



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

---

**City Council Special Meeting – December 30, 2003 – 4:00 p.m.**

---

Mayor MacKenzie called the meeting to order and presided.

---

**ROLL CALL .....ITEM 1**

**Present:**

Bonnie R. MacKenzie, Mayor  
Gary Galleberg, Vice Mayor

**Council Members:**

William MacIlvaine  
Clark Russell

**Absent:**

Penny Taylor  
Tamela Wiseman

---

**Also Present:**

Robert Lee, City Manager  
Robert Pritt, City Attorney  
Jessica R. Rosenberg, Deputy City Clerk  
Bonnie McNeill, Recording Specialist  
Karen Kateley, Administrative Specialist  
Allen Walburn  
Conrad Willkomm  
Gene Scanlan  
Joe Biasella  
Henry Kennedy

**Media:**

Eric Staats, Naples Daily News  
Tim Wetzel, WINK-TV  
Other interested citizens and visitors

---

**It is noted for the record that Council Member Herms resigned from City Council on December 22, 2003. It is also noted for the record that Items 2 and 3 were considered concurrently.**

---

Council observed a moment of silence for former Mayor Ned Putzel who had recently passed away.

**ORDINANCE 03-10314.....ITEM 2**

**AN ORDINANCE DIRECTING THE CITY CLERK TO CALL A SPECIAL ELECTION TO ELECT A COUNCIL MEMBER FOR THE REMAINDER OF A TERM ENDING ON FEBRUARY 7, 2006; ESTABLISHING A DATE FOR THE ELECTION, A CANDIDATE QUALIFYING PERIOD AND OTHER REGULATIONS PERTAINING TO THE**

**CONDUCT OF THE ELECTION; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 03-10315.....ITEM 3**

**A RESOLUTION DIRECTING THE CITY CLERK TO CALL A SPECIAL ELECTION TO ELECT A COUNCIL MEMBER FOR THE REMAINDER OF A TERM ENDING ON FEBRUARY 7, 2006; ESTABLISHING A DATE FOR THE ELECTION, A CANDIDATE QUALIFYING PERIOD AND OTHER REGULATIONS PERTAINING TO THE CONDUCT OF THE ELECTION; AND PROVIDING AN EFFECTIVE DATE.**

Titles to Items 2 and 3 read by City Attorney Robert Pritt (4:01 p.m.). City Attorney Pritt explained that because Council Member Herms had filed for the office of Mayor, he had been required under Florida law to vacate his seat on City Council to avoid serving two concurrent terms. In order to address questions regarding the newly vacant two year seat, Mr. Pritt said that he had prepared a legal opinion (Attachment 1). According to City Charter, vacancies in the office of Mayor or Council Member must be filled by a special election for the unexpired term to be called by the City Clerk upon a resolution adopted by Council, and held within 60 days of such vacancy. He said that he had later determined that the special election could not be held on the same date as the February 3, 2004 general election as the Collier County Supervisor of Elections would have inadequate time to conduct the necessary preparations including printing and mailing absentee ballots and performing other election-related functions. Further, the U.S. Department of Justice would be unable to pre-clear the special election in that time period. Mr. Pritt also noted that the timing of the resignation, which was one day before the end of the general election qualifying period, would not provide sufficient notice or time for qualifying of persons interested in running for the unexpired term vacated by Mr. Herms. The Council must meet to establish dates for qualifying and for the special election which was the purpose of the special meeting, he added.

In response to Mayor MacKenzie, City Attorney Pritt indicated that a unanimous vote of the Council Members present would be required for adoption of the ordinance, and an affirmative vote of at least three of the four members for approval of the resolution. Mr. Pritt further explained that he had prepared both a resolution and an ordinance to satisfy requirements of the Charter and State law.

Mayor MacKenzie said that when she had learned of the Council vacancy, she had attempted to avoid the expense of a separate election if possible and to promptly install the seventh member of Council. She added that the Collier County Supervisor of Elections had accommodated her request to conduct the special election on February 17 to allow the new member to take office during the second meeting in February (Attachment 2). Further, she said Election Systems and Software (ES&S) has affirmed that it could have the ballots ready in time for the 17th.

In response to Vice Mayor Galleberg, City Attorney Pritt explained that in 2000 former Council Member Fred Coyle had resigned his office to run for Mayor as required by the statute referred to as the resign-to-run law prior to the start of the qualifying period for the general election. Therefore, this afforded candidates an opportunity to declare for the vacancy in the existing qualifying period. Because Council Member Herms had however filed to run for the office of Mayor the day before the end of the 2004 qualifying period, a special election and a new qualifying period became necessary. City Attorney Pritt further noted that he would add a whereas clause in both the ordinance and resolution indicating that the Supervisor of Elections

had provided approval for a special election and a timeline for same. In addition, he said Council should establish the qualifying period for candidacy which he would also include. Council Member Russell suggested establishing the qualifying period as January 2 to January 16 in order to allow potential candidates two full weeks.

**Public Comment:** (4:26 p.m.) **Allen Walburn, 925 Eighth Avenue South**, asserted that all who were interested in running for Council were aware of Mr. Herms' resignation, and had the opportunity to apply. He therefore suggested saving embarrassment and taxpayer's money by imposing a very limited time period for qualification and, if no other candidate applies, electing by acclamation Tamela Wiseman who had already qualified for this unexpired seat. City Attorney Pritt noted that the resolution and ordinance contain a clause stating that any person who has otherwise lawfully qualified for this office shall be deemed qualified. Council Member Russell asserted, however, that until Council establishes the qualifying period, no one is actually qualified. **Conrad Willkomm, 227 Gulf Shore Boulevard South**, stated that according to the Charter, the special election is unnecessary being that the vacancy occurred within one year of the general election. He therefore suggested that Council proceed with the general election on February 3 allowing all candidates to run, and conferring the four-year terms on the top three candidates and the two-year term on the fourth place candidate. City Attorney Pritt explained that the Council could fill this vacancy only until the next election, which would be February 3, 2004, and therefore accrue to one month. Vice Mayor Galleberg added that there is no basis in the Charter for the action described by Mr. Willkomm. **Joe Biasella, 860 12<sup>th</sup> Avenue South**, asked that Council vote against the special election, and instead appoint someone to this vacancy. Vice Mayor Galleberg said that Council must uphold the Charter and therefore conduct a special election within 60 days of the resignation. Mayor MacKenzie added that if no one else qualifies for the two-year seat, the special election would be unnecessary. **Henry Kennedy, Tarpon Road**, recommended that Council carefully consider this issue before proceeding, and asserted that State law gives Council the ability to appoint someone to this seat. He also expressed concern that candidates may, if they lose in the general election, assert that they are also qualified for the special election. City Attorney Pritt explained that he had issued his opinion at 1:00 p.m. on December 23 which afforded candidates the opportunity to switch their candidacy from a two-year to a four-year seat. He pointed out that candidates may qualify for one office at a time. Mr. Kennedy further recommended that if Council proceeds with the special election, it should establish a very limited qualifying period.

Mayor MacKenzie said she could not support a short qualifying period, saying it is unfair to those willing to serve the City and to the voters. Council Member Russell said that Mr. Herms' resignation triggered a special election, and that simply appointing an individual to Council for a two-year seat deprives citizens of their ability to vote. Although saying he shared the sentiments expressed by the residents, he said he believed most are willing to pay the price necessary for a free and clear election. Council Member MacIlvaine said he believed that an election is preferable to an appointment, and recommended that Council follow the advice of the City Attorney.

**Public Comment (continued) :** (4:51 p.m.) **Gene Scanlan, 596 Third Street North**, expressed agreement with comments made by Council Member Russell about allowing the political process to proceed in a fair and open manner. In response to Mr. Scanlan, City Attorney Pritt confirmed

that a general election candidate can withdraw and file for the special election, but that he would have to research State law on that issue. He however asserted that no one could qualify for both elections at the same time.

**MOTION by Russell to ADOPT ORDINANCE 03-10314 WITH THE FOLLOWING AMENDMENTS: 1) THE INCLUSION OF A FIFTH WHEREAS CLAUSE INDICATING THAT THE SUPERVISOR OF ELECTIONS HAD PROVIDED APPROVAL FOR A SPECIAL ELECTION AND A TIMELINE FOR SAME; 2) THE QUALIFYING PERIOD SHALL BE "...FROM JANUARY 2, 2004 TO JANUARY 16, 2004, BETWEEN 8:00 A.M. AND 5:00 P.M. WEEKDAYS..." This motion was seconded by MacIlvaine and carried 4-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-absent, MacKenzie-yes).**

**MOTION by Russell to APPROVE RESOLUTION 03-10315 WITH THE FOLLOWING AMENDMENTS: 1) THE INCLUSION OF A FIFTH WHEREAS CLAUSE INDICATING THAT THE SUPERVISOR OF ELECTIONS HAD PROVIDED APPROVAL FOR A SPECIAL ELECTION AND A TIMELINE FOR SAME; 2) THE QUALIFYING PERIOD SHALL BE "...FROM JANUARY 2, 2004 TO JANUARY 16, 2004, BETWEEN 8:00 A.M. AND 5:00 P.M. WEEKDAYS..." This motion was seconded by MacIlvaine and carried 4-0 (Galleberg-yes, MacIlvaine-yes, Russell-yes, Taylor-absent, Wiseman-absent, MacKenzie-yes).**

**PUBLIC COMMENT .....**

**Attorney Fred Hardt, litigation counsel for the City**, advised that he had been appointed by Governor Jeb Bush to the bench of the 20<sup>th</sup> Judicial Circuit effective January 2. He explained that all pending litigation matters would be reassigned to others at his firm, Roetzel & Andress, under the City Attorney's supervision. He expressed appreciation to the Mayor and Council as well as the staff for their support during his tenure at the City. Mayor MacKenzie extended the Council's congratulations and expressed appreciation to Mr. Hardt for his service to the City, noting that he had saved the City a significant amount of money in litigation expenses.

**ADJOURN .....**  
4:59 p.m.

\_\_\_\_\_  
Bonnie R. MacKenzie, Mayor

\_\_\_\_\_  
Tara A. Norman, City Clerk

Minutes prepared by:

\_\_\_\_\_  
Jessica R. Rosenberg, Deputy City Clerk

Minutes Approved: 2/18/04