



# REGULAR TOWN COUNCIL MEETING

Monday, December 2, 2019 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA
  - a. Approve Minutes of Regular Town Council Meeting of 11/18/2019  
Exhibit: Agenda Report Number 4a

**Attachments:**

- Agenda Report Number 4a (TownCouncilMinutes1118\_2019.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
  - a. T&G Committee
  - b. Park & Recreation Board
  - c. Planning & Zoning Board

Recommendation regarding Huggins Park sale

8. STAFF REPORTS
  - a. Administrator
  - b. Public Works Director
  - c. Fire Chief
  - d. Clerk

**9. PUBLIC COMMENTS**

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

***Five (5) Minute Limit per Speaker***

## 10. PUBLIC HEARINGS / SPECIAL ORDERS

### a. ORDINANCE 2019-13 Zoning Change for Huggins Park - 2nd Reading

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADMINISTRATIVELY AMENDING THE ZONING MAP FOR THE 3.4 ACRE SITE IN SECTION 31, TOWNSHIP 28 AND RANGE 38 LOCATED IN THE JOHN J POLLAKS SUBDIVISION, MALABAR FLORIDA FROM INSTITUTIONAL (INS) TO RESIDENTIAL (RS-10); PROVIDING FOR PROPER CLASSIFICATION IN ORDER TO SELL; PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

#### Attachments:

- Agenda Report Number 10a (10a1.pdf)

### b. Complaint from Richard Kovach on Code of Conduct Violation committed by then Council Member Dick Korn

Exhibit: Agenda Report 10b(1) and 10b(2)

#### Attachments:

- Agenda Report Number 10b(1) (Conduct\_Code.pdf)
- Agenda Report Number 10b(2) (Agenda\_10b\_2019112514414892.pdf)

### c. Complaint from Jose Minero on Code of Conduct Violation committed by then Council Member Dick Korn

Exhibit: Agenda Report Number 10c(1) & 10c(2)

#### Attachments:

- Agenda Report Number 10c(1) (Conduct\_Code.pdf)
- Agenda Report Number 10c(2) (Agenda\_10c\_2019112514422810.pdf)

### d. Complaint from William Hard on Code of Conduct Violation committed by Council Member Danny White

Exhibit: Agenda Report Number 10d(1) & 10d(2)

#### Attachments:

- Agenda Report Number 10d(1) (Conduct\_Code.pdf)
- Agenda Report Number 10d(2) (Agenda\_10d\_2019112514425452.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

## 12. ACTION ITEMS

ORDINANCES:

RESOLUTIONS:

MISCELLANEOUS:

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

## 13. DISCUSSION/POSSIBLE ACTION

### a. Impact Fees for Malabar (Request by Council Member David Scardino)

#### Attachments:

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

## 14. PUBLIC COMMENTS

General Items (Speaker Card Required)

## 15. REPORTS - MAYOR AND COUNCIL MEMBERS

## 16. ANNOUNCEMENTS

## 17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 18, 2019                      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 the meeting to order at 7:30 pm. CM Ball led P&P.

**2.     ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET, excused

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE, excused

MATT STINNETT

KARL BOHNE

DEBBY FRANKLIN

TOWN MANAGER: (TM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

**3.     **SUNSHINE LAW OVERVIEW**** – Attorney Bohne gave refresher on Sunshine Law and Public Records.

**4.     **NOMINATIONS FOR CHAIR AND VICE CHAIR****

CM Vail to nominate Mayor Reilly to serve as Chair. CM Ball seconds. No other nominations.

**Vote:** All Ayes. CM Ball to nominate CM Rivet as Vice-Chair. CM Vail seconds. No other nominations. **Vote:** All Ayes.

**5.     **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**** Chair added BCSO.

**6.     **CONSENT AGENDA:**** Town Council Mtg Minutes of 11/04/2019 & 11/07/2019.

**MOTION:** CM Ball / CM Vail to approve consent agenda. **VOTE:** All Ayes.

**7.     **BCSO REPORT:**** Dep Cline reported details for some of the 282 calls for October.

**8.     **ATTORNEY REPORT:**** nothing further

**8.     **STAFF REPORTS:****

**8.a.   **ADMINISTRATOR:**** Update on lobbyist – they had planned to go up to Tallahassee during Veterans week for Legislative Committee meetings, but they were cancelled.

Goal is to make contacts and explain Town's need for the overall engineering study of the town and where we need to get stormwater work done and get the State to help us financially to get those projects done. TM said they will build relationships and pass that information on through the lobbyist. Also pursuing funding through DEP and they had their meeting last Thursday so should hear soon.

**8.b    **CLERK:**** Happy Thanksgiving and Don't Forget FallFest.

**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**

**10.    **PUBLIC HEARINGS/SPECIAL ORDERS: 0****

**11.    **UNFINISHED BUSINESS/GENERAL ORDERS: 0****

**12.    **ACTION ITEMS: ORD for 1<sup>st</sup> Reading: 0; RESOLUTIONS: 1: 1****

**12.a.   **Reso 22-2019 Appointment of Charles "Bud" Ryan to BOA as alternate.****

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF CHARLES "BUD" RYAN TO THE MALABAR BOARD OF ADJUSTMENT AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF

RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Read by title only.

**MOTION:** CM Ball / CM Vail to approve Reso 22-2019. Rollcall **VOTE:** CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Scardino, Aye; CM White, Excused. Motion carried 3 to 0.

**MISCELLANEOUS: 5**

**12.b. Select date for Road Workshop**

Consensus to set Dec 5, 2019 at 1:30PM for road workshop. **Vote:** All Ayes.

**12.c. Select Bill Reviewer for 2019/2020** Discussion:

**MOTION:** CM White / CM Vail to select CM White as Bill Reviewer. **Vote:** All Ayes.

**12.d. Select Check Signer for 2019/2020** Discussion:

**MOTION:** CM Vail / CM Scardino to select CM Ball as Check Signer. **Vote:** All Ayes.

**12.e. Select Space Coast League of Cities (SCLC) Delegate for 2019/2020**

**MOTION:** CM Vail / CM Ball to select CM White as SCLC Delegate. **Vote:** All Ayes.

**MOTION:** CM Vail / CM Ball to select CM Scardino as SCLC Alternate Delegate. **Vote:** All Ayes.

**12.f. Select Representative for TPO/TAC for 2019/2020** Discussion:

**MOTION:** CM Vail / CM Scardino to select TM Matt Stinnett as the TPO/TAC representative. **Vote:** All Ayes.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**13. DISCUSSION/POSSIBLE ACTION: 0**

**14. PUBLIC COMMENTS: General Items (Speaker Card Required) none**

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

CM Ball: Has asked TM about getting the waterfront cleaned up – i.e. pepper trees. TM has set up meetings to see about getting help with that.

CM Vail: nothing

CM Rivet: excused

CM Scardino: Noticed the new equipment. They have done a great job of getting the ditches cleaned out and water flowing. CM Ball said this Council has made the biggest strides in getting things done. CM Vail said Council took a stand to focus on roads and drainage. CM Scardino asked about ditch sludge. TM said it is stockpiled at PW yard. Clerk stated that the Code states that ditch spoil is exempt from remaining in Town.

CM White: excused

Mayor: nothing

**16. ANNOUNCEMENTS:** Openings on Bd of Adjustment, T&G, P&Z and Park and Rec Bds.

**17. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:10 PM.

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

ATTEST:

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

Date Approved: 12/02/2019

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 10.a.**  
**Meeting Date: December 02, 2019**

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

**SUBJECT: 2<sup>nd</sup> Reading Public Hearing on Ord 2019-13 - Rezoning Huggins, Park 2540  
Johnston Avenue, Prior to Sale**

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**BACKGROUND/HISTORY:**

Council held a Public Hearing on this request per the requirements in Article XII of the Malabar Land Development Code on November 4, 2019. That section requires a Public Hearing to be held also at the Planning and Zoning Board meeting. That was done at their meeting of 10/23/19.

Florida Statutes separately requires a legal advertisement and public hearing on the second reading of all ordinances. That is what is before Council on December 2, 2019.

The Town owns and maintains 150 acres of park and conservation land for its citizens. In addition to this there is over 1,100 acres of preserved lands maintained by the Brevard County Environmentally Endangered Lands Program for passive public enjoyment within Malabar.

Throughout public meetings in 2017 and 2018 Council discussed closing Huggins Park due to the dilapidated, unsafe play equipment and lack of use. The TA at the time spent almost a full year working with Brevard County legal department to get a clear title to the land.

The direction of Council was to get a clear title to the land, get it rezoned to match the surrounding property and get it back on the tax roll. Once the ordinance is adopted, staff will pursue information on the best method to offer for sale: either by sealed bids with a minimum or listing it with an agent. That information will be brought back before Council for final direction.

**FINANCIAL IMPACT:**

Revenue from sale, annual ad valorem and reduced expenditures for maintenance.

**ATTACHMENTS:**

Ordinance 2019-13

**ACTION OPTIONS:**

Action on 2nd Reading of Ord 2019-13

**ORDINANCE 2019-13**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADMINISTRATIVELY AMENDING THE ZONING MAP FOR THE 3.4 ACRE SITE IN SECTION 31, TOWNSHIP 28 AND RANGE 38 LOCATED IN THE JOHN J POLLAKS SUBDIVISION, MALABAR FLORIDA FROM INSTITUTIONAL (INS) TO RESIDENTIAL (RS-10); PROVIDING FOR PROPER CLASSIFICATION IN ORDER TO SELL; PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** The Town Council has determined that the 3.4 acre parcel located at 2540 Johnston Avenue is no longer used as a recreational park and should have the designation changed to residential to be compatible with surrounding areas in order to market it as surplus land. The parcels together are identified as 2540 Johnston Avenue, Parcel ID 28-38-31-26-5-1.

**Section 2.** The Town Clerk is hereby authorized and directed to cause the revisions to the Official Town Zoning Map as referenced in Article II of the Land Development Code to show the zoning change set forth above.

**Section 3.** The effective date of this ordinance shall be six (6) days following adoption by Council.

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 Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance will become effective and considered adopted by the Town Council, Town of Malabar, Brevard County, Florida six (6) business days from the date of this meeting: December 02, 2019.

(seal)

**BY:  
TOWN OF MALABAR**

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

ATTEST:

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

Approved as to form and content:

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

Legally Advertised to Comply with FS 163 and 166.

Hearing at P&Z: 10/23/2019

Ord First Reading: 11/04/2019

Ord Second Reading: 12/02/2019

Effective Date: 12/10/2019



**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 10.b.c. & d.**  
**Meeting Date: December 02, 2019**

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

**SUBJECT: Complaint regarding Code of Conduct**

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**BACKGROUND/HISTORY:**

These complaints will be heard separately as public hearings.

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:**

Code on process to follow when complaints are received.  
Legal ad

**ACTION OPTIONS:**

Action Requested Separately on these Complaints

request by the town council, I will return to the town any privileged or confidential documents or materials or town property provided to me by the town while serving on the town council.

- l. I will abide by all laws of the state applicable to my conduct as a member of the town council, including, but not limited to, the government in the Sunshine Law, the Florida Public Records Law, the Florida Code of Ethics for Public Officers, and town rules of procedure and codes of conduct.
- m. I will promote constructive relations in a positive climate with all town employees, town attorney, and town contractors and consultants consistent with my role as a member of the town council, as a means to enhance the productivity and morale of the town. I will support the town administrator's decision to employ the most qualified persons for staff positions. I will recognize the bona fide achievements of the other members of the town council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town and other sharing in, and striving to achieve, the town's mission.
- n. I will enhance my knowledge and ability to contribute value to the town as a councilmember by keeping abreast of issues and trends that could affect the town through reading, continuing education and training. I will study policies and issues affecting the town, and will attend training programs if required by the town. My continuing goal will be to improve my performance as a councilmember.
- o. I will value and assist my fellow councilmembers by exchanging ideas, concerns, and knowledge through lawful means of communication. I will help build positive community support for the town's mission and the policies established by the town council.
- p. I will support and advocate for my beliefs, but will remain open to understanding the views of others. I recognize that I share in the responsibility for all town decisions and will accept the will of duly authorized decisions of the town council and town electorate.
- q. I understand that my first priority as a councilmember will always be to look out for the best interests of the citizens of the town and the public health, safety and welfare. I will seek to provide appropriate leadership that nurtures and motivates town citizens to be stakeholders in the affairs and achievements of the town.
- r. I will be accountable to the town council for violations of this code of conduct.

(3) *Penalties for violation of code of conduct.*

- a. Before any councilmember shall be found to be in violation of this code of conduct the councilmember shall be given a public hearing concerning any charge of a violation of this code of conduct. The date and time of a public

hearing concerning a member charged with a violation of this code of conduct shall be published in a newspaper of general circulation in the town at least one week in advance of the hearing, or as otherwise provided by state or local law.

- b. All such charges shall be in writing and filed with the office of the town clerk. The written complaint must be based substantially upon the personal knowledge of the complainant and signed under oath or affirmation by the person filing the complaint. The town clerk shall cause the notice in subparagraph (a) to be drafted and published. To the extent possible such hearing shall occur at the next regularly scheduled meeting of the town council. In the event that there is insufficient time to cause the publication in subsection (a) above to occur or if the next available meeting of the town council has been previously cancelled then the hearing shall be scheduled for the next available regular meeting of the town council.

12 02  
11/18/19

In the event that any councilmember shall be found in violation of this code of conduct the following penalties shall be imposed:

- *For a first violation:* a notation in the councilmembers file that a first violation of the code of conduct has been found to have been committed by a majority vote of the town council entitled to vote on such matter;
- *For a second violation:* Censure;
- *For a third violation:* At the discretion of the town council, sanctions may include additional censure, or removal or exclusion from leadership positions, other official positions or duties.
- *For any subsequent violations:* If there is a determination of such a subsequent violation and upon the vote by a majority vote of the town council entitled to vote on such matter the institution of subsequent forfeiture of office proceedings pursuant to F.S. § 112.501(2).

(Ord. No. 2017-06, § 1, 8-21-17)

Secs. 2-28—2-50. Reserved.

### ARTICLE III. OFFICERS AND EMPLOYEES\*

Secs. 2-51—2-75. Reserved.

\***Charter references**—Town council appoints officers, § 2.14(a); town clerk, § 2.15; town attorney, § 3.04.

**State law references**—Code of ethics for public officers and employees, F.S. § 112.311 et seq.; oath of office, F.S. § 876.05.



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

**Customer:** TOWN OF MALABAR  
**Address:** 2725 MALABAR RD  
MALABAR FL 32950  
USA

**Ad No.:** 0003897146  
**Pymt Method:** Invoice  
**Net Amt:** \$0.00

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 11/14/19

**Text of Ad:**

AD#3897146 11/14/2019  
TOWN OF MALABAR  
NOTICE OF PUBLIC HEARINGS  
The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, December 02, 2019 at 7:30 PM or as soon thereafter as the matter can be heard, for a public hearing on the following topic:  
Violation of Malabar Code of Conduct for Elected Officials  
The Malabar Clerk has received three complaints from residents alleging violations to the Malabar Code of Conduct against two of the Malabar Council Members. A Public Hearing is set for Monday, December 02, 2019 at 7:30PM to consider these violation letters and allow the Council Members to respond. Copies of the complaints are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may appear and be heard at this meeting of the Town Council with respect to this topic. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764, Debby Franklin, CMC Town Clerk/Treasurer