

**TOWN OF MELBOURNE VILLAGE
ORDINANCE 2008-01**

AN ORDINANCE OF THE TOWN OF MELBOURNE VILLAGE, BREVARD COUNTY, FLORIDA, REVISING CHAPTER 21, TREE PROTECTION AND REMOVAL, OF THE TOWN OF MELBOURNE VILLAGE CODE OF ORDINANCES BY REPEALING SECTIONS 21-1 THROUGH 21-12 IN ITS ENTIRETY AND ESTABLISHING NEW SECTIONS 21-1 THROUGH 21-12 AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, The provisions of Town of Melbourne Village Town Code Section 21-1 through 21-12 are in some cases out of date and in other cases inadequate, and

WHEREAS, The Vision 2012 Committee has made recommendations to the Commission to incorporate changes arrived at during the Committee's meetings and public hearings to address questions that had arisen since the Code was last amended, increase minimum tree requirements, and increase penalties, and

WHEREAS, The Town Commission finds that these additional provisions and changes are needed, and

WHEREAS, establishing new Sections 21-1 through 21-12 will further protect the current natural environment of Melbourne Village,

NOW THEREFORE BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE, BREVARD COUNTY, FLORIDA THAT:

SECTION 1. Chapter 21, Sections 21-1 through 21-12, of the Code of Ordinances of the Town of Melbourne Village is hereby repealed in its entirety;

SECTION 2. A new Chapter 21, Sections 21-1 through 21-12, of the Code of Ordinances of the Town of Melbourne Village is hereby established as follows:

SECTION 21-1. INTENT.

- A. The intent of this chapter is to preserve and protect 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 address the increasing canopy loss of the Town, by helping to restore it one property at a time, and by other measures, in accord with the findings of the Vision 2012 process and Chapter 23 of this code that a core value of the citizens of the Town is preservation, protection, and enhancement of the Town's "green envelope".
- C. 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. **Town Tree Code Enforcement Officer (Tree CEO):** any person appointed or designated by the Town with the authority and responsibility to administer the provisions of this Code. The Tree CEO shall receive such training in arboriculture and code enforcement as is deemed necessary by the Town Administration.

- B. **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.
- C. **Legacy Tree:** any tree of a desirable hardwood species measuring over 12 inches dbh or any other tree of a desirable species over 20 inches dbh.
- D. **Yard Area:** The front, side and rear yard areas as established and required by the zoning code of the Town of Melbourne Village.
- E. **Buildable Area:** The portion of a site within the required yard areas on which a structure or improvements may be erected.
- F. **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 Building Official.
- G. **Diameter at Breast Height (dbh):** Diameter at breast height measured four feet six inches (4' 6") above grade. Diameter is calculated by dividing the circumference of the tree at that height by 3.14.
- H. **Topping:** Indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough to assume the terminal role, or removal of more than 25% of the tree canopy. Other names for topping include heading, tipping, hat racking and rounding over. For palm trees removal of more than 25% of the canopy may not constitute topping. The removal of any of the bud area, or growing point, of a palm constitutes topping.
- I. **Drip Line:** Refers to the outer edges of tree limbs and branches. Tree roots often extend beyond this area.
- J. **Terminal Role or Leader Role:** Branch that assumes the dominant vertical position on the top of a tree.
- K. **Native Species:** A species whose natural range included Florida at the time of European contact (1500 AD).
- L. **Person:** Person, organization, society, corporation, or any agent or representative thereof.
- M. **ANSI A300 Part 1 Pruning Specification:** Town of Melbourne Village adopted guideline for identification of unacceptable/acceptable pruning and topping methods.
- N. **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.)
- O. **Tree Fund:** Refers to funds that may be made available by the Town Commission from tree permits, fines, and enforcement penalties for the purposes of helping residents defray costs of tree replacement in the case of dead trees when replacement is required and/or for training and other Town tree related expenses

SECTION 21-3. APPLICABILITY:

This ordinance applies to all property situated within the boundary of the Town of Melbourne Village. For properties developed or to be developed under the Town of Melbourne Village Code Chapter 23-21, the provisions of that chapter shall also apply.

SECTION 21-4. PERMITS.

- A. **Required** - No person shall cut down, poison, remove, relocate, or effectively destroy through pruning or topping any 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, relocation, or pruning of more than 25% 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 casual 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.
 - c) The tree root system has caused damage to or represents a threat to foundations of existing permitted permanent structures 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, or pruning of the tree is needed for the health of the tree itself.

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.

3. Pruning - A permit to prune in excess of allowed limits may be granted for the following reasons:

a) A building permit has been issued by the Town of Melbourne Village and the tree impinges on the buildable area or yard where a structure or improvements will be placed.

b) The tree represents a threat to an existing permanent structure or of personal injury.

c) The control of an existing non-native and invasive species which spreads rapidly.

d) The pruning of the tree is needed for the preservation, health, or protection of a more desirable species of tree, or pruning of the tree is needed for the health of the tree itself.

e) It is in the interest of the health, safety and welfare of the general public that the tree be pruned.

E. **Appeal** - In the event a permit application is denied the reason for the denial shall be given to the applicant in writing. 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 for one of the reasons stated in 21-D (a-h) above, 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. **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. This does not preclude a homeowner retaining part or all of the removed tree onsite as landscaping material.

SECTION 21-5. PERMIT FEE and TREE REPLACEMENT.

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

1. To Prune more than 25% of the Canopy of a Tree

Permit Fee – No Cost – a no cost permit must be obtained

A pruning permit shall be issued only for reasons listed in section 21-4 D (3).

2. To Relocate any Tree

Permit Fee – No Cost – a no cost permit must be obtained

3. 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.

4. 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 –

1) Trees used in conformance with provisions of this section shall be of the same species or a species of a higher category than the tree removed as ranked on the chart in Section 21-12 B 5 below 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.

2) On site replacement alternative. Replacement trees may be designated as follows: an applicant may designate a tree currently growing on the property which is of the same species or a species of a higher category than the tree removed as ranked on the chart in Section 21-12 B 5 below, at least 6 feet tall, Florida grade no. 2 or better, but which is not 4 inches or more dbh, to replace the tree to be removed.

3) All replacement trees must be in place and viable for at least three years following planting or designation or additional replacement will be required. Replacement trees must be tagged and reinspected for continued viability annually for three years by the Tree CEO.

SECTION 21-6. MINIMUM TREE REQUIREMENT.

- 1) A minimum of one (1) tree per each full 1/16 acre of property size, regardless of where located on lot, must exist or must be planted on each lot. For R-1 and R-1A the maximum number of trees required for a lot shall not exceed 24. At least 50 % of the required trees must be of species that will attain an overall height of at least forty (40) feet and a trunk caliper of at least twelve (12) inches measured dbh at maturity. The remainder of the required trees shall be of 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 at maturity.

- 2) If an owner believes that the property will not sustain the number of trees required, the following alternative may be approved by the board reviewing the proposed development, which may require an arborist opinion agreeing that adding additional trees to the property would be undesirable due to space and existing trees:

As an alternative to a minimum number of trees, each lot must have a canopy lot coverage of at least 40%, measured by dripline diameters. Where existing mature trees do not provide this, a table of sizes at maturity shall be used to calculate future canopy coverage of immature trees existing or added to site. Dripline coverage overhanging the lot from neighboring property, public or private, shall be included in calculating the canopy coverage. Dripline coverage calculations shall be submitted by owner and shall be verified by the Town Tree CEO with the advice of an arborist if needed.

3) All trees planted to meet these minimum requirements must be native species or otherwise selected from the sources identified in Section 21-8 (A) Suggested Trees and must be provided with adequate water and food materials to encourage growth. Minimum tree plantings must be viable at the end of a three (3) year period or shall be replaced in a like manner.

4) Plantings shall be located so as not to cause danger to, nor interference with, existing structures or utilities at the time of their maturity.

5) Lots not currently conforming to the provisions of this Section shall be required to conform upon application for a building permit requiring a site plan review, or upon application for a tree removal permit.

SECTION 21-7. TREE PROTECTION.

A. It is the intent of this section to protect and retain all trees possible on the site. The requirements of this section are not to be used as a reason to remove a tree not in the footprint of construction on the basis that it is too close to required construction activities to be protected.

B. 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", 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 available from the Town Office.

C. A variance from the requirements above may be granted for individual trees specified on the building permit application as being too close to construction activities, including drainage elements, to ensure non-disturbance at the discretion of the Tree CEO. If granted, the protection measures to be taken in regard to that tree or trees shall be stated in the final permit.

D. 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. **Suggested Trees** - Trees listed as native to Florida and suitable for this region, and not listed as invasive, in any publication of the State of Florida, or The University of Florida may be used to meet any minimum planting requirements. The list of "Native Plants for Brevard County", published by the University of Florida Cooperative Extension Service provides recommended plants for the local region, zone 9B.

B. **Prohibited Trees** - It is prohibited to plant in the Town of Melbourne Village any trees listed on the Florida Exotic Pest Plant Council (EPPC) "Invasive Pest Plant List" 2005 or subsequent dates. The most recent list is available on-line or may be obtained from 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, requirements of this chapter may be waived by the Town Commission, which shall state clearly which provisions are to be waived and for how long.

- 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 from 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.
- 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 –

1. Any time that an action as described in section 21-4 (A) as requiring a permit is taken without a permit, and such action is not reparable, it shall be deemed to constitute illegal tree removal, even if the irreparably damaged tree is still standing.
2. A Town Code Enforcement Officer, and/or in the case of a current construction site the Building Official or Code Enforcement Officer, shall 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.
3. Each individual tree removed in violation of the provisions of this Chapter shall constitute a separate offense.
4. In making the decision whether to take a violation to the Code Enforcement Board for Enforcement, the Code Enforcement Officer shall consider the following if the circumstances allow it to be determined that:
 - i. the tree was dead prior to being removed
 - ii. the tree is of an undesirable species
 - iii. a permit would have been issued if applied for prior to removal.

5. If the Code Enforcement Officer is able to determine that any of these conditions apply, and the homeowner complies with the provisions of 21-12 B 1, 3, and 4 below, then the Code Enforcement Officer may elect not to seek further enforcement action by the Code Enforcement Board, with the provision that the required replacement trees shall be of the same number of trees as those removed and shall meet the requirements of section 21-5 B 1 and the cumulative trunk diameter provision below shall not apply.
6. The individual homeowner is legally responsible for illegal tree removal, unless the Code Enforcement Officer establishes that a third party, independent of any involvement by the homeowner, took the action to remove a tree. It shall be the responsibility of the homeowner to ensure that contracted service providers follow the requirements of this code and the homeowner is liable to enforcement measures if they do not.

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 size as the one(s) removed, and of the same species or a species of a higher category than the tree removed as ranked on the chart in Section 5 below.
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) 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 the same species or a species of a higher category than the tree removed as ranked on the chart in Section 5 below, 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 and tagged no certificate of occupancy or completion, if applicable, shall be issued by the Town.
4. **Fees** - Each illegally removed tree shall require a replacement permit, clearly marked "Replacement Permit", for which the permit fee shall be \$100 (one hundred dollars). 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 three years from the date of the permit or additional replacement will be required, and that the Town will inspect the tree annually to determine it's continued placement and viability.

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 three years from the date of the permit or additional replacement will be required, and that the Town will inspect the tree annually to determine its continued placement and viability. Replacement trees will be tagged with semi permanent tags which must remain in place throughout the three-year period.

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 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.

If the Code Enforcement Officer has not been able to determine that any of the provisions of Section 21-12 A 3 above are applicable, the notice of violation shall also include a notice requiring attendance at a Hearing before the Code Enforcement Board to determine whether an irreversible and irreparable violation of this code has occurred. If finding that one has, the Code Enforcement Board shall impose a fine according to the following table:

Category	<u>Fines For illegal tree removal</u>	4-8" dbh	8-12" dbh	Over 12" dbh
1	Palms (other than Cabbage Palms)	\$100	\$250	\$500
2	Cabbage Palms, Pine Trees, other softwoods	\$250	\$1,250	\$2,500
3	Hardwood Trees	\$500	\$2,500	\$5,000

It is the intent of this Chapter that if the factual determination by the Tree CEO or other Town Code Enforcement Officer clearly indicated a Code-covered violation, and that finding of fact is verified by the Code Enforcement Board, that the fines as listed be actually levied. The intent of Section 21-12 is first to act as a deterrent to illegal tree removal, and second to strengthen enforcement when a violation does occur.

The Town shall maintain on file in the Town Office an Official List of the trees most commonly found in Melbourne Village organized according to these categories. Trees not so listed shall be categorized by the Tree CEO based on their descriptions in the publications listed in Section 21-8-A. In case of disagreement, the Town shall secure an opinion of a certified Arborist.

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 (if approved by the Town). 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 3 - SEVERABILITY - In the event that a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Commission of the Town of Melbourne Village did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Commission would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4 - CONFLICTS - All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5 - EFFECTIVE DATE - This Ordinance shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Melbourne Village on the first reading this 29th day of April 2008, and upon its second reading this 27th day of May 2008.

Stephen J. Gaul
Mayor

ATTEST:

Gail E. Griswold
Town Clerk/Treasurer

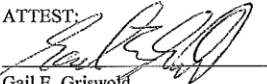
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