

MEMORANDUM

Item No. 6C & 6D

To: Honorable Harley Strickland, Mayor and City Council Members

From: William E. Reischmann, Jr., Esquire, City Attorney

Subject: **Closest Unit Response Interlocal Agreement with Volusia County.**

Issue: **Initiation of governmental dispute resolution pursuant to Chapter 164, Fla. Stat.**

Date: June 18, 2008

PURPOSE:

Enclosed are the requested resolutions given that Volusia County refuses to issue Orange City a COPCN until a fully executed CUR interlocal agreement is negotiated.

BACKGROUND:

Chapter 164 of the Florida Statutes is very specific as to how a governmental entity must initiate, or avoid, governmental dispute resolution. These two proposed resolutions satisfy all the specific statutory requirements.

(A) Pursuant to the first proposed resolution, if the Council concludes that there is not an immediate danger to the health, safety or welfare of the public, then the following procedure applies: Five (5) days after the passage of this resolution, this office will provide a letter and certified copies of the resolution to the County Manager of Volusia County, via certified mail, return receipt requested, pursuant to the statute, and will be in contact with the County Manager to set an initial meeting for conflict resolution; and our letter will set forth that meeting, with suggestions regarding the officials who should be present. We will also be required to mail copies of the letter and resolution to other local governmental entities, because they may have a role in approving or implementing any settlement between Volusia County and Orange City. Both Volusia County and Orange City must give public notice at least ten (10) days prior to the initial meeting in publication(s) of the widest circulation in their respective jurisdictions. The initial conflict resolution meeting shall be scheduled to occur within thirty (30) days of receipt of the letter from Orange City initiating the conflict resolution proceeding; however, the meeting shall be scheduled to

allow the attendance by the appropriate personnel of Volusia County and Orange City. If both parties agree, the assistance of a facilitator must be enlisted for the initial conflict meeting.

If no tentative resolution can be agreed upon by Volusia County and Orange City, Orange City must schedule a joint public meeting to again determine if an agreement can be reached. If no agreement can be reached at this joint public meeting, or subsequent joint public meetings, the parties must participate in mediation, the cost of which must be equally divided between the parties.

(B) If, however, the Council determines by three-fourths vote that there is an immediate danger to the health, safety or welfare of the public, the notice, public hearing requirements and other proceedings are not required before a court proceeding takes place. This is consistent with the latter proposed resolution.

RECOMMENDATION

The Council should first determine the need, or not, for immediate judicial relief. That determination will allow the Council to select whether to approve both resolutions.

RESOLUTION NO. 482-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, FINDING THAT THERE IS A CONFLICT BETWEEN ORANGE CITY AND VOLUSIA COUNTY, FLORIDA; THAT ORANGE CITY HAS AUTHORIZED ITS CITY ATTORNEY TO INITIATE LEGAL PROCEEDINGS REGARDING SUCH CONFLICT AND THAT JUDICIAL PROCEEDINGS ARE IMMINENT; INITIATING CONFLICT RESOLUTION PROCEEDINGS PURSUANT TO FLORIDA LAW; DIRECTING THAT THE CITY ATTORNEY NOTIFY THE PRIMARY CONFLICTING GOVERNMENTAL ENTITY AND OTHER GOVERNMENTAL ENTITIES WHICH MAY HAVE A ROLE IN APPROVING OR IMPLEMENTING ANY ASPECT OF SETTLEMENT PURSUANT TO SECTION 164.1052, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Volusia County requires cities within its jurisdiction that provide emergency medical services to enter into a Closest Unit Response (CUR) interlocal agreement with the County; and

WHEREAS, the City of Orange City began negotiating with Volusia County regarding the CUR agreement; and

WHEREAS, the City of Orange City and Volusia County have been unable to finalize a CUR agreement; and

WHEREAS, the City of Orange City applied to Volusia County for the issuance of a Certificate of Public Convenience and Necessity (COPCN) for the purpose of providing Advanced Life Support Services to its citizens; and

WHEREAS, Section 46-2-h of Volusia County Ordinance #2003-14 requires that a notarized statement be attached to the COPCN application stating that the applicant agrees to participate in a CUR plan; and

WHEREAS, the City of Orange City has provided Volusia County the notarized statement with its COPCN application; and

WHEREAS, contrary to the requirements of Section 46-2-h of Volusia County Ordinance # 2003-14, Volusia County will not issue the COPCN until a fully executed CUR interlocal agreement is provided; and

WHEREAS, the issuance of the COPCN is a matter of great importance to the health, safety and welfare of the citizens of the City of Orange City; and

WHEREAS, based upon the foregoing, the City of Orange City has authorized its City Attorney to initiate legal proceedings against Volusia County, and, therefore, court proceedings regarding the same are imminent; and

WHEREAS, the City Council for the City of Orange City recognized the statutory mandate that it initiate conflict resolution procedures pursuant to Chapter 164, Fla. Stat., prior to initiating any lawsuit against Volusia County; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. It is the intention of the City Council for the City of Orange City to hereby initiate conflict resolution procedures pursuant to Chapter 164, Florida Statutes, prior to initiating judicial proceedings.

SECTION 2. The issues of conflict include, but are not necessarily limited to the following:

- (a) Volusia County does not have the legal authority to deny issuance of the COPCN because a fully executed CUR agreement was not provided with the COPCN application; and
- (b) The actions of Volusia County interfere with the ability of the City of Orange City to provide Advanced Life Support Services to its citizens;
- (c) All other issues of conflict are specified in the Whereas clauses above.

SECTION 3. The City Council of the City of Orange City hereby directs the City Attorney to send a certified copy of this Resolution, return receipt requested, to the Chief Administrator of Volusia County within five (5) days after passage of this Resolution, together with a letter pursuant to Section 164.1052(1), Florida Statutes.

SECTION 4. Also pursuant to Section 164.1052(1), Florida Statutes, the City Council hereby directs the City Attorney to mail a copy of the letter and this Resolution to all other local governmental entities listed below and all others which may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by any resolution of the conflict: None

SECTION 5. EFFECTIVE DATE. This Resolution becomes effective immediately upon its adoption.

ROLL CALL VOTE AS FOLLOWS (Resolution No. ____-08):

Jim Mahoney	_____	Donald Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Donald Sandford	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland , Mayor	_____		

ADOPTED THIS _____ DAY OF _____, 2008.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney

RESOLUTION NO. 483-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, FINDING THAT SIGNIFICANT LEGAL RIGHTS OF THE CITY WILL BE COMPROMISED IF A COURT PROCEEDING DOES NOT TAKE PLACE PRIOR TO COMPLIANCE WITH DISPUTE RESOLUTION PROCEEDINGS UNDER CHAPTER 164, FLORIDA STATUTES, AND THAT IMMEDIATE DANGER TO THE HEALTH, SAFETY, AND WELFARE OF THE PUBLIC REQUIRES THE CITY OF ORANGE CITY'S IMMEDIATE ACTION OF FILING THE APPROPRIATE LAWSUITS AGAINST VOLUSIA COUNTY, AND THAT, UPON THE FILING OF ANY LAWSUITS AGAINST VOLUSIA COUNTY, SUCH LAWSUITS SHOULD NOT BE ABATED DUE TO THE CITY'S INABILITY TO COMPLY WITH CHAPTER 164 OF THE FLORIDA STATUTES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it appears that Volusia County will not issue a Certificate of Public Convenience and Necessity (COPCN) for the purpose of providing Advanced Life Support Services to the citizens of the City of Orange City, Florida until Volusia County and the City of Orange City execute a Closest Unit Response (CUR) interlocal agreement; and

WHEREAS, until the COPCN is issued, the City of Orange City cannot provide Advanced Life Support Services to its citizens; and

WHEREAS, the City Council of the City of Orange City entered Resolution No. 482-08 to initiate conflict resolution procedures pursuant to Chapter 164, Fla. Stat., prior to initiating any lawsuit against Volusia County; and

WHEREAS, the failure to provide Advanced Life Support Services to the citizens of the City of Orange City presents an immediate danger to the health, safety and welfare of the public; and

WHEREAS, immediate danger to the health, safety, and welfare of the public of Volusia County in general and Orange City, in particular, requires immediate legal action which should not be postponed to effectuate dispute resolution proceedings under Chapter 164, Fla. Stat.; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. The City Council for the City of Orange City, by a three-fourths (3/4) vote, finds that significant legal rights of the City will be compromised, and immediate danger to the health, safety, and welfare of the public will be adversely affected if the

filing of any lawsuits against Volusia County are delayed or, subsequent to filing, are abated.

SECTION 2. The City Manager, City Attorney, or their designees, are hereby authorized to bypass the conflict resolution process set forth in Chapter 164, Florida Statutes, as may be necessary, and take all reasonable actions necessary to prosecute or defend any lawsuit or other actions, either alone or in concert with other affected local governing bodies and their representatives throughout the State of Florida.

SECTION 3. EFFECTIVE DATE. This Resolution becomes effective immediately upon its adoption.

SECTION 4. PASSED AND DULY ADOPTED by a three-fourths (3/4) vote of the governing body at the meeting of City Council of the City of Orange City on the ____ day of _____, 2008.

ROLL CALL VOTE AS FOLLOWS (Resolution No. 482-08):

Jim Mahoney	_____	Donald Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Donald Sandford	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland , Mayor	_____		

ADOPTED THIS _____ DAY OF _____, 2008.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney