

## MALABAR TOWN COUNCIL REGULAR MEETING

June 1, 2015

7:30 PM

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

### A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Council Chair Mayor Carl Beatty. CM Grant Ball led the prayer and pledge.

### B. ROLL CALL:

COUNCIL CHAIR:

MAYOR CARL BEATTY

VICE-CHAIR:

MARISA ACQUAVIVA, excused

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DON KRIEGER

DICK KORN

TOWN ADMINISTRATOR:

BONILYN WILBANKS, excused

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN, excused

DEPUTY TOWN CLERK

CYNTHIA KELLEY

For the Record, the Fire Chief Christopher Robinson is also present.

**C. ADDITIONS/DELETIONS/CHANGES:** Mayor Beatty stated there were several things that needed to be added. The City of Melbourne is requesting a donation for fireworks this year; the fire ordinance and the interviews. CM Korn asked if we were going to discuss the sale of surplus items. Mayor Beatty stated it could be added; this will be heard after the attorney is excused as he doesn't need to be involved in this. The surplus items will be heard as Item 4A and the City of Melbourne's donation request will be heard as Item 4B.

Sargent Al Tolley from the BCSO came forward and gave Council a brief overview of what has taken place in Malabar over the last month. He also provided information on Grant Valkaria as well.

CM Vail asked if they will be stepping up the patrols as the kids are out of school now; he foresees some mischievous activities taking place while the ~~parent~~ parents are working. Sgt. Tolley stated that they will be patrolling a little more in the area.

CM Korn made mention of a patrolman who had his personal phone number posted on Facebook; he asked St. Tolley if there was anything we could do to assist in this. Sgt. Tolley stated that information is very easy to get ~~information~~ on law enforcement officers and fire personnel. Without a court order or injunction, there is nothing that can be done.

Mayor Beatty stated that there is an issue at the Yellow Dog Café with the cross walk and traffic. Sargent Tolley stated that most of the traffic stops are at this area. There is someone pulling people over at the north end as well as the south end of town. Ball asked what the comments are from the people being stopped. Tolley stated that they are trying to educate the people with the new cross walk. Korn asked how to expedite the continuous green light; it has to be funded. He stated that Council has that power; just keep on it as the squeaky wheel gets things done.

**D. MINUTES:**

1. **Approval of Minutes** Regular Town Council Mtg – 5/18/15  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Request Approval of Minutes

**MOTION: CM Vail / CM Ball moved to approve the minutes of May 18, 2015 as presented.**

Discussion: none

**VOTE: All Ayes.**

Motion carried 4 to 0.

**MOTION: CM Vail / CM Ball moved to approve the minutes from 05/26/15 Workshop as presented.**

Discussion: none

**VOTE: All Ayes.**

Motion carried 4 to 0.

**E. 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.**

David Kerns of Palm Bay, came forward and addressed Council. He asked if anyone knows who the State Representative is. He is running for District 53; thinks the train coming in with what is already here will be an issue. He is here with petitions and would appreciate any signatures. (NOTE: *Per Reso. 07-2014, Section B5; no campaigning from the podium*)

**ATTORNEY REPORT:**

Attorney Bohne stated that we need to select a representative for the mediation of the law suit on June 23, 2015. He stated that he will be in attendance along with TA Wilbanks and the attorney(s) for the other side as well. Attorney Bohne asked if Council wanted a representative there. This person will be able to report back to Council. If we can come up with a solution, it will be brought back to Council for their blessing. Mayor Beatty stated that he is available. CM Vail asked if anyone would be volunteering for this CM Krieger stated there is a meeting on the 15<sup>th</sup>; CM Korn stated we have a meeting with Mr. Connor on the 15<sup>th</sup>. DTC Kelley stated that CM Korn has a telephone meeting with Mr. Connor on the 15<sup>th</sup>, the rest of Council has meetings set for the 10<sup>th</sup> of June. CM Krieger stated we have another Council meeting on the 15<sup>th</sup>; why not meet with Mr. Connor as we will have more information, and then choose a person to attend the mediation at the Council meeting on June 15<sup>th</sup>.

Mayor Beatty stated that if we choose a person this evening, Mr. Connor can prepare that person for the mediation meeting. CM Korn stated that the week before is very busy for him but he could go if needed. He volunteered to be the back-up person if Mayor Beatty couldn't make the meeting for any reason.

Attorney Bohne stated that we are not obligated to settle the case; we are obligated to meet and see if this can be resolved. Any offer made will be brought back to Council for discussion and vote.

It is the general consensus of Council to have Mayor Beatty as the representative and CM Korn as the back-up person if Mayor Beatty cannot make the meeting for any reason.

**F. ACTION ITEMS:****ORDINANCE: 1<sup>ST</sup> Reading****2. Amend Chapter 8 of Malabar Code re: Open Burning – Ordinance 2015-02**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE II STANDARDS; AMENDING ARTICLE III, SECTION 8-73(B) RELATING TO BURN PERMITS; AMENDING SECTION 8-83(D) DELETING THE WORD "PROHIBITED"; AMENDING SECTION 8-83 BY DELETING SUB-PARA (e); AMENDING SECTION 8-83 TO ADD "YARD TRASH FIRES" AS PROHIBITED; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Approval of 1<sup>st</sup> reading of Ord 2015-02

Mayor read by title only.

**MOTION: CM Vail / CM Korn moved to approve Ord. 2015-02 as presented.**

Discussion: Mayor Beatty stated that it should be referred to as what the Fire Marshal has down as the permitted use and the Fire Chief has the power to over-ride. He doesn't want to see it as case by case. CM Vail stated that we are giving the ability to burn yard trash as on a case by case basis; it would be inspected by the fire department and blessed if the burn can take place. This would be decided by the Fire Chief or his representative. Mayor Beatty stated that it would be based on the code. Chief Robinson stated that the criteria is already there with the State of Florida. There is no need to change anything. CM Korn stated there are two things that he doesn't see here. What is the procedure for obtaining a permit; a new sign at the fire department that states whether it is a good day to burn or not. Chief Robinson stated that the sign will follow the State of Florida. CM Vail stated that there are many pages that go into the code for Malabar. CM Ball stated that this will be approved as long as it isn't a hazard for burning. CM Vail stated what he's asking is where to you go to obtain a burn permit. Chief Robinson stated they refer people to Town Hall for the paperwork. Attorney Bohne stated that there are regulations and it will be a case by case basis. CM Korn asked if this covers a barrel burn. Chief Robinson stated that a contained fire does not need to have a permit.

CM Krieger stated that we have the ordinance; does Attorney Bohne have the pages with the cross-outs. He wants to make sure they are saying the same thing. CM Krieger stated he wanted the enclosed fires to be mentioned; properly enclosed and protected. He wants people to know what doesn't require a permit as well as what does require a permit. They can't do anything in violation. CM Korn stated he had a suggestion; have an article written by fire personnel and put it in the Mailboat. CM Krieger wants the language in the ordinance. CM Vail stated that we need to get the code fine-tuned and then we can let the public know and educate them.

Attorney Bohne stated that there was a discussion at a previous Council meeting concerning Section 8-83; it discusses what types of burning can be done. Yard trash was moved to 8-83; which can be burned. Household trash was moved to 8-78; which cannot be burned. This is only being done to move things around to the right areas of the ordinance. The TC moved the two items that were being changed. CM Vail stated that the first page covers the burning of household trash, rubber trash and such. It is on the cover page of the ordinance. Attorney Bohne stated that we need to put the word "tires" back into the ordinance. CM Krieger stated that in section 8-80, he sees the words will and shall; he is looking for the word may. We are not touching on this area. CM Krieger stated that we are piece-mealing instead of looking at the whole. Attorney Bohne said let me defend this the best I can because this is the result of what was discussed months and months ago; took the minutes, so if you guys want additional stuff,

now would be the time to let us know. CM Krieger stated that if you check the minutes from the previous meeting that this was discussed, he made a few suggestions and they are not here. CM Korn asked CM Krieger if he wants the wording to say "may" instead of shall. CM Korn asked Attorney Bohne if the resident would be charged or not. Attorney Bohne stated that they would be charged as that is how the code is written.

**MOTION: CM Krieger / CM Vail to table this until the minutes are reviewed for the suggestions from CM Krieger. VOTE: All Ayes.**

**MISCELLANEOUS:**

**3. Action on 5/26/15 Workshop Items 1–4.**

**Exhibit:** Agenda Report No 3

**Recommendation: Discussion and Action**

Discussion: Mayor Beatty stated that one of the questions that came up at the workshop was when the applications are received, are they public records. Attorney Bohne stated that they are public records. CM Vail stated that we need to wait until the closing date; once it's closed, then the applications can be reviewed all at the same time. Attorney Bohne stated that Council can give the Committee information as to how to do this. CM Krieger stated that if the applications come in and they are available to staff, he wants them available to him. CM Vail stated that the Committee shouldn't be discussing the applications until after the closing date. CM Krieger stated that we could go a different route and have the applications sent to the attorney. Attorney Bohne stated he is an agent to the Town; they would still be considered as public records. CM Korn asked if they had to be opened. Kelley, Attorney Bohne and CM Vail stated that they have to be opened and date stamped.

In reviewing the ad for the Town Administrator's position, Attorney Bohne stated he didn't know what a bachelor's degree in an appropriate field meant; what is the work relating to? CM Ball stated that we were trying to write the ad so it won't disqualify someone from applying for the position. CM Korn asked if he (Bohne) would feel better with the word "applicable". CM Krieger stated to list appropriate degrees and education.

Attorney Bohne stated that you are looking for someone with managerial experience. CM Krieger stated why not a have a managerial degree. CM Korn stated management related education, training or experience. Council, after hearing CM Korn's thought, decided to remove bachelor's degree and replace it with the following wording: "Management related education, training or experience". Upon further discussion, Council removed equivalent combination of training and replaced it with the following wording: "Managerial operations".

DTC Kelley was having trouble keeping up with the change in wording so CM Vail read the ad, from the beginning, to make sure the correct wording is on record. The following is what was read into the minutes:

**TOWN OF MALABAR  
EMPLOYMENT OPPORTUNITY  
FOR TOWN ADMINISTRATOR**

Town Administrator – Town of Malabar. (pop. 2,766) Malabar, is located within the Space Coast area, south of Melbourne and has an annual budget of \$1.5 million with 18 full-time and part-time employees. Collaborative management style with people skills is required. Provides daily supervision and direction to all Town Departments. Management related education, training or experience. Minimum of five years' experience in municipal government or managerial operations. Excellent benefits, salary DOQ. Telephone interviews will be conducted between July 16-19, 2015. Submit resumé with salary history, professional and personal

references and cover letter to: Town Clerk, 2725 Malabar Road, Malabar, FL 32950; fax: (321) 722-2234. Open until July 15, 2015. The Town of Malabar is an EOE.

This above is the wording for the ad that will be provided to the Town Clerk tomorrow morning to place the ad in the newspapers and on the various agency websites.

- 1) Requirements for TA
- 2) 2 Duties/Responsibilities
- 3) Wording for Job Posting/Time-frame
- 4) Create time-line for review process

**MOTION: CM Vail/ CM moved to approve the advertisement for Town Administrator as amended. VOTE: All Ayes.**

Mayor Beatty stated that Mayor Crews has accepted the position to do the phone interviews. It is the consensus of Council to have Mayor Crews and Mayor Beatty complete the phone interviews. Attorney Bohne stated that since this is an action item, a motion would be needed from Council.

**MOTION: CM Krieger / CM Ball moved to assign the task of phone interviews to Mayor Beatty and Mayor Crews. VOTE: All Ayes.**

Attorney Bohne stated that he was not familiar with what items 1-4 on the agenda meant. Kelley advised him that the four items were: Requirements for the TA; Duties/responsibilities; wording for job posting/time frame and create a time-line for review process. After hearing this, Attorney Bohne stated that staff is asking Council to approve the draft time-line that is in the packet. He asked DTC Kelley if this is correct; she stated that it was. CM Vail stated that items 1 through 4 had been addressed in the job advertisement. Attorney Bohne said Council discussed the draft timeline and discussed it at the May 26<sup>th</sup> Workshop; Attorney Bohne suggested Town Council review what is in the package.

The question was raised by CM Krieger that there are two joint workshops in June; he didn't think the second workshop was really outlined as being needed. DTC Kelley asked if she could speak to this; Mayor Beatty stated yes. DTC Kelley stated that the first workshop on June 22<sup>nd</sup> is to meet with the Selection Committee and let them know what you, as Council, expect from them and to start working on the questions for the interview process. The workshop on June 29<sup>th</sup> is to meet and finalize the interview questions with the Selection Committee. DTC Kelley also stated that there is another workshop scheduled for August 10<sup>th</sup>; it's the same night as the SCLC dinner. CM Vail asked if the Selection Committee will be meeting on their own. DTC Kelley stated that it would be up to Council as to what they want to do. It was decided, after much discussion, to leave all scheduled workshops on the calendar; if they aren't needed, they can be cancelled but staff needs to know so we have time to prepare the necessary documents for the meetings and to post them as well.

**MOTION: CM Vail / CM Ball moved to approve the draft time-line. VOTE: All Ayes.**

Motion carried 4 to 0

Attorney Bohne excused at 8:50 pm. Upon realizing he left his keys, Attorney Bohne came back into the building. CM Krieger asked him not to leave as he had a question. It was asked what the procedure is for the contract. Attorney Bohne stated that the contract, once Council agrees with it, will be drawn up. When you have a candidate that you would like to offer the position to, the negotiations will be begin.

Attorney Bohne was excused, again, at 9:05 pm.

**RESOLUTIONS: 1****4. Budget Adjustment – Reso. 11-2015**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2014-2015; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Approval of Reso 11-2015

Mayor read by title only.

**MOTION: CM Vail / CM Ball moved to approve Reso. 11-2015 as presented.**

CM Vail stated we are taking funds from training to cover operating costs. The training funds have not been used and they are needed to cover these other expenses. CM Krieger asked what operating costs consist of. CM Ball stated he is not comfortable moving funds until he knows what they are for.

**MOTION: CM Korn / CM Krieger moved to table this until next the meeting with more information as to what operating expense are.**

**THESE TWO ITEMS WERE ADDED TO THE AGENDA AT THE TOP OF THE MEETING:**

**4A. CITY OF MELBOURNE FOURTH OF JULY FUNDS**

Mayor Beatty advised Council that we made a donation of \$200 last year for the fireworks show that is put on by the City of Melbourne. CM Ball asked why we are doing this. CM Vail stated that, prior to Palm Bay getting so big, people went to Melbourne or were on their boats to see the fireworks show put on by Melbourne. CM Korn stated he is not comfortable with this; we are not Melbourne. Mayor Beatty stated that we gave a donation \$200 last year and nothing the year before. He stated he would have a letter drawn up and signed. CM Krieger stated TA would draft the letter and have Council review it at the next meeting. Mayor Beatty stated that the letter he received was to him from Mayor Meehan of the City of Melbourne. We don't need to jump through hoops; we will respectfully decline with a letter that comes from him.

**MOTION: CM Korn / CM Ball moved to wish them well but not to make a donation.**

**VOTE: All Ayes.** Motion carried 4 to 0.

**4B. SALE OF SURPLUS ITEMS**

CM Korn brought this to Council because it would seem that some of us discovered a bid opening that was taking place on Friday; he saw it was posted on the Town's website the night before. He stated that we don't know what we have listed as surplus. He had a conversation with TC Franklin this afternoon stating that Council wanted a list in January and then Council would decide how to dispose of it. He worked it out that a list would be provided to Council.

**MOTION: CM Korn / CM Krieger moved to not have a surplus sale until a comprehensive inventory list is provided to Council.**

Discussion: CM Korn stated that there was a misunderstanding; we hashed this out in January and there was a misunderstanding. We need to take the misunderstanding out of it. CM Krieger stated he didn't think there was a misunderstanding; apparently members of staff think, with previous Councils, there is a surplus list and they can have an auction. He just came back and heard about it and it was already done. CM Korn stated that it was all over for everyone. CM Krieger asked, with something of this nature, doesn't it need to have a public notice? Mayor Beatty stated that the list of inventory is half of the equation; we need to have a policy, nothing happens until we have both.

CM Korn stated that we need to make a decision tonight; there are five bids on hold for the two items that were on the list. We need to let them know that they can purchase the items or that the auction has been cancelled. As of right now, he (Korn) would say it is cancelled. CM Krieger asked CM Korn to amend his motion to say that there will be no sale until a comprehensive inventory list is provided to determine what is surplus. Mayor Beatty stated that an inventory list and policy is needed; we need both as they go hand in hand. He also stated that as far as the above sale, cancel it.

CM Krieger stated you can't have surplus until you have inventory. CM Korn is asking Council to agree with him to have a list of surplus items at the next Council meeting. Then we will figure out how to dispose of the items. CM Korn wants a list of items that are no longer used by the Town. CM Ball agrees with both CM Korn and CM Krieger. He stated that you have to have an inventory list with a value. It is not decided by staff, it is decided by Council. We should have a list of inventory. We need to have a list of everything. We need to know the items that the Town owns now. Mayor Beatty stated that in January, we determined that we didn't have a policy for surplus items. The TA was going to bring information from Grant Valkaria as to what they do with surplus item. CM Ball stated that we need to have a value on the list; otherwise, you're going to be nickeling/diming staff on staplers, coffee mugs and such. CM Korn asked what Council wants to do with the bid that was going to happen on Friday; we have sealed bids and they were called and told the bid is on hold.

**AMENDED MOTION: CM Korn/ CM Krieger moved to not have a surplus sale until we have a comprehensive inventory list and a policy in place.**

Mayor Beatty stated that the bid that is on hold is now cancelled.

**VOTE: All Ayes.** Motion carried 4 to 0

CM Korn asked if we need to have a time on the list being provided to Council. Mayor Beatty stated he wants to have information on the list of what the item is, how much it was purchased for, when it was purchased and if it is in working condition or not. CM Vail stated that it sounds like we need a workshop. CM Ball stated we need to put a value on the property. The purchase price will be the determining factor. The general consensus of Council for the value is \$300; have the list as soon as possible. CM Ball stated it won't happen in the next two months; Council would like to have a preliminary list by August 14<sup>th</sup>.

**H. PROCLAMATIONS: Flag Day June 14 & National Flag Week June 14-20**

**I. STAFF REPORTS: CLERK** – Free CPR class at Fire Department 6/20/15 at 9 am; call department for more information, if needed.

**J. REPORTS – MAYOR AND COUNCIL MEMBERS**

1. Mayor Beatty – nothing at this time
2. Grant Ball – nothing at this time
3. Brian Vail – nothing at this time
4. Don Krieger – permits are good for a certain amount of time with without improvements made; is someone keeping up with this? Mayor Beatty stated Building Official keeps track of that. (NOTE: Building Permit software tracks this information.) Krieger would like to see something to show this information. Ball would like to know how many we have, what's completed, and such.

CM Krieger stated that the P&Z Board had made a recommendation to Council a while ago regarding the franchise agreement with Palm Bay for the water/sewer. This was to be a protection for the citizens of Malabar so they are not made to hook up to sewer when it comes to Malabar. We need to ask the TA if the documentation was ever provided by them; if it was, it needs to go to the attorney for review and a new franchise agreement must be written. This was discussed at a previous meeting and the minutes should be looked at to see what exactly

the P&Z Board's recommendation was to Council. CM Korn asked who would be speaking to the TA about this. CM Krieger stated he would make contact with the TA. (NOTE: this was provided to Council by Clerk's office 6/12/15 via email.)

5. Dick Korn – reported to Council that he had a message from the Town Clerk regarding the contract for the new Town Administrator. The contract that was used for the current Town Administrator was the one used for Ed Booth. There was not a thought through contract for the current Town Administrator. The second life insurance policy for the Town Administrator has been taken out; it was an over-sight as it was given to Ed Booth because he was retired military and had excellent health insurance. He also asked if the Town Administrator, being hired with a contract, is considered as a contract employee or as an employee to the Town. Mayor Beatty stated that a person hired by contract is not the same as an employee for the Town. CM Korn urged all of Council to review the contract that was sent by TC Franklin, the one that has the red wording, and make their notes. CM Krieger stated he hadn't seen the contract. CM Korn asked that DTC Kelley put a copy of the draft contract in each of Council's mailbox. DTC Kelley advised Council that this was not included in their packet for tonight's meeting; it was sent under separate cover.

6. Marisa Acquaviva is excused

**K. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**L. ANNOUNCEMENTS:**

Two (2) vacancies on the Board of Adjustment

Three (3) vacancies on the Park and Recreation Board

One (1) vacancy on the Trails & Greenways Committee

One (1) vacancy on the Planning & Zoning Board

**M. ADJOURNMENT:**

There being no further business to discuss, Chair asked for a motion.

**MOTION: CM Ball/ CM Korn moved to adjourn. VOTE: All Ayes.** The meeting adjourned at 9:50 PM.

BY: Marisa Acquaviva  
Mayor Carl Beatty, Council Chair  
Signed in his absence by Vice-Chair  
Marisa Acquaviva

(seal)

TRANSCRIBED BY:

Cynthia D. Kelley  
Cynthia D. Kelley, C.M.C.  
Deputy Town Clerk

ATTEST BY:

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

Date Approved: 7/6/15