

ORDINANCE NO. 2012-51

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE II STANDARDS; AMENDING SECTION 8-32 RELATING TO FIRE INSPECTIONS; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Section 8-32 of Article II of Chapter 8 of the Code of Ordinances of the Town is hereby repealed and replaced to read as follows:

Sec. 8-32 Right of entry.

(a) To the full extent required by law, a fire safety inspector engaged in fire prevention and inspection work in accordance with provisions of Chapter 633 of the Florida Statutes shall be authorized to bi-annually conduct a fire safety inspection at all establishments described as required under the uniform fire safety standards as adopted by the state of Florida under Chapter 633 of the Florida Statutes. Before such inspection shall occur, the fire safety inspector shall give written notice of the date and time of the inspection to the occupant of such premises. Such notice shall be delivered, either personally, by mail, or by posting such notice in a conspicuous place on the principal structure on the premises, or in the case of a commercial marine vessel or a commercial vehicle at the business address on file with the Town, at least seventy two (72) hours in advance of the inspection. Establishments not described above in this section shall ensure the testing, inspection and maintenance of existing fire prevention equipment and be able to provide to the Authority Having Jurisdiction (AHJ) evidence that fire prevention equipment is periodically inspected by certified personnel as required under minimum fire safety standards as adopted by the state of Florida under Chapter 633 of the Florida Statutes.

(b) It shall be unlawful for any persons to interfere with a fire safety inspector carrying out any lawful duties or functions prescribed by this chapter.

(c) It shall be unlawful for any person to represent themselves or to use an official badge, uniform or other credentials so as to impersonate an authorized official for the purpose of gaining access to any building, structure, marine vessel, vehicle, premises or condition, or for any other unauthorized purpose in this jurisdiction.

(d) The Town shall not charge any fee for an inspection authorized under this section.

(e). Notwithstanding the provisions of subsection (a) exigent circumstance shall not require notice by a fire safety inspector under the authorization of the AHJ or law enforcement in order to render aid or to eliminate an obvious dangerous condition. For purposes herein, "exigent circumstance" shall mean a situation that presents an immediate threat to the life or there is an immediate need to prevent serious bodily injury to the occupants or patrons of the commercial establishment and there is a lack of time to secure the notice in accordance with subsection (a) above.

SECTION 2 REPEAL. All ordinances or parts of ordinances in conflict herewith are hereby

repealed and all ordinances or parts of ordinances or resolutions not in conflict herewith are hereby continue in full force and affect.

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 this 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. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, and it is hereby provided that the provisions of this ordinance shall become and made part of the Code of Ordinances of the Town of Malabar.

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

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

- Council Member Carl Beatty
- Council Member David White
- Council Member Steve Rivet
- Council Member Jeffrey (Jeff) McKnight
- Council Member Marisa Acquaviva

Aye
Excused
Excused
Aye
Aye

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 16 day of April, 2012

BY:
TOWN OF MALABAR

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg
Council Chair

First Reading: 3/19/2012
Second Reading: 04/16/12

ATTEST:
By: Debby K. Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

(Seal)

Approved as to form and content:
Karl W. Bohne, Jr.
Karl W. Bohne, Jr., Town Attorney