

**4543234567890 TOWN OF MALABAR  
TOWN COUNCIL MEETING  
MONDAY APRIL 6, 2015  
7:30PM  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

---

**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE
  - B. ROLL CALL
  - C. ADDITIONS/DELETIONS/CHANGES
  
  - D. CONSENT AGENDA: none
    - 1. **Approval of Minutes** Regular Town Council Mtg – 3/2/15, 3/16/15
      - Exhibit:** Agenda Report No. 1
      - Recommendation:** Request Approval of Minutes
  
  - E. **PUBLIC COMMENTS:** Comments may address items that are not on Agenda Items. Comments related to subsequent agenda items may be made prior to Council action on such items. Public Comments do not require a Council response. (Speaker Card Required) **Five (5) Minute Limit per Speaker**
  
  - F. **ATTORNEY REPORT:**
  - G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT:**
  - H. **PUBLIC HEARINGS: 0**
  
  - I. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**
    - 2. **Request from Resident Patrick Reilly: Discuss Mayor's Veto Power**
      - Exhibit:** Agenda Report No. 2
      - Recommendation:** Request Action
  
  - J. **PRESENTATIONS:**
    - 3. **Presentation by Website Hosting Vendor: Audio to Website by Randy Perry of E-City Services**
- ACTION ITEMS:**  
**MISCELLANEOUS:**
- 4. **Approve 1<sup>st</sup> Mtg of month with Attorney; 2<sup>nd</sup> Mtg without (Mayor)**
    - Exhibit:** Agenda Report No. 4
    - Recommendation:** Request Discussion / Action
  
  - 5. **Approve that only the Attorney will Draft Ordinances & Resolutions (Mayor)**
    - Exhibit:** Agenda Report No. 5
    - Recommendation:** Request Discussion / Action

**(No Recess – Attorney Excused)**

**RESOLUTIONS:**

**6. Budget Adjustment – Reso. 06-2015**

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

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Approval of Reso 06-2015

**K. PROCLAMATIONS:**

**L. STAFF REPORTS: ADMINISTRATOR – Reso Supporting EOC funding  
CLERK**

**M. DISCUSSION ITEMS:**

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

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

**P. ANNOUNCEMENTS:**

Two (2) vacancies on the Board of Adjustment

Three (3) vacancies on the Park and Recreation Board

Two (2) vacancies on the Trails & Greenways Committee

One (1) vacancy on the Planning & Zoning Board

**Q. ADJOURNMENT:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: April 6, 2015**

**Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer**

---

**SUBJECT: Approval of Minutes**

---

**BACKGROUND/HISTORY:**

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 3/2/2015 w/ verbatim per Mayor
- Regular Town Council Meeting – 3/16/15

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:**

Draft Minutes of the following meeting:

- Regular Town Council Meeting – 3/2/2015
- Regular Town Council Meeting – 3/16/15

**ACTION OPTIONS:**

The Town Clerk requests approval of the minutes.

“The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council.”

**MALABAR TOWN COUNCIL REGULAR MEETING**

**March 2, 2015 7:30 PM**

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

**A. CALL TO ORDER:**

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

**B. ROLL CALL:**

|                       |                   |
|-----------------------|-------------------|
| COUNCIL CHAIR:        | MAYOR CARL BEATTY |
| VICE-CHAIR:           | MARISA ACQUAVIVA  |
| COUNCIL MEMBERS:      | GRANT BALL        |
|                       | BRIAN VAIL        |
|                       | DON KRIEGER       |
|                       | DICK KORN         |
| TOWN ADMINISTRATOR:   | BONILYN WILBANKS  |
| TOWN ATTORNEY:        | KARL BOHNE        |
| TOWN CLERK/TREASURER: | DEBBY FRANKLIN    |

For the Record, the Fire Chief Christopher Robinson and PW Dir Tom Miliore are also present.

**C. ADDITIONS/DELETIONS/CHANGES:** TA said to pull #7 and she will try to have it ready for next agenda if she gets information back from other towns our size. CM Acquaviva asked to pull #6. She doesn't know why they are getting additional information at the start of the meeting from the Mayor regarding a quote from Everglades. She asked Mayor if Council directed the Mayor. This is a strong Council form of government. They passed a resolution recently that she asked Clerk to distribute showing the duties of the Mayor as spelled out in the Charter. She wanted to know why the Mayor took this action to get a quote. Motion; CM Korn to move it to discussion; Council consensus to do so. Chair, Mayor Beatty wants to allow BCSO Report to go next.

**G. BREVARD COUNTY SHERIFF'S OFFICE REPORT:** Feb had 2 burglaries and 1 vehicle break-in in Jan. Fraud in Jan. Stolen property in Jan and 0 in Feb. CM Vail asked about break-ins in GV. Yes house on US1 and Habitat Golf Course and they caught both culprits. Said there have been a significant increase in roadway accidents in Malabar in Jan.

**C. CONSENT AGENDSA: none**

- |                                      |   |
|--------------------------------------|---|
| <b>1. <u>Approval of Minutes</u></b> | Regular Town Council Mtg – 1/5/15<br>Special Town Council Mtg – 2/17/15 |
| <b><u>Exhibit:</u></b>               | Agenda Report No. 1.  |
| <b><u>Recommendation:</u></b>        | Request Approval of Minutes   |

**MOTION:** CM Vail / CM Acquaviva to approve the Minutes as corrected.

Discussion: CM Acquaviva corrections: 1/5/15 pg 4, 2<sup>nd</sup> line clarifies to state CM Acquaviva was specifically asking about “fire” inspections. On the 2/17/15 minutes, pg 3, 6<sup>th</sup> line, sb “those” minutes not “the” minutes.

**VOTE:** All Ayes.

**E. PUBLIC COMMENTS:** Comments may not address subsequent Agenda Items. **Comments do not require Council response.** (Speaker Card Required) **Five (5) Minute Limit per Speaker.** Speaker's Card: None

**F. ATTORNEY REPORT:** nothing

~~**G. BREVARD COUNTY SHERIFF'S OFFICE REPORT:** Feb had 2 burglaries and 1 vehicle in Jan. Fraud in Jan. Stolen property in Jan and 0 in Feb. CM Vail asked about break ins in GV. Yes house on US1 and Habitat Golf Course and both they caught them. Significant increase in roadway accidents in Malabar in Jan.~~

**BCSO REPORT DONE AFTER "C"**

**H. PARK & RECREATION ADVISORY BOARD CHAIR REPORT:** Chair not present  
**I. PLANNING & ZONING ADVISORY BOARD CHAIR REPORT:** Pat Reilly, Chair said he didn't know he was to present.

**J. PUBLIC HEARINGS: 0**

**K. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**

- 2. **Resident Ms. Laura Mahoney** re: Burning of Yard Waste  
**Exhibit:** Agenda Report No. 2  
**Recommendation:** Request is Open

Laura Mahoney, 2475 Malabar Road, came forward and addressed Council. (Presentation attached and made part of the minutes) She handed out copies of the Preamble. She referred to Ord 2014-03 not allowing any burning at all in Malabar. So for the Rural Residential type of life desiring having a campfire on their own property, it causes a hardship and essentially is the taking of property rights. The open fire restrictions are the only specifically prohibited. DOF doesn't deal with small camp fires; with 200 parks in Brevard alone, requiring permits would require more staff. She explained how her husband prepares and handles their fires. Ms. Mahoney said another point to correct in code is that land clearing can only be done for "future construction". She referenced Daniel Weltons email. She has property in Viera; only 1/6 acre and it produces about as much as their property on Malabar Road. They have burned yard waste on their property on Malabar Road since 2004, when her kids were small.

**MOTION:** CM Korn / CM Ball to amend Ord 2014-03 in Sec 8-73(b) to remove language "land clearing for future construction" and allow permits on a case by case basis and delete the word "prohibited" in Sec 8-83(d) and move sub para Sec 8-83(e) under 8-78. (Motion amended after the following discussion:

Discussion: CM Krieger asked how this ordinance relates to the agreement with DOF. He doesn't think people who have been here for years should have to pull a permit every time they want to burn in their pit. Atty said he can't tell what the relation was to the agreement and ordinance. Franklin said the ordinance was primarily adopted to update the State agency references (FFS instead of DOF and FDACS instead of State). Atty said the ordinance from 1992 prohibited yard waste burning. CM Ball understands what Don is saying. If he has a chiminea and its cool out and occasionally they may want to have an outdoor burn after hours? What about asking to live a rural lifestyle? Atty said it is not the chiminea or other contained pits. This was much discussed during the adoption of Ord 2014-03 and the language was already in the code prohibiting yard waste burning. This prohibition was only for the uncontained open fires. Chief came to podium and said they have residents on file that have

called ahead of time and let them know they were going to burn and have safeguards in place; they are responsible.

CM Korn asked about the 55 gal barrel with mesh screen top in his backyard. Chief said it is technically a contained fire. So is a ringed fire pit. CM Vail said he has a small fire ring and if he wants to have a burn he calls the FD. **Laura Mahoney said the DOF doesn't issue permits for open fires less than eight feet in diameter and less than ten feet in height. For larger fires you have minimum setbacks as referenced in handout.** CM Acquaviva said they have lots of yard waste that is generated and WM is very good about picking it up. Ms. Mahoney said they are right on Malabar Road and if they piled it up on the roadside it could be dangerous for drivers both for vision and safety since palm fronds get blown around easily.

CM Krieger said he wanted language to make it apparent about what is a contained fire – and what is the distance – he heard 75'.

Chief said they have good checks and balances in place now; there is no cost for the permit; they don't want people to burn negligently.

CM Korn, asked about the fires on resident's property in the last year and a half that was done without a permit or calling the FD requiring the FD to respond. CM Acquaviva said she didn't know she could just call Fire Dept to ask for a Special Permit. Chair called FD Chief to podium. He said the only problem is the person who doesn't call. The instance Korn referenced, that particular day was a "no burn" day per DOF. TA explained why we adopted the ordinance so that we could issue permits for burning.

Atty said change Sec 8.73 (b) to allow for a case by case and in Sec 8-83 remove the word "prohibited" from sub para (d). CM Vail asked about reverse 911? No it cost 5K each year. Chief said we have great

Korn said Krieger will have the minutes from this meeting. Krieger thinks it should go to Park Board and P&Z Boards for their review of this before it comes back to Council. Atty said it does not require that but Council can do what they want. CM Acquaviva said she is satisfied with the Council making this decision. Board Members are welcome to attend and participate.

**VOTE:** All Ayes.

**3. Recommendation from Planning & Zoning Board – Maximum Bldg Coverage**  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Request Direction

Presentation from PZ Bd Chair.

Discussion: CM Acquaviva asked if it meant larger buildings. PZ Chair Pat Reilly said that R/LC would allow larger foot prints but over 4,000sf would be a conditional use. He explained the P&Z Board is considering recommendations to change zoning along arterials (Babcock, Malabar and Highway 1) to RLC. Mayor said other commercial districts use a percentage.

CM Krieger said 20% is great. It seems to be what commercial.

Juliana Hirsch from audience, 1035 Malabar Road. 4000 sf is not very big. Some houses are that big.

**MOTION:** CM Korn / CM Ball to recommend option 1 for P&Z Board to explore.

**VOTE:** Ayes 4; Nay, 1 (Acquaviva).

**L. ACTION ITEMS:  
ORDINANCES FOR 1<sup>ST</sup> READING – 0  
RESOLUTIONS - 2**

**4. Authorize Joint Agreement with FDOT (Reso 03-2015)**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Korn to approve Reso 03-2015.

Discussion:

Franklin explained Reso and Atty explained why we are the agent. CM Ball asked Attorney if we are buying in to this and approving it; are we endorsing any other project by approving this. Atty said we are endorsing the lighting project as described in the scope of services only.

CM Krieger said he it looks like it is benefitting a private business. Krieger asked if these are replacement poles or new poles. Franklin said it is four (4) poles in Malabar and five (5) in Palm Bay to light up the curve. This resolution only authorizes the TA to sign a JPA with FDOT for improved street lighting on Hwy 1 at the curve between north Malabar and south Palm Bay boundaries.

CM Ball thought it appeared that this was being pushed through without all the information. Franklin said we have kept Council apprised of this project since November, 2014. She will send out more information.

**ROLL CALL VOTE:** CM Ball, Nay; CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 3 to 2.

**5. Adopt Reso 02-2015 opposing Seismic air-gun testing off the Atlantic Coast in the Search for Oil and Gas**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Mayor read Reso by title only:

Discussion: The Mayor said SCLC and many municipalities have already passed similar resolutions. Mayor said the explosion equates to 250 decibels and he has seen a bunch dolphins that floated to surface.

**MOTION:** CM Acquaviva / CM Vail to approve Reso 02-2015.

Discussion: CM Ball said this sounds very political. He said we are non-partisan and should not endorse one way or the other. CM Korn said the art of politics is about influence. Our input may help influence. Mayor said the State of Georgia has already gone forward with allowing this testing despite what the people wanted.

CM Krieger put out feelers at a couple of Departments at F.I.T. and he has not gotten anything back yet; he only asked yesterday. CM Krieger said this smacks of politics and they shouldn't be involved; or we could table until he hears back from FIT and he (Mayor) gets the additional information to share with Council.

CM Acquaviva asked Mayor why he supports it. He said because the SCLC has adopted it and many municipalities have adopted similar resolutions. He can't name them but he will submit the information he has on this subject so it can be in the next packet. Mayor said he witnessed this test on Duda Ranch. He is thinking about whales and other fish and mammals that could be adversely affected. TA asked if she should write a letter to Senator Nelson. Consensus of Council was to not send a letter. Review material when it is available.

**MOTION:** Ball / Korn to table until more information is provided. **VOTE:** All Ayes.

**MISCELLANEOUS:****The Following Item was moved to Discussion:****DISCUSSION ITEMS:**

6. **Slope Mower Repair Quotes (Council Directive)**  
**Exhibit:** Agenda Report No.6  
**Recommendation:** Request Action Moved to Discussion

*The next item was pulled until TA completes the information gathering.*

- ~~7. **Disposal Process for Declared Surplus (Council Directive)**~~

**(No Recess – Attorney Excused)**

**M. PRESENTATIONS: Thank You Letter to Building Official**

Mayor read letter into the record; it is a letter thanking the Roger Cloutier, Building Official, for his time and efforts in making a cover for the portable sound system.

**N. PROCLAMATIONS: None****O. STAFF REPORTS:**

**ADMINISTRATOR:** None

**TOWN CLERK's Report:**

Clerk explained why she had sent out minutes by subject matter to Council last Saturday. The implication from the 2/17/15 meeting that adequate discussion had not occurred at the time initiated these. This was for the benefit of the new members and a refresher for the other members that the topics discussed at the Special Mtg on Feb 17 had been discussed thoroughly at several meetings starting before the Budget workshops. They covered SW projects, CIP update, Roads and PW and FD vehicle inventory and department status.

SCLC Dinner Meeting is next Monday. We are co-hosts with G-V. Appear to have a good representation from Malabar; Cindi and I will be checking people in as we are the co-hosts.

Audit Report should be delivered to each CM directly from the Auditor later this week. This will be on the 3/16 agenda for acceptance. We do this with a resolution. In the past we have allowed the Audit firm to present at the beginning of the meeting as they have to drive back to Orlando afterwards.

Our Accounting Clerk Jackie Garner is a tremendous asset to our department and has been doing all the Accounts Receivable and Payroll since Jan 1. The separation of duties with me reviewing it all and Cindi doing accounts payable and Jackie doing accounts receivable truly provides clear checks and balances. The Auditor is very pleased with the reports we are able to produce.

Last item is to advise Council that a PRR (public records request) was made of a Board Member for all his emails that related to Town business and copies of his phone bills that included town officials calls. After 13 days he acknowledged my request and stated he had no material that pertained to official business. I am telling you this because it may escalate into a civil matter. It will not involve the Town as I have done as I was supposed to do per F.S. From this point on it will be a civil matter between these two parties. That's all.

TA said Clerk was following direction of the Town Attorney regarding this matter.



TA also said that the Auditor would be happy to come early on the 16<sup>th</sup> to meet with any Councilmember before the meeting; he would have to meet with you individually. Franklin then added that after they review the audit report if they have questions or want clarification they are welcome to ask either the TA or her.

**P. DISCUSSION ITEMS: Agenda Item # 6 (moved from action above)**

**6. Slope Mower Repair Quotes (Council Directive)**

**Exhibit:** Agenda Report No.6

**Recommendation:** Request Action Moved to Discussion

Discussion:

**Per Council direction on 3/16/15:**

**Verbatim Minutes from RTCM 03/2/15 Regarding Slope Mower Repair Quotes:**

**Mayor:** Well what happens; I'll just start. We have a quote from Robinson Equipment for \$38,335.83 and one from Everglades is \$49,451.32.

**Vail:** there's a second Everglades in there for \$38,500

**Acquaviva:** yeah

**Mayor:** correct; I guess you want to know where that came from.

**Acquaviva:** this one here? I'm real interested.

**Mayor:** What happen was I called because we cancelled the meeting and wanted time to look at it. So I went back and called because I was looking at Everglades and it appeared to me that it was parts list with prices on it. So I called and she said yes; that's what she requested to replace all the parts. In the conversation, for different things, she also offered me. She says, I'll tell you what I'll do; I will send a technician up, free of charge to evaluate the machine for you because they had not seen it.

**Vail:** that being discussed?

**Mayor:** right; so the technician came up, I asked her can I be present for the inspection because it's her business, not mine. She said sure. Can I invite some guests? So I asked Bud Ryan and Captain Bob Seigmann, he wanted to see because we didn't see the machine, we had pictures. Some of those pictures were upside down; if you didn't realize it you didn't know where you were. So he came up and I talked to Bonnie about making the machine available to them; she said no problem. So he pulled it out in the yard out here and he had the operator do different things; he looked around stuff and...actually at the time, by word, we talked about a couple of things that had been done to the machines to make them a little better. Of course, this is an obsolete design and they don't make them like that anymore. So I guess you have the old ones and new ones still available. So he left and so when they came up with a price, I wanted to see it because I was there. I wanted to be able to explain things if someone says you were looking at it; what does this mean; how come this, this, this. So I got the first page; see there's two pages. The long list is the original thing with the minimal repair it to take all the play out of it. After I saw how cheap it was, I called and said how about including two items which is packing the cylinder; I couldn't see it leaking but it was wet. So how much would that cost. Also the tie rod ends because the guy from Titusville had explained that the tie rods are bad, so therefore, from that point on, we would have to determine they were fine or we would have to fix them. So there is nothing on these two extra bids that are any obligation whatsoever. This is a bid based on observation; we were here with the technician and we hadn't been before. So what happens, when I got the first bid and saw how low it was, I said wait a minute so I asked about the other two points which are on the second one? One, I'll make up another but it's probably pretty close. I called down there because I hadn't gotten the second bid because I wanted to put the two together before I told Council and meanwhile I found out that the first one

disappeared. She sent both, around \$130, it might even say on there, she emailed these to me and it was too late to distribute at that time so I brought them and came in here and put them out before the meeting.

**Acquaviva:** my only problem with this; the bidding process so that it is apples to apples and everybody's doing it; it is not your job to go and get a bid. Yeah, I think it's great that you're looking at the machine and you're doing that. But to bring a bid in like right at 7:00, without it being; you know, we have to look at our bids all together in a way where; I don't think it's your job to be getting bids like that. I don't know.

**Mayor:** basically, Everglades submitted the bid based on eyes on; they did the inspection, a technician at no charge.

**Acquaviva:** yeah, but why wasn't Town Hall involved in any of that in the sense of so that all three or whatever, the Robinson and; it was presented to us in that way. I mean; I can't go out and go get quotes and bring them in here and just put them up here and not even telling anyone I'm out there doing that work for the Town but I wasn't told to do that by the Council to go get bids. That's what I have an issue with.

**Mayor:** yes

**Wilbanks:** the original numbers that you actually got for supplies are here; the original numbers. It was a quote for each company to do the same information to us; the re-hab of the entire arm. If you want to go with getting another from Robinson, I would take what they have come up with here, in fairness, although the numbers kind of are out there now, so it's not as fair and objective what we normally do. I could still get Brian from Robinson to tell us what just doing what is said here and then you would be able to at least compare the numbers.

**Mayor:** yeah, well this price with a hands on inspection is like one-tenth of just replacing everything.

**Wilbanks:** well I understand that, but what I'm saying to you Mayor is to get validity that we do due diligence and get two quotes, I could write up the scope from this one and ask Robinson to also quote on it. And it would be under \$10,000 so it could be a quote and not an RFP.

**Vail:** I do remember discussing getting a representative from Alamo, Everglades; that's the supplier or dealer that we purchased it from. To send a technician to review this machine and give us a quote; I remember discussing that at length at Council. I assuming

**Acquaviva:** did we give you the directive?

**Vail:** is this what Carl did through you; through Bonnie

**Wilbanks:** Carl actually called down there; I think you were talking to probably Rose?

**Mayor:** right

**Wilbanks:** okay; she's the head of the service department and she's the one who offered a technician come up free of charge. They didn't do that when we asked at the same time that Brian was coming up; they did not offer to do that. She offered to strictly, because she had the serial number off of the machine because that's where we got it from, they said that they could actually quote without having to physically see it. But we were asking for re-habbing the whole arm

**Vail:** that was back in December

**Wilbanks:** correct

**Vail:** but now in more recent discussions, it came up that we want the machine assessed and gone over by an authority on that machine by Alamo by Everglades; we get a price from them. This is what Carl has brought this evening is what I'm to assume?

**Acquaviva:** yeah, right when we sat down

**Wilbanks:** I mean, this was heard on the 13<sup>th</sup>

**Mayor:** I didn't get the numbers until 1:23

**Acquaviva:** listen, 100% I gotcha; listen, when anybody, when we're doing these kinds of bids and we're doing this slope mower and everybody's been so thoughtful about it, we all don't

appreciate getting draft minutes late; to sit down and have a whole quote, a big quote, I don't feel like I could make an action item on this to say

**Korn:** it's not an action item; we changed it to discussion

**Acquaviva:** that's why I did that but I'm say is I don't think Council told you to go out and get a bid though. Look at it and whatever, that was fine I guess

**Vail:** Council

**Korn:** why else would the guy come up here?

**Vail:** Council was of the consensus that we wanted a service representative to come and look at the machine

**Acquaviva:** right

**Vail:** and I'm to assume, not to defend anybody, but I'm to assume that's what was orchestrated through Bonnie with Carl and these others that showed interest

**Acquaviva:** and truthfully, I feel like if an RFP; maybe I was not how we processed anything going over a certain amount; how we do our bidding processing. Hey listen, for any one of us out there doing special projects or whatever, that if you're bringing in a bid, and I didn't have a chance to talk to you or anybody about any of this so that's when I saw the bid come in, we don't normally do the bidding process like this. It is normally a thing where it is apples to apples. I'm just doing my due diligence here as far as

**Vail:** I just have one thing to throw out here; I agree with Bonnie that we take this scope and forward it to the other vendor that has shown interest in it and no prices, just this is what we are considering doing

**Wilbanks:** instead of on the full re-hab t go this route

**Vail:** this is a consideration that we are making, would you give us a price on this level of service. I am in agreement with that

**Korn:** we are in a semantics problem here and a definition of terms. I remember you said Brian from Robinson

**Wilbanks:** Brian

**Korn:** I remember he had a blue shirt on but I don't remember his name. I remember at the end of the meeting I said do you feel that you have looked at the equipment and have enough knowledge of it to offer us an estimate to make it serviceable. What I did not do in that request was define the term serviceable. For some people, that might be make it all brand new and others make sure it starts once in a while.

**Wilbanks:** actually Council gave

**Korn:** let me finish

**Wilbanks:** what would it be to be runnable and how many years

**Korn:** serviceable and safe is what I feel

**Wilbanks:** and you all said three years

**Korn:** but this is where we may have come up with two different ones. But we are looking at a whole big range of money that brings some real ethical questions into my mind that I haven't even begun to sort out; it was a long ride today; I was only 100 miles away this weekend but it was really wet down there. But my point is we need to get the same definition of what we're asking for, probably in this case because the individual from Everglades did come up here; word the same request to Alamo and whoever

**Vail:** that's what we just discussed; that's exactly what we discussed

**Korn:** but do not share with the other vendors the price the other ones gave so that one says one did it for \$2,000; we'll do it for \$9,000. End of Verbatim.

Franklin explained how the quote was done. It did not involve the TA; there are no records of what was asked from Everglades; TA was instructed by Mayor to have the slopemower at town hall at 8am on 2/13/15 because he and the others were going to inspect it. Franklin then explained that we have to get quotes for the port-a-lets for Springfest and the Clown and the

Ponies and all of it is done in writing to the vendors at the same time and is handled and documented by the TA. TA then said that we need to do this because part of the audit testing process is to review the RFPs, RFQs, Grant applications, etc., and determine if we have followed our own rules.

CM Acquaviva clarifies she is not against getting more information; she wants the direction to come from Council.

**MOTION: CM Vail / CM Ball to table. VOTE: All Ayes.**

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

CM Korn – Should also complement Bonnie and her staff for the quick response and corrective action on repairs to Richards and Kramer Lanes. Bonnie will pass it on to staff.

Mayor also complemented her on her purchase of the portable amplifier. TA said the credit goes to Denine, who does a great job of shopping for the best deal. CM Korn continued that this March 2, and her review is due in April. Need to send out review paperwork for TA. That will then be on first agenda in April. Link to videos on website was there and then gone and now it is back. We need the Mailboat out on a regular basis. Communicate with constituents. Vail said we all travel different roads and we should feed that information back to TA. What are the crown and arrow painted in gold? Korn said they are distance markings. TA said the nursery on Weber (Sunscape) has put a stop bar in orange across road for his customers.

CM Acquaviva – nothing

CM Ball – nothing

CM Vail – nothing

CM Krieger – Culverts on Atz in Sugar Pine SD, also on Corey south of Malabar, east side. There is drop from edge of road. CM Vail said Corey Road south of Hall Road on east side, there are two big dips. Atz Road between Homestead Lane and Corey Road, there is dirt washing into ditch because it needs sod. Last thing, he likes the discussion type of meeting we had the last meeting and would like to have one every month.

Mayor – Several items, because he has the information on Homestead and Lineberry; the four foot (4') culverts and headwalls were put in by county. The County used dirt filled rip rap bags. Mayor suggests patching the ones that have fallen and just pour concrete over them where they are failing at Atz and Homestead Lane.

Mayor then explained why he had the discussion meeting on 2/17/15. There were many things he learned from that. The minutes and agendas still can't be seen on website. Much discussion; Mayor said prior Mayor Phil Crews couldn't access it and he is computer savvy. Korn said the minutes and agendas are there; he has accessed them. CM Vail said he also found them and he is not computer savvy. Krieger said he was doing research.

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

**S. ANNOUNCEMENTS:**

- Two (2) vacancies on the Board of Adjustment
- Three (3) vacancies on the Park and Recreation Board
- Two (2) vacancies on the Trails & Greenways Committee
- Two (2) vacancies on the Planning & Zoning Board

**T. ADJOURNMENT:**

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

**MOTION:** CM Krieger / CM Ball to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:22 PM.

BY: \_\_\_\_\_  
Mayor Carl Beatty, Council Chair

ATTEST BY:

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

Date Approved: \_\_\_\_\_

DRAFT

“The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council.”

## MALABAR TOWN COUNCIL REGULAR MEETING

March 16, 2015 7:30 PM

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

### A. CALL TO ORDER:

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

### B. ROLL CALL:

|                       |                   |
|-----------------------|-------------------|
| COUNCIL CHAIR:        | MAYOR CARL BEATTY |
| VICE-CHAIR:           | MARISA ACQUAVIVA  |
| COUNCIL MEMBERS:      | GRANT BALL        |
|                       | BRIAN VAIL        |
|                       | DON KRIEGER       |
|                       | DICK KORN         |
| TOWN ADMINISTRATOR:   | BONILYN WILBANKS  |
| TOWN ATTORNEY:        | KARL BOHNE        |
| TOWN CLERK/TREASURER: | DEBBY FRANKLIN    |

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

CM Korn called for a Point of Privilege and read a statement (attached to minutes).

### C. ADDITIONS/DELETIONS/CHANGES:

Mayor said please pull agenda items 5 & 6 for a later meeting. He has more information to provide. CM Korn said he would not be at next meeting and asked that the TA evaluation be on the 2<sup>nd</sup> meeting in April. No objections.

MOTION: CM Korn / CM Krieger to approve the amended agenda. Vote: All Ayes.

### D. CONSENT AGENDAS: none

- Approval of Minutes** Regular Town Council Mtg – 3/2/15  
**Exhibit:** Agenda Report No. 1.  
**Recommendation:** Request Approval of Minutes

Discussion: Mayor said he had objection to what is in the minutes related to the slope mower estimate. He wants it clarified regarding getting the estimate.

MOTION: CM Vail / CM Ball to table until next meeting.

VOTE: 4 Ayes; 1 Nay (Marisa).

**E. PUBLIC COMMENTS:** Comments may not address subsequent Agenda Items. **Comments do not require Council response.** (Speaker Card Required) **Five (5) Minute Limit per Speaker.** Speaker's Card:

Pat Reilly, P&Z Board Chair, 1985 Howell Lane. He asked about Agenda Item # 6; it had no agenda report – wants cover letter.

**F. ATTORNEY REPORT:** Bert Harris claim – they rejected the settlement offer. Wait and see on lawsuit.

**G. PUBLIC HEARINGS: 0**

## H. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

### 2. Recommendation from Planning & Zoning Board – Offsite Parking

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request is Open

Pat Reilly, P&Z Chair, presented for the board: Spent 3 or 4 months working on this ordinance. To update Art 9 and 20. He walked through the changes.

CM Vail said basically it is housekeeping. Mostly offsite parking – wanted it to be contiguous. CM Krieger asked about the non-porous vs. non pervious. CM Krieger said most are non-porous and should add that proviso. CM Krieger said he just got a chance to look at it. CM Ball agreed they should add that language “such as – but not limited to”.

Jeff McKnight, 2005 Flashy Lane. His concern is replacement of Building Official to staff? If BO retires. Are there unintended consequences.

**MOTION:** CM Krieger / CM Korn to send back to P&Z.

**VOTE:** All Ayes.

## I. PRESENTATIONS:

### 3. Presentation of FY 2013/2014 Financial Audit – Ray Bastim of Averett Warmus Durkee, Outside Auditors

Ray Bastim, senior Manager that worked on the budget. He went through the Table of Contents and explained the purpose of the Independent Auditors report. The financial statement is produced from data provided by Town. The statements themselves are responsibility of town. They are an outside auditor firm. They follow GASB (Governmental Accounting Standards Board) procedures; Auditor’s Opinion based in all material respects the financial dept for YE 9/30/14. They are giving an opinion that they are an accurate representation. They tested the internal controls. They test for compliance to procedures.

Management report; Assets more than liabilities.

FY net position decreased 4% but net position is still good.

Feb 3 2014, Council approved moving the SW fund into the GF so that will drop off next year.

Pg 6, Govt activities. Income vs. expenses was more than last year. Net position went up 4.2% from last year. Pg 8 long term obligations. All related to compensated absences.

Pg 14 gets into the notes. These are the footnotes that support the balance statement.

Pg 16 shows the investments all in Fund A. The SBA is similar to MM, requiring them to invest more conservatively.

Pg 17 and 18 the depreciation methods. Range between 5 and 20 years.

Pg 20 goes into individual entries. Town is required to report these. There wasn’t anything to report as of Mar 3, 2015.

Required supplementary information. Original budget and budget adjustments and they were right on. It was to the good of 95K. T.I.F.T. (Transportation Impact Fee) money explained

Pg 27, related to SW and it will go away. Pg 26, CM Ball asked about the 127K; Franklin explained how we provided projects to County in order to get the TIFT money released. That is how much we have received and not yet spent on approved projects (flashing light at Fire Dept, turn lane on Corey Road, etc.)

Other financial sources are the transfer in from the restricted SW funds carried forward.

Pg 28, compliance section, compliance to ordinances, grants and bids.

Pg 31, mgnt letter is required by the Auditor General. They want to see the bulleted, prior audit findings – there were none. There were none this year. No financial emergencies.

TA asked about the 45K increase is the 4 FF salaries and benefits. At the time of the Budget workshops, she adds 14% for an estimate in the benefit increase. When actual renewals are done in October that amount is usually lower.

CM Ball asked about benefit increases; are they linear or do they go up annually? Linear.

Mr. Bastim left at 8:50PM.

Break until 9PM.

**J. ACTION ITEMS:  
MISCELLANEOUS:**

**4. Slope Mower Repair Quotes (Council Directive)**

**Exhibit:** Agenda Report No.4

**Recommendation:** Request Discussion / Action

Discussion: TA said she was given direction to contact Robinson Equipment to provide the scope of services same as Everglades. Provided in backup material. She also asked him for the tie rods repair estimate. PW Director Tom Miliore told TA the bearings and cylinder had been done in 2013. She also explained how the cap comes loose due to vibration. That is a flaw since they have had it. That was included in the first estimate.

TA turned it back to Mayor.

Service Supervisor, heavy NY accent. He asked Everglades if he could attend. Guy tested the machine. The big nut on top costs 700 and he said it in the minutes. Mayor said the history of the equipment. He then asked for the quote. Said he can do it in the yard. The cylinder was going to replace the whole thing. The seal had cracks in it.

CM Acquaviva called point of order. Her question was about how the bid was done by the Mayor. She said they have already rehashed why they were doing it. She pointed out the exception on the last page of the Everglades estimate.

CM Krieger asked when it was done. CM Krieger wanted to know if PW is qualified to do those repairs. Did we buy the parts from Everglades?

CM Korn going back to what CM Acquaviva brought up. There are two people on this Council that can repair that. He would assume if there are hidden costs, they would contact us. TA explained that she is sent a revised estimate for her to sign if there are additional costs.

CM Vail concurred that is the process. CM Ball said it is required per Florida law. CM Vail has dealt with Everglades on this piece of machinery. Have them do the 3K repair.

**MOTION:** CM Vail / CM Ball to approve the Everglades estimate of 2873.51 and the tie rod. Mayor said the wiper on top keeps debris out. TA said Robinson is 972 for same change. Vail said he would not like to separate the two repairs.

Discussion: CM Acquaviva, she reads, she listens, but she questions the liability if a worker is hurt. She also stated for record that no one on council approved buying a slopemower. It was approved to put 100K is contingency.

CM Krieger asked about the statement from Robinson that he would have taken it off the road until repaired. He asked again about the PW guy if they are qualified to do repairs. CM Vail



explained how much force is put on that arm when it is operating. He said the PW save a lot of money doing repairs in house.

Mayor explained the pin that goes on top of the king pin. That weldment is the main post they are going to replace. The bearings will be replaced. And it will be near new. Mayor said Everglades said they can do it in our yard.

CM Acquaviva to CM Krieger's point. PW Director Tom Miliore fixes things in house to save the town money; same as Carl did in that position.

CM Korn called for the question.

**VOTE: All Ayes.**

**PULLED BY MAYOR FOR FUTURE MEETING:**

- 5. **Council Pre-approval of all Expenditures over \$999.00 (Korn)**
- 6. **Review Resolution 10-2014 re: Mayor's Duties (Mayor)**

**(No Recess – Attorney Excused)**

**RESOLUTIONS - 3**

- 7. **Appoint Doug Dial to P&Z Board for 3 year term (Reso 4-2015)**  
**Exhibit:** Agenda Report No. 7  
**Recommendation:** Request Action

Mayor read Reso by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF DOUGLAS DIAL TO THE MALABAR PLANNING AND ZONING BOARD AS A MEMBER FOR A THREE YEAR TERM; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

**MOTION: CM Vail / CM Korn to amend Reso 04-2015 to appoint Douglas Dial as an Alternate Member to P&Z Board.**

Discussion:

P&Z Board Chair stated Mr. Dial had attended the last P&Z meeting and the Board endorsed his appointment.

CM Acquaviva said she has heard from both Malabar constituents and other P&Z Board Members of their dissatisfaction with the absences and premature departures of Bud Ryan from the P&Z Bd meetings. Given his attendance record for the last three years the Board would be better served with him as an alternate and Mr. Dial as regular member.

**ROLL CALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye.** Motion approved 5 to 0.

- 8. **Approving Budget Adjustment for FY 2014/2015 (Reso 01-2015)**  
**Exhibit:** Agenda Report No. 8  
**Recommendation:** Request Action

Mayor read Reso by title only:

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

Discussion:

**MOTION:** CM Acquaviva / CM Vail to approve Reso 01-2015.

Discussion:

**ROLL CALL VOTE:** CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye; CM Ball, Aye. Motion approved 4 to 1.

**9. Approving Annual Audit for FY 2013/2014 (Reso 02-2015)**

**Exhibit:** Agenda Report No. 9

**Recommendation:** Request Action

Mayor read Reso by title only:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2013/2014 BY THE AUDIT FIRM OF AVERETT WARMUS DURKEE; AND PROVIDING AN EFFECTIVE DATE.

Discussion:

**MOTION:** CM Korn / CM Acquaviva to approve Reso 02-2015 accepting the annual audit for FY 2013/2014.

**ROLL CALL VOTE:** CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye; CM Ball, Aye; CM Vail, Aye. Motion approved 5 to 0.

**K. PROCLAMATIONS: 2**

**Irish American Heritage Month is March  
May is Motorcycle Awareness and Safety Month**

Mayor read summaries of both and presented the first to Pat Reilly and the 2<sup>nd</sup> to the Brevard County Chapter of ABATE of Florida.

**L. STAFF REPORTS:**

**TOWN ADMINISTRATOR:**

TA gave out performance evaluation for her – it will be on 2<sup>nd</sup> meeting in April.

**TOWN CLERK:**

Financial Report handed out for October to end of February. She explained how the items showing over 100% are the ones they have either addressed with the budget adjustment or plan to on the next budget adjustment.

**M. DISCUSSION ITEMS:**

Mayor: Add the inventory of each dept so we have that. Also the CIP, 1<sup>st</sup> version and all subsequent. Wells have been on it from the beginning and we no longer have water department.

Budget WS calendar CM Korn said they are good. Mayor said we can have a kick off workshop. CM Korn said that also include in the inventory the unused property. He said we got rid of Jeep at FD that the Chief used to drive. He did not know it was sold. He wasn't on council. He doesn't like surprises.

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

CM Korn – 20 and 30 bikes going through stop signs and taking up entire roads. People come here to ride. CM Krieger has had complaints. Early morning and late evening.

CM Acquaviva – nothing

CM Ball – nothing – asked about the gold crowns on Weber and the red wheelchair icon on north Marie Street.

CM Vail – will be gone April 14 – 19 Mon thru Sun.

CM Krieger – last 7 minutes the damage to Corey and Weber. Stitch in time saves 9. Mayor said it needs a hot patch. Vail said it is a 20' stretch. East side. South of Hall Road on east side of Corey.

TA said priorities had to be the park for SpringFest. Doing sidewalk repairs in BH.

CM Korn talked to Tom and thanked him for his words. Where the WM trucks back down. TA said the mail truck.

CM Krieger wants to know what PW is authorized to do and repair. A professional should be doing that type of work. What do they do under maintenance? CM Vail would like to have a discussion on that as well.

Mayor – Re: setting the agenda – abbreviation of proclamation and moving the reso to after the Atty leaves.

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

Bud Ryan, Howell Lane told CM Acquaviva that no member of the P&Z Board has complained about his attendance; it was a member of the public.

**P. ANNOUNCEMENTS:**

- Two (2) vacancies on the Board of Adjustment
- Three (3) vacancies on the Park and Recreation Board
- Two (2) vacancies on the Trails & Greenways Committee
- One (1) vacancy on the Planning & Zoning Board

**Q. ADJOURNMENT:**

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

**MOTION:** CM \_\_\_\_\_ / CM \_\_\_\_\_ to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:20 PM.

BY: \_\_\_\_\_  
Mayor Carl Beatty, Council Chair

(seal)

This statement is intended to be read before council and included verbatim in the Public Record.

It is not intended to provoke or encourage discussion at this time and I will not participate in any discussion of its content at this time. Any discussion of the contents of this statement or related matters should be reserved for when it relates to an item on an approved agenda.

#### Post script

After discussing this with several patrons of Loreen's Village Café My wife, Joanne, who is both a regular patron there and who has known Billy Hammer since his early youth, has purchased a small gift certificate for our Town Administrator to use at Loreen's. It is Joanne's hope that Bonnie will use it and not feel left out of our camaraderie there, and join us.

**Statement presented to Malabar Town Council Monday,  
March 16, 2015 and read into the public record by Councilman  
Dick Korn, Dist 4:**

On the morning of Tuesday, March 10, I received a telephone call asking if I had seen the latest WAG sent by the Town Administrator. I responded that I had. I was further asked if I had carefully read the portion entitled "Richards Lane Update". I admitted I had only glanced at that portion because I was familiar with the subject. It was suggested that I re-read it carefully.

In doing so, I was surprised to see the distortions of fact and inaccuracies in this report.

To begin with, BCSO Deputy Hammer did not report that Richards Lane was impassable by emergency vehicles. The truth is that my friend Billy Hammer relayed a message to me from another friend, Dave Richards. The message was that Mr. Richards was concerned about the condition of his lane and the possible deterrent this condition might have on access by emergency vehicles. This was a concern expressed by Mr. Richards and not Mr. Hammer. (I refer to Billy as "Mr." rather than "Deputy" because in this instance he was acting in the capacity of a friend and not a law enforcement officer.) I asked Billy to tell Dave I would pass this concern on to the Town Administrator when I went to the Town Hall later that day.

While enroute to Town Hall that morning I stopped at the Fire House to properly dispose of a package of used syringes and needles we had accumulated in the treatment of a diabetic pet. The Chief was there and we engaged in a few moments of conversation. In the course of that conversation, I mentioned I was headed to see the Town Administrator and would pass on to her the concern of Dave Richards as told to me by Billy Hammer. The

Chief offered to check Richards Lane himself and relay his assessment of its condition on to the Town Administrator. Upon my arrival at the Town Administrator's office, I informed her of Mr. Richards concerns and told her I had mentioned this to the Fire Chief.

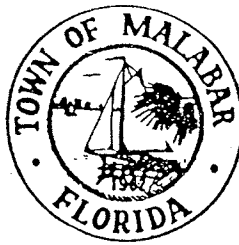
I receive expressions of similar concerns from Malabar residents from time to time and always pass them on to the Town Administrator. Why this instance received such "special attention" I have no idea.

As for the last part of this WAG, Mr Richards tells me he has tried to reach the Town Administrator by phone in the last three months and his calls have not been returned.

Most importantly in all this, our Town Administrator had implied that Deputy Hammer has strayed from her accepted protocol by speaking with me rather than directly to her. I would hope my above explanation has set this to rest and ask that she inform the appropriate supervisors in the BCSO of her error and apologize in writing to Deputy Hammer directly.

In conclusion, Mr. Richards has told me he is happy with the work done on Richards Lane last week and asks that it be checked periodically to assure it remains as it is now.

OFFICE OF THE TOWN CLERK  
(407) 727-7764  
FAX (407) 722-2234



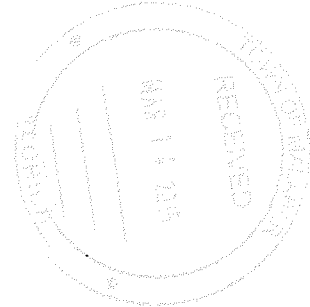
2725 MALABAR ROAD  
MALABAR, FLORIDA 32950-4427

#2

### AGENDA ITEM REQUEST FORM MALABAR TOWN COUNCIL

Please mail completed form to:

Town of Malabar  
2725 Malabar Road  
Malabar, Florida 32950



NAME: Patrick T. Reilly

ADDRESS: 1985 Howell Ln.  
Malabar, FL 32950

TELEPHONE: (321) 676-2758 (Home)      (321) 427-0839 (Business)

Please state the item you wish to have placed on the Town Council Agenda.

Mayor's Veto Power (Discussion Item)

Please summarize pertinent information concerning your request Agenda item, and attach applicable documents.

Discuss to Remove Mayor's Veto Power from the Town Charter.

Please state desired action by Town Council.

Discuss to place on the November 2015 Town ballot.

Signed: Patrick T. Reilly

Date: 3/16/15

# Town of Malabar Mayor's Veto Power

- Town Charter
- Research
  - MuniCode Research
  - Other Research
- Council Voting Scenarios
- Mayor's Veto Examples
- Roberts Rule, Rescinding a Vote
- Conclusion and Recommendations

Patrick T. Reilly  
6 April 2015



# Town Charter

## **Section. 2.04. - Qualifications and Duties of the Mayor.**

(a)

The Mayor may be elected as the presiding officer of the Council, and will thereafter serve at the discretion of Council. The Mayor shall be the Titular Head of the Town Government for ceremonial purposes, and for the purpose of civil process. The Mayor shall be responsible for civil defense and military law. The Mayor shall execute all instruments that the Town is a party as the Council shall direct unless otherwise provided by this Charter or by law. The Mayor shall vote only in the event of a tie. The Mayor shall have the power to veto any Ordinance but the veto can be overridden by four-fifths (4/5) vote of the Council.

**Goals: To remove the Mayor 's veto power from the Town Charter  
Also, remove the Mayor's tie vote sentence**

# Town Charter (cont)

## **Section. 2.04. - Qualifications and Duties of the Mayor.**

(c)

The Mayor shall perform all duties that are delegated to the Mayor by vote of the Town Council and shall be responsible to the Town Council for the performance of these duties. The Mayor shall preside as the ceremonial chief officer of the Town at all ceremonial functions.

**We are a Strong Council-Weak Mayor form of government**

# MuniCode Research

## State of Florida

I randomly researched 100 municipalities in the state of Florida to see if the Mayor was allowed to veto Council's actions.

1. About 85% did not have any language about Mayor's veto power
2. About 13% had language to "Not Allow" Mayor's veto power
3. Hialeah and Hialeah Gardens were the only two municipalities that had language and "Allowed" Mayor's veto power. **They are both Strong Mayor-**

### **Council forms of government.**

1. Hialeah is the 6<sup>th</sup> largest city in Florida at 234,000 people (2013)
2. Hialeah Gardens has about 23,000 people (2013)
  1. It looks like Hialeah Gardens just copied Hialeah's Charter and Land Development Codes

**Mayor veto power isn't widely accepted and is only used in high density municipalities, Council-Strong Mayor, and Council-Manager forms of government**

# Other Research

1. Google search
  1. Question: Does the mayor in a town have veto power over ordinances? (State of Washington Legislature Web Site)  
Answer: No. The mayor's duties and powers are specified in RCW 35.27.160 and this statute does not provide for a mayoral veto power. In the absence of specific statutory authorization the mayor cannot exercise this power. Therefore, the mayor in a town does not have a veto power over council ordinances, resolutions or motions. It is necessary for the mayor to sign municipal ordinances, but this is simply a ministerial action and there is no discretion in his or her exercise of this power.

Google research supported the MuniCode research

# Council Voting

## Council Voting Scenarios

1. 5-0 and 4-1 votes on Action Items
  1. If the Mayor is in favor with the Council's vote, then no veto
  2. If the Mayor is not in favor with the Council's vote, then he vetoes
    1. The council will probably override the veto with the same vote result of 5-0 or 4-1
    2. Result = Veto Fails and is overridden
2. 3-2 and 2-1 votes on Action Items
  1. If the Mayor is in favor with the Council's vote, then no veto
  2. If the Mayor is not in favor with the Council's vote, then he vetoes
    1. The council will probably not override the veto with the same vote result of 3-2 or 2-1
    2. Result = Veto Passes
3. 2-2 votes on Action Items
  1. The Mayor breaks the tie vote (essentially a veto vote at Council level)

**Mayor veto power should not influence 3-2 Council voting**

# Mayor's Veto Examples

1. Assisted Living Facility (ALF) Ordinance (Ordinance 2014-1)
  1. Planning and Zoning passed 4-1 (11/13/2013)
  2. Council passed 5-0 (2/3/2014)
  3. Mayor veto's item with having a combined 9-1 total votes
  4. Council override's Mayor Veto's with a 5-0 vote (3/3/2014 )
2. Rezoning 1300 Highway US1 property (Ordinance 2014-14)
  1. Planning and Zoning passed 4-1 (9/24/2014)
  2. Council passed 3-2 (10/6/2014)
  3. Mayor veto's item with having a combined 7-3 total votes
3. Budget Amendment (Ordinance 2014-17)
  1. Council passed 3-1 (Korn excused) (11/3/2014)
  2. Mayor veto's item with having a combined 3-1 total votes

Mayor vetoed 3-Ordinance's in 2014

# Robert's Rules, Rescinding a Vote

## Rescinding a Council's Vote

This could be used if there is ever a situation where only 3-members of Council attend a meeting, and the voted Action Item was not in favor of the other 2-member's of council. The Action Item could be called for reconsideration at the next meeting for a revote.

- One could argue that a good reason to keep the Mayor's veto power is to stop this scenario from happening:

Having the ability for Council to "Rescind" an Action Item would eliminate the need to having the Mayor's veto power for the protection of the Town.

Robert's Rules allows the Council to "Rescind" a vote of Action at a later meeting

# Conclusion

- The Mayor should not have veto powers to override the decisions of the Town Council.
- I believe that the Mayor's position should be to represent the Town of Malabar for ceremonial and civil purposes only, and have no influence to the Town's politics.
- I would like this to be brought before Town Council for discussion and action to put on the November 2015 ballot to remove the Veto power of the Mayor in the Town charter.
- I would also like the Council to consider removing the Mayor's ability to vote on the Council's tie votes as stated in the Town Charter.

**Keep the Town administration in the hands of the 5-elected Council members, and keep the Strong Council-Weak Mayor form of government**



# 3

**Debbie Franklin**

---

**From:** Bonilyn Wilbanks  
**Sent:** Monday, March 02, 2015 4:16 PM  
**To:** Debbie Franklin  
**Subject:** 3/16/2015 rcm

Randy Perry has confirmed that he will be at the meeting and would like to do a presentation first so he can leave to go back to Orlando

**Have a great day!**

*Bonilyn Wilbanks*

Bonilyn Wilbanks  
Town Administrator  
Town of 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.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: April 6, 2015**

**Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer**

---

**SUBJECT: Approve 1<sup>st</sup> Meeting of Month with Attorney; 2<sup>nd</sup> Mtg without (Mayor)**

---

**BACKGROUND/HISTORY:**

The Mayor has asked for this to be discussed at the February 17, 2015 meeting and is now requesting action.

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:** none

**ACTION OPTIONS:**

Staff requests Action.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: April 6, 2015**

**Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer**

---

**SUBJECT: Approve that only the Attorney draft Ordinances & Resolutions (Mayor)**

---

**BACKGROUND/HISTORY:**

The Mayor has asked for this to be discussed at the February 17, 2015 meeting and is now requesting action.

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:** none

**ACTION OPTIONS:**

Staff requests Action.

# TOWN OF MALABAR

## AGENDA ITEM REPORT

AGENDA ITEM NO: 6  
Meeting Date: April 6, 2015

Prepared By: Bonilyn Wilbanks, Town Administrator

---

**SUBJECT:** Budget Transfers for FY 2014/2015 (Reso 06-2015)

---

**BACKGROUND/HISTORY:**

These changes are being made to provide funds for the appropriate Department expenses that have occurred since October 1, 2014 and up to March 31, 2015.

**FINANCIAL IMPACT:**

NONE

These adjustments do not represent any budget increases.

**ATTACHMENTS:**

Resolution No. 06-2015  
Budget Transfer Authorizations.

**ACTION OPTIONS:**

Staff requests approval of Resolution 06-2015.

RESOLUTION 06-2015

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

WHEREAS, it is necessary from time to time to amend the budget to record adjustments approved by Council and to accurately reflect the departmental expenditures.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Amend the Budget Amount in Fire Control (522) Department.

Transfer from and to the Accounts indicated on the attached Budget Transfer Authorizations to accurately record the revisions to the Fire Control Department.

SECTION 2. Conflict

All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. Effective Date.

This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member \_\_\_\_\_. The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

|                                 |         |
|---------------------------------|---------|
| Council Member Grant Ball       | _____   |
| Council Member Brian Vail       | _____   |
| Council Member Don Krieger      | _____   |
| Council Member Dick Korn        | Excused |
| Council Member Marisa Acquaviva | _____   |

This Resolution was then declared to be duly passed and adopted this 6th day of April, 2015.

TOWN OF MALABAR  
By:

(seal)

\_\_\_\_\_  
Mayor Carl A. Beatty,  
Council Chair

ATTEST:

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

Approved as to Form and Content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

