

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY, MAY 1, 2017  
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 Town Council Meeting Minutes 4/17/17**  
    **Town Council Workshop Mtg Minutes 4/24/17**  
    **Exhibit:** Agenda Report No. 1  
    **Recommendation:** Request Approval
- E. BCSO REPORT:**
- F. ATTORNEY REPORT:**
- G. BOARD/COMMITTEE REPORTS:**  
**Trails and Greenways Committee:**  
**Planning and Zoning Board**  
**Park and Recreation Board**
- H. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF**
- I. 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.
- J. PUBLIC HEARINGS/SPECIAL ORDERS: 1**
- 2. Second Reading of Ord 2017-04 - Redistricting**  
    AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AMENDMENT TO CHAPTER SEVEN, SECTION 7.5, ELECTIONS, OF THE CODE OF ORDINANCES; PROVIDING FOR THE NOVEMBER 8, 2016 ELECTION RESULTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.  
    **Exhibit:** Agenda Report No. 2  
    **Recommendation:** Request Adoption of Ord 2017-04
- K. UNFINISHED BUSINESS/GENERAL ORDERS**
- ORDINANCES FOR FIRST READING: 2**
- 3. Medical Marijuana Regulations Ord 2017-02**  
    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 MEDICAL MARIJUANA TREATMENT CENTERS IN THE COMMERCIAL ACTIVITIES PORTION OF SAID TABLE; PROVIDING MEDICAL MARIJUANA TREATMENT CENTERS AS A CONDITIONAL USE IN THE COMMERCIAL LIMITED ZONING CATEGORY; AMENDING ARTICLE VI OF THE LAND DEVELOPMENT CODE OF THE TOWN; CREATING A NEW SUBSECTION D, "ADDITIONAL CONDITIONAL USE CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTER" TO SECTION 1-6.1; SETTING FORTH ADDITIONAL REQUIREMENTS AND CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTERS; AMENDING TABLE 1-6.1 (B) CONDITIONAL LAND USE REQUIREMENTS; PROVIDING FOR MEDICAL MARIJUANA TREATMENT

CENTERS; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Approval of 1<sup>st</sup> Reading of Ord 2017-02

**4. Eliminating Citation Process Ord 2017-05**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REPEAL OF SECTIONS 2-208 THROUGH 2-210 OF DIVISION 2 OF ARTICLE VII OF CHAPTER 2; PROVIDING FOR REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Approval of Ord 2017-05

**RESOLUTIONS: 1**

**5. Naming the Shade Structure (Resolution 12-2017)** A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE ADOPTION OF "CAMERON TRAIL SHELTER" RECENTLY COMPLETED IN THE RICHARD E. CAMERON SR. AND VOLUNTEERS WILDERNESS PRESERVE; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Approval

**MISCELLANEOUS:**

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**L. DISCUSSION/POSSIBLE ACTION:**

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

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

**O. ANNOUNCEMENTS:**

(1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) vacancy on Trails and Greenways.

**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 ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: May 1, 2017**

**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 – 4/17/2017
- WS minutes 4/24/2017

It was determined during the last year that the minutes should be a brief summary of what occurred in the meeting. This was confirmed again at the November 21, 2016 meeting. For specific details, audio of the meetings are available.

**ATTACHMENTS:**

Draft Minutes of the 04/17/2017 and WS minutes of 4/24/2017 meetings

**ACTION OPTIONS:**

The Town Clerk requests approval of the minutes.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**

**April 17, 2017**

**7:30 PM**

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

**A. CALL TO ORDER:**

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

**B. ROLL CALL:**

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN
	RICHARD KOHLER
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the record, Fire Chief Leonard Thomassen is also in attendance.

**C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: none**

**D. APPROVAL OF THE MINUTES:**

**1. Regular Town Council Meeting Minutes 4/03/17**

**Workshop Meeting Minutes 4/04/17**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Request Approval

**MOTION:** CM Rivet / CM Kohler to approve RTCM minutes of 4/03/17.

Discussion: CM Mahoney suggested using one of those apps that converts voice to written.

CM Korn: Point of order.

**Vote:** Ayes, 4; Nay, 1 (CM Mahoney).

**MOTION:** CM Kohler / CM Ball to approve WS minutes of 4/4/2017.

**Discussion:** CM Mahoney did not say that she wanted to get rid of the Charter. Clerk will check audio.

**Vote:** All Ayes with correction.

**E. ATTORNEY: none**

**F. STAFF REPORTS:**

**• ADMINISTRATOR:**

Several items to update Council:

Has surveyor creating descript of drainage easement to allow us to maintain drainage improvements on D&D Ranch.

Working of Atz Road and Smith Lane drainage and paving project.

Surveys have been done. Problems on Atz Road are not unique to Atz Road. Showed the survey of Atz from Candy to Jordan Blvd. approximately 5000lf - 75% of the ditches are not even in the right of way.

FPL will be moving the power pole at intersection of SR-514 and West Railroad Avenue. ATT has also been contacted and he has not heard back from them.

CM Korn said the residents on Smith Lane will be paving. The word around town is that the paving will be mandatory on all the roads. Can we do an article in newsletter or website to quell the fears. TA mentioned that the County wants to bill us 11K for debris

clean up. TA said we have filed a claim with our insurance. If that doesn't work. Brevard County made an error in not sending it out within so many days. TA said in regards to Smith Lane, they came to us; comments he has made is that individuals want to do this. Then the Town can use it as an example.

There are people that don't want to live on a paved road. He is meeting with a person that puts stuff up on Next Door to clarify some misinformation. He will try and move forward with this.

Did you post the quarterly financial report? He is still just reviewing it. He will go over that with the financial people. We are six months in and not running in the red.

- **CLERK:** nothing
- **FIRE CHIEF:** nothing

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

**Speaker's Card:** none

**I. PUBLIC HEARINGS/ UNFINISHED BUSINESS/GENERAL ORDERS  
ORDINANCES FOR FIRST READING: 1**

**2. Ordinance 2017-04: Redistricting Malabar Council Districts**

Read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AMENDMENT TO CHAPTER SEVEN, SECTION 7.5, ELECTIONS, OF THE CODE OF ORDINANCES; PROVIDING FOR THE NOVEMBER 8, 2016 ELECTION RESULTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Approval of 1<sup>st</sup> Reading of Ord 2017-04

**Speaker's Card:** none

**MOTION:** CM Rivet / CM Kohler approve 1<sup>st</sup> Reading of Ord 2017-04.

Discussion: CM Mahoney said in the 3rd Whereas it says we got recommendation from Elections Office; she talked to SOE Supervisor Lori Scott; CM Mahoney said it should be amended to say there were multiple companies available that could do the redistricting.

CM Rivet asked if the Whereas is factual. Clerk said yes.

CM Korn said if we get something in writing from SOE Lori Scott then Council could reconsider it.

**ROLL CALL Vote: 1) CM Ball, Aye; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion Carried 4 to 1.**

**RESOLUTIONS: 3**

**(2 Tabled Resolutions re: SR-514)**

**3. RESOLUTION 06-2017**

(Tabled on 3/20/17 to this certain date & will require motion to remove from table.)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REQUESTING A REDUCTION OF SPEED TO 45 MPH ON STATE ROAD 514 ALSO KNOWN AS MALABAR ROAD FROM THE WEST END OF THE JURISDICTIONAL BOUNDARY EAST TO MARIE STREET; REQUESTING EXPEDITED INTERSECTION IMPROVEMENTS AT COREY AND WEBER ROADS TO INCLUDE TRAFFIC SIGNALS; SOLICITING SUPPORT FROM OTHER COMMUNITIES AND AGENCIES IN THIS

REQUEST TO FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING FOR DISTRIBUTION OF REQUEST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

Chair asked for a motion to take from table. None. Chair stated this resolution has died.

**4. RESOLUTION 11-2017**

(Tabled on 4/03/17 after TPO Presentation & will require motion to remove from table.)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A REQUEST FROM THE FLORIDA TRANSPORTATION PLANNING ORGANIZATION TO RECOMMEND A CONCEPT FOR THE WIDENING ON SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U. S. 1 (STATE ROAD 5) IN THE TOWN OF MALABAR; PROVIDING FOR DISTRIBUTION OF REQUEST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE

**Exhibit:** Agenda Report No. 4

**Recommendation:** Request Action

Chair asked for a motion to take from table. None. Chair stated this resolution has died.

**5. RESOLUTION 03-2017 – Intent to Increase Storm Water Fee**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR FINDINGS; PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEARS 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020; PROVIDING FOR CLASSIFICATIONS OF PROPERTY; PROVIDING FOR CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING THE UNIFORM AD VALOREM METHOD OF COLLECTION; PROVIDING FOR MASS MAIL OUT NOTIFICATION OF PUBLIC HEARING TO TAKE PLACE AT THE COUNCIL MEETING OF JUNE 19, 2017; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Approval of Reso to go Forward with Public Notices

Reso read by title only.

**Speaker's Card:** None.

**MOTION:** CM Rivet / CM Korn to approve Reso 03-2017.

Discussion: Chair said there are two missing values; staff is asking Council to determine what they should be.

CM Rivet did a compounded calculation on inflation and it would come up \$52. CM Korn said the County is at \$64 and he proposes \$52 also for 2017. These funds are used only to help with Storm Water projects which are the major concern in Malabar.

CM Mahoney, asked about how SW money is/can be spent. Clerk explained how the tax is assessed and the restrictions on how it can be spent.

CM Ball then what's the next number. CM Rivet said it could be 52 plus CPI for next year. TA said or have it adjusted every two or five years. CM Korn asked about keeping it at 52 and can be reviewed annually. Franklin explained that this is a multi-step process; once Council adopts the resolution with "intent" to increase the SW tax then the notice must be

sent out to all property owners of the 1,681 parcels. This is an expensive process that you don't want to undertake annually.

Consensus to set 2017 rate at \$52.00 for the tax years of 2017, 2018 and 2019 and then increase it to 64.00 in tax year 2020 until further revised by future council.

Chair asked for rollcall: Clerk stated that in previous Councils she had restated the CM that would vote first on multiple issues requiring rollcall votes. She asked if current council would support. Council said yes. Clerk said the "1)" would indicate the CM that votes first in Roll Call votes.

ROLL CALL Vote: CM Ball, Aye; 1)CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion Carried 5 to 0.

**MISCELLANEOUS: 1**

**6. Reconsider TPO/TAC Delegate (Mayor)**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Request Action

Chair said many people have come up to him and asked for reconsider the TPO appointment of Mr. Krieger as our Town's representative. They felt it should always be a staff person or a member of council. We have a lot going on right now with the discussions on widening SR-514.

MOTION: CM Ball / CM none to appoint Mayor Reilly as new delegate to TPO/TAC and stated his reason. It should be an engineer type person.

Mayor declined. It is daytime meeting and it would be difficult to break away. CM Korn said when it was first discussed it was his belief that it ought to be a council member. He had forgotten that a previous Town Administrator served in that position for many years. He should have stated it should be Council or staff. This is not to say that Mr. Krieger has not shown interest. We got a report today, we got a report last month. He has not come to Council personally with these reports; he called him this afternoon; he guessed Mr. Krieger went around to each of them today passing the reports out.

When the council was meeting with the consultant to do the redistricting, the Deputy Clerk/Treasurer Matt Stinnett was working with him and CM Korn was amazed at the level of detail he was familiar with regarding the specifics of this town. He is impressed with him and thinks he would do a good job in this position.

MOTION: CM Korn / CM Rivet to appoint Matt Stinnett as new delegate to TPO/TAC.

Discussion: CM Korn said that TA was the delegate in the past and he had overlooked that. It is not to say that Mr. Krieger has not done anything wrong. He has not come to us directly. Need to commend him. And ask him to continue as a CAC.

CM Korn would recommend the Deputy Town Clerk. CM Korn was at town hall on April 4 before the workshop to meet with Mr. Tozier and he was amazed at how well versed Mr. Stinnett is with the town. CM Ball said it should be a member of the seated Council.

CM Mahoney said she contacted the TPO and spoke with Lisa Hickman who said previously that the nice thing about having Don Krieger this year is that Malabar had an engineer for their delegate. He would understand the technical side. The other thing is that he was elected by this council. The TPO consists of 26 voting members, 13 must be municipal representatives approved by the SCTPO. Then she called the league of cities, Stu from IHB and he said he reads that he (Krieger) is representative because we voted him into that, but this us up to us.

TA said Mr. Krieger has been the Town representative since last November but they finally got a report at 5:23pm this evening about two meetings. They got one other report that was provided at a meeting. He thinks these reports are a result of the pressure being applied by the town. As a representative to the Town TA thinks Mr. Krieger would send an email or put in an appearance. Neither of the reports the town received were presented by Mr. Krieger. TA does not think the town's best interests are being served having Mr. Krieger as the representative. TA said because of his technical expertise, Matt would do a good job. TA has been to couple of TPO meetings and he thinks the attitude towards Malabar is changing. TA noticed a marked increase in interest by TPO head Bob Kamm from the meeting in Nov 2015 and the most recent one TA attended. Need someone from the Town to promote the Town's interests.

CM Rivet asked if Mr. Krieger had ever asked staff or Council or the Mayor's what the Town's position is on any issues before the TPO? No. CM Rivet asked if Mr. Krieger had ever come to Council to ask what issues to support? Had he ever come to Council to give a report? If not, what positions is representing? How would he know Council position if he does not communicate? CM Rivet thinks Matt would be a great representative.

CM Ball would like it to be a council member. CM Kohler says he has to work Monday daytime so he can be here Monday nights. CM Mahoney said having a staff member the representative would have a financial impact. She thinks Don has done a great job and his reports have been great. His first report – he had a death in the family. It was a voting meeting. All the others were cancelled. Mayor said he has been the rep for six months and they have gotten two reports. CM Mahoney said the meetings didn't have quorums.

CM Rivet said he should have asked for direction from Council if he is Council's representative. CM Korn said they are discussing the position not the person. Stay away from that. He suggested CM Mahoney be the alternate. CM Mahoney said they should leave Mr. Krieger as rep until next year and then decide.

CM Kohler agreed the representative needs direction from the Town Council. CM Ball said there is a communication problem. CM Korn said it should not get into a discussion of the quality of Mr. Krieger. Stay away from that.

**MOTION: CM Korn / CM Kohler to appoint Matt Stinnett** Vote: Ayes, 3; Nays, 2. (CM Ball, CM Mahoney)

**MOTION: CM Korn / CM Rivet to appoint Mayor Reilly as alternate.** Vote: All Ayes.

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

**7. Updates to Capital Improvement Plan Projects (C.I.P.) Due Annually Prior to Budget Workshops**

**Exhibit:** Agenda Report No. 7

**Recommendation:** Request Direction to Staff

Chair wanted Council to continue considering this item for future action. Franklin said the recommendation from P&Z Board will be forthcoming.

Atty leaves at 8:20

**J. PUBLIC COMMENTS:**

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

CM Dist 1: nothing

CM Dist 2: Wrote out a report and read into the record: I believe the citizens of Malabar desire community. I envision people coming to Malabar to see trees, grass, cows, chickens,



horses and lots of wildlife. I believe we have an abundance of resources that sometimes are forgotten. I believe our preamble and charter are our responsibility as Council Members to uphold and keep.

Let's continue to remember our young people, our Veterans, our generations of families that grew their children and businesses here. When "developing" Malabar, we must put the Citizens first.

I believe a Malabar Memorial Garden (low maintenance) with lots of stones out near the road and along our new multi modal bike path would be a pleasant feature to remind us of our history and allow newcomers the history in an exciting and Malabar way. I'd suggest some coquina rocks, a mailboat, some fish, some farm animals, just all kinds of Malabar features with the names that come up to put with those features.

I believe in order to help appear more transparent, simple progress reports of areas covered by public works would be encouraging.

I believe we need to encourage ways to keep getting better and better at communicating with the public. Remaining inclusive and involved is important.

It is exciting to think, that we can remain rural. That we have something to offer to all of Brevard County.

Can you imagine if we could link all of our trails up and down Brevard County? This would preserve a healthy transportation system and natural environment for our future generations. CM Mahoney said she can not attend next Monday's meeting.

CM Dist 3: nothing

CM Dist 4: He will do letter of thanks to Mr. Krieger. He will quote CM Vail – leave personal feelings at the door. There are too many people that have ill feelings. There was one CM that did not speak to a former TA because he was never formally introduced. Don't have to like someone to work with someone. If you don't like our town staff, then get out of town. Don't let that affect how you do your job. Bunch of people with personal agenda.

CM Dist. 5: nothing

TA said by next weekend we may have a toilet to flush at SandHill Trailhead.

**L. ANNOUNCEMENTS:**

(1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) Vacancy on the Trails & Greenways

**M. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:25PM.

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

ATTEST:

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

Date Approved: 5/01/2017

District 2 Report

April 17, 2017

CM Laura Mahoney

I believe the citizens of Malabar desire community. I envision people coming to Malabar to see trees, grass, cows, chickens, horses and lots of wildlife. I believe we have an abundance of resources that sometimes are forgotten. I believe our preamble and charter are our responsibility as Council Members to uphold and keep.

Let's continue to remember our young people, our Veterans, our generations of families that grew their children and businesses here. When "developing" Malabar, we must put the Citizens first.

I believe a Malabar Memorial Garden (low maintenance) with lots of stones out near the road and along our new multi modal bike path would be a pleasant feature to remind us of our history and allow newcomers the history in an exciting and Malabar way. I'd suggest some coquina rocks, a mailboat, some fish, some farm animals, just all kinds of Malabar features with the names that come up to put with those features.

I believe in order to help appear more transparent, simple progress reports of areas covered by public works would be encouraging.

I believe we need to encourage ways to keep getting better and better at communicating with the public. Remaining inclusive and involved is important.

It is exciting to think, that we can remain rural. That we have something to offer to all of Brevard County.

Can you imagine if we could link all of our trails up and down Brevard County? This would preserve a healthy transportation system and natural environment for our future generations.

## MALABAR COUNCIL WORKSHOP MEETING

April 24, 2017

7:30 PM

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

### A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Chair Mayor Reilly. Prayer & Pledge were said by Council Chair, Mayor Patrick T. Reilly.

### B. COUNCIL:

COUNCIL CHAIR:

MAYOR PATRICK T. REILLY

VICE-CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL, arrived 7:45pm

LAURA MAHONEY, excused

DICK KORN

RICHARD KOHLER

ADMINISTRATOR

DOUG HOYT, excused

CLERK/TREASURER:

DEBBY FRANKLIN

### C. WORKSHOP ACTION: DISCUSSION ON R/LC - Definition

Chair introduced the revised maps that were changed during the last workshop. Chair said on the revised Power Point he has shown the existing homes as "x" on the "proposed" side of the maps. On Page 11, he changed the area within the Oakmont Preserve subdivision currently labeled as RR to Conservation since the platted subdivision required the 23-acre site to be platted as the "wetland conservation" area of the subdivision.

General discussion supported the changes made by the Chair. The consensus of Council was that having the commercial areas on the arterials does not take away from the "Rural" character of the Town, it preserves it.

CM Ball discussed Highway 1 and the lack of customers on the east side of highway. That is why Highway 1 will/can not develop as a highly commercial area. He referred to the shopping center at Pt Malabar that eventually dissolved due to lack of customers. CM Korn said even rural communities have business districts. He cited several rural communities he was familiar with smaller populations, rural residential developments but they all have a business district.

Then they went through Maps

Map pg 1 - good

Map pg 2 - good

Map pg 3 - good

Map pg 4 - good

Map pg 5 Mayor read Vail's request to leave the depth at 1,320 but provide a requirement of 300' on south side to be a "buffer." General discussion about this but consensus was to leave as revised to 660' with a dual land use designation.

Map pg 6 - see comments above.

Map pg 7 - good

Map 8 - good with change on south side change depth to 660'

Map 9 - Mayor to change RR to Conservation on the portion of Oakmont designated as wetland conservation as pointed out by CM Kohler.

Maps 10 - good

Map 11 - Changed the RR to Conservation within the Oakmont Subdivision

Map 12 - parcel identified as RR should be Conservation – fixed – see Maps 13 and 14.

Map 13 - good

Map 14 - good

Franklin had also mentioned the CM Korn said the Council proposal needs to have consistency. CM Rivet is very happy with what council had come up with – with his concerns addressed on the deep lots.

Chair said re: density, 6 units with water and sewer and 4 units without water and sewer. He has posed the question do they want to rethink what they previously decided. CM Ball said this is what – only on those corridors.

CM Rivet had concern with higher density next to RR. To allow more commercial along the three corridors. CM Ball said to be truthful, they need to provide for commercial development along the main arteries to retain and support the rural residential areas. They all want to keep Malabar Rural Residential but they need to provide for commercial development along the corridors.

Chair said what about two buildings with two stories. Consensus of council to permit this. Same stipulation as stated earlier – 4 units per acre without water and sewer and 6 units per acre with water and sewer.

Chair said we will have a public hearing and people will question why they are doing this and they need to hear the same information from all of council. There will also be accusations that Council increased the density to harm the rural areas. They need to be united with their replies to these questions.

Revisions will be ready for Council Action at the May 15, 2017 council meeting. Then there will be a Public Hearing date set.

Chair Reilly, without objection, adjourned the meeting at 8:30 pm.

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

(seal)

ATTEST:

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

Approved: RTCM 5/1//2017

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: May 1, 2017**

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

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**SUBJECT: Ordinance 2017-04 New District Lines for five new precincts**

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**BACKGROUND/HISTORY:**

A workshop was held on April 4, 2017 using an outside vendor recommended by the Brevard County Election Office.

There was unanimous consensus on the new lines at the end of the workshop. This then went to Council on 4/17/17 for first reading of Ordinance 2017-04 incorporating these changes.

This is the 2<sup>nd</sup> reading and Public Hearing of Ordinance 2017-04.

The Brevard County will use these new lines to create the five new precincts for the 2017 election.

**FINANCIAL IMPACT:** \$1,551.00 to date for vendor. Increased Election costs unknown at this time.

**ATTACHMENTS:**

- Ordinance 2017-04 with Exhibit "A" (new map and definition of each District)
- Narrative of each District

**ACTION OPTIONS:** Council Adoption of Ord 2017-04 after PH.

## **Ordinance 2017-04 Redistricting – Narrative Description of each District**

### District 1 – pop 567

Those properties on the east side of Briar Creek Boulevard, south to the north side of Malabar Road; and, those properties on the western and northern curved road known as Absaroka Lane; and those properties on the north side of Allen Street and the east side of Weir Street and the north side of Malabar Road east to the Indian River Lagoon (IRL); and those areas on the north of Glatter Road, the south side of Malabar Road and the east side of Marie Street; and, those properties on the north and south sides of Passaic Avenue and south therefrom between FEC railroad and the Indian River Lagoon to Jordan Boulevard, not including any of the Rocky Point area.

### District 2 – pop 565

Those properties on the south side of Malabar Road and the east side of Marie Street west to the Indian River Lagoon (IRL) and south to the Town boundary with the western boundaries defined as: those properties on the south side of Hall Road and the east side of LaCourt Lane; and, those properties on the south side of Atz Road and the east side of Corey Road; except the portion defined above as belonging in District 1 (FEC to IRL between Passaic Avenue and Jordan Boulevard).

### District 3 – pop 576

Those properties on the west side of Marie Street, the north side of Hall Road, the south side of Glatter Road, the east side of Eva Lane; and, those properties on the west side of Weir Street south of Allen Street; and, those properties on the east side of Corey Road south of Allen Street; and, those properties on the inside of Absaroka Lane; and, those properties west of Briar Creek Boulevard & north of Malabar Road west to Town boundary.

### District 4 – pop 586

Those properties on the south side of Malabar Road; and, those properties on the west side of Eva Lane and the north side of Hall Road; and, those properties on the west side of Weber Road and the south side of Atz Road; and, those properties on the west side of Corey Road south and west to the Town boundary.

### District 5 – pop 535

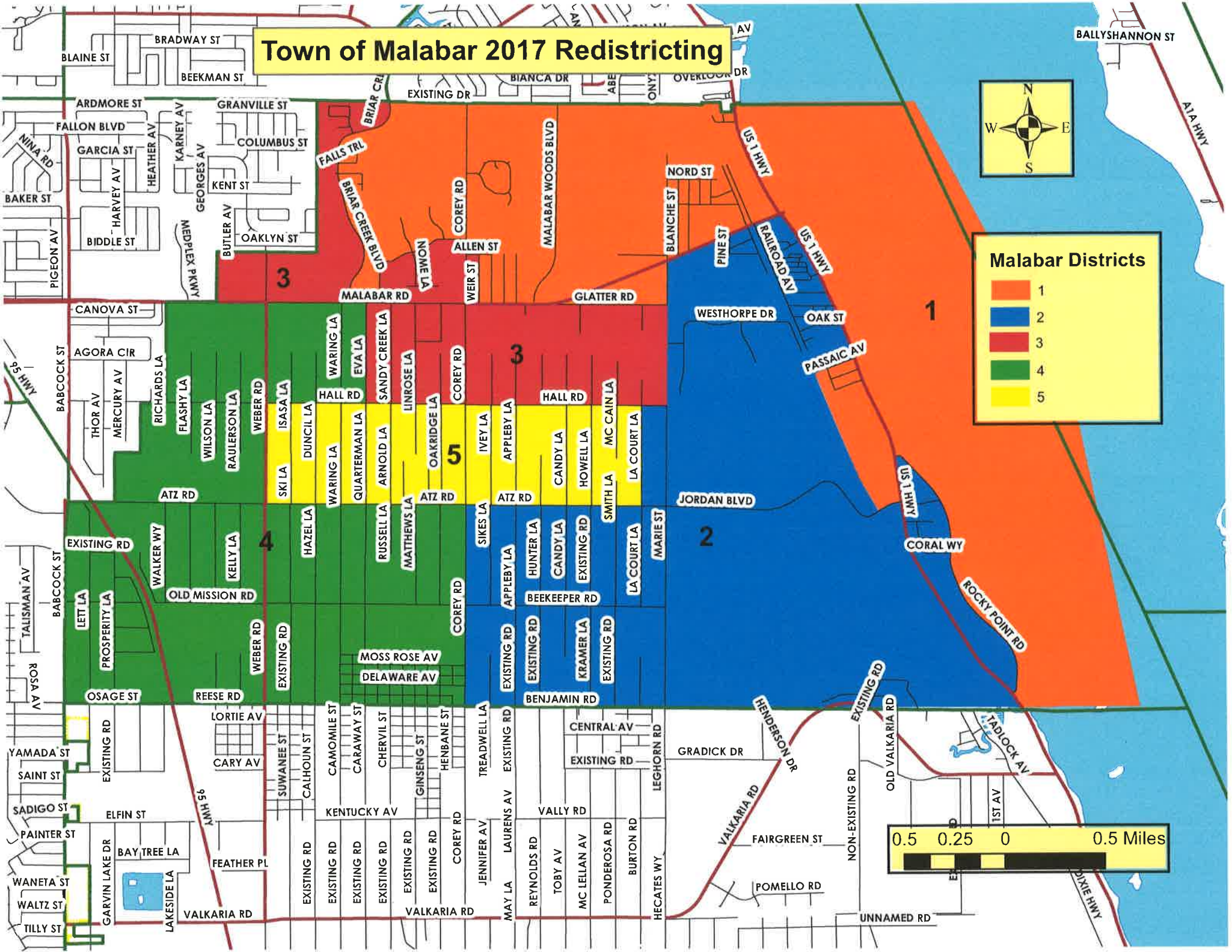
Those properties on the west side of LaCourt Lane, the east side of Weber Road, the south side of Hall Road and the north side of Atz Road.

# Town of Malabar 2017 Redistricting



**Malabar Districts**

	1
	2
	3
	4
	5



**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: May 01, 2017**

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

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**SUBJECT: Medical Marijuana Regulations (Ord 2017-02) – Recommendation from P&Z**

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**BACKGROUND/HISTORY:**

The Town Council adopted ordinance 2017-01 on the recommendation of Attorney Karl Bohne. It provided a moratorium period to allow for Malabar sufficient time to develop local regulations on how to deal with the approval of Amendment 2, Medical Marijuana Treatment Facilities.

Attorney Bohne then drafted and forwarded an ordinance to Malabar dealing with these regulations. He had done similar ones for the other municipalities he represents.

This Draft Ordinance (2017-02) was provided to the Malabar Planning and Zoning Board for review. They have spent several meetings discussing these regulations and have provided this recommendation.

Prior actions by the State have already established regulations dealing with the cultivation of medical marijuana. The ordinance before you deals with regulations on Medical Marijuana Treatment Facilities.

**FINANCIAL IMPACT:**

Unknown at this time.

**ATTACHMENTS:**

Ord 2017-02

**ACTION OPTIONS:** Council Approval of 1<sup>st</sup> Reading of Ord 2017-02



# TOWN OF MALABAR

## MEMORANDUM

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**Date:** April 13, 2017 17-AABO-001

**To:** Debby Franklin, Town Clerk/Treasurer  
Town Council

**From:** Denine M. Sherear, Administrative Assistant to the Building official ~~DS~~

**Ref:** Recommendation from P&Z to Town Council, To Approve the Medical Marijuana Ordinance as presented by Town Attorney Karl Bohne

---

The Planning and Zoning Board discussed the Medical Marijuana Ordinance 2017-02 at a few of their recent PZ Meetings, it was an "Action" Item on 4/12/2017 and the following recommendation was made:

**Motion: Abare/Foster To Recommend Council Approve the Medical Marijuana Ordinance 2017-02 as presented by Town Attorney Karl Bohne.**

**Roll Call Vote: Foster; Aye, Abare; Aye, Rice; Aye, Ritter; Aye, Dial; Aye.**

**Motion passed 5 to 0**

## ORDINANCE 2017-02

**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 MEDICAL MARIJUANA TREATMENT CENTER IN THE COMMERCIAL ACTIVITIES PORTION OF SAID TABLE; PROVIDING MEDICAL MARIJUANA TREATMENT CENTER AS A CONDITIONAL USE IN THE COMMERCIAL LIMITED ZONING CATEGORY; AMENDING ARTICLE VI OF THE LAND DEVELOPMENT CODE OF THE TOWN; CREATING A NEW SUBSECTION D, "ADDITIONAL CONDITIONAL USE CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTER" TO SECTION 1-6.1; SETTING FORTH ADDITIONAL REQUIREMENTS AND CRITERIA FOR MEDICAL MARIJUANA TREATMENT CENTERS; AMENDING TABLE 1-6.1 (B) CONDITIONAL LAND USE REQUIREMENTS; PROVIDING FOR MEDICAL MARIJUANA TREATMENT CENTERS; 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, Florida Statute sect. 381.986 as well as passage of Amendment 2 legalized the medical use of marijuana, allows for the creation of medical marijuana treatment centers, and allows for licensed caregivers to dispense medical marijuana; 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 zoning regulating the location of Medical Marijuana Treatment Center; and'

WHEREAS, The Town Council finds that protecting patients, caregivers of patients, physicians, persons lawfully engaged in activities associated the operation of a medical marijuana dispensary, property and the general health, safety and welfare of the Town is of a paramount concern; and

WHEREAS, the Town Council finds that protecting the public from criminal activity and to ensure the highest degree of conduct of owners, patients and business invitees of medical marijuana TREATMENT CENTER will promote the general welfare; and,

WHEREAS, the Town council has determined that it is in the best interest of the public to set siting requirements and other restrictions for medical marijuana TREATMENT CENTER; 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 Medical Marijuana Treatment Centers in the "Commercial Activities" section as a conditional use in "CL" zoning district 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
COMMERCIAL ACTIVITIES														
<u>Medical Marijuana Treatment Centers</u>									C <sup>5</sup>					

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

**SECTION 2.** Article VI, Section 1-6.1 is amended by adding a new subsection "D" to read as follows:

\*\*\*

"D Medical Marijuana Treatment Center. Medical Marijuana Treatment Center, with a minimum 1,500 square foot facility, shall be allowed as a Conditional Use in the Commercial Limited (CL) zoning district. Medical Marijuana Treatment Center shall be defined as any business which has been approved by the State of Florida under chapter 381 of the Florida Statute and/or the Florida Administrative Code and Article X, Section 29 of the Florida Constitution. All activities of Medical Marijuana Treatment Center as authorized by this code shall occur wholly within the structure, or in the case of a multi-unit structure such unit upon which such medical marijuana facility is located. When considering an application for a medical marijuana treatment center, the planning and zoning board and the town council shall consider the criteria below. The town council may impose additional reasonable conditions and safe guards not inconsistent with Section 29 to Article X of the Florida Constitution as deemed necessary.

1. Criteria to be considered concerning an application for a medical marijuana dispensary:

a. *Controlled substance.* The on-site sale, provision, or dispensing of medical marijuana is prohibited except as specifically authorized by applicable federal or state law;

b. *Adequate facilities.* Medical marijuana Treatment Center shall provide adequate seating for its patients and business invitees. The medical marijuana treatment center shall not direct or encourage any patient or business invitee to stand, sit (including in a parked vehicle), or gather or loiter outside of the building where the dispensary is located and operates, including, but not limited to, sidewalks, parking areas, right-of ways, or neighboring properties for any period of time longer than that is reasonably required to arrive and depart. The medical marijuana treatment center shall post conspicuous "No Loitering" signs on all sides of that portion of a building occupied by the medical marijuana dispensary.

c. *Queuing or stacking of motor vehicles.* The medical marijuana treatment center shall ensure that there is no queuing or stacking of motor vehicles in any right-of-way.

d. *Outside display.* There shall be no outside display of any products, wares or merchandise.

e. *Alcoholic beverages.* There shall be no sale, service or consumption of alcoholic beverages on the premises or in any parking area, sidewalk, or right-of-way.

f. *Separation distance.* A medical marijuana treatment center shall not be located within 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.

g. *Hours of operation.* Medical marijuana treatment centers shall only operate between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. through 12:00 p.m. on Saturday. Medical marijuana treatment center shall not operate on Sunday.

h. *Other Activities.* Other than the cultivation, processing and dispensing of medical marijuana permitted herein no medical marijuana treatment center shall sell, market, dispense, provide, exchange, or otherwise vend any other services; product; or drug paraphernalia as defined by federal or state law.

i. *Compliance with other laws.* In addition to the laws and ordinances of the Town of Malabar all medical marijuana treatment centers shall comply with all federal and state laws.

j. *Security Measures.* Each medical marijuana treatment center shall provide the following, at the owner's expense:

i. *Drive through facilities are prohibited.*

ii. *A silent alarm that notifies the Brevard County Sheriff's Office or a private security agency that a break in or robbery is taking place*

iii. *Full time private armed security personnel from a licensed security firm during all hours the facility personnel are on the premises.*

iv. *A security camera capable of recording and retrieving an image. Such security camera system shall be operational at all times during and after business hours. The security cameras shall be located at every ingress and egress site of the facility, including doors and windows, as well as on the interior where any monetary transaction shall occur and shall also be located at the ingress and egress site where the medical marijuana is grown and/or stored;*

- v. Install a secure safety enclosure of transparent polycarbonate or other material with an indirect pass through or window to transact business that meets the following standards:
1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or
  2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;
- vi. A drop safe or cash management device that provides minimum access to the facility's cash receipts
- vii. A lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface.
- viii. Window signage must allow clear and unobstructed view from the outside of the building and in normal line of sight of the cash register and sales transaction area.
- ix. The facility shall not have window tinting that reduces exterior or interior view in a normal line of sight.
- x. Height markers at the entrance and exit of the facility that displays height measures.

k. *Fire Suppression.* The facility shall have installed, at the owners expense, a fire sprinkler system designed by a licensed fire suppression firm registered in the State of Florida, approved by the Fire Marshall, permitted by the Town Building Department, and installed by a licensed fire sprinkler system installer.

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

m. *Public Use or Consumption Prohibited.* The use, ingestion, consumption or smoking of medical marijuana or non-medical marijuana on any public property or property open to the public is prohibited. The term "public property or property open to the public" means, but is not limited to, any property owned, or controlled by any governmental body, including streets, right-of-ways, easements, parks, recreation area, any quasi-public area including stores, parking lots, malls, business establishments, shopping centers, private recreation area, common property of any community association; and any other area which is visible from any public property or property open to the public, except a private residence.

Any medical marijuana treatment center must, at all times when such establishment is open to the public or is selling marijuana or marijuana-based products, have a sign on the premises located where it can be readily seen and read by all customers of the marijuana dispensary which is at least six by eight and one-half inches (6" x 8½") in size and with seven-sixteenth inch minimum lettering and contains the following information:

"IT IS UNLAWFUL TO SMOKE, INGEST, OR CONSUME MARIJUANA INSIDE, OR IN THE PARKING LOT, OF THIS ESTABLISHMENT. MALABAR TOWN CODE SEC. 1-6.1 D. 1.m.

It is unlawful for the owner or operator of any marijuana dispensary to fail to comply with this section or for any person to sell or dispense marijuana in any establishment which is not in compliance with this section. The requirements of this section apply to all medical marijuana treatment centers.

n. *Dispensing by a Qualified Physician.* Any physician qualified under Section 381.986 Florida Statutes, the Compassionate Medical Cannabis Act of 2014 and/or the Florida Administrative Code and Article X, Section 29 of the Florida Constitution to place an order for marijuana may dispense such marijuana to a qualified patient, as defined in Section 381.986 (1)(d), from the physician's medical office. The medical office must be located within a zoning classification permits medical offices. Such physician shall not cultivate or process medical marijuana from the medical office. Nothing herein is intended to authorize the establishment of a Medical Marijuana Treatment Center as a conditional use in a zoning district other than IND. Furthermore, nothing herein is intended to permit any person to dispense marijuana in violation of either state or federal law.

o. *Mobile Medical Marijuana Treatment Center.* No Mobile Medical Marijuana Treatment Centers are permitted. In the Town. For purposes herein a Mobile Medical Marijuana Treatment Center is any legal entity, clinic, cooperative, club, business or group which transports or delivers, or arranges the transportation or delivery, of marijuana to any person

2. Cultivation. The term Cultivation shall mean the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof. FS 381.986 (2014) provides for a definition of a dispensing organization and such definition permits a dispensing organization to cultivate and process medical marijuana. Such dispensing organizations must meet state law criteria in order to be an approved dispensing organization. Although on site cultivation and processing of medical marijuana is prohibited under this code, in the event that it is legislatively or judicially determined that an approved dispensing organization under chapter 381 of the Florida Statutes or any administrative rule or pursuant to Article X, Section 29 of the Florida Constitution cannot be completely prevented from cultivating or processing medical marijuana as provided herein, the following shall apply:

a. Outside cultivation of medical marijuana is prohibited. Cultivation shall only be within a closed structure upon which such medical marijuana facility is located. Indoor cultivation is limited to 50 square feet of the medical marijuana facility. Cultivation may not occur in a structure which is not attached to the building upon which the medical marijuana facility is located.

b. Indoor grow lights in any structure shall not exceed an aggregate of one thousand two hundred watts and shall comply with all applicable building code regulations. Gas products (including, without limitation, CO2, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.

c. Cultivation shall not take place in any area of the medical marijuana facility

which is accessible by the general public. Such areas of cultivation must be restricted to authorized personnel, eighteen years of age or older, of the medical marijuana facility. Such area of cultivation shall be secured and locked at all times when not occupied by authorized personnel of the medical marijuana facility.

d. Such area of cultivation must have a ventilation system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with all applicable building code regulations, including obtaining all required permits and approvals. The ventilation system must be approved by a Florida Licensed Engineer and a Florida Licensed Heating and Ventilation Contractor at the applicant's expense, and installed prior to commencing cultivation within the fully-enclosed and secure structure.

3. Savings clause. In the event that any part of this section shall be preempted by federal or state law those provisions preempted shall be deemed to be invalid and the remaining provisions not preempted shall remain in full force and effect. "

**SECTION 3.** Table 1-6.1 (B) is amended by adding Medical Marijuana Treatment Centers 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>Medical Marijuana Treatment Centers</u>	<u>N/A</u>	<u>N/A</u>	<u>Paved; Locations only permitted on U.S. Highway 1 and Babcock Street</u>	<u>(11)</u>	<u>(11)</u>	<u>Type A, only if the facility is located in a single building and not part of a multi-unit or building structure</u>	<u>(7)</u>

(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	_____
Council Member Richard Kohler	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on May 15, 2017.

Ord 1<sup>st</sup> Reading: 5/01/17  
Ord 2<sup>nd</sup> Reading 5/15/17  
Veto Period: 5/16/2017 thru 5/22/2017  
Final Adoption: 5/22/2017

TOWN OF MALABAR

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

APPROVED AS TO FORM AND CONTENT

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

ATTEST:

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

(seal)



**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: May 01, 2017**

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

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**SUBJECT: Amend Chapter 2 of Code Eliminating Citation Process (Ord 2017-05)**

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**BACKGROUND/HISTORY:**

The Town Council adopted Ordinance 2000-05 in June of 2000. It provided for the Special Magistrate method of Code Enforcement.

Prior to that we were using the citation method that created additional costs for the Town and resulted in mostly dismissed cases and non-compliance. The Attorney will speak in more detail about the shortcomings of this method.

A recent code enforcement incident caused us to look at this section of the Code and we saw the conflict with still having the language related to citations in the Code. In order to eliminate the confusion we are asking Council to adopt the attached ordinance that will eliminate the citation language from the Code.

**FINANCIAL IMPACT:**

None.

**ATTACHMENTS:**

Ord 2017-05

**ACTION OPTIONS:** Council Approval of 1<sup>st</sup> Reading of Ord 2017-05

## ORDINANCE 2017-05

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE REPEAL OF SECTIONS 2-208 THROUGH 2-210 OF DIVISION 2 OF ARTICLE VII OF CHAPTER 2; PROVIDING FOR REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Malabar adopted Ordinance 2000-5 providing for Special Magistrate procedures in dealing with Code violations; and

**WHEREAS**, The Town Council has determined it no longer need to keep the Citation process in the Code.

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

Section 1. Findings. The above statements are correct.

Section 2. Sections 2-208 through 2-210 of Division 2 of Article VII of Chapter 2 ~~The following sections of Chapter 2 are repealed in their entirety as follows:~~

~~"Sec 2-208 Authority to issue citations. Any law enforcement officer or code enforcement officer is hereby empowered to issue citations to a person when based upon personal investigation, the officer has probable cause to believe that the person has committed a civil infraction on violation of a duly enacted town code or ordinance.~~

~~Sec 2-209. Ordinances enforced and penalties assessed.~~

~~All town codes and ordinances may be enforced by this section, by citation to the appropriate County Court of Brevard County, except where prohibited by law or Statute. Violations of a code or ordinance of the town is a civil infraction. Initial violation of codes and ordinances shall carry a fine as specified by Attachment "A" which is incorporated in this section. Repeat violations shall carry a fine equal to twice the fine as scheduled in Attachment "A" of this section. The fine imposed pursuant to this section may be amended by resolution of the town council as deemed necessary. However, in no event shall the violator be fined the maximum civil penalty if citation is not contested.~~

~~-Sec 2-210. Violation; procedures.~~

~~(a) A code enforcement officer or law enforcement officer is authorized to issue a citation to a person when, based upon, personal investigation, the officer has probable cause to believe that the person committed a civil infraction in violation of a duly enacted of the town. However, prior to issuing a citation, a code enforcement officer shall provide notice in writing to the person that the person has committed a~~

~~officer shall provide notice in writing to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation.~~

~~(b) A code enforcement officer or law enforcement officer shall issue a citation in a form prescribed by the town and it shall contain:~~

~~(1) The date and time of issuance.~~

~~(2) The name and address of the person to whom the citation is issued.~~

~~(3) The date and time the civil infraction was committed.~~

~~(4) The facts constituting probable cause.~~

~~(5) The number or section of the code or ordinance violated.~~

~~(6) The name and authority of the code enforcement officer, or law enforcement officer.~~

~~(7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.~~

~~(8) The applicable civil penalty if the person elects to contest the citation.~~

~~(9) The applicable civil penalty if the person elects not to contest the citation.~~

~~(10) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citations, he shall be deemed to have waived his right to contest the citations, and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.~~

~~(c) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.~~

~~(d) The maximum civil penalty shall not exceed five hundred dollars (\$500.00).~~

~~(e) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or § 775.083.~~

~~f. Any person who fails to pay the civil penalty stated on the citation within the prescribed period, or who fails to request a hearing within the prescribed period, shall be issued a summons to appear in court by the clerk of court and in and for Brevard County, Florida. Said summons shall be served upon the violator by the clerk of the county court with a copy sent to town. If said summons is issued, both the town and the violator shall be present at the time and date specified within the summons for the purpose of answering the violation set forth within the citation.~~

### **Section 3.** Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Sections 2-208 through 2-210 be removed from the Code of Ordinances of the Town of Malabar, Florida

### **Section 4.** Severability.

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

**Section 5. Conflicts.**

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

**Section 6. Effective Date.**

This ordinance 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 a vote, the vote was as follows:

Council Member Dist 1 Grant Ball	_____
Council Member Dist 2 Laura Mahoney	_____
Council Member Dist 3 Steve Rivet	_____
Council Member Dist 4 Dick Korn	_____
Council Member Dist 5 Richard Kohler	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on May 15th, 2017.

**TOWN OF MALABAR**

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

1<sup>st</sup> Reading: 5/1/17

2<sup>nd</sup> Reading: 5/15/17

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

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

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: May 1, 2017**

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

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**SUBJECT: Naming the newly Constructed Shade Structure at Cameron Preserve**

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**BACKGROUND/HISTORY:**

The Trails and Greenways Committee recently completed the shade structure within the Cameron Preserve. The Chair of that committee presented to Council and gave a Power Point presentation.

The Committee subsequently submitted a memo to Town Hall requesting Council approve a Resolution naming the new structure.

**FINANCIAL IMPACT:** Unknown

**ATTACHMENTS:**

- Resolution 12-2017

**ACTION OPTIONS:** Council adoption of Resolution 12-2017

**RESOLUTION 12-2017**

**A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE ADOPTION OF "CAMERON TRAIL SHELTER" RECENTLY COMPLETED IN THE RICHARD E CAMERON AND VOLUNTEERS WILDERNESS PRESERVE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Malabar has the authority to name natural and manmade infrastructure in honor of persons that have contributed greatly to the community; and

**WHEREAS**, the Town of Malabar would like to recognize and show appreciation to Richard E. Cameron for all the decades of volunteerism; and

**WHEREAS**, after the recent completion of the structure to provide temporary shelter from sun or rain within the Cameron Wilderness Preserve, designed and built by members of the Trails and Greenways Committee and other local volunteers, including Richard E. Cameron, the Town of Malabar would like to formally adopt a name for this new infrastructure that will be used and enjoyed by trail users for years to come as the "*Cameron Trail Shelter*", also to be known as the "CTS".

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

**SECTION 1.** That the Town of Malabar approves of the new name "*Cameron Trail Shelter*" for the shade structure recently completed in the Richard E. Cameron and volunteers Wilderness Preserve.

**SECTION 2.** Malabar Council directs staff to work with the Trails and Greenways Committee on appropriate signage.

**SECTION 3.** Malabar Council directs staff to provide an address for this site for E 9-1-1 database.

**SECTION 4.** This resolution shall take effect immediately upon its adoption.

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

Council Member Grant Ball	_____
Council Member Laura Mahoney	_____
Council Member Steve Rivet	_____
Council Member Dick Korn	_____
Council Member Richard Kohler	_____





2725 Judge Fran Jamieson Way, Bldg. B  
Viera, Florida 32940  
Telephone: (321) 690-6890  
Fax: (321) 690-6827  
www.spacecoasttpo.com



April 18, 2017

Malabar Greenways and Trails Committee  
Drew Thompson, Chairman  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950-4427

Dear Mr. Thompson:

The Space Coast Transportation Planning Organization will recognize individuals and agencies for their efforts in promoting bicycle/pedestrian initiatives. The recipient of this year's Bicycle/Pedestrian Safety Award for Get on a Trail, is the Malabar Greenways and Trails Committee. The awards will be presented to the recipients at the Space Coast TPO meeting on Thursday, May 11, 2017 beginning at 9:00 a.m.

The TPO meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, third floor Florida Room and is televised live.

Please RSVP to the Space Coast TPO staff office at (321) 690-6890 or by email to [Lisa.Hickman@brevardfl.gov](mailto:Lisa.Hickman@brevardfl.gov) by April 28, 2017, to provide the name(s) of attendees from the Malabar Greenways and Trails Committee.

Thank you in advance for your attention to this request.

Sincerely,

  
Bob Kamm  
SCTPO Executive Director

BK/lch