



CHAPTER 11.5

NUISANCES

Article I.

In General

ARTICLE I. IN GENERAL

SECTION 11.5-1. DILAPIDATED BUILDINGS; JUNK VEHICLES.

(1) The existence of dilapidated, unsanitary or unsafe buildings or structures constitutes a menace to the public health and safety, and as such they are hereby declared to be public nuisances.

(2) The Town Commission shall have the power and authority to abate such nuisances by condemning and ordering to be demolished, or removed, or put in a state of sound repair. (Fla. Laws 1957, c. 57-1578) (Ord. No. 80-7; 1/27/81)

(3) In R1, R1A and R2 residential districts unlicensed, disabled, disassembled or otherwise inoperable vehicles stored or parked outside a garage or carport for more than fourteen (14) consecutive days are hereby declared to be nuisances. (Ord. No. 84-4; 6/26/84)

SECTION 11.5-2. MARSH, SWAMP, ETC., LANDS.

(1) The existence of marsh, swamp, wet or overflowed lands provides breeding places for mosquitoes and dangerous reptiles, produces unpleasant odors, stenches and smells, and is otherwise dangerous to the health, comfort, convenience, and general welfare, and such lands are hereby declared to be nuisances.

(2) The Town Commission shall have the power and authority to abate such nuisances by requiring the owner of any marsh, swamp, wet or overflowed land to ditch, drain or fill the same. (Fla. Laws 1957, c. 57-1578, Art. IV. § 2) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-3. GARBAGE, TRASH AND WEEDS.

(1) The presence of garbage, refuse, surface closets, dead animals, trash, waste and unused lumber or other waste material, sawdust, or debris of any kind, or weeds or high grass produces and harbors mosquitoes and dangerous reptiles, increases the danger of fires and the spread thereof, and produces unpleasant odors, stenches and smells and is otherwise dangerous

MELBOURNE VILLAGE CODE

to the health, comfort, convenience and general welfare, and the existence of any such condition is hereby declared to be a nuisance.

(2) The Town Commission shall have the power and authority to abate such nuisances by requiring the owner of any property to remove therefrom all such garbage, refuse, surface closets, dead animals, trash, waste or other (sic) unused lumber, or other waste material, sawdust or debris of any kind, and to cut to a height of not more than four inches from the ground all weeds or grass, and to remove same from said lands. (F;a Laws 1957, c. 57-1578, Art. IV, § 3) (Ord. No. 80-7; 1-27-81)

SECTION 11.5-4. REQUIRING OWNER TO ABATE; HEARING.

(1) If any officer of the Town shall find any nuisance, as set forth in Section 11.5-1 through Section 11.5-3, to exist on any lands within the Town, he is hereby authorized and empowered and directed to give to the owner of such land notice to abate such nuisance or to show cause before the Town Commission of the Town of Melbourne Village, at a time and place specified in said notice, not less than ten days from the date of service thereof, why the same should not be declared to be a nuisance and abated.

(2) Such notice may be served upon said owner by any officer or agent of the Town, either personally or by mail.

(3) Said hearing may be adjourned by the Town Commission from time to time.

(4) At such hearing the Town Commission shall give to the said officer and the owner of said property a full opportunity to be heard and to present any evidence relating to the condition of said property, and the conditions causing such nuisance, and may, if deemed advisable, make a personal inspection of the property. If, upon hearing such evidence, or upon such personal inspection, the Town Commission shall determine that a nuisance exists, it may enter an order requiring the owner to abate said nuisance within a reasonable time, not less than ten days nor more than thirty days, from the date of such order. (Fla. Laws 1957, c. 57-1578, Art. IV, § 4) (Ord. No. 80-7; 1-27-81)

SECTION 11.5-5. PROCEDURE WHERE OWNER UNKNOWN. If the name of the owner of said property is unknown to the officer of the Town who shall find the nuisance to exist on said property, or the home of such owner is unknown and his address is unknown to the Town Clerk of the Town, or the name of such owner is known and his address is unknown to such officer or Town Clerk, the notice provided in Section 4 (§ 11.5-4 of this compilation) may be served upon the owner of said property by posting a copy of the same upon the property not less than ten days before the date of

CHAPTER 11.5

hearing, and such notice by posting shall be sufficient to authorize the Town Commission to proceed in the manner provided by Section 4 § 11.5-4 of this compilation). (Fla. Laws 1957, c. 57-1578, Art. IV, § 5) (Ord No. 80-7; 1/27/81)

SECTION 11.5-6. JOINDER OF PROPERTIES IN COMMISSION ORDERS. Where notice shall have been given in the manner provided herein (Sec. 11.5-4 of this compilation) to the owners of more than one parcel of property (,) the Town Commission may in one order determine that said nuisances exist as to all of said properties, and may in one order require each owner to abate said nuisance as to his property, and it shall not be necessary to enter separate orders on each parcel of property. (Fla. Laws 1957, c. 57-1578, Art. IV, § 7) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-7. PENALTY FOR VIOLATIONS. The Town Commission shall have the power and authority to provide penalties by fines or imprisonment, or by both fine and imprisonment, for the violation of any order so (§ of this compilation) entered. (Fla Laws 1957, c. 57-1578, Art. IV, § 8) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-8. LIENS--WHERE TOWN ABATES NUISANCE AFTER FAILURE OF OWNER TO ACT; INTEREST; DISCHARGE.

(1) If any owner of any property shall fail to comply with the order of the Town Commission within the time specified in said order, the Town, acting by and through any officer, agent or employee, may enter upon the property where said nuisance exists, and may do all acts necessary to abate such nuisance, and expend such sums of money in doing said work as may be required to abate such nuisance at the expense of the owner thereof, and may charge or assess the said property and the owner with the actual cost of labor performed and materials furnished in abating said nuisance, together with ten per centum (10%) of the cost of said labor and materials for the use of tools and supervision; and said amounts shall constitute an indebtedness of the owner of said property to the Town, and shall constitute a lien against said property which shall be superior to all other liens, except the liens for State and County taxes and Town taxes, and the liens for special assessments for public improvements.

(2) The Town Clerk shall enter in a book provided by him for such purpose the claim of the Town for said lien, in which he shall give a brief description of the property, the name of the owner, if known, and the amount due to the Town for which said lien is claimed.

MELBOURNE VILLAGE CODE

(3) The amounts so expended by the Town shall become due within one (1) month after the expenditure of the same, and if not paid within said time shall bear interest after one month from the date thereof at the rate of one per centum (1%) per month until paid.

(4) Upon payment of the amount due for said work the Town Clerk shall enter on said record the fact and date of payment thereof, and such entry of payment by the Town Clerk shall constitute a discharge of the lien. (Fla. Laws 1957, c. 57-1578, Art. IV. § 9) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-9. SAME---IRREGULARITIES DO NOT INVALIDATE; DEFENSES.

(1) Any liens herein provided for (§ 11.5-10, et. seq., of this compilation) shall not be set aside or declared invalid because of any informality or irregularity in the proceedings, provided the notice required by Sections 4 and 5 of the Article (Sec. 11.5-4 and 11.5-5 of this compilation) shall have been given.

(2) The entry of said lien shall be competent and sufficient evidence and prima facie evidence of the necessity for, and the legality of, the work done, and the correctness of the amount claimed by the Town for such work and of the lien for the same.

(3) In any suit brought to enforce said lien no defense shall be available to the owner or other defendant except the defense that the nuisance found by the Town Commission to exist, did not exist, or that the same had been abated by the owner prior to the abatement of such nuisance by the Town, or that the amount claimed by the Town to be due for the cost of abating said nuisance was not expended by the Town, or that such amount had been paid; and the burden of affirmatively alleging and proving such defense shall be upon the defendant. (Fla. Laws 1957, c. 57-1578, Art. IV, § 10) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-10. FORECLOSURE OF LIENS---WHERE OWNER FAILS TO PAY.

(1) If the owner of any property subject to a lien for the abatement of a nuisance, as herein provided (§ 11.5-8 of this compilation), shall fail to pay the amount assessed against said property for the expense of abating said nuisance, as herein provided (§ 11.5-8 of this compilation), within thirty (30) days after the same shall have been assessed, the Town Clerk shall be, and he is hereby authorized and directed, to deliver to the Town Attorney a certified copy of said entry of lien for collection; which certified copy shall be prima facie evidence of the contents of said entry of lien and of the effect thereof, as provided in this Article (§ 11.5-8 of this compilation).

CHAPTER 11.5

(2) The Town Attorney, upon receiving any such certified copy as aforesaid, shall be, and he is hereby, authorized and directed to bring in the Circuit Court of Brevard County, Florida, a bill in equity to foreclose the said lien, which bill in equity shall briefly allege the Town's claim of lien against the real estate described, shall briefly allege the giving of the notice and the entry of the order for the abatement of said nuisance, the failure of the owner to abate the same, and the abatement of the same by the Town, the expenses of such abatement, and the entry of the lien therefor, and the failure of the owner to pay the same.

(3) The service of the said suit, the proceedings therein, and the sale of said property in said foreclosure proceedings shall be the same as is provided by law for the foreclosure of liens for taxes by the Town of Melbourne Village, which are hereby made applicable to suits to foreclose the liens provided by this Article (Sections 19-27 through 19-45 of this compilation).

(4) A sale of property in said foreclosure proceedings shall divest the title of the owner thereof and the claims of all persons holding liens of said property, and vest the same in the purchaser in the same manner and to the same effect as suits to foreclose liens for taxes. (Fla. Laws 1957, c. 57-1578, Art. IV, § 11) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-11. SAME---JOINDER OF DEFENDANTS AND PROPERTIES.

(1) The Town Attorney, in foreclosing said liens (§ 11.5-10 of this compilation), may include in one bill of complaint as many parcels of land and as many and varied defendant owners, mortgagees and other lien holders as may be deemed necessary and advisable by the Town Attorney, and may include the foreclosure of such liens in bills of complaint seeking the foreclosure of taxes.

(2) No such bill of complaint shall be deemed multifarious, and it shall be no objection to the same that liens upon more than one parcel of land, or liens for taxes, or more than one defendant, are included in the same bill of complaint. (Fla. Laws 1957, c. 57-1578, Art. IV, § 13) (Ord No. 80-7; 1/27/81)

SECTION 11.5-12. SAME--ATTORNEY'S FEES.

(1) The Town Attorney shall be entitled to a fee of five per centum (5%) of all amounts of liens and interest collected by him without suit, which shall be added to the amount of the lien, and in all suits to foreclose said liens wherein the Town shall prevail he shall be entitled to a reasonable attorney's fee, to be fixed by the court and to be taxed as a part of the cost, which

MELBOURNE VILLAGE CODE

allowance to the Town Attorney shall be regarded as further penalties for the non-payment of the said lien within the time prescribed by law.

(2) If the Town Attorney shall procure information from an abstract company as to the record ownership of, or mortgages or liens upon, any land, the liens on which have been certified for collection, the amount so paid to such abstract company for such information shall be added to the liens and collected as cost and shall be included in the cost in the event of foreclosure. (Fla. Laws 1957, c. 57-1578, Art. IV, § 12) (Ord No. 80-7; 1/27/81)

SECTION 11.5-13. MAJORITY ACTION BY COMMISSION. In any proceedings had under Sec. 11.5-1 through 11.5-13 of this compilation, a majority of the Town Commission may act, and the presence of the full Commission shall not be required. (Fla. Laws 1957, c. 57-1578, Art. IV, § 6) (Ord. No. 80-7; 1/27/81)

SECTION 11.5-14. ABANDONED PROPERTY AND VEHICLES. (Ord. No. 88-6; 5/26/88)

(1) Definitions.

(a) *Abandoned property*, shall mean property which has been left inoperable, abandoned, unused, or unprotected from the elements, and shall include, but not be limited to, wrecked, inoperative or partially dismantled motor vehicles, trailers and boats.

If a motor vehicle does not have a current registration and license plate issued pursuant to the laws of the State of Florida, it shall be presumed to be abandoned property within the meaning of this definition. However, the existence of a current registration and license plate on a motor vehicle shall not be sufficient to show that such vehicle is not abandoned property if such vehicle has been left inoperable, abandoned, unused or unprotected from the elements.

(b) *Carport*, shall mean an area attached to and an integral part of a residence or dwelling unit which is designed to cover and protect no more than two motor vehicles and which has a permanent roof meeting all applicable building and zoning codes.

(c) *Enclosed building or structure*, shall mean any building or structure having a permanent roof meeting all applicable building codes and permanent structural walls surrounding its entire periphery.

CHAPTER 11.5

Neither a carport nor a tent or other fabric covered structure shall be considered an enclosed building or structure for purposes of this Article.

(d) Code enforcement officer, shall mean the Chief of Police and other designated representatives authorized to enforce the Code of Ordinances of the Town.

(e) Inoperable, or inoperable condition, shall mean, as applied to any item of personal property that such property is not capable of being operated, employed, or used on a regular and routine basis for the normal purpose for which such property was designed or manufactured. A motor vehicle shall be deemed to be inoperable if it cannot be safely operated on the public highways and streets of the Town on a daily basis, or if it lacks any parts, equipment, or other items required by the laws of the State of Florida.

(f) Major repair, as applied to a motor vehicle shall mean:

(1) Any painting accomplished by using commercial paint spraying equipment.

(2) Any sheet metal work or other repair to the body of a vehicle using commercial equipment.

(3) Any mechanical repair of any nature which disables a vehicle or prevents its normal use or operation for a continuous period of fourteen (14) days or more.

(g) Motor vehicle, shall mean any vehicle which is self-propelled, including motorcycles.

(h) Residential zone, shall mean any area within the Town zoned R-1, R-1A, and R-2, in accordance with the zoning ordinance of the Town.

(i) Trailer, shall mean any vehicle with or without motor power designed for carrying persons or property and for being drawn by a motor vehicle.

(j) Unprotected from the elements, shall mean exposed to weather conditions outside an enclosed building or structure. Personal property covered only by canvas, tarpaulin, plastic sheet or other similar flexible covering shall be deemed to be unprotected from the elements for purposes of this Article.

(k) Vehicle, shall mean any device in, upon or by which any person or property is or may be transported or drawn upon a highway or street. The term "vehicle" shall include both motor vehicles and trailers, but shall expressly exclude bicycles or mopeds.

MELBOURNE VILLAGE CODE

SECTION 11.5-15. RESTRICTIONS ON NUMBER OF VEHICLES UNDER REPAIR. No person shall repair, dismantle, disassemble, reassemble or rebuild more than one motor vehicle or trailer at a time, or permit the repairing, dismantling, disassembly, reassembly or rebuilding of more than one motor vehicle or trailer at a time on any parcel of private property within the limits of the town, except within an enclosed building or structure.

SECTION 11.5-16. RESTRICTION ON MAJOR REPAIRS. No person shall accomplish or perform or permit to be accomplished or performed any of the major repairs of a vehicle defined in Section 11.5-14 (1) (f) 1. and 11.5-14 (1) (f) 2. within the limits of the town unless such major repair is done within an enclosed building or structure. No person shall accomplish or perform or permit to be accomplished or performed the major repairs defined in Section 11.5-14 (1) (f) 3. unless such major repair is done within an enclosed building or structure or within a carport.

SECTION 11.5-17. RESTRICTION FOR VEHICLES IN INOPERABLE CONDITION. No person shall leave or permit or allow to be left in a residential zone any vehicle in inoperable condition more than fourteen (14) days, except when such vehicle is within an enclosed building or structure or within a carport.

SECTION 11.5-18. STORING, DEPOSITING OR KEEPING ABANDONED PROPERTY PROHIBITED EXCEPT WITHIN AN ENCLOSED BUILDING. It shall be unlawful for any person, either as owner, occupant, lessee, agent, tenant, or otherwise, to store or deposit, or cause or permit to be stored or deposited, any abandoned, junked or discarded motor vehicles, or junked or discarded trailer or any other vehicle, with or without motor power, designed for carrying persons or property and for being drawn by a motor vehicle upon any public or private property within the limits of the Town for more than fourteen (14) days, except within an enclosed building or structure.

SECTION 11.5-19. PROPERTY ABANDONED ON PUBLIC LAND. The leaving of any property on any public right-of-way or other public lands within the town for a continuous period of forty-eight (48) hours shall be prima facie evidence that such property has been abandoned.

CHAPTER 11.5

SECTION 11.5-20. NOTICE OF VIOLATION, HEARING, AND CORRECTION OF VIOLATION BY THE TOWN: EXCEPTION IN CASE OF IMMINENT DANGER.

(1) NOTICE. If the Code Enforcement Officer finds any vehicle or other property in violation or apparent violation of sections 11.5-15, 11.5-16, 11.5-17, or 11.5-18, he shall place or cause to be placed on such vehicle or property a weather-resistant notice of the violation or apparent violation. Such notice shall be in substantially the following form:

NOTICE TO OWNER AND ALL PERSONS INTERESTED IN THIS VEHICLE OR PROPERTY

Vehicle Make or Property Description _____

I.D. or Serial Number (if applicable): _____

Location of Vehicle or Property: _____

This vehicle or property is in violation or apparent violation of the Code of Ordinances of the Town of Melbourne Village for the following reason:

_____ It is under repair in violation of Section 11.5-15, or Section 11.5-16, of the Town Code.

_____ It is inoperable and located within the limits of the town in violation of Section 11.5-17, of the Town Code.

_____ It is abandoned in violation of Section 11.5-18, of the Town Code.

This violation must be corrected within seven (7) days of the date of this notice. If the violation is not corrected within the said seven (7) day period, a hearing will be held at the Melbourne Village Town Hall, 535 Hammock Road, Melbourne, Florida, 32904, to determine the violation continues to exist and whether the property or vehicle should be removed and disposed of by the Town of Melbourne Village. Anyone interested in the property may appear and be heard. The hearing will be held on:

Date: _____

MELBOURNE VILLAGE CODE

Time: _____

If no one appears at the hearing, the Town will take action based on all available information.

Date of Notice: _____

Name of Enforcement Officer: _____

In addition to posting, the Code Enforcement Officer shall mail or personally deliver a copy of the notice to the owner of the real property upon which the article is located, on or before the date of posting of such notice. If the property in question is a vehicle, a copy of the notice shall be mailed or personally delivered to the owner of such vehicle as shown by the registration for such vehicle with the State of Florida.

(2) HEARING. If, by the date and time of the hearing regarding such notice, the owner or owners or any person interested in the vehicle or property described in the notice has not removed the vehicle or property and/or otherwise complied with the ordinance(s) cited in the notice, the hearing officer designated or appointed by the Town Mayor shall conduct a hearing.

The purpose of the hearing shall be to determine whether the property described in the notice is in violation of the Town Code as specified in the notice. At the said hearing, the owner or other persons possessing an interest in the property shall be given an opportunity to present, by oral testimony or documentary evidence, their objections to the property being declared in such violation. Should no person appear to contest the property being declared in such violation, the hearing officer shall proceed with the hearing and may, upon presentation of satisfactory evidence, find that such violation exists.

(3) CORRECTION OF VIOLATION BY THE TOWN. If the property is found to be abandoned the hearing officer shall order the property to be immediately removed by the Town and destroyed or otherwise disposed of. If the property is a motor vehicle and is found to be in violation of Section 11.5-17, the hearing officer shall order the vehicle to be impounded and sold or disposed of in accordance with the terms of Article II of this Chapter.

(4) EXCEPTION IN CASE OF IMMINENT DANGER. If the Code Enforcement Officer finds any abandoned property which poses an imminent danger to life, limb, or safety, he shall have the authority to cause such property to be removed by the Town without prior notice or hearing. In such event, the Town shall impound such abandoned property and shall not dispose of the same until notice has been given and a hearing held substantially as provided in subsections (1) and (2) of this section.

CHAPTER 11.5

When any property as defined in this Chapter shall remain upon any public right-of-way, or other public lands for a continuous period of forty-eight (48) hours or more, such property shall be taken into possession of the Town by the Code Enforcement Officer and shall be stored at some convenient place. If the owner of such property is known, he shall be notified at once that such property is in the custody of the police department and the person shall be directed to repossess himself of such property.

SECTION 11.5-21. IMMUNITY FROM PROSECUTION FOR CODE ENFORCEMENT OFFICER. Any code enforcement officer or any person authorized and accompanied by the code enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of the duties imposed by this Article.

SECTION 11.5-22. PENALTIES.

(1) Penalties for violation. In addition to the remedy provided in Section 11.5-20, any person, firm, partnership or corporation violating any provision of this Article shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) and/or by imprisonment in the County jail for a period not in excess of sixty (60) days.

(2) Penalty for resisting code enforcement officer. Whoever opposes, obstructs, or resists any code enforcement officer, or any person authorized by any code enforcement officer, in the discharge of his duties provided in this section, shall upon conviction, be punished by a fine of five hundred dollars (\$500.00) and/or by imprisonment in the County jail for a period not to exceed sixty (60) days.

SECTION 11.5-23. REMEDY TO BE SUPPLEMENTARY TO OTHER PROVISIONS OF LAW. The remedies provided by Section 11.5-20, shall expressly be supplementary to all other remedies available by law for violations of provisions of this Article. Nothing herein shall be construed to preclude action for injunctive relief in a court of competent jurisdiction.