

## ORDINANCE 2012-54

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING SECTION 13-52; REVISING THE PROCEDURES FOR REQUESTING ROAD OR STREET IMPROVEMENTS BY OWNERS OF LAND ABUTTING SAID ROAD OR STREET; PROVIDING FOR CODIFICATION, CONFLICTS; AND SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:**

**SECTION 1.** Section 13-52 of the Code of Ordinances of the Town is hereby amended in full to read as follows:

**“Sec. 13-52. - Levy of special assessments for street paving, construction or hard surfacing.**

(1) Pursuant to F.S. Ch. 170, the town council may, from time to time, levy special assessments for paving, hard surfacing, and construction of streets, as well as other purposes permitted by F.S. Ch. 170. The town reserves the right to levy such special assessments from time to time.

(2) As an alternative to the provisions of subsection (1) above, upon petition signed by the owners of two-thirds (2/3) or greater of the front footage on any street or road requesting the town council to construct, pave, or hard surface such street or road, the town council of the town shall, upon a finding by the council that the petition is in sufficient form, substance and execution, direct town staff to determine the preliminary cost for such construction activity. Within thirty (30) days of notice sent to the owners, via regular mail to the address appearing on the petition, signing the petition of the preliminary determination of such construction cost an owner may notify the Town of their desire to be excluded from the petition. If an owner timely requests they be excluded from the petition then their name shall not be considered as joining the petition. .

(a). At the expiration of the thirty day notice period above and if there are enough owners removed from the petition to drop below the two third (2/3) threshold requirement the petition shall be deemed rejected and no further action shall be required.

(b). At the expiration of the thirty day notice period above and if there are enough owners to meet the two third (2/3) threshold requirement the Town Council may approve the construction and order a special assessment imposed in accordance with the procedures of F.S. Ch. 170. Notwithstanding any owner whose name is excluded from the petition, if the Town Council determines to approve the construction and the imposition of the special assessment for such construction, all owners of property benefited from the construction improvement shall be subject to the special assessment.

(3) The form of the petition provided for herein shall be supplied by the Town.

(4). Provisions for the pay back of any special assessment imposed pursuant to this section shall be set forth in the resolution required by F.S. Ch. 170.

**SECTION 2.** Codification. This ordinance shall be forwarded to the Municipal Code Corporation for incorporation into the Malabar Code of Ordinances..

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4.** In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder 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 5.** This ordinance shall become effective immediately upon its adoption after the second public hearing.

This ordinance was moved for adoption by Council Member Rivet and was seconded by Council Member White and, upon being put to a vote, the vote was as follows:

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

This ordinance was then declared duly passed and adopted this 16 day of July, 2012.

By: Phillip R. Crews  
Mayor Phillip R. Crews  
Council Chair

ATTEST:  
Debby K. Franklin  
Debby K. Franklin  
Town Clerk/Treasurer



First Reading: 6/18/12  
Second Reading: 7/16/12

Approved as to Form and Content:

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