

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
June 19, 2017 7:30 PM

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

A. CALL TO ORDER:

Chair, Mayor Patrick T. Reilly called the meeting to order at 7:30 pm. CM Mahoney led the prayer and pledge.

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN
	RICHARD KOHLER
	DOUGLAS HOYT
	KARL BOHNE
TOWN ADMINISTRATOR:	MATT STINNETT
TOWN ATTORNEY:	DEBBY FRANKLIN
DEP TOWN CLERK/TREASURER	
TOWN CLERK/TREASURER:	

For the record, Fire Chief Leonard Thomassen is also in attendance.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: CM Mahoney asked about the public hearing that was advertised for this meeting. Franklin said it would be readvertised.

D, APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 6/5/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Rivet / CM Kohler to approve RTCM minutes of 6/05/17.

Discussion: CM Kohler pointed out a typo on pg 3, 6th para, 5th line, plans to remove" half" not have; CM Mahoney did not like the "post meeting notes" Chair recognized Clerk; Franklin mentioned page 1, under Speakers Card, Post meeting note: words in question were said ...added "by CM Mahoney herself" for clarification. Also on pg 2, 2nd para, last sentence deleted as it was not said. CM Mahoney stated they should not use "post meeting notes". Chair asked for other comments. CM Mahoney thought minutes were a good representation.

CM Korn commented under Staff report page 2, add east of Atz Road. CM Korn then asked about the "blue in face" comment. Mayor stated that it was said during the 5/22/17 workshop at minute 48 if anyone else wanted to listen. Dawn presented that it was not said and the "post meeting note" clarifies that it was indeed said. CM Mahoney wanted info from her report added to minutes. Franklin replied that her report was emailed the following day without a title or an author noted but Franklin did include it after the minutes and referenced under Council Reports, Dist 2, that it was attached. Franklin suggested that a date, title and author be included for benefit of future readers of the minutes.

Vote: Ayes, 4; Nay, 1 (CM Mahoney).

E, ATTORNEY REPORT: Medical Marijuana Legislation – email attached

Atty went over SB8a – legislation to clarify medical marijuana dispensaries. Doesn't know if Gov has signed it. He forwarded the summary – the 75-page engrossed bill to clerk for decimation to Council last week. It would allow cities to ban med marij dispensaries. If allowed, certain state laws must be followed. Or repeal our Ord and do anther saying they are banned. CM Korn as of last week it had not been signed. Atty wants direction from council. Draft a repeal Ord and ban them or revise what we have to allow them in the town. Mayor said where they are allowed in the Ord there is no place for them. Atty said the land could be rezoned. CM Ball asked about repealing. Atty said we are compliant with state law. If state law is changed, there could be ramifications. CM Korn said wait and see if it is signed

and then relook at it. No direction at this time. CM Rivet said it is appropriate to contact residents to see if they want to have regulations or do they want to ban them. Have on next agenda if it has been signed.

Attorney commented on the reference to CM report attached: suggested it be done in a memo form to Council from the CM Mahoney with date and title, such as June District 2 Report. Just a suggestion. Mayor said this was brought up before.

F, PRESENTATION: Representative Randy Fine:

Rep said re: the medical marijuana bill, the Gov received the bill today and he said he will sign it. Two options for municipalities – ban them outright or allow them with regulations like pharmacies. Initially there will not be that many of them. There are 7 now and will be another 10 to allow growth and sale of marij. Limited to 25 locations. Less than similar CVS. Over time the number can go up. He is on the committee. He visited a dispensary and smoking is outlawed. Welcome to call our office. CM Ball asked about the taxpayer burden on training law enforcement, etc. to implement this. Rep doesn't know. 71% voted for constitutional amendment. Legislature could implement regulations or have non-elected health Dept personnel draft rules. The costs are not insignificant. Voters spoke.

It is an honor to represent you. Area of District 53 goes from Highway 192 to Indian River County. Will do this whenever you want us. His office is on Palm Bay Road, close to US1, just six minutes away. Will be starting a weekly newsletter if anyone wants to be on email list.

Went over recent legislative session: Passed a balanced budget and put 3Billion in reserves for rainy day fund. Passed a tax cut. Did a lot related to education; will require civics to be taught. Reformed FRS and eliminated corporate welfare. Of note, locally – 4.5 mil for members within the delegation area. 222K for Palm Bay Front pier redevelopment.

He will answer any questions. CM Korn asked about HB 17 gutting home rule. Fine said it simply said cities to follow statutes. Fine said it is inappropriate for local govt to set policy. If it is in statute cities can regulate. If you want to create regulation it should come from the State. It is a constitutional issue. Make it hard to pass a law. Adjunct of the state – that is what they did to recognize municipal governments. He stated what has happened over time is that Representatives found it too hard to get law passed in Tallahassee so they do it as “lazy man regulations” by having municipalities adopt regulations.

HB17 was intended to reset that but it did not pass. Local governments that did it the right way were the most upset about the bill.

CM Korn said that HB17 would not have not allowed Malabar to have made decision on med marijuana. It would have disenfranchised local governments from setting business regulations. Malabar representatives know our situations and needs better – not Tallahassee.

Rep Fine said that is wrong. Rep Fine stated that local government is the least responsive form of government we have in the country. Municipal leaders are accountable to the residents. What about the people who work here or own business but don't live here – or people that drive the roads but don't live there. He said his office is in Palm Bay and he drives roads in Indialantic and Melbourne Beach but has no say. But everyone has the equal vote in Tallahassee.

Council thanked Rep Fine. Attorney said the estimate for the appropriation of SB8a is 15 Mil.

G. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

• **ADMINISTRATOR:**

Nothing -

- **CLERK:** Audit Presentation for FY 15/16 is set for 7/24/17 at 7PM followed by a budget workshop. The Memo with meeting dates was revised to accurately reflect the Audit presentation. It was printed on yellow paper and placed in front of each of Council.

Also, the Trails and Greenways Committee Members are hosting a Grand Welcoming Ceremony for the Cameron Trail Shelter on June 22, 2017. All are invited to meet at the north end of Corey Road, the entrance to Cameron Preserve at 7pm and the group will then walk appx ½ mile to the shelter, install the new sign and enjoy light refreshments.

Franklin then wanted to thank Doug and Matt and the rest of staff for keeping things going while she was unexpectedly out of commission recently.

H, 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) Three (3) Minute Limit per Speaker.

Speaker's Card:

Jose Merino, 1720 Benjamin Road, complaint is same he has stated previously – drainage. rainy season just getting started and the SE part of Malabar area is flooding. Has seen no action only political promises.

TA responded that he is aware of Mr. Marino's concern but its cause is on private property. PW has been kept busy with replacing failed culverts. Many of the culverts are failing and are being replaced with the high-density poly. Because these failures are unexpected they take precedence. CM Korn said this area was in Dist. 4 and he has talked with this gentleman and the area is hodge podge of vacant land that is used by 4 wheelers and no way for water to drain. His house is high and dry but the yard is probably underwater similar to many others including his own. It is not subject to be cured.

Liz Ritter: 2860 Orange Ave. Item came up at P&Z meeting. Re: R/LC - a person came to them and wants to keep the current zoning. Mayor said that it would not affect it. Liz said the person doesn't want the land use designation changed.

I. PUBLIC HEARINGS/SPECIAL ORDERS: 0

**J. UNFINISHED BUSINESS/GENERAL ORDERS
ORDINANCES FOR FIRST READING: 0
RESOLUTIONS: 0**

MISCELLANEOUS: 3

2. Concerns Raised by P&Z Board re: Route 1 Motorsports Signage

Exhibit: Agenda Report No. 2

Recommendation: Request Approval

Speaker's Cards:

1) Mary Hofmeister, new to P&Z Board, does have a few questions. Why was P&Z bypassed. Mayor will say comments later and it will be in what he says.

2) Liz Ritter, Orange Avenue – noted that it was said that it came before P&Z, and that it is incorrect. It is the procedures that they were questioning. The date on the rendering from Artcraft was almost a year ago – so why did it not go to P&Z. The revision came this past month and is still not to Code. The revision also did not come before P&Z. All signs shall comply with Town Code. Mayor said it will be covered by his comments.

Discussion: CM Korn had a business in Palm Bay and there were a lot of requirements for how his sign could be done. That was in the 1980's. Point is what are the rules and have they been shared.

Mayor will now make his speech. For clarification, what was presented for approval by Council clearly stated it was not done at Site Plan stage. Perhaps an oversight or perhaps applicant was not even ready for signage. It is irrelevant. A sign is considered an accessory structure. He read from Signage Code. All sign permit applications go through Building Official (BO), not the P&Z. The BO went to Council with the rendering of the proposed signage. The Town Council approved it. It was later revised and overall height and size was decreased. The main issue brought up by P&Z now is the video screen, which measures 8' x 3' also less than the proposed rendering. The applicant has already stated it won't change every two seconds. The BO recommended Council direct the P&Z Board update the Table in Article 19 to provide for current conditions and provide for commercial developments on arterial highway roadways with higher speeds and larger parcels. Chair suggested the P&Z Board review and follow Chap 2 of Code that provides the duties of the Planning and Zoning Board. Chair stated he believes the procedures were followed. It is an accessory structure and it is done by the BO. CM Mahoney said the restrictions should be in writing.

Mayor called property owner Mr. Carmine of 1300 Highway 1, Route 1 Motorsports to the podium. He stated as far as the sign depictions he thinks Ms. Ritter is looking at Artcraft's draft dates and they do not reflect when they were submitted to the Town. When he and sign contractor reviewed the Code from the Town; the sign would look like a postage stamp on that building. Since it had already been through Site Plan review, Town staff recommended that it go to Council. He clearly stated at that meeting that it was a preliminary design. The final design cleaned it up and removed the branding. The video signage is not new. He is not looking to show movies as intimated by some. TA had talked to him and asked him to limit the video change to not less than 30 seconds. He suggested that while the P&Z Board considers the updates to the Malabar Sign Code, they should look at the current times. In the daytime, it is brighter. He is willing to discuss that after 9pm it doesn't change at all and at 12 midnight it goes off. If that is their concern he is willing to discuss. The timing of the changing of the ads is not a distraction for him.

CM Mahoney said Bud (Charles Ryan) had brought them information that it would be a hazard. Mayor asked what is the limit he is willing to go. Mr. Carmine mentioned the insurance one on Malabar before Minton. CM Korn asked if there are regulations from the FDOT. Direct BO to research the applicable regulations. Mayor said that is why it went to Council. Atty suggested that it be looked at. Atty said the site plan #7 requires signage to be looked at that time. Attorney conceded that it was completely missed by all parties. CM Mahoney said they should try and get as many eyes on something and consider our people.

TA asked Clerk about memo and study done by Engineer. Franklin stated that the Engineer submitted information on commercial signs in existence that exceeded the current Code and that information went with the memo to Council stating the signage was not reviewed at Site Plan stage and asking for Council action on the sign and the code. Staff did recommend the Table in Article 19 be updated and asked that Council direct it to P&Z.

TA said Morgan and Morgan has an electronic sign by Nasa Blvd intersection. His recommendation is to approve it. CM Ball doesn't want to be consistently putting up barriers to applicants and contractors. They should not penalize the applicant. CM Rivet said it will not be a problem for safety. He has reduced the height and overall dimensions.

MOTION: CM Korn / CM Rivet to approve the sign as permitted with condition to slow down the animation and accept the limit of a 30 second change rate. **Vote:** Chair called for a

ROLLCALL: CM Ball, Aye; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 4 to 1.

3. Fire Apparatus Replacement/Refurbishment

Exhibit:

Agenda Report No. 3

Recommendation:

Request Approval to Proceed with 5-year Lease

Chief Thomassen presented Power Point presentation. (attached)

He reported on Engine 99 – pump issues. Keep in mind – it is 21 years old and has served this community for that entire time. Refurb vs replacement. Refurb 120 days and then 6 months to refurb with no replacement. Lifespan is 20 years = 25 if refurbished even if it only goes 2 to 3 years.

Most apparatus is replaced at 10 to 12 years. To lease a replacement costs 2-4K a month. Will not know the total cost of the refurb until E-1 get vehicle and goes over it.

NFPA 1911 Palm Bay Fleet Services are certified to assess the vehicle and let us know. PB Fleet did a pump test in Feb and they projected that it would fail the actual test in July. The Fire Dept personnel try to do the most they can but this requires professional certification. Frame is bent – happened before his time. Every 11 months he is putting on new tires. Fire pump flow test failed. Will no longer pull the draft.

It is scheduled for official pump test in 3 weeks – at that time if the pump fails he must notify ISO that they can't go into structure fires. They will have to rely on Palm Bay or County to respond before they can enter structure. Also once he notifies ISO the premium savings will be gone and they will be asking for twice that in increased insurance rates. ISO rating will go to 10.

The estimate for refurb of the fire apparatus is \$218,750 without E-1 even seeing the vehicle. That price will go up once they determine what else has to be brought up to compliance. It is NFPA compliant until it goes in for refurb. So, that is why the price will go up. He has done this a couple of times in his career. He suggested you could put another 100K on top of that estimate to gain 2-5 years use of vehicle. Went through list of problems throttle cable, rust, no lights on hose bed, etc. Using a brush cable. Bent frame. They might tell him they can't refurb it.

The proposal for a replacement is based on what Malabar needs are. Engine 99 should be replaced; they must supply the current level of service. Avoid expensive loss due to refurbishment. New engine will provide better capabilities, IOS rates will be maintained once you show mitigation. Terms will allow Town to not expend a lot of money.

Annual payment for 5, 7 and 10 years. Regular maintenance will be reduced. CM Rivet is looking at lease proposals. Matt said lease to own over a ten-year period is his recommendation. He referred to the less than 2/10 of a percent difference between the 5 and ten-year finance charges. Easily offset by the increase in interest Malabar is experiencing now due to changes in investments. \$452,901.00 is the full cost. CM Korn said cost to refurb is greater than \$218,750 for a maximum of five years use and the alternative would be to buy new vehicle for \$452,901 and get 20 plus years of use. Yes.

E1, Suphen and any other vendors that supply fire trucks. CM Korn said he has saved on his homeowners. Would this change. Yes- asked TA if they have explored the various options. TA said he doesn't like spending money. Even if they fix the 213K to get 3 more years and they then hit a wall. Frankly refurbing a 21.5-year-old truck is foolish. For 300K more they get 20+ years of operation.

CM Korn thanked the FD for their efforts. Department is known around the State not just in Brevard County.

CM Mahoney said so far they have stayed in budget. Will this cause them to go over budget. She suggested they look at a used fire truck.

Matt explained that if they sign now the first annual payment will not be until next June (2018) and based on the 10 year lease the 58,000 is a budgetable amount. The decision will be Councils.

Chief said they bought a used ladder truck and they bought used problems. Other departments get rid of their apparatus for good reasons. They have had a heck of a time with ladder 99. They don't need that.

There is a one year warranty bumper to bumper and then extended warranties on other portions.

CM Ball asked if the ladder truck would go away. Yes. Palm Bay is buying a new ladder. It is a smaller one so it can get into our driveways. Not saying we will not need a ladder again. But when Palm Bay gets their new ladder. Automatic alert for structure fires. Mayor said Harris helped pay for the ladder. Chief said that he put that in place. The current ladder truck now is not operational.

CM Rivet said Council should discuss it at next workshop – C.I.P. on June 26. CM Kohler asked if we would keep the rating if we sign the commitment papers. Yes, that is the reason for need of Council action. When it goes for pump test in July and fails, it can't be used as front line response and Chief must notify ISO. By signing the commitment to purchase, it won't take the ISO hit. Mayor ask the pleasure of Council.

CM Korn supports purchase. CM Ball said work it at the workshop and do a special meeting. Matt said we do have the cash on hand in reserves to handle the first payment if that is their choice.

TA said the ten-year financing at 58K per year budgeting is doable. It is there for these types of situations. Taken a good long hard look at the budget. CM Mahoney said it would be nice during the workshop to show the budget for the Fire Dept. Matt said this is a need rather a want. CM Mahoney said they want new suits. May require flexing in other departments as well.

Atty said we need to go out for bid for the vehicle replacement. CM Korn said we could look for grant to cover other needs in FD.

MOTION: CM Korn / CM Rivet to authorize TA to proceed with obtaining bids to purchase a new replacement for Engine 99. Chair called for roll call vote.

ROLL CALL VOTE: CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye; CM Ball, Aye. Motion carried 5 to 0.

TA said they will have excess cash from getting rid of Brush 399; also, will be getting rid of ladder truck and that will be reduction in cash expenditures. TA says as they go forward, a 21-year old piece of equipment is not going to get any better; just because there is a Sheriff's bid you could still go out and get better prices. Paperwork in front of them re: slope mower showed that. Chief has talked to the other companies and Pierce was the lowest. Today's dollars are more valuable than tomorrow's dollars. Dollars are not keeping up with inflation.

4. Commit to a Code of Conduct for Council and Board Members**Exhibit:** Agenda Report No. 4**Recommendation:** Request Approval

Discussion: Mayor Reilly brought this up at the last meeting. CM Korn said many municipalities do this and this is one like Cape Canaveral. An ordinance will be drafted to make this a requirement in Chapter 2 of Code if Council directs. CM Mahoney said it sounds like the public transparency with the public would be lost. Are we starting to keep secrets from the public?

MOTION: CM Kohler / CM Korn to direct amendment to Chapter 2 to add this.

ROLL CALL VOTE: CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye; CM Mahoney, Nay; CM Ball, Aye. Motion carried 4 to 1.

Before Chair released Attorney: CM Ball asked Atty about content based Supreme Court ruling on signage – did it have any bearing on Route 1 Motor Sports signage? No.

COUNCIL CHAIR MAY EXCUSE ATTORNEY NOW

K. DISCUSSION/POSSIBLE ACTION:**5. Cancel First Council Meeting in July****Exhibit:** Agenda Report No. 5**Recommendation:** Request Approval

Discussion: Mayor Reilly asked TA to address this. It is unusual to have a meeting the evening before a Federal Holiday.

Council discussed the need to commit to purchase of fire apparatus. Keep 7/3/17 RTCM to commit to this decision.

VOTE: All Ayes.

TA said if we choose to close the town hall that day would council have an objection. Staff has vacation. Short meeting. No objection.

PUBLIC:

Skip Hard – no longer here.

Carlene Conroy – 1865 Alexander Lane – addresses the code of conduct. Does not understand the need for this. She is one of those persons that wants to know it in advance. Chair asked if she had read the agenda package of the website and specifically the Code of Conduct – no she had not.

Ms. Conroy also stated there is no link on the homepage of Town website to the Mailboat. She could not find the recent Mailboat. Should be on homepage.

L. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist 1: He is concerned with the sign ordinance. We should be looking at language and regulations in signage that is typical of today's trends for businesses not 20 years ago rules. Should have been working on this. Mayor stated it was sent to P&Z to update and they have had it for two or three meetings.

CM Dist. 2: none.

CM Dist 3: CM Rivet – Atz Road project – putting together bid package should be out by end of the week. Asked if another council member had done ethics training online? Yes, some had done it.

CM Dist 4: Appreciates the cards from council and staff. Encourage all of council to be open to all the community members. Dist 4 is getting the deepest penetration of water. We need to remember the rain is not something we can control. Asked about soccer field. TA looked at it last week. They have contracted with Ecor for 6 treatments and have closed the field.

Combo of treating and closing and the watering - it is getting there. Will it be ready for league play? TA can't say when it will be ready. Malabar resident and businessman, Mr. Scott McLachlan donated \$1,000.00 towards the cost of the rehab. PW is monitoring.

CM Dist. 5: CM Kohler thanked the community for a great response to a tragic event recently in our community.

Mayor: Thanked everyone for attending SCLC Meeting – good turnout for Malabar.

M. ANNOUNCEMENTS:

(1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) Vacancy on the Trails & Greenways

N. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 10:05PM.

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

ATTEST:

Debby K. Franklin

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

Date Approved: 7/03/2017

Monday, June 19, 2017 RTCM – *sent out after the meeting*

Council has repeatedly over the years requested an opportunity to review the draft version of the Mailboat, this most recently, by a then Council Member in 2016. Both Council and Staff has been in full agreement with this prudent step in publishing accurate information to the Citizens of Malabar. To this end the most recent draft of the Mailboat was sent to the Council members on June 1st, 2017 for review and comment prior to sending the document to printing. For the record, Staff received replies from the Mayor and other Council. None of the content was found to be inconsistent with the Town's normal content in the Mailboat. On June 15th, 2017 (before publication) an article appeared on a Social Media Web Site with comments from a Citizen (not a Council Member) on one of the articles in the Draft Mailboat. While providing preliminary information to the general public prior to its intended release date may not be a violation of the Florida Sunshine, it may be contrary to the Town of Malabar Council Member Code of Conduct and the intended purpose of privileged information sent to Council for review prior to public release.

Douglas C. Hoyt
Administrator



Fire Apparatus **Replacement/Refurbishment**

Assessment, Findings, and Proposal

Fire Apparatus Findings

Current equipment shortfalls and concerns:

Significant repairs and maintenance must be performed by certified technicians i.e. Palm Bay Fleet

NFPA 1911

- 6.8.1.1 Air brake system
- 10.2.2 Pump shaft packing or mechanical seals
- 10.2.6 Instrumentation and gauges
- 21.7.6 Vacuum test procedures and specifications
- 21.7.7.2 Fire pump flow and capacity test

NFPA 1901

- 13.10.2.1 Hose bed lighting
 - 14.1.9 SCBA mounting brackets
 - 16.2.3.3.1 Drafting test and specification
- Physical Damage & Irreplaceable Parts:

- Frame Damage
- Throttle Cable
- Extensive body rust
- Damaged Wheels

Significant degradation of the Department's ISO rating is imminent.



