

ORDINANCE 2017-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR A TOWN COUNCIL CODE OF CONDUCT AND PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL AND CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

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

SECTION 1. Article II of Chapter 2 of the Code of Ordinances of the Town is amended by adding a new Section 2-27 to read as follows;

Sec. 2-27. Town Council Code of Conduct.

"In addition to adhering to the requirements of state law, all current and future councilmembers shall commit to the following code of conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

1. Definitions: For purposes of this section the following definitions shall apply:

-Town Council shall mean collectively the 5 elected councilmembers and the office of the Mayor, *See Town Charter 2.02.*

-Town Administrator shall mean the Town Administrator, or designee, of the Town of Malabar. *See Section 2-300 (c) of the Code of Ordinances of the town*

-Town or town shall mean the Town of Malabar

-Councilmember shall mean each individual person elected to a seat on the Town Council and the Mayor.

-Censure shall mean a formal vote by the majority of members of the Town Council members present and entitled to vote disapproving the actions of a councilmember in violation of this Code of Conduct.

2. Code of Conduct

(a) I affirm that the proper statutory and Town Charter role of the members of the Town Council, as with any elected member of a legislative body, is to act collectively, not individually, to set and/or revise and/or to apply the town's governing policies and that the Town Administrator and staff administer such policies.

(b) I understand that no individual member of the Town Council manages the affairs of the town. I will not intrude into daily operations or spheres of responsibility designated by Florida Statutes, Town Code, and Town Charter to the Town Administrator; or undermine the Town Administrator's lawful authority. Further, I understand that the Town Administrator is responsible for administering the policy direction established by a majority vote of the town council and not the policy wishes of one individual member of the Town Council. *See Article IX, Chapter 2 of the Code of Ordinances of the Town*

(c) I will represent the interests of the entire town when making decisions and will rely upon available facts and my independent judgment. In my capacity as a member of the Town Council, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.

(d) I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as a member of the Town Council. I will refrain from intimidation and ridicule of fellow members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town.

(e) In my capacity as a member of the Town Council, I will refrain from inappropriate language including statements that are malicious, threatening, slanderous, disparaging, mean-spirited, vulgar or abusive. All disagreements, concerns or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an elected official and the honor of the town council.

(f) I will focus on solving problems. I will maintain appropriate decorum and professional demeanor in the conduct of town business and work cooperatively and conscientiously with others as I request or receive information, examine data or weigh alternatives in the decision-making process.

(g) I will demonstrate patience and refrain from demanding, interruptive access to staff or immediate responses or services when requesting information that requires significant staff time in research, preparation or analysis or that will result in staff neglect of urgent duties. Such requests will be made through the town administrator for scheduling and prioritizing through consensus of the town council.

(h) I will devote adequate time for preparation prior to town council meetings and as much as possible, I will be in attendance at such meetings and all other scheduled events where my participation is required.

(i) I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town. I will listen actively and objectively to others' concerns or constructive criticisms.

(j) I will refrain from any individual action that could compromise lawfully authorized decisions of the town or the integrity of the town and my fellow members of the Town Council. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a representative of the town.

(k) I will maintain in confidence any privileged or confidential information, as provided by law, provided to me by the town and will not disclose such information publicly or to any person who

has not been duly authorized by the town to receive such information, unless such disclosure is duly authorized by the Town Council or required by law. In addition, I will refrain from copying any written privileged or confidential documents provided to me by the town and will keep such documents in safekeeping. Further, upon leaving office or upon request by the Town Council, I will return to the town any privileged or confidential documents or materials or town property provided to me by the town while serving on the town council.

(l) I will abide by all laws of the state applicable to my conduct as a member of the Town Council, including, but not limited to, the Government in the Sunshine Law, the Florida Public Records Law, the Florida Code of Ethics for Public Officers, and town rules of procedure and codes of conduct.

(m) I will promote constructive relations in a positive climate with all town employees, town attorney, and town contractors and consultants consistent with my role as a member of the Town Council, as a means to enhance the productivity and morale of the town. I will support the town administrator's decision to employ the most qualified persons for staff positions. I will recognize the bona fide achievements of the other members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town and other sharing in, and striving to achieve, the town's mission.

(n) I will enhance my knowledge and ability to contribute value to the town as a councilmember by keeping abreast of issues and trends that could affect the town through reading, continuing education and training. I will study policies and issues affecting the town, and will attend training programs if required by the town. My continuing goal will be to improve my performance as a councilmember.

(o) I will value and assist my fellow councilmembers by exchanging ideas, concerns, and knowledge through lawful means of communication. I will help build positive community support for the town's mission and the policies established by the town council.

(p) I will support and advocate for my beliefs, but will remain open to understanding the views of others. I recognize that I share in the responsibility for all town decisions and will accept the will of duly authorized decisions of the town council and town electorate.

(q) I understand that my first priority as a councilmember will always be to look out for the best interests of the citizens of the town and the public health, safety and welfare. I will seek to provide appropriate leadership that nurtures and motivates town citizens to be stakeholders in the affairs and achievements of the town.

(r) I will be accountable to the Town Council for violations of this code of conduct.

3. Penalties for Violation of Code of Conduct.

(a) Before any councilmember shall be found to be in violation of this Code of Conduct the councilmember shall be given a public hearing concerning any charge of a violation of this Code of Conduct. The date and time of a public hearing concerning a member charged with a violation of this Code of Conduct shall be published in a newspaper of general circulation in the town at least one (1) week in advance of the hearing, or as otherwise provided by State or local law.

(b) All such charges shall be in writing and filed with the Office of the Town Clerk. The written complaint must be based substantially upon the personal knowledge of the complainant and signed under oath or affirmation by the person filing the complaint. The Town Clerk shall cause the notice in subparagraph (a) to be drafted and published. To the extent possible such hearing shall occur at the next regularly scheduled meeting of the town council. In the event that there is insufficient time to cause the publication in subsection (a) above to occur or if the next available meeting of the town council has been previously cancelled then the hearing shall be scheduled for the next available regular meeting of the town council.

In the event that any councilmember shall be found in violation of this Code of Conduct the following penalties shall be imposed:

-For a first violation: a notation in the councilmembers file that a first violation of the Code of Conduct has been found to have been committed by a majority vote of the Town Council entitled to vote on such matter ;

-For a second violation: Censure;

-For a third violation: At the discretion of the Town Council, sanctions may include additional censure, or removal or exclusion from leadership positions, other official positions or duties.

-For any subsequent violations: If there is a determination of such a subsequent violation and upon the vote by a majority vote of the Town Council entitled to vote on such matter the institution of subsequent forfeiture of office proceedings pursuant to FS 112.501 (2)."

SECTION 2. CONFLICT. All ordinances or resolutions or part of ordinances or resolutions in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

SECTION 4. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of Section 1 of this ordinance to be incorporated into the Code of Ordinances.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage and adoption.

The foregoing Ordinance was moved for adoption by Council Member Kohler. The motion was seconded by Council Member Rivet 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

NAY
NAY
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 21
day of August, 2017.



By: TOWN OF MALABAR

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

1st Reading: 8/7/17 3 to 2
2nd Reading: 8/21/17 3 to 2

ATTEST:

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

Approved for Legal Sufficiency:

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

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~~