



REGULAR TOWN COUNCIL MEETING

Monday, April 4, 2022 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA
 - a. Approve Minutes of RTCM 03/21/2022 & STCM 03/29/2022
Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

- b. Approval to apply for the Volunteer Fire Assistance (VFA) Grants through the Florida Department of Agriculture and Consumer Services, Florida Forest Service to replace Fire Department Turnout Gear
Exhibit: Agenda Report Number 4b

Attachments:

- **Agenda Report Number 4b** (Agenda_Report_Number_4b.pdf)

PROCLAMATION - Women's Lung Health Week

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Manager
 - b. Special Projects Manager Lisa Morrell (Written)
Exhibit: Agenda Report Number 8b

Attachments:

- **Agenda report Number 8b** (Agenda_Report_Number_8b.pdf)

- c. Fire Chief
 - d. Clerk

e. Public Works Director (Written)

9. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS: 0

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

a. Trails and Greenways Committee Report

Exhibit: Agenda Report Number 11a

Attachments:

- **Agenda Report Number 11a** (Agenda_Report_Number_11a.pdf)

12. ACTION ITEMS

ORDINANCES for FIRST READING: 2

RESOLUTIONS: 2

MISCELLANEOUS: 0

a. Amend Chapter 2 of Malabar Code of Ordinance Pertaining to Procurement (Ordinance 2022-03)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

- **Agenda Report Number 12a** (Agenda_Report_Number_12a.pdf)

b. Amend Article VIII of the Malabar Land Development Code Pertaining to Illicit Discharge (Ordinance 2022-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TITLE OF ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; CREATING CHAPTER 1; PROVIDING FOR A CHAPTER 2; CREATING A NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

c. Appoint New Trails & Greenways Committee Alternate Member (Resolution 07-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR THE APPOINTMENT OF MARK BRITT TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER; PROVIDING FOR THE REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTION IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12c

Attachments:

- **Agenda Report Number 12c** (Agenda_Report_Number_12c.pdf)

d. Appoint New Trails & Greenways Committee Alternate Member (Resolution 08-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR THE APPOINTMENT OF MIKE SCHOOLFIELD TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12d

Attachments:

- **Agenda Report Number 12d** (Agenda_Report_Number_12d.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

a. Extend Council Terms from Two Years to Three Years (from 3/21/2022)

Exhibit: Agenda Report Number 13a

Attachments:

- **Agenda Report Number 13a** (Agenda_Report_Number_13a.pdf)

b. Discussion of Code Enforcement Lien at 1870 Hall Road (CM Rivet)

Exhibit: Agenda Report Number 13b

Attachments:

- **Agenda Report Number 13b** (Agenda_Report_Number_13b.pdf)

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(2) Vacancies on the Trails and Greenways Committee

17. 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 ensure 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.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 03/30/2022 at 12:28 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.

Meeting Date: April 04, 2022

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

SUBJECT: Meeting Minutes

BACKGROUND/HISTORY:

Summary of Council actions at the Town Council Regular Meeting Minutes

ATTACHMENTS:

- Draft Minutes of RTCM Minutes of 3/21/2022
- Draft Minutes of Special Town Council Mtg 3/29/2022

ACTION OPTIONS:

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
MARCH 21, 2022, 7:30 PM**

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

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:30 pm. CM Scardino led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	MARISA ACQUAVIVA, excused
	BRIAN VAIL
	DAVID SCARDINO
	MARY HOFMEISTER
	MATT STINNETT
	LISA MORRELL
	KARL BOHNE
	DEBBY FRANKLIN

TOWN MANAGER:

SPECIAL PROJECTS MANAGER:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

2. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: TM to add request a letter of support from FDOT for a grant.

4. CONSENT AGENDA:

4.a. RTCM Minutes of 3/07/22

4.b. Approve Purchase of Replacement of Public Safety Radios Utilizing Piggyback of Brevard County Contract, B-7-21-81, 800mHz Radio System Maintenance, awarded to Communications International, Inc. (CII)

4.c. Letter of Support added by TM

MOTION: CM Vail / CM Scardino to approve Consent Agenda. Vote: All Ayes.

ATTORNEY REPORT: done under Staff Reports this meeting

5. STAFF REPORTS:

5.a. Town Manager –

John in PW is retiring, and his last workday was today. He has worked and served the Town for many years. They have posted his position opening today.

5.b. Special Projects Manager –

ARPA funds – approval of radios under consent agenda will be paid with these federal funds as an approved expense. The other items approved at last meeting: scanning of records by MCCI – PO has been issued and contract signed; Electronic sign in front of FD: PO issued, site plan and BP is being processed and renovation/upgrades of restrooms at MCP are under review now.

5.c. Clerk – Have prepared the MSTU Referendum ordinance for the 2nd meeting in April. We do every two years. The qualifying period for this year's election is Aug 2 – 16. We have received our first request for the qualifying period. In 2014 both the MSTU question and the proposed 3-year terms for Council was drafted in the same ord.

5.d. Attorney – update on Painted Acres litigation. Atty explained he had briefed Council on the FLC use of Dean, Ringers, Morgan & Lawton in this litigation. The timeframe of the League covering this has expired and he recommends the Council approve continuing with this firm and the engagement agreement.

MOTION: CM Vail / CM Scardino to direct TM to sign contract. Vote: All Ayes

6. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)
Five (5) Minute Limit per Speaker.

7. PUBLIC HEARINGS: 2

7.a. 2nd Reading of Ordinance 2022-02

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 CONSTRUCTION CODES DEALING WITH ABATEMENT OF DANGEROUS BUILDINGS AS PROVIDED IN THE FLORIDA BUILDING CODE 1997 EDITION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 7.a.

Ord read by title only. Opened PH: none Closed PH:

Chair asked staff – as presented in Agenda Report.

MOTION: CM Rivet / CM Hofmeister to adopt Ord 2022-02.

Discussion:

ROLLCALL VOTE: CM Acquaviva, excused; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 4 to 0.

7.b. Public Hearing – Request to Vacate 10' Alley Separating Parcels and Serving No Public Purpose (Reso 05-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE VACATE OF THE TEN (10) FOOT WIDE ALLEY THAT RUNS APPROXIMATELY 138 FEET BETWEEN PARCEL 29-38-06-02-A-1 AND PARCEL 29-38-06-02-A-6; AUTHORIZING THE TOWN CLERK TO RUN A LEGAL ADVERTISEMENT OF THIS ADOPTED RESOLUTION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 7.b.

Resolution/Request read by title only.

Chair called for an applicant to podium. Tony Childers owns the parcels that are split by this alley. Also, in order to build his accessory structure/garage he needs four feet of this and will have this if the alley is vacated. It does not impact any other property owners except him and the co-applicant. Each will gain five feet and in addition his two parcels will be joined.

Opened PH: none. Closed PH:

Chair asked staff – as presented in Agenda Report – vacating this alley will benefit these two property owners only and have no adverse impacts to the public.

MOTION: CM Vail / CM Hofmeister to approve Reso 05-2022 vacating this 10' alley and directing Clerk to record the adopted resolution and forward to the Property Appraiser's office.

Discussion: none

ROLLCALL VOTE: CM Acquaviva, Excused; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 4 to 0.

8. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING: 2

8.a. Park and Recreation Board Recommendation to Seek Bids for Pavilions

Exhibit:

Agenda Report No. 8.a.

Chair asked Clerk. Clerk said it is as stated in Agenda Report, but Board Secretary Richard Kohler is present and can give summary. Richard Kohler summarized the Park Board

request/recommendation to request approval to bid for similar pavilions on FCT (Florida Community Trust) parcels utilizing some of the Federal ARP funds at Cameron Preserve and part of the FDEP money from the transfer of Fern Creek Park to FDOT for intersection improvements at install a pavilion at the Eschenberg ((park (preserve/sanctuary)).

MOTION: CM Vail / CM Hofmeister to approve recommendation and direct TM to seek bids for two pavilions. **Vote:** All Ayes.

8.b. Offer from Space Coast Flight to Pay for an additional Porta-potty in Malabar Community Park near Soccer Field during remainder of season

Exhibit: Agenda Report No. 8.b.

Chair asked if applicant was present. Did Staff want to speak to this. Clerk said this item had a follow-up receipt of a written commitment to pay for additional porta-potty during their season. Staff is asking if the increase of public use at MCP warrants the Town to provide this additional porta-potty in the future. This request by this user is only for their season which ends in May. Council may want to consider this improvement year-round in the future.

MOTION: CM Vail / CM Scardino to approve offer and authorize Space Coast Flight to pay for an additional porta-potty during their season of play ending in May of 2022. **Vote:** All Ayes.

8.c. Request for Waiver of Accumulated Code Enforcement Fines/Fees and Release of Lien for 2415 Malabar Rd

Exhibit: Agenda Report No. 8.c.

Chair asked TM to present. TM said the new buyer of this property had asked for this. His item requires two separate considerations for two separate locations.

Discussion: 2415 Malabar Road

CM Rivet asked how this was sold without satisfying the lien. Cash sale. CM Rivet so the person that did the violation got off. Yes. CM Vail said definitely have to collect the administrative fees. The fines total \$7,500.00 on this. Council discussed many various pros and cons on how code enforcement liens can be circumvented.

MOTION: CM Vail / CM Rivet to approve removing the lien, reducing the \$7,500.00 in fines by 75% and requiring payment of the administrative fees of \$ 465.81 to bring case involving 2415 Malabar Road. **Vote** 4 to 0

Discussion: CM Scardino said he is not in favor of elimination of fines. Atty Bohne asked if he would be in favor of reduction. He could support that. CM Rivet said the new owner has remedied the situation. CM Rivet could support reduction.

Vote: All Ayes.

Discussion: 2425 Malabar Road – violation of placement of Conex boxes, junk cars, junk in general and the State's Sunbiz website has a business address listed here.

CM Scardino said we are not applying code to the violators. If they can sell like this, then they suffer no adverse effects from the violations.

MOTION: CM Vail / CM Scardino to approve removal of lien, reduction of fines by 75%, contingent to the following: person/applicant must buy the property within 90 days of this date; cleanup of property within 60 days following closing and payment of administrative fees of \$388.28. Administrative fees will still be due.

Vote: 3 Ayes, 1 Nay (Rivet).

8.d. Malabar Scrub Sanctuary Scrub Habitat Restoration Permit Application Submittal

Exhibit: Agenda Report No. 8.d.

Mayor asked TM to present and give an overview of the process and provide any insight into the compromises he and Mike Knight propose.

TM Stinnett states that what is in front of you is what Mr. Knight is willing to agree to. He is asking for a waiver of the per tree charge and is willing to pay \$5,440 for site plan. This is their submittal. CM Scardino asked if they submitted the permit? TM Stinnett states that they agreed to sign if the Town agrees to their conditions.

1) Sue Hann -Began by thanking Council and Town Staff for their work. This project will change the character of the town in a big way. The last SMC had discussion of the 183 bikers, 118 hikers and – walkers, they estimated that represented 20% of the normal users. That would be 1,000 persons. Lots of users that live in other areas of the County, other counties, and even other states enjoy this area. Consider council intent, submit to T&G for other user input, and put on for action on 4/4 RTCM. Important to take the fences down immediately. Issue the permit for Malabar East only. Not for Malabar West.

Mike Knight proposed no changes to the trails within the Malabar west and this submittal has significant changes to the trails.

Monitoring clause – County to pay for such monitoring. Request a surety bond in case of damage by logging equipment on Malabar Woods Blvd.

2) Murray Hann – two emails sent, and he will summarize. Appreciate TM work on this. Don't approve anything tonight except a path forward. Malabar East is a lot more ready for possible permitting. Malabar should be the one to pick the inspector. Malabar West is a whole different story and agrees it is not ready for consideration. It is pretty good for mountain bikers. People that know the trails would know it is not the best plan for all users. Some of the trails planned to be removed are favorites of hikers, and elderly walkers from the Glenbrook ALF.

Malabar East is the scrub property. Malabar West is not.

The T&GC plan should not have been called a compromise. TM should bring Mike Knight their concerns. The EEL program plan to use their own personnel to do both portions of the sanctuary concurrently – there should have been more public involvement.

Issue Malabar East for permitting. Trail modification is not thought through. We can work together. This is a unique piece of property. He didn't see anything in the proposed permit package on the marking of turtle locations.

3) Jason Stroble: Viera, Vice-Pres of Mountain Bike Assc. The gates and fences have no need to be there. Support the suggestion for Malabar East permitting only.

Malabar West should be vetted through the public notice policy. There are areas that EEL can't meet USFW rules.

4) Drew Thompson– Don't have the area in Malabar West to meet EELs specifications – we have forgotten 2004 bond referendum passed with a 60% to provide 60 mil in taxpayers money to manage. Simple verbiage, open space recreation was part of the wording. The EEL program ended procurement and went into management. Supports two permits also and the Malabar East both with specifics clauses for each. Consider requiring a 15-foot buffer on perimeter become a mandatory requirement. People have come here where Turkey Creek Sanctuary meets the EEL Sanctuary. We are different, 20% of our town is conservation we must stand firm. We need to locate and engage users as part of the interested parties. The Sanctuary is why we are all here. Several HOAs and Palm Bay, along with Town of Malabar Advisory boards and the BMBA should all be involved.

5) Craig Smith, representing himself, lives in G-V. He is on Board for the Mountain Bike Assc. Role works with the land manager when work is done inside various sanctuaries. Thankful to Matt and Mike. Likes the idea of separating the permits. Threatening species and they include humans, people walk with animals, ride animals, push wheelchairs, joggers, etc.

T&G Committee have gone before SMC meetings and make more and more compromises.

Supports T&G working with EEL on the last final touches before the permit for Malabar East is issued. As a resident of G-V is thankful and hopeful that someday he can enjoy the types of trail experience Malabar offers in his hometown.

One of 11 Towns designated Trail Town. Gem of place called Malabar.

6) Mark Britt - agrees with everyone that spoke, one issue that concerns him and HOAs – hasn't heard this discussed is the burn – start with the large burns – what does that mean for the surrounding areas. They are going to be under the gun to complete their work and need assurances that the resident near the smoke won't have long term affects. What can we do to get answer to this? Stay locked in our homes.

Supports having the T&G members meet with EEL and work on this and also require the 15' buffer. Don't understand the big rush.

MOTION: CM Rivet /CM Vail to approve permit for only Malabar East property, waive the per tree fee contingent on immediate removal of gates and fences and a perimeter buffer area and requiring review by T&G before issuance.

Discussion:

CM Rivet states it is his intention to waive the per tree fee.

CM Vail we are trying to be agreeable. We need a workshop of sorts prior to issuing of permit contingent on set an agreement.

CM Rivet said he doesn't think need a workshop for Malabar East, but certainly will for Malabar West.

CM Scardino said they need to provide a tree survey.

CM Vail also wants the buffer a requirement.

CM Rivet wants involvement by T&G because they know the area best.

Drew Thompson said a buffer requirement could be a benefit we could offset the fee per tree. Use it as a tradeoff.

CM Scardino said he doesn't want to set precedent of waiving fees. At least charge them 0.50 per tree so we know how many trees they are removing. It sets a good standard.

CM Vail said this would not set a precedent.

CM Hofmeister asked if the EELs program has provided a tree survey?

TM Stinnett states they have not. They provided rough estimates for both Malabar East and West, but not an official count.

CM Vail states there are estimates included in the agenda packet, or about 6,500 trees for Malabar East.

CM Rivet states that though it is his intention to waive the fee, he would be open to amending it.

CM Vail states he agrees with Mr. Thompson that a buffer would be a good idea. It would shield the animals from adjacent residential properties, and residents from the tree clearing work. He also believes that a 15-foot buffer would not adversely affect the Scrub Jays.

CM Rivet states he wants the T&GC to review this, as they are the people who have done most of the research and know the area best.

CM Vail states the T&GC should be allowed access to the area to be able to review the plan, as currently they are not allowed behind the fences.

Thompson states that the option of a buffer could be leveraged to negate the tree survey. It could provide a precedent for future projects.

Vote: 3 Ayes, 1 Nay (Hofmeister).

9. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 1 done *under Public Hearing "Agenda Item 7.b."*

MISCELLANEOUS: 1

9.a. Request for Council to Take Legal Action to Provide Public Access to Publicly Purchased Land (Malabar Scrub Sanctuary) by CM Scardino (*Tabled at the RTCM 3/7/2022*)

Exhibit: Agenda Report No. 9.a.

Chair asked Council if there was a motion to remove from table.

MOTION: CM Scardino / CM Hofmeister to remove from table.

Vote: All Ayes.

Discussion: CM Scardino said we have discussed all the issues he had.

Chair to ask Attorney to remain for Discussion Items

10. DISCUSSION / POSSIBLE ACTION: 2

10.a. Expand Council Member Term Limits (CM Scardino)

Exhibit: Agenda Report No. 10.a.

CM Scardino said it takes one year to get the hang of it.

Mayor said sometimes we get a bad apple up here, and it may be better for the voters to have the opportunity to remove that person sooner.

CM Rivet said the government closest to the people is the most effective for the people. Being elected every two years keeps Council closer to the people.

CM Hofmeister state she is still new, and it takes a year to get a good understanding of how things happen.

Mayor said put this on next agenda when we have full Council

10.b. Potential Road ROW Closure of Marie St South of NORTH of Atz Road (CM Vail)

Exhibit: Agenda Report No. 10.b.

CM Vail explained the situation. It is a safety concern. There is no bottom in that hole. Make the closure passable to pedestrian traffic.

Motion: CM Vail / CM Rivet to close Marie just south of Town property.

Mayor states he would not support this.

Clerk will prepare Reso and radius package.

VOTE: All Ayes (4-0).

Chair excuses Attorney

11. PUBLIC COMMENTS: General Items (Speaker Card Required)

12. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: excused

CM Vail: none

CM Rivet: Still some property on Hall Road that we have a lien against and have not acted on- make an agenda item.

CM Hofmeister: none

CM Scardino: when is Brightline going to finish - 2023

Mayor Reilly: none

13. ANNOUNCEMENTS: Openings on T&G Committee.

14. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 9:21 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 04/04/2022

**MALABAR TOWN COUNCIL SPECIAL MEETING MINUTES
MARCH 29, 2022, 1:00 PM**

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

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:30 pm. Mayor led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

MATT STINNETT

TOWN MANAGER:

KARL BOHNE

TOWN ATTORNEY:

DEPUTY TOWN CLERK/TREASURER:

RICHARD W. KOHLER

3. SPECIAL MEETING ACTION ITEM:

3.a. Resolution 06-2022

Deputy Clerk read by title only.

Drew Thompson, T&GC Chair – Mr. Thompson stated that at a BPTAC meeting last night, the committee passed unanimously to send a letter to the County Commissioners stating that it is inappropriate to close the Paved Al Tuttle Trail, as it is a multi-modal travel path. The vote had participation from communities across the County. A few members did abstain, but the vote was unanimous. The letter will be sent directly to the County Commission.

Motion: CM Scardino/ CM Acquaviva to approve Resolution 06-2022

CM Scardino believes that this is where we were going to end up since the beginning of the issues. He thanked TM Stinnett for his hard work but feels the EELs program is acting in bad faith. We shouldn't have our citizens arrested for going to a park. As a contractor, he has gotten permits from the County, and has been fined for not having them in the past. He also asked Mr. Knight at a T&GC Meeting if the EELs program has to obtain permits for their work, and Mr. Knight responded that they do.

CM Acquaviva states that the Town handled itself very well. We are all on the same page. She was hopeful after the last meeting, but the County showed they were uninterested. It is unfair to the residents we represent.

Mayor states the sanctuary is a reason people move here.

CM Rivet states that this is the County Commission standing up for the power of Government, and not working for the best outcome for their constituents. This issue has turned into the Residents of South Brevard, versus the Brevard County Government. We at Malabar are on the side of the residents.

CM Vail states he agrees with CM Rivet. There was little to no public input from the EELs program. Residents want to be heard and have their voices heard. The EELs program was intended to preserve the land, and this appears to deviate from that goal. He has encouraged residents to contact the County.

CM Hofmeister states that we have seen how many residents use our parks and trails. There was an amazing effort from the T&GC, BMBA, and Town Staff to find a compromise, and it appears the County has their minds made up.

Mayor suggests a change to the 10th Whereas on page 2, to add in that the Malabar Residents and County residents paid for this. It should be stated that the people who paid for the land can't use it.

CM Scardino states the property was intended to be a diverse site to include passive recreation, education and habitat preservation.

CM Acquaviva states we are one of 12 Trail Towns in Florida.

CM Rivet suggests using the line depriving the public of the land they paid for.

Atty states he would like to know where it should be included.

Thompson suggested the original ballot language be included, as it clearly states that passive recreation is included. Scrub Jays were not mentioned in the ballot, and the EELs program has reinvented their goals.

CM Vail states that is what people voted for.

CM Acquaviva suggests including it in the first Whereas.

Atty suggests including it as a new second Whereas.

CM Scardino agrees.

ROLLCALL VOTE:

CM Acquaviva, Aye ;

CM Vail, Aye;

CM Rivet, Aye;

CM Scardino, Aye;

CM Hofmeister, Aye.

Motion carried 5 to 0.

Atty states the resolution will go to the County, DEP, and the Trust fund that owns the land. First, Staff will meet, then joint meeting, then mediation.

4. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 1:21 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 04/04/2022

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.b.

Meeting Date: April 4, 2022

Prepared By: Lisa Morrell, Special Projects Manager
Through: Michael Foley, Fire Chief

SUBJECT: Approval to apply for the Volunteer Fire Assistance (VFA) Grants through the Florida Department of Agriculture and Consumers Services, Florida Forest Service to replace Fire Department Turnout Gear

BACKGROUND/HISTORY:

The Fire Department intends to apply for the Volunteer Fire Assistance (VFA) Grants through the Florida Department of Agriculture and Consumers Services, Florida Forest Service that is open for application. This grant provides for up to a 50/50 match or available funding of continual applications from statewide agencies for matched funding.

The Fire Department is applying for funding to replace six ensembles of fire turnout gear, commonly known as bunker gear, that has reached the intended useful life of ten years as well as an additional piece of apparel, Chief's Coat.

The Town of Malabar has been provided attached quote for the items via another agency contract price totaling, \$22,588.61 for the identified turnout gear that is necessary to replace. The Fire Department will submit an application, if approved by Town Council, to commit a 50% match of \$11,294.31 from budgeted funds in 522.6400, Fire Department, Capital Outlay, Machinery & Equipment.

ATTACHMENTS:

VFA Grant Application Form
SF-424B Assurances -- Non-Construction Program
AD-1047 Certification Regarding Debarment

FINANCIAL IMPACT:

Department Account: 001-522.6400 - \$11,294.31

ACTION OPTIONS:

Motion to approve the Fire Department to submit an application for the VFA Grant and for the Town of Malabar to commit a 50% match of local funds for the grant application and award as required.



Florida Department of Agriculture and Consumer Services
Florida Forest Service

VOLUNTEER FIRE ASSISTANCE GRANT APPLICATION

NICOLE "NIKKI" FRIED
COMMISSIONER

LEGAL NAME		FORM OF ORGANIZATION: (Municipal, Fire District, Non-Profit, County)											
ADDRESS													
CITY		IF COUNTY, LIST VFD'S BENEFITING FROM GRANT:											
STATE	ZIP												
COUNTY	COUNTY #												
EMPLOYER IDENTIFICATION NUMBER (EIN)													
<table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>													

IS FIRE DEPARTMENT LOCATED IN AN INCORPORATED TOWN? YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES, NAME OF TOWN: _____ POPULATION OF TOWN: _____ PROTECTED AREA: EST. POPULATION: _____ SIZE: (SQ. MILES) _____	WHAT IS THE FIRE DEPARTMENT ISO RATING? _____ IS FIRE DEPARTMENT NIMS COMPLIANT? YES <input type="checkbox"/> NO <input type="checkbox"/> CURRENT COOPERATIVE AGREEMENT WITH FFS? YES <input type="checkbox"/> NO <input type="checkbox"/> DISTANCE OF CLOSEST MUTUAL AID FIRE DEPARTMENT: _____ NAME OF FIRE DEPARTMENT: _____
--	---

NUMBER OF FIREFIGHTERS: PAID: _____ VOLUNTEERS: _____ NO. OF INCIDENTS PAST YEAR: WILDLAND FIRE: _____ OTHER: _____ NO. OF FIREFIGHTERS CERTIFIED AS: WILDLAND FIREFIGHTER I _____ WILDLAND FIREFIGHTER II _____	HAS APPLICANT RECEIVED GRANT FUNDS FROM ANY SOURCE IN THE PAST 12 MONTHS? YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES, WHERE? _____ AMOUNT: \$ _____ LIST TOTAL FUNDS RECEIVED FROM OTHER TAXING AUTHORITIES SUCH AS CITY, COUNTY, TAXING DISTRICTS (Past 12 Months) AMOUNT: \$ _____
---	---

LIST OF FIREFIGHTING VEHICLES:			
TYPE	MAKE/YR.MODEL	PUMP CAPACITY (GPM)	WATER CAPACITY (GAL.)

ESTIMATED GRANT FUNDING REQUEST:		LIST OF EQUIPMENT OR SUPPLIES TO PURCHASE WITH GRANT FUNDS:		
FEDERAL	\$	NUMBER	DESCRIPTION	AMOUNT
APPLICANT	\$			
COUNTY	\$			
TOTAL	\$			
(Federal not more than 50% of total. Applicant at least 50% of total in matching funds.)				

We understand that this is a 50 percent maximum cost-share program (Cooperative Forestry Assistance Act of 1978, PL 95-313), and that funds on deposit up to 50 percent of the actual purchase price of the items approved will be committed to our project. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION ARE TRUE AND CORRECT. THE GOVERNING BODY OF THE APPLICANT HAS DULY AUTHORIZED THIS DOCUMENT.

Type Name of Authorized Representative	Title	Telephone Number: ()
		FAX: ()
Signature of Authorized Representative	Date Signed and Submitted	Email:

U. S. DEPARTMENT OF AGRICULTURE

*Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions*

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, *Federal Register* (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

(Before completing certification, read instructions on reverse.)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

<i>ORGANIZATION NAME</i>	<i>PR/AWARD NUMBER OR PROJECT NAME</i>
<i>NAME AND TITLE OF AUTHORIZED REPRESENTATIVE</i>	
<i>SIGNATURE</i>	<i>DATE</i>

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective primary participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ASSURANCES -- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
 - (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290-dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
 - (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 961-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Health Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102 (a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition of \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

V, B-5 (02/05)

Authorized for Local Reproduction

Standard Form 424B (9-03) Prescribed by OMB Circular A-102

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for

research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

TOWN OF MALABAR

COUNCIL MEETING

Staff Report 8.b. Special Projects Manager
Meeting Date: April 4, 2022

Prepared By: Lisa Morrell, Special Projects Manager as of March 29, 2022

SUBJECT: SPM Report for April 4, 2022 Council Meeting

Cybersecurity Awareness Program - CS/HB 7055: (Cybersecurity)

The Town has initiated distribution of cybersecurity awareness training with 11% of the training material completed by employees. Two new training campaign has been launched called "the Inside Man" which enforces the principles outlined in the Security Awareness Foundation Training modules. The second campaign is Payment Card Industry Data Security Standard. (PCI-DSS) will launch on March 31, 2022.

Health & Wellness

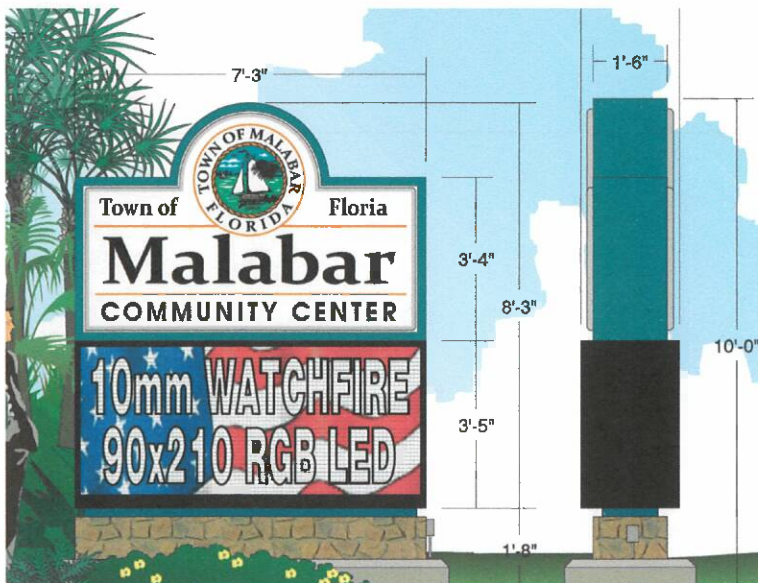
Staff that is has elected coverage from the Town's health insurance provider, Florida Mutual Insurance Trust (FMIT), had the opportunity to participate in the 100-mile Challenge. That program is in progress with bi-weekly reporting of steps to FMIT.

Fixed Town Facility or Entrance Signage

An RFP was awarded to Southeastern Lighting Solutions to replace (2) two fixed entrance signs: Malabar Community Park and Disc Golf Sanctuary. The contract was executed by both parties on March 22, 2022. A purchase order will be released soon for design, fabrication, installation, delivery, and warranty. Estimate this project will be completed in 90 days short of any delays (ex. Material availability, shipping, and labor shortages).

Electronic Sign (SLFRF Funded)

The electronic sign is ordered and is expected to be received in 60 days from the manufacturer. This sign will deliver programmable content as needed via an internet connection; replacing the meeting notice schedule located at the Malabar Community Park and Fire Department. An electrical contractor will be verifying the necessary electrical connections for Art-Kraft to install the sign.



Document Imaging and Scanning (SLFRF Funded)

The contract has been executed by both parties and corresponding purchase orders have been issued with the payment of the annual software subscription license mailed on March 23, 2022. The deposit for the project will be mailed this week. After payments are received by MCCi, The Town will be scheduled for a project kickoff meeting. The Town Clerk staff will begin paper record retention review, pursuant to the Florida record retention schedule and guidelines, of documents to be scanned within the project to reduce the scanning of records that are no longer required to be retained.

Financial System Improvements

The Town recently implemented upgrades to the financial system to the payroll and timekeeping improvements. Over the past weeks, I have been performing migration tasks, of data collection reporting on year-to-date payroll information for the system as well as coordination of employee participation tasks for enrollment and utilization of electronic paystub and W2 workforce portal and electronic timekeeping for employees to record their daily timesheets for payroll, eliminating paper timecards and paper routing approvals, W2's, and paystub. Paper processes are slated for elimination for pay period starting May 11, 2022; during this time, setup continues through a hybrid pilot time period for employee's process adjustment.

Grants

I have been enrolled and registered with Ecivis, a Florida League of Cities partner, to receive daily emails regarding new grant announcements and updates. I review these daily and share these with the Town Manager and Departments, highlighting any relevant opportunities.

The Malabar Fire Department is requesting to apply for the Volunteer Fire Assistance Grant available from Florida Department of Agriculture and Consumer Service to replace Fire Turnout Gear that has reached is approaching end-of-life use; this is 50/50 match grant.

A grant opportunity for outdoor fitness sponsored by Game Time offering a grant up to \$50,000 was routed on March 7, 2022, to the Town Manager, Fire Department, and Parks and Recreation Board. No response has been received for direction to date. An outdoor fitness center would serve age group of 13+ in the below example. The current playground set serves ages 5-12 years old.



The Department of Transportation has advertised road improvement grants through the Space Coast Transportation Planning Organization (SCTPO) for Multimodal Project Discretionary Grant Opportunity on March 23, 2022; these opportunities are in review for eligibility and compliance for the available

opportunities, cursory not: these grants are typically associated with highway freight and multimodal transportation improvement and resiliency.

DOT is combining these three programs into a single NOFO to provide a more efficient application process for project sponsors. While they remain separate programs for the purposes of award, the programs share many common characteristics, including a larger project size, multimodal eligibility, and many shared statutory project requirements. Because of these shared characteristics, it is possible for many projects to be eligible and considered for multiple programs using a single application.

- The INFRA program: At least 15% of the funds are reserved for small projects (<\$100 million) and at least 25% of the funds are reserved for rural projects. The program also includes a leverage pilot, under which \$150 million is set-aside to prioritize for projects with greater non-Federal share.
- The new Mega program: Focused on large multimodal transportation projects, with 50% of the funding being awarded to projects greater than \$500 million in total project cost, and the remaining 50% of the funding being awarded to projects between \$100 million and \$500 million in total project costs. The Mega program will help large multimodal projects with gaps in their financial plans.
- The new Rural program: Reserved for surface transportation projects in rural areas, with a minimum of 90% of all projects having a minimum \$25 million Rural grant award. The Rural program will focus on rural needs, such as improving highway safety and expanding access to rural transit service. Set asides for projects on the Appalachian Development Highway System and projects located in states with above average rural lane departure fatality rates.

Employment

Active recruitment efforts have been initiated to recruit and fill the Medium Equipment Operator position, recently vacated by a retirement. A job description and online application have been posted to Government Jobs and the Town's website.

Recruitment for Volunteer Firefighters has been advertised and improved, with the conversion of the Volunteer Firefighter Application and Informational Packet as a Fill in Form for download and submittal available on the Town's Employment & Fire Department web pages and social media.

State & Local Fiscal Recovery Fund (SLFRF) formerly American Rescue Plan (ARP)

Designated webpage for public information of State & Local Fiscal Recovery Fund (SLFRF) published to the Town's Website. The first project and expenditure report is due April 30, 2022 and is currently in progress.

TOWN OF MALABAR

TOWN COUNCIL MEETING

AGENDA ITEM NO: 11.a
Meeting Date: April 4th, 2022

Prepared By: Richard Kohler, Deputy Clerk/Treasurer

SUBJECT: Trails and Greenways Committee Report

BACKGROUND/HISTORY:

- a. On March 29th, the Trails and Greenways Committee held a special meeting to discuss the Malabar Scrub Habitat Restoration Permit Application reviewed at the 3/21/2022 RTCM. Discussion highlights and approved motions are included in DTC/T Memo 2022.4.

ATTACHMENTS:

- a. DTC/T Memo 2022.4

ACTION OPTIONS:

- a. Discussion

TOWN OF MALABAR

MEMORANDUM

Date: March 30, 2022 2022-DTC/T-4

To: Town Clerk & Town Manager

CC: Town Council and Mayor Reilly

From: Richard W. Kohler, Deputy Town Clerk/Treasurer

Ref: Trails and Greenways Committee Recommendations

At the March 21st RTCM, Council voted to send the Malabar Scrub Sanctuary Habitat Restoration permit application to the Trails and Greenways Committee for review. Council directed the permit for the Malabar Scrub Restoration Project be split into Malabar Scrub East and Malabar Scrub West, with a permit for Malabar Scrub East to be issued first. Conditions discussed for the Malabar East permit are as follows:

- No permits issued until all barricades restricting public access to public lands are removed.
- In lieu of the required Tree Survey and \$40 per tree fee associated with a standard Malabar tree removal permit, the EELs program leaves a 20–25-foot vegetative perimeter buffer.
- The Trails and Greenways Committee approves the permit plan.
- The Town of Malabar should be able to appoint an inspector to supervise the work in progress.

At the March 29th Trails and Greenways Committee meeting, the Committee agreed with the above referenced ideas from Council and provided further insight. The Committee defined a Vegetative Perimeter Buffer as follows:

“A [vegetative perimeter buffer \(VPB\)](#) is defined as being located and maintained within the sanctuary, along all property borders, at a minimum 25’ width. Within the [VPB](#), all oak trees and all native palm trees may not be removed or reduced in height. Any Sand Pines (regardless of DBH), and any other Pine trees less than 5” DBH, and any invasive species, may be removed. Any other reduction of vegetation within the [VPB](#) is limited to a height no lower than 15’. There will be no roller chopping within the [VPB](#).”

The [VPB](#) will be measured from the property border inward, away from the border. In areas where a firebreak is located between property border and scrub, the [VPB](#) will begin at the scrub side of the fire break, measured inward from the inside edge of the fire break.

Where the Al Tuttle Trail is located within the sanctuary, it is to be considered a fire break. For the duration of this permit, no firebreaks will be relocated.”

The Committee also discussed areas notated by the EELs program in their most recent Permit Application. Details of their discussion reference Figures from the Permit Application and are attached to this document.

“Based on mutual (EEL Pgm – TOM) MSS communications to date (as per the 3/21/2022 RTCM Agenda), the following areas have been identified for a higher density of preserved trees offset by a lowering of the core scrub habitat tree density:

Fig 2 – Area A – Preserve all oak trees within 25’ of the trail from entrance to where trail turns south on double-track trail.

Fig 3 – Area B – On “short east-west” section along Al Tuttle Trail, expand VPB from minimum 25’ to a minimum of 50’.

Fig 4 – Area C – No changes.

Fig 5 – Area D – Viewed from left to right, from where trail turns due east and ends at trail intersection, preserve all oak trees within 25’ of the trail.

Fig 6 – Area E – Expand width of VPB from property line to fire break where fire break does not immediately border property line.

Fig 7 – Area F – On west side of lake, treat area from lake high water line as a VPB and expand to a width of 25’ west of existing trail. On VPB at southern-most point of MSS, immediately below lake / north of Malabar Community Park, expand width of VPB to 150’.”

After their discussion, the following motions were made and passed unanimously:

Motion : CM Waite/ VC Hann Recommend to Council to approve the Malabar Scrub East Habitat Restoration Permit if all barricades (In Malabar Scrub East & West) restricting public access to public lands are removed, with trails only closed when work is immediately adjacent to the trail, if Malabar may appoint an inspector to verify permit compliance, and either the VPB waiver and site specific recommendations are followed, or the per tree fee is paid.

All Ayes (4-0)

Motion: CM Waite/ VC Hann recommend Council approve the definition of the VPB waiver, which includes site specific recommendations.

All Ayes (4-0)

Fig. 2 - Area A – 12 Oaks



Fig. 3 - Area B – 12 Palms



Fig. 4 - Area C – 4 Oaks, 1 Pine

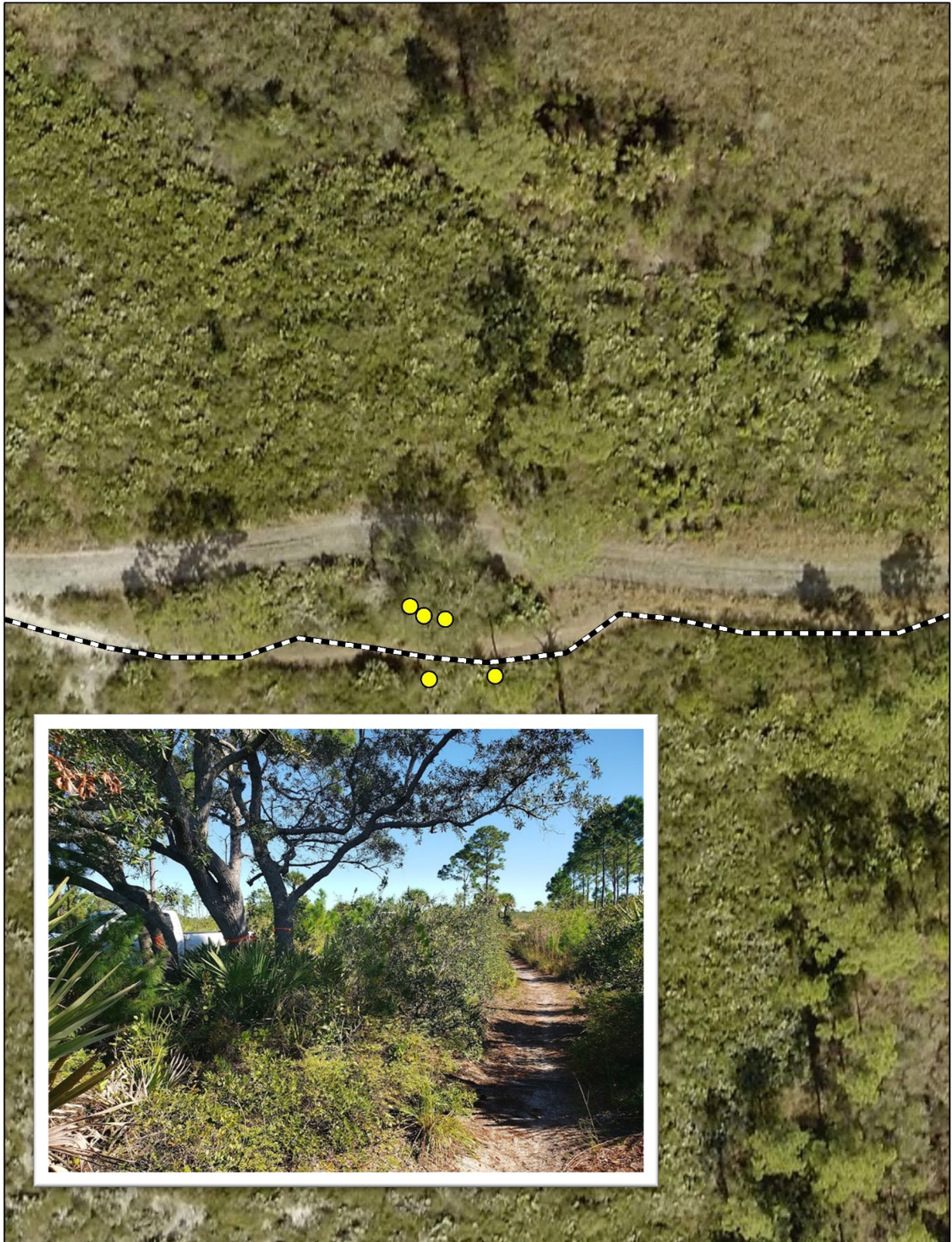


Fig. 5 - Area D – 6 Oaks



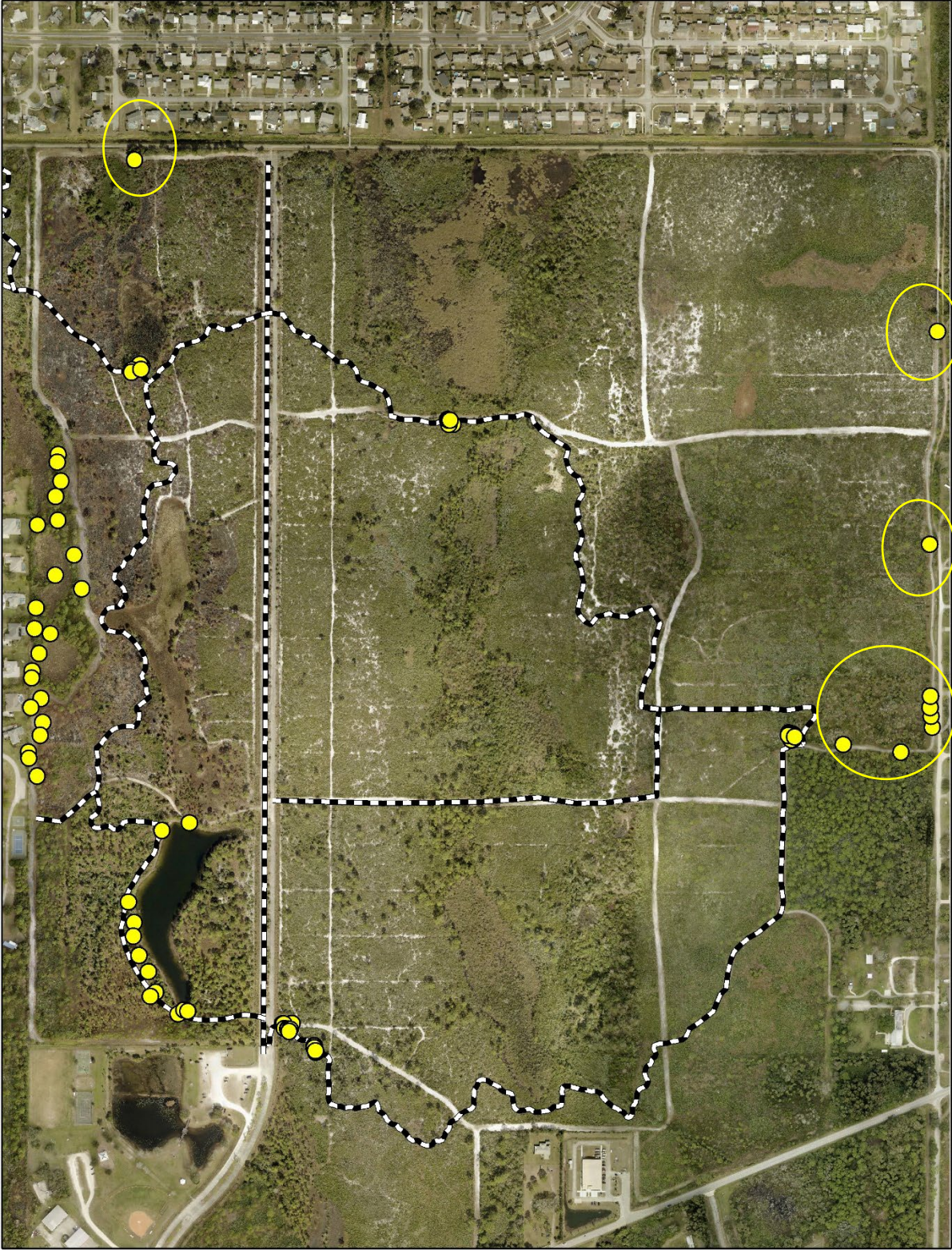
Fig. 6 - Area E – 22 Pines



Fig. 7 - Area F – 12 Pines



Fig. 11 - Paved Trail Preserved Tree Locations – 6 Oaks, 3



TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.

Meeting Date: April 4, 2022

Prepared By: Lisa Morrell, Special Projects Manager
Through: Matthew Stinnett, Town Manager,
Debby Franklin, Town Clerk,
Karl Bohne, Town Attorney

SUBJECT: Amend Chapter 2 of Malabar Code of Ordinance Pertaining to Procurement (Ordinance 2022-3)

BACKGROUND/HISTORY:

The Procurement Code in Article V. has not been updated since 2009 and has only two components adopted. One requires Town Council approval for purchases in "excess of \$10,000", after obtaining (3) quotes or advertising a request for bid and award to the lowest and best bidder. The other defines the use of other agency awarded contract, commonly referred to as a piggyback contract, in excess of \$2,000; the Town Manager has the sole authority to approve the use and purchase. The code is inefficient for the Town's public purchasing needs and lacks updates that are commonly used in other agencies in the State of Florida. Staff requests for the current code sections to be repealed and amended to provide more definition to provide different methods of purchasing for types of goods and services, modifications of threshold amounts, balance of authorities, approvals, and oversight within a smaller number of staff for the execution of contractual purchase of goods and services as necessary to service the public now and in the future.

In summary, Ordinance 2022-03 will substantially amend the code for the procurement process to be used by all Town staff for adherence and guidance to provide efficient and transparent methods to operate and serve the town's needs with the open marketplace, contractors, and other agency awarded contracts. Threshold amounts will be augmented to efficiently purchase day to day operational purchases up to \$2,000, requires (3) written quotes for purchases between \$2001 and \$19,999, and a formal method for purchases in excess of \$20,000. All methods have an established process and authorities of either the Town Manager, in coordination with the Town Clerk/Treasurer, and Town Council approvals as required for certain purchases, awards of formal processes, execution of certain contracts, receipt of donations, and surplus of public property.

ATTACHMENTS:

Ordinance 2022-03

FINANCIAL IMPACT:

N/A

ACTION OPTIONS:

Motion to approve Ordinance 2022-03, repealing section 2-101 in its entirety and replacing with a new section 2-101 through 2-116 providing for policies and procedures related to all aspects of the procurement process; providing for delegation of duties, providing for supervision, responsibility, and authority; providing for severability, conflicts, codification and an effective date.

ORDINANCE 2022-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to purchasing providing procurement steps, approval processes, authority, delegation of duties and responsibilities and codifying them for staff guidance; and,

WHEREAS, the Town Council desires to provide for consistent procedures for purchasing for Town needs; and,

WHEREAS, it's the intent of the Town Council to supplement the Town Code and state law and to provide a system of due process regarding the procedures herein to provide consistent processes throughout all Town Departments; and,

WHEREAS, the Town Council desires to provide authority to the Town Manager for general supervision of the purchasing and contracts duty and shall act as the principal purchasing officer for the Town with the financial process duties of the procurement process assigned to the Town Clerk/Treasurer; and,

WHEREAS, the Town Council desires to provide methods of source selection and processes for all purchasing contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. 287.017, or Competitive sealed bidding, electronic auctions/reverse auctions, Competitive sealed proposals (request for proposals), Invitation to negotiate; and

WHEREAS, the Town Council desires to provide in these regulations outlines for the advisory selection committee to follow when evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act (CCNA) per F.S. 287.055; and

WHEREAS, the Town Council desires to establish purchasing levels based on a specific threshold value for any procurement not required to be conducted pursuant to the terms and conditions of Section 2-106 of this Code, ("Methods of Source Selection") shall be made in accordance with the operation procedures and thresholds for informal small purchases; and

WHEREAS, the Town Council desires to provide for specific exclusions and exceptions to bid, proposal or quote requirements to include sole source solicitations; provide for emergency purchase that are not a result of an emergency declaration, cooperative purchasing, purchases from other governmental entities, purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by formal competitive selections process, professional services, owner direct purchase and Waiver of procurement procedures

WHEREAS, the Town Council intends to include requirements for bonds and security requirements, insurance requirements, types of contracts and contract administration, specifications for requisition, appeals and remedies, authority to debar or suspend, and ethics in public contracting.

WHEREAS, the Town Council intends to include requirements for donations to be approved by Council.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. A new Section 2-101 through 2-116 is hereby added to Chapter 2, Article V, Purchasing, of the Code of Ordinances of the Town to read as follows:

Chapter 2 – ADMINISTRATION

“ARTICLE V. PROCUREMENT CODE

Sec. 2-101. Title.

The provisions of this article shall be known as the Town of Malabar Procurement Code.

Sec. 2-102. Purpose and intent.

- (a) *General.* This article applies to all purchases of supplies, services, and construction by the Town except as provided herein.
- (b) *Purpose and intent.* The purpose and intent of this article shall be to generally prescribe the manner in which the Town shall control the purchase of materials, supplies, equipment and certain contractual services. This article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
 - (1) To obtain the supplies, services and construction required by Town departments in order for those departments in a cost effective and responsive manner to better serve the Town's residents and businesses;
 - (2) To uphold the highest standards and best practices through the adoption and adherence with the public procurement profession values and guiding principles of accountability, ethics, impartiality, professionalism, service and transparency;
 - (3) To provide fair and equitable treatment of all persons who transact business with the Town;

- (4) To maximize the purchasing value of public funds in the procurement of goods and services;
 - (5) To provide safeguards for the quality and integrity of the Town's maintenance of a procurement;
 - (6) To maintain a high ethical standard for all officers and employees of the Town in connection therewith; and
 - (7) To require all parties involved in the negotiation, performance, or administration of Town contracts to act in good faith.
- (c) *Contracts to which this article is applicable.* This article applies only to contracts solicited or entered into after the effective date of this article. Nothing in this article shall be construed to prohibit the Town from complying with the terms of a grant, gift, or cooperative agreement.
 - (d) *Supplementary general principles of law applicable.* Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this article.
 - (e) *Severability.* If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
 - (f) *Determinations.* Written determinations required by this Code shall be retained in the appropriate official contract file of the Town.
 - (g) *Public access to procurement information.* Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time and shall be available to the public as provided in such statute.
 - (h) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:
 - (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
 - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Sec. 2-103. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless:

- (1) The context in which they are used clearly requires a different meaning; or
- (2) A different definition is prescribed for a particular article or provision.

Addendum/addenda means a formal written notification to prospective bidders or proponents which provides clarification of the requirements for a solicitation. Addenda are also used to summarize clarifications made during a pre-bid or pre-solicitation conference. Whenever a potential bidder/proponent requests information or a clarification regarding information that is not clearly referenced in a solicitation document, it is necessary to provide all bidders and proponents with the information in writing, using the addendum document.

Administrative policy means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a Town-wide basis. Administrative policies are approved and issued by the Town Manager.

Advertisement means a formal announcement of an invitation for a solicitation; usually placed in a newspaper of general circulation or on an Internet website.

Best and final offer (BAFO): In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, services and products to be delivered. Sometimes referred to as BAFO and utilized during the request for proposal method of procurement.

Best value means the highest overall value to the Town based on relevant factors that may include, but are not limited to, price, quality, design and workmanship.

Bid bond means a bid security in the form of a bid surety, certified check, cashier's check, or cash that ensures that the bidder will be capable of entering into a contract and subsequently provide the required performance and payment bonds within a specified period of time.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

Business day means a day, Monday through Friday, excluding any day that is a Town observed holiday.

Calendar day or "day" means a consecutive twenty-four-hour period running from 12:01 a.m. to midnight.

Category one means the dollar threshold defined by F.S. § 287.017 (1), which may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases made on behalf of the Town of Malabar. In the event that the State of Florida amends the Category one threshold, such change shall be reported to the Town Council and the Town Council shall be required to formally consent to such change prior to such new threshold becoming effective for the Town.

Change order means any written alteration or modification to a contract executed by the Town in accordance with the terms of the contract, directing the contractor to make changes due to unanticipated conditions or developments, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking.

Construction means the process of building, altering, repairing, improving, or demolishing any public facility, including any public improvements of any kind to real property, including roadways, utilities, infrastructure, and facility site work. Construction does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

Construction Manager-at-risk means a construction delivery process allowing the project owner to choose a construction Manager who assumes the risk for construction, rehabilitation, or repair of a public facility at the contracted price as a general contractor and provides consultation to the Town regarding construction during and after the design.

Consultant's Competitive Negotiations Act (CCNA) means F.S. § 287.055, as amended, governing the procurement of architectural, engineering, land surveyor and mapping or landscape architect services.

Contingent or contingency contract means an agreement whereby the contractor's revenue is generated from a Council, percentage or other fee that is conditional upon the success that a person has in securing a contract or based on performance on a contract.

Continuing services agreement or contract means a contract for professional services entered into in accordance with F.S. § 287.055, as amended, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the Town, with no time limitation except the contract must provide for a termination clause.

Contract means all types of Town agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction between parties with binding legal and moral force, usually exchanging goods or services for money or other consideration.

Contract modification means written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person or business having a contract with a governmental body or that contracts to perform work or services or provides goods or supplies to the Town.

Contractual services mean without limitation, the purchase of insurance, printing, gas, electricity, fuel, cleaning services; the purchase, installation, rental repair and maintenance of equipment and machinery, and other personal property; lease or real property and office space, and all other contractual supplies, materials and equipment and services not specifically excluded from the requirements of this article.

Data means recorded information, regardless of form or characteristic.

Debarment means the disqualification of a person to receive solicitations or the award of contracts by the Town for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

Design-bid-build means a construction project delivery method in which the Town sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-build means a construction project delivery method in which the Town enters into a single contract for design and construction of an infrastructure facility as defined in F.S. § 287.055, (CCNA) as amended.

Designee means a person who is chosen to represent or given the authority to act on behalf of another person of authority.

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee means an individual drawing a salary from a governmental body, whether elected or not.

Excess supplies (also see surplus property) mean any tangible personal property having a remaining useful life, but which is no longer required by the Town department in possession of the supplies.

Governmental body means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by

statute and any other entity which expends public funds for the procurement of supplies, services or construction.

Grant means a contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

Gratuity means a gift, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is received.

Invitation for bid means a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought. Unless specifically authorized by this Code, no negotiation is permitted, and the contract award is granted to the lowest priced responsive and responsible bid, which conforms to the requirements set forth in the bid document.

Invitation to negotiate means a written solicitation for competitive sealed replies to one (1) or more vendors with which to negotiate for the procurement of commodities or services.

Job order contracting means a construction delivery method in which the Town awards a term contract agreement that provides for unit pricing for individual tasks of a project to provide construction services based on individual quotations prepared on a project-by-project basis. Unit pricing is normally predicated on the compilation of a task guide reflecting local construction market conditions where contractors bid a general discount or add-on factor.

Performance bond means a contract of guarantee, executed subsequent to award by a successful bidder, to protect the Town from loss due to the bidder's inability to complete the contract as agreed. The bond ensures that the project will be able to be completed in the event that the bonded contractor defaults on their contract.

Person means any business, individual, union, committee, club, other organization, or group of individuals.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction including, but not limited to all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional services mean services within the scope of a particular area of practice; such as the practice of architecture, landscape architecture, land surveying and professional engineering which are governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act, as amended. Auditing services, which are governed by F.S. § 218.391, and other professions including, but not limited to law, management consulting, medicine, real estate appraising, or other area of expertise.

Public notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, posting on a bulletin board, electronic or paper mailing lists, and web site(s) designated by the Town and maintained for that purpose.

Purchase request means a document whereby a Town department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

Request for proposal (or competitive sealed proposals) means a written solicitation for competitive sealed proposals with the title, date and hour of deadline for submittal. The request for proposals is used when it is impractical for the agency to define a detailed scope of work. The request for proposal document is used to solicit proposals from potential providers for goods and services (offerors). Requests for proposals are evaluated on various criteria, which may or may not include price. When used as an evaluation factor, price may not be the primary evaluation factor, but the proposal document shall state the relative importance of price as well as any other evaluation criteria. A request for proposal provides for the negotiation of all terms, including price, prior to contract award; and may include a provision for the negotiation of a BAFO. Requests for proposal may be a single step or a multi-step process.

Responsible bidder or offeror means a person, business or contractor who has the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a Town project or purchase.

Responsive bidder or offeror means a person, business or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

Reverse auction means a procurement method wherein bidders, anonymous to each other, electronically submit real time bids on designated supplies or services.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Single source refers to a supply source for goods or services to which purchases are directed because of issues related to standardization, warranty, or other factors, even though other competitive sources may be available.

Sole source refers to a situation created due to the inability to obtain competition. This situation may result because only one (1) vendor or supplier possesses the unique ability or capability to meet the particular requirements of the user, or situations where only one (1) economically viable source is capable of providing the service or item that the Town seeks to purchase. Sole sources may be characterized by a marketplace where there is only one (1) vendor because items are patented or geographically franchised.

Specification means a precise description of the physical or functional characteristics of a product, good or construction item. A description of goods and/or services. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples. May also be known as a purchasing description.

Supplies means all tangible property, including but not limited to equipment, materials, and commodities required for ongoing operational Town requirements including but not limited to

equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus property means any tangible personal property or real property no longer having use to the Town. Surplus property includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Term contract or agreement means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s).

Using agency/department means any department, division, activity, agency, board, Council, or other unit in Town government that procures commodities, construction, or services which derive their support wholly or in part from Town funds as provided in this article.

Written or in writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 2-104. Reserved.

Sec. 2-105. Responsibilities and authority.

- (a) *General.* Except as otherwise provided herein, the Town Manager shall have responsibility for the general supervision of the purchasing and contracts duties and shall perform all duties required and shall act as the principal public purchasing officer for the Town, responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of excess equipment or supplies.
- (b) *Responsibilities and authority.*
 - (1) All purchases of goods and services shall be processed through the Town Clerk/Treasurer and is hereby authorized to promulgate procedures for the requisitioning of supplies and services.
 - (2) For all purchases, the Town Clerk/Treasurer shall verify that the purchase request has sufficient unencumbered funds to cover the purchase, or that a budget amendment or transfer is in process for approval by the Town Manager or designee.
 - (3) The Town Manager or designee shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments and contract renewals up to and equal to the amount of the threshold for purchasing Category one, as defined in the F.S. § 287.017 (1) or less.
 - (4) The mayor shall have the authority to execute all procurement-related, contracts, contract amendments and contract renewals in excess of the threshold for purchasing Category one, as defined in the F.S. § 287.017(3) after Town Council approval. Such execution shall be attested to by the Town Clerk/Treasurer.

Sec. 2-106. Methods of source selection.

- (a) *General.* Except as otherwise provided by law, this article or by Charter; all contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. § 287.017, as amended, shall be awarded through the use of a formal competitive process identified within this section.
 - (1) *Competitive sealed bidding.*

- a. *Invitation for bid.* An invitation for bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- b. *Public notice.* Adequate public notice of the invitation for bid shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the Town Clerk/Treasurer. The Town Clerk/Treasurer shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, websites designated and maintained for such notification or on a dedicated area on a website maintained by the Town, or through the use of vendor list which may be maintained by the purchasing and contracts division Town Clerk/Treasurer on an ongoing basis. Publications in newspapers of general circulation must be at least one (1) time, with the notice published in the "Legal Notices" section of the newspaper at least ten (10) days prior to the bid opening date. Notices published on websites must be posted immediately upon release of the invitation for bid and remain available to the public until the scheduled bid opening date and time. Said notice shall state the place, date and time of the bid opening. When the projected cost of a Town construction project exceeds the bid threshold set forth in F.S. § 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.
- c. *Bid bonds.* May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.
- d. *Addenda.* After an invitation for bid is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- e. *Bid opening.* The following procedures shall apply to all bid openings:
 - 1. *Sealed.* Bids shall be submitted sealed to the purchasing office and shall be clearly identified in accordance with the terms of the invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.
 - 2. *Copies.* The appropriate number of copies of the bid as required by the invitation for bid shall be required to be submitted prior to bid opening.
 - 3. *Opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Town Clerk/Treasurer deems appropriate, together with the name of each bidder shall be recorded;

4. *Tabulation.* A tabulation of all bids, and each bid shall be open to public inspection in accordance with the Florida Public Records law.
 5. *Late receipt.* No late bids shall be accepted or opened; if received after the date and time called for in the bid notice, late bids shall be returned unopened to the bidder.
- f. *Bid acceptance.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Code. The Town's rights include Rejecting any or all proposals, waiving irregularities in any proposals, accepting or rejecting all or any part of any proposals, waiving any requirements of the request for proposal package, as may be deemed solely by the Town to be in the best interest of the Town.
 - g. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. Mistakes discovered before bid opening may be withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.

After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the Town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident, or
2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids after bid opening, based on bid mistakes, shall be supported by a written determination made by the Town Clerk/Treasurer .

- h. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- i. *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid. In the event all the low responsive and responsible bid for a project exceeds available funds, the Town Manager is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, Town officials may consider other factors that relate directly to the bidder's level

of responsibility pursuant to the requirements of subsection 2-106(a)(1)h of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Bid Evaluation").

- j. *Award to other than low bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the record file.
- k. *Tie bids.*
 - 1. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:
 - (a) A local bidder with a primary business location within the Town of Malabar.
 - (b) A local bidder with a primary business location within Brevard County.
 - (c) A bidder with a primary business location within the State of Florida.
 - 2. The Town may split the award of a contract when it is to the Town's advantage.
 - 3. Where subsections (a)(1)k.1.(a) through 1.(c) of this section is not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the Town Manager or designee and shall be open to the public.
 - l. *No bids received.* If no bids for goods or services are received, the Town Manager shall have the authority to negotiate terms and pricing with firms which provide the goods or services sought.

(2) *Electronic auctions/reverse auctions.*

- a. The Town may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid.
- b. *Public notice.* Adequate public notice of the electronic auction/reverse auction shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
- c. *Bid bonds.* May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award. *Addenda.* After an invitation for bid is issued and before the actual occurrence of the electronic auction/ reverse auction, the Town

Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

- e. *Bid submission.* Bid pricing shall be submitted by electronic means in a manner prescribed procedures as prescribed by the Town Clerk/Treasurer.
 - f. *Acceptance, evaluation and award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of subsections (a)(1)f,(1)h, (1)i, (1)j and (1)l of this section. ("Methods of Source Selection, Competitive Sealed Bidding).
- (3) *Competitive sealed proposals (request for proposals).*
- a. When the Town Clerk/Treasurer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered into by the use of the competitive sealed proposal method.
 - b. *Public notice.* Adequate public notice of the request for proposals (RFP) shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
 - c. *Addenda.* After a request for proposals is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations and shall be open for public inspection in accordance with Chapter 119, Florida Public Records Law, Florida Statutes, as amended.
 - e. *Evaluation factors.* The request for proposals shall state the criteria to be used in the evaluation of the proposals which shall include their relative importance.
 - f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for proposals. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, including any assigned project Manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the Town.
 - g. *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to

award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the evaluation committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.

- h. *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the Town taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. The Town reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the Town.
- i. *Continuing services contracts.* Continuing services contracts are defined as contracts for professional services entered into in accordance with F.S. § 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the Town, with no time limitation except the contract must provide a termination clause. Continuing services contracts shall be awarded using a qualifications-based selection procedure in accordance with F.S. § 287.055.

(4) *Invitation to negotiate.*

- a. *Determination of use.* When the Town Clerk/Treasurer determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that concurrent negotiation with one (1) or more vendors may be necessary for the Town to receive the best value, the Town Clerk/Treasurer may procure commodities and contractual services by competitive sealed replies solicited through an invitation to negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. 287.055, unless expressly permitted by statute.
- b. *Public notice.* Adequate public notice of the invitation to negotiate shall be given in the same manner as provided in subsection 2-106(a)(1)b of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice")
- c. *Addenda.* After an invitation to negotiate is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the invitation to negotiate. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- d. *Receipt of competitive sealed replies by invitation to negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
- e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the invitation to negotiate, and shall select,

based on the ranking, one (1) or more respondents with which to commence negotiations.

- f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the invitation to negotiate. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, or individuals who may possess a level of skill or expertise related to the scope of work.
 - g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The Town may utilize either sequential or concurrent negotiation methods.
 - 1. *Sequential negotiations:* The Town may consider the respondent's statements of qualifications without consideration to price and may select the most qualified respondents as finalists. The Town may conduct interviews with all finalists and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the Town. If an agreement is not reached, the Town may commence negotiations with the successive ranked respondents until an agreement is attained.
 - 2. *Concurrent negotiations:* The Town may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The Town may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the Town.
 - h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the Town considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made.
- (b) *Selection advisory committee.* There is hereby established a selection advisory committee (SAC) for the purpose of evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act, F.S. § 287.055, as may be amended from time to time.
- (1) The SAC members shall be comprised of at a minimum of consist of three (3) voting members and one (1) nonvoting member
 - a. The Town Clerk/Treasurer or their designee, who shall facilitate the committee process, and be a non-voting member;
 - b. Three (3) members shall be appointed by the Town Manager or their designee from a list of recommendations to the Town Clerk/Treasurer received from the director of using department;
 - (2) All meetings of the SAC shall be subject to and held in conformity with the requirements of the Florida Sunshine law, as may be amended.

- (3) All minutes of the meetings of the SAC shall be promptly recorded and the records shall be open to public inspection in accordance with the provisions of Florida's Public Records laws, as may be amended.
- (4) *Selection procedure.*
 - a. The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require presentations by no fewer than three (3) firms regarding their qualifications, approach to the project, and ability to furnish the required services; however, if less than three (3) proposals are received, the SAC may interview those firms' submitting responses. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the SAC shall rank all responses and determine the response that is most advantageous to the Town.
 - b. The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:
 1. The proposer's demonstrated understanding of the Town's requirements and plans for meeting those requirements;
 2. The professional qualifications, related experience and adequacy of the personnel assigned to the project;
 3. The prior experience and references of the proposer;
 4. The prior experience, if any, that the proposer has had with the Town.
 5. All other statutory requirements of the Consultants' Competitive Negotiation Act as applicable to the specific procurement, including whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985.
 - c. Upon reaching consensus on the recommendation by the SAC, the Town shall negotiate with the number one ranked firm, and upon completion of negotiations, shall make a recommendation to the Town Council for contract award. If negotiations are not successful with the number one (1) ranked firm, the Town shall negotiate with the next highest ranked firm.

Sec. 2-107. Small purchase procedures.

- (a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of section 2-106 of this Code, ("Methods of Source Selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.
- (b) *Delegation of authority.* The Town Manager may establish operational procedures delegating authority for Town departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the purchasing Category one threshold as defined in the most current version of F.S. § 287.017, as amended.
- (c) Electrical work in excess of the threshold provided pursuant to F.S. § 255.20(1), as amended, shall be competitively bid.
- (d) *Requirements for quotations.* The Town Manager, or designee, or by a department or division, may solicit informal quotations by anyone (1) or more of the following methods:
 - (1) By direct mail or requests to prospective vendors;

- (2) By telephone, facsimile or e-mail;
 - (3) By public notice posting on a Town-maintained public electronic bulletin board or bulletin board at Town Hall;
 - (4) By use of a third-party internet hosting site;
 - (5) By reverse auction.
- (e) *Quotation threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the Town. The Town Manager shall develop procedures for processing quotations within the guidelines established.

\$0.01 — \$2,000	(3) Quotes are highly recommended.
\$2,001 — \$19,999.99	Minimum of three (3) written quotations required.
\$20,000+	Formal process required as prescribed in Sec. 2-106. Methods of source selection.

In the event that fewer than three (3) quotations are received, the Town may consider those quotations received; however, the Town Clerk/Treasurer or designee reserves the right to validate the availability of suppliers for an item or service.

- (f) *Recording.* The Town Clerk/Treasurer shall maintain a record of all small purchases and the quotations submitted in competition thereon, and such records shall also be open to public inspection.
- (g) *Procurement cards.* The Town Clerk/Treasurer shall have the authority to issue Town procurement cards to employees at the request of the department director. The Town Manager shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an administrative policy.
- (h) *Petty cash.* The Town Clerk/Treasurer may promulgate rules and regulations governing petty cash purchases as appropriate
- (i) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the Town orders, contracts for or buys any materials or supplies outside the purview of the Town Charter and/or this Code. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:
 - (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders") is prohibited.
 - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Town Clerk/Treasurer.
 - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - (4) Obtaining items available on an existing Town term contract from a supplier that does not hold the contract.
 - (5) Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).

- (6) Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (j) *Change orders.* The Town Manager or designee is authorized to approve and initiate change orders determined in the judgment of the Town Manager or designee to be in the public interest as follows:
 - (1) All change orders decreasing the cost of the contract to the Town; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;
 - (2) All change orders increasing the cost of the contract to the Town, up to the formal competitive purchasing Category one threshold as defined in the most current version of F.S. § 287.017(3), as amended, and approved by the Town Council, provided that sufficient budgeted funds are available.
 - (3) All other change orders must be formally approved by the Town Council before work may be authorized to begin; and no claim against the Town for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.
 - (4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the Town Manager, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.
 - (5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in subsection 6-148(b) "Emergency Procurements" of this Code.

Sec. 2-108. Exclusions and exceptions to bid and proposal requirements.

- (a) *Exclusions.* This article shall not apply to:
 - (1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services;; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;
 - (2) Goods purchased with petty cash or Town procurement cards in accordance with the Town's petty cash and procurement card procedures;
 - (3) Items purchased for resale to the general public; for example, supplies for a Town-owned concession area.
 - (4) Purchase of groceries pursuant to local, state or federal emergency declarations;
 - (5) Artistic services or works of art;
 - (6) Travel expenses, hotel accommodations and hotel services pursuant to per diem rates established by General Services Administration (GSA);
 - (7) Town-sponsored events held at venues not owned by the Town;

- (8) Entertainment and entertainment-related services for Town-sponsored events;
 - (9) Purchase of motor vehicle license plates from a governmental agency;
 - (10) Persons or entities retained as "expert consultants" to assist the Town in litigation, or in threatened or anticipated litigation;
 - (11) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
 - (12) Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III;
 - (13) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.
- (b) *Sole and single source procurements*
- (1) A contract may be awarded for a supply, service, or construction item without competition when the Town Manager or a designee determines in writing that there is only one (1) economically feasible source for the required supply, service, or construction item, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.
 - (2) The Town Manager or designee shall conduct negotiations, as appropriate, regarding price, delivery and terms. The Town department requesting a single, or sole source procurement must submit a written request to the Town Manager for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.
 - (3) Sole source purchase requests shall be approved by the Town Council. A record of sole source purchases shall be maintained by the Town and shall list each vendor's name, the amount and type of each contract and a listing of the item(s) procured under each contract.
- (c) *Emergency procurements.*
- (1) Notwithstanding any other provision of this Code, specifically section 2-400 "EMERGENCY POWERS", the Town Manager or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the Town Manager to the Town Council and included in the contract file.
 - (2) The Town Manager is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the Town Manager shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the Town's needs as a result of the emergency and may delegate authority for a department head or other designee to secure emergency proposals. The Town Manager, the Town Clerk/Treasurer, or the designee shall endeavor to secure proposals from at least two (2) separate sources.
 - (3) Any emergency procurement exceeding the award authority of the Town Clerk/Treasurer, or the Town Manager shall be reported to the Town Council in writing

or at a Town Council meeting, no later than ten (10) working days after the determination that the emergency situation has been stabilized and that no further emergency expenditures are required. The Town Manager shall make a full disclosure of all emergency expenditures made pursuant to this section to the Town Council at the next regular meeting of the Town Council.

- (d) *Cooperative purchasing.* When deemed to be in the best interests of the Town, the Town Manager may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one (1) or more governmental units for the procurement of any supplies, services, or construction. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open-ended public procurement term contracts that are made available to other governmental units.
- (e) *Purchases from other governmental entities.* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section, will require approval by the Town Council.
- (f) *Purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by a formal competitive selection process.* The purchase of goods or services under a contract awarded by the United States Government or another governmental or not-for-profit entity by a formal competitive process is authorized provided the Town Manager makes a determination that time, expense and marketplace factors make it financially advantageous for the Town to do so, will require approval by the Town Council.
- (g) *Professional services.* Contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the Town Manager or designee to be in the best interest of the Town, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional services contracts that exceed the threshold established in subsection 2-106(a) of this Code, ("Methods of Source Selection"), will require approval by the Town Council.
- (h) *Owner direct purchase.* A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the Town as an owner direct purchase for incorporation into a public works project as defined in FSS 255.0992(b) and as amended, the contract for which was previously awarded by the Town, which prior award included the cost of such supplies and materials. In such event, the Town shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (i) *Waiver of procurement procedures.* The Town Council may authorize the waiver of procurement procedures upon the recommendation of the Town Manager that it is in the Town's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. § 287.055 or § 255.20, as amended.

Sec. 2-109. Bonds and security requirements.

- (a) *Bid security.*

- (1) The Town Clerk/Treasurer may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the Town Clerk/Treasurer or designee shall consider the nature of the solicitation and performance required to protect the Town during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to Town and approved by the Town Clerk/Treasurer.
 - (2) *Amount of security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.
 - (3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.
 - (4) If a bidder is permitted to withdraw its bid before award as provided in subsection 2-106(a)(1)g of this Code, ("Methods of Source Selection, "Correction or Withdrawal of Bids; Cancellation of Awards"), no action shall be taken against the bidder or the bid security.
- (b) *Performance and payment bonds.*
- (1) When a construction contract is awarded in excess of two hundred thousand dollars (\$200,000.00), the following bonds as security shall be delivered to the Town and shall become binding on the parties upon execution of the contract as required in F.S. § 255.05 as may be amended.
 - a. *Performance bond:* Required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.
 - b. *Payment bond:* Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the contractor.
 - (2) *When required.*
 - a. The Town Clerk/Treasurer shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by subsections 2-109 (b)(1) of this Code.
 - b. Performance and payment bonds may also be required, at the discretion of the Town Clerk/Treasurer, for construction work estimated to cost less than the thresholds established by F.S. § 255.05, as amended. Performance and payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to one hundred (100) percent of the contract price or otherwise secured in a manner satisfactory to the Town. The bonds shall be recorded in the public records of Brevard County, Florida.
 - (3) *Reduction of bond amounts.* The Town Clerk/Treasurer shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.
 - (4) In lieu of a performance and payment bond, the Town may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of one hundred (100) percent of the contract price. Such alternate form of security shall be

for the same purpose and shall be subject to the same conditions as a performance and payment bond.

- (c) *Guidelines and standards for surety companies.* The Town Clerk/Treasurer in consultation with the Town Manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the Town on behalf of a contractor.
- (d) *Use of Town forms.* The Town reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the Town. The Town Clerk/Treasurer or designee shall include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

Sec. 2-110. Insurance requirements.

The Town Clerk/Treasurer with the concurrence of the Town Manager may establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The Town of Malabar shall be named as an additional insured for any required general liability coverage. From time to time, the Town may require a contractor or consultant to provide the Town with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the Town.

Sec. 2-111. Types of contracts and contract administration.

- (a) *General.* Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the Town may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- (b) *Multi-year contracts.*
 - (1) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Town provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.
 - (2) *Use.* A multi-year contract is authorized where:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the Town by encouraging effective competition or otherwise promoting efficiencies in Town procurement.
 - (3) *Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.
- (c) *Contract administration.* The Town Manager shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is

performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.

- (d) *Contingent contracts.* The use of contingent contracts is prohibited.
- (e) *Cancellation due to non-performance.*
 - (1) *Applicability.* This section applies to contracts, procured by the Town and between a person or entity which provide for termination of the contract by the Town for cause and/or for convenience.
 - (2) *Authority.*
 - a. The Town Manager upon consultation with the Town clerk shall have the authority to terminate a contract for cause, in the event of a breach by the contractor, or for convenience, if in the best interest of the Town.
 - b. Nothing in this section shall be construed to restrict the Town Manager upon consultation with the Town Clerk/Treasurer from simultaneously making a determination to terminate a contract under this section and suspending or debaring a contractor.
 - (3) *Notice of decision.* A copy of any decision under this section shall be furnished in writing to the contractor.
 - (4) *Finality of decision.* Any decision under this section shall be final and conclusive upon the contractor.
 - (5) *Other remedies.* Nothing in this section shall limit the Town from pursuing other legal or contractual rights or remedies against a contractor.
 - (6) The contract documents may provide contract cancellation or contractor termination procedures that are different from, or in addition to, those provided in this section. If a contract contains a cancellation or termination clause, that clause rather than this section shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

Sec. 2-112. Specifications.

- (a) *Maximum practicable competition.* All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the Town by outside sources.
- (b) *Required characteristics.* All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the Town's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the Town Manager or designee.
- (c) *Relationship with user departments.* The Town Manager shall obtain advice and assistance from personnel of user departments in the development of specifications and may delegate to a user department the authority to prepare and utilize its own specifications.

Sec. 2-113. Procurement of construction and professional design services.

- (a) *Procurement of construction delivery methods.* Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the Town Manager or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction Manager-at-risk, task order-contracting, fixed price, or other approved methods.
- (b) *Bonds and insurance requirements for construction projects.* The Town shall require bonds and insurance from contractors for construction projects as prescribed in sections 2-109, "Bonds and Security Requirements" and 2-110, "Insurance" of this Code.
- (c) *Professional design services.* Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. § 287.055, as amended, in accordance with the requirements of subsection 2-106(a)(2) of this Code, ("Methods of Source Selection; Competitive Sealed Proposals") utilizing a qualifications based procurement process which shall not permit the use of price as an evaluation factor.

Sec. 2-114. Appeals and remedies.

- (a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors holding a Town contract and shall only apply to protests by bidders or offerors when the Town Manager recommends a purchase in excess of the Town's formal competitive threshold as established in subsection 2-106(a) "Methods of Source Selection", "General" of this Code.
 - (1) *Right to protest.* Any actual or prospective bidder or proposer who is aggrieved in connection with a solicitation or award of a bid or contract may protest to the Town Manager in accordance with established procedures detailed in the purchasing manual.
 - (2) *Remedy.* The Town Manager is authorized to settle any protest regarding the solicitation or award of a Town contract, any claim arising out of the performance of a Town contract, prior to an appeal to the Town Council, or the commencement of an action in a court of competent jurisdiction
 - (3) *Stay of procurement.* In the event of a timely protest properly filed, the Town Clerk/Treasurer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Town Manager or Town Council, as appropriate, makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Town.

Sec. 2.115. Authority to debar or suspend.

- (a) *Authority.* The Town Manager or designee, after reasonable notice to the person involved and reasonable opportunity for that person or firm to be heard, is authorized to debar a vendor or bidder for cause from consideration for award of contracts. Debarment shall not be for a period of more than three (3) years.
- (b) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:
 - (1) Conviction for the Council of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Town Manager or designee to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Refusal to perform a contract after a contract is accepted by the Town and awarded to the vendor.
 - d. Any other cause the Town Clerk/Treasurer determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; and
 - e. Violation of the ethical standards set forth in section 6-156 (Ethics in public contracting).
- (c) *Decision.* The Town Clerk/Treasurer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (d) *Notice of decision.* A copy of the decision under subsection 6-154(c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (e) *Appeal.* A decision under subsection 6-154(c) shall be final unless within ten (10) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the Town Manager.
- (f) *Authority of the Town Manager.* The Town Manager shall have the jurisdiction to review the Town Clerk/Treasurer decision regarding suspension or debarment and decide whether, or the extent to which, the debarment or suspension was in accordance with this section, was in the best interest of the Town, and was fair. such decision by the Town Manager shall be final and conclusive.

Sec. 2-116. Ethics in public contracting

- (a) *Standards of ethical conduct.*
 - (1) *Ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the Town employee's or elected official's duties is a breach of a public trust.
 - (2) *Ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a violation of this article.

- (b) *Standards of conduct for employees, public officials and suppliers.*
- (1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by administrative policy of the Town.
 - (2) *Solicitation or acceptance of gifts.*
 - a. No Town official or employee shall solicit or accept anything of value from any vendor or bidder, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the actions of that official or employee would be influenced thereby.
 - b. No bidder, supplier, vendor or contractor shall solicit or provide anything of value to any Town official or employee.
 - (3) *Doing business with the Town.* No Town officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the Town from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. No Town official or employee, acting in a private capacity, shall rent, lease or sell any realty, goods or services to the Town.
 - (4) *Unauthorized compensation.* No Town officer, agent or employee or his or her spouse or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.
 - (5) *Conflicting employment or contractual relationship.* No Town officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the Town; nor personally profit directly or indirectly from any contract, purchase, sale or service between the Town and any person or company through a relationship with any business entity which is doing business with the Town. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the Town.
 - (6) *Contingent fees.* No Town official or employee shall be retained, or shall retain a person, to solicit or secure a Town contract upon an agreement or understanding for a Council, percentage, brokerage or contingent fee.
 - (7) *Confidential information.* No Town official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
 - (8) *Prohibition against lobbying.*
 - a. During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any Town Council members, candidates for Town Council or any employee of the Town. Contact should only

be made through regularly scheduled Council meetings, or meetings scheduled through the Town Clerk/Treasurer for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.

- b. During a formal solicitation process, contact with personnel of the Town of Malabar other than the Town Clerk/Treasurer or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

Sec. 2.116.1. Surplus tangible property.

- (a) *Determination that property is surplus.* At least once annually, each department shall review Town inventory and make a determination of Town property that should be classified as surplus; however, at any time during the fiscal year a department may identify property as being surplus.
- (b) *Disposition of surplus property.* The Town Manager shall have the responsibility to dispose of any Town tangible property that exists on the official municipal inventory, that is obsolete, worn out, excess, scrapped, or not cost effective to repair.
 - (1) Using departments shall submit to the Town Manager or designee, at such time and on such forms that may be prescribed, reports showing stock of all supplies which are no longer used, or which have become obsolete, worn out, excess, scrapped or that are not cost effective to repair. The using department may suggest a dollar value per item or per lot of items; however, such suggestion shall not constitute the minimum sale amount.
 - (2) The Town Manager shall have the authority to dispose of surplus property by the method or methods deemed to be most advantageous, convenient and economical to the Town. Methods of disposal of surplus stock may include, but not be limited to the use of competitive sealed bids, public auction, including internet auctions, established markets, sales at posted prices, or trade-in for new equipment, donated pursuant to FSS 273.01(3), as may be prescribed for the individual situation.
 - (3) Property that has been declared surplus that has a book value of greater than five thousand dollars (\$5,000.00) shall be disposed of by authorization of the Town Council.
 - (4) Property which has been declared surplus may be donated to an outside agency at the discretion of the Town Manager or designee. The Town Manager or designee shall report any donations with a book value of greater than five thousand dollars (\$5,000.00) to the Town Council at its next regularly scheduled meeting, .
 - (5) Property which is in a wrecked, inoperative or partially dismantled condition, or which has deteriorated to the point that it has no apparent monetary value or may pose a potential risk to the Town if disposed of through a sale, may be discarded as trash in an environmentally acceptable method, upon receipt of written approval by the Town Manager.
 - (6) In the event that either the competitive sealed bid or public auction methods for disposal are used, notice of a proposed sale of property shall be publicly noticed by advertisement in a newspaper of general circulation within the Town, or by electronic notice published on the Internet at least one (1) week prior to the scheduled sealed

bid or auction. The property shall be available to prospective buyers for inspection in advance of the bid opening or auction.

- (7) Competitive sales of surplus property shall be made to the highest responsive and responsible bidder.
- (c) *Surplus proceeds.* The proceeds from any sale of Town property, less selling expenses if applicable, shall be deposited into the fund which purchased the property.

Sec. 2-116.2 Surplus real property.

- (a) *General.* Upon the Town Council's determination that continued ownership of any parcel of real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the Town, the Council shall authorize by resolution the sale or other disposition of such real estate. No sale or conveyance shall be deemed authorized except as provided in the authorizing resolution -
- (b) *Appraisal required.* Prior to the sale or other disposition of any Town-owned real property, an appraisal shall be obtained unless the Town Council finds that, due to exigent or other circumstances, an appraisal would not be in the best interest of the Town. For platted, undeveloped residential property, a recent appraisal of comparable property located in the same vicinity of the subject property may be utilized to satisfy the appraisal requirement. For purposes of this section, a "recent" appraisal shall mean one that was prepared not more than twelve (12) months prior to the proposed date of sale or other disposition.

Sec. 2-116.3. Acceptance of donations.

Donations other than sponsorships of Town events, with an estimated value exceeding one thousand dollars (\$1,000.00), shall be approved by the Town Council prior to acceptance.

SECTION 3. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or Town law, rule, code, or regulations, the more restrictive shall apply.

SECTION 5. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 6. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

The foregoing Ordinance 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 Marisa Acquaviva _____

Council Member Brian Vail _____

Council Member Steve Rivet _____

Council Member David Scardino _____

Council Member Mary Hofmeister _____

This ordinance was then declared duly passed and adopted this 18th day of April 2022.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: 04/04/2022 Vote to .

Second Reading: 04/18/2022

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b.

Meeting Date: April 4, 2022

Prepared By: **Matthew Stinnett, Town Manager**

SUBJECT: Ordinance 2022-04 Regulation of Non-Stormwater Discharges into the Storm Drainage System.

BACKGROUND/HISTORY:

On February 28, 2022 we received an audit report from the Florida Department of Environmental Protection of our Municipal Separate Storm Sewer System (MS4) NPDES Permit. One of the required improvements was to adopt a regulatory mechanism to specifically prohibit non-stormwater discharges into the storm sewer system. The proposed ordinance will satisfy this requirement.

ATTACHMENTS:

Draft Ordinance 2022-04.

FINANCIAL IMPACT:

None.

ACTION OPTIONS:

Motion to approve Ordinance 2022-04.

ORDINANCE NO. 2022-04

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA, AMENDING THE TITLE OF ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; CREATING CHAPTER 1; PROVIDING FOR A CHAPTER 2; CREATING NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Malabar, Brevard County, Florida, that:

Section 1. Article VIII of the Town Land Development Code is hereby amended to read as follows:

“Article VIII Surface Water, Natural Resources, and Stormwater Management

Chapter 1. Surface Water Management (1-8.1 through 1-8.19)

...

Chapter 2. Illicit Discharge and Connection (2-8.01 through 2-8-14)

Sec. 2-8.01. – Short title, Purpose, Findings and Intent.

This article shall be known and may be cited as the “Town of Malabar Illicit Discharge Code.

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the Town of Malabar, Florida through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law

This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process

The objectives of this Chapter are:

a) _____ To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;

b) _____ To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

Sec. 2-8.02. – Definitions.

- a. Authorized Enforcement Agency means the department within the town that is designated by the town manager as having the responsibility to enforce this article, or the town's code enforcement department.
- b. Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- c. Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- d. Construction activity means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.
- e. Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- f. Illicit connection means either:
 - (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- g. Illicit discharge or illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 71-169 of this article, or discharge to the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits. Illicit discharges are declared a serious threat to the public health, safety, and due to their nature are irreparable or irreversible in nature.

- h. Industrial activities means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.
- i. Municipal separate storm sewer system (MS4) or storm drain system means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.
- j. National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.
- k. Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.
- l. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.
- m. Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- n. Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- o. Receiving bodies of water means any water bodies, watercourses and wetlands into which surface waters flow.
- p. Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- q. Stormwater management system means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.
- r. Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- s. Water body means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

- t. Watercourse means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

Sec. 2.8.03. – Applicability.

This chapter shall apply to all water entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Sec. 2.8.04. – Compatibility with other regulations.

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 2-8.05. – Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Sec. 2-8.06. – Control of pollutant contributions from interconnected MS4s.

Interconnected MS4s, including MS4s not owned by the town, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

Sec. 2-8.07. – Prohibitions.

- (a) Illicit/illegal discharges. No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

- (1) petroleum products, including, but not limited to, oil, gasoline, grease;
- (2) solid waste;
- (3) paints;
- (4) steam cleaning waste;
- (5) pesticides, herbicides or fertilizers;
- (6) degreasers, solvents;
- (7) sanitary sewage;
- (8) chemically treated cooling water;
- (9) antifreeze and other automotive products;
- (10) lawn clippings, leaves, branches, etc.;

- (11) animal carcasses;
 - (12) recreational vehicle waters;
 - (13) dyes;
 - (14) construction materials;
 - (15) water from a commercial car wash;
 - (16) any liquids in quantity or quality that are capable of causing a violation of the town's NPDES stormwater permit; and
 - (17) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the town's storm drain system.
- (b) Illicit connections.
- (1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the town that results in any discharge in violation of any provision of federal, state, town or other laws or regulations.
 - (2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.
 - (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (c) Violation of permits. Any discharge into the stormwater system of the town in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

Sec. 2-8.08. – Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.

- (a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the town's MS4 or regulated waters.
- (b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the town's land development regulations, shall be properly implemented, installed, operated, and maintained.
- (c) Authorized discharges to the town's MS4 shall be controlled so that they do not impair the operation of the town's MS4 or contribute to the failure of the town's MS4 to meet any applicable local, state, or federal law or regulation.
- (d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

- (e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to town engineering department within 30 days after the issuance of a permit.

Sec. 2-8.09. – Authorized exemptions.

- (a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:
- (1) water line flushing;
 - (2) flushing of reclaimed water lines;
 - (3) street cleaning;
 - (4) construction dust control;
 - (5) landscape irrigation;
 - (6) diverted stream flows;
 - (7) rising ground waters;
 - (8) foundation and footing drains;
 - (9) dechlorinated swimming pool discharges;
 - (10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
 - (11) uncontaminated pumped ground water;
 - (12) discharges from potable water sources;
 - (13) air conditioning condensate;
 - (14) irrigation water;
 - (15) springs;
 - (16) lawn watering;
 - (17) individual residual car washing
 - (18) flows from riparian habitat and wetlands; and
 - (19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.
- (b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Sec. 2-8.10. – Emergency conditions and suspension of MS4 access.

Notwithstanding any other provisions of this article, whenever the authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or town approved construction plans, town forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency, conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

- (a) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened

discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

- (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

Sec. 2-8.11. – Inspection and monitoring for compliance.

Town personnel and town agents shall be granted access for inspection of facilities discharging or suspected of discharging to the town's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the town's MS4, as well as records relating to them, shall be made accessible to town personnel and town agents for this purpose.

Sec. 2-8.12. – Reporting requirements.

Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 71-167, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the town, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

Sec. 2-8.13. – Enforcement.

(a) Notice of violation.

- (1) For any violation which does not involve an illicit discharge, the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:
- a. the performance of monitoring, analyses, and reporting;
 - b. the elimination of illicit connections;
 - c. the issuance of cease and desist orders;
 - d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;

- e. advice as to the possible amount of fines; and
 - f. the implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.
- (b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the special magistrate or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the special magistrate.
 - (c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, shall be liable to the town for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges. The determination of the reasonableness of such costs shall be brought before the special magistrate, either as an independent hearing or in conjunction with a code enforcement hearing. The determination regarding the reasonableness of the cost of abatement shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment if such amount is not paid within ten days from the date of the special magistrate's decision regarding the abatement costs.
 - (d) Persons responsible for violation of this article shall be liable for all costs incurred by the town in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.
 - (e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the town's legal recourse, be subject to prosecution before the special magistrate of the town, pursuant to this Code. Each day of violation shall constitute a separate violation.
 - (f) The town may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.
 - (g) In the event of an illicit discharge, the Town shall not be required to send a Notice of Violation and may cause a Hearing to be immediately scheduled before the Special Magistrate with notice of such hearing provided to the violator.
 - (h) The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies. The Town may recover all attorney's fees court costs and other expenses associated with enforcement of this Chapter in court.

Sec. 2-8.14. – Use of penalty awards.

Any funds received by the Town as a result of the enforcement of this code which are not used for specific purposes set forth in this code shall be deposited in the stormwater utility fund."

Section 2. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 3. Inclusion in Code. It is the intention of the Town Council of the Town of Malabar that the provisions of this ordinance shall be made a part of the Town of Malabar Code of Ordinances, and the sections may be renumbered to accomplish such intention.

Section 4. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Malabar, Brevard County, Florida, this 18th day of April, 2022.

BY:

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, Town Clerk/Treasurer

(seal)

1st Reading: April 4, 2022 _ to _

2nd Reading: April 18, 2022

Approved as to Form and Content

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

TOWN COUNCIL MEETING

AGENDA ITEM NO: 12.c

Meeting Date: April 4th, 2022

Prepared By: Richard Kohler, Deputy Clerk/Treasurer

SUBJECT: Resolution 07-2022

BACKGROUND/HISTORY:

- a. On March 29th, Mark Britt submitted an application to be an alternate member of the Malabar Trails and Greenways Committee. There are currently 2 open alternate positions available. By approving Resolution 07-2022 & Resolution 08-2022, the Trails and Greenways Committee would be full.

ATTACHMENTS:

- a. Resolution 07-2022

ACTION OPTIONS:

- a. Adopt Resolution 07-2022

RESOLUTION 07-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF MARK BRITT TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified of openings on the Trails and Greenways Committee; and

WHEREAS, Malabar Town Council desires to fill this opening by appointment.

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

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Mark Britt as an alternate member of the Trails and Greenways Committee for a three-year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Committee Chair, and the Committee Secretary of this appointment.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect immediately upon adoption.

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

Council Member Marisa Acquaviva _____
Council Member Brian Vail _____
Council Member Steve Rivet _____
Council Member David Scardino _____
Council Member Mary Hofmeister _____

This Resolution was then declared to be duly passed and adopted this 4th day of April 2022.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

MAR 29 2022 PM 12:52

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE

NOTE: Florida's Public Records Law, Chapter 119, Florida Statutes states, "It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Your application when filed will become a public record and subject to the above statute. In addition, any appointed member of a board of any political subdivision (except members of solely advisory bodies) and all members of bodies exercising planning, zoning or natural resources responsibilities are required to file a financial disclosure form within 30 days after appointment and annually thereafter for the duration of the appointment as required by F.S. Chap. 112.

NAME: MARK Britt TELEPHONE: 321 427-4406
ADDRESS: 1671 Country Cove Cir, Malabar - 32950
EMAIL: MARKb1241@hotmail.com

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: [X] YES [] NO

OCCUPATION: (If retired, please indicate former occupation or profession.)
Retired - SPECIAL AGENT US Treasury

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:
-

ADDITIONAL INFORMATION/REFERENCES:
-

Please select the Board that you would like to serve on by indicating first choice & second choice:

- Board of Adjustment
Parks & Recreation
Planning & Zoning
Trails & Greenways

Per Town Code, Council shall require removal of members after 3 successive absences.

Signature of Applicant: Mark Britt

Date: 03/29/22

Please return this form to: Town Clerk
Town of Malabar
2725 Malabar Road
Malabar, FL 32950-4427
Email: townclerk@townofmalabar.org

Note: If you need more information concerning the duties of these Boards, please contact the Town Clerk. Please attach a copy of your resume to this application. You will be notified of the date of the Town Council Meeting that your application will be considered for appointment. You will need to plan to attend the Council Meeting.

Applicant Certification

By completing this application with the Town of Malabar and placing my signature below, I do hereby acknowledge the following:

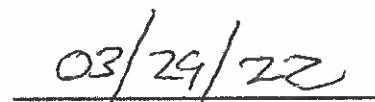
- This application, when completed and filed with the Office of the Town Clerk, is a PUBLIC RECORD UNDER Chapter 119, Florida Statute, and is open to public inspection.
- I am responsible for keeping the information on this form current and that any changes or updates will be provided to the Office of the Town Clerk.
- I acknowledge that I am a resident of the Town of Malabar.
- I consent to filing the Statement of Financial Interest as required by Chapter 112, Florida Statutes.
- If appointed to a Committee or Board, I acknowledge that it is my obligation and duty to comply with the following:
 - Malabar Code of Conduct
 - Code of Ethics for Public Officials (F.S., Chapter 112, Part III)
 - Florida Sunshine Law (F.S., Chapter 286)

I understand the responsibilities associated with being a Committee or Board member and I will have adequate time to serve on this Committee or Board.

The information provided on this form is true and correct and consent is hereby given to the Town Council or its designated representative to verify any and/or all the information provided.



Signature



Date

Trails & Greenways (T&G) Committee Application

The T&G Committee is hereby established and shall consist of five (5) seats and two (2) alternate-seats. The Committee is established to deal with the specific subject of trails and greenways within Malabar and how they connect to the South Brevard Linear Trail system. The Committee shall gather information and present it to the Park and Recreation Board for referral to the Town Council. The Committee is advisory in nature but consults with trail groups from other agencies on trail related issues and forwards their recommendations to the Parks and Recreation Board for their consideration and recommendation to Council.

1. Name: MARK BULL Phone: 321 427-4406
 2. Home Address: 1671 COUNTY CIRC GY MALABAR
 3. Email Address: MARKB1241@HOTMAIL.COM 32951
 4. Are you a resident of the Town: Yes No
 5. How long have you been a resident of the Town of Malabar: 6 years
 6. Are you currently involved with any other organization of the Town: Yes No
- If yes, which organization: _____

Town of Malabar 2725 Malabar Road Malabar, Florida 32950
 Phone: 321-727-7763 ~ Fax 321-722-2234 ~ Email: townclerk@townofmalabar.org
 Website: www.townofmalabar.org



TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950
(321) 727-7764 OFFICE • (321) 722-2234 FAX
www.townofmalabar.com

Town of Malabar Board Member Code of Conduct

(Malabar Code Chap 2. – Code of Conduct) In addition to adhering to the requirements of State Law, any person appointed to serve as a Member of a Town Board or Committee shall commit to the following Code of Conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

I affirm that the proper Statutory and Town Charter role of Members of appointed Town Boards and 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.

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 as the Chief Executive Officer; 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.

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.

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, and those conducting business with the Town.

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.

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.

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.

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 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 Malabar. I will listen actively and objectively to others' concerns or constructive criticisms.

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.

I will maintain the confidentiality of privileged information and will abide by all laws of the State applicable to my conduct as a Board or Committee Member, including but not limited to the Government in the Sunshine Law, the Florida Code of Ethics for Public Officers, and Town Rules of Procedure and Codes of Conduct.

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.

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.

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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.

As a Board or Committee Member, 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.

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

Mark Butt
Signature

3/29/22
Date

MARK BUTT
Print Name

Witness

TOWN OF MALABAR

TOWN COUNCIL MEETING

AGENDA ITEM NO: 12.d

Meeting Date: April 4th, 2022

Prepared By: Richard Kohler, Deputy Clerk/Treasurer

SUBJECT: Resolution 08-2022

BACKGROUND/HISTORY:

- a. On March 29th, Mike Schoolfield submitted an application to be an alternate member of the Malabar Trails and Greenways Committee. There are currently 2 open alternate positions available. By approving Resolution 07-2022 & Resolution 08-2022, the Trails and Greenways Committee would be full.

ATTACHMENTS:

- a. Resolution 08-2022

ACTION OPTIONS:

- a. Adopt Resolution 08-2022

RESOLUTION 08-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF MIKE SCHOOLFIELD TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified of openings on the Trails and Greenways Committee; and

WHEREAS, Malabar Town Council desires to fill this opening by appointment.

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

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Mike Schoolfield as an alternate member of the Trails and Greenways Committee for a three-year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Committee Chair, and the Committee Secretary of this appointment.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect immediately upon adoption.

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

Council Member Marisa Acquaviva _____
Council Member Brian Vail _____
Council Member Steve Rivet _____
Council Member David Scardino _____
Council Member Mary Hofmeister _____

This Resolution was then declared to be duly passed and adopted this 4th day of April 2022.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved as to form and content:

_____.
Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

MAR 29 2022 PM 1:46

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE

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NAME: Mike Schoofield TELEPHONE: 321-482-6536
ADDRESS: 1315 Rembrandt Trail Malabar
EMAIL: mike.schoofield@gmail.com

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: [X] YES [] NO

OCCUPATION: (If retired, please indicate former occupation or profession.)

retired general contractor

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:

Elder Board - Calvary Chapel Surfside

ADDITIONAL INFORMATION/REFERENCES:

Please select the Board that you would like to serve on by indicating first choice & second choice:

- Board of Adjustment Planning & Zoning
Parks & Recreation Trails & Greenways

Per Town Code, Council shall require removal of members after 3 successive absences.

Signature of Applicant

Date 3/29/22

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1. Name: MIKE SCHOOLFIELD Phone: 321-482-6536
 2. Home Address: 1315 Pemberton Trail Malabar
 3. Email Address: MIKESCHOOLFIELD@gmail.com
 4. Are you a resident of the Town: Yes No
 5. How long have you been a resident of the Town of Malabar: 10 years
 6. Are you currently involved with any other organization of the Town: Yes No
- If yes, which organization: _____

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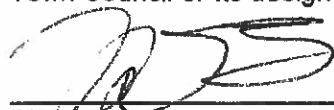
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Signature

3-29-22
Date



TOWN OF MALABAR

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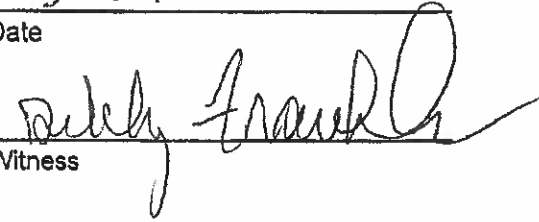


Signature

Mike Schootfield

Print Name

3-29-22

Date


Witness

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 13.a.

Meeting Date: April 04, 2022

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Discussion of Councilmember Term Limits – con't. from 3/21/2022

BACKGROUND/HISTORY:

Council discussed this at the RTCM 3/21/2022 and wanted to get input from all Council Members so it was requested to be on this agenda. If directed staff can add this to the Ordinance planned for RTCM of 4/18/2022 to and include the question to the voters on the same ordinance as the MSTU issue.

If approved by the voters, the term would increase from two to three years for Council. Since this is in the Charter the only way to change it is with a majority vote of the voters.

This was a tie vote in 2014 since it wasn't a majority, it did not pass.

Another consideration would be the number of terms – currently we have a limit of three two-year terms.

The Charter for the Town of Malabar, ARTICLE II, Sec. 2.07. Election and Terms; to increase the current 2-year term limit of members of the Town Council.

"The regular election of the Town Council members, including the Mayor, shall be held on the Tuesday after the first Monday of November each year to fill the expired terms as presently established and shall be for two (2) year terms. Two (2) council seats shall be elected in odd years and the remaining three (3) council seats in even years. The Mayor shall be elected to no more than two consecutive four-year terms. If only one (1) candidate qualified for any one of the council seats or the office of mayor, the name shall not appear on the ballot, and the candidate is automatically elected. In any election, the person having the highest number of votes in the election shall be elected. In the event of a tie, the winner shall be selected by draw. Beginning with the terms commencing with November 1986 election and thereafter, an elected Council Member shall not serve more than three (3) consecutive terms in any capacity, even if one of those terms was as an interim or appointed official."

Florida State Statute 166.031 (1) provides in part as follows:

The governing body of a municipality may, by ordinance, ... "submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance" ... to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose."

FINANCIAL IMPACT: Not Applicable, Town Council Discussion

ATTACHMENTS: Official Election Results 2014

ACTION OPTIONS:

Direction to staff to include within the ordinance for the referendum question for the 2022 ballot.



2014 General Election

(Website last updated at: 11/14/2014 5:07:10 pm)

Election Date: 11/4/2014

Registered Voters: 379,112
 Ballots Cast: 225,448
 Voter Turnout: 59.47%

Precincts Completely Reported: 173 / 173
 Vote By Mail: Completely Reported
 Early Voting: Completely Reported
 Election Day: Completely Reported

OFFICIAL RESULTS

Includes Provisional Ballots

The write-in candidate for State Representative, District 53 has withdrawn.
 A vote cast for the "write-in candidate" in this race will not count.

County-wide Results

Precinct Results

Maps

Reports

Filter Races

Select a race: 3 Year Terms for Town Council Members, Town of Malabar

View Type: Detailed

Precinct 301		Election Day	Vote By Mail	Early Votes	Provisional	Total Votes	Percentage
Choice							
YES		425	176	62	1	664	50%
NO		456	138	69	1	664	50%

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 13.b.

Meeting Date: April 4, 2022

Prepared By: Matt Stinnett, Town Manager

SUBJECT: Discussion of Code Enforcement Lien at 1870 Hall Road (CM Rivet).

BACKGROUND/HISTORY:

On July 1st 2020 it was ordered that the owner of 1870 Hall Road would begin accruing fines on July 17th 2020 if 3 separate code violations were not remedied. The owner subsequently failed to cure the violations until March 21st 2021.

The accumulated fines currently total \$93,000. In addition to the \$266.50 ordered to cover administrative costs.

The property owner has not made any attempt to pay or settle the accumulated fines or administrative costs.

ATTACHMENTS:

Special Magistrate Findings of Fact and Order Case No. 2020-0301

FINANCIAL IMPACT:

Administrative costs have currently not been recovered.

Brevard County Property Appraiser's Office market value listed as \$33,660.00

ACTION OPTIONS:

Council Direction to foreclose or take no action on the outstanding lien.

**TOWN OF MALABAR BEACH SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA**

TOWN OF MALABAR

Case No.: 2020-0301

Petitioner

vs.

**ERIC FABER
2208 CYPRESS BEND DRIVE
POMPANO BEACH, FL 33069**

Respondent(s).

FINDINGS OF FACT AND ORDER

THIS CAUSE having come on for the public hearing before the Town of Malabar Special Magistrate on July 1, 2020 after due notice to the Respondent(s) and the Special Magistrate having heard testimony under oath and receiving evidence, thereupon issues this Finding of Fact and Orders as follows:

- A. The Respondent ERIC FABER is the owner of that certain parcel of real property described as follows: 1870 Hall Road, Malabar 32950, FL, Parcel ID 29-37-01-01-00-271, S 1/10 Of Lot 21 Of Pb 1 Pg 165 Ex E 25 Ft, W 25 Ft & S 35 Ft As Des In Orb 1880 Pg 823 See Exhibit A attached hereto (the "Property")
- B. Based upon the testimony heard and the evidence presented the Special Magistrate concluded that there is a violation of the Code of Ordinances of the Town in that the following violations exist on the Property:
 - Property used as a junkyard in violation of Land Development Code, Section 1-3.2;
 - Storage or parking of wrecked, discarded, inoperative personal equipment in violation of Chapter 11, Article II, Section 11-28; and,
 - there exists overgrown vegetation on the Property in violation of Chapter 11, Article III, Section 11-41 with respect to required clear zones.

ORDER

Based upon the foregoing finding of fact and conclusions of law, it is

ORDERED AND ADJUDGED THAT:

1. Respondent(s) shall by July 16, 2020 come into compliance herein by doing the following:

-cease using the Property as a junkyard in violation of Land Development Code, Section 1-3.2;

-remove all stored or parked wrecked, discarded, inoperative personal equipment in violation of Chapter 11, Article II, Section 11-28; and,

-clear and remove all overgrown vegetation and create the clear zones on the Property as required by Chapter 11, Article III, Section 11-41.

2. Should the Respondent(s) fail to comply with paragraph 1 of this Order by July 16, 2020, the Respondent is advised that civil penalty in the amount of \$ 125.00 per day for each violation of paragraph 1 of this Order is hereby imposed and shall commence accruing on July 17, 2020. Furthermore and pursuant to the provisions of Florida Statute, Section 162.09(1), and due to the fact that the violations found herein pose and present a serious threat to the public health, safety, and welfare the City is authorized to take reasonable steps to reduce the threat of serious injury to the public health, safety, and welfare, including but not limited to, removing all stored or parked wrecked, discarded, inoperative personal equipment in violation of Chapter 11, Article II, Section 11-28 and removing the overgrown vegetation on the Property in violation of Chapter 11, Article III, Section 11-41. The cost of such remedial action by the Town shall be assessed against the Property and the Town shall file a lien against the Property for the cost of performing such remedial action.

3. The Respondent is further advised that said civil penalty shall continue accruing until such time as the Respondent contacts the Code Enforcement Officer and schedules an inspection to confirm the compliance with this Order has been achieved. Upon compliance, an Order of Compliance shall be recorded in the public records of Brevard County, Florida at which time the civil penalty imposed herein shall cease to accrue.
4. The Respondent is further advised that should a repeat violation occur, the respondent will not be given notice to cure and will be brought before the Special Magistrate at which time the Special Magistrate may impose a fine up to \$500.00 per day for each violation.
5. Administrative costs in the amount of \$ 266.50 are hereby imposed. *ds*

DONE AND ORDERED this 1st day of July, 2020 at Town of Malabar, Brevard County, Florida.

SPECIAL MAGISTRATE



James Stokes

cc: Respondent

All of the East 1/2, less the North 9/10 thereof, of Lot 21, Section 1, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, according to the plat thereof, recorded in Plat Book 1, Page(s) 165A and 165B, of the Public Records of Brevard County, Florida, Less the East 25 feet and the South 35 feet for road, utility and drainage right-of-way.

And

All of the West 1/2, less the North 9/10 thereof, of Lot 21, Section 1, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, according to the plat thereof, recorded in Plat Book 1, Page(s) 165A and 165B, of the Public Records of Brevard County, Florida, Less the West 25 feet and the South 35 feet for road, utility and drainage right of way.

- Parcel Identification Number: 29-37-01-00-271

Ex A.