

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**  
**AUGUST 07, 2017                      7:30 PM**

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

**A.     CALL TO ORDER:**

Acting Chair, Steve Rivet called the meeting to order at 7:30 pm. CM Kohler led the prayer and pledge.

**B.     ROLL CALL:**

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

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

**C.     APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** CM Mahoney to table # 2 and 3 and 7 and under Item . M. remove "possible action" from the title. Chair explained she can request removal at this point but not to table until the item is up on the agenda. Chair asked for Council comment on the removal. No consensus to remove. Chair received a request to remove SR514 Resolution under Agenda Item 6. TA said the new FDOT representative got the Resolution 7-10 days ago, The removal from this agenda is at the request FDOT, not Aitkens. Chair asked - does Council agree. CM Korn is not in support of the resolution. Consensus to remove until further direction.

Chair asked to move # 7 up under item J (after public comments). No objection.

**D.     APPROVAL OF THE MINUTES:**

**1.   Regular Town Council Meeting Minutes 7/17/17**

**Town Council Special & Workshop Mtg Minutes 7/24/17**

**Exhibit:                      Agenda Report No. 1**

**Recommendation:      Request Approval**

**MOTION:** CM Kohler / CM Korn to approve RTCM minutes of 7/17/17.

Discussion: CM Mahoney said for the public the corrected minutes should be in the original council packet. Chair suggested she bring it up under Council reports.

**Vote:** Ayes, 5; Nay, 0

**MOTION:** CM Ball / CM Kohler to approve Special and WS minutes of 7/24/2017.

Discussion: CM Mahoney asked for her request under reports to show that the request for the schedule was hers not CM Koehler's. Clerk said that it was CM Kohler that said perhaps after the work was performed a report could be posted.

**Vote:** All Ayes.

**E.     BCSO REPORT: none**

**F.     ATTORNEY REPORT: none**

**G.     PRESENTATIONS:   Chair presented Letters of Commendation to Fire Dept Personnel**

Chair read Letter to Chief and presented to him. (attached) Acting Council Chair then asked the Chief to call his personnel up to present the Letters of Commendation. The Commendations were presented and pictures were taken by a volunteer in the audience. Council and audience was very thankful, supportive and grateful for the response from the Malabar Fire Department on this tragic incident.

Fire Chief then explained the circumstances of such a tragic fire and thanked Council for recognition of the efforts of the Malabar Fire Department responders.

**H. BOARD/COMMITTEE REPORTS:**

**Trails and Greenways Committee:** Drew Thompson short presentation. Will be doing something in the south as presented at earlier meetings. Will be talking with Doug to give access to Jordan scrub. Working on concept. Brevard County has park land north of Valkaria Road.

**Planning and Zoning Board: Liz Ritter**

Still working on the sign code. They had to go through the definitions first; then go back to the table.

**Park and Recreation Board: Hans Kemmler**

Hans informed them about the memorials and have gone through several suggestions. Low maintenance and style. They had a presentation by Formmasters in Deland. Rick Basso came and left example of poured concrete polished. 4 x 8 and 4" thick. They don't have all the details and price ranges. \$75 per square foot. If they cast it and we pick it up it could be for 3K. Will have some options with a lower and higher cost. With them pouring the columns.

Things are going well at the golf disc sanctuary.

Re: Huggins Park: they have gone through so many ideas that they may want to sell the land and use the money for parks and recreation.

TA said hopefully he will have two of the shade sails up over the playground by the end of the year. The decision has been made to have four separate shade sails so they will have a greater chance of surviving high winds. CM Korn asked regarding the memorial wall, would the existing memorials be included? Yes.

**I. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF**

**ADMINISTRATOR:** TA - nothing

**CLERK:** The proposed Stormwater fee increase advertisement has run in the paper and the individual notices were mailed out as required by statute so Council can hold a Public Hearing on August 14, 2017 regarding the increase. There was a formatting issue when the dataset was inserted into the Notices mailed out that caused a "1" to be printed under "commercial" on all residential notices. It in no way had any effect on the bill classification. We have appreciated all the calls from property owners that requested clarification. A resident on Sandy Creek Lane delivered a request to speak at the 8/14/17 public hearing. Council was copied on the request. Also, another call resulted in a request for a stormwater credit for their stormwater system and that will probably be successful.

**FIRE CHIEF:** Went over July report – FF1 class will be offered. Applied for the SCOTT Paks for grants. That is paid for by DOF at 100%.

Chief said regarding the question that came up at the Budget WS he wanted to provide the background for the increase under "radios" in the budget. The County is going to digital radios. They have 14 portable radios. He only has three that are digital. The rest are analog. They must rely on the radios. The county will switch over entirely in 2019 or 2020. The radios in the vehicles can be modified.

**J. 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:**

Liz Ritter: 2860 Orange Avenue. Rented the park on 7/22 and the grass is over knee high. As a taxpayer, would like to request that the park be mowed more than once a month. TA said the schedule is once a month; had the Town received the right permit it would have been taken care of. Ms. Ritter said even if you are just walking your dog – if it is a foot deep you will lose your dog..

CM Korn said he was contacted by Ms. Ritter. CM Korn suggested in the future she use him as the expeditor. In her park, they make sure it is maintained. CM Korn said communication is a wonderful thing. Ms. Ritter said the advertisement was on the Town website.

Chair said make sure the appropriate permit is issued. If you are paying to rent the park...Chair gaveled point of order.

TA said he got a phone call on Saturday morning asking why it was not mowed.

CM Korn asked if a private person bring their mower and mowed it was that allowed. Don't think our insurance would cover an accident. Ms. Ritter said when Ricky called the TA he said it was ok to mow it.

(Post Meeting Note: TA clarified the Saturday phone call (attached to minutes))

**Agenda Change:** Move Agenda Item #7 here:

**7. Action on Request to Accept 416 feet of Corey Road (north end)**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

Chair asked for TA to give introduction. As stated in the request by the applicants they wish to purchase the parcel and build a home and would like Council to accept the portion of roadway used daily to get to the Cameron Preserve. The Engineer has spelled out some of his requirements to meet Town Code and protect the Town from future financial responsibility. The roadway dead ends into the Cameron Preserve which is a sanctuary dedicated in perpetuity so very unlikely a right-of-way would ever be platted to go north to Palm Bay. If Council approve this tonight, then the applicant has agreed to do the Hold Harmless and the right-of-way dedication. They will also perform the compaction tests and submit the results to the Town for evaluation by the Town Engineer.

**MOTION:** CM Korn / CM Kohler to approve 416' feet of Corey Road between the end of the pavement north to the entrance to Cameron Wilderness Preserve with the conditions stated by the Engineer to be met:

- Dedication of 5' to the Town for additional right-of-way
- Compaction Tests that meet or exceed Town requirements
- Execution of the Hold Harmless Agreement covering potential Stormwater problems.

**VOTE:** All Ayes.

**K. PUBLIC HEARINGS/ UNFINISHED BUSINESS/GENERAL ORDERS: None**  
**L. UNFINISHED BUSINESS/GENERAL ORDERS**  
**ORDINANCES FOR FIRST READING: 4**

**2. ORDINANCE 2017-06 – AMEND CHAPTER 2 TO PROVIDE FOR COUNCIL CONDUCT**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR A TOWN COUNCIL CODE OF CONDUCT AND PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL AND CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Approval of First Reading of Ord 2017-06

**Speakers Card:** Karlene Conroy handed out a rebuttal to the Attorney's response comments. One theme emerged – no one person can direct a staff member. She stated it will be a deterrent for other willing to serve. Her written rebuttal will be attached to minutes.

CM Mahoney made motion to change this to discussion. Motion died for lack of 2<sup>nd</sup>. CM Korn said it needs to stay on. He has been on Council or a board for 17 years. He said Ms. Conroy's letter used the word "asked" not demand. Adopting this ordinance is a protection for the Town. If it keeps someone from volunteering to serve, then they have a different agenda than what is best for the Town.

**Speakers Card:** Brian Vail, He is in favor of this. It is unfortunate that we have draft this – it gives accountability. You should all get along as a group and it protects the image of Council.

**MOTION:** CM Korn / CM Kohler to approve first reading of Ord 2017-06.

Discussion: CM Korn took Ms. Conroy's concerns very seriously. CM Mahoney said June 19, TA sent out an email that was not in the minutes.

Atty Bohne said there are clear guidelines on what is confidential. Can't put label of privileged so if it does not fit one of those categories it is disclosable. He only can think of two cases where this would have been applicable. He wishes it wasn't necessary.

CM Ball: He said for the reasons stated by CM Korn, if it has only happened two times, why is the ordinance necessary? You are creating another level of bureaucracy. The ordinance is very subjective. What is adequate time? He is against it. He doesn't see it as serving any useful purpose. CM Kohler said he is supportive of this. This would keep everything moving forward.

Atty said look for more detail. Atty said identify the issue. That is up to Council to figure out; not his office or Town staff.

CM Mahoney asked how much time it took to draft this and put it in the form of an ordinance.

**ROLL CALL Vote:** 1) CM Ball, Nay; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 3 to 2.

**3. ORDINANCE 2017-07 – AMEND CHAPTER 2 TO PROVIDE FOR BOARD/COMMITTEE CONDUCT**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING DIVISION 1 OF ARTICLE VIII OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-216; PROVIDING FOR DEFINITIONS; PROVIDING FOR A BOARD AND COMMITTEE CODE OF CONDUCT AND PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL AND

CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 3

**Recommendation:** Request Approval of First Reading of Ord 2017-07

**MOTION:** CM Korn / CM Kohler to approve first reading of Ord 2017-07.

Discussion: CM Mahoney – same reasons she opposed the previous ordinance.

**ROLL CALL Vote:** CM Ball, Nay; 1) CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 3 to 2.

#### **4. ORDINANCE 2017-08 MORATORIUM on MEDICAL MARIJUANA DISPENSARIES**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND ISSUANCE OF LOCAL BUSINESS TAX RECEIPTS OR LAND USE PERMITS, DEVELOPMENT ORDERS, MODIFICATIONS OR APPROVALS FOR ANY MEDICAL MARIJUANA TREATMENT CENTER AND/OR ANY MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY, AS THOSE TERMS ARE USED AND DEFINED IN SB 8A; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 4

**Recommendation:** Request Approval of First Reading of Ord 2017-08

**MOTION:** CM Ball / CM Mahoney to approve first reading of Ord 2017-08.

Discussion: CM Ball said move in this direction to protect the town until all the regulations are drafted. If we choose to regulate them we will have to modify our code. Also, have to determine if our regulations are grandfathered in since it was adopted before the bill passed. Could also ban them outright. Or treat them same as pharmacies. If you want to switch this from a moratorium to a ban it would require going back before Council.

**Speaker Card:** Karen Moser: Don't have a problem with moratorium but if you want to extend it. Would it have to go back before Council. Yes. Proactively get a comment on this: fine if you want to amend regulations to treat them the same as pharmacies. Seems cruel to burden sick patients with driving far distances. Malabar wants low taxes but they also want to attract businesses. Full statement is attached

CM Korn: majority of people voted to allow this. During 2016 he saw ads in local publications that an individual was growing and selling it in Malabar. Yes, you could do it same as pharmacies or ban it or grant a temporary moratorium while getting more information. Morgan is suing the State. Depending the ruling on that case may also change the regulations. Chair said this moratorium would give them until Jan 8, 2018.

**ROLL CALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; 1) CM Korn, Aye; CM Kohler, Aye. Motion carried 5 to 0.

#### **5. ORDINANCE 2017-09: MORATORIUM on WIRELESS INFRASTRUCTURE WITHIN MALABAR RIGHTS-OF-WAY**

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE TOWN OF MALABAR ON THE EFFECTS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 PASSED BY THE FLORIDA LEGISLATURE DURING THE RECENTLY ENDED 2017 LEGISLATIVE SESSION AND APPROVED BY THE GOVERNOR; PROHIBITING ANY AND ALL APPROVALS DURING THE MORATORIUM PERIOD FOR ANY RIGHT-OF-WAY LOCATED WITHIN THE TOWN OF MALABAR IN ORDER TO ALLOW AN OPPORTUNITY FOR THE TOWN TO REVIEW THE REQUIREMENTS OF THE SAID BILL AND TO DEVELOP AN ORDINANCE, AS APPROPRIATE, RELATING TO THE IMPACTS OF THE LEGISLATION; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR GEOGRAPHIC AREA ENCOMPASSED BY THE MORATORIUM;

PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Approval of First Reading of Ord 2017-09

**Speakers Card: none**

**MOTION:** CM Kohler / CM Mahoney to approve first reading of Ord 2017-09.

Discussion: Atty said there is some allowance for local regulation but must review the law to see how much control local government will have over these regulations.

CM Korn said the wireless. Refers to the green boxes. Is this part of the State's attempt to remove home rule and legislate from Tallahassee?

CM Mahoney asked if we can do research on permit fees; can we limit it to certain roads. No.

**ROLL CALL Vote:** 1) CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; 1) CM Kohler, Aye. Motion carried 5 to 0.

**RESOLUTIONS: 1 tabled**

**6. RESOLUTION 15-2017 – SUPPORT PROPOSED CONCEPT for WIDENING of SR514**

~~A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING PERTAINING TO A REQUEST FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION TO SUPPORT A CONCEPT FOR THE WIDENING OF SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U.S. HIGHWAY 1 (SR 5) IN THE TOWN OF MALABAR AND TO PROVIDE ONGOING MAINTENANCE OF THE MULTI-USE TRAIL INCLUDED IN THE RECOMMENDED ALTERNATIVE FROM MALABAR WOODS BOULEVARD TO MARIE STREET; PROVIDING FOR DISTRIBUTION OF REQUEST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.~~

**MISCELLANEOUS: 2**

**7. Action on Request to Accept 416 feet of Corey Road (north end)  
Moved to under Item J.**

**M. DISCUSSION / POSSIBLE ACTION:**

- Upcoming Public Hearing on 8/14/17 at 7:30PM re: Stormwater Fee Increase from \$36 to \$52 for three years and then a further increase to \$64 in 2020 and thereafter.
- Upcoming Public Hearings being prepared for advertisement at P&Z and Council re: FLUM

Clerk is preparing the text and map to get the notices mailed out and the legal advertising done.

**N. PUBLIC COMMENTS: none**

Attorney leaves.

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

CM Dist. 1: CM Ball: He is bringing this up because he has got calls. KellWill (Route 1 Motorsports) agreed to have the sign at a 30-sec streaming limit. What is a realistic – don't put handcuffs on him. See what he had agreed to at the last meeting.

CM Ball also wanted to relay a recent conversation with the father of a new volunteer at the Fire Department. The father was delighted with the way the Chief mentored his son and was amazed with the value received back to the son. It was greatly appreciated.

CM Mahoney also was relieved that the resolution was pulled. Mr. Poteat wanted Malabar approval on their plan before taking his plan to FDOT and TAC.

CM Dist. 2: CM Mahoney: Suggest the corrected minutes go up with the original package for the public's benefit. She requested a copy of the most recent payroll register.

CM Dist. 3: CM Rivet: Got some input from citizens – we haven't done the budget resident review committee. It was a mistake to not involve the citizen in that process. We need to be as much of the experts from the citizens – having the board encourages them to participate. For next year, we should form a resident's budget review board. CM Korn make sure what we do is well discussed with the residents.

CM Dist. 4: CM Korn: Action on the Town's desires on what we want done re: SR514. They are not clear as a council on any of the issues related to that. Don't want to be railroaded into saying something they do not intend. Sand Hill Crane junior was killed by a careless driver. Put the word out. People need to be careful. Would like to ask for increased enforcement in this area. That is what we pay the BCSO for. Make sure what is done by Council adds to the comfort and safety of our residents. CM Ball is in total agreement. Every time they give us a presentation it is changed. There is a triangle in front of Krieger's that will be a lake. There is precious little commercial land now.

CM Dist. 5: CM Kohler: Also wanted to give a great thanks to FD and their efforts.  
Mayor: excused

**O. ANNOUNCEMENTS:**

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

**P. ADJOURNMENT: CM Kohler e**

**MOTION: CM Korn /**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:20 PM.

BY:   
Vice-Chair Steve Rivet Acting Council Chair

ATTEST:



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

Date Approved: 8/21/2017



## **ADDENDUM to RTCM MINUTES of AUGUST 7<sup>th</sup> , 2017**

*By Doug Hoyt*

Attached please find a Notice of Cancellation or Nonrenewal for the insurance covering the Malabar Community Association. Ostensibly, this insurance (liability policy?) was in effect for the intended date of Saturday, July 22<sup>nd</sup> 2017. The Town was not furnished a certificate of insurance prior to the event, nor at any time did the Town receive an insurance certificate.

Friday, July 21<sup>st</sup> 2017 (the evening before the Activity) after normal business hours I received a call on my cell phone from an individual purportedly associated with the MCA (Ricky Bisnath) asking if the gate allowing access to the park could be unlocked for the event on Saturday and could the Park be mowed. I was told that he had a certificate of insurance naming the Town as a third party insured. My response was that if they wanted to mow the area in question and had insurance they could proceed with mowing. Mention was made that the activity permit was incorrect as the permit MCA held was for a family activity not a Special Activity Permit and that for a Special Activity the park would have been mowed in a timely fashion. He was also told that the Gate would be open by 8:00 am on the day of the Activity.

For Councils note, under ARTICLE III. Special Activity Permits in the Town Codes starting with Sec. 10-256 ending with 10-264 requirements for this type of park use are far more stringent than for a family activity, including approval by the Council.




# NOTICE OF CANCELLATION OR NONRENEWAL

<b>INSURANCE COMPANY</b> FEDERATED NATIONAL INSURANCE CO. 14050 N.W. 14TH STREET # 180 SUNRISE, FL 33323-0000	<b>KIND OF POLICY</b> General Liability  <b>POLICY NO.</b> HM-0000016051-00  <b>CANCELLATION OR EXPIRATION WILL TAKE EFFECT AT:</b> 9/23/17 (DATE) 12:01AM (HOUR STANDARD TIME) 8/07/17  <b>ISSUED THROUGH AGENCY OR OFFICE AT:</b>  11276/000 KIM JONES AGENCY, INC.* KIMBERLY JONES WHITAKER 1003 S WASHINGTON AVE TITUSVILLE, FL 32780-0000
<b>NAME AND ADDRESS OF INSURED</b> MALABAR COMMUNITY ASSOCIATION 346 CAMELOT AVENUE MALABAR, FL 32950-0000	
<b>NAME AND ADDRESS OF ADDITIONAL INSURED / MORTGAGEE HOLDER / LIENHOLDER</b> TOWN OF MALABAR 2725 MALABAR ROAD MALABAR, FL 32950	

<b>CANCELLATION</b>	<input type="checkbox"/>	You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that your insurance will cease at and from the hour and date mentioned above for the <b>reason(s)</b> stated in the "Important Notices" section below. See the "Important Notices" below for other information that may apply.
	<input checked="" type="checkbox"/> <b>FL only</b>	You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that your insurance will cease at and from the hour and date mentioned above for the <b>reason(s)</b> stated in the "Important Notices" section below. You are permitted by law to appeal this cancellation. An appeal must be filed no later than 20 days before the effective date of cancellation set forth in this Notice. Forms for such appeal and the regulations pertaining thereto may be obtained from the offices of the Department of Insurance. The Department of Insurance does not have the authority to extend the effective date of cancellation; therefore you should obtain replacement coverage prior to the effective date of cancellation. (Appeals is not permitted in the case of cancellation for nonpayment of premium.) See the "Important Notices" below for other information that may apply.
<b>NON-RENEWAL</b>	<input type="checkbox"/>	You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed for the reason(s) stated in the "Important Notices" section below.
<b>IMPORTANT NOTICES</b>		Reason(s) for cancellation, nonrenewal of policy (reason(s) stated only if above marked item indicates such.) COMPANY REQUEST  DOCS NOT RECEIVED

<input type="checkbox"/>	<b>TO LIENHOLDER:</b> You are hereby notified that the agreement under the Loss Payable Clause payable to you as Lienholder, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.
<input type="checkbox"/>	<b>TO MORTGAGEE:</b> You are hereby notified that the agreement under the Loss Payable Clause payable to you as Mortgagee, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.
<input checked="" type="checkbox"/>	<b>TO ADDL. INSURED/CERTIFICATE HOLDER:</b> You are hereby notified that the agreement under the Loss Payable Clause payable to you as Additional Insured/Certificate Holder, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.

<b>PRODUCER / AGENT:</b> 11276/000 	(If notice of cancellation or nonrenewal is mailed to the Insured, Lienholder or Mortgagee, complete the following.)  I hereby certify that I personally mailed in the U.S. Post Office, at the place and time stamped hereon, a notice of cancellation or nonrenewal to the insured, lienholder or Mortgagee, an exact carbon copy of which appears above, and at said time received from the U.S. Postal Service the receipt made a part hereof or attached hereto.  Signed this <u>05</u> day of <u>August</u> 20 <u>17</u> Signature <u>J. GORDON JENNINGS III</u>
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# **SWAP MEET & TRUCK SHOW**

## **BUY - SELL - SWAP - TRADE!**

Music By



*Free to Shop!*  
*Free to Browse!*



**Saturday**  
**July 22, 2017**  
**3:30 - 7:30 PM**

### **SWAP MEET**

Home Made Wares,  
Artwork, Crafts,  
Produce/Food,  
Auto Parts,  
Tools & Equipment,  
Garage Sale Items

### **TRUCK SHOW**

Come See  
Giant Custom Trucks!  
Trophies!  
Buy, Sell, Trade, Parts &  
Accessories, Raffles,  
& more!

**PRE-REGISTER ONLINE by 6 PM July 21<sup>st</sup>**

**[www.malabarcommunityassoc.com](http://www.malabarcommunityassoc.com)**

All Vendors & Trucks must be Registered & Paid by 2:30 PM Day of Event.  
Payment is Due at Day of Event; We can only accept Cash or Checks.

### **Swap Meet & Vendor Registration**

A 10 x 10 space is \$5 when you Pre-Register, \$10 Day of Event  
Bring your own Table, Chair, Pop Up Tent

### **Truck Show Registration**

\$10 when you Pre-Register, \$15 Day of Event

**MALABAR COMMUNITY PARK**

1840 Malabar Road, Malabar, FL 32950

RE: Objection to Ordinances 2017-06 & 2017-07

kbohne@fla-lawyers.com

Mon 8/7/2017 10:18 AM

To: Laura Mahoney <cmdist2@townofmalabar.org>;

Regardless of any "Code of Conduct" that may or may not be adopted by the Town, all public officials are bound by the Florida Code of Ethics. That being said the code of ethics does not cover all the areas encompassed by the 2 proposed ordinances.

Karl W. Bohné, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
321-255-3737 Telephone  
321-255-3141 Facsimile

**Office Hours:**

8:30 a.m. to 5:00 p.m. Monday thru Thursday  
8:30 a.m. to 12 Noon on Friday

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**From:** Laura Mahoney [mailto:cmdist2@townofmalabar.org]

**Sent:** Monday, August 07, 2017 9:54 AM

**To:** kbohne@fla-lawyers.com

**Subject:** Fw: Objection to Ordinances 2017-06 & 2017-07

Your thoughts?

RTCN,  
8/7/17

From: Karl : <karlenec@cfl.rr.com>  
Sent: Sunday, August 6, 2017 8:01 PM  
To: Grant Ball; Laura Mahoney; Steve Rivet; Dick Korn; Richard Kohler  
Cc: Pat Reilly  
Subject: Objection to Ordinances 2017-06 & 2017-07

Our Objection to:

- ORDINANCE 2017-06- AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR A TOWN COUNCIL CODE OF CONDUCT AND PENALTIES FOR VIOLATION; ETC.
- ORDINANCE 2017-07 – AMENDING CHAPTER 2 TO PROVIDE FOR BOARD/COMMITTEE CONDUCT – AMENDING DIVISION 1 OF ARTICLE VIII OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-16; PROVIDING FOR DEFINITIONS; PROVIDING FOR A BOARD AND COMMITTEE CODE OF CONDUCT AND PENALTIES FOR VIOLATION, ETC.

First reading August 7, 2017, Town Council Meeting.

At the June 5<sup>th</sup> TCM meeting, the mayor, prompted by the jokes he'd heard about Palm Bay's problems at the Civilian Military & League of Cities meetings he attends, suggested to council that they might want to discuss signing a Code of Conduct for Council at the next meeting. The mayor said it was already written, he just changed Palm Bay to Malabar. CM Korn said to make it available at the next meeting.

Most of you on council willingly signed this document prior to the June 19<sup>th</sup> meeting with very little discussion *at the meeting*. You overlooked serious problems with this Code of Conduct document and then agreed to turn it into an Ordinance.

Now, with the Agenda for the August 7<sup>th</sup> meeting giving notice of First Reading for 2 Ordinances for Amendments to Chapter 2, we discover that Board and Committee members will also be subject to an Ordinance. Did we miss something between that council meeting and this action? When was this decided?

**1) First objection: we are not Palm Bay so why are we emulating their doctrines or policies?**

**2) Why are these amendments and ordinances needed when Conduct is already covered in:**

- Part 1 of Charter, Article VI – Sec. 6.02. - Conduct of Officials in Office

The officials of the Town of Malabar will [be] held to standards in office set forth in the Florida Statutes as required by law. These statutes hold officials statewide to standards of conduct concerning conflict of interest, ethics and morality as it affects their performance of duty in office. Ramifications for violations of these standards are set forth in the Florida Statutes. (*Ord. No. 95-3, § 1, 7-17-95; Amd. of 3-25-03*)

**3) These ordinances jeopardize and threaten your council positions as well as board and committee positions.**

**#2 a)** affirms that "the proper statutory and Town Charter role of the members of the Town Council... is to act collectively, not individually, to set and/or revise and/or to apply the town's governing policies and that the TA and staff administer such policies."

- This conflicts with a council member's ability to disagree with any given policy.

- A nity vote of council sets policy under town law so mandat. that council "act collectively" is a contradiction.
- Charter Part 1, Article II, Section 2 covering Council says nothing about members having to act collectively.

**#2 b)** Instructs council members not to intrude into daily operations of the town administrator or undermine the TA's lawful authority.

- this contradicts Chapter 2, Article IX – Town Administrator, Sec. 2-300 Office of Town Administrator:

**(b)** the town administrator shall serve at the will and pleasure of the council, and

**(e)** the town council shall have the power to review any action of the town administrator, and may direct the town administrator in any of his or her actions.

- It also contradicts Charter Part 1, Article I, Sec. 1.05 and Sec. 1.06 that state the legislative powers of the Town shall be vested in and exercised by a town council and the form of government of the Town shall be known as the Strong Council Plan.

**#2 (g)** instructs council members to refrain from demanding, interruptive access to staff or immediate responses or services when requesting information that requires significant staff time... Such requests will be made through the town administrator for scheduling and prioritizing through consensus of the town council.

Problems:

- council members become subordinated to staff. Staff is under the administrative direction and control of Council.
- who interprets "demanding, interruptive access to staff"? Staff or council?
- requiring requests be made through the town administrator for scheduling and prioritizing through consensus of the town council is a dangerous precedent to set. You are subjecting council to the town administrator and staff again, and now adding a consensus of council to get information from staff. Council is supposed to be in charge, not the other way around.
- this also interferes with 2 H

**#2 (h) "I will devote adequate time for preparation prior to town council meetings and as much as possible."**

- 2g above presents stumbling blocks to obtaining information that a council member may need to properly prepare for imminent or upcoming town business.

**#2 (r) "I will be accountable to the Town Council for violations for this code of conduct."**

- You are setting up a police state with these ordinances.

**#3 (a) and (b) – Penalties for Violation of Code of Conduct**

- Why revise when already covered in:
- Part 1, Article II, The Town Council, Section 2.08 Vacancy and Forfeiture of Office and
- Part 1, Article VI, Sec. 6.01 Recall and Sec. 6.02 Conduct of Officials in Office.

**4) Re: Boards and Committees**

- Be reminded: Chapter 2, Article VIII – DIVISION 1. Sec. 2-211. – General procedures for all boards and committees reads:

Citizen participation is vital to a democratic government. The Town of Malabar recognizes the unique contributions made by volunteers and encourages involvement in the policy-making process through service as an advisory board member. Boards and committees are standing bodies established by town ordinance and appointed by the town council to provide ongoing board/committee recommendations to town council on diverse matters of public concern.

These ordinances overreach, repress, and restrict anyone volunteering to be on council, boards, or committees. We urge you to reject these ordinances for the reasons stated above and because they will likely lead to a severe shortage of volunteers in the future.

Karlene & John Conroy  
Alexander Lane, Malabar

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

# Fw: Code of Conduct Ordinances

Laura Mahoney

Mon 8/21/2017 1:48 PM

RTCM  
8/7/17

To: Debby Franklin <townclerk@townofmalabar.org>; Douglas C. Hoyt <dhoyt@townofmalabar.org>; Pat Reilly <mayor@townofmalabar.org>; Dick Korn <cmdist4@townofmalabar.org>; Steve Rivet <cmdist3@townofmalabar.org>; Richard Kohler <cmdist5@townofmalabar.org>; Grant Ball <cmdist1@townofmalabar.org>;

Cc: kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>;

I noticed this was missing from the packet as you all should have received before the last council meeting. Please note the attorney's responses especially of note number three's response, and the advice to possibly refine some verbiage in number two (g).

Will see you tonight!

Laura

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**From:** kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

**Sent:** Monday, August 7, 2017 1:39 PM

**To:** Debby Franklin; Douglas C. Hoyt

✓ Laura Mahoney

**Subject:** Code of Conduct Ordinances

Please forward to all Council members.

Councilmember Mahoney provided me an email from a citizen posing objections to the Code of Conduct " Ordinances for tonight. She had asked that I detail the interaction between the proposed ordinances and Florida's Ethics Law. Below is the comparison and analysis. I have reproduced the objection email below and my replies are in red. While some of the provisions of the proposed code of conduct state the obvious, other provisions identify situations that are not covered by other areas of the law.

## Florida Ethics Law for Public Officials

The Florida Ethics Law is found at FS 112.311 through 112.3261. The ethics laws is designed to provide how public officials act on a broad scale. It covers such things as employment of relatives, voting conflicts, dual office holding, financial disclosure, receipt of gifts, conflicting employment, corrupt misuse of position, etc. The ethics law does not address any conduct that may be particular and more local.

That is why some municipalities have adopted additional conduct requirements consistent with FS 112.326: "Additional requirements by political subdivisions and agencies not prohibited.—Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees **additional or more stringent standards of conduct** and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part. "

), notwithstanding any other provision of law or ordinance, Florida Law provides:

112.51 Municipal officers; suspension; removal from office.—

(1) By executive order stating the grounds for the suspension and filed with the Secretary of State, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.

In addition that same statute provides for removal for a conviction of a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.

So in addition to any code of conduct and penalties adopted by the Town the governor still retains the right to suspend/remove pursuant to the above. In my opinion a Town adopted code of conduct probably does not fall within the provisions of 112.51

**Malabar Proposed Codes of Conduct.** Instead of going line by line of the proposed ordinances, I thought it better to address the particular concerns addressed below.

1) First objection: we are not Palm Bay so why are we emulating their doctrines or policies?

Most municipal code of conducts have the same basic elements. So Town staff gathered the information from Palm Bay in an effort to save a significant amount of time and money for the basis of the ordinances. While codes of conduct may differ between municipalities, based on any given circumstances most are consistent.

2) Why are these amendments and ordinances needed when Conduct is already covered in:

- Part 1 of Charter, Article VI – Sec. 6.02. - Conduct of Officials in Office

The officials of the Town of Malabar will [be] held to standards in office set forth in the Florida Statutes as required by law. These statutes hold officials statewide to standards of conduct concerning conflict of interest, ethics and morality as it affects their performance of duty in office. Ramifications for violations of these standards are set forth in the Florida Statutes. (Ord. No. 95-3, § 1, 7-17-95; Amd. of 3-25-03)

As I indicated the state ethics law is designed to cover how an individual acts as a public official and does not necessarily cover those micro-situations as is defined in the proposed ordinances such as how members treat staff, the public or how no council member has any right to make a decision or direct staff.

3) These ordinances jeopardize and threaten your council positions as well as board and committee positions.

These ordinances create a civility code in some instances, define the role of any one council person relating to directing staff, conduct during meetings. While some of the proscribes are common sense items, putting them down in writing eliminates any ambiguity.

#2 a) affirms that “the proper statutory and Town Charter role of the members of the Town Council... is to act collectively, not individually, to set and/or revise and/or to apply the town’s governing policies and that the TA and staff administer such policies.”

- This conflicts with a council member’s ability to disagree with any given policy. A council member will always retain that right. It reaffirms no one councilmember has any right to set any policy, direct staff, or make decisions for the Town unless the council so proscribes such duties to one council member and it reaffirms the right of the Town Council to act, not one individual, on behalf of the Town

- A majority vote of council sets policy under town law so mandating that council “act collectively” is a contradiction. Majority vote controls, the term “collectively” reaffirms that the Council as a body acts and not just one person. It does not say unanimously, but collectively.

- Charter Part 1, Article II, Section 2 covering Council says nothing about members having to act collectively. See above

#2 b) Instructs council members not to intrude into daily operations of the town administrator or undermine the TA’s lawful authority.

- this contradicts Chapter 2, Article IX – Town Administrator, Sec. 2-300 Office of Town Administrator:

(b) the town administrator shall serve at the will and pleasure of the council, and again reaffirms no one council member has authority to act, rather it is a council decision

(The town council shall have the power to review any action of the town administrator, and may direct the town administrator in any of his or her actions. See above. The council can as a collective body direct the TA, not just one member.

- It also contradicts Charter Part 1, Article I, Sec. 1.05 and Sec. 1.06 that state the legislative powers of the Town shall be vested in and exercised by a town council and the form of government of the Town shall be known as the Strong Council



Plan. Again, the council is always the final decision maker. No one councilmember can make a staff decision or any decision for that matter unless so authorized by the council. The Town Council has the Charter Power to establish administrative units of government and did so by creating the office of the TA.

#2 (g) instructs council members to refrain from demanding, interruptive access to staff or immediate responses or services en requesting information that requires significant staff time... Such requests will be made through the town administrator for scheduling and prioritizing through consensus of the town council.

Problems:

- council members become subordinated to staff. Staff is under the administrative direction and control of Council. It does prevent any one council member from acting in the place of the town council, of course the town council can always set priorities if it chooses to do so.
- who interprets "demanding, interruptive access to staff"? Staff or council? Not sure. It is subjective. May need to be refined.
- requiring requests be made through the town administrator for scheduling and prioritizing through consensus of the town council is a dangerous precedent to set. You are subjecting council to the town administrator and staff again, and now adding a consensus of council to get information from staff. Council is supposed to be in charge, not the other way around. I understand this concern. So rather than feeling constrained, a council member can always have their matter brought up during their report. It may be advisable for the council to create a list of prioritized matters that staff will need to address sooner rather than later.
- this also interferes with 2 H

#2 (h) "I will devote adequate time for preparation prior to town council meetings and as much as possible."

- 2g above presents stumbling blocks to obtaining information that a council member may need to properly prepare for imminent or upcoming town business. Council will need to set a list of priorities.

#2 (r) "I will be accountable to the Town Council for violations for this code of conduct."

- You are setting up a police state with these ordinances. Council members are always accountable for their actions.

" (a) and (b) – Penalties for Violation of Code of Conduct

Why revise when already covered in:

- Part 1, Article II, The Town Council, Section 2.08 Vacancy and Forfeiture of Office and
- Part 1, Article VI, Sec. 6.01 Recall and Sec. 6.02 Conduct of Officials in Office. The proposed Code of Conduct identifies that a violation of the code of conduct forms a ground for penalties, including possible forfeiture for violating the adopted code of conduct of the town. Unless a code of conduct is established that covers more than the Ethics Law in my opinion no penalties can be imposed by the council. The provisions of Chapter VI of the Charter dealing with recall is a right enjoyed by the electorate. ^02 merely reaffirms the requirement to conduct oneself in accordance with the State Ethics Laws.

4) Re: Boards and Committees

- Be reminded: Chapter 2, Article VIII – DIVISION 1. Sec. 2-211. – General procedures for all boards and committees reads:

Citizen participation is vital to a democratic government. The Town of Malabar recognizes the unique contributions made by volunteers and encourages involvement in the policy-making process through service as an advisory board member. Boards and committees are standing bodies established by town ordinance and appointed by the town council to provide ongoing board/committee recommendations to town council on diverse matters of public concern.

Karl W. Bohne, Jr.

Schillinger & Coleman, P.A.

1311 Bedford Drive

Melbourne, FL 32940

321-255-3737 Telephone

321-255-3141 Facsimile

Office Hours:

8 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

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