

**ORDINANCE 2023-01**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE II, SECTION 1-2.6, SUBSECTION (C) TO INCLUDE NEW SUBSECTIONS (9) AND (10); AMENDING ARTICLE II, SECTION 1-2.6 SUBSECTION (C) TO RENUMBER SUBSECTIONS (9) THROUGH (20) AS SUBSECTIONS (11) THROUGH 22; AMENDING ARTICLE III, SECTION 1-3.2, TABLE 1-3.2 TO INCLUDE NEW CONDITIONAL USES; AMENDING ARTICLE VI, SECTION 1-6.1, TABLE 1-6.1(B) TO INCLUDE NEW TYPES OF CONDITIONAL LAND USES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, manufacturing is a Land Use Classification allowed as an Industrial Activity withing Industrial Land Use Districts; and

**WHEREAS**, the Town of Malabar has a limited number of Industrial zoned parcels available for manufacturing activities for development and growth; and

**WHEREAS**, at present, there are no rules or regulations pertaining to limited manufacturing in the Town Code; and

**WHEREAS**, the Town Council with the recommendation by the Malabar Planning and Zoning Board on February 8, 2023, seek to allow certain Limited Manufacturing Land Use Classifications in specific Commercial Land Use Districts of Residential/Limited Commercial (R/LC), Commercial Limited (CL) and Commercial General (CG); and

**WHEREAS**, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

**NOW THEREFORE BE IT ORDAINED** by the Town Council for the Town of Malabar, Brevard County, Florida:

**SECTION 1.** ARTICLE II SECTION 1-2.6 Subsection (C) of the Town Land Development Code is hereby amended to include new subsections (9) and (10) to read as follows:

...

9. Limited Manufacturing Activities. This land use classification is intended to accommodate small limited item shops with limited inventory serving a specialized market with customized service demand. This classification is intended to include the following:

- Manufacturing or processing of electronic components, optical instruments, electrical appliances, or other precision components;
- Assembly and distribution of goods;
- Maintenance, repair, reconditioning, and cleaning;
- Printing;
- Limited packaging and processing activities;
- Research and development technology;
- Small Machine shops

Other similar limited manufacturing activities conducted in a fully enclosed building which are approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The activities strictly prohibit the manufacturing of any chemical or petroleum, rubber or plastics, or other activities generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

10. Limited Manufacturing Services. Services such as Customer & Call Support; Low Impact Machinery &/or Electronic Device Repair or other service uses approved by the Town Council based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and which are to be conducted in a fully enclosed building and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.

Other similar Limited Manufacturing Services may be approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The activities strictly prohibit the manufacturing of any chemical or petroleum, rubber or plastics, and/or other activities generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Hazardous materials may not be stored in excess quantities. This Land Use is intended to only have small day to day quantities of hazardous materials located in a controlled environment.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited within Section 1-2.6 and Section 1-2.7.

**SECTION 2.** ARTICLE II SECTION 1-2.6 Subsection (C) of the Town Land Development Code is hereby amended to renumber previous Sections 9 through 20 as Sections 11 through 22 to read as follows:

11. ~~9.~~ *Waterfront Marine Related Activities.* The following marine related land uses are included in this land use classification: commercial wet or dry storage and boat sales and rental; Marine power sales and service; and bait and tackle shop; and excluding marine salvage and boat yards.

12. ~~10.~~ *Medical Services.* The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical laboratory testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging. This land use classification includes pharmacies when developed as an accessory use within a medical service facility.

13. ~~11.~~ *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.

14. ~~42.~~ *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.

15. ~~43.~~ *Restaurants (excluding drive-ins and fast food service).* Any establishment (which is not a drive-in service establishment) where the principal business is the sale of food, desserts or beverages to the customer in a ready-to-consume state and where the design or principal method of operation includes two or more of the following:

(a) Customers, normally provided with an individual menu, are served generally in non-disposable containers by a restaurant employee at the same table or counter at which items are consumed.

(b) Ice cream parlors and other specialty restaurants having floor area exclusively within a shopping or office center and sharing common parking facilities with other businesses within the center and expressly prohibiting freestanding stores having characteristics of a drive-in restaurant.

(c) A cafeteria or cafeteria type operation where foods, desserts or beverages generally are served in non-disposable containers and consumed within the restaurant building.

(d) Customers purchase food, desserts or beverages for carryout.

16. ~~44.~~ *Restaurants (drive-ins and fast food service).* Any establishment where the principal business is the sale of foods, desserts or beverages generally contained in a ready-to-consume state and whose design, method of operation or any portion of whose business includes one or both of the following:

(a) The restaurants are self-service. Food is generally served in disposable containers and customers generally do the bussing and clean-up for themselves or foods, desserts or beverages are served directly to the consumer in a motor vehicle.

(b) The consumption of foods, desserts or beverages within a motor vehicle parked upon the premises, or consumption at other facilities on the premises is allowed, encouraged or permitted.

(c) *Mobile Food Dispensing Vehicle* means any vehicle that is licensed by the State of Florida as a public food service establishment {See F.S. § 509.013(5) for definition of a public food service establishment} and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(d) *Mobile Food Dispensing Vendor*. The operator of a Mobile Food Dispensing Vehicle.

(e) *Location of mobile food dispensing vehicle/vendor*. A mobile food dispensing vendor may operate a mobile food dispensing operation in the following locations:

1. *Town-Owned Property*.

A. On the following Town-owned property, total operation must be contained within the area designated for their operation by the Town Manager or designee:

1. Malabar Community Park
2. Sandhill Trailhead Park
3. Town Hall

B. *Access*. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, pedestrian ingress or egress, emergency exits, or access to businesses. Notwithstanding anything to the contrary herein, a mobile food dispensing vendor may only operate on Town-Owned Property in areas so designated by the Town.

C. *Conflict*. A mobile food dispensing vendor may not operate on or at any location where the Town Manager or designee determines that a conflict exists between a mobile food dispensing vendor's vehicle or operation and an existing license or franchise agreement, contractual obligation, or any other public health or

safety concern, including but not limited to a special event or rental facility.

2. *Improved Property.*

A. A mobile food dispensing vendor may operate on improved private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the Town upon request while the mobile food dispensing vendor is operating.

1. Commercial General (CG)
2. Industrial (IND)
3. Residential/Limited Commercial (R/LC)
4. Office Institutional (OI)
5. Commercial Limited (CL)
6. Institutional (INS)

B. *Set-back Requirement.* When operating on private property, a mobile food dispensing vendor may operate only if set-back at least fifty (50) feet from any abutting residential district and at least one hundred and fifty (150) feet from any exclusively single family residential structure, unless the owner(s) of the residential structure immediately abutting such proposed location provides the mobile food dispensing vendor with express written permission to operate. The one hundred and fifty-foot set-back requirement is reduced to fifty (50) feet where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.

C. *Access.* A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, pedestrian ingress or egress, building entrances, blocks a public or

private right-of-way, emergency exits, or access to businesses. A mobile food dispensing vendor may locate upon a public or private utility easement area; provided, however, that such location may be terminated by the town Manager if it is determined that such location has cause a deterioration to such easement or utility service needs unrestricted access to the easement area.

3. *Construction areas.* A mobile food dispensing vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.

4. *Principal structure requirement.* A mobile food dispensing vendor may only operate on a lot that has a permitted principal structure.

5. *Stationary location requirement.* A mobile food dispensing vendor must operate from a stationary location, but may operate from multiple locations throughout the day, except as otherwise permitted in this article.

17. ~~15.~~ *Service Stations, Including Gasoline Sales.* Establishments for the dispensing of motor fuels and related projects at retail and having pumps, underground storage tanks and other facilities for such activity and which may include the retail sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles within enclosed service bays or stalls. For the purpose of this Code, these services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.

18. ~~16.~~ *Trades and Skilled Services.* Shops providing services requiring skilled labor or craftsmanship for repair including household items, office equipment, appliances, printing, blue printing, carpet sales and service, feed stores, lawn and maintenance services, newspaper printing, radio and television broadcasting, restaurant equipment and supply sales and services. All such activities shall not include outside storage.

19. ~~47.~~ *Vehicular Service and Maintenance.* Vehicular establishments providing sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles. These services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.

20. ~~48.~~ *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.

21. ~~49.~~ *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.

22. ~~20.~~ *Wholesale Trades and Services.* The display, limited storage and sale of goods to other firms for resale, excluding outside storage, except as otherwise provided in this chapter [Code].

**SECTION 3.** ARTICLE III SECTION 1-3.2, LAND USE BY DISTRICT; TABLE 1-3.2

LAND USE BY DISTRICT to be amended to include Limited Manufacturing Activities and Limited Manufacturing Services as Conditional Uses in the Commercial Limited (CL), Commercial General (CG), and Residential/Limited Commercial (R/LC) Zoning to read as:

TABLE 1-3.2. LAND USE BY DISTRICTS															
	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP	
<b>RESIDENTIAL USES</b>															
Duplex					P	P					P				
Mobile Homes							P								
Multiple Family Dwelling					P	P					P				
Single Family Dwellings	P	P	P	P	P	P	P				P				
<b>COMMUNITY FACILITIES</b>															
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P		
Child Care Facilities								C			C		C		
Churches, Synagogues and Other Places of Worship								P, A <sup>1</sup>	P	C	C		P		



Clubs and Lodges (Not-for-Profit)									P	P					
Cultural or Civic Activities									P	P	P	P		P	
Educational Institutions									C, A <sup>1</sup>					C	
Golf Course Facilities	C														
Hospital and other Licensed Facilities									C					C	
Nursing Homes and Related Health Care Facilities					C	C			C					C	
Protective Services					C	C	C	C	C	C	C	C	C	C	
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
COMMUNITY RESIDENTIAL HOME															
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				C	C									
Level 2 (7 to 14 residents/beds)					C	C								C	
ASSISTED CARE COMMUNITIES															
I Assisted Living Facility															
	RR-65	RS-21 <sup>1</sup>	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP	
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>					C				
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>									
Level 3 (16 or more residents/beds)					C <sup>4</sup>	C <sup>4</sup>									
II Adult Family-Care Homes															
(1 to 5 residents/beds)	C <sup>3</sup>	C	C	C	C	C					C				
III Adult Day Care Centers					C	C		C			C			C	
AGRICULTURAL ACTIVITIES															
Noncommercial Agricultural Operations	P														
Wholesale Agricultural Activities	P														
Commercial Stables	C														
COMMERCIAL ACTIVITIES															
Adult Activities											C				
Bars and Lounges											C				
Bed and Breakfast												p <sup>1</sup>			



Vehicle and Other Mechanical Repair and Services										C*		P		
Warehouse, Storage and Distribution Activities												P		
WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES														
Noncommercial piers, boat slips, and docks														C
C	=	Conditional Use												
P	=	Permitted Uses												
A	=	Accessory Use												
*	=	These uses are permitted only on sites abutting Babcock Street, US 1, West Railroad Avenue, Garden Street and Pine Street.												
1	=	Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.												

<sup>1</sup> Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

<sup>2</sup> Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

<sup>3</sup> Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

<sup>4</sup> ALF Factor of "3" (see section I-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's

<sup>5</sup> Subject to FL State law association with CS/HB 403 related to Home-based Businesses which outlines allowances and restrictions such as property use, residents, parking, signage, and federal, state and local regulations related to use/storage/disposal of hazardous materials.

**SECTION 4. ARTICLE VI, SECTION 1-6.1 CONDITIONAL USES; TABLE 1-6.1(B)**

CONDITIONAL LAND USE REQUIREMENTS to be amended to include Limited Manufacturing Activities and Limited Manufacturing Services to read as:

Conditional Land Uses	Minimum Size Site	Minimum Width/ Depth (feet)	Access Required to Street	Building Setback from Residential District / Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District / Nonresidential District (feet)	Perimeter Screening Residential District / Nonresidential District (5)	Curb Cut Controls	Other
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)	

Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)	
Enclosed Arcade Amusement Center/Electronic Gaming Establishment	1 Acre	120	Highway 1 and Babcock Street only	100/30	N/A	Type A/C	(7)	
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Hospitals and other Licensed Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes and Related Health Care Facilities	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	
Protective Services	(4)	120	Paved	50/30	25/20	Type A/C	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/C	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C		
Adult Entertainment	1 Acre (8, 9, 10)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
<u>Limited Manufacturing Activities</u>	<u>1 Acre</u>	<u>100/150</u>	<u>Arterial / West Railroad Avenue</u>	<u>100/25</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>	
<u>Limited Manufacturing Services</u>	<u>1 Acre</u>	<u>100/150</u>	<u>Arterial / West Railroad Avenue</u>	<u>100/25</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>	
Marine Commercial Activities	1 Acre	120	US1 / Babcock / West Railroad Avenue	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	

Trades and Skilled Services	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	N/A	Type A/C	(7)
Vehicular Services and Maintenance	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	N/A	Type A/C	(7)
Wholesale Trades and Services	1 Acre	145	US1 / Babcock / West Railroad Avenue	50/30	15/10	Type A/C	(7)
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)
Vehicular and Other Mechanical Repair	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	15/10	Type A/C	(7)
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family-Care Homes							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

**SECTION 5. Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 6. Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

**SECTION 7. Inclusion in Code.** It is the intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

**SECTION 8. Effective Date.** This Ordinance shall take effect ninety (90) days after the adoption of this Ordinance.

The foregoing Ordinance was moved for adoption by Council Member Acquariva. The motion was seconded by Council Member Scardino 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 Jim Clevenger	<u>Aye</u>
Council Member David Scardino	<u>Aye</u>
Council Member Mary Hofmeister	<u>Aye</u>

This ordinance was then declared duly passed and adopted this 4 day of Dec. 2023.

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

ATTEST:

Richard W. Kohler  
Richard W. Kohler, Town Clerk  
(seal)



Approved for Legal Sufficiency:  
Karl Bohne, Jr.  
Karl Bohne, Jr, Town Attorney

First Reading: 7/03/2023

Vote: 4 to 0.

Second Reading: 12/04/2023

Vote: 5 to 0.