
- (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 or her 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 as permitted by Florida law.
 - (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 sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, 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 (i) 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 (ii) such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.
 - (7) Each female person may determine which $\frac{1}{4}$ 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.
- (Ord. No. 265, § 5, 2-22-94)

Sec. 14-31. 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 14-32. 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, except as provided in section 14-32.

(Ord. No. 265, § 6, 2-22-94)

Sec. 14-32. Exemptions.

The prohibitions of section 14-31 of this article shall not apply:

- (1) When a person appears nude in a place provided or set apart for nudity provided (i) 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 (ii) such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity; or

- (2) When the conduct of being nude cannot legally be prohibited by this article (i) 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 of 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. 2nd DCA 1977)) and as such is protected by the United States or Florida Constitution or (ii) because it is otherwise protected by the United States or Florida Constitution.

(Ord. No. 265, § 7, 2-22-94)

Sec. 14-33. Enforcement and penalties.

Any person or entity violating any of the provisions of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense. In lieu of the above procedure, the town may enforce this article in the manner provided by the town's code of ordinances or by any other means authorized by law.

(Ord. No. 265, § 8, 2-22-94)

Sec. 14-34. Injunctive relief.

In addition to the procedures provided herein, establishments dealing in alcoholic beverages that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

(Ord. No. 265, § 9, 2-22-94)

Sec. 14-35. Territory embraced.

All territory within the legal boundaries of the town, as they may be changed from time to time, shall be embraced by the provisions of this article.

(Ord. No. 265, § 10, 2-22-94)

