

RESOLUTION 40-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA PURSUANT TO SECTIONS 164.1041, 164.1051, AND 164.1052 INITIATING CONFLICT RESOLUTION PROCEDURES WITH THE CITY OF PALM BAY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE.

WHEREAS, on May 5, 1993, the Town of Malabar (Town) and the Palm Bay Utility Corporation, a not-for-profit corporation (PBUC) entered into a Wholesale Water and Wastewater Service Agreement (Agreement), which Agreement was joined in by the City of Palm Bay (City); and

WHEREAS, Section 13 of the Agreement provides, in part:

“PBUC agrees to provide water and wastewater service to the Town at PBUC’s **current retail rate**...”

WHEREAS, the City has increased the rates charged to the citizens of the Town which rate is higher than PBUC’s **current retail rate**; and

WHEREAS, the Town has taken the position that the City can not charge a rate for water and wastewater service to the Town which higher than the **current retail rate**; and

WHEREAS, section 164.1041, Florida Statutes requires a governmental entity that either intends to file suit or files suit against another governmental entity to initiate conflict resolution proceedings.

NOW THEREFORE, be it resolved by the Town Council of the Town of Malabar, Brevard County, Florida that:

Section 1. As required by sections 164.1041, 164.1051, and 164.1052, Florida Statutes, the Town Council of the Town of Malabar intends to initiate conflict resolution proceedings with the City before filing suit for, including but not limited to, injunctive relief, declaratory relief and damages to recoup overcharges by the City for water and wastewater service to the Town.

Within five (5) days of the passage of this Resolution the Town Administrator shall send a letter and a certified copy of this Resolution to the Mayor and City Manager of the City by certified mail, return receipt requested.

Section 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 3. This resolution shall take effect immediately upon its adoption

This Resolution was moved for adoption by Council Member McClelland and was seconded by Council Member Vail and, upon being put to a vote, the vote was as follow:

Council Member, Nancy Borton
Council Member, Brian Vail

Aye
Aye

Council Member, Chuck McClelland	<u>Aye</u>
Council Member, Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member, Pat Dezman	<u>Aye</u>

This Resolution was then declared duly passed and adopted this 6th day of October, 2008.

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

ATTEST:

Debby K. Franklin
Debby K. Franklin
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

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