



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Special Meeting – Monday, April 16, 2001 – 1:30 p.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present: Bonnie R. MacKenzie, Mayor
Joseph Herms, Vice Mayor
(arrived 1:55 p.m.)

Council Members
Gary Galleberg
William MacIlvaine
Fred Tarrant
Penny Taylor
Tamela Wiseman

Also Present:
Kevin Rambosk, City Manager
Tara Norman, City Clerk
Robert Pritt, City Attorney
Ron Lee, Planning Director
Don Wirth, Community Services Director
Karen Kateley, Administrative Specialist
Laura Spurgeon, Planner
Dr. Jon Staiger, Natural Resources Manager
David Lykins, Recreation Manager
Susan Golden, Planner

Frances Federico
Robert Barnes
Joe Biasella

Elizabeth Bloch
Kevin Bill
Henry Kennedy

Allen Walburn
Gary Martin

Other interested citizens and visitors.

First ReadingITEM 2

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 78 OF THE CODE OF ORDINANCES IN ORDER TO CLARIFY THE LANDSIDE FACILITY DEFINITION AND ESTABLISH PROCEDURES TO ENFORCE THE CHARTER BOAT REGULATIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (1:34 p.m.). Noting the year-long review which had preceded that meeting, Mr. Rambosk listed various options to resolve the issue: 1) retain the current ordinance with minor changes; 2) make major changes to the current ordinance; 3) or eliminate Article IV of Chapter 78 altogether and require that charter boats follow the same regulations as all other businesses. He cited the on-going concern for the availability of charter boats, balanced with business and residential uses and the environment, and listed the following areas which had been examined: ordinance definitions; licensing requirements; location and parking requirements (zoning); and landside facility operations necessary only to allow pick-up and drop-off of passengers by public transportation.

Rather than the originally planned round table workshop, he said that staff had requested a special meeting so that the Council could take action and pointed out that the ordinance then before Council would effect minor revisions rather than major revision about which the Council had not achieved consensus. The third alternative, eliminating Article IV of Chapter 78, would require charter boats to operate from a commercially zoned location. However, Mr. Rambosk pointed out, this would not address a need identified in the 1980's for boats to accommodate overflow demand from hotels, although he said he believed that this need had in fact not materialized. By the mid-1990's unregulated charters were being operated from various locations such as Naples Landing or private homes, Mr. Rambosk continued, a situation which had become a concern voiced by charter boat operators who were adhering to City requirements. Therefore, a group of charter boat operators had assisted in formulating guidelines, although enforcement of those guidelines had been lacking. Subsequently, requirements were relaxed allowing restricted charter boats to operate, he said.

Mr. Rambosk also reported that in most locations in the state the marketplace regulates charter boat activity because few areas experience the parking and dockage constraints present in the City of Naples. He recommended that the Council therefore make a policy decision as to the extent to which the City should act to assure that charter boats have an opportunity to operate, including whether the City should become the County's hub for charter boat activity. Establishing a single type of charter boat license, he said, would in fact eliminate those operators who had purchased vessels to go into business in the restricted category. These particular operators could however not be grandfathered indefinitely since criteria must be open to everyone. Nevertheless, he cautioned that strict criteria aggressively enforced could again cause many captains to operate illegally, a situation more difficult to address than if the City were to license and regulate them, he said. He also pointed out that there are just two landside facilities, the City Dock and Port-O-Call Marina with a finite capacity, from which charter operations can occur in the City.

It is noted for the record that Vice Mayor Herms entered the meeting at 1:55 p.m.

Mr. Rambosk therefore suggested that the Council first address community philosophy with reference to charter boats. Council Member MacIlvaine cited the importance of maintaining charter boat operations as a vital element of the waterfront, and Council Member Galleberg cited the importance of simplifying regulations and addressing enforcement issues. Mr. Galleberg also urged recognition first of City residents who pay City taxes. He asked City Manager Rambosk to address the affect allowing two classes of charter boats would have upon a proposal to increase commercial slips at the City Dock by reducing the number of recreational slips. Mr. Rambosk confirmed that allowing more pick-up/drop-off activity at the City Dock where parking is available would to some extent reduce the need to convert recreational slips to commercial. Mr. Rambosk also cited enhanced enforcement as one of the more important facets of the proposal before Council; namely, employment of a harbormaster for on-site enforcement, a focus on regulation as opposed to simply charging a fee, and the ability not only for the City Manager to suspend licenses in conjunction with the Council's current authority to revoke them.

Confirming that the ordinance before Council would be characterized as minor as opposed to major changes, Council Member Taylor indicated her support and expressed the view that the charter boat fleet should be preserved without the City becoming a hub of charter boat activity for Collier County.

Mayor MacKenzie commended the staff on the thoroughness of its research but expressed the view that one set of rules could not apply both to businesses which provide parking and those which do not. Noting that prior Councils had allowed extensive residential development on Naples Bay and thereby foreclosed the City's ability to maintain a working waterfront, Mayor MacKenzie

nevertheless expressed the view that other areas of the County, not just the City of Naples, should be the locus of charter boat activity. She also said that acquisition by the City of additional dockage on Naples Bay is not economically feasible, although zoning incentives could act to encourage retention of commercial waterfront activities as mixed use projects develop. The proposed ordinance would allow the City to manage its docking facility to the best of its ability, Mayor MacKenzie concluded.

Council Member Wiseman indicated her support for establishing a single classification for charter boats which could be addressed through zoning incentives. Stating that the system of restricted charter boats had not worked well, Mrs. Wiseman pointed out that there are locations other than the City of Naples from which charter boats can operate and questioned the extent of the actual impact upon restricted charter boats, many of which are part-time operations. In conclusion, she congratulated the staff and urged the Council to that day make the policy decision called for by the City Manager.

Vice Mayor Herms, however, said that he favored retaining the current ordinance as a solution to the greater number of the problems. He said that increased population and tourism in the County had caused the same capacity issues at the City Dock as had occurred at other public facilities such as the Fifth Avenue district, the beaches and the hospital. He noted the finite quantity of submerged public lands and called for Collier County to also address the need for commercial dockage.

While expressing appreciation for the work of the staff, Council Member Tarrant nevertheless maintained his opposition to the City imposing regulations on the charter boat industry, stating that these business would be healthier without government regulation. Although the charter boat industry is important to the City, he said, other businesses are equally important and all should be treated the same. Mr. Tarrant also recommended that available spaces at the City Dock be filled by lottery. Council Member MacIlvaine said that while occupants of slips at the City Dock should not be allowed to sell their leases to others, the waiting list should be strictly adhered to when vacancies occur. City Manager Rambosk indicated that the staff would in the future request Council's policy guidance for the City Dock. However, once guidelines are in place, Mr. Rambosk asked that the staff then be allowed to operate the facility as a business.

Council Member Galleberg indicated his concurrence with the statements of Council Members Wiseman and Tarrant while receiving assurances from the City Manager that if Article IV of Chapter 78 were eliminated, the staff would nevertheless have adequate enforcement powers. However, in response to Council Member Taylor, City Manager Rambosk indicated that deleting Chapter 78 could in fact accrue to the largest number of potential violations such as operators using unauthorized locations to board passengers. Miss Taylor said she supported retaining restricted and unrestricted categories because of the need to accommodate a fluctuating passenger demand.

Based on Council's statements, Mayor MacKenzie identified supporters of retaining the current ordinance with minor changes as being Council Members MacIlvaine and Taylor, Vice Mayor Herms and herself. She said that those indicating a preference for elimination of Article IV of Chapter 78 were Council Members Galleberg, Wiseman and Tarrant. Mayor MacKenzie also predicted that the increased violations anticipated by this latter option would occur most in Old Naples, Naples Landing and Crayton Cove, urging that Council be sensitive to an area already heavily impacted.

Public Comment: (2:21 p.m.) **Robert Barnes, 2655 McCormick Drive, Clearwater, Florida,** representing Universal Sailing, assured the Council that his client as well as many others will remain

interested in commercial slips at the City Dock which allows them the ability to advertise the location of their boats and to attract walk-up customers. He asked the City Manager for data relative to the number and nature of complaints lodged against restricted charter boats. Council Member Wiseman said that she had not intended by her prior comments to convey this impression and explained that she had heard from City residents that they do not understand why they must comply with the pick-up/drop-off requirements imposed on restricted charter boats. Mr. Barnes then recommended against eliminating Article IV of Chapter 78, taking the position that pick-up/drop-off is critical to the success of the charter boat industry due to the decreasing availability of dockage. He said that the City is in fact in the charter boat business as a landlord offering space at below market rates to some but not all. He also cautioned the Council about possible legal ramifications of altering the rules which apply to the City Dock waiting list by giving City residents preference over those registered. Mr. Barnes warned that elimination of Article IV would also delete the accommodation which the Council had made to the temporary unrestricted charter boat operators. In conclusion, he urged that every landside facility be required to provide at least one pick-up/ drop-off space. **Elizabeth Bloch, 5920 Golden Gate Parkway and 860 12th Avenue South**, also asked for information relative to alleged enforcement problems and said she believed that the difficulties in this regard emanate from vessels which do not have occupational licenses. She said that her primary concern is the substitution of a privilege for a right which restricted boat owners have to operate in under a landside facility petition because access could be eliminated at the option of a landside facility without Council approval. She also cautioned that such a system would in the future be administered by people who most likely would not have the background possessed by the current administration and Council. She said she supported either retaining the current ordinance or the proposed new ordinance with reinstitution of the pick-up/drop-off and landside facility provisions. She also noted that based on the number of restricted boats who could realistically on any given day operate in Naples Bay, the number of vehicles requiring parking would be relatively few.

Council Member Galleberg said that Ms. Bloch's comments indicated to him that if the current classifications of charter boats remain, operators would return to Council again and again with requests for modifications. City Manager Rambosk clarified for Council Member Taylor that pick-up/drop-off had not been eliminated but moved to another section with the caveat that a landside facility must provide required parking. In response to Vice Mayor Herms, Mr. Rambosk confirmed that while one slip is designated for pick-up/drop-off at the City Dock, there is sufficient parking to allow for more. Miss Taylor, however, said that should pick-up/drop-off slips be eliminated, a privilege or right would in fact be taken from restricted charter boats, noting that many charter boat passengers prefer to drive their own vehicles to the dock rather than taking public transportation. Mayor MacKenzie, however, noted that the alternative would actually be an imposition upon a property owner and therefore questioned the justification for such a requirement. Council Member Galleberg also noted that there is no current provision for passengers to use anything other than public or chartered transportation to the dockage of a restricted charter boat, although he said he feels that restricted charter boat passengers do in fact drive their own vehicles. In response to Mayor MacKenzie, City Attorney Robert Pritt indicated that as opposed to a right, restricted charter boats are granted a license which can be issued under conditions established by the City Council.

Kevin Bill, 1535 Chesapeake Avenue, Day Star Charters, said that he was one of ten charter captains who could be displaced in conjunction with Boat Haven redevelopment and requested that the City open ten additional slips at the City Dock for commercial use, noting that the ratio of recreational to commercial slips is now approximately 5-1. This would assist commercial charter boat operators and have no impact on parking, he said. He also urged inclusion of language to allow unrestricted charter boats who may be displaced to have five full years from that displacement in

which to locate new dockage. Captain Bill then questioned whether one captain could maintain dockage at the City Dock for multiple boats under the same business, a situation which he said he believed to be occurring at the present time. In conclusion, Captain Bill urged the City to maintain pick-up/drop-off which he and other displaced charter operators could use if the need arose. **Allen Walburn, 925 Eighth Avenue South**, said he had understood that this meeting would take place at 3:00 p.m. and that he had been unable to obtain a copy of the proposed ordinance changes. Mayor MacKenzie briefly reviewed the options under consideration. He said that people with restricted boats were seeking to supercede license limitations, asserting that market conditions have actually not changed over the past ten years. He also noted his understanding that those restricted and unrestricted boats currently licensed would be allowed to continue to operate under the same conditions but that new operators would be required to comply with all Code requirements. Mayor MacKenzie however noted that the City Attorney had opined that a policy which differentiates between groups would not be legal. In conclusion, Captain Walburn cited a commingling of issues involving restricted, unrestricted and displaced charter boats as the cause of the difficulties the City was currently facing. **Gary Martin, 1200 Sixth Avenue South, president of Old Marina Docks**, expressed the hope that no charter boat captain would become unemployed as a result of Council's action if the current regulations were repealed. He expressed appreciation for Council Member responsiveness to his individual contacts and for Council's efforts to address the charter boat problem. He recommended that distance regulations be relaxed from 600 to 1000 feet for off-site parking; if so, he said he felt his marina could provide dockage for additional charter boats. In response to Council Member Tarrant, Mr. Martin indicated that there are 15 slips at his marina, 8 of which could eventually be occupied by charter boats.

Council Member MacIlvaine asked staff to identify any disadvantages to extending the aforementioned distance limit from 600 to 1000 feet. City Manager Rambosk said that normally customers will park as close to their destination as possible. Also noting the current situation with overflow parking at Naples Landing, Mr. Rambosk asserted that City facilities and services are now at maximum usage. He then confirmed for Council Member Taylor that Old Marina Docks had not submitted a landside facility petition; City Attorney Pritt also responded that as long as the City had a valid reason for doing so, the required distance for parking could be individually designated for landside facilities.

Joe Biasella, 860 12th Avenue South, stressed the need for enforcement of the regulations which the Council puts into place, a problem not only on the waterfront but in other areas. He noted that regardless of distance requirements set forth for off-site parking, charter boat passengers arriving early in the morning will park as close as possible to the dockage in lots which belong to other businesses. Mr. Biasella also reported that there is currently little enforcement on Naples Bay and conditions are worsening in such areas as no-wake zones. Restricted charter boat licensing, he said, is another area out of control with no enforcement. He urged the City Council to get out of the charter boat business.

In response to Vice Mayor Herms, City Manager Rambosk indicated that citations written on Naples Bay have increased incrementally each year and have doubled over the last three to five years. He also confirmed for Council Member Taylor that there is no provision for a parking space in conjunction with pick-up/drop-off because public transportation must be used; however, he said, there had been instances where a parking space had been so designated at the City Dock which was actually contrary to the Code.

Natural Resources Manager Jon Staiger advised the Council that Mr. Biasella had privately clarified to him that he was not taking issue with the amount of enforcement provided by the City's marine officers, but rather that there should be more officers patrolling. In response to Council Member MacIlvaine, Dr. Staiger explained that both the Florida Marine Patrol and Collier County Sheriff's Office also provide some patrols on the Bay.

Henry Kennedy, 2178 Tarpon Road, said that a complaint he had made about enforcement on the Bay had been reported in the newspaper and that he had subsequently been inundated with information from the staff such as how many citations are issued. However, he maintained that speeders on Naples Bay are not ticketed and therefore reiterated his concern about all types of waterfront enforcement. He recommended increasing occupational licenses fees from the average of \$50 to \$100 so that there would be sufficient funds to employ two additional enforcement officers.

Mayor MacKenzie stated that while the Naples Police & Emergency Services Department is among the finest in the state, recently several experienced officers had retired and were yet to be replaced which she identified as a possible contributing factor to the issues cited by Mr. Kennedy. In response to Council Member Wiseman, City Attorney Pritt further clarified that while he recommends against a grandfathering provision, a reasonable amortization period could be appropriate for a term of approximately two years. City Manager Rambosk suggested that carrying capacity of Naples Bay may be a factor to limit the number of licenses issued, and Planning Director Ron Lee noted that conditional use categories can be created and could be revocable if requirements were not met. City Attorney Pritt asked Council to keep in mind that charter boat operations are permitted through licensure, not via regulatory ordinance, and are therefore renewable which is distinguished from specific zoning approvals such as those through the conditional use process.

Staff then reviewed the ordinance, with Planning Director Lee noting that most of the changes involve clarifications, and with City Attorney Pritt pointing out various minor grammatical and language modifications. (An annotated copy of this ordinance draft is contained in the file for this meeting in the City Clerk's Office.) Mr. Pritt also clarified that the penalty for violation would generally be derived from Chapter 2 of the Code although the City Council already has the ability to revoke a charter boat license; a license suspension after hearing before the City Manager had however been added. He also responded to Vice Mayor Herms that the reference to a conditional use on Page 3 is correctly included because that particular provision in fact deals with the use of land. It was also recommended that the Council delineate the maximum length of license suspension which can be imposed by the City Manager (30 days) and clarified that while the suspension hearing would be conducted by the City Manager, license revocation is within the purview of the Council. The Council also briefly discussed the advisability of in the future reducing the maximum passenger capacity of vessels allowed on Naples Bay from the current 149 to 125. Council Member Tarrant pointed out that any change in the Communist government in Cuba could create a market for large vessels to enter Naples Bay similar to the past proposal for dockage of the Buquebus.

Council Members then indicated the following preferences:

- Retain current ordinance with minor changes – Herms, Taylor, MacIlvaine
- Revise current ordinance with major changes - None
- Eliminate Article IV of Chapter 78 - Tarrant, Wiseman, Galleberg

Council Members Wiseman and Galleberg also noted their preference for retaining the temporary unrestricted charter boat status for displaced captains. Without indicating a preference, Mayor MacKenzie nevertheless noted the difficulty the City has experienced with accommodating

businesses which do not meet standards, making a strong argument for eliminating Article IV. She received clarification from City Manager Rambosk that doing so would result in the continuance of restricted charter boats until the expiration of their occupational licenses on October 1, 2001, although temporary event (unrestricted) charters could be provided for. He also predicted that the primary difficulties in elimination of Article IV would be public outcry from current restricted operators (approximately 47 in number) and potential for increased enforcement demand in the short term.

In response to Council Member Galleberg, City Manager Rambosk indicated that the estimated 47 restricted licensees includes those applied for after Council discussed the possibility of limiting restricted licenses; approximately 30 new licenses were issued after April 2000, some of which were unrestricted since applicants had been able to obtain commercial dockage. Recreation Manager David Lykins however pointed out that this total also reflects charter boat operators who have gone out of business as well as others who have converted to unrestricted status having located the required parking in conjunction with a landside facility. Council Member Tarrant called for fairness and a reasonable time period to eliminate restricted licenses and the possibility of providing additional pick-up/drop-off slips at the City Dock; however, he said he opposed limiting the Council to the aforementioned three options.

Council Member Taylor pointed out that elimination of Article IV would require extensive enforcement and force some individuals to then operate illegally; she reiterated her support for the ordinance before Council which would make minor changes to the current Code. She also said that unrestricted captains had appealed to her not to eliminate restricted licenses because these boats are needed by the industry to accommodate large groups. She urged Mayor MacKenzie to support this option.

Mayor MacKenzie received clarification that the date for elimination of all restricted licenses could be specified in the future even though repeal of Article IV would be effective in October 2001; the City would not be required to accept new restricted license applications during that intervening time.

MOTION by Wiseman to INSTRUCT STAFF to: 1) proceed conceptually with elimination of portions of Article IV, Chapter 78, retaining the temporary unrestricted charter boat classification for displaced unrestricted captains; 2) to retain a procedure whereby a temporary use permit could be obtained ~~often~~ more often than twice per year for special events; and 3) to immediately cease issuing restricted licenses upon adoption of the ordinance, providing a reasonable period of time to sunset the classification. This motion was seconded by Galleberg and carried 5-2 although additional discussion ensued prior to the vote (Tarrant-yes, Galleberg-yes, Herms-no, Wiseman-yes, Taylor-no, MacIlvaine-yes, MacKenzie-yes).

Council Member Taylor said that this would create a monopoly for unrestricted charter boat operators. Vice Mayor Herms said that when an ordinance is drafted with the aforementioned guidelines, the Council will again hear complaints of restricted boat owners at both the first and second readings, reiterating that an estimated 47 captains would be out of business at some date in the future. Council Member Galleberg however pointed out that the problem must be dealt with since the capacity of Naples Bay is finite; he confirmed with Recreation Manager Lykins that there are other locations in Collier County where commercial dockage is available, although many are not as popular and convenient as Naples Bay. Council Member Wiseman took the position that many of the aforementioned 47 holders of restricted licenses were not actually in business. Council Member MacIlvaine said he believed that the City should to the extent possible get out of the charter boat

business while at the same time acknowledging a responsibility to provide a period of time for the 47 restricted boats to find the necessary dockage. Council Member Tarrant then confirmed with Mrs. Wiseman, the maker of the motion, that at the end of the sunset period both restricted and unrestricted categories would no longer be in existence. A vote was then taken on the motion (see previous page).

CORRESPONDENCE and COMMUNICATIONS.....

None.

PUBLIC COMMENT.....

None.

ADJOURN.....

4:28 p.m.

Bonnie R. MacKenzie, Mayor

Minutes prepared by:

Tara A. Norman, City Clerk

Minutes approved: 8/15/01