



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Special Meeting – December 3, 2001 - 3:30 p.m.**

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Mayor MacKenzie called the meeting to order and presided.

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**ROLL CALL (3:38 p.m.) ..... ITEM 1**

**Present:**

Bonnie R. MacKenzie, Mayor  
Joseph Herms, Vice Mayor (arrived 3:39 p.m.)

**Council Members:**

Gary Galleberg  
William MacIlvaine  
Fred Tarrant  
Penny Taylor  
Tamela Wiseman (arrived 3:40 p.m.)

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**Also Present:**

Kevin Rambosk, City Manager  
Robert Pritt, City Attorney  
Tara Norman, City Clerk  
Karen Kateley, Administrative Specialist  
Virginia Neet, Deputy City Clerk  
Steve Moore, Chief/PESD  
David Lykins, Recreation Manager  
Don Wirth, Community Services Director  
Clark Russell  
Brian Leiding

Kent Walker  
John Brugger, Attorney  
Alan Ryker  
Gary Martin  
Bill Hill  
Jim Boula  
Thomas Marvel  
William Duddy  
Gary Martin

Other interested citizens and visitors

**ORDINANCE (First Reading).....ITEM 2**

**AN ORDINANCE AMENDING SECTION 78-81 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FLORIDA, TO ADD A DEFINITION FOR “SLIP”; AMENDING SECTION 78-82 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FLORIDA, TO DELETE CERTAIN RULES AND REGULATIONS FOR USE AND OPERATION OF THE MUNICIPAL DOCK THAT MAY BE ADOPTED BY RESOLUTION; REPEALING SECTION 78-84 OF THE CODE OF ORDINANCES, CITY OF NAPLES, FLORIDA, RELATING TO SLIP RENTALS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Rambosk (3:39 p.m.) who said that, based on prior Council discussions, staff had prepared an enabling ordinance wherein many items had been moved to either the City Dock leases or the rules. It is noted for the record that the texts of the items discussed at this meeting are contained in the file for this meeting in the City Clerk’s Office.

Mayor MacKenzie recommended that the word “supplemental” be deleted from Section 78-82(4). She said that it implied original rules had not been adopted; and City Attorney Robert Pritt concurred. In response to Council Member Wiseman, City Attorney Pritt confirmed that Agenda

Item 2 would be a First Reading, while Items 3, 4 and 5 are resolutions which could be enacted that day. Responding to Council Member MacIlvaine, City Manager Rambosk said the City would no longer consider implementing a harbormaster and that those duties would be reassigned to other staff members.

**Public Comment:** (3:47 p.m.) **Brian Leiding, 235 Bahia Point, and Kent Walker, 3520 Second Avenue N.E.,** declined to speak when called. **John Brugger, 600 Fifth Avenue South,** an attorney speaking on behalf of six commercial boat owners at the City Dock, said he had understood that there would be a two-week public notice for the resolutions, however, City Attorney Pritt explained that the terms of the proposed leases provide for notification within the lease documents. **Alan Ryker, 300 Fifth Street South,** declined to speak when called.

Ascertaining that under the proposed enactments the City Manager would have more control over dock operations than previously authorized, Council Member Tarrant nevertheless expressed concern that another City Manager would be less effective than City Manager Rambosk. Mayor MacKenzie said the ordinance could then be amended to give City Dock management responsibility to another staff member. Council Member Galleberg proffered a motion for approval, characterizing the ordinance as enabling legislation.

**MOTION by Galleberg to APPROVE ITEM 2, AS AMENDED, REMOVING THE WORD “SUPPLEMENTAL” FROM SECTION 78-82(4); seconded by MacIlvaine and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RESOLUTION (Continued).....ITEM 3**  
**A RESOLUTION ADOPTING A RULES AND REGULATIONS SUPPLEMENT FOR THE MUNICIPAL DOCK; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (3:50 p.m.). He suggested that Council may wish to remove the word “supplement” from the title. Mr. Rambosk also said that the Rules and Regulations Supplement for the City Dock had been recommended by the Dockmaster to ensure that leaseholders, visitors and transient vessel owners would be provided with guidelines. Recreation Manager David Lykins also noted that the document now includes an introduction stating it is the goal and intention of the City to offer the use of the municipal dock slips to as many diverse individuals and groups as possible, and provide its use to the public, subject to reasonable and concise rules and regulations. Mr. Lykins said that the second sentence of Item (1)B could be amended for improved clarity as follows: “The Dockmaster shall direct where each vessel shall be moored within the municipal dock area.”, and Mayor MacKenzie concurred. Responding to Mayor MacKenzie, Mr. Lykins explained that the Community Services Director and Dockmaster would be authorized to execute recreational leases, and only the City Manager would be authorized to execute commercial leases. Council Member Tarrant received clarification that there was a hold harmless clause at the end of the agreement.

Council Member Taylor requested that Item (1)F include reference to an animal control officer, and City Manager Rambosk recommended the following: “The Police and Emergency Services Department, the county sheriff’s office, or any legally constituted enforcement authority shall have full authority to enforce all laws...” Council learned the rewording would include code enforcement officers. It was also the consensus of Council to amend (1)H by replacing the number 24 with 12. Council Member Wiseman suggested that (1)I be amended by deleting the words “economically as possible”.

In order to be inclusive of various behaviors which would be objectionable at the City Dock, it was the consensus of Council to amend Item (1)J to state “Code of Conduct for the Municipal Dock and Related Areas. All persons must at all times exhibit behavior that reflects respect and courtesy toward all individuals. Harassment, intimidation, retribution or verbal, physical or emotional abuse from any person toward any other person is expressly prohibited. All persons must at all times exhibit a behavior that reflects respect and courtesy toward all individuals.” Council Member Galleberg, however, said he would have preferred Item (1)J to be written less specifically in regard to the forms of abuse, and Vice Mayor Herms said he preferred the language as it had been originally rendered.

In discussion of Item (2)B, it was noted by staff that the City Dock waiting list had been submitted to the City Clerk’s Office and had been posted on the City Dock bulletin board as well as the Community Services Office. City Manager Rambosk clarified that all public documents, such as waiting lists and rules, would ultimately be available through the website.

In discussion of Item (2)B, Mayor MacKenzie and Council concurred that preference should be given to City residents on the City Dock recreational slip waiting list. Council Member Galleberg said he favored immediately revising both the commercial and recreational waiting list to provide preference for City residents, but Vice Mayor Herms and Council Members Wiseman and Taylor opposed this. Vice Mayor Herms pointed out that City residency requirements for the commercial waiting list could be circumvented by charter boat operators merely renting a residence within the City. Community Services Director Wirth reported that 118 individuals had applied for recreational slips and approximately 25 percent are City residents; 32 individuals had applied for the 11 commercial slips with six more to be added. Mr. Wirth also said that the first individual on the recreational waiting list had applied on March 15, 2000.

**MOTION by Galleberg to APPROVE REVISING THE CITY DOCK RECREATIONAL SLIP WAITING LIST TO IMMEDIATELY GIVE PREFERENCE TO CITY RESIDENTS;** *seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).*

**MOTION by Taylor to APPROVE RETAINING THE CITY DOCK COMMERCIAL WAITING LIST BUT FROM THIS DAY FORWARD ANY NEW ADDITIONS WOULD BE SORTED BY RESIDENCY WITH CITY RESIDENTS TO RECEIVE PREFERENCE;** *seconded by Tarrant and carried 5-2, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).*

Council Member Galleberg reiterated his recommendation that the City Dock commercial list be revised immediately to provide preference to City residents, and Mayor MacKenzie concurred.

Responding to Mayor MacKenzie, Recreation Manager Lykins said staff recommended increasing the \$50 deposit required of applicants on the commercial waiting list. Mayor MacKenzie suggested \$100 to prevent applicants from misplacing receipts, which she said had occurred. Mr. Lykins also recommended yearly payments for individuals to remain on the waiting lists so the City could purge those names no longer interested. Mayor MacKenzie and Council Member Galleberg concurred, and he noted that a yearly fee would also provide funds for administration. Council Member Tarrant, however, recommended a larger deposit but no annual fee, and Council Member MacIlvaine concurred, recommending a deposit of \$1,000 with annual interest at the U.S. Department of Treasury bill rate remitted to the applicant yearly.

Council Member Galleberg proffered a motion to direct staff to consider establishing initial and annual fees to be paid by City Dock waiting list applicants; however, further discussion ensued. Vice Mayor Herms said establishing annual fees would discourage County residents from remaining on the City Dock waiting list because City applicants would progress more rapidly, and Council Member Galleberg observed that the willingness of County residents to remain on the waiting list while paying yearly fees would be at their discretion.

**MOTION by Galleberg to DIRECT STAFF TO CONSIDER ESTABLISHING AN INITIAL FEE FOR CITY DOCK WAITING LIST APPLICANTS WITH ANNUAL FEES TO BE PAID THEREAFTER, WITH FEE AMOUNTS TO BE RECOMMENDED BY STAFF; seconded by Taylor and carried 4-3, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-no, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

Council Member Wiseman expressed concern that it would be difficult under Item (2)B2 to document the accuracy of the partner and member names, thereby not accomplishing what staff had intended. City Attorney Pritt, however, recommended removing “If it is a partnership, a list of all general partners must be provided. If it is a limited liability company, a list of all members must be provided.” from Item (2)B2 because it had been included in the lease, and the intent had been to ensure that commercial operators have occupational licenses and had been otherwise properly licensed, and City Manager Rambosk concurred. City Attorney Pritt pointed out that Council Members could, however, reconsider the deletion of these sentences if not adequately covered in the lease. The first sentence in Item (2)B2 was also amended to “...state of Florida or Federal commercial vessel registration...”

Council concurred that Item (2)D1-6 would be removed because it had been addressed in the lease, and Item (2)D7 would be deleted. It was the consensus of Council that (2)L should be amended by deleting “Repeated excessive noise violations shall be sufficient cause for termination of a lease or removal from the Municipal Dock.” because it had already been addressed in Item (16). Responding to Council, Mr. Lykins said staff concurred that Item (16) should be amended to “...order any persons to be removed from the Municipal Dock areas for violation of any applicable provisions of same.” Responding to Mayor MacKenzie, Mr. Lykins said Item 2U had been intended to limit shower facilities for municipal dock lessees and their guests, and transient vessel owners and their guests, and he concurred the word “restrooms” should be deleted from “...shall be authorized to use the ~~restrooms~~, showers, laundry or other services...” so the public could also have use of restrooms.

Mayor MacKenzie said Item (5)A should be amended to state, “While moored at the Municipal Dock area, waste may only be disposed of...”. Council Member Wiseman however recommended a more specific definition, and City Attorney Pritt concurred. Council Member Taylor said that Item 6(A) should be amended to “No person shall clean any fish within the Municipal Dock areas...”, but concurred that if a definition for Municipal Dock areas was provided it would be unnecessary.

Council Member Tarrant said Item (10) should include the removal of unruly pets, but Vice Mayor Herms recommended stating that some pets could be permanently banned from the City Dock because of potential liability. Council Member Wiseman said it should be amended to “The City in its sole discretion may require the permanent removal of a pet if a pet owner allows a pet to roam,...”, and Mayor MacKenzie and City Manager Rambosk concurred. Council learned that the word “established” had erroneously been deleted from Item (11), which should be amended to “A use fee may be applied as established by the city.” Council Member Wiseman

recommended that the first two sentences in Item (11) be amended to state that except as otherwise provided in the lease agreement, no signs would be posted except that upon request the city may permit one sign not to exceed one square foot in area on any vessel for a maximum of 30 days, and Council Member Taylor and Mayor MacKenzie concurred. City Manager Rambosk said “for sale sign” should be included in Item (11) and that he would also amend this section pursuant to Council’s comments. Mayor MacKenzie recommended that Item (14)E be amended to “...even if it is caused by relatives, employees, guests, customers, invitees, or contract workers of the owner.”

**Public Comment:** (5:28 p.m.) **Brian Leiding, 235 Bahia Point,** recommended the word “supplemental” be removed from Item (1)E and that Item (2)N be amended so that “...no more than 5 6 gallons of fuel in an approved container.” because that was the average size of an outboard gas tank. He said Council should revise Item (2)P so individuals would be permitted to have cocktails on their boats, which he said are legally defined homes. Mr. Leiding also recommended amending Item (2)Q so boat residents would be permitted to cook on grills. Council Member MacIlvaine said grills should, however, be disallowed on vessels tied to the mooring area and mooring balls. Mr. Leiding said Item (5)A should be amended to allow portable toilets, which he said are beneficial to the environment because the sewage could not be dumped overboard. City Manager Rambosk said he would determine compliance regulations for the use of portable toilets on small recreational boats, and Mayor MacKenzie recommended that Item (5)A could be rewritten to specifically state boat sizes approved for acceptable toilet alternatives. Mr. Leiding said Item (6)B unfairly prohibited recreational residents from fishing from their boats while at the dock, and Community Services Director Don Wirth concurred. Mr. Leiding said Item (8)B should be amended, and City Attorney Pritt said Council could approve amending it to “...the opinion of an accredited independent marine surveyor may be obtained of the city’s choosing...”, and Mayor MacKenzie concurred. Mr. Leiding said it would be dangerous to require pets to be on a leash while on the boats as stated in Item (10), but he concurred that pets should be leashed while on the dock itself. Mayor MacKenzie recommended it be amended to state that pets must be confined to the vessels, and Council Member Taylor said it should also state that pets are under the handler’s control at all times. Vice Mayor Herms nevertheless maintained that pets should be leashed on the boats, which could be reconfigured to eliminate danger that the pet could be harmed by hanging. Council concurred that pets must be confined to the vessel and under handler control at all times. Mr. Leiding said Item (11) should be amended so boat owners can place for sale signage on boats for 180 days with a possible extension instead of the 30 days as proposed, and Community Services Director Wirth said he concurred unless there would be a legal prohibition. **Kent Walker, 2520 Second Avenue NE,** Prince Albert Charters, Slip 76, Naples City Dock, opposed Item (1)D that required boat owners to provide a complete set of keys to the Dockmaster, noting that approximately \$3,500 in equipment had been stolen from his boat. He also said that his insurance company requires that he submit documentation of individuals permitted to access his boat. Council Member MacIlvaine however pointed out that docked boats would be better protected against fire if the Dockmaster retained keys, and Mr. Walker concurred with this point, but said his concern had been with properly safeguarding keys. City Manager Rambosk suggested a key safe, which could not be resealed without the Dockmaster’s knowledge that someone had accessed the keys. Mr. Walker agreed that this would be acceptable. **Attorney John Brugger, 600 Fifth Avenue South,** speaking on behalf of six commercial boat owners at the Naples City Dock, said the Rules and Regulations should be modified so that the individual would be required to have retained City domicile upon execution of the lease, and Council concurred. He said this would prevent individuals from later moving to the County while retaining residency preference. He said Council should reconsider Item (14)D that prohibited welding because he questioned

whether City permission would really be required in the case of an emergency repair of a sinking vessel, and Council Member Wiseman and Mayor MacKenzie concurred. **Alan Ryker, 300 Fifth Street South**, declined to speak when called. **Gary Martin, 1200 Sixth Avenue South (President of Old Marina Docks)**, thanked Mayor MacKenzie for noting that the public should be permitted access to the municipal dock restrooms. He said Council had permitted the selling of City property by allowing Sweet Pea Charters to sell for \$30,000, and he said it was the City Dock slip that had value and not the charter business itself. Mr. Martin said Old Naples Seaport slips are state-leased, and those charter businesses have been selling for approximately \$250,000, which he predicted could also occur at the City Dock. Council Member Galleberg, however, distinguished Old Naples Seaport and the City Dock because City Dock charter boat business owners have only been selling a business with the remaining lease period, and Old Naples Seaport had sold 99-year lease rights. Council Member Galleberg suggested that charter business owners could be prohibited from transferring leases, which would expire when their charter businesses were sold. Mr. Martin also recommended that the City act quickly in regard to pet nuisances at the City Dock because of recent reports that a dog had attacked an individual. Council Member Tarrant concurred, citing the potential liability to the City. City Attorney Pritt, however, noted that the City may not have authority to remove a dog under the current rules and regulations without due process. City Manager Rambosk said charges have been filed and that he would notify the alleged violator within five days of his already submitted hearing request, as required. He said a hearing date would be confirmed upon the owner's return to the City on December 10. Responding to Vice Mayor Herms, City Manager Rambosk said that while Collier County Animal Control could remove vicious pets from front yards if there was a safety risk, this particular dog had not threatened or cornered individuals so it could not be removed. He reminded Council that the dog in question had been tied to the fish cleaning station, was not being transported from the boat, and that the alleged attack had occurred on Fleischmann Dock, which is private property. City Attorney Pritt confirmed for Council Member Taylor that the dog could legally be temporarily removed until the hearing if City Manager Rambosk determines that the dog is in fact dangerous and an immediate threat to the health, safety or welfare.

Vice Mayor Herms proffered a motion to instruct City Manager Rambosk to determine whether the City should immediately prohibit the aforementioned dog from any portion of the City Dock until conclusion of the hearing, unless the position of Council reflects that it is a danger to the health, safety and welfare of the community. Council Member Taylor seconded; however, further discussion ensued. Responding to Mayor MacKenzie, City Attorney Pritt confirmed that this motion would not jeopardize due process. Mayor MacKenzie said immediate removal of the dog should be permitted because the alleged attack occurred on private property, but that she could not support the motion because she also concurred with Vice Mayor Herms and Council Members Tarrant and Taylor who had concerns about jeopardizing the hearing process and instigating litigation. Mayor MacKenzie recommended that the motion instruct City Manager Rambosk to delay a determination for removing the dog until after the hearing. Mr. Rambosk also suggested that the City could also request that the dog's owner keep his pet away from the City Dock until after the hearing.

**MOTION by Herms to INSTRUCT CITY MANAGER RAMBOSK TO DETERMINE WHETHER THE CITY SHOULD IMMEDIATELY PROHIBIT THE AFOREMENTIONED DOG ENTRY TO ANY PORTION OF THE CITY DOCK UNTIL AFTER CONCLUSION OF THE HEARING AND THAT THE COUNCIL REFLECTS THAT IT IS A DANGER TO THE HEALTH, SAFETY AND WELFARE OF THE COMMUNITY. This motion was seconded by Taylor but failed 3-4, all members present and voting (Taylor-yes,**

*MacIlvaine-no, Wiseman-no, Galleberg-no, Tarrant-yes, Herms-yes, MacKenzie-no).*

**MOTION by Galleberg to DIRECT THE CITY MANAGER, WITH THE ADVICE OF THE CITY ATTORNEY, TO INVESTIGATE THE ISSUE OF THE DOG AND THE ALLEGED INCIDENTS, TO TAKE ANY ACTIONS PERMISSIBLE WITHIN DUE PROCESS CONSIDERATIONS TO REMEDY THE SITUATION, AND TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE IN AND AROUND THE CITY DOCK. This motion was seconded by Taylor and carried 6-1, all members present and voting (Herms-yes, Galleberg-yes, Taylor-yes, MacIlvaine-yes, Wiseman-yes, Tarrant-no, MacKenzie-yes).**

Council Member Wiseman noted for the record that City Manager Rambosk already had the authority to perform the action Council had directed in its motion, but Council Member Galleberg observed that the second motion had successfully and narrowly defeated the first motion, which would have denied due process. City Manager Rambosk said he would meet with City Attorney Pritt on December 4 to determine whether the animal could be precluded from the City Dock facility.

**Bill Hill, 500 Fifth Avenue South**, recommended Council amend the regulations to allow boat owners to reside on their vessels more frequently. He also said that insurance companies would not indemnify vessels for \$500,000, as required in the proposed lease agreement. Community Services Director Don Wirth, however, noted that the City's insurance counsel has advised staff that it should require recreational and commercial lessees to have \$300,000 to \$500,000 as a minimum for public liability and property damage. Council Member Taylor expressed concern that \$500,000 would be insufficient, considering the boats contain combustibles and move while individuals embark and disembark. **Jim Boula, 702 Broad Avenue South**, requested that the Dockmaster not be permitted to relocate his vessel for better allocation of City Dock space. He also expressed concern about the security of keys in the Dockmaster's possession. Mayor MacKenzie said individuals otherwise residing in close proximity are required to provide keys for access in emergency situations, although she did not disregard or underestimate Mr. Boula's privacy concerns. City Manager Rambosk said privacy would be guaranteed boat owners unless a search warrant had been obtained, and staff would enter the boats only in an emergency. He recommended the City institute a method for key security to protect the City from allegations of misuse, and Mayor MacKenzie concurred. Mr. Tarrant said the City should consider 24-hour security to monitor theft at the City Dock, and Council Member Taylor concurred. City Manager Rambosk said staff had begun researching security cameras. Council Member Tarrant said dogs would not have to be leashed when on the owners' boats. Mr. Boula said Council should permit individuals one year to replace noncompliant dock boxes, and not six months as directed by staff. **William Duddy, 2185 Shad Court**, had left the meeting before called.

Responding to Mayor MacKenzie, City Attorney Pritt recommended that these substantial amendments be adopted at the second reading of the Ordinance. Further discussion centered on determining a date to continue to the next meeting. Vice Mayor Herms proffered a motion to continue the meeting to 4 p.m. on Wednesday, December 5, 2001, Council Member Galleberg seconded. However, further discussion ensued. Responding to Council Member Wiseman, City Attorney Pritt said he would study the proposed lease to ensure completeness.

Mayor MacKenzie invited speakers unable to attend the December 5 meeting to make their presentations for Items 4 and 5 on that day. Mr. Brugger said Item 11.1 in the recreational lease agreement would be impossible to enforce because boat slip lessees would be unable to obtain insurance on property owned by the City. Visitors who trip over a loose board on the City Dock should not be permitted to sue the boat owner, he said. Council Member Taylor said she had learned otherwise from a New York insurance agency, and she confirmed that the requirement would pertain to smaller boats and not commercial cruise ships. Council Member Galleberg suggested Section 11.1 be amended to state that the lessee would be responsible if the dock damage had occurred because of the use, maintenance or operation of the vessel, and Mayor MacKenzie concurred that it should be clarified. Mr. Leiding said that Section 11.1 should be amended by adding the phrase “except those claims involving negligence by the employees of the City or their agents”, and Mayor MacKenzie concurred. Mr. Leiding further said he should not be required to provide workers’ compensation as noted in Section 11.4 because these individuals would be employed by another business, and Mayor MacKenzie concurred. Mr. Walker said his agent would be available to discuss insurance considerations.

**MOTION by Herms to CONTINUE THIS MEETING TO 4 P.M. ON WEDNESDAY, DECEMBER 5, 2001; seconded by Galleberg and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).**

**RECESSED.....**  
6:42 p.m.

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Bonnie R. MacKenzie, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

\_\_\_\_\_  
Annette Thompson  
Recording Specialist

Minutes Approved: 3/6/02