

**TOWN OF MALABAR
TOWN COUNCIL MEETING
MONDAY, OCTOBER 16, 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 10/02/17**
- Exhibit:** Agenda Report No. 1
- Recommendation:** Request Approval
- E. ATTORNEY REPORT:**
- F. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF:**
- G. PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
- H. PUBLIC HEARINGS: 0**
- I. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)**
- ACTION ITEMS:**
- ORDINANCES FOR 1ST READING:**
- RESOLUTIONS:**
- MISCELLANEOUS:**
- 2. Swear in Mike Foley as Malabar Fire Chief**
- Exhibit:** Agenda Report No. 2
- Recommendation:** Request Action
- COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME**
- J. DISCUSSION/POSSIBLE ACTION:**
- 3. Discuss adoption of Ordinance Requiring Mowing of rights-of-way**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion and Direction
- K. PUBLIC COMMENTS: General Items (Speaker Card Required)**
- L. REPORTS – MAYOR AND COUNCIL MEMBERS**
- M. ANNOUNCEMENTS:**
- (2) Vacancies on the Board of Adjustment;
- (2) Vacancies on the Park and Recreation Board;
- (2) Vacancies on the Trails and Greenways
- N. ADJOURNMENT:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: October 16, 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 – 10/02/2017

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 10/02/17 meeting

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
OCTOBER 02, 2017 7:30 PM

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

A. CALL TO ORDER:

Council Chair, Patrick T. Reilly called the meeting to order at 7:30 pm. CM Kohler 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, Acting Chief Mike Foley is also present.

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

- 1. Regular Town Council Meeting Minutes 8/21/17**
Rescheduled Town Council Meeting Minutes 9/18/17
Regular Town Council Meeting Minutes 9/25/17
Budget Workshop Minutes 8/29/17
Exhibit: Agenda Report No. 1
Recommendation: Request Approval

MOTION: CM Kohler / CM Ball to approve the 8/21/17 minutes.

Discussion: none. **Vote:** Ayes, 4; Nay, 1. (CM Mahoney) Motion carried 4 to 1.

MOTION: CM Rivet / CM Kohler to approve the 9/18/17 minutes .

Discussion: CM Mahoney said these minutes give false history. Her suggestion is for the citizens to be better represented. Mayor said she should give specific details of her issues with the minutes. She sent in a set of minutes. Mayor said she needs to be specific. She has quite a few things she would like to change. CM Korn went through all the minutes and thought they were accurate.

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

MOTION: CM Kohler / CM Rivet to approve the 9/25/17 minutes.

Discussion: CM Mahoney regarding the safety money on pg 5. That was only for FDOT. She wanted to make sure there would be money to improve the Malabar side of the intersections. Franklin will make the changes to make that clear. She also noticed that this is the meeting where she asked for the money to go into reserves and she didn't do that.

Vote: Ayes, 5.

MOTION: CM Rivet / CM Ball to approve the 8/29/17 minutes.

Discussion:

Vote: Ayes, 4 Nay 1. (CM Mahoney) Motion carried 4 to 1.

D. ATTORNEY REPORT: nothing

E. STAFF REPORTS: ADMINISTRATOR: One thing to mention regarding the Town website. Last year about this time he mentioned the website got 30K plus hits. This year's report is over 105,000 visitor sessions, 284,353 pages viewed and over 30,950 PDF files downloaded.

CLERK: nothing
FIRE CHIEF nothing

F. 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.

John Geil, 2840, 2842 Rocky Point. He has been here since 1967. He is here because of the septic tank the neighbor put in and the additional fill they added to the lot. It happened in May and it took until July for the Town Engineer to send the memo dated 7/24/17 to the neighbor. He stated in the memo the neighbor's addition of fill on the property was in violation of the Malabar code regarding site work involving 1000sf. Mr. Geil wanted to know if it is enforceable. He asked why the Engineer letter had not been sent to the Attorney. The neighbor didn't get a permit from the Town.

Mayor said the septic is not under the jurisdiction of Malabar. Mr. Geil said his potable well that was put in with a County permit before her septic replacement has been under water and has required him to run a pump for the last 30 hours. Because she put in a larger septic system than was required. The Town Engineer said there was a violation of town code. Mr. Geil also heard there was a nuisance file kept now here at town hall on him.

CM Mahoney – said there is something about keeping stormwater on their own property in the Code. Attorney said what Mr. Geil is stating that is that extra fill was brought in over and above the 1000ft. The Attorney has not heard of this before. The fill dirt is subject to Malabar Ordinance. CM Korn said they should try to work together to solve this problem.

Mayor Reilly agreed to talk to Mr. Geil about excess fill not related to the septic replacement outside the meeting. Mr. Geil wanted that in the record.

Dawn Danielson, Hall Road, thanked the Mayor for his statement at beginning of meeting that the yellow speaker card should be completed and submitted before the agenda item unless it is a public hearing. She asked if he could do that for each meeting she would really appreciate it.

G. BOARD/COMMITTEE REPORTS:

Trails and Greenways Committee: written and attached. Council Chair read the email from Chair of T&G. Looking forward to official opening of ADA Restroom and credit given to DEP Office of Greenways and Trails.

Planning and Zoning Board – no one

Park and Recreation Board - no one

H. PUBLIC HEARINGS/SPECIAL ORDERS: 0

I. UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING: 1

2. ORDINANCE 2017-12: REGULATIONS FOR WIRELESS INFRASTRUCTURE WITHIN MALABAR RIGHTS-OF-WAY

AN ORDINANCE OF THE TOWN OF MALABAR, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; AMENDING CHAPTER 13 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CREATING ARTICLE IV SMALL WIRELESS FACILITIES IN RIGHT-OF-WAYS; PROVIDING FOR DEFINITIONS, AND PURPOSE, PENALTIES, EMERGENCY REPAIR OR REMOVAL; PROVIDING FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; PROVIDING FOR A PERMIT APPLICATION AND REVIEW PROCEDURE; PROVIDING FOR BONDING REQUIREMENTS, INDEMNIFICATION AND INSURANCE; PROVIDING FOR WAIVERS AND APPEALS; PROVIDING FOR ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Approval of First Reading of Ord 2017-12

Read by title only.

MOTION: CM Rivet / CM Korn to approve 1st reading of Ord 2017-12. Discussion: Attorney stated the State defines the regulations unless municipalities adopt regulations. The Mayor said he sent the Attorney some info he had on these wireless facilities. Some info came from other cities with similar facilities.

Atty stated that with HB 687 the state is starting to erode home rule to control your own ROWS. If we don't adopt regulations by the end of the year, we lose all control. The State defines what we can regulate. It is something we must do. Mayor – 5G wireless – put up little substations to get rid of cell towers. Placed out on a grid. His main concern was the noise emitted from these units. Thinks it was pretty well written even though it is kind of long.

CM Korn said this involved the communication "green boxes" but beyond that, could put a cell tower in our ROW unless we come up with regulations before the end of the year.

CM Mahoney questioned subsection "b.1" vs "b.4". Regarding following town code, should it go to P&Z? Attorney said no, the State regulations would be consistent with land use but not necessary building code requirements and that is not something that would be under P&Z review; but administration. Atty said the State will deem them consistent with our zoning code. He said the devices would be no bigger than a large refrigerator in Town ROW. Atty said they would need to review on a case by case basis.

CM Korn asked Mayor would it be appropriate to refer to P&Z. No. Would it be appropriate to refer to staff? Chair said no, it is not under P&Z and that this ordinance came through staff via the attorney and is before Council now.

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

RESOLUTIONS: 1

3. Resolution 15-2017

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING A REQUEST FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION TO SUPPORT A CONCEPT FOR THE WIDENING OF SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U.S. HIGHWAY 1 (SR 5) IN THE TOWN OF MALABAR AND TO PROVIDE ONGOING MAINTENANCE OF THE MULTI-USE TRAIL INCLUDED IN THE RECOMMENDED ALTERNATIVE FROM MALABAR WOODS BOULEVARD TO MARIE STREET; PROVIDING FOR DISTRIBUTION; 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: Adopt Reso 15-2017

Chair asked Attorney: Atty said if we maintain it could also be liable if there is an injury or death. Atty said we may have potential liability if injury occurs on multi-use trail under Town maintenance agreement.

MOTION: CM Rivet / CM Kohler to adopt Reso 15-2017 discussion: CM Korn asked about the distance from Corey Road east would better serve the people if it was three lanes. Mayor also mentioned Marie to US 1 should be consistent. CM Korn thinks it should be 3 lanes in that stretch.

AMEND MOTION: CM Rivet / CM Kohler to amend the motion to add three lanes from Corey Road – change b. to read 3 lanes.

CM Ball has issue is the maintenance of the trail and didn't think about the potential for additional liability. Also, what does the maintenance consist of? ... sweep it or maybe just patching it or does it mean resurfacing. His observation regarding maintenance in general, that Council makes too many commitments in this Town without allocating dollars. TA said his findings show that 4K-6K annually for generalized maintenance and mowing. CM Kohler agrees; the trails are well used and should be maintained.

CM Mahoney went back to the resolution Council adopted in 2016 and read the first part of it and asked the FDOT rep if that resolution would be more helpful. CM Rivet said this is a resolution for the general support of the widening of SR514 and Malabar's commitment to maintain the multi-use trail on the north side of Malabar Road.

The FDOT Project Manager said the request for the resolution is two-fold. In order to keep the multi-use trail on the north side as this project continues, there must be a MOU (memorandum of understanding) signed stating the Town will maintain the trail. Otherwise it comes out of the design and concept now. The other item is that if the future traffic studies don't support the need for additional lanes they will not be added. CM Korn said what about the amendment to this resolution? FDOT said if the traffic study doesn't support it then it can't move forward. At design stage in 2020 and for two years they will relook at 4-lane then it will go forward.

CM Ball said put a line item to do the maintenance on the budget. By 2025-2030 some maintenance will be needed. The FDOT rep said the MOU does not obligate you to spend.

Resident spoke from audience. It was going to be done in 2019. FDOT said It only moves fast if it is moved up by TPO.

ROLL CALL Vote: 1)CM Ball, Nay; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 3 to 2.

MISCELLANEOUS: 0

J. DISCUSSION/POSSIBLE ACTION:

4. Recording & Video of Town Meetings

Exhibit: Agenda Report No. 4

Recommendation: Discussion and Direction

Dawn Danielson, in recent years – she read statement (attached). Resident on Sikes asked about video streaming. It may be difficult or possible to attend. Video streaming would give them access. View hi-def on computer. Video gathers more attention. Multiple ways to watch it. We the citizens may not be present at future meetings.

CM Korn said someone did broadcast the videos for a short while. CM Rivet said the issue was with archiving – that is the major hurdle. He is supportive if they can meet the regulatory requirements. CM Ball what is the cost and how much will it cost to maintain and upload.

Mayor said what if it goes flatline. It is a nicety. Atty said the minutes are the official record of the meeting. If we record it we must keep it archive it.

CM Ball said any citizen can set up a camera. Dawn is asking to do the videotaping through the Town's website. Staff will get info from website vendor regarding the size and how much it would cost.

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

L. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Kohler said they all agreed that the drainage and roads are the two most critical issues. Show the residents that we are serious about tackling these issues.

CM Korn was asked what his platform was and he stated that it has always been the health, welfare and comfort of the residents. He suggests TA make sure the plans for the drainage don't create additional rework on the road paving. Regarding speed bumps they work but they also cause noise. Communicate their needs to BCSO and let them do speed enforcement.

Clerk Franklin stated about SW grant funding from the IRL tax – it was reviewed but not funded because they did not like the road paving included. The SW grant will be resubmitted and staff is looking at hopefully a favorable result.

Mayor asked about existing driveways and potential impact to existing residents. TA assured them that the elevations would not create adverse conditions for their driveways.

CM Mahoney said there is safety money available from FDOT and she hopes it is used for improvements at Corey and Weber intersections with Malabar Road.

M. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:45 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 10/16/2017

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: October 16, 2017

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

SUBJECT: Swear in Mike Foley as Fire Chief

BACKGROUND/HISTORY:

Mike Foley was appointed the Interim Fire Chief on September 6, 2017 and has performed those duties faultlessly since. He has the full support of the staff at the fire station and at Town Hall. He is well respected by his peers in other agencies and cities within the community. He is a tremendous role model and representative of the Town. His pay was increased to the Chief salary effective with payroll on October 6, 2017.

ATTACHMENTS:

ACTION OPTIONS:

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: October 16, 2017

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

SUBJECT: Adopt Ord Requiring Mowing of Rights-of-Way

BACKGROUND/HISTORY:

Recently a CM came in and said he had received a call from a resident stating that the Malabar Public Works Department was mowing private property with Town equipment. He was referring to the Public Right-of-Way area along Corey Road – between the property line and the edge of the pavement.

Prior Council Member Brian Vail had repeatedly requested that residents step up and maintain this portion of ROW to free up the PW staff to do other projects. There were articles in the newsletter requesting residents to make the commitment.

There was never any intention to require property owners to get down into the six-foot deep ditches with more than a 3:1 pitch. The Town has equipment to maintain those ditches. There was discussion about harming those who were elderly or infirm by this requirement but if you live in RR-65 zoning you have at least 1.5 acres of land. The vast majority of those lots are 200 feet wide at the roadway. So, if you don't mow it yourself and you pay a service to mow your yard they can certainly be expected to go outside the fence line and mow the area between the fence and the roadway.

Council is now considering making this a requirement in the code so that if the area is not maintained, code enforcement proceedings can be initiated.

ATTACHMENTS:

Portion of Chapter 11

ACTION OPTIONS:

Staff Requests Direction

3

Sec. 11-5. Accumulation of debris declared nuisance.

Any unauthorized accumulation of refuse on any premises in the town is declared to be a nuisance and is prohibited. Failure to remove any existing accumulation of refuse, within thirty (30) days after the effective date of this chapter, shall be deemed a violation of this chapter.

(Ord. No. 96-5, § 1, 6-17-96)

Sec. 11-6. Unlawful deposit of waste.

It shall be deemed unlawful and a violation of this chapter for any person to deposit or cause to be deposited any waste as defined herein upon any lot, parcel of land, public or private, whether vacant or improved, occupied or unoccupied, or upon any other premises, street, alley, roadway, park, stream, canal or other waterway within the town, without first obtaining all required and necessary town, state, and federal licenses and permits to do so. Compost piles on private property shall be excluded from the provisions of this subchapter.


(Ord. No. 96-5, § 1, 6-17-96)

Sec. 11-7. Removal of garbage and the like.

It shall be unlawful for any person to accumulate, burn or bury any garbage, litter, refuse, building materials, or garden and yard trash, household trash, on any private or public property in the town and such person must arrange for the removal of same in accordance with the revisions of this chapter, to a designated disposal facility at no cost to the Town, except that total land clearing of debris and pasture improvements may be burned on-site upon obtaining a written permit from the fire chief or designee and the division of forestry under the provisions of [F.S. §§] 33.40 et seq. and 33.55 et seq.

(Ord. No. 96-5, § 1, 6-17-96; Ord. No. 04-02, § 2, 7-12-04)

Sec. 11-8. Residential requirements.



(a) *Maintenance of private property.* All owners and/or tenants, agents, lessors, lessees, or occupants of property within the town shall maintain their property in a clean and litter-free condition including sidewalks, grass strips, and contiguous alleys, curbs, and rights-of-way to the edge of the pavement.

(b) *Sweeping.* No person shall sweep into or deposit on any street or sidewalk the accumulation of litter from any property or building.

(c) *Prohibition of public nuisance.* The accumulation of refuse within the town to the extent that such accumulation of refuse causes infestation by rodents or other wild animals, or breeding of mosquitoes and vermin, or threatens or endangers the public health, or adversely affects adjacent property is declared to be a public nuisance and is prohibited. A violation of this provision is subject to the enforcement provisions of this chapter.

(Ord. No. 96-5, § 1, 6-17-96)