

1 **MINUTES OF THE MEETING OF THE ORANGE CITY CHARTER REVIEW**
2 **COMMITTEE**, held on Monday, May 19, 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; Bill DeVane (Late, arrived at 6:08); Hugh Strickland; Evelyn
12 Robinson; and Gary Blair; Paul Rasch, Chair; City Clerk Deborah Renner; City
13 Attorney Bill Reischmann
14

15 **ABSENT:** Joelle DeVane
16

17 **1. Approval of May 5, 2008 Minutes**

18
19 Chairman Rasch noted an error on Page 7 of the minutes, Line 33, the word “entirely” should be
20 “entirety”.
21

22 Chairman Rasch noted that there was some confusion regarding what changes were passed at the May
23 5th meeting. Mr. Strickland advised that his original motion was never voted on, therefore, it died at
24 the end of the meeting. He said that two changes were made to Section 3.01, however, the intention to
25 add the phrase “appointed by and removed by the City Council by a motion requiring four affirmative
26 votes” to Sections “A.”, “B.”, and “C.” was never adopted. Mr. Crowther noted that his motion to
27 amend the main motion requiring a separate vote on each section (A, B, and C) was adopted, but was
28 not carried out. Mr. Strickland suggested that the minutes be approved as amended and advised that
29 he has a revised motion to add the aforementioned phrase to each section (A, B, and C).
30

31 **Ms. Robinson moved to approve the minutes of the May 5th meeting**
32 **as amended seconded by Mr. Strickland. Motion passed by 5/0 voice**
33 **vote of the committee.**
34

35 Chairman Rasch noted that he had promised Ruth Blue an opportunity to speak at the last meeting,
36 however, that meeting was cancelled due to lack of a quorum. He said that he would allow Al Blue to
37 speak on Ms. Blue’s behalf since she could not be present tonight. Chairman Rasch said that after Mr.
38 Blue’s comments, he would like to address a conflict with next week’s meeting before moving on to
39 the next item.
40

41 **Public Comment**

42
43 Al Blue, 447 N. Oak, came forward and read a statement into the record on behalf of Ruth Blue as
44 follows: “Thank you for letting me express my opinion on compensation for elected officials. Folks
45 from northern states who have moved here say ‘You pay your Council Members? Ours are
46 volunteers.’ Three weeks ago, a discussion evolved about the preparation time for council meetings.
47 My thought went out to all volunteer hours our fellow residents contribute to the Hospital, Habitat,
48 School, sports, City government, ad hoc committees and more. They never receive any money, let
49 alone pension, or investment options. I have no problem with paying Council Members for the

1 meetings, but I do question pension and investment programs. It did set off an alarm when we were
2 led to believe that it was mandated for elected officials. I did contact the Florida Retirement Service
3 (FRS) and was provided the following information: (1) the four groups, police, fire, regular
4 employees and elected officials, can join individually. (2) It's not mandatory that all of them, or any
5 of them, join. It's 100% employer funded. (3) The pension requires six years to be vested. The
6 investment program requires one year. (4) Once a person has chosen a program, he or she cannot
7 change, it's a done deal. (5) The Florida State Legislature votes each year whether the amount charged
8 goes up or down. The present cost to the City per Orange City Finance Director is \$7,042 per year. I
9 just think it's fair that the residents understand the City's financial obligation with regard to pension
10 and investments programs for elected officials. Thank you."

11
12 Mr. Blue expressed his understanding that once an employee has joined one of the pension groups, the
13 City can not revoke that action. He stated, "The City's in it forever." Mr. Blue said that the money
14 that the City pays is given to the official as a lump sum if the City does not pay for the full six year
15 vesting period. He stated, "If I serve six years and I'm vested, I will get that money back." Mr. Blue
16 suggested that if an official only serves four years, they will still get their money back. Discussion
17 regarding the vesting requirements for the FRS plans ensued.

18
19 Mr. Strickland said that his understanding is that if the official chooses the pension plan option, there
20 is no return to anyone if the official does not meet the six-year vesting requirement. If the investment
21 plan is chosen, there is a return because it has a shorter vesting period. Mr. Blue noted that the City's
22 money paid in for employees who leave before vesting is not returned. Mr. Blue advised that the cost
23 to the City for a Council Member is \$4,800 plus 16% or \$787 for a total of \$5,587 per year. The
24 Mayor costs \$8,380 per year. The cost to the City for the entire Council is \$41,903. Mr. Blue stated,
25 "I doubt if anyone ran for office because of the money or for the pension, but once the word gets out,
26 there might be a bunch." Mr. Blue noted that the City must now pay the cost for the elected officials
27 no matter how much it is increased by the Legislature. Mr. Blue further noted that the pension for
28 elected officials was adopted by the previous Council, whose policies the current Council ran against.
29 In conclusion, Mr. Blue requested that the Committee recommend a charter change that would prevent
30 any Council from entering any contract or agreement which is not revocable. He stated, "Any
31 non-revocable agreement, I believe, should be approved by the vote of the citizens."

32
33 Mr. DeVane noted that there is a six-month period following the election during which each newly
34 elected council member can choose to abstain from participation in the FRS program. Mr. Strickland
35 disagreed stating that the choice is whether to enter the pension program or the investment program.
36 Mr. DeVane disagreed and maintained that the choice applies to participation in any FRS program.

37
38 Chairman Rasch expressed that the plan should force new members to make a choice after the
39 six-month period rather than automatically enrolling them in the pension plan. He said that it appears
40 that the City is "stuck."

41
42 Mr. Crowther stated that he had done some legal research on Florida Statute 121.052 (2)(f),
43 Membership Class of Elected Officials. He said that he was seeking guidance as to whether or not the
44 City erred in adopting the plan for elected officials. He read from the statute, noting that it provides
45 that any elected official on or after July 1, 1997 can become a member of the class as provided in
46 paragraph (3)(e). This paragraph provides that effective July 1, 2001, the governing body of a
47 municipality may elect to designate all of its elected positions for inclusion in the elected officers
48 class. It further states, "Such election shall be made between July 1, 2001 and December 31, 2001 and
49 shall be irrevocable." Mr. Crowther said that he could find no further guidance regarding the

1 interpretation of this section. He stated his understanding that “the City was just a little too late in
2 setting up the retirement program by two to three years.”
3

4 **Mr. Crowther moved that the Committee strongly urge the City**
5 **Council to have an Attorney General’s opinion issued as to the effect**
6 **of paragraph (3)(e) on the inclusion of the elected officers in the FRS**
7 **pension plan, seconded by Mr. Blair.**
8

9 Mr. Strickland requested that the request be transmitted to the City Council without delay.
10

11 Mr. Reischmann said that city officials were told by representatives of FRS that they could include the
12 elected officials in the pension program. Referencing the email correspondence between Christine
13 Davis and FRS, Mr. Reischmann said that it was affirmed by the State that the City has an irrevocable
14 contract that includes all of the elected officials. He said that the City could pose the question to the
15 Attorney General (AG) regarding the time limitation set forth in Chapter 121 F.S. Mr. Crowther
16 suggested that an impartial ruling from the Attorney General would provide a better understanding of
17 the statute in question. Mr. Strickland concurred that an AG opinion would be in order.
18

19 Ms. Robinson suggested that further discussion on this item be tabled until more “concrete”
20 information is obtained. Mr. Rasch said that it is apparent that the City can make no changes to the
21 charter regarding this matter, however, an opinion could be obtained from the AG. Mr. Reischmann
22 advised that if the City were to enact the proposed charter amendment as discussed, it will be in direct
23 conflict with the State of Florida as it interprets the City’s FRS contract and that the City would be
24 penalized accordingly.
25

26 Mr. Strickland said that he is not in favor of making any changes to the charter regarding this matter
27 without an opinion from the AG. Chairman Rasch concurred and said that the Committee should ask
28 that the City Council direct staff to seek an opinion on the matter from the AG. He cautioned that the
29 response could also affect many other cities in the FRS program.
30

31 **Motion passed by 5/0 voice vote with Mr. DeVane abstaining.**
32

33 Mr. Reischmann said that he would discuss the matter with the City Council. He advised that a
34 representative from the Committee could be present if desired. Mr. Strickland said that he could be
35 present at the Council meeting.
36

37 Ms. Robinson said that Ms. Davis did “an excellent job” of getting questions answered from FRS and
38 said that she really appreciates it.
39

40 **Discussion on Holiday Conflict** 41

42 Chairman Rasch noted that next Monday is Memorial Day and asked how the Committee wished to
43 handle the meeting scheduled for that night. Ms. Renner indicated that the Council Chambers would
44 be available on Wednesday, May 28th, if the Committee wished to reschedule the meeting.
45

46 **It was the consensus of the Committee to reschedule the May 25th**
47 **meeting to May 28th because of the conflict with the Memorial Day**
48 **holiday.**
49

1 **Article III Section 3.01 Council Appointments (revisited)**

2
 3 **Mr. Strickland moved to amend Section 3.01 in accordance with the**
 4 **draft language presented and that it be sent to legal staff for review**
 5 **and transmittal to the City Council, seconded by Ms. Robinson.**
 6

7 Mr. Blair stated his understanding that the Committee would transmit their recommendations to the
 8 City Council at the conclusion of their review. Chairman Rasch confirmed that that was correct.

9
 10 **Motion passed by 5/1 voice vote with Mr. DeVane voting “no.”**

11
 12 *(Note: This amendment added the language “appointed by and removed by the City Council by a*
 13 *motion requiring four affirmative votes” to Sections 3.01 A., B., and C.)*

14
 15 **2. Begin Discussion on Article IV**

16
 17 **Section 4.10 Political Activities**

18
 19 Mr. Strickland distributed a sheet with suggested changes for this section. Mr. Strickland proposed
 20 adding section (b) to 4.10 to read as follows: “The City Council shall adopt an ordinance that makes it
 21 a misdemeanor if Section 4.10 (a) or any other provision of this charter shall be violated and that if
 22 convicted anyone so convicted shall be removed from city employment and be subject to punishment
 23 that shall be established by the ordinance.”

24
 25 Mr. Strickland said that during his review of the current charter, he discovered that there is no express
 26 penalty for violating any of the provisions of the charter.

27
 28 Mr. Crowther suggested that the language “or City ballot issue” be added to the second sentence of (a)
 29 so that it carries the same prohibitions as the first sentence.

30
 31 **Mr. Strickland moved that Section 4.10 be amended to add item (b) as**
 32 **presented and that that draft language presented be used by legal**
 33 **staff to draft final language for this commission to send to the City**
 34 **Council, to include the language suggested by Mr. Crowther**
 35 **regarding “or City ballot issue.”**
 36

37 Mr. Reischmann noted that no one can force the State Attorney’s office to pursue charges for
 38 violations of the City’s code. He further noted that when a city in Volusia County requests that the
 39 State Attorney pursue charges, the City is required to pay the public defender for representation if the
 40 person charged can not afford an attorney. He said that this has prompted the City not to pursue
 41 violations on many occasions because of the potential costs involved. Mr. Reischmann pointed out
 42 that there could also be potential conflicts with the due process requirements in the personnel policies
 43 and this charter amendment as proposed. He said that the proposed change would require a review of
 44 the personnel policies.

45
 46 Chairman Rasch asked Mr. Reischmann if he thought that the personnel policies did not contain a
 47 termination penalty for an employee who was convicted of a crime.

48
 49 Mr. Strickland clarified that he could find no ordinance that provides specific penalties for violations

1 of the charter, nor any provisions in the charter itself.

2
3 Mr. DeVane suggested that this issue is something that should be addressed by the City Manager. Mr.
4 Strickland questioned why the City Manager? Mr. DeVane responded that the City Manager is the
5 administrative officer of the City. Mr. Strickland questioned what would happen if it is the City
6 Manager that is violating the charter. Mr. DeVane responded that it would be addressed by the City
7 Council because the City Manager and City Clerk work directly for the Council. Mr. DeVane stated,
8 “But, if this is a motion being made specifically to address the City Manager, it should say that we’re
9 attacking the City Manager. It shouldn’t say that we’re making a personnel thing.”

10
11 Chairman Rasch concurred with Mr. Strickland that there appear to be no penalties specified for
12 violating the provisions of the Charter.

13
14 Mr. DeVane reiterated Mr. Reischmann’s contention that making violations of the Charter a criminal
15 matter could become very costly for the City in legal fees. Mr. Reischmann said that there are sections
16 in the code and in the charter that require the City Manager to enforce all aspects of the Charter, the
17 Code of Ordinances and any other directions of the City Council. He noted that one of the terms of
18 the City Manager’s contract is to abide by the Charter and that procedures are set forth in there for
19 handling violations of the charter or code. Ms. Robinson noted that the Charter Officers have a
20 different reporting relationship than the other employees. She said that there are probably steps and
21 processes that must be followed regarding violations of policy. Mr. Reischmann noted that the City
22 Clerk and City Attorney are direct employees of the City Council while everyone else works under the
23 direction of the City Manager subject to the Personnel policies which create the due process
24 requirements to protect the rights of City employees.

25
26 Mr. Crowther questioned whether an elected official would be considered an employee. Mr.
27 Reischmann responded that they would not and noted that they are specifically excluded from the
28 personnel policies. Mr. DeVane noted that there are provisions in the charter that an elected official
29 can be removed from office for violating. Mr. Reischmann concurred and stated, “Pursuant to the
30 Florida Statutes as well.”

31
32 Mr. Reischmann read from Section 2.09 (b) of the charter, “Qualifications, Disqualifications and
33 Forfeiture of Office” as follows: “The Council shall be the judge of the election and qualifications of
34 its members and the grounds for forfeiture of their office in accordance with the provisions of general
35 law. Anyone who violates the express prohibitions of this charter shall forfeit their office.” Mr.
36 Reischmann stated, “So, if you are an elected official and you violate the charter, you do so at your
37 own risk under the provisions of this charter.”

38
39 Mr. Crowther said that he felt the language suggested by Mr. Strickland for Section 4.10 (b) was “too
40 broad” for inclusion in this section. In response to a question from Mr. Crowther, Mr. ~~Strickland~~
41 Reischmann (amended on 5/28/08) stated that the reason the City would have to pay for the defense of
42 someone charged with a violation of City code or the charter was because they are not being charged
43 with a violation of state law, and therefore, the State Attorney has decided that they do not have the
44 legal obligation to pay for a public defender in these cases. He said that these legal fees could add up
45 to significant amounts of money.

46
47 Mr. DeVane concurred with Mr. Crowther that (b) does not belong in Section 4.10. Chairman Rasch
48 concurred.

49

1 Mr. Crowther suggested that the language be changed to make a violation subject to the provisions of
2 the personnel policies. Mr. Reischmann noted that the personnel policies are adopted by ordinance
3 and that the City Manager has a contractual obligation to enforce them.
4

5 **Mr. Strickland withdrew his motion.**
6

7 **Mr. Crowther moved that Section 4.10 Political Activities be amended**
8 **to add the words “or City ballot issue” to the second sentence,**
9 **seconded by Ms. Robinson and passed by 5/1 vote with Mr. DeVane**
10 **voting “no.”**
11

12 Section 5.01 Motions, Ordinances and Resolutions

13

14 **Mr. Strickland moved to amend Section 5.01 to add Item (10), “Before**
15 **the adoption of a non-ad valorem tax or special assessment, the City**
16 **Council shall certify by resolution that a majority of property tax**
17 **owners assessed or taxed have agreed in writing or by special election**
18 **to participate.” And that the draft language presented be used by**
19 **legal staff to draft final language for this commission to send to the**
20 **City Council**
21

22 Mr. Strickland noted that this item requires Council to secure the agreement of a majority of property
23 owners before issuing a special assessment or ad valorem tax except in case of emergency. Mr. Blair
24 noted that he did not see the language “except in case of an emergency” in Mr. Strickland’s proposed
25 language. Mr. Strickland added the language to his motion.
26

27 Mr. Reischmann suggested that this language would be more appropriately placed in Section VII or
28 VIII. Mr. Strickland responded that he had included it in 5.01 because this Section outlines the
29 legislative process for the Council. Mr. Reischmann noted that items (1) through (9) of this section
30 finish the sentence “.....those acts of the Council shall be by Ordinance which:...” Chairman Rasch
31 suggested beginning the proposed section (10) with “adoption of a non ad valorem tax.....” Mr.
32 Reischmann noted that the section actually deals with two issues. He clarified Mr. Strickland’s intent
33 by stating that the section would require that the special assessment be set forth by ordinance and that
34 a resolution must be adopted prior to the ordinance certifying that the property owners have agreed to
35 the assessment in writing or by special election. Mr. Strickland advised that he chose the suggested
36 wording so that an election would not be required in a case where a group of property owners initiated
37 the assessment process.
38

39 Mr. DeVane questioned what effect this would have on a situation where an improvement was needed
40 for safety purposes, but the people refused to agree to the assessment. Mr. Crowther agreed that could
41 be a dilemma. He suggested language that would permit an assessment to be imposed in an
42 emergency situation. Mr. DeVane discussed a scenario where the City might feel that street lights are
43 needed in a certain area for safety purposes. Mr. Strickland expressed his support for the City paying
44 for such an improvement out of the general fund because he felt that it would benefit everyone. Mr.
45 Crowther said that he likes special assessments because the people receiving the benefit are the ones
46 paying, however, there should be due process involved whereby the citizens can voice their opinion.
47 He said that paying for things like road paving from the general fund creates its own special problems.
48 Mr. Strickland expressed that if the citizens are receiving a benefit from the improvements, they will
49 support an assessment to pay for it. Mr. DeVane agreed that public hearings should be held so that

1 people can express their opinion. He said that it could be a hard decision for the elected officials
2 because it may be politically unpopular, but stressed that at times it can be a “necessary evil.” Mr.
3 Crowther discussed a recent situation on the dirt roads in the unincorporated area on the west side of
4 17-92, noting that road improvements were needed there in order for emergency response vehicles to
5 access the area.

6
7 Mr. Reischmann advised that for a special assessment to be “substantively legal,” it must meet the
8 “dual nexus” test which means that for a special assessment to be valid, the property paying the
9 assessment must receive a specific benefit separate and apart from the benefit of any other taxpayer in
10 the City. In addition, there must be a rational basis between the benefit and the charge to the property
11 owner.

12
13 Mr. Crowther said that while he could appreciate Mr. Strickland’s intent, he had concerns about
14 inhibiting the City’s ability to respond to emergencies in the event something was needed and the
15 citizens did not agree to the assessment.

16
17 **Motion seconded by Mr. Crowther.**

18
19 Mr. DeVane called the question.

20
21 **Motion failed by 1/5 roll call vote with Ms. Robinson, Mr. DeVane,**
22 **Mr. Crowther, Mr. Blair and Chairman Rasch voting “no.”**

23
24 Bob Storke, 1122 E. Wisconsin, came forward and noted that “Resolutions” are mentioned in the first
25 paragraph of Section 5.01, but then are not mentioned again. The remainder of the section pertains to
26 ordinances.

27
28 **Mr. DeVane moved to leave Section 5.01 as written.**

29
30 Chairman Rasch suggested that the vote on the previous motion had done that. Mr. DeVane
31 responded that other motions to amend the section could still be made.

32
33 Mr. Crowther asked Mr. Reischmann whether the City currently adopts special assessments by
34 ordinance or by resolution. Mr. Reischmann responded that an enabling ordinance is adopted pursuant
35 to Chapter 180 F.S. that creates a process whereby the City Council can, thereafter, impose a special
36 assessment by Resolution. The City Clerk noted that the entire process, including notification
37 requirements, is laid out in the statutes. Mr. Reischmann advised that the City hires a special
38 consultant to assist with the process. The consultant will identify the assessment district, as well as the
39 assessment amounts. Notice of a public hearing is sent to each property in the district. In response to
40 a question from Mr. Crowther, Mr. Reischmann said that an enabling ordinance is adopted and then
41 the remainder of the process is handled by resolution. He noted that a great deal of work is done at
42 considerable expense before the contemplated assessment district is sent to the Council for approval.
43 Mr. Crowther stated, “So there’s really no advantage to having special assessments by an ordinance
44 when we’re really covered by an ordinance.” Mr. Reischmann said that prior to making any
45 procedural changes regarding assessments, he would have to research to see if the requirements in
46 Chapter 180 would preempt any requirements the City may adopt. Mr. Reischmann noted that what
47 Mr. Strickland was proposing was to add an additional layer which would require the approval of the
48 citizens. Mr. Strickland stated, “Give you something you don’t want and make you pay for it...it’s
49 crappy.”

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Mr. DeVane called the question.

Chairman Rasch said he disagreed with Mr. Strickland’s motion because it eliminates any further examination of this item.

Motion failed by 2/4 vote with Mr. Strickland, Chairman Rasch, Ms. Robinson, and Mr. Crowther voting “no.”

Section 5.04 Emergency Ordinances

Mr. Crowther moved that the word “may” in the first paragraph of Section 5.04 be deleted so that the passage reads, “To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt one or more emergency ordinances, but such ordinances may shall not levy taxes;.....”, seconded by Mr. Strickland and passed by 6/0 unanimous voice vote.

Section 5.05 Recording or Posting of Ordinances After Final Passage

Mr. Strickland moved that Section 5.05 be amended to include resolutions and to provide for posting on the City’s internet site and that the draft language presented be used by legal staff to draft final language for this commission to send to the City Council, seconded by Mr. Crowther and passed by unanimous 6/0 voice vote.

Note: revised section will now read: “Section 5.05 Recording or Posting of Ordinances and Resolutions After Final Passage: Every ordinance and resolution shall, upon its final adoption, be recorded in a book kept for that purpose by the City Clerk, and shall be authenticated by the signatures of the Mayor and the City Clerk. Every ordinance and resolution shall upon its final disposition, be posted in City Hall, the city’s internet site if operational and the Orange City Post Office for a period of ten calendar days.”

Section 5.07 Independent Annual Examination of Books and Records

Mr. Strickland noted that it was time to adjourn. He passed out his recommended language and requested that this item be taken up for consideration at the beginning of the next meeting.

4. Citizen Comments

Bob Storke, 1122 E. Wisconsin came forward and suggested that that the language Mr. Strickland wanted to include regarding employee involvement in political activities and violations of the Charter may be appropriate for Article IX.

5. Adjourn

There being no further business, the meeting adjourned at 7:30 p.m.

1 Respectfully Submitted
2
3 _____
4 Deborah J. Renner, CMC, City Clerk

Approved on

5/28/08