

ORDINANCE 2021-12

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVI SUBDIVISIONS; AMENDING SECTION 1-16.4 PERTAINING TO ROAD DEDICATION AND REQUIRED LANGUAGE IN SUBDIVISION COMMUNITY ASSOCIATION RESTRICTIVE COVENANTS REGARDING MAINTENANCE OF ROADS, STREETS AND RIGHTS OF WAY; AMENDING SECTION 1-18.7, PERTAINING TO PROCEDURE FOR ACCEPTING ROAD DEDICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

SECTION 1. Section 1-16.4 D.4.j. and k. are amended as follows:

"j. *Restrictions, Reservations and Restrictive Covenants.* Restrictions pertaining to the type and use of water supply; type and use of sanitary facilities; use and benefits of water areas, canals and other open spaces, odd-shaped and substandard parcels; restrictions controlling building lines; establishment and maintenance of buffer strips and walls; and restrictions of similar nature shall require the establishment of restrictive covenants and such covenants shall be noted on the plat. Documents pertaining to restrictive covenants shall be submitted with the final plat.

All plats and replats submitted to the Town on or after July 1, 2021, shall contain the following plat note:

Right to Repair Private Roadways: All roads, streets, and right of ways in the subdivision are private and are not required to be maintained, repaired or replaced by the Town. Such maintenance, repair and replacement is the responsibility of the subdivision community association. The Town of Malabar shall have the right, but not the obligation, to maintain, replace and repair any private roadways within the Property and associated rights of way, and improvements thereon. The Town may use the Special Assessment powers provided for in the Declaration to pay for such maintenance; provided, however, that the Town shall not be required to obtain any approval of the Members before instituting such Special Assessment. Any Owner who does not pay a special assessment assessed against such Owner's Lot pursuant to this subsection may have a lien placed upon their property, which lien shall be superior to any other lien prescribed by the Declaration and Chapter 720, Florida Statutes, and may be enforced as provided by law. In the event the Town does undertake the task of maintaining, replacing and/or repairing said private roadways and/or rights of way, including any improvement thereon, the Association does hereby assign to the Town any and all assessment rights to collect and retain Special Assessments instituted pursuant to this subsection as they become due and to exercise such right as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney's fees incurred for any such repair, replacement and/or maintenance, including such costs, expenses and attorney's fees incurred in enforcing the Town's rights as provided herein.

The Town shall not be responsible to the Association, Owner, or any other person or entity as a consequence of the determination not to exercise or of the determination to exercise any of the rights granted to the Town or for failure of the Town to perform any rights granted to the Town herein or by virtue of applicable law. No Owner shall be discharged from any obligations provided herein without the written consent of the Town. This subsection may not be amended without the written approval of the Town Council."

A similar provision shall appear in the subdivisions Restrictions, Reservations and Restrictive Covenants.

...

k. *Private Streets and Related Facilities.* All plats and replats submitted to the Town on or after July 1, 2021, shall provide that streets, roads and right of ways and their related facilities shall be for private use. Private streets shall be permitted within property under single ownership, a property owners' association or a condominium or cooperative association as defined by Florida Law. Where private streets are permitted, ownership and maintenance association documents shall be submitted with the final plat and the dedication contained on the plat shall clearly dedicate the roads and maintenance responsibility to the association without recourse to the Town or any other public agency. The rights-of-way and related facilities shall be identified as tracts for road purposes under specific ownership."

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SECTION 2. Section 1-18.7.B is amended as follows:

"Section 1-18.7. - Acceptance and maintenance of required improvements.

...

B. Procedure for Accepting Dedications. The dedication of public space, parks, or the like on the plat shall not constitute an acceptance of the dedication by the Town. The applicant shall apply to the Town for acceptance of required improvements by the Town Council. It is the general policy of the Town not to accept any dedication of roads, streets, right of ways and travel easements and that such shall remain private and subject to private maintenance and repair. Any acceptance of a dedication shall be subject to the inspection and approval of the Town Engineer. Such acceptance shall occur only upon adoption of resolution by the Town Council which shall accept the subject dedications at such time as all improvements meet or exceed the standards set forth by this ordinance. The applicant's engineer shall furnish to the Town Engineer in writing a sealed and signed certificate stating that the required improvements have been completed in accordance with the approved plan therefor and comply with this ordinance and all other applicable codes. Should the Town accept such a road, street, or right of way dedication, the unit owners and subdivision association shall be responsible for any repair, replacement or maintenance and the provisions of Section 1-16.4 D.4.j will apply regarding the Town's obligations to repair, replace or maintain such road, street, or right of way and improvements therein.

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SECTION 3: Repeal. All Resolutions or Ordinances in conflict herewith are repealed.

SECTION 4: Severability/Interpretation Clause.

(a) 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 or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 5: Codification. The provisions of this Ordinance shall be incorporated into the Town's Code of Ordinances.

SECTION 6: Effective date. This Ordinance shall take effect immediately upon passage and adoption.

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

Council Member Marisa Acquaviva	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member David Scardino	<u>Aye</u>
Council Member Danny White	<u>Aye</u>

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

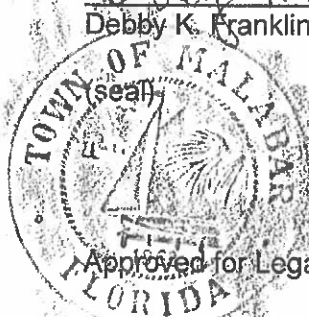
TOWN OF MALABAR

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

P&Z Board: 8/11/2021
1st Reading: 9/14/2021 Vote: 5 to 0
2nd Reading: 9/27/2021

ATTEST:

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



Approved for Legal Sufficiency:

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