



REGULAR TOWN COUNCIL MEETING

Monday, September 27, 2021 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA

- a. **Approve Minutes of RTCM 09/14/2021**

Exhibit: Agenda Report Number 4a

Attachments:

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

- b. **Fire Department Surplus Materials for Sale or Donation**

Exhibit: Agenda Report Number 4b

Attachments:

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

- c. **Purchase of Mini-Excavator for PW**

Exhibit: Agenda Report Number 4c

Attachments:

- **Agenda Report Number 4c** (Agenda_Report_Number_4c.pdf)

5. ATTORNEY REPORT

6. STAFF REPORTS

- a. **Manager**
 - b. **Clerk**
 - c. **Annelie Harvey on Malabar Market**

Agenda Report Number 6c

Attachments:

- **Agenda Report Number 6c** (Agenda_Report_Number_6c.pdf)

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: 6

a. 2nd Public Hearing: Approve Millage Levy for FY 2021/2022 (Ordinance 2021-17)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE MILLAGE RATE OF 2.4899 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8a

Attachments:

- **Agenda Report Number 8a** (Agenda_Report_Number_8a.pdf)

b. 2nd Public Hearing: Approve Budget for FY 2021/2022 (Ordinance 2021-18)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE BUDGET OF \$3,338,915.00 FOR THE FISCAL PERIOD FROM OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8b

Attachments:

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

c. Amend Article XVI Related to Requiring Road Dedication (Ordinance 2021-12)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVI SUBDIVISIONS; AMENDING SECTION 1-16.4 PERTAINING TO ROAD DEDICATION AND REQUIRED LANGUAGE IN SUBDIVISION COMMUNITY ASSOCIATION RESTRICTIVE COVENANTS REGARDING MAINTENANCE OF ROADS, STREETS AND RIGHT OF WAYS; AMENDING SECTION 1-18.7, PERTAINING TO PROCEDURE FOR ACCEPTING ROAD DEDICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8c

Attachments:

- **Agenda Report Number 8c** (Agenda_Report_Number_8c.pdf)

d. Amend Article XV Relating to Tree Protection and Restoration (Ordinance 2021-19)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATED AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTION 1-15.8 AND 9 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8d

Attachments:

- **Agenda Report Number 8d** (Agenda_Report_Number_8d.pdf)

e. Amend Article V Related to Excavation and Fill Procedures (Ordinance 2021-20)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROL MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8e

Attachments:

- **Agenda Report Number 8e** (Agenda_Report_Number_8e.pdf)

f. Amend Article VII Related to Procedures for Site Plans (Ordinance 2021-21)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8f

Attachments:

- **Agenda Report Number 8f** (Agenda_Report_Number_8f.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

ORDINANCES:0

RESOLUTIONS:0

MISCELLANEOUS:0

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

11. DISCUSSION/POSSIBLE ACTION

12. PUBLIC COMMENTS

General Items (Speaker Card Required)

13. REPORTS - MAYOR AND COUNCIL MEMBERS

14. ANNOUNCEMENTS

(2) Vacancies on the Trails and Greenways Committee

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.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on
09/21/2021 at 4:46 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.
Meeting Date: September 27, 2021

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

SUBJECT: Meeting Minutes on Consent Agenda

BACKGROUND/HISTORY:

Summary of Council actions at the Town Council Regular Meeting Minutes

ATTACHMENTS:

- Draft Minutes of RTCM Minutes of 09/14/2021

ACTION OPTIONS:

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 14, 2021, 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 Vail led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL
	DAVID SCARDINO
	DANNY WHITE
	LISA MORRELL
	KARL BOHNE excused
	DEBBY FRANKLIN

TOWN MANAGER: (ITM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For the record the Fire Chief Mike Foley is also present.

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: CM White to remove 4.c. from Consent agenda. No objections. The Union Agreement is moved to 12.j.

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 8/16/2021

4.a. Budget WS Mtg Minutes of 8/16/2021 & 8/30/2021

4.b. Surplus Material for sale or donation

4.c. Union Agreement with Fire Department IAFF (removed and moved to 12.j.)

MOTION: CM Acquaviva / CM Vail to approve. Vote: All Aye.

5. ATTORNEY REPORT: Attorney excused.

6. BCSO REPORT: none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: none

7.b. Park & Recreation Board: Chair Eric Bienvenu – None

7.c. P&Z Board: none.

8. STAFF REPORTS:

8.a. Town Manager – ITM Morrell informed Council that the playground was inspected and passed today. It is nicely done. Hunter Lane will be paved this week or next week. The Geotech came back real solid. She has submitted a DEP grant for stormwater projects recommended by SAI. 1.2 mil for first year and 4.5 for the next 3 years. Funded from fed govt. In good position since we had shovel ready. No match. Got SW masterplan final report to review and will bring back to Council and then submit to DEP for close out of revolving loan. ENT trailhead is progressing well. Re: FallFest – do you want to proceed or plan for a soft event or cancel. TPO and T&G will not be having their mobility ride. CM Acquaviva asked if we can combine with the marketplace event. ITM Lisa wants Council direction since many of the cities are cancelling or postponing. Discussed if they should ask Atty. No, it is up to us as a Council. CM Scardino said we will be dealing with Covid in Spring as well so go forward with plans. Outdoors is better than indoors. CM Vail is ok with it. ITM Lisa said she will be talking more about this on the 27th. She has not advertised yet, but we have planned for it. Mayor said we have full Council support.

8.b. Fire Chief: Handed out August report. Went over the details.

8.c. Clerk – There will be an opening on the P&Z Board in November when Mary Hofmeister is sworn in. There has already been an application submitted. There is also interest from another person that has not lived here for one year. To run for Council, you are only required to live in Town

for six months, but to sit on an appointed board, there is a one-year requirement. Is there any interest by Council to reduce that to six months or eliminate it entirely? No direction given.

The legal advertisements required by F.S. for the budget will run in the paper on September 23, 2021. She sent the legal to the DOR TRIM for review and approval before sending to the paper. No problems foreseen.

The Fee Reso (Agenda Item 12.e.) that was originally posted did not include the latest version that included the fee added for residential and commercial fill. They uploaded the corrected resolution online to include the fee info regarding the fill permitting. Website was corrected today but copies were made for each CM for tonight's meeting. The new fees in the Reso correspond to the ordinances up for Council action.

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. None.

10. PUBLIC HEARINGS: 5

10.a. SW Assessment Roll for Collection for FY 2021/2022 (Reso 08-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL FOR FY2021/2022; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Reso read by title only. Franklin said the final estimate received from the PA office is a little higher at \$129,089.58. The final number is attached to the Resolution.

PH opened. None. PH closed.

MOTION: CM Rivet / CM Vail to Adopt Reso 08-2021. Discussion: none.

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

10.b. First Reading: Approve Millage Levy for FY 2021/2022 (Ord 2021-17)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.4899 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.b.

Ord read by title only. Franklin said per F.S. 200.065 we are required to state that the millage proposed for the 2021/2022 budget is 2.4899 and represents a ten percent increase over the RBR of 2.2503 which is needed to fund the expenses commencing 10/1/2021.

PH opened. None. PH closed.

MOTION: CM Acquaviva / CM White to Adopt Ord 2021-17. Discussion: none.

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

10.c. First Reading: Approve Budget for FY 2021/2022 (Ord 2021-18)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$3,338,915.00 FOR THE FISCAL PERIOD FROM OCTOBER 1, 2021, THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.c.

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Acquaviva / CM Rivet to Adopt Ord 2021-18. Discussion: CM White is saying to the audience that the 3.3 mil budget is not the normal budget. It includes about 750K from Federal ARP money and TIFT sources.

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

10.d. 2nd Reading: Amend Chapter 13 to Provide for Road Closures and Vacates (Ord 2021-15)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ADDING A NEW SECTION 13-26 PROVIDING DEFINITIONS AND PROCEDURES FOR TEMPORARY CLOSURE AND/OR VACATION AND ABANDONMENT OF PUBLIC RIGHTS-OF-WAY; DELETING IN FULL SECTION 1-12.8 IN ARTICLE XII; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 10.d.**

Ord read by title only. ITM Lisa addressed Council on recent requests. With passage of Ord tonight there will be three letters going out to residents explaining the process for Public Hearing to consider such requests; all the requirements will be communicated to residents. For the Town to open a closed ROW can be done by Council by legislative action.

PH opened. None. PH closed.

MOTION: CM Scardino / CM Vail to Adopt Ord 2021-15.

Discussion: no other discussion.

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

10.e. Amend Comp Plan to Provide Property Rights Element (Ord 2021-16)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02; ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS; REQUESTING EXPEDITED STATE REVIEW; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 10.e.**

Ord read by title only.

PH opened. None. PH closed.

MOTION: CM Rivet / CM White to approve for Transmittal to the State DEO of Ord 2021-16.

Discussion: no additional comments.

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

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS; HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 4

12.a. Amend Article XVI Related to Required Road Dedication (Ord 2021-12)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVI SUBDIVISIONS; AMENDING SECTION 1-16.4 PERTAINING TO ROAD DEDICATION AND REQUIRED LANGUAGE IN SUBDIVISION COMMUNITY ASSOCIATION RESTRICTIVE COVENANTS REGARDING MAINTENANCE OF ROADS, STREETS AND RIGHT OF WAYS; AMENDING SECTION 1-18.7, PERTAINING TO PROCEDURE FOR ACCEPTING ROAD DEDICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.a.

Ord read by title only.

MOTION: CM Vail / CM Acquaviva to approve first reading of Ord 2021-12.

Discussion: CM Acquaviva asked about the 60/40 plan for existing subdivisions. ITM Lisa said it is not retroactive and would not apply to PUD types. This was reviewed by P&Z on 8/11/2021.

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

12.b. Amend Article XV Related to Tree Protection and restoration (Ord 2021-19)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATED AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTION 1-15.8 AND 9 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.b.

Ord read by title only. ITM Lisa said this passed unanimously from P&Z – kind of housekeeping to put the types of clearing and to add a type V, nothing in code to clear. Issuing lots of zero charge type 4 permits. To clear and not take down trees should still require a permit. Give them the permit and inspect the work before and after and sets a fee. CM Rivet asked about dead trees; they are included in Type 4 and is also authorized by State. CM Acquaviva said it is a good thing.

MOTION: CM Scardino / CM White to approve first reading of Ord 2021-19.

Discussion: CM Scardino said increase the fines or enforce the fines we have. Same holds for land fill on weekends-should have more strict enforcement. This is a good start.

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

12.c. Amend Article V Related to Fill and Erosion control (Ord 2021-20)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.c.

Ord read by title only. ITM Lisa said this goes with 12.d. These all go together. We have had several standards interpretations, - think it is easier to put it in simple language. More than 30 yards or two dump trucks will require a permit. 30 yards is plenty for a garden. Revise the code and make it simple and you are going to need a permit. Make it easy and P&Z also approved unanimously. CM White asked about a time limit. ITM Lisa said this is the first reading, and we can make the change. Outside the calls for road grading – this is the biggest complaint he has heard sitting on Council. A permit is valid for 6 months. CM Scardino would like it written in the language of Code as well.

MOTION: CM White / CM Scardino to approve first reading of Ord 2021-20. Discussion: none.

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

12.d. Amend Article VII Related to Site Plan Regulations (Ord 2021-21)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL

AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.d.

Ord read by title only.

MOTION: CM Acquaviva / CM Rivet to approve first reading of Ord 2021-21. Discussion: none

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

RESOLUTIONS: 2

12.e. Amend Fee Resolution (Reso 09-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR AN UPDATED APPLICATION FEE REQUIREMENTS FOR LAND CLEARING AND TREE REMOVAL ACTIVITIES FOR BOTH RESIDENTIAL AND COMMERCIAL PURPOSES; LAND FILL APPLICATION FEES; CLARIFICATION ON MINOR SITE PLAN FEE TO COMPLY WITH ORDINANCE; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.e.

Reso read by title only.

MOTION: CM Rivet / CM Acquaviva to approve Reso 09-2021.

Discussion: ITM Lisa said the residential fees stayed low and the commercial – if you want to increase then we would have to do the feasibility study. CM White said just allow them to get the permit and follow the process. CM Scardino wants to increase fines. CM Rivet gave example of process where the Town doesn't collect. ITM Lisa said we are bound by State laws and must have a due process. She suggested changing the Code to add language to say a violator can't pull other permits until fine is paid. CM Scardino asked if we should have an alternate attorney.

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

12.f. Recognize the Florida League of Cities Advocacy Team (Reso 10-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA COMMENDING THE FLORIDA LEAGUE OF CITIES (FLC) AND THE LEGISLATIVE AFFAIRS TEAM FOR THEIR HARD WORK REPRESENTING FLORIDA'S MUNICIPALITIES DURING THE 2021 FLORIDA LEGISLATIVE SESSION

Exhibit: Agenda Report No. 12.f.

Reso read by title only.

MOTION: CM White / CM Vail to approve Reso 10-2021.

Discussion: Franklin explained the challenges facing cities last legislative period with so many bills, and COVID and remote meetings, etc. they did a fantastic job keeping cities informed of legislation affecting them. ITM Lisa said there are already 78 bills filed before the next session even starts and the Brevard Delegation will be meeting in Viera on Sept 29, 2021, in preparation of the next session.

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

MISCELLANEOUS: 2

12.g. Waste Management (WM) Memorandum of Understanding (MOU) for Interim Service Period from October 2021 March 2022

Exhibit: Agenda Report No. 12.g.

Discussion: Introduction by ITM Morrell. Two items re: solid waste. WM current contract is ending on 9/30/21. This is short term bridge agreement but does have a price increase in monthly cost and provides a reduction in the quarterly franchise fee to offset part of the cost.

CM Rivet noted the price this is about two times what they are now paying. If the transition to new vendor happens sooner than three months, we can cancel.

MOTION: CM Vail / CM Acquaviva to approve MOU. **VOTE:** All Ayes.

12.h. Solid Waste RFP Bid Recommendation and Authorization to Negotiate

Exhibit: Agenda Report No. 12.h.

Discussion: Introduction by ITM Lisa. She went over the committee of volunteers. Happy to use them again. They came in prepared. Received three responses. No bid from WM. All of this is published on the website. Republic was complete but pricing was not complete but that was not reviewed by committee, so she did not eliminate. Waste Pro was complete on both items. They heard a lot about how it was so expensive about solid waste and yard waste. Really only had one complete submittal and the committee selected the same vendor. She forwarded to TM Matt, and he was pleased and supports this request to award to the recommended vendor of Waste Pro and authorize negotiations, that is why she worded the agenda report as through TM Matt Stinnett.

MOTION: CM Vail / CM Scardino to approve Committee's recommendation and authorize ITM Lisa to negotiate with Waste Pro vendor.

VOTE: All Ayes.

12.i. Amended Florida Communities Trust (FCT) Grant Requirements re: Fern Creek

Exhibit: Agenda Report No. 12.i.

Mayor asked Clerk to introduce. Franklin stated the amended FCT grant to release the Fern Creek property to FDOT also included a requirement to provide specific improvements to the remainder of the FCT property. There was some misunderstanding – we originally thought the 40K from DEP was for the land and minor improvements we had done at Fern Creek. But we must use the money to build specific things on the remainder of the FCT property so either the Cameron Preserve, Eschenberg Sanctuary, or the Disc Golf Sanctuary. I provided a timeline of the actions by Staff. This amendment was not brought before Council last year for explanation or approval before signing. We felt it was important to bring to Council's attention as this means the 40,445, we received and put into unrestricted fund balance for Park and Trail use must now be allocated to a restricted fund balance for specific improvements on the FCT property. Since none of these improvements were brought before Council there may be some need for future action by Council to amend the Grant Agreement to accommodate improvements that are more in line with the Town's ability to maintain. There is no Council action requested at this time.

12.j. Union Agreement with Fire Department IAFF

CM White said he was concerned about Section 35 that seems to require the Town to guarantee the union workers employment. ITM Lisa explained that if we gave up FD then the new vendor would have to employ the union members. Same are when PB took over parks from county and they had to keep employed employees. That section is not part of the contract that was up for negotiation; that was in the original. CM Vail said that ITM Lisa's explanation is how he recalls the original discussion. CM White said the FD is 750K. The first year's new wages are included in the budget. Brief discussion on rates charged by County in G-V. Mayor said they pay 4.5 times what we pay for fire assessment. CM White had looked at it 4 years ago. He is ok with the explanation. He does have concerns with the overall cost of FD. CM Acquaviva said the union is new to her since she served up until 2016. She was here when it was a volunteer FD and Chief got stipend. Talking in general they must ensure residents' safety. She doesn't see it as a comparison for either fire protection or road improvements. CM Vail said the union has been a positive improvement and provides much more training. CM Acquaviva said we need the stability since volunteers are scarce.

Motion: CM Vail / CM Scardino to approve to union agreement. **Vote:** All Ayes.

13. DISCUSSION/POSSIBLE ACTION: 0
14. PUBLIC COMMENTS: General Items (Speaker Card Required) None:
15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: nothing

CM Vail: nothing

CM Rivet: nothing

CM White: nothing

CM Scardino: Still interested in getting an alternate attorney for attending these meetings and the P&Z meetings. CM Acquaviva said Karl does a good job. Mayor said there is no value added to have atty at P&Z. ITM Lisa said she would like Council to rather give direction to Atty Bohne to provide an alternate or perhaps a list of potential alternates. Mayor asked if they need a motion. No, Staff will send an email to Atty Karl Bohne.

Mayor Reilly: nothing

16. **ANNOUNCEMENTS:** Openings on T&G Committee.

17. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:50 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 09/27/2021

DRAFT

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: **4.b**

Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Fire Department Surplus for Sale or Donation

BACKGROUND/HISTORY:

In accordance with Florida State Statute Chapter 274.05 entitled TANGIBLE PERSONAL PROPERTY OWNED BY LOCAL GOVERNMENTS, staff is requesting Town council to classify the attached list of staff identified surplus equipment of the Town of Malabar deemed as surplus property for disposal through public sale.

Town Staff will publicly offer the property for sale through GovDeals, an Auctioneer Service and Related Products contract number R100601 with Omnia Partners National Cooperative Purchase Contract vendor; previously authorized for use by Town Council at the November 2, 2020, Regular Town Council Meeting.

Within FSS 274.05 Surplus Property: "the governmental unit may offer surplus property to other governmental units in the county or district for sale or donation or may offer the property to private nonprofit agencies as defined in FSS 273.01(3) by sale or donation". The Fire Department has included in the list attached for Town Council's consideration to deem as surplus.

ATTACHMENTS:

2021 Fire Department Surplus Listing

FINANCIAL IMPACT:

No direct expenses other than staff time to prepare lots for auctions and pickup with winning bidder; all surplus sale proceeds will return to the fund where originally purchased.

ACTION OPTIONS:

Motion to surplus the attached list of government property as surplus for sale and donation per FSS. 274.05 using GovDeals.

**Town of Malabar
Surplus Inventory Form**

Department Submittal Print Name Sign & Date: **Nickolas Acevedo/Beau Pickard**

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.C.

Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Procurement of Mini-Excavator utilizing the Florida Sherriff Association (FSA) Cooperative Purchasing Program utilizing National Equipment Dealer Inc, DBA Earthmovers Construction Equipment, 3401 Oleander Ave, Fort Pierce, Florida 34982, an awarded contract holder.

BACKGROUND/HISTORY:

The FY22 budget includes funding to procure a mini excavator within the Stormwater and Streets and Roads capital outlay budget. Staff has acquired a quote from Earthmovers Construction Equipment, awarded FSA contractor, for the appropriately sized equipment with options required to perform stormwater ditch and swale maintenance and project improvements as well perform other general fund projects that require a smaller equipment without the need to rent equipment on an as needed basis. The addition a mini-excavator and attachments will provide more efficient maintenance activities for swales and less project overhead for mobilization of town owned equipment by Public Works Staff. There is a limited supply of construction equipment available for the next year due to delays of cargo ports and logistic delays by the pandemic, currently (2) machines are available at this time.

In accordance with The Town of Malabar Code of Ordinances, ARTICLE V. entitled PURCHASING, Section 2-101 - Competitive bids:

“The town administrator is authorized to piggy back contracts for any purpose where the stipulated consideration thereunder to be paid by the town exceeds two thousand dollars (\$2,000.00) awarded by any other governmental entity so long as the bidding process utilized by the other governmental entity in awarding such contract is consistent with the competitive bid procedures outlined in this section. “

Staff has had an opportunity to utilize the R55-9A mini-excavator over the last two weeks, as a trial, with much success and positive feedback by the equipment operators. The purchase of the Hyundai R55-9a machine build and includes options of a 26” Standard Bucket with hydraulic thumb, a 48” Ditch Cleaning Bucket, and a Brush hound Cutter Head, totaling \$79,051.50 T

The Brush hound cutter attachment relieves the additional purchase for a replacement Ferri offset tow behind mover that has failed. A replacement Ferri mowing head quoted to cost \$15,000. The Brush hound cutter line item is \$11,960, which provides an overall savings of approx. \$5,000 as opposed to a more expensive tractor tow behind offset mower.

Staff is requesting the Town Council to consider allocating FY22 budgeted funds to procure the item on October 1st, 2021, the new fiscal year, to procure a

FINANCIAL IMPACT:

FY22 Budget Stormwater 541.6400, \$46,964.05

FY22 Budget Streets and Roads 541.6410, \$20,127.45.

FY22 Budget Streets and Roads 541.4600, \$11,960.00

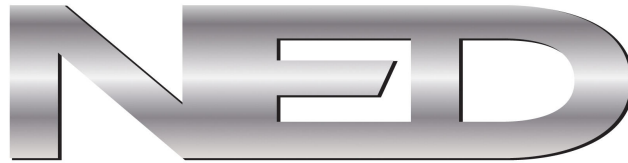
ATTACHMENTS:

- Town of Malabar R55 w.cutter Quote.PDF

- Town of Malabar R55 itemized.PDF

ACTION OPTIONS:

Motion to approve the purchase of a Hyundai R55-91 Excavator, (2) Bucket options, and (1) Brush cutter attachment using the Florida Sherriff Association (FSA) Cooperative Purchasing Program, contract # FSA20-VEH18.0 Heavy Equipment, utilizing awarded contractor National Equipment Dealers, LLC.



NATIONAL EQUIPMENT DEALERS, LLC.

Quotation / Order
September 1, 2021

Town of Malabar
Ms Lisa Morrell
Mr Tom Milliore

Ship to:
Town of Malabar
2725 Malabar Road
Malabar, Florida

Thank you for this opportunity. We would like to offer you the following for your purchase consideration. If you have any questions please do not hesitate to contact us.

NEW Hyundai R55-9A Excavator

- Yanmar 4TNV98C, Tier 4 Final, 65.1 HP Diesel Engine
- 9'10" Boom and 6'3" Long Arm
- Pilot-Operated Adjustable Joystick
- Extra CWT
- Double Acting Piping Kit
- Viscous Fan Clutch
- Dig Depth: 12'6" Dig Reach: 20'2"
- 16" Rubber Tracks
- Pattern Change Valve (SAE and ISO)
- Hyundai Dual Lock Quick Coupler plus 26" Bucket with Sidecutters
- Beacon on Top of Cab
- 3 Year / 3,000 Hour Standard Manufacturer's Warranty
- Hi Mate remote Management System for 5 Years
- Operating Weight: 12,900 lbs.
- All Weather Steel ROPS Cab with 360° Visibility
- Heating, Air Conditioning and Defroster
- Adjustable Suspension Seat with Heater
- Centralized Monitoring and [Rear View Camera](#)
- Radio / USB Player
- 4 Front Working Lights
- Battery Master Switch
- Two Outside Rearview Mirrors
- HYDRAULIC Dozer Blade
- 48" Ditching Bucket
- EX30 A4503 Brushhound Cutter Head (Installed)

Sale Price

\$ 79,051.50

Pricing based on FSA 20-EQU18,0 Heavy Equipment

CUSTOMER SIGNATURE

DATE

National Equipment Dealers, LLC dba Earthmovers Construction Equipment

PURCHASE ORDER #





Earthmovers Const. Equipment
3401 Oleander Ave
Ft Pierce FL 34982
Tel: 407-891-4956

New Hyundai R55-9A Excavator

TO: Town of Malabar DATE: 9/01/2021
 2725 Malabar Rd
 Malabar FL 32950
ATTN: Lisa Morrell Town Manager MUNICIPAL P/O #:
 Tom Milliore Equipment Manager P/O DATE:
PHONE: 321-727-7764 EST DELIVERY DATE: In Stock

Thank you for your continued interest in our Hyundai Construction Equipment
 This quotation lists the machine and a few basic specifications according to your request.

CODE	QTY.	DESCRIPTION	PRICE
	1	New Hyundai R55-9A	56,215.00
		Build Sheet / Specs Attached	
	1	Standard 26" Bucket / Hydraulic Quick Coupler / Hydraulic Thumb (Factory Installed)	5,631.10
	1	48" Fleco Ditch Cleaning Bucket (includes pins for quick coupler)	2,434.65
	1	EX30 A4503 Brushhound Cutter Head (installed and calibrated)	11,960.00
	1	2021 Steel / Freight / Fuel Surcharge (submitted to FSA but not posted)	2,810.75
	1	3 Year 3000 Hour Standard Manufacturers Warranty No Deductible - No Travel Time - No Mileage	Included

FOB: Ft Pierce

SENT BY: Lee Lassiter
 Municipal Sales Manager Florida
 National Equipment Dealers, LLC

DATE: 9/1/2021

QUOTE GOOD THROUGH: 10/15/2021

SPECIAL NOTES: Pricing Per Florida Sheriff's Association FSA20-EQU18.0 : Heavy Equipment

Trade In Equipment - Purchases herby bargains, sells and conveys unit Seller the above described Trade-In Equipment and certifies it to be free and clear of liens, encumbrances, and security interests except to the extend shown below.	I agree to pay all taxes and other charges and settle for the purchase price as follows:	
	1. Total Cash Price	-
	2. Trade Allowance / Down Pnt	-
	3. Unpaid Cash Payment	-
	4. Sales Tax N/A	-
	5. DOC fees or Charges	-
	6. Total Taxes and Fees	-
	7. Cash Due on Delivery	-
	In the event Buyer fails to pay any portion of the amount identified above, Buyer shall be responsible, and must reimburse Seller, for any costs (including litigation costs and attorney's fees) incurred by Seller collecting the outstanding balance. Any past due amounts owing under this Bill of Sale shall accrue interest at 1% % per month until the entire balance is paid in full	

- Title to or ownership of the Property shall not pass from Seller to Buyer, and Seller is not obligated to relinquish possession of the Property, until Seller is paid in full and all funds have cleared. In the event Buyer fails to make immediate payment, Buyer shall be in default under this agreement, and Seller may pursue any available remedy under applicable law. Buyer shall still be responsible for all unpaid rental charges associated with the rental of said Property through the completion of the sale
- Risk of loss of the Property shall pass to Buyer when Seller notifies Buyer that the Property is available for pick-up or shipment. If Buyer does not furnish shipping instructions, Seller will select the mode of shipping. In that situation, if Seller selects to ship the Property by carrier, risk of loss shall pass to Buyer when Seller makes the Property available to the carrier for shipment. Any charges to ship, load, unload, erect or dismantle the Property, and any demurrage or similar charges, are the sole responsibility of Buyer.
- To the full extent allowed by law, Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all (1) federal, state, municipal and local license fees and taxes of any kind or nature owing from Buyer in connection with the purchase of the Property, including without limitation, any and all excise, personal property, use and sales taxes; and (2) liabilities, obligations, losses, damages, and penalties incurred by, and claims, actions, and suits against, Seller which result from the sale of the Property to Buyer or in connection with Buyer's use, possession, or ownership of the Property.
- If and when Seller receives payment in full, Seller will assign to Buyer Seller's rights under any warranties provided to Seller by an applicable manufacturer or other third party, to the extent Seller has the right to assign such rights. Buyer agrees and understands that Seller makes no warranty regarding the condition of any machines, equipment, parts, and other goods (the "Property"), except as expressly agreed in a writing signed by NED. Seller DISCLAIMS all implied warranties, including the implied warranties of merchantability and fitness for particular purpose. Seller warrants only that (1) Seller is the true and lawful owner of the Property; (2) the Property shall be transferred to Buyer free and clear of all liens and encumbrances; and (3) Seller currently holds the right to transfer ownership of the Property to Buyer pursuant to the terms herein. Without limiting any language in this document, Buyer acknowledges that all used machines, equipment, and parts are sold "as is" with all faults.
- This contract shall be governed by the law of the State of North Carolina. The Mecklenburg and Davidson County, NC courts and the U.S. Western and Middle District courts of NC shall have exclusive jurisdiction over any claim filed in connection with this agreement, and Buyer waives the right to challenge jurisdiction and venue in the aforesaid courts.
- Notice is hereby given that National Equipment Dealers, LLC dba MAY-RHI, LLC has assigned to WTP Exchange, as part of a like-kind exchange, its rights (but not its obligations) to sell the equipment described in this sale agreement.
- Buyer acknowledges receipt of a Seller's standard Terms and Conditions of Sale. Seller's standard Terms and Conditions of Sale are incorporated into this document by reference. This document, including Seller's standard Terms and Conditions of Sale, constitutes the entire contract between the parties and no other verbal or written agreement exists. Seller makes no other representation or warranty apart from that contained herein. To the extent of any conflict between this document and Seller's standard Terms and Conditions of Sale, the conflict shall be resolved by giving Seller the greatest rights, and least responsibilities, reasonably inferable and legally possible.

Order Taken By: _____
 Seller Signature: _____

Purchaser Name: _____
 Purchaser Signature: _____

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.C

Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Malabar Community Market Report – Annalie Harvey

BACKGROUND/HISTORY:

The Community Market was approved by Town Council to utilize the Malabar Community Park by citizen volunteers to offer a venue for vendors to have informational and retail booths free of charge by vendors and by the volunteer group to organize and operated monthly on the 4th Saturday. The initial event on August 28 was held and widely attended by both vendors and the community. The second event was scheduled on September 25 with a Health and Fitness theme.

With the success of the event, Ms. Harvey and Interim Town Manager discussed options for moving the event to a Town Sponsored Event with booth registration and fees, advertisement, pre-event setup (ex. tents, portable sanitary facilities, signage, etc.), insurance liability coverage by the Town, and expenses of the event with the continued volunteers managing the Community Market.

For discussion and future Town Council action, revenues would require a fee resolution with a published fee for collection by the town for vendors attendance and registration; fee structure may also include discounts for registered 501.3c non-profit or other governmental agency, and or as directed. A budget amendment for revenues and planned expenditures shall be provided for consideration and approval by Town Council outlining event needs. A Town sponsored event in a public park will incur the umbrella of risk and liability for injuries and or damage.

Ms. Annalie Harvey will be present and provide additional information for Town Council discussion.

ATTACHMENTS:

FINANCIAL IMPACT:

ACTION OPTIONS:

As directed by Town Council discussion of the Community Market Report.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.a.

Meeting Date: September 27, 2021

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

SUBJECT: Setting Millage for Fiscal Year 2021 / 2022 (Ord 2021-17)

BACKGROUND/HISTORY:

The Florida Statutes lay out the requirements for local governments on how the annual budget process is approved by each governing body. The process requires the following steps:

1. Announce the FY 2021 / 2022 proposed millage of 2.4899 to levy on property values
2. State this is an increase of 10.00% over the rolled back rate of 2.2503
3. The final millage rate of 2.4899 is to fund the expenses commencing October 1, 2021 and ending September 30, 2022.

The Malabar Interim Town Manager submitted a balanced budget with a ten percent increase over the rolled back rate to fund the operational costs of the Town, provide for funding for:

- Recalculated personnel costs for the Town portion of insurance, FICA, WC and FRS
- Provided a 3% COLA to non-union employees
- Provided for negotiated pay increase for union FD Lts. and D/E
- Funded Special Projects Manager position 50/50 with General Fund and ARPA
- Increased legal from 30K to 60K
- Provides for FD Chief vehicle replacement with that vehicle going to PW
- Provides for LifePaks for FD – cardio monitor defibrator units
- Maintained funding for PW vehicle and road maintenance
- Provides funding for MCP restroom rehab
- Provides for new mini excavator for streets and stormwater maintenance
- Increases CIP paving fund to 160K from 66K
- Provides for two new Toro mowers with trade-in credit.

This will be advertised as required by law in the Florida Today newspaper on September 23, 2021.

FINANCIAL IMPACT:

Council directed the millage be set at 2.4899

ATTACHMENTS:

- Ord. No. 2021-17

ACTION OPTIONS:

Action on 2nd reading of Ord 2021-17

ORDINANCE 2021-17

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.4899 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN FOR THE PERIOD FROM OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

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

SECTION 1. The Town Council, in regular session duly assembled adopted the millage rate of 2.4899, to be levied for the General Fund upon all real and tangible personal property located within the boundaries of the Town of Malabar taxing authority.

SECTION 2. The final levy of 2.4899 mills will result in a 10.00% increase to the rolled back rate of 2.2503.

SECTION 3. This final millage rate of 2.4899 is to fund the general fund expenses for the fiscal year commencing October 1, 2021 and ending September 30, 2022.

SECTION 4. This ordinance shall become effective October 1, 2021, upon its adoption after the second public hearing.

This ordinance was moved for adoption by Council Member _____ and 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 Danny White	_____

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

First Reading: 09/14/21 Vote 5 to 0.
Second Reading: 09/27/21

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.b.
Meeting Date: September 27, 2021

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

SUBJECT: Budget for Fiscal Year 2021 / 2022 – Ord 2021-18

BACKGROUND/HISTORY:

The TRIM Notice mailed to all property owners in mid-August lists the dates and times for the first Public Hearings on the tentative millages and budgets for all agencies taxing property owners to provide them the opportunity to attend and be heard. This meeting date was selected by Malabar Council for that notice.

Council consensus during the budget workshop process was to:

- Commit budgeted funds to reserves for vehicle replacement.
- Commit budgeted funds to reserves for road resurfacing
- Provide pay increase as noted in the budget
- Provide funds for continued maintenance of Malabar Community Park
- Continue to Develop Long Range Plans for Funding Capital Improvements

This will be advertised as required by law on September 23, 2021.

FINANCIAL IMPACT:

As stated in attached budget documents

ATTACHMENTS:

- Ord 2021-18 setting FY 2021/2022 Budget at \$3,338,915.00

ACTION OPTIONS:

Action on 2nd reading of Ord 2021-18.

ORDINANCE 2021-18

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$3,338,915.00 FOR THE FOR THE FISCAL PERIOD FROM OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2022; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar has set forth the appropriations and revenue estimates for the budget for the period from October 1, 2021, through September 30, 2022; and in accordance with the laws of the State of Florida;

WHEREAS, The Town Council has held Public Hearings as required by F.S. 200.065.

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

SECTION 1. The Town Council, in regular session duly assembled adopt the Fiscal Year 2021/2022 Budget of \$3,338,915.00.

SECTION 2. This budget may be amended during the year, if necessary, by ordinance.

SECTION 3. This ordinance shall become effective on October 1, 2021, upon its adoption after the second reading and public hearing.

This ordinance was moved for adoption by Council Member _____ and 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 Danny White	_____

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

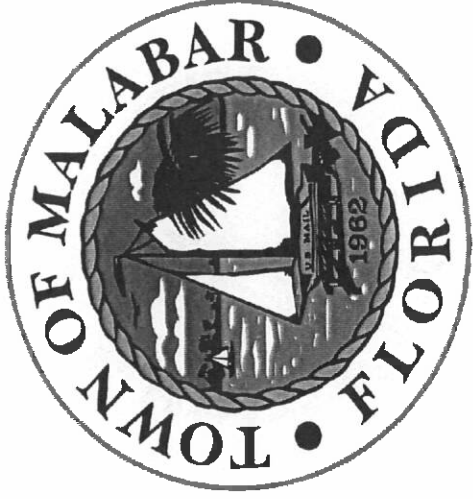
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

First Reading: 09/14/2021 Vote 5 to 0.
Second Reading: 09/27/2021



Budget Fiscal Year 2021/2022

First Public Hearing on 9/14/2021

Second Public Hearing on 9/27/2021

Millage adopted Ordinance 2021-17

Budget adopted Ordinance 2021-18

2021-2022 Budget

8/31/2021

ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 8/4/2021	Proposed FY 21/22	Notes
	Funding Sources						
31	TAXES	1,053,956	1,117,341	1,148,542	1,198,362	1,296,891	
32	PERMITS, FEES, & SPECIAL ASSESSMENTS	403,300	465,210	422,000	459,747	432,038	
33	INTERGOVERNMENTAL REVENUE	314,146	260,604	237,969	296,245	1,086,509	
34	CHARGES FOR SERVICES	69,122	50,608	53,885	44,210	64,722	
35	FINES AND FORFEITURES	80	175	150	360	400	
36	MISCELLANEOUS	178,253	133,989	168,053	315,614	140,080	
38	OTHER SOURCES	42,369	44,905	125,123	120,276	163,833	
	TOTAL REVENUE	2,061,226	2,072,832	2,155,722	2,434,814	3,184,473	
38 Cont.	RESERVED FUNDING/FINANCING	148,533	77,437	194,911	59,686	154,442	
	TOTAL FUNDING	2,209,759	2,150,269	2,350,633	2,494,500	3,338,915	

2021-2022 Budget

8/31/2021

ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 8/4/2021	Proposed FY 21/22	Notes
	EXPENDITURES	FYE	FYE	BUDGET	FYTD	Proposed	
		9/2019	9/2020	FY 20/21	Jun-21	FY 21/22	Notes
511	LEGISLATIVE	22,301	24,000	24,000	20,847	94,406	
512	EXECUTIVE	95,967	99,047	122,085	97,362	100,773	
513	FINANCE & ADMINISTRATIVE	168,879	194,266	208,877	188,789	222,748	
514	LEGAL	29,659	27,555	30,000	23,780	60,000	
515	COMPREHENSIVE PLANNING	14,580	3,475	5,000	892	3,500	
519	GENERAL GOVERNMENT	97,201	85,837	72,014	70,678	208,341	
522	FIRE CONTROL	646,675	655,900	687,600	511,705	720,322	
524	PROTECTIVE INSPECTIONS	114,201	152,277	201,526	136,158	235,942	
525	DISASTER RELIEF	24,371	220	0	1,101	797,610	
538	FLOOD CONTROL/SW MANAGEMENT	109,682	69,644	234,076	180,309	218,500	
541	STREETS AND ROADS	444,972	411,858	679,646	418,408	566,605	
572	PARKS AND RECREATION	71,853	66,253	91,809	155,912	104,167	
574	SPECIAL EVENTS	278	4,527	6,000	1,395	6,000	
	TOTAL EXPENDITURES	1,840,619	(1,794,859)	(2,362,633)	(1,787,336)	(3,338,915)	

GENERAL FUND FUNDING SOURCES							
Population per State for formulas - 2,979 - an increase of 80 persons from last year							
ACCT	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET 20/21	FYTD 08/19/2021	Proposed FY 21/22	Notes
31	TAXES						
311.1000	Ad Valorem Taxes 2.4899	513,065	574,725	632,515	639,178	725,988	Total Taxable Value of \$ (96% of expected returns)
312.4000	Local Option Gas Tax	109,443	105,988	94,048	114,614	122,729	Est. from County
314.1000	Utility Tax - Electricity	300,042	300,959	291,964	306,000	310,296	based on prior receipts
314.4000	Utility Tax - Gas	13,718	10,710	12,000	13,454	13,265	based on prior receipts
315.1000	Communications Services Tax	99,055	103,996	97,515	104,613	104,613	State Estimate
316.1000	Business Tax Receipts - Malabar	18,633	20,963	20,500	18,503	20,000	Local Business
	TOTAL TAXES	1,053,956	1,117,341	1,148,542	1,198,362	1,296,891	
32	PERMITS, FEES, & SPECIAL ASSES						
322.1000	Building Permits	142,824	212,464	175,000	171,002	171,220	This Funds Dept 524,
323.1000	Electric - Franchise	212,019	203,972	200,000	201,421	210,000	30 yr contract
323.4000	Water - Franchise Fee	6,827	7,193	6,000	6,950	6,818	Contract ends 9/2022
323.7000	Solid Waste Franchise	34,615	34,227	36,000	37,611	37,000	10% of Revenue Collection
329.1000	OPSA - Land Use Related	7,015	7,354	5,000	42,763	7,000	Land Uses Incl.
	TOTAL PERMITS, FEES, & SPECIAL ASSES	403,300	465,210	422,000	459,747	432,038	
33	INTERGOVERNMENTAL REVENUE						
331.6200	FEMA Reimbursement	27,779	2,381	3,762	0	0	
331.6300	ARP	0	0	0	0	797,610	NEU Confirmed 1st Allocation 8/16
335.1200	State Revenue Sharing	84,734	77,939	70,337	90,098	90,757	Est. from State
335.1400	State Mobile Home Tax	2,021	1,975	2,295	3,122	2,951	Based on past receipts
335.1500	Alcoholic Beverage Licenses	1,776	1,468	1,700	1,575	1,700	Based on past receipts
335.1800	Local Gov't Half Cent Sales Tax	189,826	188,277	151,122	192,513	184,355	Est. from State
335.4900	Other General Government - Traffic Signal Maintenance	7,276	7,466	7,653	7,653	8,036	Annual (July) Reimbursement from FDOT
338.2000	Business Tax Receipts Brevard Ct	734	1,098	1,100	1,284	1,100	From Brevard Cty BTR receipts
	TOTAL INTERGOVERNMENTAL REVENUE	314,146	260,604	237,969	296,245	1,086,509	
34	CHARGES FOR SERVICES						
349.2000	Cell Tower Lease	31,390	28,980	28,980	21,465	28,980	\$2415 x 12
349.5000	Special Event Revenue	970	3,214	4,000	1,602	1,000	
349.7000	Fire Dept Training Fees - others	0	0	0	0	0	training of external agencies
349.7010	Background Check	360	0	0	155	600	
349.8000	Paving Assessment	32,392	12,239	17,555	14,238	26,442	Smith \$8887/Hunter \$17356

339172

GENERAL FUND FUNDING SOURCES									
Population per State for formulas - 2,979 - an increase of 80 persons from last year									
ACCT	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET 20/21	FYTD 08/19/2021	Proposed FY 21/22	Notes		
349.8010	Golf Cart Registration Fee	350	525	350	200	200	1-time \$50 cost		
349.9000	Lien Searches	3,660	5,650	3,000	6,550	7,500	based on prior receipts		
	TOTAL CHARGES FOR SERVICES	69,122	50,608	53,885	44,210	64,722			
35	FINES & FORFEITURES								
351.5000	Fines & Forfeitures	80	175	150	360	400			
	TOTAL FINES & FORFEITURES	80	175	150	360	400			
36	MISCELLANEOUS REVENUES								
361.1000	Interest	28,525	16,831	20,000	4,456	3,000			
363.1000	SW Assessment	100,741	96,702	128,953	122,324	128,780	based on \$64/ERU		
363.2300	TIFT Received	13,479	12,000	0	0	0	Pass Thru - Non-revenue County 389.9020		
365.1000	Sale of Surplus Materials	15,404	4,500	10,000	185,630	5,000	Surplus Trucks		
366.1000	Donations FD	13,290	110	5,000	1,450	1,500			
369.3000	Insurance Refund	4,113	3,175	3,500	1,493	1,500			
369.9000	Miscellaneous Revenues	2,701	1,671	600	261	300			
	TOTAL MISCELLANEOUS REVENUE	178,253	133,989	168,053	315,614	140,080			
38	OTHER SOURCES								
389.2000	General Grant Revenue	33,195	0	0	0	0	future grant applications		
389.3000	VFA State Grant	9,174	2,910	20,000	0	0	FD 50/50 match from VFA		
389.5000	DEP Revolving Loan	0	41,995	105,123	120,276	16,000	Recalc 8/19 Remaining SA/ISWU		
389.9020	Use of TIFT Funding	0	0	0	0	147,833	Trans Impact Fee Bal/ 6/30/21 \$309,262		
	TOTAL OTHER SOURCES	42,369	44,905	125,123	120,276	163,833			
38 Cont.	USE OF RESERVED FUNDING								
389.9000	Parks Rec Funds	0	45,160	0	45,160	0	\$144,873 in Fund Reserve FY22		
389.9520	Use of BD Restricted Funding	0	32,277	14,526	14,526	64,722	FY21 \$121,220 Fund Balance, FY22 \$56,498		
389.9530	Use of General Fund Reserve	0	0	180,385	0	0	\$1,403,578.90		
389.9540	Use of SW Reserved Funding	148,533	0	0	0	89,720	FY21 \$276,246 Fund Balance, FY22 \$186,526		
	TOTAL OTHER SOURCES	148,533	77,437	194,911	59,686	154,442			
	TOTAL FUNDING	2,209,839	2,150,269	2,350,633	2,494,500	3,338,915			
*FY21 - Year End Revenues Exceeded Budgeted Revenues Totalling:		143,867					*FY22 - Increased Revenues Total:	844,415	

511 - LEGISLATIVE									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY21/22	Notes FY 20/21		
	Personnel Services								
511.1100	Special Projects Manager	0	0	0	0	50,000	1/2 of New Position in GF- 1/2 525 DR		
511.2100	FICA Taxes	0	0	0	0	3,825	1/2 of New Position in GF- 1/2 525 DR		
511.2200	Retirement Contribution - FRS	0	0	0	0	5,410	1/2 of New Position in GF- 1/2 525 DR		
511.2300	Employee Benefits	0	0	0	0	13,072	1/2 of New Position in GF- 1/2 525 DR		
511.2400	Workers Compensation	0	0	0	0	0	Consolidated to GF 519		
	Total Personnel Services	0	0	0	0	72,307			
	Operating Expenses								
511.3400	Contractual Services -	11,283	10,000	15,000	16,776	14,600	Code, FLC, SCLC,		
511.4000	Travel & Per Diem - Mayor	1,315	1,500	1,500	1,045	1,500	League of Mayors, Civ-Mil, SCLC		
511.4010	Travel & Per Diem - Council	3,162	2,500	2,500	2,763	3,500	FLC Conf, IEMO, SCLC, Ethics		
511.4100	Printing, Postage, PR	5,169	5,000	2,000	263	1,000	PR, Postage		
511.5200	Operating Supplies	1,372	5,000	3,000	0	1,499			
	Total Operating Expenses	22,301	24,000	24,000	20,847	22,099			
	Capital Outlay								
511.6400	Machinery & Equipment	0	0	0	0	0			
	Total Capital Outlay	0	0	0	0	0			
	TOTAL LEGISLATIVE	22,301	24,000	24,000	20,847	94,406			

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512 - EXECUTIVE									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Personnel Services								
512.1100	Town Manager	45,481	65,000	13,000	11,950	53,002	9.5 months		
512.1100	ITM	7,827	0	65,000	51,312	-	Position Removed FY22		
512.1600	Retiree Pay	16,670	0	0	0	-			
512.2100	FICA Taxes	5,279	4,208	5967	4,616	4,055			
512.2200	Retirement Contribution - FRS	11,648	16,517	21286	17,858	19,442	Contributions due for TM full salary		
	Retirement True Up - FRS	0	0	0	0	15,174	TM Leave True Up 10097.30/2020 & 5076.75/2021		
512.2300	Employee Benefits	5,480	7,975	8852	7,150	6,601	Health, Dental, Town Paid		
512.2400	Workers Compensation	308	480	480	505	-	Consolidated to GF 519		
	Total Personnel Services	92,693	94,180	114,585	93,391	98,273			
	Operating Expenses								
512.4000	Travel, Train & Per Diem	3,274	4,867	5,000	3,775	2,500	Continuing education/car allowance		
512.5200	Operating Supplies	0	0	2,500	196	0	Moved to 519 GF		
	Total Operating Expenses	3,274	4,867	7,500	3,971	2,500			
	Capital Outlay								
512.6400	Machinery & Equipment	0	0	0	0	0			
	Total Capital Outlay	0	0	0	0	0			
	TOTAL EXECUTIVE	95,967	99,047	122,085	97,362	100,773			

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513 - FINANCE & ADMINISTRATION									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 2021	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Personnel Services								
513.1100	Clerk/Treasurer	59,763	63,420	65,000	56,197	66,950			
513.1200	Deputy Clerk/Treasurer	13,323	33,438	36,036	29,700	37,117			
513.1300	Reception/Clerical Asst to Clerk	17,000	15,625	17,160	14,122	23,566	Increased from PT to FTE		
513.1400	Overtime	350	789	2,000	386	1,000	Board Duties for T&G and Parks		
513.2100	FICA Taxes	6,557	8,523	9,073	6,822	9,764			
513.2200	Retirement Contribution - FRS	18,220	19,407	22,978	15,968	25,988			
513.2300	Employee Benefits	21,354	21,031	20,690	14,717	25,013	Health, Dental, Town Paid		
513.2400	Workers Compensation	1,230	1,440	1,440	1,486	0	Consolidated to GF 519		
	Total Personnel Services	137,797	163,673	174,377	139,398	189,398			
	Operating Expense								
513.3100	Election Expenses	159	0	2,000	0	350	Districts 4 & 5		
513.3210	Auditing	19,000	19,500	21,000	20,000	21,500	Annual Contract		
513.4000	Travel & Per Diem	1,787	4,037	5,000	2,901	5,000	Continuing education/training-Portion GF 519		
513.4900	Charges & Obligations	7,999	4,041	5,000	5,806	5,000	Legal ads, Obooks Bank Processing		
513.5200	Operating Supplies	1,031	3,015	1,500	684	1,500	Consolidated to GF 519		
	Total Operating Expenses	29,976	30,593	34,500	29,391	33,350			
	Capital Outlay								
513.6400	Machinery & Equipment	1,106	0	0	0	0			
	Total Capital Outlay	1,106	0	0	0	0			
	TOTAL FINANCE & ADMIN.	168,879	194,266	208,877	168,789	222,748			

514 - LEGAL									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Operating Expenses								
514.3100	Professional Services	29,659	27,555	30,000	23,780	60,000	Increased for Employee Manual Update, and or ongoing litigation		
	TOTAL LEGAL	29,659	27,555	30,000	23,780	60,000			

515 - COMPREHENSIVE PLANNING									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Operating Expenses								
515.3100	Professional Services	14,580	3,475	5,000	892	3,500	Reduced Comp Plan updates, LDC updates		
	TOTAL COMP PLANNING	14,580	3,475	5,000	892	3,500			

519 - GENERAL GOVERNMENT									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes FY 21/22		
	Personnel Services								
519.2300	Employee Benefits	0	0	0	0	162,897	Health, Dental, Town Paid - General Fund		
519.2330	OEB Liabilities	0	0	0	0	21,200	\$106K Term/Conversion Payouts 20% Funded from 0%		
519.2400	Worker's Compensation	0	0	0	0	40,835	\$45K total, All GF in 519, Bldg FTE % in 524		
519.2410	AD&D FFCD Premium	0	0	0	0	933	Consolidated from GF Depts as GF		
	Total Personnel Services	0	0	0	0	62,968			
	Operating Expenses								
519.3400	Contractual Serv: Pest Control	1,678	1,276	1,400	988	2,200	Consolidated from GF Depts as GF		
519.3420	Contractual Serv: IT /Web	10,444	11,056	10,000	11,359	15,000	O365 \$3876, IT Sppt \$5040, Iworq, Sonicleat \$500,		
519.3460	Contractual Serv: Cleaning	2,960	2,180	2,500	1,560	4,620	Consolidated from GF Depts as GF		
519.4000	Travel, Train & Per Diem	0	0	0	0	7,080	GF Conference, Training, Travel, Per Diem		
519.4100	Comm & Freight - Tele/SP	6,647	3,020	5,500	3,777	12,650	GF Internet, Phone System, Cell phones		
519.4300	Utilities - Electric	4,215	2,770	2,300	1,942	10,150	Consolidated from GF Depts as GF		
519.4400	Rentals & Leases	4,464	4,472	4,000	3,582	12,700	GF, Dex MFP, H2o, CIT		
519.4500	Insurance - Property Liability	51,858	35,694	32,314	35,330	50,000	GF property, liability & auto ins, exec travel, ADD		
519.4600	Repair & Maintenance	8,331	18,040	5,000	4,086	10,000	Consolidated from GF Depts as GF		
519.4900	Other Current Chrgs & Oblig	1,539	2,605	2,000	3,704	5,000	Cty landfill, invest/bank fees, recording fees, FRS fees		
519.4920	Contingency	0	200	1,000	0	5,973			
519.5200	Operating Supplies	5,065	4,524	6,000	4,350	10,000	Non specific GF Town Hall		
	Total Operating Expenses	97,201	85,837	72,014	70,678	145,373			
	TOTAL GEN GOVERNMENT	97,201	85,837	72,014	70,678	208,341			

522 - FIRE CONTROL									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 2021	FYTD 08/04/2021	Proposed FY 21/22	Staff Notes		
	Personnel Services								
522.1100	Executive - Fire Chief	40,673	39,884	47,000	33,903	48,410			
522.1200	Reg Salaries - Lt - 4 each	141,228	232,825	118,702	195,630	130,572	FTE Lt (14.78 x 2208) = 32643.07 x 4		
522.1200	Reg Salary - Admin Asst	-	-	14,976		15,452	1300 hrs @ 11.54		
522.1200	FTE FF- Driver/Eng 4 each	73,163	-	91,853		101,957	FTE (11.54 x 2208) = 25,489X4		
522.1300	Holiday	5,769	8,688	8,000	8,025	8,000			
522.1400	Overtime	3,436	10,278	7,000	2,823	5,000			
522.1500	Pay Per Call vol FF	14,171	12,477	15,000	5,885	7,500	PPC FD volunteers - Reduced Historical		
522.2100	FICA taxes	19,209	22,542	20,850	15,815	23,248			
522.2200	FRS	69,141	67,852	72,197	51,295	74,407			
522.2300	Employee Benefits	59,900	73,760	83,031	43,487	77,080	Health, Dental, Town Paid		
522.2400	Workers Compensation	7,500	10,579	11,000	10,100	0	Consolidated to GF 519		
	Total Personnel Services	434,190	478,885	489,609	366,963	481,626			
	Operating Expenses								
522.3100	HFAdvent CentraCare	1,212	1,345	5,000	335	5,000	Annual Physicals - HF \$550/Member (9)		
522.3100	Contractor Medical Director	0	0	0	0	7,500	Dudley - FY21 Training 3440		
522.3420	IT, Cloud, Related	2,445	6,267	7,500	3,424	1,150	Fire Programs Only		
522.3440	Training for MVFD members	1,249	2,854	2,500	10,320	2,500	MVFD personnel, target solutions - Moved Med Director \$ 3100		
522.3470	ILA for 800 Mhz Sys	4,832	6,239	6,500	12,623	6,250	ILA MFD portion for City Backbone Per Radio Charge		
522.3490	ILA 911 County Dispatch	9,500	9,500	9,500	9,500	9,500	ILA annual payment w/ County		
522.4000	Travel & Per Diem	240	0	0	0	0			
522.4100	Com & Freight-Telephone	6,233	4,277	5,000	5,920	500	Consolidated to GF 519		
522.4300	Utilities - Electric	9,681	8,510	7,000	6,101	0	Consolidated to GF 519		
522.4400	Rentals & Leases	3,948	3,984	3,984	3,551	0	Consolidated to GF 519		
522.4600	Repairs & Maintenance	26,227	35,688	30,000	23,813	25,000	bidg & vehicles Fire Specific		
522.4615	Expend from Donations	3,300	7,103	5,000	145	0	see revenue 366.1000 for donations		
522.4620	Repairs Maint/Radio	8,004	4,069	7,000	6,034	1,500	347083490 Reduced No New Acids Expected		
522.4800	Promotional Activities	653	0	0	129	0	Pancake Breakfast funded by FD Inc.		
522.5100	Office Supplies	1,223	1,355	1,600	0	0	Consolidated to GF 519		
522.5200	Operating Supplies - Fuel	8,392	6,042	7,000	4,677	7,500			
522.5210	Operating Expenses	18,658	18,677	18,111	8,019	12,000	FD Specific - Medical		
522.5400	Books, Pub, Subscrip, Membership	583	485	600	455	600			

522 - FIRE CONTROL							
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Staff Notes
	Total Operating Expenses	106,380	116,395	116,295	95,046	79,000	
	Capital Outlay						
522.6300	Lease Purchase Eng 99	49,696	49,696	49,696	49,696	49,696	10yr term
522.6400	Machinery & Equipment	3,824	0	17,000	0	100,000	lifepak (ARPA?) & replacement SUV
522.8300	Grants	52,585	10,924	15,000	0	0	2 cycles 50% reimbursed VFA grant
	Total Capital Outlay	106,105	60,620	81,696	49,696	149,696	
	TOTAL FIRE CONTROL	646,675	655,900	687,600	511,705	720,322	

524 - PROTECTIVE INSPECTIONS							
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes
	Personnel Services						
524.1100	Executive - Building Official - P/T	17,391	17,924	17,280	11,248	17,280	.26 FTE
524.1110	Executive - ITM	-	-	12,000	10,313	0	Deleted Position FY22
524.1200	Building Department Manager	36,489	41,328	42,000	37,026	43,260	
524.1210	Permitting Clerk	0	0	24,960	6,529	25,709	.63 FTE
524.1400	Overtime	2,902	3,414	4,000	401	2,000	P&Z Board Duties
524.2100	FICA Taxes	4,464	4,941	6,444	3,841	5,276	
524.2200	Retirement Contribution - FRS	3,709	3,853	6,696	3,742	7,462	
524.2300	Employee Benefits	8,072	7,461	18,225	5,339	16,675	
524.2400	Workers' Compensation	1,365	1,440	2,880	2,416	5,155	
	Total Personnel Services	74,392	80,361	134,485	80,855	122,817	
	Operating Expenses						
524.3100	Professional Services - Engineer	9,840	11,940	12,000	12,413	12,000	Pass thru - Revenue Offset Fee Resolution
524.3110	Professional Services - Planner	3,127	7,833	9,000	1,267	2,000	Revenue Offset Fee Resolution
524.3120	Professional Services - Legal	0	4,425	5,000	3,980	5,000	Revenue Offset Fee Resolution
524.3130	Part Time Assistant	3,948	2,229	10,123	3,263	0	Deleted Permittign Clerk Funded 1210
524.3400	Contractual Serv. Pest Control	0	391	420	329	420	
524.3420	I.T. Services	2,370	5,448	5,000	7,784	7,943	Worq \$3500, IT\$1500, Town Cloud \$500, O365 \$552
524.3440	Contractual Serv - BO, Reviewer, Insp	8,055	3,073	4,000	2,650	60,000	BOfficial, Inspector, Plan Reviewer
524.3460	Contractual Serv -Cleaning	80	960	840	740	860	
524.4000	Travel & Per Diem	35	900	1,000	0	500	
524.4100	Communication/ISP	1,772	1,580	3,000	2,160	3,000	
524.4300	Electric	599	1,122	1,200	884	1,200	
524.4400	Rental and Leases	2,861	4,245	4,000	3,421	4,000	Copier, Record Storage
524.4500	Insurance/Prop Liab	0	1,533	6,854	6,854	6,854	
524.4900	Other Current Charges & Obligations	4,657	3,961	3,000	8,633	7,148	ltransact CC Fees from 3420 \$2148
524.5200	Operating Expenses	1,359	22,276	1,604	748	2,200	
	Total Operating Expenses	38,703	71,916	67,041	55,126	113,125	
	Capital Outlay						
524.6400	Machinery & Equipment	1,106	0	0	177	0	
	Total Capital Outlay	1,106	0	0	177	0	
	Total Protective Services	114,201	152,277	201,526	136,158	235,942	

525 - Disaster Relief									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Personnel Services								
525.1100	Special Projects Manager	0	0	0	0	50000	1/2 of New Position ARP -1/2 511 GF		
525.2100	FICA Taxes	0	0	0	0	3825	1/2 of New Position ARP -1/2 511 GF		
525.2200	Retirement Contribution - FRS	0	0	0	0	5410	1/2 of New Position ARP -1/2 511 GF		
525.2300	Employee Benefits	0	0	0	0	13072	1/2 of New Position ARP -1/2 511 GF		
525.2400	Workers Compensation	0	0	0	0	0	Consolidated to GF 519		
	Total Personnel Services	0	0	0	0	72,307			
	Operating Expenses								
525.1000	Hurricane Expenses	24,371	0	0	0	0	Emergency expenditures made due to natural disaster recovery		
525.3010	COVID-19 Expenses	0	220	0	1,101	0			
525.3020	ARPA - American Relief Plan	0	0	0	0	725,303	ARPA		
	TOTAL DISASTER RELIEF	24,371	220	0	1,101	797,610	Confirmed 8/16 1st Allocation		

538 - Flood Control / Storm Water Management									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Operating Expenses								
538.3100	Cont Serv - Engineering	11,940	1,400	5,000	348	5,000	SAI Design		
538.3110	Cont Serv - Vac/Truck Services	0	0	0	0	50,000	Fy22RFP - Pipe Cleanout MInce		
538.3400	Administrative Fees/Costs	7,016	9,880	18,052	14,843	18,000	County Admin		
538.4900	SW Projects related costs	78,043	16,369	105,901	32,494	50,000	Increase SW maintenance projects		
	Total Operating Expenses	96,999	27,649	128,953	47,685	123,000			
	Capital Outlay								
538.6300	Infrastructure - Stormwater	0	41,995	105,123	132,624	50,000	SAI Eng/Design Projects		
538.6400	Equipment	0	0	0	0	45,500	70% Mini-Excavator-30% 541		
	Total Capital Outlay	12,683	41,995	105,123	132,624	95,500			
	TOTAL FLOOD CONTROL	109,682	69,644	234,076	180,309	218,500			

541 - STREETS & ROADS									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Personnel Services								
541.1100	Public Works Director	46,629	49,879	50,470	43,614	51,984			
541.1200	Regular Salaries & Wages	87,935	89,096	109,200	73,041	113,526	3 H.E.O.		
541.1400	Overtime	334	169	1,000	66	500			
541.2100	FICA Taxes	9,825	10,583	12,215	7,765	12,662			
541.2200	Retirement Contribution - FRS	12,282	12,227	15,967	9,597	17,908			
541.2300	Employee Benefits	30,801	31,489	46,789	22,626	33,350	Health, Dental, Town Paid		
541.2400	Workers' Compensation	5,521	10,000	10,000	10,048	0	Consolidated to GF 519		
	Total Personnel Services	193,327	203,443	245,641	166,757	229,930			
	Operating Expenses								
541.4000	Travel & Per Diem	0	876	1,000	0	500			
541.4300	Electric St. Lights & Signals	12,090	12,467	11,000	12,538	11,000	Partially offset from FDOT 335,4900		
541.4600	Repair & Main - vehicles	40,084	49,106	45,000	25,701	35,000	Reduced - New Vehicle FY21, Roll FD FY22		
541.4610	Repair & Main - roads	39,864	54,353	50,000	19,932	50,000			
541.4650	Repair/Main - RR Crossing	3,600	3,600	3,600	3,600	3,600	for Jordan RR xing per FEC		
541.4900	Other Charges & Obligations	4,119	5,287	2,000	451	1,000	Reduced Trend		
541.5200	Operating Supplies - Fuel	18,168	11,681	12,000	8,873	12,000			
541.5210	Operating Supplies	6,143	6,331	6,000	6,232	7,000			
	Total Operating Expenses	124,068	143,701	130,600	77,327	120,100			
	Capital Outlay								
541.6300	Trans Impact Fee \$ - TJFT Projects	0	0	0	12,000	0	Hunter		
541.6400	Machinery and Equipment	37,074	47,008	37,075	37,075	37,075	Gradall Payment		
541.6410	Equipment Replacement	7,092	0	200,000	58,919	19,500	30% Mini-Ex - 70% 538 SWU		
541.6420	C.I.P. Road Paving	83,411	17,706	66,330	66,330	160,000	Road Paving/Resurfacing		
	Total Capital Outlay	127,577	64,714	303,405	174,324	216,575			
	TOTAL STREETS & ROADS	444,972	411,858	679,646	418,408	566,605			

572 - PARKS AND RECREATION									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET FY 20/21	FYTD 08/04/2021	Proposed FY 21/22	Notes		
	Personnel Services								
572.1200	Parks Supervisor	33,891	36,005	37,440	32,321	38,563	FTE-Park Supervisor		
572.1210	Temp Worker	0	0	3,700	0	0	Summer Mowing Assistance-Trend		
572.1400	Overtime	105	0	300	27	300			
572.2100	FICA Taxes	2,601	2,723	2,864	2,114	2,950			
572.2200	Retirement Contribution - FRS	3,193	3,147	3,744	2,810	4,173			
572.2300	Health & Dental Insurance	7,781	7,210	8,809	5,222	7,782	Health, Dental, Town Paid		
572.2400	Workers Compensation	668	480	480	449	0	Consolidated to GF 519		
	Total Personnel Expenses	48,239	49,565	57,337	42,943	53,767			
	Operating Expenses								
572.3400	Cont Serv - Pest Control	1,200	480	1,200	381	0	Consolidated to GF 519		
572.3460	Cont Serv - Pk Restroom Cleaning	3,080	2,900	3,120	2,460	0	Consolidated to GF 519		
572.4300	Utilities - Electric	576	500	700	449	0	Consolidated to GF 519		
572.4400	Rentals and Leases-Port-a-lets	1,200	1,071	1,300	1,013	1,300			
572.4600	Repairs and Maintenance	14,212	10,349	15,000	11,446	18,500	ARPA?- Bathrooms Remodel		
572.4900	Other Current Charges & Obligations	300	458	1,100	466	600	Trail Head Lease (\$300), GF 519		
572.4930	Greenways & Trails Develop	3,046	930	10,000	466	10,000	Eagles NestTH		
	Total Operating Expenses	23,614	16,688	32,420	16,681	30,400			
	Capital Outlay								
572.6400	Machinery & Equipment	0	0	2,052	48,126	20,000	24K ToroX2-Trade Value		
572.6410	Infrastructure	0	0	0	48,162	0			
	Total Capital Outlay	0	0	2,052	96,288	20,000			
	TOTAL PARK AND RECREATION	71,853	66,253	91,809	155,912	104,167			

574 - SPECIAL EVENTS									
ACCT NO.	ACCOUNT DESCRIPTION	FYE 9/2019	FYE 9/2020	BUDGET 20/21	FYTD 8/4/2021	Proposed FY 21/22	Notes		
574.4800	Operating Expenses Expenditures	278	4,527	6,000	1,395	6,000	Fall Fest, Tree Lighting		
	Total Operating Expenses	278	4,527	6,000	1,395	6,000			

CAPITAL IMPROVEMENT PLAN										
ACCT NO.	ACCOUNT DESCRIPTION	Proposed FY 21/22	Year 2 FY22/23	Year 3 FY23/24	Year 4 FY24/25	Year 5 FY25/26	Future	Notes		
	Capital Projects									
522.6300	Lease Purchase Eng 99	49,696	49,696	49,696	49,696	49,696	49,696	Matures FY26/27		
541.6400	Gradall	37,075	37,075	37,075	37,075	37,075	37,075	Matures FY26/27		
522.6400	LifePak	70,000	0	0	0	0	70,000	1 time CIP, Plus Annual Mtnce		
522.6400	Replacement FD	30,000	0	0	0	0	30,000	1 time CIP, Plus Annual Mtnce		
525.3020	ARPA Relief	797,610	702,390	0	0	0	0	ARPA Agmt. Signed, 1st Year Allocation 30 Days		
538.6400	Mini-Excavator	45,500	0	0	0	0	7,000	1 time CIP, Plus Annual Mtnce		
541.6400	Mini-Excavator	19,500	0	0	0	0	0	1 time CIP, Plus Annual Mtnce		
541.6400	Road Paving Maintenance	160,000	160,000	200,000	250,000	300,000	0	Road Category & Priority Report due 12/31/2021		
541.6400	Road Improvement Paving Program	0	100,000	100,000	150,000	150,000	150,000	Road Category & Priority Report due 12/31/2021		
572.6400	Toro Mower Replacement	24,000		0	0	0	24,000	1 time CIP, Plus Annual Mtnce		
538.6300	SW Projects	50,000	75,000	150,000	175,000	225,000	300,000	SWU, ARPA & DEP Grants		
	Ditch North side Hall, Flashy Lane to Till	0	0	0	0	0	0			10,000
	Ditch North side Hall, Weber to Flashy	0	0	0	0	0	0			60,000
	Ditch North side Hall, Duncil to Weber	0	0	0	0	0	0			25,000
	Ditch North side Atz, Candy to Corey	0	0	0	0	0	0			60,000
	Atz Southside Ditch, Smith to Jordan/Tw	0	0	0	0	0	0			85,000
	Cason Lane, West side to Atz	0	0	0	0	0	0			2,500
	Sandy Creek to SR-514 east side	0	0	0	0	0	0			17,000
522.6400	FD Flashing ER Signal	0	0	75,000	75,000	0	0	FDOT Permitted, Town Expense		
522.6400	Scott Air Pacsk 5/year	0	0	0	45,000	0	45,000	FY18, 9K each - Qty 15 -135K		
522.6400	Combo Tender/Tanker Vehicle	0	0	0	450,000	0	0	Addition, Replace B/U and Tanker		
522.6400	Artesian Hydrant	0	0	0	0	0	0	70K Each		
572.6400	Community Center	0	100,000	100,000	100,000	100,000	100,000	EE \$500K		
519.6400	Shared Town Hall w/EEL	0	250,000	250,000	250,000	250,000	250,000	EE 1.5mil		
572.6400	Baseball Field Dugout & Concession	0	15,000	10,000	0	0	0	FPRA / MLB Grant - Match		
	Total CIP Expenses	1,283,381	1,489,161	971,771	1,581,771	1,111,771	1,062,771			

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 8.C.
Meeting Date: September 27, 2021

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: 2nd Reading: Amend Art XVI regarding new roads in SD (Ord 2021-12)

BACKGROUND/HISTORY:

This was discussed at the 8/2/2021 Council meeting and routed to P&Z for their review on 8/11/2021. They recommended adoption.

It had first reading on 9/14/21 and has been legally advertised for a public hearing at this meeting.

ATTACHMENTS:

Ordinance 2021-12

ACTION OPTIONS:

Action on 2nd reading of Ord 2021-12.

ORDINANCE 2021-12

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVI SUBDIVISIONS; AMENDING SECTION 1-16.4 PERTAINING TO ROAD DEDICATION AND REQUIRED LANGUAGE IN SUBDIVISION COMMUNITY ASSOCIATION RESTRICTIVE COVENANTS REGARDING MAINTENANCE OF ROADS, STREETS AND RIGHT OF WAYS; AMENDING SECTION 1-18.7, PERTAINING TO PROCEDURE FOR ACCEPTING ROAD DEDICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

SECTION 1. Section 1-16.4 D.4.j. and k. are amended as follows:

“j. *Restrictions, Reservations and Restrictive Covenants.* Restrictions pertaining to the type and use of water supply; type and use of sanitary facilities; use and benefits of water areas, canals and other open spaces, odd-shaped and substandard parcels; restrictions controlling building lines; establishment and maintenance of buffer strips and walls; and restrictions of similar nature shall require the establishment of restrictive covenants and such covenants shall be noted on the plat. Documents pertaining to restrictive covenants shall be submitted with the final plat.

All plats and replats submitted to the Town on or after July 1, 2021, shall contain the following plat note:

Right to Repair Private Roadways: All roads, streets, and right of ways in the subdivision are private and are not required to be maintained, repaired or replaced by the Town. Such maintenance, repair and replacement is the responsibility of the subdivision community association. The Town of Malabar shall have the right, but not the obligation, to maintain, replace and repair any private roadways within the Property and associated rights of way, and improvements thereon. The Town may use the Special Assessment powers provided for in the Declaration to pay for such maintenance; provided, however, that the Town shall not be required to obtain any approval of the Members before instituting such Special Assessment. Any Owner who does not pay a special assessment assessed against such Owner's Lot pursuant to this subsection may have a lien placed upon their property, which lien shall be superior to any other lien prescribed by the Declaration and Chapter 720, Florida Statutes, and may be enforced as provided by law. In the event the Town does undertake the task of maintaining, replacing and/or repairing said private roadways and/or rights of way, including any improvement thereon, the Association does hereby assign to the Town any and all assessment rights to collect and retain Special Assessments instituted pursuant to this subsection as they become due and to exercise such right as provided herein until the Town receives full reimbursement, including any costs, expenses and attorney's fees incurred for any such repair, replacement and/or maintenance, including such costs, expenses and attorney's fees incurred in enforcing the Town's rights as provided herein.

The Town shall not be responsible to the Association, Owner, or any other person or entity as a consequence of the determination not to exercise or of the determination to exercise any of the rights granted to the Town or for failure of the Town to perform any rights granted to the Town herein or by virtue of applicable law. No Owner shall be discharged from any obligations provided herein without the written consent of the Town. This subsection may not be amended without the written approval of the Town Council.”

A similar provision shall appear in the subdivisions Restrictions, Reservations and Restrictive Covenants.

...

k. *Private Streets and Related Facilities.* All plats and replats submitted to the Town on or after July 1, 2021, shall provide that streets, roads and right of ways and their related facilities shall be for private use. Private streets shall be permitted within property under single ownership, a property owners' association or a condominium or cooperative association as defined by Florida Law. Where private streets are permitted, ownership and maintenance association documents shall be submitted with the final plat and the dedication contained on the plat shall clearly dedicate the roads and maintenance responsibility to the association without recourse to the Town or any other public agency. The rights-of-way and related facilities shall be identified as tracts for road purposes under specific ownership."

...

SECTION 2. Section 1-18.7.B is amended as follows:

"Section 1-18.7. - Acceptance and maintenance of required improvements.

...

B. Procedure for Accepting Dedications. The dedication of public space, parks, or the like on the plat shall not constitute an acceptance of the dedication by the Town. The applicant shall apply to the Town for acceptance of required improvements by the Town Council. It is the general policy of the Town not to accept any dedication of roads, streets, right of ways and travel easements and that such shall remain private and subject to private maintenance and repair. Any acceptance of a dedication shall be subject to the inspection and approval of the Town Engineer. Such acceptance shall occur only upon adoption of resolution by the Town Council which shall accept the subject dedications at such time as all improvements meet or exceed the standards set forth by this ordinance. The applicant's engineer shall furnish to the Town Engineer in writing a sealed and signed certificate stating that the required improvements have been completed in accordance with the approved plan therefor and comply with this ordinance and all other applicable codes. Should the Town accept such a road, street, or right of way dedication, the unit owners and subdivision association shall be responsible for any repair, replacement or maintenance and the provisions of Section 1-16.4 D.4.j will apply regarding the Town's obligations to repair, replace or maintain such road, street, or right of way and improvements therein.

...

SECTION 3: Repeal. All Resolutions or Ordinances in conflict herewith are repealed.

SECTION 4: Severability/Interpretation Clause.

(a) In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 5: Codification. The provisions of this Ordinance shall be incorporated into the Town's Code of Ordinances.

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

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

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

P&Z Board: 8/11/2021
1st Reading: 9/14/2021 Vote: 5 to 0
2nd Reading: 9/27/2021

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

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

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.d.
Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: 2nd Reading Amend Art XV Related to Tree Protection and Restoration (Ordinance 2021-19)

BACKGROUND/HISTORY:

Staff has compared the land clearing permits within the Land Development Code, Article XV, entitled, Tree Protection and Restoration with the Town's operations of processing permits which revealed an omission of land clearing activity of grubbing and vegetation removal and recommends the following changes for clear applicability of the review and issuance of land clearing permits and processing:

1. Textual change throughout the code from Building Official to Town Manager, or designee; Removal of Item E. entitled "*Classification of permits*" from Section 1-15.8 entitled "*Permits available; criteria for issuing permits; permit determinations; required replacements or relocations*".
2. Amending and adding the criteria text from 1-15.8 to Section 1-15.9 entitled, "*Permits, submittal requirements, Review and Determination.*" to each land clearing permit items: A. Type I permit, B. Type II permit, C. Type III permit, D. Type IV permit. These permits relate to the removal of trees and diameter breast height (dbh) unit of measure from removal and replacement.
3. Amending Item D. Type IV permit, adding (2.d.) to include the reference to Section 1-15.14 emergency tree or tree of special significance removal, whereas a Type IV permit is required for these two activities with another section of code.
4. Adding item E. Type V permits for land clearing permits for the land clearing activities related to non-removal of trees with the removal of vegetation and underbrush (less than 6' in height) with limited soil and sediment disturbance for maintenance or nuisance, firebreaks, and/or future land development activities (example, parcel survey).

These amendments clearly define the applicability of land clearing permits that were not enforced due to the types of permits established, only related to tree removal and did not address non-removal of tree, land clearing permit activity.

P&Z Recommendation was unanimous and grammatical and formatting changes were made before this reading. This was advertised in Florida Today on September 17, 2021.

ATTACHMENTS:

Ordinance 2021-19

FISCAL IMPACT: None

ACTION OPTIONS:

Action on 2nd Reading of Ord 2021-19

ORDINANCE NO. 2021-19

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATING THE PERSON OF AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTIONS 1-15.8, 9 AND 10 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town of Malabar is predominately a rural community wanting to safeguard the rural character of natural greenspace while providing for protection from natural and manmade disaster; and

WHEREAS, The Town Council has determined that providing regulations and permitting requirements for the land clearing and tree removal of various types of commercial and residential purposes under permitted circumstances will benefit the health, safety, and welfare of the citizens of the Town while preserving and protecting the natural greenspace rural character of Malabar.

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

SECTION 1. Article XV, beginning with Section 1-15.7 and proceeding throughout the entire chapter that all references to the Building Official or Engineer shall be changed to “Town Manager or Designee”.

SECTION 2. Section 1-15.8.B of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

“Section 1-15.8.B.1. Criteria for issuing a land clearing or tree removal...

...

SECTION 3. Section 1-15.8.B. of Article XV of the Land Development Code of the Town is hereby amended by adding a new subsection “4.”, which new subsection shall read as follows:

“Section 1-15.8.B.”4”. The Town Manager or designee shall consider accessibility to the property and may require a culvert for property access, whether temporary or permanent, prior to the issuance of any permit type in this section.

...

SECTION 4. Section 1-15.8.E. of Article XV of the Land Development Code of the Town is hereby deleted in its entirety.

SECTION 5. Section 1-15.9. of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

“**Section 1-15.9. Permits, submittal requirements, Review and Determination.**

Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:

A. *Type I permit.*

Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a development plan as required by the Land Development Code:

- a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
- b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type of professional as approved by the Town Administrator or his designee.

2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

B. *Type II permit.*

Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:

a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.

2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

C. *Type III permit.*

Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.

1. *Submittal:* Projects that require a Type III permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a building permit application:

a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.

2. *Review and determination process:* The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger. After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).

1. *Submittal*: Tree removal requiring a Type IV permit shall submit two copies of the following to the Town Manager or designee:

- a. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).
- c. Tree plan if applicable.

2. *Review and determination process*: The tree removal permit shall only be granted where at least one of the following criteria is met:

- a. *Use*. Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.
- b. *Proximity to structures*. The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.
- c. *Thinning*. The removal of such tree is beneficial to the enhanced growth of other trees on site.
- d. A type VI permit is required for the removal of any designated tree of special significance or emergency tree removal as defines in Section 1-15.14.

E. Type V permits

Type V permits shall be required for any use of a motorized and or rotary equipment method to remove underbrush and vegetation less than six (6) feet in height, and not defined as a tree, for the propose of unimproved property maintenance as required in the Town's code of ordinance of nuisance vegetation and or firebreak protection of property in conjunction with any development plan required by the Land Development Code

1. *Submittal*: Tree removal requiring a Type V permit shall submit two copies of the following to the Town Manager or designee:

- a. Survey of the property. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of removal of underbrush and vegetation less than six (6) feet in height. This permit does not permit the removal of any trees.

2. *Review and determination process*: The permit shall only be granted where at least one of the following criteria is met:

- a. Use. Reasonable effort has been made to minimize the impact of root and soil sediment and the topology of the property for the purpose of clearing nuisance and overgrown vegetation to maintain or gain access for development activities, reduce a nuisance to abutting property owners and rights-of way, or reduce fire hazards for the protection of life and property."

...

SECTION 6. REMAINDER OF CODE: It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the remainder of the Chapter remain the same.

SECTION 7. CODIFICATION: It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1 of this ordinance to be incorporated into the Town's Land Development Code.

SECTION 8. SEVERABILITY: In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 9. CONFLICT: All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 10. EFFECTIVE DATE: The ordinance shall take effect immediately upon its adoption.

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

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 27th day of September 2021.

TOWN OF MALABAR

(seal)

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to form and legal sufficiency by:

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

Public Hearing at P&Z: 9/08/2021
Council First Reading: 09/14/2021 Vote: 5 to 0.
Council Second Reading: 09/27/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.e.

Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: 2nd Reading Amend Art V Related to Fill & Erosion Control (Ord 2021-20)

BACKGROUND/HISTORY:

Staff has recognized the difficulty in calculation and interpreting the fill permit requirements for applicants and property owners. The amended code, Section 1.5-22 Fill and Erosion Control of Article V, General Provisions of Land Development Code; requires a fill permit for all land disturbances of 1,000 square feet and or the addition of 30 yards of fill. 30 yards is equivalent to (2) 15-yard dump trucks. The amendment also includes clear references to codes and regulations pertaining to erosion control requirements to ensure no adverse impacts to adjacent properties and or streams to maintain water quality and proper drainage.

P&Z Recommendation: Unanimous Board Approval on September 8, 2021, with comments to retain "Excavation" in the title of Section 1-5.21 and minor grammatical changes and formatting.

Legally advertised in Florida today on Friday September 17, 2021.

ATTACHMENTS:

Ord 2021-20

FISCAL IMPACT:

N/A

ACTION OPTIONS:

Action on 2nd Reading of Ord 2021-20

ORDINANCE 2021-20

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a standards for fill permitting and erosion control requirements.

WHEREAS, the Town Council desires to locate these regulations within the Article dealing with General Provision in the Land Development Code with references to the Building Code in Chapter 6 and Site Plan regulations in Article VII.

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

SECTION 1. Article V, General Provisions, in the Land Development Code Section 1-5.22 is amended to read as follows:

“Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control.

Any site work adding more than 30 yards of material or disturbing more than 1,000 square feet of land shall not be undertaken without prior application, approval, and issuance of a permit by the Town in order to assure no adverse impacts will occur on adjacent lands and to assure appropriate erosion control measures are followed. See Article VII, Site Plan Design and Article VIII, Surface Water Management.

A. Purpose and intent.

The intent of this article is to promote consistent regulations related to land-disturbing and fill activities on any land area greater than 1,000 square feet within the Town to ensure the protection of natural resources, water quality, flood prevention and erosion control measures are followed.

For the purpose of this article, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present term include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Terms listed in Article VII and Article VIII may also apply to this article.

Erosion and sedimentation control permit. A permit issued by the Town based on an approved erosion and sedimentation control (ESC) plan in conjunction with development permit or redevelopment approval.

Filling (fill). The placement of any soil or other solid material either organic or inorganic on a natural ground surface or an excavation in an effort to change the existing grade or recompose the soil.

Finished grade. The final grade or elevation of the ground surface forming the proposed design.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind; including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land and for which a ESC permit is required.

Sediment. Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

Slope. Degree of deviation of a surface from the horizontal usually expressed in ratio of horizontal to vertical dimension.

Stabilization. The process of establishing an enduring soil cover of vegetation and/or mulch or other ground cover and/or a combination when installing temporary or permanent structures for the purpose of reducing to a minimum the transport of sediment by wind, water or gravity.

Structural practices. Soil and water conservation measures other than vegetation, utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating, or disposing of runoff to prevent excessive sediment loss; including, but not limited to open sediment basins, dikes, level spreaders, waterways or outlet diversions, grade stabilization structures, sediment traps, land grading, etc.

Unacceptable filling (fill). Any material from another site other than excavated earth. Any material prohibited as fill material by state or county regulations.

Watercourses. Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows either continuously or intermittently and which has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow of flood water.

Sec. 1-5.23. - Scope and exclusions.

(a) Scope and exclusions. This section shall apply to any land-disturbing activity involving 1,000 square feet of land, undertaken by any person on any lands, except for the following:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, maintenance work, or other related activities which result in minor soil erosion, except those affecting drainage easements.

(b) Procedure for permitting land-disturbing activity.

(1) No person shall perform any land-disturbing activity without first obtaining a permit from the Building Department after certification by Town personnel that the proposed activity is consistent with these regulations. Such permit shall be in addition to any other permits or approvals required for the project by any other ordinances, rules and regulations in effect.

(2) Application for a land disturbing activity must be made to the Town on an application form provided by the Town and must be accompanied by an erosion and sedimentation control plan. The applicant's erosion and sedimentation control plan shall include, as a minimum, the following information for the entire tract of land to be disturbed regardless of whether the tract will be developed in stages:

a. A narrative description of the overall project. This narrative shall include:

1. Anticipated starting and completion dates for each sequence and stage of land disturbing activities and the expected date the final stabilization will be completed.

2. A description of the sediment control program and sediment control practices.

3. An adequate description of general topographical and soil conditions of the tract.

4. A description of the zoning classification and uses of adjacent property and a general description of existing structures, building and other fixed

improvements located within a perimeter of 200 feet of the boundary line of applicant's property.

5. A description of the maintenance program for sediment control facilities including inspection programs, revegetation of exposed soils, method and frequency of removal and disposal of solid waste material removed from control facilities and disposition of temporary structural measures.

6. The type of soil or material to be used for filling, if applicable.

b. Maps, drawings and supportive computations bearing the signature and seal of a licensed engineer and containing:

1. A site location drawing of the proposed project indicating the location of the proposed project in relation to jurisdictional boundaries of roadways and watercourses.

2. A boundary line survey of the site on which the work is to be performed.

3. A plan for temporary and permanent vegetative and structural erosion and sediment control measures.

(3) Approval of application and issuance of permits.

a. The Town Building Official or designee shall certify the erosion and sedimentation control plan upon finding that the requirements of this section have been met.

b. If the tract is to be developed in phases, then the Building Department may issue a separate permit for a master plan or for each phase.

c. The permit may be suspended or modified by the Town upon a finding that the holder is not in compliance with this section or has violated any of the provisions or conditions of the permit.

d. No building permit shall be issued until a required land disturbing ESC permit certifying approval of the erosion and sedimentation control plan is obtained in accordance with this section.

(c) Principles and standards.

(1) Implementation. Soil erosion and sediment control measures shall conform to the standards and specifications of this chapter. The application of measures shall apply to all features of the site, including street and utility installations, drainage facilities, watercourses, and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.

(2) General design principles. Practical combinations of the following principles shall be utilized as a minimum, in planning measures to be installed for any land-disturbing activity:

a. The land-disturbing activity shall conform to existing topography and soil type so as to create the lowest practical erosion potential.

b. Land-disturbing activities shall be conducted in a manner minimizing erosion.

c. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.

- d. Erosion control must be strictly maintained during cut and fill operations.
- e. Disturbed soil shall be stabilized as quickly as practicable or as directed.
- f. Whenever feasible, natural vegetation shall be retained, protected and supplemented.
- g. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development.
- h. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable.
- i. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills.
- j. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps or similar measures until the disturbed area is stabilized.
- k. Cuts and fills must be constructed in such a manner that erosion and runoff from the site does not endanger adjoining property.
- l. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners without adequate provisions for an equivalent alternate system with a positive outfall.
- m. Rights-of-way, including streets and sidewalks or pedways, and drainage ways, or watercourses shall be kept clear of all debris/dirt, etc.
- n. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible and provided in any case, that such crossings are kept to a minimum, and sedimentation control devices are provided.

(d) Maintenance. Maintenance of all soil erosion and sedimentation control practices whether temporary or permanent, shall be at all times the responsibility of the owner.

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

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

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

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

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

Council Member Marisa Acquaviva
 Council Member Brian Vail
 Council Member Steve Rivet
 Council Member David Scardino
 Council Member Danny White

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

By: _____
 Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

 Karl Bohne, Jr, Town Attorney

P&Z Board: 09/08/2021
 First Reading: 09/14/2021 Vote 5 to 0.
 Second Reading: 9/27/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.f.
Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: 2nd Reading Amend Art VII Related to Site Plan Regs (Ord 2021-21)

BACKGROUND/HISTORY:

With the recommendation of approval for amending LDC Article V, General Provisions, Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control, it is necessary to amend and clarify Site Plan Procedures in Article VII, Section 1-7.1 Applicability and Filing Procedures of the Land Development Code to ensure all land disturbances greater than 1,000 square feet where fill is required, a permit is also required to protect adjacent properties, proper drainage, and erosion control is complied.

P&Z Recommendation: Unanimous Board Approval on September 8, 2021, with formatting comments.

This was legally advertised on Florida Today on September 17, 2021.

ATTACHMENTS:
Ord 2021-21

FISCAL IMPACT: None

ACTION OPTIONS:
Action on 2nd Reading of Ord 2021-21

ORDINANCE 2021-21

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a standard for Site Development Procedures for both residential and commercial developments.

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

SECTION 1. Article VII, Section 1-7.1. Site Plan Procedures in the Land Development Code Section 1-5.22 is amended to read as follows:

“Sec. 1-7.1. Applicability and filing procedures.

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses and structures shall comply with surface water management criteria of Article VIII and Fill and Erosion Control criteria in Article V.
2. All conditional uses.
3. Any use or change in use resulting in the land disturbance of one thousand (1,000) square feet of the entire site.
4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
5. Any development including single family residences which will involve any clearing, fill, grading or other form of disturbing the land by the movement of earth shall comply with the provisions of Article V as if the same were incorporated in this Article.

(f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided. See Article V, Section

A. General Site Plan Review Procedure. In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Staff and Planning and Zoning Board and received approval by Town Council.

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk.

2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

All applications shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Department for Town Staff review for their recommendation to the Planning and Zoning Board. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.

The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, to prevent inconvenience and delay to the project.

After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

3. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

B. *Review of Minor Site Plans.*

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:

a. Residential projects comprised of a single building, having less than five (5) dwelling units, or:

b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.

c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.

2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Department-Official and Town Engineer.

3. *Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Building Official and Town Staff and approved by the Building Official. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to Section 1-7.4

4. Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff.

5. *Conformance with Zoning Regulations Required.* Any such building, structure or use shall be erected, altered, installed, and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

...

SECTION 2. Remainder of Article. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the remainder of the Article remain the same.

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

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

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

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

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

- Council Member Marisa Acquaviva _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member David Scardino _____
- Council Member Danny White _____

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

(seal)

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved for Legal Sufficiency:

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

P&Z Board: 09/08/2021
First Reading: 09/14/2021 Vote 5 to 0.
Second Reading: 9/27/2021