



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – December 19, 2001 – 9:00 a.m.

Mayor MacKenzie called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bonnie R. MacKenzie, Mayor
Joseph Herms, Vice Mayor

Council Members:

Gary Galleberg
William MacIlvaine
Fred Tarrant
Penny Taylor
Tamela Wiseman

Also Present:

Kevin Rambosk, City Manager
Beverly Grady, City Attorney
Tara Norman, City Clerk
William Harrison, Assistant City Manager
Ron Lee, Planning Director
Dan Mercer, Public Works Director
Don Wirth, Community Services Director
William Overstreet, Building Official
Ronald Wallace, Dev. Services Director
George Archibald, Traffic Engineer
Randy Ward, Dockmaster
Laura Spurgeon, Planner
David Lykins, Recreation Manager
Jon Staiger, Natural Resources Manager
Karen Kateley, Administrative Specialist

Paul Lindabury
Tom Morgan
Mildred Morgan
Jacques Groenteman
Georgia Mosier
John Brugger
Jim Boula
Kent Walker
Marlena Brackebusch
Henry Kennedy
Eileen Arsenault
Ron Pennington
Harry Timmins
Ronald Labasky
Al Kriss

Media:

Dianna Smith, Naples Daily News

Other interested citizens and visitors

INVOCATION AND PLEDGE OF ALLEGIANCE.....ITEM 2

Father Robert Tabbert, St. Ann's Catholic Church

ANNOUNCEMENTS.....ITEM 3

2001 was declared the Year of the Champion in recognition of Naples Golden Eagles state football championship.

SET AGENDA.....ITEM 4

Mayor MacKenzie recommended tabling Item 29 (action relative to possible correction of overpayments for salvage and cleanup operations following the June 11, 1998, fire at the

Keewaydin covered boat slips) until Council received additional information. She said City Attorney Robert Pritt had determined that she had no conflict of interest relative to voting to table. Council Member Taylor and Vice Mayor Herms disagreed, stating that Mayor MacKenzie had ownership in salvage contractor Joe Biasella's company in 1998 when the cleanup occurred. Council Member Galleberg clarified, however, that the State of Florida had already determined that Mayor MacKenzie had no conflict of interest in regard to this matter.

MOTION by Galleberg to TABLE ITEM 29; seconded by Wiseman and carried 4-3, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-no, Wiseman-yes, MacKenzie-yes).

City Manager Kevin Rambosk announced items for Council's consideration to be added to the agenda; these items are listed within the applicable motions below:

Add Item 11-f, Purchase of Fireworks.

MOTION by Galleberg to ADD ITEM 11-f; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 30-b, Appointment to Canvassing Board.

MOTION by Galleberg to ADD ITEM 30-b (AND LIST ITEM 30 AS 30-a; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 32, Red Tide Cleanup.

MOTION by Galleberg to ADD ITEM 32; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Add Item 33, Attorney Conflict Waiver.

MOTION by Galleberg to ADD ITEM 33; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Galleberg to SET AGENDA NOTING THE ABOVE ITEMS AND WITHDRAWING ITEM 24, SEPARATING ITEM 6 INTO 6-a (PARKING) AND 6-b (DRAINAGE, DRIVEWAY); AND NOTING THAT ITEMS 15 AND 19 WOULD BE CONSIDERED CONSECUTIVELY. This motion was seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

PUBLIC COMMENT.....ITEM 5

See below.

CONSENT AGENDA

APPROVAL OF MINUTES.....ITEM 11-a

August 13, 2001 Budget Workshop Meeting and November 5, 2001 Workshop Meeting.

COMMUNITY SERVICES.....ITEM 11-b

1) Dig the Arts at Lowdermilk Park – 3/30/02

RESOLUTION 01-9437.....ITEM 11-c

A RESOLUTION APPROVING A THREE-MONTH CONTRACT BETWEEN THE CITY OF NAPLES AND FLORIDA RECYCLING SERVICES, INC., TO PERFORM COMMERCIAL WASTE HAULING SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE

DATE. Title not read. Public Works Director Dan Mercer said no additional charges would be assessed against commercial customers for the temporary three-month extended recycling services because funds are available through current billing although rates could be adjusted under the new recycling contract which would be presented to Council on January 9, 2002.

RESOLUTION 01-9438.....ITEM 11-d
A RESOLUTION APPROVING A CONTRACT, UNDER STATE CONTRACT, PURSUANT TO SECTION 2-355 (1) (d) (2) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO WESTCO TURF SUPPLY, INC. FOR THE PURCHASE OF A TORO GROUNDMASTER #328 TO BE USED BY THE COMMUNITY SERVICES DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 01-9439.....ITEM 11-e
A RESOLUTION RATIFYING AND CONFIRMING THE ACTION OF THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HARVEY ENGINEERING, INC. IN THE AMOUNT OF \$9,800.00 FOR STRUCTURAL ENGINEERING SERVICES FOR THE RIVER PARK CONSTRUCTION PROJECT; WAIVING COMPETITIVE NEGOTIATION; AND PROVIDING AN EFFECTIVE DATE. Title not read. Council Member Galleberg expressed concern that the City would incur engineering costs that would otherwise be included in an outside architect's fees.

COMMUNITY SERVICES (Added Item).....ITEM 11-f
PURCHASE OF FIREWORKS FOR NEW YEAR'S EVE TO BE REIMBURSED BY ALLEN SYSTEMS GROUP.

MOTION by Herms to APPROVE CONSENT AGENDA ITEMS 11-a, 11-b, 11-c, 11-d, 11-e AND 11-f; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

END CONSENT AGENDA

RESOLUTION 01-9440.....ITEM 18
A RESOLUTION ACCEPTING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); DIRECTING THE CITY MANAGER TO SUBMIT THE REPORT TO HUD; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:20 a.m.).

MOTION by Wiseman to APPROVE RESOLUTION 01-9440 AS PRESENTED; 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).

PUBLIC COMMENT.....ITEM 5
Thomas Morgan, 615 West Lake Drive, said Pacific 41 Restaurant had been cited for an ordinance violation after he had reported excessive noise from this facility located approximately one mile from his home. He said that before permitting more musical entertainment, Council should consider that noise travels easily. **Mildred Morgan, 615 West Lake Drive,** said all businesses should cease outdoor amplified entertainment at 9 p.m. because it is disruptive to residents. Council Member MacIlvaine said he supported a 9 p.m. deadline for outdoor amplified music, and Mayor MacKenzie said Council would consider these comments when it addressed outdoor live entertainment on a future agenda. Vice Mayor Herms said he had received numerous complaints alleging excessive noise levels at Pacific 41 on Thursday evenings, and City Manager Kevin Rambosk said staff had contacted the business about lowering noise levels. Vice Mayor Herms said the City should monitor outdoor noise levels if

businesses should be required to move their entertainment indoors after 9 p.m. because sound frequently continues to emanate through open doors, and Mayor MacKenzie concurred.

ORDINANCE (Continued)**ITEM 6-a**
AN ORDINANCE PERTAINING TO PARKING IN THE RIGHT-OF-WAY AND
LIMITING PARKING OF COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS;
AMENDING SECTION 62-94, OBSTRUCTING WIDTH OF ROADWAY; REPEALING
SECTION 62-63, MANNER OF STANDING OR PARKING; REPEALING SECTION 62-
106, WORKERS PROVIDING SERVICES TO RESIDENTIAL PROPERTY;
AMENDING SECTION 110-86, PROVIDING FOR COMMERCIAL VEHICLE
PARKING IN RESIDENTIAL DISTRICTS; PROVIDING A SEVERABILITY CLAUSE;
PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (9:32 a.m.). City Attorney Beverly Grady reviewed the changes requested by Council at its December 5, 2001 regular meeting. Council learned from City Manager Rambosk that City police officers, Code Enforcement personnel and building inspectors could issue \$50 tickets to parking violators. He also said parking violators would be given an opportunity to move their vehicles, but individuals failing to do so would be cited. Responding to Vice Mayor Herms, City Manager Rambosk said that a City employee would continue to determine a vehicle's owner by canvassing the neighborhood. He also said that the parking restrictions would be enforceable in any right-of-way, except alleys, which is addressed elsewhere in the Code. Council learned that residents could however petition to improve rights-of-way for vehicle parking in front of their homes with Council's approval and a \$300 processing fee. It was also clarified by City Manager Rambosk that visitors would be allowed to park in the paved rights-of-way for up to six hours, and service and repair personnel up to two hours.

Public Comment: (9:47 a.m.) **Georgia Mosier, 1021 Spyglass Lane**, representing the Port Royal Property Owners' Association, conveyed support for the ordinance after having reviewed at that day's meeting the most recent amendments proposed, although she pointed out that she had been unable to obtain a draft of the ordinance late afternoon only the day before. **Al Kriss, 1301B Chesapeake Avenue**, Oyster Bay Homeowners' Association, supported the proposed ordinance, but noted that rights-of-way should not be used for vehicles in lieu of garages used for other purposes. He suggested that complexes amend by-laws to allow only two vehicles per unit owner.

Council Member Taylor proposed an amendment that would allow Lake Park and Eagle Oak Ridge residents to continue parking on the right-of-way without requiring improvements and the attendant \$300 processing fee. Council Member Galleberg concurred. Miss Taylor further noted that many of these properties are small and have no driveway space; City Manager Rambosk recommended that Section 1, Section 62-94(4) be broadened by deleting the words "short term" as it relates to approvals by the City Manager or designee. In further discussion with City Attorney Grady it was determined that proper public notice had been provided for this to be considered first reading of the ordinance if language changes had been determined. Council Member Wiseman recommended a policy of obtaining homeowners' permission before erecting "no parking" signage, and Council Member MacIlvaine proffered a motion to approve; however, further discussion ensued. Council Member Wiseman recommended that Section 1, Section 62-94 be amended to "...(exceptions do not apply where no signage prohibiting parking signage is posted:...)", which she said would be consistent with other language in the Code. Vice Mayor Herms then proffered a motion to hold first reading of the ordinance at the next meeting, asserting that public notice had not been sufficient, and Council Member Taylor seconded. Council Member Galleberg then seconded Council Member MacIlvaine's motion for approval,

stating that City Attorney Grady had said that proper public notice had been given and that speakers had approved the amendments. Vice Mayor Herms pointed out that his motion to continue had been the first to be seconded; Council Member Galleberg therefore withdrew his second of Council Member MacIlvaine's motion to approve.

MOTION by Herms to CONTINUE FIRST READING OF AGENDA ITEM 6-a TO JANUARY 9, 2002; seconded by Taylor and carried 4-3, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-no, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-no).

Council Member Wiseman also expressed concern that the public had not been properly notified. She proffered a motion to direct staff to set policies and procedures for posting of no-parking areas, and Council Member Galleberg recommended that the direction include permitting.

Public Comment: (10:16 a.m.) None.

MOTION by Wiseman to DIRECT STAFF TO SET POLICIES AND PROCEDURES FOR POSTING OF NO-PARKING AREAS AND FOR PERMITTING; seconded by Galleberg and carried 6-1, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms took the position that current policies and procedures for posting "no-parking" signage had been appropriate and no further motion was necessary.

ORDINANCE (First Reading) ITEM 6-b
AN ORDINANCE PERTAINING TO REGULATING SURFACE WATER MANAGEMENT; AMENDING SECTION 94-75 SUBMISSION OF SIDEWALK AND DRIVEWAY PLANS TO ADD STREET AND PROJECT SITE DRAINAGE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:18 a.m.). Building Official William Overstreet said the proposed ordinance required site plans to indicate surface water containment or water run-off directed to the right-of way during construction, which he said the Building Department currently required.

Public Comment: (10:21 a.m.) None.

MOTION by Galleberg to APPROVE THIS ORDINANCE AS PRESENTED ON FIRST READING; seconded by Wiseman and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

ORDINANCE (First Reading) ITEM 12
AN ORDINANCE AMENDING SECTION 62-158(b) "METER RATES" AND SECTION 62-159(a) "VIOLATIONS; PENALTIES; PAYMENT OF FINES; PUBLIC UTILITY, CITY VEHICLES PARKING IN METERED SPACES" OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF ADJUSTING METERED PARKING RATES AND FINES FOR VIOLATIONS AT NAPLES LANDINGS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (10:26 a.m.), who explained that since Collier County parking fees had been increased, users would favor Naples Landing unless the City's fees, too, were increased. He confirmed that even those possessing beach parking stickers are required to pay meter fees or purchase parking passes for Naples Landing. Recommended increases were from 25 cents per hour to 25 cents per 20 minutes, and from \$20 to \$60 for parking passes. Mr. Rambosk also clarified that, while desirable, a differential between fees charged for City and non-City residents was prohibited by a 25-year agreement whereby Collier County had shared the cost of Naples Landing improvements. Mayor

MacKenzie observed that optimally the City would not have such a financial agreement with regard to the Pulling Park development.

Public Comment: (10:29 a.m.) None.

MOTION by Wiseman to APPROVE THIS ORDINANCE AS PRESENTED ON FIRST READING; *seconded by Galleberg and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

Council Member Tarrant said Naples Landing should be restricted for use by City residents only.

**ORDINANCE (First Reading)ITEM 13
AN ORDINANCE PROPOSING TO THE ELECTORS OF THE CITY OF NAPLES,
FLORIDA, AN AMENDMENT TO THE CHARTER OF THE CITY OF NAPLES
CREATING THE OFFICE OF INTERNAL AUDITOR AND PROVIDING FOR DUTIES
OF THE INTERNAL AUDITOR; PROVIDING FOR THE PROPOSED AMENDMENT
TO BE SUBMITTED TO THE ELECTORS OF THE CITY OF NAPLES AT THE NEXT
MUNICIPAL ELECTION TO BE HELD ON FEBRUARY 5, 2002; PROVIDING
BALLOT LANGUAGE; DIRECTING THE CITY CLERK TO TAKE ALL
APPROPRIATE ACTIONS NECESSARY TO CARRY OUT THE PROVISIONS OF
THIS ORDINANCE; PROVIDING A DATE FOR THE AMENDMENT TO TAKE
EFFECT AND DIRECTING THE CITY CLERK TO INCORPORATE THE
AMENDMENT INTO THE CHARTER AND TO FILE THE REVISED CHARTER
WITH THE FLORIDA SECRETARY OF STATE; PROVIDING A SEVERABILITY
CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Manager Kevin Rambosk (10:30 a.m.). Council Member Wiseman noted improvements effected by recommendations of Collier County Clerk of Court Dwight Brock, but also recommended that Section 5.2 be further amended as follows: "...and shall perform such other related duties as assigned by the council."

Public Comment: (10:33 a.m.) None.

In discussion of reporting responsibilities, City Attorney Beverly Grady clarified that for a staff department or internal auditor to report directly to Council a Charter amendment would be needed. Council Member Tarrant recommended that both the internal auditor and his or her employees report directly to Council rather than administration. Council Member MacIlvaine, however, called such an arrangement an improper management procedure and further recommended that an internal auditor not report directly to Council to eliminate fear of termination reprisals.

Council Member Wiseman proffered a motion to approve the proposed ordinance, as amended, and Vice Mayor Herms seconded; however, further discussion ensued. Council Member Galleberg recommended rewriting to provide flexibility for the Council not to fill such a highly paid position if later determined to be unnecessary. Council Members Wiseman and MacIlvaine, however, disagreed, stating that another Council could amend it if necessary, and Council Member Taylor said the City would be required to fund an internal auditor because the position would also provide the financial security which would always be necessary. City Attorney Grady recommended the word "other" also be stricken from the above amended phrase.

MOTION by Wiseman to APPROVE THIS ORDINANCE ON FIRST READING, AS AMENDED, TO INCLUDE IN SECTION 5.2 "...AND SHALL PERFORM SUCH ~~OTHER~~ RELATED DUTIES AS DIRECTED BY THE CITY COUNCIL." *This motion was seconded by Herms and unanimously*

carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess: 10:43 to 10:59 a.m. It was noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE 01-9441ITEM 14
AN ORDINANCE AMENDING SECTIONS 106-32 AND 106-39, SIGNS, OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES FOR THE PURPOSE OF CLARIFYING SIGNAGE REQUIREMENTS FOR TEMPORARY POLITICAL SIGNS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:00 a.m.) Council Member Wiseman proffered a motion to approve, Council Member MacIlvaine seconded.

MOTION by Wiseman to ADOPT ORDINANCE 02-9441, AS SUBMITTED; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Galleberg said the ordinance would be an unnecessary limitation on political free speech.

ORDINANCE (First Reading)ITEM 16
AN ORDINANCE ADOPTING LARGE SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 01-CPA2, AMENDING THE DOWNTOWN MIXED USE DISTRICT WITHIN THE FUTURE LAND USE ELEMENT TO ELIMINATE THE REQUIREMENT THAT THE GROUND FLOOR OF BUILDINGS BE COMMERCIAL, OFFICE, OR RETAIL, AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (11:03 a.m.). Planning Director Ron Lee said that this proposed amendment would allow residential apartments and townhouses on the ground floor of buildings on the avenues in the “D” Downtown District, which had been prohibited in an effort to create commercial, pedestrian scale thoroughfares. Planning Director Lee cited concurrence with the proposal from urban planners Samuel Noe and Robert Freedman. (Copies of letters by the aforementioned individuals are contained in the file for this meeting in the City Clerk’s Office.) By providing for 100% residential buildings on the avenues as recommended by Mr. Noe, Mr. Lee said, it was expected that approximately 25% less traffic impact would be generated than a commercial block and approximately 20% less than a mixed-use block. Council Member Galleberg said Mr. Noe’s concept of 100% residential on the avenues had been in opposition to the City’s plan, which contained only partial residential. Council Member Taylor, however, expressed concern that the Comprehensive Plan would be amended in a fashion dissimilar to that presented by the urban planner.

Planning Director Lee said Mr. Freedman had stated that avenues and not streets would be appropriate for townhouses in the “D” Downtown District, and Mr. Noe had stated that the Heart of Naples discussions regarding residential uses in the area appeared to be a positive direction. Council Member Tarrant characterized Mr. Freedman’s study as unproductive and expensive and said that it had inappropriately proposed approximately 15 parking garages in the 41-10 area. While concurring with Mr. Tarrant’s assertion that residents would be more capable than professional planners who live elsewhere, Council Member MacIlvaine nevertheless noted that these planners had been sought at a Council Member’s direction.

Mayor MacKenzie also observed that while Planner Noe had predicted that residential units on major highways would be difficult to market, there was in fact a strong demand for downtown housing, citing a building with upper story residential units being constructed at the Four Corners

(US 41 and Fifth Avenue South). Council Member Taylor, however, said that this was an inappropriate comparison because the building cited by Mayor MacKenzie was not located in a primary business district. Miss Taylor also asserted that the proposed amendment would result in the inappropriate displacement of businesses. Mayor MacKenzie nevertheless maintained that Planner Noe's recommendation that entire blocks of small lots fronting on streets be converted to residential would cause the disruptive transformation.

Planning Director Lee further explained that the proposed ordinance would allow residential, commercial, office or retail on any floor of a building in the "D" Downtown area. Council Member Galleberg, however, cited a distinction between allowing residential on the ground floor or merely not prohibiting it, and Council Member MacIlvaine concurred. Council Member Taylor recommended further feedback from the community, but Council Member MacIlvaine pointed out that the Heart of Naples Committee had encouraged citizen participation over the year it had held televised public meetings. He also predicted that the Heart of Naples Committee would be discouraged with another rejection of a Comprehensive Plan amendment.

Responding to Vice Mayor Herms, Planning Director Lee quoted development potential as 75,700 square feet in 100% commercial, 174,000 square feet in mixed use, and 162,000 square feet in 100% residential. Planning Director Lee also noted the commercial square footage per block at Wynn's Ace Hardware (35,560), Carvel Plaza (33,170), Dairy Queen (52,711), Naples Plaza (85,604), and Newblock (98,900). Council Member MacIlvaine pointed out that Council had been attempting to encourage residential units on the east to west avenues, maintaining commercial on the north to south streets in an effort to encourage upscale neighborhoods where individuals would patronize small businesses near their homes. Mayor MacKenzie said the Vision Study Committee of the Olde Naples Association had stressed the importance of revising the Comprehensive Plan to develop an appropriate balance of residential and commercial, noting the belief that excessive commercial would increase traffic, and that the committee encouraged replacing commercially-zoned property either totally or partially with residential. Vice Mayor Herms, nevertheless maintained that the Old Naples Association would not advocate modifying 75,000 square feet of commercial if it resulted in 174,000 square feet of commercial and residential use. Planning Director Lee noted, however, that 174,000 square feet in a mixed use project would be acceptable if adequate parking was provided because the Code contained no density standards in this regard. Vice Mayor Herms, however, said the Heart of Naples Committee had recommended a density capacity of 14 units per acre for the "D" Downtown area, and he said that many residents want to reduce population growth.

Public Comment: (11:36 a.m.) **Russ Reddick, 888 Tenth Street South**, said the Heart of Naples had never intended to exclude residential uses from the first floor and had recommended townhouses as desirable on the avenues because they encouraged permanent residency. He said the Heart of Naples Committee had also not proposed increasing density, although increasing business activity and discouraging traffic would require more residential units. He said failure of the proposed ordinance would be discouraging to the Heart of Naples Committee. **Falconer Jones, 620 Sandpiper Street**, said he encouraged residential development on the avenues over commercial buildings with large parking lots. He, too, said that failure of the proposed ordinance would be discouraging to the Heart of Naples Committee. **Paul Lindabury, 2125 Marina Drive**, said he has lived and worked on Tenth Street most of his life, and he recommended an increase in residential on the avenues because he said it would be beneficial to business owners. **Jacques Groenteman, 938 Third Avenue North**, Heart of Naples Committee co-chairman, said he had assumed Council would approve a mixed use for the Heart of Naples area because of the extensive studies that have indicated it would revitalize the area. More

residences in the downtown area would discourage traffic, he noted, and the Heart of Naples would be an ideal residential location because of its proximity to Fifth Avenue South.

Council Member Wiseman proffered a motion that the following language be deleted from Item 2e in the “D” Downtown Future Land Use Element: “The ground floor of buildings in this district may only be used for commercial, office or retail. All of the permitted uses within this district are allowed to be located on any floor or story of a building.” Council Member MacIlvaine seconded. City Attorney Grady noted that this would leave silent the uses placed on each floor, which would be determined after amending the Code; she then recommended that the proposed amendment be considered a first, instead of a second, reading at that meeting. Discussion then ensued relative to the date for a second reading of the ordinance due to staff concerns that delaying a second reading until 2002 would cause the City to expend one of its two allotted large-scale Comprehensive Plan amendment cycles for the coming year. Council concurred with determining during the mid-day recess whether advertising requirements for a second reading on December 31 could be met, thus retaining both 2002 amendment cycles for other purposes. Council Member Galleberg however recommended additional feasibility studies before amending the Comprehensive Plan, but Planning Director Lee pointed out that further studies would cause a delay until June 2002 due to the limit on annual Comprehensive Plan amendments. Mr. Lee said he would be reluctant to undertake further planning efforts until Council had made a determination on the amendment under consideration.

Vice Mayor Herms said he abstained because he owned one square block in the area affected by the Comprehensive Plan amendment. Council Member Galleberg said he had filed a voluntary disclosure, which the City Attorney and Commission on Ethics had determined did not pose a conflict.

MOTION by Wiseman to APPROVE ON FIRST READING AS AMENDED TO REMOVE THE FOLLOWING FROM THE “D” DOWNTOWN FUTURE LAND USE ELEMENT: “THE GROUND FLOOR OF BUILDINGS IN THIS DISTRICT MAY ONLY BE USED FOR COMMERCIAL OFFICE OR RETAIL. ALL OF THE PERMITTED USES WITHIN THIS DISTRICT ARE ALLOWED TO BE LOCATED ON ANY GROUND FLOOR OR STORY OF A BUILDING.” This motion was seconded by MacIlvaine and carried 5-1-1 (Taylor-no, Herms-abstain, MacIlvaine-yes, Tarrant-yes, Galleberg-yes, Wiseman-yes, MacKenzie-yes). (See Attachment 1, Form 8B Memorandum Of Voting Conflict for County, Municipal, and Other Local Public Officers.)

Recess: 12:15 to 1:35 p.m. It was noted for the record that the same Council Members were present when the meeting reconvened except Council Member Wiseman who returned at 1:44 p.m.

City Manager Rambosk reported that City Clerk Tara Norman had determined that proper public notice could be achieved for a second reading on December 31, 2001.

MOTION by MacIlvaine to SCHEDULE SPECIAL MEETING MONDAY, DECEMBER 31, 2001, AT 9:00 A.M. FOR SECOND READING OF THIS ORDINANCE; seconded by Galleberg and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

City Manager Rambosk said Council Member Wiseman had been delayed in traffic.

**ORDINANCE 01-9442 ITEM 7
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.

**RESOLUTION 01-9443.....ITEM 8
A RESOLUTION ADOPTING RULES AND REGULATIONS FOR THE MUNICIPAL DOCK; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 01-9444.....ITEM 9
A RESOLUTION APPROVING A FORM FOR RECREATIONAL LEASE AGREEMENTS FOR USE AT THE CITY OF NAPLES, MUNICIPAL DOCK; AUTHORIZING AND DIRECTING USE OF SAME; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 01-9445.....ITEM 10
A RESOLUTION APPROVING A FORM FOR COMMERCIAL LEASE AGREEMENTS FOR USE AT THE CITY OF NAPLES, MUNICIPAL DOCK; AUTHORIZING AND DIRECTING USE OF SAME; AND PROVIDING AN EFFECTIVE DATE.** Titles to Items 7-10 were read by City Manager Kevin Rambosk (1:38 p.m.), who noted that Item 7 was the second reading of an enabling ordinance.

Public Comment: (1:39 p.m.) None.

MOTION by Galleberg to ADOPT ORDINANCE 01-9442 AS PRESENTED (ITEM 7), seconded by MacIlvaine and carried 6-0 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-absent, MacKenzie-yes).

City Manager Rambosk then noted that Agenda Item 8 dealt with the rules and regulations for the City Dock and adjacent mooring areas, which included the amendments recommended by Council.

It was noted for the record that Council Member Wiseman arrived at 1:44 p.m.

Council Member Taylor said Item (2)E should allow staff to determine the credentials of fueling as well as docked vessels; however, Dockmaster Randy Ward pointed out that the credentials of each of the many boats entering the fuel dock could not be ascertained and that of greater concern are those boats at the City Dock due to the need for safety. Use of the fuel dock could be denied to unsafe vessels, he said. (Recreation Manager David Lykins noted that Item (2)N should be revised to Item (2)L.)

Council then discussed allowing a limited number of overnight stays on recreational craft, although increased pollution and parking deficiencies were among the potential issues cited should such a policy be implemented. Council learned that some violations of the prohibition of overnight stays at recreational slips are currently occurring. Nevertheless, City Manager Rambosk noted that other docking facilities do in fact allow limited overnight stays and recommended that Council consider as many as six per month. Dockmaster Ward suggested implementing procedures to limit the number of recreational boaters staying on their vessels on any given night and also an application policy to request permission for overnight stays.

Responding to Mayor MacKenzie, Dockmaster Ward said that Julian Kennamer, operator of a 40-foot restricted charter sailboat, would most likely be provided one of the newly designated commercial slips. Mr. Ward also confirmed that overnight stays are not allowed by commercial slip lessees. Council Member Tarrant recommended that individuals anchor offshore to sleep aboard instead of at the dock. Mayor MacKenzie said allowing individuals to remain overnight for six days a month may be inadvisable, and Vice Mayor Herms noted that few individuals had

made the request. Council Member Galleberg said he recognized that sleeping aboard boat could be enjoyable, but he recommended limiting overnight stays to two days monthly. Vice Mayor Herms, however, said it would be difficult to determine which individuals had exceeded their permitted number of overnight stays, and Council Member MacIlvaine concurred.

Mayor MacKenzie then noted that Item (8)A should be amended to “Unless extended, if after 60 days the boat is still inoperable,...”, and City Manager Rambosk concurred. Council Member MacIlvaine recommended Item (8)B be amended to “Seaworthy” means that the vessel’s hull, keel, decking, cabin and/or mast, if stepped, are structurally sound and generally free from dry rot” because he said sailboats and many power boats without masts are seaworthy.

City Manager Rambosk said he had included for discussion amending Item (10) to include: “Any dog that bites any person at the Municipal Dock shall be permanently removed from the Municipal Dock.” In further discussion, Council Member Wiseman recommended amending the fourth sentence in Item (10) to the effect that the City is empowered to require the permanent removal of a pet under certain circumstances, eliminating the word “may”. Council learned that new lessees would be allowed to have dogs at the dock, but the pets could only travel to and from the parking lot and the boat, and they could not enter the pavilion or office. Dockmaster Ward said attractive signage would be placed at the dock informing pet owners of that rule.

Public Comment: (2:40 p.m.) **John Brugger, 600 Fifth Avenue South**, declined to speak when called. **Marlena Brackebusch, 860 12th Avenue South**, representing Julian Kennamer, pointed out that some vessels contain bathroom facilities and holding tanks so that many individuals would not have to use the City Dock facilities. Mayor MacKenzie said that the proposed ordinance must cover everyone, regardless of the facilities present on their vessels, but that Council may wish at some point to consider allowing overnight stays for boat owners with adequate facilities. **Henry Kennedy, 2178 Tarpon Road**, declined to speak when called. **Jim Boula, 702 Broad Avenue South**, said many individuals already stay aboard their vessels and they should be allowed to continue to do so. He also said that there should be no prohibition against diving for emergency vessel repair, especially after hours when staff is not available to provide approval. Responding to Council Member Taylor, City Attorney Grady said the requirement that the Dockmaster be notified of emergency dives would enhance safety and reduce City liability. He also spoke against restrictions proposed relative to dogs on the City Dock.

MOTION by Herms to APPROVE RESOLUTION 01-9443 (ITEM 8) (WITH CHANGES REVIEWED BY CITY MANAGER); seconded by Taylor and carried 6-1 (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-absent, MacKenzie-yes).

City Manager Rambosk recommended that Council direct staff to amend the landside facility petition by striking the ability to have restricted charter boats at the recreational portion of the City Dock. Council Member Galleberg proffered a motion to approve, Vice Mayor Herms seconded; however, Council first addressed the landside facility petition shown below.

Public Comment: (2:45 p.m.) None.

MOTION by Galleberg to DIRECT STAFF TO SUBMIT LANDSIDE FACILITY PETITION TO ELIMINATE RESTRICTED CHARTER BOATS AT RECREATIONAL PORTION OF CITY DOCK; seconded by Herms and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

MOTION by Herms to APPROVE RESOLUTION 01-9444 (ITEM 9) AS AMENDED; 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).

Recreation Manager David Lykins reviewed the proposed commercial lease agreement offering two alternatives in Item 3.3 (Rent):

- Alternative 1 – The annual base rent shall increase by the greater of (a) 2.5%; or (b) the percentage, if any, by which the then most recently published CPI (as hereinafter defined) figure shall have increased over the CPI figure for the month occurring 1 year prior to the most recently published CPI figure. For purposes of this Lease, the term “CPI” shall refer to the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U, 1982-84=100) U.S. City Average.
- Alternative 2 – The annual base rent shall increase by the greater of (a) 2.5%; or (b) the percentage, if any, by which the then most recently published CPI (as hereinafter defined) figure shall have increased over the CPI figure for the month occurring 1 year prior to the most recently published CPI figure. For purposes of this Lease, the term “CPI” shall refer to the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U, 1982-84=100) Miami-Ft. Lauderdale, FL.

Mr. Lykins confirmed that each option requires sales tax increases to be paid by the lessee. In discussion of application of a Consumer Price Index (CPI), it was confirmed that either the national figure (Alternative 1) or one which applied to the Miami/Fort Lauderdale area (Alternative 2) resulted in a similar calculation. It was the consensus of Council to adopt Alternative 1.

Council then learned that lease payments would be due the first day of the month, and late charges of 5% would accrue on the total delinquent amount after the 10th day of the month. On Council Member MacIlvaine’s recommendation, Council concurred to reinsert the word “past” in “A charge of 5% of the total monthly amount that is not paid when past due shall be assessed each month.”

Vice Mayor Herms expressed concern that Item 5.2 would allow lessees to maintain City Dock slips through familial relationships in perpetuity. Mayor MacKenzie said it should be amended to state that only one commercial slip would be available to each immediate family; however, Council learned that City Attorney Robert Pritt had discouraged such an amendment based on discrimination issues.

Recreation Manager David Lykins then noted two alternatives in Item 5.3 regarding transfer fees:

- Alternative 1 – The transfer fee will be equivalent to 1 year’s base rent at the rate in effect at the time of transfer. The Lessee will execute the old lease for the remaining term of the lease at the rates set forth in the old lease, or
- Alternative 2 – The transfer fee will be equivalent to 3 years’ base rent in effect at the time of the transfer. The Lessor will execute a new lease not to exceed 5 years with the new Lessee at the then current rental rates.

City Manager Rambosk said Alternative 1 had been recommended by City Attorney Pritt but that Alternative 2 had been approved by charter boat owners and operators who had discussed it with staff at Council’s authorization. City Attorney Grady and City Manager Rambosk cautioned that Alternative 2, however, creates lease extensions without the City’s concurrence and could allow leases to pass without City control among boat owners as long as transfers occurred after less

than five years. Vice Mayor Herms also pointed out that Alternative 2 would allow individuals to avoid waiting three years or longer to obtain commercial slips. Council Member Galleberg said allowing long-term charter boat owners to transfer their leases would provide them the opportunity to obtain the equity they had built from years at the City Dock, but he also said the new lessees would not be allowed to transfer their lease, so less would be paid for those businesses. Mr. Galleberg also pointed out that Council and charter boat business owners had agreed to adopt transfer fees and indicated his support for Alternative 2; Council Member MacIlvaine concurred. City Attorney Grady however reiterated that adopting Alternative 2 could cause the City to lose control of the slip for an undetermined period of time. Council Member Galleberg however noted that Item 5.4 stated that the City had to approve new ownership. It was the consensus of Council to approve Alternative 2.

City Manager Rambosk then recommended deleting Item 9.2 because it had also been stricken from the recreational lease. Council also concurred to amend Item 14.1 as follows: “Lessor will provide at least 10 days notice of such ordinances, rules and regulations, prior to adoption by the City Council to be posted at the Municipal Dock.”

Council then reviewed two alternatives for Item 15(e):

- Alternative 1 – The level of activity shall be at least \$18,720.00 in gross income, from the charter business, reviewed annually, based upon the previous year’s activity, or
 - Alternative 2 – The level of activity shall be at least 52 charter trips annually.
- Council learned that either could be confirmed by affidavit or otherwise documented, and charter boat operators not complying would also not have a viable business. It was the consensus of Council to adopt Alternative 2, which was deemed easier to administer.

Council Member Galleberg said that as written Item 5.1, Assignment, could result in the loss of a lease with even minor changes in ownership. Therefore, he recommended the following amendment: “...if Lessee is a partnership, a withdrawal or change (voluntary, involuntary, by operation of law or otherwise) of any ~~of the partners thereof, partner or partners owning more than 50% to the lessee,~~ or the dissolution of the partnership except in the event the partnership continues operation by the remaining partners upon the death of a partner; or, if Lessee consists of more than one person, a purported assignment, transfer, mortgage or encumbrance (voluntary, involuntary, by operation of law or otherwise) ~~from one thereof unto any other party; of a majority interest in the business or vessel;~~ or if Lessee is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Lessee, or any change in the ownership (voluntary, involuntary, by operation of law or otherwise) of its capital stock or membership interests (as the case may be) ~~from the ownership existing on the date of execution hereof which result in a different owner or owners controlling more than 50% of the lessee.~~” Council Member Galleberg said this would provide for charter boat business owners to retain dock leases if the controlling ownership remained the same although a larger percentage of the business had been retained. Responding to Vice Mayor Herms, City Attorney Grady said only owners controlling more than 50% interest could enter into a lease agreement. (Later in the meeting it was the consensus of Council to approve these amendments to Item 5.1.)

Public Comment: (3:37 p.m.) **John Brugger, 600 Fifth Avenue South**, speaking on behalf of six commercial boat owners at the City Dock, thanked Council Member MacIlvaine and staff for speaking to the commercial boat dock tenants. He recommended that Item 2.3 be amended to state: “Lessor and Lessee may negotiate by mutual consent a new lease for an additional term ~~for up to 5 years, not to exceed 5 years,~~” for consistency with Item 2.2 which states: “The term of this Lease shall not exceed 5 years...” He said he concurred with Council’s decision to use the

national Consumer Price Index (CPI) for determining rent increases because of its availability on the Internet. Mr. Brugger said the commercial boat owners have conceded to a transfer fee equivalent to three years' base rent in effect at the time of the transfer, but he said it would nevertheless be a hardship for boat owners whose businesses are valued at only \$60,000 since the fee could be \$20,000. Mr. Brugger urged the City to commit to renewal of commercial leases after five years if the business had operated according to the rules and regulations. Council Member MacIlvaine said, however, that he would not recommend guaranteed renewals, and Council Member Galleberg concurred, stating it should be assumed that the City would operate in good faith. **Kent Walker, 2520 Second Avenue, NE**, Prince Albert Charters, Slip 76, Naples City Dock, declined to speak when called. **Marlena Brackebusch, 860 12th Avenue South**, representing Sailboats Unlimited and Julian Kennamer, questioned whether Item 15.2(e), Alternative 2, would consider a one-week charter as one trip. Recreation Manager Lykins said staff recognized that fishing charters and sailboat charters were dissimilar, and they would be considering a tiered schedule when charter activity had been determined. Ms. Brackebusch said Council should reconsider the volume of business required of new charters because of decreased tourism after the September 11, 2001 terrorist attack. Council Member Galleberg said, however, that a lower threshold would indicate a less than viable business, and would appear as if a recreational boater were merely attempting to retain a boat slip. Recreation Manager Lykins said staff would proportionately assess the trips that had been completed if an emergency such as a mechanical failure should occur. **Henry Kennedy, 2178 Tarpon Road**, recommended that up-to-date Rules and Regulations, commercial and recreational leases, and the Florida Clean Marina Program be posted at the City Dock, and City Manager Rambosk concurred. Mr. Kennedy said that Item 15.2(e) should retain both Alternative 1 (requiring at least \$18,720 in gross income) and Alternative 2 (requiring at least 52 charter trips annually in order to provide flexibility).

Council Member Galleberg proffered a motion to approve the lease with the amendments as discussed, and Council Member MacIlvaine seconded, noting that Council approved Alternative 1 in Item 3.3, Alternative 2 in Item 5.3, and that both Alternatives be available in Item 15.2(e). However, further discussion ensued. Council Member Galleberg confirmed that a charter boat captain with a five-year lease could sell a legitimate business prior to lease expiration and would be charged a transfer fee. He said the buyer would have to be approved by the City.

MOTION by Galleberg to APPROVE RESOLUTION 01-9445 (Item 10) (WITH CHANGES AS DISCUSSED); seconded by MacIlvaine and carried 4-3, all members present and voting (Galleberg-yes, Taylor-no, Tarrant-no, Wiseman-yes, Herms-no, MacIlvaine-yes, MacKenzie-yes).

Council Member Taylor, however, took the position that the City would in fact be selling taxpayers' property by allowing charter boat businesses to transfer leases, and Council Member Tarrant concurred. Council Member MacIlvaine said both the City and charter boat captains have agreed to concessions, and that an adequate compromise had been reached. Council directed staff to provide information to current tenants about entering into the new leases, most of which expire in 2005.

RESOLUTION 01-9466.....ITEM 17
A RESOLUTION DETERMINING VARIANCE PETITION 01-V8 FROM SECTION 102-146 OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES, WHICH REQUIRES A SIDE YARD SETBACK OF 10 FEET IN THE R1-15 ZONING DISTRICT, IN ORDER TO INSTALL AN EMERGENCY GENERATOR THAT ENCROACHES TO WITHIN 5 FEET OF THE SIDE PROPERTY LINE AT 1617 GULFSTAR DRIVE SOUTH; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:01 p.m.). This being a quasi-judicial proceeding, Council made the following ex

parte disclosures: MacKenzie and Council Members MacIlvaine, Galleberg, Taylor, Wiseman and Tarrant/no contact; Herms/thanked the petitioner on that day for providing documentation from neighbors who supported the resolution. City Clerk Tara Norman then administered an oath to those intending to give testimony; all responded in the affirmative. Council Member Galleberg noted that the generator would be located near other mechanicals and adjacent to a neighbor with no objections to its installation.

MOTION by Wiseman to APPROVE RESOLUTION 01-9466 AS PRESENTED; seconded by Tarrant and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Recess: 4:02 to 4:18 p.m. It was noted for the record that the same Council Members were in attendance when the meeting reconvened.

ORDINANCE 01-9446ITEM 15
AN ORDINANCE ADOPTING LARGE SCALE COMPREHENSIVE PLAN AMENDMENT PETITION 01-CPA1, AMENDING THE 2005 FUTURE LAND USE MAP TO UPDATE THE BOUNDARY OF THE HIGH NOISE IMPACT AREA; ADDING POLICY 1-12.1 TO THE PARKS, RECREATION AND OPEN SPACE POLICY 1-1 OF THE FUTURE LAND USE ELEMENT TO ELIMINATE REFERENCES TO COMMERCIAL BUILDING HEIGHTS OVER 42 FEET AND TO CLARIFY A SCRIVENER’S ERROR OF PERMITTED INTENSITY IN LOW DENSITY RESIDENTIAL AS 0-6 DWELLING UNITS PER ACRE; AND PROVIDING AN EFFECTIVE DATE. It is noted for the record that Items 15 and 19 would be considered consecutively. Title read by City Manager Kevin Rambosk (4:18 p.m.). Council learned that the third “Whereas” would be amended as follows: “it is appropriate to designate the boundary of the area...”.

Public Comment: (4:20 p.m.) None.

Council Member Wiseman proffered a motion to approve, Council Member MacIlvaine seconded; however, further discussion ensued. Responding to Council Member Tarrant, City Attorney Beverly Grady said the amendment would allow the Comprehensive Development Code to be amended with as yet uncertain regulations regarding the new high noise impact area. Planning Director Ron Lee explained that the City Council had appointed a Commission, which has been developing new regulations for development and redevelopment within the impacted area, although since the regulations had not yet been finalized, the financial impact to residents and business owners within the area had not been determined. Planning Director Lee said the high noise impact area had shifted slightly to the southwest, and only a few additional homes would be affected.

MOTION by Wiseman to ADOPT ORDINANCE 01-9446 AS PRESENTED; seconded by MacIlvaine and carried 5-2, all members present and voting (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Tarrant said he dissented because the financial consequences to homeowners and business owners should have been indicated.

RESOLUTION 01-9447.....ITEM 19
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH COLLIER COUNTY AND THE NAPLES AIRPORT AUTHORITY FOR IMPROVEMENTS TO TRANSFER STATION ROAD; AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:23 p.m.). Vice Mayor Herms said he approved of the proposal after reviewing information from County Transportation Operations Director Edward Kant.

Public Comment: (4:24 p.m.) None.

MOTION by Galleberg to **APPROVE RESOLUTION 01-9447 AS PRESENTED;** *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).*

Council Member Wiseman requested that Council Member Tarrant further address his prior comments regarding her possible conflict of interest in voting on airport projects. Council Member Tarrant responded by noting that Council Member Wiseman is a member of a body which appoints Airport Authority members, and her husband's construction company had been awarded a substantial airport improvement contract. Council Member Wiseman said her husband is president of Southern Gulf West Construction, Inc., which had submitted a public bid \$100,000 lower than any other bid received for the airport improvements. She said an opinion had been received from the City Attorney on the matter, and she also asserted that the Airport Authority is an entity independent from the City.

RESOLUTION 01-9467.....ITEM 20
A RESOLUTION APPROVING A CONTRACT WITH BENTLEY ELECTRIC COMPANY, INC., IN AN AMOUNT NOT TO EXCEED \$163,140.00, TO FURNISH AND INSTALL STREET LIGHTING ON RIVERSIDE CIRCLE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:27 p.m.), who said that Bentley Electric had submitted the lowest bid for placing 46 lights at Riverside Circle. Council Member Galleberg proffered a motion to approve, and Council Member Taylor seconded; however, further discussion ensued. Council Member MacIlvaine expressed concern about the quality to be achieved by accepting such a low bid, but City Manager Rambosk assured him that Bentley Electric had provided many quality projects for the City in the past. Vice Mayor Herms questioned whether the City should install \$160,000 in lighting when few individuals utilized that area in the evening. City Manager Rambosk said the roadways had become open to the public after improvements, and Development Services Director Ronald Wallace said the lighting would provide security for City buildings and equipment.

Public Comment: (4:30 p.m.) None.

MOTION by Galleberg to **APPROVE RESOLUTION 01-9467 AS PRESENTED;** *seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION 01-9448.....ITEM 21a
A RESOLUTION WAIVING COMPETITIVE BIDS AND APPROVING CONTRACTS WITH (1) MITCHELL & STARK, INC., (2) KYLE CONSTRUCTION INC., AND (3) HASKINS, INC., IN AN AMOUNT NOT-TO EXCEED \$150,000 EACH TO PROVIDE WATER, SANITARY AND STORM SEWER REPAIR AND MAINTENANCE SERVICES AS NEEDED CITYWIDE ON AN EMERGENCY BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk during discussions below (4:31 p.m.). Development Services Director Ronald Wallace said the City funded approximately \$200,000 annually in emergency storm sewer repairs; however, he said emergency water and sewer repairs had been included in this contract for three companies to be hired at a rate not to exceed \$150,000 each. He said a City inspector observes the repairs and documents the time involved, and this information is submitted to the Finance Department. Development Services Director Wallace also said that in 1999, at the City Attorney's Office request, staff had ranked various companies for emergency repair consideration. City Manager Rambosk pointed out that although 1999 rankings had been used to select the other two companies, the contracts would be

rebid when they expired. Mr. Wallace cited such factors as past experience, quality of work, responsiveness and availability of equipment to determine rankings and said the most available company would most likely be contacted when needed.

Public Comment: (4:34 p.m.) None.

MOTION by Wiseman to **APPROVE RESOLUTION 01-9448 AS PRESENTED**; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Council Member Tarrant said he dissented because he believed this to be an improper practice.

RESOLUTION 01-9449.....ITEM 21-b
A RESOLUTION RANKING THE TOP THREE FIRMS IN ORDER OF PREFERENCE TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN AND CONSTRUCTION SUPERVISION OF THE DRAINAGE BASIN V STORMWATER SYSTEM IMPROVEMENTS, AUTHORIZING THE CITY MANAGER TO ENTER INTO NEGOTIATIONS WITH THE TOP RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:35 p.m.). Development Services Director Ron Wallace explained that the resolution would provide the City authorization to begin price negotiations with the top ranked firm, Camp Dresser and McKee. He said this company had been ranked more highly because it had already been working on the Gordon River Study, which he said was closely related to the Drainage Basin V stormwater system improvements. Mr. Wallace also noted that Camp Dresser and McKee had completed the hydraulic improvements at Drainage Basins III and VI.

Public Comment: (4:37 p.m.) None.

MOTION by Taylor to **APPROVE RESOLUTION 01-9449 AS PRESENTED**; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9450.....ITEM 21-c
A RESOLUTION APPROVING A CONTRACT WITH VIDEO INDUSTRIAL SERVICES TO PERFORM STORM AND SANITARY SEWER CLEANING ON AN AS-NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:37 p.m.)

Public Comment: (4:37 p.m.) None.

MOTION by Wiseman to **APPROVE RESOLUTION 01-9450 AS PRESENTED**; 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 01-9451.....ITEM 21-d
A RESOLUTION APPROVING A CONTRACT WITH INSITUFORM TECHNOLOGIES, INC., FOR SANITARY AND STORM SEWER RELINING, ON AN AS-NEEDED BASIS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:38 p.m.).

Public Comment: (4:38 p.m.) None.

Responding to Vice Mayor Herms, Development Services Director Ron Wallace said that the company which had been providing the service had not submitted the lowest bid and that Insituform had quoted a lower bid and had been performing service to the County.

MOTION by Herms to APPROVE RESOLUTION 01-9451 AS PRESENTED;
seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9452.....ITEM 22
A RESOLUTION APPOINTING FIVE MEMBERS TO THE FLEISCHMANN PARK YOUTH FOOTBALL PROGRAM SELECTION COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:39 p.m.). Council Member MacIlvaine nominated Council Member Galleberg; however, Council Member Galleberg nominated Council Member Wiseman, noting her interest in the activity.

MOTION by Galleberg to APPROVE RESOLUTION 01-9452 AS PRESENTED TO APPOINT COUNCIL MEMBER WISEMAN;
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 01-9453.....ITEM 23
A RESOLUTION APPROVING THE TREE PROGRAM PLAN FOR THE YEAR 2002 AS REQUIRED IN SECTION 70-1(d) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:40 p.m.), who said that annually staff is to provide Council with recommendations regarding tree plantings for the upcoming year. Responding to Vice Mayor Herms, Community Services Director Don Wirth said the City would be planting some 350 trees at a cost of approximately \$100,000. He said under the 2001-02 plan, most of the plantings would be in rights-of-way where approximately two trees were missing, but some trees would be placed in rights-of-way that have no trees. Community Services Director Wirth said 108 trees had been planted in the 2000-01 plan.

Public Comment: (4:45 p.m.) **Eileen Arsenault, 1188 Gordon Drive,** said former City Manager Richard Woodruff had stated that the City would be implementing a program so that individuals applying for demolition permits could have unwanted trees removed to a tree farm for use by others. Community Services Director Wirth confirmed that the City has a tree farm to store those donated by others on an informal voluntary basis. He said, however, that staff could implement a program where individuals applying for demolition permits could be notified of a tree donation program. City Manager Rambosk directed Community Services Director Wirth to contact Building Official William Overstreet regarding this matter and to provide Ms. Arsenault with further information. Responding to Mayor MacKenzie, Community Services Director Wirth said the program could be revised to include the pier plaques and Cambier Bandshell bricks.

MOTION by Galleberg to APPROVE RESOLUTION 01-9453 AS PRESENTED;
seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION (Withdrawn, See Page 2)..... ITEM 24
CONSIDER ADOPTING THE STATE OF FLORIDA BUILDING CODES.

RESOLUTION 01-9454.....ITEM 25-a
A RESOLUTION APPROVING A THREE-YEAR ADMINISTRATIVE SERVICES AGREEMENT WITH FLORIDA 1ST HEALTH PLANS, INC., TO PROVIDE THIRD-PARTY ADMINISTRATION SERVICES (MEDICAL RELATED CLAIMS PROCESSING) FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT;

AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:50 p.m.), who said the City must adopt a health benefits plan before January 1, 2002. He said he would consult with Assistant City Manager William Harrison and County Clerk of Court Dwight Brock to suggest an alternative insurance provider, if necessary, but he said many of the benefit programs had been negotiated and approved by the City's unions. City Attorney Beverly Grady said the City had stricken the indemnification clause from the Administrative Services Agreement Contract because she said cities do not indemnify. She said a phrase stating "to the extent permitted by law" would protect the City should Florida 1st Health Plans insist upon the indemnification clause.

Public Comment: (4:52 p.m.) None.

MOTION by Wiseman to APPROVE RESOLUTION 01-9454 AS AMENDED, TO AUTHORIZE REMOVAL OF INDEMNIFICATION LANGUAGE AND SUBSTITUTE "TO THE EXTENT PERMITTED BY LAW." This motion was 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).

RESOLUTION 01-9455.....ITEM 25-b
A RESOLUTION APPROVING A THREE YEAR CONTRACT WITH EXPRESS SCRIPTS, INC. (ESI) TO PROVIDE PRESCRIPTION DRUG SERVICES FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:53 p.m.). Human Resources Director Lori Burke said this program would be similar to the previous plan that had a mandatory mail-in for ongoing prescription drugs.

Public Comment: (4:53 p.m.) None.

MOTION by Wiseman to APPROVE RESOLUTION 01-9455 AS PRESENTED; 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 01-9456.....ITEM 25-c
A RESOLUTION APPROVING AN APPLICATION FOR GROUP INSURANCE WITH METLIFE TO PROVIDE A DENTAL INSURANCE PROGRAM FOR THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT FOR PLAN YEAR 2002; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:54 p.m.).

Public Comment: (4:54 p.m.) None.

MOTION by Wiseman to APPROVE RESOLUTION 01-9456 AS PRESENTED; 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 01-9457.....ITEM 25-d
A RESOLUTION APPROVING A CONTRACT RENEWAL WITH SUNLIFE OF CANADA, TO PROVIDE STOP-LOSS (INDIVIDUAL AND AGGREGATE) INSURANCE FOR THE CITY'S SELF-INSURED EMPLOYEE HEALTH BENEFITS PLAN FOR THE PLAN YEAR JANUARY 1, 2002, THROUGH DECEMBER 31, 2002; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:54 p.m.).

Public Comment: (4:54 p.m.) None.

MOTION by Galleberg to APPROVE RESOLUTION 01-9457 AS PRESENTED; 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 01-9458.....ITEM 25-e
A RESOLUTION APPROVING A CONTRACT AND AMENDMENT II TO CONTRACT WITH VISION SERVICE PLAN, INC. (VSP) TO PROVIDE VISION CARE INSURANCE TO CITY EMPLOYEES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND AMENDMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:55 p.m.).

Public Comment: (4:55 p.m.) None.

MOTION by Wiseman to APPROVE RESOLUTION 01-9458 AS PRESENTED; 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 01-9459.....ITEM 25-g
A RESOLUTION AMENDING AND RESTATING THE CITY OF NAPLES SUPPLEMENTAL RETIREMENT PLAN WITH NATIONWIDE RETIREMENT SOLUTIONS, INC., AUTHORIZING THE ASSISTANT CITY MANAGER AND HUMAN RESOURCES DIRECTOR TO EXECUTE DOCUMENTS AND TO SECURE APPROVAL BY THE INTERNAL REVENUE SERVICE, APPOINTING THE ASSISTANT CITY MANAGER AND HUMAN RESOURCES DIRECTOR AS TRUSTEES OF THE PLAN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:56 p.m.).

Public Comment: (4:56 p.m.) None.

MOTION by Galleberg to APPROVE RESOLUTION 01-9459 AS PRESENTED; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

RESOLUTION 01-9460.....ITEM 25-f
A RESOLUTION APPROVING A ONE-YEAR RENEWAL WITH ITT HARTFORD TO PROVIDE LIFE INSURANCE, LONG-TERM DISABILITY (LTD), AND ACCIDENT DEATH AND DISMEMBERMENT (AD&D) INSURANCE PROGRAM FOR THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT FOR THE PLAN YEAR 2002; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:57 p.m.).

Public Comment: (4:57 p.m.) None.

MOTION by Wiseman to APPROVE RESOLUTION 01-9460 AS PRESENTED; 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 01-9461.....ITEM 26
A RESOLUTION RANKING FIRMS IN ORDER OF PREFERENCE TO PROVIDE PHASE ONE DESIGN SERVICES FOR MARINA FACILITIES TO THE CITY OF NAPLES; AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT NEGOTIATIONS WITH THE TOP-RANKED FIRM; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (4:58 p.m.). Assistant City Manager William Harrison said the resolution would allow the design committee to begin developing design plans and funding alternatives for the Naples City Dock and the area known

as the Pulling Property, which activity, he said, would include City Council workshops and involvement with the community. While Assistant City Manager Harrison said a long-term capital plan had been developed for Naples Landing, City Manager Rambosk also noted that previous plans to provide marina facilities and boardwalk had been discarded due to resident disinterest and that it had also been determined that Naples Landing would be inappropriate for developing a water cleansing area for stormwater runoff. Council then discussed including a study of Naples Landing for the services under consideration. City Manager Rambosk also pointed out that staff envisioned only a pier and temporary storage of vessels at the Pulling site, but Mayor MacKenzie said she would favor diverting boat traffic to the Goodlette Road access and the Pulling site. Council Member MacIlvaine proffered a motion to approve, as amended, to include Naples Landing Park in the review, Council Member Wiseman seconded; however, further discussion ensued. Responding to Council Member Tarrant, City Manager Rambosk said Council had not yet determined whether the Pulling site would have only non-motorized vessels. Vice Mayor Herms expressed concern about altering the aesthetics of Naples City Dock by expanding and creating floating docks, but Mayor MacKenzie said floating docks could maintain the same ambiance and provide less detriment to the environment. Assistant City Manager Harrison said floating docks are easier for boaters to use, and Council Member MacIlvaine pointed out that floating docks are less damaging to vessels. Assistant City Manager Harrison reported that although the consultant's cost had not yet been determined, approval of the resolution would allow staff to begin negotiations with the top-ranked firm, whose contract would then be submitted to Council for approval.

Public Comment: (5:08 p.m.) None.

MOTION by MacIlvaine to APPROVE RESOLUTION 01-9461 AS AMENDED TO INCLUDE NAPLES LANDING PARK IN REVIEW; seconded by Wiseman and carried 5-2 (Galleberg-yes, Herms-no, MacIlvaine-yes, Tarrant-no, Taylor-yes, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms said he opposed replacing the Naples City Dock.

RESOLUTION 01-9462.....ITEM 27-a
A RESOLUTION APPROVING AN AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, WITH CHANGES APPROVED BY THE CITY MANAGER AND CITY ATTORNEY, BETWEEN THE CITY OF NAPLES AND BRYANT, MILLER AND OLIVE, P.A., FOR THE PURPOSE OF PROVIDING BOND AND DISCLOSURE COUNSEL SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:10 p.m.). Assistant City Manager William Harrison said Council had previously approved the ranking of financial advisors for bond and disclosure counsel and had authorized staff to negotiate a contract. He said the proposed resolution would approve a contract for services. Council Member Galleberg proffered a motion to approve and Council Member MacIlvaine second; however, further discussion ensued. Vice Mayor Herms noted that the City would be paying approximately \$10,000 more for the new firm, but Assistant City Manager Harrison observed that this would be minimal in order to avoid costly errors. Responding to Council Member Taylor, Council Member MacIlvaine said he had recommended replacing the former bond counsel because direction had inappropriately been taken without seeking the City's advice, and he also said the City had encountered problems with the Wilkinson House bond issue that could have been avoided. Council Member Taylor, however, said City staff and the City Attorney's Office should also share the responsibility regarding the Wilkinson House, and she said former bond counsel Jack McWilliams should not be penalized.

Public Comment: (5:14 p.m.) None.

MOTION by Galleberg to APPROVE RESOLUTION 01-9462 AS PRESENTED; seconded by MacIlvaine and carried 6-1, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-no, Wiseman-yes, MacKenzie-yes).

Vice Mayor Herms pointed out that Attorney McWilliams has performed professionally in the ten years he has provided services to the City, and he said he opposed approving an additional \$10,000 in fees. Nevertheless, he said that hiring a different bond counsel could be beneficial to the City.

**RESOLUTION 01-9463.....ITEM 27-b
A RESOLUTION APPROVING AN AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, WITH CHANGES APPROVED BY THE CITY MANAGER AND CITY ATTORNEY, BETWEEN THE CITY OF NAPLES AND FIRST SOUTHWEST COMPANY FOR THE PURPOSE OF PROVIDING FINANCIAL ADVISOR SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:15 p.m.).**

Public Comment: (5:15 p.m.) None.

MOTION by Galleberg to APPROVE RESOLUTION 01-9463 AS PRESENTED; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 01-9464 (Added).....ITEM 32
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF NAPLES AND ENVIROSCAPE OF NAPLES, INC., IN AN AMOUNT NOT-TO-EXCEED \$30,000.00 FOR THE PURPOSE OF PROVIDING SUPPLEMENTAL RED TIDE CLEANUP SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Rambosk during discussions below (5:17 p.m.). Assistant City Manager William Harrison said red tide cleanup had not been placed in the budget because it occurred sporadically. City Manager Rambosk said approximately \$19,000 of the \$200,000 in the general fund contingency has been expended for recent red tide cleanup, and approximately \$11,000 would remain for additional removal.**

Public Comment: (5:18 p.m.) None.

City Manager Rambosk noted that he received a letter from Aqualane Shores residents who had expressed appreciation for the City's immediate response to red tide cleanup in the canals.

MOTION by Wiseman to APPROVE RESOLUTION 01-9464 AS PRESENTED; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

**RESOLUTION 01-9465.....ITEM 28
A RESOLUTION DIRECTING THE TRANSFER OF \$173,918 FROM GENERAL FUND UNDESIGNATED RESERVES TO THE SABAL BAY LITIGATION FUND, AUTHORIZING FUNDS FROM THE SABAL BAY LITIGATION FUND TO BE USED FOR LITIGATION EXPENSES RELATING TO THE PROPOSED HAMILTON HARBOR DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (5:18 p.m.). Assistant City Manager William Harrison said representatives of Citizens to Preserve Naples Bay had requested to be reimbursed \$100,000, which he said is 50% of the legal fees the group incurred when it had litigation against the City.**

Mr. Harrison said the City contributed approximately \$200,000 and the Citizens to Preserve Naples Bay had contributed approximately \$50,000 after entering into a 1992 trust agreement to contribute funds to finance Sabal Bay litigation. Vice Mayor Herms said the agreement had stipulated that the City would underwrite the legal fees until the fund had been depleted. Mr. Harrison said, however, that the majority of the legal fees had been incurred prior to 1992 so an extensive amount of funds remained by early 1995 when litigation had been completed. The City had agreed to rename the Sabal Bay Litigation Fund as Naples Bay Litigation Fund, and the Citizens to Preserve Naples Bay president had concurred to use the funds to improve Naples Bay. Mr. Harrison said staff, at the direction of City Council, had in 2000 refunded private contributions remaining after legitimate expenses with the declined refunds donated to Save the Manatees. Mr. Harrison said the Citizens to Preserve Naples Bay reverted to the original Sabal Bay agreement and requested a refund of 50% of its \$200,000 legal expenses to sue the City for Hamilton Harbor using the Sabal Bay agreement.

Public Comment: (5:21 p.m.) **Harry Timmins, 555 Kingstown Drive,** Citizens to Preserve Naples Bay president, submitted to Council a November 12, 2001 letter he had written in response to a litigation fund settlement proposal (Attachment 2). Mr. Harrison said he and Mr. Timmons had concurred with returning funds to the Sabal Bay Litigation Fund. Mr. Harrison said, however, that staff has recommended that the funds be used for past and future legal expenses related to Hamilton Harbor litigation, and Mr. Timmons has recommended that the Citizens to Preserve Naples Bay receive \$100,000 and the remainder be used for Hamilton Harbor litigation. Responding to Council Member Tarrant, City Attorney Beverly Grady said her memorandum to Mr. Harrison had stated that there had not been a valid claim and she could determine no valid basis to pay Citizens to Preserve Naples Bay \$100,000 (See Attachment 3) She said all private sector funds contributed to the City pursuant to a 1992 letter agreement have either been expended in a timely manner for Sabal Bay litigation or the remainder had been returned to private contributors. She said she had written in her memorandum that to constitute a valid charge or claim against the local government, the claim or indebtedness must be legitimately incurred under the expressed or implied power of the statute. Council Member Tarrant said, however, that providing \$100,000 to Citizens to Preserve Naples Bay would be correcting a mistake and would not be a contribution to a not-for-profit organization.

Mayor MacKenzie then cited Naples Bay Project Committee Meeting Minutes from November 10, 1997, that stated the priority of the Citizens to Preserve Naples Bay had been water quality. She said the organization had suggested that the approximately \$257,000 that remained in the Sabal Bay Litigation Fund could be used to provide safe water for swimming and fishing in Naples Bay, and Mr. Timmons concurred. She said City Council regular meeting minutes of April 5, 2000, indicated that Wheeler Conklin, of Citizens to Preserve Naples Bay, had said that Council should correct the illegal Hamilton Harbor approval ordinances. She said the minutes had also stated that the Citizens to Preserve Naples Bay would allow the current Sabal Bay Litigation Fund held by the City to be used in any litigation filed against the City relative to Hamilton Harbor, to which the Citizens to Preserve Naples Bay had been opposed as well. Mr. Timmons said his objection has been that the funds had been used for other purposes such as snacks for the bay study group, and Mayor MacKenzie concurred that some expenditures had been inappropriate. Mr. Harrison said the proposed resolution would restore the Sabal Bay Litigation fund to the balance necessary to reflect only those expenditures specifically directed by Council.

Council Member Wiseman proffered a motion to approve and Mayor MacKenzie seconded; however, further discussion ensued. Council Member Tarrant said that the Citizens to Preserve Naples Bay attorney should be provided a copy of City Attorney Grady's opinion before further discussion, and Mr. Timmins concurred. Council Member Taylor proffered a motion to table the discussion, Council Member Tarrant seconded. Mayor MacKenzie, however, said additional public speakers had registered, and Council Member Taylor withdrew her motion.

Public Comment: (5:45 p.m.) **Henry Kennedy, 2178 Tarpon Road**, urged Council to consider City Attorney Grady's advice. **Ron Pennington, 3430 Gulf Shore Boulevard North**, said he had provided funds for Sabal Bay litigation, which had been returned with interest. He said, however, that it had been inconceivable that the City would return funds to any organization that had filed litigation against the City.

Council Member Taylor proffered a motion to table this discussion until the next meeting, and Council Member Tarrant seconded.

MOTION by Taylor to TABLE; seconded by Tarrant. This motion failed 3-4, all members present and voting (Wiseman-no, Tarrant-yes, Taylor-yes, Galleberg-no, Herms-yes, MacIlvaine-no, MacKenzie-no).

Vice Mayor Herms said he supported tabling the motion because the Citizens to Preserve Naples Bay attorney should have the opportunity for further review.

MOTION by Wiseman to APPROVE RESOLUTION 01-9465 AS PRESENTED; seconded by MacKenzie and carried 4-3 (Wiseman-yes, Herms-no, MacIlvaine-yes, Taylor-no, Tarrant-no, Galleberg-yes, MacKenzie-yes).

Council Member Taylor said the Citizens to Preserve Naples should have been provided additional time to consider the resolution, and Council Member Tarrant concurred. Council Member Galleberg however characterized a proposed \$100,000 reimbursement by Citizens to Preserve Naples Bay as a blatant attempt to obtain tax money.

**(Tabled / See Page 2)ITEM 29
ACTION RELATIVE TO POSSIBLE CORRECTION OF OVERPAYMENTS FOR
SALVAGE AND CLEANUP OPERATIONS FOLLOWING THE JUNE 11, 1998 FIRE AT
THE KEEWAYDIN COVERED BOAT SLIPS.**

**.....ITEM 30-a
CONSIDER REFERENDA BALLOT LANGUAGE RELATING TO THE FEBRUARY 5,
2002, CITY OF NAPLES GENERAL ELECTION.** (5:52 p.m.). City Clerk Tara Norman read into the record the ballot question regarding the hiring of an internal auditor (Attachment 4). City Clerk Norman confirmed that the defined duties of an internal auditor would be available to individuals at the precincts.

MOTION by MacIlvaine to APPROVE THE BALLOT WORDING FOR INTERNAL AUDITOR; seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

City Clerk Norman read into the record the ballot question from the Citizens to Preserve Naples (Attachment 5).

Public Comment: (5:58 p.m.) **Harry Timmins, 555 Kingstown Drive**, Citizens to Preserve Naples president, confirmed that the ballot language accurately represented the wording the organization had intended. City Attorney Grady informed Council that an as yet unpublished court case stated that it is the City's responsibility to prepare a summary question for the ballot; however, a political committee could prepare a ballot question, which would have to be reviewed by the City to ensure it had not exceeded 75 words in length. She said the City is however required to place the issue on the ballot.

MOTION by Wiseman to APPROVE THE BALLOT WORDING SUBMITTED BY THE CITIZENS TO PRESERVE NAPLES AS PRESENTED; seconded by Taylor and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).

City Clerk Norman read into the record the ballot question from the Sensible Government for Naples (Attachment 6)

Public Comment: (6:13 p.m.) **Ronald Labasky, 318 North Monroe Street, Tallahassee, Florida**, representing Sensible Government for Naples, said the organization approved the ballot language regarding its referendum.

Harry Timmins, Citizens to Preserve Naples chairman, read into record a December 15, 2001 letter regarding the Sensible Government for Naples' proposed ballot question for the Charter Amendment, which he said was misleading (Attachment 7).

Council Member Wiseman proffered a motion to approve ballot language from the Sensible Government for Naples as submitted. Council Member Galleberg seconded; however, further discussion ensued. Vice Mayor Herms said the ballot language presented by the Sensible Government for Naples was unclear and inaccurately reflected its proposed Charter amendment, which he said Council had the responsibility to ensure did not occur. Council Member Taylor concurred. Vice Mayor Herms further said that the title of the ballot question includes the words "protection" and "restoration of mangrove wetlands" when in fact he said it should state that it would allow destruction of up to 1.5 acres of mangroves. Vice Mayor Herms also maintained that this ballot question, if approved, would be in violation of the City's zoning ordinances. Council Member Galleberg, however, said Council would not be endorsing the substance of the ballot question and that Sensible Government for Naples properly followed regulations required for placement of its question on the ballot.

MOTION by Wiseman to APPROVE THE BALLOT WORDING SUBMITTED BY THE SENSIBLE GOVERNMENT FOR NAPLES; seconded by Galleberg and carried 4-3, all members present and voting (Tarrant-no, Galleberg-yes, Herms-no, Wiseman-yes, Taylor-no, MacIlvaine-yes, MacKenzie-yes).

Vice Mayor Herms and Council Members Taylor and Tarrant said they dissented because the proposed Charter Amendment encouraged growth and mangrove destruction. Council Member Galleberg reiterated that the proposed Charter Amendment had complied with ballot requirements. Council Member MacIlvaine said individuals would be informed because they would read both the title and text of the proposed Charter Amendments when voting.

Vice Mayor Herms proffered a motion to accept City Clerk Norman's recommendation that the questions be placed on the ballot in the order they had been received. Council Member Wiseman also recommended that Council recognize the date the petition had been received, and Council Member Tarrant concurred. Council learned that the City's ballot question regarding an internal auditor would appear last on the ballot. Mayor MacKenzie recommended that the ballot questions be placed on two facing pages, with both English versions on the left and both Spanish versions on the right. Council Member MacIlvaine proffered a motion to have the Citizens to Preserve Naples ballot question first, Sensible Government for Naples second, and the City's ballot question for hiring an internal auditor third; however, further discussion ensued. City Clerk Norman said she had been uncertain whether both ballot questions could be printed on adjoining pages because the required Spanish translation is lengthier than English. Responding to Council Member Galleberg, Mrs. Norman confirmed that Spanish has not been required to

comply with a 75-word limit on ballots. Mayor MacKenzie recommended Council approve the order of the ballot questions, and they could consider approving the ballot format on January 9, 2002. Council Member Wiseman seconded.

MOTION by MacIlvaine to APPROVE THE ABOVE ORDER OF APPEARANCE ON THE BALLOT; *seconded by Wiseman and unanimously carried, all members present and voting (Galleberg-yes, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-yes, MacKenzie-yes).*

RESOLUTION (01-9465-A) (Added).....ITEM 30-b
A RESOLUTION APPOINTING A CITY ELECTOR TO THE CANVASSING BOARD FOR THE CITY OF NAPLES GENERAL ELECTION OF FEBRUARY 5, 2002; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager Kevin Rambosk (6:31 p.m.). Mayor MacKenzie said three individuals she had contacted to serve as a City elector to the Canvassing Board had been unable to do so, and she recommended that Council authorize the Canvassing Board to contact former mayors for this purpose. Vice Mayor Herms proffered a motion to appoint former Canvassing Board Member Charles Rhoades, Council Member Tarrant seconded. Council Member Galleberg expressed concern that Mr. Rhoades would be unable to serve, and he recommended that he be contacted before appointment, and Council Member Wiseman concurred.

MOTION by Herms to APPOINT CHARLES RHOADES; *seconded by Tarrant and carried 5-2 (Galleberg-no, Herms-yes, MacIlvaine-yes, Tarrant-yes, Taylor-yes, Wiseman-no, MacKenzie-yes).*

MOTION by Galleberg to ALLOW CANVASSING BOARD TO DETERMINE WILLINGNESS OF A FORMER MAYOR TO SERVE AS CITY ELECTOR SHOULD CHARLES RHOADES BE UNABLE TO SERVE; *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).*

(Added)ITEM 33
CONSIDERATION OF CONFLICT OF INTEREST WAIVER REGARDING INVESTOR IN TIDES MOTEL REZONING (6:45 p.m.). City Attorney Beverly Grady explained that her law firm had been representing Inns By the Sea, LLC, regarding a land use application in Fort Myers Beach, and a company investor would also be seeking a rezoning for the Tides Motel at the January 9, 2002 Council meeting. Council Member Wiseman proffered a motion to recognize the conflict of interest with the City's law firm and Tides Motel, seconded by Galleberg.

MOTION by Wiseman to ACCEPT CONFLICT OF INTEREST WITH CITY'S LAW FIRM AND TIDES MOTEL; *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).*

Council then learned the City has four attorneys with concurrent engagements, and Vice Mayor Herms proffered a motion to select Attorney Larry Farese of Cummings & Lockwood to perform services on behalf of the City in regard to the Tides Motel, but Mayor MacKenzie said that Mr. Farese might in fact have a conflict of interest as well. Discussion then centered on determining one of four attorneys to represent the City in discussions with Tides Motel. Mayor MacKenzie recommended that another attorney from Cummings & Lockwood be allowed to provide services to the City if Mr. Farese were unavailable. City Attorney Grady confirmed that no attorney with Cummings & Lockwood could perform the services if one of the lawyers in the firm had a conflict of interest.

MOTION by Herms to AUTHORIZE CITY MANAGER AND CITY ATTORNEY TO CONTACT CUMMINGS & LOCKWOOD TO PROVIDE LEGAL SERVICES IN THIS REGARD; *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).*

.....ITEM 31
DISCUSSION OF THE CONTRACTUAL RELATIONSHIP THAT MAYOR BONNIE R. MACKENZIE HAD WITH JOE BIASELLA, DBA DEL REY MARINE. (6:49 p.m.). Council Member Taylor read into the record a statement alleging a conflict of interest between Mayor MacKenzie and Joe Biasella, owner of Del Rey Marine (Attachment 8). Miss Taylor then stated that Del Rey Marine had been exclusively hired without a contract for water cleanup in Naples Bay and that Council had condoned apparent and serious ethical problems regarding Mayor MacKenzie and her former business relationship with Mr. Biasella and Del Rey Marine. Responding to Council Member Taylor, Mayor MacKenzie said that Ms. Taylor had not been authorized to conduct an investigation so she would therefore not answer her questions. Mayor MacKenzie said she would respond to questions from the State Ethics Commission and the State's Attorney's Office, where any evidence of her alleged wrongdoing should be submitted. She said she had done nothing wrong. Council Member Taylor then requested that Mayor MacKenzie respond to her percentage of ownership in Del Rey Marine in 1998, her relationship with Del Rey Marine while voting on items pertaining to Del Rey Marine and Joe Biasella; and the public perception of her having voted against an investigation.

Vice Mayor Herms said the City's Charter and Code would require that Mayor MacKenzie be removed from office if she knowingly had a contractual relationship with Mr. Biasella, and he proffered a motion that Council refer the alleged violation to local prosecutors and the Governor for a complete investigation. Responding to Mayor MacKenzie, Vice Mayor Herms said that she had owned more than 5% of Del Rey Marine in 1987 and that she continues to have a contractual relationship with Mr. Biasella. Council Member Galleberg said the allegations of impropriety had been timed to coincide with City elections in February, and he said Mayor MacKenzie had already been cleared of a similar allegation made earlier in 2001. Council Member Tarrant then seconded Vice Mayor Herms' motion.

MOTION by Herms to REFER MATTER TO LOCAL PROSECUTORS AND GOVERNOR; *seconded by Tarrant. This motion failed 3-4. (Taylor-yes, MacIlvaine-no, Wiseman-no, Galleberg-no, Tarrant-yes, Herms-yes, MacKenzie-no).*

Council Member MacIlvaine said he considered the allegations against Mayor MacKenzie to be absurd. Council Member Wiseman said Mayor MacKenzie would be above reproach regarding the allegations stated on that day. She described personal politics by certain Council Members that day to be reprehensible, and any allegations of impropriety should be reported for investigation and not at televised City Council meetings. Council Member Tarrant said he supported the motion to ensure the City adhered to the Charter. City Attorney Grady confirmed that Mayor MacKenzie could vote on the above motion. Mayor MacKenzie said that for eight months she had been answering questions relative to wrongful allegations of impropriety. She said the three Council Members who had supported an investigation could have presented their allegations to authorities for investigation, and she said she could not support a motion to approve the investigation which would be at the City's expense.

PUBLIC COMMENT (7:08 p.m.)
None.

ADJOURN

7:08 p.m.

Bonnie R. MacKenzie, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Annette Thompson, Recording Specialist

Minutes approved: 4/3/02