

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY MARCH 21, 2016  
7:30 PM  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A.** CALL TO ORDER, PRAYER AND PLEDGE
- B.** ROLL CALL
- C.** APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:
  
- D. APPROVAL OF THE MINUTES:**
  - 1. Regular Council Mtg of 3/07/16**
    - Exhibit:** Agenda Report No. 1
    - Recommendation:** Request Approval
  
- E. SHERIFF REPORT:**
- F. ATTORNEY REPORT:**
- G. STAFF REPORTS:**
  - ADMINISTRATOR:**
  - CLERK:**
  
- H. PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
  
- I. PUBLIC HEARINGS/SPECIAL ORDERS:**
  
- J. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES; HOA REQUESTS)**
  - 2. Recommendation from P&Z Board: Amend Ord 2014-01 re: ALF in OI**
    - Exhibit:** Agenda Report No. 2
    - Recommendation:** Request Action
  
- K. ACTION ITEMS:**
  - ORDINANCES FOR FIRST READING: 0**
  - RESOLUTIONS: 0**
  - MISCELLANEOUS:**
    - 3. Discuss and Revise Council Procedures**
      - Exhibit:** Agenda Report No. 3
      - Recommendation:** Request Action
  
    - 4. Discuss and Create Policy Guidelines for Working with Developers**
      - Exhibit:** Agenda Report No. 4
      - Recommendation:** Request Action
  
    - 5. Reschedule Workshop Date for Recreational/Limited Commercial Discussion**
      - Exhibit:** Agenda Report No. 5
      - Recommendation:** Request Action

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**L. DISCUSSION/POSSIBLE ACTION:**

**6. Discuss Memorial Options for past Mayor Carl Beatty**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

**M. PUBLIC COMMENTS: General Items (Speaker Card Required)**

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

**O. ANNOUNCEMENTS:**

(2) Vacancies on the Board of Adjustment;

(3) Vacancies on the Park and Recreation Board;

(1) Vacancy on the Planning & Zoning Board

**P. 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.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1  
Meeting Date: March 21, 2016**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 3/07/2016

**ATTACHMENTS:**

Draft Minutes of the following meeting:

- Regular Town Council Meeting – 3/07/2016

**ACTION OPTIONS:**

The Town Clerk requests approval of the minutes.

**MALABAR TOWN COUNCIL REGULAR MEETING**

**March 7, 2016**

**7:30 PM**

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

**A. CALL TO ORDER:**

The meeting was called to order at 7:30 pm by Council Chair Carl Beatty. CM Korn led the prayer and pledge.

**B. ROLL CALL:**

COUNCIL CHAIR:	VACANT
VICE-CHAIR:	BRIAN VAIL
COUNCIL MEMBERS:	GRANT BALL
	DON KRIEGER
	DICK KORN
	RICHARD KOHLER
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the Record, the Fire Chief Christopher Robinson is also present.

**C. APPROVE AGENDA - ADDITIONS/DELETIONS/CHANGES** – CM Krieger asked that item 1.3. Selection of Interim Mayor be moved to the top of the agenda. No objections. Add an item to select a council chair and a vice chair if needed. Acting Chair Vail asked – no response. **MOTION:** CM Korn / CM Ball approve agenda as amended. **VOTE:** All Ayes

This item moved from **1.3.** per agenda change, above.

**3. Appoint Interim Mayor**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**MOTION:** CM Krieger/ CM Korn to appoint former Mayor Crews as interim Mayor until after election November, 2016. CM Krieger said he filled the need in the past.

**Speaker Cards:**

Marisa Acquaviva, 1120 Baywood Court, said as she stated in the letter she submitted, she would fill this opening to help the Town. She said she would totally support and respect the Council decision.

Carlene Conroy, Alexander Drive, supported Phil Crews as he has the best interests of Town in mind and since he is not planning to run in November. Others are planning to run and this appointment could provide unfair advantage.

CM Korn called for the question: **Vote:** All Ayes. Mayor Crews accepts appointment and is sworn in by Clerk.

**MOTION:** CM Krieger / CM Korn to appoint Phil Crews to position of Chair for remainder of term. **Vote:** All Ayes. Mayor Crews accepts appointment and is seated and gavel is passed. CM Vail remains as Vice-Chair.

- D. APPROVE MINUTES** – Meeting of 11/16/15
1. **Approval of Minutes** Regular Council Minutes – 2/1/16
  - Exhibit:** Agenda Report No. 1
  - Recommendation:** Request Approval of Minutes

**MOTION:** CM Vail / CM Krieger moved to approve the minutes from February 1, 2016 as amended. CM Krieger, 1<sup>st</sup> para, sentence fragment. Needs completion. CM Korn pg 4 item 9, said when Jeff was here we need to start a little earlier. Start the budget process earlier – that is what he meant. Krieger, pg 2, 'did not have no' beer.- double negative; another one on pg 5. Pg 3, confusion – wants to leave it on the table. Look at verbatim and correct it. CM Ball said it needs clarification. Mayor Beatty was a regular attendee of CivMil. Clerk to make noted changes/clarifications. **VOTE: All Ayes.**

- E. SHERIFF'S REPORT:** no one here
- F. ATTORNEY REPORT:** nothing at this time. CM Korn asked about Painted Acres and Attorney said there is no agreement.

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

Skip Hard, Hard Lane, wanted to commend Clerk for the abbreviated minutes.

**H. PUBLIC HEARINGS: 1**

2. **Review Site Plan for Commercial Development & Consider Recommendation from P&Z Board:** Parcel 28-38-31-00-00750- aka 1300 Highway 1, Malabar, FL 32950; Route One Motor Sports- Applicant: KellWill, LLC, represented by Mr. William Carmine & Mr. Vaheed Teimouri, Engineer
- Exhibit:** Agenda Report No. 2
- Recommendation:** Request Action

Applicant was asked to the podium to summarize his request.

Vaheed Teimouri Engineering, representing owner. Said they have been working on this project for a long time. The project grew as they put it together. They have met all the town's requirements. Obtained all outside permits except FDOT. FDOT requires town approval first, before submittal. There were some concerns regarding access. They went to poured concrete walls and fire separation between the repair area and the showroom. To bring water / sewer from Palm Bay is not feasible or necessary. Use will easily be accommodated by septic tank and well. The fire requirements for the NFPA do not require building to be sprinkled, but to get 3000psi for a 3-hour period they must have three 8" wells.

Access for delivery / off-loading of product meet/exceed code. There is adequate parking for employees, and longer parking spaces for customers with trailers.

Mr. Teimouri stated P&Z Board Member Bud Ryan voted against it at P&Z meeting. Mr. Teimouri asked Ryan after the meeting what he objected to or wanted added and he got no response.

Mr. Teimouri stated any commercial development done in the county where the proposed access is 24 feet wide is in excess of the required 20 feet. With a requirement of 30 feet access the potential to block is moreso than with a 24 foot access even with striping and signage. It all

comes down to planning, setting rules, training employees and enforcement of those rules by employees. Mr. Teimouri has done 1200 commercial projects in Brevard County in the last 30 years. In some instances they don't even take the fire truck onto the property. He is not a fireman, but confers with them countwide on his projects to ensure safety. If you require it to the wider 30 feet and stripe it, there is more probability of illegal parking in that area.

They also agreed to put no parking signs on the side of the driveway. The building is accessed from the rear and most of the deliveries will be in the back. The showroom vehicles have no gas or batteries. There are fire rated walls between showroom and repair area.

CM Korn, asked about the end of the packet. (3<sup>rd</sup> Party reviewer) Brian Foster asked if there would be enough room in the cul-d-sac for delivery vehicles. Have all the questions been addressed to the satisfaction of the reviewers.

PH opened:

Skip Hard, went on the town website, and it announced the building would be a 10,000 sf building – referred to the advertisement, it has now become a larger project. He asked if there was an issue with the conflict. Chair said current notice does not mention the size. Attorney said all notices have been and are compliant.

Liz Ritter, Vice Chair, Planning and Zoning Board, said they had all these questions at their meeting and resolved those questions properly. They are proposing preformed concrete walls, stairs in the front and primary access at the south west end of building, with protection to the neighbors on north side. They went over everything on the plans, got answers and submitted their recommendation for council approval.

CM Krieger stated the back building does not have walls. Tiemouri said it does now; the project has evolved. CM Krieger said he did the math on the MBC and came up with .205, which is a little more than the maximum the code allows. CM Korn has no problem with the walls for security and weather; they do not have an impact on the impervious surface runoff.

Krieger asked if it was normal for the opinions to be reviewed. Krieger tried to do due diligence plans. Legal ad with two meetings implies that it will be accepted. He has tried to do his due diligence. The minutes weren't available until this morning. Why take this some opinions

Krieger that is where he is at. When this first presented to the public. It seems that P&Z Franklin said about the 20% is gross lot size.

Milucky, 1280 Highway 1, last time he spoke in front of this body, still thinks . He came to support his neighbor to the south. It is his here to support. He supports it and there are going to be trees on the property line. The people that are most likely to be affected. Appreciates all the due lildiligence, and punt this football down the road.

This is a good solid project. Everyone of his concerns has been answered. This is good. And its additional property tax.

No other speakers. Questions?

PH closed.

**MOTION:** CM Korn / CM Kohler to approve site plan as recommended by P&Z Board with the additional requirement to widen driveway an additional six feet to 30 feet or cut an access from East Railroad Avenue.

Discussion: Vail asked to hear from the Chief

Chief read from the NFPA code Section 18.2.3.3 and 18.2.3.1.4, the AHJ (agency having jurisdiction) can require multiple access roads if single access could impede their access. FS 633.266 states when there is a conflict between, the AHJ can refer plans to the State Fire Marshal. Even though the building is non-combustible, with a limited 24' road, if there is anything going on that could worse case scenario prevent them from accessing. He needs to have someone sit with him to make this alternative plan. Chief said you have already set precedent. Future access from the back of the property. He suggests they set a meeting so this can be worked out. P&Z reviews and recommends. Somone needs to talk to him. CM Krieger asked Attorney if we are liable. Attorney said no, not if it is per code. If we are not going to agree then it is going to have to go to the State Fire Marshal.

Vail said it is a very good project. And has been drug out far too long. Chief said his job is to reduce liability and protect the public. Chief appreciates the

Attorney said if you make it contingent on approval of Fire Chief and then there is no approval, then what – Attorney said the applicant and Fire Chief need to talk and postponing is his recommendation. Chair said you could postpone until there is an agreement and then Chair could call a special meeting to hear only this item.

Chair asked Chief how much time is needed? Chief said could be next day or the next. CM Vail wanted to hear from Chief. Engineer Teimouri also asked to speack again; perhaps they can work it out tonight. Chair said they could call a recess. CM Korn spoke of the good qualities of the existing Route 1 Motorsports business.

Chair called a 10 min recess at 8:40pm.

Chair called the meeting back to order 8:55pm. Chair asked if they had reached an agreement. Chief said yes. Chair asked one of them to come to podium and tell Council what they had agreed to. Engineer Vaheed Tiemouri stated the applicant has agreed to either do the 30' opening or cut the secondary access, either / or and the Chief agreed. Tiemouri then said they didn't have a choice – either make a 30-foot driveway or open East Railroad Avenue. If they do not do one or the other then basically, they do not have a project. They submitted in December, before Christmas. Malabar had 60 days, January and February, to review the plans. And then always at the 11<sup>th</sup> hour, Malabar Fire Dept says do this or your project won't go through. He referred to the church project he had done on Babcock Street in 2013. Got all the way to construction and then the Fire Dept said it must be sprinkled and it shut down the project for two years. It is an opinion, a suggestion, not a requirement. That is not the way to do business. He is not just making money, he is licensed to read and interrupt the code and follow that code when designing these projects with public safety in mind. CM Korn, do we have an agreement. Chair said yes, they will do either the widening or the second access. Tiemouri said they would have to see which is more economically feasible.

**ROLL CALL VOTE:**

1)CM Ball, Aye; CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye; CM Vail, Aye. Motion carried 5 to 0.

**I. ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS/COMMITTEE; RESIDENT GRIEVANCES; HOA REQUESTS)**

#3 moved to top of agenda.

**4. Recommendation from P&Z Board:** amend LDC to require 500' radius notification for land use and 1000 feet for vacate and abandonment.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Korn to direct staff to draft an ordinance expanding the radius for notification purposes before public hearing on land use items as recommended by P&Z.

Discussion:

CM Krieger "all affected" what does that mean? Ritter explained the abandoned and vacate and the public utilities could affect more than just the people within the radius. Put the responsibility on the Building Department to make someone responsibility. 500' of the perimeter not the center.

**ROLL CALL VOTE:**

CM Ball, Aye; 1)CM Krieger, Aye; CM Korn, Aye; CM Kohler, Aye; CM Vail, Aye. Motion carried 5 to 0.

Vote: All Ayes 5 to 0

**5. Recommendation from P&Z Board: Amend Ordinance 2014-01 re: ALF in OI**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

**MOTION:** CM Vail / CM Kohler to direct staff to draft an ordinance prohibiting ALF construction in OI Zoning.

Discussion: Council asked P&Z Vice Chair Liz Ritter to speak. When they first did the ALF regulations they used the Florida statute and it has since changed and now and it is allowed in a lot of zoning classifications. They want to limit the OI to defer to the preamble of the Charter. The definition of OI accommodate only non-residential. Since this was adopted ALF. No residential uses in OI. CM Krieger hasn't had enough time to read all of these. CM Krieger- the directive they got from council when he was on zoning board, was to prohibit "residency" in OI zoning. Ritter explained they have changed the statutes in the last two years. If we state we are rural residential and the statute conflicts with our preamble, we would like to defer to the Charter. CM Vail asked Atty to look at and get back to council.

**MOTION:** CM Korn / CM Krieger to postpone until next meeting. Vote: All Ayes.

**J. ACTION ITEMS:  
ORDINANCES FOR FIRST READING: 0  
RESOLUTIONS: 0**

(No action on this as it was improperly put on agenda. Once an item is tabled, it remains off the agenda until a motion is made and seconded and has a majority vote to take from table. It can then be acted on.)

~~6. RESOLUTION 02-2016 - A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR REVISION OF RESOLUTION 04-2011 REGARDING PERMIT FEES FOR NEW RESIDENTIAL AND COMMERCIAL CONSTRUCTION; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.~~



**MISCELLANEOUS:**

**7. Set Next Workshop Date for Council re: FLUM & R/LC**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Action

**MOTION:** CM Korn / CM Kohler to recommend workshop on Mar 31, 2016 to discuss the R/LC.

**Vote:** Ayes, 4; Nay, 1 (Krieger)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**K. BOARD & COMMITTEE MONTHLY STATUS REPORTS:**

P&Z Vice-Chair Liz Ritter had left

T&G Chair Drew Thompson gave PP presentation: Kohler recognized Drew and his group for the great work they are doing. Ball is out early in the morning and has come across walkers and another cyclist. Vail asked if EELp would help with lightening systems. One on each side of Cameron. Build it once with minimal maintenance. Krieger asked if he had contacted FIND. Krieger is interested in the land beyond the ROW.

Park Chair Hans Kemmler – not present

**L. DISCUSSION/POSSIBLE ACTION:**

**M. STAFF REPORTS:**

ADMINISTRATOR: before you there are proposed articles for the newsletter. Sand Hill Trailhead restroom, the delay for the project is the potable water for the water fountain. 4 choices: do away with it. Put in water treatment, use the old school house, or put in a cooler and delivers the 5 gal jug.. Krieger asked about a vending machine. The FD opens and closes the restroom. Trailhead will close and open automatically.

To get this off of dead center, he would strongly recommend the alternative. Item 4 is very doable.

Drew said when the committee was working on grant, they anticipated having ADA users, people without water or they ran out. They wanted to encourage people that are not experts using. If that is the. Doug opposes the initial expense but also the monthly maintenance.

Doug, the fence around the ball park is falling down, been there over 20 years, he sent the breakdown to get it replaced. 6100.00 he would like to move ahead with this project. Korn said he saw it and it was in bad shape. He has contacted WM and other local businesses that will participate in donations toward this expenditure.

**MOTION:** CM Korn / CM Vail to extend 15 minutes

**MOTION:** CM Korn / CM Kohler to suspend the rules and approve the expenditure.

**Vote:** All Ayes

Doug frontend loader, needs brakes, council was furnished with all this information. Need to get this fixed. It took awhile to get this all pulled together. Called 8 vendors. Maudlin International, said they would take it apart. Looking at 10K to fix it or spend 5,500 for a 30 days. He personally looked at the equipment. The emergency brake was locked. CM Krieger said this is dejavu. It is a large expenditure. CM Korn said it is parked at Maudlin.

**CLERK:** nothing

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

1)CM Ball – Ball would like more information on agenda for the front end loader. One of the things is where is the money coming from.

2)CM Vail –

3)CM Krieger – discuss the order of the agenda reports.

4)CM Korn – next door, bit of discussion to a memorial to the former mayor.

5)CM Kohler – welcome and thanks to Phil

Interim Mayor - Crews said the ways we work the agenda, kick around the way you put the agenda together. This will give everyone 2 weeks to work on it. The Chair will help watch for this. It is really coming from you.

Vail said the resolution will be removed from table at next meeting. Vail said a good point brought up today. We have him cornered. Bring this information to developer before it comes to . Maybe have it as a agenda item to discuss and how it came to be.

Phil will work with clerk. Korn has addressed items to chair and a copying the clerk. There have been times

**O. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**P. ANNOUNCEMENTS:**

- (2) vacancies on the Board of Adjustment;
- (3) vacancies on the Park and Recreation Board;
- (1) vacancy on the Planning & Zoning Board

**Q. ADJOURNMENT:**

There being no further business to discuss, Chair asked for a motion.

**MOTION:** CM Korn / CM Korn to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:30 PM.

BY: \_\_\_\_\_  
Council Chair

(seal)

ATTEST:

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

Date Approved: 3/21/2016

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: March 21, 2016**

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

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**SUBJECT: Recommendation from P&Z Board – ALF in OI Zoning**

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**BACKGROUND/HISTORY:**

Council postponed this from the last meeting. They wanted input from Attorney Bohne.

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:**

Agenda Packet from March 7, 2016

**ACTION OPTIONS:**

Discussion and Action

## Debby Franklin

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**From:** Karl Bohne <KBohne@fla-lawyers.com>  
**Sent:** Wednesday, March 09, 2016 9:44 AM  
**To:** Debby Franklin; Douglas C. Hoyt  
**Subject:** P&Z changes to ALF

I have reviewed the suggested changes by the P&Z concerning ALFs. I understand most of what they are suggesting. I would ask that they clarify if they want to remove, as a conditional land use in the OI, the item known as Adult Day Care centers. I don't know if it was missed or if they intended to leave it in as a CU. Just need clarification.

I still am not sure about the suggested language which reads "The town may defer from Florida Statutes to maintain its rural nature as stated in the town charter". My understanding is that this is suggested to give some leeway when considering such a facility or facilities to conclude that if they are contrary to the rural nature of the town we can deviate from the state definition and deny or request modification. While the intent is admirable the problem is that as worded its probably too ambiguous and may give too much unfettered discretion to deny or impose conditions. There needs to be some guidelines. So may be language as follows can be used.

"With respect to the following uses and facilities, the definitions as used in the Florida Statutes shall serve as the starting point for consideration of such facilities and uses. The town may deviate from such definitions upon the record findings that:

- that applying the statutory definition would be contrary to the harmony of the site and character of the surrounding area and properties;
- that applying such statutory definition would adversely affect or impact land use activities of surrounding land use activities;
- that applying the statutory definition would adversely impact public infrastructure; and
- that applying the statutory definition would be contrary the Town' s charter in maintaining the rural character and rural life in the Town."

This is a starting point. This will need some additional thought. What still remains unclear is: what in the statutory definitions are of a concern? Is it the character of the potential use and facility or is it the intensity of the use and facility, for instance the # of potential "beds" associated with a particular use or facility?

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# Portion of Article III District Provisions

development shall be located so that they provide a smooth transition between low density residential development and areas developed and/or designated for more intense uses.

H. *RM-6 "Multiple-Family High-Density Residential Development."* The RM-6 district is established to implement comprehensive plan policies for managing high-density residential development at a density not to exceed six units per acre. The district is established to ensure that sufficient land is available for developments of high-density residential development and is intended to ensure availability of adequate public facilities.

I. *OI "Office-Institutional."* The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to accommodate businesses and professional offices together with institutional land uses on sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B)), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.

J. *INS "Institutional Services."* The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.

K. *CL "Commercial Limited."* The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:

- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
- A specialized market with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Golf Course Facilities	C													
Hospital and other Licensed Facilities								C					C	
Nursing Homes and Related Health Care Facilities					C	C							C	
Protective Services					C	C	C	C	C	C	C	C	C	C
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C
COMMUNITY RESIDENTIAL HOME														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				C	C								
Level 2 (7 to 14 residents/beds)					C	C							C	
ASSISTED CARE COMMUNITIES														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>					C			
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>								

*Remove* ←

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
10. *Public Health Facilities.* The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

**Add**  
↓

**The Town may defer from Florida Statutes to maintain its rural nature as stated in the Town Charter**

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities" means any establishment that:

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

~~However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.~~

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following

Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

~~"Long-term care facility" means a nursing home facility, assisted living facility, adult family care home, board and care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).~~

**Delete**  
↓

**Add**

Part I Long-Term Care Facilities

"Long Term care facility" only means a nursing home facility or board and health care facility.

Part II Nursing Homes

"Nursing Home Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Part V Intermediate, Special Services, and Transitional Living Facilities

Intermediate care facilities; intent-The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state government share the cost of providing care, is an appropriate option to explore in the continuum of care.

11. *Public Parks and Recreation Areas.* Public parks and recreation land and facilities developed for use by the general public.
12. *Public and Private Utilities (including Essential Government Services).* Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; wastewater collection and disposal; communication; and similar services and facilities.
13. *Social Welfare Facilities.* The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430. Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

ADD  
↓

The Town may defer from Florida Statutes to maintain its rural nature as stated in the Town Charter.

A. Community Residential Homes

"Community Residential Home" means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency of Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Refer to Chapters 408 and 419.

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities



ORDINANCE 2014-01

A ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.B. LAND USE CLASSIFICATIONS; PROVIDING FOR PUBLIC HEALTH CARE FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING TABLE 1-6.1 (B) REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING SECTION 1-9.2; ESTABLISHING PARKING REQUIREMENTS FOR PUBLIC HEALTH FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-20.2 OF ARTICLE XX, DEFINITIONS; PROVIDING FOR DEFINITIONS OF HOSPITAL AND OTHER LICENSED FACILITIES, ADULT FAMILY-CARE HOME, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTERS AND COMMUNITY RESIDENTIAL HOME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Sections 1-2.6.B is amended as follows:

“B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.

5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.

6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.

7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

<i>Type of Golf Course</i>	<i>Minimum Acres Required</i>
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.

9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.

10. *Public Health Facilities*

The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities " means any establishment that:

(a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours

Added Sentence



by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

(b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

"Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).

Part II Nursing Homes

"Nursing Home Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Part V Intermediate, Special Services, and Transitional Living Facilities

Intermediate care facilities; intent.—The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state

Added sentence  
Deleted

government share the cost of providing care, is an appropriate option to explore in the continuum of care.

11. *Public Parks and Recreation Areas.* Public parks and recreation land and facilities developed for use by the general public.

12. *Public and Private Utilities (including Essential Government Services).* Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; wastewater collection and disposal; communication; and similar services and facilities.

13. *Social Welfare Facilities*

The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

Added Sentence  
↓

A. Community Residential Homes

“Community Residential Home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency of Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Refer to Chapters 408 and 419.

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

“Assisted Living Facility (ALF)” means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. Refer to Chapter 408 and 429.

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied

by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

#### Part II Adult Family-Care Homes

“Adult Family-Care Homes” means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. Refer to Chapters 408 and 429.

#### Part III Adult Day Care Centers

“Adult Day Care Centers” or center means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services. Refer to Chapters 408 and 429.”

Section 2. Section 1-3.1.I is amended to read as follows:

• • •

“I. *OI "Office-Institutional."* The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to accommodate businesses and professional offices together with institutional land uses on sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses ~~(except those Community Facilities defined as Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B))~~, general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.”

← Delete

• • •

Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code, Community Facilities, is hereby amended to delete references to “Group Homes”, and by amending references to “Hospitals and Extended Care Facilities” and “Nursing Homes (including Rest Homes and Convalescent Homes)” and adding references to Community Residential Home and Assisted Care Communities to read as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
<u>“COMMUNITY FACILITIES</u>														
Group Homes					€	€		€			P		€	
Hospitals and Extended Care other Licensed Facilities								C						
Nursing Homes (including Rest Homes and Convalescent Homes) and Related Health Care Facilities					C	C					€		C	
Community Residential Home														
Level 1 (1 to 6 residents/beds)	C (3)				C	C								
Level 2 (7 to 14 residents/beds)					C	C							C	
Assisted Care Communities														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C (4)	C (4)					C			
Level 2 (6 to 15 residents/beds)					C (4)	C (4)								
Level 3 (16 or more residents/beds)					C (4)	C (4)								
II Adult Family-Care Homes														
(1 to 5 residents/beds)	C (3)	C	C	C	C	C					C			
III Adult Day Care Centers					C	C		C			C		C	

*Deleted "C"*

(3) Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

(4) ALF Factor of “3” (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF’s”

**Section 4.** Table 1-6.1(B) is hereby amended to delete references to “Group Homes”, and by amending references to “Hospitals and Extended Care Facilities” and “Nursing Homes (including Rest Homes and Convalescent Homes)” and adding references to Community Residential Home and Assisted Care Communities to read as follows:

"Conditional Land Uses	Minimum Size Site (3)	Minimum Width/Depth (feet) (3)	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 (5)	Curb Cut Controls
Group Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)
Hospitals and Extended Care <del>other</del> Licensed Facilities	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes (including Rest Homes and Convalescent Homes) and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family- Care Homes							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

•••

“(3) Minimum spatial requirements shall comply with the requirements established by the Town of Malabar District Provisions or the Florida Statutes, whichever requirement is greater.”

•••

Section 5. Section 1-9.2 is amended to include the following:

11. *Social Welfare Facilities.* One (1) space for every three (3) residents/beds plus one (1) space per employee on the largest shift.”

12. *Public Health Facilities.* One (1) space for each five (5) beds plus one (1) space for each employee, including doctors, or one (1) space for per three hundred (300) feet of building area, whichever is greater.”

•••

Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for “Group Care Facility” and amending “Extended Care Facility” and establishing the following additional definitions:

“Hospital and other Licensed Facilities” As defined in section 1-2.6.B.10.A

“Adult Family-Care Home” As defined in section 1-2.6.B.13.B, Part II.

“Assisted Living Facility” As defined in section 1-2.6.B.12.B, Part I.

“Adult Day Care Centers” As defined in section 1-2.6.B.13.B, Part III

“Community Residential Home” As defined in section 1-2.6.B.13.A.”

**Corrected  
13B**

Section 7. 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 8. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 9. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 10. This Ordinance shall become effective immediately upon its adoption.



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

Council Member James Milucky  
Council Member Wayne Abare  
Council Member Steven (Steve) Rivet  
Council Member Dick Korn  
Council Member Marisa Acquaviva

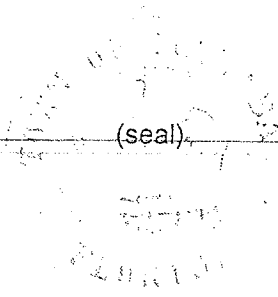
Aye  
Aye  
Aye  
Aye  
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3<sup>rd</sup> day of February, 2014.

Town of Malabar  
no signature – veto by Mayor  
Carl A. Beatty, Mayor

First Reading 1/6/14 PASSED 5/0  
Second Reading 2/3/14  
Vetoed by Mayor 2/12/14  
Council Vote to Override 3/3/14

Results:  
Jim Milucky Aye  
Wayne Abare Aye  
Steve Rivet Aye  
Dick Korn Aye  
Marisa Acquaviva Aye



Ordinance adopted / fails (circle one)

TOWN OF MALABAR  
By: [Signature]  
Steve Rivet, Council Chair

ATTEST:

By [Signature]  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

Approved as to form and content:

[Signature]  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: March 21, 2016**

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

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**SUBJECT: Amending Council Procedures in Reso 04-2014 to better align with Town Charter and Robert's Rules (Reso 04-2016)**

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**BACKGROUND/HISTORY:**

Chair offered to look at the resolution on Council procedures and make recommendations to reflect the language and intent in the Town Charter and Robert's Rules. We kept it in a resolution format for convenience of Council.

When a request comes in to put an item on the agenda, it is forwarded out to Council and the Mayor. If additional requests come in they are added to the first one and sent out to Council and the Mayor. Then at the start of the next meeting Council can direct if an item be set on an upcoming agenda, added to the current agenda or dealt with in some other manner.

At the end of the meeting, there should be sufficient idea of what will be on the next agenda.

**FINANCIAL IMPACT: none**

**ATTACHMENTS:**

Reso 04-2016  
a, b, c's of Parliamentary Procedures  
Section 2.11 of the Charter

**ACTION OPTIONS:**

Discussion and direction to staff

## RESOLUTION 04-2016

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 07-2014 RELATING TO COUNCIL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council recognized the need for established procedures to facilitate orderly and respectable regular and special Town Council meetings through adoption of various resolutions since 1964; and

**WHEREAS** the Town Council desires to follow the direction stated in the Town Charter to follow Roberts Rules of Order in setting the order of business. Nothing in this resolution is meant to conflict with the Charter or Roberts Rules. ~~expand on the council meeting procedures in Resolution 30-2013 to improve the handling of Town Council business during meetings; and~~

~~**WHEREAS**, the Town Council recognizes that this Resolution shall act as a guide and provide a framework for Town Council procedures during meetings; and~~

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

### **SECTION 1. Establishment.**

This Resolution hereby establishes the Town Council procedures for both regular and special Town Council meetings.

### **SECTION 2. Process.**

The Town Council, Town Administrator, Town Clerk, all Department Heads, and the public are hereby advised and directed to follow the terms, conditions and provisions of this Resolution as the basis and framework for Town Council Meeting procedures as follows:

### **SECTION 3. Meetings**

Regular meetings of the Malabar Town Council shall be scheduled for the first and third Monday of each month. All meetings shall be called to order at 7:30PM unless alternative times and dates are agreed to by a majority of Council.

- At 10:15PM the Chair shall announce there is only 15 minutes left in meeting (without a vote to extend) and the Chair may ~~shall~~ reprioritize any remaining agenda items at that time.

- All meetings shall adjourn no later than 10:30 PM unless all members of the Town Council present, vote by unanimous consent to extend the time for adjournment to a time certain. Any agenda items remaining at the time of adjournment shall be carried over to the next regularly scheduled meeting unless, prior to adjournment, the Town Council determines that an item should be placed on the agenda for a special meeting.

The Council may, at any regular meeting, cancel the next scheduled meeting by majority vote if the Charter requirement of at least one meeting a month is met. The Council Chairperson, upon determining that there are no agenda items requiring immediate Council attention may direct the Town Clerk to cancel the regularly scheduled meeting.

#### **SECTION 4. Regular Meetings**

A. **Agenda Order.** ~~The normal order of the agenda items is as follows and may be reorganized by the Council Chairperson~~ sets the order of business for each meeting in accordance with the Town Charter and Robert's Rules. ~~for items directly related to paid staff, for convenience of speakers, or the public.~~

- a. Call to order & prayer and pledge – may or may not be rotated among Council per Chair.
- b. Roll call— Chair requests clerk to call the roll and then announces those members of council excused and declares a quorum.
- c. Agenda approval - additions, deletions and changes to the agenda – council or mayor, town administrator or clerk may ask that items be added, deleted or moved up or down the agenda.
- d. Consent agenda – all items not requiring separate discussion may be placed here and approved with one motion and a rollcall vote if there are resolutions on the consent agenda.
- e. Approval of minutes from previous meeting
- f. Attorney report
- g. Sheriff's office report
- h. Staff reports -
- i. Board and/or committee reports
- j. Public comments five minute limit (may not address subsequent agenda

items) speaker card required. Speaker's cards will be available by the council chamber door to be utilized by persons desiring to address council on items listed on the agenda. a copy of the speaker's card is attached as exhibit "b" speaker cards are required for all agenda items except public hearings. Speaker cards shall be transmitted to the chairperson of the town council for the purpose of determining the number of speakers for any agenda item and establishing a framework for public comments. Speaker cards must be transmitted to the chairperson prior to the opening of the agenda item specified on the card in order to be valid. The town council may, by majority vote, allow late submittals of speaker's cards. No response is required from council to any public input. Speaker cards will be recognized by agenda item number prior to council taking up the agenda item. Exception: if a member of the public wishes to be recognized after council has taken up an agenda item, any council member may ask the chair to recognize that person. If the chair refuses to recognize the person then it shall be put to a vote of council. Public comments shall be limited to five minutes maximum per person during a regular or special town council meeting. The town council may, by majority vote, extend the five minute limitation. This section applies except in the case of a required public hearing as per state law.

- k. Public Hearings / Special Orders

l. General Orders / New Business Agenda items directly related to residents present at the meeting: (such as Board recommendations, HOA requests, resident grievances, etc.) Ordinances, Resolutions and miscellaneous items follow. Board members representing their Board's recommendation or appearing at the request of the Mayor or Council Member is not required to submit a Speaker's card in order to address council or respond to council's questions.

- m. ~~Special Orders: Action Items – ordinances for 1<sup>st</sup> reading, resolutions, miscellaneous (listing urgent or time sensitive first, followed by unfinished business (old business), then new business).~~

Chair may excuse Attorney at this point if there is no objection.

- n. Presentations – may be moved to front of meeting.
- o. Proclamations - may be moved to front of meeting.
- ~~p. staff reports – may be moved to front of meeting.~~
- q. discussion items - listing old/unfinished business first then new business
- r. reports, verbal, by council , mayor
- s. publiccomment –any subject –speaker card required
- t. Adjournment: no further business to propose.

## **B. Agenda Items**

- ~~1. The Chair sets /approves the agenda in accordance with Charter and Robert's Rules. Any Member of Council or the Mayor may place items on the agenda. Once an item has been placed on the agenda, in accordance with the provisions of this resolution, it may be removed only by the Council Member or Mayor who placed the item on the agenda.~~
- ~~2. Any person may ask a council member or mayor to make a request to the Chair to Malabar resident may place one or more items on the agenda by submitting a completed request form attached as Exhibit "A" and related information to the Town Clerk's Office. Town Hall by the Wednesday noon deadline. Non-residents must contact the Mayor or any Council Member to request they submit the item for them. These items may be rescheduled or pulled from an agenda by a vote of Council.~~
3. The normal deadline for submitting agenda items along with all information relating to the items, to the Town Clerk's Office, is noon, ten (10) business days preceding the next regularly scheduled meeting. Staff will have all agenda material prepared and available to Council Members by noon on Wednesday prior to the meeting.
- ~~4. Any Member of the Council or the Mayor may, during the meeting, immediately after the Roll Call, request that an item be added to the agenda or that an item be moved to a different location on the agenda for convenience of the public. If there is no objection from any Council Member, the Chairperson shall place the item at the appropriate place on the agenda. If any Council Member objects, a majority vote of the Council shall be required to place or move the item on the agenda.~~
5. No requests for placement on the agenda will be accepted from any candidate or person supporting any candidate for public office which promotes the campaign of any candidate.
6. The Consent Agenda may contain Resolutions, Council minutes, reports or other items that can be approved as a group without necessity for comment and discussion.
  - ~~a. Notwithstanding the foregoing, any item placed on the Consent Agenda shall by request of any Council Member, be removed from the Consent Agenda and placed on the regular agenda immediately after new business, to be discussed and voted on separately by the Town Council.~~

**C. Absence Procedures**

1. If a Council Member or the Mayor intends to be absent from any Council meeting, he or she shall notify a staff Member of the absence and the reason why. Notification of a staff Member shall have the following priority: 1)Town Clerk, 2)Town Administrator, 3) Deputy Clerk. If it is after hours at the Town Hall, the Council Member or Mayor shall leave a message on the answering machine.
2. Communication shall be maintained among staff members so that the Clerk who will be serving at the Council meeting is aware of the absence.
3. Prior to the start of the Council meeting, the Clerk shall check the answering machine and notify the Chair of any absences and the reason why.
4. Prior to asking for roll call, the Chair shall announce any absence and the reason why. If there is no objection from any Council Member, the Clerk shall declare that Member excused when calling roll.
5. If an objection is raised by any Council Member, the issue shall be put to a vote prior to rollcall and the Clerk, when calling roll, shall declare that Member excused or unexcused according to the vote.
6. If a Council Member or the Mayor is absent at roll call and has not made notification per (1) above, the Chair prior to asking for roll call shall announce the absence and declare it unexcused. If there is no objection from any Council Member, the Clerk shall declare that Member unexcused when calling roll.
7. If an objection is raised by any Council Member, the issue shall be put to a vote prior to roll call and the Clerk shall declare that Member excused or unexcused according to the vote.
8. If a Council Member or the Mayor arrives after roll call, the Chair shall announce that Member's presence and time of arrival. The Clerk shall then change that Member's status from absent to present in the roll and note it in the minutes.
9. If a Council Member or the Mayor leaves before the end of the meeting, the Chair shall announce that Member's departure and the time. The Clerk shall then note it in the minutes and in the votes.

**D. Meeting Process**

- a. Chair calls meeting to order and directs Prayer & Pledge
- b. Chair announces any Council Member and/or Mayor that is not present and states if they are excused. Chair directs Clerk to call roll.
- c. Chair reads each item on the Consent Agenda. If there is a resolution the Chair reads it by title only and then asks for a supporter to make a motion and then asks for a second. If there is a resolution on Consent Agenda the Chair asks Clerk to do a rollcall, otherwise it is a voice vote.

d. Council Members (CM) do not have to rise to make a motion but it must be seconded before discussion. Motion should be phrased in such a way that the motion maker agrees/supports the motion. Motion should be phrased using positive words whenever possible. Motion maker may say "so moved" unless motion is not clear.

~~e. These motions do not require a second: Call for the question, Question of Privilege, Point of Order, Parliamentary Inquiry and Point of Information. Motion maker cannot speak against the motion but he can vote against it. The Chair cannot make a motion without first passing the gavel to the Vice Chair who will keep the gavel until after the vote on the item. The Chair shall maintain an aura of neutrality and refrain from making motions unless he does pass the gavel.~~

~~f. During discussion/debate the Motion maker gets to speak first. CM must be recognized by the Chair before speaking.~~

~~g. CM shall address comments to Chair and not engage with fellow CM or members of the audience. The Chair may relax this rule if it will assist the Council in their deliberations. See Sec 4.A.6.~~

~~h. Chair restates motion and calls for the vote.~~

**SECTION 5. Conflict and Repeal.**

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

**SECTION 6. Effective Date.** This Resolution shall take effect immediately upon its adoption. This Resolution was moved for adoption by Council Member \_\_\_\_\_ This motion was seconded by Council Member \_\_\_\_\_ and being put to vote, the vote was as follows:

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Don Krieger	_____
Council Member Dick Korn	_____
Council Member Richard Kohler	_____

This Resolution was then declared to be duly passed and adopted this 21 st day of March, 2016.

By: TOWN OF MALABAR

\_\_\_\_\_  
Mayor Phil Crews, Council Chair

**Sec. 2.09. Filling of Vacancies.**

If a vacancy occurs on the Council or in the office of Mayor and there is less than one (1) year remaining in that person's term, the Council, by a majority vote of the remaining full council shall choose a successor to serve until the election is held to fill the vacancy for the unexpired term. The successor must have all qualifications as described in Section 2.03 and/or 2.04. If one (1) year or more remains in that person's term, that seat or office of mayor shall be filled by special election for the remainder of the unexpired term. The council shall schedule a special election to be held not sooner than sixty (60) days nor more than ninety (90) days, following the occurrence of the vacancy. Notwithstanding any quorum requirements established herein, if at any time the membership of the council is reduced to less than a quorum, the remaining members may, by majority vote appoint additional members until the vacancies are filled as provided herein.

(Ord. No. 95-3, § 1, 7-17-95; Amd. of 3-25-03; Ord. No. 08-16, § 2(Exh. A), 12-15-08/11-2-10; Ord. 2006-07, 5-15-06)

**Sec. 2.10. Extraordinary Vacancies.**

In the event that all members of the council are removed by death, disability or forfeiture of office, the governor shall appoint an interim council that shall call a special election as provided in Section 2.09 to fill the unexpired terms.

(Amd. of 3-25-03)

**Sec. 2.11. Meetings.**

(a) The town council shall meet regularly not less than once every month at such time and place as the council may prescribe by resolution. Meetings shall be conducted under the guidelines of Robert's Rules of Order. Special meetings limited to the subjects in the call may be held on the call of the mayor, the chairman or a majority of the members with no less than twenty-four (24) hours notice to each member and the public. Emergency meetings may be called. Council shall provide by ordinance for determination of an emergency meeting. Action taken at emergency meetings must be ratified at the next regularly scheduled meeting of the town council. Any meeting of the town council under these provisions shall be continued by a majority vote of the town council until a time set by the council if business scheduled at such meeting is not concluded.

(b) Notice of meetings shall be posted on a conspicuously placed bulletin board outside the Town Hall protected from the elements. The notice shall contain the date, time and nature of the particular meeting.

(c) The Chairperson shall set the order of business for each meeting.

(d) Voting on ordinances and resolutions shall be by roll call and shall be recorded in the minutes. Three members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members. No action of the Council except as otherwise provided herein shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present.

(Ord. No. 95-3, § 1, 7-17-95; Amd. of 3-25-03)



**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: March 21, 2016**

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

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**SUBJECT: Working with Developers**

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**BACKGROUND/HISTORY:**

The guidelines for site plan review are well defined in the code. What we are requesting is a change in the approval process.

In the past when a site plan is approved by Council then staff gets all reviewing parties to sign off on the approved plan. We are proposing that as each reviewer completes his review and has no adverse comments they sign off on the plan. Until all reviewing parties have signed off, the plan does not go before P&Z. Once all reviewing parties sign off and P&Z makes a favorable recommendation then the P&Z Chair signs off and it goes to Council.

**FINANCIAL IMPACT: none**

**ATTACHMENTS:**

Article VII, Site Plan Review  
Stamp used for sign off

**ACTION OPTIONS:**

Discussion and direction to staff

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

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk then directed to the Building Official and/or the Town Engineer or other designated officials for their recommendation. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by

the Town, responsible for performing the duties specified herein as the Town Engineer.

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

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

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

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Official or Town Engineer and such other staff as may be pertinent. The Town shall proceed to make appropriate studies and/or reviews required to make an appropriate evaluation. The application with evaluative comment shall then be forwarded to the Town Planning and Zoning Board for their consideration and action. The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, so as to prevent inconvenience and delay to the project.

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

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

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

Engineer, Planner, Building Official, Attorney and Fire Department all initial stamp before it goes to P&Z Board. Their initial indicates that the plan meets the requirements of the code.

**SITE PLAN REVIEW  
TOWN OF MALABAR**

**REVIEWED FOR CODE COMPLIANCE BY:**

Engineer: \_\_\_\_\_ Building Official: \_\_\_\_\_  
Planner: \_\_\_\_\_ Fire Marshal: \_\_\_\_\_  
Attorney: \_\_\_\_\_ Council Chair: \_\_\_\_\_  
P&Z Bd: \_\_\_\_\_  
Approved By Town Council on: \_\_\_\_\_

**Approval of Plans and Specifications does not permit the  
violation of any section of the Florida Building Code.  
State Law or Town Ordinance.**

# Calendar for year 2016 (United States)

<b>January</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 2:☉ 9:☀ 16:☾ 23:☾ 31:☾	<b>February</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 8:☀ 15:☾ 22:☾	<b>March</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 1:☾ 8:☀ 15:☾ 23:☾ 31:☾
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<b>July</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 4:☀ 11:☾ 19:☾ 26:☾	<b>August</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 2:☀ 10:☾ 18:☾ 24:☾	<b>September</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 1:☀ 9:☾ 16:☾ 23:☾ 30:☀
<b>October</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 9:☾ 16:☾ 22:☀ 30:☀	<b>November</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 7:☾ 14:☾ 21:☀ 29:☀	<b>December</b> Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 7:☾ 13:☾ 20:☀ 29:☀

## Holidays and Observances:

Jan 1 New Year's Day	May 30 Memorial Day	Nov 11 Veterans Day
Jan 18 Martin Luther King Day	Jun 19 Father's Day	Nov 24 Thanksgiving Day
Feb 14 Valentine's Day	Jul 4 Independence Day	Dec 24 Christmas Eve
Feb 15 Presidents' Day	Sep 5 Labor Day	Dec 25 Christmas Day
Mar 27 Easter Sunday	Oct 10 Columbus Day (Most regions)	Dec 26 'Christmas Day' observed
Apr 13 Thomas Jefferson's Birthday	Oct 31 Halloween	Dec 31 New Year's Eve
May 8 Mother's Day	Nov 8 Election Day	