

## ORDINANCE 2021-07

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN CREATING SECTIONS 2-400 THROUGH 405 “EMERGENCY POWERS”; PROVIDING FOR THE DESIGNATION OF A TOWN OFFICIAL IN THE EVENT OF AN EMERGENCY DEFINED HEREIN; PROVIDING FOR DEFINITIONS; PROVIDING FOR A DECLARATION OF EMERGENCY BY EXECUTIVE ORDER; PROVIDING FOR THE AUTHORITY OF THE DESIGNATED TOWN OFFICIAL; PROVIDING FOR THE DURATION OF AN EXECUTIVE ORDER FOR A DECLARED EMERGENCY; PROVIDING FOR THE POSTING OF ALL EMERGENCY ORDERS, ORDINANCES AND DECLARATIONS ON THE TOWN’S WEBSITE; PROVIDING LIMITATIONS ON ANY CURFEW ESTABLISHED; PROVIDING FOR REPEAL, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, Sections 252.46, Florida Statutes, provides authority for municipalities to declare a Local State of Emergency; and,

**WHEREAS**, On May 3, 2021, Governor DeSantis signed SB 2006 Emergency Management into law effective July 1, 2021: and,

**WHEREAS**, SB 2006 created regulations in the event of a declaration of a “Public Health Emergency” which must be followed by local governments, while allowing local governments to implement their own processes regarding a situation which is not a “Public Health Emergency”, for example, named storms, hurricanes, wildfire, flood, geological, civil disturbance, terrorism, transportation incidents, hazardous material, biological incidents, or other space weather emergencies; and,

**WHEREAS**, the Town Council deems it necessary for the protection of the health, safety, and welfare of the public to adopt regulations regarding any federal, state, or local declared emergency consistent with state law and municipal home rule powers as set forth at Article VIII, Section 2, of the Constitution of the State of Florida; Chapter 166, Florida Statutes; Chapter 252, Florida Statutes; and other applicable controlling law.

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

**SECTION 1:** Section 2, new subsections 400-405, “Emergency Powers” is hereby added to Chapter 2 of the Code of Ordinances of the Town to read as follows:

**“Sec. 2-400.** Designation of official in case of an emergency.

(a) *Generally.* It is the intent of the Town to designate the Town Manager to declare a local state of emergency in the event of a natural or manmade emergency, or the imminent threat thereof, and to authorize certain actions relating thereto, when a quorum of the Town Council is unable to meet for any reason on an emergency basis.

(b) *Designation.* Pursuant to Chapter 252, Florida Statutes, which authorizes the waiver of procedures and formalities otherwise required of political subdivisions to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency, when a quorum of the Town Council is unable to meet for any reason on an emergency basis in relation to the nature of the emergency, the Town Manager, or his/her designee is empowered to declare a local state of emergency whenever he/she shall determine that a natural or manmade disaster or emergency has occurred or

that the occurrence or threat of one is imminent and requires immediate and expeditious action.

(c) The Town Manager shall perform the function of director of Emergency Management, and may designate others to serve in designated capacities. The Town Manager shall implement, manage, and report to the Town Council on all actions authorized and taken under the provisions of this chapter. In the absence or inability of the Town Manager, the Mayor shall perform the functions of director of emergency management.

(d) The Town Manager may appoint a risk and emergency management coordinator whose duties shall include the ongoing planning for and coordination of those actions necessary to comply with national incident management system (NIMS), the Emergency Management Plan of Brevard County and for the creation and maintenance of an effective emergency management response capability.

**Sec. 2-401. Emergency defined.**

"Emergency" means any occurrence, or threat thereof, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property as a result of a hurricane or other weather related, fire or flood disaster or emergency.

**Sec. 2-402. Declaration of emergency by Executive Order—Generally.**

(a) A state of emergency shall be declared by Executive Order of the Town Manager, or his/her designee for situations other those involving Public Health such as named storms, hurricanes, wildfire, flood, geological, civil disturbance, terrorism, transportation incidents, hazardous material, biological incidents, or other space weather emergencies The state of emergency shall continue until the Town Manager, or his/her designee finds that the threat or danger no longer exists or until an emergency meeting of a quorum of the Town Council can take place and terminate the state of emergency by Executive Order.

(b) An Executive Order declaring a state of emergency shall activate the emergency management plan of Brevard County or any emergency management plan of the Town of Malabar which supersedes the emergency management plan of Brevard County and shall be the authority for use or distribution of any supplies, equipment, materials, or facilities assembled or arranged to be made available pursuant to such plans.

(c) Only the Town Council has the authority to provide for penalties for a violation of any Executive Order issued hereunder.

d) Any emergency ordinances, declarations, and orders adopted by the Town must be available on a dedicated webpage accessible through a conspicuous link on the Town's homepage. The dedicated webpage must identify the emergency ordinances, declarations, and orders currently in effect.

e) Any emergency ordinances, declarations, and orders adopted by the Town which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

**Sec. 2-403. Authority of designated official.**

Upon the declaration of a state of emergency pursuant to this chapter, the Town Manager shall issue the Executive Order shall have the authority and power to take such action to protect the health, safety, and welfare of the community including the following which shall have the force of municipal law during this emergency including the following:

(1) Establish curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provisions

of the designated essential services such as fire, police, emergency medical services (including the transportation of patients and emergency calls by physicians or other approved medical personnel), and public works services (including utility emergency repairs).

- (2) Utilize all available resources of the Town government as reasonably necessary to cope with the disaster emergency, including emergency expenditures not to exceed fifty thousand dollars, \$50,000.00.
- (3) Declare certain areas and public facilities of the Town off limits and closed to all nonessential personnel.
- (4) Make provisions for the availability and use of temporary emergency housing and the emergency warehousing of materials.
- (5) Establish an emergency operating center and employee shelter in addition to or in place of those provided for in the Brevard County's emergency plan.
- (6) Declare that during an emergency it shall be unlawful for any person, firm or corporation operating within the town to charge more than the normal, average retail price for any merchandise, goods, or services sold during the emergency. The average retail price as used herein is defined to be that price at which similar merchandise, goods or services were being sold during the ninety (90) days immediately preceding the emergency or a markup which is not a larger percentage over wholesale cost than was being added to wholesale cost before the emergency.
- (7) Confiscate merchandise, equipment, vehicles, or property needed to alleviate the emergency. Reimbursement shall be within sixty (60) days and at customary value charged for the items during the ninety (90) days previous to the emergency.
- (8) In cooperation with Brevard County emergency management and on behalf of the town, call on law enforcement divisions as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue, and traffic control.
- (9) Shall be able to activate the statewide mutual aid system.
- (10) Waive the procedures and formalities otherwise required by law pertaining to:
  - a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
  - b. Entering into contracts.
  - c. Incurring obligations.
  - d. Employment of permanent and temporary workers.
  - e. Utilization of volunteer workers.
  - f. Rental of equipment.
  - g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
  - h. Appropriation and expenditure of public funds.
- (11) Suspend all existing laws, ordinances, and rules inconsistent with any rule or order specifically promulgated pursuant to this Chapter during this period of time and to the extent that such conflict exists.
- (12) Suspend, toll, or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town's Code of Ordinances and regulations, to the extent necessary to accommodate the emergency.
- (13) All actions of the designated Town official issuing the Executive Order shall be subject to review, modification, extension, and repeal by the Town Council. Nothing herein is intended to limit the ability of the Town Council to issue any Executive Order or impose additional restrictions, limitations, prohibitions, conditions, or extensions to any issued Executive Order or limit the authority of the Town Council to provide for penalties for a violation of the provisions of any Executive Order issued hereunder.

**Sec. 2-404.** Duration of Executive Order.

The duration of any Executive Order for an emergency issued pursuant to the provision of Florida Statutes, Section 252.38 (3)(a)(5) “affecting only one political subdivision” shall be as provided for in Section 252.38 (3)(a)(5). Any Executive Order not issued pursuant to Florida Statutes, Section 252.38 (3)(a)(5) shall have a duration of a period of sixty (60) days unless extended by the Town Council, if the Town Council determines, in its reasonable discretion, the extension is appropriate considering information obtained from the state and federal government. If extended, a notice of extension will be posted on the Town's website, will be posted on the front door of Town Hall, and will be emailed to any person or entity that has requested in writing such notice.

**Sec. 2-405.** Declaration of Public Health Emergency; Issuance of Local Executive Order

a) Upon a declaration of a Public Health Emergency by the State Health Officer the Town Council may issue a Local Executive Order. Such order must be narrowly tailored to serve a compelling public health or safety purpose. Any such order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.

b) Any emergency ordinances, declarations, and orders adopted by the Town which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

**SECTION 2:** All Resolutions or Ordinances in conflict herewith are repealed.

**SECTION 3:** Severability/Interpretation Clause.

In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable shall not affect any of the other remaining terms.

**SECTION 4:** The provisions of this Ordinance shall be incorporated into the Town’s Code of Ordinances.

**SECTION 5:** This Ordinance shall take effect immediately upon passage and adoption. The foregoing Ordinance was moved for adoption by Council Member Acquaviva. The motion was seconded by Council Member Rivet and, upon being put to a vote, the vote was as follows:

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

This ordinance was then declared duly passed and adopted this 21 day of June 2021.

**TOWN OF MALABAR**

By: original signed  
Mayor Patrick T. Reilly, Council Chair

1<sup>st</sup> Reading: 6/7/2021 Vote: 5 to 0 Aye  
2<sup>nd</sup> Reading: 6/21/2021

**ATTEST:**

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

(seal)

Approved for Legal Sufficiency:

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Karl Bohne, Jr, Town Attorney