

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, JULY 17, 2017
7:30 PM
2725 MALABAR ROAD, MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES**
- D. APPROVAL OF THE MINUTES:**
 - 1. Regular Town Council Meeting Minutes 7/3/17**
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Request Approval
- E. ATTORNEY REPORT: Medical Marijuana Legislation**
 - Wireless Infrastructures within Town ROW
- F. PRESENTATIONS: 2**
 - Mayor to Present Letters of Commendation to Malabar Fire Personnel**
 - Presentation by Mr. Poteat, P. E. of Atkins Engineering re: SR514**
- G. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF**
- 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.
- I. PUBLIC HEARINGS/SPECIAL ORDERS: 0**
- J. UNFINISHED BUSINESS/GENERAL ORDERS**
 - ORDINANCES FOR FIRST READING: 0**
 - RESOLUTIONS: 0**
- MISCELLANEOUS: 2**
 - 2. Form DR-420 – Tentative Maximum Millage and Public Hearing Date**
 - Exhibit:** Agenda Report No. 2
 - Recommendation:** Request Approval
 - 3. Lowering Speed Limit to 20mph on Selected Unpaved Roads**
 - Exhibit:** Agenda Report No. 3
 - Recommendation:** Request Approval
- COUNCIL CHAIR MAY EXCUSE ATTORNEY NOW**
- K. DISCUSSION/POSSIBLE ACTION:**
- L. PUBLIC COMMENTS: General Items (Speaker Card Required)**
- M. REPORTS – MAYOR AND COUNCIL MEMBERS**
- N. ANNOUNCEMENTS:** (1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) Vacancy on Trails and Greenways.
- O. 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: July 17, 2017

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 7/3/2017

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 07/3/2017 meeting

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
JULY 03, 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, Excused
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

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

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Chair recognized CM Korn's request to add item he had emailed out on Sunday as #4.

D. APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 6/19/17

Town Council Workshop Mtg Minutes 6/26/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Kohler / CM Korn to approve RTCM minutes of 6/19/17.

Discussion:

CM Mahoney said page 1 of the minutes does not include her question about the stormwater public hearing that was advertised. People had come to the last meeting due to the advertisement. CM Mahoney said on pg 7, item 4, the minutes should reflect that the letter from TA is attached to minutes. It was sent out later, after the meeting.

CM Mahoney requested Item 2 to be tabled. She wanted to know who set the agenda – she didn't think they would be voting on the fire apparatus; she thought they were going to be discussing the financing. Chair explained that the minutes reflect what the action at this meeting would be; the time to change the agenda had passed. Chair asked if there was a second on she MOTION to table. None. Chair stated motion died for lack of second.

Chair called for vote on minutes of 6/19/17.

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

MOTION: CM Ball / CM Korn to approve WS minutes of 6/26/2017.

Discussion: none. **Vote:** All Ayes.

E. BCSO REPORT: none present

F. ATTORNEY REPORT: Excused

G. PRESENTATIONS: CM RICHARD KOHLER: IEMO 2 CERTIFICATION

Chair presented Certificate to CM Kohler for his completion of the Institute of Elected Municipal Officials Level 2 – an intense 3-days advanced training for local elected officials. The courses are offered by the Florida League of Cities.

H. BOARD/COMMITTEE REPORTS: none present
Trails and Greenways Committee:

**Planning and Zoning Board
Park and Recreation Board**

I. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

ADMINISTRATOR: TA

CM Rivet asked about east Atz Road drainage project. TA said they have made one change on the mid-south side to the west and the north side to the east.

CM Mahoney asked about soccer field – did the plugs get put in. TA said that the Town never agreed to plug the field. It is greening up – they are going to give it a couple months. CM Mahoney said she spoke with Ryan and he said Ecor is a good company and was at that meeting with TA at field that they discussed the plugging of the field. The TA said the weeds are dying. Just because you fertilize and herbicide you aren't going to get a nice lawn. She said Ryan said if the plugging has not already been done, it would be too late. TA said Mr. McLachlan made the only donation and it was reported at the last meeting that it was used to offset the herbicide and fertilizer.

CLERK: City of Satellite Beach will be holding an Ethics Training session on August 1, 2017 at 12:30 that meets the annual requirement. Please let me know if you wish to attend. The deadline for reservations is the 21st of July. CM Mahoney, CM Ball, CM Kohler, and CM Rivet will attend.

FIRE CHIEF: Last month he told Council about the need for SCOTT packs. He has gotten 15 SCOTT packs in exchange for training 8 of their fire personnel in the autumn Fire 1 class. This represents a savings of over 100K.

J. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Three (3) Minute Limit per Speaker.

Speaker's Card: Jose Merino, Benjamin Road – He feels he was misquoted at last meeting. He wasn't complaining about drainage issues on his property – it was about drainage issues for the whole SE area of Town.

Speaker's Card: Richard Kovak, Hall Road re: July 4th upcoming fireworks. He has been a resident for 11 years. He read statement about the law related to fireworks. They harm returning military suffering from PTSD and said all fire depts. respond to 25% more calls on July 4th. He asked Council to provide input to State to rid the loop hole in the statute. CM Korn said he does not want to restrict individual rights. Ask the Sheriff to make a public statement.

K. PUBLIC HEARINGS/ UNFINISHED BUSINESS/GENERAL ORDERS: None

L. UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING: 0

RESOLUTIONS: 0

MISCELLANEOUS: 2

2. Approve Bid for New Fire Apparatus

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Speaker's Card: Brian Vail, Smith Lane. He knows Council, the Town, and knows the fire dept. The vehicle is 21 years old. It is going to fail the pump test. The ladder is a refurb. They have learned you should not buy refurb apparatus. He said it is about the fire fighters

and public safety. You are affecting public safety, you are compromising overall public safety. 50K for ten years for a vehicle that will then last an additional ten years is a good investment.

Speaker's Card: Richard Kovak – This item is not about the cost per se. The bid for fire apparatus. It could be a small or large item. In contrast the slope mower. The perception is that public does not know what is going on. The requirement for three bids. Be transparent and use budgetary oversight.

Speaker's Card Carleen Conroy, Alexander Lane, read from statement. She said there is a disconnect between the public, staff and council. She questioned the rush to purchase the fire truck. She said the use of the word "apparatus" is deceptive. This isn't the sleepy town of Malabar. Malabar residents need to be involved.

Speaker's Card Skip Hard, Hard Lane, thanked Carlene and Richard. Surprisingly not against purchase of fire truck but rather looking at cost. Several years ago, Mr. Abare attempted a study. He said Council should back off from this and do a study and determine if they want to sign a contract committing taxpayers to a ten-year debt.

Chair asked TA to introduce. TA said a study of three homes and the amount they pay in taxes was done and Posted it on the website; asked if it had been read. They have been researching this item since the beginning of the year. By delaying it, the ISO rating will go up to 10. Premiums will cost residents more than the 50K in annual payments. He strongly recommends Council approve the recommended bidder.

MOTION: CM Korn / CM Kohler to approve bid from Pierce for Fire Truck.

Discussion: CM Korn said he feels very strongly in transparency and believes all of them do. Council's has a responsibility to do things for the health safety and welfare of the residents. They need to help people understand.

He gave an example of a tax bill and the amount that comes to Malabar. The cost of a refurb would have to be paid now for a possible two-year period. CM Korn said Council needs to do a better job of helping citizens understand. CM Korn stated that if they went to county then Malabar would be paying for 420K and the 433K would be a special assessment for the property owners.

(Post Meeting Note: This is not correct. Property owner would pay the non-advalorem assessment and the special assessment for County coverage with no money coming from the town.)

CM Korn said the Council has been working on this for three years.

CM Rivet said we have a hybrid department. Our fire dept paid staff are not getting the same CM Ball said he was against the ladder truck. He is a convert for what they are proposing. He will support this knowing that the ladder truck will go away. They have been looking at this constantly. They have looked at it and looked at out sourcing. They did the right thing in asking for staff to go get bids.

CM Kohler said it is has been proven. This is more of a safety issue. This seems to be the only way to go.

CM Mahoney is not opposed to the fire dept. Her biggest concern and the reason for her request to table. She stated her research shows that losing the pumper truck will not make us lose the ISO rating. One of the other things she has learned from talking to others shows they should use the SWAT analysis. She really wants to keep the public informed.

CM Korn focused on what CM Ball said about apparatus – we are going to get rid of ladder truck.

CM Kohler – his grandpa was a Fire Chief and he understands the need for proper equipment.

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

3. Approve Legislative Priorities for Space Coast League of Cities

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Speaker's Cards:

Carlene Conroy – spoke regarding tax increases

Richard Kovak – while the town must operate within its budget. Like to request that #4 not be included.

Discussion: CM Korn wants to go over them one at a time.

MOTION: CM Rivet / CM Kohler to approve the four (4) Legislative priorities and only the first three (3) of the local concerns with wording changes as noted.

CM Mahoney believes the safety money is still there per Lisa Hickman. It is a sure thing and we need to get something at least started. The list should be specific. CM Rivet said it is our priorities to submit to SCLC.

CM Korn said he would like to know what FDOT is planning to do with SR514.

Discussion: CM Mahoney wanted to go over each one of them.

#1 ok

#2 ok

#3 ok

#4 CM Ball has a problem with this. Refers to the ½ cent tax. It is being driven – not a priority. Grant reads it as wanting more funding. Change to emphasize use existing money.

Local

#1 – ok - CM Mahoney would add detail of using the safety money and a crosswalk at Marie Street. TA said FDOT will come and make presentation at next meeting. CM Mahoney said it does have details; it is good to include the fatalities.

#2 SW drainage. CM Korn said this goes with the IRL – we need to do our part. CM Mahoney said our water is clean.

#3 CM Mahoney asked if they were asking for money. It should be dropped. CM Ball doesn't like the reference. CM Ball wants to delete the reference to funding.

#4 delete that one.

Vote: All Ayes.

Motion carried 5 to 0.

4. Support SCLC Resolution

Exhibit: Agenda Report No. 4

CM Rivet said he is not in favor of a carbon tax. Render an opposing position.

Vote: Ayes: All. Motion carried 4 to 1.

M. DISCUSSION / POSSIBLE ACTION: 0

N. PUBLIC COMMENTS:

Brian Vail, stated that most people don't recognize how much of tax bill is directed to Malabar – it is less than 10% of total tax bill. He is willing to pay more. If Council lets the roads fall apart it will cost the taxpayers a whole lot more money.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist. 1: CM Ball – he and his wife attended the T&G dedication of the shade structure. It was a positive improvement. In re: the ADA restroom: it is working but has a concern: it was built with a grant which was someone’s tax dollars at some point. He asked how much it finally cost. TA will get that amount and he can put it on as an agenda item.

CM Dist. 2: CM Mahoney – Who is the medical director for Fire Dept and how much is he paid. Pursue the SWAT thing.

CM Dist. 3: CM Rivet: biggest thing he hears is about the drainage; next is roads.

CM Dist. 4: CM Korn: have they approved the slope mover. Tells audience to contact their council person or any council person.

CM Dist. 5: CM Kohler: nothing

Mayor: nothing

O. ANNOUNCEMENTS:

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

P. ADJOURNMENT:

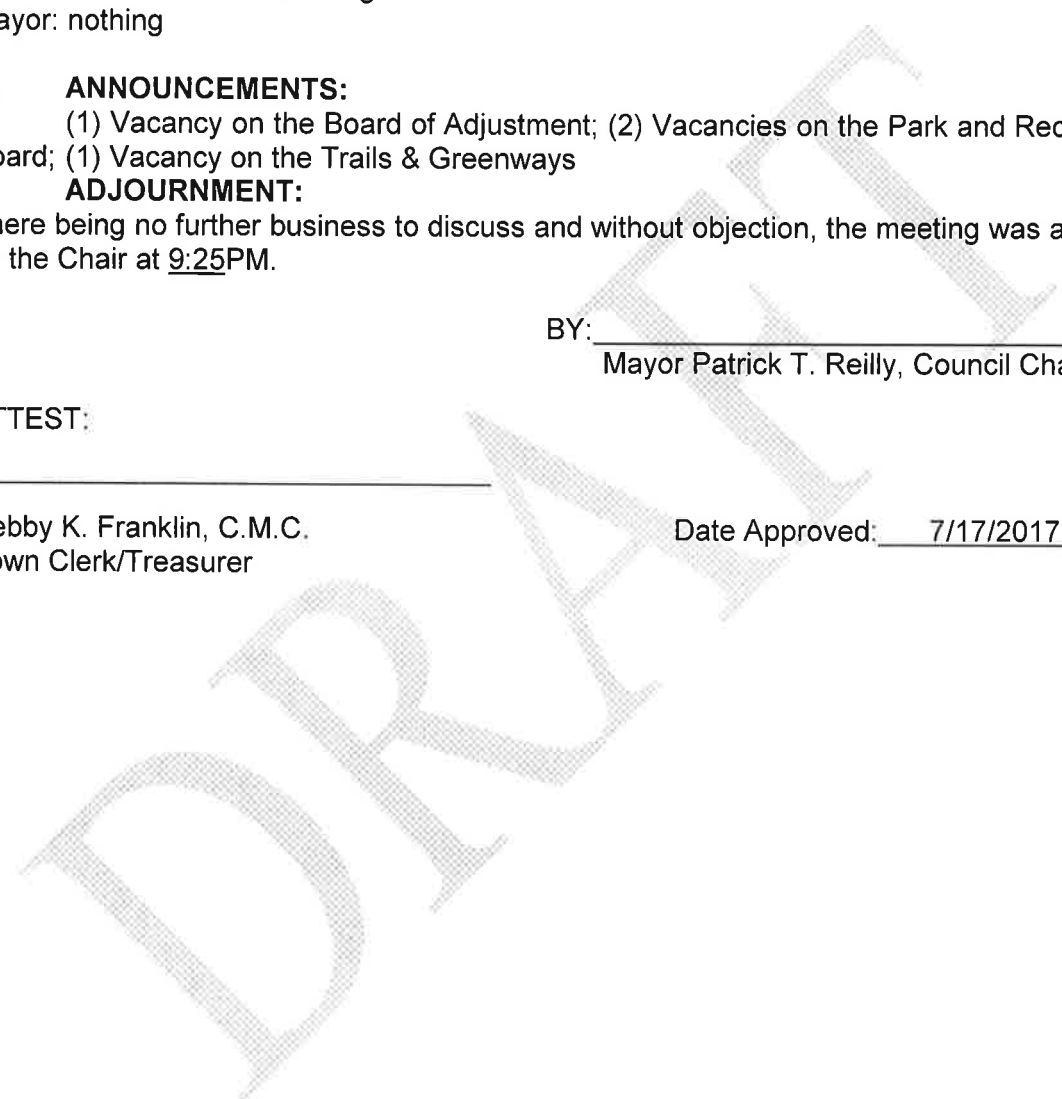
There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:25PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 7/17/2017



**TOWN OF MALABAR
Council Meeting**

Meeting Date: July 17, 2017

AGENDA ITEM "E"

Attorney Report



City of Indian Harbour Beach Staff Report

City Council Agenda Item

Council Direction on Medical Marijuana Dispensary Regulations

Meeting Date: July 11, 2017

Staff Recommendation: Council direction on Medical Marijuana Dispensary Regulations

Background Information:

You will recall during the November 2014 General Election the voters of Florida were asked to cast a “yes” or “no” vote on Amendment 2 which, per the ballot title, would allow for the “Use of Marijuana for Certain Medical Conditions.” Under Florida’s State Constitution this amendment required approval by a 60% majority. In advance of this referendum election, October 2014, the City of Indian Harbour Beach adopted an ordinance regulating medical marijuana operations within the community, including the prohibition of cultivation of medical marijuana in the city. These municipal regulations were adopted to provide for the location and regulation of such facilities, as it was unclear what regulations, if any, the State of Florida would pass to implement the Medical Marijuana industry.

Amendment 2 failed in the November 2014 General Election as a result of not obtaining more than 60% approval of the proposed amendment. However, the city retained the regulations on this issue as we believed this amendment would be revised and return to the General Election Ballot in November 2016. This revised amendment did, in fact, return to the ballot in November 2016 and was approved by 71 percent of the voters in Florida. Here in Indian Harbour Beach our voters approved this amendment by 70.5 percent. The approved Constitutional Amendment required the Florida Legislature to enact legislation implementing rules governing the Medical Marijuana industry prior to July 1, 2017. Absent such legislation, the Florida Department of Health was required to adopt implementation regulations.

Following passage of the November 2016 Amendment, the city implemented a one year moratorium on the issuance of Business Tax Receipts for these facilities to ensure the city’s regulations would comply with regulations adopted by the Florida Legislature. Unfortunately, the Florida Legislature failed to adopt legislation implementing the 2016

version of Amendment 2 during the 60-day legislative session that ended May 5, 2017. However, the Florida Legislature returned to Tallahassee for a Special Legislative Session (2017A) from June 7 through June 9, 2017. The special session focused on funding for K-12, the newly created Florida Job Growth Fund, and Visit Florida funding. It was expanded to incorporate legislation implementing the medical marijuana constitutional amendment, funding for repairs to the Herbert Hoover Dike and Higher Education funding.

The legislature ultimately adopted SB 8-A that authorizes the number of new Medical Marijuana Treatment Center (MMTC) licenses, in addition to the seven currently issued and provides language for increasing the number of facilities based upon the number of patients, but with caps. The bill caps the number of dispensaries per MMTC license at 25. Governor Scott signed SB 8-A into law on June 23, 2017.

The bill divides the state into five regions (Northwest, Northeast, Central, Southeast, Southwest) and authorizes the Department of Health to determine the maximum number of dispensaries allowed in each region based on population within that region compared to the total state population.

Under the bill, medical marijuana is exempt from the state sales tax. The bill prohibits the smoking of medical marijuana, but authorizes it to be vaped or consumed in pill or edible form. The use of medical marijuana, unless it is low-THC cannabis, is prohibited in any public place, on any form of public transportation, in a qualifying patient's place of employment (unless allowed by the employer), on school grounds, or in a school bus, vehicle, aircraft or motorboat.

Of importance to cities, the bill adds "delivery" to the current preemption on cultivation and processing. Cities can, by ordinance, ban medical marijuana dispensaries. However, cities that choose to allow them cannot limit the number of dispensaries within their boundaries. Cities can determine the criteria for the location of dispensaries and other permitting requirements that do not conflict with state law or department rule, but such permitting requirements cannot be more restrictive than the zoning or permitting requirements for currently existing pharmacies. Cities are authorized to charge a license or permit fee to MMTC facilities, but the fee cannot be more than what is currently charged for pharmacies.

Dispensaries cannot be located within 500 feet of a public or private elementary, middle or high school, unless the city approves the location through a formal proceeding open to the public and determines that the location promotes the health, safety, and general welfare of the community. Finally, this legislation allows cities to ensure that MMTC facilities comply with the Florida Building Code, the Florida Fire Prevention Code or any local amendments to these codes.

In reviewing SB 8-A Staff many of our the municipal regulations adopted in 2014 *may be* invalidated by this statute. Earlier in this report I indicated that municipalities must treat MMTC's similar to a pharmacy. In Indian Harbour Beach pharmacies are a permitted use in the C-P and B-1 Zoning Classifications. Included in this agenda packet is a map reflecting the location of the commercially zoned properties that would permit a pharmacy. It is important to note that the distance separation of 500 feet from a proposed MMTC and a public or private elementary school, middle school, or high school, would eliminate the commercial properties along South Patrick Drive from the Harbour Villas Townhouses north to the city's newly acquired property (south of the Dollar General Store).

Other conflicts with this statute include, but are not limited to, the city's hours of operation, separation from day care facilities/parks/residential properties/churches, our prohibition of drive-thru facilities, various municipal security requirements, and parking/queuing requirements. Therefore, the city must determine whether to amend our Medical Marijuana regulations to conform to this new statute and allow the facilities in commercial zoning classifications that permit pharmacies, and remove conflicting regulations with this new law.

Alternatively, as stated earlier, SB 8-A allows municipalities to adopt ordinances banning medical marijuana treatment centers within the boundaries of the city.

City Attorney Bohne has provided a third option to consider. There may be an argument for the City being able to preserve its adopted Medical Marijuana Ordinance. The Bill states: "Except as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465." 381.986(11)(b)2, Florida Statutes. Arguably, this legislation has prospective application and would only apply to any municipal regulation enacted after the effective date of the Bill. He has done some research and he believes there maybe a compelling argument that the city's regulations adopted in 2014 could be retained. This all has to do with statutory interpretation. Mr. Bohne's researched several court cases addressing the language of statutes and the retroapplication to existing local regulations.

- J-II Investments, Inc. v. Leon County, 908 So.2d 1140 (Fla. App., 2005)
- Wilson v. Palm Beach County, 62 So.3d 1247 (Fla. App., 2011)

Although unconventional, this research indicates you may elect to retain the pre-existing regulations. However, in retaining these regulations you run a risk of litigation, and the costs associated with defending such litigation, that the pre-existing laws conflict with the new statute or challenges to the enforcement of the pre-existing regulations.

As you consider these alternatives it is important to note that you may amend our regulations to conform to SB 8-A. These local laws will have little effect, as the power to regulate, for the most part, falls with the Florida Legislature. Additionally, the Legislature meets annually and can change these rules each year which would necessitate

corresponding changes to our regulations. We are also aware that one other community here in Brevard County, Cocoa Beach, has approved a MMTTC, and if you elect to ban these dispensaries you will not preclude access to these facilities by our citizens.

City Attorney Bohne will be present at this meeting to participate in this discussion.

Staff Recommendation:

Staff is seeking direction whether to amend the Medical Marijuana regulations to conform to SB 8-A, develop an ordinance banning Medical Marijuana Treatment Centers in our community, or leave the pre-existing regulations in place.

Medical Marijuana

kbohne@fla-lawyers.com

Wed 7/5/2017 12:02 PM

To: Douglas C. Hoyt <dhoyt@townofmalabar.org>;

Cc: Debby Franklin <townclerk@townofmalabar.org>;

In consideration of the voters of the Town, nearly 68%, in the last election voted for Amendment 2 I took a new look at SB 8A and there may be an argument for the Town being able to preserve its adopted Medical Marijuana Ordinance. The Bill states: "Except as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465." 381.986(11)(b)2, Florida Statutes. Arguably, this legislation has prospective application and would only apply to any municipal regulation enacted after the effective date of the Bill. I have done some research and here is what I can advise is a compelling argument. This all has to do with statutory interpretation. I have come across a couple of cases addressing the language of statutes and the retroapplication to existing local regulations.

In, *J-II INVESTMENTS, INC. v. Leon County*, 908 So.2d 1140 (Fla. App., 2005), the court held that "the Florida Agricultural Lands and Practices Act says that a "county may not exercise any of its powers to adopt any ordinance, resolution, regulation, rule or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land...." § 163.3162, Fla. Stat. (2004) (emphasis added). See also § 832.14(6), Fla. Stat. (containing identical language relating to nuisance suits, stating that "a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land...."). A statute must be given its plain and obvious meaning. *McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla.1998)...The plain, unambiguous terms of section 163.3162(4), Florida Statutes, prevent counties from adopting ordinances relating to agriculture. The statute does not address the enforcement of provisions already in place. If the legislature intended to include the term "enforce" in the statute, it clearly could have done so. See, e.g., § 403.7603, Fla. Stat. (2004) ("... no county or municipality shall adopt or enforce regulations that discriminate against privately owned solid waste management facilities ...") (emphasis added); § 163.3174(6), Fla. Stat. (2004) ("If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area....") (emphasis added). Thus, since the legislature did not include the word "enforce" in section 163.3162(4), Florida Statutes, we cannot assume that they intended to preempt all existing county regulations. *Tallahassee Mem'l Reg'l Med. Ctr. v. Tallahassee Med. Ctr.*, 681 So.2d 826, 831 (Fla. 1st DCA 1996) ("The courts should be careful in imputing an intent on behalf of the Legislature to preclude a local elected governing body from exercising its home rule powers.").

In, *Wilson v. Palm Beach County*, 62 So.3d 1247 (Fla. App., 2011), the court interpreted the following language in the Florida Right to Farm Act, FS 823.14 (6) "Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461.." The Court went on to hold that the Right to Farm Act does not prohibit the enforcement of county ordinances enacted prior to the Act's effective date.

In reviewing SB 8A I find nothing to suggest we cannot enforce existing regulations and based on the foregoing cases we may not need to amend the code at this time unless it is the decision of the council to ban them. So maybe we need to seek council direction as follows: do we ban, do we amend, or leave what we have in place and see what happens.

Karl W. Bohne, Jr.

Schillinger & Coleman, P.A.



City of Indian Harbour Beach Staff Report

City Council Agenda Item

Council Direction on Advanced Wireless Infrastructure Deployment Act (HB 687)

Meeting Date: July 11, 2017

Staff Recommendation: Council Direction on Advanced Wireless Infrastructure Deployment Act (HB 687)

Background Information:

Over a veto request by the Florida League of Cities, Governor Scott signed CS/CS/HB 687, which becomes effective July 1, 2017. In summary, the Act substantially amends section 337.401, Florida Statutes, relating to the use of public (municipal or county) right-of-way, and structures located within the right-of-way, for broadband or wireless facility infrastructure. With various limited exceptions, the Act provides for the collocation of small wireless facilities on government owned poles and other poles and structures located in the right-of-way, installation of ground mounted equipment in the right-of-way, installation of new poles in the right-of-way, and installation of micro wireless facilities.

The Act provides a specified process a government must follow to accept applications for permits and to process and issue permits. Generally, a government must either approve or deny a completed application within 60 days after receipt of the application. The Act sets forth various standards by which an application may be denied. Installation is subject to “applicable codes,” which includes “local codes or ordinances adopted to implement” the Act and “objective design standards adopted by ordinance . . . to meet reasonable location context, color, stealth, and concealment requirements.” The Act restricts the amount that may be charged for permit fees, and also restricts the rate to collocate a small wireless facility on a government utility pole to not more than \$150 per pole annually.

The Act provides that local governments “shall offer rates, fees and other terms that comply with (the Act) by the later of January 1, 2018, or 3 months after receiving a request to locate its first small wireless facility on a utility pole owned or controlled by (the local government) . . . through ordinance or otherwise.” It is expected that many permit applications will be submitted to local governments once the Act becomes effective on July 1, 2017.

Moratorium

Some communities in Florida are issuing a moratorium on the implementation of the Advanced Wireless Infrastructure Deployment Act (HB 687) adopted by the Florida Legislature in order for their community to have the time and opportunity necessary to develop a framework of authorized regulations and fee structure to implement the legislation. The Act does not specifically prohibit the adoption of a moratorium. Wireless service providers will likely take the position that a municipality or county cannot adopt a moratorium, and will likely point to language in subsection 337.401(7)(c) that provides: Except as provided in this subsection (the Act), an authority (municipality or county) may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way; and subsection 337.401(7)(d) that provides in part: An authority (municipality or county) shall accept applications for permits and shall process and issue permits subject to the requirements set forth in the legislation.

The Act provides somewhat different language for the collocation of small wireless facilities on authority (municipality or county) utility poles (such as poles providing lighting, traffic control, signage, or other similar functions). Subsection 337.401(7)(f)5. provides in part: By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection (the Act). Therefore, for collocations of small wireless facilities on authority utility poles, the Act provides at least 6 months, from July 1, 2017 to January 1, 2018, for the authority to develop, through ordinance or otherwise, rates, fees and terms for the collocation.

Staff Recommendation:

Staff is seeking direction whether to prepare an ordinance adopting a moratorium on the implementation of the Advanced Wireless Infrastructure Deployment Act (HB 687) adopted by the Florida Legislature during the recently ended 2017 Legislative Session in order for the City to have the time and opportunity necessary to a framework of authorized regulation and fee structure as to implementing the legislation.

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: July 17, 2017

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

SUBJECT: Form DR-420 – Tentative Maximum Millage and Public Hearing Date

BACKGROUND/HISTORY:

This is the first step in the annual *Truth in Millage* process. Council must set the maximum proposed millage they wish to consider during their discussions and set the date for the first public hearing on the proposed millage and budget. This information is then sent to the Property Tax office and they include it on the TRIM Notice that is mailed to every Malabar property owner.

The ten percent cap we are held to due to Special Law 74-430 is based on the *rolled-back rate*, not the millage rate. Based on this, the maximum millage rate we are permitted to set is 2.0906.

We can go higher only if Council puts the question to the voters.

Our millage rate was 2.0260 in 2017, 1.9256 in 2016, 1.800 in 2015, and 1.6630 for 2011-2014. In 1978 when we set the first millage rate for ad Valorem collection the millage was set at 1.5. So, in 40 years, we have only increased it by 25.96%

To start the budget process, we should set the preliminary rate high and as you go through the budget workshops, you may determine that we can decrease it, but if we set it low now and then decide we need to increase it, we must do so at a great expense.

By August 4, 2017, we must tell the Property Appraiser the following:

- prior year's millage rate (2.0260)
- current years rolled-back rate (1.9005) + 10% (based on the 10% cap)
- current year's **proposed maximum millage** rate of 2.0906
- the date, time and meeting place of the first tentative budget hearing (9/11/17 at 7:30pm)

FINANCIAL IMPACT:

As listed

ATTACHMENTS:

TRIM Timetable

DR-420

Calendars for July, August and September

ACTION OPTIONS:

Staff seeks Motion to set the Maximum Tentative Millage for the first Public Hearing at 2.0906 and select September 11, 2017 as the date for that first Public Hearing.

This is the information that will print on the Truth in Millage (TRIM) Notice that is mailed out by the Brevard County Property Appraisers Office.

**TRIM
TIMETABLE**

TRIM TIMETABLE

Timetable and Important Dates

On June 1, the property appraiser delivers an estimate of the total assessed value of nonexempt property for the current year to the presiding officer of each taxing authority in the county. The taxing authorities use this estimate for budget planning purposes only.

If the Department of Revenue (Department) has not completed a county's railroad assessment by June 1, the property appraiser may use the prior year's values for millage certification (*s. 193.085(4), F.S.*).

The dates below are directory, and the property appraiser may shorten the timeline. The property appraiser must give written notice and coordinate any new dates with all affected taxing authorities. Taxing authorities can use the full time period designated by the dates below.

DAY 1 is JULY 1 or the date of certification, whichever is LATER. TRIM is actual calendar days, including weekends and holidays.

Day 1
July 1

The property appraiser certifies the taxable value on form DR-420, Certification of Taxable Value, and delivers it to each taxing authority within his or her jurisdiction. The property appraiser will certify form DR-420DEBT, Certification of Voted Debt Millage, if the taxing authority has a voted debt. The property appraiser will also certify form DR-420TIF, Tax Increment Adjustment Worksheet, if there is a community redevelopment area.

The Board of County Commissioner's (BCC) budget officer delivers a tentative budget to the Board. (*s. 129.03(3), F.S.*)

Day 35
August 4

Within 35 days of certification of value, each taxing authority certifies the completed DR-420, DR-420MMP, and any additional forms and returns them to the property appraiser. The taxing authority informs the property appraiser of the following:

- Prior year millage rate
 - Current year proposed millage rate
 - Current year rolled-back rate (calculated under *s. 200.065, F.S.*)
 - The date, time, and meeting place of the tentative budget hearing
- This is the final hearing for School Districts.

**Hearing
Dates With**

- Hold the tentative hearing from September 3 to September 18, which is 65 to 80 days from certification of taxable value.

TRIM TIMETABLE

Local Government TRIM Timetable

This is an EXAMPLE using July 1 as the date of certification and showing the range of dates (minimum to maximum) that would be utilized for scheduling. These dates DO NOT make any provision for the shortening of the time frames

Day #	"TYPICAL" DATE	AGENCY	ACTIVITY
1 st Day of TRIM	July 1 or date of certification, whichever is later	Property Appraiser	Certifies tax roll or court certifies interim tax roll (Form DR-420, Certification of Taxable Value)
(BCC only)		Board of County Commissioners	County budget officer submits tentative budget to the BCC
Within 35 days	August 4	Taxing Authority <i>Malabar</i>	Advises property appraiser of proposed millage; rolled-back rate; and time, date, and place of the tentative budget hearing on DR-420
Within 55 days	August 24	Property Appraiser	Mails Notice of Proposed Property Taxes (DR-474, TRIM notice). This is the advertisement of the first TRIM hearing.
Within 65 – 80 days	September 3 – First day to hold tentative hearing September 18 – Last day to hold tentative hearing	Taxing Authority	Tentatively adopts millage and budget at the tentative millage and budget hearing. This hearing cannot take place sooner than 10 days following the mailed TRIM notice.
Within 15 days after tentative hearing	September 18 – Last day to advertise hearing held on September 3 October 3 – Last day to advertise hearing held on September 18	Taxing Authority	Within 15 days after adopting tentative millage and budget advertises the final millage and budget hearing in the newspaper
Between 2 – 5 days after advertisement	September 18 – First day to hold hearing advertised on September 18 October 3 – Last day to hold hearing advertised on September 18	Taxing Authority	Holds final millage and budget hearing between 2 and 5 days after advertisement in the newspaper. Adopt final millage and final budget.
Within 3 days after final adoption	September 23 – Last day for September 20 hearing	Taxing Authority	Forwards resolution or ordinance adopting final millage to property appraiser, tax collector, and Department of Revenue



TOWN OF MALABAR

July 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 TOWN HALL CLOSED 4 th of July Holiday RTCM 7:30PM	4 TOWN HALL CLOSED Independence Day	5	6	7	8
9	10 T&G Com 6:00pm	11	12 Planning & Zoning 7:30pm	13	14	15
16	17 RTCM 7:30PM	18	19 Park & Rec 6:00pm	20	21	22
23	24 Special Mtg Council 7:00PM Budget WS #1 7:30PM	25	26 Planning & Zoning 7:30pm	27	28	29
30	31					

TOWN OF MALABAR

August 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7 RTCM 7:30PM	8	9 Planning & Zoning 7:30pm	10	11	12
13	14 RTCM Public Hearing on SW Fee Increase	15 Budget Workshop	16 Park & Rec 6:00pm	17	18	19
20	21 RTCM 7:30PM	22	23 Planning & Zoning 7:30pm	24	25	26
27	28	29 Budget Workshop	30	31		

TOWN OF MALABAR

September 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 TOWN HALL CLOSED Labor Day	5	6	7	8	9
10	11 T&G 6:00pm RTCM 7:30PM 1 st PH	12	13 Planning & Zoning 7:30pm	14	15	16
17	18	19	20 Park & Rec 6:00pm	21	22	23
24	25 RTCM 7:30PM 2 nd PH	26	27 Planning & Zoning 7:30pm	28	29	30

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: July 17, 2017

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

SUBJECT: Reduce Speed to 20 mph on Selected Unpaved Roads

BACKGROUND/HISTORY:

This has been requested by residents living on unpaved roads.

ATTACHMENTS:

None

ACTION OPTIONS:

Staff requests approval of this item.