

ORDINANCE 2014-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO FIRE PREVENTION AND PROTECTION; AMENDING CHAPTER 8, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING DEFINITIONS; REMOVING REFERENCES TO DOF AND DEP AND REPLACING WITH REFERENCES TO FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND FLORIDA FOREST SERVICE; PROVIDING FOR AN OPEN BURNING MULTILATERAL OPERATING AGREEMENT; PROVIDING FOR SEVERABILITY, REPEAL AND CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Article III of Chapter 8 of the Code of Ordinances of the Town is amended in full to read as follows:

“Sec. 8-71. Purpose.

The purpose of this article is to set certain requirements and criteria to regulate and control all types of open burning within the town so as not to pose a threat to health, life, adjoining properties or public ways or to endanger natural vegetation and wildlands, or cause an "unfriendly fire" within the town.

Sec. 8-72. Definitions.

For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Words in the present tense include the future; words in the masculine gender include the feminine and the neuter; the singular number includes the plural and the plural the singular.

Agricultural and silvicultural fires includes all burning for agricultural, silvicultural, or forestry operations related to the growing, harvesting, or maintenance of crops or in connection with wildlife management. This includes the burning of plant material by plant nurseries and for grove operations.

Air curtain incinerator means a combustion device that directs air at high velocity through a manifold head into a pit with vertical walls in such a manner to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.

Air pollution means the presence in the outdoor atmosphere of the state of any one or more substances or contaminants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

FDACS means the Florida Department of Agriculture and Consumer Services

FFS means the Florida Forest Service

Sec. 8-73. Permit required to burn.

(a) It shall be unlawful for any person to conduct open burning of any kind within the town without first obtaining a written permit from the chief of the fire department or his assigned designee.

(b) Only those persons who are involved in land clearing for future construction purposes will be considered for burning permits.

(c) All persons obtaining burnings permits will follow all FDACS regulations, FFS_regulations, and/or the requirements of this article. If the requirements of this article differ from the requirements of the FDACS or the FFS, the more stringent requirement shall apply.

Sec. 8-74. Hours of burning.

Burning will be permitted only between the hours of 9:00 a.m. and one hour prior to sunset, excluding special permits.

Sec. 8-75. Name of property owner, township, section, range, to be provided.

Prior to the issuance of a burn permit within the town, the person desiring the permit shall provide to the fire chief or his designee the name of the owner of the property, the township, section, and range upon which the material is to be burned. This information will also be required by FDACS and/or FFS.

Sec. 8-76. On site survey required.

(a) The fire chief or his assigned designee shall conduct a survey of the proposed burning site to determine if it meets the requirements of this article and/or FDACS and FFS_regulations.

(b) The fire chief or his assigned designee shall conduct a visual inspection of the forced air device required by FDACS and/or FFS, to insure that it meets specific standards that will accomplish complete combustion with a minimal amount of smoke. The forced air system shall provide a minimum air transference of 14,000 cubic feet per minute (CFM) and maintain a minimum static pressure of ninety (90) miles per hour (mph). This information shall be provided to the fire chief or his assigned designee by the permittee. Manufacturer's specifications or written statements by an approved testing agency are acceptable.

(c) The site must meet the FDACS and/or FFS requirements of one hundred fifty (150) feet from any road and one hundred fifty (150) from any occupied structure, with a minimum fifty (50) feet clear area around the piles.

Sec. 8-77. FDACS and/or FFS burn permit number required.

After inspection by the fire chief or his designee DOF will be notified for approval to issue daily permit numbers for the site. The person desiring the permit will call FDACS and/or FFS to obtain a daily permit number. After obtaining the FDACS and/or FFS number Malabar Fire Department will be notified for final approval to burn for the day.

Sec. 8-78. Materials which may not be burned.

The burning of tires, rubber material, asphalt, roofing material, tar, railroad cross ties, other creosoted lumber, plastics, or garbage (except approved waste pesticide containers), or any other material listed by the FDACS and/or FFS or this article is prohibited.

Sec. 8-79. Means of controlling unfriendly fire.

Any person conducting burning operations shall have a means of controlling an unfriendly fire immediately available on site. Example:

- (1) Front end loader;
- (2) Pumping water from wells or holding ponds; or
- (3) Other means acceptable and approved by the fire chief or his assigned designee.

Sec. 8-80. Extinguishing of fire by fire department personnel.

(a) If burning sites are left unattended while debris is still burning, the fire department will respond to extinguish said debris and the permittee will be subject to incur all costs of extinguishment.

(b) If debris piles are not extinguished by stated time, the fire department will respond to extinguish said debris and the permittee will be subject to incur all costs of extinguishment.

(c) If debris reignites after extinguishment by the permittee, and the fire department is required to respond and extinguish said debris, the permittee will incur all costs of extinguishment.

Sec. 8-81. Burn permit denied or revoked.

A burn permit may be denied or revoked at any time by the fire chief or his assigned designee for any one or more of the following reasons:

- (1) Failure to provide FDACS and/or FFS permit number;
- (2) Failure to provide immediate means of controlling unfriendly fire;
- (3) Wind speed is in excess of ten (10) miles per hour;
- (4) Extremely dry conditions as determined by the fire chief or his assigned designee;

(5) Failure to provide a competent person to attend to the burning operation while burning is in progress.

(6) Two (2) or more complaints are received from nearby residents or building occupants in reference to health reasons, possible damage to property, smoke hazard, any other legitimate reason which would interfere with the health or well-being of a person in the vicinity of the burning operation;

(7) Any time the burning operation is found to be in violation of FDACS and/or FFS_regulations or in violation of any part of this article; and

(8) Any time the fire chief, or his assigned designee, determines that a fire may cause a threat to health, safety and welfare.

Sec. 8-82. Permit suspended and criminal prosecution.

(a) Any person found to be burning without a permit issued by the fire chief or his assigned designee within the town or conducts a burning operation after the denial or revocation of a burn permit will be issued a suspension from the privilege of receiving a burn permit within the town. The suspension may apply to and be honored by the individual named on the suspension, and any other individual company, firm, contractor, or organization that said individual is employed by or in any way affiliated with while conducting such burning operation and said suspension shall remain in force for a period of:

- (1) Fourteen (14) days—first offense;
- (2) Thirty (30) days—second offense; and
- (3) Permanent suspension—third offense;

The suspension may also be applied to the property upon which a violation is located.

(b) The suspensions and/or criminal prosecution listed in paragraph (a) above, shall be in addition to any other penalties, fines, etc., imposed by the FDACS and/or FFS or any other enforcing agency as permitted by the law.

Sec. 8-83. Types of burning permitted.

(a) Agricultural and silvicultural fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(b) Rural land clearing fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(c) Non-rural land clearing fires will be permitted per FDACS and/or FFS regulations and any other requirements of this article.

(d) Yard trash fires are prohibited.

(e) Burning of household trash is prohibited.

(f) Burning for cold or frost protection will be permitted per FDACS and/or FFS_regulations and any other requirements of this article.

(g) Special burning permits may be issued by the fire chief or his assigned designee for camp fires or bonfires for special events within the town when weather conditions permit.

Sec. 8-84 Open Burning Multilateral Operating Agreement

Then Town and the FDAC and the FSS may from time to time enter into an Open Burning Multilateral Operating Agreement or like agreement outlining the rights, responsibilities and the duties of the parties to such an agreement concerning open burning. Any permit issued pursuant to this Article III shall be deemed to incorporate the terms and provisions of such agreement."

Section 2. 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 3. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 4. Codification. The provisions of this ordinance shall become part of the code of ordinances of the Town of Malabar.

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

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

- Council Member Wayne Abare
- Council Member James Milucky
- Council Member Steven (Steve) Rivet
- Council Member Dick Korn
- Council Member Marisa Acquaviva

Aye
Aye
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3 day of Feb, 2014.

Carl A. Beatty
 Town of Malabar
 By Carl Beatty, Mayor

First Reading 1/06/2014
 Second Reading 2/03/2014

ATTEST:
 By Debby K. Franklin
 Debby K. Franklin, C.M.C.
 Town Clerk/Treasurer

(Seal)

Approved as to form and content:
Karl W. Bohne, Jr.
 Karl W. Bohne, Jr., Town Attorney