

**Town of Melbourne Village
ORDINANCE 2010-03**

AN ORDINANCE OF THE TOWN OF MELBOURNE VILLAGE AMENDING CHAPTER 12 – OFFENCES ADDING PROVISIONS REGARDING CRUELTY TO ANIMALS, UPDATING REFERENCES TO STATE STATUTES, UPDATING AND CLARIFYING SEVERAL ITEMS, RENUMBERING SECTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Melbourne Village has historically been regarded as animal friendly; and

WHEREAS, The Town Commission finds that protecting the existing character of the Town demands establishing protection for animals from cruelty; and

WHEREAS, on review of the Town Code on Offenses, several sections were found to be too general, too specific, and/or out of date, and references to State Statutes inaccurate; and

WHEREAS, The Town Commission wishes update to the code;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE AS FOLLOWS:

SECTION 1. That Section 12, Offences Article I – In General, of the Town Code be and is hereby deleted in its entirety; and

SECTION 2. That New Section 12 Offences Article I – In General be created as follows:

ARTICLE I. IN GENERAL

SECTION 12-1. ABANDONING REFRIGERATORS OR ICEBOXES.

(1) It is unlawful for any person knowingly to abandon or discard or to permit to be abandoned or discarded on premises under his or her control any icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit having an interior storage capacity of 1¹/₂ cubic feet or more from which the door has not been removed.

(2) The provisions of this section shall not apply to an icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit which is crated or is securely locked from the outside

State law reference: Similar provisions, SS 823.07, Florida Statutes.

SECTION 12-2. ASSAULT.

(1) No person shall commit an assault.

(2) An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

State law reference: Similar provisions, SS 784.011, Florida Statutes.

SECTION 12-2.5. CRUELTY TO ANIMALS.

No person shall unnecessarily overload, overdrive, torment, deprive of necessary sustenance or shelter, or unnecessarily mutilate, injure, maim, or kill any animal, or cause the same to be done, or carry in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner.

State law reference: Similar provisions, SS 828.12, 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.

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.

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 856.011, Florida Statutes; driving while intoxicated, SS 316.193, 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, 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, except as permitted by State law and License.

State law references: Similar provisions, SS 791, 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, Florida Statutes.

SECTION 12-10. INDECENCY. No person shall be found in a state of nudity, 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.

(1) No person shall loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

State law reference: Similar provisions, SS 856.021, Florida Statutes.

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.

State law reference: Similar provisions, SS 847.011, Florida Statutes.

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.

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 896, 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 810, 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 810, 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.

State law reference: Similar provisions SS 870.02, 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; SS 790 generally

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

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 of committing a criminal offense, 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.

SECTION 12-24. DUTIES OF TOWN POLICE OFFICERS.

(a) The chief of police is designated as executive peace officer of the town. He may designate any qualified town police officer to serve in his stead at any meeting of the Town Commission or other occasion. 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 Code Enforcement officers and/or Code Enforcement Board, and from the Town Commission, 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.

Ord. 2010-03 Deleted references to town court.

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).
- (d) As authorized by any interlocal agreements for police enforcement entered into by the Town and approved by the Town Commission.

SECTION 3. That the Editorial notes be adjusted as needed to explicate the history of the code; and

SECTION 4. 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 5. Conflicts. All Sections or parts of Sections of the Town’s Codes and Regulations, all Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions, that are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. This ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Melbourne Village on the First Reading this 25^h day of May, AD 2010,

AND on the Second and Final Reading on this 22d day of June, AD 2010 .

Scott McCoy
Mayor

ATTEST: _____
Gail E. Griswold
Town Clerk/Treasurer