

1 **MINUTES OF THE MEETING OF THE ORANGE CITY CHARTER REVIEW**  
2 **COMMITTEE**, held on Monday, May 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:** Paul Rasch, Chair; John Crowther; Bill DeVane; Hugh Strickland; Evelyn Robinson;  
12 and Joelle DeVane; City Clerk Deborah Renner; City Attorney Bill Reischmann

13  
14 **ABSENT:** Gary Blair

15  
16 **1. Approval of May 19, 2008 Minutes**

17  
18 Mr. Crowther noted a correction on Page 5, Line 40, sentence reads, "In response to a question from  
19 Mr. Crowther, Mr. ~~Strickland~~ stated" should read ".....Mr. Reischmann stated....."

20  
21 **Mr. DeVane moved to approve the minutes as amended, seconded by**  
22 **Mr. Crowther and passed by 6/0 voice vote.**

23  
24 Mr. Crowther recalled that the Committee voted at the last meeting to request that the City Council  
25 direct the City Attorney to obtain an Attorney General (AG) opinion regarding the City's addition of  
26 the "Elected Officials" class in the Florida Retirement System (FRS). He noted that the Council voted  
27 last night by a 3/4 vote not to authorize that action and questioned the reasoning behind that.

28  
29 Mr. Reischmann responded that this was the vote, however, he said that he could not say why each  
30 Council Member voted the way that they did. Ms. Robinson noted that two of the Council Members  
31 were present in the audience. Mr. Reischmann stated, "I don't want to be presumptuous and speak for  
32 any of the Council Members. They all voted the way they did. I'm sure they voted their conscience  
33 and what they felt was the right thing to do for the City." Mr. Crowther remarked that the vote "just  
34 seemed strange" in light of the language in the statute. He said that a citizen could still bring an action  
35 for declaratory relief.

36  
37 Al Blue, 447 N. Oak, came forward and stated that he was present at the Council meeting last night  
38 and that the City Attorney did "a super job" in his presentation on this issue. Mr. Blue suggested that  
39 Committee members obtain a copy of the Council Members' comments on this subject.

40  
41 Mr. Reischmann said that he just received a copy of an AG opinion which was issued in response to a  
42 request from a Mosquito Control District. The District had asked a question regarding FRS and  
43 eligibility for their Board Members to participate in FRS. The response from the AG was that they did  
44 not wish to get involved and that the District should contact FRS.

45  
46 Robert Miller came forward and stated that he also was present at last night's meeting. He  
47 commended Mr. Reischmann for his handling of the discussion stating that he did an "outstanding"  
48 job. Mr. Miller commented on the complexity of the statutes governing the FRS. He said that his  
49 understanding of the Council's position was that they would look at the issue after the Committee's

1 findings have been presented to them. He noted that there was also concern as to whether there would  
2 be enough time to receive a response from the AG before the issue has to go on the ballot. He  
3 suggested that it would be better to take the time needed to ensure that the proposed charter  
4 amendments are legal and appropriate even if it means missing the November ballot.

5  
6 Chairman Rasch suggested that the Committee move on. He advised that participation in the plan for  
7 the elected officials is not costing the City a great deal, and said that in light of possible ramifications  
8 on other city employees, he would prefer to leave it alone. Chairman Rasch noted that every City  
9 Council Member, with the exception of one, has signed up for the FRS plan and that the one who did  
10 not sign up "signed up by default" by not making a choice. He suggested that it could encourage  
11 people to run for Council in the future.

12  
13 Mr. Crowther expressed that he felt City Officials had an obligation to seek the truth in the issue. He  
14 stated, "I don't think that they can sweep under the rug the fact that there is a question about whether  
15 or not this statute was properly abided by when they voted to include a retirement plan. Because I take  
16 my duties here on the Commission seriously, and I've spent a lot of time on it, I can not abide that  
17 kind of a decision."

18  
19 **Mr. Crowther moved that the Committee urge the City Council to file**  
20 **an action for declaratory relief in the circuit court and have a decision**  
21 **as to whether or not, by the judge or by the court, as to whether or not**  
22 **the retirement plan was properly instituted by the City of Orange**  
23 **City in light of Florida Statute 121.052, seconded by Mr. Strickland.**  
24

25 Mr. DeVane questioned how much such an action would cost the City. Mr. Crowther responded that  
26 if there is a problem, it is better to discover it now before further money is involved. Chairman Rasch  
27 questioned whether this would affect everyone in the City who is currently in the FRS plan, or perhaps  
28 people throughout the State. Mr. Crowther maintained that the City is bound to run the retirement  
29 program properly and that what they have done is either right or wrong and must be dealt with on that  
30 basis. Chairman Rasch concurred that he wished the Council would have ordered the AG opinion on  
31 the matter, however, they didn't.

32  
33 Mr. DeVane called the question.

34  
35 **Motion failed in a 3/3 tie vote with Mr. DeVane, Chairman Rasch, and**  
36 **Ms. DeVane voting "no."**  
37

38 Mr. Reischmann advised that Council Member Mahoney had questioned whether the City could  
39 simply "freeze" the FRS account for the elected officers class. Christine Davis, Finance Director,  
40 submitted the question to FRS via email this morning and the response was "no." He noted that staff  
41 had also submitted a question to FRS regarding the potential specific conflict with the Florida Statutes,  
42 but a response to that question had not yet been received. In regard to filing a suit against FRS, Mr.  
43 Reischmann said that his concern would be the cost of entering into a suit against the State of Florida,  
44 noting that the City had previously been involved in a suit against the Department of Environmental  
45 Protection which turned out to be very long and costly.

46  
47 **2. Section 5.07 Independent Annual Examination of Books and Records**  
48

49 Mr. DeVane noted that the City is currently complying with the requirements of Section 5.07. and that

1 the results of the audit are presented to the Council at a public meeting. He said that he has no  
2 objection to this section as it stands.

3  
4 **Mr. DeVane moved to leave Section 5.07 as written, seconded by Mr.**  
5 **Crowther.**

6  
7 Mr. Crowther clarified that Mr. Strickland's suggested changes lay out a process for selection of the  
8 auditor and a process for verifying what has been received. He stated, "I'm not so sure that's bad."

9  
10 Mr. Strickland stated that currently, the auditor provides additional services, and, therefore, has a  
11 financial interest in continuing a contract and an audit with the City. He said that his language would  
12 forbid that unless the Council votes to waive the prohibition. Mr. Strickland said that he has spoken  
13 with a number of City Council Members about this and was present during Council discussions  
14 regarding limiting the length of time that any particular firm could renew their contract with the City.  
15 In addition, Mr. Strickland said that his language put the responsibility for oversight of the audit on the  
16 City Council, not the City Manager.

17  
18 **Mr. Crowther withdrew his second.**

19  
20 Al Blue, 447 N. Oak, came forward recalled that when he had been on the Council previously, the City  
21 Manager had hired the auditor to perform accounting functions for the City. Mr. Blue suggested  
22 striking the language that would allow the Council to waive the prohibition against having the auditor  
23 perform other services for the City and further suggested that this prohibition be extended to two years  
24 before or two years after the time the firm has been retained. Mr. Strickland recalled a conversation he  
25 had with Council Member Mahoney during which Mr. Mahoney noted some situations where the City  
26 may need advice from the auditor regarding a technical matter such as software selection or other  
27 issues and advised that this was why he chose the language that he did.

28  
29 Ms. DeVane cautioned against adding prohibitions to the Charter based on hypothetical situations.

30  
31 Mr. Reischmann noted that Mr. Strickland's proposed changes were from the Model Charter.

32  
33 **Mr. Strickland moved that Section 5.07 be amended to utilize the**  
34 **language presented in the draft with some modification and that the**  
35 **draft language presented be used by legal staff to draft final language**  
36 **for this Commission to send to the City Council, seconded by Mr.**  
37 **Crowther and passed by unanimous 6/0 roll call vote.**

38  
39 **Section 6.01 Direction and Supervision of Administration**

40  
41 Mr. Strickland asked whether there was anything in the personnel policies manual which would  
42 prevent the City from using an anonymous evaluation to supplement the evaluation process for the  
43 City Manager. Mr. Resichmann responded that the personnel policies don't apply to the City  
44 Manager. His duties and responsibilities are assigned in the Charter, Chapter 2 of the Code and in the  
45 Manager's contract. Mr. Strickland clarified that he was asking if there is a any limitation on the  
46 method of evaluation of the City Manager in any of the aforementioned documents. Mr. Reischmann  
47 said that the evaluation is addressed in the Manager's contract, but not in the Charter or in Chapter 2  
48 of the Code.

1 Mr. Rasch said that in his past jobs, feedback from subordinates was always part of a Manager’s  
 2 evaluation. Mr. Strickland said that he wanted to include language to provide for this if it’s not strictly  
 3 prohibited. Mr. DeVane noted that the City Manager is reviewed annually by the Council. Mr.  
 4 Strickland clarified that what he is suggesting is what is known as a “360” evaluation. Mr. DeVane  
 5 said that he didn’t see any problem with that.

6  
 7 Bob Storke, Wisconsin Ave., came forward and voiced his objection to allowing the evaluation forms  
 8 to be returned anonymously stating that “you are preventing him from confronting his accuser.”

9  
 10 *Note: Due to technical difficulties, portions of the audio failed during discussion on Section 6.01 and 6.03, as a result, not*  
 11 *all discussion has been captured in the minutes.*

12  
 13 **Mr. Strickland moved to amend the second paragraph of the**  
 14 **suggested language to add the language “or their designee” so that the**  
 15 **sentence reads, “The Council may use an anonymous personnel**  
 16 **evaluation form or instrument collected by Council or their designee**  
 17 **from all city employees.....” seconded by Ms Robinson and passed by**  
 18 **unanimous 6/0 voice vote.**

19  
 20 **Mr. Strickland moved to adopt the proposed draft language for**  
 21 **Section 6.01 as amended and that the draft language presented be**  
 22 **used by legal staff to draft final language for this Commission to send**  
 23 **to the City Council, seconded by Ms. Robinson and passed by**  
 24 **unanimous 6/0 voice vote.**

25  
 26 **Section 6.02 Employment of Former Elected Officials**

27  
 28 There were no changes to this section.

29  
 30 **Section 6.03 Creation of Certain Departments and Offices**

31  
 32 There was a discussion regarding the need for this section to be in the charter. Mr. DeVane recalled a  
 33 time a number of years ago when he said that the Council at that time was trying to eliminate the  
 34 Police Department. He said that if it weren’t for this provision being in the charter, they may have  
 35 been successful. Mr. DeVane strongly endorsed the need to keep this Section. Mr. Crowther  
 36 questioned whether other departments such as, Orange City Utilities (OCU), should be added. Mr.  
 37 Strickland stated his understanding that OCU is considered an Enterprise Fund and is separate and  
 38 apart from the City. Mr. Reischmann agreed and said that it is a for-profit enterprise that is owned by  
 39 the City.

40  
 41 Al Blue, 447 N. Oak, came forward and agreed that OCU is an Enterprise Fund and, as such, is a  
 42 for-profit business that stands alone.

43  
 44 Mr. Reischmann clarified that OCU is not “a department that’s created by ordinance.”

45  
 46 *(No changes were made to Section 6.03)*

47  
 48 **7.01 Preparation and Submission of Budget**

1 Mr. Strickland expressed his opinion that the time for public comment on the budget comes “far too  
2 late in the process.” He noted that the hearings are not held until the budget has been prepared. Mr.  
3 Strickland suggested that a charter requirement be created causing the Council and Manager to  
4 conduct at least one meeting to collect information from the citizens prior to June 1<sup>st</sup>.

5  
6 Ms. DeVane advised that the City does hold budget workshops prior to voting on the final budget.  
7 Mr. Reischmann discussed the procedure laid out in the Charter for the budget adoption process.

8  
9 Mr. Strickland reiterated that there is a need for an “information gathering” meeting to be held prior to  
10 June 1<sup>st</sup> to receive input from the public on the budget. This will give the Manager and Council time  
11 to incorporate those suggestions into the budget before it is presented to Council. Mr. Strickland said  
12 that he attended some of the budget meetings held in the City of DeLand last year. He observed that  
13 those meetings had good turnout and good participation.

14  
15 Mr. Strickland distributed language for Section 7.01 adding a sentence to the beginning of the first  
16 paragraph as follows: “Prior to June 1<sup>st</sup> of each year, the Council and City Manager shall conduct one  
17 public meeting to collect information as to what the citizens of Orange City suggest as a priority for  
18 spending in the next fiscal year.”

19  
20 **Mr. Strickland moved that Section 7.01 be amended to provide for a**  
21 **public meeting to collect information from citizens as to their**  
22 **priorities for spending and that the draft language presented be used**  
23 **by legal staff to draft final language for this commission to send to the**  
24 **City Council, seconded by Mr. Crowther.**

25  
26 Ms. DeVane questioned the June 1<sup>st</sup> deadline. Mr. Strickland said that he selected that date based on  
27 feedback he received that a minimum of sixty days was needed. In response to a question from Mr.  
28 Strickland, he said that DeLand held their workshop 120 days prior to presentation of the budget. Mr.  
29 DeVane expressed his doubts that the public would participate.

30  
31 Council Member Tom Laputka, 345 N. Oak, came forward and stated that it should be held between  
32 the goal setting workshop and the budget adoption process. Ms. DeVane said that she thought the  
33 purpose of the goals workshop was to give the Manager an idea of the general direction the Council  
34 wants to go over the next several years. Mr. Strickland advised that a “very successful” goal setting  
35 workshop had been held with excellent citizen participation. He said that a meeting such as that  
36 would satisfy this Charter requirement if adopted. Mr. Reischmann clarified that the purpose of the  
37 meeting would be limited to input from the citizens on the priorities for spending. Committee  
38 Members discussed their vision of how and when this meeting would be conducted. Ms. DeVane  
39 endorsed the idea, but expressed concern about the proposed timeframe. Chairman Rasch clarified  
40 that the language provides that the meeting must be held by June 1<sup>st</sup>, which would allow that it could  
41 be heard at an earlier time if desired.

42  
43 Michelle Polgar, 585 Montclair, came forward and suggested that the language be changed to require  
44 that “a minimum of one public meeting” be held. She also expressed concern regarding the language  
45 “...as to what the citizens of Orange City suggest...”, questioning if it was too specific by limiting the  
46 input to citizens of the City. She suggested that this could preclude business owners from providing  
47 their input.

48  
49 **Mr. Strickland moved to amend the proposed language by changing**

1 **the first sentence to read, “.....shall conduct a minimum of one**  
 2 **public meeting.....”, seconded by Mr. Crowther.**  
 3

4 Ms. Robinson noted Ms. Polgar’s other concern regarding the reference to “citizens of Orange City.”  
 5 Chairman Rasch said that the Charter is for the residents of the City and expressed his confidence that  
 6 the Council would not exclude non-residents from making comments. He further stated his belief that  
 7 the Council views business owners in the same light as citizens. Ms. Polgar concurred that Council  
 8 would allow comments from any member of the public.  
 9

10 Mr. Crowther suggested simply omitting the reference to “citizens of Orange City.”  
 11

12 Mr. Strickland called the question on the amendment.  
 13

14 **Motion passed by unanimous 6/0 voice vote.**  
 15

16 Ms. DeVane suggested that the language in the second sentence which begins “No later than August  
 17 1<sup>st</sup>....” could be confusing in light of the deadline in the first sentence.  
 18

19 **Main motion passed by 5/1 voice vote with Mr. Crowther voting “no.”**  
 20

21 **Section 7.05 Effective Date of Budget; Certification; Copies**  
 22

23 **Mr. Strickland moved that Section 7.05 be amended to provide for the**  
 24 **posting of the certified budget on the City’s internet site and be made**  
 25 **available by electronic media and that the draft language presented be**  
 26 **used by legal staff to draft final language for this Commission to send**  
 27 **to the City Council, seconded by Mr. DeVane, and passed by**  
 28 **unanimous 6/0 voice vote.**  
 29

30 **Section 7.10 City Depositories**  
 31

32 Chairman Rasch read a statement into the record as follows: “Recent events have shown that the  
 33 City’s funds were in very few investment funds and could have been unavailable. All funds should be  
 34 spread out so as to protect the funds from events that would freeze access to funds. Adding a sentence  
 35 to this section ordering diversity of depositories would be helpful.”  
 36

37 Mr. Strickland said that he met with Council Member Mahoney and they drafted a sentence to be  
 38 added to this section as follows: “Such resolution shall show that security of principle and diversity of  
 39 placement has guided the selection of the banks and depositories.” Mr. Strickland noted that the  
 40 proposed change would complement the investment policy currently under adoption by the Council.  
 41

42 Mr. Reischmann stated that Council had considered an ordinance at their meeting last night setting  
 43 forth an investment policy for the City. He said that he could not verify whether this provision would  
 44 be in conflict with any part of that policy. Mr. Strickland said that in his conversations with Council  
 45 Member Mahoney and one other member of Council, they felt that the proposed language would  
 46 address issues that have arisen in the past. Mr. Reischmann advised that if this charter provision was  
 47 adopted and proved to be in conflict with any part of the investment policy, the policy would simply  
 48 have to be amended by ordinance.  
 49

1 Chairman Rasch questioned how it would be shown in the resolution that “security of principle and  
2 diversity of placement” have been used to make investment decisions. Mr. Strickland responded that  
3 it would require that it be shown that all monies have not been put in one fund. He said that the  
4 Council would have to certify that the requirement has been met.

5  
6 **Motion passed by unanimous 6/0 voice vote.**

7  
8 **ARTICLE VIII INITIATIVE AND REFERENDUM**

9  
10 Mr. Strickland said that he wished to remove his comments regarding this Article.

11  
12 **Section 8.01 Authorization of Initiative and Referendum**

13  
14 Mr. Crowther noted that Resolutions are mentioned in the first sentence of Section 8.01 and are never  
15 mentioned again in the Article. He suggested that perhaps an amendment is needed to include  
16 resolutions in other parts of the Article.

17  
18 **Section 8.02 Commencement of Proceedings**

19  
20 Mr. Crowther next referenced an area which he felt was in need of clarification on the third line of  
21 Section 8.02 where it reads, “.....responsible for circulating the petition and filing it in proper form,  
22 which all notices to the committee are to be sent,.....” He advised that the passage doesn’t make  
23 sense. Mr. Reischmann said that he would have to do some research as to the origins of this passage.

24  
25 Mr. Crowther said that this passage deals with referendum proceedings. He speculated that there was  
26 language missing that would direct that an address be provided stating where the notices are to be sent.

27  
28 **Section 8.03 Petitions**

29  
30 Ms. DeVane questioned the 15% requirement in Section 8.03. Mr. Crowther also questioned whether  
31 there should be some language specific to districts in this section. Ms. DeVane noted that Section 9.02  
32 has a 10% requirement and questioned why this was less than the earlier 15% requirement. Mr.  
33 Crowther expressed that 10% seemed a little low to him.

34  
35 **4. Citizen Comments**

36  
37 Ruth Blue, 447 N. Oak, came forward and stated that when she began her talks with FRS, she didn’t  
38 realize that it would be “quite so complicated as it was.” She said that she was told that the only way  
39 the elected officials could be dropped from the plan was to eliminate their salary. She said that they  
40 can still receive compensation, however, just not in the form of a salary. Mr. Strickland advised that  
41 this would require that Council amend the ordinance establishing their compensation, not the Charter.

42  
43 **5. Adjourn**

44  
45 There being no further business, the meeting adjourned at 7:30 p.m.

46  
47 Respectfully Submitted

Approved on

48  
49 \_\_\_\_\_  
Deborah J. Renner, CMC, City Clerk