

ORDINANCE 2024-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE V, GENERAL PROVISIONS; AMENDING SECTION 1-5.6, ACCESSORY BUILDINGS; ADDING SUBSECTION E, "CARGO CONTAINERS FOR PERMANENT STORAGE"; PROVIDING FOR A DEFINITION OF A CARGO CONTAINER; PROVIDING FOR CONDITIONS AND RESTRICTIONS REGARDING CARGO CONTAINERS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar is seeking to restrict the use of Cargo Containers in Town;
and

WHEREAS, a local government agency has the authority to amend their Zoning Codes to better accommodate the needs of the municipality; and

WHEREAS, on March 13th 2024, the Malabar Planning and Zoning Board held a publicly advertised meeting to discuss and recommend such amendments to the Town Code; and

WHEREAS, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. Article V, Section 1-5.6, of the Town Land Development Code is hereby amended to provide additional subsection "E", which shall read as follows:

E. Cargo Containers for Permanent Storage

Definition of *Cargo Container*: The term "Cargo Container" shall mean any container, structure, box, cylinder, or crate made of any material temporarily or permanently affixed to real property, normally used for freight and includes, but not limited to, freight containers, shipping containers, conex box, sea van, dry box, commercially available temporary storage containers, pods, without a chassis and/or wheels underneath that is enclosed or capable of being enclosed on all sides, top and bottom, that is stored, placed, located or put on any real property within the Town for the purpose of storing personal property, construction material, trash, refuse, garbage, debris, or other material or matter. Railroad cars, truck trailers roll-off dumpsters and vehicles shall not be permitted as Cargo Containers under this section.

Cargo containers are permitted to be used as permanent storage in accordance with the following:

1. All cargo containers shall comply with the Florida Building Code, Florida Fire Prevention Code, and shall require a building permit.
2. Cargo containers shall be permitted in accordance with the following:
 - a. As a temporary use in any land use district in conjunction with an authorized construction project and shall be removed upon completion of the project unless properly permitted to remain as permanent storage in accordance with this section. All such containers located pursuant to this subsection shall not be located in any required set-backs.
 - b. Non-residential and bonafide agricultural properties are permitted to have one cargo container per five acres of agricultural tax-exempt acres of land.
 - c. Cargo containers located on a residentially developed lot land use district, that is adjacent to residentially developed lots or structures shall be buffered and opaquely screened from the adjacent off-site residential lot or structure. Additionally, they shall maintain a minimum setback of 15 feet.
3. In the instance where more than one cargo container, as outlined in this section, is allowed they shall not be stacked.
4. All cargo containers shall be placed in either the side or rear yard and meet accessory structure setbacks for the applicable land use district or the setback as outlined in condition #2 above, whichever is more restrictive.
5. Cargo containers shall not be located within any drainage easements.
6. Cargo containers shall not occupy any required off-street parking spaces, vehicular accesses or drive aisles, pedestrian facilities or landscape areas for the site.
7. Cargo containers shall not be permitted to have signage of any type.
8. Cargo containers shall not be used for habitation and Cargo containers shall not be modified or retrofitted for habitation.

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 3. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 4. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 5. Effective Date. This Ordinance shall take effect immediately after the adoption of this Ordinance.

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

Council Member Marisa Acquaviva
Council Member Brian Vail
Council Member Jim Clevenger
Council Member David Scardino
Council Member Mary Hofmeister

Aye
Aye
Aye
Aye
Aye

This ordinance was then declared duly passed and adopted this 6 day of May 2024.

TOWN OF MALABAR

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

ATTEST:

Richard W. Kohler

Richard W. Kohler, Town Clerk

(seal)



Approved for Legal Sufficiency:

Karl Bohne, Jr.

Karl Bohne, Jr, Town Attorney

First Reading: 04/15/2024

Second Reading: 05/06/2024

Vote: 4 to 0

Vote: 5 to 0