



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Regular Meeting – January 20, 2010 – 8:29 a.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALL ITEM 1

Present:

Bill Barnett, Mayor
Penny Taylor, Vice Mayor

Council Members:

Teresa Heitmann
Gary Price, II
John Sorey, III
Margaret Sulick
William Willkomm, III

Also Present:

William Moss, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
Roger Reinke, Assistant City Manager
Vicki Smith, Technical Writing Specialist
Stephen McInerney, Deputy Chief of NPF
Paul Bollenback, Building Services Director
Michael Bauer, Natural Resources Manager
Denise Perez, Human Resources Director
Robin Valdario, Human Resources Generalist
Thomas Weschler, Chief of NPF
Ann Marie Ricardi, Finance Director
Ronald Wallace, Streets & Stormwater Director
Ralph LaCivita, Comptroller
Adam Benigni, Planner
Robin Singer, Planning Director
Robert Middleton, Utilities Director
David Lykins, Community Services Director
Mireidy Fernandez, Planner
Clarence Tears
Cedar Hames
Lou Vlasho
Gina Lynch

Michael Vannicola
Richard Yovanovich
Fred McCreary and Family
Ernie Modugno
Steve Quinn
Roy Terry
Greg Flynn
Tommy Smith
Bill Kramer
Will Gamble
Barbara Jean Moore
Trevor Tibstra
Marvin Easton
Richard Pfeil
Barbara Walker
Sam Saad
Lynne Peters
Dorothy Hirsch
John Finstrom

Media:

Jenna Buzzacco-Foerster, Naples Daily News

Other interested citizens and visitors

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

Father Michael Vannicola, St. Ann’s Catholic Church.

ANNOUNCEMENTSITEM 3

Vice Mayor Taylor read a proclamation designating January 18 to 24 as Purple Martin week in the City, following which Mayor Barnett read the proclamation designating January 22 as Hodges University Day. Vice Mayor Taylor continued by presenting a proclamation designating January 20 as Fred McCreary Day in the City and Mayor Barnett presented Mr. McCreary with a key to the City. Prior to the presentation of employee service awards by various department directors, City Manager William Moss noted that the City had been awarded a Certificate of Achievement recognizing outstanding financial reporting by the Government Finance Officers Association (GFOA).

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

MOTION by Sorey to SET THE AGENDA removing Item 7-e (Coast Guard Auxiliary lease) and Item 7-g (watering truck budget amendment) from the Consent Agenda for separate discussion; and adding Item 17 (revision in vendor booth fees). This motion was seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....ITEM 5

None.

CONSENT AGENDA

APPROVAL OF MINUTESITEM 7-a

December 2, 2009 Regular, December 14, 2009 Workshop and December 16, 2009 Regular meetings; as submitted.

SPECIAL EVENTS ITEM 7-b

- 1) Cultural Heritage Celebration – City of Naples – River Park Community Center – Third Avenue North and 11th Street North – 02/20/10,
- 2) St. Patrick’s Day and St. Patrick’s Day Celebration 2010 – McCabe’s Irish Pub and Grill – 03/13/10 and 03/17/10.
- 3) Sea Turtle Homecoming Festival – city of Naples / Natural Resources Department – 12th Avenue South and Fishing Pier roundabout – 03/20/10.
- 4) Kid’s Fishing Clinic – Marine Industries Association of Collier County Foundation and Florida Wildlife Foundation – 12th Avenue South and Fishing Pier roundabout – 04/24/10.
- 5) Fundraiser – Taste of Collier, Inc. – Bayfront – 05/02/10.

RESOLUTION 10-12585.....ITEM 7-c

A RESOLUTION APPROVING SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT NO. 4600001964 ACCEPTING GRANT MONEY TO CONSTRUCT AQUIFER STORAGE AND RECOVERY (ASR) EXPLORATORY WELL NO. 2 AND CONDUCT TESTING; AUTHORIZING THE MAYOR TO EXECUTE THE LOCAL GOVERNMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12586..... ITEM 7-d
A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES UNDER THE 2009-2011 FOREST HEALTH IMPROVEMENT INITIATIVE PROGRAM FOR CITY TREE PLANTING PROJECTS; AND PROVIDING AN EFFECTIVE DATE. Title not read.

RESOLUTION 10-12587..... ITEM 7-f
A RESOLUTION AMENDING THE 2009-10 BUDGET AND CAPITAL IMPROVEMENT PROGRAM ADOPTED BY ORDINANCE 09-12519 TO CREATE A NEW PROJECT 10K58, ALTERNATE WATER SUPPLY, TO PROVIDE FUNDING FOR CONNECTIONS TO THE IRRIGATION (RECLAIMED) WATER SYSTEM; AND PROVIDING AN EFFECTIVE DATE. Title not read. It is noted for the record that later in the meeting City Manager William Moss responded to a prior inquiry by Council Member Sulick regarding the number of properties to be connected to the City’s irrigation (reclaimed, reuse or alternative) system with these funds. He stated that the listing of the properties would be provided and further confirmed that the allocation would fund connection from the main to a City meter with the property owner being responsible for connection beyond the City meter.

MOTION by Taylor to APPROVE CONSENT AGENDA except Items 7-e and 7-g; seconded by Willkomm and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

END CONSENT AGENDA

RESOLUTION 10-12588..... ITEM 7-e
A RESOLUTION APPROVING A TEN YEAR LEASE OF CITY PROPERTY FOR THE COAST GUARD AUXILIARY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:08 a.m.). In response to Council Member Price’s request for the estimated monetary value of the lease, staff had ascertained that the submerged land involved had been dedicated to the City by the State of Florida (Trustees of the Internal Improvement Trust Fund/TIITF) for use as a street or other public municipal purpose; therefore, no commercial use could be entertained. Mr. Price indicated that for future reference, he had wished to note this fact for the record. (It is noted for the record that a copy of the 1962 dedication is contained in the file for this meeting in the City Clerk’s Office.)

Public Comment: (9:09 a.m.) None.

MOTION by Price to APPROVE RESOLUTION 10-12588 as submitted; seconded by Willkomm and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 10-12589..... ITEM 7-g
A RESOLUTION AMENDING THE 2009-10 BUDGET AND CAPITAL IMPROVEMENT PROGRAM ADOPTED BY ORDINANCE 09-12519 TO FUND A PORTION OF A WATER TRUCK THAT WAS ORIGINALLY EXPECTED TO BE FUNDED BY A GRANT; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:09 a.m.). Council Member Price indicated that he could not support the \$68,000 expenditure in light of the economic challenges currently facing the City. Council Member Sorey however noted the \$78,807 of repair costs for the current vehicle since its

purchase in 2000 and expressing doubt about alternatives available to prevent the loss of sod and other landscaping serviced by the truck.

Public Comment: (9:12 a.m.) None.

MOTION by *Sorey* to ***APPROVE RESOLUTION 10-12589*** as submitted; seconded by *Sulick* and carried 5-2, all members present and voting (*Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-no, Barnett-yes*).

RESOLUTION 10-12590.....ITEM 8

A RESOLUTION DETERMINING VARIANCE PETITION 09-V12 FROM SECTION 56-45(6) OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO ALLOW A POOL DECK AT 6’11” ABOVE THE CROWN OF THE ROAD AND A SPA AT 8’5” ABOVE THE CROWN OF THE ROAD AT 200 BAY POINT, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:13 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 the following ex parte disclosures: Willkomm/no contact; Sulick, Price and Sorey/visited the site but no contact; Barnett and Taylor/familiar with the site but no contact; and Heitmann/spoke with the petitioner. Planner Adam Benigni briefly reviewed the petition, noting that one of the petitioners’s suffered from a medical condition which limits her mobility and the requested variance is to facilitate ease of access around the pool deck area. This was confirmed by the petitioner’s agent and sister, Lynne Peters, and is reflected in correspondence from two of the petitioner’s physicians. Approval had been recommended by the Planning Advisory Board (PAB) as well as staff, Mr. Benigni stated.

Mr. Benigni pointed out that the petition would not set a precedent with regard to Federal Emergency Management Agency (FEMA) elevations; City Attorney Pritt agreed, noting Section 46-37 of the City’s Land Development Code as containing the criteria for approval as cited in the sixth Whereas of the subject resolution.

Public Comment: (9:20 a.m.) None.

MOTION by *Willkomm* to ***APPROVE RESOLUTION 10-12590*** as submitted; seconded by *Heitmann* and unanimously carried, all members present and voting (*Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes*).

RESOLUTION 10-12591.....ITEM 9

A RESOLUTION DETERMINING RESIDENTIAL IMPACT STATEMENT PETITION 10-RIS1 FOR NAPLES MARINA INVESTMENT, LLC, TO OBTAIN AN EXTENDED HOURS OF OPERATION PERMIT TO OPERATE THE PRIVATE CLUB FACILITIES AT NAPLES HARBOR YACHT CLUB FROM 7:00 A.M. UNTIL 11:00 P.M. NIGHTLY, LOCATED AT 475 NORTH ROAD, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:20 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony but who had not previously been sworn; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Sulick, Price and Sorey/visited the site and received various e-mails, letters and telephone calls from neighbors; and Barnett, Taylor and Heitmann/familiar with the site and received the same communications as aforementioned. Planner Adam Benigni provided a brief

overview of the petition, pointing out that the extended hours apply only to the Naples Harbor Yacht Club and not the marina; staff recommends approval, he added.

Attorney Richard Yovanovich, petitioner’s agent, presented a site diagram (a copy of which is contained in the file for this meeting in the City Clerk's Office), emphasizing that the Club is located approximately 500 feet from the nearest private residence and further buffered from noise by a 10-foot in height retaining wall. In response to Council Member Sulick, John Finstrom, President of Florida Marina Investments, LLC, owner and developer of the Club, estimated the approximate distance from residences across the waterway to be at least 1,500 feet. Mr. Benigni added that, to date, no noise complaints had been received by the Police Department regarding the subject property.

Public Comment: (9:25 a.m.) **Barbara Jean Moore, 1585 Airway Drive**, stated that the neighborhood had received prior assurance that hours of operation would never be extended beyond 9:00 p.m. and recommended denial. Although currently only the marina operations generate noise, she expressed concern that outdoor music would eventually be requested in conjunction with Club activities. **Will Gamble, 1575 Airway Drive**, noted that his, being a boating community, marina operations are generally accepted, however, noise continuing until 11:00 p.m. would be unacceptable, he stressed. Should the petition however be approved, all activities should be restricted to inside the Club with parking designated at the south lot after 9:00 p.m. **Trevor Tipstra, 1620 Avion Place**, characterized the marina as a good neighbor, stating that the need for the extended hours of the Club is understandable, especially in light of the current economic situation; he therefore urged approval. Council Member Sorey suggested that the petitioner review the boating operations with regard to lessening the noise generated, especially the forklift; and Attorney Yovanovich agreed. Mr. Finstrom confirmed that the Club, which is not open to the general public, has parking available only in the south lot and also indicated that the marina operations generally cease at 7:00 p.m.

Council Member Sulick echoed a prior concern that a request for outdoor entertainment at the Club would eventually be forthcoming. Mr. Benigni explained that the current request involves extending hours of operation only, no live entertainment whatsoever had been proposed; however, should such a request be made, another Residential Impact Statement (RIS) would be required and Council could impose conditions, he added.

MOTION by Price to APPROVE RESOLUTION 10-12591 as submitted; seconded by Taylor and carried 6-1, all members present and voting (Price-yes, Sorey-yes, Sulick-yes, Willkomm-yes, Taylor-yes, Heitmann-no, Barnett-yes)

Council instructed the neighbors in attendance that should noise become an issue, complaints should be lodged and the situation would be addressed.

**ORDINANCE (Continued / see motion below).....ITEM 6
AN ORDINANCE RELATING TO RECLAIMED (IRRIGATION) WATER RATES;
AMENDING SECTION 30-259(1) RECLAIMED (IRRIGATION) WATER RATES OF
APPENDIX “A”, FEES AND CHARGES SCHEDULE, OF THE CODE OF
ORDINANCES, CITY OF NAPLES, AND DELETING THE EXEMPTION FOR BULK
CUSTOMERS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION
AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (9:48 a.m.). City Manager William Moss noted the inadvertent failure to publish the public notice for the second reading of this ordinance; therefore, he requested that the public hearing go forward that day but

that the actual second reading of the ordinance be continued to the February 3 regular meeting. However, affected residents had been notified of that day’s meeting via their utility billing, he added, and reviewed the amended rates. Council agreed to continue the second reading of the ordinance to the aforementioned date.

Public Comment: (9:49 a.m.) **Marvin Easton, 944 Spyglass Lane**, reported the following voluntary connections to the irrigation (reclaimed, reuse or alternative) water system: from March 2008 to September 2009 / 114 or 6 per month; October 1, 2009 to January 19, 2010 / 67 connections and 112 applications, which he had indicated on a map displayed for Council. (It is noted for the record that a copy of this map is contained in the file for this meeting in the City Clerk’s Office.) Council thanked Mr. Easton for his ongoing interest in the irrigation water system and his campaign urging that residents connect.

MOTION by Price to CONTINUE THIS ORDINANCE TO FEBRUARY 3, 2010 REGULAR MEETING FOR SECOND READING; seconded by Taylor and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 10-12592.....ITEM 10
A RESOLUTION DETERMINING INDOOR AMPLIFIED LIVE ENTERTAINMENT PETITION 10-LE1 AND RESIDENTIAL IMPACT STATEMENT PETITION 10-RIS2 WITH AN AFTER 9 P.M. EXTENDED HOURS WAIVER FOR CAFÉ AND BAR LURCAT LOCATED AT 494 FIFTH AVENUE SOUTH, MORE FULLY DESCRIBED HEREIN; SUBJECT TO THE CONDITIONS LISTED HEREIN; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (9:57 a.m.). This being a quasi-judicial proceeding, Notary Public Vicki Smith administered an oath to those intending to offer testimony but who had not previously been sworn; all responded in the affirmative. City Council Members then made the following ex parte disclosures: Willkomm/no contact; Sulick, Price, Barnett and Heitmann/visited the site but no contact; and Taylor and Sorey/familiar with the site but no contact. Planner Mireidy Fernandez provided a brief overview of the petitions, noting that staff recommended approval.

Petitioner’s agent, Gina Lynch, explained that the intent was to provide live entertainment from 9:00 p.m. to 11:30 p.m., two or three days per week. The musicians would be located on the first floor along the northeast mirrored wall of the restaurant, with doors and windows closed. In response to Council, she clarified that the nearby retractable doors on the north wall must remain closed due to the placement of the musicians, and that the requested 11:30 p.m. cessation of live entertainment had been sought due to the fact that the live entertainment allowance to 12:00 a.m. for all such permits might not be continued. Ms. Lynch agreed to a reference regarding live entertainment on the first floor to be added to the conditions of the approval as reflected in the motion below.

Public Comment: (10:10 a.m.) **Richard Pfeil, 571 West Lake Drive**, maintained that he had not received written notice of the subject petitions, but Ms. Fernandez indicated that notices had indeed been sent to the addresses reflected in the Collier County Property Appraiser’s website within a 500-foot radius of the subject property. He also cited an ongoing issue with the location of the restaurant’s trash container which is located approximately 50 feet from his bedroom when refuse and bottles are disposed late at night. Mayor Barnett recommended that he speak with the petitioner’s agent prior to leaving the meeting that day and City Manager William Moss stated that staff would ascertain which addresses had been sent notices.

MOTION by Sorey to ***APPROVE RESOLUTION 10-12592*** amending as follows: Section 3-1: “...to be located on the northeast mirrored wall on the first floor of the restaurant...”; seconded by Taylor and unanimously carried, all members present and voting (Sorey-yes, Taylor-yes, Price-yes, Willkomm-yes, Sulick-yes, Heitmann-yes, Barnett-yes)

Recess: 10:20 a.m. to 10:38 a.m. It is noted for the record that the same Council Members were present when the meeting reconvened.

ORDINANCE (First Reading).....ITEM 11
AN ORDINANCE RELATING TO FENCES AND WALLS; AMENDING SECTIONS 56-37(b)(1) AND SECTION 56-54(a), OF THE CODE OF ORDINANCES, CITY OF NAPLES, TO PROVIDE FOR POOL SAFETY FENCES, CLARIFY THE BASE POINT OF MEASUREMENT AND ADDRESS RETAINING WALLS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:38 a.m.). Planning Director Robin Singer explained that this legislation was intended to allow pool safety fences to exceed the allowable height so as to meet the minimum height necessary to comply with pool safety standards of the Florida Building Code (FBC). Following review of the draft ordinance by the design community and the Design Review Board (DRB), she added, references to “wrought iron” had been changed to “decorative metal work.” Ms. Singer also enumerated the following revisions:

- gate and fence post width had been increased by 2 feet 4 inches;
- a cap would be accommodated without waiver by allowing the post to be 6 inches higher than the adjacent fence or gate;
- retaining walls are to be measured to the average elevation of the crown of the road at the property frontage to the top of the finished grade; and
- those retaining walls exceeding 30 inches in height are not permitted in yards unless otherwise allowed as part of a pool deck and the total height of walls extending above finished grade are governed by Section 56-37 (fences and walls). Ms. Singer said that staff as well as the Planning Advisory Board (PAB) recommended approval.

In response to Council Member Sulick, Ms. Singer confirmed that issues regarding side and rear yard fence heights had been addressed in prior amendments.

Public Comment: (10:44 a.m.) None.

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

ORDINANCE (First Reading / Continued / see motion below)ITEM 12
AN ORDINANCE RELATING TO PARKING REQUIREMENTS FOR OUTDOOR DINING; AMENDING SECTIONS 50-104(15), 56-126(c)(2)(h), 56-127(d)(2)(m). AND 58-1134(d)(1) OF THE CODE OF ORDINANCES, CITY OF NAPLES, FOR THE PURPOSE OF ADJUSTING THE PARKING REQUIREMENTS FOR OUTDOOR DINING; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:44 a.m.). Planning Director Robin Singer reviewed her memorandum dated December 31 (Attachment 1) in which she had discussed the need to address conflicting parking standards with regard to outdoor dining. During its review of the ordinance, she said, the Planning Advisory Board (PAB) received input

from Third Street South merchants and agreed with staff that a parking study should be undertaken prior to adoption of the ordinance; Council agreed as reflected in the motion below. Council Member Sulick expressed concern with possible violations occurring at a recently permitted 13th Avenue South restaurant (Le Lafayette), and Council requested that staff investigate the establishment’s service practices and adherence to the approved parking plan; a report of findings is to be provided in the near future.

Public Comment: (10:47 a.m.) **Barbara Walker, Neapolitan Enterprises, 255 13th Avenue South,** waived comment when called.

MOTION by Sulick to CONTINUE THIS ORDINANCE pending parking analysis of Third Street South area; seconded by Price and unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

**ORDINANCE (First Reading).....ITEM 13
AN ORDINANCE RELATING TO EXCEPTIONS TO HEIGHT LIMITATIONS;
AMENDING THE DEFINITION OF ARCHITECTURAL EMBELLISHMENT IN
SECTION 44-8, DEFINITIONS, AND AMENDING SECTION 56-39(a), HEIGHT
REQUIREMENTS, EXCEPTIONS THERETO, OF THE CODE OF ORDINANCES,
CITY OF NAPLES, FOR THE PURPOSE CLARIFYING EXCEPTIONS TO THE
HEIGHT LIMITATIONS; PROVIDING A SEVERABILITY CLAUSE, A REPEALER
PROVISION AND AN EFFECTIVE DATE.** Title read by City Attorney Robert Pritt (10:49 a.m.). Planning Director Robin Singer reviewed her memorandum dated December 31 (Attachment 2), noting that the proposed ordinance addresses the following:

- a revised architectural embellishment definition to limit access to roof decks and the function of embellishments;
- exceptions to height limitations were modified to include energy producing devices such as wind turbines and solar panels;
- base point of measurement modified from Federal Emergency Management Agency (FEMA) elevation to the required first floor (per the Floodplain Coordinator) to eliminate confusion with other finished floor requirements; and
- accessibility of roof decks limited when the deck, railing or any functional element exceeds the height limitations of the district.

She pointed out that the Planning Advisory Board (PAB) had unanimously recommended approval as well as staff.

In response to Council Member Price, Ms. Singer indicated that the term elevator shaft had been replaced with elevator overrun due to the fact that basements are not feasible in the area and therefore the motorized equipment is placed above the elevator mechanism. Furthermore, she said that the term would however be reviewed as to whether something more appropriate exists.

Public Comment: (10:56 a.m.) None.

MOTION by Taylor to APPROVE THIS ORDINANCE on First Reading, staff to review following possible amendment prior to Second Reading: Section 2 (Sec. 56-39. Height requirements, exceptions thereto.): (a): “Chimneys, elevator shafts ~~shafts~~ or overruns, stair towers...”. This motion was seconded by Sulick and carried 6-1, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-no, Barnett-yes).

RESOLUTION 10-12593..... ITEM 14(1)

A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD FOR A TWO-YEAR TERM COMMENCING JANUARY 20, 2010, AND EXPIRING JANUARY 19, 2012; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:56 a.m.).

Public Comment: (10:57 a.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 10-12593 APPOINTING DAVID ALGER which unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 10-12594..... ITEM 14(2)

A RESOLUTION APPOINTING ONE MEMBER TO THE COMMUNITY REDEVELOPMENT AGENCY ADVISORY BOARD FOR A TWO-YEAR TERM COMMENCING FEBRUARY 6, 2010, AND EXPIRING FEBRUARY 5, 2012; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (10:57 a.m.).

Public Comment: (10:57 a.m.) None.

MOTION by Taylor to APPROVE RESOLUTION 10-12594 APPOINTING WYNN PHILLIPS which unanimously carried, all members present and voting (Heitmann-yes, Price-yes, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

RESOLUTION 10-12595..... ITEM 15

A RESOLUTION WAIVING POST-EMPLOYMENT RESTRICTIONS FOR VICE-MAYOR PENNY TAYLOR SET FORTH IN THE ETHICS CODE OF THE CODE OF ORDINANCES OF THE CITY OF NAPLES; AND PROVIDING AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (10:57 a.m.). City Manager William Moss provided a brief overview of his memorandum dated January 8 (Attachment 3) wherein he pointed out that the City has the additional restriction over and above the state law that an elected or managerial employee may not be employed by, nor enter into a contractual relationship with a person or entity for compensation before the government body for the same two-year period as contained in state law. Vice Mayor Taylor therefore had requested that Council consider waiving this latter post-employment provision in Section 2-974(f)(2) of the Code of Ordinances; Mr. Moss however said that the state provision cannot be waived. Council Member Sorey proffered a motion of approval and Mayor Barnett seconded.

Council Member Sorey indicated support for granting the requested waiver, but Council Member Price pointed out that the provision should be reviewed for deletion instead of granting a waiver on a case-by-case basis. Mr. Sorey recommended the matter be scheduled for a workshop discussion thereby allowing public input; Mayor Barnett agreed, reiterating his support for approval of the waiver. In response to Mr. Price, Vice Mayor Taylor indicated her intent to abstain from voting and requested that the vote go forward. Council Member Willkomm indicated his support so long as the above requested workshop is also scheduled.

Mr. Pritt explained that the provision under discussion had been drafted from state legislation applicable during an elected or appointed person's tenure in office, not after vacating that office.

Public Comment: (11:07 a.m.) None.

MOTION by Sorey to **APPROVE RESOLUTION 10-12595** as submitted; seconded by Barnett and carried 4-2-1, all members present (Sorey-yes, Price-no, Heitmann-yes, Willkomm-yes, Taylor-abstain, Sulick-no, Barnett-yes). (See Attachment 4, Form 8-B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers.)

Council Members Price and Sulick stated that while they indeed support Vice Mayor Taylor in this instance, they would rather address the issue as a body than on an individual basis.

Workshop discussion requested after general election with regard to amending the Code to relieve this restriction for all individuals covered by ethics ordinance.

ORDINANCE (First Reading).....ITEM 16

AN ORDINANCE RELATING TO EXPEDITED REVIEW OF PETITIONS AND REQUESTS FOR PERMITS; ADDING A NEW DIVISION 5, EXPEDITED REVIEW, REVIEW OF DETERMINATION, TO ARTICLE III, OFFICERS AND EMPLOYEES, TO CHAPTER 2 OF THE CODE OF ORDINANCES, CITY OF NAPLES; PROVIDING A SEVERABILITY CLAUSE, A REPEALER PROVISION AND AN EFFECTIVE DATE.

Title read by City Attorney Robert Pritt (11:09 a.m.) who then noted that the ordinance had been in response to issues raised during the recent signage ordinance review. The legislation’s intent is to provide for expedited review of applications and requests relating to impermissible prior restraints of protected speech held in the First Amendment to the United States Constitution.

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

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

RESOLUTION 10-12596 (Added Item / see Item 4 above)ITEM 17

A RESOLUTION REVISING VENDOR BOOTH FEES FROM \$35 PER BOOTH TO \$10 PER BOOTH THROUGH DECEMBER 31, 2010, APPROVED BY RESOLUTION 09-12574 ESTABLISHING REVIEW AND APPROVAL CRITERIA FOR SPECIAL EVENTS; AND PROVIDING AN EFFECTIVE DATE. Title read by City Attorney Robert Pritt (11:11 a.m.).

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

MOTION by Sorey to **APPROVE RESOLUTION 10-12596** as submitted; seconded by Sulick and carried 6-1, all members present and voting (Heitmann-yes, Price-no, Sorey-yes, Sulick-yes, Taylor-yes, Willkomm-yes, Barnett-yes).

PUBLIC COMMENT.....

None.

CORRESPONDENCE AND COMMUNICATIONS.....

(11:11 a.m.) Council Member Sulick noted her pleasure in recognizing residents such as Fred McCreary (see Item 3 above). Council Member Price voiced his appreciation to the community for its disaster assistance to Haiti earthquake victims and Vice Mayor Taylor shared her experience at a local prayer vigil held the prior evening, praising the spirit of the Haitian people. Council Member Heitmann stated her appreciation for employees receiving service awards that day (see Item 3 above) and reported that the federal government had not waived its required removal of beach outfall pipes. Council Member Sorey confirmed the outfall decision and commended Vice Mayor Taylor for her service to the community. Mayor Barnett voiced his

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appreciation to current Council Members and wished candidates good luck in the upcoming election.

ADJOURN

11:18 a.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Vicki L. Smith, Technical Writing Specialist

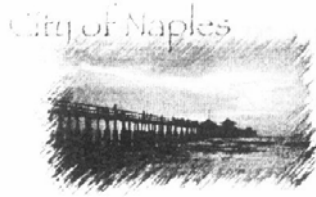
Minutes Approved: 02/03/10



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: January 20, 2010

Agenda Section: Regular	Prepared By: Robin D. Singer, Planning Director Date: December 31, 2009 Department: Planning
Agenda Item: 12	Legislative <input checked="" type="checkbox"/> Quasi-Judicial <input type="checkbox"/>
SUBJECT: Consideration of an Ordinance approving Text Amendment petition 09-T8 amending Section 50-104(15), 56-126, 56-127 and 58-1134(d)(1) of the Land Development Code of the Code of Ordinances to adjust the parking requirements for outdoor dining and create new standards for food service uses.	
SUMMARY: City Council is asked to consider on First Reading, an Ordinance approving Text Amendment petition 09-T8 amending Section 50-104(15), 56-126, 56-127 and 58-1134(d)(1) of the Land Development Code of the Code of Ordinances to adjust the parking requirements for outdoor dining and to create new standards for food service uses.	
BACKGROUND: During the review of a recent variance for restaurant parking, it was noted that there are conflicting standards for parking for outdoor dining. Section 50-104(15) provides that the general parking ratio for restaurants applies equally to outdoor eating or serving areas. Section 56-126(C)(2)h, which governs parking requirements for outdoor dining on <u>private</u> property, requires three spaces for every 1000 square feet of outdoor dining area while Section 56-127(d)(2)m, which provides the parking requirements for outdoor dining on <u>public</u> property, requires five spaces for every 1000 square feet. Outdoor dining on both public and private property that covers less than 100 square feet is currently exempt from parking requirements. Section 58-1134(d)(1) provides a complete exception for parking for outdoor dining in the Fifth Avenue South Special Overlay District: The lesser parking requirements were intended to recognize the character that outdoor dining may add to a district and encourage outdoor dining by reducing or eliminating the parking requirement. However, these conflicting standards create the potential for uneven enforcement. At the September 14, 2009 City Council Workshop, a consensus was reached to amend the Code to eliminate exceptions for outdoor dining and require parking at the same ratio as the restaurant that it serves. At the Workshop, City Council also agreed to consider alternate parking requirements for variations on restaurants such as take-out only establishments, delicatessens, caterers, bakeries and similar establishments for the sale of prepared food for consumption off premises. Restaurants and grocery stores have the same parking requirement (1 space/100 sq .ft.) and appear to be the most similar to the other food service uses. However, according to <i>Parking Generation</i> by the Institute of Transportation Engineers, the parking requirements for convenience stores (4 spaces/1000 sq. ft. weekday) and fast food establishments (3 spaces/1000 sq. ft. weekday) are much lower than the requirements for sit down restaurants (6-8 spaces/1000 sq. ft.) and supermarkets (13 spaces/1000 sq. ft. weekday). Staff recommends that these uses which have no seating or limited seating have the same parking requirement as retail uses which range from 3 spaces per 1000 sq. ft. in the Fifth Avenue South Special Overlay District and D Downtown to 1 space per 300 sq. ft. in other areas of the City.	



NAPLES CITY COUNCIL AGENDA MEMORANDUM

Regular Meeting Date: January 20, 2010

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Agenda Section: Regular	Prepared By: Robin D. Singer, Planning Director Date: December 31, 2009 Legislative <input checked="" type="checkbox"/>	Department: Planning Quasi-Judicial <input type="checkbox"/>
Agenda Item: 12		
<p>At their December 9, 2009 meeting, the Planning Advisory Board voted 7-0 to approve the text amendment with the recommendation that City Council not implement the text amendment until a comprehensive parking study is performed for the Third Street South area and that study is correlated with the parking study previously done for the Fifth Avenue South area. Ms. Barbara Walker, representing Neapolitan Enterprises, spoke against the text amendment. A copy of her letter is included in the package.</p> <p>RECOMMENDED ACTION: Consider ordinance on First Reading.</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: January 20, 2010

Agenda Section: Regular	Prepared By: Robin Singer, Planning Director Date: December 31, 2009 Legislative <input checked="" type="checkbox"/>	Department: Planning Quasi-Judicial <input type="checkbox"/>
Agenda Item: 13		
SUBJECT: Consideration of an Ordinance adopting Text Amendment petition 09-T9 amending Section 44-8, Definitions, and Section 56-39, Height Requirements, Exceptions Thereto, of the Land Development Code of the Code of Ordinances to clarify exceptions to the height limitations.		
SUMMARY: City Council is asked to consider on First Reading an Ordinance adopting Text Amendment petition 09-T9 amending Section 44-8, Definitions, and Section 56-39, Height Requirements, Exceptions Thereto, of the Land Development Code of the Code of Ordinances to clarify exceptions to the height limitations.		
BACKGROUND: On October 19, 2009, City Council discussed allowances for encroachments into height limitations and the accessibility of roof decks. The trend in roof decks has followed a desire to maximize interior floor to ceiling height which can result in a flat roof. To improve the appearance of the flat roof, a decorative railing is installed which may exceed the maximum allowable height as an architectural embellishment. In some cases the owner would like the roof deck to be accessible and the decorative railing becomes functional. The direction from City Council was that roof decks should not be accessible and become an extension of the outdoor living area when they exceed the maximum height allowance in the district. City Council had also discussed at previous meetings exceptions for roof mounted energy producing devices and determined that they should be allowed. The proposed ordinance specifically addresses the following: <ul style="list-style-type: none"> • The definition of architectural embellishment is revised to limit access to roof decks and the function of embellishments. • Exceptions to the height limitations are modified to include energy producing devices. • The base point of measurement has been modified from FEMA to the required first floor on the advice of the Floodplain Coordinator to eliminate confusion with other finished floor requirements. • The accessibility of roof decks is limited when the deck, railing or any functional elements exceed the height limitations of the district. The Planning Advisory Board voted 7-0 to recommend approval of the amendment at their December 9, 2009 meeting.		
RECOMMENDED ACTION: Approve the Ordinance on First Reading to amend Section 44-8, Definitions, and Section 56-39, Height Requirements, Exceptions Thereto, of the Land Development Code of the Code of Ordinances to clarify exceptions to the height limitations.		
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: January 20, 2010

Agenda Section: Regular	Prepared By: A. William Moss, City Manager Date: January 8, 2010 Legislative <input checked="" type="checkbox"/>	Department: City Manager Quasi-Judicial <input type="checkbox"/>
Agenda Item: 15		
SUBJECT: Resolution to accept request by Vice Mayor Penny Taylor to waive post-employment restrictions as authorized by Section 2-974 (f) (4) of the City Code.		
SUMMARY: The Naples City Code restricts an elected or managerial employee from having an employment or contractual relationship with any person or business entity within two years following vacation of office if the elected or managerial employee participated in any contract or zoning approvals sought or received by such person or business entity. By a majority vote of City Council, the post-employment restriction may be waived. Vice Mayor Taylor requests that City Council adopt a resolution to waive the post-employment restriction.		
BACKGROUND: Florida Statutes and the Naples City Code restrict elected and appointed officials from representing another person or entity for compensation before the governmental body for a period of two years after vacating office. There are no provisions, either in the Florida Statutes or the City Code, to waive such restriction. However, the Naples City Code, Section 2-974 (f) (2) further restricts elected and city managerial employees from engaging in or having an employment or contractual relationship with any person or business entity, or their representative, if such elected officer or city managerial employee, within two years immediately preceding the vacancy from office, personally or substantially participated in a recommendation or decision relating to any contracting or zoning approvals sought or received by any such person or business entity, for a period of two years following vacancy from office. Unlike the Florida Statutes, the City Code prohibits a council member from employment or contractual relationship with any entity with whom a council member was required to render a contracting or zoning decision within two years of vacating office, for a period of two years following vacancy of office. Therefore, a council member cannot accept employment or a contractual relationship with the Conservancy, for instance, or the FDOT, the Chamber of Commerce, the SFWMD, or any one of the hundreds of entities with whom the City has had a contractual relationship or were involved in a zoning approval. Section 2-974 (f)(4) provides that "by majority vote of the city council, the post-employment restrictions [2-974 (f)(2)] may be waived. Vice Mayor Penny Taylor respectfully requests that applicability of the provisions of City Code Section 294-(f)(2) and (3)(a) for Ms. Taylor be waived.		
RECOMMENDED ACTION: Consider Resolution to waive post-employment restrictions.		
Reviewed by Department Director A. William Moss	Reviewed by Finance N/A	Reviewed by City Manager A. William Moss
City Council Action:		

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME <i>Taylor, Penelope A</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Naples City Council</i>
MAILING ADDRESS <i>995 13th St North</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <i>Naples</i> , COUNTY <i>Collier</i>	NAME OF POLITICAL SUBDIVISION: <i>Collier / Naples City</i>
DATE ON WHICH VOTE OCCURRED <i>1/20/09</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Penny Taylor, hereby disclose that on JANUARY 20, 20 10:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Item #15 Regular Meeting
Request to waive post-employment restrictions upon my vacation from office

1/20/10
Date Filed

Penny Taylor
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.