

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 27, 2021, 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:30 pm. CM Rivet led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

LISA MORRELL

KARL BOHNE

DEBBY FRANKLIN

TOWN MANAGER: (ITM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For the record the Fire Chief Mike Foley is also present.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Mayor to add item 10.a. to consider canceling the RTCM 10/4/2021.

4. CONSENT AGENDA:

4.a. RTCM Minutes of 9/14/2021

4.b. Fire Dept Surplus Material for Sale or donation

4.c. Purchase of Mini-Excavator for PW

MOTION: CM Vail / CM Acquaviva to approve. Vote: All Aye.

5. ATTORNEY REPORT: Attorney spoke about SB 280 introduced for consideration in the upcoming legislative session regarding local ordinance adoption procedures. It would require the Town to perform an impact statement covering the public purpose, provide a reasonable connection between the new ordinance and the existing business. The estimated economic effect on both the businesses within and outside of Malabar. Would also require a good faith estimate on number of businesses affected and an analysis on how the ordinance would encourage or deter business – or impede businesses to compete in other areas. Atty said there is no reason for this bill to pass, more unfunded mandates on local government. This is more of the proposed legislation against home rule.

6. STAFF REPORTS:

6.a. Town Manager – ITM Morrell informed Council that the playground was opened – Hunter Lane project is paved and is at the clean-up - sodding stage and putting in mitered culvert ends and striping. Negotiating with Waste Pro.

8.b. Clerk – nothing.

8.c. Annelie Harvey spoke about the 2nd Malabar Market event held Saturday when they focused on health and fitness. She has discussed with staff the upcoming Market for October and the Trunk or Treat event. Market day has been the 4th Sat of the month from 9-2 and the Town's Trunk or Treat is set for the 5th Sat of October from 4 to 9. Malabar Market was going to start charging commercial businesses on the Oct date but if they move date to the 5th Sat and share with Trunk or Treat the event lay out and time frame would have to be changed or it would make for a long day. Also, the Town was not planning on charging for spaces as a community event. Council asked what she proposed to charge. \$15 for commercial businesses. CM Rivet asked about anticipated expenses Annelie is expecting to be offset by the fees. Annelie said with the Art show focus for Nov and Dec she would need to get frames. Also, there is port-o-lets and advertising. She

doesn't want to be handling the money. Wants the Town to collect money and pay the expenses. She has discussed with the upcoming charge to vendors, and they are ok with it. We are waiving right now. CM Acquaviva asked if they can be their own entity; doesn't want them to lose the momentum. Can staff take it on. Annelie doesn't want to be stuck with the liability. CM Rivet asked what is behind this; what is she asking from the Town Council. Annelie said the Town has the liability now. CM Acquaviva asked Atty if they must have their own insurance. Atty said we are letting them use it, but we are ultimately liable. ITM Lisa said therefore she needs this discussed by Council; if the Town is going to do the cash handling there needs to be additions to the fee resolution to establish the rates and procedures to require vendors to have certain insurance coverage.

Does Council want to direct staff to take on the event. The money received would go into General Fund revenues. Payment would be to private persons or a private entity. There is the element of scrutiny. Atty Bohne said for the Town we have general liability. The bounce house, propane brought in, you create liability that we are not covered for it. They are incurring expenses. The other issue is handling the money. CM White understands we are responsible to require insurance and get evidence of coverage. Not a good practice to not require it. The Market sounds like a casual event and it may scare people off by requiring insurance. CM Vail asked about fees can they be donations. Normally this would be a special event. Get the insurance. Town doesn't have a non-profit status. Could create one and create a board to handle the operations. Lots of red tape. Could take a donation but still would need a revised Fee resolution. CM Acquaviva said can we use it like use of park. CM Scardino asked about costs – advertising what kind do they expect us to do?

Annelie said the constant expense is for the port-a-potties. CM Acquaviva said maybe with it being transient with visitors coming and going all day they wouldn't need the port-a-lets. Annelie said she is not favoring a short stay but rather a couple of hours. CM Vail said the event would get the Town some funds. To collect money from the vendors for the good of the Town. The fees would offset the cost of the port-a-lets or the fuel for a generator or the electric use from the outlets. CM Acquaviva said the event is still forming itself. And with people coming and staying then we could have parking issues. Annelie is concerned about switching it about and if they are not feeling it is a solid thing then they may start getting competition.

Mayor suggested putting it on the 10/18/2021 agenda for further discussion. Council consensus to put on for further discussion on that agenda. Council agrees the Malabar Market does have a true sense of community. Council thanks Annelie.

7. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)
Five (5) Minute Limit per Speaker.

Barry White, Kelly Lane, wanted to talk about WM bill. Got a little more info from ITM Lisa and CM White late this afternoon. He has never seen this kind of service. He is asking was there a true streamlined – ITM Lisa said the mandatory 2 times a week trash pick-up is mandated in the ordinance adopted in 1996. They received 3 bids – Republic submitted only for 1 x a week trash; 1 x recycle and 1 cu of yard waste. They offered that for 33/week. It wasn't submitted correctly. Waste Pro offered the same coverage as the Town currently has with WM. This is what the market bears in these unprecedented times. CM Acquaviva said it is mostly for yard waste. She likes house trash picked up 2x a week. More truck loads for us if we go to 1x week. Getting the yard waste pick up – this is a rural area with lots of growth. Mr. Barry White asked if we should ask the people in Town what level of service they want? Can we put it on a petition? He has talked to people and \$50 a month for trash is a lot. He knows it is too late to delay this contract but if prices keep going up perhaps the residents would want something different. CM Scardino said we have a lot of dead-end

streets and yard vegetation and that was their main reason for the cost increase. We had no control over – we don't have the leverage. Mr. Barry White said where he is from, they all bring it to a collection point. CM Vail said most of the input he got wanted the 2x a week pu. ITM Lisa and Clerk explained the initiative process to get the question on the ballot. The question would have to be approved by both Town Council but also meet the requirements of the SOE. CM Danny White explained the problem and that Council was presented this horrific increase announcement on the eve of renewal. With this contract extension with WM, he will be paying more for solid waste pick-up than he pays for Town taxes. Maybe it should be regulated like other utilities and gave example if FPL wants to raise rate they have to go thru the PSC before approval. Are people willing to reduce their yard waste? They all agree it is horrible. CM Danny White further explained that the new cost covers the billing expense. Palm Bay adds it to the water bill to pay Republic and Grant-Valkaria uses the annual tax bill to collect the fees for payment to Waste Pro. Malabar does not have the capacity or manpower to do the billing and related collection processes so that cost is added in the bill to the residents.

8. PUBLIC HEARINGS: 6

8.a. 2nd Public Hearing: Approve Millage Levy for FY 2021/2022 (Ord 2021-17)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.4899 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 8.a.**

Ord read by title only. Franklin said per F.S. 200.065 we are required to state that the millage proposed for the 2021/2022 budget is 2.4899 and represents a ten percent increase over the RBR of 2.2503 which is needed to fund the expenses commencing 10/1/2021.

PH opened. None. PH closed.

MOTION: CM White / CM Scardino to Adopt Ord 2021-17. Discussion: CM White said his taxes went up a whopping \$14.00.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

8.b. 2nd Public Hearing: Approve Budget for FY 2021/2022 (Ord 2021-18)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$3,338,915.00 FOR THE FISCAL PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 8.b.**

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Rivet / CM Acquaviva to Adopt Ord 2021-18. Discussion: none

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

8.c. Amend Article XVI & XVIII Related to Required Road Dedication (Ord 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.

Exhibit: **Agenda Report No. 8.c.**

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Vail / CM Rivet to Adopt Ord 2021-12. Discussion: none

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

8.d. Amend Article XV Related to Tree Protection and Restoration (Ord 2021-19)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATED AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTION 1-15.8 AND 9 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 8.d.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Scardino / CM Acquaviva to Adopt Ord 2021-19. Discussion:

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

8.e. Amend Article V Related to Excavation and Fill Procedures (Ord 2021-20)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROL MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 8.e.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM White / CM Scardino to Adopt Ord 2021-20. Discussion:

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

8.f. Amend Article VII Related to Procedures for Site Plans (Ord 2021-21)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 8.f.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Rivet / CM Vail to Adopt Ord 2021-21. Discussion:

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

9. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0**

10. **ACTION ITEMS:**
ORDINANCES for FIRST READING: 0

RESOLUTIONS: 0

MISCELLANEOUS: a. Cancelling the 10/4/2021 mtg. Mayor asked ITM and Clerk and Council Consensus to cancel.

11. DISCUSSION/POSSIBLE ACTION: 0

12. PUBLIC COMMENTS: General Items (Speaker Card Required) None:

13. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: nothing

CM Vail: nothing

CM Rivet: nothing

CM White: nothing

CM Scardino: nothing

Mayor Reilly: thanked staff for the help with Market event.

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:43 P.M.

BY: _____

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 10/18/2021