

# **CHAPTER 2**

## **ADMINISTRATION**

Article I.	In General, S 2-1.---2-2.
Article II.	Town Commission, S 2-11.---2-14.
Article III.	Code Enforcement Board, S 2-15.---2-25.
Article IV.	Budget, S 2-31.---2-34.
Article V.	Historic Preservation Commission, S 2-35.---2-37.

### **ARTICLE I. IN GENERAL**

**SECTION 2-1. FRANCHISES.** No public franchise of any description shall be granted except by ordinance, and no franchise so granted by the Town Commission shall be for a longer period than thirty (30) years. Any easements provided under any public franchise, for the purpose of access for provision of service, shall be granted solely for the provision and maintenance of said service. Any extraneous uses of such easements shall be governed by applicable codes, or, in the absence of any applicable codes, shall be permitted only with the approval of the Town Commission. (Ord. No. 80-7, Jan. 27, 1981) (Fla. Laws 1957,c.57-1578, Art. IX,S2) (Ord. 88-2, Jan. 26, 1988)

**SECTION 2-2. INTEREST OF TOWN OFFICIALS IN TOWN CONTRACTS.** No member of the Town Commissioner or Officer, agent or employee of the Town shall be directly or indirectly interested in any contract under the charge of the Commission. (Ord. No. 80-7, Jan. 27, 1981) (Fla. Laws 1957, Art. S 27)

**SECTION 2-3. PROHIBITIONS AGAINST HOLDING COMPENSATED OFFICES.** Except where authorized by law, no commission member shall hold any compensated Town Office identified by the Code of Ordinances, or any Town employment during the terms for which they are elected to the commission, and no former members of the commission shall hold any compensated appointive Town office or Town employment until one (1) year after the expiration of the terms for which they were elected. This provision shall not prevent participation in activities connected with any volunteer organization or committee as specified by the commission. (Ord. No. 95-1, S 1, 11/22/94)

**SECTION 2-4. ADMINISTRATIVE SUPERVISION.** Except for the purposes of inquiries and investigations, the Town Commission, committees or their members shall deal with Town department heads and employees who are subject to the general supervision and control of the Mayor solely through the Mayor, and neither the Town Commission, nor committees nor their members shall have the authority to give orders to any such officer or employee, either publicly or privately, unless the

# **MELBOURNE VILLAGE CODE**

specific action has been authorized by the Mayor or by prior majority vote of the commission. All direction to department employees shall furthermore be made only through the associated department heads. (Ord. No. 95-2, S 1, 11/22/94)

## **SECTION 2-5. OFFICIAL SEAL AND LOGO OF THE TOWN OF MELBOURNE VILLAGE.**

(1) The following symbols are hereby designated to be the official seal and logo of the Town of Melbourne Village:

(2) In accordance with Florida Statute 165.043, the manufacture, use, display, or other employment or any facsimile or reproduction of the municipal seal and/or logo, except by municipal officials or employees in the performance of their official duties, without the express approval of the Mayor is a second-degree misdemeanor, punishable as provided in Florida Statute.

## **ARTICLE II. TOWN COMMISSION**

**SECTION 2-11. ELECTION FROM TOWN AT LARGE.** All members of the Town Commission shall be elected from the Town at large. (Ord. No. 20, S 24)

## **SECTION 2-12. WHEN COMMISSIONERS TAKE OFFICE.**

(1) Candidates elected to fill seats on the Town Commission shall be sworn in and take office at the next regular commission meeting following the election.

(2) In the event of a run-off election, they shall be sworn in at the first regular meeting following the run-off election. (Ord. No. 20, S 24)

## **CHAPTER 2**

### **SECTION 2-13. VACANCIES.**

(1) If a seat in the Town commission shall become vacant, it shall be filled for the remainder of the unexpired term by a majority vote of the remaining members of the commission. In case of a tie, the Mayor-Commissioner shall be entitled to cast the deciding vote.

(2) If a majority of the places on the Town Commission shall become vacant at one time, a special election of voters shall be held to elect new members to serve for the remainder of the unexpired term, except that if a regular election for members of the commission to serve for the next regular term has already been held, or is to be held not more than sixty days after the occurring of the vacancies, such a special election need not be held and the members elected to the commission at the regular election shall take office forthwith or as soon as the regular election is completed.

**SECTION 2-14. ABSENCE VACATES SEAT.** If any member of the Town Commission shall be absent from three consecutive regular meetings his seat shall be considered vacated, and the commission shall thereupon fill the vacancy, unless the commission shall, by resolution, excuse such absence. (Ord. No. 50, S 1)

### **ARTICLE III. CODE ENFORCEMENT BOARD**

**SECTION 2-15. INTENT.** It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the Town of Melbourne Village by providing for an equitable, expeditious, effective and inexpensive method of enforcing certain codes in force in the town, including, but not limited to, occupational license, fire, building, zoning, litter, environmental, animal control, abandoned property, land use and sign codes and ordinances. This article is enacted pursuant to the authority granted the town by Chapter 162, Florida Statutes and the home rule powers vested in the town.

**SECTION 2-16. DEFINITIONS.** Definitions as used in this article.

(a) *BOARD*, shall mean the Code Enforcement Board of the Town of Melbourne Village.

(b) *TOWN*, shall mean the Town of Melbourne Village, Brevard County, Florida.

# **MELBOURNE VILLAGE CODE**

(c) *CODE*, shall mean any one of the following designated chapters, or sections or subsections of a chapter, of the town code which is subject to the jurisdiction of the Code Enforcement Board.

- (1) Section 3-2 (a), 3-2 (c), 3-5 of chapter 3, Animals and Fowl.
- (2) Chapter 4, Building and Building Regulations.
- (3) Chapter 6, Electricity.
- (4) Chapter 7, Fire Control and protection.
- (5) Chapter 8-10--8-12 of chapter 8, Garbage and Trash.
- (6) Chapter 9, Gas.
- (7) Chapter 9.5, Improvements.
- (8) Chapter 10, Occupational Licenses.
- (9) Chapter 11.5, Nuisances.
- (10) Chapter 16, Plumbing.
- (11) Chapter 16.5, Signs.
- (12) Chapter 17, Streets and Sidewalks.
- (13) Chapter 18, Subdivisions.
- (14) Chapter 18.5, Swimming Pools.
- (15) Chapter 21, Tree Protection and Removal.
- (16) Chapter 23, Zoning.

(d) *CODE ENFORCEMENT OFFICER*, shall mean the Chief of Police or other designated representative authorized by the town commission to enforce the codes cited in Section 2-16 (c) above.

## CHAPTER 2

(e) *TOWN ATTORNEY*, shall mean the legal counselor for the town.

(f) *TOWN COMMISSION*, shall mean the elected governing body of the town.

(g) *WRITTEN NOTICE*, shall mean the mailing of notice by certified mail, return receipt requested, to the person required to be notified for an alleged code violation and for any board hearing on any violation or, when such mailing would be ineffective, by hand delivery to an alleged violator by the Code Enforcement Officer.

(h) *REPEAT VIOLATION*, shall mean a recurring violation by a violator who has been found by the code enforcement board to have previously committed the same violation.

**SECTION 2-17. JURISDICTION.** The Board shall have jurisdiction to hear and decide cases in which violations are alleged of any provision of any chapter, section or subsection cited in Section 2-16 (c) of this article.

**SECTION 2-18. CODE ENFORCEMENT BOARD CREATED: COMPOSITION: TERMS: REMOVAL: ORGANIZATION.**

(1) The Town Commission shall appoint a seven-member Code Enforcement Board whose members are and have been residents of the town twelve (12) months immediately preceding appointment and shall serve without compensation.

(2) The membership of the board shall be on the basis of interest or experience in the jurisdiction of the respective code enforcement board, and shall whenever possible, include.

- (a) An architect.
- (b) A business person.
- (c) An engineer.
- (d) A general contractor.
- (e) A subcontractor.
- (f) A realtor.

# **MELBOURNE VILLAGE CODE**

(3) The initial appointments to the board shall be as follows:

(a) Two (2) members appointed for a term of one (1) year each.

(b) Three (3) members appointed for a term of two (2) years each.

(c) Two (2) members appointed for a term of three (3) years each.

Thereafter, any appointment shall be made for a term of three (3) years. A member may be reappointed by the town commission for one successive term. Any appointment to fill any vacancy on the board shall be for the remainder of the unexpired term of office. If any members fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's office vacant and the town commission shall promptly fill such vacancy. Members may be suspended and removed for cause by the town commission.

(4) At the first meeting of the Code Enforcement Board the members shall elect a chairperson and vice-chairperson from among the board members. The presence of four (4) or more members shall constitute a quorum necessary to conduct board business.

(5) The board shall establish a schedule for regular meetings at such intervals as the board may determine, and regular meetings may be cancelled by the chairperson if no cases are pending or necessary business is to come before the board. Special meetings may be convened by the chairperson, or the vice-chairperson in the absence of the chairperson, upon giving thereof to each member of the board at least twenty-four (24) hours notice in advance.

(6) Minutes shall be maintained of all meetings and hearings held by the board, and all meetings, hearings and proceedings shall be open to the public.

(7) The town attorney shall either be counsel to the enforcement board or shall represent the town by presenting cases before the enforcement board, but in no case shall the town attorney serve in both capacities, and in the event the town attorney acts as counsel to the enforcement board, the code enforcement officer shall represent the town by presenting cases before the board. The town commission may appoint a practicing member of the Florida Bar to represent the board when required, to be compensated by the town.

## **SECTION 2-19. ENFORCEMENT PROCEDURE.**

## **CHAPTER 2**

(1) **INITIATION OF PROCEEDINGS.** It shall be the duty of the code enforcement officer to initiate enforcement proceedings for violations of the codes. No member of the enforcement board shall have the power to initiate such proceedings. Upon finding that a violation of the codes has been committed, the code enforcement officer shall give written notice to the alleged violator describing the nature of the violation and requiring the alleged violator to correct the violation within a specified reasonable time; provided, however, that if the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety or welfare, the code enforcement officer may proceed directly to the procedure in Section 2-20 without notifying the alleged violator.

(2) **FAILURE TO COMPLY.** If a violation continues beyond the time specified for correction, the code enforcement officer shall notify the enforcement board and request a hearing in accordance with the procedures of Section 2-20 of this article. Within five (5) days of the receipt of such notice from the code enforcement officer, the chairperson of the enforcement board shall establish a date and time for such a hearing and shall cause written notice of both the violation and the hearing thereon to be mailed or otherwise served upon the alleged violator. The hearing shall be scheduled no sooner than ten (10) days nor later than twenty-five (25) days after the date of such notice. The person cited as the alleged violator shall have the right to request a postponement or continuance of the hearing in the event he received said notice less than five (5) days prior to the date of the hearing.

(3) **REPEAT VIOLATIONS.** In case of repeat violations, the provisions of subsection (2) shall apply except as provided otherwise in this subsection. In the case of a repeat violation, the code enforcement officer shall notify the violator but shall not be required to give him reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the enforcement board and request a hearing. The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the board hearing.

### **SECTION 2-20. CONDUCT OF HEARING.**

(1) **ADMINISTRATIVE PROCEDURE.** The chairperson of the enforcement board shall cause minutes to be kept of all hearings by the enforcement board, and all hearings and records of the enforcement board shall be open to the public. The town commission shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties. The enforcement board may, at any hearing, set future hearing dates and may postpone or continue any matter before it to a future date.

# **MELBOURNE VILLAGE CODE**

(2) REPRESENTATION. Each case before the enforcement board shall be presented by the code enforcement officer or the town attorney. Any person accused of a violation may be represented by counsel at the hearing.

(3) ORDER OF PROCEDURE AND RULES OF EVIDENCE. At any given hearing, the enforcement board shall first take testimony and receive evidence from the town, and the town shall have the burden of proving the existence of the alleged violation by the preponderance of the evidence. If the evidence presented by the town established a prima facie case, the enforcement board shall then proceed to receive evidence and testimony from the alleged violator. Formal rule of evidence shall not apply, but fundamental procedural due process shall be observed and shall govern said proceedings. All testimony before the enforcement board shall be under oath and shall be recorded.

(4) FINDINGS AND ORDERS. At the conclusion of the hearing, the enforcement board shall make findings of fact, based on the evidence of record, and conclusions of law, and shall issue an order affording such relief as may be consistent with the powers granted herein. The findings and order shall be adopted by motion of a majority of those present and voting, except that at least four (4) members of the enforcement board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. The findings and order shall be presented in written form and shall be served personally or by mail upon the alleged violator. The record of all hearings shall be preserved as an official case record of the town and shall be subject to review by a court of competent jurisdiction as provided by Section 2-23. of this article.

## **SECTION 2-21. POWERS OF CODE ENFORCEMENT BOARD.**

(1) With respect to any hearing the code enforcement board shall have the following powers:

(a) To subpoena alleged violators and witnesses to the hearing.

(b) To subpoena evidence to its hearings.

(c) To take testimony under oath.



## **CHAPTER 2**

(d) To issue orders having the force of law commanding whatever steps necessary to bring a violation into compliance.

(e) Establish and levy fines pursuant to Section 2-22.

### **SECTION 2-22. PROCEDURE AND PENALTY IN THE EVENT OF NONCOMPLIANCE WITH AN ORDER OF THE CODE ENFORCEMENT BOARD.**

(1) If the code enforcement officer determines that an order of the code enforcement board has not been complied with, he shall notify the chairperson of the code enforcement board of such noncompliance. The chairperson of the board shall within five (5) days of receipt of such notice from the code enforcement officer, schedule a hearing for the purpose of determining whether the allegations of noncompliance are true and correct. Such hearing shall be scheduled as set forth in Section 2-19 (2) of this article, and the alleged violator shall be served personally with notice of the said hearing. All time limits for such service and for the hearing date shall be set forth in Section 2-19 (2) above. The hearing shall be conducted in the manner prescribed in Section 2-20 above, and finding of fact, conclusions of laws and orders shall be made by the board as provided in Section 2-20. (4) above.

(2) If the code enforcement board finds that the alleged violator has not complied with he previous order of the board, in addition to providing any other remedy, order the violator to pay a fine in the amount set forth in this section for each day the violation continues past the date set by the code enforcement board for compliance, or, in the case of a repeat violation, for each day the repeated violation continues past the date the code enforcement officer notified the violator of the repeat violation and a hearing shall not be necessary for issuance of the order imposing the fine.

(3) Any fine imposed pursuant to this section shall not exceed \$250. per day for first-time violations, or \$500. per day for repeat violations. In determining the amount of the fine, if, any, the code enforcement board shall consider the following factors:

(a) The gravity of the violation;

(b) Any actions taken by the violator to correct the violation; and

(c) Any previous violations committed by the violator.

(4) The enforcement board shall have the authority to reduce or extinguish a fine imposed pursuant to this section if the board finds the violator has corrected the violation.

# **MELBOURNE VILLAGE CODE**

(5) In the event a fine is imposed as set forth in this section, a certified copy of the order imposing such fine may be recorded in the public records of Brevard County. Upon such recording, the fine assessed shall constitute a lien against the land of which the violation was found to exist. If the violator does not own the said land, such fine shall constitute a lien upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgement by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgement except for enforcement purposes. A fine imposed pursuant to this chapter shall continue to run until the violator comes into compliance or until judgement is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After six (6) months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien.

(6) No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than five (5) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In any action to foreclose on a lien, the local governing body shall be entitled to recover all costs, including the reasonable attorney's fee, incurred in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

## **SECTION 2-23. APPEALS.**

(1) An aggrieved party, including the town commission of the Town of Melbourne Village, Florida, may appeal a final administrative order of the Code Enforcement Board to the circuit court. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(2) The scope of review shall be limited to the record made before the Code Enforcement Board and shall not be a trial de novo.

(3) The Code Enforcement Board shall, by rule, establish reasonable charges for the preparation of the record to be paid by the appealing party.

## **SECTION 2-24. NOTICES.**

## **CHAPTER 2**

(1) All notices required by this article shall be by certified mail, return receipt requested, or, when mail would not be effective, by hand delivery by the code enforcement officer, or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice. If the premises are vacant or the code enforcement officer knows the premises are occupied and that the occupants are making themselves unavailable, the code enforcement officer shall post the notice on the premises and shall note the reason for posting in the case file.

**SECTION 2-25. PROVISIONS OF THIS ARTICLE TO BE CUMULATIVE.** The remedies provided by this article shall be expressly supplementary to and cumulative to any other remedies provided by law for enforcement of the town codes. Nothing in this article shall be construed to abrogate or repeal the right of the town to bring criminal charges against a violator through the office of the state attorney or to preclude the town from proceeding with a civil action for injunctive or other relief.

Ord. No. 89-10, adopted October 24, 1989 amended Chapter II by adding Article III, establishing a Code Enforcement Board pursuant to Chapter 162 Florida Statutes.

**Editor's note:** Ordinance No. 69, S 1 adopted August 22, 1972, amended this code by repealing former Article III, SS 2-20---2-25, which article was derived from Ordinance No. 9, SS 1 and 2, and pertained to the town superintendent.

**SECTIONS 2-26.---2-30. RESERVED.**

### **ARTICLE IV BUDGET**

**SECTION 2-31. DEFINITIONS.** As used in this article, the following words and phrases shall have the meanings indicated:

(1) *YEAR.* "Year" shall mean the fiscal year of the town. (Od. No. 16, S 2)

**SECTION 2-32. FISCAL YEAR.** The fiscal year shall commence on the first day of October and end on the thirtieth day of September of each year. (Ord. No. 16 S 2)

# **MELBOURNE VILLAGE CODE**

**SECTION 2-33. FUNDS ESTABLISHED.** There shall be prepared, approved, adopted and executed for each fiscal year an annual budget for the following funds:

- (1) GENERAL FUND. (Ord. No. 16. S 3)

**SECTION 2-34. BUDGET PROCEDURE.** The following procedures shall be followed in the preparation of the annual budget:

- (1) CERTIFICATION OF VALUATION OF TAXABLE PROPERTY. On or before the first day of July of each year the tax assessor shall certify to the finance committee the actual assessed valuation of the property within the town, as spread upon the general tax roll of the current year, separating homestead real property from nonhomestead property.

- (2) TENTATIVE BUDGET. On or before the fifteenth day of July of each year, the finance committee, after tentatively ascertaining the proposed fiscal policies of the town commission for the ensuing fiscal year, shall prepare and present to the town commission a tentative budget for the ensuing fiscal year for each of the funds provided in this Article, including all estimated receipts, taxes to be levied, and balances expected to be brought forward, and all estimated expenditures, reserves and balances to be carried over at the end of the year.

- (3) REVISION BY COMMISSION. The town commission shall receive and examine the tentative budget for each fund and shall require such changes to be made as it shall deem necessary, provided that the budget shall remain in balance.

## **CHAPTER 2**

(4) BUDGET, NOTICE OF PUBLIC HEARING. Upon completion of any revisions by the town commission, the commission shall prepare a statement called the "Budget." This budget shall reflect the proposed tax millages, the balances, the reserves, and the total of each major classification of receipts and expenditures. The town commission shall cause this budget to be advertised one time in a newspaper of general circulation published in the county, or shall post a copy thereof at the town bulletin board. Such notice of advertisement shall state that the town commission will meet on a day designated therein, not earlier than one week and not later than two weeks from the date of the advertising or posting, for the purpose of hearing requests and complaints from the public regarding the budget.

(5) PUBLIC HEARING; FILING. The town commission shall meet upon the day designated in the advertisement or notice and from day to day thereafter as necessary, for the purpose of holding a public hearing and making whatever revisions in the budget it may deem necessary, and shall thereupon tentatively adopt the budget, and the tentative budget shall be filed in the town clerk's office as a public record.

(6) ADOPTION. After the public hearing, the town commission shall, at its next regular meeting, adopt by ordinance the tentative budget as the budget of the town for the next fiscal year. (Ord. No. 16, S 4; Ord. No. 50, S 2)

**Amendment note:** Ordinance No. 50, S 2, amended subsection (4) of the above section by changing "town office and at the town hall" to read "town bulletin board" in the third sentence.

### **ARTICLE V. HISTORIC PRESERVATION COMMISSION**

**SECTION 2-35. CREATION OF THE COMMISSION.** The Historic Preservation Commission shall consist of at least five (5) members. Members shall serve staggered two-year terms and may be reappointed. Initially, three will be appointed for a two year term, and two will be appointed for a one year term. Members do not receive a salary.

# **MELBOURNE VILLAGE CODE**

## **SECTION 2-36. THE HISTORIC PRESERVATION COMMISSION SHALL BE AUTHORIZED TO:**

- (1) Prepare a survey of all property within the Town of Melbourne Village in regards to historic preservation.
- (2) Recommend to the Town of Melbourne Village Commission specific places, districts, sites, buildings, structures, or works of art to be designated by Resolution as historic properties or historic districts.
- (3) Conduct an ongoing educational program on historic sites and important events and personalities related to Melbourne Village.
- (4) Conduct a survey of local historic resources.
- (5) Make recommendations to the Town Commission for further action as required.
- (6) Coordinate with the American Homesteading Foundation, property owners and other parties with regard to selection of sites, placements of markers, and other matters of mutual interest.

## **SECTION 2-37. RECORDS.** A public record shall be kept of the Historic Preservation Commission's proceedings and actions.

(Ord. No. 93-5, 06/22/93 added Article V.)