

**ORDINANCE NO. 2008-05**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE HEIGHT OF FENCES OR WALLS LOCATED ON THE PERIMETER OF A RESIDENTIAL SUBDIVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, The Town Council has determined that current fence regulations do not apply to perimeter fencing of residential subdivisions and clarification is needed relating to fencing associated with residential subdivision developments.

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

**SECTION 1.** Article V, Section 1-5.8 of the Land Development Code of the Town is hereby amended by adding a new sub-section (i), which new sub-section shall read as follows:

*“(i) Perimeter Fencing for Certain Residential Subdivisions/Developments*

Any perimeter fencing and/or wall which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with the following:

1. In RS Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall exceed 48 inches in height.
2. In the RR Zoning District, fence or wall, including gates, support posts, members, or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall not exceed 54 inches. Higher perimeter fences and walls within the RR Zoning Districts, not to exceed six (6) feet in height, may be approved by Town Council after considering the recommendation by the Planning and Zoning Board. Prior to approving any fence or wall in excess of 54 inches, the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at an abutting intersection.
3. In the R-MH Zoning District no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a mobile home residential subdivision or development that is not part of a mobile home site shall exceed 48 inches in height.
4. In RM Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a multi family residential subdivision or development that is not part of a residential site shall exceed 48 inches in height.

**SECTION 2. 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 sections 1, 2 and 3 of this ordinance to be incorporated into the Town’s Land Development Code.

**SECTION 3. 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 4. CONFLICT.** All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**SECTION 5. EFFECTIVE DATE.** The ordinance shall take effect immediately upon its adoption.

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

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Charles (Chuck) McClelland	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Patricia (Pat) Dezman	<u>Aye</u>

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this 5<sup>th</sup> day of May, 2008.

BY: TOWN OF MALABAR

Thomas M. Eschenberg  
Mayor Thomas M. Eschenberg

1<sup>st</sup> Reading: 04-21-08  
2<sup>nd</sup> Reading: 05/05/08

ATTEST:

Debby K. Franklin  
Debby K. Franklin  
Town Clerk/Treasurer  
(seal)

Approved as to form and  
legal sufficiency by:

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