

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida, held  
2 on Tuesday, February 28, 2006, at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City.

3  
4 **CALL TO ORDER**

5  
6 Mayor Erwin called the meeting to order at 7:00 p.m. and roll call was taken.

7  
8 **ROLL CALL**

9  
10 **PRESENT:** Mayor Albert T. Erwin; Councilmembers Donald C. Sherrill, Joelle R. DeVane, Jim Mahoney,  
11 Jeff H. Allebach (late, 7:03); City Manager John. J. McCue; City Attorney William  
12 Reischmann; City Clerk Deborah Renner.

13  
14 **ABSENT:** Vice Mayor Chuck Abell; Councilmember Anthony R. Yebba

15  
16 The Invocation was given by Councilmember Sherrill, followed by the Pledge of Allegiance.

17  
18 Mr. McCue asked for a moment of silence in memory of Molly Murray, wife of Chester Murray, Development  
19 Services Director.

20  
21 The Council voted unanimously to move agenda Item 7-C to Presentations.

22  
23 **1. PRESENTATIONS:**

24  
25 Mr. McCue presented a Certificate of Recognition to Officer Michael Johnson for his outstanding service and  
26 heroic efforts in resuscitating a two year old child on February 23, 2006.

27  
28 Police Chief Baskoff and Public Works Director Paul Johnson introduced the City's newest employees.  
29 New employees attending the meeting were: Michael Johnson, Chris Pitzer, Judy Schroeter, Enzo Zucco,  
30 Michael Strode, Joel Williams, and Charles Hargrove.

31  
32 **Item 7-C Fire Chief Appointment**

33  
34 Mr. McCue announced the appointment of Herb Hoffman as the City's first fulltime professional Fire Chief  
35 and congratulated Chief Hoffman on his promotion. City Clerk Debbie Renner administered the Oath of  
36 Office to Chief Hoffman. Mayor Erwin commended Chief Hoffman for his very professional efforts, which  
37 were well above his expectations, during the hurricanes of 2004 and said he was proud to pin the badge of  
38 office on the Chief.

39  
40 Mr. McCue announced that Lt. Rick Beauregard has been promoted to the position of Captain and will  
41 assume the duties of the City Fire Marshall. He commented on Captain Beauregard's outstanding credentials  
42 and his many years of service to the City and community. Mr. McCue presented Captain Beauregard with his  
43 new badge.

44  
45 Mr. McCue noted that based on Chief Hoffman and Captain Beauregard's recommendation, Homer Harrell  
46 has been promoted to the position of Lieutenant in the Fire Department. He presented Lt. Harrell with his  
47 badge of office.

1 Chief Hoffman recognized Scott Jefts, Kyle Taylor, and Scott DeVito as new employees and presented their  
2 badges to them.

3  
4 **2. CITIZENS COMMENTS:**

5  
6 Carolyn Benton, 710 W. Wisconsin Avenue, came forward and read a statement into the record (a copy of  
7 which is attached and becomes a permanent part of these minutes) regarding the Village Improvement  
8 Association (VIA). Ms. Benton advised that the VIA has been asked to vacate a room in the Dickinson  
9 Memorial Library that they have used since 1919 and asked for the Council's support in this matter.

10  
11 Mayor Erwin expressed that it was his understanding that the VIA would always have a room available in the  
12 Library. He volunteered to meet with all the parties involved in an attempt to work out a solution. Mr.  
13 McCue stated that he would meet with the City Attorney tomorrow to discuss alternative approaches to the  
14 situation and that he would also look for temporary facilities for the VIA until the matter is resolved. Ms.  
15 Benton replied that the VIA would try and cooperate with the City, the Historical Society and the Library  
16 Association. Mr. Reischmann asked that the VIA provide him with documentation that would provide a basis  
17 for the VIA to remain at the Library.

18  
19 Joan LaFleur, 343 East Graves Avenue, came forward and expressed that the VIA sees the notice to vacate the  
20 Library as a huge hindrance to any participation by them in the City's 125<sup>th</sup> Anniversary events now being  
21 planned.

22  
23 Al Blue, 447 North Oak, a past President of the Library Association, came forward and gave a brief history on  
24 library operations. Mr. Blue stated that it was always known that it was the Library Association's  
25 responsibility to provide the VIA with the necessities for their operation; to provide and maintain the room  
26 and the kitchen. He expressed his appreciation regarding the placement of a utility payment box on Graves  
27 Avenue.

28  
29 **3. CONSENT AGENDA:** None at this time

30  
31 **4. ORDINANCES – FIRST READING:**

- 32  
33 **A. ORDINANCE NO. 271:** An Ordinance of the City Council of the City of Orange  
34 City, Florida, authorizing an additional Line of Credit with First Community Bank in  
35 an aggregate principal amount not to exceed \$1.5 million; authorizing the execution  
36 and delivery of a Loan Agreement; authorizing the execution and delivery of a Note  
37 to Evidence the City's obligation under the Loan Agreement, such Note to be a  
38 limited obligation of the City payable from legally available designated revenues as  
39 pledged herein; providing for the rights and securities of the owner of the Note;  
40 designating the Note as a bank qualified tax-exempt obligation within the meaning of  
41 the Internal Revenue Code; ratifying and confirming the Council's authority to  
42 execute the Letter of Credit with First Community Bank; making certain other  
43 covenants and agreements in connection therewith; and providing for an effective  
44 date.

45  
46 **Councilmember Sherrill moved to adopt Ordinance No. 271 on first**  
47 **reading, seconded by Councilmember Allebach.**

1 Mr. McCue noted that the Council had previously authorized him to negotiate a Line of Credit for an  
2 additional \$1.5 million to cover the costs associated with the construction of the new Partnership Center.  
3 Ordinance No. 271 formally authorizes the additional Line of Credit. Mr. Reischmann pointed out that  
4 although the Council previously voted for the additional Line of Credit, the City Charter requires formal  
5 authorization through the adoption of an ordinance by the Council. Mr. Reischmann advised that he has met  
6 with representatives from DBCC, the City of DeBary, and the Chamber of Commerce to try and eliminate  
7 some ambiguities and confusion in the operations and maintenance agreement previously presented to the  
8 Mayor and City Manager. A final draft has been emailed to the Mayor and City Manager. He noted that the  
9 City of Deltona is now reviewing that agreement. Mr. Reischmann anticipated presenting the final draft to the  
10 Council in the very near future.

11  
12 Councilmember Mahoney referred to the first "Whereas clause" and said that he did not know if it was of  
13 "paramount public purpose"; rather it was certainly in the best interest and that public safety was paramount  
14 from his viewpoint. Councilmember Mahoney referenced Section 3 which states, "and to express the contract  
15 between the City and the owners thereof", and questioned what that statement meant. Mr. McCue responded,  
16 "We're the owners."

17  
18 Councilmember Mahoney noted a discrepancy in Section 4, "Authorization of the Note", noting that it calls  
19 for annual payments due in June and December. He advised that the ordinance is worded correctly even  
20 though the loan agreement calls for annual payments twice a year. He stated, "We want to make sure that the  
21 new loan agreement has that corrected."

22  
23 Councilmember Mahoney noted that Section 5, the third sentence, states, "from all revenues of the City not  
24 derived from ad valorem taxation". He advised that if both Lines of Credit are fully drawn upon, it would  
25 cost the City \$600,000 a year, excluding interest, in payments. He expressed his concern that there would not  
26 be enough non-ad valorem revenue to make those payments.

27  
28 Mr. McCue replied, "You can use ad valorem taxes. You can't pledge them. It's an appropriation in your  
29 budget. When you are going to pledge your ad valorem taxes you have to do it by voter referendum. So, it  
30 doesn't mean we can't use our ad valorem taxes. It's up to you, the City Council, to budget and appropriate  
31 the debt service for this. This is not a designated revenue stream that say a bond issue is based on. This is  
32 just, you guys have to appropriate your obligation so nothing in here restricts you from using ad valorem  
33 taxation; you just cannot pledge it and guarantee that that is the single source of income for the repayment of  
34 this debt."

35  
36 **Ordinance No. 271 passed on first reading by a unanimous 5/0 roll call**  
37 **vote of the Council.**

38  
39 **5. PUBLIC HEARINGS – ORDINANCES – SECOND & FINAL READING:** None at this time

40  
41 **6. RESOLUTIONS:** None at this time

42  
43 **7. DISCUSSION AND ACTION:**

44  
45 **A. Interlocal Agreement for Contractor Registration**

46  
47 Wendy Hickey, Planning Analyst, noted that the Interlocal Agreement with Volusia County to provide for a

1 centralized uniform system of local registration for contractors working within the City expires on August 8,  
2 2006. The new agreement contains new requirements including requiring the registration of specialty  
3 contractors. Ms. Hickey stated that the Agreement is for a three-year term with a provision for automatic  
4 renewal for an additional three years. Mayor Erwin clarified that this is not an exclusive agreement; rather it  
5 is an agreement that the County has with all the cities. Ms. Hickey advised that staff will be able to access the  
6 County's database to determine whether a contractor is fully certified and licensed.

7  
8 **Councilmember Allebach moved to authorize the Mayor to execute the**  
9 **proposed Interlocal Agreement with Volusia County for contractor**  
10 **registration, seconded by Councilmember Sherrill, and passed by**  
11 **unanimous 5/0 voice vote of the Council.**

12  
13 **B. Miller-Legg Contract Amendment**

14  
15 Mr. McCue pointed out that Council had previously authorized Miller Legg & Associates to do an aerial  
16 survey of the GEL Landfill, perform an analysis of the survey, and then to present a report regarding the  
17 capacity and life expectancy of the landfill given the constraints of their permit. However, due to information  
18 received from the Department of Environmental Protection (DEP), Mr. McCue said that he had informed  
19 Miller Legg to discontinue this aspect of the project.

20  
21 **BEGIN TAPE 1-B**

22  
23 Mr. McCue requested Council's authorization to begin negotiating a new Scope of Services with Miller Legg  
24 to allow them to represent the City's interests in the closure of the GEL Landfill and to monitor the progress  
25 of the assessment and remediation of the groundwater contamination recently identified by DEP. Mr. McCue  
26 stressed the importance of assessing the extent of lateral and vertical movement of the contaminated  
27 groundwater followed by a determination through testing of what should be done to remediate the  
28 contamination. He noted that GEL has been informed that they are responsible for the groundwater  
29 contamination under the City's property. Mr. McCue said that the Scope of Services contract with Miller  
30 Legg will be presented to Council at the next meeting.

31  
32 Mayor Erwin noted that past history has shown that the City has to keep a visual eye on the proceedings at the  
33 landfill to make sure that all the parties involved fulfill their obligations. The Mayor referred to the letter from  
34 DEP regarding groundwater contamination and stated that five years ago when the City was in the midst of a  
35 battle through the permitting process the then Chairman or head of DEP in Tallahassee said to him that the  
36 City, as to the water contamination, had not presented undeniable scientific information to prove that there  
37 was any contamination whatsoever in the water. Now they are acknowledging that there is contamination and  
38 the contamination is moving. Mayor Erwin endorsed continuing with the engineering services of Miller Legg.

39  
40 Councilmember Sherrill asked if the St. John's River Water Management District (SJRWMD) would become  
41 involved because of the groundwater contamination. Mr. McCue replied that SJRWMD's role would be to  
42 make sure that the stormwater system is sufficient. In response to a question from Councilmember Sherrill,  
43 Mr. McCue stated that because the landfill sits on top of the old Lake Marie Landfill, the City has a legitimate  
44 reason for asking that the DEP recognize that there has to be a different type of capping system. He noted  
45 there were several methods for capping a landfill.

46  
47 Councilmember Mahoney questioned whether the Lake Marie Landfill was properly closed. Mr. Reischmann

1 replied that the landfill was closed consistent with the regulations that were in place at that time. It would not  
2 be closed in the same manner today under the current regulations. Councilmember Mahoney stated, "The  
3 point I was trying to make is, my recollection of all this is no, it wasn't. GEL was an economic vehicle by  
4 which DEP could ultimately facilitate that closure. This is the second chance, it's the last chance."  
5

6 Mr. Reischmann noted that the Lake Marie Landfill was not ever owned by GEL and that for a number of  
7 years the landfill sat "fallow" until the late 1980's when GEL purchased the land and it became a C & D  
8 landfill. He reaffirmed that several things have happened that make this the City's last and best opportunity to  
9 make sure that further damage to the City's groundwater is mitigated or eliminated. Mr. Reischmann said that  
10 there is now evidence indicating that the permitted footprint of the GEL landfill sits atop the Lake Marie  
11 landfill and stated, "It's very important because, as Mr. McCue indicated, a C & D landfill is not allowed to  
12 put in the type of materials that would contaminate groundwater, just by definition. So, the standards and  
13 regulations that are applied by the State of Florida are much more lenient; whereas, the Class 1 landfill of  
14 course accepts household waste and accepts all sorts of things and Lake Marie, at the time it was operated,  
15 accepted things that you couldn't put into a Class 1 landfill today." He noted that evidence presented by Ms.  
16 Eger of Miller Legg, also clearly shows an overlap of the permitted footprint.  
17

18 Mr. Reischmann stated that as a result of the aerial photography of the landfill, there is evidence that the  
19 footprint, as it sits on the ground today, extends beyond the permitted footprint which provides even more  
20 proof that it sits over the old Lake Marie landfill. He emphasized that the impact of those two factors should  
21 cause DEP to enforce different and more stringent regulations upon GEL and more stringent regulations for  
22 closure of the landfill. A C & D landfill is capped differently than a Class 1 landfill and in this case, it's a  
23 Class 1 unlined landfill. Mr. Reischmann advised that recent evidence submitted by the GEL Landfill itself  
24 indicates that their groundwater contamination has gone offsite. That triggers an entire new set of regulations  
25 that DEP is obligated to enforce, including remediation, which would mean that DEP would require GEL to  
26 undergo some sort of process to take all of the contamination, called a "plume of groundwater", out of the  
27 ground and eliminate the contamination. He stressed that to accomplish that is a very lengthy and difficult  
28 process and can go on forever unless you can stop the rainwater from continuing to filter through the landfill.  
29

30 Mr. McCue clarified that this discussion concerned contamination of the shallow groundwater and did not  
31 involve the aquifer. He noted that the City implemented testing parameters several years ago to insure that  
32 there were no contaminants going into the City's well fields. Mr. McCue complimented Ms. Eger on the  
33 tremendous job she has done in representing the City and expressed his pleasure that GEL had decided to  
34 close their C & D operations.  
35

36 Councilmember Mahoney expressed his concern that the City may end up in the same position as five years  
37 ago with the DEP. Mr. Reischmann responded that Ms. Eger is a very effective spokesperson and has a  
38 different kind of rapport and relationship with the decision makers at DEP. Mr. McCue noted that once  
39 everything moves to closure and contamination assessment the City will be dealing with different people at  
40 DEP. He stated, "I do not believe that we're going to end up in that same boat. It's a possibility. I will tell  
41 you that not only is she a good representative, but we got something going for us. We've got a fairly large  
42 state-wide engineering firm that cannot be questioned in regard to their credentials and their engineering  
43 certifications and land survey certifications in the State of Florida. And, we're going in with data and  
44 information, that's what we paid for with the last go round. We never had that in our first go round."  
45

46 Mr. Reischmann stated, "It's important at this point that we ensure through the closure process, that there are  
47 sufficient funds available to do the proper closure and that is one of things Ms. Eger will be able to assess,

1 quantify, and hopefully convince the DEP to mandate that GEL bring forward at this time and put in escrow to  
2 ensure that all of the things associated with the proper closure, both short-term and long-term, are properly  
3 funded.” Mr. McCue stated, “If we go down the path of doing anything and everything we can to shut down  
4 the recycling operation out there, the likelihood of success in these other arenas we’re looking for with a bond  
5 for the closure process and the cost of closure could cause somebody to go into bankruptcy and then we would  
6 be left with seeing that thing sit. Now, we wouldn’t be responsible for it, the State would, but we also have to  
7 keep in mind that there is an economy that we need to keep in mind to allow them to utilize that property to  
8 some extent as long as they’re doing it properly and they’re good corporate citizens so that they have the  
9 financial wherewithal to provide the things that we were just talking about.”

10  
11 **Councilmember Allebach moved to authorize the City Manager to**  
12 **negotiate a new Scope of Services contract with Miller Legg, seconded by**  
13 **Councilmember Sherrill, and passed by unanimous 5/0 voice vote of the**  
14 **Council.**

15  
16 C. (Moved to Presentations)

17  
18 **8. REPORTS:**

19  
20 **A. City Manager**

21  
22 Mr. McCue reported that the annual CAFR Report and State of City Address will be presented at the next  
23 Council meeting.

24  
25 Councilmember DeVane asked if the City’s Land Development Regulations (LDR) address stormwater  
26 prevention. Mr. McCue replied, “Yes it does, but it leaves it up to the State mandates, in other words, we do  
27 not have our own specific stormwater management requirements.” He stated that contractors are required to  
28 follow all the best management practices but the City does not go out and inspect stormwater projects because  
29 it is a delegated State level requirement for a private contractor. Staff will soon be reviewing the LDR to  
30 bring various new components into the City’s codes. Councilmember DeVane noted that other governmental  
31 entities have stormwater requirements and said that she was not aware of whether the City had more proactive  
32 requirements in the LDR to help prevent future problems.

33  
34 Mayor Erwin stated that the City’s present stormwater study should address some of the issues raised by  
35 Councilmember DeVane. Mr. McCue pointed out that all of the development orders address maintenance of  
36 stormwater systems and facilities and noted that with the adoption of a recent ordinance, Code Enforcement  
37 can enforce the maintenance of stormwater ponds. Mr. Reischmann stated, “Where the City gets involved in,  
38 at the time of construction for stormwater, is with site plans and development orders.” He advised that with  
39 all site plans coming before the Planning Commission one of the requirements is that the development meets  
40 all the requirements of stormwater retention imposed upon all development in the State of Florida and in this  
41 area, the SJRWMD. The SJRWMD requires that a development cannot create more runoff than before the  
42 property was developed. He explained why and how an engineer creates retention systems based on the  
43 proposed impervious surfaces.

44  
45 Councilmember DeVane referred to the Blue Springs subdivision and said that she noticed during the  
46 development of that subdivision that the sock drains placed in front of the inlets to keep sediment out became  
47 clogged so they no longer fulfilled their purpose. She also noted that the portable toilets were not located in

1 the proper place and reiterated that she had not known whether the land development regulations were  
2 proactive in making developers abide by State requirements. She mentioned that before the City assumes  
3 maintenance for underground stormwater systems they should be inspected. Mr. McCue replied that they are.  
4

5 Mr. McCue reported that Orange City ranked third in the value of commercial construction in Volusia  
6 County.

7  
8 **B. Mayor/City Council**

9  
10 Mayor Erwin reported that the Master Facility Plan and the Motion to Delay were not approved at the recent  
11 WAV meeting. A positive result of the meeting was the approval of the contract with McMahon  
12 Construction for the Finish Water Interconnects on the west side. The Mayor noted that he had asked WAV's  
13 Attorney to attend the Executive Committee meeting scheduled for tomorrow to discuss several options  
14 available to WAV after what transpired at the last meeting. The Manager's Advisory Committee was  
15 reinstated and asked to review the Master Facility Plan and come back with recommendations to the full  
16 Board on what direction should be taken.  
17

18 Mayor Erwin noted that VCOG meetings will now be held in a facility located on the corner of Williamson  
19 Blvd. and Hwy 92. He reported that presentations from several cellular telephone companies were very  
20 informative and many questions were raised.  
21

22 BEGIN TAPE 2-A  
23

24 **C. City Clerk**

25  
26 The City Clerk had nothing to report at this time.  
27

28 **D. City Attorney**

29  
30 Mr. Reischmann reported that Volusia County will be sponsoring a public forum regarding the Southwest  
31 Activity Center and the DRI in late March. Mr. McCue said that he and Mr. Reischmann would be attending  
32 that meeting.  
33

34 Mayor Erwin asked Mr. Reischmann to give a brief synopsis of what transpired at the recent meeting with the  
35 VGMC. Mr. Reischmann noted that in 2004 a Comprehensive Plan Amendment was submitted to VGMC  
36 designating several hundred acres as MX. For that Comprehensive Plan Amendment, VGMC wanted to  
37 impose a Certificate of Consistency that was conditional and required all sorts of requirements and conditions  
38 that the City could not meet and would have prevented the development of the property subject to that  
39 Comprehensive Plan Amendment.  
40

41 Mayor Erwin pointed out that the area under discussion was located in the northeast corner of the City. Mr.  
42 McCue replied that the property consisted of 100 acres of undeveloped land. Mr. Reischmann reported that  
43 the City then revamped the Comprehensive Plan Amendment to include only the 100 acres of undeveloped  
44 land. He noted that DCA will be approving the Comp Plan Amendment and it's already been approved by the  
45 Department of Transportation. Mr. Reischmann reported that yesterday they met with representatives from  
46 VGMC and stated, "We told them that we felt that they may not have been doing their job. They were  
47 unhappy with the points that we raised and we expressed to them that we have been working with them for

1 over 20 months now trying to answer all of their questions through repeated responses to what are called  
2 'requests for additional information', and that every time that we responded fully to their requests for  
3 additional information they'd come back with another set of requests for additional information. And, we  
4 said essentially that 'enough is enough', and that if we're required to follow the rules of the game, they're  
5 required to follow the rules of the game. We anticipate that this matter is going to move forward." He  
6 expected that the City would be receiving notice of a hearing for late March.  
7

8 Mr. McCue predicted that this issue could lead to some level of litigation in the future and noted that VGMC  
9 has based their decision process on historical practices rather than County code and that those practices and  
10 timeframes for approvals are not consistent with their codes. He stated, "Our opinion is that we have a de  
11 facto approval of the Comprehensive Plan because they missed their timeframes and since they missed their  
12 timeframes staff is going to bring back and recommend to you the final adoptive hearing once we get the  
13 ORC cleaned up from DCA. And, we're going to move forward. I would fully expect that at that stage of the  
14 game, the VGMC Board of Directors is going to have consider a recommendation from their legal counsel,  
15 Gray Robinson, whether or not they want to litigate this issue."  
16

17 In response to a question from Councilmember Allebach, Mr. McCue responded that the City was not going  
18 to be able to purchase Ms. Hagood's property because of the value that was placed on it so the City removed  
19 its objection to her developing the property. Mr. Reischmann reviewed what had transpired regarding Ms.  
20 Hagood's appeal after the City Council upheld the Planning Commission's decision to deny her request based  
21 upon prior rulings from Volusia County. He stated that during the appeal process Mr. McCue had instructed  
22 him to investigate the opportunity of purchasing Ms. Hagood's property given the respective strengths and  
23 weaknesses of the City's case. The appraisal presented by Ms. Hagood's representatives was consistent with  
24 the increased real estate values in Central Florida. Mr. Reischmann stated, "Your City Manager felt that it  
25 would not have been a very good use of City funds simply to purchase that piece of property with the hope of  
26 trying to prevent the negative impacts of the development consistent with the way that Ms. Hagood intends  
27 to."  
28

29 Mr. Reischmann reported that Ms. Hagood indicated that she would work with the City to try and minimize  
30 those negative impacts and stated, "As a result of that, given the relative strength and weaknesses of our case,  
31 we chose to not proceed with defending the appeal."  
32

## 33 9. APPROVAL OF MINUTES:

34  
35 **Councilmember Sherrill moved to approve the minutes of the**  
36 **February 7, 2006 Workshop Meeting and the February 14, 2006**  
37 **Regular Council Meeting, seconded by Councilmember Allebach, and**  
38 **passed by a unanimous 5/0 voice vote of the Council.**  
39

## 40 10. COUNCIL COMMENTS:

41  
42 Councilmember Mahoney thanked Mr. McCue for the moment of silence for Molly Murray.  
43

44 Councilmember Allebach referred to correspondence regarding engineers for the City of DeBary reviewing  
45 Orange City's stormwater plans for the Enterprise Cove subdivision and reporting that it was "perfect". He  
46 noted that as part of the development process, the Development Services Department ensures that stormwater  
47 drainage projects do not adversely affect other properties either in Orange City or adjacent cities.

1  
 2 Mayor Erwin said that he hoped that if the issue between the VIA and the Library Association could not be  
 3 resolved that staff could find an adequate facility for the VIA activities.

4  
 5 **11. ADJOURNMENT:**

6  
 7 There being no further business, Mayor Erwin adjourned the meeting at 9:00 p.m.

8  
 9 **RESPECTFULLY SUBMITTED:**

**APPROVED ON**

10  
 11  
 12  
 13  
 14 Leslee Gustafson  
 15 Deputy City Clerk

\_\_\_\_\_