



Planning and Zoning Board Meeting

Tuesday, December 15, 2020 at 6:30 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA

APPROVAL OF MINUTES

a. Approval of Minutes of 11/17/2020

Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

5. PUBLIC HEARING: 0
6. ACTION ITEMS: 0
7. DISCUSSION: 2

a. Amending District Provisions Article III Table 1-3.3(A) for R/LC

Exhibit: Agenda Report Number 7a

Attachments:

- **Agenda Report Number 7a** (Agenda_Report_Number_7a.pdf)

b. Amending of Article XIX Signage, Section 1.19.18 District Regulations Residential vs Non-Residential concerning square footage

Exhibit: Agenda Report Number 7b

Attachments:

- **Agenda Report Number 7b** (Agenda_Report_Number_7b.pdf)

8. ADDITIONAL ITEMS FOR FUTURE MEETING
9. PUBLIC COMMENTS
10. OLD BUSINESS/NEW BUSINESS

a. Old Business: Review Ordinance 2020-14 for Mobile Food Vendors

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

b. New Business

Board Member Comments

Next regular Meeting - January 13, 2021

11. ADJOURNMENT

Contact: Denine Sherear (dsherear@townofmalabar.org 13217277764) | Agenda published on
12/04/2020 at 2:54 PM

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4.a

Meeting Date: December 15, 2020

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim, and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of 11/17/2020 (Richard Kohler, Deputy Clerk/Treasurer)

ACTION OPTIONS:

Secretary requests approval of the minutes.

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
November 17th, 2020 7:00 PM**

This meeting of the Malabar Planning and Zoning Board was held at Malabar Town Hall at 2725 Malabar Road.

1. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:00 P.M. Prayer and Pledge led by Board Member Foster.

2. ROLL CALL:

CHAIR:	WAYNE ABARE
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	GEORGE FOSTER
	DOUG DIAL (EXCUSED)
	MARY HOFMEISTER (EXCUSED)
ALTERNATE:	SUSAN SHORTMAN
ALTERNATE:	JEFF RINEHART
ACTING BOARD SECRETARY:	RICHARD KOHLER
TOWN ATTORNEY:	KARL BOHNE

3. NOMINATIONS FOR CHAIR & VICE CHAIR

Chair moves to move this item until after both discussion items. Without objection, motion approved.

Vice-Chair Ritter/Board Member Foster move that Wayne Abare be nominated to continue serving as the Chair of the Planning and Zoning Board.

All Ayes.

Board Member Reinhart/Foster move that Vice-Chair Ritter be nominated to continue serving as the Vice-Chair of the Planning and Zoning Board.

All Ayes.

4. ADDITIONS/DELETIONS/CHANGE: NONE

5. CONSENT AGENDA: 1

**5.a. Approval of Minutes
Exhibit:
Recommendation:**

a. Planning and Zoning Meeting – 10/14/2020
Agenda Report No.5. a
Request Approval

Motion: Vice-Chair Ritter/Board Member Reinhart move to accept the minutes as amended.

Vice-Chair Ritter asked for the addition of explanation of the zoning issues raised under public comments.

Vote: All Ayes.

6. PUBLIC HEARING: 0

7. ACTION: 0

8. DISCUSSION: 2

8.a. Local Regulations for Mobile Food Vendors

Exhibit: Agenda Report Number 8a

Chair began by thanking Town Staff for their work on preparing this ordinance. He then asks Acting Secretary Kohler to walk the Board through the Ordinance.

Acting Board Secretary Kohler begins by explaining the definitions on page one.

Board Member Shortman recommends catering trucks and ice cream trucks be protected.

Chair, Vice-Chair and Board Member Reinhart disagree.

Attorney Bohne states that he doesn't believe it will be an issue. We need to review the legislation to comply with the State's definition.

Board Member Foster asks the Attorney if this should include ice cream trucks?

Attorney states the intent is not for that type of business, so we should remove the ice cream truck section of the definition.

Acting Board Secretary Kohler then discussed the definition of improved property, and the application process.

Attorney Bohne reiterated that Mobile Food Vendor will still be charged for a Business Tax Receipt, but not additionally for this application. It is informational only.

Vice-Chair Ritter asked if the Town can ask for these things.

Attorney says he will review sections d. and e. of the application process for compatibility with the State statutes.

Board Member Shortman asks if the Board wants to limit the number of food trucks per site.

Board Member Reinhart states that the Town should not limit these, let the market do that.

Board Member Foster and Shortman agree.

Vice-Chair Ritter states that multiple vendors can be on the same location but operate at different times. For example, there could be a coffee shop for breakfast, and sandwich truck that does lunch, and a burrito truck for dinner. We shouldn't regulate that.

Chair Abare recommends adding "Unless a greater number is approved by the Town Manager or designee."

Board Members Shortman, Reinhart and Foster agree to remove limit on town owned property, and to expand section C to include parameters of enforcement.

Acting Board Secretary Kohler continued by reviewing Section 2 discussing zoning locations and requirements pertaining to Mobile Food Vendors on private property.

The general consensus is in agreement with sections A&B.

Vice-Chair Ritter questions the need for section C.

Board Member Foster believes this section should match the relating section from Town Owned property.

Acting Board Secretary Kohler moves to section D.

Chair Abare recommends this section should also be included with the limit in the general conditions.

Acting Board Secretary Kohler covered sections 3 through 5 of the location sections.

Board Member Shortman reiterates that Mobile Food Vendors can move their operation throughout the day.

Acting Board Secretary Kohler begins reviewing the Operations portion of the code.

Chair Abare states that the hours of operation reflect the past discussions of the Board.

Board Member Shortman questions the necessity for the Town to regulate what Mobile Food Vendors sell.

Board Member Reinhart and the Attorney suggest that section be removed from the Ordinance.

Chair Abare states that the noise requirement refers to existing code and is fine.

Vice-Chair Ritter states that Section 4 of the Operations should include that the listed items are the only items allowed.

Vice-Chair Ritter suggests that the Waste Collection section be condensed.

Attorney Bohne suggests that a restriction on selling non-food items be included.

Acting Board Secretary Kohler begins reviewing the Insurance section of the Ordinance.

Vice-Chair Ritter corrected a typo in the introduction and removed "rented" from the first section.

Board Member Reinhart suggests item C be removed from the Insurance section.

Attorney Bohne agrees that item C is unnecessary.

Vice-Chair Ritter questions the three-day period allowed to inform the Town of insurance policy changes.

Attorney Bohne states the three days is standard and should be kept.

Attorney Bohne then reviewed Section 4, enforcement. He recommends a statement be included giving the Town Manager the authority to contact Law Enforcement to cease operations immediately.

Board Member Foster agrees that Law Enforcement should be included.

Vice-Chair Ritter states that this whole section needs to be reworked.

Attorney Bohne states he can rework that section to ensure it will comply with existing State statutes.

Acting Board Secretary Kohler states that Sections 5 through 9 are boiler plate portions of any Ordinance.

Chair Abare asks if the Board wants to see this again before it goes to Council.

Board Member Reinhart states that the Board has seen it enough and thinks it should go to Council.

Chair Abare and Board Member Foster agree.

Board Member Reinhart/Shortman move to send the ordinance to Council as amended with a complimentary copy to be provided to the Board.

Vote: All Ayes

8.b. Recommendation to Council Table 1-3.3(A)

Exhibit:

Agenda Report No.7.b

Recommendation:

Discussion

Chair Abare begins by reviewing the table in question. He covered the addition of the RM-4 and RM-6 specifications. He then stated that he has spoken to the mayor and several council members about this R/LC issue. The example he used was a Dollar General. The general consensus was that the minimum square footage should increase with the size of the lot. The genesis of this zoning designation was for residential living first, and small community based commercial establishments.

Vice-Chair Ritter states that as is, the code would not allow something like a Dollar General.

Chair Abare states that with the current rezoning of R/LC, the Town could end up with a 10-acre R/LC lot. If we use the 20%, the owner of a 10-acre R/LC lot could build a 2-acre building.

Vice-Chair Ritter states that a big box store can not be built in R/LC per the description of the designation. The intent was to develop a Downtown Melbourne style area with small shops on the bottom floor, and an apartment upstairs.

Board Member Foster states that developers will not want to develop lots in R/LC with the current dimensions. Downtown Melbourne was developed 50-70 years ago, that style is not profitable anymore.

Board Member Shortman believes that the Town should employ an urban planner to develop a Downtown plan.

Board Member Reinhart believes that this is overreaching. We are trying to plan for something that will never happen.

Attorney Bohne reminded the Board that changing the narrative requires a large-scale comp plan amendment, which can take months and be an expensive process. He suggests making the maximum lot size 20,000 square feet. He does note that it wouldn't solve all the problems.

Vice-Chair Ritter states that a large-scale comp plan amendment is needed.

Board Member Reinhart suggests using the 20% moving forward.

Chair moves to table until the next meeting and dismisses the Attorney.

9. ADDITIONAL ITEMS FOR FUTURE MEETING:

10. PUBLIC:

11. OLD BUSINESS/NEW BUSINESS:

Old Business:

New Business:

- Next Regular Meeting- December 9th, 2020

12. ADJOURN

There being no further business to discuss

MOTION SHORTMAN/FOSTER . Vote: All Ayes. The meeting adjourned 8:38 PM.

BY:

Wayne Abare Chair

Richard W. Kohler, Acting Board Secretary
presented/corrected:

Date Approved: as

DRAFT

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7.a.
Meeting Date: December 15, 2020

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Amending District Provisions Article III Table 1-3.3(A) to be Drafted by Ordinance

BACKGROUND/HISTORY:

This Item has been on the last several PZ Agendas, last discussed on 11/17/2020 the Board Members agreed on the following:

- 1200 sq. feet minimum living area.
- The maximum area would be a table that gives larger size depending how many acres the lot has
- A business owner needs stormwater, parking, & outdoor space so 20% coverage is a fair number
- Consensus is to remove the 4,000 sq. ft. and support 20% maximum coverage
- The Board agrees to keep 900 sq. ft as minimum building coverage
- It was agreed to keep RM-4 and RM-6

The Board wished to discuss the maximum coverage for R/LC before sending to Council.

ATTACHMENTS:

Draft Table 1-3.3(A) for Adoption by Ordinance

ACTION OPTIONS:

Discussion/ Action to Council

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS See numbered Notes below

Zoning District	Minimum Lot (1)		Depth (ft.)	Maximum Height (ft./stories)	Min Sq Ft Living Area Commercial Area	Setback (ft.) from property line or centerline(2)			MISR (%)		MBC	MOS	Maximum Density (units per acre)
	Size (sq. ft.)	Width (ft.)				Front	Rear	Side interior	Side corner	Max Impervious Surface Ratio %			
Rural Residential Development													
RR-65	65,340	150	250	35/3	Single Family:1500	40	30 (7)	30	20	N/A	80	1	
Traditional Single-Family Residential Development													
RS-21	21,780	120	150	35/3	1,800	35	20	15	35	N/A	65	2	
RS-15	15,000	100	120	35/3	1,500	30	20	15	45	N/A	55	3	
RS-10	10,000	75	100	35/3	1,200	25	20	10	50	N/A	50	4	
R/LC	20,000	100	150	35/3	1,200	25	20	10	50	N/A	50	2	
RM-4	20,000	100	150	35/3	1,200	25	20	10	50	N/A	50	2	
RM-6	20,000	100	150	35/3	1,200	25	20	10	50	N/A	50	2	
Multiple Family Residential Development and Mixed-Use Development													
RM-4	5-acre min Site	200	200	35/3	Multi Family 1-bedrm 900 2-bedrm 1100 3-bedrm 1300 Ea additional bedrm 120	60	40	40	50	N/A	50	4	
RM-6	5-acre min Site	200	200	35/3	Multi Family 1-bedrm 500 2-bedrm 700 3-bedrm 900 Ea additional bedrm 120	60	40	40	50	N/A	50	6	
R/LC Residential	20,000	100	150	35/3	Multi Family 1-bedrm 500 2-bedrm 700 3-bedrm 900 Ea additional bedrm 120	50	25 (5)	10 (4)	65	N/A	35	6	
R/LC Mixed Use	20,000	100	150	35/3	Commercial Min 900 sf 4,000sf 4,000sf	50	25	10 (4)	65	20	35	6	

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS See numbered Notes below

Minimum Lot (1)		Setback (ft.) from property line or centerline (2) See also Note 5					MBC %	MOS %	Maximum Density				
Zoning	Lot Size	Width	Depth	Max Height	Floor Area	Front (2)	Rear (5)	Side (I) interior	Side (C)	MISR %	Max Bldg Coverage %	Minimum Open Space %	Residential Units per acre
Mobile Home Residential Development													
R-MH	Size: 5 acres Lot: 7000sf	N/A	N/A	N/A	N/A	10	8	8	10	50	N/A	50	6
Office Institutional Development													
OI	20,000	100	150	35/3	Minimum floor Area: 1,000sf	35/60 (2)	25	20	25	65	20	35	N/A
INS	20,000	100	150	35/3	Minimum floor Area: 1,200sf	50	25	20	30	60	20 (6)	40	N/A
Commercial Development													
CL	20,000	100	150	35/3	Minimum floor Area: 900sf Max: 4,000sf	50	25	10(4) 15(3)	20	65	20	35	N/A
CG	20,000	100	150	35/3	Minimum floor Area: 1,200sf Min hotel/motel 300sf ea unit	50	25	20(4) 15(3)	30	65	20	35	N/A
IND	20,000	100	150	35/3	Min 1,200sf	50 (5)	25 (5)	20(5)	30(5)	70	42	30	N/A
CP	No size or Dimension Standards Adopted												

Note 1: Minimum lot size include plus one-half of adjacent public right-of-way.

Note 2: Setbacks determined pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

Note 3: Setbacks where rear lot line abuts an alley.

Note 4: Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply

Note 5: Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.

Note 6: Recreation activities Maximum Building coverage shall be 20%

Note 7: Sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. if the height of the accessory structure is 20 feet, this will equal a 20-foot setback.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7.b.
Meeting Date: December 15, 2020

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Amending of Article XIX Signage, Section 1.19.18 District Regulations Residential vs Non- Residential concerning square footage

BACKGROUND/HISTORY:

The Town's Code Article XIX Signage Section 1.19.18 District concerning Sign Regulations needs to be Amended. The intent is to discuss and clarify the size of signage in Residential Zoning Districts and Non-Residential Zoning Districts in General Outdoor Advertising as noted in attachments.

The Town Manager Morrell discussed with Council a future *Draft Ordinance* for review and suggest changes to be made for clarification.

ATTACHMENTS:

- Interim Town Manager, Lisa Morrell Agenda Item dated November 11/2/2020
- Article XIX Section 1-19.18-District sign regulations

ACTION OPTIONS:

Discussion/Action to Council

TOWN OF MALABAR

COUNCIL MEETING

 **AGENDA ITEM NO: XX.X**
Meeting Date: November 2, 2020

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration of Amending of Land Development Code / Article XIX Signage

BACKGROUND/HISTORY:

In reviewing the Town's Code of Ordinances, particularly the Land Development Code, Article XIX Signage, Section 1.19.18 District Sign Regulations, Table 1-19.8, as it may be a counter intuitive to the intent and adoption of maximum area of a permitted sign within Residential Zoning Districts and Non-Residential Zoning Districts for sign type identified as General Outdoor Advertising.

Specifically, in Table 1-19.18, under item (1) Sign Regulations Within Residential Zoning Districts, table heading General Outdoor Advertising and construction class of wall or detached has a maximum area defined as 32 square feet, or the equivalent to a 4'x8' sheet of plywood in a residential area.

Conversely in Table 1-19.18, under item (1) Sign Regulations Within Non-Residential Zoning Districts, table heading General Outdoor Advertising, the maximum area of a wall sign is 10 square feet, or the equivalent of 5.5'x5'5 and a detached sign is 3 square feet, or 1.5'x1.5'; in a commercial area.

ATTACHMENTS:

Town of Malabar Code of Ordinances Section 1-19.18 District Sign Regulations.PDF

ACTION OPTIONS:

Request for Town Council to review the current attached code and provide staff direction, if any, to amend or clarify the Town's Code of Ordinances, Land Development Code Chapter, Article XIX Signage, Section 1.19.18 District Sign Regulations, and Table 1-19.8 pertaining to the maximum area allowed for sign type, General Outdoor Advertising, in each zoning district, Residential and Non-Residential.

Section 1-19.18. - District sign regulations.

The provisions of Table 1-19.8 "Zoning District Sign Regulations" shall apply to each lot or parcel of land, and/or each business establishment as may be applicable in each case. In the following zoning classifications, the specified sign types and construction classes shall be permitted subject to the restrictions and limitations contained herein.

Also, any and all allowed &/or required Federal, State, County, &/or Local Signage or Flags as covered per their regulations and as such shall abide by their rules and regulations relating to each. These may be regarding Public Display for; information, location, display protocol, public safety, traffic safety, etc.

TABLE 1-19.18. ZONING DISTRICT SIGN REGULATIONS

(1) Sign Regulations Within Residential Zoning Districts.

Sign Type	Accessory	Construction	Directory	Directional
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	1	1	1
Maximum Area	4 sq. ft.	32 sq. ft.	10 sq. ft.	3 sq. ft.
Maximum Height	10 ft.	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 12 ft.
Placement	Must observe all yard regulations	Front setback: 10 ft. Side and Rear: 25 ft.	Must observe all yard regulations	Non-Restricted

Illumination	None	None	Indirect	None
Special Regulations	Permitted only in conjunction with a permitted home occupation. See Footnote 1.	Must be removed immediately upon completion of construction or occupancy	None	None

Sign Type	Future Improvement	General Outdoor Advertising
Construction Class	Detached	Wall or Detached
Maximum Number	1	1
Maximum Area	10 sq. ft.	32 sq. ft.
Maximum Height	10 ft.	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection
illumination	None	None
Special Regulations	None	See Footnotes 1 and 2



(2) Sign Regulations Within Non-Residential Zoning Districts.

Sign Type	Accessory	Accessory	Temporary
Construction Class	Wall	Detached, Marquee, and Projecting	Snipe/Signs
Maximum Number	3	2 total from this group	4
Maximum Area	10% of the wall area, and no more than 60 sq. ft. of cumulative area	60 sq. ft. total cumulative area	4 sq. ft. each
Maximum Height	Roof line of building	Detached: 25 ft. Others: Roof line of building	Roof line of building
Placement	Non-Restricted	Must observe yard regulations and Front setback: 10 ft.	Must observe yard regulations
Illumination	Direct, Indirect	Direct, Indirect	None
Special Regulations	See Footnotes 1, 3, and 4	See Footnotes 4 and 5	See Footnote 7

Sign Type	Construction	Directory	Directional	General Outdoor Advertising
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	2	2	1
Maximum Area	32 sq. ft.	Sum of 30 sq. ft.	3 sq. ft. each	Detached: 3 sq. ft. Wall: 10 sq. ft.
Maximum Height	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 10 ft.	10 ft.
Placement	Front Setback: 10 ft. Rear and Side: 25 ft.	Must observe all yard regulations	Non-Restricted	Front setback: 10 ft. Rear and Side: 25 ft.
Illumination	Indirect	Indirect	Indirect	Indirect
Special Regulations	Must be immediately removed upon completion of construction or occupancy	None	None	See Footnotes 1 and 2

(3) Sign Regulations Within Non-Residential Zoning Districts.

Sign Type	Future Improvement
Construction Class	Detached
Maximum Number	1
Maximum Area	32 sq. ft.
Maximum Height	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.
Illumination	Indirect
Special Regulations	None

Footnotes to charts:

- (1) All inside signs within five (5) feet of a window shall be counted as wall signs and in addition shall not exceed twenty (20) inches of the glassed area of the window in which the sign is located.
- (2) Only permitted are those signs which may be off the premises for which they relate and are within two hundred (200) feet of the property for which they relate to. However, if the sign is three (3) square feet or less in area, the property to which the sign relates may be within one (1) mile of the sign.
- (3) Apartment complexes and dwellings of up to ten (10) units are permitted thirty-two (32) square feet. For excess of ten (10) units, one (1)

- square foot may be added for each unit, up to a maximum of forty-eight (48) square feet in cumulative area.
- (4) If illumination/animation is permitted a minimum refresh rate is six (6) seconds
 - (5) One (1) additional sign of this construction class up to thirty (30) square feet in area shall be permitted for each two hundred (200) feet of street frontage.
 - (6) For a group of more than four (4) sites and in lieu of the nine (9) square foot individual lot sign, one thirty-two (32) square feet shall be permitted.
 - (7) Minimum distance between Temporary Signs shall be twenty (20) feet.

(Ord. No. 19-06, § 1, 7-15-19)

OLD BUSINESS

PZ

AGENDA

MEETING

12/15/2020



TOWN OF MALABAR
COUNCIL MEETING
AGENDA ITEM NO: 11.a.
Meeting Date: December 7, 2020

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Ordinance 2020-14 Mobile Food Dispensing Vehicles

BACKGROUND/HISTORY:

With the passing of Florida Senate Bill 474 in January of 2020, the State barred local governments from prohibiting the operations of Mobile Food Dispensing Vehicles. Beginning on February 12th, 2020, the Malabar Planning and Zoning Board began to review the possibility of including rules and regulations pertaining to Mobile Food Dispensing Vehicles. During their discussions, the Board agreed an ordinance should be passed which contain the following items:

- Approved Zoning Designations of Operation
- Permitted Property Types
- Traffic Concerns
- Product Dispensing
- Noise Restrictions
- Hours of Operation
- Enforcement

At the November 17th Planning and Zoning Board meeting, Board Member Reinhart made a motion to send Ordinance 2020-14 as revised for Town Council review. Board Member Shortman seconded that motion, and the vote was 5-0 in the affirmative. The minutes of said meeting are attached.

FINANCIAL IMPACT: NONE

ATTACHMENTS:

- Ordinance 2020-14
- Draft Minutes of Planning and Zoning Board Meeting of 11/17/2020

ACTION OPTIONS: Action on 1st reading of Ordinance 2020-14

ORDINANCE 2020-14

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RELATING TO MOBILE FOOD DISPENSING OPERATIONS; AMENDING ARTICLE II, SECTION 1-2.6.C.14 OF THE LAND DEVELOPMENT CODE OF THE TOWN PROVIDING FOR DEFINITIONS, RULES AND REGULATIONS REGARDING MOBILE FOOD DISPENSING OPERATIONS LOCATIONS; AMENDING ARTICLE XX, LANGUAGE AND DEFINITIONS, OF THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 14 OF THE TOWN CODE BY ADDING A NEW SECTION 14-40.1; PROVIDING FOR AN APPLICATION AND OPERATIONAL PROCEDURES FOR MOBILE FOOD DISPENSING OPERATIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Mobile food dispensing is a growing industry in the United States and serves as a means for individuals to start businesses or to supplement existing businesses; and

WHEREAS, there is an increasing demand for a greater variety of food options than are present in the Town; and

WHEREAS, at present, there are no rules or regulations pertaining to mobile food dispensing vehicle, vendors and operations in the Town Code; and

WHEREAS, on November 17, 2020, Malabar's Planning and Zoning Board held publicly advertised meetings 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 II SECTION 1-2.6-C. 14 of the Town Land Development Code is hereby amended to include new subsections (c), (d) and (e) to read as follows:

...

"(c) Mobile Food Dispensing Vehicle means any vehicle that is licensed by the State of Florida as a public food service establishment {See F.S. 507.013 (5) for definition of a public food service establishment} and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(d) Mobile Food Dispensing Vendor – The operator of a Mobile Food Dispensing Vehicle.

(e) Location of mobile food dispensing vehicle/vendor. A mobile food dispensing vendor may operate a mobile food dispensing operation in the following locations:

1. Town-Owned Property

- A. On the following Town-owned property, total operation must be contained within the area designated for their operation by the Town Manager or designee:
1. Malabar Community Park
 2. Sandhill Trailhead Park
 3. Town Hall
- B. Access. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, pedestrian ingress or egress, emergency exits, or access to businesses. Notwithstanding anything to the contrary herein, a mobile food dispensing vendor may only operate on Town-Owned Property in areas so designated by the Town.
- C. Conflict. A mobile food dispensing vendor may not operate on or at any location where the Town Manager or designee determines that a conflict exists between a mobile food dispensing vendor's vehicle or operation and an existing license or franchise agreement, contractual obligation, or any other public health or safety concern, including but not limited to a special event or rental facility.

2. Improved Property

- A. A mobile food dispensing vendor may operate on improved private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the Town upon request while the mobile food dispensing vendor is operating.
1. Commercial General (CG)
 2. Industrial (IND)
 3. Residential/Limited Commercial (R/LC)
 4. Office Institutional (OI)
 5. Commercial Limited (CL)

6. Institutional (INS)

- B. Set-back Requirement. When operating on private property, a mobile food dispensing vendor may operate only if set-back at least fifty feet (50') from any abutting residential district and at least one hundred and fifty feet (150') from any exclusively single family residential structure, unless the owner(s) of the residential structure immediately abutting such proposed location provides the mobile food dispensing vendor with express written permission to operate. The one hundred and fifty-foot (150') set-back requirement is reduced to fifty feet (50') where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.
- C. Access. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, pedestrian ingress or egress, building entrances, blocks a public or private right-of-way, emergency exits, or access to businesses. A mobile food dispensing vendor may locate upon a public or private utility easement area; provided, however, that such location may be terminated by the Town Manager if it is determined that such location has caused a deterioration to such easement or utility service needs unrestricted access to the easement area.
3. Construction areas. A mobile food dispensing vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.
4. Principal structure requirement. A mobile food dispensing vendor may only operate on a lot that has a permitted principal structure.

Stationary location requirement. A mobile food dispensing vendor must operate from a stationary location, but may operate from multiple locations throughout the day, except as otherwise permitted in this article."

SECTION 2. ARTICLE XX of the TOWN Land Development Code is hereby amended to include the following definition:

“Improved Property - property upon which a principal residential, commercial, or other principal building has been built”

SECTION 3. Chapter 14 of the TOWN Code of Ordinances is hereby amended to include a new Section 14.40.1:

“Section 14-40. 1 Application process for Mobile Food Dispensing Vendors; Operational Procedures for Mobile Food Dispensing Vendors.

(a) A mobile food dispensing vendor must submit a complete application to obtain or renew a business tax receipt. The application must include all the following:

1. The name, address, phone number and email address of the mobile food vendor;
2. Proof of a valid license issued by the Florida Department of Business and Professional Regulation, a mobile food establishment permit issued by the Florida Department of Agriculture and Consumer Services, and a license or permit from any other state agency having jurisdiction over the mobile food dispensing vendor or the products sold therein as applicable to the mobile food dispensing vendor’s intended operation;
3. Confirmation from the Town of Malabar Fire Department indicating that the mobile food dispensing vendor has passed a fire and safety inspection based on the applicable Florida Fire Prevention Code; and
4. Proof of any insurance required by this section if applicable

(b) Operational Procedures for Mobile Food Dispensing Vendors

1. Hours. A mobile food dispensing vendor may only operate during the posted hours on the authorized Town-Owned property, or for all other approved locations between the hours of one-half hour before sunrise and nine (9) p.m. the same day. Operating hours include the time required for setup and breakdown of the mobile food dispensing operation.

2. Noise requirements. Mobile Food Dispensing Vendors shall comply with Article X of this Land Development Code.
3. Placement of items. Except as otherwise provided herein, the placement or storage of any items is prohibited on the public/private right-of-way, street, sidewalk, or ground area immediately surrounding the an mobile food dispensing operation. The following are the only items which may be placed in the immediate area of such operation as long as they do not impede, endanger, or interfere with pedestrian or vehicular traffic:
 - a. Two (2) trash receptacles;
 - b. One (1) recycling receptacle; and
 - c. One (1) menu board no larger than thirty inches by fifty inches (30" x 50") in height.
4. Waste collection. A mobile food dispensing vendor must provide receptacles for trash and recycling. The area immediately surrounding an operating mobile food dispensing vendor shall always be kept neat and orderly and garbage or trash shall be removed prior to departure of the mobile food dispensing vendor. Mobile food dispensing vendors are responsible for the proper disposal of all waste generated on-site. No grease, waste, trash, or other by-product from a mobile food dispensing vendor's business may be deposited or released onto Town-Owned property, included but not limited to the streets, sidewalks, into the gutter or storm drainage system, etc.

(c) Limitation on sales.

1. The sale of alcoholic beverages is prohibited unless authorized by a special event permit.
2. The sale of non-food related items is prohibited, such as, but not limited to, T-Shirts, ball caps and hats, novelty items, etc.

(d) Insurance

1. When operating on Town-owned property, a mobile food dispensing vendor must maintain insurance and coverage in occurrence form, as required by this section. The mobile food vendor must also have a current certificate of insurance on file with the Town, naming the Town of Malabar, Florida as an additional insured.

- a. Commercial General Liability Insurance. The policy must include a minimum limit of \$300,000 for each accident, \$600,000 for general aggregate, \$600,000 for products and completed ops, and \$100,000 damage to rented premises.
 - b. Commercial Auto Liability Insurance. The policy must include a minimum limit of \$1,000,000 for each accident for property damage and bodily injury with contractual liability coverage.
2. Upon the cancellation or lapse of any policy of insurance required by this section a mobile food vendor is prohibited from operating on Town-owned property. A mobile food vendor must notify the Town within three (3) business days of any changes in the insurance coverage required by this section.
 3. At all times, a mobile food dispensing vendor must maintain all insurance policies required by local, state, and federal law and regulation.

(e) Enforcement

1. The location of a mobile food dispensing operation on Town-Owned property or on any public right of way or public easement without the permission of the Town is deemed a trespass. Upon the discovery of such violation the Town Manager or designee may enlist the assistance of a law enforcement officer to cause the mobile food dispensing operation to cease and be removed from such unauthorized location and should the mobile food dispensing vendor remain and disobey the command to cease and remove the operation then the continued trespass shall be deemed a trespass after warning and enforced according to law.
2. Any mobile food dispensing operation located on property which is not either Town-Owned property or public property without the proper authority is hereby deemed to present a serious threat to the public health, safety, and welfare. The Town Manager or designee may immediately notify the violator that a violation exists and demand the operation cease and desist and may immediately schedule a code enforcement magistrate hearing. Any mobile food dispensing operation found in violation herein shall be fined by the Code Enforcement Special Magistrate in the amount of \$250.00, plus administrative expenses which shall include attorney fees.
3. Upon a violation being found by the Special Magistrate, the Town Manager shall provide a copy of such Finding and Order to the State Agency which regulates mobile food dispensing vendors.

SECTION 4. 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 5. 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 6. 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 7. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

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

- Council Member Marisa Acquaviva _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member David Scardino _____
- Council Member Danny White _____

This ordinance was then declared duly passed and adopted this ____ day of _____ 2020.

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: Vote to
Second Reading: