



# City of Naples

City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

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## City Council Regular Meeting – February 15, 2012 – 8:29 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  
John Sorey, III, Vice Mayor

**Council Members:**

Douglas Finlay  
Teresa Heitmann  
Gary Price, II  
Samuel Saad, III  
Margaret Sulick (left 4:45 p.m.)

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**Also Present:**

William Moss, City Manager  
Robert Pritt, City Attorney  
Tara Norman, City Clerk  
Roger Reinke, Assistant City Manager  
Vicki Smith, Technical Writing Specialist  
Denise Perez, Human Resources Director  
Gregg Strakaluse, Streets & Stormwater Director  
Justin Frederiksen, Utilities Deputy Director  
Paul Bollenback, Building Service Director  
Stephen Weeks, Technology Services Director  
Thomas Weschler, Police Chief  
Robert Middleton, Utilities Director  
David Lykins, Community Services Director  
Robin Singer, Planning Director  
Roger Jacobsen, Code & Harbor Manager  
Adam Benigni, Planner  
Erica Goodwin, Planner  
Ann Marie Ricardi, Finance Director  
Christa Carrera, Floodplain Coordinator  
Jessica Rosenberg, Deputy City Clerk  
Honorable Hugh D. Hayes  
James Coletta            Alan Ziskin  
Donna Fiala             Ed Barsamian  
Penny Taylor            Milos Simovic  
John Vega                Max Furetta  
Gary Garmon            Stephania Martin  
Judy Castel Cruz       James Knafo  
Jeff Curl                 Gordon Stojkoski

Lonnie Mills  
Henry Kennedy  
Sharon Kenny  
Charles Thomas  
Linda Penniman  
Lois Selfon  
Lise Sundria  
Lou Vlasho  
Lois Bolin  
Matt Kragh  
William Kelly  
Barbara Walker  
Tony Ridgway  
Erika Hinson  
Sebastian Maillard  
Tim Hancock  
Richard Yovanovich  
George Buonocore, Jr.  
Eric Chin  
Flemming Madsen  
Marvin Easton            Lisa Garmon  
Wayne Draper            Shannon Tewell  
Sue Smith                Anthony Chinaglia  
Andrew Rapp             Larry Porter  
Bob Foreman             Alex Garland

**Media:**

Kristine Gill, Naples Daily News  
Other interested citizens and visitors

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

Reverend Lonnie Mills, Macedonia Baptist Church.

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

City Clerk Tara Norman read into the record the canvass of results of the general election of January 31, 2012, (a copy of which is appended hereto as Attachment 1). City Manager William Moss then recognized those City Council members completing terms of office, presenting gifts to each.

**SWEARING IN OF MAYOR & NEWLY-ELECTED COUNCIL MEMBERS..... ITEM 4**

The Honorable Hugh D. Hayes, 20<sup>th</sup> Judicial Circuit, administered the oath of office to Mayor John F. Sorey III, and Council Members Barnett, Heitmann and Sulick.

**RECESS (30 minutes) / ROLL CALL..... ITEM 5**

Following the above noted recess, roll call was taken as follows: Mayor John F. Sorey and Council Members Bill Barnett, Douglas Finlay, Teresa Heitmann, Gary Price, Samuel Saad and Margaret Sulick.

**SET AGENDA (add or remove items)..... ITEM 6**

***MOTION by Price to SET THE AGENDA as submitted; seconded by Finlay and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**PUBLIC COMMENT ..... ITEM 7**

(9:24 a.m.) **R. Jacobsen, no address given**, stated that the Collier County Special Olympics basketball team had again won a gold medal in a state-wide competition held in Tampa. **William Kelly, PO Box 2584**, stated that in the previous year, nearly all of the variances considered by the City Council were approved. However, he asserted, variations from the Code of Ordinances should in fact rarely be granted, and then only when other options have been exhausted or when the situation had not been caused by the petitioner. He therefore urged that the Council follow the Code.

**CORRESPONDENCE & COMMUNICATIONS..... ITEM 8**

(9:26 a.m.) Mayor Sorey explained that placing this item at the end of Council agendas had in his opinion shortchanged Council's opportunity to engage in a thoughtful discussion. Council Member Barnett however expressed concern that this practice would cause petitioners undue delay. Council Member Finlay concurred, noting this could increase attorney's fees incurred by petitioners. Mr. Barnett also suggested that Council reschedule its final meetings before the summer hiatus for two successive weeks in June. Mayor Sorey asked that the City Manager research this possibility and schedule discussion at the next meeting.

Council Member Finlay requested an item on the April workshop agenda to discuss a proposal by David Buser, president of the Seagate Property Owners Association, that Collier County should hold the Clam Bay dredging permit, instead of the Pelican Bay Services Division, noting that Dr. Buser also favors retaining the recreational component in this permit. It was the consensus of Council to move forward, inviting both Dr. Buser and Collier County Coastal Zone Manger Gary McAlpin for this discussion. In addition, Mr. Finlay requested a workshop discussion in March with regard to the Naples Bay vessel speed issue; Mayor Sorey said he would address that matter later in Correspondence.

Council Member Price stated that he had spent time over the past several months with Emergency Medical Services (EMS) and fire services personnel where he had learned of significant concerns. Mr. Price therefore offered to present a report to the City Manager for distribution to Council. Mayor Sorey asked that this item be placed on an upcoming agenda in order to receive an update.

**City Council Regular Meeting – February 15, 2012 – 8:29 a.m.**

Council Member Sulick recommended that the City focus its efforts on connectivity toward making changes at the Four Corners (intersection of US 41 and Fifth Avenue South) where Council and the business community have already acknowledged an issue. She said she had learned in a meeting with Florida Department of Transportation (FDOT) officials and local governmental staffs that any changes to US 41 would be a protracted process; the best advice is to begin modestly, she added. In response to Council Member Saad, she said she thought the FDOT staff understood the impact that roadways and transportation can have on communities, and is seeking ways to bring them back together. Mrs. Sulick then noted that Council Member Saad has recently been elected Vice Chair of the Collier County Metropolitan Planning Organization (MPO).

Council Member Saad extended congratulations to those newly elected. He also agreed with Council Members Barnett and Finlay with regard to scheduling Correspondence on the agenda; Mayor Sorey noted that if placing it at the beginning is not deemed effective, it could always be restored to the end. Agreeing with Correspondence at the beginning, Council Member Heitmann said she nevertheless favored allowing Council comments at the end of meetings to facilitate follow-up and requests. Citing failure of proposed legislation that would have preempted local authority with regard to fertilizer application, Mrs. Heitmann urged that Council develop positions on important legislative issues to convey to future legislative sessions.

Mayor Sorey noted that a Town Hall meeting would be conducted in the Council Chamber on March 26 at 6:00 p.m. He explained that following a presentation, citizens would be allowed to speak within the allotted three-minute format. Noting Council Member Finlay's mention of the vessel speed issue, he asked that Council consider forming a Naples Bay Advisory Committee to make recommendations with regard to water quality, aesthetics, habitat islands and other related topics. Mr. Finlay expressed concurrence, but maintained the need for a timely discussion regarding the vessel speed issue, specifically in order to preclude future legal issues. It was the consensus of Council to discuss this matter at the March 7 Regular Meeting, and the proposed advisory committee at the March 19 Workshop.

**CONSENT AGENDA**

**APPROVAL OF MINUTES (separate motion / see below) ..... ITEM 11-a**  
December 7, 2011 Regular, December 12, 2011 Workshop and December 14, 2011 Regular Meeting: as submitted.

***MOTION by Sulick to APPROVE THE MINUTES as submitted; seconded by Heitmann and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**APPROVAL OF SPECIAL EVENTS ..... ITEM 11-b**

- 1) McCabe's St. Patrick's Day Celebration 2012 – McCabe's Irish Pub and Grill – Sugden Plaza – 03/17/12.
- 2) Taste of Collier – Taste of Collier, Inc. – Bayfront – 05/06/12.
- 3) Naples Craft Beer Fest – Naples North Rotary Club Foundation – Bayfront – 03/10/12.
- 4) FASBID Directory Panel - Fifth Avenue South Business Improvement District – temporary construction wall – Fifth Avenue South and Park Street – through October 2012.
- 5) Evening on Fifth Mardi Gras - Fifth Avenue South Business Improvement District (FASBID) – Fifth Avenue South – 02/21/12.
- 6) Golisano Children's Museum of Naples (c'mon) – Cycling Event – Children's Museum of Naples – Park Street / Cambier Park – 04/01/12.

**RESOLUTION 12-13036** ..... **ITEM 11-c**  
**A RESOLUTION AMENDING THE 2011-12 BUDGET ADOPTED BY ORDINANCE 11-12953 TO MODIFY THE PROJECT DESCRIPTION OF UTILITIES MAINTENANCE CAPITAL IMPROVEMENT PROJECT 12X02 (PUMP STATION CONVERSIONS) TO INCLUDE PUMP STATION 17 AND PROFESSIONAL DESIGN SERVICES FOR BOTH PUMP STATIONS 6 AND 17; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 12-13037** ..... **ITEM 11-d-1**  
**A RESOLUTION REAPPOINTING WILLIAM MACILVAINE, A CITY RESIDENT, TO THE BOARD OF TRUSTEES OF THE POLICE OFFICERS' RETIREMENT TRUST FUND FOR A TWO-YEAR TERM COMMENCING FEBRUARY 20, 2012, AND EXPIRING FEBRUARY 19, 2014; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 12-13038** ..... **ITEM 11-d-2**  
**A RESOLUTION RECOMMENDING REAPPOINTMENT OF ROBERT MEISTER, A CITY RESIDENT, TO THE COLLIER COUNTY CONTRACTORS LICENSING BOARD FOR A THREE-YEAR TERM IN THE CATEGORY OF CONTRACTOR; DIRECTING THE CITY CLERK TO PROVIDE SAID RECOMMENDATION TO THE COLLIER COUNTY COMMISSION FOR APPOINTMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 12-13039** ..... **ITEM 11-d-3**  
**A RESOLUTION APPOINTING ANNABEL DREW (CURRENT ALTERNATE) TO THE CODE ENFORCEMENT BOARD FOR THE BALANCE OF A THREE-YEAR TERM EXPIRING MAY 6, 2012; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

***MOTION by Barnett to APPROVE CONSENT AGENDA (except 11-a / see above); as submitted; seconded by Finlay and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**END CONSENT AGENDA**

**RESOLUTION 12-13040** ..... **ITEM 12-a**  
**A RESOLUTION ELECTING A VICE MAYOR, PURSUANT TO SECTION 2.4 OF THE CHARTER OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.** Title not read. (9:57 a.m.) Mayor Sorey nominated Council Member Price and Council Member Saad nominated Council Member Sulick. Mrs. Sulick then withdrew her name, expressing support of Mr. Price.

**Public Comment:** (9:57 a.m.) None.

***MOTION by Sorey APPROVING RESOLUTION 12-13040 ELECTING GARY PRICE AS VICE MAYOR unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**SWEARING IN OF NEW VICE MAYOR** ..... **ITEM 12-b**  
City Clerk Tara Norman administered the oath of office to Gary Price as Vice Mayor of the City of Naples.

**CITY COUNCIL RULES OF PROCEDURE (Discussion only)** ..... **ITEM 13**  
**REVIEW AND DISCUSSION OF PROPOSED CITY COUNCIL RULES OF PROCEDURE.** (9:58 a.m.) Council conducted an in-depth discussion of the proposed changes, following which it was determined that each Council Member would submit their comments and specific suggestions in writing to the City Manager. (It is noted for the record that the initial draft of the document discussed at this meeting is contained in the file for this meeting in the City Clerk's Office.)

**Public Comment:** (10:50 a.m.) **William Kelly, PO Box 2584**, cautioned that discussion must occur prior to a motion being proffered and stressed that all citizens should be allowed to speak

regarding any matter being considered. He then further urged Council to question any information provided and that all must be made available to the public. **Sue Smith, 11th Avenue South**, chastised Council Members Price and Saad for what she termed as rudeness to staff and also questioned whether Council Members were texting and receiving messages on their electronic devices during meetings. If pertinent to the City, this information should be made available to the public, she added. Mrs. Smith also cautioned against agendas and minutes being generated only in an electronic format as not all members of the public have access to computers or the skill required to operate them.

***Discussion only - Council Members to submit specific suggestions in writing to City Manager.***

**Recess: 10:57 a.m. to 11:10 a.m.** It is noted for the record that the same Council Members were present when the meeting reconvened.

**RESOLUTION 12-13041 ..... ITEM 9**  
**A RESOLUTION DETERMINING CONDITIONAL USE PETITION 11-CU9 PURSUANT TO SECTIONS 50-103(e) AND 50-107 OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO GRANT APPROVAL OF A PARKING NEEDS ANALYSIS IN ORDER TO ALLOW LE LAFAYETTE RESTAURANT TO OPERATE WITH 20 PARKING SPACES WHERE THE CODE REQUIRES 45 PARKING SPACES, AMENDING THE PRIOR CONDITIONS OF APPROVAL IN RESOLUTION 09-12486 FOR PROPERTY IN THE C1 RETAIL SHOPPING DISTRICT, OWNED BY PRATT SHOES, INC., LOCATED AT 375 13<sup>TH</sup> AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (11:11 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made ex parte disclosures to the effect that all had received e-mails. Additional disclosures included: Barnett, Finlay and Sulick/no further contact; Price/spoke with petitioner, Sorey/spoke with petitioner's agent, owner of Pratt Building and citizens; Saad/spoke with Charles Thomas; and Heitmann spoke with neighbors and concerned business owners. Attorney Richard Yovanovich, agent for the petitioner, explained that since the prior consideration of the petition, he had worked with staff to draft the provision for the development of an operational plan for the restaurant. This plan identifies service or seating areas, to be calculated at 1 parking space per 100 square feet; the remainder of indoor space, kitchen and storage, etc., at 1 space per 300 square feet; and then outdoor dining at 3 per 1,000. Staff is to review and approve the plan, he added. Solutions exist to meet whatever parking requirement staff approves, including the submitted valet parking plan providing 27 on-site spaces. He further reminded Council that parking in the Aragon Building lot would remain available for use by the petitioner so long as the original reciprocal parking agreement stands. The agenda memorandum (Attachment 2) and resolution contain a chart reflecting the petitioner's calculation of the square footage equating to the need for 27 parking spaces during evening hours with valet service being provided, he explained, reiterating that should staff decide that more than 27 spaces are required, solutions exist to meet this as well, which are also contained in the aforementioned memorandum and the draft resolution. In addition, he assured Council that the City's Traffic Engineer must approve the final valet parking plan. Following additional discussion, Council Member Saad recommended the amended language contained in the motion below requiring that the operational plan be approved by staff prior to commencement of operation under the revised plan.

Planning Director Robin Singer summarized the above referenced agenda memorandum prepared by Planner Erica Goodwin, stating that staff believed that the bar should be included within the seating area of the restaurant and that the petitioner had indicated that the calculations above noted did not do so. The revised operational plan should be very similar to

that previously approved, she said, with the main difference being the lowered number of required parking spaces as the prior plan was calculated at 1 space to 100 square feet of interior area for the entire restaurant and will stipulate that the approval is for “quality sit down” dining only. The draft resolution contains staff’s understanding of Council’s direction from the prior consideration of this petition, she concluded.

**Public Comment:** (11:46 a.m.) **George Buonocore, 340 13<sup>th</sup> Avenue South**, explained that his place of business is across the street from the subject establishment, and that he supports the restaurant and its location near a side street. Retail business has been very slow, he said, and the restaurant draws customers to the area. The restaurant does not create parking issues as some of the other nearby ones do, he pointed out. **Bob Foreman, 416 12<sup>th</sup> Avenue South**, provided a brief history of the restaurant and its petitions, cautioning that he believed the parking requirements for the Third Street South area must be reviewed for all businesses in the district, including the one under discussion. **Tony Ridgway, 1300 Third Street South**, stated that the parking requirements should be left alone, that they work and the Code of Ordinances should be followed. He cautioned that the conditional use under consideration contains no conditions for future users and that he continues to follow conditions imposed on his restaurant in 1976. **Barbara Walker, representing Neapolitan Enterprises**, indicated continued concerns that an actual plan had not been submitted for this operation and should be available prior to any approval. This would allow a future appeal should the plan not meet the parking needs of the restaurant, she stated, and also contended that the decision-making was being delegated to staff and the petitioner which is not the case with other restaurants in the area who sought conditional uses. She added that it should be clearly stated that the subject conditional use is based upon a parking needs analysis and does not permanently amend the Code nor set a precedent; any future remedy to meet the restaurants parking needs must meet the code also. **Erika Hinson, 347 Central Avenue**, stated that she had been asked by the Finnegan’s to confirm that Council was in receipt of their e-mail from the prior day (a copy of which is contained in the file for this meeting in the City Clerk’s Office) and to voice her own concern with the parking situation, referencing a situation which occurred on 12<sup>th</sup> Avenue South the prior weekend in which a valet service had blocked off the on-street parking.

Attorney Yovanovich summarized that the alternative parking calculation to be utilized is contained in the Code and under normal conditions, its use would be approved administratively. Due to the prior conditional use granted Le Lafayette, Council’s approval became necessary to amend that prior permit, he explained. Other restaurants in the district have been allowed to utilize the alternative calculations and therefore it is not unprecedented. He reiterated that the reciprocal parking agreement between the Pratt Building and Aragon Building will remain in effect and the only change will be that the Aragon Building will be allowed to have tenants with hours of operation after 5:00 p.m. Nevertheless, the parking lots of both buildings will be available for use by either building’s tenants and/or patrons. A parking problem does not exist and the petitioners merely want to be treated similarly to other businesses in the area, he concluded.

Additional discussion followed during which Director Singer confirmed that the operational plan would be based upon performance criteria as contained in the resolution (alternative parking calculation, see Attachment 2, Page 2) and that valet parking would be required each evening unless it is proven not needed. The motion below was then proffered.

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**MOTION** by Saad to **APPROVE RESOLUTION 12-13041** amended as follows: **Section 2-3: "...by the business and shall be approved by staff prior to commencement of operation under the revised plan."** This motion was seconded by Price and carried 5-2, all members present and voting (Heitmann-no, Finlay-yes, Price-yes, Barnett-yes, Sulick-no, Saad-yes, Sorey-yes).

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Recess: 12:20 p.m. to 12:58 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

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It is noted for the record that Items 10-a and 10-b were read and considered concurrently.

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**RESOLUTION 12-13042 ..... ITEM 10-a**  
**A RESOLUTION DETERMINING PRELIMINARY AND FINAL (RECORD) PLAT APPROVAL FOR RSI NAPLES (PETITION 12-SD1), A REPLAT OF LOTS 1 THROUGH 5 INCLUSIVE, 11 THROUGH 32 INCLUSIVE, THE NORTH 4 FEET OF LOT 6, AND THE VACATED NORTH-SOUTH AND EAST-WEST ALLEYS, BLOCK 17, TIER 10, SEABOARD REPLAT AS RECORDED IN PLAT BOOK 1, PAGE 59 TO REPLAT 5 EXISTING PARCELS (27 LOTS MORE OR LESS) INTO ONE PARCEL (APPROXIMATELY 2.305 ACRES) LOCATED NORTH OF FOURTH AVENUE SOUTH, SOUTH OF THIRD AVENUE SOUTH, EAST OF US 41 AND WEST OF TENTH STREET SOUTH, OWNED BY RSII PROPERTIES, INC., MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 12-13043 ..... ITEM 10-b**  
**A RESOLUTION DETERMINING SITE PLAN WITH DEVIATIONS PETITION 12-SPD1 TO ALLOW FOR CONSTRUCTION OF AN APPROXIMATELY 60,000 SQUARE FOOT COMMERCIAL BUILDING IN THE D-DOWNTOWN DISTRICT AND C2, GENERAL COMMERCIAL DISTRICT, FOR PROPERTY OWNED BY RSII PROPERTIES, INC., LOCATED NORTH OF FOURTH AVENUE SOUTH, SOUTH OF THIRD AVENUE SOUTH, EAST OF US 41 AND WEST OF TENTH STREET SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Titles read by City Attorney Robert Pritt (12:59 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Barnett and Finlay/met with the petitioner and petitioner's agent and received numerous e-mails; and Price, Sorey, Sulick, Saad and Heitmann/visited the site, met with the petitioner and petitioner's agent and received numerous e-mails. Architect Matthew Kragh, agent for the petitioner, utilized an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office) in providing an overview of the replat and site plan. Following a brief history of the subject property, he listed the requested deviations for the proposed Robb & Stucky furniture store. He pointed out that the replatted property could routinely contain a three-story, 60,000 square foot building with 180 parking spaces but due to the architecture and landscaping embellishments the current proposal had been necessary. Rather than the "D" Downtown District requirement of 3 parking spaces per 1,000 square feet, a furniture store requires only 1 space per 500 square feet as mandated in other districts. All parking is to be contained on-site, he said, pointing out that the business should be viewed as an anchor store for the Tenth Street / Design District. In response to Council Member Heitmann, Tim Hancock with Davidson Engineering explained that the stormwater collection system would capture approximately 20% more than required by the City by utilizing an underground exfiltration system.

Planner Adam Benigni reviewed the requests as contained in his agenda memorandum (Attachment 3), noting that the Planning Advisory Board (PAB), Design Review Board (DRB), and staff recommended approval.

**Public Comment:** (1:34 p.m.) **William Kelly, PO Box 2584**, questioned the proposed use of City right-of-way for a sidewalk along Third Avenue South and the claim that a turn lane would be added, observing that the thoroughfare, although not striped, is in fact four lanes with the turn lane actually marked. He also cautioned that Council is not required to approve all of the requested deviations, but is allowed to choose in the interest of betterment of the City. **Sue Smith, 11th Avenue South**, sought responses to the questions of the previous speaker. In response to the public comments, Mr. Kragh stated that Third Avenue South is two lanes in that block and that while the sidewalk could be placed on the subject property without affecting the size of the structure, then no landscaping, only a 10-foot wide strip of concrete will exist along the roadway. The street plan for Third and Fourth Avenues South had been copied from that of the City's streetscape plan for that area, Mr. Kragh pointed out.

**MOTION by Saad to APPROVE RESOLUTION 12-13042 as submitted; seconded by Barnett and unanimously carried, all members present and voting (Saad-yes, Sulick-yes, Heitmann-yes, Finlay-yes, Price-yes, Barnett-yes, Sorey-yes).**

**MOTION by Saad to APPROVE RESOLUTION 12-13043 as submitted; seconded by Barnett and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).**

Following the above motions, City Attorney Pritt informed Mr. Kragh that the mylars must be amended to reflect the current Mayor.

**RESOLUTION 12-13044 ..... ITEM 14**  
**A RESOLUTION DETERMINING VARIANCE PETITION 12-V1 FROM SECTION 58-914(9) OF THE CODE OF ORDINANCES TO ALLOW A GROUND SIGN ON A PARCEL FRONTING ON EIGHTH STREET SOUTH IN THE D-DOWNTOWN DISTRICT WHERE GROUND SIGNS ARE ONLY PERMITTED ON PARCELS FRONTING US 41 AND GOODLETTE-FRANK ROAD, SAID PROPERTY OWNED BY HHH INVESTMENTS LIMITED PARTNERSHIP, LOCATED AT 201 EIGHTH STREET SOUTH AND MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:44 p.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Heitmann, Saad, Sorey and Price/visited the site but no contact; Sulick and Finlay/familiar with site but no contact; and Barnett/occupies an office located in subject building (creating no conflict) but no contact. Attorney John Vega, agent for petitioner, explained that the sign is needed by tenants of the Baker Building to aid patrons and that prior to the enactment of the "D" Downtown District zoning regulations, the proposed signage would have been allowable. Planner Adam Benigni provided a brief overview of the petition as contained in his agenda memorandum (Attachment 4), noting that the Planning Advisory Board (PAB) and staff recommended approval. In response to Vice Mayor Price, Mr. Benigni assured him that staff would confirm that the sign would not be installed at a greater height than the allowable 5'6". Attorney Vega agreed that the sign would be unlit and that a condition could be added referencing this restriction as reflected in the motion below.

**Public Comment:** (1:51 p.m.) None.

**MOTION by Saad to APPROVE RESOLUTION 12-13044 amended as follows: adding Section 2-3: "The sign shall not be illuminated." This motion was seconded by Price and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)**



**RESOLUTION 12-13045 ..... ITEM 15**  
**A RESOLUTION DETERMINING OUTDOOR DINING PETITION 12-ODPB1 TO ALLOW A RESTAURANT (THE CAFÉ) TO HAVE OUTDOOR DINING EXCEEDING 100 SQUARE FEET IN AREA ON PUBLIC PROPERTY THAT IS NOT DIRECTLY ABUTTING THE STOREFRONT OF WHICH IT SERVES, LOCATED AT 821 FIFTH AVENUE SOUTH, SAID PROPERTY BEING MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (1:51 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Heitmann, Saad, Finlay, Barnett, Sorey and Sulick/visited the site and spoke with the petitioner; and Price/visited the site but no contact. In addition, all indicated receiving e-mails and/or speaking with staff. Flemming Madsen, agent for the petitioner, briefly reviewed his request utilizing an electronic presentation (a printed copy of which is contained in the file for this meeting in the City Clerk's Office). He confirmed for Council Member Finlay that the existing outdoor dining generates almost 25% of his gross revenues with this figure climbing to 50% or more during the winter tourist season.

Planner Adam Benigni reviewed his agenda memorandum (Attachment 5) which provides details of the proposal, noting that the petitioner had been operating the outdoor dining portion of his business under a right-of-way permit, with no prior consent of City Council. The current request differs slightly from the existing use, he said, in that fewer tables, which are rectangular rather than circular are being proposed which will maintain the five-foot minimum pedestrian walkway which was being encroached upon; no umbrellas will be located in the dining area abutting the building. The additional row of pavers will require no removal of landscaping and the three tables being proposed away from the building will be circular to facilitate seating without encroaching into the aforementioned walkway. The Design Review Board (DRB) as well as staff recommends approval, Mr. Benigni concluded, recommending that the diagram being utilized during discussion be entered into the record and attached to the resolution (Attachment 6).

**Public Comment:** (2:12 p.m.) **Henry Kennedy, no address given,** urged that the petition be approved but that the number of tables be limited and their placement be designated due to the increasing congestion of Fifth Avenue South.

Following further discussion of the placement of the chairs and use of additional pavers in the mulched landscaping area, the motion below was proffered.

***MOTION by Sorey to APPROVE RESOLUTION 12-13045 amended as follows: adding condition that outdoor dining design shall substantially be in accordance with Exhibit "B" attached and that tables will be affixed to the sidewalk. This motion was seconded by Barnett and carried 6-1, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-no, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**RESOLUTION 12-13046 ..... ITEM 16**  
**A RESOLUTION DETERMINING OUTDOOR DINING PETITION 12-ODPB2 TO ALLOW A RESTAURANT (AQUA) TO HAVE OUTDOOR DINING, EXCEEDING 100 SQUARE FEET IN AREA ON PUBLIC PROPERTY THAT IS NOT DIRECTLY ABUTTING THE STOREFRONT OF WHICH IT SERVES, LOCATED AT 862 FIFTH AVENUE SOUTH, SAID PROPERTY BEING MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (2:35 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in

**City Council Regular Meeting – February 15, 2012 – 8:29 a.m.**

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the affirmative. City Council Members then made ex parte disclosures to the effect that all had visited the site although no contact had occurred with the exception of Mayor Sorey who indicated that he had spoken with staff on numerous occasions. Petitioner Gordon Stojkoski explained that the business had previously operated under the name of Bert's Seafood and Chowder House utilizing the existing outdoor seating permit. Remodeling and renaming to Aqua, he continued, necessitated an application for a new outdoor dining permit under the new name. Architect James Knafo, agent for the petitioner, then reviewed the requested outdoor dining, explaining that the plan is identical to the prior design. A brief discussion followed regarding outdoor food preparation, which is prohibited, and the placement of outdoor heating apparatuses.

Planning Director Robin Singer then reviewed the specifics of the petition as contained in her agenda memorandum (Attachment 7), noting that the Design Review Board (DRB) and staff recommended approval and that the circular tables could be replaced with rectangular ones should Council deem it prudent. She also confirmed for Council Member Sulick that use of the right-of-way containing the City's landscaping had become common along Fifth Avenue South east of Eighth Street and had created no major issues.

**Public Comment:** (2:54 p.m.) **Sue Smith, 11th Avenue South**, stated that she viewed the use of the public sidewalk for outdoor dining as increasingly burdensome to Fifth Avenue South pedestrians, especially those using walkers or canes.

City Attorney Pritt then questioned the necessity of Section 3-2 of the resolution which required a deposit of funds by the petitioner for restoration of the outdoor dining area should the use be abandoned or the permit revoked. Director Singer indicated that this provision had been included for consistency due to a previous approval of a similar petition for use of the public right-of-way. City Manager William Moss noted that a previous petition had involved changes to the existing structure in the right-of-way and recommended that it be removed from the subject resolution as the design has been longstanding at that site. Ms. Singer then clarified for Vice Mayor Price that the reference to the removal of tables adjacent to the building (Section 3-1) should be deleted as this had been a prior recommendation but was no longer valid. The motion below was then proffered.

***MOTION by Barnett to APPROVE RESOLUTION 12-13046 amended as follows: Section 3-1: "...However, the tables...be omitted."; and deleting Section 3-2. This motion was seconded by Sorey and carried 5-2, all members present and voting (Heitmann-no, Finlay-yes, Price-yes, Barnett-yes, Sulick-no, Saad-yes, Sorey-yes).***

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**Recess: 3:17 p.m. to 3:30 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.**

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**RESOLUTION 12-13047 ..... ITEM 17**  
**A RESOLUTION DETERMINING INDOOR AND OUTDOOR LIVE ENTERTAINMENT PETITION 12-LE3 FOR OSETRA CAVIAR & CHAMPAGNE LOCATED AT 469 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:30 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Heitmann and Sulick/visited the sit but no contact; Saad/familiar with the site and spoke with the petitioner; Sorey and Barnett/visited the site and spoke with the petitioner; Price and Finlay/familiar with the site but no contact. Council Member Saad then recommended continuing this and the next two items until a more comprehensive policy could be established dealing with outdoor live entertainment on Fifth Avenue South. He then proffered a motion to

continue this item which was seconded by Council Member Heitmann, explaining that the three establishments are closely situated and may result in competition between entertainers. City Attorney Pritt cautioned that the petitioner nevertheless has a right to be heard prior to voting for each continuance.

Agents for the petitioner, Anthony Chinaglia and Milos Simovic, then explained that they understood Council's concerns and expressed a willingness to work with the other petitioners with regard to the outdoor requests. Mr. Chinaglia then offered to limit the subject petition to indoor live entertainment, thereby allowing the three businesses to reach an agreement with regard to the outdoor portion of their requests. The motion to continue was then withdrawn by the motion maker and the seconder.

Planner Adam Benigni explained that staff had recommended approval of the initial request as detailed in his agenda memorandum (Attachment 8), adding that staff also recommended approval of the petitioner's amended request as stated above. (It is noted for the record that a brief discussion of amending the second Whereas followed and Mr. Benigni pointed out that Whereas clauses are not amended as they reflect the original request/information as reflected in the petition.)

**Public Comment:** (3:48 p.m.) **Gary Garmon, 480 Fifth Street South**, commended the Fifth Avenue South street lighting and then noted that while he supports indoor live entertainment, he is concerned with outdoor after 10:00 p.m., especially if amplified. **Lisa Garmon, 480 Fifth Street South**, and representing several seasonal residents of Kensington Gardens (located on Fourth Avenue South and Fourth Street), stated that dinner music should be provided at a level allowing conversation. **Erika Hinson, 347 Central Avenue**, indicated that she supported indoor live entertainment but four establishments within one city block offering outdoor live entertainment is excessive, suggesting instead a rotation for outdoor live music with cessation at 10:00 p.m. except on weekends. At that time, City Manager William Moss noted receipt of an e-mail from the property manager of Kensington Gardens which was entered into the record and is contained in the file for this meeting in the City Clerk's Office. **Judy Castel Cruz, 364 Fourth Avenue South**, observed that while she enjoys living in Old Naples, the loud music, especially outdoors, is not needed to maintain the desired character and ambience of the City.

**MOTION by Saad to APPROVE RESOLUTION 12-13047 amended as follows:**  
**Title: "A resolution determining indoor and ~~outdoor~~ live entertainment...effective date."; and"; Section 1: "That Indoor and ~~Outdoor~~ Live...described as:..." and deleting Section 2-2. This motion was seconded by Barnett and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).**

Mayor Sorey cautioned the petitioners to adhere to the City's noise ordinance.

**RESOLUTION 12-13048 ..... ITEM 18**

**A RESOLUTION DETERMINING INDOOR AND OUTDOOR LIVE ENTERTAINMENT PETITION 12-LE4 FOR BELLINI ON FIFTH LOCATED AT 445 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:59 p.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made ex parte disclosures to the effect that all were familiar with the site and had had no contact except Council Member Saad who indicated that he had visited the site. Agents for the petitioner, Max Furetta and Stephania Martin, explained

that following the discussion during Item 17 above, they would be willing to amend their request to that reflected in the motion below.

Planner Adam Benigni reviewed the request as contained in his agenda memorandum (Attachment 9), advising that staff recommended approval as submitted.

**Public Comment:** (4:12 p.m.) **Alan Ziskin, 585 West Lake Drive**, explained that amplified music carries across nearby Spring Lake and that live entertainment after 10:00 p.m. is too late for most residents. He then played for Council an audio clip from his cell phone which he stated had been recorded over a block away from where the singer had been performing, noting the loudness even at that distance. He urged that outdoor live entertainment be reviewed.

**MOTION by Price to APPROVE RESOLUTION 12-13048 amended as follows: Section 2-1 and 2-2: "...up to 2 3 entertainers on Sundays through Thursdays Wednesdays from 5:00 p.m. to 10:00 p.m. 11:30 p.m. and on Fridays and Thursday through Saturdays from 5:00 p.m. to 12:00 a.m. (midnight)..."; and Section 2-3: "...through Thursdays Wednesdays ...". *This motion was seconded by Barnett and carried 4-3, all members present and voting (Finlay-yes, Sulick-no, Heitmann-no, Price-yes, Barnett-yes, Saad-no, Sorey-yes).***

**RESOLUTION 12-13049 ..... ITEM 19**

**A RESOLUTION DETERMINING OUTDOOR LIVE ENTERTAINMENT PETITION 12-LE5 FOR CAFÉ LUNA LOCATED AT 467 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (4:23 p.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made ex parte disclosures to the effect that all were familiar with the site and had no contact; in addition, Council Members Saad, Sulick and Barnett reported that they had visited the site. Shannon Tewell and Ed Barsamian, agents for the petitioner, explained that they wished to have outdoor live entertainment similar to that of Paddy Murphy's, noting a verbal agreement with that establishment that both would not stage music at the same time. Due to the discussion which occurred during Item 17 above, the request was amended to Friday and Saturday nights only, from 9:00 p.m. to 12:00 a.m. In response to Vice Mayor Price, Mr. Barsamian confirmed that the request was for the entertainers to be stationed outside in the newly constructed patio area.

Planner Adam Benigni then provided staff's summary of the request as contained in his agenda memorandum (Attachment 10), noting its recommendation for approval subject to amended hours for the entertainment.

**Public Comment:** (4:30 p.m.) **Gary Garmon, 480 Fifth Street South**, explained that his main concern is that the music is to be amplified and outdoors.

Council Member Finlay expressed his support of a workshop discussion to address the issues of outdoor live entertainment along Fifth Avenue South, noting his continued opposition to Thursday evening entertainment later than 10:00 p.m. in consideration of residents who work on Fridays. Council Member Barnett then proffered the motion below. City Attorney Pritt cautioned against the petitioner speaking on behalf of Paddy Murphy's management with regard to the above referenced agreement.

**MOTION by Barnett to APPROVE RESOLUTION 12-13049 amended to allow outdoor live entertainment Fridays and Saturdays, 9:00 p.m. until 12:00 a.m. (with petitioner agreeing to refrain from concurrent outdoor entertainment with Paddy Murphy's) **FAILED** due to lack of a second.**

Following the failure of the above motion, Council Member Saad also stated his concern with live entertainment on Fifth Avenue South, proffering the motion below to allow time for a workshop and development of a policy. Mr. Barsamian offered to place the entertainers indoors but the motion stood.

**MOTION by Saad to CONTINUE RESOLUTION 12-13049; seconded by Heitmann and carried 6-1, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-no, Sulick-yes, Sorey-yes).**

City Attorney Pritt observed that a date certain should be set for the item to be heard again and discussion followed during which City Manager William Moss added that should the date be set for April 18<sup>th</sup> as discussed, the March workshop schedule would require amendment. Mr. Pritt added that the winter tourist season would be over by the time the item is reconsidered and Council Member Price suggested that the petition be reconsidered immediately, placing the entertainers indoors as was approved in Item 18 above. Council Member Barnett agreed and proffered the motion below.

**MOTION by Barnett to RECONSIDER RESOLUTION 12-13049; seconded by Finlay and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).**

Council Member Barnett then proffered the motion reflected below.

**MOTION by Barnett to APPROVE RESOLUTION 12-13049 amended as follows: Section 2-1: "...entertainers located indoors, doors and windows may remain open, on Fridays and Sundays through...Thursdays through Saturdays from 9:00 p.m. 6:00 p.m. until 12:00 a.m. (midnight).". This motion was seconded by Price and carried 5-2, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-no, Price-yes, Saad-no, Sulick-yes, Sorey-yes).**

It is noted for the record that Council Member Sulick left the meeting at 4:45 p.m. and did not return.

**RESOLUTION (Continued – see motion below) ..... ITEM 20  
A RESOLUTION DETERMINING A MARINE PERMIT TO REMOVE A SEAWALL AND FILL EXTENDING PAST THE PROPERTY LINE AT 1493 BLUE POINT AVENUE AND TO CONSTRUCT A NEW SEAWALL ALONG THE PROPERTY LINE; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (4:44 p.m.) This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony; all responded in the affirmative. City Council Members then made ex parte disclosures to the effect that while no contact had occurred, Mayor Sorey and Council Member Heitmann had visited the site; the remainder of Council indicated familiarity with the site. Agent for the petitioner, Alex Garland, Garland & Garland Marine Construction, reviewed the specifics of the proposed relocation of a seawall, explaining that when originally dredged, the platted property line was not utilized. The existing seawall is actually beyond the property line, he said, and Larry Porter (sworn separately), with PorterVanArsdale Construction, explained that upon surveying the property, the encroachment into the canal had been discovered. City Attorney Pritt recommended that the item be continued to allow the petitioner to produce the title work to support property ownership. Vice Mayor Price additionally requested that the setbacks for the structure be verified as having been measured from the valid property line and not the one involving the encroachment into the canal.

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

**MOTION by Price to CONTINUE THIS RESOLUTION TO MARCH 7, 2012 REGULAR MEETING; seconded by Saad and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes).**

**WAIVER OF CONFLICT ..... ITEM 21**  
**APPROVING A WAIVER OF CONFLICT TO ALLOW THE CITY ATTORNEY / ROETZEL & ANDRESS TO CONTINUE TO REPRESENT THE CITY OF NAPLES AS ISSUER'S COUNSEL FOR THE 2007A AND 2007B BOND REFUNDING.** (4:57 p.m.) City Attorney Robert Pritt briefly explained the need for the Waiver of Objection to Conflict of Interest as contained in his agenda memorandum (Attachment 11), noting that Branch Banking & Trust (BB&T) had already signed the waiver document (a copy of which is contained in the file for this meeting in the City Clerk's Office). In response to Council Member Heitmann, Mr. Pritt clarified that his firm, while representing both the City and BB&T in certain matters, does not perform any work in conjunction with the issuance of bonds for the bank; therefore, both entities may waive objection as no direct conflict exists. Bond Counsel Wayne Draper explained that the bank is the lender and will hold the bonds in this instance.

In response to Vice Mayor Price, City Attorney Pritt explained that should the City not waive its right to object to a conflict of interest then another attorney would be sought to act in his stead; this transaction is time sensitive as the bonds can be prepaid only on March 1 and September 1 of each year for the life of the bond. Such transactions move quickly and the refinancing date may be missed, Mayor Sorey stated.

**Public Comment:** (5:01 p.m.) None.

**MOTION by Sorey to APPROVE THIS ITEM; seconded by Finlay and carried 5-1 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-no, Saad-yes, Sulick-absent, Sorey-yes).**

**RESOLUTION 12-13050 ..... ITEM 22**  
**A SUPPLEMENTAL RESOLUTION OF THE CITY OF NAPLES, FLORIDA AUTHORIZING THE ISSUANCE OF A NOT TO EXCEED \$8,525,000 PUBLIC UTILITIES REFUNDING REVENUE BOND, SERIES 2012A AND A NOT TO EXCEED \$4,975,000 PUBLIC UTILITIES REFUNDING REVENUE BOND, SERIES 2012B TO REFUND CERTAIN INDEBTEDNESS AND TO PAY COSTS RELATED THERETO; AWARDING THE SALE THEREOF TO BRANCH BANKING AND TRUST COMPANY BASED ON THE CONDITIONS DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:01 p.m.). Finance Director Ann Marie Ricardi provided a brief summary of the item as contained in her agenda memorandum, noting that the refinancing will save the Water Sewer Fund over \$1-million over the remaining 15-year life of the bonds. Bond Counsel Wayne Draper agreed with Ms. Ricardi's summary.

**Public Comment:** (5:04 p.m.) None.

**MOTION by Barnett to APPROVE RESOLUTION 12-13050 as submitted; seconded by Finlay and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes).**

**ORDINANCE (First Reading)..... ITEM 25**  
**AN ORDINANCE AMENDING SUBSECTIONS (1) AND (2) OF SECTION 16-146, CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF ADOPTING THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE STUDY (FIS) AND FLOOD INSURANCE RATE MAPS (FIRMS) REVISED MAY 16, 2012 FOR COLLIER COUNTY AND INCORPORATED AREAS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:08 p.m.). Floodplain Coordinator Christa Carrera provided a brief introduction. (It is noted for the record that copies of the maps and the study are contained in the file for this meeting in the City Clerk's Office.)

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

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**MOTION by Finlay to APPROVE THIS ORDINANCE at First Reading as submitted; seconded by Barnett and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes).**

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It is noted for the record that Council indicated it would proceed with the meeting until 6:00 p.m. and adjourn at that time.

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**ORDINANCE (First Reading)..... ITEM 29**  
**AN ORDINANCE RELATING TO THE POLICE OFFICERS PENSION AND RETIREMENT SYSTEM OF THE CITY OF NAPLES, FLORIDA; AMENDING THE DEFINITIONS OF FINAL AVERAGE COMPENSATION, PRIOR SERVICE CREDIT AND COMPENSATION IN SECTION 29-271, DEFINITIONS; AMENDING SUBSECTIONS (2) AND (3) OF SECTION 29-273, MAINTENANCE OF FUND; AMENDING SECTION 29-311, CONTRIBUTIONS; AMENDING SECTION 29-312, REQUIREMENTS FOR RETIREMENT; REPEALING SECTION 29-313, SPECIAL RETIREMENT ELECTION FOR MEMBERS OVER AGE 45; REPEALING SECTION 29-314, SPECIAL RETIREMENT ELECTION FOR MEMBERS OVER AGE 44; AMENDING SECTION 29-317, SEPARATION FROM MUNICIPAL EMPLOYMENT; CREATING A NEW SECTION 29-327, DEFERRED RETIREMENT OPTION PLAN; CREATING A NEW SECTION 29-328, NON-APPLICATION OF CERTAIN BENEFIT CHANGES; DIRECTING THE CITY CLERK TO FILE A COPY OF THIS ORDINANCE WITH THE DIVISION OF RETIREMENT OF THE FLORIDA DEPARTMENT OF MANAGEMENT SERVICES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE. Title read by City Manager William Moss (5:09 p.m.).**

**Public Comment:** (5:11 p.m.) None.

**MOTION by Price to APPROVE THIS ORDINANCE at First Reading as submitted; seconded by Barnett and carried 5-1 (Barnett-yes, Finlay-no, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes)**

**CITY CLERK RECRUITMENT DISCUSSION..... ITEM 30**  
**REVIEW AND DISCUSSION OF THE SELECTION PROCESS FOR THE CITY CLERK POSITION INCLUDING NARROWING THE POOL OF CANDIDATES AND SCHEDULING OF INTERVIEWS.** (5:11 p.m.) City Manager William Moss briefly reviewed the agenda memorandum prepared by Human Resources Director Denise Perez (Attachment 12), noting that the pool of five candidates was to be reduced to three.

**Public Comment:** (5:13 p.m.) **Sue Smith, 11th Avenue South**, questioned the specifics of the selection process. Mayor Sorey clarified that individual interviews between the candidates and Council Members would be private and no members of the public allowed, although a final interview for each would occur during the March 7 regular meeting and the public would be in attendance and allowed to speak. In response to Mrs. Smith's claim of important knowledge regarding the candidates, Vice Mayor Price urged that she be allowed to provide that information to Council prior to any decision-making. She began by voicing her support of the two candidates currently employed in the City Clerk's Office, citing their knowledge of its operation, but took issue with several claims contained within the submittal by a current employee of the City's legal department and the fact that her husband is an elected official. **Henry Kennedy, Naples**, chastised Council for its behavior during the above speaker's comments which pertained to what he termed one of the most important offices in the City organization. He expressed his support of the two City Clerk's Office employees, adding that the consideration should not be political in nature and to select outside of the current Clerk's staff would result in the ruination of that office. None of the other candidates have any experience with the work provided by the Clerk's office and should not be considered, he concluded.

Following additional discussion during which Patricia Rambosk, Jessica Rosenberg and Vicki Smith were selected for individual interviews, Council Member Heitmann indicated that she would not be available on the two dates referenced. She stated that she would contact the City Manager's Office to determine her interview schedule.

***Consensus to proceed with interviews of Patricia Rambosk, Jessica Rosenberg and Vicki Smith on 02/17/12 and 02/21/12 except Council Member Heitmann who will require rescheduling.***

**ORDINANCE (First Reading)..... ITEM 27**  
**AN ORDINANCE RELATING TO UTILITIES; AMENDING THE DEFINITION OF CITY MANAGERIAL EMPLOYEE IN SECTION 2-972 OF ARTICLE IX, CODE OF ETHICS, AMENDING ARTICLE I, DIVISIONS 1 AND 2 OF ARTICLE II, AMENDING ARTICLE III, AMENDING ARTICLE IV, AMENDING SECTION 30-342 OF CHAPTER 30, UTILITIES, AMENDING SECTION 48-62, AMENDING SECTION 48-63 AND AMENDING SECTION 48-93(a) OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF ELIMINATING CONFLICTS BETWEEN PREVIOUSLY ADOPTED ORDINANCES; ENSURING CURRENT OPERATIONS OF THE CITY'S WATER, SEWER AND RECLAIMED WATER UTILITIES; CONSOLIDATING INFORMATION SUCH AS UTILITY RATES, APPLICATIONS FOR SERVICE AND DISCONTINUATION OF SERVICES INTO ONE SECTION OF THE CODE; UPDATING GENERAL REGULATIONS; REVISING THE PROCESS FOR APPLICATION OF SERVICE, UTILITY BILLING PROCEDURES AND RELATED BILLING REGULATIONS; AND TO CORRECT THE NAME OF THE PUBLIC WORKS DEPARTMENT TO THE UTILITIES DEPARTMENT; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:35 p.m.) City Manager William Moss provided a brief overview of his agenda memorandum (Attachment 13) which detailed the revisions to the ordinance and the necessity thereof. Following a brief discussion of the billing practice of various local utilities, including Collier County, Council Member Finlay expressed his support of monthly billing for City utilities rather than the current bi-monthly process.

**Public Comment:** (5:44 p.m.) **Marvin Easton, 944 Spyglass Lane**, utilized an electronic presentation to support his comments regarding the City's utility billing process, stressing that the collective overdue amount of more than \$1-million demonstrates its ineffectiveness. (A copy of Mr. Easton's comments and presentation are appended hereto, respectively, as Attachments 14 and 15.) He urged approval of the ordinance.

Further discussion followed during which various remedies were discussed, including completion of the electronic meter reading equipment, electronic billing and incentive programs.

***MOTION by Saad to APPROVE THIS ORDINANCE at First Reading as submitted; seconded by Barnett and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes)***

**It is noted for the record that Items 28-a and 28-b were read and considered concurrently.**

**RESOLUTION 12-13051 .....ITEM 28-a**  
**A RESOLUTION CREATING A FINANCIAL POLICY FOR THE CITY THAT EXCLUDES THE FUND BALANCE POLICY AND INCLUDING POLICIES FOR BUDGETARY AND FINANCIAL PLANNING, FINANCIAL REPORTING, CAPITAL IMPROVEMENT AND DEBT MANAGEMENT; REPEALING AND SUPERSEDING CURRENT FINANCIAL POLICY ADOPTED BY RESOLUTION 09-12512; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 12-13052 ..... ITEM 28-b**  
**A RESOLUTION CREATING A SEPARATE FUND BALANCE POLICY TO CONFORM TO THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENT 54; AND PROVIDING AN EFFECTIVE DATE.** Titles read by City Manager William Moss (6:13 p.m.). Referencing the agenda 15 memorandum by Finance Director Ann Marie Ricardi (Attachment 16), Council Member



Saad received clarification that Council had previously directed that the monthly reporting requirement in the Financial Policies be amended to reflect quarterly reports.

**Public Comment:** (6:14 p.m.) None.

**MOTION by Finlay to APPROVE RESOLUTION 12-13051 as submitted; seconded by Saad and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes).**

**MOTION by Finlay to APPROVE RESOLUTION 12-13052 as submitted; seconded by Price and carried 6-0 (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-absent, Sorey-yes).**

It is noted for the record that due to time constraints, City Council continued items 23, 24 and 26 as reflected below.

**CRA CHAIR AND VICE CHAIR SELECTION (Continued)..... ITEM 23  
SELECTING THE COMMUNITY REDEVELOPMENT AGENCY CHAIR AND VICE CHAIR  
PURSUANT TO ARTICLE III, OFFICERS, SECTION 3.1, REGULAR OFFICERS, OF THE  
COMMUNITY REDEVELOPMENT AGENCY BY-LAWS, AND FLORIDA STATUTE 163.356.**

**(Continued)..... ITEM 24-a  
AWARDING A CONTRACT FOR THE PURCHASE OF A NEW STREET SWEEPER AND  
FIVE-YEAR TURN-KEY MAINTENANCE PLAN: \ VENDOR: ENVIRONMENTAL PRODUCTS  
OF FL CORPORATION, APOPKA, FLORIDA \ COST: \$288,156 \ FUNDING: CIP 12V05 –  
STREET SWEEPER.**

**RESOLUTION (Continued) ..... ITEM 24-b  
A RESOLUTION AMENDING THE 2011-12 BUDGET ADOPTED BY ORDINANCE 11-12953  
TO APPROPRIATE FUNDS FROM THE FUND BALANCE OF THE STORMWATER  
ENTERPRISE FUND TO INCREASE THE BUDGET OF THE STREET SWEEPER PROJECT  
FOR THE PURCHASE OF A REPLACEMENT STREET SWEEPER; AND PROVIDING AN  
EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 26-1  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE AIRPORT NOISE  
COMPATIBILITY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 26-2  
A RESOLUTION APPOINTING ONE COUNCIL MEMBER AS A RESIDENT MEMBER TO  
THE BOARD OF TRUSTEES OF THE FIREFIGHTERS' RETIREMENT TRUST FUND FOR A  
TERM COMMENCING FEBRUARY 17, 2012, AND EXPIRING FEBRUARY 16, 2014; AND  
PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 26-3  
A RESOLUTION APPOINTING ONE COUNCIL MEMBER TO THE BOARD OF TRUSTEES  
OF THE GENERAL RETIREMENT SYSTEM, FOR A TERM COMMENCING FEBRUARY 15,  
2012, AND EXPIRING FEBRUARY 14, 2016; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 26-4  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE JUVENILE JUSTICE  
COUNCIL; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION (Continued) ..... ITEM 26-5  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES (COLLIER  
COUNTY) METROPOLITAN PLANNING ORGANIZATION; AND PROVIDING AN EFFECTIVE  
DATE.**

**RESOLUTION (Continued) ..... ITEM 26-6  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BOARD OF  
DIRECTORS OF THE NAPLES ART ASSOCIATION; AND PROVIDING AN EFFECTIVE  
DATE.**

City Council Regular Meeting – February 15, 2012 – 8:29 a.m.

RESOLUTION (Continued) ..... ITEM 26-7  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES PLAYERS  
BOARD OF DIRECTORS; AND PROVIDING AN EFFECTIVE DATE.  
RESOLUTION (Continued) ..... ITEM 26-8  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE SOUTHWEST  
FLORIDA REGIONAL PLANNING COUNCIL; AND PROVIDING AN EFFECTIVE DATE.  
RESOLUTION (Continued) ..... ITEM 26-9  
A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE TOURIST  
DEVELOPMENT COUNCIL; AND PROVIDING AN EFFECTIVE DATE.  
ADJOURN .....  
6:14 p.m.

\_\_\_\_\_  
John F. Sorey III, Mayor

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

Minutes prepared by:

\_\_\_\_\_  
Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 03/21/12

\*\* Official \*\*

CERTIFICATE OF COUNTY CANVASSING BOARD

STATE OF FLORIDA

**Collier County**

We, the undersigned, Michael Provost, County Judge, Jennifer J. Edwards, Supervisor of Elections, and Joe Foster, Canvassing Board Member, constituting the Board of County Canvassers in and for said County, do hereby certify that we met on the 10th day of February, A.D., 2012, and proceeded publicly to canvass the votes given for the City of Naples Municipal Election and the Referendums specified at the **Presidential Preference Primary** held on the 31st day of January, A.D., 2012 as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

**City of Naples City Council Race (three seats up for election)**

William "Bill" Barnett 5,458 votes

Teresa Lee Heitmann 4,386 votes

Margaret "Dee" Sulick 4,841 votes

Penny Taylor 3,840 votes

**REFERENDUM TO INCREASE EAST NAPLES FIRE DISTRICT'S  
MAXIMUM MILLAGE TAX RATE**

In order to prevent further reduction of life safety and property protection, shall the East Naples Fire Control and Rescue District be authorized to increase the annual ad valorem millage maximum rate that it may levy within its boundaries from 1.5 mill, which was approved by referendum in 1983, to 2.0 mills, and to levy such millage rate above statutorily mandated rollback rates, in order to meet the operating costs of the District?

YES FOR APPROVAL 4,807

NO FOR REJECTION 5,588

**REFERENDUM TO INCREASE GOLDEN DATE FIRE DISTRICT'S  
MAXIMUM MILLAGE TAX RATE FOR LIMITED PERIOD**

To prevent further reduction of life safety and property protection, shall the Golden Gate Fire Control and Rescue District be authorized to increase the ad valorem millage maximum rate that it may levy from the 1.5 mills approved by referendum in 2009, up to 2.75 mills, for five fiscal years beginning with the 2012-2013 year and to levy such millage rate above statutorily mandated rollback rates, in order to meet the District's operating costs?

YES FOR APPROVAL 3,491

NO FOR REJECTION 5,375

SUPPLEMENT  
#3 CLERK

\*\* Official \*\*

**IMMOKALEE FIRE CONTROL DISTRICT – APPROVAL OF CHANGE  
TO AD VALOREM TAX RATE**

Shall the Board of Commissioners of the Immokalee Fire Control District be authorized to levy and assess ad valorem taxes on all taxable property in order to construct, operate, and maintain district facilities for fire and rescue services at a rate of 3.75 mills? The currently authorized millage rate is 3.00 mills, which was approved by referendum in the year 2001.

YES (FOR APPROVAL) 358

NO (FOR REJECTION) 179

**APPROVAL OF LIMITED GENERAL OBLIGATION BONDS TO  
FINANCE LANDSCAPING AND SPRINKLER IMPROVEMENTS**

Shall general obligation bonds payable from the existing ad valorem property taxes levied at a rate not exceeding .5 mills on all taxable property within "Radio Road East Municipal Service Taxing Unit (MSTU)" be issued in a principal amount not exceeding \$649,000, with a maturity not longer than 10 years and an interest rate less than the maximum legal rate, to advance the construction of landscaping/irrigation improvements within the MSTU?

INSTRUCTIONS TO VOTERS:

YES - FOR BONDS 682

NO - AGAINST BONDS 269

  
\_\_\_\_\_  
County Judge

  
\_\_\_\_\_  
Supervisor of Elections

  
\_\_\_\_\_  
Canvassing Board Member



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: **February 15, 2012**

Agenda Section: Regular	Prepared By: Erica J. Goodwin, AICP, Planner II Department: Planning
Agenda Item: 9	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Conditional Use Petition 11-CU9 in order to allow Le Lafayette Restaurant to operate with 20 parking spaces on their property, as well as the approved valet services, where the Code requires 45 spaces, amending the prior condition of approval in Resolution 09-12486, for property in the C1 Retail Shopping District located at 375 13 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a Resolution determining Conditional Use Petition 11-CU9 pursuant to Sections 50-103 (e) and 50-107 of the Code of Ordinances, to grant approval of a parking needs analysis in order to allow Le Lafayette Restaurant to operate with 20 parking spaces on their property, where the Code requires 45 spaces, amending the prior conditions of approval in Resolution 09-12486, for property in the C1 Retail Shopping District, owned by Pratt Shoes, Inc., located at 375 13 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Le Lafayette French Restaurant petitioned the Planning Advisory Board (PAB) and City Council in 2009 for a parking variance in order to allow the restaurant to expand to the west, thereby encompassing the entire existing building. The PAB recommended approval of the variance by a 4-3 vote at its May 13, 2009 meeting. City Council denied the variance unanimously at its June 3, 2009 meeting. Subsequently, Le Lafayette applied for and obtained Conditional Use approval to allow for the expansion of the restaurant with the operation of a valet parking service and a reciprocal parking agreement with the owner of the neighboring building, authorizing the restaurant to utilize 23 spaces in the neighbor's parking lot. City Council approved the Conditional Use Petition on August 19, 2009 by Resolution 09-12486, subject to conditions. The petitioner wishes to amend the current parking situation through a parking needs analysis, pursuant to Section 50-107(c).  Pursuant to the calculations for required parking based on interior space and outdoor seating in the Code, the restaurant requires a total parking provision of 45 spaces. With the provision of valet service and the use of the adjacent parking lot, a total of 52 parking spaces are available. Based on actual parking counts, the petitioner is asserting that the 20 parking spaces on-site (27 spaces available with valet parking) is enough to serve the existing restaurant under most circumstances and that the 23 spaces available on the adjacent property through the reciprocal parking agreement are adequate to supplement parking on the limited occasions where it is needed. Their objection to the conditions imposed under Resolution 09-12486 is that the use of the restaurant square footage is contingent upon the neighboring property owner continuing to limit evening hours of that building. They are concerned that a change in ownership of that building or simply a desire to lease to a tenant with evening hours will result in a loss of square footage for the restaurant. The petitioner would like approval to operate the entire interior and exterior square footage of the restaurant during	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

Agenda Item:

9

**BACKGROUND (cont.):**

the daytime when valet service is not provided, contrary to the condition limiting the use of square footage in the approved Resolution.

The petitioner has submitted parking counts taken by the valet service demonstrating the actual number of parking spaces utilized by patrons of the restaurant during the peak months of January, February and March in 2010 and 2011. These counts show that for the most part, the maximum number of parking spaces utilized is less than 20; however, on at least 4 occasions, the actual number of parking spaces utilized exceeds 20, up to a maximum of 46 on one occasion. It is also important to note that the parking counts were taken while the restaurant has been operating under the limitations on square footages under the previous approval.

On December 19, 2011, the Planning Advisory Board voted 6-0 to recommend approval of Conditional Use Petition 11-CU9 to allow an alternate ratio to calculate the parking for the kitchen, office and circulation area using one space per 300 square feet instead of one space per 100 square feet of gross square footage. The PAB recommendation is conditioned upon the following:

1. The restaurant will be allowed to operate the entire indoor and outdoor square footage during daytime and nighttime hours.
2. Parking will be calculated as follows (shown on Valet Parking Plan in submittal):

Parking Required	
Use/Calculation	# of Spaces
1,240 sq. ft. indoor dining @ 1 space/100 sq. ft.	12
1,666 sq. ft outdoor dining @ 3 spaces/1,000 sq. ft.	5
297 sq. ft. office +624 sq. ft. kitchen + 2,089 sq. ft. circulation/other space @ 1 space/300 sq. ft.	10
<b>Total Required</b>	<b>27</b>

3. The restaurant will provide only the 20 spaces on the Pratt property (27 spaces with provision of valet service during nighttime hours).
4. The owner will provide valet service only during nighttime hours.

On January 18, 2012, City Council reviewed this petition and continued it to the February 15<sup>th</sup> meeting to allow for revisions to the conditions of approval. The revised conditions will allow for a calculation of parking based on similar ratios to those recommended by the PAB but encompassing the entire floor area of the restaurant and providing that any additional required parking be accommodated by either valet service, the reciprocal parking agreement with the neighboring property or a reduction in the area of available seating. Confirmation of compliance will be provided through an operational plan



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Three

Agenda Item:

9

**BACKGROUND (cont.):**

to be approved by staff. The resolution included with this package contains the final recommended conditions that have been provided by staff and agreed to by the petitioner.

**File Reference:** 11-CU9

**Petitioner:** Le Lafayette French Restaurant, Astrid Maillard and Sebastien Maillard

**Agent:** Richard Yovanovich, Coleman, Yovanovich & Koester, P.A.

**Location:** 375 13<sup>th</sup> Avenue South

**Zoning:** C1 Retail Shopping and 3<sup>rd</sup> Street Commercial Area Special Overlay District

**PUBLIC NOTIFICATION:**

On October 18, 2011, and again on December 5, 2011, a total of 157 letters were mailed to all property owners located within 500 feet of the subject property. As of the date of this report, staff has received numerous phone calls and several letters in response to the mailing. Copies of these letters are attached.

**RECOMMENDED ACTION:**

Should City Council vote to approve Conditional Use Petition 11-CU9 pursuant to Sections 50-103 (e) and 50-107 of the Code of Ordinances, to grant approval of a parking needs analysis in order to allow Le Lafayette Restaurant to operate with 20 parking spaces where the Code requires 45 spaces, amending the prior conditions of approval in Resolution 09-12486 for property in the C1 Retail Shopping District, owned by Pratt Shoes, Inc., located at 375 13<sup>th</sup> Avenue South, staff recommends that it be subject to the following conditions:

1. Parking shall be provided at a ratio of 3 per 1000 square feet of seating area for outdoor dining, 1 space per 100 square feet of seating area for indoor dining and 1 space per 300 square feet of the remaining indoor gross floor area. Indoor dining areas shall be defined by walls or other solid partitions. The circulation space around and between tables shall be considered part of the dining area as well as the area in front of or behind the bar.
2. To the degree that the required parking cannot be accommodated on site based on the above ratios the restaurant owner shall elect to provide the additional required parking through any of the following options including a combination of the options:
  - the use of a valet service to efficiently park cars in the space provided;
  - the use of parking on the adjacent property through a reciprocal parking agreement during hours where a surplus of parking is available; or
  - the reduction of the square footage of seating area that reduces the parking requirement to the number of spaces available.



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Four

Agenda Item:

9

**RECOMMENDED ACTION (cont.):**

3. An operational plan shall be submitted to staff for review and approval. The operational plan shall set forth the parking required and provided based on 1 and 2 above. The business will abide by the stipulations of the operational plan. The operational plan may be changed by the business and approved by staff. If staff cannot approve the plan, the petitioner may appeal the decision in accordance with the Code. New business owners shall be required to submit a new operational plan prior to any changes in the operation of the restaurant.
  
4. This approval shall apply to this location for as long as the building continues to be used for a sit down restaurant and the use does not lapse for a period of 12 months or more.

Reviewed by Department Director  
Robin Singer

Reviewed by Finance  
N/A

Reviewed by City Manager  
A. William Moss

City Council Action:

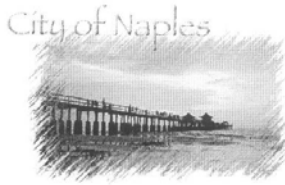




**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Agenda Section: Regular	Prepared By: Adam A. Benigni, AICP Department: Planning
Agenda Item: 10 a and b	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b>	
<p>a) Resolution determining Subdivision/Replat Petition 12-SD1 for Preliminary and Final Plat approval in order to replat five parcels (approximately 2.31 acres) into one parcel located north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South.</p> <p>b) Resolution determining Site Plan with Deviations Petition 12-SPD1 to allow for the construction of an approximately 60,000 square foot commercial building on property located north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South.</p>	
<b>SUMMARY:</b>	
<p>City Council is asked to consider the following:</p> <p>a) Resolution determining Petition 12-SD1 for Preliminary and Final (Record) Plat approval of RSI Naples, a replat of Lots 1 through 5 inclusive, 11 through 32 inclusive, the north 4 feet of Lot 6, and the vacated north-south and east-west alleys, Block 17, Tier 10, Seaboard Replat as recorded in Plat Book 1, Page 59, to replat five parcels (approximately 2.31 acres) into one parcel located in the D-Downtown District and C2, General Commercial District on property located north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South.</p> <p>b) Resolution determining Site Plan with Deviations Petition 12-SPD1 to allow for the construction of an approximately 60,000 square foot commercial building in the D-Downtown District and C2, General Commercial District with 123 parking spaces where 180 are required, parallel on-street parking where 90-degree parking is required along 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South, an 8-foot sidewalk within the City's right-of-way where a 10-foot sidewalk on private property is required and to not provide a pedestrian via as required by Section 58-912 of the Code of Ordinances, for property located north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South.</p> <p>In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.</p>	
<b>BACKGROUND:</b>	
<p>The subject property was formerly occupied by the Trails End Motel. The motel was originally developed in 1950 and was demolished in 2003. In 2003, a rezoning to PD, Planned Development, was approved for a mixed use project containing three mixed use buildings, two residential buildings, a resident clubhouse, a street level plaza, a parking deck / plaza, and a pool</p>	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

Agenda Item:

10 a and b

**BACKGROUND (cont.):**

deck. The commercial space totaled approximately 30,000 square feet and 40 residential units were included. The project was never built and the Planned Development for that project expired in 2008. Pursuant to Code, the zoning reverted back to C2, General Commercial and D-Downtown.

The new owner of the property, RSII Properties, Inc., has proposed to construct an approximately 60,000 square foot commercial building on the property. The building would be occupied by Robb & Stuckey International – a furniture store. The petitioner has proposed four deviations to the Code: provide 123 parking spaces where 180 are required, construct parallel on-street parking where 90-degree parking is required along 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South, install an 8-foot sidewalk within the City's right-of-way where a 10-foot sidewalk on private property is required and to not provide a pedestrian via as required by Section 58-912 of the Code of Ordinances. The parking deviation is due to the fact that the site has split zoning and therefore must abide by the more strict parking requirements of the D Downtown as opposed to the requirement for furniture stores. Under the furniture store requirement of one space for every 500 square feet of floor area the project would be compliant. In addition to the Site Plan with Deviations Petition, the petitioner has requested approval of a Subdivision/Replat Petition. The proposed replat of the property will vacate all existing internal lot lines and establish a single parcel. Traffic Engineer, George Archibald has reviewed the plat and has recommended that the preliminary and final plats be processed concurrently – see attached memo. An analysis of the Site Plan with Deviations Petition and Subdivision/Replat Petition is also attached.

On January 11, 2012, the Planning Advisory Board voted 6-0-1 to recommend approval of both the Site Plan with Deviations Petition 12-SPD1 and Subdivision/Replat Petition 12-SD1.

On January 12, 2012, the Design Review Board unanimously voted to approve the Preliminary Design of the project. The architect has submitted the Final Design Application which will be heard by the Design Review Board on February 22, 2012.

**File Reference:** 12-SD1 and 12-SPD1

**Petitioner:** RSII Properties, Inc.

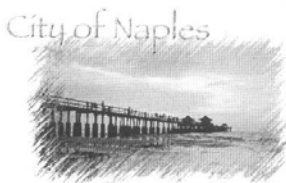
**Agents:** Matthew Kragh, AIA, MHK Architecture and Planning and Tim Hancock, Davidson Engineering

**Location:** North of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South

**Zoning:** D-Downtown District and C2 General Commercial District

**PUBLIC NOTIFICATION:**

On November 21, 2011, a total of 67 letters were mailed to all property owners located within 500 feet of the subject property. To date there has been one response in regard to the addressing of the property.



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: **February 15, 2012**

Page Three

Agenda Item:

10 a and b

**RECOMMENDED ACTION:**

Adopt the following:

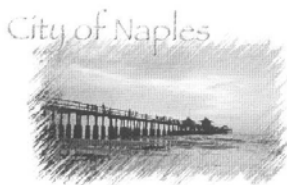
- a) Resolution approving Petition 12-SD1 for Preliminary and Final (Record) Plat for RSI Naples, a replat of Lots 1 through 5 inclusive, 11 through 32 inclusive, the north 4 feet of Lot 6, and the vacated north-south and east-west alleys, Block 17, Tier 10, Seaboard Replat as recorded in Plat Book 1, Page 59, to replat five existing parcels (27 lots more or less) into one parcel (approximately 2.305 acres) located in the D-Downtown District and C2, General Commercial District north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street
  
- b) Resolution approving Site Plan with Deviations Petition 12-SPD1 to allow for the construction of an approximately 60,000 square foot commercial building in the D-Downtown District and C2, General Commercial District with 123 parking spaces where 180 are required, parallel on-street parking where 90-degree parking is required along 3<sup>rd</sup> Avenue South and 4<sup>th</sup> Avenue South, an 8-foot sidewalk within the City's right-of-way where a 10-foot sidewalk on private property is required and to not provide a pedestrian via as required by Section 58-912 of the Code of Ordinances, for property located north of 4<sup>th</sup> Avenue South, south of 3<sup>rd</sup> Avenue South, east of U.S. 41 and west of 10<sup>th</sup> Street South.

Reviewed by Department Director  
Robin Singer

Reviewed by Finance  
N/A

Reviewed by City Manager  
A. William Moss

City Council Action:



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012


Agenda Section: Regular	Prepared By: Adam A. Benigni, Sr. Planner Department: Planning
Agenda Item: 14	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Variance Petition 12-V1 to allow a ground sign on property located at 201 8 <sup>th</sup> Street South.	
<b>SUMMARY:</b> City Council is asked to consider a variance from Section 58-914(9) of the Code of Ordinances in order to allow a ground sign on a parcel fronting on 8 <sup>th</sup> Street South in the D-Downtown District where ground signs are only permitted on parcels fronting on U.S. 41 and Goodlette-Frank Road for property located at 201 8 <sup>th</sup> Street South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> The Baker Center was constructed in the early 1970s as an office building and it is still used as an office building. The name of the building is provided over the entry but there are limited opportunities for signs identifying the individual tenants on the building without appearing cluttered.  The property was once zoned C2, General Commercial and O, Office until the D-Downtown District was created and applied to this and other properties in the 41-10 District in the 1990s. The subject property has approximately 360 feet of frontage along 8 <sup>th</sup> Street South. The D-Downtown Code only permits ground signs for properties with over 150 feet of frontage along U.S. 41 or Goodlette-Frank Road. Such ground signs are permitted to be up to 5 ½ feet in height and may be located on the front property line. Ground signs must be located so as to not present visual hazards for pedestrians. The petitioner has proposed to install a ground sign that is approximately 6 ½ feet in height near the front property and centered on the building. The petitioner has submitted a survey and photo showing the proposed location of the sign. Because the design of the building does not provide reasonable or adequate area for visible external signage to identify tenants of the building, the Planning Department recommends approval of Variance Petition 12-V1 based upon the request meeting General Criteria 1 and 2, and Specific Criteria 1, 5, 6, 7, 8 and 9 and subject to the condition that the sign be lowered to a height of 5 ½ feet to be consistent with the D-Downtown ground sign height regulations. On January 11, 2012, the Planning Advisory Board recommended approval of this variance petition by a vote of 6 to 1 subject to staff's condition regarding sign height and the condition that the sign area be limited to 20 square feet.	
<b>File Reference:</b> Variance Petition 12-V1 <b>Petitioner:</b> HHH Investments Limited Partnership <b>Agent:</b> John G. Vega, Esq. <b>Location:</b> 201 8 <sup>th</sup> Street South <b>Zoning:</b> D-Downtown District	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

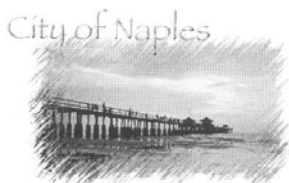
Agenda Item: 14		
<b>RECOMMENDED ACTION:</b> City Council adopt a Resolution approving Variance Petition 12-V1 from Section 58-914 (9) of the Code Of Ordinances to allow a ground sign on a parcel fronting on 8 <sup>th</sup> Street South in the D-Downtown District where ground signs are only permitted on parcels fronting U. S. 41 and Goodlette-Frank Road, said property owned by HHH Investments Limited Partnership, located at 201 8 <sup>th</sup> Street South		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss 
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date:** February 15, 2012

Agenda Section: Regular	Prepared By: Adam A. Benigni, AICP Department: Planning
Agenda Item: 15	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Outdoor Dining Petition 12-ODPB1 to allow The Café to provide outdoor dining on public property within the Fifth Avenue South Special Overlay District on property located at 821 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a Resolution determining Outdoor Dining Petition 12-ODPB1 in order to allow The Café to provide outdoor dining on public property within the Fifth Avenue South Special Overlay District, pursuant to Sections 56-126 (c) (1) and 58-1134 (e) (13) of the Code of Ordinances, on property located at 821 5 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Flemming Madsen, owner of The Café, has submitted a petition for outdoor dining on property located at 821 5 <sup>th</sup> Avenue South. Mr. Madsen purchased the restaurant in October 2009 at which time City staff informed him that outdoor dining permits were not transferable to new owners and he was required to apply for a new permit. Mr. Madsen applied for an outdoor dining permit, with a similar layout to what is proposed in this petition, and received a right-of-way permit from City staff in November 2009.  Mr. Madsen has since completed an extensive renovation to the restaurant and has enjoyed success at the location. There was a recent inquiry as to whether or not the outdoor dining at The Café met the 5-foot clearance requirement for sidewalks. After a site visit and researching the active permit, it was discovered that the required 5-foot clearance was not met and that the outdoor seating plan was never reviewed by the City Council as required in Chapter 56 of the Code of Ordinances. Mr. Madsen was operating his outdoor dining per the right-of-way permit and he was unaware that City Council approval was necessary because he was never told by City staff.  Planning Department staff has since notified Mr. Madsen of the issue and he has reapplied for approval. Staff has made several visits to the restaurant to discuss potential seating plans that would meet the current Code requirements. After much discussion, it was determined that the least invasive and most logical solution was for Mr. Madsen to buy rectangular tables (he currently uses round 4-top tables) to place along the storefront (chairs pull out parallel to storefront) and install one row of pavers (8 inches in width) along the landscaped areas across the sidewalk. If this is approved, no landscaping will need to be removed, only mulch. Staff has discussed this request with the City's Parks and Parkways Superintendent, Joe Boscaglia, and Mr. Boscaglia has no objection to the request. Other than the installation of the new paver row and new rectangular tables, the outdoor seating area would remain the same as it currently exists.	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

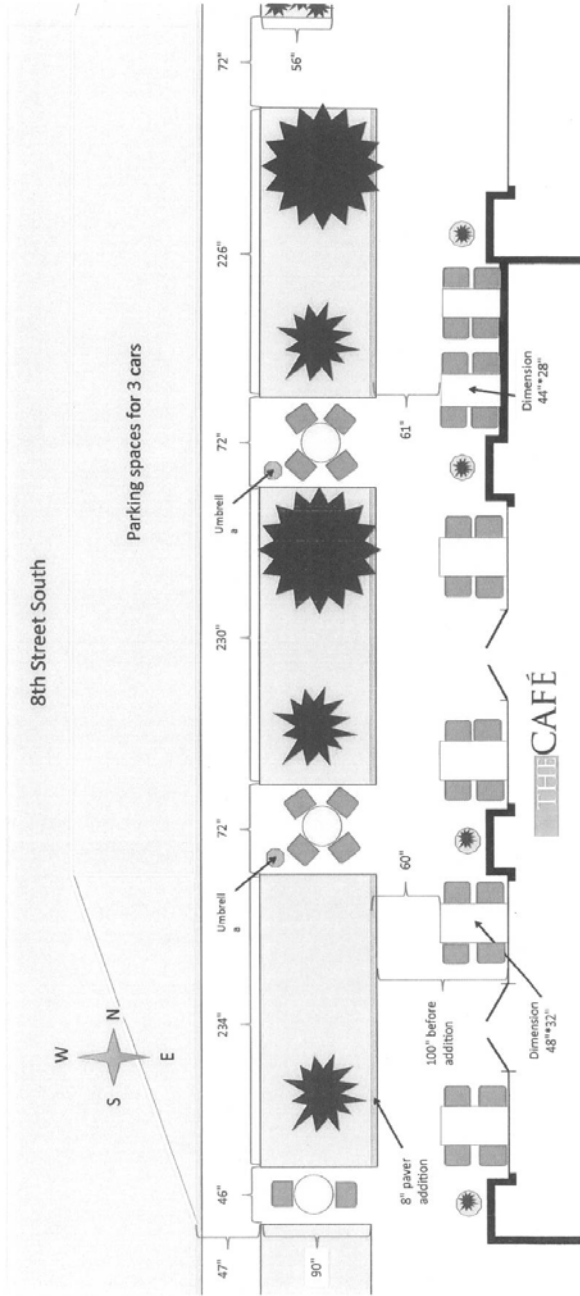
**Regular Meeting Date:** February 15, 2012

**Page Two**

Agenda Item: 15		
<b>BACKGROUND (cont.):</b>		
<p>The proposed plan consists of 9 tables with a total of 34 seats (8, 4-top tables and 1, 2-top table) and is a reduction in the number of tables and chairs approved under the right-of-way permit in 2009. The right-of-way permit approved 10 tables with a total of 36 seats.</p> <p>The tables separated from the storefront are in small walkways that were designed to be used by people parking along 8<sup>th</sup> Street in front of The Café to get to their vehicles. There is room for 3 cars in this parking area. Staff has met with the City's Traffic Engineer, George Archibald, and has determined that sufficient access to the parking spaces along 8<sup>th</sup> Street will remain if the tables are to remain in the proposed locations and no table be placed in the walkway on the north side of the property.</p> <p>The Design Review Board reviewed this request at the January 12, 2012 meeting and unanimously voted to approve the plan, as submitted. Staff is also recommending approval of the outdoor dining plan, as submitted.</p> <p><b>File Reference:</b> Outdoor Dining on Public Property 12-ODPB1  <b>Petitioner:</b> The Café (Tops &amp; Tado Holding Company, LLC)  <b>Agent:</b> Flemming Madsen  <b>Location:</b> 821 5<sup>th</sup> Avenue South  <b>Zoning:</b> C1-A, Commercial Core District and Fifth Avenue South Special Overlay District</p> <p><b>RECOMMENDED ACTION:</b>          Adopt a Resolution approving Outdoor Dining Petition 12-ODPB1 to allow The Café to have outdoor dining exceeding 100 square feet in area on public property that is not directly abutting the storefront of which it services, located at 821 5<sup>th</sup> Avenue South.</p>		
Reviewed by Department Director Robin D. Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

EXH "B"

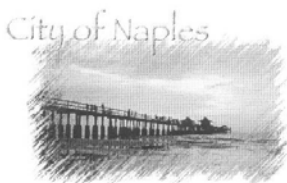
**Exhibit 1 - The Cafe - Outdoor Dining  
Solution 1 (As Is)**



- Add a row of 8" pavers in landscape facing store front to get 108" clearance from store front
- Change table tops along store front to 48"\*32" & 44"\*28" whereby we achieve 60-61" ROW clearance
- 1 exit aisle for 3 parking spaces in front of The Cafe on 8th Street.
- Opposite West side of 8th street provides 1 exit aisle for 4 parking spaces.
- No alteration to the landscaping and compliance with city code in terms of ROW clearance

DRB Meeting 1/12/12  
File No. 12-ODPB1  
(H.T.E. #12-006)  
Received 12/12/11

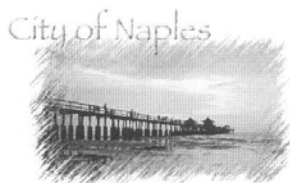




**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012


Agenda Section: Regular	Prepared By: Robin D. Singer, Director Department: Planning
Agenda Item: 16	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Consider a Resolution determining Outdoor Dining Petition 12-ODPB2 to allow Aqua to provide outdoor dining on public property within the Fifth Avenue South Special Overlay District on property located at 862 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a Resolution determining Outdoor Dining Petition 12-ODPB2 to allow Aqua to provide outdoor dining on public property separated from the storefront and exceeding 100 square feet within the Fifth Avenue South Special Overlay District, pursuant to Sections 56-126(1) and 58-1134(e)(13) of the Code of Ordinances, on property located at 862 5 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Aqua restaurant is requesting approval to place three two seat tables adjacent to the storefront and three four seat tables separated from the storefront adjacent to the curb. The total seating area in the public right-of-way will be approximately 150 square feet. The proposed area is located across the sidewalk from the storefront and had previously been used for seating when the restaurant was Bert's Seafood and Chowder House. A variance petition for Bert's, while under different ownership, had been approved in 2010 to allow the seating separated from the storefront. However, where variances typically run with the land, this variance involved a revocable permit for the use of the public right-of-way. This petition is a request for approval of an outdoor dining configuration identical to that granted to the previous business owner. However, Section 56-126 (c) (4) states that outdoor dining permits shall not be transferable in any manner. The permit shall run only with the business and not the land, in the location and configuration approved. City Code does not provide authority for administrative approval. As such, City Council approval of the dining area under the current business is required.  Section 56-126 (c) (1) of the Code of Ordinances requires City Council approval for the establishment or expansion of outdoor dining areas on public property exceeding 100 square feet in area, as well as on public property that is not directly abutting the storefront of the restaurant which it serves. Section 58-1134 (e) (13) requires that the Design Review Board approve outdoor dining in the Fifth Avenue South Special Overlay District.	
<b>File Reference:</b> Outdoor Dining on Public Property 12-ODPB2 <b>Petitioner:</b> Bill and Gordon, Inc. <b>Agent:</b> Gordon Stojkoski <b>Location:</b> 862 5 <sup>th</sup> Avenue South <b>Zoning:</b> C1-A, Commercial Core District and Fifth Avenue South Special Overlay District	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

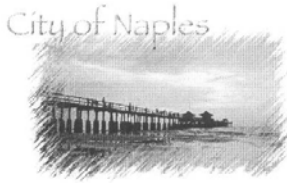
Agenda Item: 16		
<b>BACKGROUND (cont.):</b> The Planning Department has reviewed the request against the established criteria for outdoor dining in Chapter 56 of the Code of Ordinances and has found the request consistent with criteria. The Design Review Board reviewed this request for outdoor dining together with other design related issues at their January 12, 2012 meeting and voted to approve the request.  On December 28, 2011 a total of 63 letters were mailed to adjacent property owners. No responses have been received.		
<b>RECOMMENDED ACTION:</b> Approve a Resolution granting Outdoor Dining Permit 12-ODPB2 to allow a restaurant (Aqua) to have outdoor dining located at 862 5 <sup>th</sup> Avenue South, subject to the conditions found in the Resolution.		
Reviewed by Department Director Robin D. Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss 
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date:** February 15, 2012

Agenda Section: Regular	Prepared By: Adam A. Benigni, Sr. Planner Department: Planning
Agenda Item: 17	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Indoor and Outdoor Live Entertainment Petition 12-LE3 for Osetra Caviar & Champagne located at 469 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a resolution determining Live Entertainment Petition 12-LE3 for Osetra Caviar & Champagne to allow indoor live entertainment consisting of up to two entertainers on Wednesdays from 5:00 p.m. until 11:30 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) and outdoor live entertainment consisting of up to two entertainers on Wednesdays from 5:00 p.m. until 10:00 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) on property located at 469 5 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Osetra Caviar & Champagne, located at 469 5 <sup>th</sup> Avenue South, is requesting indoor live entertainment consisting of up to two entertainers on Wednesdays from 5:00 p.m. until 11:30 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) and outdoor live entertainment consisting of up to two entertainers on Wednesdays from 5:00 p.m. until 10:00 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight). The location of the performers is to be within the restaurant near the office, as shown on the site plan. The request is considered to be outdoor live entertainment because the front door of the establishment is proposed to be open during performances. If the proposed hours of live entertainment are approved by City Council, the petitioner would be required to close the front doors during performances on Wednesdays after 10:00 p.m. The entertainment could then continue as indoor entertainment until 11:30 p.m. The petitioner has not proposed to use speakers outside of the establishment. The Police Department has reviewed the Computer Aided Dispatch (CAD) and has found no noise complaints or City ordinance violations for this establishment since it is a new establishment. A memo from the Police Department is included with the staff report.	
<b>File Reference:</b> 12-LE3 <b>Petitioner:</b> Osetra Caviar & Champagne <b>Agent:</b> Anthony Chinaglia <b>Location:</b> 469 5 <sup>th</sup> Avenue South <b>Zoning:</b> C1-A Commercial Core and Fifth Avenue South Special Overlay	
<b>PUBLIC NOTICE:</b> A total of 154 public notices were mailed out January 23, 2012. As of the date of this report, there have been no letters in support or opposition in regards to the proposed entertainment.	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

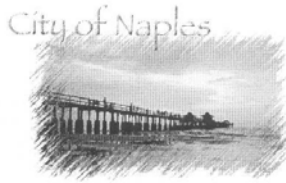
Agenda Item: 17		
<b>RECOMMENDED ACTION:</b> Approve the resolution determining Outdoor Live Entertainment Petition 12-LE3 for Osetra Caviar & Champagne located at 469 5 <sup>th</sup> Avenue South.		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss 
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012


Agenda Section: Regular	Prepared By: Adam A. Benigni, Sr. Planner Department: Planning
Agenda Item: 18	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Indoor and Outdoor Live Entertainment Petition 12-LE4 for Bellini on Fifth located at 445 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a resolution determining Live Entertainment Petition 12-LE4 for Bellini on Fifth to allow indoor live entertainment consisting of up to three amplified entertainers on Sundays through Wednesdays from 5:00 p.m. until 11:30 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) and outdoor live entertainment consisting of up to three entertainers on Sundays through Wednesdays from 5:00 p.m. until 10:00 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) on property located at 445 5 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Bellini on Fifth, located at 445 5 <sup>th</sup> Avenue South, is requesting indoor live entertainment consisting of up to three amplified entertainers on Sundays through Wednesdays from 5:00 p.m. until 11:30 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight) and outdoor live entertainment consisting of up to three entertainers on Sundays through Wednesdays from 5:00 p.m. until 10:00 p.m. and on Thursdays through Saturdays from 5:00 p.m. until 12:00 a.m. (midnight). The location of the entertainers is proposed to be within the establishment, near the bar area. During the hours of outdoor live entertainment the front doors will be open during performances. The Police Department has reviewed the Computer Aided Dispatch (CAD) and has found no noise complaints or City ordinance violations for this establishment within the last 12 months. A memo from the Police Department is included with the staff report.	
<b>File Reference:</b> 12-LE4 <b>Petitioner:</b> Bellini on Fifth <b>Agent:</b> Max Furetta <b>Location:</b> 445 5 <sup>th</sup> Avenue South <b>Zoning:</b> C1-A Commercial Core and Fifth Avenue South Special Overlay	
<b>PUBLIC NOTICE:</b> A total of 140 public notices were mailed out January 17, 2012. To date, there has been one email response. A copy is attached.	

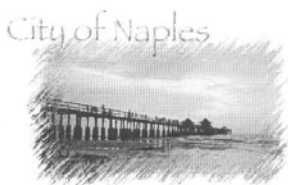


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

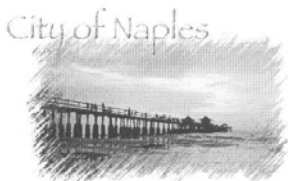
Agenda Item: 18		
<b>RECOMMENDED ACTION:</b> Adopt a Resolution approving Indoor and Outdoor Live Entertainment Petition 12-LE4 for Bellini on Fifth located at 445 5 <sup>th</sup> Avenue South.		
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss 
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: **February 15, 2012**

Agenda Section: Regular	Prepared By: Adam A. Benigni, Sr. Planner Department: Planning
Agenda Item: 19	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Resolution determining Outdoor Live Entertainment Petition 12-LE5 for Café Luna located at 467 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a resolution determining Live Entertainment Petition 12-LE5 for Café Luna to allow outdoor live entertainment consisting of up to two entertainers on Sundays through Thursdays from 6:00 p.m. until 11:00 p.m. and on Fridays and Saturdays from 6:00 p.m. until 12:00 a.m. (midnight) on property located at 467 5 <sup>th</sup> Avenue South. In that this is a Quasi-Judicial matter, disclosures and the swearing in of those giving testimony are required.	
<b>BACKGROUND:</b> Café Luna, located at 467 5 <sup>th</sup> Avenue South, is requesting outdoor live entertainment consisting of up to two entertainers on Sundays through Thursdays from 6:00 p.m. until 11:00 p.m. and on Fridays and Saturdays from 6:00 p.m. until 12:00 a.m. (midnight). The location of the entertainer(s) is proposed to be on the patio. Staff has reviewed the proposed live entertainment location with the Fire Marshal who has no objection to the location as it will not negatively affect ingress or egress. Staff is recommending approval of this request subject to the following days and hours: outdoor live entertainment consisting of up to two entertainers on Sundays through Wednesdays from 6:00 p.m. until 10:00 p.m. and on Thursdays through Saturdays from 6:00 p.m. until 12:00 a.m. (midnight). Staff's recommendation is consistent with the hours permitted in Section 56-125 of the Code of Ordinances. The Police Department has reviewed the Computer Aided Dispatch (CAD) and has found no noise complaints for this establishment within the last 12 months. A memo from the Police Department is included with the staff report.	
<b>File Reference:</b> 12-LE5 <b>Petitioner:</b> Café Luna <b>Agent:</b> Shannon Tewell <b>Location:</b> 467 5 <sup>th</sup> Avenue South <b>Zoning:</b> C1-A Commercial Core and Fifth Avenue South Special Overlay	
<b>PUBLIC NOTICE:</b> A total of 154 public notices were mailed out on January 20, 2012. There have been no responses to date.	
<b>RECOMMENDED ACTION:</b> Adopt a Resolution approving Outdoor Live Entertainment Petition 12-LE5 for Café Luna located at 467 5 <sup>th</sup> Avenue South subject to the hours found in the resolution.	
Reviewed by Department Director Robin Singer	Reviewed by Finance N/A
City Council Action:	Reviewed by City Manager A. William Moss



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: **February 15, 2012**

Agenda Section: Regular	Prepared By: Robert D. Pritt, City Attorney Department: Legal	
Agenda Item: 21	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Motion relating to Waiver of Conflict to allow Roetzel & Andress to continue representing the City as Issuer's Counsel for the 2012 A and B Bond Refunding issue (2007 Utility Bonds).		
<b>SUMMARY:</b> City Council is asked to consider by motion a Waiver of Objection to Conflict of Interest from Branch Banking & Trust (BB&T) to allow Roetzel & Andress to continue representing the City as Issuer's Counsel for the 2007 A and B Bond Refunding issues (2012).		
<b>BACKGROUND:</b> Attached is a Waiver of Objection to Conflict of Interest from BB&T Bank to allow Roetzel & Andress to continue representing the City as Issuer's Counsel for the 2012 Bond Refunding issues (2007 Utilities Bonds). A proposal for refund of the 2007 Utility Bonds was presented to City staff since the last City Council meeting and the proposal is being fast-tracked in order to be able to close on March 31, 2012.  Roetzel & Andress represents the bank that has been proposed for the transaction, Branch Banking & Trust (BB&T) in unrelated matters. The law firm did not participate in the selection process.  As long as it is not a direct conflict (and it is not), the representation of the City may continue if the conflict is waived by the parties. BB&T is also waiving conflict, as is the norm in these types of transactions.		
<b>RECOMMENDED ACTION:</b> Motion to approve Waiver of Objection to Conflict of Interest to allow Roetzel & Andress to represent the City as Issuer's Counsel for the 2012 A and B (2007 Utility Bond Refunding Issues).		
Reviewed by Department Director Robert D. Pritt	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

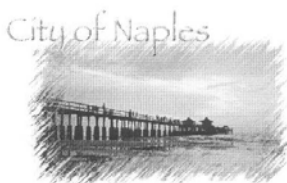




**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

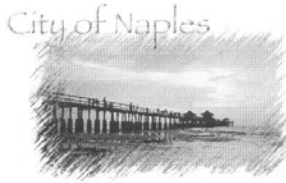
Agenda Section: Regular	Prepared By: Denise K. Perez, Human Resources Director Department: Human Resources	
Agenda Item: 30	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Review and discussion of the selection process for City Clerk.		
<b>SUMMARY:</b> City Council is asked to consider narrowing the pool of candidates for the position of City Clerk from five to three and to schedule interviews with each candidate.		
<b>BACKGROUND:</b> The recruitment process to fill the position of City Clerk was discussed by City Council during the Workshop meeting of January 17 <sup>th</sup> . City Council agreed to limit submittal of applications to City employees, and then for Council Members to conduct individual interviews, followed by an interview with City Council in a public meeting.  On January 19, 2012, notification was sent to all City of Naples employees to determine interest in the position of City Clerk. Resumes were required to be submitted to the Human Resources Director by 5:00 P.M. on January 25, 2012.  At the close of business on January 25, 2012, six applications were received: Gregory E. Givens, Roger Jacobsen, Patricia Lynn Rambosk, Jessica R. Rosenberg, Vicki L. Smith, and Ingrid Vargas. Mr. Jacobsen withdrew his application on Friday, January 27 <sup>th</sup> . The applications for the remaining five candidates are attached for City Council's consideration.		
<b>RECOMMENDED ACTION:</b> City Council is asked to consider narrowing the pool of candidates from five applicants to three. Recommended are individual interviews with each City Council member on Friday, February 17 <sup>th</sup> and Tuesday, February 21 <sup>st</sup> . Interviews with the entire City Council can be held on Wednesday, March 7, 2012.		
Reviewed by Department Director Denise Perez	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date:** February 15, 2012

Agenda Section: Regular	Prepared By: A. William Moss, City Manager Department: City Manager
Agenda Item: 27	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Ordinance, First Reading, to Amend Chapter 30—Public Works, of the City Code of Ordinances	
<b>SUMMARY:</b> Proposed is an ordinance for consideration on First Reading to amend Chapter 30, Public Works, of the City Code pertaining to regulation of water, water conservation, sanitary sewer, and reclaimed water utilities.	
<b>BACKGROUND:</b> Staff has embarked on an initiative to revise Chapter 30 — Public Works, of the City Code of Ordinances. Revisions are deemed appropriate to: eliminate conflicts between previously adopted ordinances that have occurred over time; to insure the City Code reflects current operations of the City's water, sewer, and reclaimed water utilities; to consolidate information, such as utility rates, applications for service, and discontinuation of services into one section of the City Code; to update general regulations; and to revise the process for application of service, utility billing procedures, and related billing regulations.  Several examples of changes that are not considered substantive include: elimination of a required excavation permit and replacing language with a required right-of-way permit; relocating and re-wording definitions of rates, charges and application procedures from several sections to one section; adding definitions, such as a definition for grease trap; removing language pertaining to wastewater discharge permits; removing language pertaining to capital improvement accounts that are no longer utilized; revising reclaimed water provisions to reflect current practice and regulatory requirements; and adding use of reclaimed water to the Article II, Division 2, Water Conservation.  The more substantive changes are found in Sections 30-9, Monthly rates, fees, and charges; 30-10, Other fees and charges; 30-11, Application for service, billing procedures, regulations; and 30-12, Regulations.  Language from Articles II, Water; III, Sewers; and IV, Reclaimed water pertaining to rates, fees, and charges are consolidated to a new Section 30-9, Monthly rates, fees, and charges. While language was edited and clarified, there are no substantive changes to the rates, fees, and charges.  Section 30-10, Other fees and charges, was created to list other fees and charges related to utility services that are or may be listed in Appendix A of the City Code. Appendix A is the list of fees and charges that are adopted by City Council from time to time. These include fees for meter inspections, meter testing, illegal connections, and late payment charges.	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

Agenda Item: 27		
<b>BACKGROUND (cont.):</b>		
<p>Section 30-11 provides the process for application for service, billing procedure, and regulations. This language generally follows the current Code with the following notable exceptions: a requirement that accounts be listed in the name of the property owner, and not the tenant. [As tenant accounts are discontinued, the account will be placed in the name of the property owner. Bills may be sent to a tenant and/or the property owner, but the property owner will ultimately be responsible for unpaid utility bills by a tenant. Liens may be placed upon property when a property owner has an unpaid utility bill, but a lien may not be placed on a property if the account is in the name of a tenant].</p> <p>The second notable exception is that new account deposits are no longer required. Deposits equivalent to two months average service may be required when service has been cut off for non-payment on two occasions. Currently, tenants are required to post a utility deposit, but not property owners. Tenant deposits on-hand will remain with the City until the tenant account is terminated and thereafter transferred to the property owner.</p> <p>Section 30-12, Regulations, consolidates sections and, once again, affirms the property owner's responsibility for utility service and bad debts, and that such debts constitute a lien upon the property. The utility bill may be mailed to the property owner, tenant, or both. Currently bills are delinquent after 15 days, and an overdue delinquent fee is imposed 30 days after due date. The attached memorandum summarizes the recommended policy for due dates, delinquent fees, and cut-off of service, although it is recommended these procedures not be codified.</p> <p>These amendments regulate water, sewer, and reclaimed water utilities. The amended procedures should substantially reduce unpaid and uncollected utility bills by requiring the property owner to be ultimately responsible for payment of the utility bill.</p>		
<b>RECOMMENDED ACTION:</b>		
<p>Adopt an ordinance on First Reading amending Chapter 30 of the Code of Ordinances pertaining to regulation of water, water conservation, sanitary sewer, and reclaimed water utilities.</p>		
Reviewed by Department Director A. William Moss	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

Three years ago, Council asked 7 residents to sit on a "Blue Ribbon Finance Committee" that provided written detailed recommendations, that **I BELIEVE**, are as valid today, as they were 3 years ago.

One recommendation was for the City to start thinking and acting, like a **Private Sector Business** versus a **Public Sector Monopoly**.

What did we mean? If the City takes longer than the 59-63 day cycle to read the meters, and this pushes a customer into a higher tier pricing, should the City **initiate** the corrective action for the problem they **caused**, or will they include an alert notice on any bills that exceeded the 63 day maximum cycle, or will the City wait for the customer to **initiate a complaint**?

Private Sector Businesses compete to provide products or services. Successful companies continue to provide innovations and improvements to their products and services because they have competition. They must also do it, in an **efficient manner**, or they could not stay in business.

This differs from many municipalities, that have a **monopoly** on their services, and have **taxing power**, and **rate setting power** to **cover up inefficiencies**.

A Private Sector Company, be it a one person law firm, a three person financial advisory, a car dealer, a consumer goods company, or an entertainment company, **has to bill and collect** their receivables in a **timely fashion**.

Because no matter the quality, if the company does not get paid, after providing their product or service, they will go out of business.

#27  
#EASTON  
SUPPLEMENT

In 3 years, the City's "90 Day & Over Past Due" Receivables has **doubled**.

In the past 6 years, it has **increased** nearly **12 fold from \$70,000 to over \$800,000, and the total past due amount exceeds \$1 Million.**

Will the City be proposing **increasing water rates** on those who pay their bills on time, to make up for **the failure** to collect from those who don't pay?

**In the Private Sector, "To manage it, you have to measure it".**

To fix this **significant, out of control** situation, most **CEO's, or Boards of Directors** **would set a time based, past due, dollar objective, measure to it, and review it monthly, until that objective is attained.**

**What Mr. Moss is proposing, in this new Ordinance, is a first step, and I would hope that Council approves it 7-0.**

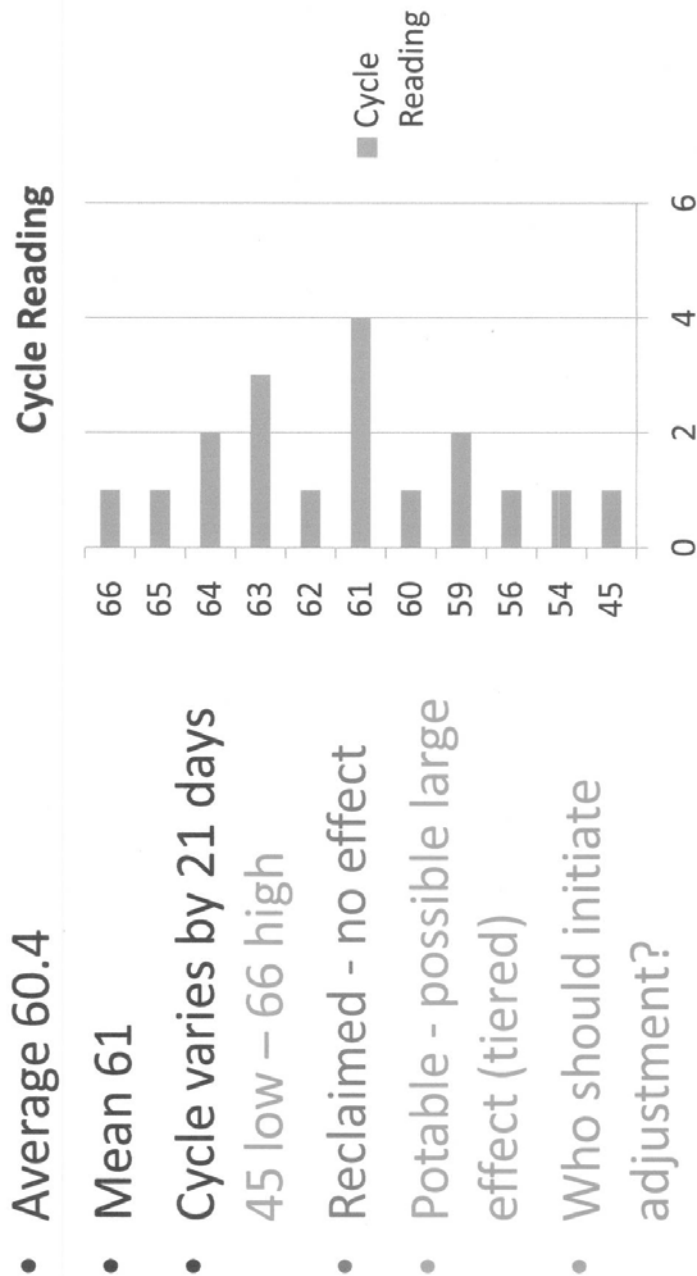
But please, **don't delay for another 3 years,** before taking the needed actions, that other Utilities and Private Sector Businesses use, to improve the **effectiveness** of the entire Utility Billing and Collection process.

Maybe contacting the Naples chapter of SCORE, the Service Corps of Retired Executives, for help, should be considered.

**The ballooning of the overdue accounts to \$1 million, highlights the current Billing and Collection ineffectiveness.**

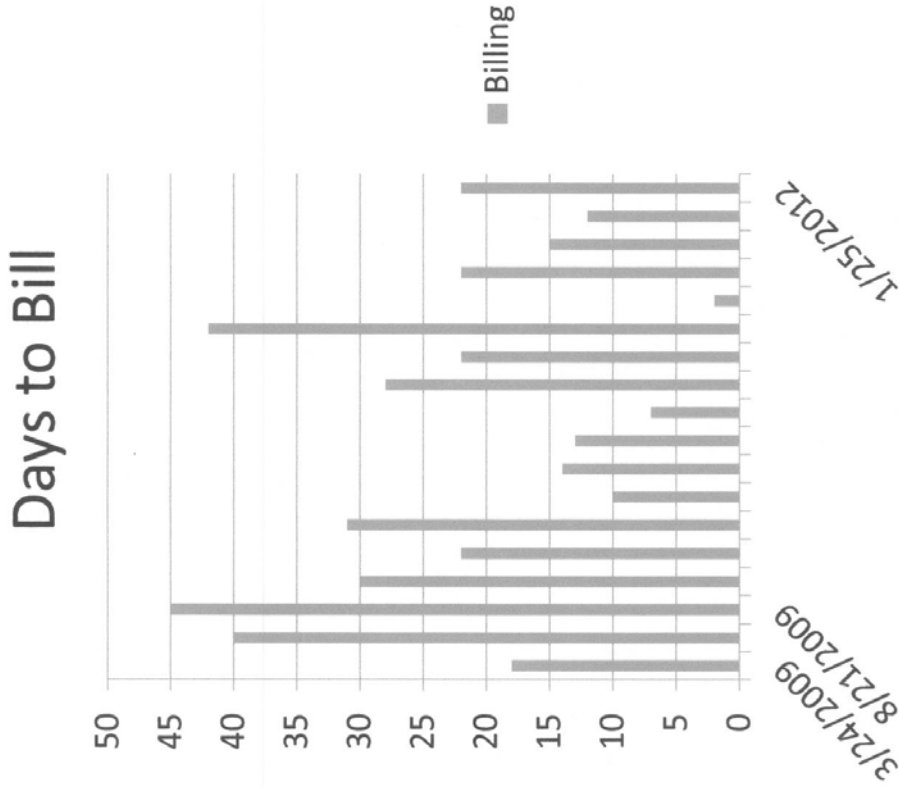
Marvin L. Easton  
944 Spyglass Lane  
Naples, FL 34102-7733

## 61 day Meter Reading Cycle 03/24/2009 – 01/25/2012



- Average 60.4
- Mean 61
- Cycle varies by 21 days  
45 low – 66 high
- Reclaimed - no effect
- Potable - possible large effect (tiered)
- Who should initiate adjustment?

SUPPLEMENT  
#27 GASTON



Days after service provided  
& meter is read,

until bill is prepared

2 - 10 days = 3 of 18

11 - 15 days = 4

16 - 20 = 1

21 - 25 = 4

26 - 30 = 2

31 - 35 = 1

36 - 40 = 1

41 - 45 = 2

Meets 7-10 day = 17%

Fails to meet = 83%

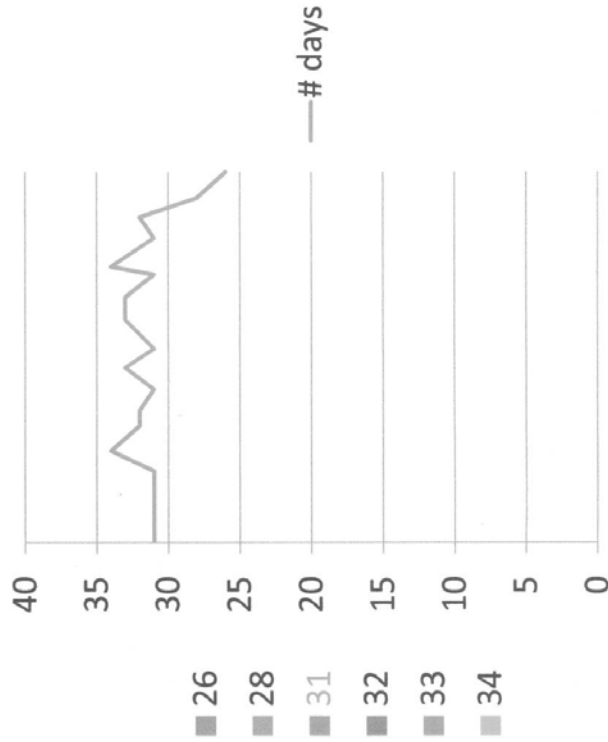
21.7 days to bill average

22 days to bill "mean"

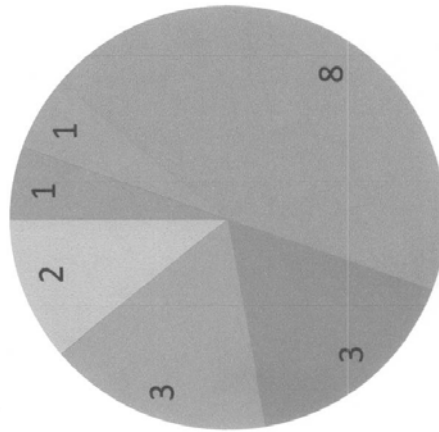
**FPL = 1 day after reading**

# Billing Grace Period 3/24/9 – 1/25/12

Due Dates



Due Dates



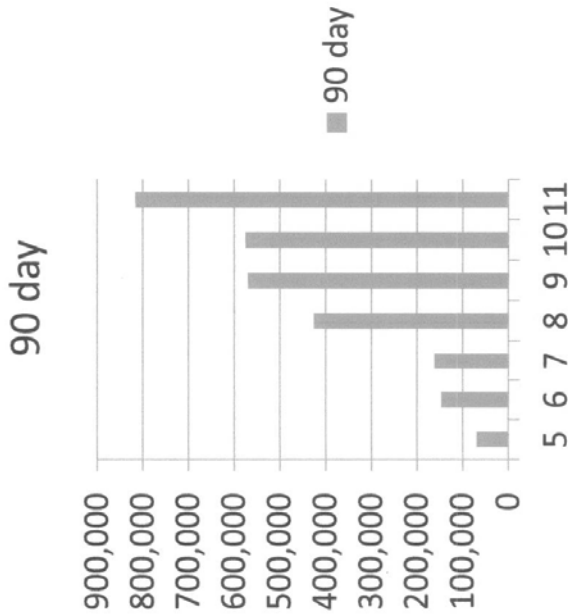


## \$ Past Due - 90 Days & Over

### Fiscal Year 2005-2011

What do we know?

- Meter Reading to Bill = 22 vs 1
- Grace Period avg = 31 vs 21
- Customer follow-up = ? vs 7
- 90 Day Past Due \$
  - Doubled in 3 years
  - Increased 12 fold in 6 years
  - \$70K to \$816K
- Total past due (30,60,90) exceeds \$1 million
- **“Houston we have a problem”**

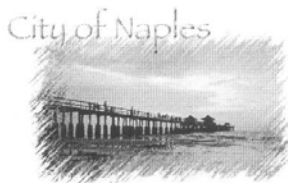




**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012


Agenda Section: Regular	Prepared By: Ann Marie Ricardi, Director Department: Finance
Agenda Item: 28	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Two resolutions to repeal the current Financial Policy and establish two separate policies for Financial Policies and Fund Balance Policy.	
<b>SUMMARY:</b> City Council is asked to consider separating the current Financial Policy Resolution, and create two separate policies, one for Fund Balance, the other for all other Financial Policies, so that the Fund Balance Policy is in compliance with Governmental Accounting Standards Board Statement 54.	
<b>BACKGROUND:</b> By Resolution 09-12512, City Council adopted a combined Fund Balance Policy and Financial Policy of the City. In March 2009, the Governmental Accounting Standards Board (GASB) established Statement 54, which changed definitions for reporting fund balance. Because of the City's size, the implementation of GASB 54 was not required until 2011.  The first resolution will repeal resolution 09-12512, and create the set of Financial Policies which are consistent with the current policies. The only change made is that the monthly reporting requirement in section II (2) was changed to quarterly.  The second resolution explains and defines the new verbiage for Fund Balance reporting requirements. Formerly reported as Reserved and Unreserved, Designated or Undesignated, there are now five categories, including Non-spendable (such as inventories or prepaid items) Restricted (Emergency Reserve), Committed, Assigned (in funds other than the General Fund, "Assigned" is the residual category) or Unassigned (only the General Fund can have an Unassigned fund balance). The September 2011 Comprehensive Annual Financial Report will use these updated terms.  Although not part of the adopted polices, GASB 54 also changes how special revenue fund may be established. Special Revenue funds, such as the CRA fund or the Streets fund, can only be created when it's primary revenue source(s) are restricted or committed to that purpose.  Statement 54 requires governments to disclose the following in the annual Financial Reports:	
<ul style="list-style-type: none"> <li>• Additional detail regarding the purposes of restrictions, commitments, and assignments, if the required level of detail is not met through display on the face of the balance sheet.</li> <li>• The decision-making authority and formal action, if any, that results in commitments of fund balance</li> </ul>	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

Regular Meeting Date: February 15, 2012

Page Two

Agenda Item: 28		
<b>BACKGROUND (cont.):</b>		
<ul style="list-style-type: none"> <li>• The bodies or persons with the authority to express intended uses of resources that result in assigned fund balance</li>   <li>• The order in which a government assumes restricted, committed, assigned, and unassigned amounts are spent when amounts in more than one classification are available for a particular purpose</li>   <li>• Information about minimum fund balance policies, if a government has one</li>   <li>• The purpose for each major special revenue fund, identifying which revenues and other resources are reported in each of those funds.</li> </ul>		
Attached is a Fact Sheet prepared by the Governmental Accounting Standards Board.		
<b>RECOMMENDED ACTION:</b>		
Approve two Resolutions as follows:		
Approve a Resolution creating a Financial Policy for the City that excludes the Fund Balance Policy and including policies for budgetary and financial planning, financial reporting, capital improvement and debt management; repealing and superseding the current Financial Policy adopted by Resolution 09-12512		
Approve a Resolution creating a separate Fund Balance Policy to conform to the Governmental Accounting Standards Board (GSAB) Statement 54		
		
Reviewed by Department Director Ann Marie Ricardi	Reviewed by Finance Ann Marie Ricardi	Reviewed by City Manager A. William Moss
City Council Action:		