

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: August 17, 2017**

**Prepared By: Debby Franklin, Town Clerk/Treasurer**

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**SUBJECT: Ordinance 2017-09 Moratorium on Wireless Infrastructure within Malabar Rights-of-way**

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**BACKGROUND/HISTORY:**

The Attorney spoke to Council for the need to do this until the Attorney and Staff can determine the impact on local regulations and authority.

**FINANCIAL IMPACT:**

None

**ATTACHMENTS:**

Ordinance 2017-09

**ACTION OPTIONS:**

Request Approval of First Reading

**ORDINANCE 2017-09**

**AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE TOWN OF MALABAR ON THE EFFECTS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 PASSED BY THE FLORIDA LEGISLATURE DURING THE RECENTLY ENDED 2017 LEGISLATIVE SESSION AND APPROVED BY THE GOVERNOR; PROHIBITING ANY AND ALL APPROVALS DURING THE MORATORIUM PERIOD FOR ANY RIGHT-OF-WAY LOCATED WITHIN THE TOWN OF MALABAR IN ORDER TO ALLOW AN OPPORTUNITY FOR THE TOWN TO REVIEW THE REQUIREMENTS OF THE SAID BILL AND TO DEVELOP AN ORDINANCE, AS APPROPRIATE, RELATING TO THE IMPACTS OF THE LEGISLATION; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR GEOGRAPHIC AREA ENCOMPASSED BY THE MORATORIUM; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Committee Substitute for Committee Substitute for House Bill 687 passed the Florida House of Representatives on April 28, 2017 and the legislation was subsequently passed by the Florida Senate on the same day and subsequently approved by the Governor with an effective date of July 1, 2017; and

**WHEREAS**, the bill creates the "Advanced Wireless Infrastructure Deployment Act"; and

**WHEREAS**, the legislation establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" (i.e., a county or municipality); and

**WHEREAS**, thus, the bill provides that the Town may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the legislation; and

**WHEREAS**, Town staff has not had adequate time to evaluate the impacts or address local issues that are presented by the legislation; and

**WHEREAS**, this Ordinance is enacted pursuant to the home rule powers of the Town as set forth at Article VIII, Section 2, of the Constitution of the State of Florida; Chapter 166, Florida Statutes, and other applicable controlling law.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA THAT:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.**

(a). The foregoing recitals (whereas clauses) are hereby ratified, affirmed and confirmed as being true and correct and are hereby made a part of this Ordinance.

**SECTION 2. STUDY AND REVIEW PROCESS.**

(a). During the temporary moratorium period designated in Section 3 of this Ordinance, the Town staff, are hereby directed to study controlling State law regarding Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

(b). The essential purpose of such a review and study by the Town staff is to develop and propose to the Town Council amendments to the Town's codes and ordinances as may be necessary and appropriate to conceptualized a framework of authorized regulation and fee structure as to implementing the legislation.

**SECTION 3. IMPOSITION OF TEMPORARY MORATORIUM.**

(a). All activity relating to the acceptance, review and action upon matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 is temporarily suspended in order for the Town to have the time and opportunity necessary to a framework of authorized regulation and fee structure as to implementing the legislation.

(b). Based upon the legislative findings, purpose, and intent set forth herein, there is hereby imposed a temporary moratorium on all matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

(c). During the time that the moratorium imposed by this Ordinance is in effect, no applications will be accepted with regard to the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 that pertain to activities proposed to occur within the Town Limits of the Town.

**SECTION 4. GEOGRAPHIC AREA COVERED.** This Ordinance applies to all areas within the Town Limits of the Town of Malabar.

**SECTION 5. DURATION OF MORATORIUM.**

(a). The temporary moratorium established by this Ordinance has taken effect upon first reading of this Ordinance (under the zoning in progress doctrine; pending ordinance doctrine) and shall terminate on January 1, 2018.

(b). No applications for approvals subject to the moratorium will be accepted by the Town until the moratorium has expired.

(c). The temporary moratorium set forth in this Ordinance shall expire prior to the termination date set forth herein if the Town Council enacts an ordinance addressing the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

**SECTION 6. IMPLEMENTING ADMINISTRATIVE ACTIONS.**

(a). The Town Administrator is hereby authorized and directed to implement the provisions of this Ordinance and with regard to the implementation of the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 by the promulgation of rules and the development and usage of forms and processes all as may be deemed necessary or appropriate by the Town Administrator.

(b). The Town Administrator is also hereby authorized and directed to generally implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance in accordance with controlling law as such officer may deem appropriate under the Town of Malabar Charter.

**SECTION 7. SAVINGS.** The prior actions of the Town in terms of the matters relating to the regulation of rights-of-way, as well as any and all related matters, are hereby ratified and affirmed.

**SECTION 8. CONFLICTS.** All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 9. 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 10. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon passage and adoption.

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	_____

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

By: TOWN OF MALABAR

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

(seal)

1<sup>st</sup> Reading: 8/7/17  
2<sup>nd</sup> Reading: 8/21/17

**ATTEST:**

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

Approved for Legal Sufficiency:

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