



City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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**City Council Regular Meeting – February 16, 2005 – 9:00 a.m.**

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Mayor Barnett called the meeting to order and presided.

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

**Present:**

Bill Barnett, Mayor  
Tamela Wiseman, Vice Mayor

**Council Members:**

William MacIlvaine  
Johnny Nocera  
Clark Russell  
John Sorey, III  
Penny Taylor

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**Also Present:**

Robert Lee, City Manager  
Robert Pritt, City Attorney  
Robin Singer, Community Development Director  
Dan Mercer, Public Works Director  
David Lykins, Community Services Director  
Victor Morales, Asst. to the City Manager  
Chet Hunt, CRA Manager  
Denise Perez, Human Resources Director  
Cheryl Botout, Technology Services  
Pamela Koepke, Recording Specialist  
Karen Kateley, Administrative Specialist

Reverend Debra Williams  
Jim Boula  
Brian Leiding  
Joe Biasella  
Henry Kennedy  
Sue Smith  
Richard Lewis

Other interested residents and visitors

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

Reverend Debra Carter-Williams - Unity Church of Naples

**ANNOUNCEMENTS ..... ITEM 3**

Council Member Taylor eulogized Architect Richard Morris.

**SET AGENDA..... ITEM 4**

***MOTION*** by Russell to ***SET AGENDA***, continuing Item 8 to March 16, to consider City Manager salary adjustment on March 2, and add Items 14 and 15. This motion was seconded by Nocera and unanimously carried, all members present and voting. (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**PUBLIC COMMENT..... ITEM 5**

(9:10 a.m.) **Brian Leiding, 235 Bahia Point, representing City Dock tenants**, characterized the current situation regarding the vessel mooring field as political and said that he finds it distasteful for one governmental entity to be fined by another. (Editor's Note: The Department

of Environmental Protection had recently indicated that fines would be assessed against the City of Naples relative to matters involving the City Dock.) He cited potential risks to both people and property without a safe anchorage during severe weather and urged Council to prevent the loss of the mooring field currently in place. Council Member MacIlvaine described the mooring field as an asset to the City which prevents haphazard anchorage and enhances the safety of vessels during storm events; he therefore expressed hope that the City would be able to soon replace the mooring field. Mr. Leiding added that tourists also utilize the field, and urged that the City request assistance from the local legislative delegation to effect the return of the mooring field. **Richard Ellis, President of Government Supervisors Association of Florida, OPEIU Local 100**, characterized recent labor negotiations with the City of Naples as positive and productive and said that he was looking forward to a long and positive relationship. **Jim Boula, 702 Broad Avenue**, offered a copy of a compilation of various documents related to the City's mooring field (a copy of which is contained in the file for this meeting in the City Clerk's Office), depicting a timeline of the original installation to the recent removal of the mooring balls. He asserted that City staff's awareness that a permit for the mooring field was lacking had been recently stated to the Department of Environmental Protection (DEP); Community Development Director David Lykins had also intimated that the City was not interested in replacing the mooring balls which had been recently removed. Minutes from this meeting with the DEP, which occurred on February 10, are also contained in the file for this meeting. Mr. Boula said, and he urged Council to direct the City Manager not to also remove the submerged chains and anchors still in the mooring field, citing the various benefits of tourism, property protection, hurricane preparedness, and boating safety that would result from restoration of the mooring field. **Joe Biasella, 860-12th Avenue South**, citing Ordinance 00-8820 (adopting anchorage rules), related the reasons for establishing a mooring ball field; namely, the ground at the City Dock being unsuitable for holding anchorage, a lack of vessel traffic management, and a lack of control over marine sanitation. Some of these areas, he said, are in worse condition than when the ordinance was adopted. Mr. Biasella said that the issues identified by the DEP must be addressed quickly to facilitate the return of the mooring field before hurricane season. He said during his tenure on the Naples Bay Project Committee that he had forwarded a DEP mooring field permit application to former Natural Resources Manager Jon Staiger. At the time, the DEP had committed to fast-tracking a management agreement, at no cost to the City. Mr. Biasella further surmised that the current issues between the City and the DEP had been caused by the same City Dock tenant who has been alleging illegal activity at the Fleischmann Dock. He urged Council to pursue the replacement of the mooring field as expediently as possible. In conclusion, Mr. Biasella contended that his previous predictions of retaliation from City Dock tenants had, in fact, occurred with alleged complaints and an early morning visit by a Naples Marine Patrol Officer.

Mayor Barnett advised a report regarding the mooring ball field would be offered later in the meeting. Council Member MacIlvaine said the difference between the anchor, chain and mooring ball should be identified in the report.

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**Recess: 9:25 a.m. - 10:04 a.m. It is noted for the record that Council Member MacIlvaine was absent when the meeting reconvened.**

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**CONSENT AGENDA**

**APPROVAL OF MINUTES .....ITEM 6-a**  
January 18, 2005 Workshop and January 19, 2005 Regular, as submitted.

**SPECIAL EVENTS ..... ITEM 6-b**

1. Hope for Haiti, Inc., Fund Raiser, Sugden Plaza, March 13, 2005
2. Stan Spiro Orchestra, City of Naples Cultural Arts Program, Cambier Park Bandshell, April 17, 2005

**RESOLUTION 05-10748.....ITEM 6-c**

**A RESOLUTION APPROVING A 2005 TOURISM AGREEMENT BETWEEN COLLIER COUNTY AND THE CITY OF NAPLES FOR DREDGING MAINTENANCE OF DOCTOR'S PASS; AUTHORIZING THE MAYOR TO EXECUTE THE TOURISM AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10749..... ITEM 6-d**

**A RESOLUTION APPROVING A FIRST AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF NAPLES AND HUMISTON AND MOORE ENGINEERS TO COMPLETE PERMITTING SERVICES FOR THE PROPOSED BOAT RAMPS AT THE PULLING PARK SITE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10750.....ITEM 6-e**

**A RESOLUTION APPROVING A VOLUNTARY COOPERATION MUTUAL AID AGREEMENT REGARDING THE MULTI-JURISDICTIONAL TRAFFIC TASK FORCE BETWEEN THE CITY OF NAPLES AND VARIOUS LAW ENFORCEMENT AGENCIES; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10751..... ITEM 6-f**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NAPLES AND PROLINE CORPORATION TO PROVIDE POND EXCAVATION SERVICES FOR THE CITY'S WATER TREATMENT PLANT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10752..... ITEM 6-h**

**A RESOLUTION APPROVING A SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT PROVIDING GRANT FUNDING FOR EXPANDING THE CITY'S RECLAIMED WATER SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AMENDING THE 2004-05 BUDGET ADOPTED BY ORDINANCE 04-10603; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10753..... ITEM 6-i**

**A RESOLUTION DETERMINING LIVE ENTERTAINMENT PERMIT RENEWAL FOR BEAU'S PARADISE GRILL, LOCATED AT 1100 9<sup>TH</sup> STREET NORTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE..** Title not read.

**RESOLUTION 05-10754..... ITEM 6-j**

**A RESOLUTION DETERMINING PETITION 03-LE11 FOR A LIVE ENTERTAINMENT PERMIT AT BISTRO 821 LOCATED AT 821 FIFTH AVENUE SOUTH, MORE PARTICULARLY DESCRIBED HEREIN; SUBJECT TO THE**

**CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 05-10755..... ITEM 6-k**  
**A RESOLUTION RATIFYING AND CONFIRMING THE CONTRACT BETWEEN THE CITY OF NAPLES AND THE GOVERNMENT SUPERVISORS ASSOCIATION OF FLORIDA, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 100, AFL-CIO BARGAINING UNIT AND PROVIDING AN EFFECTIVE DATE.** Title not read.

***MOTION by Russell to APPROVE CONSENT AGENDA, except for Item 6-g, which was considered separately. This motion seconded by Taylor and carried 6-0 (MacIlvaine-absent, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).***

**END CONSENT AGENDA**

**RESOLUTION 05-10756.....ITEM 6-g**  
**A RESOLUTION ENCOURAGING THE STATE OF FLORIDA, LEE COUNTY AND CHARLOTTE COUNTY TO NEGOTIATE THE PURCHASE OF THE ENTIRE 91,362 ACRE BABCOCK RANCH; AND PROVIDING AN EFFECTIVE DATE.** Title not read.  
Council Member Taylor advised that her questions regarding this item had been sufficiently addressed by City Attorney Robert Pritt; namely, that there could be no negative repercussions from Council offering its support and encouragement for the purchase of the Babcock Ranch. She said that she fully supports the request and urged that the correspondence to the State be firm in requesting the preservation of this land.

***MOTION by Taylor to APPROVE RESOLUTION 05-10756, as submitted, seconded by Russell and carried 6-0 (MacIlvaine-absent, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).***

**It is noted for the record that Council Member MacIlvaine entered the meeting at 10:05 a.m.**

**RESOLUTION 05-10757.....ITEM 7**  
**A RESOLUTION DETERMINING A REQUEST FOR THE RESTORATION OF A LAKE SHORELINE LOCATED AT NAPLES COMMUNITY HOSPITAL ALONG 8TH STREET NORTH AS REQUIRED BY SECTION 114-132(e) OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.** (10:05 a.m.) Title read by City Attorney Robert Pritt. Notary Public Pamela Koepke administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Council Members offered ex parte disclosures that no contact had occurred with Council Members Wiseman, Nocera, Russell, MacIlvaine, and Sorey and Mayor Barnett. Council Member Taylor disclosed a conversation with Laverne Gaynor several months ago regarding proposed improvements. Chris Hagen of Johnson Engineering, agent for the petitioner, said that the proposal is to improve the duck pond at Naples Community Hospital, which will be incorporated into the Garden of Hope currently being constructed for cancer patients and their families. Some of the improvements will include an expansion of the pond for better stormwater management and nutrient filtering, with landscaping, walkways, boardwalks, and a fountain.

**Public Comment:** (10:11 a.m.) None.

***MOTION by Sorey to APPROVE RESOLUTION 05-10757; as submitted, seconded by Nocera and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).***

**ORDINANCE (First reading/Continued; see Item 4) .....ITEM 8  
AMENDMENT OF THE CODE OF ORDINANCES PERTAINING TO  
ESTABLISHMENT OF ZONING DISTRICTS IN ORDER TO ADD TWO NEW  
ZONING DISTRICTS, R1-15M AND R1-10M, ADDING SPECIFIC REGULATIONS  
FOR SINGLE-FAMILY PROPERTIES WITHIN THE MOORINGS SUBDIVISION.**

**ORDINANCE (First Reading; see below) .....ITEM 9  
AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF  
NAPLES CODE OF ORDINANCE BY ADDING SECTION 50-349, ASSIGNMENTS  
PROHIBITED, TO ARTICLE V, FIREFIGHTERS' PENSION AND RETIREMENT  
SYSTEM TO COMPLY WITH CHAPTER 2004-21, LAWS OF FLORIDA, TO  
PROVIDE THAT RETIRANTS MAY AUTHORIZE DIRECT THIRD PARTY  
PARMENTS AS A DEDUCTION FROM NET BENEFITS FOR SPECIFIC PURPOSES;  
PROVIDING FOR CONFLICTING PROVISIONS, SERVERABILITY AND  
APPLICABILITY, AND PROVIDNG AN EFFECTIVE DATE.**

**ORDINANCE (First Reading; see below) .....ITEM 10  
AN ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF  
NAPLES CODE OF ORDINANCES SECTION 50-383(2) TO AMEND THE  
CONTRIBUTION TO THE POLICE OFFICERS' RETIREMENT TRUST FUND;  
AMENDING SECTION 50-432(3), POLICE OFFICERS' PENSION AND RETIREMENT  
SYSTEM, TO PROVIDE FOR CORRECTION OF A SCRIVENER'S ERROR  
OCCURRING ON PASSAGE OF ORDINANCE 03-10102 IN THAT AMENDMENTS IN  
ORDINANCE 00-8930 WERE INADVERTENTLY OMITTED; ADDING SECTION 50-  
445, ASSIGNMENTS PROHIBITED, TO ARTICLE VI, POLICE OFFICERS' PENSION  
AND RETIREMENT SYSTEM TO COMPLY WITH CHAPTER 2004-21, LAWS OF  
FLORIDA, TO PROVIDE THAT RETIRANTS MAY AUTHORIZE DIRECT THIRD  
PARTY PAYMENTS AS A DEDUCTION FROM NET BENEFITS FOR SPECIFIC  
PURPOSE PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND  
APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE. (10:12 a.m.)**

City Attorney Robert Pritt read the titles for both Items 9 and 10 and referred to his memo and a letter from the State of Florida Department of Management Services, contained in the file for this meeting in the City Clerk's Office. This material indicates that amendments to police and fire pension ordinances require State approval; therefore, this review had resulted in a recommendation to eliminate the following text: "the City shall have the right of set-off, or any claim arising from embezzlement by, or fraud of, a member retirant or beneficiary." This is due to State law superceding any local ordinance. This being a substantive change, deliberation at this meeting would be considered a First Reading of the amended ordinance. Mr. Pritt said that Robert Sugarman, attorney for the City of Naples Pension Boards had concurred with the changes.

**Public Comment:** (10:15 a.m.) None.

**MOTION** by MacIlvaine to **APPROVE ITEM 9 AT FIRST READING**, eliminating "the City shall have the right of set-off, or any claim arising from embezzlement by, or fraud of, a member retirant or beneficiary." This motion was seconded by Russell and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**MOTION** by Russell to **APPROVE ITEM 10 AT FIRST READING**, eliminating "the City shall have the right of set-off, or any claim arising from embezzlement by, or fraud of, a member retirant or beneficiary." This motion was seconded by MacIlvaine and unanimously carried, all members present and voting (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**ORDINANCE 05-10758.....ITEM 11**  
**A ORDINANCE OF THE CITY OF NAPLES, FLORIDA, AMENDING THE CITY OF NAPLES CODE OF ORDINANCES SECTION 50-240(a), MEMBERS' CONTRIBUTIONS TO CHANGE THE CONTRIBUTION TO THE GENERAL EMPLOYEE'S RETIREMENT TRUST FUND; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.** (10:16 a.m.) Title read by City Attorney Robert Pritt who advised that this ordinance had not required amendments similar to Items 9 and 10 above because general employee pensions are not governed by the same State laws which regulate pensions for fire and police.

**Public Comment:** (10:17 a.m.) None.

**MOTION** by MacIlvaine to **ADOPT ORDINANCE 05-10758**, as submitted, seconded by Russell and unanimously carried, all members present and voting, (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 05-10759.....ITEM 12**  
**A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE WOMAN'S CLUB OF NAPLES, INC. FOR THE USE OF THE PARKING LOT AT THE SOUTHWEST CORNER OF PARK STREET AND 6TH AVENUE SOUTH; AMENDING THE 2004-05 BUDGET ADOPTED BY ORDINANCE 04-10603; AND PROVIDING AN EFFECTIVE DATE.** (10:17 a.m.) Title read by City Attorney Robert Pritt. City Manager Robert Lee advised that the \$4,000 cost had been reduced to \$3,500 and would be reflected in both the agreement and resolution. City Manager Lee also confirmed that the hours for the parking lot would be 5:00 p.m. to 2:00 a.m. so as to provide vendor parking for multi-day special events, as well as to accommodate the parking needs of Fifth Avenue South in the evening hours. Community Redevelopment Agency (CRA) Director Chet Hunt further noted that several dates reserved for prior commitments of the Woman's Club had been identified, as well as the Naples Art Association retaining its current daytime use of the lot.

Council Member Russell questioned using the General Fund for payment of the lease when the need for the parking is redevelopment-related. While he said he, nevertheless, supported this

measure to address current parking needs, he could not support expanding the redevelopment district.

Council Member Sorey expressed concern for the lack of sufficient lighting and suggested a sign be placed near the City's parking garage directing overflow parking to this lot. He recommended monitoring costs for future budgetary purposes, but concurred with Council Member Russell's budgeting concerns. Mr. Sorey also said that a parking garage in this location should be seriously considered.

In response to Council Member Nocera, CRA Manager Hunt quoted the cost per parking space as slightly less than \$17.00, and slightly under the anticipated cost per space of the proposed lease of the Fourth Avenue South and Fourth Street parking lot. The difference in cost between this lease and the Woman's Club reflects the latter being unavailable during the day on weekends.

In further discussion, CRA Manager Hunt offered to confirm that the valet parking permit at Zoe's had in fact expired.

**Public Comment:** (10:26 a.m.) None.

***MOTION*** by Sorey to ***APPROVE RESOLUTION 05-10759***, changing the \$4,000 rental fee to \$3,500; seconded by Taylor and unanimously carried, all members present and voting, (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 05-10760.....ITEM 13**

**A RESOLUTION APPROVING BY-LAWS FOR THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD (CRAAB); AND PROVIDING AN EFFECTIVE DATE.** (10:26 a.m.) Title read by City Attorney Robert Pritt. City Manager Robert Lee explained that this was initiated to provide clearer direction as to the responsibilities and purpose of the Community Redevelopment Agency Advisory Board (CRAAB). City Attorney Pritt confirmed that while he had reviewed this proposal, that Robert's Rules of Order had never been adopted by Council and therefore, are not applicable here. CRA Manager Chet Hunt said it was important to remember that the CRAAB, after Council approval of these by-laws, would no longer be simply an advisory board, but would operate in a quasi-judicial capacity.

**Public Comment:** (10:29 a.m.)

***MOTION*** by MacIlvaine to ***APPROVE RESOLUTION 05-10760***, as submitted; seconded by Russell and unanimously carried, all members present and voting, (MacIlvaine- yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).

**RESOLUTION 05-10761 (Added Item; see Item 4) .....ITEM 14**

**A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN FOURTH AND FOURTH ASSOCIATES, INC. AND THE CITY OF NAPLES FOR THE PARKING LOT AT THE SOUTHEAST CORNER OF FOURTH AVENUE SOUTH AND FOURTH STREET SOUTH FOR PUBLIC PARKING; AND PROVIDING AN EFFECTIVE DATE.** (10:29 a.m.) Title read by City Attorney Robert Pritt.

**Public Comment:** (10:30 a.m.) None.

***MOTION by Russell to APPROVE RESOLUTION 05-10761, as submitted, seconded by MacIlvaine and unanimously carried, all members present and voting, (MacIlvaine-yes, Nocera-yes, Russell-yes, Sorey-yes, Taylor-yes, Wiseman-yes, Barnett-yes).***

Following the vote, Council concurred with Mayor Barnett's recommendation that information regarding this additional parking be posted on the City's website. Council Member Sorey suggested that the words "private property" be eliminated from signage and Council Member Taylor suggested maps indicating the locations of the available parking be provided to the retail businesses on Fifth Avenue South. CRA Manager Chet Hunt offered to follow up on these suggestions along with recommending that the Fifth Avenue Association likewise place the same information on its website.

**(Added Item; see Item 4) .....ITEM 15  
DISCUSSION REGARDING DEFERRED RETIREMENT OPTION PLAN (DROP) FOR  
CITY CLERK.**

Mayor Barnett advised that, at Council's direction, he had confirmed with City Clerk Tara Norman that she was not willing to consider options other than a Deferred Retirement Option Plan (DROP). He also addressed concerns from the previous workshop that a DROP would cause retention of undesirable employees, asserting that, if this were the case, the organization's evaluation process should be seriously reviewed if such an undesirable employee were allowed to achieve a 30-year tenure.

Council Member Sorey further noted that if City Clerk Norman were to retire immediately she would be eligible for 75% of her salary, making this an economic issue despite her dedication to the City. He said that he suggested retirement and then entering into a consulting arrangement with the City Clerk for a period of time yet to be determined and that the Council consider a Deputy City Clerk who could engage in an extended training period, thereby being prepared to step into the City Clerk's position when Mrs. Norman leaves. Mr. Sorey expressed concern both for the lack of periodic evaluations and a process from which a successor could be appointed.

Council Member Russell said that he, however, continues to believe that a DROP is the best solution, tailored exclusively for the City Clerk, and with the possibility of later exploring the program Citywide. Mr. Russell stressed that a DROP could be implemented with no impact upon the organization or the City as a whole.

Council Member Taylor nevertheless expressed concerns regarding the possibility of a DROP becoming subject to collective bargaining. City Manager Lee said that, because City Clerk Norman answers to Council, there is justification to offer it in this instance; however, there are currently several union contracts and each stands on its own. He said that there is always the possibility that a bargaining unit would negotiate for a DROP.

Vice Mayor Wiseman said that although both the County and the State have DROP programs in place, it has never before been requested in the City; however, should this occur among the various City bargaining units, it could during negotiations result in trade-offs for other benefits. If the DROP program is cost-neutral and can be traded for a benefit that is not cost-neutral, she said, then it becomes a benefit to the City. She said she agrees with Council Member Russell that consideration of a DROP Citywide can be deferred to a later date, the current issue being



whether or not City Clerk Norman is retained. Mrs. Wiseman said that it was important to note that Mrs. Norman is neither intimidating nor attempting to influence the situation; she had, however, stated her desire to stay, although economically a DROP is necessary in order to avoid a loss of benefits. This is rational and fair, Mrs. Wiseman said, and offered her support.

Council Member Russell agreed and said that while he is always sensitive to possible uncompromising situations relative to collective bargaining, this is a unique employee who, until recently, had been working without a contract setting forth pay raises and has thereby, also suffered economically. He stressed that this can be a one-time decision that provides a net benefit to the City. Mr. Russell said that he does agree with Council Member Sorey that steps should be taken to ensure continuity within the City Clerk's Office.

Council Member Sorey expressed concern for what he characterized as an ultimatum by City Clerk Norman and stressed other benefits, such as vacation and sick time, would continue to be received, representing a financial impact to the City with which he remains troubled.

Council Member MacIlvaine said that there are many versions of DROP programs and the City will have to seriously analyze and decide what the City's version would be for this one employee; personnel policies tailored for one must be applied to the whole, he added. He said that while he supported showing honor and respect to a deserving employee, it would be a mistake for the City to institute a new pension program for one employee that will be desired by the unions, the results of which are still unknown.

Mayor Barnett offered a motion to explore a DROP program that is cost-neutral, tailored exclusively for City Clerk Norman. Council Member Russell offered a second, however, further discussion ensued.

**Public Comment:** (10:38 a.m.) **Sue Smith, 15-11th Avenue South**, said the City has been fortunate to have qualified and dedicated City Clerks throughout the years, considering what a challenging and difficult job it is. She said City Clerk Norman is reflected by her loyal and dedicated staff and that she brings to the City qualifications that cannot be replaced. The City Clerk's Office is the brain of the City and serves not just City Hall but the entire community, Mrs. Smith said, and questioned the level of concern for bargaining units negotiating for a DROP when the County and the State both offer it. Mrs. Smith also said that the City Manager and the City Clerk are comparable in importance and questioned whether Council would ponder the City Manager's proposed salary increase to the extent that the DROP issue had been discussed. Furthermore, she said that there were no members of staff that could sufficiently fill the City Clerk's position and she cautioned that Council is not taking the necessary action to retain City Clerk Norman.

Mayor Barnett said that after hearing from both City Manager Lee and Human Resources Director Denise Perez, he was very comfortable in offering a DROP to City Clerk Norman and that he would never consider action that may put the City at risk.

Council Member Taylor inquired as to how long ago the General Pension Board had discussed DROP programs. Council Member MacIlvaine said that the concept had been discussed on

several occasions over the previous five years. He explained that a DROP is an alternative program that is generally authorized by a union agreement and is subject to negotiation. He stressed that the Pension Board is to be attentive to the pension benefits of participants, not necessarily the City; however, the Board is not in a position to initiate such a program.

Vice Mayor Wiseman stressed that any employee, or employee group, can request and negotiate for any benefit, and that she was unable to perceive a negative aspect of offering a DROP program to the City Clerk. Council Member Taylor said the difference is the concept versus the reality of any benefit offered to one employee, but not others.

City Manager Lee said that comparisons between employment contracts and the various pension plans in the County and State could be presented, but stressed that there are many differences in the various department director contracts and pensions plans. He also indicated that he had attempted to maintain neutrality and sensitivity regarding this issue and that there may be questions raised; however, the City Clerk position reports directly to City Council and differing contracts are not unusual.

Council Member Russell said Council Member MacIlvaine's comments had reassured him that offering a DROP to City Clerk Norman would not have a negative effect on future collective bargaining, pointing out that a DROP had, in fact, been discussed several times in the past and yet it had not been presented as an element of contract negotiations. Council Member MacIlvaine, however, predicted that allowing the program would indicate that the City is now interested in negotiating it.

**MOTION by Barnett DIRECTING STAFF TO EXPLORE A DEFERRED RETIREMENT OPTION PLAN (DROP) EXCLUSIVELY FOR CITY CLERK TARA NORMAN, THAT WILL REMAIN COST NEUTRAL TO THE CITY.**  
***This motion was seconded by Russell and carried 4-3 (Wiseman-yes, Nocera-yes, MacIlvaine-no, Taylor-no, Russell-yes, Taylor-no, Barnett-yes).***

During the vote, Council Member Sorey characterized the decision as unfortunate because other alternatives might be available; he also expressed concerns for the lack of an established plan to replace City Clerk Norman, if she were to leave. Mayor Barnett confirmed that Human Resources Director Perez would begin the development of a DROP, as well begin preparations to assure continuity of the City Clerk's duties and responsibilities.

Vice Mayor Wiseman said that she understood City Clerk Norman is, in fact, training the current Deputy City Clerk, Jessica Rosenberg, and that she found Council Member Sorey's comments insulting; she said that she has had occasion to work with the staff of the Clerk's Office and has found them to be responsive, competent, and loyal. Council Member Sorey said that he agreed, however, he suggested a Deputy City Clerk be recruited to begin training for the day when City Clerk Norman does retire. Council Member Taylor said that the responsibility for hiring the City Clerk lies with the Council, but filling the Deputy City Clerk position does not; she also questioned the advisability of the City Clerk hiring her own replacement. Mayor Barnett said that he did not believe that City Clerk Norman would retire in a manner that would leave either her department or the City in jeopardy. Mayor Barnett suggested a workshop discussion with City Clerk Norman regarding the particular elements of her retirement and whether a member of her staff could begin training as a replacement.

Vice Mayor Wiseman also noted that she and City Clerk Norman had discussed creation of a position to address public records issues Citywide.

**CORRESPONDENCE AND COMMUNICATIONS.....**

City Manager Robert Lee advised that Community Services Director David Lykins and Dockmaster Mike Klein had been working directly with the Department of Environmental Protection (DEP) regarding the mooring field, recognizing that there were occurrences in the past that had created the current situation whereby the DEP is working to assure proper legal compliance. He stressed the importance of the process being undertaken to prevent future concerns and commended both Director Lykins and Dockmaster Klein for their efforts.

Community Services Director Lykins stressed that the DEP meeting minutes referred to earlier by public speakers had not been a verbatim accounting and that statements had in fact been taken out of context. The mooring field has a value and benefit to the City, he said, and indicated his sensitivity to the concerns already expressed. However, the City Dock is the priority in that various options to correct violations must be carefully reviewed. Director Lykins said the City had now established an open communication with the DEP, and staff believes it to be correct in taking advantage of its ability to rectify all the issues that involve both the City Dock and the mooring field.

Mr. Lykins further said that the permit application process for the mooring field requires considerable supporting documentation, coupled with public notices and meetings, and formal agreements with shoreline and riparian rights owners adjacent thereto. He said that staff does feel a mooring field offers safety and protection for those other vessels seeking safe harbor, however, in light of the smallness of the City's mooring field, there are limits on the level of safety that can be expected. He said a determination still must be made regarding an appropriate location.

Regarding information provided to Council earlier in the meeting by Jim Boula, Mr. Lykins said that the City is not in a position to rely upon assumptions and, therefore, is awaiting written direction from the DEP to proceed, cautioning against taking action until this is in hand. He further acknowledged that expanding the restroom facilities at the City Dock is a requirement for mooring field permitting; he cautioned, however, that since restrooms are considered a non-water dependent facility with specialized requirements, time-consuming reviews are necessary. He, therefore, predicted a three to nine month time frame to bring the City Dock into compliance, which will then result in the opportunity to apply for a mooring field; the City has been offered a temporary use agreement from the DEP while compliance is sought, he said.

In response to Council Member Taylor, Community Services Director Lykins explained that the aforementioned minutes of a DEP meeting had correctly reflected his response to an inquiry regarding whether the City was interested in leasing a mooring field, however, his additional assertion that a mooring field must be delayed until the City Dock was in compliance had been excluded. Upon completion of corrective action at the City Dock, Director Lykins said, the DEP will be willing to support the City's request for a mooring field. He further explained that there is no dependency on the mooring field for any City Dock operations; it is strictly a service for those maritime operators who do not wish to moor at a marina and does provide an ancillary

benefit such as storm tie-up during hurricanes. He said there is not consideration for the permanent loss of the mooring field but that it is an important future element that cannot be pursued at this time. In further discussion with Council Member Taylor, Mr. Lykins noted that because just 12 vessels can be accommodated in the mooring field, the benefit offered to the boating community for securing vessels during a hurricane is therefore limited.

City Manager Lee said that currently the City is not in a position to obtain a permit for a mooring field and he noted that the City Dock revenues are approximately \$1.6 million, while the mooring field only generated approximately \$11,000 per year. He said that staff would, however, continue to work with DEP and, upon receipt of written direction would ultimately pursue the return of the mooring field.

In response to Council Member Sorey, Community Services Director Lykins said that staff shares Council's frustration in that it incorrectly assumed that the matter had been properly addressed in the past. He said that the issues have, nevertheless, now been correctly identified and staff is diligently pursuing corrective action. Director Lykins confirmed that he and Dockmaster Klein had not been involved with this issue until approximately 60 days before. Council Member Sorey, noting the arrival of a new Natural Resources Manager, urged staff to simultaneously pursue compliance at the City Dock and the legal permitting of the mooring field. Council Member MacIlvaine stressed the importance of having a clear understanding that could have avoided citations and fines assessed against the City.

Community Services Director Lykins clarified that the existence of non-water dependent facilities, structures, equipment and supplies had over time been inappropriately omitted from City Dock diagrams upon which DEP approvals are based. He said a new survey of the City Dock area had recently been conducted so as to accurately depict all elements, however, he said he presently could not guarantee the DEP would allow these elements to remain. Through further conversation with Council Member MacIlvaine, Director Lykins said staff is educating those residents affected by a mooring field as to its benefits, ensuring the level of support that the DEP requires.

City Attorney Robert Pritt confirmed for Council Member MacIlvaine that, although the State owns the submerged land, the City does have the authority to impose reasonable anchoring regulations, except as it relates to anchoring as part of vessel operation. Community Services Director Lykins confirmed that boat anchorage cannot be prohibited unless the vessel is blocking a Federal channel.

Council Member Russell, however, cautioned against ignoring the reasons the City is now in its current position, and requested that staff further clarify a timeline. He said the decision to re-install the mooring field would require Council approval and there are questionable financial implications of a potential \$50,000 improvement to the City Dock restrooms to realize just \$11,000 in revenue. City Manager Lee pointed out, however, that the issue is not as much financial as it is the avoidance of a City Dock closure. Every effort is being made to first meet compliance although the DEP is considering both the Dock and the mooring field, he added.

Vice Mayor Wiseman expressed the view that some of the present challenges could have been avoided with more City Attorney involvement, expressing disappointment with the continued issues at the City Dock. She also questioned the appropriateness of commercial enterprise being conducted on municipal property. She suggested that if the City is unable to effectively settle the problems, it might consider abandoning the City Dock. Mayor Barnett offered his support for City Attorney Pritt's involvement, noting the disruption to the City Clerk's Office which had recently occurred when a public records request had yielded over 30 boxes of records brought from storage for review by a citizen. Mrs. Wiseman said that this underscores her earlier comments regarding a central public record depository, which would alleviate delays in producing accurate and complete records.

City Manager Lee said that he fully endorses City Attorney Pritt's involvement and offered to itemize the history of the City Dock issues, committing to full disclosure to Council of even unfavorable information. He said he understands that his predecessor had devoted considerable time to dealing with City Dock issues, which remain complex. Mayor Barnett stressed that instead of seeking someone to blame, Council desires a clear understanding of what had happened and that the goal is to expediently address all the aspects involved. Council Member Nocera agreed, saying that both Council and staff are judged on the results at the City Dock and that difficulties had been going on long enough.

In response to Council Member Taylor, City Attorney Pritt suggested not involving the local legislative delegation due to the perception that may be attached to such action by other State and local agencies. City Manager Lee agreed.

**Public Comment:** (11:43 a.m.) **Joe Biasella, 860-12th Avenue South**, complained that the issues surrounding the City Dock have been over eight years in duration and that Public Comment does not occur because it is apparent that City Council is not concerned about problems, which it has the power to correct. He, however, complimented both Community Services Director David Lykins and Dockmaster Mike Klein, urging Council to ensure legal representation for staff when interacting with the various regulatory agencies. He asserted that the City had been aware that it was charging rents for mooring field usage without either an ownership or lease arrangement for the use of the property. He said that residents have indicated to him their reluctance to speak at public meetings for fear of repercussions such as those that the Fleischmann Dock was currently facing. Noting a memo by Police & Emergency Services (PESD) Chief Steven Moore (Attachment #1), Mr. Biasella contended that because he had claimed harassment before City Council, every tenant of the Fleischmann Dock had been given a citation that same day. **Jim Boula, 702 Broad Avenue South**, urged Council to direct staff to immediately pursue permits for the mooring field, noting that full support had been officially given by adjacent property owners on numerous occasions. **Henry Kennedy, Tarpon Road**, said that over the previous five years many people had informed City Council of the lack of a submerged land lease, and yet, the City continued to illegally collect rents from the anchorage. Mr. Kennedy then claimed responsibility for the public records request mentioned earlier, however, he said had requested a breakdown of the mooring field income, but that over 30 boxes of records had been taken out of storage and delivered to the City Clerk's Office. He said he had, however, located the information, which could have been provided by the Finance Department since applicable accounting codes could be obtained from these records. He alleged that diversions and delays are purposefully created by staff to prevent the public from accessing

pertinent records and to create a negative perspective of the individual making the request. He also said that he agrees that residents do not speak out for fear of repercussions.

Council Member Nocera said that he wished Council to state clearly that it is willing to legally replace the mooring field. Mayor Barnett, however, said that such a promise could not be made until the process explained earlier had been pursued; however, he confirmed that the goal is to obtain the necessary permit in order to proceed. Community Services Director David Lykins reiterated that a mooring field has been deemed to have value and that it would be pursued at the appropriate time. In response to Mayor Barnett, Director Lykins cautioned against applying for the mooring field permit until the DEP had provided written criteria for compliance. However, he committed to working on the requirements for the mooring field simultaneously with the City Dock measures, which would be going forward.

Noting comments by DEP Environmental Manager Grave McConnell at the aforementioned February 10 meeting, Council Member Taylor questioned whether staff believes it could achieve some concessions under the Butler Act. Director Lykins confirmed that the State had actually recommended that the City pursue this, however, he again stressed the necessity to delay until directions are offered in writing. City Manager Lee suggested closing this discussion to allow staff and City Attorney Pritt an opportunity to review the information presented and report to Council at a later date.

Dockmaster Mike Klein said that DEP and Henry Kennedy had requested the same information, however, upon projecting the staff time required to retrieve receipts from stored records, DEP had agreed to require the previous year's receipts only. He stressed that documentation was, in fact, being assembled to initiate protections under the Butler Act and to bring the City Dock into compliance. In addition, he said he is responding to numerous records requests, but stressed that he and Director Lykins have been addressing all of the issues but had yet to be afforded sufficient time to adequately complete the task. He, however, expressed the belief that the City Attorney should be brought in only if a situation warrants it, and appealed for patience from both the City Council and residents, pledging that staff would do everything in its power to achieve the goals of a legally compliant City Dock and mooring field. City Manager Lee said that he would ensure City Attorney Pritt's involvement, stressing, however, that this does not depreciate, in any way, the work already done by staff. Council Member Taylor expressed faith in the efforts of staff in contrast to the past. Council Member Sorey, nevertheless, received a consensus that City Attorney Pritt review and report on the mooring field rents charged. City Attorney Pritt said he would follow up, but also cautioned Council against further deliberations on these issues.

In other matters of correspondence, Council Member Sorey informed Council that he had resigned from the Southwest Florida Land Preservation Trust, inquired as to the policy for returning a t-shirt left in his City Hall mailbox, and confirmed that all e-mails sent to the City and City Council is considered public record.

City Attorney Robert Pritt advised that the proposal from the potential purchaser of the Carver Apartments would first, be presented to Council, in a workshop setting prior to being considered by the Carver Finance Board of Directors, an independent arm of City government.

**City Council Regular Meeting February 16, 2005 – 9:00 a.m.**

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In response to Mayor Barnett, City Manager Lee advised that an update on the City's parking garage would be forthcoming. Mayor Barnett then stressed the importance of Council Members completing performance evaluations for both the City Manager and the City Clerk.

Council Member Russell described a recent survey sent to the Moorings Bay residents as inadequate and questioned whether additional material was available; he urged that Council be provided copies.

**ADJOURN** .....  
12:16 p.m.

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Bill Barnett, Mayor

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Tara A. Norman, City Clerk

Minutes prepared by:

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Pamela M. Koepke, Recording Specialist

Minutes Approved: 3/16/05