

1 **MINUTES OF THE MEETING OF THE ORANGE CITY CHARTER REVIEW**
 2 **COMMITTEE**, held on Monday, April 28, 2008 at 6:00 p.m. in Council Chambers, 201 N. Holly
 3 Avenue, Orange City.

4
 5 **CALL TO ORDER**

6
 7 The Meeting was called to order at 6:00 p.m. by Chairman Rasch and roll call was taken.
 8

9 **ROLL CALL**

10
 11 **PRESENT:** John Crowther; Joelle DeVane; Bill DeVane; Paul Rasch, Chair; Hugh Strickland;
 12 Evelyn Robinson; City Clerk Deborah Renner; City Attorney Bill Reischmann
 13

14 **ABSENT:** Gary Blair
 15

16 **1. Approval of April 21, 2008 Minutes**

17
 18 Chairman Rasch noted a correction to the minutes on Page 1, Line 45, the last word in the line should
 19 be “sad” not “bad” so that it reads, “I think it a sad indictment.....”
 20

21 Mr. DeVane noted a correction to Page 2, Line 48 the reference to “917 people per district” should
 22 read “917 registered voters per district.”
 23

24 **Mr. Strickland moved to accept the minutes as amended, seconded by Ms.**
 25 **Strickland DeVane and passed by 6/0 voice vote.**
 26

27 **2. Begin Discussion on Section 2.03 Vice Mayor**

28
 29 **Section 2.03 Vice Mayor**

30
 31 a. Committee Discussion

32
 33 **Mr. Strickland moved that Section 2.03 of Article II be amended to**
 34 **provide for the annual election of the Vice Mayor by the City Council**
 35 **and that the draft language presented be used by legal staff to draft**
 36 **final language for this Commission to send to the City Council,**
 37 **seconded by Ms. Robinson.**
 38

39 Mr. Strickland read his proposed language into the record as follows:

40
 41 **Section 2.03 Vice Mayor: The Council shall elect from among its**
 42 **members, a Vice Mayor. Election of the Vice Mayor shall be done**
 43 **annually at the first regular Council Meeting in December. The Vice**
 44 **Mayor shall act as Presiding Officer during the absence or disability**
 45 **of the Mayor. Any Council Member may serve no more than two**
 46 **consecutive years as Vice Mayor.**
 47

48 Mr. Strickland advised that his proposed language was as a result of Ms. DeVane’s suggestion
 49 regarding the word “annually” and that it also retains the term limit of two consecutive years as written

1 in the present charter. Mr. Crowther noted that the provision for “two consecutive years” constitutes
2 term limits.

3
4 City Clerk Debbie Renner noted that electing the Vice Mayor in December could cause a vacancy in
5 the position if the current Vice Mayor did not win reelection. Mr. Strickland responded that he had
6 been told by several Council Members that they did not want to elect a Vice Mayor at the very first
7 meeting after the election. He noted that there would only be a general election every other year, not
8 every year. Mr. Crowther questioned who would assume the Vice Mayor’s duties if he is no longer on
9 the Council? Mr. DeVane suggested having the election of the Vice Mayor in November as a remedy
10 for the situation.

11
12 Ms. DeVane advised that the situation of not having a Vice Mayor had been encountered in the past in
13 the absence of both the Mayor and Vice Mayor and that the Council had elected a Chairman for that
14 meeting. Mr. Strickland said that the advantage of delaying the election of a Vice Mayor is that it
15 doesn’t put the new Council “on the hot seat” to make an immediate decision.

16
17 Mr. Crowther asked the City Attorney if there would be legal ramifications if the Council, without
18 Charter authority, elects a Vice Mayor Pro Tem. Mr. Reischmann responded that it is fairly simple to
19 fill the vacancies of Vice Mayor or Mayor for the purposes of running a meeting. However, it is much
20 more complicated to have the Council appoint someone by voice vote to act in the stead of the Mayor
21 and to fulfill his charter responsibilities. Mr. Reischmann stated, “That could create a problem.” Mr.
22 DeVane questioned whether the Council would have the authority to just elect a Vice Mayor at the
23 time the position is needed. Mr. Crowther responded that it could only be done by a charter provision.

24
25 Ms. Robinson asked how the Vice Mayor Pro Tem is selected and whether it is based on seniority.
26 Mr. Reischmann responded that it would be done in whatever manner is specified in the charter. He
27 reiterated that the major issue is not who will run the meeting, but who will assume the other duties of
28 the Mayor.

29
30 Mr. Reischmann noted that the City generally cancels the second meeting of November because of the
31 Thanksgiving holiday so there would not be an opportunity to elect a Vice Mayor then. Mr. Crowther
32 recalled that in the 1970’s when he was on the Council, the charter provided that whoever was
33 Chairman of the City Council would assume the position of Mayor and the Council would then
34 appoint another Chairman. He said that fulfilling the ceremonial duties of the Mayor was not a big
35 problem, the real issue is the fact that the Mayor is the only one who can accept process on behalf of
36 the City. Mr. Reischmann also noted that the Mayor is responsible to the Governor in the event of an
37 emergency.

38
39 The implications of having a vacancy in the Vice Mayor’s position were discussed further. Mr.
40 DeVane suggested that the Vice Mayor should not be limited to one year. Council Member Don
41 Sandford, speaking from the audience, suggested adding a clause that would invoke a procedure for
42 filling a vacancy in the Vice Mayor’s position.

43
44 The remedy of calling a special meeting at any time to elect a Vice Mayor if necessary was discussed.
45 Discussion then turned to whether the Vice Mayor should be elected annually, or should serve a two-
46 year term. Mr. Strickland spoke in support of the position being filled annually so that it rotates
47 through the Council. Chairman Rasch said that he did not have a preference for either choice since the
48 position is largely ceremonial. Mr. Reischmann reminded everyone that the Vice Mayor does
49 represent the City in a number of different capacities such as VCOG. Mr. Strickland noted that with

1 term limits, a Council Member could not serve as Vice Mayor for two years if he were elected in the
 2 third year of his term.

3
 4 **Mr. DeVane moved that Section 2.03 Vice Mayor, read as follows:**
 5 **“The Council shall elect from among its members a Vice Mayor.**
 6 **Election of the Vice Mayor shall be done bi-annually at the first**
 7 **regular Council meeting after the City election. The Vice Mayor shall**
 8 **act as the presiding officer during the absence or disability of the**
 9 **Mayor. Any Council Member may serve no more than one, two-year**
 10 **term as Vice Mayor.**

11 **Motion withdrawn.**

12
 13
 14 **Mr. Crowther moved to amend the main motion by adding the**
 15 **following language to Section 2.03: The Council shall elect from its**
 16 **members a Vice Mayor. Election of the Vice Mayor shall be done**
 17 **annually at the first regular council meeting in November. The Vice**
 18 **Mayor shall act as presiding officer during the absence or disability of**
 19 **the Mayor. Any Council Member may serve no more than two**
 20 **consecutive years as Vice Mayor. Motion seconded by Mr.**
 21 **Strickland.**

22
 23 Ms. DeVane said that as Vice Mayor, a Council Member has more exposure to the Mayor’s duties
 24 such as attending meetings and other functions in his stead. She said that this could be considered
 25 “grooming” for some who have the aspiration to become Mayor at some time in the future. She
 26 suggested that with annual elections, there may be people on the Council who are just not interested in
 27 serving as Vice Mayor.

28
 29 **Motion to amend passed by unanimous 6/0 voice vote of the Committee.**

30
 31 **Section 2.05 Compensation**

32
 33 Chairman Rasch referenced a benefits survey for elected officials which had been distributed
 34 previously.

35
 36 Ms. DeVane noted that the City is on the FRS Retirement plan and she questioned whether the City
 37 Council could be excluded from the plan.

38
 39 Chairman Rasch asked for further information before a motion is introduced. He asked what the
 40 current salary of the Council Members is. Ms. DeVane responded that it is \$400 per month for
 41 Council Members and \$600 per month for the Mayor. Ms. Renner noted that the Council does not
 42 receive health benefits from the City. In response to a question about the Council’s pension, Mr.
 43 Reischmann responded that the Council is included in the City’s FRS pension plan. Mr. DeVane said
 44 that the Council Member’s pension benefits are a “pittance.” Ms. DeVane said that she was under the
 45 impression that all employees of the City, including elected officials, are required to participate in the
 46 FRS plan.

47
 48 Mr. Strickland stated that Florida Statute 112.048 provides that there is a legislative intent that all
 49 cities shall provide some type of pension option. He stated that if an elected official serves for twenty-

1 four consecutive years, they are entitled to one-half of their final month's compensation for the rest of
2 their life. He said that the pension plan could be non-contributory. Mr. Strickland said that his motion
3 would be to allow the Council to be part of the pension plan, however, no contributions could be made
4 by the City from tax funds to fund the pension plan. Ms. Renner noted that employees are not allowed
5 to contribute to the FRS pension plan. Mr. Strickland said that the City does not have to provide FRS
6 benefits for elected officials, they just have to make available some sort of pension plan.

7
8 Ms. Robinson advised that she has been part of the FRS system and there is a provision whereby
9 employees can buy back years of service.

10
11 Ruth Blue, 447 N. Oak, stated that she spoke to FRS and was told that there are separate classes within
12 the pension plan for Police, Fire, Employees and Elected Officials. She expressed that she did not feel
13 retirement benefits should be available for a temporary, part-time position such as an elected official.

14
15 Chairman Rasch said that based on a comparison with other nearby cities, Orange City is "not out of
16 line" in regard to compensation. He maintained that in order to encourage competent people to run, it
17 is necessary to compensate them to a certain extent. He asked Council Member Sandford (in the
18 audience) how many hours he devotes to his Council duties each week. Council Member Sanford
19 replied two to three hours per week. Council Member Laputka said that he works about five or six
20 hours a week. Mr. Reischmann said that most of the Mayors during his tenure as City Attorney
21 worked at least twenty hours per week and that Mayor Erwin used to work nearly full time. Chairman
22 Rasch stressed the importance of remaining competitive with other cities.

23
24 Mr. DeVane noted that other cities offer things from a stipend to life and health insurance and cell
25 phones. Mr. Reischmann noted that the Council does have the option to give themselves health care
26 coverage if they so wish. Mr. Rasch said that the amount of the FRS pension is so small that it didn't
27 matter to him if they have it or not. Mr. Crowther stated, "Well, then let's let them work more than
28 one night a month."

29
30 Romane Casteel, speaking from the audience, stated that she called other nearby cities such as
31 DeBary, DeLand and Deltona and that no one offers a pension to their elected officials. Mr. DeVane
32 noted that DeLand offers their Council use of a City vehicle. He said that in Daytona Beach, the
33 Council Members receive a \$5,760 stipend for expenses, plus cell phone, health insurance and life
34 insurance. Mr. Crowther stated, "It's only a vote away."

35
36 Ms. DeVane noted that the FRS pension plan was adopted to attract and retain quality employees and
37 that the Council did not request pension benefits. Mr. Reischmann said that he would check to see if
38 FRS benefits are mandatory for all employees. Mr. Strickland said that he reviewed the statutes
39 related to pensions for government employees and read that it is the legislative intent that elected
40 officials be provided with a pension plan, but that it could be contributory or non-contributory. Mr.
41 Strickland stated, "My position here tonight is that I don't think that the tax payers should be
42 contributing." He said that he did not believe participation for elected officials is mandatory, citing
43 the City of Deltona as an example.

44
45 Mr. Rasch said that it did not matter to him either way, but that he wanted to know if the City could
46 legally exclude elected officials from the FRS plan.

47
48 **Mr. DeVane moved to table further discussion on this matter until a**
49 **definitive answer could be obtained regarding the obligation for FRS**

1 **benefits for elected officials, seconded by Ms. DeVane and passed by**
2 **4/2 roll call vote with Mr. Strickland and Mr. Crowther voting “no.”**

3
4 **Section 2.06 Meetings**

5
6 **Mr. Strickland moved that Article 2.06 of Article II be amended to**
7 **require twice monthly meetings of the City Council with a posting of**
8 **special meetings in all City office entrances and on the City’s internet**
9 **site and that any Council Member may request that an item be placed**
10 **on the agenda for the next Council meeting, seconded by Mr.**
11 **Crowther.**

12
13 Mr. Strickland clarified that he also included a stipulation in the language that one of the meetings
14 may be cancelled if it falls on a City holiday, stating, “That way the employees are not penalized.”

15
16 In response to a question from Mr. Reischmann, Ms. Renner stated that the City is closed on Thursday
17 and Friday for Thanksgiving. Mr. Reischmann noted that the City Council could be required to have a
18 meeting on Christmas Eve. Mr. Strickland responded, “I understand.”

19
20 Ms. DeVane requested that the proposed language be discussed item by item. Ms. DeVane recalled
21 that the only time Council meetings were cancelled in the past is during the week of a holiday such as
22 Thanksgiving week, as many people travel out of town that week. Mr. Rasch said that there was
23 always the possibility that there may not be a quorum for a scheduled meeting whether it falls on a
24 holiday or not. Mr. Crowther stated, “It seems to me that duties precede personal pleasures.” Both
25 Mr. and Ms. DeVane spoke against requiring a meeting on Christmas. Mr. Crowther noted that some
26 people celebrate their religious holidays on different days and questioned whether their schedules
27 should be accommodated. Mr. Strickland noted that not holding a meeting could cause the agenda to
28 be unduly lengthy for the next regular meeting. He suggested changing the language in subsection (a)
29 from “shall” to “may” and changing the wording from “on a city holiday” to “during the week of a city
30 holiday.”

31
32 Mr. Reischmann advised that the current charter requires that at least one meeting be held each month.
33 Council’s Rules & Procedures set the regular meetings for the second and fourth Tuesday of each
34 month. He said that in the past, the Council has chosen to adopt a resolution cancelling the second
35 meeting of November and December. He noted that the cancellation is not automatic, but is
36 accomplished through a resolution.

37
38 Mr. Crowther reiterated that Mr. Strickland’s proposed language does not require a meeting if it falls
39 on a City holiday. Mr. DeVane noted that the Council is only required to have one meeting per month,
40 yet they have been having two. He said that they have been meeting their obligations regarding
41 meeting twice a month with the exceptions that they feel are proper. He questioned the need to have a
42 charter requirement for the two meetings. Mr. Crowther reminded everyone that the Council does
43 have final say over the proposed charter amendments.

44
45 Mr. DeVane addressed item (d) of this section and stated his understanding that either the Mayor or
46 City Manager currently places items on the agenda. He asked the Clerk to confirm this. Ms. Renner
47 responded that the way it has been done recently is that items for the agenda are given to the City
48 Manager and he puts them on. Mr. Strickland said that this item is present because several members
49 of the Council asked that it be included in the Charter.

1 Former Council Member Bob Storke, speaking from the audience, stated that the City Manager sets
2 the agenda and if a Council Member wishes to have an item on there, he tells the Manager. Council
3 Member Laputka, also speaking from the audience, noted that the Charter Review Committee was
4 formed as the result of an agenda item requested by Council Member Abraham.

5
6 Ms. DeVane said that there may be time needed by staff to prepare for a requested agenda item and
7 that this had to be taken into consideration. She said that discussions are more productive when
8 everyone has had an opportunity to prepare.

9
10 Council Member Sandford, speaking from the audience, stated his understanding that the agenda is set
11 by the City Manager and if there is an item that he does not want on the agenda, it will not be put
12 there. He said that there should be a means whereby a Council Member can place an item on the
13 agenda, even if the City Manager does not want it there. Ms. DeVane said that the Council Member
14 should, at that time, bring the matter up at a council meeting and if the rest of the Council votes to put
15 something on the agenda, the Manager will do it without question.

16
17 Mr. Reischmann advised that he represents the City of Daytona Beach Shores and that they have a
18 section on the agenda for "Items for Future Agendas." He said that each Council Member has an
19 opportunity to bring up an issue they would like to have come forward on a future agenda for
20 discussion and/or action. Details such as when the item would come forward and how much
21 preparation is required are addressed at that time. He said that of all the cities he has worked for, that
22 system has worked the best. Mr. Rasch said that Mr. Reischmann's suggestion was "excellent" but
23 that he found it "very disturbing" that a City Council Member's request for an agenda item could be
24 denied by the City Manager.

25
26 Mr. Crowther noted that the City Manager is only responsible to the majority of the Council. He said
27 this gives the Manager the authority to "pocket veto" legislative action and stated, "that's just wrong."
28 Mr. Strickland said that his choice of language for this item ensures that an item will be placed on the
29 agenda, not that the Council will address it. Mr. Reischmann cautioned that care must be taken not to
30 violate the sunshine laws by allowing two Council Members to introduce an item for the agenda.

31
32 Chairman Rasch asserted that if any Council Member wants something on the agenda, it should be
33 placed there, especially when districts are implemented. Mr. DeVane assured everyone that the City
34 Manager would never deny a reasonable request to place something on the agenda. He suggested that
35 there may be situations where the City Manager might choose to have a waiting period before
36 addressing a request for a certain agenda item.

37
38 Ms. Robinson suggested that if a Council Member felt the Manager might not be receptive to their
39 request for an agenda item, they bring it up in the council meeting.

40
41 Ms. DeVane suggested that amending the Council's Rules & Procedures to provide a process for
42 placing items on the agenda might be more appropriate than including this in a charter amendment.
43 Mr. Strickland responded that placing things in the charter "solidifies some rights that can not be
44 changed by a simple resolution of a later Council who decides that the information doesn't need to be
45 posted and that people don't have the right to put things on an agenda."

46
47 Mr. DeVane suggested that the language in item (d) should read, "The Mayor and/or any City Council
48 Member may request to have a new item placed on a future meeting agenda by presenting a request to
49 the City Council and City Manager at any meeting of the Council." He clarified that this would

1 require that the request be presented in an open forum.

2
3 Mr. Strickland maintained that the Council Members he has spoken with, and with whom he agrees,
4 feel they should have the right to request that an item be placed on the next agenda. He advised that
5 this provision would provide that. Chairman Rasch said that he agreed with Mr. Strickland, but felt
6 the language should be changed because it is still a request by a Council Member that the City
7 Manager could table. He suggested that “may have a new item placed on the next meeting agenda”
8 be replaced with “shall have a new item placed on the next agenda.”

9
10 Mr. Crowther suggested that the City Clerk be the one to accept the request and place it on the agenda.
11 He noted that the Clerk reports to the Council. Chairman Rasch said that he liked Mr. Crowther’s
12 suggestion. Ms. Renner responded that that would “inherently create an adversarial relationship
13 between the Manager and the Clerk” and that would not be desirable.

14
15 Ms. DeVane said that her issue was the language that requires the item to be placed on the next agenda
16 because it could take longer than that to prepare the backup for the item. Chairman Rasch concurred
17 and requested that Mr. Strickland add wording that would allow time to prepare the item. Mr.
18 Strickland responded, “no.” He said that once the item has appeared on the agenda, the Council could
19 then grant the time they felt was necessary to prepare properly.

20
21 Mr. Storke, speaking from the audience, noted that agenda items should have accompanying backup
22 information. Chairman Rasch said that he hoped that the Council Member introducing the item would
23 have the backup. Mr. Strickland noted that Council does not have to take any action without proper
24 backup.

25
26 **Mr. Strickland moved that the word “may” in the first sentence in**
27 **Section (d) be changed to “shall.”**
28

29 Ms. DeVane said that this could cause the City Manager to stop what he is doing and give his attention
30 to the one Council Member making the request for an agenda item. Chairman Rasch stated “Basically,
31 you’re kind of assuming that we’re going to have a bunch of lame-brain councilmen running around
32 who are going to be just throwing stuff on to the agenda.” Ms. DeVane expressed that she was afraid
33 that Council Members could put items on the agenda that they have had disagreements with the City
34 Manager over. Discussion over the dynamics regarding disagreements between the City Manager and
35 Council over the agenda ensued. Mr. Strickland stated that the City Manager works for the Council
36 and is responsible for carrying out their wishes. If he chooses not to do that, his job could be at risk.
37 Mr. Crowther noted that if the City Manager cultivates the votes of four Council Members, he can’t be
38 removed and the minority on the Council can not have their issues brought forward. He said the
39 proposed charter revision would at least guarantee that their issues are discussed in public. Chairman
40 Rasch concurred.

41
42 **b. Public Comment**
43

44 Michelle Polgar, 585 Montclair, came forward and said that placing items on the agenda provides an
45 opportunity to discuss the issues and concerns of the citizens. She maintained that there should be a
46 procedure that allows a Council Member to bring items for discussion.

47
48 Ms. DeVane said that she concurred with Mr. Polgar and she also agreed with Mr. Reischmann’s
49 earlier suggestion of having an item on the agenda where Council Members can discuss future issues

1 they would like to see on the agenda. She said she had no problem with a Council Member placing a
2 discussion and action item on the agenda, but if it is an issue that is to be voted on, there could be a
3 problem with having the necessary background information presented.
4

5 Ms. Polgar noted that one Council Member alone does not have the authority to direct the City
6 Manager to do extensive research on an issue.
7

8 **Further Committee Discussion and Action**

9

10 Ms. DeVane noted that Council Member Sandford said he had requested that the City Manager place
11 items on the agenda and that it had not been done. She questioned whether the request was made in
12 private or in a public meeting. She stated, "If a Council Member wants something on the agenda, they
13 absolutely need to bring it to the City Manager in front of Council. But I don't think it needs to go
14 directly onto the agenda as an agenda item.
15

16 Chairman Rasch advised that the City Manager would still retain the discretion to place a requested
17 item in any portion of the agenda that he wishes.
18

19 Mr. Reischmann discussed a potential legal issue if a Council Member requested that the City
20 Manager place an item such as a rezoning on the agenda and the charter required that he do that, but
21 there are also statutory requirements regarding the rezoning procedure that may not be able to be met
22 immediately because it requires a hearing before the Planning Commission or it may have notice
23 requirements that would preclude it from appearing on the next agenda. Mr. Strickland suggested that
24 in a case like that, the Council could just send the item back for proper processing in accordance with
25 the laws. Mr. Reischmann responded, "It would just create a direct conflict between the charter
26 requirement that the City Manager bring it forward and the conditions precedent that might exist under
27 state law." Mr. Crowther suggested that the requirement could be only that the City Manager place
28 the item on the agenda for discussion only and further action could be decided at that time. Chairman
29 Rasch suggested that the City Manager be given discretion as to where to place an item.
30

31 Mr. Crowther called the question.
32

33 Ms. DeVane recapped the pending amendment as follows:
34

- 35 (a) The Council shall meet at such times as may be prescribed by Ordinance or Resolution,
36 except that it shall meet regularly at least twice a month but ~~shall~~ may not be required to meet
37 when a regularly scheduled meeting occurs ~~on~~ during the week of a city holiday.
38

39 **Passed by unanimous roll call vote.**
40

41 **Chairman Rasch moved to amend (d) by striking the word "may in**
42 **the first sentence and replacing it with "shall," seconded by Mr.**
43 **Strickland.**
44

- 45 (d) The Mayor and or any Council Member ~~may~~ shall have a new item placed on the next
46 meeting agenda by presenting a written request to the City Manager, his designee or by request
47 at any meeting of the Council.
48

49 **Motion passed by 4/2 voice vote with Mr. DeVane and Ms. DeVane**

voting “no.”

Main motion on Section 2.06 as amended passed by 4/2 roll call vote with Ms. DeVane and Mr. DeVane voting “no”

Public Comment

Bob Storke, speaking from the audience, stated that he spent 3-4 hours preparing for every meeting when he was on the Council. In addition, he spent another 2-3 hours during the week attending meetings and functions.

4. Closing Comments

There were no further comments.

7. Adjourn

There being no further business, the meeting was adjourned at 7:38 p.m.

Respectfully Submitted

Approved on

Deborah J. Renner, CMC, City Clerk
