

# CHAPTER 12

## OFFENSES

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### ARTICLE I. IN GENERAL

**SECTION 12-1. ABANDONING REFRIGERATORS OR ICEBOXES.** No person shall discard, abandon or store any refrigerator or icebox from which the doors or latch have not been removed, outside of any building or in any open garage or carport within the town.

**SECTION 12-2. ASSAULT.** No person shall commit an assault.

**State law reference:** Similar provisions, SS 784.02, Florida Statutes.

### **SECTION 12-3. DEFACING OR DESTROYING PROPERTY.**

(1) No person shall desecrate or despoil any public cemetery or any church or other property set apart for public use or held for benevolent or charitable purposes.

(2) No person shall in any way deface any private property.

**State law references:** Similar provisions, SS 822.04, Florida Statutes; injuring or defacing public buildings, SS 822.03, Florida Statutes.

### **SECTION 12-4. DISTURBING THE PEACE.**

(1) No person shall willfully disturb the peace of others by violent, tumultuous or offensive conduct or carriage; or by loud and unusual noise; or by unseemly, profane, obscene or offensive language; or by repeating or uttering slander, scandal, malicious gossip, or rumor calculated to provoke a breach of the peace; or by assaulting, striking, or fighting another.

(2) No person shall permit any such conduct in or upon any house or premises owned or possessed by him or under his management or control.

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**State law reference:** Breach of the peace, SS 877.03, Florida Statutes.

**SECTION 12-5. DISTURBING RELIGIOUS SERVICE.** No person shall disturb any congregation or assembly met for religious worship by making any noise or by rude and indecent behavior or by profane discourse.

**SECTION 12-6. Drunkenness.** No person shall be found in a state of intoxication in any street or public place within the town.

**State law references:** Similar provisions, SS 856.01, Florida Statutes; driving while intoxicated, SS 317.20, Florida Statutes.

## **SECTION 12-7. FIREWORKS----DEFINED.**

(1) The term "fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or, except as hereinafter provided, any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion or detonation, and shall include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath for propulsion, firecrackers, torpedoes, skyrockets, Roman candles, sparklers, or other fireworks of like construction, and any fireworks containing any explosives or inflammable compounds or any tablets or other devices containing any explosive substances.

(2) The term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper caps containing 25/100ths grains or less of explosive compound are used, provided they are so constructed that the hand of the user cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than 20/100ths grains of explosive mixture.

**State law reference:** Similar provisions, SS 791.01, Florida Statutes.

**SECTION 12-8 SAME---PROHIBITED.** No person shall offer for sale, expose for sale, sell at wholesale or retail, or use or explode any fireworks.

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**State law references:** Similar provisions, SS 791.02, Florida Statutes; authority to prohibit sale within city, SS 168.10, Florida Statutes.

**SECTION 12-9. SAME---PUBLIC DISPLAYS.** The mayor- commissioner may grant permits for supervised public displays of fireworks by organizations or groups of individuals, provided that every such display shall be handled by a competent operator approved by the mayor-commissioner, and further provided that the display shall be of such a character, and so located, discharged or fired as, in the opinion of the mayor-commissioner shall not be hazardous to property or endanger any person.

**State law references:** Similar provisions, SS 791.02, Florida Statutes.

**SECTION 12-10. INDECENCY.** No person shall be found in a state of nudity, or in dress not appropriate to his sex, or indecently expose his person.

**State law reference:** State law reference---Exposure of sexual organs, SS 800.03, Florida Statutes.

**SECTION 12-11. LOITERING---IN PARKS.** No person shall loiter in any park within the town between the hours of 11:00 p.m. and 6:00 a.m.

**SECTION 12-12. SAME---IN PUBLIC PLACES.**

(a) No person shall loiter upon the street, sidewalks or other public place within the town.

(b) No person shall loiter in or near the town hall.

**SECTION 12-13. OBSCENE LITERATURE, PLAYS, ETC.; LEWD BEHAVIOR.** No person shall exhibit, sell or offer to sell any indecent or lewd book, picture or other thing; or exhibit or perform any indecent, immoral or lewd play or other representation; or be guilty in any way of indecent and lewd behavior.

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**SECTION 12-14. PROFANE LANGUAGE.** No person shall use profane, vulgar, indecent or obscene language in any public place or publicly or upon the private premises of another or so near thereto as to be heard by another.

**State law reference:** Similar provisions, SS 847.04, Florida Statutes.

**SECTION 12-15. SPITTING.** No person shall spit in any public place within the town.

**SECTION 12-16. STATE MISDEMEANORS ADOPTED BY REFERENCE.** No person shall commit within the town any act which is or shall be recognized by the laws of the State of Florida as a misdemeanor. (Ord. No. 2, S 1)

**SECTION 12-17. STATE OFFENSES ADOPTED BY REFERENCE.** There is hereby adopted by reference as fully and to the same extent as if set out at length herein, Chapter 775 through 877, inclusive, of the Florida Statutes.

**SECTION 12-18. TRESPASS---AFTER WARNING, ETC.** No person shall enter into the enclosed land and premises of another, or into any private residence, house or building of another, which is occupied by the owner or his employees, being forbidden so to enter or, not being previously forbidden, after being warned to depart therefrom and refuse to do so, or having departed re-enter without the previous consent of the owner, or having departed remain about in the vicinity using profane or indecent language.

**State law reference:** Similar provisions SS 821.01, Florida Statutes.

**SECTION 12-19. SAME---ORCHARDS, GROVES, GARDENS, ETC.** No person shall enter any orchard, grove garden or enclosure of another, without the permission of the owner or occupant authorized to give such permission, and take and carry away or destroy any fruit, flowers or garden products of any kind.

**State law reference:** Similar provisions, SS 821.12, Florida Statutes;

**SECTION 12-20. UNLAWFUL ASSEMBLY.** No two (2) or more persons shall meet together to commit a breach of the peace, or to do any other unlawful act.

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**State law reference:** Similar provisions SS 870.02, Florida Statutes; conspiracy, Ch. 833, Florida Statutes.

**SECTION 12-21. WEAPONS AND FIREARMS, GENERALLY.** It shall be unlawful to discharge in the Town of Melbourne Village firearms or weapons, which terms shall include but shall not be limited to pistols, rifles, shotguns, air rifles, dart guns, pellet guns, bows and arrows and other devices forcefully emitting projectiles with sufficient force to produce bodily harm. (Ord. No. 99, S 1, 10-24-78).

**State law reference:** Use of BB gun by children under sixteen limited, SS 790.22, Florida Statutes; carrying slingshot concealed, SS 790.15, Florida Statutes; manufacture and sale of slingshots, SS 790.09, Florida Statutes.

**SECTION 12-22. WEAPONS AND FIREARMS USED BY LAW ENFORCEMENT OFFICERS.** These provisions (of section 12-21) shall not be construed to prohibit any officer of the law from discharging a firearm in the performance of his duty, or any citizen from discharging a firearm when lawfully defending person or property. (Ord. No. 99, S 1, 10-24-78)

**State law reference:** Discharging firearms in public, SS 790.15, Florida Statutes; carrying firearms in national forests, SS 790.11, Florida Statutes; target shooting on Sunday, SS 855.06, Florida Statutes.

### **SECTION 12-23. SAME---IN POSSESSION OF ARRESTED PERSONS.**

(a) If any person is lawfully arrested while committing a criminal offense or a breach or disturbance of the public peace and shall have on his person any dangerous weapon, the arresting officer shall take possession of such weapon.

(b) If such person shall be convicted in the municipal court, such weapon shall be forfeited; but if such person shall be acquitted, the weapon shall be returned to him.

**State law reference:** Similar provisions, SS 790.08, Florida Statutes.

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## **SECTION 12-24. DUTIES OF TOWN POLICE OFFICERS.**

(a) The chief of police is designated as executive officer of the court. He may designate any qualified town police officer to serve in his stead at any term or session of the court. The chief of police may, with the consent of the town commission, hire additional police officers who shall have such powers, duties and responsibilities as provided for herein.

(b) Members of the town police force have the power and duty of serving and executing all writs, processes and warrants issuing from the town court, and the same may be served and executed at any place within the territorial limits of Brevard County, Florida. Members shall make returns as is required of constables and sheriffs in the execution of similar papers.

**Editor's note:** Ord. No. 81, S 1, adopted Oct. 22, 1974, provided for the abolition of the town court. Pursuant to the direction of the town, the editors deleted S 12-30.---12-31. and 12-34.---12-39. derived from Ord. No. 77, S 2, 3 and 6---11, adopted March 5, 1974. Said provisions created the town court and the office of prosecuting attorney; provided for the powers and jurisdiction of the court, and the town judge and other officers of the court; provided for the issuance of writs, processes, warrants and other papers; the remission of fines, costs and penalties; the suspension of sentences and the attendance of witnesses.

Former sections 12-32. and 12-33. were redesignated sections 12-24. and 12-25. by the editors.

**SECTION 12-25. ARREST WITHOUT WARRANT.** Town police officers shall have the power and duty to make arrests without warrants:

(a) For felonies, misdemeanors and violations of ordinances committed in their presence within the town limits or on real property owned anywhere by the town;

(b) For felonies when they have reasonable cause to believe that the offenses have been committed and that the person to be arrested has committed the offense within the town limits or on real property owned anywhere by the town;

(c) Anywhere in Brevard County, Florida, for felonies, misdemeanors and violations of ordinances committed within the town limits or on real property owned anywhere by the town, when in fresh pursuit of the alleged offender from within the town limits. (Ord. No. 77, S 5, 3/5/74).

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Note: See editors note following S 12-24.

## ARTICLE II. COURT COSTS

### SECTION 12-26. ADDITIONAL COURT COSTS ASSESSED; USE.

(a) There is hereby assessed by the Town of Melbourne Village, in compliance with section 943. 25(5), F.S., an additional two and no/100 (\$2.00) dollars, as court costs against every person convicted for violation of a state penal or criminal statute or convicted of a municipal or county ordinance, where said offense occurred within the Town limits of Melbourne Village. In addition, two and no/100 (\$2.00) dollars shall be deducted from every bond estreature or forfeited bail bond related to such penal statutes or ordinances. However, no such assessment shall be made against any person convicted for violation of any state statute, municipal or county ordinance relating to the parking of vehicles.

(b) All such assessments shall be collected by the appropriate court and shall be remitted to the Town of Melbourne Village and earmarked for Law enforcement and corrections education and training for members of the police department. The use and expenditure of such funds shall be in accordance with education and training programs for Law enforcement and corrections personnel as determined by the chief of police in accordance with section 943.12(4), F.S. (Ord. 84-2. 4/24/84)

**Editor's note:** Ord. No. 84-2 was in-appropriately codified in Section 12-10. While codifying other ordinances and converting the Code Book to word processing the error was recognized. Therefore, Article II., Section 12-26 was created. (22 Jan. 1996)

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## **ARTICLE III. ALCOHOLIC BEVERAGES**

### **SECTION 12-27. DEFINITIONS.**

(a) *Motor vehicle*, shall have the same meaning as vehicle as defined in Section 316.003 (76), Florida Statutes (1985).

(b) *Alcoholic beverage*, shall mean any beverage which contains more than one percent (1%) of alcohol by weight.

(c) *Highway*, shall mean any public street, avenue, boulevard, roadway, alley, sidewalk, parking lot, or other right-of-way or any area upon which public has the right to travel, whether public or private, located within the incorporated area of the Town of Melbourne Village, Florida.

(d) *Open container*, shall mean any bottle, can, or other receptacle or container containing any alcoholic beverage or any mixture containing an alcoholic beverage, which has been opened or the seal of which has been broken, or the contents of which have been partially removed.

(e) *Possession*, shall mean actual physical possession or accessibility by virtue of being located within a motor vehicle in a manner not within the exception set forth in Section 4 (d) of this code.

**SECTION 12-28. PROHIBITIONS.** No person shall drink from or have in his possession any open container containing any alcoholic beverage or any mixture containing an alcoholic beverage while in or on a motor vehicle, whether moving or stopped, upon any highway.

**SECTION 12-29. EXCEPTIONS.** This code shall not apply to:

(a) Any person engaged in picking up empty beverage containers for the purpose of collecting the deposit or value of the container itself.

(b) Any person taking part in a litter control program.



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(c) The possession of any open container by any licensed distributor or licensed vendor of alcoholic beverages, provided that such alcoholic beverage is being transported solely for commercial purposes.

(d) The transportation of any open container of alcoholic beverage in or on any motor vehicle provided that such container is in a compartment of the vehicle not readily accessible to the driver or passengers, such as locked (not merely latched) glove department, trunk, or other non-passenger or non-driver area of the motor vehicle.

(e) The transportation of any open container or the consumption of alcoholic beverages in or on any motor vehicle duly licensed and operated for hire to transport passengers, such as charter buses, regularly scheduled buses, taxicabs, and the separate passenger compartments of limousines; provided that the operator is not in immediate possession of, or engaged in consumption of, any alcoholic beverage or open container of alcoholic beverage.

(f) The operation, for a consideration, of any motor vehicle by an individual duly licensed and supplied by a chauffeur service, limousine service, taxicab company, or bus company; provided that the operator is not in immediate possession of, or engaged in consumption of, any alcoholic beverage or open container of alcoholic beverage, and is operating the vehicle while under, and within the scope of, the employment of a chauffeur service, limousine service, taxicab company, or bus company. The operator must have in his possession evidence of employment by a bona fide chauffeur service, limousine service, taxicab company, or bus company.

**SECTION 12-30. PENALTIES.** Any person found guilty of violating the provisions of this Code shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars and/or incarceration not to exceed sixty (60) days.