

## ORDINANCE NO. 2021-19

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATING THE PERSON OF AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTIONS 1-15.8, 9 AND 10 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, The Town of Malabar is predominately a rural community wanting to safeguard the rural character of natural greenspace while providing for protection from natural and manmade disaster; and

**WHEREAS**, The Town Council has determined that providing regulations and permitting requirements for the land clearing and tree removal of various types of commercial and residential purposes under permitted circumstances will benefit the health, safety, and welfare of the citizens of the Town while preserving and protecting the natural greenspace rural character of Malabar.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Malabar, Brevard County, Florida, that

**SECTION 1.** Article XV, beginning with Section 1-15.7 and proceeding throughout the entire chapter that all references to the Building Official or Engineer shall be changed to "Town Manager or Designee".

**SECTION 2.** Section 1-15.8.B of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

"Section 1-15.8.B.1. *Criteria for issuing a land clearing or tree removal...*

...

**SECTION 3.** Section 1-15.8.B. of Article XV of the Land Development Code of the Town is hereby amended by adding a new subsection "4.", which new subsection shall read as follows:

"Section 1-15.8.B."4". The Town Manager or designee shall consider accessibility to the property and may require a culvert for property access, whether temporary or permanent, prior to the issuance of any permit type in this section.

...

**SECTION 4.** Section 1-15.8.E. of Article XV of the Land Development Code of the Town is hereby deleted in its entirety.

**SECTION 5.** Section 1-15.9. of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

**"Section 1-15.9. Permits, submittal requirements, Review and Determination.**

Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:

A. *Type I permit.*

Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a development plan as required by the Land Development Code:

- a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
- b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type of professional as approved by the Town Administrator or his designee.

2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

B. *Type II permit.*

Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:

- a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.

2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

C. *Type III permit.*

Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.

1. *Submittal:* Projects that require a Type III permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a building permit application:

- a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.

2. *Review and determination process:* The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger. After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).

1. *Submittal*: Tree removal requiring a Type IV permit shall submit two copies of the following to the Town Manager or designee:

- a. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).
- c. Tree plan if applicable.

2. *Review and determination process*: The tree removal permit shall only be granted where at least one of the following criteria is met:

- a. *Use*. Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.
- b. *Proximity to structures*. The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.
- c. *Thinning*. The removal of such tree is beneficial to the enhanced growth of other trees on site.
- d. A type VI permit is required for the removal of any designated tree of special significance or emergency tree removal as defines in Section 1-15.14.

#### E. Type V permits

Type V permits shall be required for any use of a motorized and or rotary equipment method to remove underbrush and vegetation less than six (6) feet in height, and not defined as a tree, for the propose of unimproved property maintenance as required in the Town's code of ordinance of nuisance vegetation and or firebreak protection of property in conjunction with any development plan required by the Land Development Code

1. *Submittal*: Tree removal requiring a Type V permit shall submit two copies of the following to the Town Manager or designee:

- a. Survey of the property. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of removal of underbrush and vegetation less than six (6) feet in height. This permit does not permit the removal of any trees.

2. *Review and determination process*: The permit shall only be granted where at least one of the following criteria is met:

- a. Use. Reasonable effort has been made to minimize the impact of root and soil sediment and the topology of the property for the purpose of clearing nuisance and overgrown vegetation to maintain or gain access for development activities, reduce a nuisance to abutting property owners and rights-of way, or reduce fire hazards for the protection of life and property."

...

**SECTION 6. REMAINDER OF CODE:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the remainder of the Chapter remain the same.

**SECTION 7. CODIFICATION:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1 of this ordinance to be incorporated into the Town's Land Development Code.

**SECTION 8. SEVERABILITY:** In the event 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 Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council 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 9. CONFLICT:** All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**SECTION 10. EFFECTIVE DATE:** The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member Scardino. The motion was seconded by Council Member Acquaviva and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	Aye
Council Member Brian Vail	Aye
Council Member Steve Rivet	Aye
Council Member David Scardino	Aye
Council Member Danny White	Aye

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this 27<sup>th</sup> day of September 2021.

**TOWN OF MALABAR**

(seal)

By: Patrick T. Reilly  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

Approved as to form and legal sufficiency by:

Karl W. Bohne, Jr.  
Karl W. Bohne, Jr., Town Attorney

Public Hearing at P&Z: 9/08/2021  
Council First Reading: 09/14/2021 Vote: 5 to 0.  
Council Second Reading: 09/27/2021

