



REGULAR TOWN COUNCIL MEETING

Monday, May 2, 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 04/18/2022**

Exhibit: Agenda Report Number 4a

Attachments:

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

- b. **ACKNOWLEDGEMENT OF PROCUREMENT ADMINISTRATIVE POLICIES 11-15&11.5.1 re: Procurement and Purchasing Cards**

Attachments:

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

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 Matt Stinnett (Excused)**
 - b. **Special Projects Manager**

Exhibit: Agenda Report Number 8b

Attachments:

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

- c. **Fire Chief (Written)**
 - d. **Public Works Director (Written)**
 - e. **Clerk**

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 / SPECIAL ORDERS

a. Closure of Marie Street by Town of Malabar per Ordinance 2021-15

The request to barricade Marie Street Right-of-way between Section 01 and Section 06 at a point adjacent to the southeast corner of Parcel 29-37-01-00-783. The purpose of the barricade would be to prevent motorized and other off-road vehicles beyond that point until development of the adjacent parcels.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

a. Parks and Recreation Board Recommendation and Staff Comments

Exhibit: Agenda Report Number 11a

Attachments:

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

12. ACTION ITEMS

ORDINANCES: 0

RESOLUTIONS: 1

MISCELLANEOUS: 0

a. Budget Adjustment FY 2021-2022 (Resolution 09-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2021-2022; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

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

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

a. Continue Discussion on Long-term Capital Improvements Priorities

Exhibit: Agenda Report Number 13a

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(1) Vacancy on the Planning and Zoning Board

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
04/27/2022 at 3:11 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.

Meeting Date: May 02, 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 4/18/2022

ACTION OPTIONS:

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
APRIL 18, 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 Rivet 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

KARL BOHNE

RICHARD KOHLER

TOWN MANAGER:

TOWN ATTORNEY:

DEPUTY CLERK/TREASURER:

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: None

4. CONSENT AGENDA:

4.a. RTCM Minutes of 4/04/22

4.b. Change Order 003 to SW Master Plan with S.A.I. adding \$23,415 to address FDEP's requirements

4.c. Sole Source purchase of LIFEPAK 15 Monitor/Defibrillator utilizing funds State and Local Fiscal Recovery Funds (SLFRF)

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

5. ATTORNEY REPORT: We have been served with a Lawsuit regarding the EELs issue. We are prepared to respond, and he urges Council to keep the public discussion limited. We will discuss it in an executive session in the future. Mayor asks if there is a time frame. Atty states there is, and he sees an issue. Municipalities have a longer amount of time to respond. The summons issued is incorrect in his opinion.

6. STAFF REPORTS:

6.a. Town Manager Matt Stinnett - None

6.b. Clerk – Informed Council that the 20/21 Fiscal Year Audit is under way. Staff has been supplying the Auditors with the requested financial materials and are looking forward to hearing James Moore & Co presenting their findings to Council.

7. 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.

8. PUBLIC HEARINGS: 2

8.a. 2nd Reading: Ord 2022-03 - Amend Chap 2 of Malabar Code of Ordinance Pertaining to Procurement

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V (5), 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 No. 8.a.

Ordinance read by title only.
Chair opened the PH. none
Chair closed the PH

Chair asked staff – as presented in Agenda Report.

MOTION: CM Vail / CM Acquaviva to adopt Ord 2022-03. Discussion: none

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 5 to 0.

8.b. 2nd Reading Ord 2022-04 - Amend Article VIII of the Malabar Land Dev Code Pertaining to Illicit Discharge

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA, PROVIDING FOR AMENDMENT TO THE TITLE OF ARTICLE VIII (8) OF THE MALABAR LAND DEVELOPMENT CODE PROVIDING FOR A REVISED CHAPTER TITLE; PROVIDING FOR 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 AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8.b.

Ordinance read by title only.
Chair opened the PH. none
Chair closed the PH

Chair asked staff – as presented in Agenda Report.

MOTION: CM Acquaviva/CM Hofmeister to adopt Ord 2022-04. Discussion: none

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 5 to 0.

9. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 3

9.a. Report by Planning & Zoning Board of the Absence of Meetings by Alternate Member as Required by Code – Removal of Jeff Rinehart and Repeal of Reso 01-2020.

Exhibit: Agenda Report No. 9.a.

Chair asked staff – as presented in Agenda Report.

MOTION: CM Rivet / CM Scardino to remove Jeff Rinehart from P&Z Board.

Discussion: CM Rivet asked how many meetings has he missed? CM Hofmeister stated he missed almost all of the meetings last year. CM Acquaviva asks if Mr. Rinehart has been contacted? Staff answers that he has not responded to any attempts made by Staff to contact him. **VOTE:** All Aye

9.b. Request by Trails & Greenways Committee for Council to Direct Staff to Research and Prepare a Submittal for Funding Request for Invasive Plant Control (removal of Cogan, Melaleuca and Brazilian Pepper) within the Cameron Sanctuary (Funding provided by Upland Program through FFWCC)

Exhibit: Agenda Report No. 9.b.

Chair asked staff – as presented in Agenda Report.

MOTION: CM Vail / CM Hofmeister to authorize staff to work on the funding request.

Discussion: Noted the deadline for current FY is in one week. May also work for next year's submittal. **VOTE:** All Aye

9.c. Request by Trails & Greenways Committee for Council to Authorize staff to meet with T&GC at the ENT during the workday to measure/mark the proposed trail site for continued land work within the current budget.

Exhibit: Agenda Report No. 9.c.

Chair asked staff – as presented in Agenda Report.

MOTION: CM Vail / CM Acquaviva to authorize staff to spend limited workday hours on this project, noting the staff shortage.

Discussion: Noted the ENT work is continued from previous work done but not completed. Atty noted it will be a fact-finding operation only. **VOTE:** All Aye

10. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

10.a. Referendum Question for Nov 8, 2022, Election: MSTU (Ord 2022-05)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING REPEAL AND AN EFFECTIVE DATE. **Exhibit:**

Agenda Report No. 10.a.

Ordinance read by title only.

Chair asked staff – as presented in Agenda Report. It is done every two years.

MOTION: CM Vail/ CM Hofmeister to adopt Ord 2022-04. Discussion: CM Acquaviva asked when the last time we did this is? Atty stated this is every two years. Mayor would like Council to stop doing this, as it passes resoundingly every year. Atty states we need to be careful and reference the original referendum. CM Scardino asks if we can do it this year? Atty states we can work towards that if its your direction. CM Vail states he is in favor of every two years as it keeps it fresh on the voter's mind. CM Rivet agrees with CM Vail that it is beneficial to the voters and the Sherriff. The more often voters vote it encourages the average citizen to pay more attention. Mayor states he has researched the cost of a Municipal Police force and it is astronomical. CM Rivet states were not spending money to perform the election as it is a regular election cycle. TM Stinnett suggests 4 years.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 5 to 0.

RESOLUTIONS: 0

MISCELLANEOUS: 1

10.b. Request Approval of Procurement of Used Motor Grader, Surplus of Motor Grader and Tractor **Exhibit: Agenda Report No. 10.b.**

Chair asked TM to speak to this: TM Stinnett stated that our motor grader is in for repairs, and we received a loaner in the meantime, and it is a superior machine. The offer is 140 to buy and 69 to trade in. If Council is agreeable, he will draft a budget adjustment and bring it back.

PW Director Miliore stated that the buyout rate is an excellent price, almost half of the cost after 25 years, and the new machine is more efficient.

CM Vail stated the machine has been kept in great condition, and we have smaller dirt roads now than when we purchased the old grader.

MOTION: CM Rivet / CM Vail to authorize TM to proceed with Procurement of used Grader and surplusage of Grader and Tractor. (As stated in agenda report): VOTE: All Aye

Chair excuses Attorney

DISCUSSION / POSSIBLE ACTION: 1

11.a. Request by CM Scardino for Council to Hold a Workshop to discuss prioritizing Capital Improvement Projects that would expand city water on south side of Malabar Road from Weber Road east to Fire Department and Malabar Community Park.

Exhibit: Agenda Report No. 11.a.

Chair asked CM Scardino to introduce: CM Scardino stated that this started with him being interested in developing the commercial opportunities of Malabar Road and safety to the Malabar FD. Mayor stated that he and TM Stinnett met with then CM Morrell of Palm Bay, and proposed thirds, Town, City, Residents and was rejected. They are open to having the lines, but they want the Town to fund it. CM Vail believed it would be a good idea for Staff to propose it to the city again. If we can create a loop of water from US 1 to Malabar Rd to Babcock it will increase the quality of water. Mayor states a meeting won't change their old message. SPM Morrell stated this also came up under SLFRF plans. Last time we discussed it; Storm water was the focus. She reiterates that the City of Palm Bay will not fund the expansion of their water system into Malabar. CM Scardino states he doesn't see harm in looking into it further. Mayor states the Workshop should be on a broader spectrum. CM Scardino said he is interested in seeing the Capital Improvement Plan development. SPM Morrell stated this is excellent feedback that Staff can work with. We can schedule a workshop and/or direct staff to act. CM Acquaviva stated she feels the ARP/SLFRF funds should benefit all the residents. What is going to touch the most residents. CM Scardino states a workshop seems to be unnecessary, what is Council's opinion on expanding the drinking water? Consensus is agreement. CM Scardino suggests if we get the ball rolling, the city may be inclined to assist. CM Acquaviva stated her neighborhood has city water, and every resident had to pay for the connection. CM Rivet states if we didn't want commercial development, we shouldn't have zoned Malabar Road Commercial. This would be a good help to that. CM Acquaviva stated a Workshop might not be a bad idea. Can we get a workshop for Capital Improvements? CM Scardino stated he believes staff should come back with some ideas and numbers and go for a workshop to prioritize them. He wants to know what projects we can afford. SPM Morrell states so far, we have allocated about 300k. That leaves us about a million dollars of unspent funds. These funds will go quickly. Roads, Stormwater, and Drinking Water are all expensive. CM Scardino asks how much commercial development can grow if we add water? SPM Morrell stated it is hard to guess and depends on the type of development. The best you can do with this money is plant a seed and hope it grows. CM Acquaviva stated that Roads are a priority. The thermal painting needs to be done, and you can't paint roads that need to be paved. CM Scardino states we could get a bond to finance these projects, like Street Lights, Roads, Paving Brook Hollow, etc....

CM Rivet stated that if we can get a bond the be supported by the residents, it would have to encompass a lot of issues in the Town. CM Scardino states he wants to do a list and prioritize the items and get together some projects to be Bonded.

SPM Morrell reminds Council that ARP Funds can not pay debt, but you can use it to match on a grant. Drinking water and Stormwater grants are both available. However, we are not quite ready for the requirements. Another option would be to pass a resolution to pass the 10% cap. CM Scardino states we could be able to make a package that works for most of the Town. CM Rivet agreed. TM Stinnett states it sounds like we need a workshop.

CM Vail states his thoughts are where is the best bang for the buck. What can we do that has a heavy impact on our citizens? He believes a workshop is the best path. CM Scardino

states for a workshop, we should have prices. TM Stinnett states when he first took over, we did a series of Workshops, maybe we should do that again? CM Acquaviva asks what came to fruition from that?

TM Stinnett stated that was mostly operational. This is long term goals. DEP is looking for a financial plan to see how we will pay for the Stormwater Master Plan.

CM Rivet states we have been talking about the Capital Improvement Plan for years and we haven't accomplished much. We've been nibbling around the edge too long. We now have enough money to make a difference.

TM Stinnett stated it will be difficulty to set up a long-term plan. We can do an annual budget, but long-term financial planning is a new area for Malabar.

Mayor stated we will discuss it at the next meeting.

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

13. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: None
CM Vail: None
CM Rivet: None
CM Hofmeister: None
CM Scardino: None
Mayor Reilly: None

14. ANNOUNCEMENTS: (1) Vacancy on the Planning & Zoning Board.

15. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:24 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard Kohler, Deputy
Town Clerk/Treasurer

Date Approved: 05/02/2022

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.b.

Meeting Date: May 2, 2022

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

SUBJECT: Acknowledgement of Administrative 11-15 Procurement Administrative Policy and 11-5.1 Procurement Card Administrative Policy.

BACKGROUND/HISTORY:

Town administrative policies have been formulated for Town Staff to use as an operational document, or standard operating procedure, explaining in more detail the internal workflows of the Purchasing and Purchasing Card operational processes as adopted by Ordinance 2202-03 Article V, Procurement Code.

Administrative Policies and Procedures (APPs) are developed and implemented as a best practice to assist government agencies to improve operations, communication, and knowledge of its operational agents. APPs additionally are a prevention tool to deter and identify fraud, waste, abuse, and illegal acts and to provide increased accountability of government, its departments, agencies, special districts, and entities receiving funds through the Town. These policies and procedures may be more restrictive and specific for designation by the Town Manager who is charged with the leading the Town's operational duties and enforcing the Town Charter as adopted by Town Council. APP's also serve as a communication tool for all employees to understand the Town operations for their duties and responsibilities as well as the other employees and department operations they serve with, thus creating an awareness, acknowledgement, and procedures to achieve the Town's mission and goals set forth by Town Council under the direction of the Town Manager.

In summary, the attached Administrative Policies for acknowledgment by Town Council identified as 11-15 Purchasing Administrative Policy and 11-15.1 Purchasing Card Administrative Policy are complimentary and supplemental to Ordinance 2022-03 that depict the internal operation use and workflow of the local law or ordinance adopted by Town Council for Town Staff to read and understand and apply to their duties and roles; any conflicts that may arise within the policy, the Town ordinance will supersede.

ATTACHMENTS:

Administrative 11-15 Purchasing Administrative Policy
Administrative 11-15.1 Purchasing Card Administrative Policy

FINANCIAL IMPACT:

N/A

ACTION OPTIONS:

Acknowledgement and approval of Administrative Polices for operational Procurement and Procurement Card procedural document/



Town of Malabar, Florida Administrative Policy

Title: Purchasing Policy	Effective Date: May 3, 2022 Last Review: Next Scheduled Review: January 2027
Originating Department: Financial Services/Purchasing	Supersedes: All previous and existing memos or administrative policies in conflict.
Policy Number: 11-15	Page 1 of 26

I. PURPOSE:

To establish requisitioning, purchasing and contracting policies and procedures.

II. DEFINITIONS

- A. **Blanket Purchase Order:** A contractual agreement with a vendor, normally for a fixed period of time such as; quarterly or annually, to allow departments to buy directly from the vendor by referencing the blanket purchase order number.
- B. **Contract/Agreement:** An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration.
- C. **Cooperative Purchasing:** When two or more agencies combine their purchasing requirements to competitively solicit specific goods or services. This consolidation normally affords greater buying power; therefore, allowing the participating agencies to obtain lower prices.
- D. **Emergency Order:** Circumstances that may require immediate action for protection of the safety, health, and welfare of the community or any segment thereof. This includes, but is not limited to, emergencies caused by acts of God, water and wastewater system breakdowns, Town equipment breakdowns, or the need to obtain additional emergency equipment or supplies.
- E. **Field Purchase Order (FPO):** An order processing application within the accounting system used primarily for processing check requests.
- F. **Free on Board (F.O.B.):** The vendor's copy of the purchase order states, "all shipments are F.O.B. destination unless otherwise stated by the vendor." This means that the seller bears all risk until the goods are delivered to the buyer's dock, after which risk will pass to the buyer.

- G. Open Purchase Order:** A purchase order that is issued for various services that require equal payments over a period of time, i.e., \$50 per month for 12 months. The purchase order is issued to allow for incremental payments against a set amount for the period.
- H. Piggybacking:** When an agency enters into an agreement solicited and awarded by another agency to purchase goods or services. The awarding agency and vendor must grant permission for the other agencies to take advantage of the awarded pricing.
- I. Procurement Card:** A type of charge card issued to designated employees to provide for purchases of small dollar items that are difficult to plan for. This method of purchasing allows projects to continue without the delay of going through the regular requisitioning process. Set limits and commodities are established for each authorized employee prior to receiving the card. The Procurement Card may be used to pay for larger purchases as authorized by the Town Manager, when it is in the best interest of the Town.
- J. Purchase Order:** A document generated by the Purchasing Division authorizing the supplier to ship and invoice the requested service or commodity. An order is not legitimate without this document.
- K. Purchase Requisition:** An automated request generated by the initiating department. The Purchase Requisition must contain a complete and concise description of what is required to purchase a service or commodity. The requisition must be electronically approved by the department director or designee as well as the Treasurer. The requisition must also be approved by certain other departments as specified in Section IV, Guidelines, Item E. The requisition is used by Town Clerk/Treasurer to generate the Purchase Order.
- L. Quotation:** 1. An informal solicitation process used to obtain competitive prices from multiple vendors. Quotations are normally used for purchases when the total value is less than the formal solicitation threshold, \$20,000. An appendix to the requisition that must be filled out by the initiating department when quotes have been obtained to identify vendors and prices for services and/or commodities. Documentation of all quotes must be submitted through the Town Manager to the Town Clerk/Treasurer.
- M. 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.
- N. Sole Source:** Refers to a situation created due to the inability to obtain competition. This situation may result because only one vendor or supplier possesses the unique ability or capability to meet the particular requirements of the user, or situations where only one 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 vendor because items are patented or geographically franchised.

- O. **Accounting System:** The automated purchasing system that is utilized to submit requisitions, obtain approvals, check budget information, issue purchase orders, and receive goods electronically.

III. **POLICY/PROCEDURE**

The Town of Malabar recognizes that an effective procurement policy is critical to the effective management and control of resources within the Town. The "Malabar Procurement Code" is found in Article V., of the Town's Code of Ordinances. The intent of the Malabar Procurement Code is to generally prescribe the manner in which the Town shall control the purchase of materials, supplies, services, and construction required to better serve the Town's residents and businesses.

In addition to addressing the proper control of the Town's resources, the Malabar Procurement Code and this policy are designed to support honest, ethical, and fair behavioral practices on the part of all individuals engaged in procurement activities within the Town. Specifically, Town employees involved in the procurement process shall subscribe to the Values and Guiding Principles of the Public Procurement Profession of Accountability, Ethics, Impartiality, Professionalism, Service and Transparency in conducting any procurement activity on behalf of the Town.

All employees of the Town are required to follow the provisions of the Malabar Procurement Code and shall not engage in any unauthorized purchasing practices as delineated in Section 2.107 of the 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:

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.

- A. Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Town Clerk/Treasurer.
- B. Committing to a purchase without issuance of an authorized purchase order when one is required.
- C. Obtaining items available on an existing Town term contract from a supplier that does not hold the contract.
- D. Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).

- E. Adding unauthorized purchases to previously approved Purchase Orders without approval of the appropriate approval authority and subsequent modification of the purchase order.

The Town Clerk/Treasurer shall arrange for purchases of all supplies, materials, contracted services, and equipment required by any office, department, or agency of the Town Government (Malabar Procurement Code Sec. 2-105). The initiating department shall be responsible for providing a complete concise description of goods or services required, verifying the proper budget account for the purchase, and validating that sufficient funding exists in the account, and expressing a preferred vendor if it chooses.

IV. GUIDELINES

In order to fulfill the requirements of the Town Code, the Town Clerk/Treasurer has the authority to review all purchase requisitions within the following guidelines:

- A. The Town Clerk/Treasurer is authorized question and obtain additional information necessary to properly evaluate the specifications on all requests for sole source, requests for supplies of a quantity that are greater or less than required, requests where materials seem inconsistent with the requirement, requests that do not conform to Town standards, requests without proper authorization, or any other requests that require clarification. However, the Town Clerk/Treasurer will not materially alter specifications without the consent of the initiating department. The Town Clerk/Treasurer or Town Manager does reserve the right to change vendors when determined to be in the best interest of the Town.
- B. Blanket Purchase Orders are encumbered orders used to purchase a variety of commodities and services used throughout the year to maintain continuity of operations. Blankets should most frequently be issued against a term contract (annual bids). This provides the blanket pricing information before the purchase order is issued rather than giving the vendor a "blank check". When completing a requisition for a Blanket Purchase Order, "Blanket Purchase Order Request" must be indicated on the requisition. The Town Manager reserves the right to establish a single purchase limit for individual transactions when establishing a Blanket Purchase Order.
- C. Open Purchase Orders are primarily used to pay for construction projects, where progress payments are required; and monthly invoices for rentals and annual maintenance agreements

Examples: Rental of equipment such as photocopier machines or any other type of equipment for which the department is billed periodically throughout the year and maintenance agreements for alarm systems, fire extinguishers, pest control, etc.
- D. Procurement Cards are used to pay for small dollar value items purchased throughout the year. This method covers items that cannot be planned for in advance. Transaction limits, monthly limits and commodity code limits are

established for each cardholder. The Procurement Card may be used to pay for larger purchases as authorized by the Town Manager, when it is in the best interest of the Town. (See Malabar Procurement Card Administrative Policy, #11-15.1.)

Examples: Open accounts with local vendors for miscellaneous supplies purchased in small quantities such as small tools, fasteners, auto parts, and food supplies.

- E. The Field Purchase Order is an order processing application within the accounting system used primarily for processing check requests.

The FPO process shall not be used for procurement of commodities and services. All orders for goods and services shall be processed using a purchase order. Only the following transactions are approved for payment using a Field Purchase Order:

1. Membership Dues
2. Seminar Registrations & Fees, Hotels, Per Diem, Mileage, etc. (Reimbursement for Travel)
3. Petty Cash Reimbursement
4. Governmental Permit Fees Including County, etc.
5. Legal Fees
6. Workers' Comp Claims
7. Bond Issuance Payments
8. Insurance Premiums
9. Professional Dues & Licenses
10. Books, Magazines, & Newspaper Subscriptions
11. Newspaper Advertising (Legal, Bids, & Personnel Ads)
12. Performance & Bid Bonds Refunds
13. Debt Service Bond Payments
14. Utility Deposit & Overpayment Refunds
15. Employees' Benefit Option Reimbursements
16. Employees' Education Reimbursements
17. Employees' Service Awards (Savings Bonds)
18. Customers' & EMS Refunds
19. Payroll, Sales Taxes
20. Employees' Union Dues

21. Employees' Garnishments (Taxes, Child Support, etc.)
22. Election Officials' Salaries
23. Utility Payments (Electricity, Water, Telephone, Propane, etc.)
24. Instructors
25. Meals (Reimbursement)
26. Deposits for Entertainment: Dancers/Instructors, etc.

F. Competitive quotations are not required for purchases less than \$2,500. The following requirements pertain to all purchases:

Per the requirements of Section 6-147 of the Malabar Procurement Code, quotations must be obtained per the requirements for the specific thresholds shown below:

\$0 - \$2,000.00	(3) Quotes are highly recommended
\$ 2,000.01 - \$19,999.99	Minimum of three (3) Written Quotes
Over \$20,000.00	Formal solicitation issued by Town Clerk/Treasurer

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.

Documentation Required: Individuals receiving verbal quotations shall, at a minimum, transcribe all verbal quotation information on a tabulation document which shall be made a part of the quotation record. Informal written quotations may be submitted electronically by e-mail or facsimile, or may be submitted as a paper document. When issuing a formal written quotation, the submittal requirements should be detailed within the body of the quotation terms and conditions. When using a Town procurement card for purchases under \$2000, the receipt shall serve as acknowledgement of the one (1) quotation requirement.

The initiating department is responsible for furnishing a preferred vendor for all requests that are less than \$19,999.99. All quotations obtained by the initiating department must be entered in the Quotes section of the purchase requisition. Documentation must be submitted to Town Manager as backup. Upon request, Town Manager will assist with obtaining quotations. For purchases greater than \$19,999.99 as indicated above, specifications and/or a complete scope of work must be submitted to the Town Manager in order to facilitate formal solicitations to be issued by Town Clerk/Treasurer. (The Town Manager may, at its discretion, solicit quotations for any amount when determined to be in the best interest of the Town; or may delegate the authority to solicit quotations as appropriate.)

G. Contract Development and Implementation :

1. General -- Purchase Orders & Contract Templates

The Purchasing and Contracts Division has several methods for establishing contracts with vendors, and have developed several contract templates which may be utilized depending on the type of goods or services being acquired.

2. Purchase Orders

The most common type of contract document is the purchase order. Purchase orders are usually issued for the purchase of commodity and equipment items not available on a term contract agreement. A purchase order may only be considered a contract, however, when it is issued as an acceptance of an offer made by a vendor. Offers include a formal response to an Invitation for Bid (IFB) or a Request for Proposal (RFP), or an informal written quotation, where pricing is included as a part of the offer. Purchase orders are issued in response to a requisition entered into the accounting system by the using department, and will be created by the Town Clerk/Treasurer.

Each purchase order document includes standard terminology defining requirements for the vendor to follow which cover the following areas:

- (a) Items are to be shipped F.O.B. Destination, freight pre-paid. This requires that title to the goods remain with the vendor until delivery and acceptance. The vendor is responsible to pay damage claims.
- (b) The Town's tax-exempt information is provided.
- (c) Purchase Order numbers should be included on all shipments.
- (d) Required seller warranties are included.
- (e) Sellers are required to indemnify the Town for damages, losses and liabilities arising out of the operations of Seller pursuant to the Purchase Order specifically including but not limited to those caused by or arising out of a defective condition in the goods.
- (f) Vendors are required to comply with the Federal Fair Labor Standards and Equal Opportunity orders.
- (g) Florida law governs all purchases.

3. Contract Templates

As a means to provide the appropriate level of flexibility and protection for the Town, the Town Clerk/Treasurer has developed several contract template documents which are used depending on the type of acquisition required. Template documents are available in the Town's Intranet Library, however using departments interested in reviewing a contract template document should consult with the Town Manager or designee in order to determine which contract template is most appropriate for the specific purchase. The Town Manager is responsible for the final preparation of all two-party contracts, and using departments are not authorized to create or distribute copies of contract documents without the express permission of the Town Manager or designee. As a matter of reference, however, the following contract templates are used on a regular basis by the Town:

- (a) Construction Agreement: A construction agreement addresses certain issues uniquely related to construction requirements, including change order requirements, management of labor, bonding requirements, change order requirements and special remedy provisions.
- (b) Standard Agreement: A standard agreement document which may be utilized for any miscellaneous requirements not covered by any of the specialty agreements.
- (c) Event Agreement: An event agreement is normally used to contract with an entertainer, caterer, instructor, or for some other purpose related to a specific event or group of events. Event Agreements are required when the cost of this particular type of Contract is in excess of \$2,500.00.
- (d) Hold Harmless Agreement: A hold harmless agreement is normally utilized for an individual independent contractor working on Town property, such as an instructor or a group facilitator. The purpose of the hold harmless agreement is to ensure the independent contractor status of the individual. The Town may often utilize a two-party purchase order document which incorporates hold harmless language as well as language that addresses the independent contractor relationship of an individual to the Town for purposes of mitigating potential risk to the Town.
- (e) Piggyback Agreement: An agreement which establishes the ability of the Town to piggy-back the contract of another governmental entity with a specific vendor. The Piggy-back agreement ensures that standard contractual requirements of the Town are incorporated as a part of the contractual relationship with the vendor in addition to any requirements

already incorporated in the agreement with the other governmental entity.

- (f) Professional Services / Consultant Agreement: An agreement for professional services with a consulting firm, which specifically relates to legal requirements for professional services contracts including, but not limited to architects and professional engineers.
- (g) Services Agreement: An agreement for standard services to be provided to the Town.
- (h) Sponsorship Agreement: A sponsorship agreement is utilized when for private sector firms to offer support of a specific event. The Agreement may be for monetary support, volunteer effort or something else of value provided to the Town in support of the event or activity.

H. Issuance of Purchase Orders and Contracts:

1. General -- Purchase Order creation and issuance:

Purchase Order and Contract Coordination Process: The Town Manager or designee shall be responsible for the issuance of purchase orders and two-party signed agreements to vendors as applicable. The purpose of this requirement is to ensure that contract documents are processed in a consistent manner. The Town Manager or designee shall provide appropriate instructions to the vendor related to the execution of the agreement. Contractors are required to execute at least two (2) original contract documents, and return the executed originals to the Town Clerk/Treasurer. The Town Manager will then check for accuracy and completeness, and coordinate the process of contract review by the appropriate parties. The Town Manager may delegate to the Town Clerk/Treasurer, Department Directors, or any other designee the authority to approve purchase orders or two-party agreements as appropriate; however, such authority shall not exceed the limits shown in Section IV, F herein.

2. Purchase Order Issuance:

Once a properly prepared and documented requisition is received by the Town Clerk/Treasurer, staff will process the requisition into a Purchase Order, and distribute the purchase order to the selected vendor.

3. Contract Issuance:

- (a) Upon completion of all review action, the Town Manager will issue an original agreement to the vendor, along with any appropriate written notification by the Town Manager, and a copy to the using department. The Town Clerk/Treasurer will maintain the official Town copy of the Agreement.

- (b) There may be certain circumstances that warrant the use of a two-party signed agreement between the Town and vendor. As an example, ongoing service agreements are often established through the use of a two-party signed agreement, with a purchase order or blanket order used as a means to encumber funds and process receipts of invoices. Town contract templates are available for the establishment of two-party agreements by accessing the Financial Services/Purchasing Division Library on the Town's Intranet site. The use of Town authored contract templates is preferable to using vendor agreements whenever feasible.
- (c) All two-party Agreements must be routed to the Town Manager for review and approval. The Department Director or designee is required to initial the agreement next to the Town's signature block on the Agreement prior to forwarding it to Town Clerk/Treasurer. Generally, the Town Clerk/Treasurer will execute agreements of \$19,999.99 or less, or up to an amount as may be delegated by the Town Manager.
- (d) Contracts with a value greater than \$20,000 must also be accompanied by a decision memorandum initiated by the Department Director and addressed to the Town Manager which justifies the purchase. A copy of the memorandum should accompany the contract documents sent to the Town Clerk/Treasurer. Once the Agreement is executed, the Town Clerk/Treasurer will then issue the executed agreement to the vendor. Upon final approval and execution, the using department will be responsible for creating a requisition document to encumber the purchase. Please note that procurement related agreements should be submitted directly to the Town Manager and Town Clerk/Treasurer prior to the purchasing requisition for review by the Town Attorney.
- (e) Contracts must comply with all other requirements and provisions delineated in this policy, specifically as noted in Section IV, Guidelines.
- (f) All vendors performing work on Town property must have insurance as required by Section 2-108 of the Malabar Procurement Code. The insurance certificate must comply with the Town's insurance requirements and shall name the Town as additional insured. All service-related work or delivery must be reviewed by the Town Manager if the vendor does not meet the Town's level of insurance compliance. A purchase order will not be issued, or any contract executed, if the insurance certificate does not meet the Town's insurance requirements or have a prior waiver of the insurance requirements by the Town Manager. In these instances, the Town Manager's waiver of insurance

requirements and copy of insurance certificate must be submitted to the Town Clerk/Treasurer with the requisition backup documentation. Should the work being performed involve any type of construction including electrical, plumbing or HVAC, the vendor must obtain a permit from the Building Department prior to commencement of work. An approved copy of the vendor's insurance certificate also will be maintained by the Town Clerk/Treasurer.

- (g) Prior to soliciting a vendor for a Certificate of Insurance, employees shall request a vendor review file with the Town Clerk/Treasurer to determine if the firm's insurance coverage has already been approved by the Town.
- (h) All contracts for purchases of any type that exceed \$20,000 must be approved by the Town Council, and will be competitively solicited, except as detailed in Section IV. Guidelines, Sections H and I below.

I. Exemptions to Formal Competition:

Section 2-108 of the Malabar Procurement Code provides that the following goods and services are exempt from formal competition. While the Code provides that competition is not required in the areas, Departments will be expected to prepare appropriate requisition documents using the accounting system; or shall use another means such as a procurement card to make such purchases in order to create an encumbrance for such purchases. The use of confirming Check Requests shall be allowed only in accordance with procedures outlined in Section IV.E of this policy.

The procurement of dues and memberships in trade or professional organizations

1. Registration fees for trade and career fairs
2. Subscriptions for periodicals and newspapers
3. Advertisements
4. Postage
5. Legal and mediation services
6. Abstracts of title for real property; title searches and certificates
7. Title insurance for real property
8. Real estate appraisal services
9. Water, sewer, telecommunications and electric utility services payments

10. Copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials
11. Fees and costs of job-related seminars and training
12. Goods purchased with petty cash or town procurement cards in accordance with the Town's petty cash and procurement card procedures
13. Items purchased for resale to the general public; for example, supplies for a town-owned concession area.
14. Purchase of groceries, related to emergency declarations.
15. Artistic services or works of art
16. Travel expenses, hotel accommodations and hotel services, GSA current published Per Diem rates apply.
17. Town-sponsored events held at venues not owned by the Town
18. Entertainment and entertainment-related services for Town-sponsored events
19. Purchase of motor vehicle license plates from a governmental agency
20. Persons or entities retained as "expert consultants" to assist the Town in litigation, or in threatened or anticipated litigation
21. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration
22. Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III
23. 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.

J. The following types of purchases are **exempt** from formal competition, but require approval of the Town Council for transactions in excess of \$20,000, except as specifically noted:

1. Sole and Single Source Procurements:
 - (a) A contract may be awarded for a supply, service, or construction item without competition when the Town Manager determines in writing that there is only one 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.
Important Note: It is a felony to knowingly

circumvent a competitive process for commodities or services by fraudulently specifying sole source. Florida Statute 838.22(2.)

- (b) A Town Department requesting a single, or sole source procurement of \$2,000 or greater, must submit a written request to the Town Manager for approval, which must be accompanied by a written justification signed by the department head. A Single/Sole Source Justification form is available at the Purchasing Library Drive on the Town Intranet website and is included as **Appendix A** herein. 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. The Town Manager reserves the right to seek additional sources which may be able to meet the needs of the department. Justification requests submitted by vendors on their own behalf are normally not appropriate documentation and may not be considered when reviewing a single or sole source request.

2. Emergency Procurements:

- (a) The Town Manager or designee may make or authorize others to make emergency procurements when a threat exists 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. Town Council approval of emergency purchases made pursuant to this policy will not require the express approval of the Town Council; however, 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.
- (b) 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. 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.

4. 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.

5. 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.

6. 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 the Consultant's Competitive Negotiation Act (CCNA -- 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 \$20,000 will require approval by the Town Council.

7. 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, 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.

8. 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.

IV. PROCEDURES FOR PREPARING PURCHASE REQUISITIONS

A. A purchase requisition must be submitted, and a purchase order issued prior to ordering any commodity, equipment, or service, not procured through the use of a procurement card. Pursuant to the Town of Malabar Procurement Code Section 2-107, it shall be a violation for any Town officer, employee, or other person to order the purchase of any materials or supplies or make any contract for municipal materials, supplies or services, other than through the Town Manager.

B. Preparation of a Requisition

The using department shall complete, approve, and submit the electronic requisition via the accounting system. The requisition shall include all required information. If the requisition requires supporting material, it shall be forwarded to Town Clerk/Treasurer noting the respective requisition number. In addition, the using department should also contact the vendor to obtain proof of insurance, in instances where the vendor will be performing work on Town property. The insurance coverage required will be determined by the Town Manager, and the vendor must provide the Town with a "Certificate of Insurance" document, that names the Town of Malabar as an "additional insured" party.

C. Items to be Included with the Requisition

Before submitting an electronic requisition for items of \$2,000 or more, the initiating department must –

- a) fill out the quotation section of the requisition and where applicable, submit written quotations to the Town Manager or
- b) submit complete and concise specifications to the Town Manager so that quotations may be solicited or
- c) submit a sole source justification form if requested item is sole or single source. When obtaining quotations, the individual preparing the requisition shall provide a complete description of the services and/or item(s) being requested (i.e., make, model, manufacturer, etc.).

The more complete the description, the sooner commodity/equipment/service can be ordered. Be sure to include specifics on what or how the commodity is expected to perform. It is strongly recommended that written specifications/requirements be provided to the vendors so that all quotations will be based on the same information. Follow specific guidelines as delineated in paragraphs V.A and V.B above.

- D. All vendors performing work on Town property must have an approved copy of their Insurance Certificate on file with the Town, pursuant to Section 2-108 of the Malabar Procurement Code. The insurance certificate must comply with the Town's insurance requirements and shall name the Town as an additional insured. The purchase order or two-party signed agreement will not be issued if the insurance certificate does not conform to the Town's Standard Insurance Requirements, or any specific requirement required by the Town Manager. Should the work being performed involve any type of construction or electrical work the vendor must obtain a permit from the Building Department.
- E. Requisitions for purchases in excess of the Town's prescribed formal solicitation threshold which exceeds \$20,000 shall not be approved unless those purchases have been formally approved by the Town Council. The Town shall utilize a formal sealed competitive solicitation process for the acquisition of items and services over the competitive threshold in accordance with the most appropriate source selection method. Upon formal Town Council approval, the Using Department shall input a requisition in accordance with the requirements outlined in paragraph V.A above even if a two-party agreement is in place in order to establish a formal encumbrance. All pertinent information shall be included in the extended description, including the Resolution Number as assigned by the Town Clerk's Office. Additionally, all relevant documentation must be forwarded to the Town Manager. (This requirement does not apply to recurring expenditures associated with previously approved contracts or purchases or when not applicable, including but not limited to: utilities, FPL, telephone service, life and health insurance, and other benefits related to payroll).
- F. **Approvals**
1. All requisitions must be electronically approved by the Department Director or designee, as well as by the Town Manager. Depending on the item being purchased, additional approvals may be required. The approval levels must be entered into the accounting system to give authority as provided by department directors. Authority must be given to persons authorized to sign in the absence of their department director and their authority dollar limits. Additional approvals will specifically be required in the following instances:
 2. Technology Equipment, Software & Telecommunications Equipment: Requires the approval of the **Town Manager**.
 3. Vehicular equipment, gasoline/diesel powered tools and/or equipment, as well as modifications, repairs or alterations to existing Town vehicles or equipment must be reviewed by the **Department Fleet Designee**.
 4. All requests for over-rides of an account budget over \$500 per line item must be approved by the Financial Services Department, **Town Clerk/Treasurer**.

5. Service-related work or delivery is subject to the review by the **Town Manager** for appropriate insurance compliance.
6. All repairs, additions, construction, renovations, modifications, and alterations to Town facilities or building systems - must be approved by the **Department Head of the Town Facility and Town Manager**. This includes but is not limited to: exterior/interior wall finishes, carpeting and floor finishes, exterior/interior doors and locks, roof systems and repairs, partitions, interior trim, ceiling and ceiling finishes, plumbing fixtures, HVAC systems and equipment, lighting fixtures and electrical systems.

G. Verification of Budgeted Funds

Purchases without appropriated funding will not be approved by the Town Clerk/Treasurer. Funding should be available in the current fiscal year budget before proceeding with a purchase request. Prior to submitting a requisition, the accounting system automatically verifies sufficient budgeted funds are available to support the request. In addition, the Town Clerk/Treasurer will review the request to ensure use of the proper account code; however, the using department is ultimately responsible to verify the account code or funds availability prior to processing the requisition. There may be circumstances where some costs are defrayed by a grant award. In such cases, funding must be available from the grant source at the time of purchase, unless otherwise enumerated in the grant contract.

H. Other Items to Remember When Submitting a Requisition Request

1. Freight costs to be included in quotation: The standard terms and conditions of the Town Purchase Order form includes the requirement that shipments are Free on Board (F.O.B.) destination, meaning the seller bears all risk until the goods are delivered to the Town's specified destination. During discussions with vendors, please remember to obtain the cost of any required freight to be included in the price. It is the Town's goal not to pay freight charges if possible. Should the vendor state that freight charges will not be included, the initiating department must include freight as a separate line item on the purchase requisition.
2. All requisitions requesting a check with P.O. must have a copy of the invoice or appropriate price backup submitted to Town Clerk/Treasurer in order to be processed.
3. All requisitions requesting a sole source or otherwise non-competitive procurement, must have written justification submitted to the Town Clerk/Treasurer in accordance with the procedures outlined in IV.H.1.b herein.
4. **New Vendors:** All requisitions for a vendor not currently on the Town's vendor list must include a request to add a new vendor in the comment section of

the requisition. The name, address, town, state, zip code, phone number, fax number, and e-mail address, as well as contact name of the vendor must be included. **Additionally, each department is responsible for collection of a valid Internal Revenue Service Form W-9 from ALL new vendors. Payment will not be made to any vendor that does not have a form W-9 on file with the Town.** A writable form W-9 is available at the following link: www.irs.gov/pub/irs-pdf/fw9.pdf.

It is imperative that a complete search is made of the vendor file using the full vendor's name prior to requesting that a new vendor be added. If the vendor is not on the list, the Town Clerk/Treasurer will enter the information in the automated vendor system, which will automatically assign a vendor number. The Town Clerk/Treasurer will advise the user department regarding the updated vendor number and information upon entry into the accounting system.

5. Account Access: Individuals who require on-line account access to enter and/or process requisitions must obtain access to the accounting system. Access requests should include the appropriate account codes to be accessed and shall be submitted on the Town's Account Access Form and approved by the Department Director. All such requests shall be forwarded to the Town Clerk/Treasurer for approval.

V. PROCEDURES FOR SOLICITATIONS

The determination of the most appropriate method for solicitation is an integral part of the purchasing process. Each purchase is unique in its requirements and may lend itself to a different method of purchase. Some examples: The purchase of a shovel for \$20 would best be handled through a small purchase acquisition such as a procurement card. It would be completely inefficient to utilize a formal competitive bid process for a \$20 purchase. On the other hand, the purchase of a \$150,000 bulldozer requires that the Town exhibit a high level of accountability to the taxpayers of the Town, and therefore, it would be necessary to develop open, fair specifications to provide for a formal competitive bid process.

A. Factors that Impact Source Selection

The factors evaluated in determining the type of source selection method are quite varied. Some of the variables that come into play include, but are not limited to the following:

- What is the cost of the item or service?
- What is the level of standardization of the item or service in the industry?
- What is the level of competition available in the marketplace?
- How much time will it take for the item to be delivered?
- How quickly do we need the item?
- Are we concerned about just price, or do we need to evaluate other criteria such as expertise, experience, and quality of work?

- Are there federal, state, or local statutes that specifically address the acquisition method?
- Is there a high or low level of contract risk associated with the purchase?
- A combination of one or more of the above.

B. General Overview of Source Selection Methods

Some of the most common methods of source selection include the following:

- Competitive Sealed Bid (Invitation for Bid – IFB)
- Competitive Sealed Proposal (Request for Proposal – RFP)
- Small Purchases (Requests for Quotation – RFQ, Procurement Cards)
- Sole and Single Source Purchase (See Section IV.J.1 herein)
- Emergency Purchases (See Section IV.J.2 herein)

C. Matrix of Competitive Source Selection Methods

A competitive Matrix of Competitive Source Selection Methods has been included as a part of this policy to provide guidance regarding the requirements and characteristics of various methods of competitive source selection. This matrix is included herein as Appendix B to this policy. More detailed explanation of all source selection methods; and the proper deployment of those methods will be discussed in greater detail in the remaining sections of this Chapter.

D. Competitive Sealed Bidding

1. General:

Unless otherwise noted in the Town of Malabar Code or the Town Charter, competitive sealed solicitations are used for the procurement of supplies and services where the estimated cost is over \$20,000. Using departments should allow a minimum of 60 days between the submission of their requisition and award of the contract when items must be competitively solicited

2. Invitation for Bids:

An invitation for bid is prepared and issued by the Town Clerk/Treasurer. The Town Manager, with the assistance of the Town Attorney, is responsible for developing contractual terms and conditions. The using department has the initial responsibility to prepare specifications, subject to review and approval by Town Manager. Note: Town Clerk/Treasurer is available to assist, if needed, in the development of the initial specifications.

(a) Specifications

(1) Supplies - Specifications

The using department shall have the responsibility to prepare and submit the initial specifications to the Town Manager for use in the competitive bid process. The Town Clerk/Treasurer has the responsibility to review, revise, approve, maintain, and monitor the use of all specifications in coordination with the using department. Using departments should obtain assistance from the Town Clerk/Treasurer in drafting specifications.

- (2) Specifications should be simple, clear, accurate, competitive, and flexible. Minimum requirements should be identified and allow for competition, equitable award, and measurability, and should include a clear statement of intended use. The specifications portion of a solicitation should not contain bidding instructions, contractual terms and conditions, delivery, pricing formats or sheets, or similar material. Those matters should be addressed separately in the solicitation.
- (3) Objectives of a Specification. A specification should accomplish four objectives:
- (a) Identify minimum requirements
 - (b) Allow for a competitive bid
 - (c) List repeatable test methods to determine compliance with specifications
 - (d) Allow for an equitable award at the lowest possible cost
- (4) Competition. One of the purposes of a specification is to invite maximum reasonable competition. By its nature, a specification sets limits and thereby eliminates, or potentially eliminates, goods and services outside the boundaries drawn. However, a specification should encourage, not discourage, competition to promote potential spend savings; therefore, references that are overly restrictive to one product should be avoided at all costs.

E. Competitive Sealed Proposals

1. General:

A Competitive Sealed Proposal, more commonly known as a Request for Proposal (RFP) is a competitive acquisition method providing for evaluation based on criteria other than price, and provides for negotiation of all contract terms, including price, prior to contract award. RFP'S are most commonly used when looking for the best approach to a need, rather than simply the lowest price. Criteria may be weighted in order to consider such factors as service, experience, expertise, and quality, in addition to price. Proposal

evaluation is based on finding the best overall value for the Town. RFP'S are used for contracts where the estimated cost is \$20,000 under the following conditions:

- (a) The contract is for professional or consulting services, excluding architectural, engineering or land surveying services. (Note that contracts for architectural, engineering or land surveying services will be handled in accordance with the requirements of Florida Statute 287.055 the "Consultant's Competitive Negotiation Act".)
- (b) The Town Manager determines the use of competitive sealed bidding is either not practical or advantageous to the Town due to a need to make a final award determination by criteria in addition to price.
- (c) When criteria other than price are to be evaluated, and the Town is looking for the overall best approach to meet our need. Other criteria may include but not be limited to quality of work, contractor experience and capabilities, unique qualifications to complete a specific project, strength of references and the ability of the to meet the Town's schedule.

Using departments should allow a minimum of 75 to 90 days between submission of their request and award of the contract.

2. Request for Proposals:

The Request for Proposal is prepared and issued by the Town Clerk/Treasurer. The Town Manger is responsible for developing the contractual terms and conditions. The using department is initially responsible for preparing the scope of work, subject to review and approval by Town Manager. Template Request for Proposal documents are available from the Town Clerk/Treasurer.

3. Serving on an Evaluation Committee:

Prior to the beginning of the formal evaluation process, the Town Manager will appoint an Evaluation Committee to evaluate proposal responses. The Evaluation Committee will normally be comprised of Town employees who will be specifically impacted by the final outcome, as well as subject matter experts who may have a unique perspective related to the purchase. A representative of the Town Clerk/Treasurer will facilitate the process and will be responsible for coordinating all of the activities of the Committee, as well as providing guidance of the entire evaluation process.

(a) Typical Evaluation Criteria Scored by Evaluation Committees

Evaluation criteria may include, but not be limited to:

- (1) Price (may not necessarily be the most important factor)
- (2) Past performance
- (3) Demonstrated understanding of the project
- (4) Technical and/or management approach, including proposed methodology
- (5) Ability to meet schedule and budget limitations
- (6) Relevant experience and expertise
- (7) Quality of submission
- (8) Oral presentations
- (9) Availability to perform as reflected by current and projected workloads and the availability of key personnel, equipment, and facilities.

4. Proposal Scoring by Evaluation Committee Members

The Evaluation Committee will be required to individually score proposals against the proposal evaluation criteria, in accordance with instructions provided by the Town Clerk/Treasurer facilitator; however, members will only be allowed to discuss their scoring activities with other members of the committee during formal public meetings of the committee. Evaluation Committee members are also prohibited from speaking with any of the proposing offerors before and during the evaluation process. Proposal scoring shall consider the weights assigned to each individual criterion. For example, if "Past Performance" has a weight of 20 percent of 100 possible points, the most points that may be assigned to an offeror's response for that factor will be 20 points.

5. Reference Checks

During the evaluation process, one or more members of the Evaluation Committee with specific expertise in the area related to the pending purchase may be requested to perform reference checks of proposing offerors. As a matter of practice, offerors are requested to provide the Town with a list of their references. Committee members performing such reference checks will be required to memorialize all reference check results in writing. The Town Clerk/Treasurer may supply a standard form to be used for reference checks in order to ensure that the same information is gathered from all references.

6. Evaluation Committee Meetings

After allowing a reasonable amount of time for the review and scoring of proposals, the Evaluation Committee will meet to discuss their scores in a public meeting, as required by Florida Statutes F.S. 286, which will be transcribed or recorded for archival purposes. All Evaluation Committee Meetings shall be publicly posted by the Town Clerk no less than 36 hours in advance of the meeting. During this meeting, the Committee will be able to

discuss their specific concerns about proposals and offerors and may make minor adjustments to their scores based on information disclosed during the Evaluation Committee meeting. The Evaluation Committee will normally determine that several vendors should be selected or "short-listed" for further evaluation and discussions. It should be noted; however, that in certain cases, the Evaluation Committee may determine that a single vendor best meets the requirements of the Town and may recommend that an award be made to that vendor. All scores are to be memorialized in writing and will be maintained as a part of the proposal file.

7. Discussions & Presentations by Offerors

In the event that the Evaluation Committee determines the need for further discussion with a short-list of offerors, oral presentations by each short-listed offeror will be formally scheduled with the Evaluation Committee. All offerors invited to provide oral presentations will be notified in writing by the Town Clerk/Treasurer. All oral presentation meetings are not open to the public but shall be transcribed or recorded for the public record pursuant to Florida Statute Chapter 286. The order for Offeror presentations will normally be determined by lottery. Additionally, Town employees, and other interested parties who are NOT facilitating the process, or who are not on the RFP Evaluation Committee may not attend such presentations, as these presentations are not open to the public.

8. Clarification Requests During Evaluation

In some instances, clarifications are required from vendors during the evaluation process. When such clarifications are required, members of the Evaluation Committee should provide their requests for clarification to the Town Clerk/Treasurer or designee, who will then request clarification. In many instances, the Evaluation Committee may choose to prepare a set of general questions for all offerors, or questions specific to individual offerors. The Town Clerk/Treasurer or designee will then normally forward those questions in writing to the offerors, with the request that the offeror either respond in writing or address the questions during oral presentations.

9. Final Proposal Scoring by the Evaluation Committee

Great care shall be taken by the Evaluation Committee in the final evaluation of proposals. While price/cost may not be the most important criteria factor, the Committee shall carefully evaluate comparative costs between offerors in order to ensure that cost information is accurate and competitive. Pricing may be scored based on a ratio comparison of each offeror's price with the lowest price, by determining the lowest price per technical point, by an overall ranking, by comparison using a standard scenario, or by other means determined to be most advantageous to the Town.

All other proposal criteria shall be carefully considered referencing the results of other information provided which may include, but not be limited to information shown in the narrative of the offeror's proposal, reference checks, analysis of the offeror's financial condition, the level of professional capabilities demonstrated by the offeror, the offeror's ability to complete work within a reasonable schedule, the offeror's success on other similar projects and the offeror's proposed work plan.

Final Determination: Upon completion of any oral presentations, the Evaluation Committee will rank or re-score offerors based on the information presented using the proposal criteria. Committee members should score proposals in a manner that will readily distinguish the highest ranked firms from lower ranked firms to ensure complete clarity in scoring. The final ranking/scoring will then be the basis for a formal recommendation for award of a contract. All final scoring/ranking information will be maintained in the proposal file.

10. Proposals covered by CCNA & The Selection Advisory Committee

Pursuant to Florida Statute 287.055, the Consultant's Competitive Negotiation Act (CCNA), certain professional services, including Architectural, Engineering, Land Surveying, Mapping and Landscape Architecture must be evaluated based on qualifications only. Price cannot be requested or evaluated in the evaluation for these types of services, and as such, Evaluation Committee recommendations shall be made to the highest qualified firm. Upon completion of the recommendation, the Town shall negotiate price with the highest ranked firm. Should negotiations with the highest ranked firm be unsuccessful, then that proposal shall be rejected, and negotiations will be initiated with the next highest ranked firm.

Design-build proposals are also covered by CCNA, and the Town may use a two-step procurement process where firms submit qualifications and are considered to be qualified or unqualified to complete the work. Once this process is complete, all qualified firms are then asked to submit competitive pricing to perform the work.

The Town of Malabar Procurement Code Section 2-106(b) established the Selection Advisory Committee (SAC) for the purpose of evaluating firms submitting proposals in accordance with the CCNA. The Committee is composed of The Town Clerk/Treasurer or their designee, who shall facilitate the committee process, and be a non-voting member; and at least three (3) voting members appointed by the Town Manager, who will be responsible to evaluate the qualifications of firms, conduct discussions and receive presentations pursuant to Florida law and the Malabar Procurement Code.

Upon consensus on the recommendation by the SAC, the Town shall negotiate with the top ranked firm, and upon completion of negotiations, make recommendations to the Town Council for award.

F. Contract Award and Contract Administration

The Town Manager or designee of the product or services using department is charged with the authority to award and oversee the contract performance of the executed contract.

Approved: _____ 5/3/22
Matthew Stinnett Date
Town Manager

Appendix A

SOLE SOURCE JUSTIFICATION

To Be Submitted with All Requisitions for Sole Source Purchases above \$2,500.

POLICY: A contract may be awarded for a supply, service, or construction item without competition when the Town Manager determines in writing that there is only one 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. A City Department requesting sole source procurement of \$2,500 or greater, must submit a written request to the Town Manager for approval, which must be accompanied by a written justification signed by the department head. Sole source requests in excess of \$65,000 will require Town Council approval. (*Procurement Code, Section 2-108(b)*)

Important Note: It is a felony to knowingly circumvent a competitive process for commodities or services by fraudulently specifying sole source. Florida Statute 838.22(2.)

Date _____ Department _____

Vendor Name _____

Item or Service Being Purchased _____

Requisition Number _____

PLEASE CHECK THE CATEGORY APPROPRIATE TO THIS PURCHASE (*Additional pages should be included for detailed justification comments*):

 One-of-a-kind

The commodity or service has no competitive product (one-of-a-kind) AND IS AVAILABLE FROM ONLY ONE VENDOR.

 No Substitute

A component or replacement part has no substitute AND CAN BE OBTAINED FROM ONLY ONE VENDOR.

 Compatibility

Compatibility is the overriding consideration AND THE ITEM/SERVICE CAN BE OBTAINED FROM ONLY ONE VENDOR.

 Delivery Date

The ability of ONLY ONE VENDOR to meet a necessary delivery date.

 Follow-up Service

ONLY ONE VENDOR is able to make on-call repairs at a particular location.

 Emergency

Urgent need or the item or service does not permit soliciting competitive bids, as in cases of emergencies, disasters, etc.

 Monopoly

A monopoly exists as in the case of the U.S. Post Office, Florida Power & Light, Sun-Sentinel, Broward County and so on.

Requested By _____ Date _____

Department Head Signature _____ Date _____

PURCHASING APPROVAL _____ Date _____

Appendix B

METHODS OF SOURCE SELECTION

	Competitive Sealed Bidding	Competitive Sealed Proposal	Small Purchase
Solicitation Type:	Invitation for Bid(IFB)	Request for Proposals (RFP)	Request for Quotation (RFQ)
Definition	<u>Specifically defining</u> the commodity, group of commodities, or services for bids	Undefined scope of work, used to <u>solicit proposals or solutions from potential providers</u> for goods and services	<u>Best Price</u> of the Open Market or Awarded Contract
Purpose	Commodities, Construction, Services	Professional Services, Design-Build, Construction, Outsourcing, Information Technology	Under competitive sealed bid dollar threshold
Public Notice	Yes	Yes	No
Bidder's Mailing List	Yes	Yes	Yes
Specifications	Yes	Commodities & Equipment Only	No
Statement of Work	No	Yes	Yes
Term and Conditions	Yes	Yes	Yes
Pre-Bid or Proposal Conference	Option	Recommended	No
Amendments	Option	Option	Option
Technical Offer	N/A	N/A	N/A
Statements of Qualifications	No	Yes	No
Evaluation of Bids or Proposals	Yes	Yes	Yes
Discussion or Negotiations	No	Yes	No
Best and Final Offer	No	Yes	No
Basis of Award	Lowest Responsive, Responsible	Most Advantageous	Lowest Responsive, Responsible



Town of Malabar, Florida Administrative Policy

Title: Purchasing Card Procedures	Origination Date: May 3, 2022 Revised: Revised: Next Scheduled Review: January 2024
Originating Department: Town Clerk/Treasurer / Purchasing	Supersedes: All previous and existing memos or administrative policies in conflict
Policy Number: 11-15.1 Effective Date: May 3, 2022	Page 1 of 14

I. Purpose:

To establish procedures for a Procurement Card ("P-card") program.

II. Policy:

These procedures apply to all Town credit card transactions up to the Town's standard current SinglePurchase Limit (SPL) of \$1,000.00, or the SPL specifically assigned to a Cardholder upon authorization by the Department Director, not to exceed \$20,000.00, as well as all administrative and processing functions associated with a P-card program.

III. General:

The P-card program is designed to improve efficiency in processing small dollar purchases from any vendor that accepts the Visa credit card, and to streamline the electronic and on-line administration of the program using the technology currently offered by the Town's approved Procurement Card provider.

The Town Clerk/Treasurer ("Purchasing") will administer the program. All program administration questions and issues should be directed to the Procurement Card Administrator, ("P.A."), who shall be the Town Clerk/Treasurer or designee.

IV. Definitions:

Back-order: An order that cannot be fulfilled due to an out-of-stock condition.

Billing Cycle: Individual transactions are assigned based on a specific monthly calendar period.

Cardholder: An individual employee who has been assigned a p-card by their department director.

Departmental P-card Representative: The Departmental P-card representative is appointed by the Department Director, and is responsible for coordination of activities for each Department, including collection of receipts from Cardholders, entering appropriate accounting data on-line, resolving credit issues, scanning receipts, and transmitting all approved documentation to the P-card Administrator for the processing of payment.

Merchant Category Code: A universal code designated by the financial and banking industry that specifically delineates a type or class of products or services.

Monthly Purchase Limit: The dollar limitation for the total monthly allowance assigned to an individual P-card.

Procurement Card or "P-card": A payment vehicle that may be used for purchases by an individual employee. A Procurement Card works very similar to a credit card, in terms of acceptance by merchants; however, Procurement Cards provide the ability for the administrator to restrict single purchase limitations as well as specifically designate the types of commodities and services that may be purchased with each individual card.

P-card Administrator (P.A.): The individual responsible for the overall administration of the P-card program. The Town Clerk/Treasurer is the designated P-card administrator.

P-card Coordinator (P.C.): The P-card Coordinator is responsible for the day-to-day administrative functions of the P-card program, including the coordination of departmental representatives and the dispute resolution process. The Town Manager is the designated P-card Coordinator.

Receipt: A merchant's acknowledgement that payment has been made. Specifically, for purposes of this policy, the receipt is provided to the Cardholder when using a P-card for a purchase transaction.

Single Purchase Limit ("SPL"): The dollar limitation for a single purchase using the P-card.

"Splitting": The intentional processing of multiple transactions for one item or for a single order with the express intent of circumventing purchasing dollar thresholds.

Tax Exempt: When referenced in this policy, "tax exempt" refers to the fact that the Town of Malabar has been granted an exemption to the payment of State of Florida Sales Tax by the Florida Department of Revenue.

V. Objectives:

- A. To provide an efficient method of purchasing and paying for goods and/or services under the Cardholder's assigned Single Purchase Limit ("SPL") and within the Cardholder's approved monthly spending limit.

- B. To reduce the use of petty cash, purchase orders, blanket purchase orders and Field Purchase Orders (FPO's).
- C. To reduce staff time spent processing small dollar transactions.
- D. To ensure that the Town bears no legal liability from inappropriate or unauthorized use of Procurement Cards.
- E. To provide for disciplinary action if the Procurement Cards are misused. The procedures provided herein are minimum standards for departments. Departments may establish more stringent controls if necessary.

VI. Authorization:

The P-card program simplifies the purchasing and payment process for small dollar purchases made by authorized Town employees who have been assigned a Procurement Card. Procurement authority is delegated to the authorized Cardholder's Department Director or designee thus enabling the Cardholder to order directly from the vendor.

When a transaction authorization is requested by the vendor at the point of sale, the P-card system validates the transaction against established limits authorized by the employee's Department Director, and within the Town's approved guidelines. The established limits may be adjusted periodically and may include, but are not limited to, the following:

- A. Single purchase limit (SPL) not to exceed the Cardholder's approved SPL between \$1,000.00 and a maximum SPL of \$20,000.00 as may be requested by a Department Director.
- B. Monthly credit limit not to exceed Cardholder's approved limit.
- C. Approved merchant category codes.
- D. Pre-approved lodging not to exceed \$2,000.00 per trip.
- E. Pre-approved airline travel not to exceed \$1,000.00 per trip.
- F. Declared Emergencies – at the discretion of the Town Manager or designee, restrictions on single purchase, monthly limit and Merchant Category Groups may be lifted once an emergency situation has been declared.
- G. Special Circumstances – Under special circumstances, the Procurement Card Administrator may temporarily authorize users to utilize their P-card for a single purchase between \$1,000.00 and \$20,000.00. In such instances, the Town Manager or designee must provide a written request and justification to the Procurement Card Administrator.

The Town Clerk/Treasurer or designee may be required to place orders on behalf of any department requiring the use of a P-card for non-emergency transactions for a single purchase over \$5,000.00.

- H. Cards used for payments only. P-cards may be issued by Town Clerk/Treasurer or designee for the express use of payment of invoices and shall be authorized to pay the full value of such invoices.
- I. All Town travel related transactions related to lodging, transportation, and training classes, seminars, or conferences are restricted to the procurement cards assigned to the Town Clerk/Treasurer and the Town Manager. .

VII. Responsibilities:

The following is a summation of the responsibilities of the individuals and organizations involved in the Procurement Card system:

A. Cardholder

1. Holds and keeps P-card secure.
Assigns proper general ledger expense account numbers to each transaction and ensures funds are available.
2. Orders materials and services.
3. Ensures no sales tax is charged by the merchant and that no back orders are authorized or accepted.
4. Collects and saves **all** sales receipts and/or invoices for each transaction during the month's billing cycle.
5. Provides a short, detailed written description for items purchased on each receipt, including information related to the purpose of the purchase and reference to any specific project for which the purchase was made. This information will assist reviewers in their review of the purchases to help them ensure that transactions comply with Town policy. (e.g., instead of describing a purchase as "tools", it should be described as "hammer for use in toolkit for vehicle #444".)
6. Forwards all receipts/invoices to the Department P-card representative or coordinator on or before the specific date as directed by the Town Clerk/Treasurer.
7. Complies with all applicable purchasing and procurement card policies and procedures.

B. Department Procurement Card Coordinator (P-card Coordinator) or Representative (P-card Representative)

1. Reviews monthly individual transactions with each Cardholder, if applicable, and processes the transactions to provide for payment through current electronic and procedural methods including the reallocation and/or verification of general ledger expense account numbers assigned to each transaction, as well as ensuring funds availability.
2. Ensures there has been **no sales tax** charged and that no items are back ordered.
3. Ensures that appropriate and sufficient item detail is entered into the Town's on-line electronic procurement card system to identify the purpose of the purchase (e.g., instead of entering a description as merely "ice cream", it should be entered as "ice cream for summer employee recognition event".)

4. Assists Cardholders with reporting of disputed items and follows up with merchants and/or P-card provider to resolve dispute.
5. P-card Representatives must review each transaction and all receipts to determine that each receipt includes sufficient detail relating to the items purchased, dollar amounts charged as well as validating the accuracy of vendor information, to ensure the transactions were authorized and appropriate.
6. P-card Representatives shall notify the Department Director of any abuse or misuse of the program by a Cardholder, or the failure of a Cardholder to comply with applicable policies and procedures related to the P-card program.
7. P-card Representatives shall be responsible for scanning all P-card receipts/invoices into the Town computer network prior to transmitting those receipts to the Town Clerk/Treasurer and shall be scanned into appropriate folders by month and by name.
8. Ensures all original receipts/invoices are forwarded to the Town Clerk/Treasurer by the deadline established for each month.
9. Complies with all applicable purchasing and procurement card policies and procedures.

C. Procurement Coordinator

1. Requests electronic individual accounts set-up by the P.A. to secure new procurement cards for designated employees, and determines the Cardholder's individual SPL, monthly limit, and the need for access to merchants that are otherwise subject to prohibitions as defined in Section VIII B6, "Prohibited Uses of Procurement Cards" of this policy.
2. Retrieves and destroys cards, if possible, from Cardholders who end or transfer employment and notifies P-card Representative and/or P.A. to electronically close the Cardholder's account.
3. Sets Cardholder spending limits within established guidelines.
4. Provides written justifications to the P-card Administrator for temporary increases to a Cardholder's card purchase limit in the event of a requirement to use a P-card under special circumstances.
5. Designates P-card Representative.
6. Provides the final review and approval of P-card transactions prior to forwarding them for payment. Department Directors or their designee shall be responsible for signing each Department/Division Approval report that is submitted for payment.

7. Ensures compliance with all applicable Purchasing and Procurement Card policies and procedures within the department.

D. Procurement Card Administrator ("P.A.")

1. Coordinates Procurement Card Program Policy issues.
2. Coordinates and facilitates Cardholder training, whether training is for new cards or for continuing education, either in-house or through Procurement Card provider.
3. Prepares new training materials as needed, or disseminates materials issued by Procurement Card provider.
4. Assists with issuance and cancellation of cards.
5. Notifies Procurement Card provider of emergency situations in a timely manner and coordinates emergency procedures, including removal of purchase limits and Merchant Category Code restrictions until emergency has passed.
6. Participates in ongoing program reviews.
7. Monitors Accounts.
8. Conducts periodic spot audits of Cardholder transactions and reports findings to the Town Clerk/Treasurer as appropriate.
9. Complies with all applicable Purchasing and Procurement Card policies and procedures.

E. Town Clerk/Treasurer Staff Designee

1. Monitors Accounts.
2. Reviews approved monthly statements for each Cardholder and processes statements for payment by current methods.
3. Confirms that Department Director or designee has reviewed and authorized all charges.
4. Notifies Cardholders and/or P-card Representatives when statements and documentation have not been received by the deadline established for each month.
5. Pays all non-disputed charges.
6. Processes the A/P group of all P-card transactions.
7. Files, stores, and archives all monthly account statements and related documentation.
8. Administers 1099 tax reporting.
9. Notifies P.A. of missing documents.
10. Notifies P.A. of all misuse.

11. Ensures that all transactions are properly loaded in the Town's accounting system.
12. Conducts periodic operational and compliance audits as needed and reports findings to the Town Clerk/Treasurer and Town Manager.

VIII. Procedures:

A. Assignment and Control of the Procurement Card

1. Requests for and issuance of Procurement Cards
 - a. P-cards will be issued to individual employees who frequently purchase goods/services in single purchase amounts of less than \$1,000.00, or as requested by the Department Director up to a maximum SPL of \$5,000.00.
 - b. The Procurement Card will be imprinted with the employee's name, the Town's name, the Town's tax exemption number, and the card expiration date. The Procurement Card provider does not keep individual Cardholder information on file other than the Cardholder's work address. No credit records, Social Security numbers or other personal information of any Town employee will be maintained by the Procurement Card provider.
 - c. All requests for P-cards must be authorized by the P.C.
 - d. When the P.A. receives a Procurement Card for a new Cardholder, the Cardholder will be required to participate in an individual training session before personally taking receipt of the card. The Cardholder must sign an Agreement acknowledging the completion of the training and understanding and acceptance of all Town policies and procedures prior to receiving the card.
2. Lost or Stolen Procurement Cards
 - a. If a P-card is lost or stolen, the Cardholder or the Department P-card Representative must immediately notify the procurement card provider and the P.A.
 - b. The Cardholder will be responsible for reporting all information necessary to reduce the liability to the Town for a lost or stolen card.
3. Termination or Transfer of Cardholder
 - a. When an employee ends Town employment or is transferred to another Department, the Department Director or designee should collect and destroy the P-card. Upon collection of the P-card, the Department P-card Representative should notify the P.A. immediately.
 - b. If the Department Director or designee is unable to collect the Procurement Card when an employee terminates, the Department Director or P-card Representative should immediately notify the P.A., who will then electronically close the Cardholder's account.

B. Limitations on Use of Procurement Cards

1. Cardholder Use Only

A Procurement Card should not leave the possession of, nor be used by, anyone other than the employee, whose name is imprinted on the front of the card.

2. Town Purchases Only

- a. The Procurement Card is to be used for Town-authorized purchases only.
- b. Personal use of a P-card is strictly prohibited. Any such use will require immediate reimbursement by the employee to the Town and may result in disciplinary action up to and including termination of employment.

3. Dollar Limitations

- a. The Pro-card Coordinator will authorize credit limits for each Cardholder: a single purchase limit (SPL) and a monthly spending limit. The standard limits shall be \$1,000.00 for a single purchase and \$5,000.00 for a monthly spending limit. Upon the determination and authorization of the Department Director and approval of the P.C., an individual Cardholder may be authorized for an increased single purchase and monthly purchase maximum to be determined by the requirements of the Department. The SPL shall not exceed a maximum of \$20,000.00.
- b. Individual Cardholders may be authorized to make purchases from certain types of merchants or for certain types of items which are normally subject to the prohibitions of Section VIII B6, "Prohibited Uses of Procurement Cards" of this policy if their job duties require them to routinely make such purchases. Authorization for these types of purchases must be requested in writing by the P.C. and approved by the P.A. in advance. Example: a Parks and Recreation Department employee responsible for an after-school youth program is routinely required to purchase pizza or sandwiches from a restaurant for participants in the program. Although restaurants are listed as a prohibited use under normal circumstances, the Town has established a special Cardholder profile that allows the use of the P-card for payment to restaurants for employees who must routinely make such purchases as required by their job duties.
- c. Any request to permanently change the dollar limit or profile of a Cardholder must be entered by the Department Director, and electronically forwarded to the P.C. for final review and approval. Upon approval by the P.C. appropriate changes will be made to Cardholder's profile to accommodate the request by the P.A.
- d. The Department Director or designee may request temporary increases to a Cardholder's transaction limit when special circumstances warrant that the use of

a P-card is the most expedient method of acquisition. Such requests must be justified and submitted in writing to the Town Manager for approval. Requests shall include the following information:

- i. The name of the Cardholder.
- ii. A justification of the special circumstances which necessitate the request.
- iii. The estimated dollar amount for the required transaction.
- iv. The date required for the expiration of the temporary profile. The P-card system will automatically return the Cardholder to their default profile on the date the temporary profile expires.

A copy of the written approval issued by the Town Manager must be included along with the transaction receipt and other documentation provided to the Town Clerk/Treasurer at the time that payment is being processed.

- e. Multiple items may be purchased from one vendor at one time, but the invoice cannot exceed the Cardholder's approved credit limit. Payment for purchases shall not be split to stay within the single purchase limit. "Splitting" a purchase that exceeds the Cardholder's assigned credit limit is strictly prohibited. Example: a Cardholder with a \$1,000.00 SPL is attempting to buy items from a single vendor that total \$1,050.00. The vendor "splits" the cost into two (2) transactions equaling \$525.00 each to try and avoid violating the Town's policy.

4. Other Conditions

- a. The Town is a tax-exempt entity; therefore, sales tax may not be charged by the vendor. If necessary, the Cardholder can provide the vendor with a copy of the Town's tax exemption certificate, which may be obtained from Purchasing. It is recommended that a reduced copy of the Town's tax-exemption certificate be created to fit inside a standard wallet or purse. The Cardholder may be held personally liable for the refund to the Town of sales tax paid to a vendor in the event that the Cardholder fails to request exemption from sales tax during the transaction and is unable to obtain a refund or credit from the merchant for sales tax paid.
- b. All items purchased via the Internet or by telephone must be delivered by the vendor in one shipment within the same 30-day billing cycle. If the vendor cannot guarantee shipment of all items within this time frame, the order must be cancelled.
- c. Cardholders should check with the vendor when ordering via the Internet or by phone to make sure shipping charges are included in the quoted price. If the price exceeds the Cardholder's single purchase limit when shipping is added, the order must be revised to bring the total costs, including shipping, within the limit, or the order must be cancelled. Alternatively, the Cardholder's Department Director may request a one-time increase to the cardholder's SPL, which must be approved by the P.C. prior to making the purchase.

- d. No item may be backordered at any time. If the items are not in stock when an order is placed, the order must be cancelled and re-issued when the item is no longer on back-order.

5. Travel

The P-card may be utilized for payment of lodging and travel expenses for an amount not to exceed \$2,500.00 per transaction for lodging, and \$1,000.00 per transaction for other travel expenses, for employees attending functions outside of the Brevard County area, subject to the following limitations:

- a. All requests for travel shall be pre-approved by the Town Manager.
- b. Lodging expense shall be limited to the cost of room, any local taxes not subject to the Town's tax-exempt status, as well as parking expenses and internet access for purposes of conducting Town business. Any other expenses related to lodging, such as foodservice or other incidentals shall be the sole responsibility of the employee, and not be charged on the P-card.
- c. Car rental requests shall be specifically pre-approved by the Department Director and the Town Manager.

6. Prohibited Uses of Procurement Cards

- a. Gasoline & oil products at the pump (charges for bulk fuel deliveries are allowed).
- b. Non-emergency vehicle repair.
- c. Travel expenses
- d. Items which are anticipated to have a cost in excess of the annual bid limit.
- e. Cash advances.
- f. Restaurants & bars unless the Department Director or designee has specifically provided a written request to the P.C. for the Cardholder's Procurement Card profile to allow for such purchases.

- g. Capital outlay, except in such cases where the Cardholder has received previous approval from the Town Manager for the purchase of a tangible asset. Such transactions shall be reported to the Town Clerk/Treasurer in advance of the acquisition to insure proper tracking of the asset.

C. Procedures for Making and Paying for Purchases

1. Telephone Orders

- a. When placing a telephone order, the Cardholder should confirm that the vendor will charge the employee's P-card so that posting of the transaction may be verified on the monthly individual account statement.
- b. The Cardholder shall request that the customer's receipt for the purchase be sent with the order or e-mailed to the Cardholder. Packing slips are not considered sufficient documentation and will only be permitted in instances where the Cardholder provides documentation determining the inability to obtain a standard receipt and/or invoice.
- c. Receipts/invoices should clearly identify the merchandise purchased. If the merchandise is not sufficiently identified on the receipt/invoice, the Cardholder must confirm that the goods/services purchased were for Town use.
- d. The receipt/invoice will be retained either by the Cardholder or the P-card Representative until forwarded to Town Clerk/Treasurer with the monthly statement.

2. Payment and Invoice Procedures

- a. The Procurement Card Administrator will generate a monthly electronic-account statement on the day of each month that is agreed to by the Town and the Town's P-card provider. This electronic statement will then be uploaded to the Town's on-line electronic Procurement Card Management System. Upon loading into the Town's electronic on-line Procurement Card Management System, individual transactions processed during the monthly billing cycle will be available for budget reallocation.
- b. The Cardholder and/or the P-card Representative shall electronically reallocate all transactions to their appropriate account numbers upon receipt of the bank file in the Town's electronic on-line Procurement Card Management System. The P-card Representative must then download a summary report for all transactions and obtain the signature of their Department Director or designee on the report. Once all reports have been approved by the Department Director or designee, the P-card Representative shall then include the approved report in each applicable P-card envelope. Each Cardholder shall utilize one P-card envelope per month. *By signature on the Director's Departmental/Division Approval Report, the Director or designee is certifying that transactions listed on the report statements as being "ready for payment", and the P-card Representative is verifying that all*

charges are authorized and confirmed by attached receipts. Each individual manila P-card envelope containing all applicable receipts and approvals shall be forwarded to the Town Clerk/Treasurer (P.A.) for review. After all financial reviews and allocations, The Town Manager (P.C) will be the final reviewer and signature for payment processing by the Town Clerk/Treasurer.

- c. All reports and receipts from the prior month's transaction should be forwarded to the Town Clerk/Treasurer, the 5th business day of the month.**

D. Disputes

1. If items purchased with the Procurement Card are defective, the Cardholder must return the item(s) to the vendor for replacement or credit. If the service paid for with a P-card is faulty, or if it appears that a charge was incorrectly posted to the Cardholder's account, the vendor must be notified and asked to correct the situation or provide a credit. If after contacting the vendor, the vendor refuses to correct the situation, the purchase will be considered in dispute.
2. A Cardholder may dispute a transaction directly through the Town's electronic on-line Procurement Card Management System or contact their P-card Representatives, who in turn will contact the P-card Coordinator for assistance in disputing transactions. Once submitted, whether electronically or by other means, the Cardholder or P-card Representative must follow-up with the merchant in an attempt to rectify the dispute. If the dispute cannot be corrected at the merchant level, the Cardholder or P-card Representative must notify the P.A. to request further assistance. Even if the vendor agrees to rectify the situation, the Cardholder or Department P-card Representative should still note the dispute or discrepancy on the P-card return envelope, prior to sending it to the Town Clerk/Treasurer.

E. Review of Purchases by Departments

The P-card Representative confirms the validity of all transactions by preparing the Cardholder's transactions for payment and sending the properly executed Department/Division Approval Report, supporting receipts, any approved documentation, and approvals for temporary profile changes to the P.A. prior to the deadline provided each month. All P-card purchases made by the designated Cardholders are ultimately the responsibility of the Department Director, who shall be notified by the P-card Representative or by the Town Manager or Town Clerk/Treasurer of any transactions that appear to be outside of the Cardholder's normal course of duty or the Town's existing purchasing policies and procedures.

F. Misuse, Abuse and/or Violations

1. Participation in the Town's Procurement Card Program is a privilege, and not a prerequisite of employment. Although the P-card is issued in the employee's name, it is Town property and must be used with good judgment. Improper use of the P-card can be considered misappropriation of Town funds, which may result in disciplinary action, up to and including termination. Cardholders are expected to

comply with internal control procedures in order to protect Town assets. This includes keeping receipts, reconciling monthly statements, and following proper card security measures.

2. **Unauthorized Use:** If the P-card Representative, upon review of a Cardholder's statement, is not satisfied that the purchase was for Town use, the Cardholder will be requested to provide either a credit voucher from the vendor proving the item(s) were returned or must pay reimbursement to the Town for the full amount of the purchase. Proof of vendor's credit or personal payment must be sent to the P.A., and proper written justification regarding why the P-card may have been used to purchase personal items must be provided to the Department Director, and the P-card Coordinator.
3. **Missing Documentation:** If the Cardholder does not have the proper receipts/invoices for all transactions to send to the P.A. with the monthly individual account statement, proper written documentation of the purchase, including merchant, description, amount, and Town account number, must be included with the Cardholder's statement. Continued incidents of missing documentation may result in the cancellation of the employee's Procurement Card and/or other disciplinary action. The determination concerning a Cardholder's lack of proper receipts/invoices will be made by the P.C.
4. The Department Director or designee shall notify the P.C. if a Cardholder appears to be misusing the P-card, abusing the P-card program, or violating the Town's established policies and procedures.
5. Abuse and/or misuse includes but is not limited to the following:
 - a. Making purchases that exceed the Cardholder's approved SPL or monthly limit.
 - b. Purchases of unauthorized or prohibited items/services as itemized in Section VIII B6, "Prohibited Uses of Procurement Cards", unless specifically authorized by the approved Cardholder's P-card profile.
 - c. "Splitting" transactions to avoid the Cardholder's approved SPL.
 - d. Failure to maintain proper receipts and/or other required documentation.
 - e. Purchases of Capital Outlay items, unless pre-approved by the Purchasing and Contracts Manager.
 - f. Purchases from vendors which create a conflict of interest.
 - g. Charging personal items.
 - h. Allowing another person to use the P-card.
 - i. Failure to report a lost or stolen P-card in a timely manner.

- j. Charging to accounts when funds are not available, without prior authorization from the Department Director, the Town Clerk/Treasurer, or the Town Manager.

Approved: _____ 5/3/2022
Matthew Stinnett Date
Town Manager

TOWN OF MALABAR

COUNCIL MEETING

SPM Staff Report 8.b.

Meeting Date: May 2, 2022

Prepared By: **Lisa Morrell, Special Projects Manager as of April 25, 2022**

SUBJECT: SPM Report for May 2, 2022 Council Meeting

Updates from the April 4, 2022 staff report have been provided in bold for each topic with new topics added to the end of the report from the previous reporting period.

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.

05/02/2022 – Ongoing.

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.

05/02/2022 – Ongoing.

Fixed Town Facility or Entrance Signage

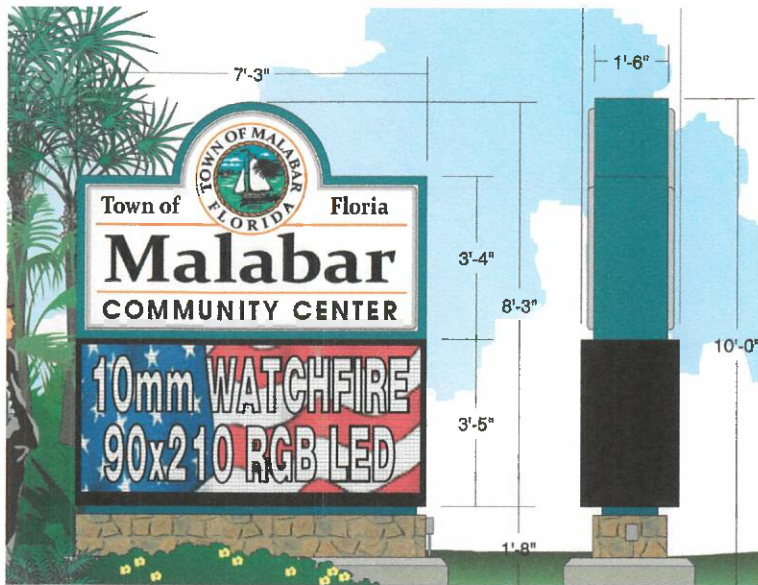
May 5, 2022

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).

05/02/2022 – Provided vendor feedback on proofs and reiterated the (2) requested signs. The vendor is working on a proof for Malabar Community Park and Disc Gold Sanctuary. The vendor also expressed concern regarding potential increased for shipping, the Town's responded with instruction for the vendor to provide a written request explaining the reason and the change amount for the award and pricing provided in the request for proposal submission.

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.



05/02/2022 – A commercially licensed electrical contractor was onsite to verify the existing electrical connection is a dedicated 20 AMP circuit required to be provided by the Town for the sign installation. The contractor also provided a quote to furnish and install an upgraded panel and surge protection for the new sign to included two independent breaker circuits for the two-part, led panel and backlit, sign components for individual operation and timing: as well as an in electrical panel surge protector for the \$37,000 investment. The cost of these services will be executed through SLFRF funding, estimated total is \$1017.00.

A building permit application has been submitted for the sign and is has been issued to the vendor on April 25, 2022, per notice of the Building Department Manager. Demolition of the old sign and installation activity has been confirmed to start on Wednesday, April 27, 2022.

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.

05/02/2022 - A preliminary kickoff meeting for the back scanning tasks was held on April 18, 2022 to discuss logistics and timing of scanning paper records in storage as we await a project manager assignment for the central database software installation and configuration.

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.

05/02/2022 – The electronic timecard recording web portal and logins have been initiated and deployed to all employees. Town staff is actively transitioning to time reporting online with clock in and out tasks. This project also deployed an electronic paperless system to request time off

due to sick, vacation, floating holiday, jury duty, military leave, bereavement, and worker's compensation tracking and usage. The system automates and permits supervisors to approve time off and timecards after the employees' requests time off. Supervisors review and approve bi-weekly timecard submissions after their respective employees and signs and certifies their timecard, all electronic. Employees have been provided a workforce portal to electronically retrieve pay stubs, review their personal profile, and future W2's. The project has a milestone of May 11, 2022 to end paper timekeeping and approved electronic timekeeping submissions for payroll activities performed by the Town Clerk/Treasurer.

Payroll history from January 2, 2022 has been uploaded retrospectively by the vendor on April 17, 2022, after two support requests and active follow-up for completion to ensure the historically data of the project migrated for proper 2022 W2 tasks for this tax reporting year.

Grants

I have been enrolled and registered with Ecvivis, 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.

Volunteer Fire Assistance (VFA) Grant

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.

05/02/2022 – VFA grant submission was signed on April 5, 2022, and submitted, awaiting response to application for up to 50/50 match, \$11,294.31, of the total request expenditure of \$22,588.62 for Fire Turnout Gear. USPS tracking as of 04/25/2022 states “arriving late” as of 04/11/2022, “Your package will arrive later than expected, but is still on its way. It is currently in transit to the next facility. Last location, April 7, 2022, 11:03 pm Departed USPS Regional Facility TALLAHASSEE FL DISTRIBUTION CENTER. Re-submitting on May 11, 2022.

Firehouse Subs Grant - Q3 2022

On April 7, 2022 The Fire House Subs quarterly grant portal opened for community public safety equipment grant requests. The Town of Malabar submitted at grant at 9:07 am after the portal opened at 6:00 am to requests financial assistance in procuring air lift bag kits totaling \$14,652.00 quoted by a vendor, Mutual Emergency Services. An email confirmation as received of the submission which only opens to 600 applicants each quarter. Currently awaiting a response to the grant application from Firehouse Subs Foundation, the confirmation states "All applicants will be notified of approval or denial within two months of the quarterly grant application deadline". The website grant portal notice currently states "Q3 2022 grant award notifications, will be emailed prior to July 7, 2022."

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.

05/02/2022 – Ongoing, 1 application has been received for the MEO and 1 new volunteer firefighter is in process of the roster onboarding.

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 April 30, 2022, and is currently in progress.

05/02/2022 – The SLFRF Compliance Report - FL0191-P&E Report-Q1 2022

Report Period: Annual March 2022 has been submitted and uploaded to the US. Treasury provided web portal for Non-Entitlement Units (NEU) due for April 30, 2022, for reporting period: January 1, 2022 through March 31, 2022. A copy of the report submittal from the online portal entry is also attached to this report.

Life Pak 15 (SLFRF)

A purchase order has been issued for the cardiac defibrillators and monitors to the contracting vendor, Stryker Medical. To date, upon inquiry, I have not received a confirmation or estimated shipping date for the equipment for Malabar Fire Department.

Park Restroom Remodel Plans

Design plans and scope of work are currently underway for vendor solicitation to perform the approved public facilities upgrades for sanitary components to include sinks with integrated facets to include automated soap, water, and drying functions, automated flush toilets, replacement partitions, epoxy coating for the floor, minor electrical upgrades for occupancy sensors with energy efficient LED lighting fixtures, addition of automated doors for open and close schedules, and a re-roof to secure the envelope and upgrades.

Procurement

In conjunction with the amended procurement code and purchasing administrative policy; Town staff is also transitioning the of online procurement software from Demand Star to a new vendor, Urban Leap.

Urban Leap is a no cost to the participating agency to solicit everyday quotes for goods and services to complex purchases using a Request for Proposal (RFP) or Invitation to Bid (ITB) process. All vendors are free to participate and submit quotes, bids, proposals, at no cost; only the awarded vendor will pay the vendor a 1% fee and only upon award and final payment from the Town. The current solution, Demand Star, used by the Town is free to the Town and vendors or contractors pay an annual subscription for which range from \$25 - \$1050 depending on the elected coverage.

Procurement Cards

The Town had a kick-off conference call on March 23, 2022 to begin the engagement with the State of Florida's Bank of America Purchasing Card to improve the procurement card program, credit card purchases, under the new purchasing ordinance and corresponding administrative policy and procedures for efficiency of purchases, approvals, accountability, and transparency of Town purchases within the established thresholds and credit limits for contactless reporting and staffing resources to meet the needs of day to day operations. A rebate of Town purchasing cards can be achieved annually as a revenue upon meeting the spending threshold of 1,000,000 annually. A rebate will not be achieved in this fiscal year, yet attainable, as a future revenue source.

Upcoming Dates:

FMIT Human Resources and Risk & Safety Management Seminar

Friday, April 28, 2022 from 8:30 am to 3:00 pm, I will be attending the 2022 FMIT Human Resources and Risk & Safety Management Seminar in Tamarac, Florida. This is a free event with no travel costs incurred to the town.

Topics:

Cybersecurity: Impacts, Takeaways and Remediation Strategies

Workers' Compensation Cost Mitigation

Who You Gonna Call? The ELA Hotline!

Liability Landscape – Flowers and Roses or Thistles and Thorns?

The New Landscape of Stormwater Grants Exploring Infrastructure and Resilience Opportunities

On May 5, 2022, Florida Stormwater Association will hold a one-hour webinar to explore one community's journey to fund community-wide resiliency planning projects utilizing grant funding. The session will explore funding opportunities with an overview of Florida's Resilient Grant Program and share a case study of project implementation with lessons learned along the way. The webinar is brought to FSA members free of charge thanks to the sponsorship of Applied Sciences.

FCCMA: Organizing the Legislative Process: Agendas, Meetings, and Minute

Also on May 5, 2022 from 2:00 to 3:00pm, Florida League of Cities is hosting a webinar for established professional or newly appointed to provide tangible ideas to demonstrate various technological changes that are entering the established practices of Florida local governments, from cloud-based methods of compiling agenda items and publishing agenda packages to conducting hybrid meetings and compiling minutes. Most importantly, the webinar will demonstrate how the workflow for creating a successful agenda package involves multiple partners who work together to provide the information elected officials and the public need to participate in the legislative process of local governments.

Panelists:

Al Butler, Director of Support Services, Ocoee
Jennifer Johnson, City Clerk, Tamarac

City/Town Water Expansion

A conference call has been scheduled with the Director of Utilities for Palm Bay, Christopher Little, with Town of Malabar Staff, Matthew Stinnett and myself, to discuss potential corridors of the Town for a capital improvement project of Drinking Water/Sewer projects using State and Local Fiscal Recovery Funds (SLFRF). Outcomes from that meeting will be shared with Town Council in a future workshop date.

Out of Office

I will be on vacation from Wednesday June 1st 2022 through Monday June 6, 2022 with no cellular or technological availability. I will return to the office on Tuesday, June 7, 2022, barring any travel delays.

SLFRF Compliance Report - FL0191-P&E Report-Q1 2022
Report Period : Annual March 2022

Recipient Profile

Recipient Information

Recipient UEI	PJL3ZYM1WNM4
Recipient TIN	591032996
Recipient Legal Entity Name	Malabar town
Recipient Type	
FAIN	
CFDA No./Assistance Listing	
Recipient Address	2725 Malabar Road
Recipient Address 2	
Recipient Address 3	
Recipient City	Malabar
Recipient State/Territory	FL
Recipient Zip5	32950
Recipient Zip+4	
Recipient Reporting Tier	Tier 5. Metropolitan cities and counties with a population below 250,000 residents which received less than \$10 million in SLFRF funding
Discrepancies Explanation	TOWN OF MALABAR TOWN HALL UNIQUE ENTITY ID: CGFALJS434J9
Is the Recipient Registered in SAM, Gov?	Yes

Project Overview

Project Name: Digitize Public Records

Project Identification Number	TOM-22-01
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$21,808.25
Total Cumulative Expenditures	\$5,482.00
Current Period Obligations	\$21,808.25
Current Period Expenditures	\$5,482.00
Project Description	<p>MCCi, is an awarded and contractor for Document and Records Retention of contract #11-26 by National Cooperative Purchasing Alliance (NCPA). MCCi has provided a master service agreement to perform two large task orders. One task order is to provide and implement the electronic database and software components of Laserfiche Document Imaging software. Laserfiche is a software application and database used by many government agencies nationwide and will also be retained to securely host and store public records in an internet cloud-based solution and become the Town's central electronic repository for public records, after scanning. Town staff will be trained and equipped with hardware and software tools to scan paper documents received, create electronic documents, and electronically retrieve historically stored paper documents without leaving their workstation. In this manner, the use of SLRFR funds is eligible for the project to prevent and reduce points of contact and improve general government services using the approved standard allowance method for expending these funds. The second task of the project will expedite back scanning services for Agendas, Minutes, Resolutions, Ordinances, Financial Records, and Building Permits.</p> <p>Town Council Approval Date: March 7, 2022.</p>

Project Name: Town Clerk Back Scanning

Project Identification Number	TOM-22-01a
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$25,216.95
Total Cumulative Expenditures	\$5,422.13
Current Period Obligations	\$25,216.95
Current Period Expenditures	\$5,422.13
	Town Clerk records for back scanning to include agendas,

Project Description	minutes, financial information (payments, receivables, budgets, payroll, etc), ordinances, and resolutions. Town Council Approval Date: March 7, 2022.
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Project Name: Building Back Scanning

Project Identification Number	TOM-22-01b
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$15,470.90
Total Cumulative Expenditures	\$0.00
Current Period Obligations	\$15,470.90
Current Period Expenditures	\$0.00
Project Description	Scanning of stored paper building permits and plan records for back scanning per parcel ID issued by the Town. These qualify as for SLRFR funds use to minimize touchpoints and in-person contact of multiple contractors, plan reviewers, review and permitting staff, and property owners. Town Council Approval Date: March 7, 2022.

Project Name: Digital Public Information Sign

Project Identification Number	TOM-22-02
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$37,225.00
Total Cumulative Expenditures	\$0.00
Current Period Obligations	\$37,225.00
Current Period Expenditures	\$0.00
Project Description	Replacement of static letter sign to dynamic electronic public information sign on Malabar Road (SR-514) to inform the public of emergency notifications, events, and public meetings. Town Council Approval Date: March 7, 2022

Project Name: Digital Public Information Sign-Electrical

Project Identification Number	TOM-22-02a
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$1,017.00
Total Cumulative Expenditures	\$0.00
Current Period Obligations	\$1,017.00

Current Period Expenditures	\$0.00
Project Description	Electrical services required connection and surge protect for Digital Public Information Sign.

Project Name: FD 911 Radios

Project Identification Number	TOM-22-03
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$127,160.27
Total Cumulative Expenditures	\$0.00
Current Period Obligations	\$127,160.27
Current Period Expenditures	\$0.00
Project Description	Brevard County Emergency Management owns the Public Safety Radio system in Brevard County. Emergency Management has announced that they will convert the current Public Radio System from analog to P25 Phase II in 2025. In preparing customers for the P25 conversion, Communications International, Inc. (CII) has reviewed the Town of Malabar Fire Department's inventory and has prepared a quote for radio replacements that are guaranteed to operate on today's systems as well as the planned P25 Phase II in 2025 upgrades. In review of the Town of Malabar inventory, all the radios that are currently being used by public safety and command personnel have met their "end of support" and do not carry the ability to be P25 ready. Malabar Fire Department receives radio dispatch services through Brevard County by interlocal agreement(s) and provides emergency response services through mutual aid agreement(s). The Town of Malabar has elected for the standard allowance methodology for recovery of revenue losses for funding receives through Coronavirus State & Local Fiscal Recovery Funds (SLRFR); additionally emergency operations centers & emergency response equipment (e.g., emergency response radio systems) are eligible uses for Responding to the Public Health Emergency under the Final Rule published by the U.S. Treasury. Town Council Approval Date: March 21, 2022

Project Name: COVID-19 FD DCON

Project Identification Number	TOM-22-04
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$800.00
Total Cumulative Expenditures	\$800.00
Current Period Obligations	\$800.00
Current Period Expenditures	\$800.00

Project Description	12-17-2021, a positive COVID-19 case provided contact tracing occurring at the Town's Fire Department which is densely occupied for 24-hour shifts. A local cleaning service provided facility cleaning of all sleeping and operational quarters of the facility.
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Project Name: Special Projects Manager 50% Salary & Benefits

Project Identification Number	TOM-22-05
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	Completed less than 50%
Total Cumulative Obligations	\$143,896.42
Total Cumulative Expenditures	\$17,365.40
Current Period Obligations	\$126,531.00
Current Period Expenditures	\$17,365.40
Project Description	<p>Town Council discussed and approved retaining the current Interim Town Manger as a Special projects manager to assist the Town Council with various activities for improvement and efficiencies; ex. ARPA, grant, grant opportunities and application submittals, economic development, code of ordinance updates, charter review activities, information technology enhancements for improve flow performance of limited staff, and legislative priorities. To date, the estimated timeframe for the Town Manager return is between November 2021 and January 2022. To keep continuity of operations and in process projects (ex. playground, solid waste, ARPA, Hunter Lane Improvements); suggest extending the existing contract with new salary and benefits to retain the Interim Town Manger until the return of the Town Manager. At that time the Interim Town Manager will transition to a Town Council report with no supervisory duties as the Special Projects Manager for the remainder of the contract, no more than the 2-year contract termination date of September 30, 2023. Funding 50% General Fund, 50% SLFRF funding for grant administration and reporting requirements.</p> <p>Town Council Approval Date: August 16, 2021</p>

Project Name: FTE Software

Project Identification Number	TOM-22-05a
Project Expenditure Category	6-Revenue Replacement
Project Expenditure Subcategory	6.1-Provision of Government Services
Status To Completion	
Total Cumulative Obligations	\$279.99
Total Cumulative Expenditures	\$279.99
Current Period Obligations	\$279.99
Current Period Expenditures	\$279.99
Project Description	Microsoft Vizio Software License for Special Projects Manager Position for currently identified project

Report

Revenue Replacement

Is your jurisdiction electing to use the standard allowance of up to \$10 million, not to exceed your total award allocation, for identifying revenue loss?	Yes
Revenue Loss Due to Covid-19 Public Health Emergency	\$1,595,219.00
Were Fiscal Recovery Funds used to make a deposit into a pension fund?	No
Please provide an explanation of how revenue replacement funds were allocated to government services	<p>On January 24, 2022, the Town Council held a public workshop presented by Special Projects Manager, Lisa Morrell, to discuss the US Treasury's Final Rule and potential project allocations. Discussions focused on the key changes of the rule (ex. Lost revenue, Economic Impacts, Premium Pay, Waster/Serwe/Broadband Infrastructure), as well, as certain restrictions of the ARP/SLFRF funds. Staff presented a list of potential projects that focused on touchpoints, first responder medical equipment, ppe supplies, improved outdoor recreation, technology solutions to better serve the public now and in the future for continuity of operations to the general public. Town Council, in a public forum, was unified on the projects and allocation estimates totaling \$558,307 and directed staff to bring forth the items on future agendas with more detail for approval by Town Council. To date, staff has allocated \$300,926.57 with elected official approval and has expended \$29,349.52 for the first annual reporting period 3/1/2021 through 3/31/2022. The Town of Malabar has a total allocation of \$1,595,219.00, during the February 3, 2022 Town Council Meeting, the standard allowance method for lost public sector revenue was approved. Town Council will revisit the remaining ~\$1,036,913 funds for additional projects presented at the first workshop for major infrastructure: Road Paving, Stormwater, Water Services, Facility Improvements; as the council would like more time for public input on such a large investment from the constituents. There is a discussion item on the April 18, 2022 agenda for larger infrastructure projects.</p>

Overview

Total Obligations	\$372,874.78
Total Expenditures	\$29,349.52
Total Number of Projects	9
Total Number of Subawards	0
Total Number of Expenditures	0

Certification

Name	Lisa Morrell
Telephone	(321) 727-7764
Title	Special Projects Manager
Email	lmorrell@townofmalabar.org
Submission Date	4/25/2022 9:00 AM

**TOWN OF MALABAR
COUNCIL MEETING**

**AGENDA ITEM NO: 10.a.
Meeting Date: May 2, 2022**

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Public Hearing – Close Marie Street right-of-way per Ord 2021-15 (Reso 10-2022)

BACKGROUND/HISTORY:

This was requested by CM Vail but several residents on Marie Street have voiced support of this closure. We have also heard from another property owner at the east end of Atz Road that owns the property that has been driven on at the rear of her property by the people swerving off Marie Street to avoid the big hole.

The point of closure would be just north of this hole.

If Council approves this temporary closure the Reso 10-2022 will be read by title only and a rollcall vote will be taken. If adopted, I will run another legal ad in paper notifying public of this temporary closure.

Town Council recently adopted Ord 2021-15 providing specific direction to staff on how to handle these types of requests. It has been legally advertised in Florida Today, the adjacent property owners within 500 feet have been sent notices of this meeting. A resolution has been drafted and reviewed by the Town Attorney, and if the road closure is approved the resolution will be recorded with Brevard County Clerk of Courts and a subsequent legal ad will published.

Staff requests Council direction.

FINANCIAL IMPACT:

Financial obligations to legal notice the public, obtain a radius package, and conduct a public hearing. If approved, a subsequent legal ad will be run to alert public to the temporary closure of this platted right-of-way”.

ATTACHMENTS:

Resolution 10-2022
Map of area and specific parcels
Copy of legal notices

ACTION OPTIONS:

Action on Resolution 10-2022

RESOLUTION 10-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE TEMPORARY CLOSURE OF MARIE STREET BETWEEN SECTION 01 AND SECTION 06 AT A POINT ADJACENT TO THE SOUTHEAST CORNER OF PARCEL 29-37-01-00-783; PROVIDING PREVENTION OF MOTORIZED AND OTHER OFF-ROAD VEHICLES BEYOND THAT POINT UNTIL DEVELOPMENT OF THE ADJACENT PARCELS OCCURS; 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.

WHEREAS, Malabar Town Council has received a request to consider the placement of barricades across a platted right-of-way to prevent motorized vehicles beyond that point until the area is further developed; and

WHEREAS, Malabar Town Council has the legislative authority to close rights-of-way after a public hearing process, if determined that it serves a public purpose.

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 placement of barricades between Section 01 and Section 06 at a point adjacent to the southeast corner of Parcel 29-37-01-00-783.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to run the legal ad of this adopted resolution after recording with the Clerk of Court and send copies to all utility companies serving south Brevard County.

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 _____ and a second by Council Member _____ and 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 2nd day of May 2022.

(seal)

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney



Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321-727-7764 (Office) 321-727-9997 (Fax) www.townofmalabar.org

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING
TO ALL PROPERTY OWNERS WITHIN 500' OF PROPOSED
RIGHT-OF-WAY CLOSURE**

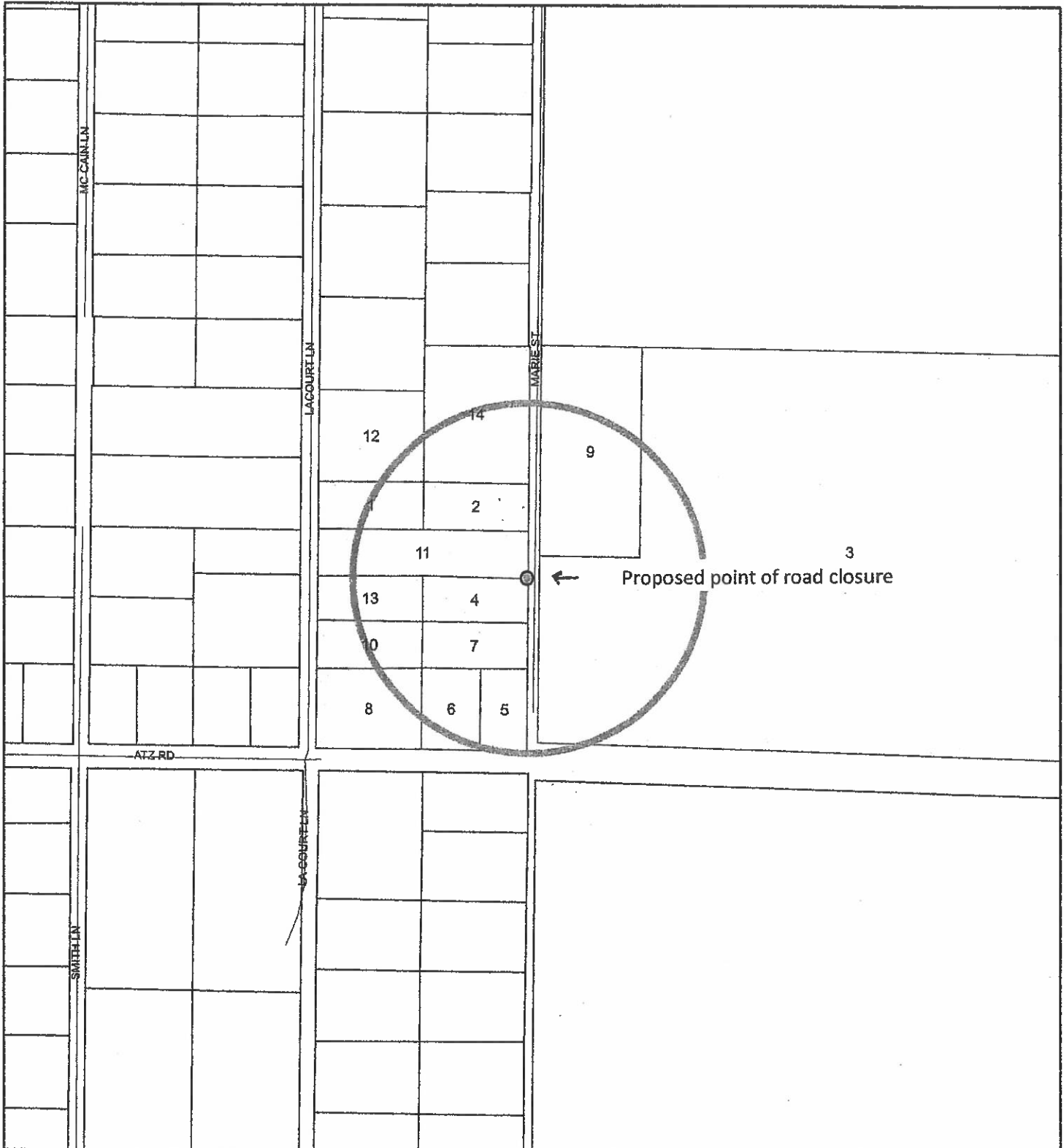
The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **May 02, 2022 at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: the request to barricade Marie Street right-of-way between Section 01 and Section 06 at a point adjacent to the southeast corner of Parcel 29-37-01-00-783. The purpose of the barricade would be to prevent ATVs and other off- road vehicles beyond that point until development of the adjacent parcels occurs. ***A public road right-of-way can only be closed, permanently or temporarily, by order of Council after notice to surrounding property owners and a Public Hearing.*** Council directed staff to advertise for a public hearing to seek input before their vote.

See map on back

If you received this notice then you are listed as an owner of property, as shown in the records of Brevard County Property Appraiser's office, within 500' of the requested road closure. This Notice is provided as required by Malabar Code, Chapter 13, Section 13-36 adopted by Ordinance 2021-15. You are invited to attend or submit your comments before the meeting to the Town Clerk at townclerk@townofmalabar.org

RADIUS MAP

ROAD CLOSURE REQUEST BY TOWN OF MALABAR FOR THE RIGHT-OF-WAY KNOWN AS MARIE STREET
 mariestreet500







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/6/2022

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels



Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF MALABAR

Ad No.: 0005213977

Address: 2725 MALABAR RD
MALABAR FL 32950
USA

Pymt Method: Invoice

Net Amt: \$81.60

Run Times: 1

No. of Affidavits: 1

Run Dates: 04/14/22

Text of Ad:

AD#5213977, 4/14/2022
TOWN OF MALABAR
NOTICE OF
PUBLIC HEARING

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, May 02, 2022, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: the request to barricade Marie Street right-of-way between Section 01 and Section 06 at a point adjacent to the southeast corner of Parcel 29-37-01-00-783. The purpose of the barricade would be to prevent ATVs and other off-road vehicles beyond that point until development of the adjacent parcels occurs. A public road right-of-way can only be closed, permanently or temporarily, by order of Council after notice to surrounding property owners and a Public Hearing. Council directed staff to advertise for a public hearing to seek input before their vote.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to to wnclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby Franklin, CMC, Town Clerk/Treasurer

TOWN OF MALABAR

REGULAR TOWN COUNCIL MEETING

AGENDA ITEM NO: 11.a

Meeting Date: May 2nd, 2022

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Dog Park Opportunity

BACKGROUND/HISTORY:

- a. On March 30th, 2022, Town Manager Stinnett, Special Projects Manager Morrell, Parks and Rec Board Chair Beinvenu, and Private Donor Mark Pieloch visited Malabar Community Park, Eschenburg Park, and the Sandhill Trailhead to discuss potential Dog Park locations.
- b. It was recommended that the area due West of the parking lot for the playground at Malabar Community Park be utilized for the Dog Park.
- c. Mr. Pieloch has agreed to donate up to \$80,000 for the completion of a dog park in Malabar. Mr. Pieloch has doated and assisted in the development of several South Brevard Dog Parks, such as on Florida Ave and in Crane Creek Park in Melbourne, as well as the newest Dog Park in East Viera.
- d. On April 20th, 2022, the Town of Malabar's Parks and Recreation Board held their regularly scheduled meeting and voted unanimously to recommend that Council approve the site and begin moving forward on the project.

ATTACHMENTS:

- a. Memo 2022-DTC/C-7
- b. Presentation from Parks and Recreation Board Chair
- c. Sample Agreement from Mr. Pieloch
- d. Draft Minutes of 04/20/2022 Parks and Recreation Board Meeting
- e. Staff Report/ Comments

ACTION OPTIONS:

- a. Discussion/Approval

TOWN OF MALABAR

MEMORANDUM

Date: April 21, 2022 2022-DTC/T-7
To: Town Clerk & Town Manager
CC: Town Council and Mayor Reilly
From: Richard W. Kohler, Deputy Town Clerk/Treasurer
Ref: Parks and Recreation Board Recommendation

At the April 20th Parks and Recreation Board Meeting, the Board discussed an offer from a private donor, Mr. Pieloch, to assist the Town of Malabar in developing a community Dog Park. Mr. Pieloch has assisted in the development of several dog parks in South Brevard, such as on Florida Ave and in Crane Creek Park in Melbourne, as well as the newest Dog Park in East Viera. Mr. Pieloch has offered to donate up to \$80,000 to the Town to assist in the development of the dog park. After a site visit to Malabar Community Park, the Sandhill Trailhead, and Eschenburg Park, Mr. Pieloch recommended that Malabar Community Park be selected as the location for the dog park, as it has ample parking, accessible restrooms, other amenities for public enjoyment, and plenty of potential shade. Mr. Pieloch has also offered the assistance of the team of volunteers who helped design and construct the other area dog parks he has been involved in, bringing experienced members to the team.

After discussion, Board Member Kemmler made the following motion:

To recommend that Council approve and begin moving forward with this project.

The motion was seconded by Board Member Bienvenu, and passed unanimously.

The following draft minutes are subject to changes and/or revisions by the Park Board and shall not be considered the official minutes until approved by the Park Board.

**TOWN OF MALABAR – PARKS AND RECREATION ADVISORY BOARD
April 20, 2022, MEETING MINUTES**

This meeting of the Malabar Parks and Rec Board was held at Town Hall at 2725 Malabar Road. It was called to order by Chair Bienvenu at 6:00 pm. Prayer and pledge were led by Chair Bienvenu.

1. CALL TO ORDER, PRAYER, AND PLEDGE

2. ROLL CALL

Chair	Eric Bienvenu - Present
Vice-Chair	Vicky Thomas – Present
Members	Tom Taylor – Present
	Jennifer Bienvenu – Present
	Hans Kemmler - Present
	Parnel Jean – EXCUSED
	Evan Hall – Arrived 6:06
Recording Secretary	Richard Kohler – Present

Public

3. ADDITIONS/DELETIONS/CHANGES: NONE

4. CONSENT AGENDA

a) Approval of Minutes of 2/16/2022.

MOTION: THOMAS/KEMMLER to accept the minutes of 2/16/2022 as amended. VOTE: All Ayes

5. PUBLIC COMMENTS

6. ACTION ITEMS:

7. DISCUSSION:

a. Potential Dog Park Opportunity

Discussion: Chair informs the Board that Mr. Pieloch has offered to grant the Town \$80,000 for the completion of a dog park. Mr. Pieloch has completed several dog parks in south Brevard, most recently he completed a park in East Viera.

BM Bienvenu gave a detailed explanation of the Viera, Florida Ave and Crane Creek Park, including the shade, seating, and dog washing areas. She stated she has been to all of the parks with her dog, and the people she interacted with loved the shade and build up.

BM Thomas discussed the potential issues with liability insurance and stated in he research, municipalities are usually successful in avoiding court cases due to dog park incidents.

BM Biennu stated that Mr. Pieloch would prefer Malabar Community Park as the selected location and will gift the Town \$80k.

Chair states that there is also the promise of several volunteers that do site work that will be included.

Chair also discussed the park requirements discussed by Mr. Pieloch (Included in Agenda).

BM Thomas asked if Malabar has the staff to pick up the dog waste.

Chair states that it is a self-serving station, the Town's only responsibility will be to keep the bags supplied. There should be a double fence, such as the other parks designed by Mr. Pieloch.

BM Kemmler states the location has been an issue with Turtles in the past.

Chair states there were none seen on the site visit. The Town can clear the land and bring in fill dirt.

BM Kemmler asked how expensive it would be to move the tortoise?

BM Hall stated he believes it is about \$5k, and the issue is that the mitigation banks are full.

BM Kemmler states he thinks it will be a wonderful addition to the area.

VC Thomas states it is a wonderful presentation.

BM Hall asked if we have asked any of the other municipalities have estimated their costs for maintenance?

Chair said he will investigate.

BM Kemmler asks if the park will be 24 hours?

Secretary states that Malabar Community Park is open Dawn to Dusk, and as a part of Malabar Community Park the Dog Park will also follow those hours of operation. He also noted that the American Kennel Club states an ideal dog park is 1 acre. The proposed site is under half an acre.

BM Kemmler states the area to the south could be added and includes nice shade. The bigger the better.

Chair states a sprinkler system will be required.

Chair reiterates that Mr. Pieloch will donate the funds, and not require the Town to do a fundraiser.

BM Kemmler states that he believes that we can do the project for under \$80k.

BM Bienvenu states the next step would be to present it to Council.

MOTION: BM Kemmler/BM Bienvenu to recommend that council that approve and begin moving forward with this project. Vote; All Ayes (5-0)

BM Kemmler reiterates that the agreement included in the agenda will be what goes before the Council.

Secretary states it will.

Chair states we will begin to look at the features once the site has been finalized. We will have the volunteers that assisted in the building of the other parks to help determine what will go in.

BM Kemmler suggests we focus the area on low maintenance features.

BM Bienvenu commended Malabar resident Megan Wolfghram for her appearance on Shark Tank for a dog lure idea.

8. OLD/NEW BUSINESS:

a) BOARD MEMBER/STAFF REPORTS:

- Richard E. Cameron & Volunteers Wilderness Preserve – VC Thomas states she walked the Impala trail. The car is beyond repair, but it's a fun trail. She is concerned with the increase of cigarette butts. People are picking up their dog waste regularly. BM Kemmler asked about the pavilions. Secretary Kohler states Council has approved it and TM Stinnett is working on the RFP.
- Disc Golf Sanctuary – BM Kemmler states that the volunteers recently removed what they believe was the last Brazilian Peppers from the site. He states there are some Melaleuca plants that they haven't removed. BM Hall asks if they can be replaced? BM Kemmler states that is a good idea. In the past they have planted Cyprus, oaks, and coconut trees. In other news the fence on the West has been violated by the neighbor, and the Town is actively working to correct the situation. There will be a small tournament on May 7th. The Town paid for some materials to repair the fence and build a new bench.
- Thomas Eschenberg Memorial Conservation Area – BM Bienvenu asked if the T&GC was interested in using the park for trails? Secretary Kohler stated the area would be tough due to the wetlands and brush.
- Malabar Community Park – BM Bienvenu states it is wonderful to see how many people use the park.
- Sandhill Trail Head – BM Hall states use has dropped to next to nothing. The ROW of Marie Street has been mowed, and the paved path can be accessed from there. Someone has mowed a path through the old Huggins Park.

b) Staff Reports – Secretary Kohler informed the Board that he spoke to BM Jean, and he is still interested in serving and appreciates the leave of absence he has been granted. He believes his schedule will return to normal and he will return to regularly attending meetings in September of this year.

c) Next Scheduled Meeting

- May 18th, 2022, 6 PM
- Chair and BM Bienvenu will be out of town for the next weekend.
- VC Thomas stated her appreciation to the Chair for his hard work on the Dog Park project. This has been in the making for a long time, and she looks forward to working on the project.

9. ADJOURNMENT

There being no further discussion. **MOTION: Thomas/Kemmler** motion to adjourn the meeting **VOTE: All Ayes.** This meeting adjourned at 6:53 pm.

By _____

Eric Bienvenu, Chair

ATTEST:

Richard W. Kohler
Recording Secretary

Date Approved: _____

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIAL ATTENDING THIS MEETING

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 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.

DONATION AGREEMENT

Viera East Pieloch Dog Park

This donation agreement is made and entered by and between Mark & Tetiana Pieloch (the "Donors"), whose business address is _____ and the Viera East Community Development District, a local, special purpose government entity authorized by Chapter 190 of the Florida Statutes as amended, and created by ordinance of Brevard County, Florida and whose business address is Viera East CDD c/o Jason Showe, District Manager, Governmental Management Services - Central Florida, LLC, 219 E. Livingston St. Orlando, FL 32801 (the "CDD")

Recitals:

Whereas, the CDD owns and operates certain property known as Woodside Park (the "Park"); and

Whereas, Donors have offered to donate the materials and services necessary to construct a dog park (the "Dog Park") within the Park; and

Whereas, the CDD has agreed to accept Donors offer and allow the construction of the Dog Park; and

Now, therefore, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which being hereby acknowledged, the parties covenant and agree as follows:

1. **Purpose; Intent:** The purpose of this Donation Agreement is to outline the details of the donation and the commitments and responsibilities

of each of the parties from conceptual planning through final completion of the Dog Park and acceptance of donated items. It is the intent of the parties to efficiently, effectively and economically cause the successful construction of the Dog Park for the benefit of the public. It is further the intent of the parties that the Donors shall, in consultation with the CDD, design, engineer, permit, construct, equip and otherwise complete the Dog Park as mutually agreed upon by the parties.

2. **Funding:** The cost of the Dog Park is estimated to be approximately \$35,000 but no more than \$70,000. The Donors agree to provide the materials and services necessary to complete and equip the Dog Park at Donors sole cost and expense, regardless of the final cost and with no monetary contribution from the CDD.
3. **Project Plan/Design:** The Donors will construct the Dog Park essentially in accordance with the project plan that is attached hereto as Exhibit "A" (Viera East Pieloch Dog Park) which has been reviewed and approved by the parties. The Dog Park shall include, but not necessarily be limited to, the following elements:
 - A. Separate sections for small dogs and large dogs
 - B. Waste pickup stations
 - C. Benches, Tables and Adirondack Chairs
 - D. Signage posting the rules and name of the dog park
 - E. Fencing along the perimeter of the dog park including gates
 - F. Water features (to be determined)
 - G. Agility features and play areas
 - H. Dog wash stations in both dog areas
 - I. Umbrella/Cantilever and or Sunshade systems

The plan/design and elements may be amended from time to time by mutual consent of the CDD and the Donors. In addition to approval by

the parties, the final design and elements of the Dog Park are subject to review and approval by the Brevard Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Viera, FL 32940.

4. **Compliance:** The Dog Park and all materials and services that are provided pursuant to this Donation Agreement shall comply with all applicable Brevard County Codes and Florida law. Construction must satisfy all governmental building code, wind load/bearing requirements, electrical code requirements and other relevant laws, as determined by Brevard County's Building Official or their designee.

5. **Ownership & Operation:** Both parties understand and agree that the CDD is the owner and/or operator of the Park, including the area of proposed Dog Park. Upon completion, final inspection and issuance of a Certificate of Occupancy for the Dog Park by Brevard County and the issuance of certificates of approval, acceptance or the like from any other governmental entity which has regulatory authority over the Dog Park or the individual equipment or facilities located therein, the CDD shall accept ownership of the Dog Park, including equipment and facilities, and shall thereafter be responsible for the ongoing operation and maintenance of the same. The CDD shall provide the Donor with a letter acknowledging acceptance of the donation of the Dog Park and releasing Donors from liability related to the design, construction and equipping thereof. While the CDD will confirm acceptance of the donation, the CDD makes no representation as to the deductibility of the donation, the suitability of the donation for an income tax deduction, or the need of an appraisal to secure such deduction. The CDD shall also not use the Dog Park as a revenue source by charging for entry into or use of the Dog Park without the prior written consent of Donors, which consent may be withheld in Donors sole discretion. The Donors are advised to consult with the Donors' accountant or attorney for tax advice.

6. **Release and Waiver of Liability; Indemnification:** CDD shall provide Donors, their agents, employees, suppliers, contractors, subcontractors and volunteers (the “Donor Entities”) reasonable access to the Park as necessary to design, engineer, permit and construct the Dog Park. Donors, on behalf of themselves and the Donor Entities, hereby assume full responsibility for any and all risks of bodily injury or property damage they may sustain or suffer in the performance of this Agreement. Donors, again on behalf of themselves and the Donor Entities, also covenant not to sue the CDD, Brevard County and their respective officers, agents, employees and representatives (the “Released Parties”) and hereby release, waive and discharge the Released Parties from any and all liability the Released Parties might otherwise have to Donors and/or the Donor Entities, whether with regard to bodily injury, property damage or otherwise, and including injuries or damage which may have been caused by the negligence of the Released Parties. Donors hereby agree to indemnify and hold the Released Parties harmless from and against any loss, liability, damage or cost the Released Parties may incur due to the performance of Donors and/or Donor Entities under this Agreement.
7. **Dog Park Name:** Upon completion of the Dog Park in accordance with this Agreement and based upon the significant contribution of the Donors, the CDD agrees to prepare a resolution or written acknowledgement to name the Dog Park “Pieloch Dog Park Viera East.” CDD’s commitment to name the Dog Park shall be subject to any applicable Brevard County codes, rules or regulations.
8. **Relationship of the parties:** Neither the Donors, nor any agent, employee, representative or subcontractor of the Donors shall be deemed to be an employee, agent, representative or subcontractor of the CDD or of Brevard County. None of the benefits provided by the CDD or by Brevard County to their respective members, officers,

agents or employees, including, but not limited to, monetary compensation, liability insurance, workers' compensation insurance and unemployment insurance, shall be provided by the CDD or Brevard County to the Donors or to Donors' employees, agents, representatives, suppliers, contractors or subcontractors. Donors shall be solely and entirely responsible for Donors' actions and omissions and for the actions and omissions of Donors' employees, agents, representatives, suppliers, contractors and subcontractors during the performance of this Agreement. Further, it is specifically understood and agreed that the CDD and Donors are acting as independent contractors and are not working as agent of one another, and that the CDD and the Donor are not in any type of joint venture, partnership, or owner-contractor relationship. Nothing contained herein shall be construed to be inconsistent with this relationship or status.

9. **Entire Agreement:** The written provisions and terms of this Agreement, together with all documents attached hereto, set forth the final agreement of the parties and supersede all prior written or oral statements of either party hereto or of their respective officers, agents, employees or representatives.

10. **Drafting; Modification; Waiver:** This Agreement was jointly drafted and negotiated by all parties to this Agreement. Consequently, no provision shall be more harshly interpreted against any party hereto as the drafter of this Agreement. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the parties. The failure of the CDD to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

11. **Notice:** All notices, demands, requests, instructions, approval, and claims shall be in writing. All notices shall be given by U.S. Mail or by email or by hand delivery, to the individual authorized to receive the notice as set forth below;

TO THE CDD: Viera East CDD
c/o Jason Showe, District Mgr.
Governmental Management Services –
Central Florida, LLC,
219 E. Livingston St.
Orlando, FL 32801
Phone: (407) 841-5524
Email: jshowe@gmscfl.com

TO THE DONOR: Mark & Tetiana Pieloch

Phone: _____
Email: _____

Notice shall be deemed to have been given and received on the date the notice is physically received if given by hand delivery or via electronic mail or, if given by U.S. Mail, five (5) days after mailing.

12. **Assignment:** Neither party may assign its rights or obligations granted by this Agreement without the written consent of the other party.

13. **Severability:** Invalidation of any one of these provisions or parts, clauses or words hereof, or the application thereof in specific circumstances, all by Judgment, court order, or administrative hearing

or order, shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

14. **Effective Date:** This Agreement shall become effective when signed by both of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, each on the respective date set forth below.

DONOR

By: _____

Date: _____

Print Name: _____

Title: _____

Signature of Witness #1

Signature of Witness #2

Print Name:

Print Name:

Print Address:

Print Address:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2021, by Mark Pieloch / Tetiana Pieloch, who acknowledged that he / she executed the same on behalf of himself / herself and also on behalf of Tetiana Pieloch / Mark Pieloch and that he / she was properly authorized to do so. He / She is personally known to me or has produced _____ as identification.

Notary Public
Seal:

My commission expires: _____

VIERA EAST CDD

By: _____
Rob Dale, Chairman

Signature of Witness #1

Print Name:

Print Address:

Signature of Witness #2

Print Name:

Print Address:

STATE OF _____
COUNTY OF _____

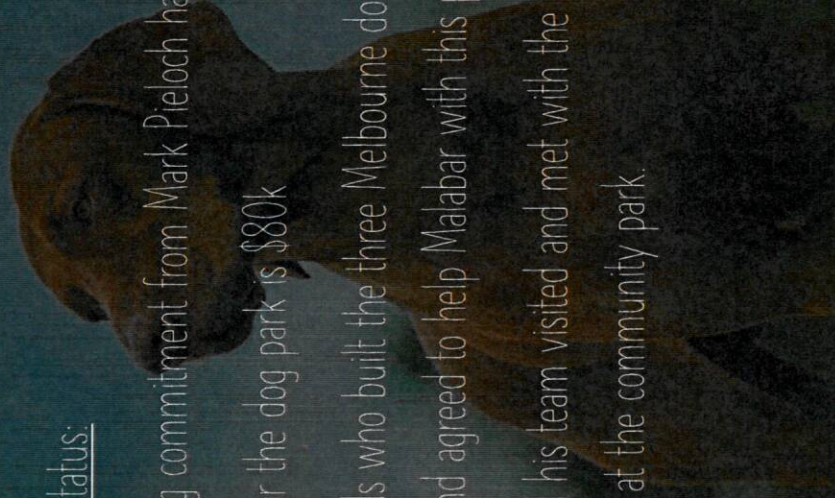
The foregoing instrument was acknowledged before me this _____ day of _____ 2021, by Rob Dale, as Chairman of Viera East Community Development District who acknowledged that he executed the same on behalf of the District and was properly authorized to do so. He is personally known to me or has produced _____ as identification.

Notary Public
Seal:

My commission expires:

Malabar Dog Park

- Current Status:
- A funding commitment from Mark Pieloch has been secured
- Budget for the dog park is \$80k
- Individuals who built the three Melbourne dog parks have been contacted and agreed to help Malabar with this project
- Mark and his team visited and met with the TM and selected a suitable site at the community park.



Malabar Dog Park Requirements

- Sufficient parking
- Access to other activities (playground, ballfields, etc...)
- Restrooms
- Separate area for large and small dogs
- Trees for shade and shade structures
- Dog waste stations
- Water and wash station
- Sprinklers to maintain grass
- Chain link fencing and perimeter safety fence
- Park benches
- Sign with Mark Pelech's name

Malabar Dog Park Location

- Based on the requirements this location seems to be best suited for the park. Dimensions are not final and will be adjusted once the site is more prepared.



Malabar Dog Park Next Steps

- Malabar Parks and Recreation Board discussion and approval - 4/20/22
- Malabar Council presentation and approval to move forward - 5/1/22
- Site preparation and park dimensions set
- Park features discussed and decided upon
- Site plan created (town) and permits applied for
- Start date
- Generate community support and ask for volunteers/build days
- Most subcontractors will be used from previous builds (cement, fencing, sprinkler....)
- Muscle Car Museum fund raiser, organize and sell tickets

Current Mark Pielock Dog Parks

- Please visit their Facebook pages or in person
- Florida Avenue, Southwest Park
- Aurora Road, Crane Park
- Viera, Crane Creek Blvd

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.a. – STAFF COMMENTS

Meeting Date: May 2, 2022

Prepared By: Lisa Morrell, Special Projects Manager

SUBJECT: Consideration of park amenity expansion with site development for a Dog Park at Malabar Community Park, 1850 Malabar Road

BACKGROUND/HISTORY:

The Park and Recreation Advisory Board recommended approval of the expansion of park amenities at the Malabar Community Park (MCP) to plan and develop a portion of the site as a Dog Park on April 20, 2022. The advisory is attached.

This memo is a supplement staff advisement to the advisory board recommendation to include research and key aspects for Town Council for discussion for direction to Town Staff.

The American Kennel Society's published "Establishing a Dog Park in Your Community" provides key information for community benefits, strategies on building public engagement for a community support and advocacy, development and design consideration, and contemplation of rules and regulation. The paper cites success stories in other municipalities and areas to include New Jersey, California, and Tallahassee. The document highlights some key elements Town Council should review and discuss:

Ideal Dog Park Design:

- One acre or more of land surrounded by a four- to six-foot high chain-link fence. Preferably, the fence should be equipped with a double-gated entry to keep dogs from escaping and to facilitate wheelchair access.
- Cleaning supplies, including covered garbage cans, waste bags, and pooper-scooper stations.
- Shade and water for both dogs and owners, along with benches and tables.
- A safe, accessible location with adequate drainage and a grassy area that is mowed routinely.
- If space allows, it is preferable to provide separate areas for small and large dogs. This will enable large dog owners to allow their pets to run more freely, while protecting smaller dogs who may not be suited to the enthusiastic play of larger breeds.
- Signs that specify park hours and rules.
- Parking close to the site

Adoption of Rules and Regulations, Policies to cover:

- Owners are legally responsible for their dogs and any injuries caused by them.
- Puppies and dogs must be properly licensed, inoculated, and healthy.
- Animals should wear a collar and ID tags at all times.
- Owners must clean up after their dogs.
- Dogs showing aggression toward people or other animals will be removed from the park. Animals who exhibit a history of aggressive behavior will not be permitted to enter.
- Puppies using the park must be at least four months old.
- Owners should not leave their dogs unattended or allowed out of sight. If young children are permitted in the dog park, they too should be under constant supervision.
- Dogs in heat will not be allowed inside the park.
- Owners must carry a leash at all times. Dogs should be leashed before entering and prior to leaving the park.

- Violators will be subject to removal from the park and suspension of park privileges

Community Support

Mark Pieloch, a local business owner and operator of the Muscle Car Museum in Melbourne Florida has supported dog park developments in Brevard County. Mr. Peiloch has a program offering that includes funding of \$70,000 in dog park developments, requires community volunteers to donate time, talent, and materials as well as park naming rights. Town staff and the Park and Recreation Chair, Eric Bienvenu, met with Mr. Pieloch and has garnered verbal support with additional drafted agreement documents for the Town to review for consideration, also attached. In discussion and deliberating, Town Council shall consider direction to staff to organize community support by championing the project to garner additional stakeholders, volunteers and donations of service and skill, as well as a Town sponsored fundraising events to benefit and support the development of the proposed dog park amenity expansion project.

Maintenance & Operations

Town Council will also need to consider additional and perpetual maintenance of the expansion of this park amenity to include an operating and maintenance budget, staff oversight, supervisor, and enforcement of adopted rules. There will be an increased costs associated with cleaning and sanitation tasks and supplies; mowing and trimming; park maintenance, repair and capital planning for replacement; general property and liability insurance; law enforcement animal control services for incidents and pet abonnement.

Site Development Items

Several development costs will be necessary to develop the site which include survey, underbrush clearing with some small tree removal with large mature tree canopy to remain, stormwater and site plan engineering for permitting where fill, grade, and grass sod costs may be required, fence and gate permitting, ADA compliance standards for access and egress, potable water availability.

ATTACHMENTS:

American Kennel Club – Establishing a Dog Park in Your Community.PDF

Designing a Model Dog Park Law - Originally published 2011; updated last May 2016. Michigan State University College of Law.PDF

FINANCIAL IMPACT:

This project is in need of an in excess estimate of \$100,000 budget and does not include potable water. There is a available sponsor agreement for Town Council's consideration to offset the development of the site, \$70,000. There are ongoing maintenance and operations costs that need to be developed and would be based upon the approved site plan.

ACTION OPTIONS:

Direction from Town Council.

Establishing a Dog Park in Your Community

What's a dog park and how does it benefit the community?

With cities becoming more and more crowded and leash laws becoming more restrictive, many concerned dog owners are looking to the creation of dog parks as a solution to their need for a place to spend quality time with their pets. But what *is* a "dog park," and what benefits can one bring to your city or town?

A dog park is a public park, typically fenced, where people and their dogs can play together. Similarly, a dog run is a smaller fenced area, created for the same use, that is often located within an existing park. As the names imply, these places offer dogs off-leash play areas where their owners can have the chance to socialize with other canines and their owners. Dog parks, which are sometimes managed by park users in conjunction with city or town officials offer a wealth of benefits to dogs, dog owners and the community.



More than just "room to roam," the creation of a dog park...

- **Allows dogs to exercise and socialize safely.** Puppies and adult dogs need room to run, and enclosed play areas permit them to do so while preventing them from endangering themselves and others (for example, by running into the path of an oncoming vehicle). In addition, dogs who are accustomed to playing with other dogs and people are more likely to be well-socialized and react well toward strangers.
- **Promotes responsible dog ownership.** Dog parks prevent off-leash animals from infringing on the rights of other community residents and park users such as joggers, small children, and those who may be fearful of dogs. Parks also make it easier for a city to enforce its leash laws, as resident dog owners with park access have no reason to allow their canine companions off-leash when outside of the park.
- **Provides an outlet for dog owners to socialize.** Dog parks are a great place for owners to meet other people with common interests. The love people share for their dogs reaches beyond economic and social barriers and helps foster a sense of community. Park users also benefit from the opportunity to ask questions of other owners and find solutions to problems they might be having with their pet.
- **Makes for a better community by promoting public health and safety.** Well-exercised dogs are better neighbors who are less likely to create a nuisance, bark excessively, and destroy property.

How to Build a Dog Park in Your Community

By now perhaps you've recognized the need for a dog park in your area, and you're eager to see one established. So, how can you get started? The following are some strategies for a successful campaign:

The First Steps ...

- **Start with a core group of committed dog park activists.** Talk with a half dozen other individuals who are concerned about the lack of off-leash spaces. This group may form a park association and will be responsible for meeting with public officials, making presentations, maintaining the park and defusing any problems that arise.
- **Hold a public meeting.** Once the core group is in place, a larger community meeting will help you get the word out to supporters and solicit input and suggestions. Contact other dog owners, dog-related clubs, veterinarians, and local humane society and animal control officials to gather interest and support. Do so by posting, mailing, or distributing notices in areas such as neighborhood bulletin boards, pet supply stores, animal hospitals, and shelters. Encourage people to write letters of support to public officials and the media, and to make presentations to community groups whose backing would be valuable.
- **Educate your fellow dog owners on the need to be responsible.** The owner who neglects to pick up after his dog or who allows an aggressive dog to run loose can do a lot of damage to your cause.

- **Write a clear mission statement that details the need and purpose of the park, stressing the benefits to dog owners, their dogs, and the greater community.** The Redwood City [California] Responsible Dog Owners' statement says it all: "To establish a fenced-in, off-leash dog park where well-behaved canine citizens can exercise in a clean, safe environment without endangering or annoying people, property or wildlife. To develop a beautiful, well-maintained space open to all dog lovers and friends who are willing to uphold the park's rules and restrictions. To view this park as a community project, in partnership with the City of Redwood City, designed to satisfy the needs of dog owners and non-dog owners alike."

- **Choose a site.** The ideal area will be a safe, accessible location that takes into account the needs of park users as well as the effect the park will have on neighbors and the environment.

- **Create a budget.** Determine how much it will cost to construct and maintain the park - costs for grass, fences, garbage removal, lawn maintenance, drinking water, field drainage, lighting, benches, and a pooper-scooper station. Some cities are willing and able to finance a dog park; others would rather share the cost with a group committed to maintaining the park and ensuring that park rules are followed. If it is within your budget to do so, sharing expenses with the city can be a great public relations tool. It shows officials that you are committed to the project.

You will need to determine how you will generate revenue for your budget. Annual or daily fees to acquire a required permit (obtained from the city, town or through the park association) and fund-raisers are ways to generate money to cover costs. Also, consider soliciting town or city sources. By convincing elected officials that there is wide support for a dog park among taxpayers and voters, you may help encourage funding for the park.

- **Solicit the input and seek the approval of significant organizations in your community.** Meet with the proposed park's neighbors before talking to city hall. As soon as someone brings up a concern, address it and try to come up with a solution.

Ok, you've gathered your resources. Where do you go from here?

- **Create a proposal.** Your presentation will include your mission statement and goals, and should address issues such as location, funding, maintenance and enforcement. Committee members will be expected to establish and enforce reasonable health and safety rules for the park, and these should be included in the proposal as well. A good proposal will also do the following:

SUCCESS STORY #1

Monmouth County, New Jersey

In the summer of 1999, a newly organized group of Monmouth County dog owners petitioned the county park system and several local municipalities to establish an off-leash dog park. The Bay Shore Companion Dog Club and New Jersey D. O. G. (Dog Owners Group) helped recruit members and collect signatures from owners of nearly 40,000 licensed dogs living in the county.

After collecting 12,000 signatures, the group presented its proposal to the county park system's Board of Recreation Commissioners and municipal park system officials. Officials agreed that a dog park would offer many benefits to residents. They talked to

other counties with successful parks about liability issues, rules, and regulations, before voting to approve funding for the establishment of an off-leash area in Monmouth county. The Thompson Park Dog Run opened on October 30, 1999, to enormous popularity.

Once the park opened, area dog owners concentrated on forming a core group to help keep up the site and prevent potential problems. Just because dogs are allowed to run free doesn't mean that owners will not be responsible for their animals' actions. There are rules to be followed, guidelines to be maintained. "Public education for dogs owners will be critical to the park's success," notes one of the organizers. The park itself provides a terrific venue for teaching people to be responsible dog owners. Members of the local dog community have already held a "Park Do's and Don'ts" seminar and plan to host future programs there.



- **Demonstrate need.** Do this by gathering statistics on the dogs and people in your community, such as how many dogs would use the dog park, what are the demographics of the people in your city, and who currently uses city parks - and who doesn't. Downplay the "dog factor" and emphasize people issues. Dogs don't pay taxes or vote.

SUCCESS STORY #2

Sausalito, California

In early 1991, the City of Sausalito passed a law requiring dogs to be leashed at all times within the city limits. After receiving a citation and fine for walking her dog Remington without a leash, one owner led a citizen group that worked with the city council, the parks and recreation department and the Marin Humane Society to establish a dedicated enclosed area where the dogs of Sausalito could be off leash.

During that summer, volunteers raised funds to fence a 1.3 acre area in the Martin Luther King School area, located on the north side of Sausalito, to be used as a dedicated dog park. In November 1991, the “Remington Dog Park” was officially opened with a gala ribbon cutting attended by city council members, local citizens, and their dog companions.

Although the city provides utilities, including water, electricity, and garbage removal, the park has been maintained by its users since the opening. Regularly scheduled work parties cut the grass as well as maintain and improve the grounds.

Improvements to the park in excess of \$36,000 have been made through donations solely from park users. In addition to original fencing, the park now has lighting, a storage shed, a riding lawnmower, picnic tables, benches, a dog drinking-water area, and a “scooper” cleaning station.

The park is home of champion show dogs as well as mixed breeds. Dog owners have adopted over 30 “rescue” dogs. Many owners now have two dogs as a result of this program.

Having received the highest rating of “4 Paws” in *The California Dog Lover’s Companion*, the Sausalito Dog Park is now used by over 300 dogs per day.



- **Demonstrate support.** In many communities, organizers found that a simply worded request, circulated on a petition, helped convince city officials that there was a indeed both a need and widespread public support for a responsibly run dog park.
 - Place petition gatherers at supermarkets, pet-supply stores and other high-traffic areas.
 - Enlist the support of local veterinarians, groomers, dog walkers, and others who have a real interest in seeing a community filled with healthy, well-socialized dogs. Involve them in gathering petitions, writing letters to the editor of local papers and generally spreading the word.
 - Organize local residents to contact their community representatives, parks department officials, and media in the form of letters, e-mails, and phone calls, asking for their support.
 - Consider sending press releases to local media, explaining how the community will benefit from a dog park and providing information about the success of existing parks in other areas.
 - You’ll need to get the neighbors’ approval too. Explain your proposal to them, as well as the ways that a dog park will benefit them, and ask them to sign a separate petition stating that they are willing to have the park in their neighborhood.
- **Get to know local officials - your city council members and the director of your department of parks and recreation.** Attend meetings, join them at fund-raisers. Find out what they need from you to move the dog park forward. To help you get started, the AKC’s Government Relations Department can provide you with brochures offering tips on working with government officials.
- **When you’re ready, request a hearing with city government to discuss your proposal.** Have two or three knowledgeable and articulate members of your group present your plan, clearly expressing its many benefits to the community and calmly addressing any concerns. Be prepared to answer questions regarding risk of dog fights, dog bites, noise level, parking and traffic needs, liability issues, and maintenance.
- **Be patient and flexible.** Dealing with city government is rarely a quick process, but don’t give up! Follow through with continued letters and e-mails, and be willing to work toward compromise.

They approved it! Now what?

Your efforts have been successful, and development of the dog park is moving forward. Now is the time to thank everyone who helped bring the park to fruition, including volunteers, government officials, and community residents. As a

result of everyone's hard work, many dog owners will soon have a new opportunity to enjoy their canine companions!

The key to future and continued success of the dog park will lie in responsible park-association members and park users who strictly enforce the rules. For the most part, this will mean getting people to clean up after their dogs, quiet excessive barking and curtail any aggressive behavior.

Maintenance will be another important consideration. In some areas, park associations work in conjunction with local kennel clubs and parks department officials to organize volunteer "park cleanup" days. Kennel clubs and other dog organizations may also be willing to donate funds for future supplies of scoopers, trash bags, and cans.

The development of a successful dog park requires a great deal of planning and effort. But your involvement and dedication will hopefully lead to the ultimate reward - the joy of creating and maintaining a special place where dogs and their families can run, romp and socialize.

Dog Park Design:

The Ideal Dog Park Should Include ...

- One acre or more of land surrounded by a four- to six-foot high chain-link fence. Preferably, the fence should be equipped with a double-gated entry to keep dogs from escaping and to facilitate wheelchair access.
- Cleaning supplies, including covered garbage cans, waste bags, and pooper-scooper stations.
- Shade and water for both dogs and owners, along with benches and tables.
- A safe, accessible location with adequate drainage and a grassy area that is mowed routinely.
- If space allows, it is preferable to provide separate areas for small and large dogs. This will enable owners of large

Rules and Regulations

Members of a dog park committee should establish and enforce reasonable health and safety rules for the park, such as the following:

- Owners are legally responsible for their dogs and any injuries caused by them.
- Puppies and dogs must be properly licensed, inoculated, and healthy.
- Animals should wear a collar and ID tags at all times.
- Owners must clean up after their dogs.
- Dogs showing aggression toward people or other animals will be removed from

SUCCESS STORY #3

Tallahassee, Florida

Members of the Ochlockonee River Kennel Club had long realized how important it was for dog owners to have a place where they could socialize with others and let their dogs run and play. At the same time, their community was facing problems at a nearby city park where owners were permitting their dogs to illegally roam off-leash. The solution seemed simple - build a dog park! A public committee was formed, and an ORKC board member volunteered to serve on behalf of the dog community.

While the city of Tallahassee was receptive to the idea, it was clear that little could be done without funds for fencing, pooper-scoopers, and the like. ORKC, which donates to various organizations every year, soon agreed to give the city the \$4,000 that would be needed to fence the two-acre park. Other clubs and fanciers followed suit, donating money for watering holes, cleanup facilities, shade trees, and benches. The city even donated old fire hydrants to add to the fun.

The park has been extremely popular since its opening, and city officials, who originally agreed to open the park on a trial basis only, are now enthusiastic about developing more.

dogs to allow their pets to run freely, while protecting smaller dogs who may not be suited to the enthusiastic play of larger breeds.

- Signs that specify park hours and rules.
- Parking close to the site.

the park. Animals who exhibit a history of aggressive behavior will not be permitted to enter.

- Puppies using the park must be at least four months old.
- Owners should not leave their dogs unattended or out of sight. If children are permitted in the dog park, they too should be under constant supervision.
- Dogs in heat will not be allowed inside the park.
- Owners must carry a leash at all times. Dogs should be leashed when entering and leaving the park.
- Violators will be subject to removal from the park and suspension of park privileges.



Help AKC fight
anti-dog legislation

www.akc.org

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Summary: This article was originally posted by the Animal Legal & Historical Center five years ago and the authors feel it has been in need of revision for some time. We will from now update the article periodically in this location so that those readers who are involved in creating dog parks, and legislators and their staff involved in modifying laws and regulations to take into account the significance of dog parks in the legal and governmental systems of states, counties, and municipalities, can have what benefit our analysis may provide concerning developments relevant to their interests. Also, those committees and groups that must decide on rules for use of a dog park to be posted at an entrance gate can understand what we think is appropriate and reasonable for a list of requirements, given that users will not want to spend large amounts of time reading a legal text before getting a dog inside the park.

The article begins with our views on how dog park law has evolved in recent years, then discusses the laws and regulations that apply to dog parks and similar spaces. It then reviews the rules that often apply to the users of dog parks around the United States. Finally, the model laws and rules are contained in the last section. The model law provisions are somewhat unusual in contemplating the adoption of provisions at a number of legislative levels. Thus there is no single proposed law, but rather a collection of suggested modifications of statutes and regulations, some of which may be appropriately contained in a statute in one jurisdiction but a regulation in another, depending on where related issues are addressed in

the codes and rules issued by a state, county, municipality, or other park-regulating entity. [1]

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I. Dog Parks Are Working Well

When we first wrote this article five years ago, we expected we would be seeing more legislative and judicial activity concerning dog parks than has been the case. Relatively few states have seen the need to assure any specific level of immunity to those who own the land on which a dog park is created. There have been some lawsuits in tort regarding unsafe conditions for visitors to dog parks, but it does not seem to us that the number of such suits is disproportionate to the amount of land involved. Indeed, we suspect that many dog parks, often created by committees of citizens in many rounds of discussions, are well thought out to avoid such problems and the frequency of personal injuries appears to be very low. There is also the goodwill of the dog-owning users, who see the benefits of such parks for their dogs and themselves and who make an extra effort to reduce both human and canine aggression.

The number of legal decisions and orders, either formally reported or published in Westlaw or Lexis-Nexis, that concern disputes that arose between visitors of dog parks has also not been very significant in our opinion. It appears that people with aggressive dogs are not prone to bring them to dog parks. Indeed, one of the values of a dog park is that it provides a place where a dog owner can socialize a dog that might not otherwise be meeting many members of its own species. Encounters on leash, on streets and roads, are often cut short or prevented at all, so that for many busy dog-owners with limited time to enjoy their pets, a dog park may be the best place to assure some frequency of socialization activity.

The area where we see the most legal activity concerns the creation of dog parks. Attempts to stop the creation of dog parks have arisen because of noise that may disturb neighbors, possible effects of dog waste, the nearby presence of schools and medical facilities, municipal reluctance to devote limited land resources to an activity in which most citizens will not participate, and other reasons. In the end, reading about such issues convinces us that many disputes are thin covers for the never-

ending divide between those in our society who love dogs and those who do not. Yet the number of disputes that result in judicial decisions and orders that reach a level where we can detect their existence in Westlaw and Lexis-Nexis has, in our opinion, not been significant.

We have not made any formal effort to calculate the number of dog parks in the United States, or the number that are created in any recent year. Without trying, we are certain that the number of new dog parks created annually is in the hundreds, perhaps in the thousands. Therefore, we believe that dog parks are becoming an important aspect of the urban landscape, just as graveyards, parks of various sorts, and monuments have been since the settling of North America. We are, admittedly, advocates for dog parks and believe that the trend will continue. Although it can be expected that there will on occasion be bad press for a dog park here and there, the number of disasters that will lead to strong opposition to a park will not, in our opinion, lead to any general public distaste for these small environments that now dot city and town maps. Therefore, the following analysis, which highlights some instances that have led to legal friction or legislative resolution, are generally relatively mild birth pangs for what we believe to be a generally positive social development.

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II. Dog Parks in American Society

A dog park is a place where dogs run off leash in the presence of their owners or handlers. Although most spaces called dog parks are surrounded by fencing, [2] this is not always the case as some off-leash areas are called dog parks, at least by those who use these spaces. We will use the term “off-leash area” to describe spaces that lack fencing, reserving “dog park” for fenced-in areas.

Dog parks sometimes begin as off-leash areas where a group of citizens, with the approval of a local authority, install fencing to provide for the safety of their dogs and the surrounding community. [3] Dog parks are increasingly incorporated, generally tax-exempt, entities, though many have no formal legal status, being approved uses of a particular space by the municipal or park authority that owns the space. This approval may itself be rather informal, indicated by no more than a city council passing a resolution to permit a citizens’ group to install a fence around some section of municipal property. The citizens’ group may never formally incorporate itself, remaining a collection of park users who have banded together to post some rules for users of the park, and occasionally gathering to clean the space or raise funds to provide some amenities for users. Private developments may also set aside common areas for dog parks. [4]

Dog parks are generally open to all dogs, though some may have separate sections for small and large dogs, or even small, medium, and large dogs. The American Kennel Club recommends that parks should not be open to dogs under four months old. [5] Wright State University in Dayton, Ohio, has a dog park for the service animals on campus to which pets are not allowed. [6]

There are few laws regarding the creation of dog parks. The District of Columbia provides a framework under which a citizens' group can approach the Department of Parks and Recreation for the creation of a dog park. [7] Administrative codes may authorize park authorities to designate areas inside of parks as off-leash areas or dog parks, but usually provide no guidance beyond perhaps specifying the authority empowered to approve such an area or park. [8]

Few state statutes use the word "dog park" and few state laws have been modified, as might seem required, to allow for their existence. Many states prohibit dogs running at large, requiring generally that, outside of the handler's property, a dog be on a leash or otherwise restrained. Dog parks would seem in violation of such laws, yet only a few states have formally excepted dog parks from such state-wide leash laws. [9] Other states empower counties and municipalities to establish leash laws, so a dog park would not require modification of a state law, yet even here many county and municipal ordinances regarding usage of leashes often remain unmodified to take into account dog parks that these governments have approved. [10] This kind of informality may be accepted by police and animal control authorities as a variance from local law, but if a serious attack by a dangerous dog were to occur in a dog park, the lack of formality might justify plaintiff's counsel in arguing that a city was negligent in failing to enforce provisions that could have prevented an attack. Few provisions even attempt to preclude liability on the part of a county or municipal authority that permits dog parks. Other laws, such as dangerous dog laws, dog bite laws, and abandonment laws, should in many states be modified to take dog parks into consideration, but remain unaltered, creating various but potentially significant legal risks. On the other hand, the lack of legislative attention probably indicates, as we noted at the beginning of this article, that dog parks are generally functioning well in the United States.

The lack of formality in the law of dog parks may in part explain why police and animal control authorities are often reluctant to become involved in enforcement issues regarding these spaces. Although a number of crimes can occur in dog parks—dog bites, attacks by dangerous dogs, even illegal activities by users such as dealing drugs—these spaces often receive little attention from local police, who may see the lack of formality as meaning that dog park users should reach their own accommodations with each other. Similarly, although dog parks may become popular places to abandon unwanted dogs, animal control officers may not want to be seen as taking sides in disputes between users that they lack any clear authority to resolve and only enter the park on request from a dog park group that, formally or not, oversees the operation of the park.

While the posted rules that apply to users of dog parks have some uniformity around the U.S., and it was not difficult for us to build model park usage rules from this uniformity, there are few laws specifying the procedures by which dog parks can be created or the requirements for their continued management and maintenance. The District of Columbia has issued comprehensive municipal regulations on the application process of creating a dog park, what elements dog parks must have, how complaints are to be dealt with, and how rules are to be enforced. These D.C. regulations became the basis of the model provisions we drafted concerning the creation and maintenance of dog parks,

provisions that we consider could be adopted by states, counties, or municipalities, or by some mixture of authorities at different levels.

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III. State and Local Laws That May Require Modification for Dog Parks and Off-Leash Areas

State statutory laws deal with a wide range of dog matters, some of which, as mentioned above, should be changed to take into account the unique aspects of dog parks and off-leash areas. The following issues may be considered by legislatures in this regard, though some will only be relevant for a select group of states. Many states provide general delegation of authority for dog regulation to counties and municipalities, [11] in which event the issues discussed below should be considered by these authorities.

Abandonment. Abandoning a dog is often made a crime, [12] and may result in extermination of the dog if it is not reclaimed. [13] Dog parks have become favored spots for doing so, [14] despite the fact that dogs abandoned at a park can become frightened and dangerous, and animal control authorities are not going to treat dogs left at dog parks any differently than dogs left anywhere else. [15] Theft of an animal is generally a crime, [16] but would not apply to removing an abandoned dog from a dog park. A statute that lists potential locations of abandonment (e.g., kennels) should be modified to mention dog parks. The authors have heard of cases where owners temporarily left dogs in parks because of laws precluding leaving the animals in parked cars. [17] Owners should be aware that dog parks are not places to park dogs during shopping trips.

Advertising. General public park rules may prohibit or limit advertising. [18] Dog parks may want to allow for some advertising displays as a means of raising funds. Pet-oriented businesses, and pet friendly businesses, may see advertising in a dog park as a means of reaching a highly targeted audience, as well as generally supporting an initiative that presents the municipality or area as dog friendly. State policy may not be averse to this, as indicated by the growing trend of issuing pet friendly license plates. [19]

Animal control authority. Animal control authorities may be created at various governmental levels, [20] and may be private entities with which a county or municipality contracts. [21] An animal control authority could be assigned specific responsibilities as to the inspection of dog parks, but at least should be empowered to investigate health and safety conditions of dog parks. Animal control authorities are often responsible for investigating nuisance complaints against dogs said to be barking excessively. [22] This will occasionally arise from regular use of a dog park, but may also apply where someone uses a park after posted hours. Some parks may use an informal overseer or interested group to report infractions and behavior problems to the municipality, which may then take action through the police or perhaps through a local animal control officer.

Beaches. States sometimes prohibit dogs from going on beaches, often in warmer months. Delaware law, for instance, provides that only law enforcement and guide dogs may go on beaches between May 1 and September 30. [23] No change to such laws should be required, unless to specify the distance a dog park must be from a beach. Beach arrangements can be informal in parks, though environmental groups can be increasingly expected to object to or attempt to limit such arrangements.

Dangerous dogs. State law often requires that dangerous or potentially dangerous dogs be kept indoors. [24] Such dogs may be euthanized by an animal control authority under certain circumstances. [25] Attacks by dangerous dogs are often crimes, with the level of the crime and potential severity of the punishment increasing with the number of attacks. [26] State law may permit municipalities to impose additional requirements as to dangerous dogs. [27] Some states specify that a dog that is the subject of a dangerous dog investigation may not be relocated or transferred to another owner pending the outcome of the investigation. [28] The frequency of a dog's biting may be part of the definition of a dangerous dog. [29] Some states have separate categories of "dangerous" and "vicious" dogs. [30] These laws should not generally require modification for bringing such dogs to dog parks unless to increase the penalty for not confining such a dog.

Dog bites. Even if a dog has not been designated as dangerous or vicious, the owner will be liable for damages to a person bitten, particularly if the owner is aware of any propensity of the dog to be aggressive. [31] A case from Connecticut, *Nucci v. Harding* [32], did not contain enough facts to know exactly what happened, but the Connecticut Superior Court concluded that a person attacked in a dog park could bring an action for public nuisance against another user of the park whose dog had attacked her. The defendant did not need to control the dog park to be liable for the nuisance created by an out-of-control dog. This is a matter regarding remedies, but there will generally be some way in which an irresponsible dog owner can be liable for an aggressive dog, and liability can even be both civil and criminal. As provided by Florida law:

The owner of any dog that bites any person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, is liable for damages suffered by persons bitten, regardless of the former viciousness of the dog or the owners' knowledge of such viciousness. However, any negligence on the part of the person bitten that is a proximate cause of the biting incident reduces the liability of the owner of the dog by the percentage that the bitten person's negligence contributed to the biting incident. A person is lawfully upon private property of such owner within the meaning of this act when the person is on such property in the performance of any duty imposed upon him or her by the laws of this state or by the laws or postal regulations of the United States, or when the person is on such property upon invitation, expressed or implied, of the owner. However, the owner is not liable, except as to a person under the age of 6, or unless the damages are proximately caused by a negligent act or omission of the owner, if at the time of any such injury the owner had displayed in a prominent place on his or her premises a sign easily readable including the words "Bad dog." The remedy

provided by this section is in addition to and cumulative with any other remedy provided by statute or common law. [33]

The owner of the dog biting someone is generally liable even if the dog, at the time of the bite, was under the control of someone else, such as a dog walker. [34] Criminal liability generally attaches as well as civil. The level of the offense is likely to increase if the owner, seeing the dog begin to attack a person, does not intervene. [35] Some state laws empower counties or municipalities to impose requirements on dogs that have bitten people. [36] Identifying a dog that has bitten someone in a dog park, or another dog, can be difficult if the handler is uncooperative. Persons witnessing a bite or attack may have a responsibility to report the incident. [37] Getting the dog's collar is one means of identifying it, if the collar contains licensing information, but taking off a dog's collar without the owner's permission is a crime in some states. [38] As discussed under "park rules" below, some dog parks now require registration of users, and even issue swipe cards, which make identification of individuals using dog parks easier.

Liability may also attach when an owner knows the dog has a propensity to push people over in dog parks. In *Hamlin v. Sullivan*, however, the owner was not liable when she did not know of a dog's allegedly dangerous propensities because she had been taking the dog to a dog park for four years without seeing the animal being anything more than rambunctious. The court said that such "typical canine behavior" was "insufficient to establish vicious propensities." [39]

Dog pounds. Animal control authorities and municipalities are generally empowered to impound stray dogs, which include dogs abandoned in dog parks. [40] Dogs taken to pounds will generally be sterilized if they are not euthanized. [41]

Dog training areas. Some states provide for licensing private dog training areas for training hunting dogs. Delaware provides that the organization applying for such a license must have 20 or more members who are citizens of the state, and shall be at least 100 acres and not more than 250 acres. [42] Dog parks may consider raising funds by separating off an area as a professional dog training area, usage of which can involve a fee. Hunting dog training area requirements are irrelevant, but legislators should make sure that the two types of training are distinguished in statutory language.

Euthanizing of dogs by animal control authority. All states have some animal control authority, which can euthanize dogs under certain circumstances. No modification of state law should be required as to dogs abandoned in dog parks. Dogs must generally be held for a specific period before being euthanized. Nonprofit organizations may have the authority to take dogs from pounds. [43] Also, dogs without licenses may absolve the animal control authority of any notice requirement to owners. [44]

Land for use as a dog park. State land may sometimes be used for dog parks, but the state legislature may have to approve the arrangement. [45] The federal government permitted development of a dog

park on land no longer used for military purposes at the former Puget Sound Naval Station at Sand Point. [46]

Leash laws. Leash laws may be statewide, and may give exceptions for dogs in the open, [47] including for hunting dogs. Some states have specific leash requirements as to state parks, [48] and sometimes other specific locations. [49] Leash law authority may be delegated to counties and cities. [50] Leash laws (also “running at large” statutes) should be modified to state that turning a dog loose in a fenced-in dog park is not considered a violation. If the state approves off-leash areas that are not fenced in, such provisions should be modified. Missouri requires that domestic household animals not be allowed in any state park “unless restrained by a leash not longer than ten feet held by some person or firmly affixed to some stationery object so as to prevent the animal from ranging at large.” [51] Leash laws also apply to federal land. Dogs can be taken into Yellowstone National Park, for instance, but must be “on leash, crated, or otherwise under physical restraint” and kept “within 100 feet of established roads and parking areas.” They may not be brought on established trails and boardwalks. [52]

Liability. A number of states have considered exempting cities developing dog parks from certain liabilities that may arise due to a park. [53] California Government Code 831.7.5, effective January 1, 2014, provides that a “public entity that owns or operates a dog park shall not be held liable for injury or death of a person or pet resulting solely from the actions of a dog in the dog park.” This confirmed earlier case law finding that a city was not liable when the plaintiff fell on the sidewalk in a dog park. The city cited the state’s recreational use immunity statute, California Government Code § 831.4, providing immunity to a public entity for an injury caused by a condition of an unpaved road or trail “which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.” The plaintiff argued that the path in the dog park was a sidewalk, for which a city could be liable. The trial court agreed with the city, and the California appellate court affirmed. [54]

See, however, *Hall v. City Fence, Inc.*, where user of dog park was injured at gate of temporary dog park. A private contractor had put up the fencing and gate for the dog park and the municipality argued it was not on notice as to any defect in the fencing. Nevertheless, the trial court ruled that “notwithstanding its lack of any role in the design or erection of the dog park, the City, by virtue of its status as the owner of the fee title to LaSalle Park, continued to owe a duty to maintain the park, including its dog park, in a condition reasonably safe for park users such as plaintiff.” [55] Such exemptions, of course, do not absolve users of the park for torts or crimes that may be committed between them.

Licensing. Although pet licensing is often delegated to counties and municipalities, [56] state statutory authority may empower law enforcement or animal control officers to seize unlicensed dogs found running at large on public highways and other locations. [57] New York City imposes requirements on handlers who use dog parks, known as “dog runs” in the city’s code:

Dog Runs. Certain fenced park areas may be designated by the Commissioner as dog runs, and persons owning or possessing dogs that are wearing a license tag and vaccinated against rabies pursuant to the laws of the State of New York and City of New York are permitted to allow such animals to remain unleashed in these areas. Users of dog runs shall obey posted rules. Users of such dog runs shall provide proof of current vaccination against rabies and proof of current licensing upon the request of any Police Officer, Urban Park Ranger, Parks Enforcement Patrol Officer or other Department employee or employee of the DOHMH, the refusal of which shall constitute a violation of §1-03(c), §1-04(i) and of this paragraph. [58]

Rabies. Some states allow that, in the event of a rabies outbreak, extreme measures, such as requiring dog owners to confine their animals, may be required. [59] Such measures may require the temporary suspension of the use of dog parks.

Reporting dog bites. Statutes may require that dog bites be reported. Professionals treating individuals who have received dog bites may also be required to report such incidents. [60] A dog bite may require an investigation by an animal control authority, which may seize the dog and even destroy it under certain circumstances. [61] Dogs that have bitten must often be confined for a period of observation, [62] and if rabies is suspected, a dog bitten by a potentially rabid dog must also generally be confined. [63] Generally no modification to refer to dog parks should be required.

Running at large. As already noted in several contexts, state statutes often prohibit allowing dogs to run at large. [64] Police and animal control authorities are often required to impound dogs found running at large, and may destroy them after required efforts are made to find an owner. [65] Some such statutes (e.g., Georgia) specifically prohibit letting dogs in heat run free. [66] Oregon permits county elections to determine if dogs can run at large in a county. [67] General “running free” statutes should be modified to allow an exception for dogs in dog parks or off-leash areas. [68] Crimes and penalties associated with dogs running at large should not be enforced for dogs in off-leash areas or dog parks. [69] Some statutes allow municipalities to prohibit dogs from running at large. [70] In such cases, the municipal law should be modified with regard to off-leash areas and dog parks. Some statutes provide that uninoculated animals should not run at large, [71] but this does not require modification. Dogs are sometimes permitted to run at large on farms of a certain size (e.g. 20 acres, from October 1 through February 28, in Delaware [72]). A driver who puts a dog in the back of a pickup without restraint may be guilty of a crime if the dog jumps out and runs at large. [73] Massachusetts provides that dogs in highway rest areas are to be on a chain or leash, [74] though rest areas in some states include fenced-in dog parks to which any such law would presumably not apply unless a posting indicated that dogs were not to be taken off leash in the area. Dogs escaping from dog

parks and injured on roadways may be treated by veterinarians, who would have a claim for reimbursement from the owners. [75]

Service and police dogs. While service and police dogs are uncommon in dog parks, handlers of other dogs should be aware that attacking such dogs is often a higher level of crime than the typical dog bite. [76] Since such laws may require that the handler of the attacking dog be aware the dog under attack is a guide or other skilled dog, such laws might not apply if the dog was released from its harness. Police and service dogs that bite people or other dogs are often exempted from quarantine requirements. [77] No change to such laws will generally be necessary.

Stray dogs. Animal control authorities are responsible for picking up stray dogs, though private individuals may do so as well. [78] Private individuals picking up stray dogs should notify animal control authorities if a dog has identifying information. [79]

Training. Some activities, such as commercial dog training, require a permit. [80] Permits could include the right to train in designated areas of dog parks for a fee paid to the municipality in which the park is located.

Vaccination. Dogs may not use county dog parks or off-leash areas unless currently vaccinated for rabies. If wolves, coyotes, and hybrids of these animals with dogs are permitted in the state, the vaccination requirement might be specifically required for these animals as well. [81] If a dog is abandoned in a dog park without a vaccination tag, police may be authorized to kill the animal without impounding it. [82] A permit for a Chicago dog park requires that a veterinarian provide a user with proof of vaccination for distemper, hepatitis, parainfluenza, parvovirus, bordetella, and leptospirosis. [83] Authorities considering approving dog parks should consult with state or regional veterinary authorities regarding appropriate vaccinations and other veterinary measures that should be required for use of dog parks.

Vicious dog. A person commits the crime of allowing a vicious dog to attack or bite another individual or dog if the person knows or has reason to know the dog has a propensity to attack, cause injury, or endanger the safety of other persons without provocation. [84] Commission of this crime includes taking a vicious dog to a dog park or off-leash area. Such offenses may be treated as misdemeanors. [85]

Water sources. States may require capping unused wells, but this is to prevent dogs, livestock, and children from falling into them. [86] Dog parks created in hot climates are often provided with water sources, which may require additional approvals for the location of a dog park site, [87] including compliance with wellhead protection and anti-pollution regulations. [88]

Wolves, Coyotes, Wolf-dog, and Coyote-dog Hybrids. State law may allow wolves and coyotes and hybrids of these animals with dogs to be pets, [89] though a permit may be required. [90] If there is an added confinement requirement as to such animals, a separate provision should not be necessary as to

dog parks. [91] If no provision exists, the state may consider banning such animals from certain public areas. [92] Indiana requires that wolf hybrids and coydogs (crosses of coyotes and dogs) be confined to a building or secure enclosure or kept on a leash. [93] In Montana, “a person may kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.” [94] No exception is made as to pet wolves.

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IV. Park Rules

The hundreds of sets of dog park rules that have been posted on the Internet show a certain uniformity, though some rules, such as pit bull bans, are not widely adopted. Some restrictions may not be specific to a dog park, but may apply to a larger park of which a dog park is a part. [95] This often applies to smoking bans and prohibitions of alcoholic beverages.

Regional differences come into play because of factors like weather. Miami dog park rules contain an admonition to periodically hose your dog or bring it into the shade. [96] The Portland, Oregon, Department of Parks & Recreation posts a guide, *Off-Leash Park Etiquette*, containing such advice as: “Be aware that dogs have different play styles. Always respect the wishes of other handlers and be prepared to move to another area if your dog is too rambunctious.” [97]

Breed-specific rules. Rules excluding pit bulls have been adopted by a number of parks. Some states (such as Colorado [98] and Oklahoma [99]) preclude counties and municipalities from imposing breed-specific rules. States where wolves, coyotes, and hybrids of these animals with domestic dogs are allowed as pets may also be considering banning such animals. [100]

Children. Many, probably most, parks have an age limit on children who come to the park. Such rules are adopted from health and safety concerns. Dog bites of children can be fatal, and the risk of an attack on a child is greater than on an adult. [101] Other considerations may argue against such limitations, such as the desire to have tourists use the dog park. Seattle dog park rules specify that users must “closely supervise young children.” [102] Tourists may be families with both pets and children that they will not want to separate. The Indiana Commission on Autism noted in meeting minutes for September 15, 2010, that some children were being taken to a dog park to learn compassion for animals. [103]

Leash requirements. Dogs are usually only allowed off-leash in an off-leash area or inside of a dog park, but must be brought to the park on a leash and removed once inside. The handler is often required to carry the leash while the dog is off-leash so that it can be put back on in case of an attack or for any other reason. Seattle dog parks, and some other parks, provide that a dog’s pinch or choke collar must be removed before entering the off-leash area. [104] Park rules may require that the handler remain in eye contact with his or her dog, and keep the dog under his or her control.

Numbers of dogs. Many park rules do not specify a maximum number of dogs, though others may limit the number per owner or handler to two or three. [105] Given the difficulty of keeping three dogs in visual control, the lower number may be preferable.

Aggressive dogs. Parks may require handlers to remove aggressive dogs, but may also allow such dogs to remain if muzzled. [106] For the health of a muzzled dog, park rules should probably exclude dogs that need to be muzzled.

Young dogs and dogs in heat. Park rules commonly preclude bringing animals below 4 or 6 months to a park. Besides disease risks to the puppy, many states except young dogs from vaccination requirements. [107] State leash laws may require that dogs in heat always be on a leash, so a separate rule for a park may not be necessary. On the other hand, it is probably best to prohibit dogs in heat from a dog park. Dogs that are sick are excluded by many, probably most, dog parks.

Cleaning up. Handlers are almost always required to clean up after dogs. This may not be a requirement of some private hotel dog parks where hotel staff members are responsible for periodically cleaning the park, but even here a clean-up rule will generally apply to users. Rules should specify that owners and handlers are responsible for cleaning up after their dogs. Some parks post a fine that can be imposed for failure to clean up. [108] Dog waste bags and receptacles should be available at several points in the park, and should repeat the rule concerning the responsibility of cleaning up after the handler's dog.

Food and water. Parks will often prohibit both dog and human food, or limit food to dog treats. [109] Even treats can trigger aggressive behavior and are sometimes listed among items not to be brought into parks. Seattle dog parks advise that bringing food into off-leash areas is at the person's own risk. [110] If a dog water fountain is not available, users should be advised to bring their own water and water bowls.

Dog toys. Some parks limit kinds of dog toys that may be brought into a park, or exclude them altogether as possible causes of aggression. [111] Nevertheless, many dog parks will have a ready supply of frisbees, balls, sticks, and abandoned stuffed toys that will continue to degenerate until becoming unidentifiable and finally thrown out. Some parks may have agility equipment temporarily or permanently installed.

Bicycles and skateboards. Parks will often specify that recreational vehicles not be used in a dog park, and may even preclude bringing them into a park. This may not be practical in high-crime areas, where a prohibition on using the recreational vehicle inside the dog park should be enough.

Destruction. Handlers are responsible for destruction caused by their dogs and may be advised that they are responsible for filling in any holes dug by their dogs. A handler watching his or her dog and in control of the dog should be able to stop this quickly, but some handlers will need to be reminded of this responsibility and it is often mentioned in posted rules.

Permit requirements. Some parks require that users obtain a permit in advance. The Ohlone Dog Park Association in Berkeley, California, has a member charge, which is reduced for low-income individuals and seniors, but which does not require that the applicant own a dog. [112] The NOLA City Bark, a dog park in New Orleans, requires that prospective users fill out a two-page application with identifying and contact information on the handler and vaccination and registration information on the handler's dogs. The applicant must sign a "release and waiver of liability and assumption of risk," and agree to abide by a list of rules. [113] Users are issued an electronic card which they swipe to enter the facility, though once inside, the park is policed by users. If a dog becomes aggressive, the card system can be checked to determine who entered the park around the time of the incident.

The permit or membership approach will help assure responsible usage of a park, but will not appeal to many communities that want to assure that people use the park in preference to informal off-leash areas. Chicago dog parks have announced a policy of requiring a permit for using a dog park, which can be obtained from a veterinarian. Failure to have a valid permit and registration tag is to be penalized, and after three violations can result in a fine of \$1,000 and imprisonment of up to six months. [114]

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V. Appendix: Model Laws and Rules

Model State Law Modifications to Allow for Dog Parks and Off-Leash Areas Running-At-Large/Leash Law

1. A dog that is current on required vaccinations, duly licensed in accordance with applicable law, and not in heat, is not considered to be running at large if it is under the control of a handler.

Municipal Liability

2. Any municipality or political subdivision allowing dog parks and off-leash areas shall be immune from criminal and civil liability, except for willful and wanton misconduct, for damages that may result from occurrences in a dog park or off-leash area. Owners and handlers of dogs entering such areas are to be on notice from a posted list of rules that entrance is at their own risk. This provision shall not negate such rights as owners and handlers may have as to other individuals making use of the dog park or off-leash area.

Dangerous Dog

3. An owner or handler of a dog that has been designated as dangerous, or which he or she has reason to know is dangerous, shall not bring such a dog into a dog park or off-leash area. Violation of this provision shall be an offense for an initial violation, but a misdemeanor for a second or any further

violation. This provision shall not negate any other penalties that may apply for harboring a dangerous dog.

Dog Bites

4. A dog bite occurring in a dog park or off-leash area shall be reported to the local police or animal control officer by anyone involved or anyone witnessing such event, or by a physician or veterinarian or other health service provider treating the victim of a bite. Dog park rules shall post a phone number for calling the appropriate authority to report a bite.

Abandonment

5. Abandonment shall include leaving a dog unattended at an off-leash area or dog park.

[State, County, or Municipal] Law Provisions for Dog Parks and Off-Leash Areas

Statement of Purpose

6. The [state, county, or municipal authority] having determined that the residents of communities need safe places to bring their dogs for off-leash exercise, hereby authorizes [county and] municipal authorities to designate appropriate areas within parks for off-leash exercise of dogs and appropriate areas to be fenced in as dog parks.

Dog Parks and Off-Leash Areas: General Provisions

7. The [county or municipal authority], whether in conjunction with other communities, may establish and maintain parkland to be designated for off-leash dog areas and dog parks.

8. The [county or municipal authority] may permit the creation of private dog parks by hotels and other businesses where such dog parks are to be used by customers of such businesses for the exercise of dogs that are visiting the area. Such businesses may open such areas to the community with the approval of the county or municipal authority, but the grant of permission to make such a private dog park shall not depend on the availability of the park to local residents.

9. No person shall use a dog park for any commercial purpose. Professional dog walkers, whose business is to walk dogs for private individuals, may bring no more than two dogs, or for some parks, three dogs inside at any one time. Violation of this restriction shall be subject to a fine of \$50 per incident.

10. The [county or municipal authority] may designate hours for the use of the dog park, which shall preclude use of the park after 9 p.m. and before 7 a.m., or during hours of daylight. The [county or municipal authority] may specify times when the park will be closed so that sanitation workers may clean the park and the park authority may mow the lawn and take care of any plants or facilities inside of a dog park or off-leash area.

11. The [county or municipal authority] may close a park for an extended time if necessary for repairs, grading of the land, installation of drainage systems, and other necessary modifications. Notice of such closure shall be posted at the entrance of the dog park or off-leash area at least one week before the first day of such closure and shall state the reason and expected duration of the closure.

12. For enclosed dog parks, the [county or municipal authority] shall provide or assure the installation of appropriate fencing, which shall be at least five (5) feet in height [alternatively six (6) feet], with a double-gated entrance area for each section of the dog park. Dog parks may be divided into large- and small-dog sections [alternatively, small-, medium-, and large-dog sections], with the difference between the sections determined by the weight of the dog, such weight to be 25, 30, or 35 pounds. Dog park rules may specify that individuals with both small and large dogs must use the large-dog area if one of the dogs fits in the large-dog category.

13. The [county or municipal authority] must post a notice stating that all handlers using a dog park or off-leash area do so at their own risk, and that the [state, county, and municipality] shall not be liable for any injury or damage caused by the dog park. This provision does not preclude a handler for seeking damages from another user of the park under either statutory or common law.

Dog Parks: Application

14. The [state, county, or municipal authority] may create a dog park, or may allow a group of concerned and interested citizens to form a group (“Dog Park Group”) to undertake the responsibility of proposing a park, including providing plans for a park, which plans may specify a particular area owned by the [state, county, or municipal authority], or owned by another government authority or private entity. The [state, county, or municipal authority] may request that the Dog Park Group provide a budget for the creation and maintenance of the park, suggest sources of funds to defray some or all of the cost of the park, and suggest what responsibilities as to the maintenance of the park shall be provided by volunteers. The [state, county, or municipal authority] may designate responsibilities as to the creation and maintenance of the dog park or off-leash area will not be provided by the [state, county, or municipal authority] and may not be funded in whole or in part by it.

15. The [state, county, or municipal authority] may ask that the Dog Park Group make a presentation to the authority regarding the proposal for a dog park or off-leash area at any point during the process of proposing or creating a park, and may ask that the residents of affected communities be able to speak and comment at such meetings.

16. The [state, county, or municipal authority] shall cooperate with the Dog Park Group in investigating the ownership of any proposed site, and if the ownership does not lie with the [state, county, or municipal authority], shall investigate whether zoning requirements would permit a dog park in the location and, if so, shall make inquiry of the owner of the area as to the owner’s interest in allowing development of the dog park in the area. It is expected that appropriate areas might be

owned by other government authorities, such as utility authorities or state parks, which areas may already have some informal usage by dog handlers and dogs.

17. The [state, county, or municipal authority] may provide the Dog Park Group with a list of existing groups of residents and local officials who should be contacted for issues relevant to the creation or maintenance of a dog park. The [state, county, or municipal authority] may separately notify local police, fire, health, animal control, and other authorities of the efforts of the [authority] and the Dog Park Group to create a dog park or off-leash area [alternatively, the principal governmental authority may require that the Dog Park Group contact such authorities].

18. When a formal proposal has been prepared for a dog park or off-leash area, the [state, county, or municipal authority] shall designate a member of the [authority] to head a committee which shall consist of a law enforcement official of the [state, county, or municipal police authority], a representative of the [animal control authority], a veterinarian practicing in the area, a representative of a local animal shelter or animal rescue organization, an official of the waste management authority for the area, and such other officials as are deemed appropriate by the [state, county, or municipal authority] for evaluating the practicality and affordability of the proposal. This group shall be designated the Dog Park Review Committee and the composition of the Committee shall be published along with the proposal. This Committee may be made permanent as determined by the [state, county, or municipal authority]. [Alternatively, particularly in small towns, no separate sub-group of the state, county, or municipal authority need be created.]

19. When a formal proposal has been prepared for a dog park or off-leash area, the [state, county, or municipal authority] shall publish notice thereof in [appropriate government and private publications and websites].

20. The Dog Park Review Committee shall review the application for creation of a dog park and shall make written recommendations within thirty (30) days of the submission of the application. The [state, county, or municipal authority] may, if it so chooses, provide comments of the Dog Park Review Committee directly to the Dog Park Group and may delay a public hearing until the Dog Park Group has had an opportunity to make any changes it deems appropriate in response to the Dog Park Review Committee's recommendations.

21. The [state, county, or municipal authority] may accept the proposal of the Dog Park Group as made, accept the proposal provisionally with a requirement that certain changes be made, or reject the proposal. If the proposal is rejected, the [state, county, or municipal authority] shall state the reasons for rejection of the proposal and state whether the proposal may be accepted later if modified in accordance with certain recommendations.

22. If the proposal of the Dog Park Group is accepted, the [state, county, or municipal authority] may enter into a memorandum of understanding with the Dog Park Group and with such other officials as may be appropriate, regarding the responsibilities of various groups and authorities for the creation

and subsequent maintenance of the dog park or off-leash area. The [state, county, or municipal authority] may specify that the Dog Park Group take a formal legal status with an agreement to provide daily management of the park and with the understanding that if the Group does not continue to maintain the park, it may be shut down and the property used for other purposes.

Dog Park Site Guidelines and Specifications

23. Dog parks in the [state, county, municipality] shall be no less than five thousand (5,000) square feet in area, though off-leash areas can be of any size satisfactory to the needs of the area. Parks of less space can be considered on prior approval of the [state, county, or municipal authority].

24. A dog park shall be located on well-drained land to prevent soil erosion and shall sit at least 50 feet from surface waters that drain into any river or creek; the surface shall allow for drainage away from the site in a manner that mitigates waste management issues. Where possible, under-utilized areas should be considered. [Alternatively, such restrictions should be left to the permit system of the environmental authority or local building inspector.]

25. A dog park may be located near a water supply line for drinking fountain (dog and human) and for maintenance purposes. [Alternatively, proximity to water supplies should be left to an environmental authority.]

26. A dog park must comply with the Americans with Disabilities Act, the Clean Water Act, and such other legislation and standards as apply to parks located in the area where the park is located.

27. A dog park shall not be located within 100 yards [or other designated distance] of a school playground or designated children's play area, or of an athletic field or court, or near a sensitive wildlife habitat area as determined by an environmental protection agency operating in the area.

28. The Dog Park Group will post rules for the dog park or off-leash area in English [and Spanish], in type large enough to be easily read by those entering the park.

Complaints and Enforcement

29. Law enforcement authorities and the local animal control authority may enforce laws under their jurisdictions that apply to dog parks, which shall include the authority to remove and impound dangerous dogs, restrain and impound dogs biting individuals or other dogs for rabies inspections, arrest individuals for violations occurring in dog parks, and all other aspects of their authority that may be exercised in the area of the dog park.

30. Complaints not properly directed to police, fire, health, or other authorities shall be directed to the Dog Park Group as formally created and recognized by the [state, county, or municipal authority]. If the complaint has not been satisfactorily resolved, the complainant may, after 30 days of filing the complaint, request a meeting with an official designated by the Dog Park Committee.

31. If the [state, county, or municipal] authority [or Dog Park Committee] determines that the Dog Park Group is consistently unresponsive to complaints (other than mere complaints about the existence of the dog park), the authority [or Dog Park Committee] may designate a permanent representative to deal with such complaints, and may notify the Dog Park Group that the authority [or Committee] may recommend further action by the [state, county, or municipal authority], which action may include the replacement of the Group with other individuals or the termination of the dog park itself.

32. The Dog Park Group shall be empowered to contact the [police or other appropriate law enforcement authority] and the animal control authority to enforce dangerous and vicious dog rules and to arrange for the removal of abandoned dogs and dogs that should be impounded to determine the possibility of disease.

33. The Dog Park Group, in consultation with the [state, county, or municipal] authority [or Dog Park Committee], may impose a requirement that users of the park have a Dog Park Registration Tag specific to the dog park or the dog parks in the area.

34. The Dog Park Group, in consultation with the [state, county, or municipal] authority [or Dog Park Committee], may arrange a card swipe or other mechanism for limiting access to the park to persons holding a valid and up-to-date Dog Park Registration Tag.

Dog Park Rules

1. Each handler using the park is responsible for reading the rules of the dog park on first entering it.
2. No handler may bring more than two (2) [alternatively, three (3)] dogs into the park at one time.
3. A handler must be sixteen (16) years of age or older.
4. A child between ten (10) and sixteen (16) years may enter the park only with a responsible adult.
5. A child under ten (10) may not be brought into the park in any case.
6. Each dog brought into the park must be wearing, or the handler must carry, current vaccination and registration tags, which tags may be checked by a member of the Dog Park Group or by the animal control authority or other law enforcement authority.
7. Dogs are to be brought to the park on leashes and released inside the dog park, and put under the control of the leash again as they exit the dog park. No spike, choke, electric, or prong collars are allowed on dogs in the park.
8. No female dog in heat, or sick dog, shall be brought into the dog park.
9. Food, toys, and glass containers are not permitted in the dog park. Smoking is prohibited in the dog park.
10. Handlers are to remain in visual contact with their dogs in the park, and shall have verbal control of their dogs in the park.

11. A handler shall immediately leash and remove a dog that becomes aggressive, regardless of whether the dog has a history of bites or has been designated as a dangerous or vicious dog under state or other applicable law; in no event may a dog that has been designated as dangerous or vicious be brought into the park. Criminal penalties apply to bringing a dangerous or vicious dog into this park.
 12. Dog bites shall be reported immediately to the [local police or animal control officer] at [phone number and email address]. All animal bites of other dogs or people shall be reported to local police and the animal control authority by anyone involved or witnessing the bite.
 13. Handlers shall control excessive barking.
 14. A handler is responsible for destruction caused by his or her dog, which includes the responsibility of filling in any holes the dog digs while in the park.
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[1] John J. Ensminger is a member of the New York bar and is the author of *Service and Therapy Dogs in American Society* (Charles C. Thomas, Springfield, Ill. 2010) and *Police and Military Dogs* (Taylor & Francis, Ltd., New York and London, 2011). Frances Breikopf is the Chair of the Woodstock Dog Park Committee. The authors wish to thank Terrie Rosenblum, Kingsbury Parker, Ronald Keats, and L.E. Papet for helpful suggestions.

[2] The District of Columbia provides that a dog park “shall be completely enclosed by a fence and gate, both no less than 5 feet in height.” D.C. Code 8-1808.01.

[3] City of Buffalo could not avoid liability for alleged defective condition, a fence on which a user had tripped and fallen, in temporary dog park inside of Lasalle Park, merely because it had ceded maintenance responsibility to Erie County. Temporary dog park had been created in response to various citizens organized by veterinary group, whose permit to have the temporary dog park had expired. The City of Buffalo had publicly announced it would not take down the dog park even though another dog park had been built in Lasalle Park. *Hall v. City Fence, Inc.*, 36 Misc.3d 1237 (Sup.Ct., Erie County, 2012). For citations to early press coverage of the creation of dog parks, see Huss, R.J. (2002). Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals. *Marquette Law Review*, 47, 86, at n. 7.

[4] Several authorities may sometimes be involved in permitting a dog park. A land trust holding a conservation easement denied use of land for a dog park that was sought by Manchester, New Hampshire. See Korngold, G. (2011). Globalizing Conservation Easements: Private Law Approaches for International Environmental Protection. *Wisconsin International Law Journal*, 28, 585, n.97. Conflicts can arise as to what funds an authority may be able to use to maintain a dog park. *Diehl v. Rarity Bay Community Assoc.*, No. 3:12-CV-499 (ED Tenn. 2013). An easement may be necessary for access to the park. This may involve separate environmental impact issues. See Public Notice of the Alaska Department of Natural Resources, Division of Mining, Land and Water, Northern Regional

Office, 4/22/2008 (2008 AK Reg. Text 135066(NS)), regarding a proposed easement to the Fairbanks Dog Park, Inc.

[5] <http://www.akc.org/learn/family-dog/dog-park-courtesy-urban-rules/>.

[6] Huss, R.J. (2012). Canines on Campus: Companion Animals at Postsecondary Educational Institutions. *Missouri Law Review*, 77, 417, n. 128. The rules for the Wingerd Service Dog Park of Wright University, as posted online, specify that the “park is strictly designated for use by service dogs and trainees only. Pets are not permitted under any circumstances.”

<https://www.wright.edu/disability-services/community/service-dog-park#tab=park-rules>. In spring 2016, according to Diana Riggs of the Office of Disability Services of Wright State University, 24 service and emotional support animals were registered to live in campus housing and eligible to use the Park (personal communication to JE, 4/19/2016).

[7] DC Order 2007-53 (delegation of authority under the Dog Park Establishment Act of 2005) (2007 DC Reg. Text 68645(NS)).

[8] Rules of Hawaii § 10-1.7 (“The director [of parks and recreation] is authorized to designate areas in public parks for use by persons having custody and control of dogs on a leash and to designate public parks for use as off-leash parks for dogs. In designating parks as off-leash parks and in designating parks or areas therein for leashed dogs, the director shall consider the park’s size, location, and frequency of use by members of the public, as well as the primary actual or designed use of each park or area included in the designation. The director shall post signs that notify the public of such designation that describe or map the park or park areas so designated.”); see *Hawaii v. Hitchcock*, Docket No. 29847 (2010) (designation of space as dog park does not preclude closing it for maintenance two days per week); Anchorage Municipal Code § 17.10.090 (off-leash dog park spaces; areas to be recommended by “animal control advisory board with concurrence of the parks and recreation commission and the mayor, subject to approval by the assembly.”).

[9] Illinois has revised its “running at large” statute to state that a “dog that is in a dog-friendly area or dog park is not considered to be running at large if the dog is monitored or supervised by a person.” (510 ILCS 5/9) The District of Columbia states that a dog being at large “does not include a dog in a dog park that is under the verbal command of a responsible adult.” D.C. Code 8-1801. This is a better approach, since it allows enforcement against someone who is not in control, or not responsible. The District of Columbia specifically prohibits permitting a dog on a school ground “when school is in session on any public recreation area, other than a dog park, unless the dog is leashed.” D.C. Code 8-1808.

[10] But see Okla. City Muni. Code § 8-153 (confinement section does not apply to city-approved dog park); Code of Ordinances, City of North Platte, Nebraska § 8-9 (unlawful to enter public park with animal not on leash, but city park department may provide exception); Omaha Muni. Code § 6-1 (exception to leash law for dog park recognized by city), § 6-74 (nuisance not to clean up dog

excrement in dog park); Phoenix City Code § 8-1 (defining dog park), § 8-14 (at-large requirements do not apply to “area within a park, that is designated by the Director [of the City of Phoenix Parks and Recreation Department] or the Parks and Recreation Board as a dog park”); Aurora, Colorado, Ordinance § 14-5 (at-large requirements do not apply “when the dog is upon the premises of a city dedicated off-leash dog park”); Fort Worth City Ordinances § 6-13 (tethering not required in “designated city dog park”).

[11] Mass. Gen. Laws Ann. ch. 140 § 147A.

[12] Colo. Rev. Stat. § 18-9-202. If a dog is not properly licensed but does have identification, the owner will generally have to pay the license fee before the dog will be released from a pound.

Idaho Code § 25-2804.

[13] N.M. Stat. Ann. § 77-7-17 (abandonment after term for care has expired when dog placed with “veterinarian, kennel, animal clinic or hospital, grooming parlor or other animal care facility”).

[14] As are kennels, veterinarians’ offices, neighborhoods with large dog populations, etc. See Fla. Stat. § 705.19.

[15] Ga. Code Ann. § 4-8-2 precludes abandoning a dead dog on public property, which would obviously include a publicly-owned dog park.

[16] La. Rev. Stat. Ann. § 14:67.2.

[17] Nev. Rev. Stat. Ann. § 574.195 (“a person shall not allow a cat or dog to remain unattended in a parked or standing motor vehicle during a period of extreme heat or cold or in any other manner that endangers the health or safety of the cat or dog”).

[18] There may also be zoning restrictions on advertising. See *Wag More Dogs, LLC v. Artman*, 795 F.Supp.2d 377 (E.D. Va. 2011). See Orland, C.C. (2013). Art of Signage?: The Regulation of Outdoor Murals and the First Amendment. *Cardozo Law Review*, 35, 867.

[19] Kansas Stat. Ann. § 8-1,164 (authorizing Kansas State University veterinary college to design pet friendly logo for license plate and receive royalties when plates are issued).

[20] See Del. Code Ann. tit. 9, § 921 (providing for a five-member Dog Control Panel consisting of a veterinarian, a member of the AKC or other dog club, an animal behaviorist and a member of the Association of Pet Dog Trainers (APDT), a police officer, and a representative of the Delaware Society for the Prevention of Cruelty to Animals).

[21] Mass. Gen. Laws Ann. ch. 140 § 151 (instead of appointing dog officers, “any city or the board of selectmen of any town may ... enter into a contract with a domestic charitable corporation

incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse, to perform the duties required of dog officers....”).

[22] Mass. Gen. Laws Ann. ch. 140 § 147.

[23] Del. Code Ann. tit. 7 § 1702 (with a fine of between \$25 and \$50 for the first violation, going up to \$100 thereafter).

[24] Cal. Food and Agric. Code § 31642; Colo. Rev. Stat. Ann. § 18-9-204.5 (“building or enclosure designed to be escape-proof and, whenever the dog is outside of the building or enclosure, keep the dog under the owner’s control by use of a leash”; after a second or subsequent offense, the dog is to be kept muzzled; microchipping also required). See Fla. Stat. Ann. § 767.12 (“unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under the control of a competent person The owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the immediate household or persons 18 years of age or older are allowed in the enclosure when the dog is present.”; violation is infraction, with fine up to \$500); Neb. Rev. Stat. § 54-618 (“No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.”); N.Y.C. Admin. Code § 17-345 (dangerous dog may be ordered muzzled); N.C. Gen. Stat. § 67-4.2 (unlawful to permit dangerous dog beyond owner’s property “unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled”).

[25] Cal. Food and Agric. Code § 31645.

[26] Colo. Rev. Stat. § 18-9-204.5 (injury or death of domestic animal is class 3 misdemeanor in first instance, class 2 misdemeanor in second instance; attacks on persons can be felonies); Fla. Stat. § 767.13 (if dog has previously been declared dangerous, on subsequent attack dog is to be confiscated immediately).

[27] Colo. Rev. Stat. § 18-9-204.5(5) (referring to authority of states and counties to impose additional requirements; no breed-specific rules may be imposed).

[28] Fla. Stat. Ann. § 767.12 (“animal control authority shall investigate reported incidents involving any dog that may be dangerous and shall, if possible, interview the owner and require a sworn affidavit from any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous”).

[29] La. Rev. Stat. Ann. § 14:102.14 (defining “dangerous dog” as a dog that “which, when unprovoked, bites a person causing an injury; or ... which, when unprovoked, on two separate occasions within the prior thirty-six month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury to a domestic animal off the property of the owner of the dog.”).

[30] 510 Ill. Comp. Stat. 5/2.19b (“‘Vicious dog’ means a dog that, without justification, attacks a person and causes serious physical injury or death or any individual dog that has been found to be a ‘dangerous dog’ upon 3 separate occasions”); La. Rev. Stat. Ann. §§ 14:102.13, 14:102.17 (separate registration and increased fees for dangerous dog); Ohio Rev. Code Ann. § 955.11 (dangerous dog is one that “has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harbinger and not under the reasonable control of its owner, keeper, harbinger, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top”; a vicious dog may be a police dog that has caused serious injury or a “dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog”; the location requirement is a curious and perhaps inadvertent restriction); R.I. Gen. Laws § 4-13.1-2 (defining “vicious dog” as “ (i) Any dog that, when unprovoked, in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; (ii) Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise endanger the safety of human beings or domestic animals; (iii) Any dog that bites, inflicts injury, assaults, or otherwise attacks a human being or domestic animal without provocation on public or private property; or (iv) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting. ”).

[31] 510 Ill. Comp. Stat. 5/16 (“If a dog or other animal, without provocation, attacks, attempts to attack, or injures any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, the owner of such dog or other animal is liable in civil damages to such person for the full amount of the injury proximately caused thereby.”); Ind. Code § 15-20-1-3 (owner liable even if he or she has no knowledge of prior vicious behavior of dog); Utah Code Ann. § 18-1-1 (“Every person owning or keeping a dog is liable in damages for injury committed by the dog, and it is not necessary in the action brought therefor to allege or prove that the dog was of a vicious or mischievous disposition or that the owner knew that it was vicious or mischievous.”).

[32] *Nucci v. Harding*, No. 08-5005416, 2009 WL 1142578 (Conn.Super. April 2, 2009).

[33] Fla. Stat. § 767.04 (damage by dogs).

[34] See *Clea v. Odom*, No. 27029, 2011 WL 3667611 (S.C. Sup. Ct. 2011) (exercise of control of owner sufficient for liability).

[35] Indiana Code § 15-20-1-4 (Class A misdemeanor if the violation results in serious bodily injury to a person, Class C felony if the attack results in death of a person).

[36] Haw. Rev. Stat. § 142-75(c) (“county may enact and enforce ordinances regulating persons who own, harbor, or keep any dog that has bitten, injured, or maimed a person”).

[37] Iowa Code § 351.38 (duty of “any person having knowledge of such bite or attack to report this act to a local health or law enforcement official”; physicians and veterinarians also obligated to make such reports); Ky. Rev. Stat. Ann. § 258.065 (“every physician shall, within twelve (12) hours after his first professional attendance of a person bitten by a dog ... report to the local health department the name, age, sex, and precise location of the person so bitten”).

[38] Ga. Code Ann. § 4-8-6.1 (though the statute specifies that the removal is an offense if done “with the intention of preventing or hindering the owner from locating such dog,” which may not apply to a dog park brawl); Ky. Rev. Stat. Ann. § 258.212 (permitting law enforcement or animal control officer to remove identification tag if done “for a legitimate purpose,” which would presumably include identification of a dog that has bitten someone; anyone else removing identification would be guilty of a Class A misdemeanor); Mass. Gen. Laws ch. 266 § 47 (wrongful removal of a collar can lead to fine of not more than \$100 or imprisonment of six months, or both); Mich. Comp. Laws § 287.262 (unlawful “for any person except the owner or authorized agent, to remove any license tag from a dog”). Holding an aggressive or dangerous dog's collar may also be one means of controlling it, and military working dog handlers are taught to do this. The problem with this approach, as described in a recent police dog bite case, is that once the person holding the collar lets go, the dog is liable to bite him or her, and it may be argued that by grabbing the collar the person trying to control the dog assumed the risk of bites following release of the collar. *Lockrem v. U.S.*, No. C10-0871JLR, 2011 WL 3501693 (W.D. Wash. 2011).

[39] *Hamlin v. Sullivan*, 93 A.D.3d 1013 (Sup.Ct., 3rd Dept. 2012).

[40] Conn. Gen. Stat. § 22-332. Impounding may also be authorized if the owner is incarcerated. Kan. Stat. Ann. § 21-4316 (providing for euthanasia after 21 days if bond is not posted; also providing for return of the dog “if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct”).

[41] Conn. Gen. Stat. § 22-380f (No pound shall sell or give away any unspayed or unneutered dog or cat to any person unless such pound receives forty-five dollars from the person buying or adopting such dog or cat).

[42] Del. Code Ann. tit. 7 § 1703. Destroying a fence around such an area is a separate crime. § 1706.

[43] Cal. Food and Agric. Code § 31108(b).

[44] Cal. Food and Agric. Code §§ 31107, 31108(c) (also requiring authorities to scan stray dogs for microchips that may identify them). See also 510 Ill. Comp. Stat. 5/11.

[45] Miss. Statutes 253.185 provides that the state’s Department of Natural Resources “may designate a specified area within any state park to serve as a dog park or an off-leash area for domestic

household animals." Missouri's "Cabins for Canines" program, which began in 2012, now covers about 30% of the state park system's total lodging units, including outpost cabins, camper cabins, yurts, single-unit cabins, fourplexes and duplexes.

[46] See Government Accountability Office, *Federal Real Property: Most Public Benefit Conveyances Used as Intended, but Opportunities Exist to Enhance Federal Oversight*, GAO-06-511 (June 2006). A user of this Sand Point Dog Park advises the authors of an unusual feature of this park: "The dog park is well fenced with a long trail heading down to the lake where quite a few dogs are in the water pretty much all day. That lake access for dogs is fenced about 30 feet out into the water so dogs can swim out and around onto on-leash land if the owners are not careful." (Kingsbury Parker, personal communication, 8/7/2011 email to JE).

[47] Mich. Comp. Laws § 287.262 (certain working dogs permitted to work off leash).

[48] Okla. Stat. tit. 74 § 2217 (precluding a person from entering a state park with a dog, unless the dog is on a leash); S.C. Code Ann. § 51-3-10 (dog not to be brought into state park "unless it is crated, caged, or upon a leash not longer than six feet or otherwise under physically restrictive control at all times").

[49] W. Va. Code § 5A-4-4 ("unlawful for any person to knowingly allow a dog owned by him to be upon the grounds of the capitol buildings or governor's mansion unless such dog is under control by leash. Any person who knowingly allows a dog owned by him to be upon the grounds of the capitol buildings or governor's mansion while not under control by leash shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars."); Tex. Gov't Code Ann. § 443.018 provides that "all pets except Seeing Eye dogs are not permitted in the Capitol, and shall be restrained at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board." The limit of access to a government facility to guide dogs violates federal requirements now applicable to such places. See Department of Justice, *Nondiscrimination on the Basis of Disability in State and Local Government Services*. 75 Fed. Reg. 56164 (September 15, 2010). Pets brought on property of the U.S. National Arboretum (USNA) in Washington, D.C., "must have proper vaccinations and, except assistance trained animals, must be kept on leash at all times. The release or abandonment of fish, plants, and other animals of any kind on USNA grounds is prohibited." 7 CFR 500.10. Communities that receive permission to use federal land for a dog park must verify that no variance is required for use of the land as a dog park.

[50] Tex. Health & Safety Code Ann. § 822.007 (municipality or county not prohibited "from adopting leash or registration requirements applicable to dogs").

[51] Mo. Rev. Stat. § 253.185.

[52] 36 CFR 7.13(h).

[53] 510 Ill. Comp. Stat. 5/35 (“municipality or political subdivision allowing dog parks shall be immune from criminal liability and shall not be civilly liable, except for willful and wanton misconduct, for damages that may result from occurrences in the dog park”).

[54] *Amberger-Warren v. City of Piedmont*, 143 Cal.App.4th 1074, 49 Cal.Rptr. 631 (Ct. App. 2006).

[55] *Hall v. City Fence, Inc.*, 36 Misc.3d 1237(A), 2012 WL 3833713 (Sup.Ct. Erie County 2012).

[56] Idaho Code Ann. § 25-2801; La. Rev. Stat. Ann. § 3:2772 (parish or municipality that levies a license fee to issue a metallic license tag), 3:2731 (license fees and fines may be used by parish or municipality for its animal control program or for enforcement of animal control ordinances); N.D. Cent. Code § 40-05-02(22); Wyo. Stat. Ann. § 11-31-213 (“board of county commissioners may require the registration of all dogs and cats within a rabies control district...”).

[57] Haw. Rev. Stat. § 143-8 (officer “shall seize any unlicensed dog found running at large or found upon any public highway, street, alley, court, place, square, or grounds, or upon any unfenced lot, or not within a sufficient enclosure, whether in the immediate presence of the owner or otherwise, and confine it in a pound or any suitable enclosure for a period of forty-eight hours, during which time it shall be subject to redemption by its owner by payment of the license due, if any, and a penalty to be set by each county council; provided that until and unless provided by ordinance the penalty shall be \$2.50. If not so redeemed, the dog shall be sold by the officer for the amount of the license and penalty due, or as much more as can be obtained therefor; provided that the officer may neuter or require the neutering of the dog prior to sale, and if not so sold it shall be humanely destroyed. The owner of any unlicensed dog impounded and not claimed within forty-eight hours as provided in this section, may redeem the dog at any time before sale or destruction of the dog by paying to the officer, in addition to the amount of the license and penalty, an impoundment fee per day for the number of days over two days the dog was impounded. Each county council shall have the power to fix the impoundment fee for dogs; provided that until and unless otherwise provided by ordinance the impoundment fee shall be \$2.50 a day. Of the money so received the amount of the license fee shall be paid to the director of finance and the balance shall be retained by the officer to defray the expenses of collecting, keeping, and feeding the dog.”); N.C. Gen. Stat. § 105-350 (empowering tax collectors to collect “property, dog, license, privilege, and franchise taxes”; the authors are unaware of any tax collector using a dog park to find unlicensed dogs for tax collection purposes, but the possibility cannot be excluded).

[58] Rev. Code N.Y. § 56.1-05(r)(3)

[59] Ark. Code Ann. § 20-19-310, Cal. Health & Safety Code §§ 121575-121710.

[60] Colo. Rev. Stat. § 12-36-135 (failure to report is a petty offense, which can lead to a fine and a brief imprisonment); § 25-4-603.

[61] Cal. Food & Agric. Code §§ 31621-5.

[62] Colo. Rev. Stat. § 25-4-604 (confinement at pound at the owner's expense); Del. Code Ann. 3.8201(o).

[63] Colo. Rev. Stat. § 25-4-605.

[64] Idaho Code Ann. § 25-2803; Me. Rev. Stat. Ann. tit. 7, § 3911 (“unlawful for any dog, licensed or unlicensed, to be at large, except for hunting.”). Many states also criminalize allowing dogs to harass livestock or game. Idaho Code Ann. §§ 25-2806, 36-1101; Ky. Rev. Stat. Ann. § 258.265 (authorizing “peace officer or animal control officer” to “seize or destroy any dog found running at large between the hours of sunset and sunrise and unaccompanied and not under the control of its owner or handler”; authority is to “make a fair and reasonable effort to determine whether any dog found at large between sunset and sunrise is a hound or other hunting dog which has become lost temporarily from a pack or wandered from immediate control of its owner, or handler”); Minn. Stat. § 35.69 (prohibiting dog running at large “unless the dog is effectively muzzled so that it cannot bite any other animal or person.”); Mo. Rev. Stat. § 273.033 (running at large onto person's property is trespass allowing person to kill dog if action was to prevent “imminent harmful contact”); N.H. Rev. Stat. Ann. § 466.31 (dog being used for hunting, supervised competition, exhibition, or training for such activities, if accompanied by an owner or custodian, is not considered at large); N.J. Stat. Ann. § 2A:42-107 (landlord can refuse to renew senior citizen's lease if senior citizen fails to properly leash dog on premises); S.C. Code Ann. § 47-3-10 (dog is running at large “if off the premises of owner or keeper and not under the physical control of the owner or keeper by means of a leash or other similar restraining device”); Wash. Rev. Code § 16.08.020; Wis. Stat. § 174.042.

[65] Miss. Code Ann. § 41-53-11 (lack of evidence of vaccination can lead to immediate destruction).

[66] Ga. Code Ann. § 4-8-6; Ky. Rev. Stat. Ann. § 258.255 (“Every female dog in heat shall be confined in a building or secure enclosure in such a manner that the female dog cannot come in contact with a male dog except for a planned breeding.”); Md. Code Ann., Art. 24 § 11-514 provides that female dogs in heat are to be confined, but also that they are to be kept from contacting “roaming dogs,” “dogs that are attracted to the premises,” and “migrating dogs.” The latter term is not separately defined, but may refer to feral dogs.

[67] Or. Rev. Stat. § 609.040 (100 or more electors can petition for vote “for and against permitting dogs to run at large in the county,” but such may not be done inside a city with an established dog licensing program); Va. Code Ann. § 3.2-6539 (“governing body of any locality may adopt ordinances requiring that dogs within any such locality be kept on a leash or otherwise restrained and may, by resolution directed to the circuit court, request the court to order a referendum as to whether any such ordinance so adopted shall become effective.”)

[68] 510 Ill. Comp. Stat. 5/9 (“dog that is in a dog-friendly area or dog park is not considered to be running at large if the dog is monitored or supervised by a person”); Seattle Municipal Code §§ 9.25.084, 18.12.030, 18.12.080.

[69] Ark. Code Ann. § 15-41-113, for instance, allows for termination of employees of the Arkansas State Game and Fish Commission for allowing dogs to run at large.

[70] Conn. Gen. Stat. § 7-148(b)(7)(A) (allowing municipalities to “[r]egulate and prohibit the going at large of dogs and other animals in the streets and public places of the municipality...”); S.D. Codified Laws § 9-29-12 (municipalities “have power to regulate or prohibit the running at large of dogs, animals, and poultry, to establish pounds, appoint poundmasters, and regulate the impounding of animals, and to impose a tax or license on dogs running at large;” perhaps such a tax could be imposed on the users of a dog park, though this was not likely the original intent of the law, first passed in 1890 and last modified in 1913).

[71] Colo. Rev. Stat. § 25-4-610.

[72] Del. Code Ann. tit. 9, § 908(a).

[73] Me. Rev. Stat. Ann. tit. 29-A, § 2087 (“person driving an open vehicle may not transport a dog in the open portion of that vehicle on a public way unless the dog is protected in a manner that prevents the dog from falling or jumping or being thrown from the vehicle.”).

[74] Mass. Gen. Laws ch. 140, § 174B.

[75] Mass. Gen. Laws ch. 150, § 151B.

[76] Conn. Gen. Stat. § 22-364b (appropriate gear must identify dog as guide dog for infraction to apply); see also § 53-247 (protection also applies to dog part of voluntary canine search and rescue team).

[77] Florida Statutes § 767.16. The owner should be able to establish that the dog is in fact a service dog. Unlawfully claiming that a dog is a service dog when, in fact, it is not is a crime in some states. Idaho Code Ann. § 18-5811A. Such bogus service dogs would not be excepted from quarantine requirements.

[78] Me. Rev. Stat. Ann. tit. 7, § 3913 (“person finding a stray dog and taking control of that dog shall take that dog to its owner if known or, if the owner is not known, to the animal shelter designated by the municipality in which the dog was found”); Tenn. Code Ann. § 5-1-120 (counties authorized to “establish and operate shelters and other animal control facilities, and regulate, capture, impound and dispose of stray dogs, stray cats and other stray animals”).

[79] Haw. Rev. Stat. § 143-10.

[80] Kansas Stat. Ann. § 32-954; Me. Rev. Stat. Ann. tit. 12, § 12052 (dog training area for hunting dogs); 34 Pa. Cons. Stat. § 2941 (20 or more citizens may apply for permit for dog training area on land owned by them, generally for training hunting dogs on land of between 100 and 250 acres).

[81] Ark. Code Ann. § 20-19-401, 406 specifically applies canine vaccination requirements to wolves and wolf-dog hybrids, noting that “wolves and dogs are scientifically classified as the same species.”

[82] Iowa Code § 351.26 (“duty of all peace officers within their respective jurisdictions unless such jurisdiction shall have otherwise provided for the seizure and impoundment of dogs, to kill any dog for which a rabies vaccination tag is required, when the dog is not wearing a collar with rabies vaccination tag attached”).

[83] Chicago dog park rules (www.chicagoparkdistrict.com/docs/7a322e31-f650-4680-ba0b-100d626ead3f_document.pdf).

[84] Ark. Code Ann. § 5-62-125.

[85] Colo. Rev. Stat. § 30-15-102(2) (class 2 misdemeanor, punishable for each separate offense).

[86] Conn. Gen. Stat. § 19a-39.

[87] Other factors may affect the choice of a site. Cities have had disputes when dog parks are located near city boundaries. See *Rocky River v. Lakewood*, 2008 WL 5191383 (Ct. App. 2008). The proponents of a location may find that a particular location violates a deed restriction. See *Bloomfield Estates Improvement Association, Inc. v. City of Birmingham*, 479 Mich. 206, 737 N.W.2d 670 (2007); for an analysis of the case under property law, see D.E. Nykanen (2009). Real Property. *Wayne Law Review*, 55, 575-598, at 592-3; *Baker v. Board of Selectmen of the Town of Foxborough*, 2008 WL 4799468 (Mass. Land Ct. 2008), aff'd 77 Mass.App.Ct. 1117, 2010 WL 3257845 (2010), aff'd sub nom. *Hubrich v. Town of Foxborough*, 78 Mass.App.Ct. 1120, 939 N.E.2d 803 (table), 2011 WL 103949 (2011).

[88] Mich. Comp. Laws §§ 325.1003b.

[89] Me. Rev. Stat. Ann. tit. 7 § 3921-A (providing that wolf hybrids may be identified “through tattooing, the placement of a microchip under the animal’s skin or any other method determined by the commissioner as adequately providing a permanent means of identification on the body of the animal.”).

[90] Mass. Gen. Laws ch. 131 § 77A.

[91] See Ark. Code Ann. § 20-19-407.

[92] Vermont permits a city or town to “regulate the keeping, leashing, muzzling, restraint, impoundment, and destruction of domestic pets or wolf-hybrids and their running at large....” Vt. Stat.

Ann. tit. 20 § 3549. The distinction of wolf-hybrids from pets would seem to permit separate exclusion of such animals from dog parks by municipal ordinance.

[93] Ind. Code § 15-20-1-5.

[94] Mont. Code Ann. § 87-3-130.

[95] Under RCNY 24.161.05(b)(1), the New York City Department of Parks and Recreation can close dog runs at night.

[96] Miami-Dade County Bark Park Rules (www.miamidade.gov/parks/library/bark_park.pdf).

[97] Portland Parks & Recreation, Off-Leash Park Etiquette” (www.portlandonline.com/shared/cfm/image.cfm?id=160385).

[98] Colo. Rev. Stat. § 18-9-204.5(5).

[99] Okl. Stat. tit. 4 § 46 (“Potentially dangerous dogs or dangerous dogs may be regulated through local, municipal and county authorities, provided the regulations are not breed specific.”).

[100] Note that Ark. Code Ann. § 20-19-402 states that “No animal may be judged to be a wolf or wolf-dog hybrid based strictly on its appearance.”

[101] Tsokos, M., Byard, R.W., and Puschel, K. (2007). Extensive and Mutilating Craniofacial Trauma Involving Defleshing and Decapitation: Unusual Features of Fatal Dog Attacks in the Young. *The American Journal of Forensic Medicine and Pathology*, 28(2), 131-136; Sacks, J.J., Sinclair, L., Gilchrist, J., et al. (2000). Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998. *Journal of the American Veterinary Medical Association*, 217, 836–840; Gershman, K.A., Sacks, J.J., and Wright, J.C. (1994). Which Dogs Bit? A Case-control Study of Risk Factors. *Pediatrics*, 93, 913–917; Avner, J.R. and Baker, M.D. (1991). Dog Bites in Urban Children. *Pediatrics*, 88, 55–57 (finding 94% of pit bull attacks to be unprovoked compared with 46% overall); Shields, L.B.E., Bernstein, M.L., Hunsaker, J.C., and Stewart, D.M. (2009). Dog Bite-Related Fatalities: A 15-Year Review of Kentucky Medical Examiner Cases. *American Journal of Forensic Medical Pathology*, 30, 223-230.

[102] Seattle Parks and Recreation Rules for Seattle’s Off-Leash Areas (photograph of rules provided by Kingsbury Parker).

[103] Posted (www.in.gov/legislative/interim/committee/minutes/AUTID9F.pdf).

[104] Seattle Parks and Recreation Rules for Seattle’s Off-Leash Areas (photograph of rules provided by Kingsbury Parker).

[105] Two (Hawaii Kai Dog Park; Bucks County, Pennsylvania, Off-Leash Dog Area; Essex County, New Jersey, Dog Park Rules); three (New Orleans NOLA City Bark, City of Albuquerque). Some Colorado

parks restrict the number of dogs a single handler can bring at one time into a “designated dog off-leash area.” See rules for Rifle Falls State Park and Cherry Creek State Park (Colorado Regs. 2.405-1 (2010 CO REG TEXT 233281(NS)). The Presidio Trust requires that persons walking four or more dogs in Area B of the Presidio of San Francisco have a Commercial Dog Walking Permit from the City and County of San Francisco (77 Fed. Reg. 69785, November 21, 2012). This suggests, of course, that walking a large number of dogs can be a source of revenue for a community. For a history of off-leash areas in national parks in San Francisco, see *U.S. v. Barley*, 495 F.Supp.2d 1121 (ND Cal. 2005).

[106] Seattle Parks and Recreation Rules for Seattle’s Off-Leash Areas (photograph of rules provided by Kingsbury Parker).

[107] Colo. Rev. Stat. § 30-15-101 (allowing county commissioners to specify an age below which dogs do not have to be inoculated).

[108] \$500 under City of Chicago Ordinance 7-12-420. Statutes and rules requiring that owners pick up their pets’ waste generally apply to dog parks as to other public areas. (See Consolidated Colorado Regulations 2.405-1.) General recreational park usage rules apply to dog parks, though this will not always be stated. (See Alabama Reg. 797 X-4, General Park Rules (9)(a).).

[109] Dogs are generally prohibited in food service areas, though Maryland specifically allows dogs in outdoor portions of restaurants. Md. Code Ann. § 21-304.2 (a sign must be posted informing patrons that dogs are allowed in the outdoor dining area).

[110] Seattle Parks and Recreation Rules for Seattle’s Off-Leash Areas.

[111] The NOLA City Bark in New Orleans has a rule specifying that only balls and frisbees may be brought into the park (www.nolacitybark.org).

[112] Ohlone Dog Park Association (www.ohlonepark.org).

[113] NOLA City Bark (www.nolacitybark.org).

[114] Administrator, Cook County Department of Animal and Rabies Control, Regulation VIII on the operation of dog friendly areas (DFAs) (issued under authority of § 20-15, Cook County Animal and Rabies Control Ordinance (www.chicagoparkdistrict.com/docs/7a322e31-f650-4680-ba0b-100d626ead3f_document.pdf)).

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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.

Meeting Date: May 02, 2022

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

SUBJECT: Budget Adjustment to FY 2021-2022 (Reso 09-2022)

BACKGROUND/HISTORY:

This was brought to Council at the 4/18/2022 RTCM by Town Manager Matt Stinnett and Council authorized the purchase of a used 2018 Noram 65E Motor Grader. In order to pay for this Council authorized the trade-in of the 2000 CAT 120H motor grader leaving a balance due to the vendor of \$80,000.00.

Payment of this will be accomplished by the transfer of \$80,000.00 from Fire Control Department to the Streets and Roads Department.

Bottom line of the budget remains the same.

ATTACHMENTS:

Reso 09-2022

ACTION OPTIONS:

Council Action on Reso 09-2022

RESOLUTION 09-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2021-2022; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Council approved the \$149,000.00 purchase of a used 2018 Noram 65E Motor Grader at their 4/18/2022 Council meeting to be partially offset by the trade-in value of the 2000 CAT 120H motor grader leaving a balance needed of \$80,000.00.

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

SECTION 1. Amend the Budget Amount in Fire Control (522) Department by reducing the 522.6400 account by \$80,000 as indicated on the attached Budget Transfer Authorizations to accurately record the adjustment to the Fire Control Department.

SECTION 2. Amend the Budget Amount in Streets and Roads (541) Department by increasing the 541.6400 account by \$80,000 as indicated on the attached Budget Transfer Authorizations to accurately record the adjustment to the Streets and Roads Department.

SECTION 3. Conflict

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

SECTION 4. Effective Date.

This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member _____.

The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member Dave Scardino	_____
Council Member Marisa Acquaviva	_____

This Resolution was then declared to be duly passed and adopted this 2nd day of May, 2022.

TOWN OF MALABAR

By:

(seal)

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney