

WALK-ON #2

ATY

Lee County Board of County Commissioners  
Agenda Item Summary

Blue Sheet No. 20050176

1. **REQUESTED MOTION:**

**ACTION REQUESTED:** Provide direction to County staff concerning certain terms and conditions of settlement as proposed by the City of Sanibel for case number 04-134-CA-H.

**WHY ACTION IS NECESSARY:** All settlements of litigation must be approved by the Board of County Commissioners.

**WHAT ACTION ACCOMPLISHES:** Provides Board direction concerning certain terms and conditions as set out in a proposed settlement agreement for the "Sanibel Litigation".

2. **DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #

3. **MEETING DATE:** February 8, 2005

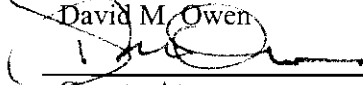
4. **AGENDA:**

5. **REQUIREMENT/PURPOSE:**  
(Specify)

6. **REQUESTOR OF INFORMATION:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER
- Settlement Agreement

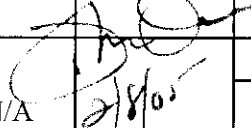
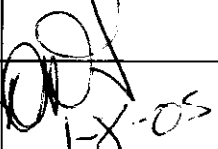
- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION
- BY:   
County Attorney

7. **BACKGROUND:**

On Friday evening, February 4, 2005, outside counsel for City of Sanibel provided County with a settlement agreement for County's consideration. County staff have reviewed the proposed agreement and have developed a black line revision with County comments. The agreement terms and conditions need further input from the Board prior to transmitting the County's revised document back to City of Sanibel representatives.

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	RISK	GC	
N/A	N/A	N/A	N/A	 2/8/05					 2-8-05

10. **COMMISSION ACTION:**

- APPROVED SCHEDULING EXECUTIVE SESSION @  
10:00 AM ON 2/15/05 (H/JANES)
  - DENIED
  - DEFERRED
  - OTHER CONTINUED TO  
5:00 PM (JANES/H)
- on 2/8/05

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

DATE: February 8, 2005

TO: Board of County Commissioners

FROM:



David M. Owen  
County Attorney

RE: **PROPOSED SANIBEL SETTLEMENT AGREEMENT**

Commissioners;

I am providing you with a copy of Sanibel City Council Resolution No. 05-026, adopted February 1, 2005, and a copy of a "black-line" copy of the draft Settlement Agreement received in our office Friday evening at the close of business and provided to you yesterday.

The City of Sanibel is requesting that the Agreement be placed on the Agenda for its regular meeting of Tuesday, February 15, 2005. Additionally, the process for entering into the Settlement Agreement and the filing of the proposed Joint Stipulated Motion for Dismissal With Prejudice and Order of the Court must be finalized by no later than Monday, February 28, 2005.

Other than descriptive revisions concerning the commitments of the Parties, there is the issue with respect to the disposition of the \$202,794.85, October 30, 2004 distribution of Sanibel Surplus Toll Revenues (Paragraph 4., Page 4). Under the terms of the present draft of the Settlement Agreement the City is requesting payment of that sum.

Resolution of that issue rests with the Board. I can discuss the matter with you this morning as a "County Attorney" item, if you so desire.

Thanks.

DMO/dm  
Enclosures

xc: Donald D. Stilwell, County Manager  
Pete Winton, Assistant County Manager  
Tony Majul, Director, Budget Services  
James Lewin, Budget Services  
James Lavender, Director, Public Works Administration  
Scott Gilbertson, P.E., Director, DOT  
Amy Davies, Transportation Planning Manager, DOT

*Pub. Resources*

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION**

**CITY OF SANIBEL, a municipal corporation,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **LEE COUNTY, a political subdivision of the** )  
 **State of Florida, and THE BOARD OF** )  
 **COUNTY COMMISSIONERS OF LEE** )  
 **COUNTY, its governing body,** )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**CASE NO.: 04-134-CA-H**

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS  
BY AND BETWEEN THE CITY OF SANIBEL AND LEE COUNTY**

This Settlement Agreement and Release of Claims (the "Agreement") is entered into this the \_\_\_ day of February, 2005 by and between the City of Sanibel ("City") and Lee County, Florida ("County"), who stipulate as follows:

**RECITALS**

A. WHEREAS, the City and County are parties to an action ~~pending~~ in the Circuit Court in and for Lee County, Florida, Case No. 04-134-CA-H, the style of which is set forth above (the "Litigation") arising out of or relating to the Sanibel Island Bridges and Causeway (the "Causeway"); and

B. WHEREAS, the parties have determined that settlement of the Litigation is in the best interests of the residents and businesses of the City and the County and will ~~foster and encourage a productive~~ serve to improve the working relationship between the City and County in general, and specifically with regard to the reduction of the current Sanibel Discount Program Fees and Tolls; and

C. WHEREAS, the City and the County have determined to settle all the claims existing between them in the Litigation in accordance with the terms of this Settlement Agreement; and.

D. WHEREAS, the City and County have been parties to an interlocal agreement pertaining to the Causeway for several decades, the most recent of which is entitled the “Amended and Restated Interlocal Agreement,” dated June 11, 2002 (the “Interlocal Agreement”), a copy of which is appended hereto as Exhibit A; and

E. WHEREAS, under Section 6 of the Interlocal Agreement, the parties agreed that the County shall remit to the City twenty-one percent (21%) of the Net Revenues, as that term is defined therein, derived from the County’s operation of the Causeway; and

F. WHEREAS, ~~in anticipation~~ as the result of incurring construction and other costs associated with construction of a the new Causeway, the County has increased the Tolls and Sanibel Discount Program Fees associated with use of the Causeway (the “Causeway Tolls,” as more fully defined below); and

G. WHEREAS, ~~in anticipation of~~ as the result of incurring construction and other costs associated with the construction of the new Causeway, the County has prepared a “Transportation Facilities Financing Model – Sanibel Interlocal Agreement Rebate” (“Financing Model”), a copy of which is appended hereto as Exhibit B; and

~~H. WHEREAS, the County intends to issue Parity Bonds with respect to the County’s Series 2001A Transportation Facilities Refunding Bonds, as defined in the Interlocal Agreement, with the estimated debt service payments (acknowledged by the parties to be only estimated at the date of this Agreement, and subject to change) reflected in the “Bonded Debt Service” column of Exhibit “B”; and~~

I. WHEREAS, ~~the increase in the Causeway Tolls has and will continue to have a significant detrimental effect upon the residents of the unincorporated area of the County who travel to Sanibel to work, and upon the residents and businesses of the City, and such increased Causeway Tolls are of serious and significant concern to the City and the County.~~

NOW, THEREFORE, in consideration of the ~~payments and~~ covenants by and between the City and the County, as set forth herein, the sufficiency of each ~~such sum and~~ covenant being hereby acknowledged by the parties, it is agreed:

### TERMS AND CONDITIONS OF AGREEMENT

1. The parties acknowledge that the recitals set forth hereinabove are material, are true and correct, and are incorporated herein by reference.
2. Definitions
  - a. Causeway Tolls – The term “Causeway Tolls” includes the user fee charged the motoring public for the vehicular use of the Sanibel Causeway, and for purposes of this Agreement, the term “Causeway Tolls” shall include the following defined terms:
    - (i) “Sanibel Discount Program Fees”, which shall include the cost of ~~the transponder, any~~ all Program Fees on an annual, semi-annual or other basis as part of the Sanibel Discount Program, and the per trip charge applicable to such Sanibel Discount Program.
    - (ii) “Toll” shall mean the cash fee paid by motorists other than those paying Sanibel Discount Program Fees.
  - b. Junior Lien Debt or General Fund Loan Loan Fund – The term “Junior Lien Debt or General Fund Loan Loan Fund” means County debt service obligation(s) other than bonded debt, ~~service~~ and is reflected in the fourth column, “Other Debt Service,” ~~on of~~

Exhibit B. The County currently anticipates that this Junior Lien Debt or General Fund Loan ~~Loan Fund~~ will be substantially retired in 2010 and completely retired ~~in~~ by 2012.

~~c. Surplus Toll Revenues – For the purposes of this Agreement, “Surplus Toll Revenues” shall mean the Gross Revenue of all Causeway Tolls less operating expenses for the Causeway, the principal Causeway “Debt Service Requirement” (as that term is defined in the Interlocal Agreement) and repair costs of the Causeway.~~

c. Surplus Toll Revenues - For the purposes of this Agreement, “Surplus Toll Revenues” shall mean the “Gross Revenues” of the Causeway Tolls less the principal “Causeway Debt Service Requirement”, “Additional Obligations”, “Operating Expenses”, “Renewal and Replacement Costs”, “Subordinated Indebtedness”, and any other repair costs of the Causeway, as all such terms are defined in the Interlocal Agreement.

3. The parties to this Agreement hereby expressly covenant and agree, for themselves and all who might make claim by and through them, to discontinue and dismiss with prejudice all actions, claims, counterclaims, suits and proceedings, including the Litigation, which are now pending by and between them with respect to the Causeway and/or the Interlocal Agreement, ~~upon full payment of the sum set forth in paragraph No. 4 below~~; and do further expressly covenant and agree not to institute, reinstate or prosecute any action, cause of action, claim, cross-claim, counterclaim, proceeding or suit among or between them, whether sounding in tort, in contract, or otherwise for any loss or damage suffered by them and all who might make claim through them on account of the Causeway and/or the Interlocal Agreement or any matters related thereto, forever. Each party will utilize its best efforts to seek the approval of the Circuit Court ~~to the~~ for a Joint Stipulated Motion for Dismissal With Prejudice and “Agreed

Order,” which is appended hereto as Exhibit C. Each party shall bear its own attorney’s and expert fees, costs, and other expenses.

\* 4. Lee County will ~~direct Charlie Green, as Clerk of the Circuit Court of the Twentieth Judicial Circuit and Clerk of the Lee County Board of County Commissioners, to deliver~~ release to the City, the Surplus Toll Revenues which were otherwise due and payable to the City on November 1, 2004, in the sum of Two Hundred Two Thousand Seven Hundred Ninety-Four and 85/100 Dollars (\$202,794.85) within ~~five (5)~~ ten (10) business days after the final execution of this Agreement.

5 Effective ~~for~~ with all Surplus Toll Revenues collected and otherwise available as of September 30, 2004, the City and the County agree to contribute One Hundred Percent (100%) of their respective shares of the Surplus Toll Revenues for the following purposes:

a. The City ~~shall~~ will contribute its 21% pro rata share of the Surplus Toll Revenues to which it is entitled under the terms of the Interlocal Agreement for the sole purpose of reducing the Sanibel Bridges Replacement and Toll Facility Project with associated Sanibel Discount Program Fees for the Sanibel Causeway so long as the County contributes its 79% pro rata share ~~to reducing the Sanibel Discount Program Fees and Causeway Tolls~~ as described in (b), below.

b. The County ~~shall~~ will continue to contribute its 79% pro rata share of the Sanibel Surplus Toll Revenues to which it is entitled under the terms of the Interlocal Agreement for the sole purpose of reducing the Sanibel Bridges Replacement and Toll Facility Project with associated Sanibel Discount Program Fees and Causeway Tolls until such time as the Junior Lien Debt is paid in full.

6      ~~On or before November 1, 2005; Upon the successful issuance of its permanent (bonded) financing for the Project,~~ the County ~~shall will~~ utilize its best efforts to reduce the Sanibel Discount Program Fees. ~~to an amount not to exceed Seventy Percent (70%) of the amount of the Sanibel Discount Program Fees existing on the date of this Agreement.~~

7.      The County agrees to utilize its best efforts to establish amounts and schedules which will result in the substantial retirement of the Junior Lien Debt or General Fund Loan ~~Loan Fund~~ in 2010, and with final retirement of the same in 2012. After initial establishment of the amount of the Junior Lien Debt or General Fund Loan ~~Loan Fund~~, no additional sums shall be added to this class of debt service.

8.      Upon the full retirement of the Junior Lien Debt or General Fund Loan ~~Loan Fund~~, the County ~~shall will~~ employ at its expense a Traffic and Revenue consultant to review the toll structure to ensure there are sufficient revenues to comply with the all existing bond covenants. Said consultant shall exercise due diligence in reviewing and certifying its review. Within one year of the completion of the consultant's review and certification, the County and City ~~shall will~~ consider possible reductions in the toll structure and ~~the resumption of payments of Seventy-Nine Percent (79%) of Surplus Toll Revenues to the County, and Twenty-One Percent (21%) of the Surplus Toll Revenues to the City. Under no circumstances shall the Surplus Toll Revenues be disbursed to only one of the parties to this Agreement. Any Surplus Toll Revenues distributed shall be distributed only on the 79% County, 21% City pro rata distribution as described herein.~~ perform an assessment of the Surplus Toll Revenues for each party. Upon distribution, the Surplus Toll Revenues ~~shall will~~ be used by the parties for any lawful transportation purpose, or as may be authorized ~~required~~ by then existing law.



9. Subject to applicable laws relating to public hearings and other requirements of the laws of the State of Florida, the parties will utilize their best efforts to amend and restate the Interlocal Agreement to reflect the above terms and conditions, effectuating the purposes of the Interlocal Agreement to the extent they are not inconsistent herewith.

10. The City agrees that it will not make nor bring any claim(s), now or in the future, to other proceeds from any of the County's Toll Facilities, except for those Surplus Toll Revenues as defined in the Interlocal Agreement, and outlined herein.

11. The City agrees that it will not bring any causes of action against, nor obstruct or otherwise interfere with the County's bonding for the permanent financing of the Sanibel Bridges Replacement and Toll Facility Project, when such bonding is undertaken by the County.

~~10.~~12. The parties acknowledge and agree that dates, assumptions and estimated costs set forth hereinabove and in Exhibit B are expressly contingent upon the Causeway not being subjected to an intervening Act of God or other natural disaster which would render the projected performance of either party as set forth herein or in Exhibit B<sub>2</sub> commercially impracticable.

~~11.~~13. The City hereby releases and forever discharges the County and its employees, officers, commissioners, agents, attorneys, and successors of and from all claims, demands, and causes of action of any kind and nature, whether known or unknown, in law or in equity, arising out of or related to the Interlocal Agreement, including but not limited to the claims asserted in the Litigation and any and all such additional claims as could have been asserted in the Litigation.

~~11.~~14. The County hereby releases and forever discharges the City and its employees, officers, councilmen and councilwomen, agents, attorneys, and successors of and from all

claims, demands, and causes of action of any kind and nature, whether known or unknown, in law or in equity, arising out of or related to the Interlocal Agreement, including but not limited to the claims asserted in the Litigation and any and all such additional claims as could have been asserted in the Litigation. This Release is specific to the Interlocal Agreement as defined herein, and specifically excludes that certain Interlocal Agreement relating to the City's placement of its weigh station on the County's Causeway Facilities.

~~13.~~15. It is understood and agreed that the making and execution of this Agreement by the parties hereto and the exchange of consideration reflected herein is not intended to be and should will not be construed as an admission of liability on the part of anyone or any entity, but is made and exchanged in settlement of disputed claims for the reasons set forth in the recitals and to avoid the expense of continuing litigation by the governmental bodies herein.

~~14.~~16. Each party represents ~~and expressly warrants~~ that the individual whose signature appears below on its behalf has the full power and authority to execute this Agreement on its behalf, and that such authority is derived by virtue of that individual's office.

~~15.~~17. The parties represent ~~and expressly warrant~~ that they have not sold, assigned, granted or transferred to any person, corporate or natural, any claim, action, demand or cause of action which is released by this Agreement.

~~16.~~18. This Agreement is the result of negotiations among by and between the City and the County, and each has had the opportunity to modify the drafting of this Agreement. Each party acknowledges that neither it nor anyone acting on its behalf is relying upon any statement, representation or promise (other than those set forth herein) made by or on behalf of any other party but that, in agreeing to the settlement and in executing this Agreement, it is relying solely upon the results of its own investigation and knowledge and those of its own attorneys, agents,

and employees and in reliance upon legal advice of counsel of its own selection, and not upon the legal advice of any other party or its that party's attorneys.

~~17.19.~~ The parties agree that this Agreement shall be interpreted and construed in accordance with Florida law.

~~18.20.~~ The parties acknowledge and agree that this Agreement may be executed in counterparts, and that it shall be binding in all respects upon and inure to the benefit of the parties, their legal representatives, successors, and duly approved assigns.

~~19.21.~~ In the event that an action is commenced to enforce or interpret this Agreement, the Court ~~shall~~ may award ~~all~~ attorneys' fees, costs and litigation expenses to the prevailing party, ~~and against the non-prevailing party.~~

~~20.22.~~ This Agreement must be signed and the Joint Stipulated Motion for Dismissal With Prejudice and Order appended hereto as Exhibit C must be executed and filed on or before February 28, 2005; otherwise this Agreement shall be void and of no force and effect.

LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
DOUGLAS R. ST. CERNY  
CHAIRMAN, BOARD OF COUNTY  
COMMISSIONERS OF LEE COUNTY

Attest: Charlie Green  
Clerk of the Circuit Court  
Lee County, Florida

By: \_\_\_\_\_

\_\_\_\_\_  
APPROVED AS TO FORM  
DAVID OWEN  
COUNTY ATTORNEY

CITY OF SANIBEL, FLORIDA

By: \_\_\_\_\_  
MARTY HARRITY  
MAYOR

Attest: City Clerk  
City of Sanibel

By: \_\_\_\_\_

\_\_\_\_\_  
APPROVED AS TO FORM  
KENNETH CUYLER  
CITY ATTORNEY

**CITY OF SANIBEL**

**RESOLUTION NO. 05-026**

**A RESOLUTION APPROVING, AUTHORIZING AND DIRECTING A SETTLEMENT IN THE CASE OF CITY OF SANIBEL, A MUNICIPAL CORPORATION V. LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, ITS GOVERNING BODY, CASE NO. 04-134 CA-H; DIRECTING THE CITY MANAGER TO CONTINUE FINAL NEGOTIATIONS REGARDING THE EXTENT OF POTENTIAL TOLL REDUCTIONS, THE TIMING OF SUCH REDUCTIONS AND THE FINANCING RELATED TO SUCH REDUCTIONS; SETTING FORTH THE GENERAL TERMS OF SETTLEMENT AND DIRECTING THAT THE CITY ATTORNEY PREPARE A PROPOSED STIPULATED SETTLEMENT AGREEMENT FOR FINAL CONSIDERATION AND APPROVAL BY CITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council adopted Resolution 05-024 directing the City Manager to continue discussions with the County Manager and his designees with respect to settlement terms that could be presented to and considered by the respective governing bodies in the case of City of Sanibel, a Municipal Corporation v. Lee County, a Political Subdivision of the State of Florida, and The Board of County Commissioners of Lee County, its governing body, Case No. 04-134 CA-H; and

**WHEREAS**, the increase in Sanibel Causeway tolls resulting from increased Causeway construction costs continue to have a significant detrimental effect upon the residents and businesses of Sanibel, and such increased tolls are of serious and significant concern to the Sanibel City Council; and

**WHEREAS**, the Board of Lee County Commissioners has proposed that it will contribute and restrict all 79% of the surplus toll revenues to which it is entitled under the Causeway Interlocal Agreement between the City of Sanibel and Lee County entered into in 1987, and Amended and Restated in June, 2002 (the "Interlocal Agreement"), solely for the reduction of the Sanibel Causeway toll fees; and

**WHEREAS**, under those circumstances, in an effort to reduce the Causeway tolls payable by the residents, businesses and other service providers on Sanibel, the City Council is willing to contribute and restrict the City's 21% share of surplus toll revenues to which it is entitled under the Interlocal Agreement solely to the reduction of the Sanibel Discount Program and transponder fees, only for so long as Lee County contributes its 79% to toll reductions.

**WHEREAS**, the City Council is interested in additional information regarding the extent to which the Sanibel Discount Program will be reduced, the time necessary for such reductions to occur, and the financing proposals which relate to such Sanibel Discount Program reductions; and

**WHEREAS**, the City Council considers it important that such matters be considered as part of a final Settlement Agreement; and

**WHEREAS**, it is the position of the City Council that a settlement of the pending litigation is in the best interests of the citizens of Sanibel and will foster and encourage a productive working relationship between the City of Sanibel and Lee County which will accrue to the overall benefit of the citizens of Sanibel;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sanibel, Florida, that:

Section 1. The City Council hereby approves, authorizes and directs the settlement of the case of City of Sanibel, a Municipal Corporation v. Lee County, a Political Subdivision of the State of Florida, and The Board of County Commissioners of Lee County, its governing body, Case No. 04-134 CA-H, by means of a Stipulated Settlement Agreement on the following terms and conditions:

- (a) The City of Sanibel will dismiss its claims in the above-styled lawsuit, with prejudice, together with any rights to appeal such claims, including any claims or appeal rights with regard to the Writ of Mandamus action against the Lee County Clerk of Courts.

- (b) Lee County will dismiss its claims (counterclaims) in the above-styled lawsuit, with prejudice, together with any rights to appeal such claims.
- (c) Each party will bear its own costs and attorney's fees with respect to all such litigation.
- (d) The County agrees to contribute its future 79% pro rata share of the surplus Sanibel toll revenues to which it is entitled under the terms of the Interlocal Agreement for the sole purpose of reducing the Sanibel Discount Program, transponder fees and toll rates for the Sanibel Causeway.
- (e) The City agrees to contribute its future 21% pro rata share of the surplus Sanibel toll revenues to which it is entitled under the terms of the Interlocal Agreement for the sole purpose of reducing the Sanibel Discount Program and transponder fees, for so long as Lee County contributes its 79% share to toll and transponder fees reduction.

Section 2. The City Manager is hereby authorized and directed to report to City Council as soon as possible after final negotiations with the Lee County Manager with respect to the extent to which Sanibel Discount Program and transponder fees can be lowered with the dedication of the City's 21% surplus revenue share and the County's 79% surplus revenue share, the timing for the reduction of the Sanibel Discount Program and transponder fees, the length of time for which the City's 21% surplus revenues would be needed for such program and fees, and the extent to which such City Causeway surplus toll revenues may again be available to the City for purposes not prohibited by State statute while maintaining a reasonably reduced toll structure.

Section 3. The City Attorney is hereby authorized and directed to prepare a proposed Stipulated Settlement Agreement for consideration by City Council, to be presented together with the information to be obtained from the County regarding the amount of toll reduction, timing for toll reduction and information relating to the financing related to the toll reduction, as set forth above, for Council's consideration and approval of such Stipulated Settlement Agreement.

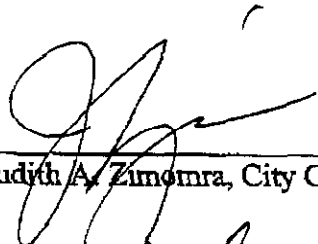
Section 4. Effective date

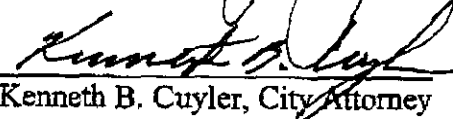
This resolution shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this  
1st day of February, 2005.

AUTHENTICATION:

  
Marty Harrity, Mayor

  
Judith A. Zimomra, City Clerk

APPROVED AS TO FORM:  2/1/05  
Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

Harrity	<u>yea</u>
Walsh	<u>yea</u>
Brown	<u>yea</u>
Jennings	<u>yea</u>
Workman	<u>naye</u>

Date filed with City Clerk: February 1, 2005