

ORDINANCE NO. 2008-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, SECTION 1-15.7 OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR THE PRUNING OR REMOVAL OF TREES AND FOLIAGE UNDER CERTAIN CIRCUMSTANCES; 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 life, limb and property from natural and manmade disaster; and

WHEREAS, The Town Council finds that during the Hurricane season of 2004 a large number of trees were damaged and threatened life and property and structures of the citizens of Malabar; and

WHEREAS, The Town Council has also determined that during the 2008 wildfires the existing canopies served as fuel for fires and a conduit for the spread of fires thereby endangering life and property of the citizens of Malabar; and

WHEREAS, The Town Council has determined that allowing the removal of various trees and foliage under limited circumstances will benefit the health, safety and welfare of the citizens of the Town and will assist in preserving and protecting life and property.

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

SECTION 1. Section 1-15.7 of Article XV of the Land Development Code of the Town is hereby amended by adding a subsection D, which new subsection shall read as follows:

"Section 1-15.7. Limited exceptions.

...

Where any portion of the canopy is within thirty (30) feet of any structure located on property that may be endangered by the possibility of fire or physical damage or destruction by wind or rain, said vegetation with a six inch basal diameter or less may be pruned or removed without a permit. Trees and foliage meeting these criteria with greater than a six inch basal diameter may be pruned or removed upon the issuance of a Type IV permit from the Building Official. Additionally, trees or vegetation, where the canopy is greater than thirty (30) feet from any structure located on property, may be pruned without a permit or removed upon the issuance of a Type IV permit from the Building Official if the canopy height is equal to or greater than the distance from the canopy to the structure. Non-Native trees and foliage species as well as dead trees and foliage with less than a six inch basal diameter may be removed without permit and those with a greater than six inch basal diameter may be removed upon the issuance of a Type IV permit from the Building Official."

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 section 1 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 McClelland. The motion was seconded by Council Member Dezman 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 20th day of October, 2008.

BY: TOWN OF MALABAR

Thomas Eschenberg
Mayor Thomas M. Eschenberg

Public Hearing at P&Z: 7/23/08
Council First Reading: 10/06/08
Council Second Reading: 10/20/08

ATTEST:

Debby Franklin
Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and legal sufficiency by:

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