

ORDINANCE 2021-15

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ADDING A NEW SECTION 13-26 PROVIDING DEFINITIONS AND PROCEDURES FOR THE TEMPORARY CLOSURE AND/OR VACATION AND ABANDONMENT OF PUBLIC RIGHTS-OF-WAY; DELETING IN FULL SECTIONS 1-12.8. AND 9. IN ARTICLE XII; PROVIDING FOR, SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a closure and vacate process for public rights-of-way by adopting this ordinance for placement within the Chapter related to Streets and Roads.

WHEREAS, the Town Council desires to locate these regulations within the Chapter that deals with streets and roads regulations recognizing that the current location of these regulations in Article XII is illogical.

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

SECTION 1. Chapter 13, Article II, Division 1, Section 13-26 is amended as follows:

“Sec. 13-26. Close, Vacate and Abandonment.

- A. Definitions: For purposes of this ordinance the following terms shall have the following meanings:
 - 1. Close a public right-of-way shall mean the Town’s authority to close, fence, gate off access to a public right-of-way without vacating same.
 - 2. Vacate and abandon shall mean vacate, abandon, renounce, disclaim or any other term that indicates the relinquishment of the Town’s right, title, or interest in a public right-of-way.
 - 3. Public right-of-way shall mean public road, street, lane, thoroughfare or travelway that has been platted or dedicated for public purposes such as roads, utilities, or stormwater.

- B. The Town Council may by resolution “close” a portion of public right-of-way.
 - 1. All requests to close any public right-of-way shall be by petition and shall state the name and address of requestor and the reason for the request.
 - a. Such requests can come from residents or Town Staff.

 - b. A Radius Package from the Brevard County Property Appraiser or Planning and Zoning Department that includes a list of all property owners within five hundred (500) feet of the proposed closure of public right-of-way under request. Such list shall include a map of the radius area, mailing addresses for all affected property owners and a list by parcel ID and owner.

 - 2. Before the adoption of any resolution “closing” any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said

resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.

3. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph 1.b. above and to all utility companies serving south Brevard County.

4. The Requestor will present their petition at the Public Hearing meeting.

5. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.

6. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.

7. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.

C. The Town Council may by resolution vacate and abandon any public right-of-way.

1. All requests for a vacate and abandonment of any public right-of-way shall be by petition and shall state the name and address of all persons owning property abutting said public right-of-way and shall give a description of the public right-of-way sought to be vacated and abandoned.

a. Such requests can come from residents or Town Staff.

2. Petitions for a vacate and abandonment shall be submitted to the Town Clerk's office with an explanation of why the vacate is being sought and how the road right-of-way is currently being used and what the purpose of the vacated right-of-way will be used for if vacate is granted. The petition package shall also include the following information:

a. A Radius Package from the Brevard County Property Appraiser or Planning and Zoning Department that includes a list of all property owners within five hundred (500) feet of the total length of the subject public right-of-way under request. Such list shall include a map of the radius area, mailing addresses for all affected property owners and a list by parcel ID and owner.

b. A map of the total area served or accessed by the public right-of-way and the area requested to be vacated and abandoned clearly identified.

3. The petition and all associated documents shall be distributed to the appropriate Town staff. Staff shall review the request and determine if any conflict may exist or if there may be any reason that the Town should not grant the request. Written staff comments shall be forwarded to the Town Clerk within ten (10) working days following receipt of the vacate request.

4. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.

5. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph 2.a. above and to all utility companies serving south Brevard County.

6. The applicant will present their petition at the meeting and Town staff will present their recommendation.

7. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.

8. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.

9. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.

D. The Town Council shall establish by resolution the appropriate schedule of fees, charges and expenses and a collection procedure.”

SECTION 2. **Deletion.** Sections 1-12.8 and 9 in Article XII shall be deleted in full:

SECTION 3. **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 4. **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 5. **Inclusion in Code.** It is 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 6. **Effective Date.** This Ordinance shall take effect immediately upon passage and adoption.

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

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| 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 14th day of September, 2021.

TOWN OF MALABAR

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

(seal)

ATTEST:

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

Approved for Legal Sufficiency:

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

First Reading: 08/16/2021 Vote 5 to 0.

Second Reading: 9/14/2021