

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**  
**MARCH 19, 2018                      7:30 PM**

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

**A.     CALL TO ORDER:**

Council Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm.

**B.     ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

LAURA MAHONEY

DICK KORN

DANNY WHITE

TOWN ADMINISTRATOR:

DOUGLAS HOYT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

**C.     APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**

CM Mahoney also asked to remove #4 as regulations for pharmacies should also go to PZ Board first. Chair asked for Vote: All Ayes to send Ord 2018-03 to P&Z Board.

**D.     CONSENT AGENDA:**

**1.   Regular Town Council Meeting Minutes 3/05/18**

**Exhibit:**

Agenda Report No. 1

**Recommendation:**

Request Approval

**MOTION:** CM Rivet / CM Ball to approve the 3/19/18 minutes as presented.

Chair asked if there were any changes. **Vote:** Ayes, 5; Nay, 0.

**E.     ATTORNEY REPORT:** nothing

**I.     STAFF REPORTS:**

**ADMINISTRATOR:** PW continues to work on stormwater project at the west end of Hall Road. TA continued that Engineer Morris Smith finished the drawings for the Atz Road piping project with catch basins. The Eva Lane hard surfacing project started last week.

**FIRE CHIEF:** Deputy Chief Joe Giantonio made report. (attached)

**CLERK:** Nothing

**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 Card: Skip Hard read from paper.

**K.     PUBLIC HEARINGS/SPECIAL ORDERS: 1**

**2.   Building Codes Adopted (Ord 2018-01)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report 2

**Recommendation:**

Request Adoption Ord 2018-01

Ordinance read by title only.

**PH opened:** none

**PH closed:**

**MOTION:** CM Rivet / CM White to adopt Ord 2018-01.

**ROLLCALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion Carried 5 to 0.

**L. UNFINISHED BUSINESS/GENERAL ORDERS**

**ORDINANCES FOR FIRST READING: 2-1 (one was pulled)**

**3. Sign Code Update (Ord 2018-02) 1st Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE TOWN; AMENDING ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION, ANNUAL LICENSE; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMIT, CERTIFICATE AND LICENSE FEES; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**Exhibit:**

Agenda Report No. 3

**Recommendation:**

Approval of 1<sup>st</sup> Reading of Ord 2018-02

Ordinance read by title.

Speaker Card: Liz Ritter – When the PZ Board did their recommendation to Council the Attorney said they did a good job.

**MOTION:** CM Rivet / CM White to approve Ord 2018-02 on 1<sup>st</sup> Reading.

CM Mahoney said P&Z asked for clean copy and why sign fees are no longer charged and got no response. In going through the Ord after P&Z the Atty had to eliminate content based signage. CM White said send it back to P&Z as a clean copy and ask them to review it and submit their recommendation. Atty said signs by their very nature are content based.

Atty said they may want to simplify it. CM Ball raised good point – making it simpler. Atty said there should be permit fees. Franklin clarified that the building permit fees have been and continue to be collected for signage permits. The Attorney is referring to an annual sign fee. That collection process was stopped in 2002 and would have to be completed restarted from the ground up. There is nothing that can be reactivated. Physical inventory of signs would be required and there is no staff to do that function.

Mayor said his concern is if the ordinance is dumbed down to the point that it defeats the Supreme Court ruling. CM Ball asked how do we go too far if it is content neutral?

**MOTION:** CM Mahoney / CM Rivet to table and send to P&Z Board. Vote: All Ayes.  
Franklin will send clean copy to Board.

Pulled to send to P&Z first.

**~~4. Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03) 1st Reading~~**

**RESOLUTIONS: 0**

**MISCELLANEOUS: 1**



5. **Allocate Road Materials (acct 541.4610) funds to Complete Quarterman Lane Improvements of the Approved Portion of Road**

**Exhibit:** Agenda Report 5

**Recommendation:** Council Approval

**MOTION:** CM White / CM Rivet to approve this allocation from the approved budget line item.

Discussion: CM Mahoney said so the 15K being requested is less than what was reported in package. Franklin stated the agenda report listed the approved budget amount and the current estimate of the remainder of that line item – not the estimated cost.

**Vote:** All Ayes.

**M. DISCUSSION/POSSIBLE ACTION:**

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

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

CM Ball: Suggested starting the budget workshops earlier this year. CM Ball said the process seemed to sneak up on them last year.

CM Mahoney: (Report attached) Thanked public for their input. They can use public input by asking Clerk about the Budget to Actual and having it explained. Also asked at the last meeting for a PW report on what had been completed.

CM Rivet: Nothing

CM Korn: Website is very informative.

Mayor: thanked everyone for the SCLC Dinner Mtg last week. He also wanted to thank Debby and Rebekah of Grant Valkaria for their efforts in its success.

**P. ANNOUNCEMENTS:**

**Q. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:30PM.

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

ATTEST:

Debby K. Franklin

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

Date Approved: 4/16/2018

**C. Approval of Agenda –**

**Pg 1**

> **Remove #3 Sign Code Update (Ord 2018-02)** –Planning and Zoning did not receive finalized update. Let's not bypass our town's government system --Planning and Zoning Board.

> **Remove #4 Pharmacies (Ord 2018-03)** needs to go back to Planning and Zoning as Pharmacies are not approved in our Town Code as of yet and must not bypass our town's government system specifically our Planning and Zoning Board.

**D. Consent Agenda**

**Minutes:**

My request would be all corrections be listed within the actual date of the minutes being corrected.

Possible second option would be a "notice" that corrections would be in the next Council meeting minutes.

**I. Staff Reports:**

**Administrator:**

BeeKeeper Lane's owner Stewart has apparently moved past the initial dirt projects that I pointed out to you in November to structures appearing like a third world country. Some people have said it is becoming an eye soar. Do you need Council's help to direct some sort of action?

Railroad Crossing expenses vs. business's financial benefits to the taxpayers. Possibly look into other alternatives. I have learned there are TPO moneys available for some smaller projects. Maybe we could look to our future combining a road out with the Trails and Greenways system. Let's be proactive in finding a solution. This was a big fiscal mistake in the first place.

**Fire Chief:** Could we get a possible pro/con report on cancelling our fire truck purchase agreement, including financials? Thank you

#### **H. Public Hearings/Special Orders: 1**

##### **2. Building Codes Updated (Ord 2018-01) 2<sup>nd</sup> Reading**

-Last meeting Attorney directed we need to adopt due to state and county updates and amendments –yearly housekeeping item.

I approve

##### **3. Sign Code Update (Ord 2018-02) 1<sup>st</sup> reading**

> Planning and Zoning asked for completed amended code to review and had not received as of last P&Z meeting

> No fees approved by P&Z- We must not ignore our governmental process.

> We should wait for the P&Z Board to review.

##### **4. Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03)**

>If we do not remove this from Agenda, I'd suggest we do not allow. If there is a lot of public interest to change our Code, put on this year's ballot.

>Let's not be hasty in making changes to our Town's Code and tables.

> I'd like to state for the record, my opinion has nothing to do with being for or against medical marijuana- this is **NOT** the issue.

##### ***Last week's concerns:***

*(Pg. 2 "a municipality that choose to allow them cannot limit the number of dispensaries within their boundaries."*

>We need to be sure to protect our town charter and rural nature.

>Does our existing Code provide needed protection for property owner's rural nature? )



**Miscellaneous: 1**

**5. Allocate Road Materials funds to complete Quarterman Lane Improvements of the Approved Portion of Road.**

**L. Reports:**

**District 2:**

I'd like to thank the public for your involvement. I'd encourage the public to start getting involved in the budgeting process at this time. Ask for the quarterly actual reports from Debby and discuss them with her. We could use public input during both our auditing and budgeting processes.

Also a reminder:

*From last Council meeting:*

*Public Works,*

*The public would be pleased to have a report such as work completed for the month. The taxpayers should be informed.*

*I'd like to add this to the next RTCM agenda, March 19<sup>th</sup>.*

**Thank you!!!**

**Laura**

**Skip Hard**

Public -  
3/19/18  
5 pp

**Subject:** Korn's Lie

8  
During the RTCM of March 5<sup>th</sup>, 2017, Councilmember Korn used bullying and cowardly tactics to intimidate fellow Councilmember Laura Mahoney, by repeatedly saying that she had lied on her election financial statement.

Quoting Councilman Korn, "Two years ago you filed a lie for your financial statement saying that you didn't spend a dime. That was the statement you turned in. I got that from the state too."

Our Town Ordinance 2017-07, section 2 Code of Conduct, subsection d, states, "I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.

Since our Ordinance 2017-07 imposes NO PENALTIES for non-compliance, it is effectively USELESS to control the actions of Councilmember Korn, and therefore should be repealed.

Councilmember Korn's comments were cowardly. He knew he was protected from a lawsuit for his slanderous statements because he was a sitting member of our Town Council during a town Council meeting. OUTRAGEOUS!

Meanwhile, Councilmember Laura Mahoney continues serving OUR town, while dealing with this HOSTILE WORK ENVIRONMENT.

Mr. Korn, you will be held accountable.

Accountability and Transparency

William H. (Skip) Hard, Jr.

ORDINANCE 2017-07

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.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

**SECTION 1.** Division 1 of Article VIII of Chapter 2 of the Code of Ordinances of the Town is amended by adding a new Section 2-216 to read as follows:

**Sec. 2.-216. Town Board and Committee Code of Conduct.**

"In addition to adhering to the requirements of state law, all current and future councilmembers shall commit to the following code of conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

**1. Definitions:** For purposes of this section the following definitions shall apply:

-Town Council shall mean collectively the 5 elected councilmembers and the office of the Mayor, *See Town Charter 2.02.*

-Town Administrator shall mean the Town Administrator, or designee, of the Town of Malabar. *See Section 2-300 (c) of the Code of Ordinances of the town*

-Town or town shall mean the Town of Malabar

-Board or Committee shall mean any public body established by the Town Council, including but not limited to Planning and Zoning Board, Board of Adjustments, Parks and Recreation Board, and Trails and Greenways Committee.

**2. Code of Conduct**

(a) I affirm that the proper Statutory and Town Charter role of Members of appointed Town Boards or Committees, as with any Member of an appointed government body, is to act collectively, not individually, to apply the Town's governing policies, and that the Town Administrator and Staff administer such policies.

(b) I understand that an appointed Board or Committee Member does not manage the affairs of the Town. I will not intrude into daily operations or spheres of responsibility designated by Florida Statutes, Town Code, and Town Charter to the Town Administrator; or undermine the Town Administrator's lawful authority. Further, I understand that the Town Administrator is responsible for administering the policy direction established by a majority vote of the Town Council and not the individual wishes of Board or Committee Members. *See Article IX, Chapter 2 of the Code of Ordinances of the Town.*



- (c) I will represent the interests of the entire Town when making decisions and will rely upon available facts and my independent judgment. In my capacity as an appointed Board or Committee Member, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.
- (d) I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.
- (e) In my capacity as an appointed Board or Committee Member, I will refrain from inappropriate language including statements that are malicious, threatening, slanderous, disparaging, mean-spirited, vulgar or abusive. All disagreements, concerns or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an appointed official and the honor of my respective Town Board or Committee.
- (f) I will focus on solving problems. I will maintain appropriate decorum and professional demeanor in the conduct of Town business and work cooperatively and conscientiously with others as I request or receive information, examine data or weigh alternatives in the decision-making process.
- (g) I will demonstrate patience and refrain from demanding, interruptive access to Staff or immediate responses or services when requesting information that requires significant Staff time in research, preparation or analysis or that will result in Staff neglect of urgent duties. Such requests will be made through the Town Administrator for scheduling and prioritizing through consensus of my respective Town Board or Committee.
- (h) I will devote adequate time for preparation prior to my respective Town Board or Committee meetings and as much as possible, I will be in attendance at such meetings and all other scheduled events where my participation is required.
- (i) I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.
- (j) I will listen actively and objectively to others' concerns or constructive criticisms.
- (k) I will refrain from any individual action that could compromise lawfully authorized decisions of the Town or the integrity of the Town and my fellow Board or Committee Members. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a Town Board or Committee Member.
- (l) I will maintain in confidence any privileged or confidential information, as provided by law, provided to me by the town and will not disclose such information publicly or to any person who has not been duly authorized by the town to receive such information, unless such disclosure is duly authorized by the Town Council or required by law.



T In addition, I will refrain from copying any written privileged or confidential documents provided to me by the town and will keep such documents in safekeeping. Further, upon leaving office or upon request by the Town Council, I will return to the town any privileged or confidential documents or materials or town property provided to me by the town while serving on the town council.

(m) I will abide by all laws of the state applicable to my conduct as a member of the Town Council, including, but not limited to, the Government in the Sunshine Law, the Florida Public Records Law, the Florida Code of Ethics for Public Officers, and town rules of procedure and codes of conduct.

(n) I will promote constructive relations in a positive climate with all Members of the Town Council, Town employees, Town Attorney, and Town contractors and consultants consistent with my role as a Board or Committee Member, as a means to enhance the productivity and morale of the Town. I will support the Town Administrator's decision to employ the most qualified persons for Staff positions. I will recognize the bona fide achievements of the Town Council, Town Administrator, Staff, Town Attorney, Town contractors and consultants, business partners, and others sharing in, and striving to achieve, the Town's mission.

7 (o) I will enhance my knowledge and ability to contribute value to the Town as a Board or Committee Member by keeping abreast of issues and trends that could affect the Town through reading, continuing education and training. I will study policies and issues affecting the Town, and will attend training programs if required by the Town. My continuing goal will be to improve my performance as a Board or Committee Member.

(p) I will value and assist my fellow Board or Committee Members by exchanging ideas, concerns, and knowledge through lawful means of communication. I will help build positive community support for the Town's mission and the policies established by the Town Council.

(q) I will support and advocate for my beliefs, but will remain open to understanding the views of others. I recognize that I share in the responsibility for all Town decisions that my respective Board makes and will accept the will of the majority.

(r) I will always hold the best interests of the citizens of the Town and the public health, safety and welfare of the community in the highest regard. I will seek to provide appropriate leadership that nurtures and motivates Town citizens to be stakeholders in the affairs and achievements of the Town.

(s) I will be accountable to the Town Council for violations of this Code of Conduct.

**3. Penalties for Violation of Code of Conduct.** As is allowed by law and the Town's Charter and code of ordinances, the Town Council reserves the right to impose any penalty for a violation of this Board and Committee Code of Conduct, including removal as allowed by and in accordance with the procedures of law."

**SECTION 2. CONFLICT.** All ordinances or resolutions or part of ordinances or resolutions in conflict herewith are hereby repealed.



**SECTION 3. SEVERABILITY.** If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

**SECTION 4. CODIFICATION.** It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of Section 1 of this ordinance to be incorporated into the Code of Ordinances.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon passage and adoption.

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

Council Member Grant Ball  
Council Member Laura Mahoney  
Council Member Steve Rivet  
Council Member Dick Korn  
Council Member Richard Kohler

NAU  
NAU  
Aye  
Aye  
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 21 day of August, 2017.



By: TOWN OF MALABAR  
Patrick T. Reilly  
Mayor Patrick T. Reilly  
Council Chair

1<sup>st</sup> Reading: 8/7/17 3 to 2

2<sup>nd</sup> Reading: 8/21/17 3 to 2

ATTEST:

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

Approved for Legal Sufficiency:

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