



# REGULAR TOWN COUNCIL MEETING

Monday, August 15, 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 Regular Town Council Meeting of 08/01/2022

Exhibit: Agenda Report Number 4a

#### Attachments:

- **Agenda Report Number 4a** (Agenda\_Report\_Number\_4a.pdf)

- b. Co-location between Brevard County Fire Rescue and Town of Malabar. Place two Brevard Units at Station 99 while they rebuild Station 88.

Exhibit: Agenda Report Number 4b

#### Attachments:

- **Agenda Report Number 4b** (Agenda\_Report\_Number\_4b.pdf)

5. ATTORNEY REPORT
6. STAFF REPORTS

- a. Manager
- b. Special Projects Manager

Exhibit: Agenda Report Number 6b

#### Attachments:

- **Agenda Report Number 6b** (Agenda\_Report\_Number\_6b.pdf)

- c. Clerk

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 / SPECIAL ORDERS : 2

**a. Second Reading of Ordinance 2022-08**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND APPROVAL OF PETITIONS REQUESTING ACCEPTED DIRT ROADS TO BE PAVED THROUGH SPECIAL ASSESSMENTS APPROVED BY COUNCIL PURSUANT TO ARTICLE II OF CHAPTER 13, SECTION 13-52 (2); PROVIDING FOR FINDINGS, INTENT AND THE DURATION OF THE MORATORIUM; PROVIDING FOR AN EXTENSION PERIOD; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8a

**Attachments:**

- **Agenda Report Number 8a** (Agenda\_Report\_Number\_8a.pdf)

**b. Second Reading of Ordinance 2022-09**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; EXTENDING THE WATER AND SEWER FRANCHISE WITH THE CITY OF PALM BAY AS ESTABLISHED IN ORDINANCE 2012-55; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8b

**Attachments:**

- **Agenda Report Number 8b** (Agenda\_report\_Number\_8b.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

**10. ACTION ITEMS : 2**

ORDINANCES: 0

RESOLUTIONS: 1

MISCELLANEOUS: 1

**a. NON-BINDING REFERENDUM QUESTION (Resolution 16-2022)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CALLING AND SCHEDULING A NON-BINDING REFERENDUM ELECTION TO DETERMINE IF THE TOWN SHOULD ADOPT A MILLAGE RATE OF \_\_\_ FOR FISCAL YEAR 2023/2024 TO FUND CAPITAL IMPROVEMENTS AND OPERATIONS; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

**Attachments:**

- **Agenda Report Number 10a** (Agenda\_Report\_Number\_10a.pdf)

**b. Interview Potential Candidates for Clerk as directed at RTCM 08/01/2022.**

Exhibit: Agenda Report Number 10b

**Attachments:**

- **Agenda Report Number 10b** (Agenda\_Report\_Number\_10b.pdf)

**11. DISCUSSION/POSSIBLE ACTION: 1**

**a. Maintenance of Ditches (CM Scardino)**

Exhibit: Agenda Report Number 11a

**12. PUBLIC COMMENTS**

General Items (Speaker Card Required)

**13. REPORTS - MAYOR AND COUNCIL MEMBERS**

**14. ANNOUNCEMENTS**

(1) Vacancy on the Planning & Zoning Board

**15. 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.

**TOWN OF MALABAR**

**COUNCIL MEETING**

**AGENDA ITEM NO: 4.a.**  
**Meeting Date: August 15, 2022**

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

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**SUBJECT: Meeting Minutes**

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**BACKGROUND/HISTORY:**

Summary of Council actions at the Town Council Regular Meeting Minutes

**ATTACHMENTS:**

- Draft Minutes of RTCM Minutes of 8/01/2022

**ACTION OPTIONS:**

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL  
REGULAR MEETING MINUTES  
AUGUST 01, 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 called meeting to order at 7:30 pm. CM Scardino led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL, excused

DAVID SCARDINO

MARY HOFMEISTER

TOWN MANAGER:

MATT STINNETT

SPECIAL PROJECTS MANAGER:

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

**4. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** TM Stinnett asked to add an item dealing with the millage restrictions due to Spec Law – Atty Bohne has submitted a legal opinion that we can proceed with the proposed millage. 13.b.

**5. CONSENT AGENDA:**

**4.a. RTCM Minutes of 7/18/2022 & WS Minutes of 6/25/2022**

**4.b. Consideration of Waiver of Bid to procure Fire Incidents and Health Record software with ESO Solutions, Inc.**

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

**5. ATTORNEY REPORT:** Atty Bohne said he will speak under 13.b.

**6. BCSO – not present**

**7. BOARD / COMMITTEE REPORTS:**

**7.a. T&G Committee:** Chair Drew Thompson – Report this month BPTAC announced on 7/14/2022 that 200K for engineering study of combined Marie St/Jordan Blvd addition to the Al Tuttle Trail through this area. G-V T&G also supports this project. They are also encouraged with FDOT support. Signage, recognition for Cameron Preserve. Bids out for pavilion at north end of Corey Road. Cement floor with metal roof. Make a minimum footprint – emphasis on – would like for T&G to have input on location/placement. IMBA had expressed interest in helping us with the grant process. Due by 7/31/22 and they did not submit. They wanted 50% in payment and then would provide consultation. Decided not to go that route. Lot is going on in the background and he recognized Richard Kohler as their Committee Secretary and stated he helps members stay focused. It is one thing to have staff support to work in the background and do research, but Richard is also an avid user and supporter. T&G made decision is to not pursue with the international group. They already have much support from the local MBA is already helping and we have their support. Moving forward on ENT. PW has helped. Trailhead area is significantly lower than Marie Street. Need to add considerably more fill – town dirt in compound to be done by vendor. Envision loading and spreading. Bobcat with a bucket for the fence line fill – then they can get the fence and gates in and secure the area. Damage was done during more recent work. Wax myrtle was lost, and barrier berm breached since the members of T&G weren't present and reiterated T&G request to be onsite when work continues at ENT. This is the summer to do it. Expressed to Council the benefit of having Richard as secretary of Committee since he has real interest in success of projects and thanks Richard again.

Mayor asked if the T&G C was working with Palm Bay on the Grapefruit trail. T&G have not been actively working on it, but T&G members that are also MBA members have been helping. Mayor is it moving forward? Yes.

7.b. Park & Recreation Board: Chair Eric Bienvenu – not present

7.c. P&Z Board: Chair Wayne Abare – not present

**8. STAFF REPORTS:**

8.a. **Town Manager** – We are behind on mowing ditches – slope mower is due back tomorrow. CM Scardino asked about vacuum truck – TM said next budget year.

Mayor said he has a SCLC mtg. next week and is regularly asked by 4-6 people about latest status on Brevard County/EELs conflict. Atty Bohne said Town submitted a motion to abate. It is just sitting there. Cty Atty has since resigned, and the County has had an interim. He understands the County will be appointing a new Attorney very soon. Conflict is status quo.

8.b. **Special Projects Manager** – written – bid on restroom is out. She is finishing employee manual. CM Acquaviva asked about LifePaks and turnout gear; both are being delayed; she asked if we had paid for these items. SPM Morrell said Town has issued a P.O. but will not make payment until the items are delivered and confirmed correct.

8.c. **Fire Chief** – nothing

8.d. **PW Director** - written

8.e. **Clerk** – nothing at this time.

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

10. **PUBLIC HEARINGS: 0**

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

12. **ACTION ITEMS:**

**ORDINANCES for FIRST READING: 2**

12.a. **Establish a Temporary Moratorium on the Special Assessment for Road Paving of Accepted Dirt Roads. (Ord 2022-08)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND APPROVALS OF PETITIONS REQUESTING ACCEPTED DIRT ROADS BE PAVED THROUGH SPECIAL ASSESSMENT APPROVED BY COUNCIL PURSUANT TO ARTICLE II OF CHAPTER 13, SECTION 13-52 (2); PROVIDING FOR FINDINGS, INTENT AND DURATION OF THE MORATORIUM; PROVIDING FOR AN EXTENSION PERIOD; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

**Exhibit:**

**Agenda Report No. 12.a.**

Ordinance read by title only. Atty Bohne explained the process.

**MOTION:** CM Scardino / CM Rivet to approve 1<sup>st</sup> reading of Ord 2022-08.

Discussion: CM Acquaviva has problem with Council adopting a moratorium that would prevent people that want to get their roads paved from applying. Town should be honest and say the Town doesn't have the money. It was explained that this would not restrict persons from getting their roads paved using Special Assessment to pay the 100% of cost. The moratorium is on the cost share portion. CM Rivet Like to find funding sources ASAP. Anything that encourages



paving the road is good for the people and for the town. CM Rivet supports this and hopefully we can repeal it once funding sources are identified. CM Scardino said if we let people know what we want to fund so we can get their support. CM Acquaviva said the moratorium takes peoples voices away. They can see what the budget is and explain the timeframe.

**ROLLCALL VOTE:** CM Acquaviva, Nay; CM Vail, excused; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Nay. Mayor voted Aye to break tie and it is a 3 to 2 vote. Motion carried 3 to 2.

**12.b. Extend Franchise Agreement with Palm Bay Utilities (Ord 2022-09)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA EXTENDING THE WATER AND SEWER FRANCHISE WITH THE CITY OF PALM BAY AS ESTABLISHED IN ORDINANCE 2012-55; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit: Agenda Report No. 12.b.**

Ordinance read by title only.

**MOTION:** CM Rivet / CM Scardino to approve 1<sup>st</sup> reading of Ord 2022-09.

Discussion: TM Stinnett said this will continue the approximately 6K in revenue. It is agreeable to Palm Bay.

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

**RESOLUTIONS: 0**

**MISCELLANEOUS: 1**

**12.c. Direction on Job Postings for Clerk and Treasurer (1<sup>st</sup> round closed 7/20/2022)**

**Exhibit: Agenda Report No. 12.c.**

Chair asked Council to provide their rankings for each position. Start with Clerk. CM Acquaviva wanted to know what staff thinks. Council said the position reports to Council. CM Rivet said he eliminated those that weren't qualified; the others have different strengths. He thought that Richard Kohler can hit the ground running. CM Scardino – Richard is his top pick; he has the understanding and qualifications; others don't. CM Hofmeister agreed with CM Rivet and likes Rinaldi first and Kohler as well. Rinaldi is her first choice. CM Rivet said who has the best chance of success; none of them are fully qualified. CM Acquaviva said plus we have TM Stinnett. CM Scardino said we have SPM Morrell, and she can take the pressure off by taking on the Treasurer duties for now. Put Richard Kohler in as Clerk and put SPM Morrell as finance/treasurer. She has more experience than any of the applicants. CM Scardino didn't see any applicants with experience. Mayor sees where CM Scardino is coming from. Let SPM Morrell help us while she is here. CM Acquaviva agreed with CM Hofmeister and said Kohler is not ready to be clerk in Sept. CM Acquaviva wants to interview Rinaldi – Mayor said Council can interview them as a body in an open meeting. Interview Rinaldi and Kohler on 8/15/2022. Afford the opportunity to both.

Discussion on Treasurer.

CM Hofmeister had reviewed the applications: #1 Rafferty, #2 Croteau – didn't have education and #3 Chris Quirk – great qualifications but changed jobs a lot.

CM Acquaviva chose Calhoun; she has lots of finance. She would like to interview these also: Rafferty for #2 and Croteau for #3.

CM Rivet said if SPM is willing to help then that is his choice. He is having a hard time picking one out from applicants. Mayor said hold off on doing background checks because it is not done until offer is made. CM Rivet is not hearing anyone say to support a particular applicant. CM Rivet asked if the SPM is willing to help. She said is here to serve and would do as directed by Council.

Consensus to readvertise. TM Stinnett suggested they advertise for another month just for the treasurer.

CM Rivet is in favor of having SPM Morrell as the Interim person. CM Scardino agreed.

**MOTION:** CM Rivet / CM Scardino to request SPM Morrell to assume the additional duties of Treasurer for the upcoming year with a renewed search for a replacement.

**Vote:** All Ayes. CM Acquaviva would have liked to interview them. Mayor said Calhoun is the only one remotely qualified.

**13. DISCUSSION / POSSIBLE ACTION: 1**

**13.a. Workshop set for 8/08/2022 at 7:30pm for Budget** move to 8/22/2022

**Exhibit: Agenda Report No. 13.a.**

Council discussed need for another budget WS. TM Stinnett would like one more and proposed the 22<sup>nd</sup> of August. CM Acquaviva can attend. CM Hofmeister can as well.

**13.b. Added item: Atty Bohne legal opinion on Special Law 74-290 and 85-xxx**

Atty Bohne explained his legal opinion based on opinion of 5<sup>th</sup> Circuit Court in an appeal to a judgement issued in 2002. The case involved this restriction brought by County Clerk of Court Scott Ellis. The Circuit Court Judge ruled the 1974 law was implied to be repealed when F.S. 200 was adopted. The 5<sup>th</sup> Circuit Court of Appeals affirmed the Circuit Judges ruling.

This gives Town the ability in good faith reliance on the case law to set millage as determined by Council to fund the expenditure needs of the Town.

TM Stinnett asked Council about a referendum question on this year's ballot. Three for referendum – nonbinding – have Atty Bohne draft a resolution for a non-binding question to voters.

**14. PUBLIC COMMENTS: General Items (Speaker Card Required) (5 minutes limit)**

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

**CM Acquaviva:** Any follow up on the truck food event. Good turnout.

**CM Vail:** excused

**CM Rivet:** had praise for Waste Pro; he did have a missed pick-up and they fixed it the next day.

**CM Hofmeister:** nothing

**CM Scardino:** said they are getting homeless people in his area, and they are stealing mail.

**Mayor Reilly:** Will be at the FLC conf later this week.

**16. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:45P.M.

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

ATTEST:

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

Date Approved: 08/15/2022



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 4.b.**

**Meeting Date: 8/15/2022**

**Prepared By: Joseph Hooker, Interim Fire Chief**

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**SUBJECT: Co-location between Brevard County Fire Rescue and Town of Malabar. Place two Brevard Units at Station 99 while they rebuild Station 88.**

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### **BACKGROUND/HISTORY:**

Brevard County Fire Rescue has asked permission to share our facility while they rebuild one of their fire stations. Directly benefits our residents by allowing shift training to fine tune our automatic aid agreement. Shift training will allow our two agencies to recognize each other's strengths and weaknesses and overcome obstacles that may delay on-scene operations. (Automatic aid is the agreement the Town of Malabar entered into with Brevard County Fire Rescue to ensure the closet unit will respond to calls in a geographical area. It is intended to provide the fastest response to residents no matter what city, town, or county area they live in). The time frame will be one year.

### **ATTACHMENTS:**

Co-Location Agreement

### **FINANCIAL IMPACT:**

None

### **ACTION OPTIONS:**

Motion to approve Co-location agreement between Brevard County Fire Rescue and the Town of Malabar.

**INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS AND THE TOWN OF MALABAR FOR USE OF SPACE**

**THIS INTERLOCAL AGREEMENT**, (hereinafter referred to as the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the **Brevard County Board of County Commissioners**, a political subdivision of the State of Florida (hereinafter referred to as the "**County**"), and the **Town of Malabar**, a Florida municipality (hereinafter referred to as the Town.)

**RECITALS:**

**WHEREAS**, the Parties desire to enter into this Agreement for the purpose of allowing the County and the Town to provide the County operational use space at one (1) of the Town's fire station to better protect the lives and property of their citizens; and

**WHEREAS**, the Parties find that it is in their respective best interests, and that it is in the best interest of the public health, safety and welfare of their citizens, for the County and the Town to share emergency response resources; and

**WHEREAS**, this Agreement is authorized pursuant to §§125.01(1)(p) and 163.01, Florida Statutes, as an interlocal agreement; and

**NOW, THEREFORE**, in consideration of the premises and mutual promises contained herein, the parties hereto agree as follows:

**SECTION 1. TERM:**

This Agreement will commence and be effective upon its approval and execution by the elected bodies of both the County and the Town and filing with the Clerk of the Circuit Court in and for Brevard County, Florida. This Agreement shall be effective for an initial one (1) year period. All terms and conditions hereof shall remain in full force and effect during the initial term and any renewal periods unless this Agreement is amended as provided in Section 2. Termination/Revision of Agreement.

**SECTION 2. TERMINATION/REVISION OF AGREEMENT:**

- 2.1 This Agreement may be terminated by either party with or without cause, upon written notice of termination to the other party at least forty-five (45) days prior to the date of such termination.
- 2.2 Either party may request that this Agreement be revised. Such requests must be placed in writing and address the reason for the amendment as well as provide proposed amended language. In order to be deemed effective, the amendment must be approved by the respective governing bodies and filed with the Clerk of the Circuit Court in and for Brevard County, Florida.

**SECTION 3. SERVICES PROVIDED:**

Except to the extent provided herein, the County and the Town agree that their respective fire rescue departments will provide primary emergency services within their own jurisdictions.

- 3.1 **Statement of Reciprocity** – The County and the Town agree to share both unique and common emergency response resources for the purpose of expeditious and effective emergency service delivery to County and Town citizens alike.
- 3.2 **Fire Station Facility Usage** – The Town hereby agrees to provide the County operational use space at one (1) of the Town’s fire stations located at:

Town of Malabar’s Station 99, 1840 Malabar Road, Malabar, Florida 32950

The County shall utilize the identified Town fire station facility to support the operations of two County staffed emergency response apparatus.

- (a) **Apparatus Space** – The Town hereby agrees to provide apparatus stall space for two (2) County Rescue’s Med Unit’s in the Town fire station identified herein above.
- (b) **Living Quarters** - The Town hereby agrees to provide a bunkroom for County employees with a minimum of three (3) beds provided by the Town and two (2) beds provided by the County for sleeping, office space, use of kitchen facilities, use of restrooms and use of day/training room at the Town fire station identified above.
- (c) **Maintenance** – The County agrees to assist the Town with any maintenance (including preventive) in equitable proportion to those areas utilized a majority of the time by the County in the Town’s fire station identified herein above.
- (d) **Insurance, Costs, Independent Contractors, Liability** – Sections 11, 12, and 13 of the Interlocal Agreement between the County and the Town shall govern insurance, costs, the relationship and status of the Town and the County and their employees, and their liability for the actions of their respective employees and agents.
- (e) **Damage** – The Town agrees to repair, replace and/or reimburse the County for any and all damages caused to property and equipment owned by the County and resulting from the actions of Town employees. The Town shall cause such repair, replace and/or reimbursement to occur within a reasonable amount of time thereby affording no undue hardship to the County. The County agrees to repair, replace and/or reimburse the Town for any and all damages caused to property and equipment owned by the Town and resulting from the actions of County employees. The County shall cause such repair, replace and/or reimbursement to occur within a reasonable amount of time thereby affording no undue hardship to the Town.

- (f) Supplies – The Town and County shall be responsible for their own medical supplies and station supplies.

**SECTION 4. PAYMENT:**

There shall be no payment to either the County or the Town for services identified in this Agreement. Both parties agree it is in their mutual best interest, and the interest of the citizens they protect to co-locate for this period of time. This period of time will allow both parties to train together as per their automatic aid agreement. This training will likewise be beneficial to the Town as new EMS Lifepak 15 equipment is implemented. The Counties current use of the Lifepak 15 will enable them to assist in the training and implementation of the Town’s new Lifepak 15.

**SECTION 5. ADDITIONAL EQUIPMENT:**

There may be circumstances in which the County and the Town mutually agree to locate assets belonging to one party in a station or stations belonging to the other party for coverage purposes on a temporary basis. Subject to mutual agreement, these units may be staffed by either agency to provide expeditious or efficient first responder and fire-rescue protection for the citizens of both parties.

**SECTION 6. NOTIFICATION:**

Any required notice to be provided by either party to this Agreement, other than an emergency call and dispatch, shall be delivered to the other party's representative at the following locations:

Joseph Hooker, Interim Fire Chief  
Malabar Fire Department  
1840 Malabar Road  
Malabar, FL 32950

Patrick Voltaire, Fire Chief/Director  
Brevard County Fire Rescue  
1040 South Florida Avenue  
Rockledge, FL 32955

With a copy to:  
Matthew Stinnett, Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

With a copy to:  
Frank Abbate, County Manager  
Brevard County Manager’s Office  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940

Any notice to be sent to the County or the Town under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first class U.S. mail, or by nationally recognized overnight courier to the last known address of the said County or the Town, as the case may be, with appropriate copies as set forth above. A mailing is deemed received at the time of hand delivery or five (5) days after mailing. Either party hereto may unilaterally change the person to whom a mailing is to be sent or the address of said person by giving notice to the other party as provided for herein.

**SECTION 7. AUDITING, RECORDS AND INSPECTION:**

7.1 In the performance of this Agreement, the County and the Town shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures, as adopted by the Department of Financial Services, as set forth in Rule 69I-61.0012, Florida Administrative Code, as amended or superseded from time to time, or the

Auditor General. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by the County and the Town for a period of three (3) years after termination of this Agreement for accounting related records and for other public records, five (5) years after termination of this Agreement, unless otherwise required by law to be held for a longer period. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119, Florida Statutes and Section 401.30, Florida Statutes.

- 7.2 No reports, data, programs, or other materials produced, in whole or in part for the benefit and use of the County or the Town, pursuant to this Agreement shall be subject to copyright protection in the United States or any other County.
- 7.3 The County and the Town agree to comply promptly with any request for public records or documents made in accordance with Section 119.07, Florida Statutes.
- 7.4 Upon a request for public records related to this Agreement, the County or the Town, as the case may be, will inform promptly the other party of the request and, upon request of the other party, provide electronic copies of the responsive public records provided, at no additional cost to the County or the Town, as the case may be.

**SECTION 8. JURISDICTION, VENUE, WAIVER OF JURY TRIAL AND CHOICE OF LAW:**

All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the laws of the State of Florida. Any legal action by either party against the other concerning this Agreement shall be filed in Brevard County, Florida, which shall be deemed proper jurisdiction and venue for the action, and any trial shall be nonjury.

**SECTION 9. ATTORNEY'S FEES AND COSTS:**

In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and costs.

**SECTION 10. SEVERABILITY:**

If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by a court to be unconstitutional, inoperative, or void such holding will not affect the remainder of this Agreement. The remainder of this Agreement shall be effective and shall remain in full force and effect, unless amended or modified by mutual consent of the parties.

**SECTION 11. INDEMNIFICATION/HOLD HARMLESS:**

The parties agree to defend, hold harmless, and indemnify each other subject to the provisions of this section and within the limitations of Section 768.28, Florida Statutes, as amended from time to time. To the extent allowed by Section 768.28, Florida Statutes, all employees and agents of each Party acting within the scope of this Agreement shall be entitled to sovereign immunity. Each Party agrees to be liable for the activities of its respective trustees, officers, employees, and agents (collectively referred to as "personnel"). TOWN agrees to defend, hold harmless, and indemnify COUNTY and its personnel from all claims, suits, judgements or damages, arising out of the acts or omissions of TOWN,



or TOWN's employees or agents, subject to the sovereign immunity protections afforded to it under Florida law. COUNTY agrees to defend, hold harmless, and indemnify TOWN and its personnel from all claims, suits, judgments or damages, arising out of the acts or omissions of COUNTY, or COUNTY employees or agents, subject to sovereign immunity protections afforded to it under Florida law. This indemnification shall not apply to loss, injury, death or damages arising by reason of the other Party's negligence, either in whole or in part, and/or its personnel. Nothing in this section shall be construed to require either Party to indemnify or insure the other Party for the other Party's negligence or to assume any liability for the other Party or the negligence of its personnel.

This section applies to any act or omission done in accordance with the terms of this Agreement regardless of which party's jurisdiction said act or omission occurs.

Nothing in this Agreement is intended to insure to the benefit of any third party for the purpose of allowing any claims which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of either Party's sovereign immunity. The Parties acknowledge specific consideration has been exchanged for this provision. This indemnification section shall survive the termination of the Contract.

**SECTION 12. INDEPENDENT CONTRACTORS:**

The County and the Town are each Independent Contractors of one another. It is specifically understood and agreed to by and between the parties hereto that a material provision in this Agreement is that the relationship between the County and the Town is one in which each party and its employees are independent contractors of the other party, and not as agents, employees, joint venturers, or other partners and neither are entitled to any benefits of the other party. Nothing contained herein shall be construed to be inconsistent with this relationship or status.

**SECTION 13. LIABILITY FOR EMPLOYEES/AGENTS:**

Each jurisdiction shall bear responsibility for any injury or loss caused by its agents, representatives, officials, employees or volunteers (hereinafter "agents") while such agents are acting outside their jurisdiction. In no event shall either party's liability for damages exceed the monetary limits, or the type of damages recoverable, under Section 768.28, Florida Statutes, as that section may be amended from time to time.

**SECTION 14. ASSIGNMENTS:**

Neither the County nor the Town, their assigns or representatives, shall enter into any agreement with third parties to delegate any or all of the rights and responsibilities herein set forth without the prior written approval of the other party.

**SECTION 15. ENTIRE AGREEMENT:**

This Agreement, including exhibits, appendices, riders, and/or addenda, if any, attached hereto, sets forth the entire Agreement between the parties. This Agreement shall not be modified except in writing and executed by all parties, except that the fire chiefs of the County and the Town are authorized to mutually agree in writing to predefined unit response assignments and location of assets as established or agreed upon.

**SECTION 16. INTERPRETATION:**

Both the County and the Town have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter hereof.

**SECTION 17. PUBLIC ENTITY CRIMES:**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

**SECTION 18. SCRUTINIZED COMPANIES:**

- 18.1 The Agency certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Agency or its subcontractors are found to have submitted a false certification; or if the Agency, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Contract.
- 18.2 If this Contract is for more than one million dollars, the Agency further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.
- 18.3 Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Agency, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Agency, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the contract.
- 18.4 The Agency agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this contract.
- 18.5 As provided in subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable

**SECTION 19. NON-EXCLUSIVE CONTRACT:**

The Parties acknowledge that this Contract is not an exclusive contract and the County may employ other professional or technical personnel to furnish services for the County, as the County, in its sole discretion, finds is in the public interest. The County reserves the right to assign such work to the Agency as it may approve in the sole discretion of the County.

**SECTION 20. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY):**

- 20.1 The Agency shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract. Upon request, the Agency shall provide acceptable evidence of their enrollment at the time of the submission of the Agency's bid. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- 20.2 Agency shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract.
- 20.3 Agency agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of Agency's enrollment in the program. This includes maintaining a copy of proof of Agency's and any subcontractors' enrollment in the E-Verify Program.
- 20.4 Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- 20.5 An Agency who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the Agency hires or employs a person who is not eligible for employment.
- 20.6 Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

**SECTION 21. COUNTERPARTS AND AUTHORITY:**

This Contract may be executed in counterparts all of which, taken together, shall constitute one and the same Contract. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that party to the obligations stated herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first written above.

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Rachel Sadoff, Clerk  
(SEAL)

By: \_\_\_\_\_  
Kristine Zonka, Chair  
As approved by the Board on \_\_\_\_\_

Reviewed for BCFR Content:

Reviewed for Legal Form and Content:

\_\_\_\_\_  
Scott M. Jurgensen, Deputy Fire Chief

\_\_\_\_\_  
Melissa Powers, Assistant County Attorney

**ATTEST:**

**TOWN OF MALABAR, FLORIDA**

\_\_\_\_\_  
Debby Franklin, CMC, Town Clerk

By: \_\_\_\_\_  
Patrick Reilly, Mayor

(SEAL)

Approved by the Town Council on \_\_\_\_\_

Reviewed for Legal Form and Content:

\_\_\_\_\_  
Karl Bohne, Town Attorney

# TOWN OF MALABAR

## COUNCIL MEETING

SPM Staff Report 6.b.  
Meeting Date: August 16, 2022

Prepared By: Lisa Morrell, Special Projects Manager

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**SUBJECT: SPM Report for August 15, 2022 Council Meeting**

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On August 8, 2022, we received the following notice from the Florida Department of Emergency Management:

The Florida Division of Emergency Management has received the funding from The US Treasury to complete the 2<sup>nd</sup> part of payments for the American Rescue Plan Act (ARPA). There is no action required of your office at this time, the payments are being processed using the same information that we received from you last year when the first payment was made.

Please allow 3-4 weeks for payments to be fully processed and we anticipate that all payments will be complete by the end of this month, August 2022.

A FY21/22 Budget Amendment will be processed through Town Council upon receipt of funds, recognizing the revenue this fiscal year.



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 8.a.**  
**Meeting Date: August 15, 2022**

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

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**SUBJECT: 2<sup>nd</sup> Reading/Adopt Ord 2022-08 - Temporary Moratorium on Road Paving using the Special Assessment Cost Share Option**

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### **BACKGROUND/HISTORY:**

Attorney Bohne revised the draft ordinance discussed at the July 18 meeting. It was drafted to place a temporary pause on accepting any further petitions to pave accepted dirt roads using the cost share option provided in Art II, Chapter 13, Section 13.52(2)c.

This moratorium will not impact those petitions already submitted for the cost share Special Assessment consideration. Those streets are:

Rivet Lane: submitted Dec, 2020  
Duncil Lane: (south) Sept, 2021  
Howell Lane: (south) Sept, 2021  
Howell Lane: (north) Oct, 2021  
Kramer Lane: Mar, 2022

This is being re-stated in this meeting as it was discussed at the RTCM 7/18/2022 when Ms. Rene Purden spoke under "Public" and specifically asked Council and their reply was that the proposed moratorium would not have any impact on those petitions already submitted.

### **FINANCIAL IMPACT:**

Until funding sources are identified to cover the Town's 40% of paving and the 100% cost to get the road ROW ready for paving.

### **ATTACHMENTS:**

Ord 2022-08 establishing a temporary moratorium

### **ACTION OPTIONS:**

Action on 2<sup>nd</sup> Reading and adoption of Ord 2022-08

**ORDINANCE NO. 2022-08**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND APPROVAL OF PETITIONS REQUESTING ACCEPTED DIRT ROADS TO BE PAVED THROUGH SPECIAL ASSESSMENTS APPROVED BY COUNCIL PURSUANT TO ARTICLE II OF CHAPTER 13, SECTION 13-52 (2); PROVIDING FOR FINDINGS, INTENT AND THE DURATION OF THE MORATORIUM; PROVIDING FOR AN EXTENSION PERIOD; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in 2017 the Town Council adopted a process to allow property owners on an improved and accepted dirt lane to request paving of their road using a Special Assessment process and adopted its first Special Assessment for paving of Smith Lane; and

**WHEREAS**, in 2020 the Town Council has further adopted an ordinance to share in the cost of a portion of the paving as a method to encourage property owners on improved and accepted dirt lanes to Petition to have their road paved; and

**WHEREAS**, due to current economic turn-down affecting the Country, State and the Town as well as other factors, including the costs associated with the paving of roads within the Town, the Town Council desires to establish a temporary moratorium until a funding source for such paving is secured.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED**, by the Town Council of the Town of Malabar, Florida, as follows:

**Section 1. Legislative Findings.**

That the above recitals are true and correct and are incorporated herein by reference.

**Section 2. Intent and Purpose.**

The intent and purpose of this Ordinance is to provide the Town of Malabar with the opportunity to review the financial impact of the cost-share policy adopted in Ordinance 2020-06 and investigate funding sources to permit it to proceed with the implementation of the cost-share requirement in Section 13-52 (2) of Article II, of Chapter 13.

**Section 3. Moratorium Imposed.**

The Town Council hereby prohibits the submission, processing and approval of any further petitions from property owners requesting road paving under the Special Assessment process as provided for in Section 13-52 (2) of Article II, of Chapter 13. Nothing herein shall affect the ability of the Town to impose any special assessments as authorized by Chapter 170 of the Florida Statutes or the provisions of Section 13-52 (1) of the Town Code. This moratorium is designed to only apply to the processes provided for in Section 13-52 (2) of the Town Code.

**Section 4. Duration of Moratorium.**

The moratorium imposed by this ordinance shall be effective October 1, 2022 through September 30, 2023, unless rescinded sooner. Prior to the expiration of the moratorium, the Town may extend the moratorium for additional periods of time.

**Section 5. Ordinance to Be Liberally Construed.**

This ordinance shall be liberally construed to carry out its purposes, which are deemed to be in the best interest of the public health, safety, and welfare of the citizens and residents of the Town of Malabar.

**Section 6. Severability.**

Should any section, phrase, sentence, provision, or portion of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

**Section 7. Effective Date**

This Ordinance shall take effect October 1, 2022.

**Section 8. Adoption.**

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

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

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 15th day of August, 2022.

1<sup>st</sup> Reading: 8/01/2022  
2<sup>nd</sup> Reading: 8/15/2022

By: TOWN OF MALABAR

\_\_\_\_\_  
Mayor Patrick T. Reilly,  
Council Chair

(seal)

**ATTEST:**

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

Approved for Legal Sufficiency:

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

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 8.b.  
Meeting Date: August 15, 2022

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

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**SUBJECT: 2<sup>nd</sup> Reading /Adopt Ord 2022-09 Extend Franchise on Water Utility for an additional ten year term at 6%**

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### **BACKGROUND/HISTORY:**

Attorney Bohne revised Ord 2012-55 that initially set up the franchise of 6% payable to the Town by Palm Bay Utilities. This was done when Malabar sold the utility to PBUC. It was set to expire on 8/20/2022.

Council approved the first reading of this ordinance extending the franchise term for an additional ten years and maintaining the current fee of six percent.

This was legally advertised in Florida Today on 8/4/2022 for a Public Hearing at this meeting.

### **FINANCIAL IMPACT:**

The General Fund revenue received from this is approximately \$6,900.00 annually.

### **ATTACHMENTS:**

Ord 2022-09 extending franchise

### **ACTION OPTIONS:**

Action on 2<sup>nd</sup> Reading and adoption of Ord 2022-09

## ORDINANCE 2022-09

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA EXTENDING THE WATER AND SEWER FRANCHISE WITH THE CITY OF PALM BAY AS ESTABLISHED IN ORDINANCE 2012-55; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Malabar, Florida recognizes that the Town of Malabar and its citizens need and desire the continued benefits of water and sewer service; and

**WHEREAS**, the City of Palm Bay operates a public utility which has the demonstrated ability to supply such services; and,

**WHEREAS**, the City of Palm Bay and the Town of Malabar desire to extend the Water and Sewer Franchise Agreement established in Ordinance 2012-55; and,

**WHEREAS**, the Town Council of the Town of Malabar deems it to be in the best interest of the Town of Malabar and its citizens to enter into the Franchise Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA:**

### **SECTION 1. Franchise Created.**

**Section 1.** This Ordinance is enacted pursuant to the provisions of Chapter 166, Florida Statutes, and other applicable provisions of law. Nothing herein is intended to conflict with the provisions of the Agreement of Purchase and Sale of Water and Wastewater System; Grant of Exclusive City Services Easement; and Bill of Sale (collectively the "Settlement Agreement") executed between the Town of Malabar and the City of Palm Bay dated September 19, 2012. Should there be a conflict between this Ordinance and the Settlement Agreement, the provisions of the Settlement Agreement shall control.

**Section 2.** There is hereby granted to the City of Palm Bay (hereinafter called the "Grantee"), for the period of ten (10) years from the effective date hereof, the exclusive right, privilege and franchise (hereinafter called "franchise") to occupy, to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Malabar, Florida, and its successors (hereinafter called the "Grantor") without limitation and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying water and sewer services to the Grantor.

**Section 3.** The facilities of the Grantee shall be installed, located, or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable ingress and egress to abutting property. It is the intent of the foregoing provision that all lanes of travel shall remain accessible for use by vehicular traffic. To avoid conflicts with traffic, the location and relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations, as revised, repealed or promulgated from time to time, with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient water and sewer service to all of its customers, and (c) shall not require the relocation



of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or other work changing the configuration of the paved, or if the public right-of-way is unpaved, on the traveled portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation.

**Section 4.** The Grantor shall in no way be liable or responsible for any accident, personal injury, property damage or any claim or damage that may occur in the construction, installation, operation, removal, repair, relocation, or maintenance by the Grantee its employees, agents, contractors, subcontractors, sub-lessees, or licensees, in connection with or relation to its facilities hereunder. The acceptance of the franchise granted pursuant to this Franchise Agreement by the Grantee shall be deemed an agreement on the part of the Grantee to indemnify the Grantor, its officials, employees, and agents, and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee or other third party arising from the construction, installation, operation, removal, repair, or maintenance of its facilities hereunder. The Grantor agrees that neither it nor its officers, employees, or agents, all in their official capacity, shall be indemnified to the percentage of its or their fault in an accident or other occurrence that Grantor or its officers, employees, agents, or volunteers, all in their official capacity, is responsible for in any incident for damages or injuries (including but not limited to injury or death) arising from the gross negligence and wanton, willful, and intentional misconduct of the Grantor or its officers, employees, agent, or volunteers. For an additional Ten Dollars (\$10.00) paid to the Grantee, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantee, the Grantee agrees that it has received sufficient consideration for its agreement to indemnify the Grantor as set forth above.

**Section 5.** As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 30 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which will equal 6% (six percent) of the Grantee's billed revenues (which also include connection/disconnection charges, impact fees, readiness-to-serve charges, demand charges, meter charges, and the like), less actual write-offs, from the sale of water to residential, commercial and industrial customers within the incorporated areas of the Grantor for the monthly billing period.

**Section 6.** Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require. Such final determination by a court of competent jurisdiction, including any final appellate determination or ruling, shall allow Grantor to proceed with its choice of remedies, provided, however, that the Grantor may, in its discretion, grant such additional time to the Grantee for compliance as the Grantor determines are in the best interests of Grantor and Grantor's citizens. Non-substantial or non-material defaults or failures by the Grantee shall be remediable pursuant to any available legal remedies.

**Section 7.** Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use

of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

**Section 8. Service Rules and Regulations.** Grantee is duly empowered to establish, amend, and enforce Service Rules and Regulations for its operations to the extent that they do not conflict with this Ordinance or the Settlement Agreement, without prior approval of the Grantor provided:

- a. They have been filed with the Town Manager of the Grantor, and
- b. They are not unjust, inequitable, or discriminatory.

Nothing in this Section prohibits the Grantor from challenging the Service Rules and Regulations on the basis of unreasonableness, discrimination, or inconsistency with this agreement.

**Section 9. Work in Public Areas.** a. All work performed in Public Areas by Grantee shall be done in a workmanlike manner, and within reasonable times, in accordance with the ordinances, rules or other policies of the Grantor.

b. If the Grantor deems it necessary or advisable to connect fire hydrants or other devices to combat fire, no charge shall be made to the Grantor or the respective fire department for the connection. This does not prohibit Grantee or any governmental entity from charging a private developer for such cost.

c. Cost of removing or relocating of lines or facilities from the Public Areas at the request of the Grantor shall be borne by Grantee, unless otherwise agreed by the Grantor and Grantee. This does not prohibit Grantee, or any governmental entity from charging a private developer for such cost.

**Section 10. Ownership of Lines and Equipment.** a. All water supply facilities used, useful or held for use in connection with supply of water service under the terms of this franchise and installed and furnished shall remain the sole property of Grantee.

b. No person or entity shall have the right to connect to the facilities or to obtain any water services furnished by Grantee, except with the consent of and upon full compliance with the Service rules and Regulations of Grantee and upon payment of any contribution in aid of construction, connecting charges, fees or rates which may be established and required. No waiver of rates or charges may be granted by Grantee where to do so would result in discriminatory rates or charges.

**Section 11. Assignment.** This franchise shall not be assigned or transferred by Grantee, without first obtaining the written consent of the Grantor. Consent shall be granted only upon a showing that it is in the best interests of the ratepayers and the residents of the Service Area, and that the assignee is fully capable of and willing to perform fully and in a timely manner, all

obligation contained in this agreement. The Grantor shall act upon a written application under this paragraph within 120 days after it is filed by Grantee and the proposed assignee.

**Section 12. Grantor Actions.** The Grantor agrees to adopt or amend all legislation and to take all actions reasonable and necessary for the protection and enforcement of Grantee's rights under this agreement.

**Section 13. Compliance with Other Law; Plans; Permits.** a. Grantee will conduct its operations in such a manner as to comply with any local, state, or federal laws, rules and regulations which may apply to its business.

b. Grantee will submit all plans for future installations to the Grantor.

c. Grantee will obtain any permits required by the Grantor and will be responsible for having all work performed by duly licensed persons or entities.

d. The Grantor shall have the right to inspect the work or the facilities in their respective Service Areas to see that they are constructed according to applicable plans, specifications and requirements.

**Section 14. Reservation of Rights.** Except as otherwise set forth in this agreement, the Grantor reserves all other rights granted to them by Florida law.

**Section 15. Failure to Comply.** Failure on the part of Grantee to comply in any material respect with the provisions of the franchise shall be grounds for forfeiture of the grants contained herein. However, no such forfeiture shall be exercised until written notice of such failure to comply has been given. Upon receipt of such notice, Grantee shall have 90 days within which to comply or show cause for its failure to do so.

**Section 16. Purchase of Property.** Grantee hereby grants to the Grantor the right of first refusal prior to any sale of the assets of Grantee within the Service Area to any other person or entity. In the event of a proposed sale Grantee shall offer the assets to the Grantor on the same terms and conditions as contained in the proposed sale, and the Grantor shall have 90 days in which to exercise the right of first refusal.

**Section 17. Commitment to Provide Service.** Grantee agrees that it will use its best efforts, skill, and experience to provide first-class central water supply and distribution and wastewater service to the Service Area described herein.

**Section 18.** That the Grantor and Grantee agree that the Franchise Agreement created by this ordinance and Grantee's acceptance hereof, shall terminate by its own terms at 12:01 a.m. ten (10) years after the effective date of the Franchise Agreement.

**Section 19.** The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained.

**Section 20.** The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

**Section 21.** As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance.

**SECTION 2. Effective Date.** This Ordinance shall be effective upon the date which Grantee files an acceptance with the Town.

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

- Council Member Marisa Acquaviva
- Council Member Brian Vail
- Council Member Steve Rivet
- Council Member Dave Scardino
- Council Member Mary Hofmeister

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 15th day of August 2022.

**BY:**

**TOWN OF MALABAR**

\_\_\_\_\_  
Mayor Patrick T. Reilly  
Council Chair

First Reading: 08/01/2022  
Second Reading: 08/15/2022

ATTEST:

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

(seal)

APPROVED as to form and content:

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

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 10.a.**  
**Meeting Date: August 15, 2022**

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

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**SUBJECT: Non-Binding Referendum Question**

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### **BACKGROUND/HISTORY:**

On August 1, 2022 the Town Attorney provided Council with a legal opinion regarding their legal requirements for setting the millage rate. The Town has a growing list of operational and capital improvement needs; property taxes are one of the few revenue sources that can be adjusted by the Town Council to meet those needs. After discussion the direction was given to draft a resolution calling for a non-binding referendum election to determine if the Town should adopt a specified millage rate for the fiscal year beginning October 1, 2023.

A non-binding referendum election is one method to provide transparency and seek input from the voting population to show support for or against certain decisions within the Town Council's purview. The non-binding aspect of the election means that ultimately the final decision still rests on the governing body. The result of the election simply provides additional public input for the decision-making process that may otherwise not be received. The election results do not bind the Town Council to any specific action.

While Town Staff is not recommending any specific millage rate, based on budget workshop and other discussions current revenue sources are insufficient to keep up with the operational and capital improvement desires of the Town Council. Increasing the millage rate would provide the Town with additional financial resources to meet growing demands at an acceptable service level and address long discussed capital improvement projects such as roadway and stormwater infrastructure.

For the fiscal year beginning October 1, 2022 the rollback rate is 2.2565, +10% over roll back rate is 2.4821 (as used at the last budget workshop), maximum proposed rate 4.5001

Revenue examples based on current property value (\$343,540,014):

3.5000 mills provides \$1,202,390  
4.0000 mills provides \$1,374,160  
4.5001 mills provides \$1,545,964  
5.0000 mills provides \$1,717,700

### **ATTACHMENTS:**

Resolution 16-2022

### **FINANCIAL IMPACT:**

None

### **ACTION OPTIONS:**

Motion to approve Resolution 16-2022 including language describing a millage rate of \_\_\_\_ for the fiscal year beginning on October 1, 2023



RESOLUTION 16-2022

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A NON-BINDING REFERENDUM ELECTION TO DETERMINE IF THE TOWN SHOULD ADOPT A MILLAGE RATE OF \_\_\_\_\_ FOR FISCAL YEAR 2023/2024 TO FUND CAPITAL IMPROVEMENTS AND OPERATION; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, The Town Council has determined that the ability to provide for necessary public works projects, road construction, road grading, park maintenance, fire protection, stormwater projects, Town Hall construction and improvements and other municipal services, capital improvements and operations authorized by law is dependent upon the town being able to fund such services; and,

**WHEREAS**, increasing the millage to \_\_\_\_\_ mills for fiscal year 2023/2024 would provide the Town the financial resources to provide such services to the Town residents at a level the Town residents deserve.

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

**Section 1.** A non-binding referendum election is hereby called and scheduled to be held concurrent with the general election on the 8th day of November, 2022, to determine whether the Town should adopt a millage rate of \_\_\_\_\_ for fiscal year 2023/2024. Such non-binding referendum election shall be held and conducted in a manner prescribed by law for all general elections. The place for voting in such non-binding referendum election shall be the usual place for voting in the Town in the general election to be held on the 8th day of November, 2022.

The polls shall be open at such voting place on the day of such non-binding referendum election during the hours specified by the general laws of the State of Florida. All duly registered voters residing within the Town shall be entitled to participate in and vote at such referendum election.

**Section 2.** The ballot to be used at such non-binding referendum election shall contain a statement of the proposed subject matter of the question and shall provide facilities for registered voters to vote on the non-binding referendum question regarding support for a millage rate of \_\_\_\_\_ for fiscal year 2023/2024. Said ballot shall be in substantially the following form:

**Non-Binding Referendum Ballot Question 2022  
Town of Malabar, Florida**

**Question 1. Would you support a millage rate of \_\_\_\_\_ for the fiscal year 2023/2024 to fund capital improvements and operations.**

The Town Council proposes a millage rate of \_\_\_\_\_ mills for fiscal year 2023/2024. The cost breakdown for a house with a taxable value of \$85,000.00 if the millage rate is \_\_\_\_\_ mills for 2023/2024 would be \_\_\_\_\_ in fiscal year 2023/2024.

\_\_\_\_ Yes  
\_\_\_\_ No

Instruction to voters: If you are in favor of the ballot question, mark the space to the left of the word "YES". If you are not in favor of the ballot question, mark the space to the left of the word "NO".

**Section 3.** The Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of Brevard County to include the above-described non-binding referendum question on the ballot for the general election to be held on the 8<sup>th</sup> day of November, 2022.

**Section 4.** This Resolution shall become effective five business days after its adoption.

The foregoing 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 David Scardino	_____
Council Member Mary Hofmeister	_____

This resolution was then declared to be duly passed and adopted this 15<sup>th</sup> day  
of August 2022.

(seal)

**TOWN OF MALABAR**

**BY:** \_\_\_\_\_  
Mayor/Chair, Patrick T. Reilly

ATTEST:

\_\_\_\_\_  
Debby K. Franklin, CMC  
Town Clerk/Treasurer

Approved as to form and content:

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

**Exhibit A**  
**NOTICE OF NON-BINDING REFERENDUM ELECTION**  
**TOWN OF MALABAR, FLORIDA**

Public notice is hereby given that on November 8th, 2022; the non-binding referendum question to determine whether the registered voters of the Town would support a millage rate of \_\_\_\_ for fiscal year 2023/2024 to fund capital improvements and operations will be submitted to the registered voters of the Town of Malabar and will appear on the same election ballot as a non-binding referendum on that date as one separate ballot question.

The Town Council of the Town of Malabar has adopted a resolution calling the said election on the following question:

AS TO QUESTION 1.

**Question 1. Would you support a millage rate of \_\_\_\_ for the fiscal year 2023/2024 to fund capital improvements and operations.**

The Town Council proposes a millage rate of \_\_\_\_\_ mills for fiscal year 2023/2024. The cost breakdown for a house with a taxable value of \$85,000.00 if the millage rate is \_\_\_\_ mills for 2023/2024 would be \_\_\_\_\_ in fiscal year 2023/2024.

Yes  
 No

Instruction to voters: If you are in favor of the ballot question, mark the space to the left of the word "YES". If you are not in favor of the ballot question, mark the space to the left of the word "NO".

The places of voting shall be the usual places of voting in the Town of Malabar during the general election scheduled on November \_\_th, 2022 and the polls shall be open from 7:00 a.m. to 7:00 p.m. on the said date. All duly qualified electors residing within the Town of Malabar shall be entitled to participate and vote in said referendum election.

The ballot containing the question to be so submitted to the electors shall be in substantially the following form:

**Non-Binding Referendum Ballot Question 2022  
Town of Malabar, Florida**

**Question 1. Would you support a millage rate of \_\_\_\_\_ for the fiscal year 2023/2024 to fund capital improvements and operations?**

The Town Council proposes a millage rate of \_\_\_\_\_ mills for fiscal year 2023/2024. The cost breakdown for a house with a taxable value of \$85,000.00 if the millage rate is \_\_\_\_ mills for 2023/2024 would be \_\_\_\_\_ in fiscal year 2023/2024.

Yes  
 No

Instruction to voters: If you are in favor of the ballot question, mark the space to the left of the word "YES". If you are not in favor of the ballot question, mark the space to the left of the word "NO".

For further information regarding this non-binding referendum election, contact the Town Clerk of the Town of Malabar. A minimum of five copies of this Resolution are on file at the office of the said Town Clerk at Town Hall, 2725 Malabar Road, Malabar, Florida, 32950, and are available for inspection upon request during normal business hours.

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 10.b.

Meeting Date: August 15, 2022

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

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**SUBJECT: Interview Potential Candidates for Clerk as directed at RTCM 8/1/2022**

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### **BACKGROUND/HISTORY:**

Applicants were reviewed and direction was given to contact Rinaldi and Kohler for interviews at the 8/15/2022 meeting.

Ms. Rinaldi informed Town that she has accepted another position.

Mr. Kohler is present.

### **FINANCIAL IMPACT:**

unknown

### **ATTACHMENTS:**

none

### **ACTION OPTIONS:**

Council Action