



TOWN OF MALABAR

AGENDA PACKET

March 19, 2018

Council Meeting
7:30 PM

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY MARCH 19, 2017, 7:30 PM
2725 MALABAR ROAD, MALABAR, FLORIDA
AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. CONSENT AGENDA:**
 - 1. Approve Regular Town Council Meeting Minutes 3/05/2018**
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Request Approval

PROCLAMATION ON GOPHER TURTLE DAY - April 10, 2018

- E. ATTORNEY REPORT:**
- F. STAFF REPORTS: ADMINISTRATOR: CHIEF; CLERK:**
- G. 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) **Three (3) Minute Limit per Speaker.**
- H. PUBLIC HEARINGS/SPECIAL ORDERS: 1**
 - 2. Building Codes Updated (Ord 2018-01) 2ND Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

 - Exhibit:** Agenda Report No. 2
 - Recommendation:** Council Adoption of Ord 2018-01
- I. UNFINISHED BUSINESS/GENERAL ORDERS**
 - ORDINANCES FOR FIRST READING: 2**
 - 3. Sign Code Update (Ord 2018-02) 1st Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY; AMENDING ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION, ANNUAL LICENSE; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMIT, CERTIFICATE AND LICENSE FEES; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

 - Exhibit:** Agenda Report No. 3
 - Recommendation:** Approval of 1st Reading of Ord 2018-02

4. Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03) 1st Reading

AN ORDINANCE OF THE TOWN OF MALABAR RELATING TO ZONING AND LAND USE; AMENDING ARTICLE III DISTRICT PROVISIONS OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING TABLE 1-3.2; PROVIDING FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES IN THE COMMERCIAL ACTIVITIES PORTION OF SAID TABLE; PROVIDING PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES AS CONDITIONAL USES IN THE COMMERCIAL LIMITED ZONING CATEGORY; AMENDING ARTICLE VI OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SUBSECTION D; SETTING FORTH ADDITIONAL REQUIREMENTS AND CRITERIA FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES; AMENDING TABLE 1-6.1 (B) CONDITIONAL LAND USE REQUIREMENTS; PROVIDING FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4
Recommendation: Council Adoption of Ord 2018-03

RESOLUTIONS: 0;

MISCELLANEOUS: 1

5. Allocate Road Materials (acct 541.4610) funds to Complete Quarterman Lane Improvements of the Approved Portion of Road

Exhibit: Agenda Report No. 5
Recommendation: Action

J. DISCUSSION/POSSIBLE ACTION:

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

L. REPORTS – MAYOR AND COUNCIL MEMBERS

M. ANNOUNCEMENTS: Vacancies: 2 on Bd of Adj; 2 on Pk & Rec Bd; 3 on T&G Com.

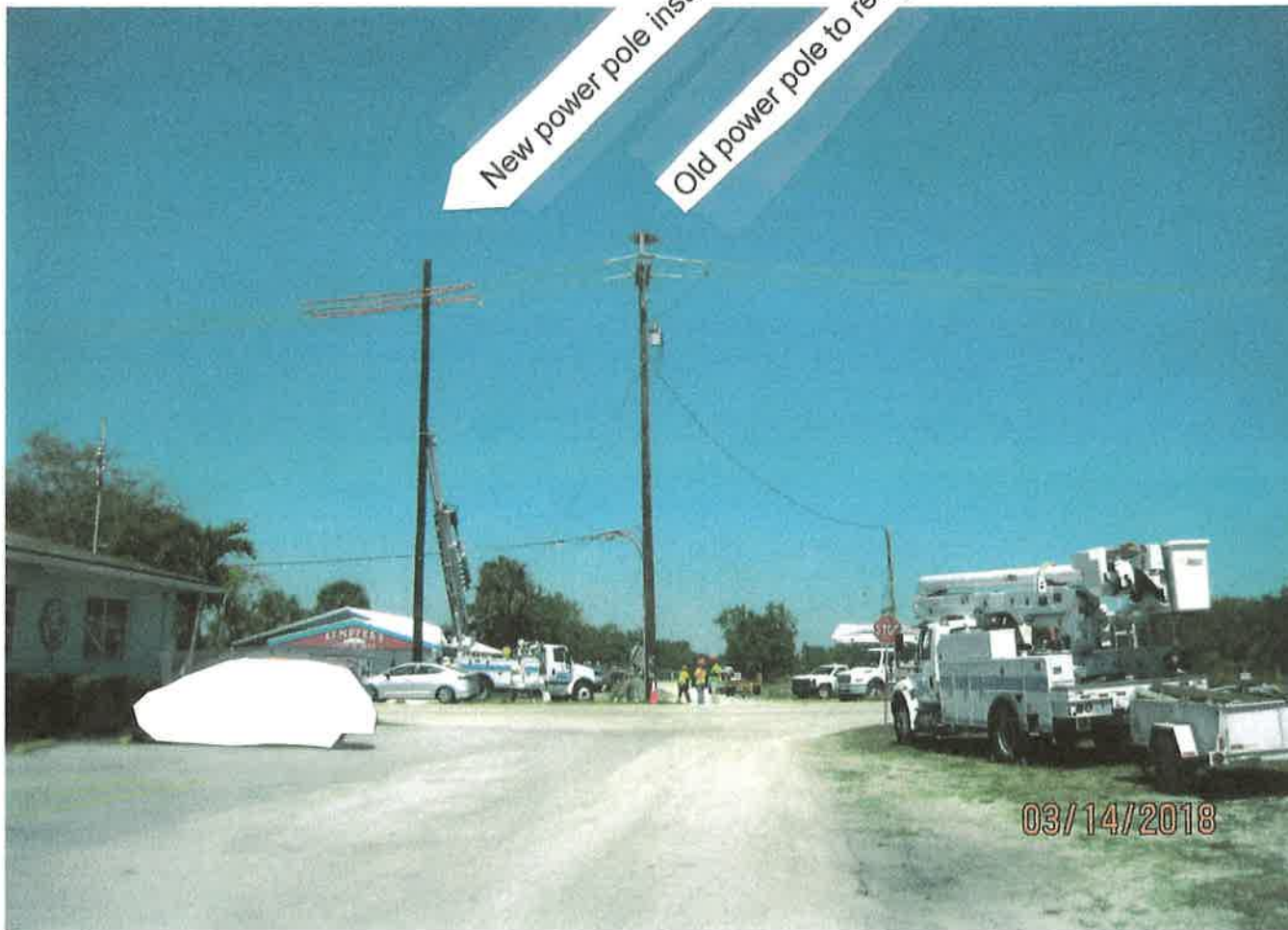
N. ADJOURNMENT:

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 insure 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.



New power pole installed 3/14/2018

Old power pole to remain until Osprey



03/14/2018

TOWN OF MALABAR

Town Malabar, Florida

WHEREAS: Gopher Tortoise Day will be observed annually in the Town of Malabar on April 10th; and

WHEREAS: the Gopher Tortoise has been living on the planet for 500,000 to 2 million years; and

WHEREAS: the Gopher Tortoise today is, in the state of Florida, listed as Threatened, and in parts of the U.S., is Federally listed as Threatened; and

WHEREAS: the Gopher Tortoise is considered a "keystone species," which means that if it were to be removed, the ecosystem that relies on its presence would drastically suffer; and

WHEREAS: the Gopher Tortoise's burrow protects more than 350 commensal species, some of which are also listed as Threatened; and

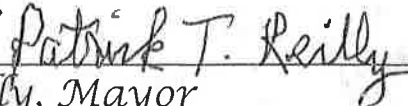
WHEREAS: the Gopher Tortoise's habitat needs protection; and having Gopher Tortoises and other species in the Town of Malabar helps to sustain our area's ecology and provide people with a source of joy and appreciation for nature.

NOW, THEREFORE, BE IT RESOLVED THAT I, Patrick Reilly, Mayor, Town of Malabar, Brevard County, Florida, do hereby proclaim April 10, 2018 as

"Gopher Tortoise Day"

in the Town of Malabar and encourage all residents to help protect this species through education and awareness.

Witness my hand and the seal of the Town of Malabar this 19th day of March, 2018.



Patrick Reilly, Mayor

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: March 19, 2018

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meeting(s):

- Regular Town Council Meeting – 03/05/2018

The minutes are the official record of the actions taken by the Council.

ATTACHMENTS:

Draft Minutes of 03/05/18

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
MARCH 05, 2018 7:30 PM

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

A. CALL TO ORDER:

Council Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Ball led the prayer and pledge.

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET, absent

COUNCIL MEMBERS:

GRANT BALL

LAURA MAHONEY

DICK KORN

DANNY WHITE

TOWN ADMINISTRATOR:

DOUGLAS HOYT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

For the record, Malabar Fire Chief Mike Foley is not present.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:

Chair asked if there were any: CM Mahoney stated that the agenda face sheet did not list the 1/3/18 minutes. Franklin said that failure to list on the agenda was an oversight.

D. CONSENT AGENDA:

1. **Regular Town Council Meeting Minutes 1/03/18**

Regular Town Council Meeting Minutes 2/05/18

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Ball / CM White to approve the 1/03/18 minutes as presented.

Discussion: CM Mahoney stated the 1/3/18 minutes included her District 2 report but there are 2 sheets that you can take out. They are in there twice.

Vote: Ayes, 3; Nay, 1.

MOTION: CM Korn / CM White to approve the 2/05/18 minutes with added report from Dist. 2 CM Mahoney 2.

Discussion: CM Mahoney stated the minutes once corrected should be notated as such and included in the original package. No consensus.

Vote: Ayes, 3; Nay, 1.

Mayor then made presentation to CM Danny White for completing 18 hours of training at the Institute of Elected Municipal Officials (IEMO) provided through the Florida League of Cities.

E. ATTORNEY REPORT:

Save for medical marijuana dispensary (MMD) discussion.

F. BCSO REPORT: none present

H. BOARD / COMMITTEE REPORTS:

T&G – Drew Thompson – not present

P&Z: Chair Liz Ritter: no one present.

Parks & Rec: Chair Eric Bienvien: will present at future meeting

Update on Fitness Course by Annelie Harvey:

The Request is to simply update council on the construction of the Fitness Course and the proposed placement of a bus stop type shelter for some of the equipment. The materials were donated and the labor to install is volunteer – they just want Council to approval the placement.

Started the fitness course – changed the storage idea to use a constructed three-sided shed with windows. She has already got some donations and has volunteers to construct and install. CM Mahoney questioned if Engineer should review. TA said it looks like a structure that would be adequate – and would be a benefit to the community. CM Mahoney asked Attorney if Engineer or permitting would be required. Franklin said it would be considered similar to landscaping – if a storm is approaching it would be moved into a secure area as it has no permanent anchoring. Also under F.S. such a structure does not meet size or dollar amount threshold for a building permit.

MOTION: CM White / CM Ball to approve the location for the open 3-sided structure for the Fitness Course use and for shelter from inclement weather. Diagram of structure and sketch of location is in packet. **Vote:** All Ayes. Motion carried 4 to 0.

I. STAFF REPORTS:

ADMINISTRATOR: ILA for 1 year to finish out year - cost share for the SW admin cost for the remaining period of less than a year. The interlocal agreement will have to be negotiated for next contract term. Eva Lane has been grade staked out – grading in the next 2 days and then bring in base rock and then paved.

Smith Lane, the residents have been actively trying to pave it. Working on process required to make that happen. Working on stormwater project at the west end of Hall and Flashy.

Completion of work on Atz Road drainage is about two months out. Delay due to property owner piping two sides of his property. CM Korn asked about water at Atz and Weber – that is next project – yes, due to failed culvert. CM Mahoney asked about when the project at the SE corner of Marie Street and Glatter Road would be scheduled. TA said after the above projects are done.

FIRE CHIEF: Not Present

CLERK: Springfest 2018 is set for April 21 – will be the 4th time partnering with Dolphin Auto presenting the car show. We will also be featuring a Bar-b-Q competition between Fire Departments. Smaller, more condensed event – keeping focus on front of park and fire department. CM White asked who was benefitting? Car show is self-sufficient and we enjoy having them utilize our venue. The Fire Dept. will benefit from the Bar-b-Q competition. CM Korn asked about pony rides – no pony rides planned as the focus is on the FD and the car show. The playground will provide a smaller Kidz Zone.

CM Mahoney appreciates the budget to actual that was provided but asked that it go on website so residents can see it. TA said the interim budget to actual is a fluid document and without great explanation, could lead some to misconstrue. The budget is front end loaded and although we are through ¼ of year, some payments and receipts are done once annually. He gave examples on annual payments or revenues opposed to monthly payments or receipts. All information is available and open for citizens coming in with their requests. For that reason, he thought it not a good idea to post these interim fluid reports. CM Mahoney suggested that if each quarter was posted to keep the public informed it will be less mysterious at budget time. CM White said he understands what TA is saying in the explanation. Posting the Budget to Actual without explanation could lead some people to suggest that some areas have over spent when they haven't. All the information and the explanations are available at any time here at town hall. Other Council and Mayor concurred. CM Mahoney said she doesn't see any reason for keeping it secret from the public.

CM Korn, White and the Mayor stated that the budget and finance papers are all here and available to the public at any time. The budget is posted on the website and has been for years.

Franklin said the caution the TA is referring to is due to the fact that the Quick Books working reports and not audited financial reports. Franklin has no reservations about the use of these reports but understands how publishing them could cause some to misconstrue and misinterpret on social

social media. She and Staff are here every day and are available to answer questions and explain but do not go out on social media to do so.

CM Mahoney said she has asked for things and it has been months before getting. She referenced the FallFest financials. Franklin said the event was in November and after all the expenditures were received and paid and reconciled the report was provided to Council in February. Malabar is very open to public requests and has always strived to be transparent in all activities. CM Mahoney said it should be posted for public.

- J. 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) **Three (3) Minute Limit per Speaker.**

Speaker Card: John Contoupe – appreciates this time and resides in Malabar next to Huggins Park. The area has scrub jays and sand hill cranes. Two passions are children and animals and preservation of wildlife. Resided there for four plus years. It is a natural habitat to turkeys, turtles and provide nature. He read from a statement (attached) and identified as “J”

CM Korn has known about his dream for quite some time now. He knows the Town has determined that they maintain huge amounts of open space and this was a neighborhood park. The County gave it to the Town and the Town named it after early residents – the Huggins family. The playground equipment was removed years ago and selling it would eliminate one area of maintenance.

Mayor said it is not zoned for grazing animals or a petting zoo. It is zoned OI.

CM While – said Council will have to address the price. He asked Attorney about the possibility of restricting the land as part of the sale. Attorney said they can write deed restrictions and attached them to those parcels. Or you can create the same restrictions in an ordinance. Put on the second April meeting agenda for further information.

Speaker Card: Skip Hard, Hard Lane, read from a statement and submitted a packet with a request to make it part of the record. He asked that Mayor Reilly to apologize.

CM Korn asked to speak – he paid the fine. He stated that the complaint was filed by Bud Ryan and Skip Hard. It is petty and the election is over. CM Mahoney and CM Korn exchanged comments.

- K. PUBLIC HEARINGS/SPECIAL ORDERS: 0**
L. UNFINISHED BUSINESS/GENERAL ORDERS
ORDINANCES FOR FIRST READING: 1;
2. Building Codes Adopted (Ord 2018-01)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 2

Recommendation: Request Approval of 1st reading of Ord 2018-01

Ordinance read by title only.

MOTION: CM Mahoney / CM Korn to approve Ord 2018-01 on 1st Reading.

Discussion: housekeeping item.

ROLLCALL Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Absent; CM Korn, Aye; CM White, Aye. Motion Carried 4 to 0.

RESOLUTIONS: 0;

MISCELLANEOUS: 1

3. Approve Temp Placement of RV while Home is Constructed – 2325 Quarterman Ln

Exhibit: Agenda Report 3

Recommendation: Approve 6-Mo Placement of Temporary Trailer

MOTION: CM Korn / CM Ball to approve temporary 6-mo trailer placement while SFR is constructed for refundable cash bond of \$500.

Discussion: CM Mahoney asked if it went to P&Z Board as the boards keep an eye on the process. Chair stated no it was under Building in Code. Attorney concurred. CM Mahoney said her concern that there be no additional adverse stormwater development. CM White questioned what stormwater had to do with the request before council – applicants are requesting to live in RV while home is constructed. Chair said the rest is governed through the Building Department. CM Mahoney said there were several homes allowed to be built in the last five years that caused stormwater hardship to neighbors because their stormwater was not contained on their property. Some discussion about the requirement to retain the first inch of rainwater on a parcel before being directed to the town's stormwater system. CM White said his stormwater goes to ditch.

Vote: Ayes, 4; Nay, 0.

M. DISCUSSION/POSSIBLE ACTION:

4. Discuss Medical Marijuana Regulations or Prohibition

Exhibit: Agenda Report 4

Recommendation: Discussion and Direction

Discussion:

Attorney said the agenda package is comprehensive. Regulations Malabar adopted were pre-SB 8A and are more restrictive than what is allowed in SB 8A. Could be subject of lawsuit. Repeal the current regulations or ban – it doesn't mean they can't have it delivered here, prescribed here or used here.

CM White – medical marijuana – it is not an adult bookstore. Simple thing to do is to treat it the same as a pharmacy. CM White said to tell Malabar residents they have to go elsewhere even if there is one 15 miles away – is not an acceptable answer. Voters approved this in Malabar by considerable number.

CM Ball said we need to make up our mind. Dealing with how many and suggested if we are too small then we don't need to have one.

CM Korn suggested developing an ordinance that says the medical marijuana dispensing pharmacy is the same as regular pharmacy. That is the safest way for us. CM Ball said it needs to be in CL. Mayor said five of the smaller cities have banned them.

Consensus of Council is to direct Attorney to draft an ordinance to include pharmacies into the medical marijuana regulations.

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

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: nothing.

CM Mahoney: Invited public to the Malabar Community Association every 3rd Saturday of month from 1-5 farmers market. Live entertainment. She also wants a PW report on the Mar 19 meeting.

CM Rivet: absent

CM Korn: week from tonight – SCLC dinner Malabar is host – Sheriff Ivey will be speaker for program.

CM White: Stated he attended the FDOT public hearing on the SR514 widening that was held at Palm Bay council chambers and the presentation was discouraging. He then mentioned the copyright license fees required to show free movies at the park and said that Deputy Clerk/Treasurer Matt Stinnett is looking into alternatives. He is excited to hear about SpringFest 2018.

Mayor: Mayor is finishing up the FLUM map drawing. Harris will not support the maintenance of the RR crossing. Data Management had already agreed to a per car calculation.

P. ANNOUNCEMENTS:

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:50PM.

BY: _____
Mayor Patrick Reilly, Council Chair

ATTEST:

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

Date Approved: 3/19/2018

March 5, 2018

District 2 Report

Laura Mahoney

D. 1 Consent Agenda

page1

> There are 2 sets of minutes in the packet

January 3 meeting minutes: a couple of pages to be taken out. (I will explain)

My request would be all corrections be listed within the actual date of the minutes being corrected.

I guess another option would be a “notice” that corrections would be in the next Council meeting minutes.

I. Staff Reports:

Administrator:

Do we have an estimated date of addressing the Southeast Marie and Glatter culvert?

Clerk:

Please put the Budget vs. Actual reports on Town website on a quarterly basis. Thank you.

K. 2. Building Codes Adopted

How often do building codes change?

3. Approve temporary placement of RV while Home constructed.

>Did this go before planning and Zoning?

> Do not want to prevent this process. I do love our committee system that protects our community by keeping more eyes on the process.

> Biggest concern on Quarterman is a good Storm water drainage plan that does not bring hurt to neighboring properties.

M. 4. Medical Marijuana regulations or prohibition

Pg. 2 "a municipality that choose to allow them cannot limit the number of dispensaries within their boundaries."

>We need to be sure to protect our town charter and rural nature.

>Does our existing Code provide needed protection for property owner's rural nature?

O. Reports

District 2:

I'd like to thank the public for your involvement. I'd like to add that the Malabar Community Association's every 3rd Saturday of the month 1-5pm Farmer's Flea market is on the 17th of this month and has live entertainment so bring a blanket or chair and enjoy your neighbors! It's \$5 a space if you register online. You can go to the town site under town news to find past flyers.

Public Works,

The public would be pleased to have a report such as work completed for the month. The taxpayers should be informed.

I'd like to add this to the next RTCM agenda, March 19th.

Again. I do appreciate the public staying in touch and the strong community Nextdoor.com has created as well.

Thank you!!!

Skip Hard

Public J,
3/5/18
Skip Hard

Subject: Final Florida Elections Commission

Mayor Riley, since making the claim at the RTCM of 2017-10-16 that, "it does not state exactly how the wording is supposed to be on the bottom of the sign," your statement has been PROVEN FALSE by the Florida Elections Commission.

I have here a CONSENT ORDER from the State of Florida Elections Commission. This order states that DICK KORN "did not include proper disclaimers, as alleged in the complaint." It further states, "Respondent shall remit to the Commission a civil penalty in the amount of \$250, inclusive of fees and costs."

Now, Mayor Riley, it is time for YOU to publicly apologize to Councilmember Laura Mahoney for issuing FALSE statements about the wording on our election signs, but MOST of all for the way that you responded to her honest attempts to serve this town by referring to her questions as "petty, petty."

Mayor Riley, you WILL be held accountable.

Accountability & Transparency

Sincerely,

William H. (Skip) Hard, Jr.
2560 Hard Lane
Malabar, FL
32950



FLORIDA ELECTIONS COMMISSION

107 W. Gaines Street,
Suite 224 Collins Building
Tallahassee, Florida 32399-1050
Telephone: (850) 922-4539
Fax: (850) 921-0783

December 12, 2017

Dick Korn
3115 Weber Road
Malabar, FL 32950

RE: Case No.: FEC 17-296; Respondent: Dick Korn

Dear Mr. Korn:

The Florida Elections Commission at its last regularly scheduled meeting considered the above referenced case and executed the consent order that is enclosed. This case is now closed.

Please let me know if you have any questions.

Sincerely,

Donna-Lynn Malphurs

Agency Clerk

/dam

Enclosure: Consent Order

cc: William H. Hard Jr., Complainant w enclosures

FILED

17 DEC -7 2M11:09

STATE OF FLORIDA
ELECTIONS COMMISSION

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: **Dick Korn**

Case No.: FEC 17-296

F.O. No.: FOFEC 17-355 W

CONSENT ORDER

Respondent, **Dick Korn**, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. Respondent is a candidate for re-election to the Malabar Town Council, District 4, in the November 7, 2017 election.

2. On September 13, 2017, the Commission received a sworn complaint alleging that Respondent violated the following section of The Florida Election Code:

Section 106.143(1)(a), Florida Statutes Respondent, a 2017 candidate for re-election to the Malabar Town Council, District 4, paid for and distributed political advertisements that contained express advocacy but did not include proper disclaimers, as alleged in the complaint

3. No other legally sufficient violation of Chapter 104 or 106, Florida Statutes, was alleged in the complaint.

CONCLUSIONS OF LAW

4. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

5. The Commission considers the allegations contained in the complaint a minor violation, pursuant to Rule 2B-1.003, Florida Administrative Code.

6. Respondent neither admits nor denies that he violated Section 106.143(1)(a), Florida Statutes.

ORDER

7. Respondent and the staff of the Commission have entered into this Consent Order freely and voluntarily.

8. Respondent shall bear his own attorney's fees and costs that are in any way associated with this case.

9. Respondent understands that before the Consent Order is final agency action, it must be approved by the Commission. The Commission will consider this Consent Order at its next available meeting.


10. Respondent voluntarily waives confidentiality upon approval of the Consent Order by the Commission, the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

11. Respondent will carefully review Chapter 106, Florida Statutes, and avoid any future violation of the chapter.


12. Respondent agrees to correct immediately, if feasible, the violations alleged in the complaint.

13. Respondent shall remit to the Commission a civil penalty in the amount of \$250, inclusive of fees and costs. The civil penalty shall be paid by cashier's check, money order, good for at least 120 days, or attorney trust account check. The civil penalty shall be made payable to the Florida Elections Commission and sent to 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.

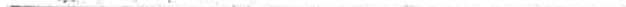
Respondent hereby agrees and consents to the terms of this Consent Order on November 2, 2017.


Dick Korn
3115 Weber Road
Malabar, Florida 32950

Commission staff hereby agrees and consents to the terms of this Consent Order on November 2, 2017.


Eric M. Lipman
General Counsel
Florida Elections Commission
107 West Gaines Street
The Collins Building, Suite 224
Tallahassee, Florida 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on November 2, in Tallahassee, Florida.


M. Scott Thomas, Chairman
Florida Elections Commission

Copies furnished to:
Eric M. Lipman, General Counsel
Dick Korn, Respondent
William H. Hard, Jr., Complainant

THIS DOCUMENT CONTAINS A FINE WATERMARK - HOLD TO LIGHT TO VIEW

OFFICIAL CHECK

1000522049

68-236/514

ISSUING BRANCH 8530202-BREVARD - PALM BAY

DATE November 02, 2017

PAY TO THE ORDER OF: FLORIDA ELECTIONS COMMISSION

\$250.00

Two Hundred Fifty and 00/100ths Dollars

BB&T

\$250.00

MEMO/PURCHASER DICK KORN

AUTHORIZED SIGNATURE

Dan Bible



Security Features Included. Details on Back.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: March 19, 2018

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

SUBJECT: Adopt Building Codes per 2017 Florida Building Commission (Ord 2018-01)

BACKGROUND/HISTORY:

This was approved 4-0 at the first reading on March 5, 2018.

The Florida Building Commission meets and updates the various codes per F.S. 553 and they become the latest revision for municipal building departments to comply with in reviewing permit applications.

Ours are found in Chapter 6 of the Malabar Code of Ordinances (attached).

FINANCIAL IMPACT:

Typical legal cost to advertise the public hearing on 3/19/18 – approximately \$138.00.

ATTACHMENTS:

Ord 2018-01

ACTION OPTIONS:

Adoption of Ord 2018-01

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the desire of the Town Council to adopt in all respects the various building and construction codes identified herein to provide for the health, safety and general welfare of the public; and

WHEREAS, the adoption of these codes is to facilitate proper inspection activities relating to construction and maintenance of buildings within the Town; and

WHEREAS, the existing codes and ordinances governing such activities are outdated; and

WHEREAS, such regulation and administration are in the best interest of the public.

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

SECTION 1. Sections 6-1 of Chapter 6 of the Malabar Code of Ordinances is hereby amended in full to read as follows:

“Section 6-1. Codes and amendments adopted

As of December 31, 2017, the Florida Building Code supersedes all local building codes which are developed and maintained by the Florida Building Commission. It is updated every three years and may be amended annually to incorporate interpretative and clarifications. The Code is composed of seven main volumes:

- (1) The 2017 6th Edition, Florida Building Code, Building, which includes
 - a) Chapter 13 Energy Conservation
 - b) Chapter 11 Accessibility
- (2) The 2017 6th Edition, FBC, Residential
- (3) The 2017 6th Edition, Florida Existing Building Code
- (4) The 2017 6th Edition Florida Building Code, Plumbing
- (5) The 2017 6th Edition Florida Building Code, Mechanical
- (6) The 2017 6th Edition Florida Building Code, Fuel Gas
- (7) The 2017 6th Edition Test Protocols for High Velocity Hurricane Zones

All codes that are specifically referenced by any of the above are hereby adopted by reference. These would include, but are not limited to:

- (1) The Florida Fire Prevention Code, 2015 Edition, Chapter 9
- (2) The National Electric Code (2011 Edition) N.F.P.A. 70
- (3) National Electric Code for 1 and 2 Family Residences, N.F.P.A. 70A

The following Codes are also adopted:

- (1) The Standard Amusement Device Code, 1985 Edition
- (2) International Property Maintenance Code, 2006 edition as published by the International Code Council
- (3) The Uniform Code for Abatement of Dangerous Buildings, 1997 Edition
- (4) Life Safety Code NFPA 101, 2015 Edition”

SECTION 2. Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances 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 Code of Ordinances.

SECTION 3. 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 this 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 4. Conflicts.

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

SECTION 5. Effective Date.

This Ordinance shall become effective 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 Grant Ball _____
- Council Member Laura Mahoney _____
- Council Member Steve Rivet _____
- Council Member Dick Korn _____
- Council Member Danny White _____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 19th day of March, 2018

BY:
TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

First Reading Approved: 3/05/2018 Vote: 4 to 0
Second Reading: 3/19/2018

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

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: March 19, 2018

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

SUBJECT: Amend Sign Regulations in Article XIX (Ord 2018-02)

BACKGROUND/HISTORY:

The Attorney was directed to take the P&Z Board's recommended changes to Article XIX and put in ordinance form for Council consideration. The Attorney stated he must also review the code to make sure the Town is protected from potential liability due to the most recent Supreme Court Ruling related to regulating signage based on content. The Supreme Court ruling stated that a locality can not regulate signage based on content.

FINANCIAL IMPACT:

Typical legal cost to advertise an ordinance for public hearing: \$138.00.

ATTACHMENTS:

Ord 2018-02

ACTION OPTIONS:

Approval of First Reading of Ord 2018-02

ORDINANCE 2018-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY; AMENDING ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION, ANNUAL LICENSE; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMIT, CERTIFICATE AND LICENSE FEES; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, The City adopted a Sign Code which is part of the City's Land Development Regulations; and,

WHEREAS, the United States Supreme Court issued a decision in *Reed v. Town of Gilbert*, ___ U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444, 25 Fla. L. Weekly Fed. S 383 (U.S. 2015), whereby the Court held that content based sign regulations violate the First Amendment to the United States Constitution; and,

WHEREAS, the United States Supreme Court provided that local governments have ample content-neutral options available to resolve problems with safety and aesthetics, including, sign size, building material of signs, lighting, moving parts, portability, restricting location on public property, view obstruction, distraction to motorists, and such signs as traffic signs and signs identifying hazards, or street number signs may be justified by traditional safety concerns; and,

WHEREAS, the City is amending its sign code to comply with the ruling of the United States Supreme Court to provide content-neutral regulations.

SECTION 1. Article XIX of the Land Development Code of the Town is amended in full to read as follows

Section 1-19.1. - Definitions.

For the purposes of this article certain words and terms shall be interpreted as follows:

Abandoned Sign. A sign is considered abandoned if a business advertised on that sign is no longer licensed, no longer has a certificate of occupancy, or is no longer doing business on that location.

Banner/Flag. A sign having characters, letters, illustrations or ornamentations applied to cloth, paper or fabric of any kind with only material for a backing. The term shall include any animated, rotating and/or fluttering device designed to attract attention.

District shall mean the various zoning districts established and described by the land development code.

Electric. Any sign containing electric wiring. This does not include signs illuminated by an exterior floodlight source.

Erect shall mean to build, construct, attach, hang, place, suspend, affix, print, or paint; this shall include the painting of wall signs.

Freestanding. A sign erected and maintained on a freestanding frame, mast or pole not attached to any building, and not including ground mounted signs.

Government Sign. A government sign is a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

Ground Mounted. A sign which extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground.

Height. Maximum height is the vertical distance between the uppermost portion of a sign and ground level and minimum height is the vertical distance between the lowermost point of a sign and ground level.

Highway Sign. A Freestanding sign, Integral Sign or Flat Mounted Sign that is erected and maintained within the view of motorists who are driving on a highway.

Integral. A sign that is embedded, extruded or carved into the material of a building façade. A sign made of bronze, brushed stainless steel or aluminum, or similar material attached to the building façade.

Non-Conforming shall mean any existing sign which was lawful at the time of the enactment of the ordinance from which this article was derived but which does not conform to the provisions of this article and to the most recently enacted land development code of the Town.

Off site-sign. A sign which has no relation to the property it is located on.

Placement shall mean the location which a sign occupies on a lot or building.

Public Body shall mean any government or government agency of the Town, Brevard County, State of Florida, or the United States Government.

Replacing shall mean rebuilding, enlarging or any change in size, structure, or lettering other than repainting to an original status and repair of original electrical apparatus.

Sign shall mean any device or display consisting of letters, numbers, symbols, pictures, illustrations, announcements, cut-outs, insignia, trademarks, banners, or demonstrations; designed to advertise, inform, identify, or to attract the attention of persons, which is visible from outside the premises on which the device or display is located. A sign shall be construed to be a display or device containing elements related and composed to form a single unit. In cases where material is displayed in a random or unconnected manner without organized relationship of the components, each component or element shall be considered to be a single sign. A name, identification, description, display or illustration, which is affixed to, painted or

represented directly or indirectly upon a building, or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business and where sign area means the space enclosed within the extreme edges of the sign for each face, not including the supporting structure or where attached directly to a building wall or surface, the outline enclosing all the characters of the word. Signs located completely within an enclosed building, and not exposed to view from a street, shall not be considered a sign. Each display surface of a sign or sign face shall be considered to be a sign.

Sign Area shall mean that area within a line including the outer extremities of all letters, figures, characters, and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon, or a building; or part thereof, shall not be included in the sign area. In measuring the area of a double-faced sign, only one face shall be calculated to determine the total area.

Sign Construction Class shall mean the manner in which any sign type is constructed and/or located, and in this article shall include animated, beacon light, detached, flashing, marquee, portable, projecting, roof, snipe, and wall as defined below:

- (1) *Animated, Spectacular or Intensely Lighted sign* shall mean any sign of which all or any part thereof revolves, swings or moves in any fashion whatsoever, and any sign which contains or uses for illustration any light, lights or lighting device or devices which change color, flash or alternate, shows movement or motion, or change the appearance of said sign or any part thereof automatically, including wind operated devices, LED operated devices and digitally operated devices.
- (2) *Beacon Light* shall mean any light with one or more beams capable of being directed in any direction or directions, or capable of being revolved automatically, or capable of having any part thereof revolve automatically, or a fixed, flashing, or rotating high intensity light or beam, or light.
- (3) *Detached* shall mean a sign not attached to or painted on a building, but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall not a part of a building, shall be considered a detached sign.
- (4) *Flashing* shall mean any sign on which the electrical lighting device or devices go on or off alternately, either all of such lights or lighting devices or part thereof. Any revolving illuminated sign shall be considered a flashing sign.
- (5) *Marquee* shall mean any sign of fire resistant cloth, plastic or metal attached to or projecting from a building over any private thoroughfare or sidewalk, whether or not such a sign is capable of being raised or lowered to a position flat against a wall.
- (6) *Portable* shall mean any sign which is not securely and permanently attached to the ground or a building or other approved structure.
- (7) *Projecting* shall mean any sign that is affixed to any building, wall, or structure extending more than twelve (12) inches beyond such building, wall or structure. The term projecting sign includes a marquee sign.
- (8) *Roof* shall mean a sign which is fastened to or supported by or on the roof, or painted on the roof of a building, or which extends over the roof of a building. Roof signs shall be prohibited in the Town.
- (9) *Snipe* shall mean any temporary sign of not over ~~one and one-half~~ four (4) square feet in area. ~~regardless of material, method of attachment, location, or subject matter.~~

(10) *Wall* shall mean any sign which is erected on the wall of any structure or part of a structure and is not more than twelve (12) inches from that structure, including any sign which is painted or otherwise directly on the wall of any structure.

Sign, Double-Faced shall mean a sign with two (2) parallel or nearly parallel faces back to back and located not more than twenty-four (24) inches from each other at the nearest parts.

Sign, Directly Illuminated shall mean a sign designed to give forth artificial light itself and/or designed to reflect light from one or more sources of artificial light that are part of the sign erected for the purpose of providing light for the sign.

Sign, Indirectly Illuminated shall mean a sign which does not produce artificial light from within itself but which is opaque and backlighted or illuminated by spot lights or floodlights.

Sign, Number shall mean for the purpose of determining the number of signs, a sign shall be considered to be a display and/or display device containing elements organized, related, and/or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered a single sign. A double-faced sign shall be considered a single sign.

Sign Structure shall mean any construction designed to support or to provide a surface for a sign, and including any marquee, canopy, awning, or clock.

Sign Type shall mean any one of the various signs ~~as differentiated by their purpose, and in this ordinance shall include accessory, billboard, construction, directional, directory, future improvement, general outdoor advertising, outdoor display, real estate, and subdivision as defined below:~~

- (1) *Accessory* shall mean a sign relating only to the ~~uses of the premises on which the sign is located, or indicating the name and address of a building or the occupants or management of a building on the premises where the sign is located.~~
- (2) *Billboard* shall mean any sign or display ~~which is not a directional sign, which~~ has no relation to the property it is located on, is advertises, illustrates, demonstrates, or identifies product, service, or place of business at another location not within two hundred (200) feet of the property which it has relation to sign, and/or any sign and is of a size over sixty (60) square feet.
- (3) *Construction* shall mean a temporary sign erected on a building site between the time of the issuance of the building permit and the completion and/or occupancy. ~~Such signs may display thereon any or all of the following: a designation of the job, the name of the owners, architect, general contractor, subcontractor, building or project under contraction [construction], and building permit.~~
- (4) *Directional* shall mean any sign less than three (3) square feet in area used for public direction ~~and containing no advertising or commercial identification of any product, service, or place of business.~~
- (5) *Directory* shall mean signs which are located in close proximity to entrances of buildings generally used as a message board to assist visitors who desire to enter or use the building. ~~give the name and/or occupation of the occupants of the building or gives the use of the building, including office building directories, church directories, and apartment house directories.~~

- (6) *Future Improvement* shall mean a temporary sign located on vacant land, parcel or lot prior to the issuance of a building permit announcing the construction of a facility in the near future relating to on the site on which the sign is located.
- (7) *General Outdoor Advertising* shall mean any sign which is not herein described or limited by these definitions and regulations.
- (8) *Outdoor Display* shall mean each piece or portion of any matter, merchandise, or device displayed outside a building with the intent of advertising, demonstrating, or identifying the nature of business or articles for sale or other merchandise inside or outside the building of the person doing business, which would not ordinarily be construed a sign, but rather as merchandise, [and] shall be considered a separate outdoor display sign.
- (9) *Real Estate* shall mean any sign used solely for the purpose of offering [for] sale, for lease, or for rent, the property and/or building on which the sign is located.
- (10) *Subdivision* shall mean any sign designed as a permanent structure to identify a subdivision or neighborhood. Such signs are not used for development or promotional purposes, but may also be used to identify mobile home parks, townhouse and other planned housing developments as defined by the zoning ordinance.
- (11) *Zone* shall mean the various zoning districts as established and described by the zoning ordinance of the Town.

Temporary. A banner, pennant, poster, portable sign or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time. Snipe signs are prohibited.

Section 1-19.2. - Purpose and intent.

The purpose of these regulations is to promote the public safety, comfort, convenience, aesthetics, amenities, prosperity and general welfare of the Town. More particularly, these regulations which control the location, type, size, height, and illumination of signage and displays are intended to establish compatible land use character, an orderly appearance and stabilize land values.

~~Abandoned Sign. A sign is considered abandoned if a business advertised on that sign is no longer licensed, no longer has a certificate of occupancy, or is no longer doing business on that location.~~

Section 1-19.3. - Exemptions.

The following are exempted from the provisions of these regulations which require a permit, certificate, license or fee for erection or maintenance. Such activities must abide, however, by the rules and regulations herein and all other laws and ordinances of the Town:

A. The following signs are authorized under in every District:

- (1) Signs not visible from areas other than the site on which they are located;
- (2) Integral decorative or architectural features of structures, except letter, trademarks, moving parts, or moving lights;

- (3) Memorial signs, tablets or plaques or names of buildings and date of erection; when the same are permanent and two (2) square feet or less in size and are cut into any masonry surface or when constructed of bronze or other incombustible material;
- (4) ~~Signs not exceeding one (1) square foot in area and bearing only property numbers, names of occupants of premises, and other identification or information concerning the premises not having commercial use or connotations, including no trespassing, posted, no hunting, private and similar prohibitions or limitations;~~
- (5) Legal notices, identification, informational or directional signs erected or required by government bodies;
- (6) ~~Noncommercial~~ Flags and insignia of any government when not displayed in connection with a commercial promotion or as an advertising device;
- (7) Changing the copy of a bulletin board, poster board, display encasement, or marquee provided, however, that the device upon which the copy is located meets all the requirements of this article;
- (8) Decals affixed to or signs painted on equipment used for dispensing retail products or services where such signs are not displayed in connection with a commercial promotion or as an advertising device;
- (9) Temporary signs as provided for in 1-19.3.1, within five (5) feet inside of a store window, not exceeding twenty (20) inches of the glassed area of the window in which the sign is located, which advertise a bona fide "going out of business" sale, or other service or merchandise sale, and which are erected for a period of not over fifteen (15) days;
- (10) Signs on motor vehicles while in use in the normal course of business. This section shall not be interpreted to permit parking of a vehicle on which signs are attached or painted in a manner or location where such signs are not permitted in order to avoid the requirements of this article. Similarly, this section shall not be interpreted to permit parking of portable trailer signs in a manner or location where the signs are not permitted in order to avoid the requirements of the article.
- (11) Government signs in every zoning district which include the signs described and regulated in subsections (12), (13), (14) and (15) below.
- (12) Traffic control devices on private or public property must be erected and maintained to comply with the Manual on Uniform Traffic Control Devices adopted in this state and if not adopted by this state with the Manual on Uniform Traffic Control Devices adopted by the Federal Highway Administration.
- (13) Each property owner must mark their property using numerals that identify the address of the property so that public safety departments can easily identify the address from the public street. Where required under this code or other law the identification must be on the curb and may be on the principal building on the property. This size and location of the identifying numerals and letters if any must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of the public street, the identifier shall be located on the mailbox or other suitable device such that it is visible from the street.
- (14) Where a federal, state or local law requires a property owner to post a sign on the owner's property to warn of a danger or to prohibit access to the property either generally or specifically, the owner must comply with the federal, state or local law to exercise that authority by posting a sign on the property.
- (15) A flag that has been adopted by the federal government, this State or the local government may be displayed as provided under the law that adopts or regulates its use.

- (16) The signs described in subsections 11 through 14 above, are an important component of measures necessary to protect the public safety and serve the compelling governmental interest of protecting traffic safety, serving the requirements of emergency response and protecting property rights or the rights of persons on property. The flags described in subsection 15 are permitted to serve a compelling governmental interest in promoting the rule of law by establishing symbolic representations of the governments who pass, protect and preserve those laws.

Section 1-19.3. 1 Regulations involving Temporary Signs:

- (1) One temporary sign per 0.25 acre of land may be located on the owner's property for a period of thirty (30) days prior to any election involving any referendum or political cause subject to election or candidates for a federal, state or local office that represents the district in which the property is located and any secondary primary or runoff election as to any such candidate who is subject to such election. Such signs shall be removed within five (5) days following the election. Any person erecting any sign during this time period shall be required to post with the clerk of the town a \$100.00 deposit before posting any such signs, which said sum shall be used to cover the cost of removal of said signs by town employees in the event they are not removed within the time frame set out above.
- (2) One temporary sign may be located on the owner's property when:
- a. that property is being offered for sale through a licensed real estate agent;
 - b. if not offered for sale through a real estate agent, when that property is offered for sale through advertising in a local newspaper of general circulation; and
 - c. for a period of 15 days following the date on which a contract of sale has been executed by a person purchasing the property.
- (3) One temporary sign may be located on the owner's property on a day when the property owner is opening the property to the public; provided, however, the owner may not use this type of sign in a Residential District on more than two days in a year and the days must be consecutive and may not use this type of sign in any non-residential district for more than 14 days in a year and the days must be consecutive. For purposes of this subsection (3) a year is counted from the first day on which the sign is erected counting backwards and from the last day on which the sign exists counting forward.
- (4) During the 26 day period December 15 to January 10, a property owner may place 2 temporary signs on the property.
- (5) A property owner may place and maintain one temporary sign on the property on July 4.
- (6) A property owner may place a sign no larger than 8.5 inches by 11 inches in one window on the property at any time.
- (7) A property owner may place one sign with a sign face no larger than two (2) square feet on the property at any time.
- (8) A person exercising the right to place temporary signs on a property as described in this subsection must limit the number of signs on the property per 0.25 acre at any one time to 2 plus a sign allowed in subsection (7).
- (9) The sign face of any temporary sign must not be larger than four (4) square feet.
- (10) The signs identified herein shall not require a sign permit

Section 19.3.2 Prohibited Signs and Exceptions.

The following signs and message devices shall be expressly prohibited in all zoning districts, except as otherwise authorized by this chapter:

(1). Signs are prohibited in all Districts unless:

(A) Constructed pursuant to a valid building permit when required under this Code; and

(B) Authorized under this Code.

(2). The following signs are strictly prohibited:

(A) Spectacular or Animated and intensely lighted signs. No sign shall be permitted which is animated by means of flashing, scintillating, blinking or traveling lights or any other means not providing constant illumination, with the exception of public information message centers showing time and temperature.

(B) Streamers, balloons and twirling signs. Streamers, balloons or twirling signs shall not be permitted, except as may be otherwise authorized by in this chapter.

(C) Snipe signs, unless a sign meeting the criteria of a snipe sign is otherwise allowed by this Code.

(D) Rotating signs. No rotating signs and message devices having rotating or spinning parts and no signs with moving copy shall be permitted.

(E) Signs in public areas. No sign shall be placed or permitted to be placed on any curb, sidewalk, post, pole, hydrant, bridge, tree or any other surface located on public property or right-of-way or over or across any street or public thoroughfare, except as may otherwise be authorized by this chapter. Signs shall be considered litter and removed by the town without notice.

(F) Swinging signs. No sign shall be suspended by chains or other devices that will allow the sign to swing.

(G) A-frame signs. A-frame or sandwich board signs shall be prohibited.

(H) Marquee signs. Marquee signs shall be prohibited in the town, unless otherwise permitted herein.

(I) Unclassified signs. The following signs having no distinct classification shall be prohibited:

(1) Signs which bear or containing statements, words or pictures of an obscene or pornographic character or which contain advertising matter which is obviously untruthful;

(2) Signs painted or attached to any fence or wall which is not a part of a building, except as may otherwise be authorized by this chapter;

(3) Signs which operate or employ any motion picture projection or media in conjunction with any advertisements or have visible moving parts or any portion which moves or which give the illusion of motion, except as may be otherwise authorized by this chapter;

(4) Signs which emit audible sound, odor or visible matter; and/or

(5) Signs which purport to be or are an imitation or resemble official traffic signs or signals or which bear the term "stop," "go slow," "caution," "danger," "warning" or similar term or which because of their size, location, movement, content, coloring or manner of illumination may be confused with or construed as traffic control signs, signals or devices or the light of an emergency or road equipment vehicle or which hide from view any traffic or street sign, signal or device.

(J) Pennants, banners and the like. Pennants, banners and the like shall be limited to no more than two permanent displays per property frontage and must be separated by a minimum of 50 feet. Additional commercial pennants, banners and the like can be permitted on a temporary basis as long as all displays are separated by a minimum of 50 feet. The total area of permanent signs shall not exceed 18 square feet. The total square feet of each temporary display shall not exceed 18 square feet. The cumulative total of the display areas shall not exceed 100 square feet per property. Pennants, banners and the like shall not be attached to any building. Fourteen days per permit, maximum six permits per year.

(K) Roof signs. No roof signs shall be permitted.

(L) Off-site signs. Except as may be otherwise authorized by this chapter, off-signs are prohibited. A real estate sign, placed or erected on property which the sign owner has a valid contract to sell, rent or lease, shall not be considered an off-site sign. No off-site signs shall be allowed within the confines of the Town except directional signs. Off-site directional signs and public signs shall be erected only by the Town and will conform to the following:

(a) Off-site directional signs and public information signs shall only be erected on Town rights-of-way or Town easements.

(b) Public necessity and convenience will be the standard used to determine what directional signs and public information signs will be erected. Such determination will be made by the Mayor.

(M) Billboards. Except as may be otherwise authorized by town code, billboards are prohibited.

(N) Flags. Flags used to attract the attention of the public shall be prohibited, except those adopted as an official symbol of government.

(1) A maximum of three flagpoles shall be permitted per each minimum parcel of land on a public street displaying no more than one government approved flag each.

(2) Flag size shall be in relation to the height of the flagpole. The maximum height of any flag or combination of flags shall be 25% of the total height of the flagpole.

(3) The maximum height of a flagpole shall be 32 feet.

(4) Flagpoles shall maintain a 15-foot setback from all property lines and a 25-foot setback from any intersection.

Section 1-19.3.3. Regulations Applicable to all Districts. Additional regulations relating to signs in all Zoning Districts are found in Table 1-19.8. Such regulations in Table 1-19.18 shall control over any conflicting provision of this sign code.

(1) Residential Districts

A. Size:

a. When a sign is authorized on a property, the sign must not exceed four (4) square feet in area. Where attached dwellings exist on a property the total square footage of signs must not exceed two square feet per dwelling unit and must not exceed a total of () square feet in area per structure.

b. For platted Residential Developments the maximum size and number of signs that the owner or owners of the residential development may erect and maintain at the entrances to the development shall be controlled according to the following:

1. Platted Residential developments four (4) acres or less in area may have a sign or signs with a total area of no more than () square feet located at the entrances to such developments. Such signs must have either been installed by the developer of the subdivision or later installed by the community association which governs the association.

2. Platted Residential developments over four (4) acres but less than forty (40) acres in area may have a sign or signs which have a total area of no more than () square feet located at the entrances to such developments. Such signs must have either been installed by the developer of the subdivision or later installed by the community association which governs the association.

3. Platted Residential developments of forty (40) acres or more in area may have a sign or signs with a total area of no more than () square feet located at the entrances to such developments. Such signs must have either been installed by the developer of the subdivision or later installed by the community association which governs the association.

B. Location:

a. Permitted signs in A above may be anywhere on the premises, except in a required side yard or within ten (10) feet of a street right-of-way.

C. Height:

The following maximum heights shall apply to signs permitted in A above:

a. If ground-mounted, the top shall not be over () feet above the ground; and

b. If building mounted, shall be flush mounted and shall not project above the roof line.

D. Illumination:

a. Illumination if used shall not be blinking, fluctuating or moving. Light rays shall shine only upon the sign and upon the property within the premises.

(2) Non Residential Zoning Districts

Each establishment shall be permitted to use any of the following described signs with the limitations stated herein:

- a. A Ground or Projecting Sign on Each Street Frontage. The size of said sign shall be as follows: _____ () square feet for the first twenty-five (25) linear feet of street frontage, increased one square foot per one foot of linear street frontage to a maximum of _____ () square feet; maximum height of _____ () feet; maximum width of _____ () feet. Where two (2) ground or projecting signs are used on a corner lot the area of both signs shall not exceed the total area allowed for the total frontage.
- b. A wall sign on each end of the building perpendicular to the road or street, thirty-two (32) square feet per fifty (50) linear feet of building perpendicular to the road or street increased one square foot per one foot of linear street frontage to ninety-six (96) square feet.
- c. A wall sign parallel to the road or street, _____ () square feet per fifty (50) feet of frontage increased one square foot per one foot of linear street frontage to of ninety-six (96) square feet.
- d. A marquee sign parallel to the road or street, not exceeding thirty-two (32) square feet per fifty (50) feet of frontage increased one square foot per one foot of linear street frontage to a maximum of ninety-six (96) square feet.
- e. A free standing sign perpendicular to the road or street not exceeding thirty-two (32) square feet per fifty (50) feet of frontage, a maximum of ninety-six (96) square feet.
- f. In addition to the other types of signs permitted in this section a business establishment may erect one additional non-permanent ground sign, not exceeding four (4) square feet. Such sign may be double sided and shall have the sign face made of wood, metal or plastic. The post material for the sign shall be made of either steel or pressure treated wood. The top of the sign when installed into the ground shall not exceed _____ () feet above the ground upon which it is placed. An application form, provided by the Town along with a permit fee established by resolution of the Town council and consent of the owner of the property shall be submitted to the Building Department for review. If the owner does not give their consent no such sign shall be permitted. Any similar signs, including any banner signs, which have been installed or placed on property without a permit shall be removed by the owner of said sign or the proprietor of the business for which such sign relates to within 10 days of written notification of the Town and such notice shall inform the owner of such sign of the provisions of this subsection.

Section 1-19.4. - Administration requirements.

A. Permits/Required Inspections. Before any sign is erected, constructed, posted, painted, altered, maintained, affixed, or relocated in the Town, a permit for such sign shall be obtained from the Building Official.

The contractor or owner securing the permit for any sign shall call the Building Official and request an inspection whenever any sign requiring a permit is being installed, and before any concrete is poured; a final inspection shall be requested upon completion. At the time of a request for final inspection, a photograph of the completed sign shall be taken by the inspector. (Minimum 2¼" × 2¼", maximum 3" × 5" for filing purposes.) No sign permit shall be approved unless it has been inspected by the Building Official and it is found to comply with this code, the

building code, electrical ode, and other applicable land development regulations. Unless otherwise provided herein, all signs shall meet the yard requirements of the zoning district in which the sign is located.

B. *Filing of Application.* Before any permit is issued, an application provided by the Building Official shall be filed in triplicate together with two (2) sets of drawings and/or specifications as may be necessary to fully advise and acquaint the Building Official with the location, construction, materials, manner of illumination, securing, wording of the sign, and any other data that may be required to ensure the enforcement of these regulations. One (1) set of drawings and/or specifications will be returned to the applicant with the permit. A separate application shall be made for each and every sign.

As a minimum the sign application shall include the following information:

- (a) Name, address and telephone number of the sign erector and the sign owner.
- (b) Written statement signed by landowner, or a lease or rental agreement, authorizing the placement of the proposed sign.
- (c) Location of building (or structure) and lot to which or upon which the sign is to be placed or maintained.
- (d) Purpose of sign.
- (e) Estimated value of sign.
- (f) Position of the sign in relation to lot lines, nearby buildings or structures, sidewalks, streets and intersections.
- (g) Type of sign and general description of structural design and construction materials to be used.
- (h) Two (2) copies of detailed scaled drawings of the plans which shall contain specifications concerning structural details of the method of sign construction, installation, [and] anchoring to the building or ground. The specifications shall show height, perimeter and area dimensions, elevations, means of support, method of illumination and any other significant aspect of the proposed sign.
- (i) A statement indicating whether or not an electrical permit is required for said sign and any support data required for the same.
- (j) A layout with sign colors shown or specified.
- (k) Any other information required by the Building Official in order to carry out the purpose and intent of this article.
- (l) All signs having unusual structure features shall be designed by an engineer, who shall submit to the Building Official complete plans and calculations so as to determine whether the sign complies with the Town's Code.

C. *Permit Expiration.* All signs shall be erected on or before the expiration of thirty (30) days from the issuance date of the permit, otherwise the permit shall become null and void and a new permit and fee shall be required.

D. *Label Requirement.* Each sign requiring a permit shall be clearly marked with the permit number and the name of the person or firm placing the sign on the premises.

E. *Notice Required for Violations.* In case any sign shall be installed, erected, constructed, or maintained in violation of the terms of this article, the building inspector shall in writing, notify the owner thereof, to alter, change, or remove, such sign so as to comply with this article with ten (10) days notice.

F. *Revocations.* The Building Official may revoke a permit or approval, issued under the provisions of this Code, if it is found that there has been any false statement, concealment or

misrepresentation as to any material fact in the application or plans on which the permit or approval was based.

Section 1-19.5. - Annual license required.

A. *Application for Annual License.* At the same time a permit to build or erect or certification of nonconformity is issued, an annual license must be applied for and granted for each sign of over five (5) square feet. All signs under five (5) square feet are exempt from licensing. ~~defined in this article as any of the following:~~

~~(1) Residential and mobile home or trailer park zoning districts:~~

- ~~a. Accessory;~~
- ~~b. Construction;~~
- ~~c. Future Improvement;~~
- ~~d. General Outdoor Advertising;~~
- ~~e. Subdivision.~~

~~(2) Nonresidential zoning districts and bona fide agricultural uses within the RR-65 district:~~

- ~~a. Accessory;~~
- ~~b. Construction;~~
- ~~c. Directory;~~
- ~~d. Future Improvement;~~
- ~~e. General Outdoor Advertising;~~
- ~~f. Subdivision.~~

~~(2) All other categories and signs under five (5) square feet are exempt from licensing.~~

B. *Licenses to be Displayed.* The license number for the current term of one (1) year shall be displayed clearly on each sign which requires a license.

C. *Renewal of License.* License will require renewal each year on the first day of the month in which the original license was purchased. Within thirty (30) days of expiration and nonrenewal of license, the sign must be removed by the owner or it shall be illegal and subject to removal by the Town at the owner's or property owner's expense ten (10) days after written notification by the Town.

Section 1-19.6. - Appeals and variances.

Matters involving appeal of an administrative decision or variance of these regulations shall be handled pursuant to Section 1-12.2 of Article 12 of the Land Development Regulations ~~by the Planning and Zoning Board with further appeal to the Council.~~

Section 1-19.7. - Nonconforming signs.

A. *Replacement of Nonconforming Signs.* Within the Town, there presently exist certain signs that are not in conformance with these regulations. Such signs are declared by this article to be incompatible with the development of the Town. It is further the intent of this article that these non-conforming signs shall not be replaced, enlarged, expanded or extended and are not to be used as grounds for adding or enlarging other signs not permitted in the district. Any sign replacing a nonconforming sign shall meet the requirements of this code as well as other applicable codes currently in force.

~~B. *Amortization Periods for Nonconforming Signs.* Such nonconforming signs shall be altered to conform or removed by the owner within one (1) year of the date of adoption of the ordinance from which this [article] was derived, except that signs with a structure valued at more than one thousand dollars (\$1,000.00) shall be altered to conform or removed within two (2) years, and signs with a structure valued at more than two thousand five hundred dollars (\$2,500.00) shall be altered to conform or removed within three (3) years. After the expiration date, all nonconforming signs shall be removed by the Town at the owner's expense. The period of amortization for nonconforming signs existing prior to April 17, 1990 shall not be changed by the passage of the land development code. Nonconforming signs shall be allowed to remain. Unless otherwise provided herein, the provisions of Article XI of the Land Development Regulations shall apply to such nonconforming signs.~~

~~C. *Certification of Nonconforming Signs.* All persons owning signs within the Town that do not conform with this article shall, within thirty (30) days of the date of the adoption of the ordinance from which this article was derived apply for certification of nonconformity. In applying for such certificate, the owner shall state in what manner the sign does not conform. The certificate must be presented to the Planning and Zoning Board, which may then instruct the building inspector to issue a certificate which shall contain the information as well as the date by which the sign must be removed or altered to conform to these regulations. This certificate is issued in lieu of the sign permit.~~

~~D. *Posting of Nonconforming Certificate Number.* A certificate number shall also be issued which shall be attached to the sign in the same manner as required for a sign permit.~~

~~E. *Illegal Signs.* Any sign not containing a certificate or permit number and a current license number after this ordinance has been in effect thirty (30) days is hereby declared to be illegal and shall be removed by the owner, or by the Town at the owner's expense, within ten (10) days of written notice by the Town.~~

Section 1-19.7.1 Hazardous Signs.

(A) *Hazardous signs.* The Building Official shall refuse to issue a permit for any sign which will constitute a hazard and a potential menace to the safety of the public and may require the removal of any sign which is not properly maintained or which otherwise shows signs of neglect or which is or will become unsafe and constitute a hazard to the safety of the public. It shall be unlawful for any permittee or owner to continue to display any sign that constitutes a hazard after 48 hours from the time of notice by the Building Official requesting the removal of the sign, unless within that time the permittee or owner shall have filed with the Building Official notice of his or her intention to appeal his or her decision to the Board of Adjustment with payment of all applicable fees. Any sign displayed more than 48 hours after notice to remove the sign may be removed by the town at the expense of the permittee or owner unless the matter is pending on appeal to the Board of Adjustment or unless the decision of the Building Official has been reversed by the Board of Adjustment.

Section 1-19.8. - Fees for permit, certificate, and license fees.

A. *Status of Fees Required for Signs.* Fees for the issuance of sign permits or certificates and annual licenses shall be in addition to any other fees, charges, or obligations legally required by the Town.

B. *Schedule of Fees Set By Town Council.* The fee schedule for the issuance of sign permits, certificates of nonconformance, and annual licenses and the inspections herein authorized or required shall be set by the Town Council and shall be maintained in the Town Clerk's office.

Section 1-19.9. –(Intentionally left blank) Applicability of signage regulations.

The following regulations apply generally to all signs and are in addition to the regulations contained elsewhere in this article:

- ~~A. *Compliance Required.* No sign, unless herein excepted, shall be erected, constructed, posted, painted, altered, maintained, or relocated, except as provided in this article.~~
- ~~B. *Required Inspection Prior to Permitting.* No sign shall be approved for use unless it has been inspected by the Building Official and is found to be in compliance with all other applicable codes and ordinances, including the building code, electrical code, and land development regulations. Unless otherwise specified, all signs shall comply with the yard requirements of the zoning district in which they are located.~~

Section 1-19.10. - Temporary permits. –(Intentionally left blank)

~~A. The building inspector upon application, may issue temporary permits for the following signs and displays for a period not exceeding thirty (30) days, when in the building inspector's opinion, the use of such signs and displays would be in the public interest and would not result in damage to private property. There will be no license or license fee for these signs, but the regular permit fee shall apply. Temporary signs shall not be illuminated except for holiday signs which may be illuminated or special event signs approved by the Town Council. Such signs shall be located in private property outside of a public right-of-way or easement.~~

- ~~(1) Special decorative displays used for holidays, public demonstrations, or window signs which do not cover more than twenty (20) percent of the surface area of the transparent portion of the window or door to which they are attached.~~
- ~~(2) Temporary signs announcing any public, charitable, education, religious or other special event or function may be installed subject to compliance with the following conditions.

 - ~~(a) *Timing of Placement and Removal.* Such signs shall be placed not more than fourteen (14) days prior to the event and must be removed not later than twenty-four (24) hours after termination of the event.~~
 - ~~(b) *Character of Signs.* Such signs shall satisfy the sign area, location, setback, and height requirements of similar type signs in the district where placed.~~
 - ~~(c) *Waiver from Requirement of Section.* The Building Official shall advise any applicant desiring relief from the requirements of this sub-section of his right to approach the Town Council to request a waiver of such requirements. A waiver by Town Council may be obtained only after introduction of the matter on an agenda of a Town Council meeting. Said waiver shall be in writing signed by the Chairperson or designate.~~~~
- ~~(3) Special sale promotion displays in a district where such sales are permitted if such signs are not within five (5) feet inside a store window.~~

~~B. A permit fee for the following signs will not be required:~~

- ~~(1) Signs advertising a special civic or cultural event such as a fair, exposition, play, concert, or meeting sponsored by a governmental, religious, cultural, civic, nonprofit, or charitable service organization;~~
- ~~(2) Special decorative displays used for holidays when sponsored by a religious, governmental, cultural, civic, nonprofit or charitable service organization;~~

~~(3) A permit fee for political signs and posters will not be required, provided that said signs are subject to the following regulations:~~

- ~~a. Such signs shall be removed within five (5) days following the election. If the candidate or political action committee fails to remove said sign, within the required five (5) days, the town may remove said signs. These signs will be held by the town for a period of thirty (30) days. During this period, and during regular town business hours, the candidate or political action committee may claim their signs, but shall pay a service charge of five dollars (\$5.00) to the town for each sign claimed. Any signs not claimed within thirty (30) days shall become the property of the Town.~~
- ~~b. Only one (1) stationary sign per candidate or referendum issue shall be permitted on any one (1) parcel of land, except should there be more than one (1) owner or occupant of said parcel, each owner or occupant shall be permitted one (1) sign per candidate or per issue of dimensions herein specified.~~
- ~~c. Said sign shall not exceed sixteen (16) square feet on aggregate area and if detached, shall not be erected in such a manner as to constitute a roof sign. Notwithstanding the provisions of this subparagraph, a sign may be placed upon any legally existing sign structure but not so as to cover an existing sign.~~
- ~~d. Political or campaign signs may be allowed in a public or private right-of-way but shall be located no closer than 3 feet from the edge of pavement or in the case of a dirt road from the edge of the dirt of a public or private street or five feet from the edge of a sidewalk, bike path, or ped-way. Further any such sign allowed in a public or private right of way may not be placed any sooner than 81 days before the election. Such signs shall not be placed closer than 50 feet to a sign of the same candidate.~~
- ~~e. No political or campaign sign shall be:~~
 - ~~(i) Located such that it obstructs, impedes, or otherwise creates a hazardous condition for safe and normal flow of pedestrian or motor vehicle traffic.~~
 - ~~(ii) Erected on private property without the consent of the property owner.~~
 - ~~(iii) Placed on any tree, utility pole, fences or fence post.~~
 - ~~(iv) Placed in or on government owned property such as a park.~~

Section 1-19.11. - General regulations.

- A. Signs on Public Property.* No sign shall be placed on property owned or leased by any government agency except by a public body or as otherwise specifically provided herein.
- B. Signs Indicating Point of Public Interest.* Signs indicating points of local interest may be placed on public property only with the express consent and formal approval of the Council.
- C. Signs Affixed to Public Property or Infrastructure.* No signs shall be attached to or painted on utility poles, seawalls, retaining walls or other supporting structure.
- D. Illegal Signage.* No sign shall be constructed, erected, used, operated, or maintained which:
 - (1) Displays intermittent lights resembling or seeming to resemble the flashing lights customarily associated with danger or such as are customarily used by police, fire, ambulance, or other emergency vehicles, or for navigation purposes;
 - (2) Uses the word "stop" or "danger," or presents or implies the need or requirement for stopping or the existence of danger, or which is a copy or imitation of an official sign. This provision regarding the word "stop" or "danger" does not apply when they are part of attraction titles for a broadcast, motion picture, theater event, opera, or concert, or

~~when they are used in descriptive lines of advertising so long as they are not used to simulate, copy, or imply any official warning, either for vehicles or persons;~~

~~(3) Is so located and so illuminated as to provide a background of lights blending with traffic signal lights to the extent of confusing a motorist when viewed from normal approaching position of a vehicle at a distance of less than three hundred (300) feet;~~

~~(4) Is erected in such a manner at any intersection so as to obstruct free and clear vision or at any location where, by reason of the position, shape, or color, [the sign may] obstruct the view of or be confused with any authorized traffic sign, signal or device.~~

E. *Signs On or Over Public Streets.* No sign shall be erected or located on or over any public street, sidewalk, alley, or right-of-way other than duly approved traffic signs authorized by a governmental entity.

F. *Illuminated Signage.* The lighting of illuminated signs shall be controlled in direction, focus, and intensity so as to prevent glare on surrounding streets or property, or any objectionable illumination of nearby property or buildings.

G. *Beacon Light.* No beacon light shall be permitted on a sign in the Town.

H. *Animated Signs.* No animated sign shall be permitted in the Town except where specifically provided by these regulations.

I. *Flashing Signs.* No flashing sign shall be permitted in the Town except where specifically provided by these regulations.

~~J. *Portable Signs.* No portable sign including trailer signs shall be permitted in the Town.~~

K. *Billboards.* No billboards shall be permitted in the Town.

~~L. *Outdoor Display Signs.* No outdoor signs shall be permitted in the Town. This shall not be construed to prevent merchandise display in the following cases:~~

~~(1) Rear yards or side yards if such merchandise is rendered nonvisible from off the premises by means of a solid fence, building or other solid barrier in good repair and appearance;~~

~~(2) New and used autos, trucks, tractors, and other large and/or heavy machinery, provided the same are displayed in an orderly fashion and the appearance is kept attractive and neat, visibility at any intersection or roadway is not impaired, and the display constitutes no safety or other hazard, nor shows gross neglect and disrepair.~~

M. *Multiple Street Frontage.* The regulations contained in this article shall apply separately and individually to each street frontage of a premises.

~~N. *Signs in Excess of Sixty Feet.* Notwithstanding other provisions of these regulations, no general advertising or other sign shall be erected in the Town which exceeds sixty (60) square feet in area.~~

Section 1-19.12. - Construction standards.

All signs shall comply with all applicable standards of the Town's building code, fire code, health code, and all other applicable codes.

Section 1-19.13. - Maintenance.

All signs, together with all their support braces, guys, and anchors, shall be maintained in good repair and appearance. The Building Official may, upon written notice, cause to be removed within ~~ten~~ sixty (4 60) days any sign which becomes a safety hazard, or which shows gross neglect or becomes dilapidated or where the area around such sign is not well

maintained. Such removal shall be at the expense of the owner or lessee of any sign that is not properly maintained.

Section 1-19.14. - Obscenity prohibited. (Intentionally left blank)

~~It shall be unlawful for any person to display upon any sign or other advertising device or structure any offensive, obscene, indecent, immoral or degrading matter.~~

Section 1-19.15. - Obstructing exits prohibited.

No sign, including guys wires and supports, shall be erected, constructed or maintained so as to obstruct any fire escape, or any window or door opening, used or required as a means of ingress, egress or ventilation, or so as to prevent free passage from one part of a roof in any form, shape, or manner to a fire escape.

Section 1-19.16. - Signs not to constitute a traffic hazard.

No sign shall be placed at any location in the Town where it may interfere with or obstruct the view of any motorist, or be confused with any authorized traffic sign, signal or device. The Town Council shall have the authority to refuse the erection, or to order the removal by the Building Official, if any signs constituting an obstruction to motorists or pedestrians or otherwise are viewed to be impediments to traffic safety or traffic flow.

Section 1-19.17. - Signs not to encroach into electric utility clear zone.

No sign shall be placed closer than eight (8) feet from the nearest part of any utility pole which supports electrical transmission lines. No sign shall be placed closer than eight (8) feet from the nearest part of any electric transmission line. If the National Electric Safety Code is now or hereafter more restrictive than the provisions of this subsection, its more restrictive provisions shall supersede the provisions herein.

Section 1-19.18. - District sign regulations.

The provisions of Table 1-19.8 "Zoning District Sign Regulations" shall apply to each lot or parcel of land, and/or each business establishment as may be applicable in each case. In the following zoning classifications, the specified sign types and construction classes shall be permitted subject to the restrictions and limitations contained herein.

TABLE 1-19.18. ZONING DISTRICT SIGN REGULATIONS

Sign Regulations Within Residential Zoning Districts: (1)

Sign Type	Accessory	Construction	Directory	Directional
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	1	1	1
Maximum Area	4 sq. ft.	32 sq. ft.	10 sq. ft.	3 sq. ft.
Maximum	10 sq. ft.	Detached: 10 ft.	10 ft.	Detached:

Height		Wall: Roof line of building		3 ft. Wall: 12 ft.
Placement	Must observe all yard regulations	Front setback: 10 ft. Side and Rear: 25 ft.	Must observe all yard regulations	Non-Restricted
Illumination	None	None	Indirect	None
Special Regulations	Permitted only in conjunction with a permitted home occupation. See Footnote 1.	Must be removed immediately upon completion of construction <u>or occupancy</u>	None	None

Sign Type	Future Improvement	General Outdoor Advertising	Real Estate	Subdivision
Construction Class	Detached	Wall or Detached	Detached	Wall or Detached
Maximum Number	1	1	4	1 per public entrance
Maximum Area	10 sq. ft.	32 sq. ft.	5 sq. ft.	32 sq. ft.
Maximum Height	10 ft.	10 ft.	4 ft.	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection
Illumination	None	None	None	Indirect
Special Regulations	None	See Footnotes 1 and 2	None	None

Sign Regulations Within Non-Residential Zoning Districts: (2)

Sign Type	Accessory	Accessory	Accessory
Construction Class	Wall	Detached, Marquee, and Projecting	Snipe
Maximum Number	3	2 total from this group	4
Maximum Area	10% of the wall area, and no more than 60 sq. ft. of cumulative area	60 sq. ft. total cumulative area	1½ sq. ft. each
Maximum Height	Roof line of building	Detached: 25 ft. Others: Roof line of building	Roof line of building
Placement	Non-Restricted	Must observe yard regulations and Front setback: 10 ft.	Must observe yard regulations
Illumination	Direct, Indirect	Direct, Indirect	None
Special	See Footnotes 1, 3, and 4	See Footnotes 4 and 5	None

Regulations			
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Sign Type	Construction	Directory	Directional	General Outdoor Advertising
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	2	2	1
Maximum Area	32 sq. ft.	Sum of 30 sq. ft.	3 sq. ft. each	Detached: 3 sq. ft. Wall: 10 sq. ft.
Maximum Height	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 10 ft.	10 ft.
Placement	Front Setback: 10 ft. Rear and Side: 25 ft.	Must observe all yard regulations	Non-Restricted	Front setback: 10 ft. Rear and Side: 25 ft.
Illumination	Indirect	Indirect	Indirect	Indirect
Special Regulations	Must be immediately removed upon completion of construction or occupancy	None	None	See Footnotes 1 and 2

Sign Regulations Within Non-Residential Zoning Districts: (3)

Sign Type	Future Improvement	Real Estate	Subdivision
Construction Class	Detached	Wall or Detached	Wall or Detached
Maximum Number	1	3	1 per public entrance
Maximum Area	32 sq. ft.	9 sq. ft. each	12 sq. ft.
Maximum Height	10 ft.	Detached: 4 ft. Wall: 8 ft.	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.	Front setback: 10 ft. Side and Rear: 25 ft.	No sign shall impede vision at any intersection
Illumination	Indirect	None	Indirect
Special Regulations	None	Buildings of over 10,000 sq. ft. may erect a wall sign of 12 sq. ft. See Footnotes 1 and 6.	See Footnote 3

Footnotes to charts:

- (1) All inside signs within five (5) feet of a window shall be counted as wall signs and in addition shall not exceed twenty (20) inches of the glassed area of the window in which the sign is located.
- (2) Only permitted are those signs which may be off the premises for which they relate and are identify, advertise, and/or direct to a licensed business within two hundred (200) feet of the property for which they relate to sign. However, if the sign is three (3) square feet or less in area, the business property to which the sign relates may be within one (1) mile of the sign.
- (3) Apartment complexes and dwellings of up to ten (10) units are permitted thirty-two (32) square feet. For excess of ten (10) units, one (1) square foot may be added for each unit, up to a maximum of forty-eight (48) square feet in cumulative area.
- (4) If illumination is permitted, sign may not be animated and/or flashing.
- (5) One additional sign of this construction class up to thirty (30) square feet in area shall be permitted for each two hundred (200) feet of street frontage.
- (6) For a group of more than four (4) sites and in lieu of the nine (9) square foot individual lot sign, one thirty-two (32) square feet shall be permitted.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. Effective Date. This ordinance shall take effect upon adoption.

SECTION 7. 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 Laura Mahoney _____
- Council Member Steve Rivet _____
- Council Member Dick Korn _____
- Council Member Danny White _____

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this ____ day of _____, 2018.

TOWN OF MALABAR

BY:

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: March 19, 2018

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

SUBJECT: Regulations for Pharmacies and Medical Marijuana Dispensaries (Ord 2018-03)

BACKGROUND/HISTORY:

Malabar Council discussed this at the last meeting a directed the Attorney to draft regulations for the Land Development Code to give direction on how pharmacies and medical marijuana dispensaries shall be governed.

Medical Marijuana was approved by the voters in November 2016. Malabar adopted a moratorium in January 2017 to provide time to create regulations. In May 2017 Malabar adopted regulations to deal with medical marijuana dispensaries (MMD).

FINANCIAL IMPACT: Typical legal cost to advertise an ordinance for public hearing: \$138.00

ATTACHMENTS:

- Ordinance 2018-03

ACTION OPTIONS:

Approval of First Reading of Ord 2018-03

ORDINANCE 2018-03

AN ORDINANCE OF THE TOWN OF MALABAR RELATING TO ZONING AND LAND USE; AMENDING ARTICLE III DISTRICT PROVISIONS OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING TABLE 1-3.2; PROVIDING FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES IN THE COMMERCIAL ACTIVITIES PORTION OF SAID TABLE; PROVIDING PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES AS CONDITIONAL USES IN THE COMMERCIAL LIMITED ZONING CATEGORY; AMENDING ARTICLE VI OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SUBSECTION D; SETTING FORTH ADDITIONAL REQUIREMENTS AND CRITERIA FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES; AMENDING TABLE 1-6.1 (B) CONDITIONAL LAND USE REQUIREMENTS; PROVIDING FOR PHARMACIES AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the Florida Right to Medical Marijuana Initiative was on the November 8, 2016 ballot as Amendment 2 under the title "Use of Marijuana for Certain Medical Conditions," and, it passed and become Section 29 to Article X of the Florida Constitution; and,

WHEREAS, SB 8A amended Florida Statute Sect. 381.986 and became effective on June 23, 2017, which effectively implemented the provisions of Section 29 to Article X of the Florida Constitution; and,

WHEREAS, SB 8A allows local governments to regulate Medical Marijuana Treatment Center Dispensing Facilities as long as such regulations are not more restrictive than its ordinances permitting or determining the locations for pharmacies; and,

WHEREAS, the Town of Malabar regulates the use of land within the Town of Malabar in accordance with the Future Land Use Map designations in the Comprehensive Plan and the Land Development Regulations; and,

WHEREAS, the Town Council has determined that it is in the best interests of the citizens of the Town to adopt regulations concerning Pharmacies and Medical Marijuana Treatment Center Dispensing Facilities; and,

NOW, THEREFORE, BE IT ORDAINED BY THE Town of Malabar of Brevard County, Florida, as follows:

SECTION 1. Table 1-3.2 is hereby amended to include Pharmacies Medical Marijuana Treatment Center Dispensing Facilities in the "Commercial Activities" section as a conditional use in "CL" zoning district to read as follows:

Table 1-3.2

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
COMMERCIAL ACTIVITIES														
<u>Pharmacies and Medical Marijuana Treatment Center Dispensing Facilities</u>									C ⁵					

5. See criteria in Article VI, Section 1-6.1 D

SECTION 2. Article VI, Section 1-6.1D is amended to read as follows:

• • •

“D. Criteria for Pharmacies and Medical Marijuana Treatment Center Dispensing Facilities

1. Criteria to be considered concerning an application for a pharmacy or medical marijuana treatment center dispensing facility dispensary:

a. Separation distance. A pharmacy and/or medical marijuana treatment center dispensing facility shall not be located within ~~twenty~~ twenty five hundred (2,500) feet of any ~~pharmacy;~~ school (as defined in section 1002.01 or 1003.01, Florida Statutes), ~~medical office;~~ day care center, day care home, adult living facility or similar type of facility, playground, religious institution, public park, ~~another medical marijuana treatment center;~~ any zoning permitting residential structures, or residential structure. All distance requirements shall be measured by drawing a straight line from the nearest property line of the premises upon which a medical marijuana dispensary is located to the nearest property line of the preexisting protected use.

b. Parking. The facility shall provide 1 parking spaces per 200 square feet of gross floor area. In addition, any parking spaces designated for or used by a pharmacy or medical marijuana treatment center dispensing facility shall meet the separation distance requirements of subsection 1.f, above.

SECTION 3. Table 1-6.1 (B) is amended by adding Pharmacies and Medical Marijuana Treatment Center Dispensing Facilities to read as follows:

“Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District	Curb Cut Controls
<u>Pharmacies and Medical Marijuana Treatment Center Dispensing Facilities</u>	N/A	N/A	Paved; Locations only permitted on U.S. Highway 1 and Babcock Street	(11)	(11)	Type A, only if the facility is located in a single building and not part of a multi-unit or building structure	(7)

(11) Reference to Town of Malabar Land Development Code Section 1-6.1 D.”

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

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7. Effective Date. This ordinance shall take effect upon adoption.

SECTION 8. 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 Laura Mahoney _____
- Council Member Steve Rivet _____
- Council Member Dick Korn _____

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this ___ day
of _____, 2018.

TOWN OF MALABAR

BY:

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 5
Meeting Date: March 19, 2018

Prepared By: Doug Hoyt, Town Administrator

SUBJECT: Allocate Road Materials (acct 541.4610) funds to Complete Quarterman Lane Improvements of the Approved Portion of Road

BACKGROUND/HISTORY:

The road material removed from Eva Lane in preparation of the hard surfacing has been placed on Quarterman Lane as part of the Town's road maintenance program.

As previously reported to Council, in order to bring the accepted portion of Quarterman Lane to the Town's minimum road standards, a significant additional amount road material needs to be added to what has already been brought in.

FINANCIAL IMPACT:

541.4610 original budget of \$83,00.00; current balance estimate is \$62,000.00.

ATTACHMENTS:

Picture of Quarterman Lane

ACTION OPTIONS:

Approve allocation of funds from 541.4610 to complete this project. Estimate to be provided at the meeting.



Quarterman Lane road improvement