

ORDINANCE NO. 2011-40

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES AND PERMIT FEES; AMENDING CHAPTER 6, SECTION 6-4 OF THE CODE OF ORDINANCES OF THE TOWN BY ADDING A NEW SUBSECTION (f); PROVIDING FOR THE REPAIR OF PUBLIC RIGHT-OF-WAYS DAMAGED DURING CONSTRUCTION RELATED ACTIVITIES; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council originally adopted Ordinance 93-11 which, in part, provided for the repair of public right-of-ways damaged during construction related activities; and

WHEREAS, The Town council adopted Ordinance 2006-02 which inadvertently eliminated the requirement to repair public right-of-ways damaged during construction related activities; and

WHEREAS, the maintenance and good repair of public right-of-ways is in the best interest of the health, safety and welfare of the citizens of the Town and the general public.

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

SECTION 1. Section 6-4 of Chapter 6 of the Code of Ordinances of the Town of Malabar is hereby amended by adding a new subsection (f) which new subsection is to read as follows:

“Section 6-4. Modification of codes; permits required; applications; plans.

...

(f) Public Right-of-way Repair Required.

1. Any individual, corporation, or other entity, while engaged in building related activities within the Town of Malabar, and owners of property upon which such building related activities occurs shall be required to repair any damage caused to any public right-of-way which is caused directly or indirectly as a result of that building activity.

2. It is the specific intent of this provision to require individuals, developers, owners or other persons or entities who are using the public right-of-ways of the Town, while engaged in building related activities to repair any damage to roads, side walks, drainage facilities, utilities or other public facilities or structures.

3. Failure to repair damage to public right-of-ways or facilities therein or thereon may result in the refusal by the Town to issue any development permits or orders to the individual or entity responsible or owner of the property upon which such building related activities occurs for said damage until said damage is repaired to the satisfaction of the Town.

4. Nothing contained in this provision shall be construed as creating an exclusive remedy for the Town. In addition to this provision, the Town may seek any legal, equitable or administrative remedy as it deems just and proper for damages, injunctive relief or fines to cause compliance with this provision.”

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 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. Conflicts.

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. Effective Date.

This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Councilmember White. The motion was seconded by Councilmember Rivet and, upon being put to a vote, the vote was as follows:

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

This ordinance was then declared to be duly passed and adopted this 1 day of August, 2011.

TOWN OF MALABAR

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

First Reading: 7/7/2011
Second Reading: 8/1/2011

ATTEST:
Debby K. Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer
(seal)

Approved as to form and content:

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