



CHAPTER 21

TREE PROTECTION AND REMOVAL

ARTICLE I. TREE PROTECTION AND REMOVAL - IN GENERAL

SECTION 21-1. INTENT.

- A. The intent of this chapter is to preserve desirable trees whenever and wherever they exist and to provide trees wherever they are sparse or do not exist, thus enhancing the health, welfare and beautification of the Town of Melbourne Village.
- B. This chapter is also intended to assure that Town of Melbourne Village homeowners are provided a method of relief from tree related conditions that represent a hazard to permanent dwellings or an unreasonable restriction in use of the property.

SECTION 21-2. DEFINITIONS:

- A. **Tree:** Any self-supporting perennial plant, both woody and fibrous, which normally grows to a minimum trunk diameter of at least four (4) inches measured dbh and a minimum height of fifteen (15) feet.
- B. **Yard Area:** The front, side and rear yard areas as established and required by the zoning code of the Town of Melbourne Village.
- C. **Buildable Area:** The portion of a site within the required yard areas on which a structure or improvements may be erected.
- D. **Developed:** That point in time when the building and site have received final inspections for occupancy or use by the Permit Committee and/or the Town Superintendent.
- E. **Diameter at Breast Height (dbh):** Diameter at breast height measured four feet six inches (4' 6") above grade.
- F. **Topping:** Indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include heading, tipping, hat racking and rounding over.
- G. **Drip Line:** Refers to the outer edges of tree limbs and branches. Tree roots often extend beyond this area.
- H. **Terminal Role or Leader Role:** Branch that assumes the dominant vertical position on the top of a tree.
- I. **Native Species:** A species whose natural range included Florida at the time of European contact (1500 AD).
- J. **Person:** Person, organization, society, corporation, or any agent or representative thereof.
- K. **ANSI A300-1995 Pruning Specification:** Town of Melbourne Village adopted guideline for identification of unacceptable/acceptable pruning and topping methods.

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- L. **Desirable Species:** Any tree not identified as prohibited within Town of Melbourne Village ordinances. (A reference for prohibited trees is cited in Sec. 21-8(b) of the Town of Melbourne Village Code.)

SECTION 21-3. APPLICABILITY:

This ordinance applies to all property situated within the boundary of the Town of Melbourne Village with the exception of properties developed or to be developed under the stricter provisions of Town of Melbourne Village Code Chapter 23-21.

SECTION 21-4. PERMITS.

- A. **Required** - No person shall cut down, poison, remove, relocate, or effectively destroy through pruning or topping any desirable species tree situated on property described in Sec. 21-3 above without first obtaining a permit as herein provided. Permits are required for trees that have a trunk diameter of at least four (4) inches measured dbh.
- B. **Application** - Permits for removal or relocation of trees covered herein shall be obtained by making application for a permit to the Town of Melbourne Village. The application shall be accompanied by a written statement indicating the reason(s) for removal or relocation of trees and one (1) copy of a legible site plan drawn to a minimum scale of one inch equals twenty feet, indicating the following information:
- 1) Location of all existing or proposed structures, improvements and site uses, properly dimensioned and referenced to property lines, setback and yard requirements.
 - 2) The location of all existing or proposed utility services.
 - 3) The name and location of all trees on the site to be removed or relocated. This information shall be summarized in legend form and when applicable be traceable to the reasons provided in the required statement.
 - 4) Applications not involving new construction may be based on drawings showing only that portion of the site directly involved and adjacent structures and landscaping or natural growth incidental thereto.
- C. **Application review** - Upon receipt of a proper application, the Town shall review the application and conduct an on-site inspection. If necessary, the Town may obtain a recommendation from a Department of Agriculture forester or a certified arborist to determine and assure that the conditions described in the application are valid and, when appropriate obtain alternative recommendations.
- D. **Issuance** -
1. **Removal** - No permit shall be issued by the Town to remove a tree unless one of the following conditions exists:
 - a) A building permit has been issued by the Town of Melbourne Village and the tree is located in the buildable area or yard where a structure or improvements will be placed and it unreasonably restricts the permitted use of the property.
 - b) The tree represents a threat of damage to an existing permanent structure, or of personal injury.

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- c) The tree root system has caused damage to or represents a threat to existing dwelling foundations or sanitary systems.
- d) The tree is dead.
- e) The tree is among the species of trees prohibited from being planted in the Town, the removal of which is desirable at any time.
- f) It is in the interest of the health, safety and welfare of the general public that the tree be removed.
- g) The removal of the tree is needed for the preservation, health, or protection of a more desirable species of tree.
- h) The tree is of a species normally planted for fruit and the tree is not producing viable fruit due to age or disease.

2. Relocation – A permit to relocate a tree will be granted only if there is a reasonable expectation that the tree will survive the move and thrive in the new location. The Town may require a recommendation from a Department of Agriculture forester or a certified arborist to determine and assure that the tree is of a species which can be successfully moved at its current size and that all conditions for its survival are being met in the plan to relocate.

- E. **Appeal** - In the event a permit is denied, the applicant may appeal the denial to the Town Commission by submitting a request for consideration, accompanied by statement(s) from expert(s) of the Department of Agriculture, or an arborist certified by the International Society of Arboriculture (ISA), that the tree in question is dead or fatally stressed, or should be removed, or from an insurance company representative stating that the failure to remove the tree(s) in question will negatively impact the homeowner's ability to obtain or retain insurance on the property. Without such statement(s), the Town Commission shall refuse to consider an appeal.
- F. **Height of Stumps** – In no case shall a tree stump be left at a height exceeding the distance from the base of the stump to the nearest lot line bordering another lot, Town right-of-way, or parkland.
- G. **Removal of Debris** – If a homeowner removes a tree the debris may be placed for removal with yard trash. If a homeowner contracts for removal of a tree by a licensed tree service or landscape service, the provider of that service shall be responsible for removal of the related debris, either by removing it or by contracting with a waste removal service to do so. Violation of this shall subject either or both the homeowner and the contracting service provider to code enforcement action and penalties. A statement to this effect shall be prominently displayed on the tree removal permit application and shall be acknowledged by the applicant.

SECTION 21-5. PERMIT FEE and TREE REPLACEMENT.

A. Fees And Conditions – A permit may be issued based on the following situations:

- 1. To Relocate any Tree**
Permit Fee – No Cost

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2. To Remove a Dead Tree or Tree of Undesirable Species

To remove a dead tree or a live tree of a species of tree cited in Sec. 21-8(b) of the Town of Melbourne Village Code as a prohibited tree, the removal of which is desirable at any time, a No Cost Permit must be obtained.

3. To Remove a Live Tree Other Than Undesirable Species

To remove a live tree other than an undesirable species the following permit fees and conditions shall apply:

- a. In conjunction with an issued building permit as per Section 21-4 (D) (1) (a):
 - 1) Permit Fee - \$10 per Tree
 - 2) In addition to the stated fee a replacement tree shall be planted on the property for each tree removed.
- b. For any other reason:
 - 1) Permit Fee - \$25 per Tree
 - 2) In addition to the stated fee a replacement tree shall be planted on the property for each tree removed.

B. **Replacement Trees** – Trees used in conformance with provisions of this section shall be of the same variety as the tree removed or of a desirable hardwood species and shall equal or exceed the standards for Florida No. 2 as given in "Grades and Standards for Nursery Plants", Second Edition 1998, State of Florida, Department of Agriculture, Tallahassee, and any amendments thereto, and shall be at least six (6) feet tall at time of planting.

At the discretion of the Official issuing the permit replacement trees may be designated as follows: an applicant may designate a tree currently growing on the property which is of a desirable hardwood species, at least 6 feet tall, Florida grade #2 or better, but which is not 4 inches or more dbh, to replace the tree to be removed.

All replacement trees must be in place and viable for at least one year following planting or designation or additional replacement will be required.

SECTION 21-6. MINIMUM TREE REQUIREMENT.

A minimum of one (1) tree per 1/8 acre must exist or must be planted on each lot, being of a species that will attain an overall height of at least fifteen (15) feet and a trunk caliper of at least four (4) inches measured dbh. All trees planted to meet this minimum requirement must be native species and must be provided with adequate water and food materials to encourage growth. Minimum tree plantings must be viable at the end of a two (2) year period or shall be replaced in a like manner. (Plantings shall be located so as not to cause danger to, nor interference with, existing structures or utilities at the time of their maturity.)

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SECTION 21-7. TREE PROTECTION.

- A. During construction, protective barriers shall be placed around all trees to be retained on the site in accordance with the following publications: (all of which are adopted by the Town Commission herein by reference) Florida Department of Agriculture and Consumer Services Manual entitled, "Tree Protection Manual for Builders and Developers, September, 1979", National Arbor Day Foundation Tree City USA Bulletins No.7 and 20 "How to Save Trees During Construction", or Professional Tree Care Standards (ANSI) as developed by the National Arborist Association to prevent the destruction or damaging of the trees. No disturbance or addition of soil will be made within the umbrella or drip-line of retained trees. Any clearing within the umbrella or drip-line of such trees shall be done with utmost care. A copy of subject manual and applicable standards shall be on file in the Town Office.
- B. No attachments or wires other than those of a protective nature shall be attached to any tree if such attachments may have a tendency to destroy any tree situated on property described herein.

SECTION 21-8. SUGGESTED AND PROHIBITED TREE VARIETIES FOR PLANTING.

- A. The Checklist of the Trees Native to Florida as compiled by Dr. Daniel B. Ward and Planting a Refuge for Wildlife published by Florida Game and Fresh Water Fish Commission with lists of trees that have been found to do well in Melbourne Village is on file in the Town Office.
- B. It is prohibited to plant any trees listed on the Florida Exotic Pest Plant Council (EPPC) "Invasive Pest Plant List" 2003 in the Town of Melbourne Village. Said list will be kept in the Town Office.

SECTION 21-9. EXCEPTIONS.

- A. During the period of an emergency, such as a hurricane, tropical storm, flood or any other act of God or man-made emergency or uncontrolled wild fire, the requirements of this chapter may be waived by the Town Commission.
- B. All licensed plant or tree nurseries shall be exempt from the provisions of this chapter only in relation to those trees planted and growing for sale or intended in the ordinary course of said licensee's business.

SECTION 21-10. REMOVAL OF TREES FROM PUBLIC LANDS.

No tree shall be removed from any public park or public right-of-way except under the provisions of this chapter.

SECTION 21-11. TREES INTERFERING WITH VEHICLES AND UTILITY SERVICES.

- A. Public Streets - Trees located on public or private property, the limbs of which overhang the street at a height insufficient to provide adequate clearance for all tall-body vehicles, such as fire and rescue trucks, vans and similar type vehicles, shall be judiciously pruned by Town personnel or hired service so as to provide a minimum street clearance of not less than thirteen feet six inches (13' 6") measured the crown of the road to overhead limbs, and also such pruning as is necessary to insure limbs at a lower height are not extending onto either shoulder of any street that would otherwise interfere with a vehicle's passage or obstruct a driver's vision.

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- B. Utility right-of-way - Trees located on public or private property, the limbs of which are, or have the strong potential for, interfering with utility lines shall be judiciously pruned and maintained clear of such service lines by work crews of the respective utility companies concerned, working within the area of the utility right-of-way only. Such work crews are authorized to perform this necessary pruning and shall do so without interference from any person in any manner, under penalty of law.

SECTION 21-12. PENALTY.

Any person violating, or causing the violation of, any provision of this chapter is subject to the penalties prescribed in Section 1-9 of the Melbourne Village Town Code. Each day that the property is not in compliance with this code shall be deemed to be a separate offense and violation hereof.

- A. **Illegal Tree Removal** - When a tree removal permit is required, any time that a tree is removed without a permit, the Code Enforcement Officer, or in the case of a current construction site the Building Official, may cite the owner or developer of the property from which the tree was removed, and/or the person removing the tree, for a violation of this section 21-12 (A), Town Code, illegal tree removal. Destruction of a tree without a required permit shall be considered to be an irreversible and irreparable violation of this code. A notice of violation may be issued for the violator to appear before the code enforcement board, or the Town may take any other enforcement action provided by this Code or by general law. Each individual tree removed in violation of the provisions of this Chapter shall constitute a separate offense.

B. Required Replacement and Fees -

1. Regardless of and in addition to any other action that may be taken by the code enforcement board, the owner or developer of the property from which the tree was removed, and/or the person removing the tree, as is determined according to the circumstances to be appropriate, shall provide replacement trees of the same type and size as the one(s) removed.
2. If it is not possible to replace illegally removed tree(s) with those of exact size and variety, the following replacement requirements shall apply:
 - 1) Each illegally removed tree must be replaced with (a) containerized (not field grown) tree(s) of a cumulative trunk diameter equal to or greater than the sum in inches for each inch of tree removed and no tree may be used as a replacement tree that has less than four (4) inch diameter measured one (1) foot above grade when available.
 - 2) Replacement trees may be no less than twelve (12) feet high.
 - 3) Replacement trees shall be of a desirable hardwood species, and shall equal or exceed the standards for Florida No. 1 as given in "Grades and Standards for Nursery Plants" Second Edition, 1998, State of Florida, Department of Agriculture, Tallahassee, and any amendments thereto.
3. Until the illegally removed trees are replaced on the site, no certificate of occupancy or completion, if applicable, shall be issued by the city.
4. **Fees** - Each illegally removed tree shall require a replacement permit, clearly marked "Replacement Permit", for which the permit fee shall be double the fee that would have applied had a removal permit been obtained prior to removal, or \$20 if the permit would have been a no-cost permit. This permit shall indicate the location, species, and size of each tree removed and the same for the replacement(s) for that tree. It shall state that the applicant understands that the replacement trees must remain in place and viable one year from the date of the permit or additional replacement will be required.

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5. **Notice of Violation** - The Code Enforcement Officer shall, upon determination that a code violation has occurred, serve a Notice of Violation upon the owner or developer of the property from which the tree was removed, and/or the person removing the tree, for a violation of section 21-12 (A), Town Code, illegal tree removal, stating the replacement tree and replacement permit requirements, and giving a date by which those requirements must be met. Such Notice of Violation shall include a provision for the person so served to request an immediate Code Enforcement Board hearing if the person served does not agree that the violation occurred or that he/she was responsible for it, and a statement that failure to comply with the notice shall result in Code Enforcement Board Hearing and action on the original violation and/or on the failure to comply.
6. Failure to comply with the provisions of this section by the date given shall constitute a separate and additional offense and each day that such continues shall be a separate offense.
7. If trees removed in violation of this code were removed from property other than that of the violator, and the owner of that property is determined by the Code Enforcement Officer not to have been involved in that removal or to have directed it or approved it, the selection of species and placement of trees must be approved by the owner of that property. In the event of disagreement, the Code Enforcement Officer shall determine a reasonable solution or refer the matter to the Code Enforcement Board for resolution.
8. If the property owner (whether the violator or not) and the Code Enforcement Officer agree that the number of replacement trees required exceeds the number that can be placed on the property involved, trees in excess of the number of trees removed may be offered for placement elsewhere in the Town of Melbourne Village. These may be placed within the Town limits of the Town of Melbourne Village in the following order of preference: on public land, on AHF parkland, on other AHF land, on other private land. The Town, the AHF, or the other property owner must agree to this and the violator must make arrangements for watering such trees until they are established. In no event shall the number of replacement trees placed on the property from which the trees were illegally removed be less than the number removed.

(Section 21— Ord 2004-04 replaced entire section; Sections 21-5 & 21-12 were amended by Ord. 2005-02)