



# City of Naples

City Council Chamber  
735 Eighth Street South  
Naples, Florida 34102

**City Council Regular Meeting - March 7, 2012 - 8:28 a.m.**

Mayor Barnett called the meeting to order and presided.

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

**Present:**

John F. Sorey III, Mayor  
Gary Price II, Vice Mayor

**Council Members:**

Bill Barnett  
Douglas Finlay  
Teresa Heitmann  
Samuel Saad, III  
Margaret Sulick

**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  
Charlotte Smith, Administrative Coordinator  
David Lykins, Community Services Director  
Paul Bollenback, Building Services Director  
Thomas Weschler, Police Chief  
Robert Middleton, Utilities Director  
Gregg Strakaluse, Street & Stormwater Director  
Ann Marie Ricardi, Finance Director  
Stephen Weeks, Technology Services Director  
Robin Singer, Planning Director  
Karen Ball, Deputy Finance Director  
George Archibald, Traffic Engineer  
Elizabeth Rogers, Administrative Specialist  
Jessica Rosenberg, Deputy City Clerk  
Patricia Rambosk, Legal Coordinator  
David Bolduc  
Kirk Materne  
Frank Perrucci

Michael McKellar  
Edward Smith  
Jim Zimmerman  
Henry Kennedy  
Jim Boula  
Lou Vlasho  
Gloria Kovacs  
Charles Thomas  
Tom Cabot  
May Cabot  
William Kelly  
Lila Zuck  
Sue Smith  
Clark Ryais  
Luca Di Falco  
Kristin Conroy  
Frank Donahue  
Allen Walburn  
Eric Alexander

**Media:**

Kristine Gill, Naples Daily News  
Eric Staats, Naples Daily News  
Other interested citizens and visitors

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

Pastor Michael McKellar, Naples Church of God.

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

Various department directors presented Employee Service Awards; a list of employees receiving awards is contained in the file for this meeting in the City Clerk's Office. Clark Ryais, Florida Urban Forestry Council, presented the City with its Outstanding Urban Forestry Program Small Community Award, recognizing its 15<sup>th</sup> consecutive annual designation as a Tree City USA.

**Public Comment:** (8:57 a.m.) **Edward Smith, 454 Sixth Street South**, expressed concern with the street trees in the median of Sixth Street South just north of Fifth Avenue South, requesting that irrigation be installed. He further noted that a contractor working with the trees had been somewhat rude when speaking to him and Mayor Sorey directed him to contact the City Manager for follow-up.

**SET AGENDA (add or remove items).....ITEM 4**

City Manager William Moss recommended that Item 10 be continued per a request by the petitioner. Mayor Sorey indicated that this would be addressed when the item was called for consideration.

***MOTION by Finlay to SET THE AGENDA 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).***

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

(9:03 a.m.) **Jim Zimmerman, representing Keep Collier Beautiful**, noted its April 14 cleanup at various sites around the area (a copy of the flier submitted by Mr. Zimmerman is contained in the file for this meeting in the City Clerk's Office.). **Sue Smith, 11th Avenue South**, submitted into the record her statement clarifying public comments she had made during the February 15 consideration of the City Clerk selection (Attachment 1).

**CORRESPONDENCE AND COMMUNICATIONS.....ITEM 6**

(9:07 a.m.) Vice Mayor Price submitted a report regarding Emergency Medical Services (EMS) in Collier County, requesting a future workshop discussion of same (a copy of which is contained in the file for this meeting in the City Clerk's Office). Mayor Sorey agreed, adding that fire services should be included. Council Member Barnett then reported that his remaining campaign funds would be donated to the City for use in the renovation of the River Park pool facility and expressed his opinion that correspondence and communications should be considered at the end of Council meetings; Mayor Sorey indicated that this item would remain at the beginning for a few more meetings and then input would be sought as to returning it to the end. Council Member Sulick reported that a recent parking variance granted to a restaurant located on 13<sup>th</sup> Avenue South should be reviewed as issues have arisen according to some residents; staff should research and report back to Council, Mayor Sorey directed. Council Member Saad supported the recommendation that correspondence and communications be returned to the end of meetings and noted e-mails received regarding utility billing, questioning when new software would be reconsidered for purchase for the Finance Department. Placing correspondence and communications at the end of the meeting was also supported by Council Member Heitmann who additionally referenced an e-mail from Darlene House regarding sharing the road; this should be considered as a topic for the upcoming town hall meeting, she added. In response to Mrs. Heitmann, City Manager William Moss stated that public response to staff's recent presentation regarding the new FEMA (Federal Emergency Management Agency) floodplain maps had been positive. Mrs. Heitmann then commended staff for a recent rescue on Keewaydin Island and noted that an economic development plan is underway for the southwest region and entire state. Mayor Sorey noted concern by some residents of the starting time for construction on Saturdays and reminded the public of the March 26 town hall meeting scheduled to begin at 6:00 p.m.

**CONSENT AGENDA**

**APPROVAL OF MINUTES.....ITEM 7-a**

January 17, 2012 Workshop and January 18, 2012 Regular meeting; as submitted.

**RESOLUTION 12-13053.....ITEM 7-b-1**  
**A RESOLUTION ACCEPTING A PERPETUAL WATER LINE AND TRANSMISSION MAIN EASEMENT FROM NATURE POINTE HOMEOWNERS ASSOCIATION INC., FOR CONSTRUCTION AND ACCESS TO UTILITY FACILITIES ALONG THE WESTERN BOUNDARY OF NATURE POINTE FOR THE PURPOSE OF ACCESSING AND MAINTAINING UTILITY FACILITIES RELATED TO THE GOLDEN GATE CANAL INTAKE STRUCTURE AND TRANSMISSION MAIN; DIRECTING THE CITY CLERK TO RECORD THE EASEMENT; AND PROVIDING AN EFFECTIVE DATE.** Title not read.

**RESOLUTION 12-13054.....ITEM 7-b-2**  
**A RESOLUTION ACCEPTING A PERPETUAL WATER LINE AND TRANSMISSION MAIN EASEMENT FROM NAPLES-OXFORD LIMITED PARTNERSHIP, THE OWNER OF RIVER REACH; ACCEPTING A PERPETUAL WATER LINE AND TRANSMISSION MAIN EASEMENT SUBORDINATION, CONSENT AND JOINDER GIVEN BY DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE, FOR CONSTRUCTION AND ACCESS TO UTILITY FACILITIES ALONG THE WESTERN BOUNDARY OF THE RIVER REACH PROPERTY FOR THE PURPOSE OF ACCESSING AND MAINTAINING UTILITY FACILITIES RELATED TO THE GOLDEN GATE CANAL INTAKE STRUCTURE AND TRANSMISSION MAIN; DIRECTING THE CITY CLERK TO RECORD THE EASEMENT AND THE SUBORDINATION, CONSENT AND JOINDER; AND PROVIDING AN EFFECTIVE DATE.**  
Title not read.

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

**FIVE-YEAR GENERAL FUND SUSTAINABILITY REPORT.....ITEM 8**  
**PRESENTATION AND REVIEW OF THE FIVE-YEAR GENERAL FUND SUSTAINABILITY REPORT.** (9:30 a.m.) Finance Director Ann Marie Ricardi presented the Five-Year Sustainability Report utilizing an electronic presentation (a copy of the report is contained in the file for this meeting in the City Clerk's Office and excerpted text of the presentation is appended hereto as Attachment 2). Discussion followed during which various Council Members cautioned against the use of reserves to fund reoccurring costs. Expenditures should be brought into alignment with revenues and should revenues be utilized, they should be allocated for one-time costs which reduce long-term outlays, such as for software for utility billing.

**Public Comment:** (10:12 a.m.) **Sue Smith, 11th Avenue South**, cautioned against any further staff reductions as she believed that a lowered level of service would then occur. She also observed that an increase in the number and size of special events places additional strain upon the City's infrastructure which outweighs any increase in revenue.

**FASBID REQUEST FOR PLACEMENT OF DIRECTORY SIGNS.....ITEM 9**  
**CONSIDERATION OF A REQUEST FROM THE FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT (FASBID) TO IMPLEMENT A SIGN PLAN FOR DIRECTORY SIGNS IN THE FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT.** (10:15 a.m.) City Manager William Moss briefly introduced the item, reviewing the request as contained in the agenda memorandum by Planning Director Robin Singer (Attachment 3). President of the Fifth Avenue South Business Improvement District (FASBID), Lou Vlasho, then submitted a brochure published by the group (a copy of which is contained in the file for this meeting in the City Clerk's Office), explaining that the FASBID had been working with City staff in determining how the document should be distributed. He indicated that the FASBID would like to place one of the directory signs (photographs of which are contained in the file for this meeting in the City Clerk's Office) in each of the City-owned parking garages as well as along Fifth Avenue South in the public right-of-way. He also explained that the brochures are currently available in the businesses in the area. Council Member Heitmann however expressed concern that if placed outside, littering would result. Vice Mayor Price recommended considering a kiosk to display

the brochures and provide information regarding current events around the City.

**Public Comment:** (10:24 a.m.) **Henry Kennedy, Naples**, cautioned against additional signage along the street, observing that sandwich board signs were currently being used. He however indicated his approval of directory signage in the garages, with the brochures offered at those sites.

***MOTION by Saad to APPROVE THE REQUEST (a sign in each of two parking garages and FASBID to work with staff to determine location(s) of additional signage); seconded by Sulick and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**Recess:** 10:29 a.m. to 10:41 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

**RESOLUTION (Continued / see Item 4 above and motion below).....ITEM 10**  
**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 not read (10:41 a.m.) Referencing the above discussion that occurred during consideration of Item 4, Mayor Sorey reiterated the petitioner's request that the item be continued.

**Public Comment:** (10:41 a.m.) None.

***MOTION by Barnett to CONTINUE THIS ITEM; seconded by Sulick and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**RESOLUTION 12-13055.....ITEM 11**  
**A RESOLUTION DETERMINING OUTDOOR DINING PETITION 12-ODPB3 PURSUANT TO SECTION 56-126(c)(1) TO ALLOW BICE RISTORANTE AND DOLCE AND SALATO RESTAURANT TO HAVE OUTDOOR DINING, EXCEEDING 100 SQUARE FEET ON PUBLIC PROPERTY AND WHICH FACES RESIDENTIALLY ZONED PROPERTY, LOCATED AT 300 5<sup>TH</sup> AVENUE SOUTH, SAID PROPERTY OWNED BY M-P REALTY LLC, BEING MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:42 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 visited the site but had had no contact except Council Member Heitmann, who was familiar with the site.

Agent for the petitioner, Luca De Falco, reviewed the request, explaining that a total of eight additional tables was being sought for use especially during tourist season. Planning Director Robin Singer then noted that nine was the actual number, providing a brief overview of the petition as contained in her agenda memorandum (Attachment 4); the Design Review Board (DRB) and staff recommended approval, she added. One letter of opposition and one negative telephone call were received expressing concern with the proximity to residential and the amount of dining already available on the subject site. No complaints about the existing outdoor dining have however been received, she said.

Following a brief discussion of possible impacts to the adjacent residential area, the motion below was proffered.

**Public Comment:** (11:00 a.m.) None.

***MOTION by Sulick to DENY RESOLUTION 12-13055 based upon adverse impact to adjacent residential; seconded by Heitmann and unanimously carried, all members present and voting (Barnett-yes, Price-yes, Saad-yes, Sulick-yes, Heitmann-yes, Finlay-yes, Sorey-yes).***



**It is noted for the record that Items 12-a and 12-b were read and considered concurrently.**

**RESOLUTION 12-13056.....ITEM 12-a  
A RESOLUTION DETERMINING VARIANCE PETITION 11-V4 FROM SECTION 58-294 OF THE CODE OF ORDINANCES FOR A PARCEL (APPROXIMATELY 10,999.50 SQUARE FEET) WITH AN EXISTING DUPLEX TO BE SUBDIVIDED RESULTING IN TWO PARCELS EACH MEASURING LESS THAN THE REQUIRED 6,000 SQUARE FOOT MINIMUM LOT SIZE AND A VARIANCE FROM SECTION 58-296 OF THE CODE OF ORDINANCES TO ALLOW ZERO-FOOT REAR YARDS WHERE THE EXISTING BUILDINGS ABUT EACH OTHER AND TO ALLOW THE SOUTHERN MOST UNIT 20 FEET FROM THE PROPERTY LINE ALONG THE ALLEY WHERE A 25 FOOT FRONT YARD WOULD BE REQUIRED ON PROPERTY ZONED R3-12 LOCATED AT 358 AND 360 2<sup>nd</sup> avenue south, OWNED BY TOMAC, LLC, MORE FULLY DESCRIBED HEREIN, SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**RESOLUTION 12-13057 (Denied / see motion below).....ITEM 12-b  
A RESOLUTION APPROVING THE PRELIMINARY AND FINAL (RECORD) PLAT of 364 SECOND AVENUE SOUTH, A REPLAT OF A PARCEL WITH AN EXISTING DUPLEX (APPROXIMATELY 10,999.50 SQUARE FEET) INTO 2 PLATTED LOTS OF APPROXIMATELY 5,668.29 SQUARE FEET AND 5,331.21 SQUARE FEET LOCATED AT 358 AND 360 2<sup>ND</sup> AVENUE SOUTH, OWNED BY TOMAC, LLC, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.** Titles read by City Attorney Robert Pritt (11:01 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 visited the site but had had no contact except Council Members Barnett and Saad who indicated that they had spoken with the petitioner's agent.

Attorney Kristen Conroy, agent for the petitioner, utilized an electronic presentation for her review of the petitions (a printed copy of which is contained in the file for this meeting in the City Clerk's Office), explaining that the townhome contains two units, one facing onto Second Avenue South and the other onto the alley at the rear of the property. The petitioners reside in the unit to the rear and wish to subdivide the site into two, fee simple ownership parcels, she said, similar to other recently approved petitions; the intent is to sell the unit facing Second Avenue, she added. Council Member Finlay expressed his support of the petition due to the issues which arise from a condominium association for only two units, including the need for common element insurance. In response to Mayor Sorey, Petitioner Tom Cabot (sworn separately), noted that the Certificate of Occupancy (CO) had been received on the structure in January 2011. Mayor Sorey observed that the owner should have been aware of all pertinent issues. He added that if approved, the petitions should include variances for the resulting lot sizes and setbacks for the rear parcel. Ms. Conroy further explained that problems had arisen when the petitioner had sought insurance, noting that the companies had insisted the policy be held by a condominium association which has led to the subject request.

Planning Director Robin Singer provided a brief overview of the petitions as contained in her agenda memorandum (Attachment 5), including the Planning Advisory Board (PAB) recommendation that while side to side subdivision should be supported, front / back subdivisions should not be approved. Staff recommended approval based upon the approval of two prior similar petitions and that homes can be fronted on an alley, she added. Vice Mayor Price then stated that he did not believe that the petitions met any of the variance criteria and that fronting homes onto alleys is an unwise decision. Council Member Finlay maintained his support of the petitions due to his opposition to rentals, especially short term, and their impacts to neighborhoods, especially when an option exists for separate ownership of the two units; Council Member Saad agreed.

A brief discussion of the current subdivision trend for fee simple ownership of multi-family structures followed during which Ms. Singer stated that staff would be drafting legislation for PAB review in May prior to presentation to Council. In response to Council Member Heitmann, Traffic Engineer George Archibald clarified the changes to the plat that had been provided in a supplement to Council, including a name change and changes to an easement dedication, although noting the most important was the inclusion of a reference to the declaration of common structure and reciprocal easements document (a copy of which is contained in the file for this meeting in the City Clerk's Office).

**Public Comment:** (11:37 a.m.) **William Kelly, PO Box 2584**, expressed opposition to such variances, questioning how the rear property would be assigned a street address as it would front on the un-named alley.

Attorney Conroy clarified that the declaration document received in the above referenced supplement was an executed copy, no amendments had been made. In addition, she stated that access to the rear unit is not being altered and that an easement for access to a mailbox on Second Avenue South is provided in the declaration agreement; the rear unit does have a Second Avenue South address although it is not as yet reflected in Collier County property records. Vice Mayor Price noted that while the petitioner's agent may have submitted an executed copy of the agreement, neither copy received by Council had been executed.

**MOTION by Finlay to APPROVE RESOLUTION 12-13056 BASED UPON Section 46-37(c)(2)a(3, 4, and 6); seconded by Barnett and FAILED 3-4, all members present and voting (Barnett-yes, Finlay-yes, Price-no, Saad-yes, Sulick-no, Heitmann-no, Sorey-no).**

**MOTION by Price to DENY RESOLUTION 12-13057 based upon denial of 12-a; seconded by Heitmann and carried 4-3, all members present and voting (Barnett-no, Finlay-no, Heitmann-yes, Price-yes, Saad-no, Sulick-yes, Sorey-yes).**

CLERK'S TRACKING #12-00001 -a, -b, and -c.....**ITEM 13 AWARDED THREE TWO-YEAR CONTRACTS TO: (a) SOUTHERN ANALYTICAL LABORATORIES; (b) MWH LABORATORIES; AND (c) FLORIDA SPECTRUM ON AN AS NEEDED BASIS FOR LAB TESTING SERVICES BASED ON UNIT PRICES AS BID (NO PARTICULAR ORDER OF PREFERENCE).** (12:03 p.m.) Utilities Director Robert Middleton provided a brief explanation of the three contracts as contained in his agenda memorandum (Attachment 6). In response to Vice Mayor Price, he noted that much of the testing is to meet Florida Department of Environmental Protection (FDEP) requirements and thereby expressed the hope that the amount of testing, and therefore the cost, would be reduced over time. Council Member Heitmann received clarification of the selection process of the firms chosen.

**Public Comment:** (12:07 p.m.) None.

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

**It is noted for the record that Item 18 was considered prior to Item 14-b, see Page \_\_\_.**

CLERK'S TRACKING #12-1300002-a .....**ITEM 14-a AWARDED A CONTRACT FOR (1) THE PURCHASE OF A NEW STREET SWEEPER; AND (2) A FIVE-YEAR TURN-KEY MAINTENANCE PLAN: \ VENDOR: ENVIRONMENTAL PRODUCTS OF FLORIDA CORPORATION, APOPKA, FLORIDA \ COST: \$288,156 \ FUNDING: CIP 12B05 - STREET SWEEPER.** (12:07 p.m.) Streets & Stormwater Director Gregg Strakaluse reviewed his agenda memorandum regarding this item (Attachment 7) and explained that the turn-key maintenance program includes all routine maintenance, such as oil changes, and provides for the use of a similar sweeper should the City's unit be out of service

for more than three days.

Vice Mayor Price then agreed with Council Member Finlay that leasing and outsourcing should be provided by staff as options when considering purchases such as that under discussion. Mr. Strakaluse observed that mechanical sweeping is very profitable for companies providing such service but vacuum is the more effective and should be a consideration due to the City's high level of service mandated by its pollutant discharge permit.

**Public Comment:** (12:26 p.m.) None.

**MOTION by Saad to APPROVE THIS ITEM as submitted; seconded by Sulick and carried 6-1, all members present and voting (Barnett-yes, Finlay-no, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).**

**Recess:** 12:26 p.m. to 12:57 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened and consideration of Item 18 commenced.

**CITY CLERK CANDIDATES INTERVIEWS AND SELECTION.....ITEM 18  
INTERVIEW THREE INTERNAL CANDIDATES: PATRICIA RAMBOSK, JESSICA ROSENBERG AND VICKI SMITH, FOR THE POSITION OF CITY CLERK; SELECT THE CANDIDATE OF CHOICE AND AUTHORIZE THE MAYOR TO NEGOTIATE AN EMPLOYMENT AGREEMENT, SUBJECT TO REVIEW AND APPROVAL BY CITY COUNCIL.**

(12:57 p.m.) Following a brief introduction by City Manager William Moss, the three candidates indicated above were interviewed.

**Public Comment:** (2:29 p.m.) The following speakers supported the selection of either of the two candidates currently employed in the City Clerk's Office: **Lila Zuck, 4325 Beechwood Lake Drive, Sue Smith, 11th Avenue South, and Henry Kennedy, Naples.**

Following additional discussion, the motions reflected below were proffered.

**MOTION by Heitmann NOMINATING VICKI SMITH FAILED 3-4, all members present and voting (Finlay-yes, Saad-no, Barnett-no, Sulick-no, Heitmann-yes, Price-no, Sorey-yes).**

**MOTION by Saad NOMINATING PATRICIA RAMBOSK FAILED 3-4, all members present and voting (Barnett-yes, Price-no, Saad-yes, Sulick-yes, Heitmann-no, Finlay-no, Sorey-no).**

**MOTION by Sorey NOMINATING PATRICIA RAMBOSK carried 4-3, all members present and voting (Saad-yes, Heitmann-yes, Price-yes, Barnett-yes, Sulick-yes, Finlay-yes, Sorey-yes).**

**MOTION by Barnett AUTHORIZING THE MAYOR TO NEGOTIATE AN EMPLOYMENT AGREEMENT WITH PATRICIA RAMBOSK; 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)**

**Recess:** 3:21 p.m. to 3:33 p.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

Mayor Sorey then noted that Item 20 (see below) would be continued and that Item 14-b would be considered prior to resuming the agenda.

**RESOLUTION (Continued / see above).....ITEM 20  
A RESOLUTION ADOPTING RULES OF PROCEDURE OF THE CITY COUNCIL OF THE CITY OF NAPLES TO FACILITATE THE TRANSACTION OF BUSINESS, TO ENSURE THE PUBLIC'S BUSINESS IS TRANSACTED BOTH EFFICIENTLY AND EFFECTIVELY FOR THE BENEFIT OF THE PUBLIC, AND TO PROMOTE COOPERATION IN THE DELIBERATION OF PUBLIC POLICY; REPEALING RESOLUTIONS 98-8218, 00-8943, 02-9689 AND 07-11892; AND PROVIDING AN EFFECTIVE DATE. Title not read.**

**RESOLUTION 12-13058.....ITEM 14-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.** Title read by City Attorney Robert Pritt (3:37 p.m.).

Public Comment: (3:37 p.m.) None.

***MOTION by Saad to APPROVE RESOLUTION 12-13058 as submitted; seconded by Sulick and carried 6-1, all members present and voting (Barnett-yes, Finlay-no, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes)***

**CLERK'S TRACKING #12-00003 .....ITEM 15**  
**APPROVING A PROFESSIONAL SERVICES AGREEMENT TO PERFORM STORMWATER QUALITY SAMPLING, ANALYSIS AND REPORTING AT VARIOUS LOCATIONS THROUGHOUT THE CITY: \ VENDOR: AMEC ENGINEERING AND INFRASTRUCTURE, INC. (FORMERLY MACTEC ENGINEERING AND CONSULTANTS, INC.), NEWBERRY, FLORIDA \ COST: \$59,015 \ FUNDING: STORMWATER OPERATIONS BUDGET.** (3:37 p.m.) Streets & Stormwater Director Gregg Strakaluse briefly reviewed the item as contained in his agenda memorandum (Attachment 8), noting that staff recommended approval. Vice Mayor Price expressed his opposition to further stormwater testing, including the caffeine testing which detects fecal coliform.

Public Comment: (3:42 p.m.) None.

***MOTION by Saad to APPROVE THIS ITEM as submitted; seconded by Barnett and carried 6-1, all members present and voting (Barnett-yes, Price-no, Heitmann-yes, Saad-yes, Finlay-yes, Sulick-yes, Sorey-yes).***

**SELECTION OF CRA CHAIR AND VICE CHAIR.....ITEM 16**  
**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.** (3:44 p.m.) Council Members Sulick and Saad indicated interest in the chairmanship and the consensus below were forthcoming.

Public Comment: (3:48 p.m.) None.

***Consensus to select Council Member Saad as CRA Chair / 5-2 (Heitmann and Sulick dissenting).***

***Consensus to select Council Member Sulick as CRA Vice Chair / 7-0.***

**RESOLUTION 12-13059.....ITEM 17-a**  
**A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE AIRPORT NOISE COMPATIBILITY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:49 p.m.)

Public Comment: (3:51 p.m.) None.

***MOTION to APPROVE RESOLUTION 12-13059 APPOINTING BILL BARNETT unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**RESOLUTION 12-13060.....ITEM 17-b**  
**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.** Title not read.

Public Comment: (3:52 p.m.) None.

***MOTION to APPROVE RESOLUTION 12-13060 APPOINTING GARY PRICE unanimously carried, all members present and voting (Barnett-yes, Finlay-***

*yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13061.....ITEM 17-c

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. Title read by City Attorney Robert Pritt (3:52 p.m.).

Public Comment: (3:52 p.m.) None.

**MOTION to APPROVE RESOLUTION 12-13061 APPOINTING GARY Price**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13062.....ITEM 17-d

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE JUVENILE JUSTICE COUNCIL; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:53 p.m.).

**MOTION to APPROVE RESOLUTION 12-13062 APPOINTING TERESA HEITMANN**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13064.....ITEM 17-e

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES (COLLIER COUNTY) METROPOLITAN PLANNING ORGANIZATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:53 p.m.).

Public Comment: (3:53 p.m.) None.

**MOTION to APPROVE RESOLUTION 12-13064 APPOINTING MARGARET "DEE" SULICK**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13065.....ITEM 17-f

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE BOARD OF DIRECTORS OF THE NAPLES ART ASSOCIATION; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:53 p.m.).

Public Comment: (3:53 p.m.) None.

**MOTION to APPROVE RESOLUTION 12-13065 APPOINTING DOUGLAS Finlay**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13066.....ITEM 17-g

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE NAPLES PLAYERS BOARD OF DIRECTORS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:54 p.m.).

Public Comment: (3:54 p.m.) None.

**MOTION to APPROVE RESOLUTION 12-13066 APPOINTING JOHN SOREY**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13067.....ITEM 17-h

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (3:54 p.m.).

Public Comment: (3:54 p.m.) None.

**MOTION to APPROVE RESOLUTION 12-13067 APPOINTING TERESA HEITMANN**  
*unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).*

RESOLUTION 12-13068.....ITEM 17-i

A RESOLUTION APPOINTING ONE CITY COUNCIL MEMBER TO THE TOURIST

**DEVELOPMENT COUNCIL; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (3:55 p.m.).

**Public Comment:** (3:56 p.m.) None.

***MOTION to APPROVE RESOLUTION 12-13068 APPOINTING JOHN SOREY unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

Mayor Sorey requested that he be held to the above appointment for a two-year term only, if possible.

**ORDINANCE 12-13069.....ITEM 19**  
**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 (3:57 p.m.).

**Public Comment:** (3:58 p.m.) None.

***MOTION by Saad to ADOPT ORDINANCE 12-13069 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).***

Vice Mayor Price thanked the City’s Floodplain Coordinator, Christa Carrera, for her efforts regarding the mapping process.

**ORDINANCE 12-13070.....ITEM 21**  
**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 (3:59 p.m.).

**Public Comment:** (4:00 p.m.) None.

***MOTION by Saad to ADOPT ORDINANCE 12-13070 as submitted; seconded by Sulick and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**RESOLUTION 12-13071.....ITEM 22**  
**A Resolution RELATING TO UTILITY FEES; AMENDING SECTIONS OF CHAPTER 30, PUBLIC WORKS, OF APPENDIX “A” , FEES AND CHARGES SCHEDULE, of THE CODE OF ORDINANCES OF THE CITY OF NAPLES TO REFLECT THE UPDATED CHAPTER 30 SECTIONS AND DESCRIPTIONS; AND PROVIDING AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (4:00 p.m.). City Manager William Moss explained that this resolution would update the fees and charges schedule of the Code of Ordinances to reflect the action

taken in Item 21 (see above). No amendment to water, sewer or reclaimed water fees is anticipated for the next fiscal year although an evaluation of other fees is scheduled and recommendations will be forthcoming, he added. Vice Mayor Price then noted that he had been receiving comments from residents and the golf courses regarding the cost of water, pointing out that he believed further education of the public with regard to the City's tiered fee structure should be provided. Mr. Price also requested that a review of the revenue being generated by the relatively new structure be provided in the near future.

**Public Comment:** (4:04 p.m.) None.

***MOTION by Saad to APPROVE RESOLUTION 12-13071 as submitted; 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).***

**ORDINANCE 12-13072.....ITEM 23**

**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 Attorney Robert Pritt (4:04 p.m.).**

**Public Comment:** (4:05 p.m.) None.

***MOTION by Price to ADOPT ORDINANCE 12-13072 as submitted; seconded by Saad and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**AMENDING 2012 CITY COUNCIL MEETING SCHEDULE.....ITEM 24**

**AMENDING THE ADOPTED CITY COUNCIL WORKSHOP AND REGULAR MEETING SCHEDULE BY REVISING MEETING DATES IN JUNE AND AUGUST. (4:05 p.m.)** City Manager William Moss provided a brief overview of the proposed amendments as contained in his agenda memorandum (Attachment 9). Following a brief discussion, the motion below was proffered.

**Public Comment:** (4:07 p.m.) None.

***MOTION by Barnett to AMEND CITY COUNCIL MEETING SCHEDULE AS PROPOSED; 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).***

**DISCUSSION OF VESSEL SPEEDS IN NAPLES BAY (Continued / see below).....ITEM 25**

(4:08 p.m.) (It is noted for the record that the January 27, 2012 memorandum from City Manager William Moss, which contained a detailed history of the issues for discussion, is appended hereto as Attachment 10.) Mayor Sorey provided a brief introduction during which he gave the following options:

- Continue with the current policy based upon safety in Naples Bay;
- Repeal the current law and not have limited boat speeds on weekends and holidays; or
- Await the outcome of upcoming court proceedings wherein citations regarding vessel

speed are being challenged.

Vice Mayor Price clarified his position that while supporting prior decisions, seeking an outside legal opinion as to the enforceability of the City's ordinance remains an additional option; Council Member Finlay agreed. City Attorney Robert Pritt then cautioned that decision-making should await the outcome of the above referenced legal challenges as the decision rendered at that time would in fact represent another legal opinion. He recommended that Council continue with discussion only of the item.

With regard to potential conflict, Mr. Pritt clarified that so long as Council Member Finlay, who had requested the subject item, would not financially benefit from the current discussion no conflict exists.

In response to a series of questions by Council Member Finlay, the following are summarized:

- Citations for boat speed violations are being written by City marine officers under Florida Statutes rather than local ordinances similar to those being written by Collier County and Florida Fish & Wildlife Conservation Commission (FWC) officers;
- The FWC mandates language contained on the waterway markers, not the City;
- Referencing his January 5, 2012 legal opinion on boat speeds on Naples Bay (Attachment 11), Mr. Pritt noted his suggestion that an editorial note be added to the Code of Ordinances pointing out the inoperability of the 2004 ordinance which in fact revives the 1994 ordinance to clarify the situation for those seeking guidance as to applicable law;
- The City's contract with the State Attorney for prosecution does not include such cases as those referenced above challenging the City's citations for boat speed violations.

Mr. Finlay then clarified that he agreed with the City Attorney that the outcome of the pending legal challenges should be awaited prior to any action by Council.

**Public Comment:** (4:42 p.m.) **Kirk Materne, 1976 Galleon Drive**, stated that as a resident living on Naples Bay, he did not believe the amount of weekend boat traffic had declined whatsoever and urged that slow speed be maintained. **Frank Donahue, representing Marine Industry of South Florida**, noted its support of the 1994 boat speed ordinance and asked that it be enforced thereby continuing the safe boating conditions in Naples Bay. He suggested that signage be updated and that local marinas and rental businesses be provided information to post for its boaters listing where lower speed zones are located and when they are in effect. **Allen Walburn, 620 Sandpiper Street**, stated that he believed that a valid ordinance does not exist and yet boaters are being cited for various infractions. The City should enact a new regulatory instrument as the revival of the 1994 ordinance would not withstand a legal challenge, he opined, as that ordinance was never rescinded. The signage in Naples Bay must reflect the law which is being applied when a violation is being cited, he continued, pointing out that this then allows the boater to seek further information by researching the law violated. **Henry Kennedy, Naples**, urged that Council follow the advice of the City Attorney and await the outcome of the ongoing challenges. **Frank Perrucci, President of Marine Industry of Collier County**, indicated its support of the slower speed zones on weekends and holidays, expressing the hope that the issue will be addressed in a timely manner to avoid any further litigation. **Eric Alexander, 654 Squire Circle #201**, did not respond when called.

*Continue this item to await outcome of court proceedings regarding citations issued.*

**SAM NOE AWARD.....ITEM 26**  
**CONSIDER THE NOMINATIONS RECEIVED AND SELECT THE 2012 SAM NOE AWARD RECIPIENT.** (4:58 p.m.) Following a brief introduction by City Attorney Robert Pritt, the following nominations were brought forward: Peter Manion by Council Member Finlay; Sharon Kenny by Council Member Heitmann (which was withdrawn as no written recommendation had



been submitted); and Albert Katz by Council Member Sulick.

**Public Comment:** (5:02 p.m.) None.

Adhering to Council policy, the nominations were voted upon in alphabetical order.

***MOTION by Sulick NOMINATING ALBERT KATZ FAILED 2-5, all members present and voting (Barnett-no, Finlay-no, Price-no, Saad-no, Sulick-yes, Heitmann-yes, Sorey-no).***

***MOTION by Finlay NOMINATING PETER MANION unanimously carried, all members present and voting (Finlay-yes, Heitmann-yes, Saad-yes, Barnett-yes, Price-yes, Sulick-yes, Sorey-yes).***

**ORDINANCE (First Reading).....ITEM 27**

**AN ORDINANCE RELATING TO BUILDING AND TECHNICAL CODES; REPEALING SECTION 16-111, ADMINISTRATION, CONFLICTS, OF ARTICLE III, BUILDING AND TECHNICAL CODES; AMENDING SECTION 16-112, FLORIDA BUILDING CODE ADOPTED, AMENDMENTS, OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF ADOPTING THE 2010 EDITION OF THE FLORIDA BUILDING CODE; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:02 p.m.). Building Services Director Paul Bollenback provided an overview of the ordinance, explaining that the Florida Building Code changes every three years and must therefore be adopted by the City as well.

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

***MOTION by Barnett to APPROVE THIS ORDINANCE at First Reading, as submitted; seconded by Saad and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**ORDINANCE (First Reading).....ITEM 28**

**AN ORDINANCE RELATING TO THE CITIZENS POLICE REVIEW BOARD; AMENDING SECTION 2-451(f) OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF REVISING THE TRAINING REQUIREMENTS FOR NEWLY APPOINTED MEMBERS OF THE CITIZENS POLICE REVIEW BOARD; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (5:11 p.m.). City Clerk Tara Norman briefly reviewed the amendment as contained in her agenda memorandum (Attachment 12), following which Mr. Pritt recommended additional changes as reflected in the motion below.

**Public Comment:** (5:16 p.m.) None.

***MOTION by Price to APPROVE THIS ORDINANCE at First Reading amended as follows: Section 2-451(f): "Upon appointment to the board and prior to voting at any meeting, a member... designee." This motion was seconded by Saad and unanimously carried, all members present and voting (Barnett-yes, Finlay-yes, Heitmann-yes, Price-yes, Saad-yes, Sulick-yes, Sorey-yes).***

**PUBLIC COMMENT.....**

(5:17 p.m.) **David Bolduc, 2039 Snook Drive**, cautioned against the use of fluoride in drinking water, providing Council with documents and a video for its review (copies of which are contained in the file for this meeting in the City Clerk's Office).

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

(5:20 p.m.) Noting David Bolduc's statement to Council, (see Public Comment above) Council Member Saad recommended that further discussion of the fluoridation issue occur; Council agreed; the item will be discussed during the April 18 meeting.

**ADJOURN.....**

5:23 p.m.

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Tara A. Norman, City Clerk

Minutes prepared by:

---

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 04/18/12

*Attachment 1 / Page 1 of 1*

March 7, 2012  
Naples, Florida

At Regular Council Meeting  
on February 15, 2012  
Agenda Item #31 During  
Public Comment on Discussion  
Concerning appointment of New  
City Clerk to Replace City Clerk  
TARA NORMAN, who is Retiring  
from that position, I inadvertently  
spoke 'MR. Rambask in Deposition'  
when I meant 'MR. Rygers in  
Deposition.'

After that meeting in reviewing  
the DVD from the City Records  
of February 15, 2012 I discovered  
my error.

I respectfully submit this  
correction into the Council  
Meeting Record DVD of March  
7, 2012.

Sincerely,  
Juz B. Smith  
(Mrs. plus Anson Smith)

SUPPLEMENT  
#5 S. Smith

Excerpted text of Item 8 / 03/07/12r / General Fund Five-Year Sustainability Report:

**Background**

- City has experienced revenue and expenditure challenges during the past several years
- Important to determine what the future may hold
- This projection assumes continuation of current status
- The City can change this future

**Purpose of Presentation**

To summarize separate written report which has more detail. Content in this presentation is copied from the written report.

**Presentation Outline**

- Bottom Line
- Assumptions used
- Options, Solutions, Other Funding Sources

**The Big Picture**

<b>General Fund Budget Projection</b>					
<b>Five Fiscal Years</b>					
	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
	Estimated	Estimated	Estimated	Estimated	Estimated
Revenue	33,156,881	33,644,990	34,457,604	35,302,350	36,180,548
Expenditures	34,174,786	34,721,008	35,078,435	35,468,162	35,873,608
Use of the Tax Stabilization Fund*	1,017,905	1,076,018	620,831	165,813	0
Change in Financial Position	(0)	0	(0)	0	306,940
Note: Unfunded project not included in above figures					
12 firefighters for Station 3/4	500,000	990,000	1,009,800	1,029,996	1,050,596

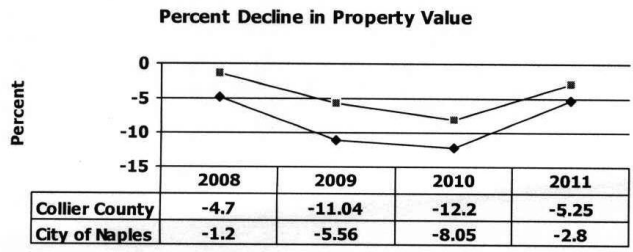
For the year ended September 30, 2011 (unaudited), the General Fund has the following fund balances:

- ✓ Emergency Reserve \$3.5 million
- ✓ Required Unassigned \$10.3 million
- ✓ Tax Stabilization fund \$5.2 million

2011-12 budget appropriates \$714,691 of the Tax Stabilization fund, leaving \$4.5 million for future years of Tax Stabilization purposes.

**Rising costs v Dropping revenue**

The decline in property values since 2008 caused a gap between budgeted revenues and expenditures.



**Main Assumptions**

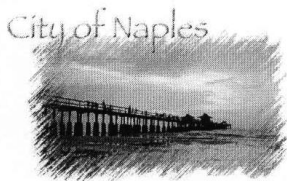
- Property Values 0% next year, then 2% then begin a 4% annual increase.
- Cost of police contractual raise is included for 2012, then salary increase of 1% for the next four years and an increase of health costs
- \$200,000 transfer to Streets Fund
- Assumes no need for capital and infrastructure, continue to be funded through current resources

**Options and Solutions**

- Staff must monitor Zero Based budgets to determine validity of suggestions and cost savings measures.
- Tax Stabilization fund (reserves) can continue to be used carefully.

**Conclusion**

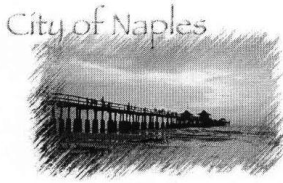
With the prudent use of Tax Stabilization fund, gap will be managed.



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Robin D. Singer, Director Department: Planning
Agenda Item: 9	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Consideration of a request from the Fifth Avenue South Business Improvement District (FASBID) to implement a sign plan for directory signs in the Fifth Avenue Special Business Improvement District.	
<b>SUMMARY:</b> Consideration of a sign plan for the Fifth Avenue Special Overlay District to allow the FASBID to place directory signs in the public parking garages within the district and to work with staff on a plan to place directory signs in the right-of-way along Fifth Avenue South.	
<b>BACKGROUND:</b> The FASBID has approached the City about placing directory signs in the public parking garages located at 4 <sup>th</sup> Avenue South and 8 <sup>th</sup> Street South and 6 <sup>th</sup> Avenue South and 8 <sup>th</sup> Street South and placing directory signs in the right-of-way along Fifth Avenue South. The FASBID has prepared a color-coded directory of businesses located in the district. This is similar to the directory found in the Third Street South District and in many malls.  Included with this agenda memorandum for your review are:	
<ul style="list-style-type: none"> <li>• Request from the Fifth Avenue South Business Improvement District;</li> <li>• Electronic Proof of the Fifth Avenue South Directory Sign (Actual Size 30"x36")</li> <li>• Photos of the Walking Map of Olde Naples as installed in the Parking Garage;</li> <li>• Photos of the Third Street South Directory Signs as installed in the right-of-way;</li> </ul>	
Currently the Walking Map for Olde Naples is on display at the pedestrian access points for each garage. The FASBID requests that the directory sign be placed in conjunction with the Walking Map. Both garages are located in the Fifth Avenue South Special Overlay District as are all of the businesses identified on the directory. The overlay district regulations allow directory signs pursuant to Section 58-1134(f)(10) as follows:	
<p>“(10) <i>Directory sign.</i> The city manager may approve a directory sign identifying the building name and tenants within a building, subject to the following conditions:</p> <ol style="list-style-type: none"> <li>a. Only one sign for each street or major pedestrian way upon which a building faces shall be allowed.</li> <li>b. The sign must be installed on private property with no setback required.</li> <li>c. The maximum total dimensions shall be seven feet in height and three feet in width.”</li> </ol>	



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

**Page Two**

Agenda Item:

9

**BACKGROUND (cont.):**

While this regulation is intended to govern signs for tenants within privately owned buildings, the application to the proposed signs seems to achieve the same general purpose and would be an asset for visitors and businesses within the district.

As a second phase of the sign plan, the BID would like to locate the directory map at various strategic points along Fifth Avenue South. The locations have yet to be determined. The signs would likely follow the design of other signs approved in the public right-of-way, such as the Naples Players sign in front of Sugden Plaza. Directory signs are currently located in the right-of-way in the Third Street commercial area. If City Council authorizes this second phase, staff will work with the BID to identify appropriate locations and the final decision will be made by City Council through the approval of a Right-of-Way Permit.

**RECOMMENDED ACTION:**

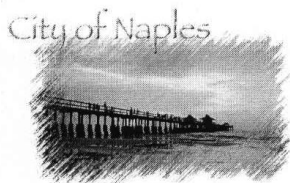
City Council approve by motion the placement of directory signs in the public parking garages and authorize staff to work with the FASBID on future locations within the public right-of-way.

Reviewed by Department Director  
Robin D. Singer

Reviewed by Finance

Reviewed by City Manager  
A. William Moss

City Council Action:

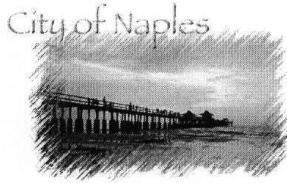


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Robin D. Singer, Director Date: February 21, 2012 Department: Planning
Agenda Item: 11	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> A Resolution determining Outdoor Dining Petition 12-ODPB3 in order to allow Bice Ristorante and Dolce and Salato to provide outdoor dining on public property within the Fifth Avenue South Special Overlay District on property located at 300 5 <sup>th</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a Resolution determining Outdoor Dining Petition 11-ODPB3 in order to allow Bice Ristorante and Dolce and Salato to provide outdoor dining on public property facing residentially zoned property and exceeding 100 square feet in area 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 300 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> Bice Ristorante is requesting approval to place six, two-seat tables in the public right-of-way adjacent to their restaurant and three two-seat tables in front of Dolce and Salato. This sidewalk faces residentially zoned property. Currently, Dolce and Salato have approval for outdoor dining on private property including an elevated patio adjacent to the building and grade level seating along 3 <sup>rd</sup> Street South and the alley behind the building. Bice Ristorante has approved outdoor dining on private property facing Fifth Avenue South and on the elevated patio area facing 3 <sup>rd</sup> Street South.  Section 56-126 (c) (1) of the Code of Ordinances requires City Council approval for the establishment or expansion of outdoor dining areas facing a residential zoning district or outdoor dining areas on public property exceeding 100 square feet in area. Section 58-1134 (e) (13) requires that the Design Review Board approve outdoor dining in the Fifth Avenue South Special Overlay District. The Design Review Board approved the dining tables and chairs and the layout at their February 22, 2012 meeting.  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. On December 28, 2011 a total of 200 letters were mailed to adjacent property owners. One written protest and a phone call have been received. The proximity to residential use and amount of dining already available on-site seem to be the issue.	
<b>File Reference:</b> Outdoor Dining on Public Property 12-ODPB3 <b>Petitioner:</b> ECIB of Naples LLC. <b>Agent:</b> Luca Di Falco <b>Location:</b> 300 5 <sup>th</sup> Avenue South <b>Zoning:</b> C1-A, Commercial Core District and Fifth Avenue South Special Overlay District	




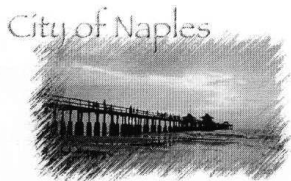


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

**Page Two**

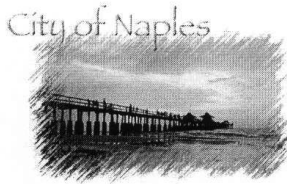
Agenda Item: 11		
<b>RECOMMENDED ACTION:</b> Adopt a Resolution approving Outdoor Dining Petition 12-ODPB3 pursuant to Section 56-126 (c) (1) to allow Bice Ristorante and Dolce and Salato Restaurant to have outdoor dining exceeding 100 square feet on public property and which faces residentially zoned property located at 300 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: March 7, 2012**

Agenda Section: Regular	Prepared By: Robin D. Singer, Director Department: Planning
Agenda Item: 12	Legislative <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/>
<b>SUBJECT:</b> Consideration of a two part request for a Variance to lot size and setbacks and for the Subdivision of property with an existing duplex on property located at 358 and 360 2 <sup>nd</sup> Avenue South.	
<b>SUMMARY:</b> City Council is asked to consider a Variance and Subdivision Petition for the following as they pertain to the property located at 358 and 360 2 <sup>nd</sup> Avenue South:	
<ul style="list-style-type: none"> <li>• <b>11-V4</b> A resolution determining a variance from Section 58-294 of the Code of Ordinances in order to allow an approximately 10,999.50 square foot parcel with an existing duplex to be subdivided resulting in two parcels each measuring less than the required 6,000 square foot minimum lot size and a variance from Section 58-296 of the Code of Ordinances to allow zero-foot rear yard where the existing buildings abut each other and to allow the southern most unit 20 feet from the property line along the alley where a 25 foot front yard would be required.</li> <li>• <b>11-SD3</b> A resolution determining a request to subdivide a parcel measuring approximately 10,999.50 square feet with an existing duplex into two platted lots of approximately 5,500 square feet each.</li> </ul>	
<b>BACKGROUND:</b> The subject property is located in the R3-12 multiple family district and the existing duplex on the property was constructed in 2009. One of the duplex units faces 2 <sup>nd</sup> Avenue South and the other faces the alley between 2 <sup>nd</sup> Avenue South and 3 <sup>rd</sup> Avenue South. The owner would like to subdivide the existing parcel between the two units separating the parcel into two parcels. Access and frontage for the rear parcel will be from the alley. In order to subdivide the parcel variances are required from the minimum lot size requirement, from the front yard requirement for the rear unit and to the rear setbacks for both units where they are attached.	
At the time the original application was made, the Planning Advisory Board (PAB) and City Council were considering similar requests in the City wherein the petitions for variance and subdivision were considered separately. In this case, the petitioner has chosen to process both petitions simultaneously. The petitioner's agent has worked with staff and the City Attorney to insure that the Common Structure Agreement proposed as part of the petition for subdivision would be adequate to protect both owners. This delayed the review as the PAB continued the item on August 10, 2011. The petitions were heard again on November 9, 2011 and the PAB voted 5-2 to deny the petitions based on the lack of a hardship based on conditions that were out of the owner's control. The petitioner chose to postpone the hearing before City Council in order to review the outcome of discussions by the PAB of the City's subdivision ordinance and allowances for townhouse or zero lot	

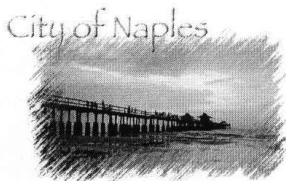


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

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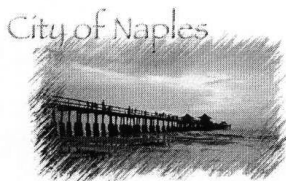
Agenda Item: 12		
<b>BACKGROUND (cont.):</b>		
<p>line subdivisions. The PAB discussed the ordinance on February 8, 2012. Their discussion indicated support for allowing townhouse or zero lot line subdivisions but they specifically stated that this provision should not include divisions where the units would be divided front/back, as is proposed under these petitions, rather than side by side where both units face the street.</p> <p>Despite the recommendation of the PAB and subsequent discussion of the ordinance, the petitioner has decided to proceed to City Council. Based on previous review and approval of similar requests, staff has recommended approval subject to the recording of the plat and Common Structure Agreement and subject to a limitation on future development of the parcels of one dwelling unit per property.</p> <p>On July 29, 2011, a total of 198 letters were mailed to all property owners located within 500 feet of the subject property. One email response was received in protest. Due to the delay between the PAB meeting and City Council, that individual will be notified of the City Council meeting date.</p> <p><b>File Reference:</b> 11-V4 and 11-SD3  <b>Petitioner:</b> TOMAC, LLC  <b>Agent:</b> Kristin M. Conroy, Conroy, Conroy &amp; Durant, P.A.  <b>Location:</b> 358 and 360 2<sup>nd</sup> Avenue South  <b>Zoning:</b> R3-12 Multiple Family District</p> <p><b>RECOMMENDED ACTION:</b>                  City Council approve the following relating to property located at 358 and 360 2<sup>nd</sup> Avenue South subject to the conditions listed in the resolutions:</p> <p>a. Adopt a Resolution approving Variance Petition 11-V4 from Section 58-294 of the Code of Ordinance in order to allow an approximately 10,999.50 square foot parcel with an existing duplex to be subdivided resulting in two parcels each measuring less than the required 6,000 square foot minimum lot size and a variance from Section 58-296 of the Code of Ordinances to allow zero-foot rear yards where the existing buildings abut each other and to allow the southern most unit 20 feet from the property line along the alley where a 25 foot front yard would be required on property zoned R3-12.</p> <p>b. Adopt a Resolution approving Petition 11-SD3 for Final (Record) Plat approval, a replat of a parcel with an existing duplex (approximately 10,995.5 square feet) into two platted lots of approximately 5,668/29 and 5,331.21 square feet on property owned by TOMAC, LLC.</p>		
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: March 7, 2012**

Agenda Section: Regular	Prepared By: Bob Middleton, Director Department: Utilities
Agenda Item: 13	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Award of three two-year contracts on an as needed basis for laboratory testing services for the Utilities Department.	
<b>SUMMARY:</b> City Council is asked to award contracts to Southern Analytical Laboratories, MWH Laboratories, and Florida Spectrum for lab testing services. Work orders will not exceed \$60,000 annually per project or assignment and will not exceed funds provided in the annual budget. The contracts will be for a period of two years, with the City's option to renew for two one-year renewal periods pursuant to the City's RFP 011-12.	
<b>BACKGROUND:</b> The City of Naples operating budgets include funding for the purpose of obtaining certified laboratory results for water, soil and wastewater samples. These laboratory testing services are either performed by the City's Central Laboratory located at the Wastewater Treatment Plant or subcontracted services. Subcontracted services are required to analyze all tests that the City's laboratory is not certified to perform. The level of certification for the City's Central Laboratory is limited to "wet chemistry" and does not include metals or other inorganic analysis. Subcontracted vendors must be TNI (The NELAC Institute) certified for soil, potable and non-potable matrices in order to meet testing requirements applicable to both drinking water and environmental analysis as mandated by the operating permits of the Water and Wastewater Treatment Plants.  The majority of the subcontracted laboratory testing services required this fiscal year is related to the Aquifer Storage and Recovery (ASR) water quality monitoring cycle testing. The ASR cycle test permit requires weekly, monthly and annual water quality testing for two ASR wells and two monitoring wells.  RFP 011-12 was publicly advertised on December 7, 2011 for the annual requirements for certified lab testing services. Eleven (11) HTE vendors were mailed notices, DemandStar sent three-hundred fifteen (315) notices to potential vendors, fifteen (15) plan holders were mailed a copy of the RFP, and the RFP was advertised in the Naples Daily News. The City received proposals from seven (7) laboratories that provided lab testing services.  A Selection Committee, appointed by the City Manager and consisting of: Justin Frederiksen, Deputy Utilities Director, Ken Kemlage, Wastewater Treatment Plant Superintendent, Shawn Davis, Laboratory Supervisor, Dave Graff, Project Manager, and Katie Laakkonen, Environmental Specialist, reviewed submittals during a publicly advertised meeting held on January 31, 2012. The Selection Committee ranked Southern Analytical Laboratories, MWH Laboratories, and Florida Spectrum as the top three laboratories, considering qualifications, references, experience, and cost for services.	

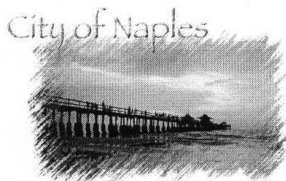


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

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Agenda Item: 13		
<b>BACKGROUND (cont.):</b> Southern Analytical Laboratories has provided these services to the City in the past and staff has been satisfied with their performance. The Selection Committee has recommended awarding Southern Analytical Laboratories as the primary service provider, and award MWH Laboratories and Florida Spectrum as secondary service providers in order to provide sufficient resources for laboratory testing services.		
Unlike many contracts, the total amount spent will depend on the required lab testing services and the amount appropriated by City Council in the annual budget. Therefore, work orders will be issued for lab testing services as required based on the unit prices provided through the competitive bid process and itemized in the contract with each firm.		
<b>FUNDING SOURCE:</b> Funding has and will be budgeted through the operating and capital budget(s) for the Water & Sewer Utility Fund. In the Water Sewer Utility Fund, the budgeted amount for certified laboratory testing services is \$60,000 for FY 2011-12. Staff is anticipating increases for the FY 2012-13 budget in order to accommodate an increased level of service required for ASR well cycle testing.		
<b>RECOMMENDED ACTION:</b> Motion to award three two-year contracts, as needed, to Southern Analytical Laboratories, MWH Laboratories, and Florida Spectrum for lab testing services based upon unit prices as bid. The aggregate total amount between the vendors will not exceed \$60,000 annually beginning March 7, 2012, with the City's option to renew for two one-year renewal periods, and authorize the City Manager to execute the contract(s).		
Reviewed by Department Director Bob Middleton	Reviewed by Finance Ann Marie Ricardi	Reviewed by City Manager A. William Moss
City Council Action:		

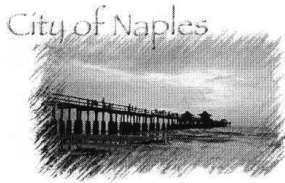


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Gregg R. Strakaluse, Director Department: Streets and Stormwater
Agenda Item: 14	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Award of contract to Environmental Products of FL Corporation in the amount of \$288,156 for the purchase of a new street sweeper and five-year turn-key maintenance plan, and approve a Resolution amending the FY 2011-12 budget in the amount of \$28,156 to appropriate funds from the Stormwater Enterprise Fund Balance to Capital Improvement Project No. 12V05.	
<b>SUMMARY:</b> City Council is asked to consider award of a contract to Environmental Products of FL Corporation for the purchase of a new street sweeper and five-year turn-key maintenance plan in the amount of \$288,156 and to approve a Resolution amending the FY 2011-12 budget to appropriate funds from the Stormwater Enterprise Fund Balance in the amount of \$28,156.	
<b>BACKGROUND:</b> This item was continued from the January 18 and February 15, 2012 City Council Meetings. While City Council unanimously concluded at the January meeting that its preference was to maintain a sweeper operation that utilized a vacuum sweeper (as opposed to a mechanical sweeper), questions remained about the capabilities of private companies that perform street sweeping services.  During last month's presentation, staff presented information regarding the City's street sweeper operation versus an outsourced operation to rationalize its recommendation to maintain the City's program in-house. With the purchase of a new street sweeper, the City's street sweeping program is estimated to cost \$13,993 per month over the next five years. The lowest <b>responsive</b> bidder for an equivalent program that is outsourced to a private company is \$16,302 per month (submitted by USA Services of Florida). Staff has determined that this bidder meets all of the City's specifications and received positive comments from all references. Under the rules and policies for procurement, this is the only company that staff could recommend entering into an agreement with under bid solicitation 05-12. Staff is not making this recommendation because in-house operations can be provided for \$2,309 less per month than the outsourced alternative.  Two additional companies submitted bid prices for street sweeping services; they are Precision Cleaning and Star Cleaning USA. Star Cleaning submitted the second lowest bid but based their bid strictly on a mechanical street sweeping operation (the City specified a vacuum sweeping operation). The lowest bidder, Precision Cleaning, provided cost for their services, but did not provide any response to the required qualifications section. Therefore, staff was unable to determine whether this company met the bid specifications or could provide reliable service at the expected level of service. Both bidders were technically disqualified from consideration.  Rather than withhold information submitted by non-responsive bidders from City Council, staff presented each company's pricing and indicated which bidders were responsive and which bidders	



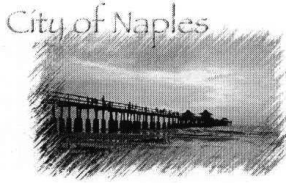


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

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<p><b>BACKGROUND (cont.):</b>                  were not. While staff does not typically check references or perform background checks on non-responsive companies, City Council raised several questions about the capabilities of the non-responsive companies. In an effort to answer questions raised at the January City Council meeting, staff has obtained additional information on all companies.</p> <p><b>USA Services of Florida \$16,302/mo. (responsive and complies with spec):</b> This company's main business is street sweeping and its corporate offices are located in Longwood, FL (205 miles from Naples), but has operational facilities in Tampa, FL (167 miles from Naples). This company provided two bids. The first for a vacuum sweeper that completely meets the City's specification. The second for a mechanical sweeper that did not meet the City's specifications. The company fully complied with the City's requirement to provide specific detail regarding its qualifications. Staff received positive feedback from all three reference contacts and all references represent government agencies within Florida with streets and highways.</p> <p><b>Star Cleaning \$9,902.10/mo. (does not comply with spec):</b> This company's main business is street sweeping and is located in Pembroke Pines, FL (104 miles from Naples). This company based its bid on a mechanical sweeping operation and complied with the City's requirement to provide specific detail regarding its qualifications. Staff received positive feedback from all three reference contacts and all references represent government agencies within Florida with streets and highways.</p> <p><b>Precision Cleaning \$9,475.50/mo. (not responsive and does not comply with specifications):</b> This company's main business is power washing/window cleaning and is located in unincorporated Collier County (3 miles from the City limits). Due to the fact that the company did not comply with the City's requirement to provide specific detail regarding its qualifications, a meeting was held between the City's Purchasing Manager and a company representative. At this meeting, the company revealed that it possesses three street sweepers (of which one is a regenerative vacuum sweeper). The company listed three references. Rafael Silva, representing the Grey Oaks Community, was contacted and indicated that the company's performance was "good" and that they were "fairly responsive". Approximately 20 miles of streets are swept within Grey Oaks. Justin Collins, representing Neapolitan Enterprises, was contacted and indicated that there were no problems with the company and that they provide a good price. Approximately 10-acres of parking lots are swept by the company. Lastly, Kyle Lukasz, representing Pelican Bay, was contacted and indicated that the company sweeps the main streets weekly and side streets monthly (approximately 6-miles). Mr. Lukasz indicated that the sweeping program supplements the County's existing street sweeping effort in order to keep community lakes clean.</p> <p>City Council also inquired about the possibility of extending the turn-key maintenance program on the City's existing street sweeper. Mr. Chris Haase, General Manager for Environmental Products of Florida, has written that due to the age of the equipment, his company could not provide any further extension to the turn-key maintenance plan. Instead, his company could provide preventative maintenance service that includes oil and filter changes, lubrication, air filter changes, and fuel filter</p>	



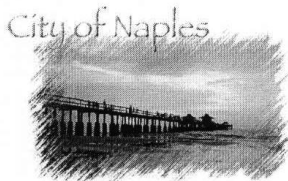
**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

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<b>BACKGROUND (cont.):</b>		
<p>changes every six months for \$2,304.83 per service (or \$4,609.66 per year). If a breakdown were to occur, the company would provide the City with "preferred pricing on parts" and labor would be billed at standard rates. Staff agrees with the company's position that the risk of breakdown for this equipment increases as age increases. Staff's position is that the current salvage value of the existing street sweeper (\$30,000) provides a significant financial advantage at this point in time.</p> <p>After significant efforts to compare an outsourced street sweeping operation with in-house operations, the Department is recommending the award of a contract to Environmental Products of FL Corporation in the amount of \$288,156.00 for the purchase of a new street sweeper with a five-year maintenance plan in order to continue in-house operations at the same level of service. Additionally, a budget amendment resolution is necessary in the amount of \$28,156 to appropriate funds from the Stormwater Enterprise Fund Balance to Capital Improvement Project No. 12V05.</p>		
<b>FUNDING SOURCE:</b>		
<p>Funding in the amount of \$260,000 is available within the Stormwater Enterprise Fund – CIP 12V05 – Street Sweeper (Account: 470.6060.539.6070). An additional \$28,156 is required from fund balance (\$6,100,000) via a budget amendment resolution.</p>		
<b>RECOMMENDED ACTION:</b>		
<p>Award a contract to Environmental Products of FL Corp. in the amount of \$288,156 for the purchase of a new air street sweeper and a five-year maintenance and repair agreement per Bid 016-12; and approve a Resolution amending the FY 2011-12 budget in the amount of \$28,156 to appropriate funds from the Stormwater Enterprise Fund balance to CIP 12V05.</p>		
Reviewed by Department Director Gregg Strakaluse	Reviewed by Finance Ann Marie Ricardi	Reviewed by City Manager A. William Moss
City Council Action:		

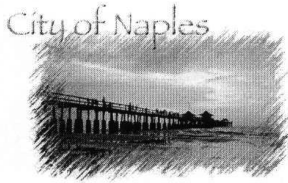




**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Gregg Strakaluse, Director Department: Streets & Stormwater
Agenda Item: 15	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Approve a Professional Services Agreement with AMEC Environment and Infrastructure, Inc. to perform stormwater quality sampling, analysis and reporting at various locations throughout the City.	
<b>SUMMARY:</b> City Council is asked to approve a Professional Services Agreement with AMEC Environment and Infrastructure, Inc. in the amount of \$59,015 to perform stormwater quality sampling, analysis and reporting at various locations throughout the City.	
<b>BACKGROUND:</b> At the December 12, 2011 City Council Workshop, staff and the City's engineering consulting firm AMEC presented a report titled "Stormwater Quality Analysis, Pollutant Loading and Removal Efficiencies". This report represented the City's year-long effort to monitor stormwater quality in lakes and the conveyance system and has been published on the City's web page ( <a href="http://www.naplesgov.com/index.aspx?nid=382">http://www.naplesgov.com/index.aspx?nid=382</a> ). At the January 17, 2012 City Council Workshop, staff presented a plan for continuing stormwater quality sampling in an effort to achieve four specific goals:  <ol style="list-style-type: none"> <li>1. Improve pollutant removal efficiencies of stormwater lakes within the City;</li> <li>2. Identify pollutant sources;</li> <li>3. Reduce pollutants at the source through an interactive public outreach program;</li> <li>4. Monitor the City's progress towards meeting City Council goals and regulatory criteria for nutrients and other impairments.</li> </ol> <p>At the conclusion of the Workshop, City Council consensus was to continue stormwater quality monitoring efforts aimed at achieving the above-referenced goals.</p> <p>In accordance with the Consultants Competitive Negotiations Act (CCNA), City Council approved Resolution 09-12327 qualifying engineering firms to perform work for the City. On June 17, 2010, staff requested Letters of Interest from pre-qualified firms detailing their approach to collecting stormwater data, analyzing data, preparing reports and modeling pollutant loading rates to receiving water bodies. On July 12, 2010, the Purchasing Division received six submittals and staff ranked AMEC (formally Mactec, Inc.) the top respondent for this ongoing effort. Since the January 2012 City Council Workshop, staff has worked with AMEC to develop a scope of work that will provide the City with stormwater quality data for 2012 and continue to monitor progress in reaching stormwater quality goals. Furthermore, the scope of work provides City staff with assistance on implementing public outreach efforts. The negotiated cost for services, along with a schedule for performance, is outlined in the attached contract.</p>	

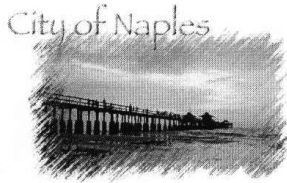


**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

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Agenda Item: 15		
<b>FUNDING SOURCE:</b> Funds for this contract are available in the Stormwater Enterprise Fund Operations Budget (Account No. 470-6060-539-3100).		
<b>RECOMMENDED ACTION:</b> Approve a Professional Services Agreement with AMEC Environment and Infrastructure, Inc., to perform stormwater quality sampling, analysis and reporting at various locations throughout the City for a cost not to exceed \$59,015.		
Reviewed by Department Director Gregg R. Strakaluse, P.E.	Reviewed by Finance Ann Marie Ricardi	Reviewed by City Manager A. William Moss
City Council Action:		



**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Bill Moss, City Manager Department: City Manager
Agenda Item: 24	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Amendment to the 2012 City Council Meeting Schedule.	
<b>SUMMARY:</b> City Council adopted a schedule of Workshop and Regular meetings of City Council for 2012. A request has been made to amend the schedule for the month of June	
<b>BACKGROUND:</b> On October 19, 2011, City Council approved a schedule of Workshop and Regular meetings of City Council for the year 2012. On February 15, 2012, Councilman Barnett proposed, and City Council agreed, to consider amending the schedule during the month of June.  The original schedule of meetings provided for a Regular meeting on June 6 <sup>th</sup> , a Workshop meeting on June 18 <sup>th</sup> , and a Regular meeting on June 20 <sup>th</sup> . Proposed are a Regular meeting on June 6 <sup>th</sup> , a Workshop meeting on June 11 <sup>th</sup> , and a Regular meeting on June 13 <sup>th</sup> .  The Five-Year Capital Improvement Program (CIP) is usually scheduled for the Workshop meeting in June. If the meeting calendar is amended, the Five-Year CIP would be scheduled for deliberation on June 11 <sup>th</sup> .  In addition, the schedule that was approved on October 19, 2011 showed the August Workshop as the 20 <sup>th</sup> and the Regular Meeting as the 22 <sup>nd</sup> . These dates are in the fourth week of the month rather than in the third week. City Council may wish to amend these meeting dates to the third week of the month -- August 13 <sup>th</sup> and 15 <sup>th</sup> .  A revised meeting calendar is attached for consideration by City Council.	
<b>RECOMMENDED ACTION:</b> Consider and approve by motion the revised meeting schedule for the months of June and August.	
Reviewed by Department Director Bill Moss	Reviewed by Finance N/A
Reviewed by City Manager Bill Moss	
City Council Action:	



# Memo

Office of the City Manager

**TO:** Honorable Mayor and City Council  
**FROM:** A. William Moss, City Manager *AWM*  
**DATE:** January 27, 2012  
**SUBJECT:** Vessel Speed Zones in the Naples Bay

On December 26, 2011, the day after the Christmas Holiday, Councilman Finlay called to express concern regarding the enforcement of speed zones on holidays in the Naples Bay. Thereafter, many email, primarily from Councilman Finlay and Mr. Allen Walburn, raised several issues regarding vessel speed zones in Naples Bay. Also received was email, telephone calls, or personal visits from representatives of the Marine Industry Association expressing their acceptance of the status quo. Two articles were published in the *Naples Daily News*.

The purpose of this email is to summarize the issues of concern raised by Councilman Finlay, Mr. Walburn, et. al.; findings of research over a 20-year period by your City Manager, City Attorney, and staff; and the determination made by the Fish and Wildlife Conservation Commission (FWC), following their review after receiving the same or similar concerns.

## The Issue(s) of Concern.

The concerns expressed by others are many but may be summarized as follows:

- The regulatory vessel speed zone markers in the Naples Bay are not properly permitted by the FWC.
- The City does not have an ordinance to support the vessel speed zones in the Naples Bay.
- The City does not have the authority to enforce regulatory speed zones.
- The City's Marine Patrol has improperly cited vessel operators because the speed zones are not valid.
- The City's 2004 ordinance, which amended and expanded vessel speed zones established in 1991, was eventually overturned when the FWC denied a permit to install new speed zone markers, following a challenge to the 2004 ordinance that reached the Court of Appeals, Second District. The ordinance, therefore, should be repealed by City Council.
- The City has no basis on which to support the necessity of the vessel speed zones [which have been in place for 20 years].
- Continued enforcement of the vessel speed zones will result in litigation and legal expenses.
- The legal opinion provided by the City Attorney dated January 5, 2012 as to the applicability of the 1994 ordinance that established the current vessel speed zones is not correct.

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**Summary.**

- In 1991, City Council adopted Ordinance #91-6440. The ordinance established regulatory speed zones applicable on weekends and holidays in certain sections of the Naples Bay. A permit was submitted to the Florida Department of Natural Resources for the placement of regulatory markers in the Naples Bay.
- In 1992, the Florida Department of Natural Resources approved Permit #91-040 for the placement of the regulatory markers consistent with Ordinance #91-6440. (Later, the responsibility for reviewing and approving regulatory markers was transferred to the Florida Fish and Wildlife Conservation Commission).
- In 1994, City Council adopted Ordinance #94-7323, which amended the Code pertaining to vessel speed zones and included a speed zone along the beach. The ordinance did not amend the speed zones in Naples Bay, other than granting an exception in one of the zones for the purpose of testing propulsion systems by marine mechanics. There is no evidence (to date) to suggest that a subsequent permit was issued by DNR/FWC. It is possible that such permit was not required because the previously approved speed zones in the Naples Bay were not amended.
- Ten years later, in 2004, City Council adopted Ordinance #04-10664 following a somewhat contentious public process. The ordinance amended the Code (Ordinance #94-7323/#91-6440) by expanding the vessel speed zones.
- Apparently because of controversy related to adoption of the 2004 ordinance, the FWC, in 2005, inspected the regulatory markers in Naples Bay for compliance with the original permit #91-040 issued in 1992. Many short-comings were noted. The FWC issued a Notice of Violation citing the deficiency in the language on the regulatory markers. The City corrected the deficiencies as required by the FWC. Today, the City's regulatory markers are at the same locations and contain the same language as was approved by the FWC in 2005, consistent with permit #91-040. The FWC required the signs to cite City Ordinance #94-7323, the 1994 ordinance, and the appropriate Florida Administrative Code section.
- With the adoption of the 2004 ordinance, the City was required to acquire a permit from the FWC for new vessel regulatory markers consistent with the revised vessel speed zones. FWC agreed that the City Council had the right to establish speed zones and issued notice of intent to issue the permit for new regulatory markers. A legal challenge to the FWC's decision to issue the permit to the City was filed by Collier County, the Marine Industries, Allen Walburn, Doug Finlay, and others.
- The matter went before an Administrative Law Judge (ALJ) who found in favor of the Plaintiffs and against the FWC. The lengthy opinion essentially determined that the FWC did not correctly interpret its own rules. Furthermore, the FWC was required to make its own factual determination concerning whether the permit application (for regulatory markers) and documentation met one of the required criteria of the Florida Administrative Code, rather than accepting all factual statements provided by the City without questioning the findings of the City.

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- The FWC decided to overrule the finding of the ALJ and again issued notice of intent to issue the permit for new regulatory markers as requested by the City. Plaintiffs appealed to the Court of Appeals, Second District.
- On September 12, 2008, the Court of Appeals sided with the finding of the ALJ. The Court found 1) The statute governing approval of waterway regulatory markers required the FWCC [FWC] to consider the City's application for marker permit and employ its own analysis to determine whether application satisfied statutory criteria, and 2) FWCC improperly delegated its final order authority to its executive director. The case was remanded back to the FWCC.
- On December 10, 2008, the FWCC revised its final order, accepted the findings of the ALJ and Appellate Court, and denied the City of Naples' application for a permit to place regulatory markers implementing Ordinance #04-10664.
- In November or December of 2011, the City Manager and City Attorney discussed future business matters that should be considered by City Council. One of the subjects suggested was the revision of the City Code to remove certain provisions that were incorporated with the adoption of the 2004 ordinance (by deleting the revised regulatory speed zones for which a permit for new regulatory markers was denied). The City Attorney proceeded to draft an amendment to the City Code.
- Following questions raised by Councilman Finlay on December 26<sup>th</sup> and others thereafter, the City Manager and staff assembled historical records, met with Councilman Finlay, Mr. Walburn and others, and the City Attorney. The subject matter addressed the "Issues of Concern" as provided above.
- The Florida Fish and Wildlife Conservation Commission was contacted and apparently the same "Issues of Concern" were conveyed to the FWC. FWC embarked on its own review of the history and the validity of the regulatory markers which have been in place for the past 20 years.

Following considerable investment in time by the City Manager, City Attorney, staff, the FWC, and other interested parties, the following occurred:

- The City Attorney crafted a legal opinion dated January 5, 2012 regarding boat speeds on Naples Bay (attached). The summary is as follows:

*The City may enforce speed zones on Naples Bay in accordance with the terms of Ordinance No. 04-10664 (2004) only to the extent it is not inconsistent with the provisions of Ordinance 94-7323 and any regulatory markers lawfully erected pursuant thereto.*

*As to the "slow speed" zones in Naples Bay, Ordinance 94-7323 applies since the determination of inoperability of those provisions in Ordinance 04-10664 revives the similar provisions in Ordinance 94-7323.*

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The Opinion, therefore, provides that the vessel speed zones, as adopted by Ordinance #94-7323 in 1994, remain in place and therefore that ordinance authorizes enforcement of the speed zones for weekends and holidays, consistent with the regulatory markers permitted by FWC permit #91-040.

- The City Attorney, City Manager, and staff prepared a memorandum to the Police Department to serve as a guide for the Marine Patrol Officers when issuing citations related to either Ordinance #94-7323 or the appropriate Florida Statute (protection of manatees). A copy is attached.
- The FWC, following review of communications from Mr. Walburn (and perhaps others), conversations with City staff, and their own legal review, issued an email confirming the validity of the vessel regulatory markers for the subject vessel speed zones (attached).

Remaining issues are whether: 1) The existing vessel speeds zones, in place since 1991/92, are necessary today, and 2) whether the City Code should be amended to delete the language pertaining to revised vessel speed zones as adopted in 2004 but not permitted.

As to whether the existing speed zones should remain as adopted in 1991-92, that is a policy decision of City Council. The City Attorney has rendered a legal opinion, and the City Manager is responsible for enforcement. So long as the vessel speed zones and the required regulatory markers remain, the vessel speed zones limiting speeds on weekends and holidays will be enforced by the City's Marine Patrol and, presumably, the Sheriff's Office and the FWC. While there appears to be limited public interest to remove or amend the vessel speed zones, such removal is a subject matter for City Council. If the speed zones are amended, such amendment will likely require review, analysis, and permit approval by the FWC.

As to whether the City Code should be amended to delete certain provisions that amended the regulatory speed zones for which a permit for new regulatory markers was subsequently denied, your staff and City Attorney are in agreement that such a code amendment carries great risk.

The reason is due to a provision in the Florida Statutes, added in 2009 in response to the Naples case, which is as follows:

*Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph.*

While it is likely that the FWC would view a full or partial repeal of the 2004 ordinance (#04-10664) as "ministerial" in nature without altering the current approved vessel speed zones and regulatory markers and would, therefore, not challenge the amendment, the law is not clear in that regard. Therefore, even if the FWC concurred with the City's amendment, there are no assurances that others will not challenge that decision, which places the City back into the legal arena.

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Others, on the other hand, may advance the theory that the City Attorney Opinion (1/5/12) as to the enforceability of Ordinance #94-7323 can and should be overturned. From their perspective, the Opinion cannot be supported by law. It is therefore better to amend the ordinance than to risk a legal challenge to the Opinion, despite possible consequences, such as subsequent review by the FWC and reconsideration as to whether the vessel speed zones should remain. Also, amending the ordinance will provide clarity for future interpretations by the City's Police Department, the public, the FWC, and the courts.

An option to a city code amendment is the placement of an Editor's footnote in the City Code to clarify application of Ordinance #94-7323 rather than amending the City Code. [See e.g., Charter Section 14.1]. Such notes are used in city codes and state laws to alert the reader of something not in the codified section but relevant to understanding of the law.

While staff, the City Attorney, and the public may offer guidance to City Council as to the appropriate action to take, if any, such a decision can only be made by City Council.

The subject matter will not be scheduled for discussion and consideration by City Council. Whether such a discussion should occur will be up to the majority of City Council.

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# Memo

Office of the City Attorney

**TO:** A. WILLIAM MOSS, CITY MANAGER  
**FROM:** ROBERT D. PRITT, CITY ATTORNEY  
**CC:** BILL BARNETT MAYOR AND MEMBERS OF CITY COUNCIL; ROGER REINKE, ASSISTANT CITY MANAGER; TOM WESCHLER CHIEF OF POLICE  
**DATE:** JANUARY 5, 2012  
**SUBJECT:** BOAT SPEEDS ON NAPLES BAY  
City Attorney Opinion No. 12-0103

SUBJECT TO VERIFICATION OF MARKERS

## Request

You have inquired as to whether and to what extent the City may currently enforce boat speeds on Naples Bay.

## Summary of Answer

The City may enforce speed zones on Naples Bay in accordance with the terms of Ordinance No. 04-10664 (2004) only to the extent it is not inconsistent with the provisions of Ordinance 94-7323 and any regulatory markers lawfully erected pursuant thereto.

As to the "slow speed" zones in Naples Bay, Ordinance 94-7323 applies since the determination of inoperability of those provisions in Ordinance 04-10664 revives the similar provisions in Ordinance 94-7323.

## Explanation

Specifically, the presumptively lawful speed restrictions as of now are those set out in Ordinance 94-7323, as follows:

78-145 (a)...

- (1) The Gulf of Mexico along the Naples public beach, from the shoreline out to 500 feet west of the public beach, from the north boundary of the City of Naples to Gordon Pass, shall be designated as an "idle speed/no wake" zone. There are two exceptions to the above:

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- a. No vessel operations are allowed within 500 feet of the Naples Pier or within 500 feet of the beach at Lowdermilk Park, other than vessels engaged in public health, safety, or welfare operations.

(Note: This provision is in substance the same as in Ordinance 04-10664.)

- b. To facilitate safe vessel operations in varying conditions of wind and tide, the "idle speed/no wake" regulation does not apply in the outer approach to Doctors Pass, such approach being the area within the marked channel from the lighted, outermost marker east to the outer ends of the stone jetties.
- (2) Doctors Pass and the Moorings Bay System, from Seagate Drive south to Banyan Boulevard, shall be designated as an "idle speed/no wake" zone.
- (3) The Gordon River and Naples Bay, from the north boundary of The City of Naples to a line running east to west through marker 32, connecting adjacent shorelines, shall be designated as an "idle speed/no wake" zone. There is one exception to the above: for the purpose of testing propulsion systems, marine mechanics are permitted to exceed the "idle speed/no wake" restriction in the Gordon River in an area approximately 0.3 mile in length, extending from the City Wastewater Treatment Plant south to the Horticultural Landfill, weekdays, between the hours of 8:00 a.m. and 5:00 p.m.
- (4) Gordon Pass, from a line running northwest to southeast through marker 7a, connecting adjacent shorelines, to a line running north to south through marker 10, connecting adjacent shorelines, shall be designated as an "idle speed/no wake" zone.
- (5) Naples Bay, from a line running east to west through marker 26, connecting adjacent shorelines, to a line running east to west through marker 32, connecting adjacent shorelines, a restriction of "slow down/minimum wake" is established for Saturdays, Sundays and holidays between the hours of 10:00 a.m. and 5:00 p.m.

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- (6) Naples Bay, from a line running north to south through marker 10, connecting adjacent shorelines, to a line running east to west through marker 21, connecting adjacent shorelines, the restriction of "slow down/minimum wake" is established for Saturdays, Sundays and holidays between the hours of 10:00 a.m. and 5:00 p.m.
- (b) For the purpose of this section the term "holidays" means the following days:
  - (1) New Year's Day, January 1.
  - (2) Observed day for Martin Luther King, Jr.'s birthday, third Monday in January.
  - (3) Memorial Day, last Monday in May.
  - (4) Independence Day, July 4.
  - (5) Labor Day, first Monday in September.
  - (6) Veteran's Day, November 11.
  - (7) Thanksgiving Day, fourth Thursday in November.
  - (8) Friday after Thanksgiving Day.
  - (9) Christmas Day, December 25.

There are certain provisions of Ordinance 04-10664, amending 94-7323, that appear to be unaffected by the litigation<sup>1</sup> and Revised Final Order of The Florida Fish & Wildlife Conservation Commission<sup>2</sup>:

**Sec. 78-136.** (now 42-171) Definitions. Applies.

Reason: This was merely a restating and updating of the previous law defining terms to make consistent with intervening state law and regulations.

**Sec. 78-136.** (now 42-172) Area of enforcement. Applies

Reason: Not changed.

**Sec. 78-137.** (now 42-173). Exemptions. Applies.

Reason: Not changed.

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<sup>1</sup> *Collier County Bd. Of County Commr's v. Fish & Wildlife Conservation Commission, City of Naples, et al*, 993 So. 2d 69 (Fla. App. 2 Dist., 2008).

<sup>2</sup> Case Nos. 05-2034, 05-2035, 05-2036, 05-2037 (12+-10-2008)

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**Sec. 78-139.** (now 42-174) Reasonable and prudent operation required. Applies.

Reason: Not changed.

**Section 78-140.** This definition of slow speed zones was transferred to 78-136 (above) and applies to the extent specified in that section.

**Section 78-141.** Fines. (now 42-175). Applies.

Reason: Slight change only in definition of "slow speed", conforming to definitions in 78-136.

**Sec. 78-142.** (now 42-176). Speed generally. Applies.

Reason: Not changed.

**Sec. 78-143** (now 42-177).

(a) Idle speed zones. Applies.

Reason: Idle speed zones were transferred from and are same as previous 78-145.

(b) Slow Speed zones. Do not apply except to extent consistent with previous speeds (see 78-145 (a) (1) above).

Reason: These are the changes in speeds that were the subject to litigation and FWC refusal to allow changes in regulatory markers.

### Legal Analysis

#### Question

Whether the provisions of Ordinance No. 94-7323 that were amended by the slow speed limit provisions of Ordinance 04-10664 that were determined to be unenforceable by the Florida Fish & Wildlife Conservation Commission (FWC) were revived as a result of the determination of unenforceability.

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**Answer**

Yes

**Discussion**

(Note: Some citations omitted and some in footnotes.)

City Council, by a narrow majority, amended the previous provisions of the City's Boat Speed regulations in 2004 after a series of "robust" hearings. That ordinance (No. 04-10664) revised preexisting Article III, Boats, of former Ch. 78 (now Ch. 42), updated definitions, reorganized certain sections and adopted changes to speed zones (primarily slow speed zones) on Naples Bay.

This last provision (in 78-143 (b)) dealing with the slow speed zones in Naples Bay met with controversy from members of the boating public, marine industry and Collier County.

In addition to the standard severability, conflict and repeal sections, Section 5 of the 2004 ordinance makes the ordinance effective upon adoption at second reading and additionally provides:

"The amendments to the speeds shall be operative upon the posting of appropriate signage pursuant to general law".

This is because state law required the City to apply for a permit and post the speeds upon a regulatory marker approved by the FWC before the changes in speeds become "operative".

The City's permit was challenged, resulting in a hearing before an administrative law judge (ALJ) with a recommended order against the City, a decision by the FWC overruling the ALJ, a decision by the 2d District Court of Appeal overruling the FWC, and a Revised Final Order of the FWC denying the City's permit application.

The net effect of this is that the speed zone amendments contained in the "slow speed zone" portion of 78-143 (b) are unenforceable and the markers could not be changed.

This raises the question as to what happens to the speed zones. Are they eliminated altogether? Or are the previous ordinance provisions and the regulatory markers erected pursuant to the previous legislation revived?

There is limited reported case law in Florida on that issue, but the general rule used in similar situations in Florida<sup>3</sup> and other states<sup>4</sup> is that when an

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<sup>3</sup> E.g., The failure of section 39.061, Florida Statutes (Supp.1990), worked an automatic revival of its immediate predecessor." *B. H. v. State*, 645 So. 2d 987, 996 (Fla. 1994). Repeal of a

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ordinance or a provision of an ordinance has been deemed to be invalid, it is a nullity, and to the extent it repeals a previous ordinance or provision on the same point, that repealer is also nullified. It is said to "revive" the repealed ordinance or provision.

statute that modified the common law with regard to the order of closing arguments in criminal prosecution reinstates the common law.

As a general principle, the repeal of a rule which modifies the common law operates to reinstate the common law rule, absent contrary legislative intent. *Taylor v. State*, 969 So. 2d 583, 584 (Fla. 4th DCA 2007).

"It is a rule of the common law that, where one statute is repealed by another, the repeal of the repealing statute revives the statute repealed; and the same rule is held to extend to the common law, so that, where an act which supersedes in any particular the common law rule previously applicable is itself repealed, the rule is held to be revived." *Beavan v. Went*, 155 Ill. 592, 41 N.E. 91, 93-94 (1895), cited in *Taylor v. State*, 969 So. 2d 583, 584 (Fla. 4th DCA 2007).

Advisory opinion from the Supreme Court of Florida to the Governor of Florida interpreting an act relating to the appointment of the Hotel Commissioner: 'Where the unconstitutional portion of an act cannot be declared void without defeating the *manifest legislative purpose*, the entire statute must fail as unconstitutional and void.' See *State ex rel. Buford v. Spencer*, 81 Fla. 211, 87 So. 634; *State ex rel. Haley v. Stark*, 18 Fla. 255; *State ex rel. Landis v. Green*, 107 Fla. 335, 144 So. 681; *Ramsey v. Martin*, 111 Fla. 798, 150 So. 256. Since we hold Chapter 26945, Laws of Florida 1951, **unconstitutional, the effect of such holding is to re-instate Chapter 509, F.S.A., which it attempted to repeal.** *In re Advisory Opinion to the Governor*, 63 So.2d 321, 326-27 (Fla. 1953) (emphasis added).

In replevin action, question arose regarding the validity of a relevant regulation. Regulation held to be invalid due to improper adoption by the legislature. Having reached the conclusion that the act involved did not become a law as provided by the Constitution of the state of Florida, it follows that the law which it purported to repeal or supersede remains in full force and effect. *Messer v. Jackson*, 171 So. 660, 662 (Fla. 1936).

<sup>4</sup> See, e.g. McQuillin *The Law of Municipal Corporations* (Database updated October 2011), Chapter 25. ZONING II. Zoning Laws and Regulations. B. Ordinances and Regulations § 25:69. **Amendments and repeal.** The **invalidity** of an amending or repealing **ordinance** may restore the effect of the provisions of the original **ordinance**. ...[T]he repeal of a zoning **ordinance** does not make lawful the use of property which was a violation of the repealed **ordinance**. See also, *Shaw v. Mayor and Township Committee of The Township of Wayne*, Superior Court of New Jersey, Appellate Division. No. A-960. Argued Jan. 23, 1961, stating: "The general rule is that the effect of an unconstitutional amendment is to leave the statute or ordinance in force as it existed prior to the adoption of the amendment. 1 Sutherland, *Statutory Construction* (3d ed., 1943), s 1937, p. 442; \*\*9016 *C.J.S. Constitutional Law*, s 101(a), p. 474 (1956); 62 *C.J.S. Municipal Corporations*, s 434(a), p. 832 (1949).

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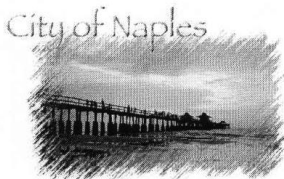
Therefore, it is my opinion that the "slow speed" zone provisions contained in Ordinance 94-7323 are revived and the police department can enforce those speeds, assuming that is what is shown on the regulatory markers.

Note: This opinion does not take into account extraneous issues pertaining to validity of the previous ordinance. It assumes that that ordinance and the existing markers were lawful.

Respectfully submitted.  
Robert D. Pritt, City Attorney

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**NAPLES CITY COUNCIL AGENDA MEMORANDUM**

**Regular Meeting Date: March 7, 2012**

Agenda Section: Regular	Prepared By: Tara Norman, City Clerk Department: City Clerk	
Agenda Item: 28	Legislative <input checked="" type="checkbox"/>	Quasi-Judicial <input type="checkbox"/>
<b>SUBJECT:</b> Revision in Training Requirements for New Members of Citizens Police Review Board		
<b>SUMMARY:</b> Currently Section 2-451(f) specifies that newly appointed CPRB members must undergo 16 hours of orientation provided by the Police Department. This provision has been in the ordinance since creation of the Board in 2001 and has proven increasingly difficult to comply with. In the past we have been able to furnish a series of video tapes of the initial orientation offered to the group, but this material is now seriously outdated. Therefore, in conversations with Lt. John Barkley, who provides support to the Board, and Chief Tom Weschler, it is believed that a more flexible, up-to-date and effective training program can be devised and, combined with a four-hour ride-along time with a patrol officer, will be an appropriate level of training.  We have received the enthusiastic endorsement of the CPRB with various members observing that they wished to continue to participate in training opportunities throughout their tenure. The recommended wording is as follows:  <i>Section 2-451(f) Upon appointment to the board, and prior to voting at any meeting, a member will receive a minimum of 16 hours of orientation from PERSD and city staff an orientation provided by the City of Naples Police Department and participate in a minimum of 4 hours of ride-along time with a city patrol officer. The above shall be documented to the Board Administrator by the Police Chief or designee.</i>  <b>RECOMMENDED ACTION:</b> Council is asked to approve the above amendment on first reading.		
Reviewed by Department Director Tara Norman	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		