

Chapter 17

OFFENSES*

*Case law annotations--A municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against state law. *Jaramillo v. City of Homestead*, 322 So.2d 496 (Fla. 1975).

Similarly, a municipality by ordinance may adopt state misdemeanor statutes by specific reference or by the general reference contained in the ordinance. *Id.*

Such an adoption by general reference as contained in the ordinance permits subsequent amendments, revisions and repeals of the laws by the state legislature to apply to the municipal ordinances. *Id.*

Cross References: Fishing from bridges prohibited, § 15-116; restrictions on fishing in residential areas, § 15-117; swimming, wading, bathing prohibited, § 15-118; police, Ch. 21; traffic and vehicles, Ch. 25; scheduled fines for parking violations, § 25-39; reward for arrest of bicycle thieves, § 25-69.

State Law References: Arrests, F.S. Ch. 901; notice in lieu of arrest, F.S. § 901.27 et seq.

Art. I. In General, §§ 17-1--17-25

Art. II. Lewd Publications, Exhibitions or Shows, §§ 17-26--17-34

Art. III. Sexual Offenders, §§ 17-35--17-50

ARTICLE I.

IN GENERAL

Sec. 17-1. State misdemeanors.

It shall be unlawful for any person to commit, within the corporate limits of the city, 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.

(Code 1964, § 17-26)

Sec. 17-2. Unlawful assembly.

Any person or persons who shall stand, congregate or assemble upon any of the sidewalks or corners of the streets, or in, around or about the parks or other public places or buildings in this city to the hindrance of the passersby shall be in violation of this section and be liable to arrest, and it shall be the duty of the chief of police, or any other officer of the police force under his direction, to order all persons violating this section to move away or disperse and, in case of neglect or refusal to obey such order, to arrest or cause to be arrested the person so refusing or neglecting to obey.

(Code 1964, § 17-3)

Sec. 17-3. Reserved.

Editors Note: At the direction of the city, § 17-3, pertaining to acquisition, transfer or management of firearms, as derived from § 17-9.1 of the 1964 Code, has been deleted due to a Broward County charter amendment (refer to section 8.19, handgun management, of the charter of Broward County).

Sec. 17-4. Attaching matter to, tampering with utility poles or posts.

It shall be unlawful to attach posters or handbills to, or to cut, scratch or otherwise disfigure any telegraph, telephone, electric light, signal or other pole or gas post standing in the street.
(Code 1964, § 17-20)

Sec. 17-4.1. Defacement or destruction of property, etc.

(a) *Generally; graffiti prohibited.* No person, unless authorized, licensed or invited, shall write, paint or draw any inscription, figure, mark of any type on any wall, rock, bridge, roadway, building, fence, gate, tree or other real or personal property, either publicly or privately owned without the consent of the owner thereof. In any prosecution or trial of any person charged with violating this subsection, the violator shall have the burden of proving that he had the consent of the property owner or the authorization, license or invitation.

(b) *Private property, real or personal.* It shall be unlawful for any person, unless authorized, licensed or invited, to injure, deface, defile or otherwise destroy the property of another, either real or personal, without the consent of the owner thereof. In any prosecution or trial of any person charged with violating this subsection, the violator shall have the burden of proving that he had the consent of the property owner or the authorization, license or invitation.

(c) *Public property, real or personal.* It shall be unlawful for any person, unless authorized, licensed or invited, to injure, deface or otherwise destroy any real or personal public property within the city. In any prosecution or trial of any person charged with violating this subsection, the violator shall have the burden of proving that he had the consent of the property owner or the authorization, license or invitation.

(d) *Trees, shrubs and plants.* It shall be unlawful for any person, unless authorized, licensed or invited, to cut, root up or otherwise injure or destroy any tree, shrub, plant or other growing thing on public or private property without the consent of the owner thereof. In any prosecution or trial of any person charged with violating this subsection, the violator shall have the burden of proving that he had the consent of the property owner or the authorization, license or invitation.

(e) *Liability of minor imputed to parents.* Any act or willful misconduct of a minor (which term is herein defined as any person under the age of eighteen (18) years) which results in the unauthorized destruction, injury or defacement of the property of another or public property shall be imputed to the parent or guardian having custody of the minor. A parent or guardian having custody of a minor convicted under the provisions of this subsection shall be liable for any fine or restoration assessed or ordered by the city's code enforcement board or a court of competent jurisdiction. The parental responsibility imposed under this subsection shall be in addition to the liability imposed by Florida Statute 741.24 as amended.

(f) *Penalty for violation.* Any person convicted of violating subsections (a) through (e) above shall be punished by a fine of not more than five hundred dollars (\$500.00). In addition to such punishment, the code enforcement board or the court of competent jurisdiction may, in imposing such sentence, order the offender to restore the property so defaced, damaged or destroyed.

(Ord. No. 1670, §§ 1--6, 12-13-89)

Editors Note: Ordinance No. 1670, adopted Dec. 13, 1989, did not specifically amend this Code; hence, inclusion of §§ 1--6 as § 17-4.1 was at the discretion of the editor.

Sec. 17-5. Trespass.

- (a) It shall be unlawful for any person to commit an act of trespass in the city, either upon private property or public property.
- (b) "Trespass," for the purpose of this section, shall mean:
 - (1) Entering upon or refusing to leave any private property of another, either where such property has been posted with "No Trespassing" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry or continued presence is prohibited; or
 - (2) Entering upon or refusing to leave any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning the property, where such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, his agent or a police officer.

(Code 1964, § 17-31)

Cross References: Uninvited solicitation constituting trespass, § 14-136(c); loitering near schools prohibited, § 17-8.

Sec. 17-5.1. Pre-authorization of police officers to enforce trespass statute on private property.

(a) *Declaration of public purpose.* The city council hereby declares and finds that pre-authorizing police officers to enforce the state trespass statutes, Sections 810.08 and 810.09, Florida Statutes, on private property, serves a valid public purpose. Specifically, the city council finds that the Florida Legislature has made it a misdemeanor for a person to defy an order from the owner of private property, or an authorized person, to leave the owner's property. Pre-designating police officers to issue warnings to leave on behalf of private property owners will protect the public from breaches of the peace which might occur if property owners are required to protect their property and expel trespassers by force. Additionally, the protection of private property is one of the primary missions of any police agency and in pursuit of that mission the police department has proposed a program whereby private property owners may pre-authorize police officers to issue warnings to trespassers on their behalf in order to safeguard their property.

(b) *Pre-authorization authority.* City police officers may be pre-authorized in writing by a private property owner within the city to issue orders to trespassers directing them to leave the owner's property. When police officers have been pre-authorized by a private property owner, they shall be considered authorized persons for the purpose of invoking the provisions of Section 810.08 and 810.09(2)(a), Florida Statutes.

(c) *Written pre-authorization.* Pre-authorization shall be in writing on a form approved by the city attorney's office.

(d) *Refusal to obey an order to leave the premises.* It is unlawful for any person, who enters on

private property without being authorized, licensed or invited, to refuse to obey an order to leave the premises given by a police officer who is pre-authorized to issue such an order under the provisions of this section. A violation of this section, in addition to being a misdemeanor under Sections 810.08 or 810.09(2)(a), Florida Statutes (as the case may be), shall be a City Code violation punishable as provided in section 17-5.1 of the Code.

(Ord. No. 1980, § 1, 4-27-94)

Sec. 17-6. Employment of unauthorized aliens in food-service businesses.

It shall be unlawful for any person engaged in any restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, drugstore and soda fountain serving food, and all other eating or drinking establishments, as well as kitchens, food stores, grocery stores, convenience stores, establishments with processed food for retail or wholesale sale, or any other place in which food or drink is prepared for sale elsewhere, knowingly to employ, hire, recruit or refer, either for himself or on behalf of another, for employment, an alien who is not duly authorized to work by the immigration laws or the attorney general.

(Code 1964, § 17-32)

Sec. 17-7. Reserved.

Sec. 17-8. Loitering near schools prohibited.

(a) It shall be unlawful for any person, without lawful business or excuse, to loiter or prowl within five hundred (500) feet distance of any school when the school is in session, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(b) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

(Ord. No. 1542, § 1, 3-23-88)

Cross References: Trespass generally, § 17-5.

Secs. 17-9--17-25. Reserved.

ARTICLE II.

LEWD PUBLICATIONS, EXHIBITIONS OR SHOWS*

* **State Law References:** Obscenity, F.S. Ch. 849.

Sec. 17-26. Findings.

The city council finds that the commercial exploitation of explicit sexual conduct through the sale and public exhibition of lewd publications or shows constitutes a debasement and distortion of a sensitive key relationship of human existence central to family life, community welfare and the development of human personality; that such exploitation is indecent and offensive to the senses and to public morals and interferes with the interests of the public and the quality of life and total community environment, the tone of commerce in the city, property values, and the public safety; and that the continuation of such activities is detrimental to the best health, safety, convenience, good morals and general welfare of the city and of its residents, citizens, inhabitants and businesses therein located and is unlawful and may not be made the subject of a lawful license. Accordingly, the city council hereby declares such activities to be public nuisances and herein establishes procedures for the abatement thereof and for the assessment and collection of costs of abatement which may be incurred by the city incident to such abatement, including reasonable attorneys' fees and court costs at both the trial and appellate levels. This article shall, after its effective date, apply to existing establishments which are presently engaged in the activities herein declared to be public nuisances.
(Code 1964, § 17-51)

Sec. 17-27. Definitions.

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

Knowledge or knowledge of such nuisance means having knowledge of the contents and character of a patently offensive sexual conduct which appears in the lewd matter or lewd show.

Lewd matter or lewd show means any matter or show:

- (1) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- (2) Which depicts or describes patently offensive representations of descriptions of:
 - a. Ultimate sexual acts, normal or perverted, actual or simulated;
 - b. Masturbation, excretory functions or lewd exhibition of the genitals or genital area;
 - c. Oral, vaginal or anal penetration by the tongue, penis, finger, hand, fist or arm or the depicting of sexual penetration by any object or instrument which, if duplicated by individuals not sufficiently preconditioned, could result in bodily injury or death, as determined by appropriate medical authorities residing within the city;
 - d. Explicit illustration or simulation of rape, forced sexual contact or other exploitation of sex partners who only willingly comply immediately prior to, during or following forced introduction or penetration;
 - e. Bondage of the human body by apparatus or other artificial restraint for the purposes of torture, physical abuse, punishment or irresistible sexual contact;

- f. Child pornography depicting voluntary or involuntary sexual contacts; i.e., sexual foreplay and/or penetration or the otherwise implied exploitation of individuals who are minors or who are portrayed as minors in lewd publications or shows;
- g. Publications or shows depicting the purported pleasure of incestual relationships between parents and children or between siblings, etc.;
- h. Snuff material or shows illustrating or depicting the actual or simulated murder and/or disembowelment or dismemberment of participants in sexual acts;
- i. Necrophilia material or shows, illustrating or describing or depicting sexual intercourse with dead bodies, human or animal;
- j. Bestiality material or shows, illustrating vaginal or oral sexual intercourse or masturbation between man and beast;
- k. Materials or shows which depict parents selling or otherwise offering their children or spouses offering their mates for use in any of the previously described activities;
- l. Material or shows which depict any individual(s) selling or otherwise offering another individual for use in any of the previously described activities;
- m. Material or shows depicting lewd perverted (homosexual or lesbian) sexual conduct;
- n. Any other material, exhibition or show not previously listed which has already been declared illegal by Florida Statutes.

Nothing herein contained is intended to preclude or prescribe any matter or show which, when considered as a whole and the context in which it is used, possesses serious literary, artistic, political or scientific value. However, in light of supreme court decisions charging each community with the responsibility of setting its own criteria for determining lewd or obscene matter and shows, the foregoing activities are not meant to constitute an exclusive list of those activities which may be considered to be obscene by some members of the community, but do reflect activities agreed to be lewd matters or lewd shows by the community of Plantation through its city council after due public hearings have been held on this article prior to its enactment and, thus, do constitute an agreed community standard of obscenity within the city.

Place includes, but is not limited to, any building, structure or place or any separate part or portion thereof whether permanent or not or the ground itself within the city. "Place" includes any money, slug or coin-operated vending machine or mechanical or electronically controlled vending machine which is located upon or is accessible from a public sidewalk or thoroughfare within the city. "Place" also includes any private club within the city in which membership is sold or offered for sale to residents of the city.

Public nuisances per se means:

- (1) Any and every place in the city in which publications or exhibitions of lewd matters or lewd

shows are offered for sale or admission prices charged for the owning, renting or viewing of lewd matter or lewd shows;

- (2) Any and every publication depicting a lewd matter possessed at a place which is a public nuisance under this section;

from and after service on the place or its manager or acting manager or person then in charge of such place of a certified copy of this article and a certified copy of the resolution provided for in this article. All valuable consideration received for the sale of such lewd matter or shows shall be regarded as being a public nuisance per accidens, as personal property used in conducting and maintaining a declared public nuisance, as to which forfeiture will be requested in the judicial proceedings required in this article.

Publication shall include any book, magazine, newspaper article, pamphlet, writing, printing, illustration, picture, sound recording or a motion picture film when such file is offered for sale or exhibited in a coin-operated machine. When a publication contains lewd matter, the terms "lewd matter" and "publications" as used herein shall be deemed synonymous when the context so requires.

Sale means the passing of title or right of possession from a seller to a buyer for valuable consideration and shall include, but is not limited to, any club membership, lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of or transfer of or possession of or display of or viewing of lewd matters or lewd shows.

(Code 1964, § 17-52)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 17-28. Presumption of knowledge.

The knowledge of the nuisance shall be presumed from the service of the copy of the resolution. The responsibility of parties therefore and the abatement of such nuisances shall be as follows:

- (1) Upon receiving notice through service of a certified copy of this article and of a certified copy of the resolution provided for in this article, any and every person who shall own, legally or equitably, lease, maintain, manage, conduct or operate a place in the city which is declared to be a public nuisance hereunder, is deemed to be a person who has knowledge of such nuisance for the purpose of this article and is, thereafter, responsible for its maintenance, and shall be liable therefor; and
- (2) The places and subject matter declared to be public nuisances hereunder shall be abated as provided for herein.

(Code 1964, § 17-53)

Sec. 17-29. Resolution declaring nuisance exists; address of property; statement of facts, etc.

Upon a specific finding that a public nuisance, as defined in this article, exists in the city, the city council, in applying the provisions of this article to such nuisance, shall provide for the following by resolution:

- (1) Declare the fact that such nuisance exists;

- (2) Set forth the description or legal description and street address of the property which constitutes the nuisance;
- (3) Set forth a statement of facts upon which the city council declaration of nuisance is based;
- (4) Order the revocation of all licenses and permits which have been issued as a part of the operation of such business or place, subject to confirmation by the court in the judicial proceedings required herein. Criminal proceedings for transacting business without a license at such address shall not be filed until the order of license revocation by the city council has been confirmed by judicial order;
- (5) Order the city attorney to give written notice to all persons named in section 17-28 to abate such public nuisances immediately, by terminating the sale, rental or exhibitions of such lewd matter or lewd shows or sale or offering for sale of publications involving lewd matter or causing the same to be terminated;
- (6) Order the city attorney to proceed as directed herein and do all things necessary to abate such public nuisance through judicial proceedings and to conclude such proceedings as expeditiously as is permissible under the law, instructing the city attorney to seek full recovery of all court costs, including his reasonable fees incurred, in such abatement;
- (7) Inform and give notices to persons named in section 17-28 that:
 - a. The city council has determined that a public nuisance presently exists at such place and address, and has revoked the licenses and permits at that place, subject to court confirmation, and that, under section 17-28 they are deemed to have knowledge thereof and are responsible therefor;
 - b. The city council has ordered the city attorney to commence legal proceedings naming such persons as defendants in a civil action to abate the same judicially and to seek compensatory and punitive damages, and recovery in such action of the costs of abatement, including investigative costs, court costs, attorney fees, (both at the trial and at all appellate levels), and other expenses and that under section 17-28 the costs of abatement are made a special assessment against the parcel of land upon which the nuisance is maintained, but only against the interest, if any therein, of the person responsible for maintaining such nuisance and, upon their determination by the city council, will, by separate resolution, be made a lien against the real property interest of the person responsible for maintaining such nuisance;
 - c. All lewd matter and lewd shows being used in conducting and maintaining such public nuisances are considered to be contraband and the subject of forfeiture and all such items being used in the conducting and maintaining of such public nuisance will be needed at the hearing in the court having jurisdiction of the legal proceedings brought by the city attorney;
 - d. From and after service on the place or its manager or acting manager, or person then in

charge of such place, of a certified copy of this article and a certified copy of such resolution, any and all moneys paid as admission price and valuable consideration received from the sale or rental of such lewd matters or the ability to witness or attend such lewd shows, shall be regarded as being a public nuisance per accidens, as personal property used in conducting and maintaining such nuisance, and as gain derived from a wrongful act, and that forfeiture of the same will be requested pursuant to state law;

- (8) Order that a certified copy of such resolution and a certified copy of this article be delivered forthwith in any manner normally used to effectuate personal service of process as directed in the Florida Code of Civil Procedure to all persons of record having any legal or equitable interest in the real property and to the regular or acting manager or persons in charge of the place therein declared a public nuisance.

(Code 1964, § 17-54)

Sec. 17-30. Proceedings.

Upon a specific finding by resolution of the city council of the fact that a public nuisance exists at a particular location, the city attorney shall:

- (1) Forthwith after passage of such resolution, commence legal proceedings hereunder by the filing of a civil action seeking the following relief:
 - a. An order that the subject matter identified by the city council in the resolution is lewd, as defined in this article;
 - b. An order that each place named by the city council is a public nuisance and that the action taken by the city council to revoke the licenses issued to that place of business was lawful;
 - c. An injunction enjoining and restraining all persons maintaining such nuisance from possessing or publicly exhibiting such lewd matter or lewd shows or from selling, renting or possessing for sale or rent such lewd publications found to contain lewd matter at any time in the future in the city and such other injunctive relief as the court may order;
 - d. An order that all such lewd matters, publications or copies or reproductions thereof be forfeited as contraband;
 - e. An accounting of all moneys paid as admission price to the exhibition of such lewd matter and valuable consideration received for the viewing or from the sale or rental of such lewd matter, shows or publications from and after the time the person or persons maintaining the nuisance received a copy of the resolution of the city council finding that a public nuisance exists, and a judgment that such moneys or gain were derived from a wrongful act and a public nuisance;
 - f. An order that all admission price moneys or valuable consideration received in the form of memberships in clubs whose meeting places are the places where the nuisance is being

maintained from and after the time the person or persons maintaining the nuisance received a copy of the resolution of the city council finding that a public nuisance exists be accounted for and be ordered forfeit as gain wrongfully derived from a public nuisance;

- g. Judgment for the city for compensatory and punitive damages and for all costs expended in abating the public nuisance, including investigative costs, court costs, reasonable attorneys' fees at both the trial and at all appellate levels, and such other expenses as are provided for herein; and
- h. All other relief as the court may deem proper.

- (2) File a notice of the pendency of the action in the office of the clerk of the circuit court in and for the county and amongst the public records of the county giving the names of the parties, the object of the action, and a description of the property thereby affected.

(Code 1964, § 17-55)

Sec. 17-31. Costs of abatement and assessment procedures.

Cost of abatement and assessment procedures and collections shall be as follows:

- (1) The cost of abatement is hereby declared a special assessment against the parcel of land upon which the public nuisance is maintained, but only against the interest, if any, therein, of the person or persons determined in the action to be responsible for maintaining such nuisance. As used in this section, the term "cost of abatement" shall include, but is not limited to, the following:
 - a. Investigative costs;
 - b. Court costs;
 - c. Reasonable attorney fees incurred, both at the trial level and at all appellate levels; and
 - d. Printing costs for any trial and appeal.
- (2) Upon the filing of a Broward County Circuit Court judgment adjudicating the existence of a public nuisance in any proceedings instituted pursuant to this article, the city attorney shall file with the city clerk a written report containing his accounting of expenses of abatement, the person or persons determined in the action to be responsible for maintaining such nuisance, a description of the premises on which such abatement occurred, and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. The clerk shall then set the report for hearing by the city council and shall, not less than ten (10) days prior to the date set for such hearing, serve notice of assessment upon the owners, which notice shall specify the day, hour and place when the city council shall hear and pass upon the assessment report together with any objections or protests thereto.

- (3) Upon the date and the hour fixed for the hearing, the city council shall hear and pass upon the assessment report together with any objections or protests which may be raised by any of the owners of any property liable to be assessed for the costs of abatement or any other interested persons. The city council may make such revision, correction, or modifications in the report as it may deem just, after which the report as submitted, or as revised, corrected or modified, shall be confirmed. The city council may adjourn the hearings from time to time. The decisions of the city council on all protests and objections which may be made shall be final and conclusive.
- (4) Upon confirmation of the assessment report, the city council shall adopt a resolution specifying the amount assessed against each respective parcel as shown on the last available assessment roll in accordance with the assessment report. Unless otherwise provided in such resolution, any such assessment shall become due thirty (30) days after the adoption of such resolution and shall thereafter bear interest at the maximum rate allowed by law. The city council may provide in the resolution for payment to become due at any later date, in total sum or in installments.
- (5) All assessments may be paid by tender of the amount due to the city clerk. The city clerk, prior to August 10 of each year, shall determine if any assessment, or portion thereof, is due and unpaid, and if he so determines, he shall cause a copy of delinquent assessment to be filed amongst the public records of the county specifying the parcel or parcels on which such amount is assessed, which delinquent assessment shall be certified true and correct by the city clerk prior to recordation.

(Code 1964, § 17-56)

Sec. 17-32. Obscene publications--Generally.

- (a) It shall be unlawful for any person within the city limits publicly to display or to offer to sell or give away or distribute any book, pamphlet, magazine, paper, picture, letters, writing, print or other matter containing any obscene, lewd, lascivious, filthy or indecent photographs or pictures.
- (b) No person shall knowingly import, print, publish, exhibit, display, sell, distribute, buy, procure, receive or have in his possession any obscene book, pamphlet, ballad, magazine, periodical, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record or wire or tape, or other recording, or any written, printed or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual or sensory representations. The test of obscenity shall be whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests.
- (c) Whenever any police officer arrests any person charged with any offense under this section, he shall seize such book, pamphlet, ballad, printed paper, picture, slide, film or other thing and take the same into his custody to await the sentence of the court upon the trial of the offender. Whenever anyone is convicted under the provisions of this section, the court in awarding sentence shall make an order confiscating such book, pamphlet, ballad, printed matter, picture, slide, film or other thing and authorize the clerk of the court to destroy same.
- (d) The penalty for violation of this section shall be a fine of five hundred dollars (\$500.00) or

imprisonment up to ninety (90) days, or both.
(Code 1964, § 17-19.1)

Sec. 17-33. Same--Dissemination to minors.

(a) *Definitions.* For the purposes of this section, the following terms shall have the meanings given in this subsection:

- (1) *Knowingly:* Every person, corporation or entity of any kind whatsoever who wilfully or knowingly:
 - a. Engages in the business of selling, lending, giving away, showing, advertising for sale or distributing to any person under the age of eighteen (18) years;
 - b. Has in his possession with intent to engage in the business or to otherwise offer for sale or commercial distribution to any individual under the age of eighteen (18) years; or
 - c. Shall display in any area or in any fashion which is visible by persons located in areas which are normally occupied by members of the general public, at newsstands or retail stores or any other business establishment frequented by minors under the age of eighteen (18) years or where minors are or may be invited as a part of the general public;

any still picture or photograph or any book, pocketbook, pamphlet or magazine, the cover or content of which exploits, is devoted to or is principally made up of descriptions or depictions of specified sexual activities or which is lewd, lascivious or indecent or which consists of pictures of specified anatomical areas of persons, shown or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain, or any article or instrument of indecent or immoral use, shall be guilty of violation of this section.

- (2) *Specified anatomical areas:*
 - a. Less than completely and opaquely covered:
 1. Human genitals;
 2. Public regions;
 3. Buttocks;
 4. Female breast, below a point immediately above the top of the areola.
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (3) *Specified sexual activities:*

- a. Human genitals in a state of sexual stimulation or arousal.
- b. Acts of human masturbation, sexual intercourse or sodomy.
- c. Fondling or other erotic touching of human genitals, public region, buttock or female breast.

(b) *Penalty for violation of section.* Any person or anyone acting in behalf thereof who shall violate or fail to comply with any of the provisions of this section shall upon conviction be punished by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment at the discretion of the judge.

(Code 1964, § 17-19.2)

Sec. 17-34. Nudity, sexual conduct prohibited.

(a) No person shall expose to public view his or her genitals, public area, vulva, anus, anal cleft or cleavage, or any portion of the foregoing specified anatomical areas, or any simulation thereof in any establishment at which alcoholic beverages, beer or wine are offered for sale for consumption on the premises.

(b) No female person shall expose to public view any portion of her breasts encompassed within an area falling below the horizontal line one would have to draw to intersect a point above the top of the areola, or any portion of the areola, or any simulation thereof in any establishment at which alcoholic beverages, beer or wine are sold or offered for sale for consumption on the premises. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed.

(c) No person maintaining, owing or operating an establishment at which alcoholic beverages, beer or wine are sold or offered for sale for consumption on the premises shall suffer or permit any person to expose to public view anus, anal cleft or cleavage, or any portion of the foregoing specified anatomical areas, or simulation thereof, within any establishment at which alcoholic beverages, beer or wine are offered for sale for consumption on the premises.

(d) No person maintaining, owning or operating an establishment at which alcoholic beverages, beer or wine are offered for sale for consumption on the premises shall suffer or permit any female person to expose to public view any portion of her breasts encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola, or any portion of the areola, or any simulation thereof, within any establishment at which alcoholic beverages, beer or wine are sold or offered for sale for consumption on the premises. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed.

(e) No person shall engage in and no person maintaining, owning or operating an establishment at which alcoholic beverages, beer or wine are offered for sale for consumption on the premises shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks or any portion thereof, anus

or genitals or the simulation thereof, within any establishment at which alcoholic beverages, beer or wine are sold or offered for sale for consumption on the premises.
(Ord. No. 1684, § 1, 2-7-90)

ARTICLE III.

SEXUAL OFFENDERS*

* **Editors Note:** Ord. No. 2418, § 1, adopted Sept. 10, 2008, repealed the former Art. III, §§ 17-36, 17-36, and enacted a new Art. III as set out herein. The former Art. III pertained to sexual offenders and derived from Ord. No. 2382, § 1, 1-10-07; Ord. No. 2385, § 1, 2-28-07.

Sec. 17-35. Definitions.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in section 17-36, except where the context clearly indicates a different meaning:

Offender means a person who has been convicted of a violation of F.S. §§ 794.011, 800.04, 827.071, or 847.0145 as may amended from time to time, or a violation of a similar law of another jurisdiction, regardless of whether adjudication has been withheld, in which the victim of the offense was less than sixteen (16) years of age, or who meets the criteria of F.S. § 775.21(4) as may amended from time to time.

Park means a tract of land devoted primarily to recreational purposes and the maintenance of open space. Such areas are usually planted and landscaped and may, or may not, include community buildings and structures or a playground or playfield as defined below.

Permanent residence means a place where a person abides, lodges, or resides for five (5) or more consecutive days.

Playfield means a tract of land devoted to active recreational purposes, primarily for the use of older children, and includes swimming facilities, tennis courts, ball fields, basketball courts or outdoor games and/or recreational areas utilized by children. Such areas usually contain facilities for organized sports and accommodations for spectators and may or may not include community buildings or structures.

Playground means a tract of land devoted to active recreational purposes for the primary use of preschool and elementary school age children. Such areas are usually equipped with play apparatus and facilities and may or may not include community buildings and structures. The playground can be for public use or created by a homeowners association or condominium association for private use. A private residence shall not be considered a playground.

Sportcenter means any building, room or facility (except any indoor or outdoor stadium, gymnasium or the like, which provides permanent stands for five hundred (500) or more spectators) which is designed and used for one (1) or more active sports activities (such as, but not limited to, weightlifting, indoor running, swimming, racquetball, the martial arts, etc.).

Temporary residence means a place where a person abides, lodges, or resides for a period of five (5) or

more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for an period of time in this state.

(b) In enacting this article, the city makes the following statements of intent and relies upon the following studies and findings:

- (1) The mayor and city council of the City of Plantation are deeply concerned about the recent occurrences of crime in our state by registered convicted sex offenders and view this article as necessary for providing protection to children.
- (2) The city is a place of residence for families with small children, and the city's recreation areas are used by children residing within Plantation and by children from other communities.
- (3) The City of Plantation desires to enact legislation which provides protection for children using park, playground, playfield, and sportcenter facilities.
- (4) The United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), studied the recidivism of sex offenders released since 1994 and found the following:
 - a. Within three (3) years following their release, 5.3 percent of sex offenders (men who had committed rape or sexual assault) were rearrested for another sex crime;
 - b. On average the nine thousand six hundred and ninety-one (9,691) sex offenders served less than half of their eight-year sentence;
 - c. Compared to nonsex offenders released from state prisons, released sex offenders were four (4) times more likely to be rearrested for a sex crime;
 - d. Of the released sex offenders, 3.5 percent were reconvicted for a sex crime within the three-year follow-up period, twenty-four (24) percent were reconvicted for a new offense and 38.6 percent were returned to prison, either because they received another prison sentence or because of a parole violation; and,
 - e. The nine thousand six hundred and ninety-one (9,691) released sex offenders studied included four thousand two hundred and ninety-five (4,295) men who were in prison for child molesting.
- (5) The Washington State Institute for Public Policy published its findings of high recidivism rates among four hundred seventeen (417) released sexual predators and determined that fifty-seven (57) percent of the predators reoffended within six (6) years of being released from prison. The study further showed that felony sex offenses were the crimes of choice for the sex offenders, and that approximately one hundred eighty (180) of the "recidivists" committed crimes "considered precursors to child molestation".
- (6) The Colorado Bureau of Investigation has assembled the following relevant statistics:

- a. In 2003, there were approximately four hundred fifty-five thousand (455,000) registered sex offenders in United States.
 - b. As of 1997, approximately two hundred thirty-four thousand (234,000) of sex offenders in the U.S. are under correctional supervision.
 - c. At least half of convicted child molesters report that they also have been sexually assaulted as a child.
 - d. Over eighty (80) percent of convicted adult rapists report that they have molested children.
 - e. Approximately one-third (1/3) of sex offenders report assaulting both males and females.
 - f. Most convicted sex offenders have committed many, many assaults before they are caught.
 - g. Most sex offenders report that they have committed multiple types of sexual assault.
 - h. Over two-thirds (2/3) of offenders who reported committing incest also said they assaulted victims outside the family.
 - i. Studies of victims have found that less than thirty (30) percent of sex crimes are reported to law enforcement.
 - j. Young victims who know or are related to the perpetrator are least likely to report the crime to authorities.
 - k. Most offenders commit multiple crimes against multiple types of victims with whom they have varying types of relationships (adults, children, male, female, known and unknown).
 - l. Sex offenders rarely commit a single type of offense. Many offenders have no official criminal record or sex crime history of any kind.
 - m. There is no such thing as a "typical" sex offender, however all tend to be manipulative, deceptive, and secretive. Sex offenders come from all backgrounds, ages, income levels, and professions.
 - n. Sex offenders usually do not commit their crimes impulsively. They usually carefully plan their crimes
- (7) The city acknowledges and adopts the state's legislative findings in the Florida Sexual Predators Act, particularly F.S. § 775.21(3)(a) and the finding in F.S. § 775.21(3)(c) that government has a compelling interest to protect the public from sexual predators.

- (8) F.S. §§ 794.065 and 947.1405 provide for one thousand-foot residence prohibitions from specified locations for certain sexual offenders.
- (9) Many local communities are adopting ordinances that increase substantially the one thousand-foot prohibition referenced above, and Plantation is concerned that without an ordinance being adopted by the city, persons subject to the laws of these other communities will migrate into Plantation.
- (10) Because of the many communities within Florida adopting differing standards concerning this subject, it is likely that national, state, or perhaps county preemptive law on the subject will be adopted; accordingly, the city wishes to provide a sunset provision to this article.
- (11) F.S. § 847.0134 provides that certain adult entertainment venues may not be located within two thousand five hundred (2,500) feet of the real property that comprises a public or private elementary school, middle school, or secondary school.
- (12) Article VIII. Section 2(b), Florida Constitution and F.S. § 166.021 and the city's charter provide the city authority to enact this article and thereby protect the public's health, safety and welfare. (Ord. No. 2418, § 1, 9-10-2008)

Sec. 17-36. Sexual offender residence prohibition; penalties; exceptions.

(a) It is unlawful for an offender to reside in a permanent residence or temporary residence within two thousand five hundred (2,500) feet of any school, day care center, park, playground, playfield or sportcenter.

(b) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to nearest outer property line of a school, day care center, park, playground, playfield or sportcenter.

(c) An offender residing within two thousand five hundred (2,500) feet of any school, day care center, park, playground, playfield or sportcenter does not commit a violation of this section if any of the following apply:

- (1) The person was an offender and the offender established the permanent residence prior to September 1, 2005.
- (2) The offender was a minor when he/she committed the offense and was not convicted as an adult.
- (3) The offender is a minor.
- (4) The school, day care center, park, playground, playfield or sportcenter within two thousand five hundred (2,500) feet of an offender's residence was opened after the person became an offender and after the offender established the permanent residence.
- (d) The city may enforce any violation of the article or prosecute any offense defined in this article

by:

- (1) Filing and prosecuting a municipal information in county court and seeking the highest fine, or longest incarceration period, or both, permitted by law; or,
- (2) Issuing a notice of violation under chapter 6 of this Code and seeking code enforcement fines and liens pursuant to such chapter from the code enforcement board or code enforcement special master/magistrate; or,
- (3) Enforcing this article pursuant to the provisions of sections 1-13 and 1-14 of this Code; or
- (4) Seeking injunctive relief in the circuit court of the 17th Judicial Circuit, in and for Broward County, Florida (injunctive relief may be the sole enforcement method, or may be supplemental to the relief sought in paragraphs (1), (2), or (3) above); or
- (5) By any other method allowed pursuant to law.

(e) Each day that this article is violated or each day that an offense occurs shall be a separate violation or offense.

(Ord. No. 2418, § 1, 9-10-2008)

Sec. 17-37. Reserved.

Sec. 17-38. Effective date.

This article shall take effect at 12:00:01 a.m. on the first day of October 2008, and shall stand repealed at midnight on September 30, 2010.

(Ord. No. 2418, § 1, 9-10-2008)

Secs. 17-39--17-50. Reserved.