



# **TOWN OF MELBOURNE BEACH**

## **PLANNING & ZONING BOARD MEETING**

**TUESDAY, FEBRUARY 3, 2026**

**AGENDA PACKET**

# Town of Melbourne Beach

## PLANNING & ZONING BOARD MEETING TUESDAY, FEBRUARY 3, 2026 @ 6:30 PM COMMUNITY CENTER – 509 OCEAN AVENUE

### PUBLIC NOTICE AGENDA

#### **Board Members:**

Chairman David Campbell  
Vice-Chairperson April Evans  
Member Kurt Belsten  
Member Dan Harper  
Member Gabor Kishegyi

#### **Alternate Board Members:**

Alternate Todd Albert  
Alternate Jason Judge

#### **Staff Members:**

Interim Town Manager Lisa Frazier  
Town Clerk Amber Brown  
Building Official Jeff Parsons

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF MINUTES**
  - A. January 6, 2026 minutes – Pages 3-8
4. **NEW BUSINESS**
5. **PUBLIC HEARINGS**
6. **OLD BUSINESS**
  - A. Update to Member Dan Harper's report – Pages 9-15
  - B. Discussion on the proposed Chapter 9A: Landscaping and Trees ordinance – Pages 16-33
7. **PUBLIC COMMENT**

Please limit comments to items that are not on the agenda
8. **REPORTS: TOWN MANAGER AND TOWN ATTORNEY**
9. **ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**
10. **ADJOURNMENT**

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, THE TOWN HEREBY ADVISES THE PUBLIC THAT: In order to appeal any decision made at this meeting, you will need a verbatim transcript of the proceedings. It will be your responsibility to ensure such a record is made. Such person must provide a method for recording the proceedings verbatim as the Town does not do so. In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

## **Planning and Zoning Meeting**

**Section:** Approval of Minutes

**Meeting Date:** February 3, 2026

**From:** Town Clerk Amber Brown

**RE:** Approval of the January 6, 2026 Minutes

### **Background Information:**

Approval of the January 6, 2026, Planning and Zoning Board minutes.

# Town of Melbourne Beach

## MINUTES

### PLANNING & ZONING BOARD MEETING

### TUESDAY, JANUARY 6, 2026 @ 6:30 PM

### COMMUNITY CENTER – 509 OCEAN AVENUE

**Board Members:**

Chairman David Campbell  
 Vice Chairman Kurt Belsten  
 Member April Evans  
 Member Dan Harper  
 Member Gabor Kishegyi

**Alternate Board Members**

Alternate Todd Albert  
 Alternate Jason Judge

**Staff Members:**

Interim Town Manager Lisa Frazier  
 Town Clerk Amber Brown  
 Building Official Jeff Parsons

**1. CALL TO ORDER**

Chairman David Campbell called the meeting to order at 6:30 p.m.

**2. ROLL CALL**

Deputy Town Clerk Cyd Cardwell conducted the roll call.

**Present:**

Chairman David Campbell  
 Vice Chairman Kurt Belsten  
 Member April Evans  
 Member Dan Harper  
 Alternate Todd Albert  
 Alternate Jason Judge

**Staff Present:**

Interim Town Manager Lisa Frazier  
 Town Planner Corey O’Gorman  
 Building Admin Steve Freeman  
 Deputy Town Clerk Cyd Cardwell

**Absent:**

Member Gabor Kishegyi

**3. APPROVAL OF MINUTES**

A. December 2, 2025 minutes

**Vice Chairman Kurt Belsten made a motion to approve; Member April Evans seconded; Motion carried 5-0.**

**4. NEW BUSINESS**

A. Site plan approval for 1806 Pine – new home

Member Dan Harper found all metrics on the application to be in compliance.

**Member Dan Harper made a motion to approve; Vice Chairman Kurt Belsten seconded;**

*Corey Runte – 402 Riverview Ln. – Thanked the board for their time reviewing his application and spoke about an email from Member Dan Harper from a few years ago that suggested clarifying height because of ambiguity.*

Alternate Todd Albert asked Town Planner Corey O’Gorman about a possible typo regarding a setback.

Town Planner Corey O’Gorman confirmed that there was a typo.

**Motion carried 5-0.**

- B. Site plan approval for 2003 Oak – new home

Alternate Todd Albert spoke about the plans showing the removal of an oak.

Member Dan Harper asked if there was a tree removal permit.

Town Planner Corey O’Gorman confirmed that none had been submitted.

Interim Town Manager Lisa Frazier spoke about preemption by state law stating that if the tree is in the way of the building, we cannot ask for any type of mitigation.

Member Dan Harper said to comply with state statute there should be a written report.

*Jeff Anderson – Project Architect – spoke about planting a replacement oak on the property if the Town requires it.*

**Member Dan Harper made a motion to approve contingent on replacement of the oak tree on the site; Member April Evans seconded; Motion carried 5-0.**

- C. Appointment of the 2026 Chairperson

**Vice Chairman Kurt Belsten made a motion that David Campbell remain Chairperson; Member April Evans seconded; Motion carried 5-0.**

- D. Appointment of the 2026 Vice Chairperson

**Vice Chairman Kurt Belsten made a motion to appoint April Evans as Vice Chairperson; Alternate Todd Albert seconded; Motion carried 5-0.**

- E. 2026 Planning and Zoning Board meeting schedule and enabling act ordinance

A discussion ensued about Election Day and the election no longer being held in the Community Center.

**Member Kurt Belsten made a motion to accept the schedule; Vice Chairperson April Evans seconded; Motion carried 5-0.**

## 5. PUBLIC HEARINGS

## 6. OLD BUSINESS

- A. Discussion on the proposed Chapter 9A: Landscaping and Trees ordinance

Interim Town Manager Lisa Frazier provided a synopsis of the history of this ordinance and introduced the revised copy with tracked changes.

Member Dan Harper proposed going page by page to discuss additional modifications.

Interim Town Manager Lisa Frazier spoke about a potentially costly requirement on page 3 of the ordinance.

Member Dan Harper agreed with Interim Town Manager Lisa Frazier's comments and changes.

Vice Chairperson April Evans also agreed.

Member Dan Harper spoke about the DBH change on page 5 and why it should be switched back to 2" versus 4".

Member Dan Harper spoke about deferring to Town Planner Corey O'Gorman's rewording on page 6.

Member Dan Harper spoke about the native plant requirement on page 7 being changed to a suggestion rather than requirement to line up with the desires of the community.

Interim Town Manager Lisa Frazier recommended instead of giving a number of plants to follow state statute about removal of trees in the way of the building.

A discussion ensued about a tree preservation plan.

Town Planner Corey O'Gorman spoke about how large the penalties seemed on page 13.

A discussion ensued about not listing species in the ordinance but instead referencing an external list.

**Curtis Byrd – 306 Surf Rd.** – Spoke about the community’s desire for native plants.

**Leslie Maloney – 1403 Pine St.** – Spoke about the Town Manager’s clarifications and assumptions about the community’s desire for native plants. Also spoke about other cities’ required percentages for native plants.

A discussion ensued about native plant percentages.

**Member Dan Harper made a motion for Town Planner Corey O’Gorman to make the adjustments spoken about and bring back a clean version for consideration next month and the native plant requirement be set at 30%;**

Vice Chairperson April Evans asked Town Planner Corey O’Gorman for a more reasonable fee schedule.

Alternate Jason Judge spoke about the fees being reasonable for the value of the tree being removed.

Interim Town Manager Lisa Frazier explained that the fees would be set by a resolution.

**Vice Chairperson April Evans seconded; Motion carried 5-0.**

Alternate Todd Albert asked if the Town had ever done a review of its public lands in reference to the native plant requirement.

Interim Town Manager Lisa Frazier spoke about the Environmental Advisory Board offering to look at our parks and do an assessment of the plants.

Member Dan Harper asked Interim Town Manager Lisa Frazier for copies of her references to the Comprehensive Plan in relation to native plants.

## **7. PUBLIC COMMENT**

**Leslie Maloney – 1403 Pine St.** – Asked about the terminology “landscape architect” used in the proposed ordinance versus the EAB’s “landscape officer”. Spoke about the review of landscaping traditionally falling to the Building Official and some past BOs not being familiar with native plants. Spoke about a landscape officer having that knowledge and helping the Building Official with enforcing the native plant requirements.

Vice Chairperson April Evans spoke about the board having no authority in regard to hiring Town staff.

**Leslie Maloney – 1403 Pine St.** – Spoke about previous conversations about passing that cost to the homeowner and it being a few hundred dollars.

## **8. REPORTS: TOWN MANAGER AND TOWN ATTORNEY**

**9. ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**

**10. ADJOURNMENT**

**Member Kurt Belsten motioned to adjourn; Vice Chairperson April Evans seconded; Motion carried 5-0.**

The meeting adjourned at 7:30 p.m.

**ATTEST:**

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**David Campbell**  
**Chairman**

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**Cyd Cardwell**  
**Deputy Town Clerk**



## **Planning & Zoning Board Meeting**

**Section: Old Business**

**Meeting Date: February 3, 2026**

**From: P&Z Member Dan Harper**

**RE: Update to Member Dan Harper's Report**

**Attachments:**

- Updated Report – Pages 10-15

## **Report on Environmental Advisory Board (EAB) Landscape Proposal 2.0**

**Prepared for: Planning & Zoning Board (P&Z)**

**Prepared by: Dan Harper, member P&Z**

**January 26, 2026**

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The EAB presented certain data in support of their 50% native plant initiative at the January 6<sup>th</sup> P&Z meeting. Specifically, they provided a select list of 9 cities/counties, that they represented to us as requiring native plants on newly constructed home sites.

Subsequent to that meeting I contacted the EAB to request the underlying ordinances they had relied upon. They refused this request, and told me to do my own investigation. This lack of transparency, called into question the accuracy of what was provided. Accordingly, I performed this follow up investigation.

### **Beachside and Neighboring Cities Landscape Requirements**

I noticed that curiously absent from the EAB's list of Cities were our neighboring cities, arguable the best comparable. As such, I compiled a list of 8 beachside and neighboring cities from Vero Beach to Cocoa Beach. NONE of these required new home construction to include some percentage of native plants (See Exhibit 1).

### **Material Misrepresentations by EAB**

EAB provided a list of 9 cities/counties that they claimed did require various percentages of native plants in landscapes of single family new

residential construction. I reviewed the actual landscape ordinances for these 9 cities. Of these 9 only 1 actually required any measure of native plants, 90% error rate present (See Exhibit 2). This was a material misrepresentation to the P&Z Board.

Providing material misrepresentation and misleading data in support of an argument can result in erroneous decisions. As members of the P&Z board we have the responsibility to make fact-based decisions.

### **Unequal Environmental Burden Sharing**

Newly constructed homeowners alone have been required to include massive stormwater swales on their properties for the good of the community at large. These mandated swales in large part eliminate the usefulness of their backyards and side yards. Adding solely to them again, a required native plant obligation seems a lot of environmental responsibility to place upon a small group.

Speaking by their actions, these new homeowners, voted 25 to 1 to not incorporate native plants. Their desires should be shown respect.

One in five (20%), of Melbourne Beach homes have voluntarily adopted significant native plant landscapes, approximately 300 out of the 1,536 homesites.<sup>i</sup> Is there really the imminent need to require the 3 or 4 annual new homeowners to plant stuff they don't want when it is not material to the community? It adds less than ¼ percent year. Wouldn't a policy of encouragement, like our neighboring beachside cities promote be more appropriate?

## Definitions

- *Encouraging*--involves motivating, inspiring, or recommending an action or behavior. It aims to build, confidence or willingness without imposing binding obligation.
- *Requiring*—to demand or coerce. An authoritative compulsion. Mandates can trigger anger, resentment, or deliberate non-compliance, sometimes reducing desired behavior more than a voluntary approach would.

## CONCLUSIONS

The P&Z Board has been entrusted to perform its due diligence and to make fact based informed decisions.

### Facts:

1. None of our Beachside neighboring cities require native plants in connection with new construction (Exhibit 1).
2. A review of newly constructed Melbourne Beach houses revealed only 1 out of 26 chose native plant landscapes. These new homeowners overwhelmingly do not desire native plant landscapes. (96%)
3. The burden of extensive swales is placed solely on these new residents destroying the practical use of backyards and side yards. Unique and disproportional environmental burden is already shouldered by them.

4. Forcing new home owners to incorporate native plants that they don't want results in no material change. ¼ percent per year or 2.5% in ten (10) years.
5. Encouragement and educational initiatives have been successful with a 20% adoption rate.

## RECOMMENDATION

I recommend that the board be consistent with our neighboring beachside communities and NOT require, but rather encourage the inclusion of native plants in landscape plans for new construction. By doing so, we show respect, while also recognizing the importance of a Florida Friendly Landscape.

***Because new homes already sacrifice significant usable land to oversized stormwater swales that serve a public environmental function, layering an additional native-plant mandate creates a disproportionate, inequitable burden that reduces livability without meaningfully improving outcomes.***

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<sup>i</sup> Six street survey of Surf Rd, 3rd, 2<sup>nd</sup>, Ash, Birch, Cherry. 214 homesites

## EXHIBIT 1

City/County	Ordinance Reference	Requires Native Plants		Comments
		YES	NO	
ADDITIONAL DATA FROM BEACHSIDE/NEIGHBORING CITIES				
Vero Beach	Sec. 72.13		NO	Single family exempt
Indian Harbour	Sec. 107-2		NO	Single family exempt
Indian Harbour	Sec. 113-400		NO	Single family exempt
Satellite Beach	Sec. 30-104		NO	Single family exempt
Cocoa Beach	Sec. 4-01		NO	Single family exempt
West Melbourne	Sec. 71-116		NO	Single family exempt
Melbourne	Sec. 9.273		NO	Single family exempt
Rockledge	Sec. 108.163		NO	Single family exempt

## EXHIBIT 2

City/County	Ordinance Reference	Requires Native Plants		Comments
		YES	NO	
EAB CORRECTED DATA (Based on Ordinance specific for single family homes)				
Sanibel Island				Pending
Miami Dade	Sec. 18A-1		NO	Single family exempt
Palm Beach County	Sec. 66-285		NO	Select circumstances only
Brevard County	Sec. 62-4341		NO	Recommend list, includes non-natives
Indian River County	Appendix A		NO	Single family exempt
Islamorada	Sec. 30-681		NO	Buffer street only (US 1)
Key West	Sec. 108-381		NO	Single family exempt
Lee County	Roadway Code		NO	Single family exempt
Manatee County	Sec. 701.2		NO	Single family exempt

## **Planning & Zoning Board Meeting**

**Section: Old Business**

**Meeting Date: February 3, 2026**

**From: Interim Town Manager Lisa Frazier**

**RE: Discussion on the proposed Chapter 9A: Landscaping and Trees ordinance**

**Attachments:**

- 5 Reasons to Require Native Plants – Pages 17-20
- Landscape Ordinance Suggestions – Pages 21-33



## 5 reasons to require native plants

### 1) Reduce stormwater runoff pollution to the Indian River Lagoon (nutrients, chemicals, sediment)

**Why it matters:** Construction adds impervious surfaces (roofs/driveways) and disturbed soils, which increases **runoff volume and speed**. Stormwater runoff commonly carries **fertilizers, waste, and chemicals** into lagoon tributaries and canals, increasing nutrient loads that contribute to muck, algal blooms, and fish kills.

**Why natives help:** The IRLNEP explicitly recommends replacing portions of lawn with **native plants that require less water, fertilizer, and pesticides**, and using infiltration-friendly site features so rain soaks into the ground instead of running to storm drains/canals.

UF/IFAS Florida-Friendly Landscaping™ identifies stormwater as a major pathway for **fertilizers, pesticides, debris, and eroded soil** that “wreak havoc” on water quality—and promotes practices that **retain rainfall/irrigation onsite**, which native-heavy plantings support when designed appropriately.

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### 2) Lower nutrient loading and reduce risk/severity of harmful algal blooms

**Why it matters:** In lagoon systems like the IRL, excess nutrients from land-based sources increase the likelihood of **algal blooms** and associated ecological impacts.

**Florida/IRL science context:** IRLNEP states that stormwater runoff adds nutrients and contributes to **algal blooms** and related lagoon degradation.

**Why natives help:** Requiring native plants is a practical, enforceable way to reduce the “input demand” of new landscapes—because IRLNEP’s Lagoon-Friendly guidance emphasizes natives that need **less fertilizer and pesticides**, which directly targets nutrient/pollutant loading from residential yards.

In other words: fewer fertilizer-dependent landscapes → fewer nutrient pulses during rain events → less bloom pressure over time (especially when combined with irrigation and stormwater design best practices).

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### 3) Stabilize dunes, reduce erosion, and improve storm resilience (native dune vegetation as “infrastructure”)

**Why it matters:** Melbourne Beach sits on a barrier island where dunes are the first line of protection. Dune vegetation is not decoration—it’s part of the **physical stability** of the shoreline.

**Florida coastal science/agency support:**

FLDEP’s CCCL dune guidance describes how **sea oats (*Uniola paniculata*)** trap and stabilize windblown sand and help **build protective dunes**.

UF/IFAS also describes sea oats as playing a **major role in stabilizing and building dunes** and notes dune restoration commonly relies on planting them after storm damage.

FLDEP also provides Florida-specific lists of **recommended native beach and dune plants** adapted to salt spray, wind, and drought—conditions that define Melbourne Beach construction sites near the coast.

### 4) Improve shoreline stability and nearshore habitat through living shorelines and native buffers

**Why it matters:** Shoreline hardening (seawalls, bulkheads) can protect property but often reduces habitat quality and can shift erosion elsewhere. “Living shorelines” use native vegetation and natural materials to stabilize shorelines and improve ecological function.

**Local/state evidence:** The Indian River Lagoon Coalition explains that living shorelines (using materials like **mangroves and shoreline grasses**) **stabilize shorelines, reduce erosion, absorb wave energy, and create habitat** for lagoon wildlife in shallow waters.

A Brevard “Save Our Indian River Lagoon” living shorelines fact sheet notes that living shorelines often rely on **native plants to reduce wave energy, trap sediment, and reduce shoreline erosion**.

FLDEP’s Resilient Florida living shorelines guidance similarly frames living shorelines as buffers that **reduce coastal erosion by absorbing wave energy** and can **decrease harmful nutrients/pollutants entering coastal waters**.

*(For Melbourne Beach: even when a home site isn’t directly on the lagoon shoreline, requiring native plant buffers and limiting turf can support watershed-scale goals by improving runoff treatment before water reaches lagoon-connected canals.)*

## 5) Protect biodiversity and food webs in a globally significant estuary (habitat function, pollinators, wildlife)

**Why it matters:** The Indian River Lagoon watershed is a biodiversity hotspot; landscaping choices in new development can either fragment habitat further or rebuild functional habitat.

**IRL + Florida science support:** IRLNEP notes that **more than 4,400 species of plants and animals** live in the IRL watershed and emphasizes the importance of maintaining and protecting this biodiversity.

UF/IFAS and Florida native-plant organizations consistently emphasize that native plants support **native pollinators** and provide essential habitat resources in developed landscapes.

## References (Florida / IRL-focused)

(APA-style; organizational authors where applicable)

- Florida Department of Environmental Protection. (2022). *CCCL Dune Planting Recommendations (August 2022 draft)*.
- Florida Department of Environmental Protection. (2022). *Dune Vegetation Maintenance Guidelines*.
- Florida Department of Environmental Protection. (2024). *Recommended Florida Native Beach and Dune Plants*.
- Florida Department of Environmental Protection. (2025). *Resilient Florida Program – Living Shorelines*.
- Indian River Lagoon National Estuary Program (IRLNEP / One Lagoon). (2025). *For Homeowners (Live Lagoon-Friendly)*.
- Indian River Lagoon National Estuary Program (IRLNEP / One Lagoon). (2025). *Stormwater Runoff (The Issues)*.
- Indian River Lagoon National Estuary Program (IRLNEP / One Lagoon). (2025). *Animals and Plants in the IRL*.
- Indian River Lagoon National Estuary Program (IRLNEP / One Lagoon). (2025). *For Local Governments (Live Lagoon-Friendly)*.
- Indian River Lagoon Coalition (Brevard). (2025). *Habitat Restoration (Living shorelines overview)*.
- Save Our Indian River Lagoon (Brevard County). (c. 2021). *Living Shorelines and Restoration fact sheet*.
- University of Florida, IFAS Extension. (2014). *Uniola paniculata (Sea oats) (EDIS FP594)*.
- University of Florida, IFAS Extension. (2018). *Sea oats for restoring sand dunes*.

- University of Florida, IFAS Florida-Friendly Landscaping™ Program. (2023). *Principle #8 – Reduce Stormwater Runoff*.
- University of Florida, IFAS Florida-Friendly Landscaping™ Program. (2024). *Program Overview (goal: reduce nonpoint source pollution)*.
- University of Florida, IFAS Extension. (2024). *Native Florida flowers for native pollinators*.
- Florida Wildflower Foundation. (n.d.). *Pollinators (native plant habitat guidance)*.

## ARTICLE I. LANDSCAPING

### § 9A-1. DEFINITION.

For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**TREE.** A Florida native tree species with a trunk diameter of four inches (4”) diameter at breast height (dbh) or greater, and a native palm with a minimum clear trunk height of eight feet (8’).

**YARD AREA.** The front, side and rear yard areas as established and required by Chapter 7A.

(` 75 Code, § 22-17) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17)

### § 9A-2. INTENT.

The intent of this article is to define Florida native and invasive plant species, establish provisions for the preservation and replacement of native species and removal of invasive species, and to provide a procedure for Town review and approval of tree removal applications and landscape development applications.

The intent of this article is also to preserve Florida native 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. The intent of the article also includes the encouragement of “Florida Friendly Landscaping” as defined by § 375.185(b), Fl. Stat. and “Florida Native Landscaping” as defined by the University of Florida’s *Institute of Food and Agricultural Sciences (IFAS)*.

Landscaping and trees benefit the Town by performing the following functions:

- Improve air quality through the absorption of carbon dioxide and release of oxygen to the atmosphere.
- Remove dust and other particulates from the air.
- Provide wildlife habitat, particularly for birds which, in turn, help control insects.
- Provide soil stabilization, which reduces erosion and mitigates the effect of flooding.
- Provide shade to conserve energy, reduce glare, modulate temperature and reduce heat island effects.
- Provide barrier to ground-level wind speeds during tropical storms and hurricanes
- Enhance the Town's attractiveness.
- Provide attractive buffering between different land uses.

- Reduce noise and surface water runoff.
- Maintain preservation of native ecosystems for future generations.

(` 75 Code, § 22-16) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17)

#### § 9A-3. APPLICABILITY.

The terms and provisions of this article shall apply to all real property in all zoning districts.

(` 75 Code, § 22-18) (Ord. 75-3, passed 5-27-75; Am. Ord. 87-13, passed 9-22-87; Am. Ord. 2017-05, adopted 12-20-17)

#### § 9A-4. PERMIT REQUIRED FOR ~~CUTTING DOWN~~ TREE REMOVAL

No person, organization, society, association or corporation, or any agent or representative thereof, directly or indirectly, shall cut down, destroy, remove, move or effectively destroy through damaging any native Tree or cluster of Trees including palm trees, scrub oak or sand live oak of any size, as defined herein, situated on property in any zoning district without first obtaining a permit as herein provided. Tree removal on any property in any zoning district shall be in accordance with the standards mandated in the most recent edition of the *Best Management Practices - Tree Risk Assessment* published by the International Society of Arboriculture or a certification from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect as to substantial compliance with such standards. Any tree which poses an unacceptable risk may qualify for removal without a permit pursuant to Fla. Stat. § 163.045 or as such section may be amended

(` 75 Code, § 22-19(a)) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17; Ord. 2023-01, adopted 3-15-23)

#### § 9A-5. APPLICATION FOR PERMIT; REVIEW OF APPLICATION.

(a) Application. Permits for removal, relocation, or replacement of trees covered herein, shall be obtained by making application for a permit to the Building Official. The application shall be accompanied by a written statement indicating the reason for removal, relocation, or replacement of trees and two copies of a legible site plan drawn to a minimum scale of one inch (1") equals 20 twenty feet (20'), indicating the following and including a tree survey accurately locating the trees in relationship to other improvements and including a legend identifying the type and size of trees:

(1) Location of all existing or proposed structures, improvements, and sites used, properly dimensioned and referenced to property lines, setback, and yard requirements;

(2) Location of existing or proposed utility services [and drainage plan](#);

(3) The location of all trees on the site designating the trees to be retained, removed, relocated, or replaced. Groups of trees in close proximity may be designated as clumps of trees with the predominant type and estimated number and average diameter noted. Only those trees to be removed, relocated, or replaced must be named (common or botanical name) on the site plan;

(4) The tree information required above shall be summarized in legend form on the plan and shall include the reason for the proposed removal, relocation, or replacement; and

(5) An application involving developed properties may be based on drawings showing only that portion of the site directly involved, and adjacent structures and landscaping or natural growth incidental thereto.

(b) Application review. Upon receipt of a [proper-complete](#) application, the Building Official shall review the application, which will include a field check of the site and referral of the application to ~~others concerned~~ [other departments including planning and engineering](#) as necessary, to determine any adverse effect upon the general public welfare, adjacent properties, or Town services and facilities.

(` 75 Code, § 22-19(b), (c)) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2023-01, adopted 3-15-23) Penalty, see § 9A-12

#### § 9A-6. ~~ON-SITE INSPECTION CRITERIA FOR TREE REMOVAL PERMITTING~~.

(a) On-site inspection. Prior to the issuance of a permit for tree removal or relocation [\(and prior to issuance of a certificate of occupancy in the case of new construction\)](#), the Building Official or his agent shall conduct an on-site inspection to determine whether or not such a removal or relocation conforms to the requirements of this chapter.

(b) Issuance.

(1) Removal. No permit shall be issued for tree removal unless one of the following conditions exists:

a. The tree is located in a buildable area or yard [of the property](#) where a structure or improvements may be placed [and](#) where inability to remove the tree would unreasonably restrict the permitted use of the property and the tree removal has been authorized by the Town as part of a site plan review;

b. The tree cannot be relocated on or off the site because of age, type, or size of tree;

c. The tree is diseased, dead, injured, in danger of falling, too close to existing or proposed structures, interferes with utility service, creates unsafe vision clearance at intersections or road entries, or conflicts with other ordinances or regulations; or

d. It is in the welfare of the general public that the tree be removed for a reason other than set forth above and in accordance with Florida Statute 163.045 Tree pruning, trimming, or removal on residential property.:-

e. (a) Mangroves can only be trimmed per state code. 1996 Mangrove Trimming and Preservation Act (sections 403.9321-403.9333, F.S.)

(2) Relocation or replacement. As a condition to the granting of a permit, the applicant ~~may will~~ be required, where practical, to relocate the tree being removed or be required to replace the tree being removed with a tree ~~somewhere within the site on the property~~ of the ~~same or similar species type~~ that will attain an overall height of at least twelve feet (12') and have a trunk caliper of ~~at least four two~~ inches (24") dbh at planting ~~for canopy trees; and a measured four and one-half feet (4.5') above grade~~ minimum clear trunk height of eight feet (8') for Palms. ~~The green areas left after all building and parking lot requirements have been met shall contain a tree density equal to or greater than that what was existing on the overall site before the beginning of construction. A permit to relocate a tree will be granted only if there is a reasonable expectation that the tree will survive the relocation 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.~~

(` 75 Code, § 22-19(d)) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2023-01, adopted 3-15-23) Penalty, see § 9A-12

#### § 9A-7. MINIMUM TREE PLANTINGS-LANDSCAPE PLANS

(a) -Landscaping in all zoning districts.

(1) All lots to be developed or re-developed shall be landscaped in accordance with this chapter prior to the issuance of a final building inspection or certificate of occupancy.

(2) Landscaping plans are encouraged to incorporate Florida-Friendly Landscaping and Florida Native Landscaping principles consistent with the guidelines, including the use of drought-tolerant native plants, efficient irrigation systems, and soil amendments that promote water retention, Landscaping plans shall be comprised



of 50% native plants selected from the current edition of the Florida Native Plant Society's list of native plants, as applicable to the East Central Florida Region.

(3) Plants in the Florida Invasive Species Council's most current list of invasive species shall be removed from a property during development or redevelopment and shall not be planted as part of the approved landscape plan.

(4) Minimum replacement standards for new construction /development or re-development under the guidelines of the Land Development Code: Any trees that are removed for new construction or reconstruction shall be replaced by the same or similar species. Specifically for mature oak trees replacement of one (1) similar species for each tree removed shall be required which at a minimum will attain an overall height of at least twelve feet (12') and have a trunk caliper of at least two four (4) inches dbh(2") at planting, measured four and one-half feet (4.5') above grade.

~~(a) Trees in residential zoning districts. Trees planted must be of a variety which is compatible with the existing soil and drainage conditions and must be provided with adequate water and food materials to encourage growth. Trees shall be planted in locations so as not to cause danger to nor interference with existing structures at the time of maturity.~~

(5) Minimum specifications for trees and hedge material shall be as follows:

a. Canopy trees at the time of planting shall have a trunk diameter of four (4) inches dbh. The trees shall be a minimum of eight feet in height and have a minimum spread of five feet. The trees are not required to be spaced evenly along property lines.

b. Trees smaller than canopy trees shall at the time of planting have a trunk diameter of one and one-half inches measured four and one-half feet above grade. The trees shall be a minimum of six feet in height and have a minimum spread of four feet.

c. Palms at the time of planting shall have a minimum clear trunk of eight feet.

d. Hedge material at the time of planting shall be a minimum of eighteen (18) inches in height when planted. Individual plants shall be planted a maximum of 24 inches on center.

(6) All plant material shall be Florida Number 1 in quality and shall be planted according to sound landscape installation standards.

(7) All landscaping shall be maintained to present a neat and orderly appearance. Dead, deteriorating or missing landscape material shall be replaced with landscaping as permitted in 9A-7(a). Replacement of landscaping material shall occur within sixty (60) days of loss, unless said time is extended by the Town Manager for good cause shown.

(8) Exceptions shall be considered on an individual basis based upon demonstrated unique characteristics of the site in question. Any such reduction or relocation shall comply with the intent of this chapter.

(9) Canopy trees shall be those that develop a crown spread of 25 feet or greater at maturity. Trees with less than twenty-five (25) feet of crown spread at maturity shall be considered ornamental trees or small trees.

(10) Clusters of three palms shall be an acceptable substitute for up to 50% of the required canopy trees and 50% of the required ornamental trees.

(11) Landscape material should be drought tolerant to the extent practical and feasible. A water source shall be available to ensure the plant material can be watered while it is being established and during drought occurrence. Automatic irrigation systems may be utilized.

(12) Currently developed sites that do not meet the landscape requirements will not be considered non-conforming. Landscaping consistent with the regulations shall be installed at these sites, to the extent practical, as redevelopment occurs. of over six months occurs, full compliance with this section shall not be required.

(b) Buffer and tree planting requirements for all non-residential and multiple family residential uses in addition to (5) above:

(1) A landscape buffer with a minimum of ten feet in width shall be provided between any residentially zoned property and a property utilized for a non-residential or multiple family residential use. Responsibility for providing a landscape buffer shall be upon the nonresidential or multifamily use. The landscape buffer shall include a minimum of one native canopy tree for every 40 linear feet, or fraction thereof. In addition, one ornamental smaller tree or palm shall be planted for each 50 linear feet, or fraction thereof.

(2) A landscape buffer with a minimum of ten feet in width shall be provided along all road frontage of the site. The landscape buffer shall include a minimum of one canopy tree for every 25 feet of frontage, or fraction thereof.

(3) A continuous hedge shall be planted in all perimeter landscape buffer areas.

(4) Parking areas shall be designed so that there is a minimum of two hundred (200) square feet of open space, not including perimeter landscape buffer areas, at the end of each row of parking. In addition, a minimum of two hundred (200) square feet of open permeable green space shall be provided in the interior of the parking lot for each ten parking spaces, or fraction thereof. These open spaces shall be distributed throughout the

parking lot in a manner that no more than ten parking spaces in a row shall be allowed without an intervening landscaped area.

~~—(5) Minimum specifications for trees and hedge material shall be as follows:~~

~~—a. Canopy trees at the time of planting shall have a trunk diameter of two four (4) inches dbh measured four and one-half feet above grade. The trees shall be a minimum of eight feet in height and have a minimum spread of five feet. The trees are not required to be spaced evenly along property lines.~~

~~—b. Ornamental trees smaller than canopy trees at the time of planting shall at the time of planting have a trunk diameter of one and one-half inches measured four and one-half feet above grade. The trees shall be a minimum of six feet in height and have a minimum spread of four feet.~~

~~—c. Palms at the time of planting shall have a minimum clear trunk of eight feet.~~

~~—d. Hedge material at the time of planting shall be a minimum of eighteen (18) inches in height when planted. Individual plants shall be planted a maximum of 24 inches on center.~~

~~—(6) All plant material shall be Florida Number 1 in quality and shall be planted according to sound landscape installation standards.~~

~~—(7) All landscaping shall be maintained to present a neat and orderly appearance. Dead, deteriorating or missing landscape material shall be replaced with substantially equivalent landscaping as permitted by the Land Development Code in 9A-7(a). Replacement of landscaping material shall occur within sixty (60) days of loss, unless said time is extended by the Town Manager for good cause shown.~~

~~—(8) Exceptions shall be considered on an individual basis based upon demonstrated unique characteristics of the site in question.) - Any such reduction or relocation shall comply with the intent of this chapter when obstacles such as overhead power lines or other conditions inhibit the ability to comply.~~

~~—(9) Canopy trees shall be those that develop a crown spread of 25 feet or greater at maturity. Trees with less than twenty five (25) feet of crown spread at maturity shall be considered ornamental trees.~~

~~—(10) Clusters of three palms shall be an acceptable substitute for up to 50% of the required canopy trees and 50% of the required ornamental trees.~~

~~—(11) Landscape material should be drought tolerant to the extent practical and feasible. A water source shall be available to ensure the plant material can be watered while it is~~

being established and during drought occurrence. Automatic irrigation systems may be utilized.

~~—(12) Currently developed sites that do not meet the landscape requirements will not be considered non-conforming. Landscaping consistent with the regulations shall be installed at these sites, to the extent practical, as redevelopment occurs. Unless complete reconstruction or rehabilitation that results in closure of a building or buildings for a period of over six months occurs, full compliance with this section shall not be required.~~

~~(c) Minimum replacement standards for new construction development or re-development under the guidelines of the Land Development Code. Any trees that are removed for new construction shall be replaced by the same or similar species. Specifically for mature oak trees 10 years old or more, replacement of one (1) two for one similar species for each tree removed shall be required which at a minimum will attain an overall height of at least twelve feet (12') and have a trunk caliper of at least two four (4) inches dbh(2") at planting, measured four and one-half feet (4.5') above grade. The two for one oak replacement is required until the mini number of canopy trees required has been met.~~

(ac) Trees in residential zoning districts. Trees planted must be of a variety which is compatible with the existing soil and drainage-conditions and must be provided with adequate water and food materials to encourage growth. Trees shall be planted in locations so as not to cause danger to nor interference with existing structures at the time of maturity.

(d) Maintenance of trees and landscaping. If the removal of any tree or landscaping from any lot causes the number of remaining trees or vegetative species to fall below the minimum standards required by this section or as reflected on any approved site plan or landscaping plan for said lot, replacement trees or vegetative species meeting the requirements of this chapter section or any approved site plan or landscaping plan shall be re- planted on the lot within thirty (30) days after removal.

(` 75 Code, § 22-20) (Ord. 75-3, passed 5-27-75; Am. Ord. 87-13, passed 9-22-87; Am. Ord. 2008-08, adopted 9-3-08; Am. Ord. 2009-03, adopted 4-15-09; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2023-01, adopted 3-15-23) Penalty, see § 9A-12

#### § 9A-8. TREE PROTECTION.

(a) Protection of trees during land-clearing.

(1) Trees ~~that are~~ retained during land-clearing of an approved development or re-development project can be applied toward total tree requirements for the property. Prior to land-clearing, on-site protection must be initiated by constructing suitable protective barricades around trees to prevent mechanical damage. Barriers should be constructed around individual trees or groups of trees that are susceptible to mechanical damage. Protective barriers shall be placed around all trees to be retained on the site in accordance with the University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) "Tree Preservation During Land Development"<sup>1</sup> guidance 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 and avoid the use of heavy machinery. Prior to any land-clearing activity, a visual inspection of the site will be made by the Building Official ~~and the Landscape Officer~~ before a land-clearing permit is issued. The land-clearing permit must be posted on-site. Only land-clearing is permitted ~~within~~ outside the drip line of the tree to be protected.

(2) On-site protection of trees may be barriers consisting of two-by four-inch lumber or flag rope and stakes visible to workers and equipment operators, but far enough from the tree to prevent soil compaction and large enough to include the area within the drip line of the tree ~~(drip line refers to the outer edges of tree limbs and branches).~~

(3) Should a deep filling around a tree be necessary, a dry well, retaining wall or terracing may be required. Procedures for these are available in the site planning and tree protection regulations available at the County Extension Office.

(b) Attachments to tree. No attachments or wires other than those of a protective nature shall be attached to any tree.

(c) Tree survival. Trees must survive on-site in a viable condition for a minimum of three (3) years after the final building inspection or certificate of occupancy is issued, or after a permit is granted for any tree replacement otherwise. Trees failing to meet this survival requirement must be replaced within 45 days after a written notification of code violation is received by the property owner from the town issued by the Town. Replacement trees must be tagged or indicated on the as built plans on file with the Town and reinspected for continued viability annually for three (3) years by Code Enforcement.

(d) Landscaping prohibition. Plants included on the current Florida Noxious Weed list – Rule 5B-57.007 in Florida Administrative Code.

(` 75 Code, § 22-21) (Ord. 75-3, passed 5-27-75; Am. Ord. 87-13, passed 9-22-87; Am. Ord. 2017-05, adopted 12-20-17)

#### § 9A-9. TREES ON PUBLIC LANDS.

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

(` 75 Code, § 22-23) (Ord. 75-3, passed 5-27-75; Am. Ord. 2017-05, adopted 12-20-17)

#### § 9A-10. VARIATIONS TO LANDSCAPE REQUIREMENTS-EXCEPTIONS.

(a) In the event that any tree shall be determined to pose an unacceptable risk as provided for in § 9A-4 or to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety and requires immediate removal without delay such tree may be removed without first obtaining a written permit as herein required.

(b) During a period of emergency, such as a hurricane, tropical storm, flood, or any other act of God, the requirements of this Article may be waived by the Town Commission.

(c) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this Article only in relation to those trees planted and growing on the premises of the licensee, which are so planted and growing for sale or intended sale to the general public in the ordinary course of the licensee's business.

(d) The types of trees included on the current Florida Noxious Weed List and Florida Exotic Pest Council's List of Invasive Plant Species shall be exempt from the terms and provisions of this article and shall not be used to meet any replacement or planting requirements. A copy of the Florida Invasive Species Council List of Invasive Plant Species will be available from the Town.

(` 75 Code, § 22-22) (Ord. 75-3, passed 5-27-75; Am. Ord. 87-13, passed 9-22-87; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2023-01, adopted 3-15-23)

#### § 9A-11. RESERVED.

~~(a) Mangroves can only be trimmed per state code. 1996 Mangrove Trimming and Preservation Act (sections 403.9321-403.9333, F.S.)~~

#### § 9A-12. PENALTY.

The improper removal of each tree shall constitute a separate offense under this chapter. Violation of this chapter and imposition of the penalty shall be determined and imposed by the Code Enforcement Special Magistrate or by a court of proper jurisdiction.

Removal of any mature oak or similar trees without first obtaining a permit from the Town as required in § 9A-4 shall constitute prima facie evidence of a violation which is irreparable or irreversible in nature for the purposes of enhanced fine assessment provided for in § 11-21(b)(1) or as otherwise amended. Photography (either ground, ~~areal~~ aerial, or geospatial) or other applicable data may be used as prima-facia evidence of the existence of trees on a site prior to any unapproved removal.

(` 75 Code, § 22-25) (Ord. 75-3, passed 5-27-75; Am. Ord. 87-13, passed 9-22-87; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2023-01, adopted 3-15-23)

~~§§ 9A-13.-9A-99. RESERVED.~~

#### § 9A-13. NUISANCE TREES.

a. The following *trees* are considered non-native, noxious, invasive species. Property owners are encouraged to remove all such trees from the properties they own within the Town consistent with this chapter Contact the Town’s Environmental Advisory Board for free site visits to identify these species.

- Brazilian pepper (*Schinus terebinthifolius*)
- Melaleuca (*Melaleuca quinquenervia*)
- Australian pine (*Causarina equisetifolia*)
- Carrotwood (*Cupaniopsis anacardioides* (A. Rich.) Radlk)
- Schefflera (*Schefflera digitata*)

~~§§ 9A-14.-9A-99. RESERVED.~~

### ARTICLE I. WETLANDS PROTECTION

#### § 11A-1. PURPOSE AND INTENT.

The purpose of this chapter is to protect, preserve and enhance the natural functions of wetlands and other environmentally sensitive areas. It is also the intent of this article to apply the following standards for development in and adjacent to wetlands.

(Am. Ord. 2017-05, adopted 12-20-17)

#### § 11A-2. GENERAL PROVISIONS.

(a) During the review of a site plan or any other plan for development, the Town Manager shall use the Natural Wetlands Inventory maps, the Brevard County Soil Survey, the Town

Comprehensive Plan, aerial photography or other applicable data in order to determine the potential existence of wetlands on or adjacent to the site.

(b) If a review of the above documents indicates that wetlands may exist on or adjacent to the site, ~~the Town manager or designee shall contact the property owner appropriate authorities listed in section 11A-2(c) to perform verification of wetland determination and provide guidance on and follow wetlands permitting requirements. an inspection will be performed by the Town Manager.~~

(c) Based on the assessment of the above site visit, the ~~Town Manager may require the developer to~~ property owner shall have the site inspected by a representative from the St. Johns River Water Management District for a determination of jurisdictional limits of the site. This may require the involvement of the Army Corps of Engineers, the Department of Environmental Regulation and the Department of Natural Resources.

(d) No building permit will be issued by the Town until either the site plan has been approved or an exemption letter has been issued by the applicable environmental agency.

(e) All proposed development adjacent to canals, the Indian River and east of State Road A1A will automatically be reviewed under the above process.

(Am. Ord. 2017-05, adopted 12-20-17)

#### § 11A-3. PERMITTED USES IN WETLANDS.

The following uses shall be permitted in wetlands provided that they are approved by the St. Johns River Water Management District or the applicable environmental agency:

(1) Open space;

(2) Fish and wildlife management;

(3) Recreation; or

(4) Any other use deemed appropriate by the St. Johns River Water Management District or the Department of Natural Resources.

(Am. Ord. 2017-05, adopted 12-20-17)

#### § 11A-4. PROHIBITED USES IN WETLANDS.

The following uses are specifically prohibited in wetlands:

(1) Residential, commercial, industrial and institutional uses, except as provided for in § 1A-3;



(2) Disposal of solid or liquid wastes, and the application or storage of pesticides and herbicides; and

(3) Any activity which impairs the function of the wetlands.

(Am. Ord. 2017-05, adopted 12-20-17)

§§ 11A-5. – 11A-99. RESERVED.