ORDINANCE NO. 2011-43

AN ORDINANCE OF THE TOWN OF MALABAR BREVARD COUNTY, FLORIDA RELATING TO FIREARMS REGULATIONS; REPEALING PROVISIONS OF THE TOWN'S CODE OF ORDINANCES INCONSISTENT WITH 2011-109, LAWS OF FLORIDA; REPEALING PORTIONS OF SECTIONS 11-13, 12.5-1 AND 12.5-43 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WITNESSETH:

WHEREAS, the Florida Legislature adopted 2011-109, Laws of Florida, effective October 1, 2011 preempting local governments from enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon the exclusive occupation of the field of firearms and ammunition regulation; and

WHEREAS, such legislation imposes severe penalties upon a local government and local officials for enacting or causing to be enforced any local ordinance or administrative rule or regulation prohibited by 2011-109, Laws of Florida; and

WHEREAS, the Town Council desires to comply with the provisions of 2011-109, Laws of Florida.

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

SECTION 1. Section 11-13 of the Code of Ordinances of the Town is amended in full to read as follows:

"Sec. 11-13. - Flammable or explosive refuse.

Highly flammable or explosive materials such as ammunition, dynamite, and the like, shall not be placed in containers for regular collection. Such disposal shall be at the expense of the owner or possessor thereof. Nothing herein is intended to regulate any matters specifically preempted by 2011-109, Laws of Florida."

<u>SECTION 2</u>. Section 12.5-1 of the Code of Ordinances of the Town relating to the definition of Firearms is amended to read as follows:

"<u>Sec. 12.5-1.</u> - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings subscribed to them in this section, except where their context clearly indicates a different meaning:

Firearms mean and include any type of instrument capable of firing a projectile or bullet, including but not limited to, any airgun, sling or slingshot."

<u>SECTION 3.</u> Section 12.5-43 of the Code of Ordinances of the Town is hereby amended in full to read as follows:

"Sec. 12.5-43. - Hunting and firearms. Wildlife

No person in a park or recreational facility shall <u>molest</u> hunt, trap or pursue wildlife at any time. No person shall use, carry or possess firearms of any descriptions, or air-rifles, spring guns, bow and arrows, slings, or any other form of weapon potentially inimical to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device, except in such areas as may be specifically provided for that purpose. Shooting into park areas from beyond park boundaries is strictly forbidden.

SECTION 4. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1, 2, and 3 of this ordinance become part of the Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1, 2, and 3 of this ordinance to be incorporated into the Town's Code.

SECTION 5. 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 the 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.

<u>SECTION 6. CONFLICT.</u> All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 7. EFFECTIVE DATE. The ordinance shall take effect October 1, 2011.

The foregoingOrdinance was moved for adoption by Council Member<u>Rivet</u>The motion was seconded by Council Member<u>Acquaviva</u>and, upon being put to a vote, the vote was as follows:

Council Member Carl BeattyAyeCouncil Member David WhiteAye

Council Member Steve RivetAyeCouncil Member Jeffrey (Jeff) McKnightAyeCouncil Member Marisa AcquavivaAye

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this <u>15</u> day of <u>August</u>, 2011.

BY: TOWN OF MALABAR

<u>Thomas M. Eschenberg</u> Mayor Thomas M. Eschenberg

First Reading: <u>8/1/2011</u> Second Reading: <u>8/15/2011</u>

ATTEST:

<u>Debby K. Franklin</u> Debby K. Franklin, C.M.C. Town Clerk/Treasurer

Approved as to form and legal sufficiency by:

Karl W. Bohne

Karl W. Bohne, Jr. Town Attorney