

ORDINANCE 2021-16

TRANSMITTED
& FINAL
2/7/2022

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02 BY ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS TO THE COMPREHENSIVE PLAN; RECEIVING NOTIFICATION OF COMPLIANCE FROM THE STATE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3167, Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to guide its future development and growth; and

WHEREAS, Section 163.3177(6)(i)1., Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to include a Property Rights Element; and

WHEREAS, The Town of Malabar respects judicially acknowledged and constitutionally protected private property rights; and

WHEREAS, The Town of Malabar respects the rights of all people to participate in land use planning processes; and

WHEREAS, this ordinance will amend the Town of Malabar's Comprehensive Plan by adding a Property Rights Element.

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

SECTION 1. The Comprehensive Plan of the Town is hereby amended by adding a Property Rights Element attached as Exhibit "A" and made a part of this ordinance as if set forth in full.

SECTION 2. It is the intention of the Malabar Town Council to adopt the amendment to the Comprehensive Plan. The Clerk of the Town is hereby directed to incorporate the approved Comprehensive Pain Amendment into the Comprehensive Plan of the Town.

SECTION 3. Town Staff was directed to upload one full copy of the adopted amendment to the State Department of Economic Opportunity and request Expedited State Review and send additional copies to the other five State Agencies, FDOT, FDEP, FDOS, ECFRPC and SJRWMD.

SECTION 4. Town Staff did not receive any adverse comments from the reviewing agencies and intends to go forward with adopting this new Element to the Comprehensive Plan as submitted to the State DEO to provide for Property Rights when considering land use decisions.

SECTION 5. The Mayor and Town Staff received confirmation from the State DEO on December 22, 2021, that that they had reviewed the amendment and found it to be in compliance and to proceed with the final adoption of the Amendment 2021-02 in Ordinance 2021-16.

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 All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 7. The effective date of this plan amendment, as it was not timely challenged, shall be 31 days after the state land planning agency notified Malabar that the plan amendment package was in compliance or January 22, 2022. Due to the holidays and the advertising requirements

Council will not vote on the final adoption until February 7, 2022, which will become the official effective date.

The foregoing Ordinance was moved for final adoption by Council Member Acquaviva. The motion was seconded by Council Member Vail 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 Mary Hofmeister	<u>Excused</u>

This ordinance was then declared to be adopted this 7th day of February 2022.

TOWN OF MALABAR

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



ATTEST

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

Council Discussion: 8/16/2021
P&Z Board Review: 8/25/2021
Transmittal Council Reading: 9/14/2021
Transmitted to State DEO successfully 12/01/2021
DEO found to be in compliance notification: 12/22/2021
Final Adoption Reading 02/07/2022

Approved as to form and legal sufficiency by:

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

ORDINANCE 2021-16

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02; ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS; REQUESTING EXPEDITED STATE REVIEW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3167, Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to guide its future development and growth; and

WHEREAS, Section 163.3177(6)(i)1., Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to include a Property Rights Element; and

WHEREAS, The Town of Malabar respects judicially acknowledged and constitutionally protected private property rights; and

WHEREAS, The Town of Malabar respects the rights of all people to participate in land use planning processes; and

WHEREAS, this ordinance will amend the Town of Malabar's Comprehensive Plan by adding a Property Rights Element.

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

SECTION 1. The Comprehensive Plan of the Town is hereby amended by adding a Property Rights Element attached as Exhibit "A" and made a part of this ordinance as if set forth in full.

SECTION 2. It is the intention of the Malabar Town Council to adopt the amendment to the Comprehensive Plan. The Clerk of the Town is hereby directed to incorporate the approved Comprehensive Pain Amendment into the Comprehensive Plan of the Town.

SECTION 3. Town Staff is directed to send three full copies of the adopted amendment to the State Department of Economic Opportunity and request Expedited Review.

SECTION 4. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If the amendment is timely challenged, this amendment shall become effective on the date the state land planning agency, or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

The foregoing Ordinance was moved for approval to transmit to the State DEO for Expedited Review by Council Member Rivet. The motion was seconded by Council Member White 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 to be approved for transmittal this 14th day of September 2021.



TOWN OF MALABAR

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

ATTEST

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

Council Discussion: 8/16/2021
 P&Z Board Review: 8/25/2021
 Transmittal Council Reading: 9/14/2021
 Final Adoption Reading _____

Approved as to form and legal sufficiency by:

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

EXHIBIT "A"

Large Scale Amendment (LSA) 2021-02ESR

August 2021

Malabar Comprehensive Plan

Element 10 – Property Rights

Goal: The Town of Malabar will make decisions with respect for private property rights with respect for people's right to participate in decisions that affect their lives and property.

Objective 1. The Town of Malabar will respect judicially acknowledged and constitutionally protected private property rights.

Policy 1.1. Property Interests. The Town of Malabar will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property including easements, leases, or mineral rights.

Policy 1.2. Property Usage. The Town of Malabar will consider in its decision-making the right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to State law and local ordinances.

Policy 1.3. Privacy and Exclusion. The Town of Malabar will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.4. Disposition of Property. The Town of Malabar will consider in its decision-making the right of a property owner to dispose of his or her property through sale or gift.