

ORDINANCE NO. 2009-28

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CORRECTING AN ERROR IN CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; REMOVING ARTICLE III OF CHAPTER 13 DUE TO AN ERROR BY THE TOWN'S CODIFICATION COMPANY; AMENDING SECTION 13-54 OF ARTICLE II, DIVISION 2 OF CHAPTER 13; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Town adopted ordinance number 01-01 which repealed Ordinance numbers 91-2 and 92-5, and

WHEREAS, at the time Ordinance number 01-01 was codified the Town's codification company did not remove Article III of Chapter 13 from the Code of Ordinances, and

WHEREAS, it was the intent of the Town Council in adopting Ordinance number 01-01 that Article III was to be repealed, and

WHEREAS, the continued inclusion of Article III in the Code of Ordinances is a scrivener's error and needs to be corrected, and

WHEREAS, Ordinance number 01-01 provided for a savings clause that provided Ordinances 91-2 and 92-5 survived only to "those road improvement projects that were begun during of the effective dates of the respective ordinances" (See section 1-21 of ordinance 01-01).

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

Section 1. The Town Council hereby directs the Town's codification company remove, in its entirety, Article III of Chapter 13 consistent with the intent expressed in Ordinance number 01-01 and that section 13-54 of Division 2 of Article II is amended as follows:

"Sec. 13-54. Prospective application.

This division shall have prospective application only, and no property owner who expended monies for the improvement of any road or right-of-way within the town prior to the effective date of this division [February 5, 2001] shall have any right or entitlement to reimbursement for such expenses by virtue of this division. The entirety of ordinance 91-2 and 95-5 of the Code of Ordinances of the Town of Malabar are repealed as of February 5, 2001. Ordinance 91-2 and 92-5 of the Code of Ordinances of the Town of Malabar shall; however, be applied to those road improvement projects that were begun during the effective dates of those respective ordinances."

Section 2. Codification. It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances 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 Code of Ordinances.

Section 3. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of the this ordinance is invalid or unconstitutional, the remainder of the is Ordinance shall not be effected and it shall be presumed that the Town Council, Town of Malabar did not intend to enact such invalid or unconstitutional revision. It shall further be assumed that the Town Council would have enacted the remainder of this Ordinance without said invalid and unconstitutional revision, thereby causing said remainder to remain in full force and effect.

Section 4. Conflict. All ordinances or resolutions or part of ordinances or resolutions in conflict herewith are hereby repealed.

Section 5. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member Rivet. The motion was seconded by Council member Borton 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 Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 16th day of November, 2009.

BY:

TOWN OF MALABAR

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

First Reading: 10/19/09
Second Reading: 11/16/09

ATTEST:

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

APPROVED as to form and content:

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